

BOARD OF ZONING APPEALS AGENDA

City of Birmingham
Commission Room of the Municipal Building
151 Martin Street, Birmingham, Michigan
April 12, 2016
8:00 PM

1. ROLL CALL
2. APPROVAL OF THE MINUTES OF MARCH
3. APPEALS

	Address	Petitioner	Appeal	Type/Reason
1.	1375 WEBSTER	MOJARADI	16-07	DIMENSIONAL
2.	369 N OLD WOODWARD	AIDEN	16-10	DIMENSIONAL/ INTERPRETATION

4. CORRESPONDENCE
5. GENERAL BUSINESS
6. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA
7. ADJOURNMENT

Title VI

Persons with disabilities that may require assistance for effective participation in this public meeting should contact the City Clerk's Office at the number (248) 530-1880, or (248) 644-5115 (for the hearing impaired) at least one day before the meeting to request help in mobility, visual, hearing, or other assistance.

Las personas con incapacidad que requieren algún tipo de ayuda para la participación en esta sesión pública deben ponerse en contacto con la oficina del escribano de la ciudad en el número (248) 530-1800 o al (248) 644-5115 (para las personas con incapacidad auditiva) por lo menos un día antes de la reunión para solicitar ayuda a la movilidad, visual, auditiva, o de otras asistencias. (Title VI of the Civil Rights Act of 1964).

The public entrance during non-business hours is through the police department at the Pierce Street entrance only. Individuals requiring assistance entering the building should request aid via the intercom system at the parking lot entrance gate on Henrietta Street.

La entrada pública durante horas no hábiles es a través del Departamento de policía en la entrada de la calle Pierce solamente. Las personas que requieren asistencia entrando al edificio debe solicitar ayudan a través del sistema de intercomunicación en la puerta de entrada de estacionamiento en la calle de Henrietta.

BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, MARCH 8, 2016
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, March 8, 2016. Chairman Charles Lillie convened the meeting at 7:30 p.m.

Present: Chairman Charles Lillie; Board Members Kevin Hart, Jeffery Jones, Peter Lyon, Erik Morganroth; Alternate Board Member Jason Canvasser

Absent: Board Members Vice Chairman Randolph Judd, John Miller; Alternate Board Member Cynthia Grove

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# 03-15-16

APPROVAL OF THE MINUTES OF THE BZA MEETING OF FEBRUARY 9, 2016

Chairman Lillie:

Page 2 - First line, add Mr. Hart's name under "absent."

Mr. Jones:

Page 3 - Second paragraph from the bottom, first line, insert "based" after "premature."

Start a new sentence with "It."

Page 5 - First paragraph, second line, delete "the" before "maintenance."

Motion by Mr. Morganroth

Seconded by Mr. Jones to approve the Minutes of the BZA meeting of February 9, 2016 as revised.

Motion carried, 6-0.

VOICE VOTE

Yeas: Morganroth, Jones, Canvasser, Hart, Lillie, Lyon

Nays: None

Absent: Judd, Miller

T# 03-16-16

**1247 BIRD AVE.
(Appeal 16-03)**

Postponed.

T# 03-17-16

**231 S. GLENHURST
(Appeal 16-05)**

Mr. Lenhart reported the owners of the property known as 231 S. Glenhurst request the following variances to allow for the construction of a house addition less than the required minimum front setbacks and distance between principal residential buildings.

A. Chapter 126, Article 2, Section 2.10 of the Zoning Ordinance requires a minimum front yard setback distance of 26.76 ft. for this lot. The applicant is proposing 23.07 ft. Therefore, a variance of 3.69 ft. is requested.

B. Chapter 126, Article 4, Section 4.69 (C) of the Zoning Ordinance requires a minimum 17.50 ft. between principal buildings for this lot. The applicant is proposing 15.10 ft. Therefore, a variance of 2.40 ft. is requested.

This property is zoned R-1.

Mr. Lenhart explained the applicant is proposing to put a foundation under existing front bay window cantilever and add gabled facade above. The proposed rear addition variance request is due to the existing non-conforming attached garage to the north. Garage is set off property line 6.10 ft. and 9.00 ft. is the minimum required. The applicant is just extending the existing plane and not going any further into the side setback.

In response to Mr. Jones, Mr. Lenhart clarified the gabled facade is not an issue if the foundation variance is granted because the gable is further in. He went on to explain for Mr. Jones that if this appeal is granted it does not affect the neighbor to the north should he wish to add on. Mr. Lyon added the neighbor will need a variance anyway, whether or not the appeal is granted.

Mr. Joseph Novitsky, JSN Architecture, appeared on behalf of the homeowners, Michael and Mary Flynn. He produced a letter from the neighbor to the north that supports what they are trying to do. The Flynns had to take down their existing garage to allow the new development to occur. The neighbor is in the same boat should he wish to make changes. Mr. Novitsky explained they are not extending the structure beyond the existing wall; in fact, they are taking off the brick thereby saving about 3 in. from the existing dimension. On the second floor they are just changing the siding in order to add more texture. Their intent for the foundation is to pull it back up and support it with some concrete. They took a hard look at the design from many different angles and decided this is the best solution. The entire structure is built around the swimming pool. The pool with its 10 ft. setback from any structure really dictates the lot.

Mr. Lyon thought they walked themselves into a somewhat self-created practical difficulty by adding the pool and the addition around it. However, adding an addition to the rear and staying in the plane of the existing building has some structural features that allow the walls to connect together. That may justify why the plane on the north has to be where it is. Mr. Novitsky agreed and noted they are conforming on their lot. However, the Ordinance made the neighbor non-conforming.

No one in the audience wished to comment on this appeal at 7:58 p.m.

Motion by Mr. Jones

Seconded by Mr. Lyon as regards Appeal 16-05, 231 S. Glenhurst, to grant both variances A and B as presented to us by the City. He believes that strict compliance would unreasonably prevent the owner from using the property for the permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

Mr. Jones believes the granting of the variance would do substantial justice to the applicant as well as to the adjoining property owners. He also feels it is due to the unique circumstances of the situation and the change in the Ordinance well as the adjoining property owner. He does not believe this is self-created. He would tie the variances to the plans as presented.

Mr. Lyon indicated he supports the motion because he believes the overriding factor is that the house to the north is non-conforming which has led to the request for the variance on the side. The front variance is more along the lines of maintenance and underpinning the existing projection.

Mr. Jones added that the applicant has attempted to minimize his request.

Motion carried, 6-0.

ROLLCALL VOTE

Yeas: Jones, Lyon, Canvasser, Hart, Lillie, Morganroth

Nays: None

Absent: Judd, Miller

T# 03-18-16

**1515 PIERCE
(Appeal 16-06)**

The owners of the property known as 1515 Pierce request the following variance to allow for the construction of a house addition less than the required minimum side yard setback.

A. **Chapter 126, Article 4, Section 4.59** of the Zoning Ordinance requires a minimum north side yard setback of 29.19 ft. for this lot. The applicant is proposing 16.72 ft. Therefore, a variance of 12.47 ft. is requested.

This property is zoned R-2.

Mr. Lenhart reported the applicant has purchased the house to the south of this lot (1525 Pierce) and is proposing to demolish the existing home, combine the lots and construct a new house addition on the existing house at 1515 Pierce. Although the Catalpa frontage is considered a side, the setback is based on the 200 ft. average setback. All other setbacks and distance requirements are conforming. He confirmed for Chairman Lillie the addition along Catalpa is extending the existing plane. Also it is increasing the setback of the adjoining property because of his plans to demo his existing garage. Further, the addition to the south will add more green space between the subject house and the house to the south.

Mr. Hart received confirmation that the variance section of the proposed addition is in the same plane as the existing garage to the north that will be demoed.

Mr. John Monigold, the property owner, noted he has a unique circumstance in that his house faces Pierce and the houses behind him face Catalpa. He wants to keep everything in the existing line and is not asking for anything more. He is improving the distances between houses on Catalpa and on Pierce.

The chairman called for comments from members of the audience at 8:08 p.m.

Ms. Janelle Whipple-Boyce, 179 Catalpa, said she supports the variance and thinks it will be a positive improvement to the neighborhood. By allowing the variance request residents on Catalpa will gain a lot of green space.

Mr. Scott Tappin, 160 Catalpa, thought the plans are aesthetically pleasing and noted he gets a setback improvement of 25 ft. He fully supports the variance.

Motion by Mr. Jones

Seconded by Mr. Morganroth as it relates to Appeal 16-06, 1515 Pierce, the appellant as advertised is seeking a variance essentially to permit the extension of the existing line along Catalpa. This is not the first time the board has ever run into a circumstance where they have a corner lot that causes them considerations of this nature. As such, Mr. Jones would move to approve the variance as advertised.

He feels that to restrict the petitioner would unreasonably prevent the owner from using the property for a permitted purpose, or would render the conformity with such restrictions unnecessarily burdensome.

Obviously, thanks to the neighbors who have also said so, he agrees that it does substantial justice to the other property owners; and in fact, improves the circumstances from a green space perspective as well as setbacks.

In that vein too, Mr. Jones does not believe that the circumstances are due either to a self-created situation, but are wholly and uniquely a function of the corner lot and the circumstances of this situation. As such he would tie the motion to the plans as presented.

Motion carried, 6-0.

ROLLCALL VOTE

Yeas: Jones, Morganroth, Canvasser, Hart, Lillie, Lyon

Nays: None

Absent: Judd, Miller

T# 03-19-16

**1375 WEBSTER
(Appeal 16-07)**

The petitioner was not present for his hearing.

Motion by Chairman Lillie

Seconded by Mr. Lyon to table this matter to the next BZA meeting subject to the City contacting the petitioner to see if they have changed their mind.

Motion carried, 6-0.

VOICE VOTE

Yeas: Morganroth, Jones, Canvasser, Hart, Lillie, Lyon

Nays: None

Absent: Judd, Miller

T# 03-20-16

**1792 BANBURY
(Appeal 16-08)**

The owners of the property known as 1792 Banbury request the following variances to allow for the construction of a house addition less than the required minimum side yard setbacks and distance between principal residential buildings.

- A. **Chapter 126, Article 2, Section 2.10** of the Zoning Ordinance requires a minimum side yard setback of 5.00 ft. for this lot. The applicant is proposing 4.50 ft. Therefore, a variance of 0.50 ft. is requested.
- B. **Chapter 126, Article 4, Section 4.69 (C)** of the Zoning Ordinance requires a minimum of 14.02 ft. between principal buildings for this lot. The applicant is proposing 12.60 ft. Therefore, a variance of 1.42 ft. is requested.

This property is zoned R-2.

Mr. Johnson stated there is enough detail in the drawings to tie the motion to the plans.

Mr. Lenhart offered background. The applicant is proposing to build a second story rear addition to accommodate space for a bathroom. All other setbacks and distance requirements are conforming. The irregular shape of the lot is a driving force and the house is not parallel to the side lot line. The appellant is staying within the existing plane of the house. The subject house is existing non-conforming. The house to the west is also non-conforming.

Mr. John Graham, the builder, spoke on behalf of the petitioner. The existing house is a bungalow and the owners would like to add a bathroom on the second floor. They are not extending past any existing footprint. This will be a friendly addition in the back of the home. The side lot lines are not parallel because the house is on a curved street and the homes face the street directly rather than being oriented with the lot lines.

There were no comments from members of the public at 8:15 p.m.

Motion by Mr. Lyon

Seconded by Mr. Jones in regard to Appeal 16-08, 1792 Banbury, to grant the variances as advertised. The appellant seeks a variance under Chapter 126, Article 2, Section 2.10 for a minimum side yard setback of 5.00 ft. and under Chapter 126, Article 4, Section 4.69 (C) for a minimum distance between buildings and a requested variance of 1.42 ft.

Mr. Lyon believes that strict compliance with the Ordinance would be unduly burdensome. This is due to the unique character and conditions of this lot being pie shaped with an existing non-conforming house next to an existing non-conforming house.

He does not believe this was self-created in that the house has been there for some time. He thinks it does substantial justice to the appellant and to the surrounding neighborhood. He would tie the motion to the plans as presented.

Motion carried, 6-0.

Mr. Jones thought this is one of the most extreme circumstances for such a proposal because it is a corner lot and because of the acute narrowing of the lot at one end. Chairman Lillie agreed this is a classic case of a unique lot.

ROLLCALL VOTE

Yeas: Lyon, Jones, Canvasser, Hart, Lillie, Morganroth

Nays: None

Absent: Judd, Miller

T# 03-21-16

**2200 AVON LANE
(Appeal 16-09)**

The owners of the property known as 2200 Avon Lane request the following variance to allow for the construction of a house addition less than the required minimum distance between principal residential buildings.

- A. **Chapter 126, Article 4, Section 4-69 (C)** of the Zoning Ordinance requires a minimum of 20.00 ft. between principal buildings for this lot. The applicant is proposing 18.55 ft. Therefore, a variance of 1.45 ft. is requested.

This property is zoned R-1.

Mr. Lenhart advised the applicant is proposing to construct a second-story addition over the garage and a rear two-story addition to an existing non-conforming structure. All other setbacks and distance requirements are conforming.

Mr. Jeff Klatt, Krieger Klatt Architects, Inc., was present with the homeowner, Ms. Kim Hursley. Mr. Klatt passed out additional approval letters from some surrounding neighbors. They propose a modest addition to the first floor as well as the second story. The idea is to create a more modern floor plan and open up the space a bit.

It would be burdensome to push the addition inward and not take advantage of the existing structure. The design compliments the neighborhood.

- They feel the special or unique condition is due to the placement of the existing home which created the non-conforming condition.
- Literal interpretation of the Ordinance would be burdensome due to existing load bearing conditions. A lesser variance would complicate the structure.
- This condition does not result in actions of the applicant because the home was constructed well before they purchased the property.
- The granting of the variance will be in harmony with the general purpose and intent of the Ordinance because they propose not to increase the non-conforming condition.
- The variance will not be injurious to the neighborhood or otherwise detrimental to the general welfare.
- The variance will not be harmful to the surrounding properties and as designed it is complimentary. It will only enhance the streetscape.

They feel the variance meets the spirit of the Ordinance and will it will be constructed in a safe manner.

Ms. Hursley pointed out where the neighbors who wrote the supporting letters are located.

No one from the public commented at 8:25 p.m.

Motion by Mr. Lyon

Seconded by Mr. Jones in regard to Appeal 16-09, 2200 Avon Lane, to grant the variance as advertised. The appellant seeks a variance under Chapter 126, Article 4, Section 4.69 (C) of the Zoning Ordinance for the minimum distance between principal buildings. 18.55 ft. is requested for a 1.45 ft. variance. He noted that 18.55 ft. presently exists.

Mr. Lyon believes that strict compliance with the Ordinance would be unduly burdensome in this case because of the fact that the existing house is a non-conforming structure as far as distance between buildings goes.

He believes the variance does substantial justice to both the appellant and the surrounding neighbors, as has been indicated by letters of support by neighbors.

Further, Mr. Lyon believes this is due to the unique circumstances that the house is existing non-conforming. This is not self-created in that the house has been there for a substantial amount of time. He would tie the motion to the plans as presented.

Motion carried, 6-0.

ROLLCALL VOTE

Yeas: Lyon, Jones, Canvasser, Hart, Lillie, Morganroth

Nays: None

Absent: Judd, Miller

T# 03-22-16

CORRESPONDENCE (none)

T# 03-23-16

GENERAL BUSINESS

Mr. Johnson passed out brand new copies of the Zoning Ordinance to board members.

T# 03-24-16

OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA (no one was left in the audience)

T# 03-25-16

ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 8:35 p.m.

Bruce R. Johnson, Building Official

CASE DESCRIPTION

1375 Webster (16-07)

Hearing date: March 8, 2016

The owners of the property known as 1375 Webster request the following variance to allow for the construction of a new house less than the required minimum distance between principal residential buildings.

- A. **Chapter 126, Article 4, Section 4.69 (C)** of the Zoning Ordinance requires a minimum of 14.00' between principal buildings for this lot. The applicant is proposing 12.70'. Therefore, a variance of 1.30' is requested.

Staff Notes: The applicant is proposing to demolish existing home and build a new home on a 40' wide interior lot. The existing non-conforming house to the west was built with a 2.70' side setback. All other setbacks and distance requirements are conforming.

This property is zoned R-3.

Scott Lenhart

Scott Lenhart
Assistant Building Official

Application Date: 2/12/16



Hearing Date: 3-8-16

Received By: BM

Appeal # 16-07

Board of Zoning Appeals Application

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

Property Information:

Street address: <u>1375 WEBSTER</u>	Sidwell Number: <u>A20-21-153-049</u>
Owners name: <u>FAREED MOJARADI</u>	Phone #: <u>248-790-1639</u>
Owners address: <u>29923 RAVENS CROFT</u>	Email: <u>info@atelierarchitect.com</u>
City: State: <u>FARMINGTON HILLS</u>	Zip code: <u>48331</u>
Contact person: <u>FAREED MOJARADI</u>	Phone #: <u>248-790-1639</u>

Petitioner Information:

Petitioner name: <u>FAREED MOJARADI</u>	Phone #: <u>248-790-1639</u>
Petitioner address: <u>29923 RAVENSCROFT.</u>	Email: <u>info@atelierarchitect.com</u>
City: <u>FARMINGTON HILLS</u> State: <u>MI</u>	Zip Code: <u>48331</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	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: [Signature] Date: 2.11.16

CITY OF BIRMINGHAM
 Date: 02/12/2016 2:40 PM
 Receipt #: 300905
 Amount: \$360.00

February 11, 2016

City of Birmingham
Board of Zoning Appeals:

RE: Variance request for a 1.3 foot distance between buildings
Property 1375 Webster
Zoning district: R 3 District

Board of Zoning Appeals;

I hear by request relief from the required fourteen foot distance between proposed residence on 1375 Webster and the existing residence located at 1363 west of this property.

Whereas the east side set back of 1363 Webster residence is partially non-compliant with the current ordinance, it presents a practical difficulty in carrying out the strict letter of such chapter.

The existing setback of 1363 Structure is 2.7 feet from our common property line. This setback will cause the proposed house have a 23.7 feet width, where a 26 foot wide structure is allowed.

To lessen this difficulty and decrease the required variance, the proposed house width is narrowed to 25 feet.

Granting of this variance will not be contrary to the spirit of purpose of the Zoning Ordinance nor contrary to the public health safety or welfare of this area,

Respectfully

Applicant and property owner

Fareed Mojaradi



CASE DESCRIPTION

369 N. Old Woodward (16-10)

Hearing date: April 12, 2016

The owners of the property known as 369 N. Old Woodward request the following variance to allow the construction of a five story mixed use building in the R6/D4 zone that exceeds the minimum lot area per unit.

A. **Chapter 126, Article 02, section 2.16**, of the Zoning Ordinance requires that buildings with residential units provide a minimum lot area of 1375 sq. ft. per one (1) bedroom unit and 1750 sq. ft. per two (2) bedroom unit. The applicant is proposing twenty-six (26) two bedroom units and three (3) one bedroom units requiring 49,625 sq. ft. of land area with 39,204 sq. ft. provided. Therefore, a variance of 10,421 sq. ft. of lot area is requested.

Or in the Alternative;

B. **Chapter 126, Article 8, Section 8.01 (D)** of the Zoning Ordinance allows for an appeal of a decision of the Building Official. The Building Official has determined that the proposed project located in the R6/D4 zone is required to comply with the minimum lot area per unit requirement of the R6 zone.

Staff Notes: The property was rezoned by the City Commission on October 12, 2015 to be included in the Downtown Overlay zone with the expressed intent of developing a mixed use building comprised of predominately residential uses. The Downtown Overlay Zone was drafted to encourage additional residential uses by permitting additional building height for residential uses as recommended by the DB 2016 plan. The proposal meets all other ordinance requirements in regards to height, setback and bulk regulations. Planning Board meeting minutes have been included for your review.

This property is zoned R6/D4.

Application Date: 3-15-16



Hearing Date: 4-12-16

Received By: BM

Appeal # 16-10

Board of Zoning Appeals Application

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

Property Information:

Street address: 369 N. Old Woodward		Sidwell Number: 19-25-376-086	
Owners name: Alden Development Group		Phone #: 248-910-5555	
Owners address: 27777 Franklin Rd, Suite 200		Email:	
City: State: Southfield, MI		Zip code: 48034	
Contact person:		Phone #:	

Petitioner Information: *

Petitioner name: Alden Development Group		Phone #: 248-910-5555	
Petitioner address: 27777 Franklin Rd, Suite 200		Email:	
City: Southfield	State: MI	Zip Code: 48034	

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'

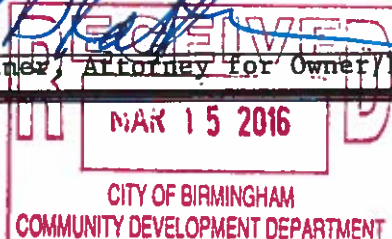
By signing this application I agree to conform to all applicable laws of the City of Birmingham. All information submitted on this application is accurate to the best of my knowledge. Changes to the plans are not allowed without approval from the Building Official or City Planner.

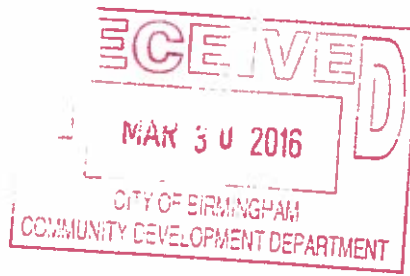
* Petitioner's Attorney/Contact Person: Richard D. Rattner, Esq., Williams, Williams, Rattner & Plunkett, P.C., Phone: 248-642-0583; rdr@wrplaw.com

Signature of Owner: _____

Richard D. Rattner, Attorney for Owner/Petitioner

Date: 3-15-16





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

380 North Old Woodward Avenue
Suite 300
Birmingham, Michigan 48009

Tel: (248) 642-0333
Fax: (248) 642-0856

March 30, 2016

Richard D. Rattner
rdrr@wwrplaw.com

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

Re: 369 N. Old Woodward, Birmingham (“Property”) – Alden Development
Group (“Petitioner” of “Property Owner”)

Dear Members of the Board of Zoning Appeals:

Please accept the following as a hardship letter on behalf of the Petitioner to the Board of Zoning Appeals in support of its request for a dimensional non-use variance from the following section of the Birmingham Zoning Ordinance (“Zoning Ordinance”): “Minimum Lot Area Per Unit” requirement of the R6 zoning district as set forth in Article 2, Section 2.16.

A. VARIANCE WITH REGARD TO “MINIMUM LOT SIZE PER UNIT” AS SET FORTH IN ARTICLE 2, SECTION 2.16 – VARIANCE “A”

Petitioner requests a dimensional non-use variance from the foregoing regulation to allow a design that accommodates a building to be built under the requirements of the D4 zone of the Downtown Birmingham Overlay District (“D4 Zone”). Section 3.02(B)(4) provides: “Where a new building is proposed, the use and site shall be subject to the requirements of the Downtown Birmingham Overlay District.” Further, Section 3.03 of the Downtown Birmingham Overlay District at 3.03(A) provides: “The design of buildings and sites shall be regulated by the provisions of the Downtown Birmingham Overlay District.” Section 3.03(C) provides: “The provisions of the Downtown Birmingham Overlay District, when in conflict with other articles of the Zoning Ordinance, shall take precedence.” Finally, Section 3.03(D) further provides: “The provision of the Downtown Birmingham Overlay District shall specifically supersede the floor-area-ratio, maximum height, band (sic) minimum setback regulations contained in each two-page layout in Article 2 of the Zoning Ordinance.”

The subject Property (see legal description attached as Exhibit A) is in the D4 Zone of the Downtown Birmingham Overlay District with an underlying zoning of R6. The building is a new building, and as a “new building,” is subject to the Downtown Birmingham Overlay District requirements. This building is designed under the D4 Zone requirements. However, during a review of the project, it was determined by the Building Department that the R6 zoning district requirement of “minimum lot area per unit” applies to this Property. Although this interpretation

is also being questioned in this appeal (see Section “B” of this hardship letter), Petitioner contends that, given the unique circumstances of this Property and the resulting unnecessary hardship experienced by the Property Owner, the facts of this case present strong support for Petitioner’s request for a dimensional variance. Accordingly, Petitioner asks that the Board of Zoning Appeals grant the dimensional variance as set forth in this letter.

The dimensional variance is requested as a result of the unique size, shape, physical characteristics and location of this Property as it relates to other neighboring and nearby properties, coupled with the requirements in the Downtown Birmingham 2016 Plan (“2016 Plan”), and the Downtown Birmingham Overlay District principles of design.

ARTICLE 8.03(F)(3)(a)(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 placement of the Property, the size and location of the Property and its zoning along North Old Woodward Avenue. These unusual circumstances cause a practical difficulty and unnecessary hardship for the Property Owner and prevent the Property Owner from using the Property in the same manner as other property owners within the same zoning district, i.e., the D4 Zone. Other owners in the D4 Zone may freely build a new building and all elements of the building, including setbacks, height, use, and all other requirements pursuant to the regulations set forth in the Downtown Birmingham Overlay District. The unusual application of one element of the R6 zoning district to this Property has no effect on the size of the building itself or its placement, but does have a damaging effect on the use of the building and reduction of units that are allowed in the building. A strict application of the Zoning Ordinance in this unique circumstance causes this building to be held to the same standards that are applicable to the R6 zoning district when the R6 property constitutes a buffer zone.

However, in this case, the Property is not a buffer to a single family district, and is not being developed pursuant to the R6 zoning district but the D4 Zone in the Downtown Birmingham Overlay District. The “minimum lot area per unit” zoning district requirement is intended to control the size of buildings in a classic R6 zoning district buffer zone. Due to the uniqueness of the location, its size and shape, the “minimum lot area per unit” serves no purpose. That is, a strict application of the “minimum lot area per unit” requirement unreasonably prevents the owner from using the Property as other property owners in the D4 Zone. A strict application of the Zoning Ordinance therefore applies a zoning ordinance requirement that is meant to apply to a R6 zoning district buffer zone of multifamily residential units that are placed next to single family residences or other residential housing.

In fact, the Property is surrounded by public property on three sides and a public street on the fourth side. The Petitioner contends it would be unreasonable therefore to in this circumstance with this location of the Property in the D4 Zone to strictly apply an R6 zoning district “buffer zone” regulation of “minimum lot area per unit.” Further, the intent provided in the Zoning Ordinance for new buildings built in the overlay zone is to build the building subject to the requirements of the Downtown Birmingham Overlay District (see Section 3.02(B)(4)). Given the size and shape of this Property and its location in the City of Birmingham within the Downtown Birmingham Overlay District, and further, given the fact that this Property is not bordering on any other residential property but public property, it would appear that it is reasonable to grant a variance so that the Property Owner may use the Property in the same manner as other property owners in the D4 Zone. If the requirements of the R6 zoning district were strictly applied, it would unreasonably prevent the Property Owner from using the Property in the same manner as D4 Zone owners.

ARTICLE 8.01(F)(3)(A)(ii) - LITERAL ENFORCEMENT OF THE CHAPTER WILL RESULT IN UNNECESSARY HARDSHIP.

The literal enforcement of the “minimum lot area per unit” requirement of the R6 zoning district as it applies to a D4 Zone building will result in a practical difficulty and an unnecessary hardship to the Petitioner. The Property is zoned as a D4 Zone overlay with an underlying R6 zoning district. Although the building is designed to be built in all respects as intended by the Zoning Ordinance, that is, with the standards of the D4 Zone, it is clear that the application of the “minimum lot area per unit” limitation found in the R6 zoning district, if applied to this particular property in this unique situation, will not only cause the Petitioner a practical difficulty and an unnecessary hardship, but also causes a conflict between the standards of the D4 Zone and the R6 zoning district standards. First, unlike other R6 zoning districts in the City, the Property abuts all public property or a public street. Other R6 zoning district properties are intended as buffer zones to single family residential. The hardship that is caused is that this R6 zoning district standard does not coordinate with either the unusual location of the Property, or the D4 Zone building design requirements. The result is that application of the “minimum lot area per unit” does not affect the size of the building, but has the unintended result of artificially and arbitrarily limiting the use of the building by reducing the number of units. This literal enforcement of the “minimum lot area per unit” requirement has no purpose in this circumstance. The hardship is caused because of the unique siting of this Property and the requirements of the Zoning Ordinance that the building be built under the D4 Zone regulations.

Also, there is a direct conflict between the use of this building as permitted in the D4 Zone and the limitation of that use if the R6 zoning district “minimum lot area per unit” standard is literally enforced. All other elements of the building are D4 Zone requirements, including without limitation the fact that the building must be moved forward to the frontage line (whereas

in the R6 zoning district there is a front setback). There are no setbacks required in the D4 Zone as there are required in the R6 zoning district. The “minimum lot area per unit” requirement of the R6 zoning district is obviously set forth in order to control the size of the multifamily dwellings in the R6 zoning district that buffer on single family residential zoning districts. This Property is not a buffer for a single family and therefore the literal enforcement of the Zoning Ordinance is not only difficult to coordinate with the D4 Zone, but is actually in conflict with that requirement and has no purpose in this unique circumstance.

Section 3.03(C) specifically states that the provision of the Downtown Birmingham Overlay District, when in conflict with other articles of the Zoning Ordinance, shall take precedence. Therefore, the literal enforcement of the “minimum lot area per unit” requirement, given the dimensions of this Property, its unusual shape and size, and importantly, its location on North Old Woodward, bordered by either public property or a public street, causes the Property Owner a practical difficulty and an unnecessary hardship. Petitioner respectfully requests that it be permitted to use the Property as other D4 Zone property owners may use their properties. The literal enforcement of the Zoning Ordinance in the circumstance causes the Property Owner a practical difficulty and an unnecessary hardship.

ARTICLE 8.01(F)(3)(a)(iii) – THE GRANTING OF THE VARIANCE WILL NOT BE CONTRARY TO THE SPIRIT AND PURPOSE OF THE ZONING ORDINANCE NOR CONTRARY TO PUBLIC HEALTH, SAFETY AND WELFARE.

The granting of the variance requested by Petitioner 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, Petitioner maintains that the construction of the proposed building in its entirety in accordance with the Downtown Birmingham Overlay District requirements, and not with the R6 zoning district requirements, is squarely within the purpose and intent of the Zoning Ordinance. All other elements of this building must be built in accordance with the Downtown Birmingham Overlay District. The building must be moved to the frontage line, the height is pursuant to the Overlay District Ordinance, the placement of other elements of the building are in accordance with the Overlay District Ordinance. The size and location of the building are in accordance with elements of the Downtown Birmingham Overlay District, and, importantly, the building does not constitute a buffer next to single family residential, as in the case with other R6 zoning districts in the City. This “buffer” zone intent of the R6 zoning district does not reasonably apply to property which is not in a location that is a buffer to any district.

On the other hand, the purpose, spirit and intent of the Downtown Birmingham Overlay District is clearly set forth in Section 3.01. It encourages the development in the D4 Zone in accordance with the Downtown Birmingham Overlay District (see Section 3.01(A)). Further, the purpose of the Downtown Birmingham Overlay Districts is to encourage a “form of development” that will maintain and enhance the economic vitality of the Downtown

Birmingham and "...maintain the desired character of the City of Birmingham as stated in the Downtown Birmingham 2016 Plan..." See Section 3.01(B).

The purpose of the Downtown Birmingham Overlay District goes on further to state at Section 3.01(C) that the intent of the ordinance is to "...ensure that new buildings are compatible with their context and the desired character of the City..." and ensure that all the uses are related to pedestrian-friendly streetscapes and to ensure that "...retail be safeguarded along specific street frontages." The spirit and purpose of D4 Zone ordinance is clearly accomplished by the project proposed. More importantly, an application of the R6 zoning district to this D4 Zone is contrary to the D4 Zone spirit and intent in that although the uses are the same, the use of the building is restricted under the R6 zoning district where it is not restricted under the D4 Zone. The restriction of this use is not intended by the D4 Zone, but rather the D4 Zone encourages such use. The granting of the variance requested will achieve all of the objectives of the D4 Zone and the City of Birmingham Zoning Ordinance.

The purpose and intent of the R6 zoning district is different from the D4 Zone ordinance in that the R6 zoning district covers multifamily housing that in all other areas of the City is adjacent to single family. The location of this building and the unusual size and shape of the Property do not fit the normal R6 zoning district areas. The spirit and intent of the R6 zoning district is not enhanced or in any way accomplished by applying one element of the R6 zoning district, that is, the "minimum lot area per unit" requirement, to this building that is otherwise built in accordance with the D4 Zone. This Property was moved into a D4 Zone specifically so that its style, size, shape and location could be utilized in a manner that is appropriate for this area of town. This D4 Zone Property is surrounded by public property or a public street. Also, across the street is a Downtown Overlay District with a required retail frontage as is the subject Property. The spirit, purpose and intent of the Zoning Ordinance would be served by granting a variance that would allow the entire building to be used and constructed under the D4 Zone rather than subjecting it to an R6 zoning district, which applies to property in different locations in different circumstances in the City.

ARTICLE 8.01(F)(3)(a)(iv) – THE GRANTING OF THE VARIANCE WILL RESULT IN SUBSTANTIAL JUSTICE TO THE PROPERTY OWNERS, THE OWNERS OF THE PROPERTY IN THE AREA AND THE GENERAL PUBLIC.

The granting of the variance will result in substantial justice to the owner of the Property and the neighboring owners of the Property and the general public. The purposes of the Downtown Birmingham Overlay District are set forth above. The fulfillment of these requirements and the purpose of the Downtown Birmingham Overlay District have been determined by the Planning Commission and the City Commission as being a benefit to the health, safety and welfare of the community. The purpose and planning goals of the Downtown Birmingham Overlay District has been enforced for several years, and has resulted in a vibrant

downtown which has benefitted the community as a whole. It would be inconsistent if one property in the D4 Zone were to be singled out and not be able to be used as a D4 building. The R6 zoning district was not intended to be an isolated zone. This Property is isolated. The location of this Property is on the very north end of the Overlay District, and not bordered by any residential property. The unique location of this Property and its triangular size and shape have caused the Petitioner to request that the Property, as unique as it is, be treated as a D4 Zone building and be permitted to be developed under the D4 Zone.

The granting of the variance will also remove the presumed conflict between the D4 Zone Downtown Birmingham Overlay District and the R6 zoning district in this unique circumstance. The circumstance is unique because of the shape, size and the location of the Property. Also, the granting of this variance will allow this new building to be used as anticipated under the D4 Zone requirements of the Downtown Birmingham Overlay District and in compliance with the Birmingham 2016 Plan as well as the ordinances of the City of Birmingham.

As such, the granting of this variance will result in substantial justice to the Property Owner by allowing the owner to use the Property as required in the Downtown Birmingham Overlay District, and not a requirement of the R6 zoning district that has no purpose in this unique circumstance. The nearby property owners are all within the Downtown Birmingham Overlay District and therefore to develop this building pursuant to the same rules as these nearby properties would be a benefit to those property owners (note that the surrounding property is all public property or public streets, but the nearby property is all developed in accordance with the Downtown Birmingham Overlay District). Lastly, as a result of this building being built in accordance with the 2016 Plan of the City of Birmingham and the well-established purposes of the Downtown Birmingham Overlay District, the granting of this variance will be of benefit to the general public and will result in substantial justice to all of the citizens of the City of Birmingham.

THE PRACTICAL DIFFICULTY AND HARDSHIP IS NOT SELF-CREATED.

The practical difficulty and hardship experienced by this Petitioner is not self-created but exists because of the size, shape, location and natural features of the Property. This Property is isolated at the end of the D4 Zone, is surrounded by public property, and is an unusual size and shape. The design of the building under the D4 Zone is made possible as a result of the requirements of the D4 Zone. The reasons for this variance and the current development plan is to benefit the City of Birmingham with a building and development that is complimentary to, and consistent with the 2016 Plan as well as the ordinances of the City of Birmingham.

The variance requested in this Petition is further necessary in order to deal with the difficult problems caused by the physical nature and location of this building. The Property is triangular in shape and bordered on one side by a park. On the east side is North Old

Woodward, the south side is adjacent to a parking structure and the west side faces a surface parking lot. The shape of the Property, and the fact that it is surrounded by public property causes a unique problem of design and shape of the building. These design elements are resolved pursuant to the D4 Zone.

The Property was zoned into the D4 Zone of the Downtown Birmingham Overlay District for the very purpose of being able to comply with that district's requirements. This gives substantial justice to the Property Owner but also benefits the citizens of the City of Birmingham. Further, the requirement of the R6 zoning district as to the "minimum lot area per unit" when applied to this Property is inconsistent with all of accepted planning and zoning goals of the City. The normal R6 zoning district in the City of Birmingham borders on single family residential and has other requirements classically found in multifamily districts that are bordering on residential. The location of this Property is not the same as any other R6 zoning district in the City. Petitioner respectfully requests that the Board of Zoning Appeals grants a variance from an R6 zoning district "minimum lot area per unit" requirement.

The granting of this dimensional variance in this circumstance given the unique location and special circumstances of this Property is a result of the unique physical characteristics of the Property which creates a practical difficulty and hardship that prevent the Petitioner from the 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 Petitioner, but are a result of physical characteristics of an unusually located and shaped property bordered by all public property on a public street.

CONCLUSION FOR REQUESTED DIMENSIONAL VARIANCE

The variance requested is necessary to preserve the enjoyment and substantial property rights possessed by other property owners in the same D4 Zone of the Downtown Birmingham Overlay District. Further, with the granting of this variance provides the following relief: (i) the Property Owner will not be unreasonably prevented from the use of the Property for a permitted purpose by a literal interpretation of the Zoning Ordinance that serves no purpose in this circumstance; (ii) the literal enforcement of the Zoning Ordinance will not result in unfair and unnecessary hardship to the Petitioner; (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 and the general public. Finally, the practical difficulty and unnecessary hardships experienced by the Petitioner are not caused by the Petitioner. The granting of this variance will produce a situation where the development of this Property and building in this part of the D4 Zone will, in all ways, comply with the purpose and objective of the Downtown Birmingham 2016 Plan.

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

B. ALTERNATIVE RELIEF: REQUEST FOR REVERSAL OF INTERPRETATION OF BUILDING DEPARTMENT

Petitioner respectfully requests as an alternative relief, that the Building Department's interpretation of the application of the R6 zoning district to this Property be reversed. The Building Department has indicated that the "minimum lot area per unit" found in Section 2.16 that relates to R6 (multifamily residential) district development standards be applied to this building which is in the D4 Zone of the Downtown Birmingham Overlay District. The Building Department referenced the fact that because this underlying zone is R6, and R6 is intended to be bordering on single family residential districts, that it was the intent of the City and the Zoning Ordinance to continue the "minimum lot area per unit" requirement found in Section 2.16 to all R6 property, even if that R6 property is in the D4 Zone. Simply stated, Petitioner objects to this interpretation and cites in opposition to the Building Department's determination the following sections of the Downtown Birmingham Overlay District.

a. Section 3.02(B)(4) provides "Where a new building is proposed, the use and sites shall be subject to the Downtown Birmingham Overlay District." This is a new building and therefore Petitioner contends that with this new building the use and site shall be subject to the requirements of the Downtown Birmingham Overlay District, not the underlying R6 zoning district.

b. Section 3.03(A) "The design of buildings and sites shall be regulated by the provisions of the Downtown Birmingham Overlay District."

Section 3.03(C): "The provisions of the Downtown Birmingham Overlay District, when in conflict with other articles of the Zoning Ordinance, shall take precedence."

Section 3.03(D): "The provisions of the Downtown Birmingham Overlay District shall specifically supersede the floor-area-ratio, maximum height, band (sic) minimum setback regulations contained in each two-page layout in Article 2 of the Zoning Ordinance."

These three subsections of Section 3.03 appear to clearly point to the intent of the Zoning Ordinance that new buildings in the D4 Zone shall be built in accordance with the Downtown Birmingham Overlay District. When there is any conflict with other articles of the Zoning Ordinance, the Downtown Birmingham Overlay District requirements take precedence over any other articles of the Zoning Ordinance.

In this case the R6 “minimum lot area per unit” at Section 2.16 is clearly in conflict with the other Downtown Birmingham Overlay District requirements. Thus the requirements of the Overlay District must take precedence over the other articles of the Zoning Ordinance.

Further, the mention of superseding the “floor-area-ratio” requirement is similar to, if not the same as, the “minimum lot area per unit” requirement of Section 2.16. Both of those sections are in the Ordinance to control the size of buildings in relation to the size of a lot. The conflict occurs because Section 2.16 requires a determination similar to floor-area-ratio while the other requirements of the Overlay District specifically overturn any floor-area-ratio type of determination. Petitioner contends that the mention of a superseding of the floor-area-ratio requirement in Section 3.03(D) directly relates to the “minimum lot area per unit” standard in the R6 zoning district. Although minimum lot area per unit is not technically called “floor-area-ratio,” those requirements are in fact attempting to control the building size as it relates to lot size. They have the same purpose and should be interpreted consistently. The irony in this case is that the application of the Section 2.16 minimum floor area per unit standard to this development will not change the size or shape of the building as it relates to the size of the lot. It will only unfairly prohibit the full use of the building as anticipated in the D4 Zone. If the minimum floor area per unit will not change the size, shape or placement of this building then it is unreasonable to apply such a requirement to a D4 Zone building. If the “minimum floor area per unit” requirement is supposed to control such elements as size and placement of the building, but does not do so, then its application to a D4 Zone building has no purpose and should reasonably be superseded by the D4 Zone requirements.

Respectfully, the Petitioner requests that as an alternative to granting the dimensional variance requested herein, the interpretation of the Building Department be reversed and that the Board of Zoning Appeals hold that the “minimum floor area per unit” requirement of Section 2.16 does not apply to this development of a building in the D4 Zone.

If you have any further questions or comments with regard to the above please do not hesitate to call. Kind regards, I am

Very truly yours,
WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, P.C.



Richard D. Rattner

RDR/cmc
Enclosure

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

SITE INFORMATION

TOTAL SITE AREA: ±35,442 SF (0.81 ACRES)
PARCEL TAX ID NO.: 19-25-376-086

DESCRIPTION:

UNITS 1, 2 & 3 OF BUILDING 1 AND UNITS 4, 5, 6, 7, 8 & 9, BUILDING 2, BROOKSIDE TOWNHOMES OF BIRMINGHAM CONDOMINIUM ACCORDING TO THE MASTER DEED RECORDED IN LIBER 29097, PAGE 719, AS AMENDED, AND DESIGNATED AS OAKLAND COUNTY. CONDOMINIUM SUBDIVISION PLAN NO. 1532, TOGETHER WITH RIGHTS IN THE GENERAL COMMON ELEMENTS AND THE LIMITED COMMON ELEMENTS AS SHOWN ON THE MASTER DEED AND AS DESCRIBED IN ACT 59 OF THE PUBLIC ACTS OF 1978, AS AMENDED.

**CITY OF BIRMINGHAM
PLANNING BOARD ACTION ITEMS
OF WEDNESDAY, MARCH 23, 2016**

Item	Page
UNFINISHED BUSINESS 369 - 397 N. Old Woodward Ave. (Brookside Terrace Condominiums) Application for Final Site Plan Review to allow construction of a new five-story mixed-use building (postponed from the meeting of February 24, 2016)	2
<p style="padding-left: 40px;">Motion by Mr. Williams</p> <p>Seconded by Mr. Share to approve the Final Site Plan and Design for 369-397 N. Old Woodward Ave. subject to the following conditions:</p> <ol style="list-style-type: none"> 1) Applicant will be required to reduce the number of residential units proposed or obtain a variance from the Board of Zoning Appeals; 2) Trees must be 3 in. in caliper at the time of planting; 3) Applicant obtain an easement for ingress/egress from the City alley to access the underground parking level, with conditions noted; and 4) Compliance with the request of City Departments. 	4
<p>Motion carried, 6-0.</p>	4
<p>SPECIAL LAND USE PERMIT ("SLUP") REVIEW FINAL SITE PLAN REVIEW 555 S. Old Woodward Ave, Suite 610, Triple Nickel Request for a SLUP Amendment to allow an on-street platform for outdoor dining for the existing restaurant</p>	5
<p style="padding-left: 40px;">Motion by Mr. Williams</p> <p>Seconded by Ms. Whipple-Boyce that based on a review of the site plans submitted, the Planning Board recommends approval to the City Commission of the applicant's request for Revised Final Site Plan and a SLUP Amendment for an outdoor dining platform at 555 S. Old Woodward Ave., Suite 610, Triple Nickel, with the following conditions:</p> <ol style="list-style-type: none"> 1) The applicant will be required to submit the plans for the proposed outdoor dining platform in color; 2) Applicant must submit plans that include refuse containers within the outdoor dining area in accordance with Article 4, Section 44, OD-01 Outdoor Dining Standards (A) (1); and 3) Applicant must submit spec sheets for the proposed outdoor tables and chairs. 	6
<p>Motion carried, 6-0.</p> <p>SPECIAL LAND USE PERMIT ("SLUP") REVIEW FINAL SITE PLAN REVIEW</p>	6 6

Item	Page
835 - 909 Haynes St., Fred Lavery Porsche/Audi Request for a SLUP Amendment to allow the temporary expansion of the existing SLUP at 835 Haynes St. to include 909 Haynes St. to allow an Audi sales facility for a maximum of one year. Motion by Mr. Williams Seconded by Mr. Share to postpone consideration of the Special Land Use Permit Review and Final Site Plan Review for 835 - 909 Haynes St., Fred Lavery Porsche/Audi to April 27, 2016.	8
Motion carried, 6-0.	9

DRAFT

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, MARCH 23, 2016
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on March 23, 2016. Board Member Robin Boyle convened the meeting at 7:33 p.m.

Present: Board Members Robin Boyle, Stuart Jeffares, Janelle Whipple-Boyce, Bryan Williams; Alternate Board Members Lisa Prasad, Daniel Share

Absent: Chairman Scott Clein; Board Members Bert Koseck, Gillian Lazar; Student Representative Colin Cusimano

Administration: Matthew Baka, Senior Planner
Brooks Cowan, Planning Intern
Jana Ecker, Planning Director
Carole Salutes, Recording Secretary

03-47-16

APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING OF MARCH 9, 2016

Motion by Mr. Williams

Seconded by Ms. Whipple-Boyce to approve the Minutes of March 9, 2016 as presented.

Motion carried, 5-0.

VOICE VOTE

Yeas: Williams, Whipple-Boyce, Boyle, Jeffares, Prasad

Nays: None

Abstain: Share

Absent: Clein, Koseck, Lazar

03-48-16

CHAIRPERSON'S COMMENTS

Mr. Boyle said he is acting as Chairperson tonight because Scott Clein is unfortunately under the weather. Vice-Chairperson Gillian Lazar is similarly not available to attend.

03-49-16

APPROVAL OF THE AGENDA (no change)

03-50-16

UNFINISHED BUSINESS

- 1. 369 - 397 N. Old Woodward Ave. (Brookside Terrace Condominiums)
Application for Final Site Plan Review to allow construction of a new five-story mixed-use building** (postponed from the meeting of February 24, 2016)

Ms. Ecker recalled the subject site, 369-397 N. Old Woodward, was previously a residential development of nine townhouses. The site is currently vacant. The property has a total land area of .81 acres and it is located on the west side of N. Old Woodward Ave. between Harmon and Willits Streets.

The applicant is proposing to construct a new five-story mixed-use building. The building will provide two levels of underground parking with 82 spaces, ground floor commercial space, and 29 residential units on the first through fifth floors.

On August 26, 2015, the Planning Board voted unanimously to recommend to the City Commission the applicant's request to rezone the property from R-6 Multiple Family Residential to R-6 Multiple Family Residential and D-4 in the Downtown Overlay District.

On October 12, 2015, the City Commission rezoned the property from R-6 to R-6 and D-4 in the Downtown Overlay District.

The applicant was required to prepare a Community Impact Study ("CIS") in accordance with Article 7, section 7.27(E) of the Zoning Ordinance as they are proposing a new building containing more than 20,000 sq. ft. of gross floor area. On September 9, 2015, the Planning Board reviewed the CIS materials submitted, and after much discussion voted to accept the CIS with several provisions.

On October 14, 2016, the Planning Board voted to approve the Preliminary Site Plan, subject to a number of conditions.

The building official has provided an interpretation stating that the R-6 lot area requirements are applicable to this project as they are not superseded by the provisions of the Downtown Overlay District. The applicant has been approved to bring the property into the Parking Assessment District.

Given the interpretation of the building official with regards to the applicability of the lot area requirements in the R-6 Zoning District, the applicant will be required to reduce the number of residential units proposed or obtain a variance from the Board of Zoning Appeals ("BZA"). The applicant has submitted a variance request to the BZA.

As per Article 3 Section 3.04, provision A.3 of the Zoning Ordinance, the fifth story shall continue in a different plane, beginning at the eave line, no greater than 45 degrees measured to the horizontal setback 10 ft. from any building facade. Units A and E of the fifth floor, as well as the staircase, do not meet setback requirements. However, the building official has since ruled that will not apply because it is an error in the Zoning Ordinance whereby that

requirement in the old Zoning Ordinance only applied along the frontage line on a street. Therefore, the applicant is not required to seek a variance.

In response to Mr. Williams, Ms. Ecker clarified that 26 residential units were originally approved by the Planning Board. The applicant has since shrunk the two retail spaces on the main floor and added three more residential units. The upper floors remain unchanged.

The property owner has indicated a willingness to deed land at the south end of this property to the City to be used as part of a future Bates St. right-of-way, as the City is looking at potentially redeveloping the N. Old Woodward Parking Structure and/or the surface parking lot behind. As well, the developer needs an Easement Agreement from the City to get access to and from the underground parking levels from the City property.

Mr. Share received confirmation that the ceiling height on the first floor retail space is 18 ft.

Design Review

The proposed plans meet the architectural standards set out in Article 3, Downtown Birmingham Overlay District, of the Zoning Ordinance as the first floor storefronts are directly accessible from the sidewalk, the storefront windows are vertically proportioned, and the main entries incorporate canopy features to add architectural interest on a pedestrian scale.

The exterior finish materials facing a street consist of the following:

- Nova Black granite base;
- Comanche limestone veneer and pilasters;
- Zinc storefront system and columns, painted blue grey and graphite grey;
- Stainless steel arches, canopies, railings and other details;
- Aluminum mechanical screening;
- Clear butt-glazed windows; and
- Wood paneled doors.

The primary colors of the exterior are compatible with the colors of adjacent buildings and in character with the surrounding area. The glazing calculations indicate that the required 70% minimum glazing has been met with 75% at the main storefront level, and the maximum 35% glazing has been met on floors two through five, with the glazing percentages ranging from 28% to 34%.

A signage review will be conducted by the Design Review Board where a Master Sign Plan for the building as a whole will be submitted by the applicant.

Ms. Ecker indicated that in the future, the City would like to see public access to the river. At Preliminary Site Plan Review, the applicant said they were willing to allow public access to the river and riverbank. In light of the addition of residential units to the first floor, the applicant should confirm that public access will still be provided.

Mr. Christopher Longe, Architect, spoke to represent the project for Alden Development Group. Their intent for signage is to have it set back from the glass line. There is no plan to prohibit anyone from walking onto the property between the west face of the building and the river, but that cannot be addressed yet because they don't know what will be there. He provided samples of the materials to be used on the building. Discussion brought out that an arrangement for retail parking has not yet been determined.

Chairman Boyle opened discussion to members of the public at 8:15 p.m.

Mr. Scott Aikens, Robert Aikens and Associates, 350 N. Old Woodward Ave., said it seems incongruous to him that retail is required on the first floor throughout this District, because already it is extremely difficult to find parking and this will exacerbate the problem.

Ms. Ecker said that parking was called out in the Community Impact Study and it was considered to be appropriate. The applicant meets all of their on-site parking requirements and they have become part of the Parking Assessment District.

Motion by Mr. Williams

Seconded by Mr. Share to approve the Final Site Plan and Design for 369-397 N. Old Woodward Ave. subject to the following conditions:

- 1) Applicant will be required to reduce the number of residential units proposed or obtain a variance from the Board of Zoning Appeals;**
- 2) Trees must be 3 in. in caliper at the time of planting;**
- 3) Applicant obtain an easement for ingress/egress from the City alley to access the underground parking level, with conditions noted; and**
- 4) Compliance with the request of City Departments.**

Speaking for himself and not for the board, Chairman Boyle noted it strikes him that the City is trying to increase the number of residents living in the Downtown area. Therefore he suggested that the variance be granted. Mr. Williams seconded that thought and added it is important to note that enough parking has been provided within the structure for the proposed residential units.

There were no final comments from the public at 8:30 p.m.

Motion carried, 6-0.

ROLLCALL VOTE

Yeas: Williams, Share, Boyle, Jeffares, Prasad, Whipple-Boyce

Nays: None

Absent: Clein, Koseck, Lazar

03-51-16

SPECIAL LAND USE PERMIT ("SLUP") REVIEW

FINAL SITE PLAN REVIEW

555 S. Old Woodward Ave, Suite 610, Triple Nickel

Request for a SLUP Amendment to allow an on-street platform for outdoor dining for the existing restaurant

Ms. Ecker provided background. The subject site is located between Bowers St. and Haynes St. The applicant, Triple Nickel, is proposing to increase their outdoor seating on S. Old Woodward Ave. from 16 to 24 by constructing an outdoor dining platform in the front (to the west) of the existing restaurant. The proposed platform is located on the sidewalk abutting the building and extends into S. Old Woodward Ave. Triple Nickel was approved for an Economic Development License and the restaurant was permitted with a SLUP in 2013. A SLUP Amendment is required for any changes to the approved plans pursuant to Chapter 10, Article II, Division 3.

The applicant is proposing to build a temporary elevated dining platform constructed of Synthetic Trex decking. The platform, which is 376.25 sq. ft. in area, is proposed to be enclosed with a 42 in. tall ornamental metal railing. The platform area will project 4 ft. from the existing curb cut into the street and extend 13.5 ft. into the sidewalk right-of-way. No parking spaces will be obstructed by the platform. A 5 ft. pedestrian pathway is proposed to remain between the platform and the building, which is the required minimum for a pedestrian pathway. The entrance has a 3.5 ft. wide tapered sill ramp up the 9 in. from the sidewalk to the elevated platform and is positioned away from any dining tables. Four of the 7 existing planters will be arranged on the sidewalk bordering the north railing of the platform. To shade the area, the applicant proposes one 7 ft. x 21.5 ft. Sunbrella canopy that measures 9.5 ft. in height at its highest point. The canopy includes a valence with hanging crystals that match the existing awning.

The plan indicates seven red four-top tables and 24 blue chairs to be arranged on the platform. The proposed dining tables are 2.5 ft. x 2.5 ft. and the table tops are pressed wood with a laminate coating. The chairs proposed are constructed of engineered wicker.

The second floor of Triple Nickel has two upstairs dining patios with retractable awnings and sliding windows that provide an outdoor dining experience when the weather permits. On the west terrace facing S. Old Woodward Ave. there are 26 seats and four tables along with a bar. The east terrace facing Woodward Ave. seats 20 at five round tables and also has two couches that can accommodate a total of eight patrons. The restaurant also has 16 outdoor seats in its current outdoor dining area. The proposed outdoor dining platform with 24 seats will be constructed in place of the existing 16 seats on the sidewalk to provide an additional 8 seats.

Mr. Jeffares thought there is a bit of a sense of vulnerability so he likes the railing. Mr. Williams noted that the cars parked out in front of the south tower stick out into the street further than the proposed platform, so a visual problem is not caused by the deck. Mr. Boyle added the parked cars give a measure of protection to folks sitting on the platform.

Mr. Bob Ziegelman, Luckenbach Ziegelman Architects, said the tables and chairs are the same ones that were used for the past two summers so they have received Planning Board approval. Mr. Jack Reinhart from Triple Nickel said they terminated valet about three months ago because there is a lot of parking in that area. He added the restaurant closes at 10 p.m.

Motion by Mr. Williams

Seconded by Ms. Whipple-Boyce that based on a review of the site plans submitted, the Planning Board recommends approval to the City Commission of the applicant's request for Revised Final Site Plan and a SLUP Amendment for an outdoor dining platform at 555 S. Old Woodward Ave., Suite 610, Triple Nickel, with the following conditions:

- 1) The applicant will be required to submit the plans for the proposed outdoor dining platform in color;**
- 2) Applicant must submit plans that include refuse containers within the outdoor dining area in accordance with Article 4, Section 44, OD-01 Outdoor Dining Standards (A) (1); and**
- 3) Applicant must submit spec sheets for the proposed outdoor tables and chairs.**

Ms. Whipple-Boyce said she is happy to see this. It does a lot to bring people to that side of S. Old Woodward Ave. Also, she was thrilled to be getting rid of the valet because there is way too much of it.

There were no final comments from the public on the motion at 8:40 p.m.

Motion carried, 6-0.

ROLLCALL VOTE

Yeas: Williams, Whipple-Boyce, Boyle, Jeffares, Prasad, Share

Nays: None

Absent: Clein, Koseck, Lazar

03-52-16

SPECIAL LAND USE PERMIT ("SLUP") REVIEW

FINAL SITE PLAN REVIEW

835 - 909 Haynes St., Fred Lavery Porsche/Audi

Request for a SLUP Amendment to allow the temporary expansion of the existing SLUP at 835 Haynes St. to include 909 Haynes St. to allow an Audi sales facility for a maximum of one year.

The subject site is located on the north side of the street between Woodward Ave. and Elm St. The parcel is zoned B-2 General Business and MU-5 in the Triangle Overlay District. The applicant, Fred Lavery Co., owns the adjacent property to the west, 835 Haynes St., which received a SLUP in 2010 to operate a Porsche car dealership within the B-2 Zone and in the MU-7 Triangle District Overlay.

Mr. Baka advised that the applicant is conducting renovations to the existing Audi dealership at 34602 Woodward Ave., and wishes to amend its existing SLUP at 835 Haynes St. to temporarily include 909 Haynes St. The applicant is requesting temporary use of the first floor of 909 Haynes St. for office space and business operations for their Audi car dealership for no more than 12 months. Along with the proposed auto dealership sales office, there is an existing beauty spa on the second floor of 909 Haynes St.

Auto sales agencies require a SLUP to operate in the B-2 District. The Birmingham Zoning Ordinance requires that the applicant obtain a SLUP Amendment and approval from the City Commission to expand the auto sales agency and showroom to temporarily include the property at 909 Haynes St. Accordingly, the applicant will be required to obtain a recommendation from the Planning Board on the Final Site Plan and SLUP Amendment, and then obtain approval from the City Commission for the Final Site Plan and SLUP Amendment.

No new screening is proposed. The applicant is proposing to utilize the existing landscaping along the front property line as screening for the parking lot. All parking facilities must be screened in accordance with Article 4, section 4.53 of the Zoning Ordinance. A minimum 32 in. masonry screenwall is required. The ordinance does grant the Planning Board authority to approve landscaping in place of a screenwall.

Article 04 section 4.20 LA-01 states that the interior planting areas shall be located in a manner that breaks the expanse of paving throughout the parking lot interior. Each interior planting