

Agenda

City of Birmingham Board of Zoning Appeals

Commission Room of the Municipal Building
151 Martin Street, Birmingham, Michigan
October 13, 2015
7:30 PM

1. Roll Call
2. Approval Of The Minutes Of September 8, 2015
3. Appeals:

	Address	Petitioner	Appeal	Type/Reason
1.	2100 E MAPLE	2100 E MAPLE, LLC	15-26	DIMENSIONAL
2.	355 HANNA	DELVECHIO	15-25	DIMENSIONAL
3.	530 FAIRFAX	PRAY	15-29	DIMENSIONAL

4. Correspondence
5. General Business
6. Adjournment

Title VI

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**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, SEPTEMBER 8, 2015**

City Commission Room
151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, September 8, 2015. Chairman Charles Lillie convened the meeting at 7:30 p.m.

Present: Chairman Charles Lillie; Board Members Kevin Hart, Thomas Hughes, Jeffrey Jones, Randolph Judd, Peter Lyon; Alternate Board Member Cynthia Grove

Absent: Board Member John Miller

Administration: Bruce Johnson, Building Official
Scott Lenhart, Asst. Building Official
Carole Salutes, Recording Secretary

The chairman welcomed everyone and explained the BZA procedure to the audience. Additionally, he noted that the members of the Zoning Board are appointed by the City Commission and are volunteers. They sit at the pleasure of the City Commission to hear appeals from petitioners who are seeking variances from the City's Zoning Ordinance. Under Michigan law, a dimensional variance requires four affirmative votes from this board, and the petitioner must show a practical difficulty. A land use variance requires five affirmative votes and the petitioner has to show a hardship. There are no land use variances called for this evening. Also, appeals are heard by the board as far as interpretations or rulings. Four affirmative votes are required to reverse an interpretation or ruling. There are no interpretations on this evening's agenda.

T# 09-50-15

APPROVAL OF THE MINUTES OF THE BZA MEETING OF JULY 14, 2015

Mr. Jones:

Page 7 - Last line, delete "does" and replace with "states."

Motion by Mr. Lyon

Seconded by Mr. Jones to approve the Minutes of the BZA meeting of July 14, 2015 as corrected.

Motion carried, 7-0.

VOICE VOTE

Yeas: Lyon, Grove, Jones, Hart, Hughes, Judd, Lyon

Nays: None

Absent: Miller

T# 09-51-15

**407 GREENWOOD
(Appeal 15-21)**

The owners of the property known as 407 Greenwood request the following variance to allow for the construction of a new house with attached front garage more than 50% of linear building width and not set back a minimum of 5.00 ft. behind front façade of house furthest back from front property line:

- A. **Chapter 126, Article 4, Section 4.70** of the Zoning Ordinance requires a maximum of 50% (18.00 ft.) of a linear building width that faces a street, for an attached garage. The applicant is proposing 64.80% (23.33 ft.). Therefore, a variance of 14.80% (5.33 ft.) is requested.
- B. **Chapter 126, Article 4, Section 4.70** of the Zoning Ordinance requires front garages must be set back a minimum of 5.00 ft. from the portion of the front façade on the first floor that is furthest set back from the property line. The applicant is proposing 44.33 ft. in front of furthest back front façade. Therefore, a variance of 49.33 ft. is requested.

This property is zoned R-2.

Seven pieces of correspondence have been received that do not object to the side entry garage. One piece of correspondence opposes front facing garages.

Mr. Lenhart said there was a change in the Ordinance that was approved by the City Commission on April 27, 2015 and that went into effect on May 11, 2015. Numerous public meetings starting in January, 2014 were held on the proposed change. These applicants have not yet made application to the City for a Building Permit. Normally the Ordinance in effect on the date of the Building Permit Application is what prevails. Responding to Mr. Lyon, Mr. Lenhart explained the front of the garage must be 5 ft. behind the front facade that is furthest from the street.

Ms. Grove asked what prompted the 1998 Ordinance change that limited the effect of garages on the fronts of houses. Mr. Johnson replied some creative designs were

coming out that technically met the letter of the Ordinance, but there was concern they were not in line with the original intent of the 1998 Ordinance.

Mr. Jeffrey Leib, Attorney, spoke on behalf of Michael and Carolina Furnari, the homeowners. Mr. Alex Fritz of AZD Architects was present also. Mr. Leib noted the only letter in opposition to the applicants' request opposes front-facing garages. This garage faces the side yard. The Furnaris propose a footprint which is almost identical to neighbors two doors down. The garage they are proposing is 34.26% of the width of the house. The applicants' proposed footprint and building envelope comply with the former Section 4.70 of the Ordinance. They were ambushed by the fact they were never told there was an ordinance being considered by the City that would amend that ordinance. Had his clients known the Ordinance was being changed they would have proceeded more timely in submitting their plans to the City. Unless the requested variances are granted his clients will be relegated to a home design with a detached rear garage that eliminates rear yard recreational use. They will be denied the rights enjoyed by others, including an immediate neighbor.

Chairman Lillie noted the other houses on the street that have similar plans to the ones proposed by the Furnaris were built when the Ordinance was different. Mr. Leib's client has some responsibility to make sure that whatever is done complies with the Ordinance. It is nice that all of the neighbors are in favor of the variances, but that doesn't establish practical difficulty. Mr. Leib explained that the adoption of the new ordinance came as a big surprise to the Furnaris and to the architect as well.

Mr. Leib agreed with Mr. Judd who established that the City complied with all of the requirements set forth by the State.

Mr. Leib also agreed with Mr. Lyon that the intent of the prior ordinance was to prevent front yard garages. However Mr. Kevin Ache, the architect, came up with a creative design for a side entry garage that complied with what was written in the prior ordinance.

In response to Chairman Lillie's suggestion to put the garage in back and move the house forward, Mr. Fritz said that moving the detached garage around to the back of the home would limit the amount of outdoor space.

The chairman took comments from the audience at 8:07 p.m.

Mr. Irving Tobocman, 439 Greenwood, said he has a front garage which allows for a nice amount of green space along the street and a minimum amount of asphalt. People along the street with garages in the back must back out onto the road. To him a garage in the front allows for a certain nicety that happens in our walkable community.

It also allows the children to be in the back of the house and not playing in the front yard and into the street.

Motion by Mr. Judd

Seconded by Mr. Lyon with respect to Appeal 15-21, 407 Greenwood. The petitioner seeks two variances from Chapter 126, Article 4, Section 4.70. The real issue before us is whether or not there is a practical difficulty that has been somehow forced upon the petitioner in this case due to an adoption of a new ordinance. By the same number, the house presented to us in the plans is based upon a prior version of Section 4.70 and it does not comply with the new requirements of Section 4.70; specifically that front garages must be set back a minimum of 5.00 ft. from the portion of the front facade on the first floor that is furthest set back from the property line. In this case the applicant is proposing 44.3 ft. in front of the furthest back front facade. Therefore, a variance of 49.33 ft. is required.

We have had extensive discussion about what was known, and what could have been known. The legal representative for the petitioner, Mr. Leib, has conceded that the City, in advertising and preparing an amendment to Section 4.70, devoted a year's worth of effort for public hearings, along with numerous other hearings with study groups, and the amendment was finally enacted on April 27, 2015.

There are four requirements for a practical difficulty. One is whether strict compliance with the Ordinance would unnecessarily prevent the owner from using the property for a permitted purpose and it would render the conformity with such restrictions unnecessarily burdensome. Mr. Judd does not feel that it does so in this case, based primarily upon the fact that the City followed all requirements of notice required under State statute.

The second is that granting the variance would do substantial justice to the applicant as well as other property owners in the district and the relaxation that applies would give substantial relief to the owners of the property and be consistent with the justice for other property owners. Mr. Judd does not feel that applies in this case.

We deal with lines; in this case a time line. A year's notice was provided. The architectural firm representing the petitioner, AZD, does work within the City. It was well within their abilities to be aware of the changes and amendments taking place to Section 4.70.

The third requirement is whether the plight of the owner is due to the unique circumstance of the property and not general conditions in the area. This is a common problem in this area, which is a long, thin, ribbon like piece of property. There have been several attempts over the years to address that, none of which

have been satisfactory to the City and to its planning boards, Building Dept., and planners. So, the latest Section 4.70 was adopted. There is no unique circumstance with this property and there are alternatives that have been discussed here on rearranging the property and different placement of where the garage would sit.

The last requirement is whether the problem is self-created and Mr. Judd feels in this case that it is due to a lack of attention on the part of either the petitioner or their representative. He would once again stress that this process for the amendment took over a year; that there were public hearings; that the architect in question does work within the City; and he feels that the term of an "ambush" is unfair and not applicable in this particular situation.

For those reasons Mr. Judd would move to deny the variances requested by the petitioner.

Mr. Lyon indicated he would support the motion. He feels the Ordinance went from something that had some loopholes and allowed some creativity to something that does not. This solution goes a long way and looks like a house with a side-facing garage. However, the Ordinance is what it is and we have to live by the ordinances when they go into effect.

Chairman Lillie said he will also support the motion. He doesn't think there has been any showing that it is unduly burdensome to comply with the Ordinance. There is nothing unique about this property and he would agree with Mr. Judd's conclusion on the self-creation.

ROLLCALL VOTE

Yeas: Judd, Lyon, Grove, Hart, Hughes

Nays: None

Recused: Jones

Absent: Miller

T# 09-52-15

381 PLEASANT Appeal 15-22

The owners of the property known as 381 Pleasant request the following variance to allow for the construction of a home addition less than the required minimum front setback for this lot:

- A. **Chapter 126, Article 2, Section 2.10** of the Zoning Ordinance requires a minimum front setback of 61.08 ft. for this lot. The applicant is proposing 48.49 ft. Therefore, a variance of 12.59 ft. is requested.
- B. **Chapter 126, Article 4, Section 4.30 (C)** of the Zoning Ordinance allows front porches to project into a front open space for a maximum of 10.00 ft. The applicant is proposing 13.28 ft. Therefore, a variance of 3.28 ft. is requested.

This property is zoned R-3.

Mr. Lenhart advised the applicant is proposing to build an addition to an existing non-conforming house. This lot and the adjoining lots are over 400 ft. deep. The three houses to the south were built in 2006, 2013, and 2012. They were built further back, creating a 200 ft. average that is non-conforming for this lot. The house to the north is in line with the subject house.

Ms. Patricia Keller, Sr. Designer for Kevin Hart Associates, spoke on behalf of the homeowners, Brad and Leah Cellars. She requested an addition built over the current footprint of the home to expand living space on the second floor and also to come out with a front porch that would enhance curb appeal. Their hardship is that the homes to the south have been pushed quite far back from the street and this home. If the setback were somewhere between 48 and 50 ft., a variance would not be needed.

No one in the audience wished to comment on this appeal at 8:20 p.m.

Motion by Mr. Lyon

Seconded by Mr. Jones in regard to Appeal 15-22, 381 Pleasant, to grant the variance as advertised and as demonstrated in the plans that were submitted. The appellant seeks a variance under Chapter 126, Article 2, Section 2.10 for a minimum front setback and under Article 4, Section 4.30 (C) for the projection into the front open space for a front porch.

Mr. Lyon believes that strict compliance with the Ordinance would be unduly burdensome because of the unique nature of this parcel with this building on it. These are very deep lots and the three neighbors to the south have elected, upon demolition and reconstruction of new homes, to site their houses much further back than was originally there and much further back than this house and the houses to the north; and actually some of the houses further south.

Mr. Lyon doesn't believe this is self-created. He thinks the granting of the variance does substantial justice to both the homeowner and the surrounding neighborhood, in that they are not seeking to move the main body of the house

further forward; only add a second-story addition on top of the existing first floor, as mentioned. He would tie the motion to the plans as submitted.

Mr. Lyon added that the petitioners became non-conforming because of the actions of their neighbors. While one can keep their building as existing non-conforming, if they want to expand they must come to the BZA.

Motion carried, 6-0.

ROLLCALL VOTE

Yeas: Lyon, Jones, Grove, Hughes, Judd, Lillie

Nays: None

Recused: Hart

Absent: Miller

T# 09-53-15

**779 W. SOUTHLAWN
(Appeal 15-23)**

The owners of the property known as 779 W. Southlawn request the following variance to allow for the construction of an addition less than the minimum required rear yard setback distance and the combined front and rear yard setback total for principal buildings standard:

- A. **Chapter 126, Article 2, Section 2.08** of the Zoning Ordinance requires a minimum rear yard setback of 30.00 ft. for this lot. The applicant is proposing 5.16 ft. Therefore, a variance of 24.84 ft. is requested.
- B. **Chapter 126, Article 2, Section 2.08** of the Zoning Ordinance requires a combined minimum front and rear setback of 55.00 ft. for this lot. The applicant is proposing 43.48 ft. Therefore, a variance of 11.52 ft. is requested.

This property is zoned R-2.

Mr. Lenhart explained the applicant is proposing to demolish an existing, non-conforming attached garage and build a new attached garage with a second-story addition. Mr. Johnson confirmed there was a variance granted in 2012 for a similar request by prior owners but the project was not pursued. Chairman Lillie noticed the house basically has no rear yard at 5.16 ft. setback. The problem is the house doesn't conform to the rear setback requirement or the combined front and rear setbacks.

Mr. David Lubin, the architect for Mr. Michael Ilitch III said the existing garage was built in the 1920s, is falling down, is way below the road, and it floods. Further it is not big enough for a full sized vehicle. The second floor is held back to minimize the scale and conform to the proportions of the existing home. The new garage will be 21 ft. and will face the side street. He produced a letter signed by two adjacent neighbors who are most affected by the renovation stating they have no problems with the design of the garage or the second story.

There were no comments from members of the audience at 8:40 p.m.

Motion by Mr. Jones

Seconded by Mr. Hart concerning Appeal 15-22, 779 W. Southlawn. The petitioner appeals and seeks a variance for two various sections of Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance. Mr. Jones would move to grant the variance. He feels that without the variance the petitioner would be unreasonably prevented from using this unique property for a permitted purpose, or such action would be unduly burdensome.

He thinks the granting of the variance would do substantial justice to the applicant as well as to the other property owners in this regard. He believes the plight of the circumstance here is, in fact, due to the unique circumstances of the property and not the general conditions in the area. He doesn't believe it is self-created. He thinks both the spirit of the Ordinance and substantial justice would be in favor of granting this variance; and accordingly he so moves.

Motion carried, 7-0.

ROLLCALL VOTE

Yeas: Jones, Hart, Grove, Hughes, Judd, Lillie, Lyon

Nays: None

Absent: Miller

T# 09-54-15

119 S. ADAMS

Appeal 15-24

The owners of the property known as 119 S. Adams request the following variance to allow for the construction of a detached garage over the maximum allowed size for this lot:

- A. **Chapter 126, Article 4, Section 4.03** of the Zoning Ordinance allows a maximum of 675 sq. ft. detached garage with an interior staircase for this lot. The applicant is proposing 724 sq. ft. Therefore, a variance of 49 sq. ft. is requested.

This property is zoned R-1.

Mr. Johnson explained the petitioners are planning to attach a covered porch of 80 sq. ft. onto the proposed garage. The original house on the property was constructed in 1835. At that time there was a detached garage with a covered front porch that was about 130 sq. ft. larger than what is being proposed. The proposed garage is 49 sq. ft. over the maximum for a detached accessory building. Chairman Lillie received confirmation that the garage size would be 600 sq. ft. without the interior staircase, but the covered porch would push the garage over the limit anyway. In response to Mr. Judd, Mr. Johnson thought the covered porch is designed to match the house in the back.

Mr. Johnson confirmed for Mr. Hart that if the garage and covered porch were attached to the house it would be conforming. Mr. Hart noted that would totally be in opposition to the historical nature of this house. Mr. Johnson agreed with him that this is a very important historical home. He stated all other proposed setbacks and distance requirements for this lot are conforming.

Mr. William Wozniak, co-owner of the property, noted they have a very large lot and the square footage for garages in Birmingham was established for smaller lots. The covered porch adds to the curb appeal of the garage and the structure. It also fits in with the historical nature of the home and keeps the homeowners dry. It will be 18 to 20 ft. from the house. They are trying to respect the historical nature of the property so they moved things to the back of the lot. It was noted that the garage would be seen driving along Maple Rd.

There were no public comments on this appeal at 9 p.m.

Motion by Mr. Hart

Seconded by Mr. Jones to approve Appeal 15-24. Mr. Hart thinks that the unique circumstances of this particular home require a little higher degree of design attention and he feels the homeowner has demonstrated a commitment to stewardship of this home to try to keep the integrity of the historic nature of the home. He thinks the proposed structure is substantially smaller than the original structure when one accounts for some of the other appendages that are not shown on the survey.

Also Mr. Hart feels substantial justice to neighboring properties and to the homeowner are being adhered to. He doesn't think there is any adverse action to

any of the other neighboring properties. That is the reason he would move to approve Appeal 15-24, tied to the plans as presented.

Mr. Jones noted that the unique nature of the property is the depth and size of the lot. He thinks that substantial justice to the community is enhanced by the porch itself. For those reasons as well as those expressed by Mr. Hart he will support the motion.

Mr. Lyon said he will support the motion also. He believes the covered, unenclosed porch is a little nebulous but does add architectural detail and a minimal variance for this historic lot and historic home.

Chairman Lillie announced he would like to support the motion but is concerned there really has been no showing of a practical difficulty. It is strictly aesthetics here and the board would be setting a bad precedent by approving this request.

Motion carried, 5-2.

ROLLCALL VOTE

Yeas: Hart, Grove, Jones, Hughes, Lyon

Nays: Judd, Lillie

Absent: Miller

T# 09-55-15

**355 HANNA
Appeal 15-25**

Postponed.

T# 09-56-15

**656 RUFFNER
Appeal 15-27**

The owners of the property known as 656 Ruffner request the following variance to allow for the construction of a new house less than the minimum distance between principal buildings standard:

- A. **Article 4, Section 4.69, (C)** of the Zoning Ordinance requires the distance between principal buildings be 14.00 ft. for this lot. The applicant is proposing 13.10 ft. on the east side. Therefore, a variance of .90 ft. is requested.

This property is zoned R-3.

Mr. Lenhart explained the applicant is proposing to demolish the existing house and build a new house on a 40.00 ft. wide interior lot. All other proposed setbacks and distance requirements for this lot are conforming. This case was heard and approved by the BZA on July 8, 2014. However, the applicant failed to start construction within one year and the variance expired.

Lillie noted if the house to the east was 5.00 ft. off the lot line, the applicant would not have to ask for a variance.

Mr. Joe Traficante, Torino Quality Homes, LLC, said his hardship is that the older home to the east is only 3.10 ft. off of the property line. That would now be non-conforming. If it weren't for that, they would be able to build a 26 ft. wide structure and meet all of the zoning requirements. However, due to this situation they shrunk the house down to 25 ft. in the hope of getting a variance. In demolishing the existing structure and building new, they are improving the setbacks in three different ways.

He noted they were granted a variance a year ago, but several circumstances prevented them from getting the Building Permit until he got the Demolition Permit and he could not get the Demolition Permit in a timely manner from when the variance was granted. This design has not changed from what was originally approved.

At 9:10 p.m. no one in the audience wanted to speak to this appeal.

Motion by Mr. Lyon

Seconded by Mr. Jones in regards to 656 Ruffner, Appeal 15-27, to grant the variance as advertised and tie the motion to the plans as submitted which are by testimony the same plans that were submitted some time ago.

The appellant seeks relief under Article 4, Section 4.69 (C), distance between residential structures. In this case it was required to be 14 ft.; the appellant requests 13.10 ft. Therefore variance of .90 ft. is requested. This is entirely due to the unique circumstance of this with the adjacent house that is existing non-conforming being 3.10 ft. from their corner side yard setback instead of the required 5.00 ft. by today's Ordinance. Therefore he believes that strict compliance would be unduly burdensome. This is not self-created, provides substantial justice to the appellant and the surrounding folks, and preserves harmony, peace and health. He ties the motion to the plans as submitted.

Motion carried, 7-0.

ROLLCALL VOTE

Yeas: Lyon, Jones, Grove, Hart, Hughes, Judd, Lillie

Nays: None
Absent: Miller

T# 09-57-15

**1951 COLE
Appeal 15-28**

The owners of the property known as 1951 Cole request the following variance to allow for the construction of a new house less than the required minimum distance between principal buildings standard:

- A. **Chapter 126, Article 4, Section 4.69 (C)** of the Zoning Ordinance requires a minimum of 14.00 ft. between principal structures for this lot. The applicant is proposing 12.80 ft. Therefore, a variance of 1.20 ft. is requested.

This property is zoned R-3.

Mr. Lenhart pointed out that the house to the east is 1.80 ft. off the property line. The applicant proposes to build a 24.00 wide house on a 40.00 wide interior lot. All other proposed setbacks and distance requirements for this lot are conforming.

Mr. Ryan Andrews, Project Manager for the property owner, Home Renewal Systems, LLC said the variance request is due to the adjacent property that is only 1.80 ft. from the property line. Granting the variance would improve the current conditions that the existing house sits on. The existing house is 2.1 ft. from the property line and it is wider than the proposed house.

The chairman took public comments at 9:15 p.m.

Mr. Steve Wilson, who resides just down the street, received clarification that the new house will be deeper than the existing house but it is also going to be narrower than the existing.

Motion by Mr. Hart

Seconded by Mr. Lyon to approve Appeal 15-28, 1951 Cole. The owner of the property has effectively demonstrated that it has been affected adversely by the adjacent property. He has demonstrated that trying to conform to the Ordinance would prevent the owner from using his property and it would also be unnecessarily burdensome.

The unique circumstances are that it has been demonstrated that the existing non-conformance of the adjacent house makes it very difficult. He thinks the proposed structure is very much in keeping with the neighborhood and it is an

austere solution to the problem. It has minimum dimensions. As can be seen on the plans that have been submitted, the 24 ft. dimension is the largest dimension width of the house, which Mr. Hart thinks is a minimum size for a house in this City. Therefore he moves to approve Appeal 15-28 and tie the motion to the drawing.

Mr. Jones was appreciative that the petitioner worked very well with the City and has attempted to mitigate whatever variance was necessary.

Motion carried, 7-0.

ROLLCALL VOTE

Yeas: Hart, Lyon, Grove, Hughes, Jones, Judd, Lillie

Nays: None

Absent: Miller

T# 09-58-15

CORRESPONDENCE (none)

T# 09-59-15

GENERAL BUSINESS (not discussed)

T# 09-60-15

ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 9:20 p.m.

Bruce R. Johnson, Building Official

Application Date: 7-15-15Hearing Date: 8-11-15Received By: BMAppeal # 15-26

Board of Zoning Appeals Application

Type of Variance: Interpretation _____ Dimensional ☒ Land use _____ Sign _____ Admin review _____

Property Information:

Street address: 2100 E. Maple	Sidwell Number: 20-31-202-001
Owners name: 2100 East Maple Road, LLC	Phone #: 248-458-5100
Owners address: 2100 East Maple Road, Suite 200	Email: linden@nelsonventures.com
City: State: Birmingham, MI	Zip code: 48009
Contact person: Linden Nelson	Phone #: 248-458-5100 <u>Disconnected</u>

Petitioner Information:

Petitioner name: same as owner	Phone #:
Petitioner address:	Email:
City:	State:
	Zip Code:

Required Attachments:

- Original Certified Survey ☒ Original BZA application ☒ Letter of hardship or practical difficulty
☒ 10 folded copies of the site plan and building plans (existing and proposed floor plans and elevations)
☒ Set of plans and survey mounted on foam board
 If appealing a board decision, a written transcript from the meeting is required along with 10 copies of minutes from any previous
 Planning, HDC or DRB board.

General Information:

Prior to submitting for a Board of Zoning Appeals review, you must schedule an appointment with the Building Official or a City Planner for a preliminary discussion on your submittal. The deadline is the 15th of the previous month.

The BZA review fee is \$310.00 for single family residential; \$510.00 for all others; and \$50.00 for the public notice sign.

Location of all requested variances must be highlighted on plans and survey. All dimensions to be taken in feet to the first decimal point.

Variance chart example:	Required	Existing	Proposed	Amount of Variance
	25'	24'	24'	1'

By signing this application I agree to conform to all applicable laws of the City of Birmingham. All information submitted on this application is accurate to the best of my knowledge. Changes to the plans are not allowed without approval from the Building Official or City Planner.

Signature of Owner: _____

LINDEN NELSON



FINAL SITE PLAN AND DESIGN REVIEW

1. 2100 E. Maple Rd.

Whole Foods

Application for Final Site Plan and Design Review to allow construction of a new 46,000 sq. ft. grocery store

Ms. Ecker advised that the subject site has been before the board on several occasions. The site currently contains a vacant building that was previously an office building, and then an urgent care medical clinic. At this time, the applicant is proposing a new single-story 46,500 sq. ft. retail building. The subject site is located on the south side of E. Maple Rd., west of the existing LA Fitness facility and east of the railroad tracks. The proposed new building will house a Whole Foods grocery store, selling natural and organic foods. The site occupies a total of 4.62 acres.

On June 10, 2015, the Planning Board voted to accept the Community Impact Statement ("CIS") for the proposed Whole Foods development with several conditions.

On June 29, 2015, the City Commission approved the rezoning of the parcel from O-1 to B-2, with the condition that the rezoning be approved, but the use be limited to grocery store uses only.

On August 12, 2015, the Planning Board continued to discuss the Preliminary Site Plan for the proposed Whole Foods Store. Much of the discussion focused on the traffic, landscaping, glazing, and the building's floor plan. At that time, the Preliminary Site Plan was approved with conditions.

Ms. Ecker advised that at this time in accordance with the Planning Board's request, the applicant has rotated the interior layout of the proposed building and placed the cash registers and eating areas along the east elevation and created a more prominent front entry on E. Maple Rd. There is a main entry at the southeast corner of the site as well. The applicant is also proposing outdoor seating along the front and side elevation of the building to promote activity and a welcoming front entry connected to the public sidewalk. Additionally, three new bike racks have been added along the northeast corner of the building as requested by the Planning Board.

The applicant is required to obtain a waiver from the arborist or obtain a variance from the Board of Zoning Appeals ("BZA") or provide the required total of 14 street trees and to ensure that all notes and drawings are consistent on all of the plan sheets. The arborist has indicated verbally that he would provide a waiver.

Design Review

Ms. Ecker advised that the applicant has submitted a photometric plan for the entire site. However, the photometric plan (drawing No. 15-38601-V6) shows light levels outside the property line on the northwest side of the property in excess of 1.5 fc, which does not meet the maximum luminance level in Article 4, section 4.21(E) of the Zoning Ordinance. This could be mitigated if lighting fixture LK- 30 were removed. ***The***

applicant will be required to adjust the lighting in this area to meet all requirements, or to obtain a variance from the BZA.

Numerous changes have been made to the building design pursuant to the requests of the Planning Board during Preliminary Site Plan Review. The applicant has now removed the fritted glass panels, and has reconfigured the store layout as noted above to orient the front of the store to E. Maple Rd.

Accordingly, additional glazing has been added to both the north and the east elevations of the proposed store. Glazing has been minimized along the west elevation that faces the railroad embankment, and has been reduced along the south elevation to allow internal prep stations in this area. All active areas are now oriented toward the north and east edges of the building as requested by the Planning Board.

Ms. Ecker advised that the building as proposed does not meet the 70% glazing requirement as listed in section 4.83 of the Zoning Ordinance. ***The applicant has submitted an application for a glazing variance, and this matter will be heard at the October 13, 2015 meeting of the BZA.***

All signage will require review and approval by the Design Review Board or Administrative Sign Review by the Planning Division as insufficient detail has been provided on the size, materials and mounting details of the proposed signage.

Mr. Jeffares had concerns that inside lights shining out might be an issue along the north elevation. He received clarification that the Building Dept. will review placing of the barrier free parking spaces.

Mr. Rick Rattner, Attorney, 380 N. Old Woodward Ave., was present to represent the property owner, Mr. Linden Nelson of Nelson Ventures, LLC who was in attendance. With them was Mr. Mike Fitzgerald with OKW Architects, 600 W. Jackson Blvd., Chicago; Mr. David Hunter from PEA; and Mr. Joseph Marson, Traffic Engineer with Parsons,

Mr. Fitzgerald said they have activated the north facade by sliding the building to the south approximately 8 ft. That enabled them to provide a larger, more prominent entrance as well as an outdoor terrace that extends along a fair portion of that facade. They lost a couple of parking spaces, but there is no concern because there is adequate parking. The spaces along the railroad will be for employee parking. In response to Mr. Jeffares' comments they are open to sliding a couple of handicap spaces up to the north end of the building and they are sensitive to mitigating the light transmittance out from the building.

Mr. Fitzgerald described how the interior floor plan has been modified by rotating the interior plan 90 degrees to provide a significantly enhanced connection to the City along E. Maple Rd. as suggested by several board members. Additionally, he went on to illustrate how each of the elevations has changed.

Material samples were then passed around. The building is predominantly brick or cast stone, but three corner elements are glass to screen mechanical equipment at the parapet. That glass is insulated, layered and the back is painted medium grey. There is a consistent dot pattern silk screen on the front face of the glass that provides depth just as the clear vision glass has beneath it. The board might want to consider that same screening for the upper-most portions of the vision glass along the north facade. It would still provide vision into the store, but at the same time reduces the amount of light that can transmit through.

Ms. Ecker noted the medium grey glass with the dots will not count toward the 70% glazing requirement.

Mr. Fitzgerald indicated they will work with staff to rectify the concern for light bleeding out from the northwest corner of the site.

Ms. Whipple-Boyce had concerns regarding maintenance of the cedar stained horizontal wood slats that screen the loading and trash area on the west elevation of the building. Mr. Fitzgerald produced an alternate material called longboard they have considered to replace the wood. It is made from aluminum and has a wood grain finish. Ms. Whipple-Boyce asked if the porcelain tile material will be a full-bodied color rather than having just a painted surface. Mr. Fitzgerald agreed to look into that.

Mr. Fitzgerald explained for Ms. Lazar that six or seven cart corrals are provided throughout the site. He clarified for Mr. Jeffares that the eye level from the second floor of the apartments across the street will not be above the parapet of the Whole Foods building and therefore people will not be looking down on mechanical equipment.

Mr. Koseck thought this is a great design. He hopes the BZA will support the applicant's variance for the amount of glazing. He was not in favor of cedar stained wood slats and likes the porcelain tile or the aluminum. Further, he asked to eliminate the deceleration lane on this very wide section of E. Maple Rd. Another lane makes the road wider yet. He suggested it would be nice to have street trees between the curb and the porch area. Lastly he liked the elimination of two parking spaces at the entrance to the site.

Mr. Fitzgerald said if there is an issue of light transmittance, film can be added to the back of the glass inside the store. That is something that can be done post construction.

Chairman Clein took discussion to the public at 8:40 p.m.

Mr. David Bloom asked about the safety plan for the site. Ms. Ecker said if there is an issue, the various departments call it out. She assumes from their lack of comment that there is enough coverage.

Mr. Dorothy Conrad, 2252 Yorkshire, indicated she is very pleased with what has been done with this project.

Chairman Clein agreed with Mr. Koseck regarding the deceleration lane. Also he thought this is a much better project without the two parking spaces. Any change in the floor plan to add a bottle return area can be administratively approved.

Mr. Jeffares said people will come and go sporadically from this site as opposed to having an office building where everyone enters and leaves at the same time, so this is win-win with regards to traffic.

Mr. Boyle agreed about eliminating the deceleration lane. Also, he thinks this is a magnificent structure and it brings vitality, jobs and taxes into the City. So he looks forward to seeing it built.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Koseck to approve the Final Site Plan and Design for 2100 E. Maple Rd., Whole Foods Market, with the following conditions:

- 1) Applicant provide the required screen wall/evergreen screening for all parking areas or obtain a variance from the Board of Zoning Appeals;**
- 2) Obtain administrative approval for any rooftop mechanical equipment and associated screening;**
- 3) The applicant is required to obtain a waiver from the Arborist, or obtain a variance from the Board of Zoning Appeals, or provide the required total of 14 street trees, and to revise the landscape plan to ensure that all notes and drawings are consistent on all of the plan sheets;**
- 4) Applicant provide plans delineating the size of the indoor seating areas to determine if all parking requirements have been met;**
- 5) Applicant provide a public access easement to the City for the sidewalk along E. Maple Rd.;**
- 6) Adjust light levels at the northwest corner of the property or obtain a variance from the Board of Zoning Appeals;**
- 7) Applicant provide material samples and specifications for all proposed materials, including window tints for administrative approval;**
- 8) Comply with the 70% glazing requirement or obtain a variance from the Board of Zoning Appeals; and**
- 9) Applicant remove the deceleration lane.**

Mr. Share raised the question as to whether the board is in a position to remove the deceleration lane. Chairman Clein recalled that both the applicant's and the City's traffic consultants felt there was not an overwhelming traffic warrant for its installation, which is the reason why he personally supports its removal.

There was no discussion from the public at 9 pm.

Motion carried, 7-0.

ROLLCALL VOTE

Yeas: Whipple-Boyce, Koseck, Boyle, Clein, Jeffares, Lazar, Share

Nays: None

Absent: DeWeese, Williams

July 15, 2015

Proposed Whole Foods Market-Birmingham, MI

Preface:

The proposed project is a 46,500 SF single-tenant (Whole Foods Market) grocery store, a permitted use for the Maple Road property that is Zoned B2.

As a grocery store market, the more publicly visible components serving customers include entry and exits, open shelving, coolers and freezers, staffed service "departments" (fish, meat, bakery, floral, etc), dining, restrooms, and cashiers. Additionally there is a significant percentage of space hidden from the public, though crucial to the practical function of a grocery store. Some of these components are receiving and loading, storage, freezers and coolers, private offices, employee facilities, and security provisions.

The time-tested and accepted layout of a grocery store, which with we all appreciate for its familiarity and comfort through a comprehensible flow of traffic, consists of visible points of entry, a central portion of goods displayed on open shelves and inside coolers and freezers, a perimeter of produce, refrigerated goods, staffed departments, and accessible restrooms. Whole Foods Market, like many grocery stores, also provides an in-store café/dining experience. Those spaces not accessible to the public are typically required to be enclosed, to best serve the essential function of a grocery store.

This description does not fully cover the extent of what Whole Foods offers nor its unique position in the grocery store market, but does represent a basic understanding of their programmatic "business", consistent with that of many grocery stores.

The project's triangular shaped property sits on the south side of Maple Road at the eastern border of Birmingham, between an elevated Amtrak rail line and a Fitness Club (in Troy). Fronting Maple Road, across the street to the north, is multi-family residences with single-family residences beyond. Beyond the rail line to the west lies a relatively new and denser multi-family neighborhood.

The building's design accounts for it's unique location within this neighborhood and community and it's specific orientation on the property, as much as it programmatic requirements.

Consequently, a significant amount of glazing is provided on the entry façade facing the south parking field. The Maple Road entry primarily serving the pedestrian traffic from the neighborhood, as well as pedestrian level glazing in the central portion of the façade provides visibility into the store's employee areas. Clerestory (high) windows visually activate all four building facades, and provide visibility into the store's volume where enclosed spaces occupy the perimeter.

Our petition is seeking approval from the Board of Zoning Appeals for a variance to the Ordinance, **Article 4.83-WN-01**, requiring 70% glazing on each façade facing a street or parking area.

All four facades of the proposed building are subject to this provision.

Pertaining to the Ordinance and the definitions determining the area of the "ground floor façade", a significant percentage of the building facade is predetermined as opaque. This is



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the area of façade vertically enclosing the buildings roof structure, consisting of perimeter beams/joists and roof system. Specifically, it is from the bottom of the structure/top of the windows (at 19') to the top of the roofing (at 22'). This three foot zone comprises approximately 14% of the façade area. In order to meet the 70% requirement, more than 80% of the remaining façade...at the pedestrian level...would need to be clear glazing.

Along with the submitted building floor plan and rendered elevations, perspective views accompany the application for reference. Additionally, a graphic representation of the building façade and it's proposed glazing, with numeric calculations, visually describe the Ordinance requirements and variance request.

In support of our request for a variance, we believe the project meets the following criteria:

- i. **Because of special conditions applicable to the property in question, the provisions of the Zoning Ordinance, if strictly applied, unreasonably prevent the property owner from using the property for a permitted purpose.**

The location of the property on the edge of the City is conducive to a stand-alone single tenant building. The Ordinance and "*Best Practices*" Planning requires the building to sit close to the street with parking located behind the building. The proposed building is located proximate to Maple Road, with the majority of parking behind the building and a small percentage of parking along it sides. Consequently, all four sides of the single-use building are subject to the 70% glazing requirement.

Unlike a retail site located in the Commercial Business District (for which this provision in the Ordinance is best suited), which can be served by street parking or centrally located public parking structures, neither Maple Road nor the general neighborhood provides additional parking to serve the use.

As explained in the preface, the proposed grocery store requires a considerable percentage of enclosed spaces to adequately function and serve its customers. It is necessary for the proper function of this permitted use that a reasonable amount of this enclosure be located along the building perimeter. The west façade faces minimal parking along an elevated train line, and the east façade faces a modest row of on-site parking that is separated from the neighboring fitness center parking lot by landscape. Both facades provide clerestory windows and a modest pedestrian level glazed portion with views to/from within public areas of the grocery store. The south facade entry is proximate to the majority of its parking and is predominately glazed to provide maximum visibility into and from within the store. The façade along Maple Road consists of a glazed entry as well, and pedestrian level glazing at employee offices. The topography of Maple Road proximate to the train underpass sits noticeably below the main floor of the store, resulting in the least "pedestrian accessible" portion from the public walkway. This area of the building primarily consists of building services and receiving, and the exterior is well-landscaped within the modest setback.

ii. **Literal enforcement of the chapter will result in unnecessary hardship.** Providing 70% glazing on all four sides of the proposed building would result in an unnecessary hardship in one of two ways:

1. A significant percentage of necessary and reasonably enclosed spaces would be visible to the public, and would compromise the function and/or security of the permitted use. Many of these required spaces are also less visually appealing and best hidden from public view, or



2. The required enclosed spaces would be relocated to the building's center while leaving the perimeter for publically-viewed functions. This results in a significantly inefficient store layout that would be both confusing and onerous for the customer to maneuver through, and unnecessarily burdensome to service from a functional standpoint. This inefficiency would result in significantly less product and services being provided to the customer within the proposed footprint, or require additional building area (and parking) than necessary or reasonable in order to provide the same product and services.

iii. The granting of the variance will not be contrary to the spirit and purpose of the Zoning Ordinance nor contrary to the public health, safety and welfare.

The spirit and purpose of the Ordinance is to encourage buildings with a welcoming, attractive, and vibrant "public face". The proposed building does such, with a visually pleasing design on all four facades, articulated with natural materials and glazing. No side of the building is deemed as the "back" and the building literally has two "fronts", including entries along Maple Road and the main parking to the south. These two "fronts" include significant areas of clear glazing at the pedestrian level. Even the sides of the building include clear glazing, providing views into the store's activity and volume. Consequently, granting the requested variance for the building as proposed is not contrary to the Ordinance's spirit and purpose, nor the public's health, safety and welfare.

iv. The granting of the variance will result in substantial justice to the property owner, the owners of property in the area and the general public.

The granting of the variance will result in substantial justice to the property owner, the neighboring property owners, and the general public in that a useful and necessary service (one that is permitted by Zoning) can be provided on the property for the immediate neighborhood as well as the surrounding community. The building fronts Maple Road and screens parking, as required. All four facades are thoughtfully designed, addressing the immediate and local context through a composition of materials and details. Great provisions have been made (beyond that of a typical grocery store function) to provide significant glazing in areas with clear visibility into and from within the store, as well as clerestory (high) glazing in areas requiring enclosure.

It is our opinion that granting the requested variance would not result in any undue hardship on neighboring property owners or to the general public.

Sincerely,

OKW Architects



Michael G. Fitzgerald, AIA
Principal





Civil Engineers | Land Surveyors | Landscape Architects

experienced. responsive. passion for quality.

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July 15, 2015
PEA Project No: 2015-053

City of Birmingham
151 Martin Street
Birmingham, MI 48012-3001

**RE: Whole Foods
2100 E Maple Road
Street Tree Variance**

Dear Board of Zoning Appeals:

The proposed Whole Foods development at 2100 E. Maple Road is requesting a variance or waiver from the City's arborist for the required number of street trees. One (1) canopy tree is required for every 40 feet of frontage per the zoning ordinance. The subject parcel has 550 feet of road frontage which equates to 14 street trees required.

The development is proposing 6 trees along the road frontage. Additional trees cannot be provided due to conflicts with existing easements, utility lines and sight vision triangles. In addition, road frontage greenspace is lost due to the new right turn lane required at the eastern drive approach and a wider western drive approach for truck access.

Two (2) existing honey locust trees will need to be removed along the frontage for the proposed development. These will be replaced with the required four (4) replacement trees. One (1) existing tree along the frontage will be saved. Also, one (1) additional street tree will be provided. No additional trees can be provided along the frontage due to the conflicts listed above. Granting of the variance would not be contrary to the spirit and purpose of the zoning ordinance.

Sincerely,

PEA, Inc.

Rachel L. Smith, PE, LEED AP, CFM
Senior Project Engineer



Williams Williams Rattner & Plunkett, P.C.
Attorneys and Counselors

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Suite 300
Birmingham, Michigan 48009

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Richard D. Rattner
rdr@wwrplaw.com

October 6, 2015

Board of Zoning Appeals
City of Birmingham
151 Martin Street
Birmingham, Michigan 48009

***Re: 2100 East Maple, L.L.C. ("Applicant") –
Supplemental Letter of Hardship for Board of Zoning Appeals Application
Tax Item No. 20-31-202-001
2100 East Maple Road, Birmingham, MI ("Property")***

Dear Members of the Board of Zoning Appeals:

Please accept the following supplemental hardship letter and information on behalf of the Applicant in support of its request for a dimensional non-use variance from the "clear glass" requirement of "Storefront/Ground Floor Windows" as set forth in Article 4.83-WN-01(A)(1). The subject building is a proposed Whole Foods Market which is intended to be constructed on the Property. This supplement is a result of several design changes made to the site plan during the planning process. These changes to the site plan were made after extensive reviews and suggestions made by the Planning Board and the Planning Staff, together with a complete redesign of the interior and exterior of the proposed Whole Foods Market so that it would conform to the 2016 Master Plan and the ordinances of the City of Birmingham. Given the hardships and unique circumstances created by the physical characteristics of the Property and the permitted use of the site as a grocery store, Applicant has endeavored throughout the process to change certain elements of the design so that any request for a variance of the glazing requirements is as minimal as possible.

Summary of Variance Requested

Applicant respectfully requests a variance from Article 4.83-WN-01(A)(1) of the Zoning Ordinance, which section provides, in pertinent part:

The following window standards apply on the front façade and any façade facing a street, plaza, park or parking area:

A. Storefront/Ground Floor Windows: Ground floors shall be designed with storefronts that have windows, doorways and signage, which are integrally designed. The following standards apply:

- 1. No less than 70% of the storefront/ground floor façade shall be clear glass panels and doorway. * * **

Applicant respectfully requests a dimensional non-use variance from the foregoing regulation to allow a design that includes windows with areas that are less than 70% of the area of each storefront/ground floor façade of the building. The detail of the glazing coverage is shown on **Exhibit A**.

Because of the shape and size of the Property, coupled with the requirements of the Master Plan design standards, all four sides of this proposed Whole Foods building are subject to the standards contained in Article 4.83-WN-01(A)(1). That is, unlike most other property subject to downtown Birmingham design standards, each façade of the building faces either a street or a parking area. However, because of the irregular shape and size of the Property, each of these façades have a distinct character which relates to the functionality and design elements of the store (see Site Plan and Floor Plan at **Exhibit B**). Specifically: (i) the north façade faces Maple Road; (ii) the east façade faces a small Whole Foods on-site parking area and, on the adjacent property, an LA Fitness (with its parking area); (iii) the south façade faces a parking area which is located to the rear of the Property and contains the main parking field for the Whole Foods Market; and (iv) the west façade faces the Grand Trunk Western Railroad which is situated at the top of a dramatically elevated berm. This west façade is also the location of the Whole Foods loading dock and a small parking area for service personnel and employees of Whole Foods.

The Applicant requests that this Board of Zoning Appeals grant a variance that will allow the percentage of glazing shown on **Exhibit A**. The percentage of glazing shown complies with the principals of the Master Plan and allows the store to provide a clear view of the retail floor and all of the retail activity. The only parts of the façades that are opaque are those areas that either block the view of the truck wells and loading dock areas (located in this building along the west façade), the backroom area of the store, or block the view of the rear of side of heavy equipment commonly placed along interior walls or in the back food processing areas of a grocery store (such as ovens, freezers, refrigeration units, etc.). In this building most of such heavy equipment is located along the western one half of each of the north and south façades, or along the west façade.

Therefore, notwithstanding the unusual and unique shape and size of the Property, the proposed glazing pattern and design preserves the view of customers and passers-by who can look into the store and see retail activity while at the same time not be forced to view the unattractive rear portions of heavy coolers, heating pipes, delivery trucks and other similar vehicles and equipment that are an ordinary and necessary part of the retail operation. This transparent design complies with the principles of the 2016 Downtown Master Plan and promotes a pedestrian-friendly, safe and walkable environment.

**Principal Characteristics of the Property Which Caused
the Applicant to Apply for this Variance**

The Property which is the subject of this variance is a triangular shape (See **Exhibit B**). This is an unusual shape to develop in a downtown area. The Property also has unusual physical characteristics, including grade changes throughout the Property and a railroad track, berm and viaduct along the entire west property line. The unusual shape, size and natural characteristics of the Property make it extremely difficult to develop, and cause hardship when designing a store or any retail outlet, especially when considering the glazing requirements of Article 4.83-WN-01(A)(1). That ordinance requires 70% glazing on all facades that face “...a street, plaza, park or parking area.” This Property borders Maple Road, and the natural shape and size of the Property lends itself to parking on all of the other three sides of the building. Therefore a strict interpretation of the ordinance would require a minimum of 70% glazing on all four facades of the building. As discussed above, given the functions within the building and the necessary operating equipment that is commonly used in the grocery store business, it is not reasonable to build a grocery store that is required to install 70% glass on all four façades of the building. The 70% glazing requirement, is unreasonable in this circumstance, is contrary to the spirit and intent of the ordinance, and imposes an unnecessary hardship and serious practical difficulty for the Applicant.

Article 8.01(F)(3)(a)(i) of the Zoning Ordinance

- i. **Because of special conditions applicable to the property in question, the provisions of the Zoning Ordinance, if strictly applied, unreasonably prevent the property owner from using the property for a permitted purpose.**

There are exceptional and extraordinary circumstances and conditions applicable to the subject Property because of the physical features of the land and its location south of Maple Road and east of the railroad tracks, rail bed and viaduct. These unusual circumstances cause a practical difficulty and unnecessary hardship for the Applicant and prevent the Applicant from using the Property in the same manner as neighboring property owners who own and use a regularly shaped rectangular parcel in the downtown area.

The Applicant's Property is not rectangular but triangular. All four sides of the Applicant's building are subject to the 70% glazing requirement of Article 4.83-WN-01(A)(1). If the ordinance were strictly applied, the Applicant would be required to comply with such glazing requirements and construct a building that was, in effect, 70% glass!

The Applicant contends that it would be unreasonable in this circumstance to strictly apply the glazing requirements of Article 4.83-WN-01(A)(1) to this Property. The shape, size and location of this Property are unique when compared to the neighboring properties, and if the

glazing requirements of the ordinance were strictly applied it would unreasonably prevent the Applicant property owner from using the Property for a permitted use and in the same manner as other property owners. Most property owners of B-2 property have to contend with the 70% glazing standard on only one side of their building (e.g., the front of a typical retail store in downtown Birmingham that consists mainly of large show windows). Rarely is a property owner required to construct all four facades that are 70% glass.

Given the special conditions applicable to the Property in question, unique location and unusual physical characteristics, the strict application of Article 4.83-WN-01(A)(1) would unreasonably prevent the property owner from using the property for a permitted purpose.

Article 8.01(F)(3)(a)(ii) of the Zoning Ordinance

ii. Literal enforcement of the chapter will result in unnecessary hardship.

The literal enforcement of the ordinance will cause the Applicant unnecessary hardship. The Property is zoned B-2 with the condition that a grocery store is constructed on the site. While the B-2 district permits grocery stores, the literal enforcement of Article 4.83-WN-01 of the Zoning Ordinance is unreasonable and will result in unnecessary hardship if the grocery store owner were to be forced to install four façades containing 70% windows. A view of the rear of refrigeration units, ovens, other food processing equipment, delivery trucks, truck wells and other “back of the house” operations does not comply with the spirit and intent of the ordinance that was created to encourage an active pedestrian-friendly environment. Simply stated, the ordinance was created to allow pedestrians the ability to view a sales floor intended for customers. But the literal enforcement of the ordinance in this case, with these unusual and unique circumstances, will result in a design that allows the public to view parts of a retail store that are intended for the use of store administrative, sales and other employees only.

Literal enforcement of Article 4.83-WN-01 of the Zoning Ordinance will result in unnecessary hardship, and further, Applicant respectfully submits that the variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property owners in the same zone and vicinity.

Article 8.01(F)(3)(a)(iii) of the Zoning Ordinance

iii. The granting of the variance will not be contrary to the spirit and purpose of the Zoning Ordinance nor contrary to the public health, safety and welfare.

Granting this variance will not be contrary to the spirit and purpose of the Zoning Ordinance nor will it be detrimental to the public health, safety and welfare. In fact, Applicant maintains that the construction of the proposed building will be a benefit to the community at

large. The grocery store will provide conveniently located organic and healthy groceries to the citizens of the city and will not be contrary to the purpose and intent of the ordinance. The store's architecture, look and feel will be consistent with structures in the City at large. The amount of per façade window area proposed by the Applicant, although less than required by Article 4.83-WN-01 of the Zoning Ordinance, will result in an attractive, pedestrian-friendly streetscape that is both inviting and safe. The spirit and intent of the ordinance will be further advanced because the development of the proposed grocery store in the manner proposed will provide badly needed redevelopment to a property that has been vacant for several years. The granting of the variance requested by the Applicant will allow the use of the Property in this zoning district that is intended.

The granting of this variance will further the spirit, purpose and intent of the Zoning Ordinance to allow reasonable growth in the community that is of significant value to this community and its citizens. The construction of the building as proposed, and containing the amount of transparent area requested by the Applicant, will be consistent with the spirit and purpose of the Zoning Ordinance and be a benefit to the public health, safety and welfare.

Article 8.01(F)(3)(a)(iv) of the Zoning Ordinance

iv. The granting of the variance will result in substantial justice to the property owner, the owners of property in the area and the general public.

The granting of the variance will result in substantial justice to the owner of the Property, the neighboring owners of property and the general public. According to Chapter 1, Section 1.04 of the Zoning Ordinance, "[The] Zoning Ordinance is intended to guide the growth and development of the City in accordance with the goals, objectives, and strategies stated within the Birmingham Master Plan and Downtown Birmingham 2016 Plan." As the City of Birmingham moves forward, it is embracing "New Urbanism". According to the Planning Department website, "New Urbanism focuses on developing a more compact, vibrant, and walkable community, emphasizing quality architecture and design, and maintaining traditional neighborhood structure and a locally-based economy." http://www.bhamgov.org/government/departments/planning/urban_design.php.

Granting the requested variance will achieve these objectives. The variance and the construction of the proposed grocery store will allow nearby residents to walk to a nearby grocer and as they walk by have the experience of seeing what goes on inside the store. Allowing citizens of this community to walk to a neighborhood grocer, and view the activity within the store as intended by the ordinance is a benefit to the community at large. The variance requested serves to encourage the applicable goals of the Master Plan and will in no way adversely affect those goals. The streetscape around the store will be active and attractive to customers and other pedestrians passing by. In summary, the granting of this variance, and the subsequent development of the store will be a benefit to the health, safety and welfare of the community.

v. **The Practical Difficulty and Hardship is not Self-Created**

The practical difficulty and hardship experienced by this Applicant is not self-created, but exists because of the size, shape, location and natural features of the Property. This property owner has attempted, and succeeded in complying with all applicable ordinances of the City of Birmingham with the technical exception of Article 4.83-WN-01(A)(1). The reason the Applicant cannot comply with this glazing section is because of special natural features and conditions applicable to the property. As discussed above, this design is challenged, first, because of the triangular shape of the property, and the requirement to move the building to the front property line (on Maple Road). Second, one of the three sides is bordered by the Grand Trunk Western Railroad, and a dramatically elevated rail bed. The existence of the railroad and tracks reasonably requires that uses adjacent to such existing features be deemphasized in the design process. Third, the natural location for this building would be toward the rear (south) of the parcel so that the parking could exist in the front of the store. However, this design pattern is not in compliance with the conceptual planning principals for the downtown area. Consequently, the design has been moved to the North, on Maple Road, to create a pedestrian friendly streetscape to fit the City's Urban Plan. Last, the location of the building is on a heavily travelled road and is highly visible to both pedestrians and motorists. Thus, the "front" of the store has to accommodate both Maple Road to the north and east, and also provide an attractive entrance for customers who enter the site, park in the south parking area and enter the store from the south. All of these design challenges are caused by the size, shape and location of the property, and not self-created by the Applicant.

Fortunately, through several iterations of designs, close work with the Planning Department and the Planning Board, the design has evolved into one of the most attractive designs in our City. This variance request is triggered by the natural features, size, shape and location of the Property. The practical difficulty and hardship experienced by the Applicant is simply not self-created.

Conclusion

For the reasons set forth herein the Applicant respectfully requests that the Board of Zoning Appeals grant a variance from Article 4.83-WN-01(A)(1) of the Zoning Ordinances of the City of Birmingham to allow the Applicant to construct the façades of the proposed Whole Foods with the percentage of glazing area as shown on the plans and the Exhibits attached hereto. The granting of a dimensional variance in this circumstance, given the size, shape, location and special circumstances existing as a result of the physical characteristics of the Property create a practical difficulty and hardship that prevent the Applicant from use of the Property in the same manner as enjoyed by other property owners in the area. None of these

unique characteristics were created by the Applicant, but are a result of the physical characteristics of an unusually shaped Property bordering a railroad and viaduct. This hardship is not created by the Applicant. The variance is necessary to preserve the enjoyment of the substantial property right possessed by other property owners in the same zone. Further, with the granting of this variance: (i) the property owner will not be unreasonably prevented from using the Property for a permitted purpose and the ordinance will not be strictly applied; (ii) the literal enforcement of the ordinance will not result in an unfair and unnecessary hardship to the Applicant; (iii) the granting of the variance will not be contrary to the spirit and purpose of the zoning ordinance nor contrary to the public health, safety and welfare; and (iv) the granting of the variance will result in substantial justice to the property owner, the owners of property in the area and the general public. Lastly, the granting of variance with respect to the amount of window area as requested by the Applicant results in a building and grocery store that will, in all ways, comply with the purpose and objective of the Birmingham Master Plan and Downtown Birmingham 2016 Plan.

Accordingly, Applicant respectfully requests that the Board of Zoning Appeals favorably consider this application and grant the dimensional variance as submitted.

Should you have any further questions or comments with regard to the above, please do not hesitate to contact the undersigned at your earliest convenience.

Respectfully submitted on behalf of 2100 East Maple, L.L.C.,

WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, P.C.

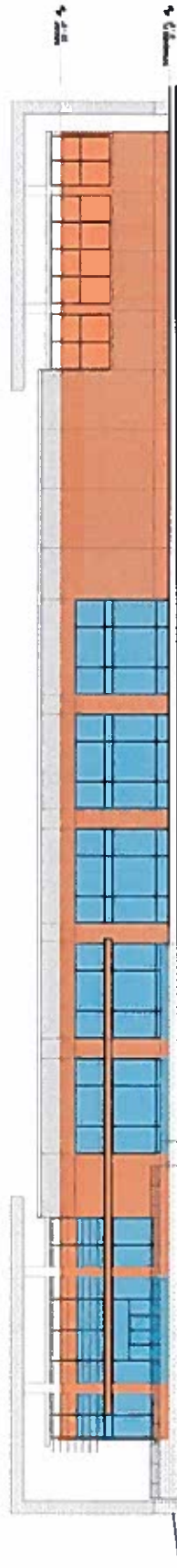


Richard D. Rattner

EXHIBIT A

TO SUPPLEMENTAL LETTER OF HARDSHIP

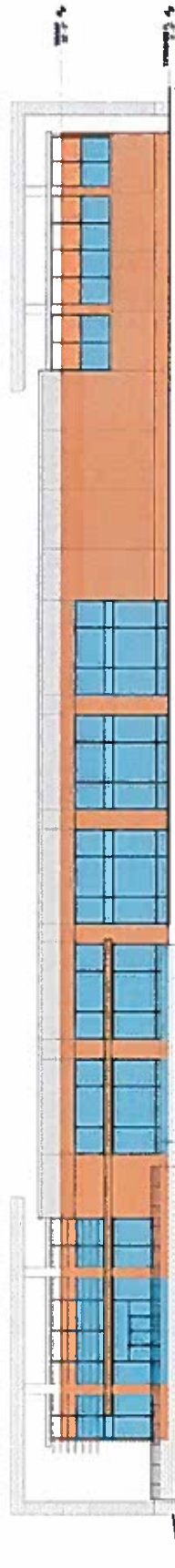
See attached.



NORTH ELEVATION
Scale 1"=10' 0"

CLEAR GLAZING PER ORDINANCE

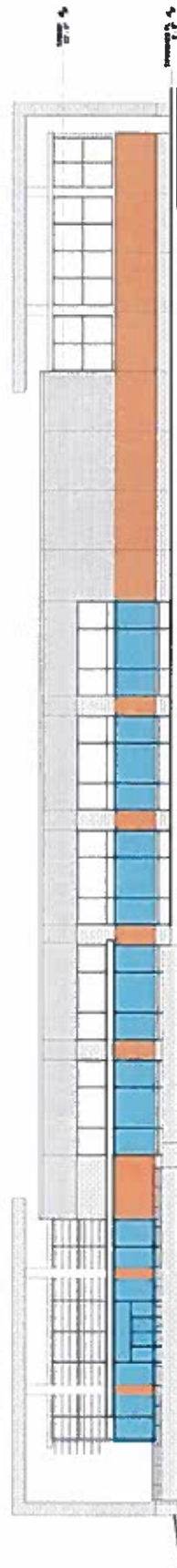
NORTH FACADE
FACADE AREA: 5,820 SF
GLAZING REQUIRED: 4,074 SF (70%)
GLAZING AREA: 2,355 SF (40%)



NORTH ELEVATION
Scale 1"=10' 0"

CLEAR GLAZING TOTAL

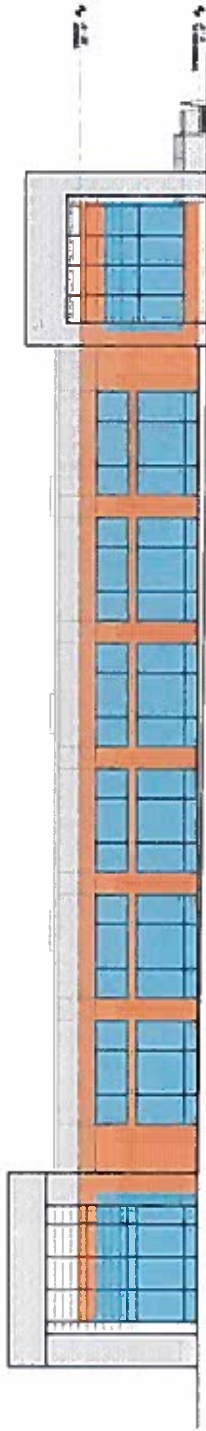
NORTH FACADE
FACADE AREA: 5,820 SF
GLAZING REQUIRED: 4,074 SF (70%)
GLAZING AREA: 2,818 SF (48%)



NORTH ELEVATION
Scale 1"=10' 0"

CLEAR GLAZING AT 3'-12"

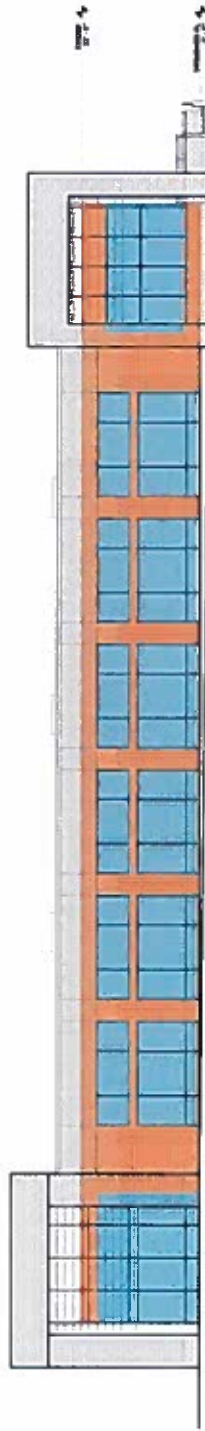
NORTH FACADE
FACADE AREA: 2,344 SF
GLAZING REQUIRED: 1,665 SF (70%)
GLAZING AREA: 1,181 SF (50%)



EAST ELEVATION
Scale: 1"=10'-0"

EAST FACADE
FACADE AREA: 4,810 SF
GLAZING REQUIRED: 3,277 SF (70%)
GLAZING AREA: 3,005 SF (65%)

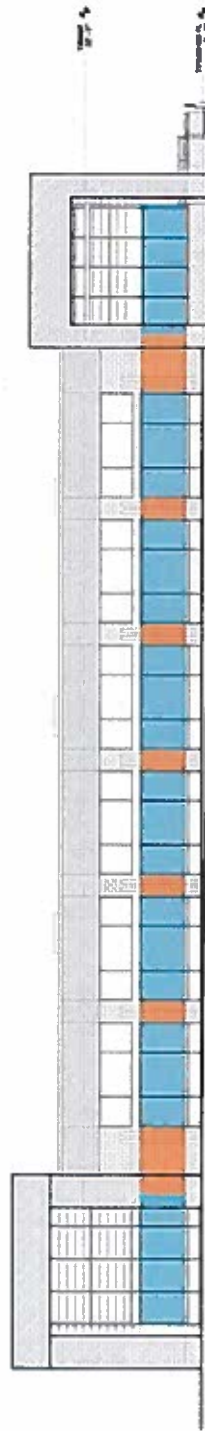
CLEAR GLAZING PER ORDINANCE



EAST ELEVATION
Scale: 1"=10'-0"

EAST FACADE
FACADE AREA: 4,810 SF
GLAZING REQUIRED: 3,277 SF (70%)
GLAZING AREA: 3,005 SF (65%)

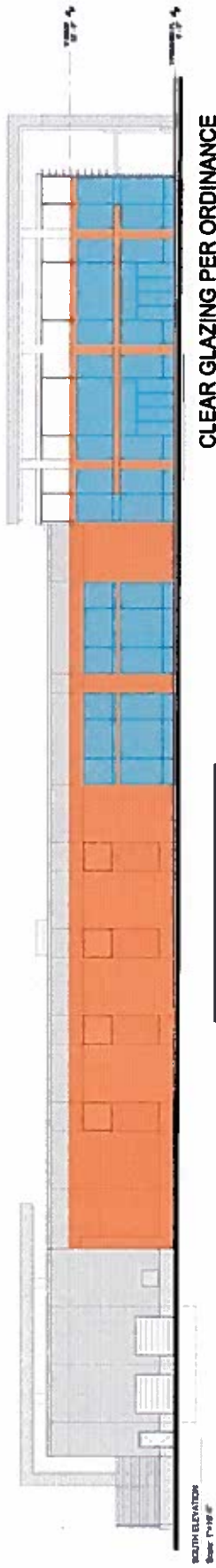
CLEAR GLAZING TOTAL



EAST ELEVATION
Scale: 1"=10'-0"

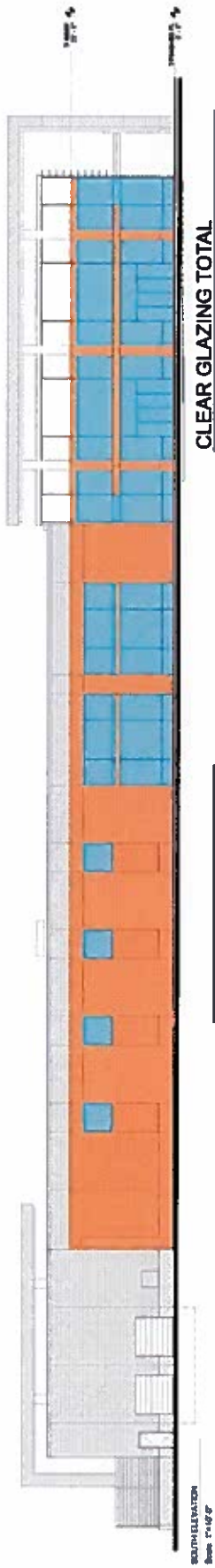
EAST FACADE
FACADE AREA: 1,885 SF
GLAZING REQUIRED: 1,319 SF (70%)
GLAZING AREA: 1,495 SF (79%)

CLEAR GLAZING AT 3'-12"



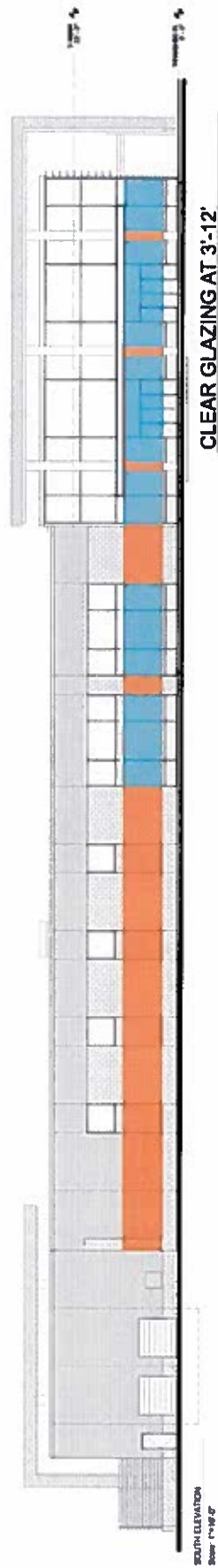
CLEAR GLAZING PER ORDINANCE

SOUTH FACADE
 FACADE AREA: 4,921 SF
 GLAZING REQUIRED: 3,080 SF (70%)
 GLAZING AREA: 2,066 SF (42%)



CLEAR GLAZING TOTAL

SOUTH FACADE
 FACADE AREA: 4,921 SF
 GLAZING REQUIRED: 3,080 SF (70%)
 GLAZING AREA: 2,230 SF (45%)



CLEAR GLAZING AT 3'-12"

SOUTH FACADE
 FACADE AREA: 2,013 SF
 GLAZING REQUIRED: 1,409 SF (70%)
 GLAZING AREA: 898 SF (45%)

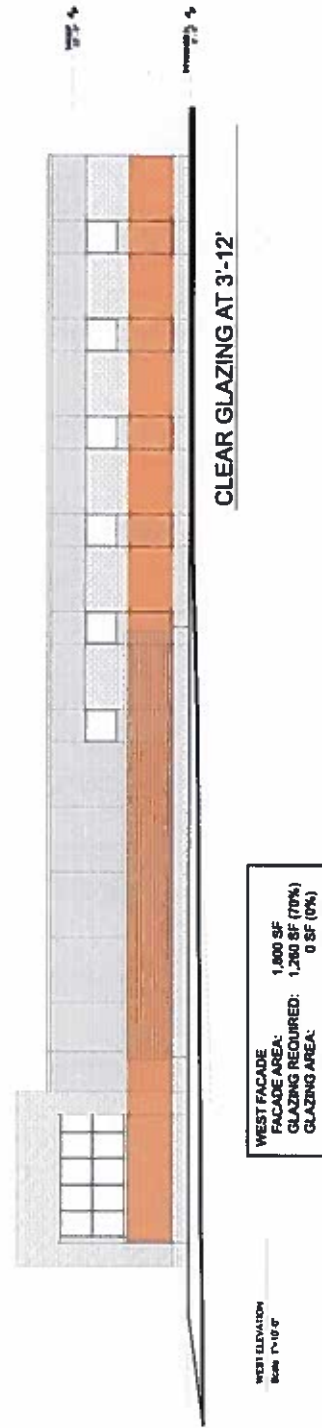
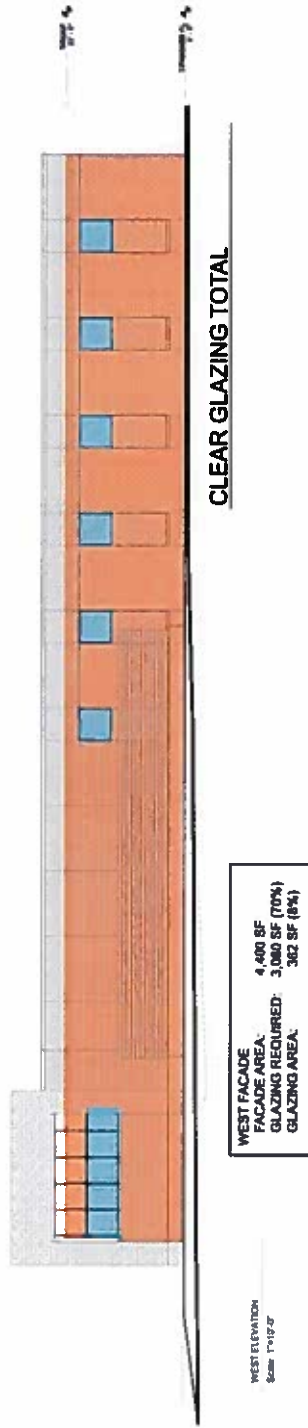
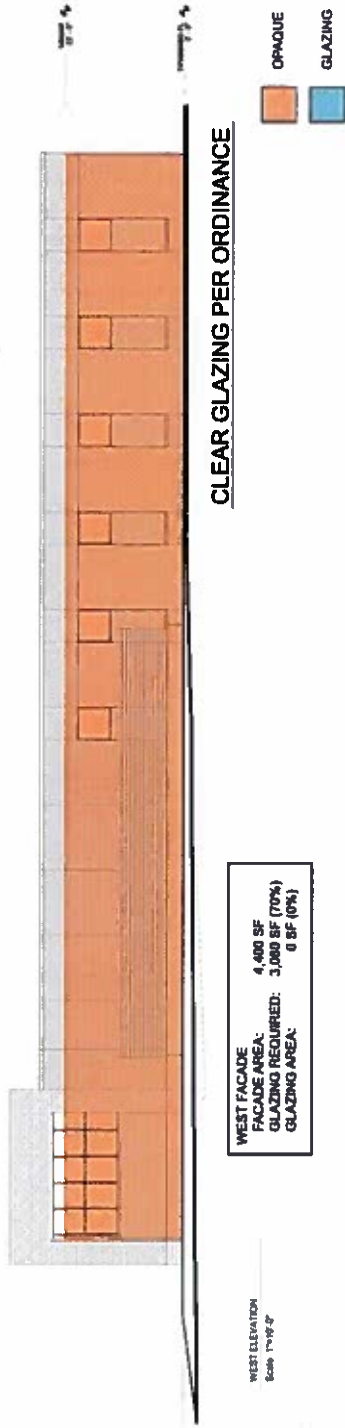
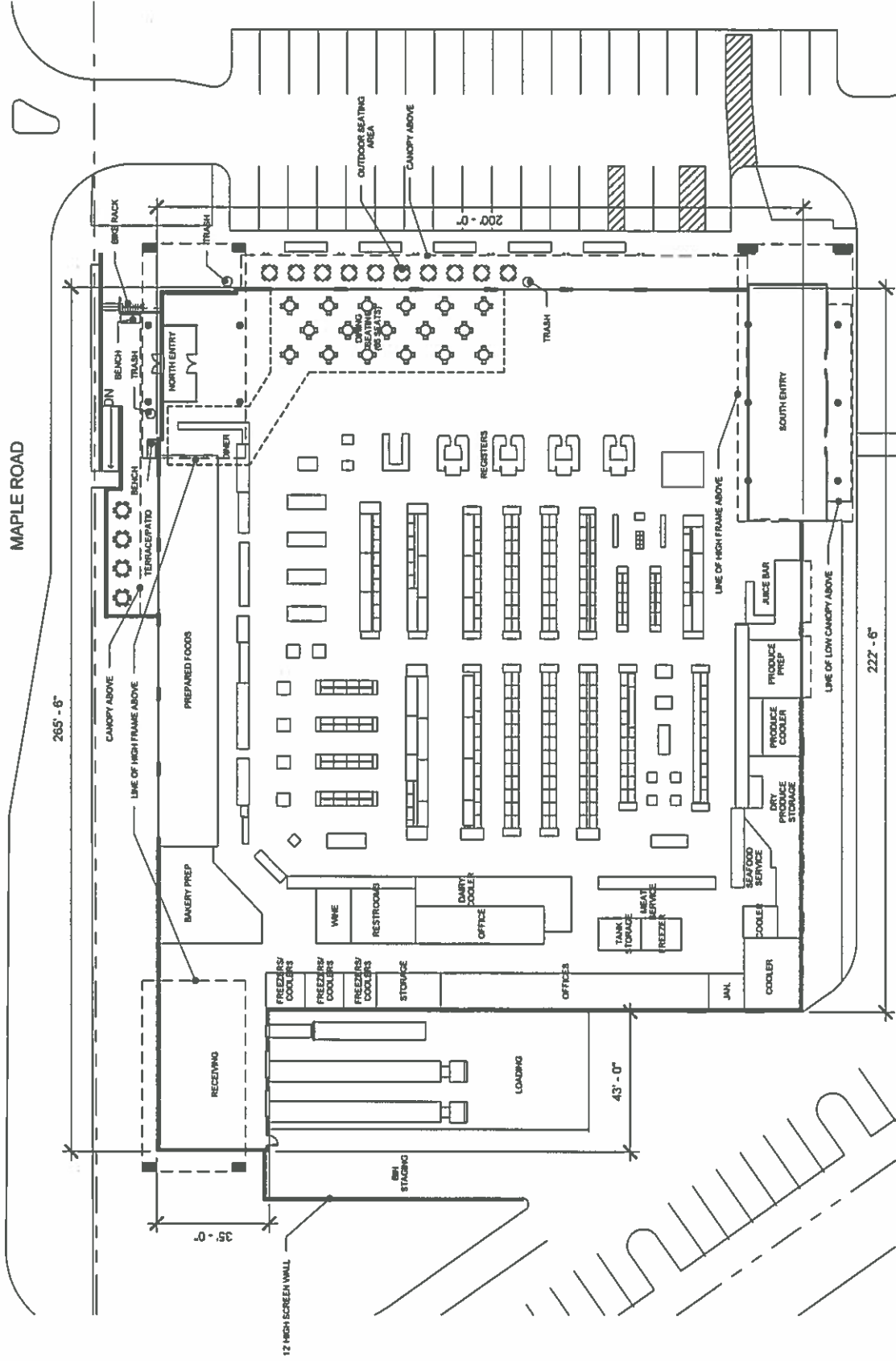


EXHIBIT B
TO SUPPLEMENTAL LETTER OF HARDSHIP

See attached.



Application Date: _____



Hearing Date: _____

Received By: _____

Appeal # _____

Board of Zoning Appeals Application

Type of Variance: Interpretation _____ Dimensional X Land use _____ Sign _____ Admin review _____

Property Information:

Street address: <u>355 Hanna</u>		Sidwell Number: _____
Owners name: <u>Kori Delvecchio</u>		Phone #: <u>248.346.8883</u>
Owners address: <u>355 Hanna</u>		Email: <u>Delvecchio@ameritech.net</u>
City: <u>Birmingham</u>	State: <u>MI</u>	Zip code: <u>48009</u>
Contact person: <u>Alex Delvecchio</u>		Phone #: <u>248.790.7075</u>

Petitioner Information:

Petitioner name: <u>Alex Delvecchio</u>		Phone #: <u>248.790.7075</u>
Petitioner address: <u>355 Hanna</u>		Email: <u>delvecchio@ameritech.net</u>
City: <u>Birmingham</u>	State: <u>MI</u>	Zip Code: <u>48009</u>

Required Attachments:

- Original Certified Survey ☐ Original BZA application ☐ Letter of hardship or practical difficulty ☐
- ☐ 10 folded copies of the site plan and building plans (existing and proposed floor plans and elevations)
 - ☐ Set of plans and survey mounted on foam board
 - ☐ If appealing a board decision, a written transcript from the meeting is required along with 10 copies of minutes from any previous Planning, HDC or DRB board.

General Information:

Prior to submitting for a Board of Zoning Appeals review, you must schedule an appointment with the Building Official or a City Planner for a preliminary discussion on your submittal. The deadline is the 15th of the previous month.

The BZA review fee is \$310.00 for single family residential; \$510.00 for all others; and \$50.00 for the public notice sign.

Location of all requested variances must be highlighted on plans and survey. All dimensions to be taken in feet to the first decimal point.

Variance chart example:	Required 25'	Existing 24'	Proposed 24'	Amount of Variance 1'
-------------------------	-----------------	-----------------	-----------------	--------------------------

By signing this application I agree to conform to all applicable laws of the City of Birmingham. All information submitted on this application is accurate to the best of my knowledge. Changes to the plans are not allowed without approval from the Building Official or City Planner.

Signature of Owner: _____

Kori Delvecchio

Date: _____

7/14/15

Three Variance Requests.

1- Existing Side Yard Setback is 4.40 ft.

Required is 5.00 ft.

Requesting 0.60 ft. variance. [2.10.R3]

2- Existing Dimension Between Principle Buildings is 12.35 ft.

Required is 14.00 ft.

Requesting 1.65 ft. variance. [4.69.C]

3- Existing west overhang is 2.00 ft. (24").

Code allows 2" per required foot of Side Yard Setback. Required Side Yard Setback is 5.00 ft. Therefore allowable overhang is 0.83 ft. (10").

As measured from the required 5.00 ft. Side Yard Setback, the allowable overhang measured from the existing wall is 0.23 ft. (2.8").

Requesting 1.77 ft. (21.2") variance to maintain the existing 24" overhang. [4.30.C.2]

August 14, 2015

1- Special or unique conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not generally applicable to other lands, structures or buildings in the same district.

The subject property, 355 Hanna, is a center lot, situated between two corner lots. The east side of 355 Hanna is adjacent to the drive and garage of 816 Bates. The subject property's drive is on the east side of the lot, side by side with the 816 Bates drive and garage. The west side is adjacent to the house at 387 Hanna. Due to the unusual lot configurations, the drive at 387 Hanna is at the rear of the property accessed only off of Chester. The usual driveway placements, that would normally accommodate the 14 foot between houses, is absent. The subject house at 355 Hanna was built c. 1952, the house at 816 Bates was built c. 1920, and the house at 387 Hanna was built c. 1919.

2- A literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance; and that the variance is the minimum necessary.

The lot width at 355 Hanna is 43.00 feet. The width of the existing house is 28.10 feet. The property owner is not asking to change the existing footprint of house. The subject property owner is not adding square footage to house. The subject property owner is not adding a second story. The subject property owner is desiring to upgrade appearance of house by changing the roof line structure and detail. The ordinances call for a 5.00 ft. west Side Yard Setback, and 14.00 feet between principle buildings, and a maximum overhang of 10" on the west side [based on 2" per foot of setback] . The existing Side Yard Setback is 4.40 ft. The distance between the subject house, 355 Hanna, and the west neighboring house, 387 Hanna, is 12.35 feet. The existing overhang is 24". Since the existing conditions have been in place since 1952 not allowing the variance would deprive the applicant of the ability to reasonably, upgrade their property due to a condition created sixty plus years ago. The applicant is asking for the minimum

necessary variance of 1.65 feet, this would satisfy both the Side Yard Setback and the Dimension Between Principle Buildings ordinances. The allowable overhang of 2.8", from the existing wall, would not allow for proper roof ventilation. The requested overhang variance is equal to the existing condition. The ability for the applicant to maintain the existing Overhang, Side Yard, and Distance Between Buildings would be reasonable, and allow the applicant to exercise the right to upgrade their property in an environmentally efficient manner.

3-The special conditions and circumstances do not result from the actions of the applicant.

The subject house, 355 Hanna, was built c. 1952. The west, neighboring house, 387 Hanna, was built c. 1919. Neither the applicant nor the neighboring property owner had any input or influence to the existing conditions.

4- The granting of the variance will be in harmony with the general purpose and intent of this ordinance.

It is believed that the general intent and purpose of the ordinance was aimed at new construction, and that the ordinance was not intended to prevent a property owner from making aesthetic improvements to an existing house. Due to pre-existing, conditions out of the property owner's control, the variance should be granted.

5- The variance will not be injurious to the neighborhood or otherwise detrimental to the general welfare.

The immediately surrounding neighborhood has experienced significant change in recent years with many original houses being replaced with new construction. The new houses are typically larger and taller than the original structures that once filled the neighborhood. Approving this variance request would allow the subject property to be improved and become more consistent with the neighborhood. The current design is out of place. The applicant's desire to upgrade the property, and it's outward appearance, would not in any way be injurious to the neighborhood or detrimental the general welfare of the neighborhood.

6- The spirit of this ordinance shall be observed, public safety secured and substantial justice done.

The spirit of the ordinance is to maintain reasonable spaces between houses. The space between the house at 355 Hanna, and 387 Hanna has been in place for 60-plus years, it was considered safe, secure and just at the time of construction, and remains that way today. The proposed alteration does not pose any public safety issues. Allowing the variance is therefore consistent with the spirit of the ordinance. In light of the the decades old, existing conditions, and, the modest variance requested, it would be an injustice to prohibit the requested variances and ensuing project.

Application Date: 9-14-15



Hearing Date: 10-13-15

Received By: BSM

Appeal # 15-29

Board of Zoning Appeals Application

Type of Variance: Interpretation _____ Dimensional ☒ Land use _____ Sign _____ Admin review _____

Property Information:

Street address: <u>530 FAIRFAX</u>	Sidwell Number:
Owners name: <u>CHRISTOPHER + TRICIA PRAY</u>	Phone #: <u>248</u>
Owners address: <u>530 FAIRFAX</u>	Email: <u>cipray@gmail.com</u>
City: State: <u>BIRMINGHAM MI</u>	Zip code: <u>48009</u>
Contact person: <u>CHAS PRAY</u>	Phone #: <u>586-726-0065</u>

Petitioner Information:

Petitioner name: <u>SAME AS ABOVE</u>	Phone #:	
Petitioner address:	Email:	
City:	State:	Zip Code:

Required Attachments:

- Original Certified Survey ☒ Original BZA application ☒ Letter of hardship or practical difficulty ☒
10 folded copies of the site plan and building plans (existing and proposed floor plans and elevations)
Set of plans and survey mounted on foam board
If appealing a board decision, a written transcript from the meeting is required along with 10 copies of minutes from any previous Planning, HDC or DRB board.

General Information:

Prior to submitting for a Board of Zoning Appeals review, you must schedule an appointment with the Building Official or a City Planner for a preliminary discussion on your submittal. The deadline is the 15th of the previous month.

The BZA review fee is \$310.00 for single family residential; \$510.00 for all others; and \$50.00 for the public notice sign.

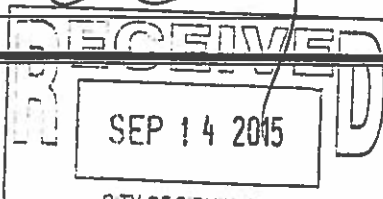
Location of all requested variances must be highlighted on plans and survey. All dimensions to be taken in feet to the first decimal point.

Variance chart example:	Required	Existing	Proposed	Amount of Variance
	25'	24'	24'	1'

By signing this application I agree to conform to all applicable laws of the City of Birmingham. All information submitted on this application is accurate to the best of my knowledge. Changes to the plans are not allowed without approval from the Building Official or City Planner.

Signature of Owner:

Date: 9/10/2015



121648

City of Birmingham
Date 09/14/2015 12:00 PM
R 0121648
Receipt 279520
Amount \$360.00

Sept. 10, 2015

Re: PRAY RESIDENCE
530 Fairfax, Birmingham, MI

Dear Zoning Board Members:

We are hereby applying for a .8' Dimensional Variance to expand our Existing Garage at 530 Fairfax.

We are seeking to get more storage space in the Existing Garage and to get a larger Garage Door to improve the backing in and out of the Garage and to do so would like to expand the Garage to the south, IN LINE with the existing garage. Because the Existing Rear Wall of our Garage is at 29.2' from rear lot line: .8' of the 4'-8" addition would be in the 30' rear setback, necessitating this appeal.

The Existing Garage is under 19' deep (which barely fits a car) and backs-up to our house/family room which is several steps up from garage, not permitting any way to go in that direction. The additional space in Garage would permit us store lawn/snow/recreational items out of sight and granting the .8' variance is the only way to get a wider garage door to improve car turning access into the shallow existing Garage.

All of our other additions and modifications meet all requirements of the Zoning Ordinance.

We feel that the garage expansion with new garage door and new siding etc will not be a detriment, but rather an enhancement, to the neighborhood and we respectfully request your approval.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Christopher & Tricia Pray". The signature is stylized, with a large, looped initial "C" and a long, sweeping horizontal stroke that ends in a small upward flick.

Christopher & Tricia Pray



Sept., 2015

Re: PRAY RESIDENCE
530 Fairfax, Birmingham, MI
Zoning Appeal

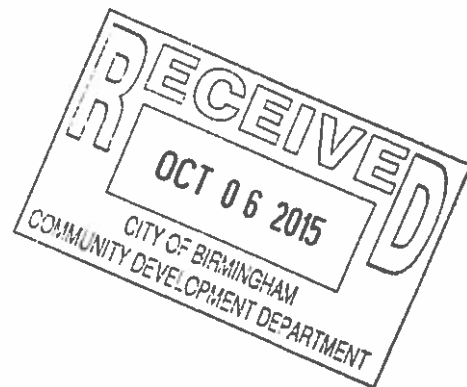
Dear City of Birmingham, Zoning Board Members:

I, the Pray's neighbor at 483 SUMMIT
am familiar with the Variance for which they are making application, to expand their existing Garage, and
Have No Objection / Support Approval of it.

Michael
Signed

MICHAEL POCHTUN
Name

9-25-15
Date



Sept., 2015

Re: PRAY RESIDENCE
530 Fairfax, Birmingham, MI
Zoning Appeal

Dear City of Birmingham, Zoning Board Members:

I, the Pray's neighbor at 555 FAIRFAX ST.
am familiar with the Variance for which they are making application, to expand their existing Garage, and
Have No Objection ☒ Support Approval of it.

[Signature]
Signed

ADAM WISE
Name

9/19/15
Date



Sept., 2015

Re: PRAY RESIDENCE
530 Fairfax, Birmingham, MI
Zoning Appeal

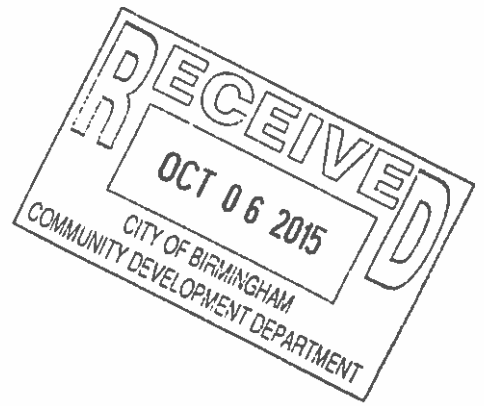
Dear City of Birmingham, Zoning Board Members:

I, the Pray's neighbor at 545 Suffield
am familiar with the Variance for which they are making application, to expand their existing Garage, and
Have No Objection / Support Approval of it.

Kathy Austin
Signed

Kathy Austin
Name

9-20-15
Date



Sept., 2015

Re: PRAY RESIDENCE
530 Fairfax, Birmingham, MI
Zoning Appeal

Dear City of Birmingham, Zoning Board Members:

I, the Pray's neighbor at 521 FAIRFAX ST. B'ham MI 48009
am familiar with the Variance for which they are making application, to expand their existing Garage, and
Have No Objection / Support Approval of it.

D. Phly
Signed

DAVID LOPY
Name

9/20/15
Date



Sept., 2015

Re: PRAY RESIDENCE
530 Fairfax, Birmingham, MI
Zoning Appeal

Dear City of Birmingham, Zoning Board Members:

I, the Pray's neighbor at 476 Fairfax
am familiar with the Variance for which they are making application, to expand their existing Garage, and
Have No Objection / Support Approval of it

Paula Schenberg
Signed

Paula Schenberg
Name

9/18/2015
Date



Sept., 2015

Re: PRAY RESIDENCE
530 Fairfax, Birmingham, MI
Zoning Appeal

Dear City of Birmingham, Zoning Board Members:

I, the Pray's neighbor at 477 FAIRFAX,
am familiar with the Variance for which they are making application, to expand their existing Garage, and
Have No Objection Support Approval of it.

Dennis E Fitzpatrick Dennis E Fitzpatrick 9-20-15
Signed Name Date