

BOARD OF ZONING APPEALS AGENDA

City of Birmingham
Commission Room of the Municipal Building
151 Martin Street, Birmingham, Michigan
February 9, 2016
7:30 PM

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

	Address	Petitioner	Appeal	Type/Reason
1.	1247 BIRD AVE	KUZA	16-03	DIMENSIONAL
2.	555 S. OLD WOODWARD	555 COMMERCIAL LLC	16-04	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, JANUARY 12, 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, January 12, 2016. Vice-Chairman Randolph Judd convened the meeting at 7:30 p.m.

Present: Board Members Jeffrey Jones, Randolph Judd, Peter Lyon, John Miller, Erik Morganroth; Alternate Board Members Jason Canvasser, Cynthia Grove

Absent: Chairman Charles Lillie; Board Member Kevin Hart

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

The vice-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# 01-01-16

APPROVAL OF THE MINUTES OF THE BZA MEETING OF DECEMBER 8, 2015

Vice-Chairman Judd:

Page 4 - Second paragraph of his motion, fifth line, add "feature" after "cosmetic"; remove the comma after "appearance."

Motion by Mr. Jones

Seconded by Mr. Lyon to approve the Minutes of the BZA meeting of December 8, 2015 as amended by the vice-chairman.

Motion carried, 7-0.

VOICE VOTE

Yeas: Jones, Lyon, Canvasser, Grove, Judd, Miller, Morganroth

Nays: None

Absent: Hart, Lillie

T# 01-02-16

**569 PIERCE
(Appeal 16-01)**

Withdrawn.

T# 01-03-16

**528 ABBEY
(Appeal 16-02)**

The owners of the property known as 528 Abbey request the following variances to allow for the construction of a house addition less than the required minimum combined side yard setbacks for principal residential buildings:

A. Chapter 126, Article 2, Section 2.06 of the Zoning Ordinance requires a combined minimum side yard setback distance of 16.25 ft. for this lot. The applicant is proposing 12.82 ft. Therefore, a variance of 3.43 ft. is requested.

B. Chapter 126, Article 4, Section 4.69 (C) of the Zoning Ordinance requires a minimum distance between principal residential buildings of 16.25 ft. for this lot. The applicant is proposing 15.15 ft. Therefore, a variance of 1.10 ft. is requested.

Mr. Lenhart explained the applicant proposes to build a rear two-story addition to an existing non-conforming house. They are continuing the second-story addition straight up. In response to Mr. Miller, Mr. Lenhart affirmed the granting of this variance would not adversely affect the residence to the west in either a renovation or a rebuild scenario. That owners of that residence would already have to come before the BZA for a variance for minimum distance between principal structures.

Mr. Jeff Klatt with Krieger Klatt Architects spoke for the homeowner, Mr. James Stanley. They are proposing to construct a 1,488 sq. ft. addition to the rear of the home over two levels. He presented photographs to clarify the area in question. A practical difficulty exists for both variances because the home is existing, non-conforming. Their goal is to stack the new addition directly above the existing first-floor footprint to take advantage of the existing load bearing conditions.

They are also proposing an addition to the back of the home which they have stepped in to lessen the variance.

Mr. Klatt noted the variances are necessary to allow the homeowner to construct the addition in a logical, straight forward manner. Further, the applicant has reached out to the neighbor to the west and they approve the addition.

At 7:43 p.m. there were no comments from members of the audience.

Motion by Mr. Lyon

Seconded by Mr. Jones in regard to 528 Abbey St., Appeal 16-02, to approve the variances as advertised. The appellant seeks a variance under Chapter 126, Article 2, Section 2.06 of the Zoning Ordinance for a side yard setback of 3.43 ft. and a variance under Chapter 126, Article 4, Section 4.69 (C) of the Zoning Ordinance, minimum distance between principal residential buildings, of 1.1 ft.

Mr. Lyon believes that strict compliance in this case would be unduly burdensome in that the house is existing and the applicant seeks to build on top of it. He also would indicate that this is not self-created, in that the house has been there for a number of years and the appellant has done some amount of mitigation to reduce the side yard setback variance on intrusion to the neighbor's light and space.

He believes it does substantial justice to both the appellant and the surrounding neighbors. The motion is tied to the plans as submitted.

Mr. Miller spoke in support. He added that by approving this motion there would be no penalty paid by the adjacent land owner for either a renovation or a re-build of the home to the west.

Motion carried, 7-0.

VOICE VOTE

Yeas: Lyon, Jones, Canvasser, Grove, Judd, Miller, Morganroth

Nays: None

Absent: Hart, Lillie

T# 01-04-16

CORRESPONDENCE

Vice Chairman Judd noted correspondence was provided to board members in the form of e-mails concerning property that is not before the BZA and that doesn't require any comment or action on the board's part or individually. However, he always pays attention to these things because one never knows what may be coming this way.

T# 01-05-16

GENERAL BUSINESS

T# 01-06-16

OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA (no one spoke)

T# 01-07-16

ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 7:52 p.m.

Bruce R. Johnson, Building Official

CASE DESCRIPTION

1247 Bird Ave. (16-03)

Hearing date: February 9, 2016

The owners of the property known as 1247 Bird Ave request the following variance to allow for the construction of a house addition less than the required minimum front and side yard setbacks, distance between principal residential buildings, allowable overhang projection.

- A. **Chapter 126, Article 2, Section 2.10** of the Zoning Ordinance requires a minimum front yard setback distance of 21.80' for this lot. The applicant is proposing 20.00'. Therefore, a variance of 1.80' is requested.
- B. **Chapter 126, Article 2, Section 2.10** of the Zoning Ordinance requires a minimum side yard setback of 5.00' for this lot. The applicant is proposing 3.07'. Therefore, a variance of 1.93' is requested.
- C. **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 10.77'. Therefore, a variance of 3.23' is requested.
- D. **Chapter 126, Article 4, Section 4.30 (C-2)** of the Zoning Ordinance allows overhangs to project 0.84' feet into the west required side yard setback for this property. Due to the existing homes nonconforming setback, the existing overhang projects 2.07' into the required open space. With 1.59' feet proposed, a variance of 1.59' feet is requested.

Staff Notes: Existing house was built in 1928. The applicants had a house fire in the summer of 2015 and want to renovate house with a new 2nd story and rear addition.

This property is zoned R-3.

Scott Lenhart

Scott Lenhart
Assistant Building Official

Application Date: 01/15/2016



Hearing Date: 2/09/2016

Received By: BW

Appeal # 16-03

Board of Zoning Appeals Application

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

Property Information:

Street address: <u>1247 BIRD AVE</u>	Sidwell Number:
Owners name: <u>STEVEN KUZA & SARAH FRANKOVI</u>	Phone #: <u>(248) 417-8806</u>
Owners address: <u>1247 BIRD AVE</u>	Email:
City: State: <u>BIRMINGHAM MI</u>	Zip code: <u>48009</u>
Contact person: <u>STEVEN KUZA</u>	Phone #: <u>(248) 417-8806</u>

Petitioner Information:

Petitioner name:	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: [Signature] Date: 1/15/2016

5. In variance requests, applicants must provide a statement that clearly sets forth all special conditions that may have contributed to a practical difficulty that is preventing a reasonable use of the property.
 6. Where the Birmingham Zoning Ordinance requires site plan approval of a project by the City Planning Board before the issuance of a building permit, applicants must obtain preliminary site plan approval by the Planning Board before appeal to the BZA for a variance request. If such appeal is granted by the BZA, the applicant must seek final site plan and design review approval from the Planning Board before applying for a building permit.
 7. An aggrieved party may appeal a Planning Board decision. Such appeal must be made within 30 days of the date of the decision. The BZA, in its discretion, may grant additional time in exceptional circumstances.
 8. Appeals from a decision of the Building Official shall be made within 30 days of the date of the order, denial of permit, or requirement or determination contested. The BZA, in its discretion, may grant additional time in exceptional circumstances.
 9. An appeal stays all proceedings in accordance with Act #202, Public Acts of 1969, Section 5(c), which amended Section 5 of Article #207 of the Public Acts of 1921.
- C. The order of hearings shall be:
1. Presentation of official records of the case by the Building Official or City Planner as presented on the application form.
 2. Applicant's presentation of his/her case—the applicant or his/her representative must be present at the appeal hearing.
 3. Interested parties' comments and view on the appeal.
 4. Rebuttal by applicant.
 5. The BZA may make a decision on the matter or request additional information.

ARTICLE II - Results of an Appeal

- A. The Board may reverse, affirm, vary or modify any order, requirement, decision or determination as in its opinion should be made, and to that end, shall have all the powers of the officer from whom the appeal has been taken.
- B. The decisions of the Board shall not become final until the expiration of five (5) days from the date of entry of such orders or unless the Board shall find that giving the order immediate effect is necessary for the preservation of property and/or personal rights and shall so certify on the record.

Letter of Hardship

Property Address:
1247 Bird Ave, Birmingham MI 48009

Homeowners:
Steven Kuza & Sarah Franczuk

We are applying for four variances for our home due to reconstruction of our second floor from a house fire.

VARIANCE	EXISTING	PROPOSED	REQUIRED	VARIANCE
A - FRONT YARD SET BACK	20'	20'	21.8'	1.8'
B - SIDE YARD SET BACK	3.07'	3.07'	5'	1.93'
C - DISTANCE B/T STRUCTURES	10.77'	10.77'	14'	3.23'
D - DISTANCE B/T STRUCTURES - OVERHANG	1'	0.5'	-1.09	1.59'

Topic #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.

In July of 2015, we had a house fire that destroyed the inside of our house. Due to many pre-existing code violations and our chance to expand the home to meet our growing family, we need to rebuild our 2nd floor. The variance(s) are needed due to previous characteristics of the property.

- Existing house built in 1928
- Remodeled in 1972
- Existing foundation and 1st floor is structurally sound
- Existing Front Setback of home is 20 feet
- Existing Side Set Back from neighbor is 3.07 feet
- Neighbors house is also in violation at 7.70 Feet side yard setback (Should be 9.0 feet which prevents the ability to meet 14.0 foot distance between houses. Needs to be total of 14 feet between both)
 - On the extension of the home, we will be 5' from neighboring line.
- The 2nd floor structure is going to be added to: not knocked down
 - Pre-existing layout was "loft-style" and prevented complete usage livable space. Fire damage requires roof to be replaced which affords us the opportunity to convert "loft-style" roof to conventional.
- The Front setback average is 21.8 feet, There are 2 (1 old and 1 new home) that effect the average because their setback is 25 feet

- Existing 1st floor and 2nd floor load bearing beam would align if both variances were to be granted. Without variance a significant hardship would be incurred because existing structural layout would have to be redesigned. Standard load points and weight dispersion could not be achieved without variance approval.

Topic #2

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

Variance A is related to the average front yard setback distance for new construction.

- Existing residence is 20'
- To keep with load bearing wall 2nd floor construction to be the same 20' setback average
- We will NOT have any bay window or extension beyond the original setback (20') of the property. We will stay consistent with what is already there

Variance B,C,D are related to the 5 foot side yard setback distance required from house to house, including overhang. Also related is Variance C – Distance b/t structures.

- Existing residence is 3.07 feet from neighbor – Side Yard Set Back
- To keep with load bearing wall and function of house, 2nd floor construction will be added to existing wall and structure that is 3.07 feet. Any NEW construction will comply with 5 foot distance, as seen in drawing, consistence with city ordinance
- Existing overhang is 1'. We are applying for variance of 6 inches.
- There will be no bay window and we have even cut overhang on property on that side of the house to 6 inches – Variance D
- On the extension, we will be 5.07 feet from neighboring line. If our neighbor does rebuild in the future this will not adversely affect a future project.

Topic # 3

The special conditions do not result from the actions of the applicant.

- Existing home built in 1928
- Remodeled in 1972
- House fire in July of 2015, is requiring new roof and because of code issues, even more work inside the home
- Neighbor home that is 3.07 feet from our house, is also in violation at 7.70 feet (should be 9 feet) This home was also existing
- Any new addition will not need variance as we will comply with city ordinance on our porch and extension (reference site plan).

Topic #4

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

The purpose of the ordinance will not be violated on any area where the property can conform without special circumstances as previously noted. The extension and the front porch will comply with 5 foot ordinance and porch set back rule.

Topic #5

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

- The variances we are asking for is within the existing structure of the home from the foundation and 1st floor, and current 2nd floor.
- The extension of the house and porch will comply with city ordinances

Topic # 6

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

The ZBA has an important job to uphold the city ordinances. We have therefore eliminated as many as we can to make sure we are only asking for what is necessary due to special circumstances.

The original plans needed variances in the following areas:

- Lot coverage
- Front Porch distance to neighbor
- Front Porch distance to street
- Extension distance to neighbor
- Front Setback distance to street
- Overhang distance to neighbor
- 2nd floor distance to neighbor

We have made changes to eliminate and reduce as much as we can to reconstruct our home with regards to the city ordinances.

Thank you

Home Owner

Steven Kuza

1247 Bird Ave.

Birmingham MI 48009

CASE DESCRIPTION

555 S. Old Woodward, Case Number: 16-04

Hearing date: February 9, 2016

The owners of the property known as 555 S. Old Woodward request the Board of Zoning Appeals confirm that their revised plans for a new curtain wall proposed on the office building still meets the intent of an interpretation made by the Building Official in 2013.

- A. **Article** 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 revised plans submitted are not in agreement with plans submitted and approved in 2013 for an interpretation that was confirmed by BZA

Staff Notes: This case is not seeking to reverse a decision of the Building Official; rather it is seeking the Board of Zoning Appeals confirmation of a revised plan.

There are two buildings located at the subject property. The south building is the apartment building and the building to the north is the commercial building. The owners of the property proposed new curtain wall systems in 2013 for both buildings. The Building Official made an interpretation that the curtain walls proposed at that time could be considered maintenance, rather than an expansion of a nonconforming structure that would require a variance. The Board of Zoning Appeals at its July 9, 2013 regular meeting confirmed the interpretation as presented and tied it to the prints, pictures and renderings from which the interpretation was based.

The owners have recently revised their plans for the new curtain walls. The Building Official has determined that the revised plan for the south building is in accordance with the interpretation made 2013. However, the plan for the north building proposes a different curtain wall system than originally proposed in 2013. The revised plans meet the intent of the interpretation except that the design is a different system than the BZA tied its confirmation to back in 2013. I have included for reference a copy of the 2013 interpretation, minutes from the 7/9/2013 BZA meeting and minutes of the 10/21/2015 Design Review Board meeting pertaining to the revised design.



Bruce R. Johnson
Building Official



MEMORANDUM

Building Division

DATE: July 1, 2013
TO: Zoning Board of Appeals
FROM: Bruce R. Johnson, Building Official
SUBJECT: 555 S. Old Woodward Renovation

This report is to inform the Board of Zoning Appeals of a proposed renovation to the exterior of the existing building complex located at 555 S. Old Woodward. The buildings at this property are legal nonconforming in regards to building height. In response to concerns expressed by the City Commission, Planning Board, and residents of poor visual appearance of the exterior of the buildings, the owners have decided to renovate the exteriors of the buildings. The paragraphs below will discuss the proposed renovation and the attached renderings will visually detail the project. I am seeking confirmation from the Board of Zoning Appeals that the proposed renovation will be considered maintenance not an enlargement.

The existing complex consists of two buildings. The building located on the north side of the property is used for commercial purposes and the building to the South for residential. The commercial building is 7 stories and 77.5 feet tall. The residential building is 15 stories and 141.83 feet in height. If the property were developed utilizing the provisions of the today's ordinance, the provisions of the D4 Overlay District would be applicable. The maximum height for the commercial building would be 4 stories and 58 feet to the surface of the flat roof. The residential building could have 5 stories and 58 feet to the surface of its flat roof. Accordingly, the upper 19.5 feet of the commercial building and the upper 83.83 feet of the residential building are legal nonconforming. Other than their height, both buildings conform to all other ordinance requirements.

Article 06 of the Zoning Ordinance regulates nonconforming buildings. In accordance with Section 6.02, nonconforming buildings are allowed to continue as long as they are maintained in good condition. A previously mentioned, the City has been encouraging the owners of the subject property to maintain their buildings and improve their overall appearance. The owners hired the design firm of Smith Group JJR to develop plans to renovate the exterior of both buildings.

The attached renderings and plan sections were recently presented to me by Brooke Smith of Smith Group JJR. During this meeting it was explained to me that the design concept is to install a new curtain wall system in front of the existing one. The new system will eliminate air and water infiltration the building has been plagued with from the beginning, will bring it into compliance with today's wind load requirements, and will dramatically improve the buildings appearance as suggested by the City. Installing the new curtain wall first will allow the residents/occupants to remain in place during construction. The new system is designed to

properly transfer wind loads through girder beams into the buildings columns. The new system with its contrasting colors adds depth to the façade improving the buildings appearance. Once the new curtain wall is installed, the existing windows will be removed from within each unit and then the opening will be finished and trimmed back to the new curtain wall assembly creating a window box.

The depth of the new window box measured from the existing windows to the new glazing is 16 inches. The depth of the new curtain wall measured from the existing one varies from 16 inches to 20 inches where new brick veneer is utilized. While the new curtain wall system will be installed on the building, it will not increase the usable space within the building itself. In other words, the existing occupancy square footage of the building will remain the same. The question becomes whether or not the new curtain wall can be considered maintenance.

As mentioned earlier, the building complies with all other ordinance provisions except for its height. The new curtain wall will comply with all ordinance regulations including setbacks. The existing curtain wall is at the end of its useful life, does not comply with current wind load requirements, and needs to be replaced. The new curtain wall is designed to a minimum depth to install girder beams to properly transfer the wind loads in accordance with the code. Leaving the existing curtain wall in place provides space for insulation necessary to meet energy code requirements and provides protection to the occupants in the building during construction. All of these facts indicate that the new curtain wall is being installed to maintain the building in good condition and therefore should be considered maintenance. Accordingly, application to the Board of Zoning Appeals would not be necessary.

555 Old Woodward

Exterior Maintenance Program

Birmingham, MI

20 June 2013



555 S. Old Woodward Avenue, 1974-2012

555 South Old Woodward Avenue Birmingham, MI

SMITHGROUP JJR

AGENDA

Design in process

Metal panel and glass façade
No balconies
No eyebrows

Section Development

Three typical sections

Operable window options

Project out awning
Horizontal sliding

Discussion





555 South Old Woodward Avenue Birmingham, MI



555 South Old Woodward Avenue Birmingham, MI

SMITHGROUP JJR



555 South Old Woodward Avenue Birmingham, MI

SMITHGROUP JJR

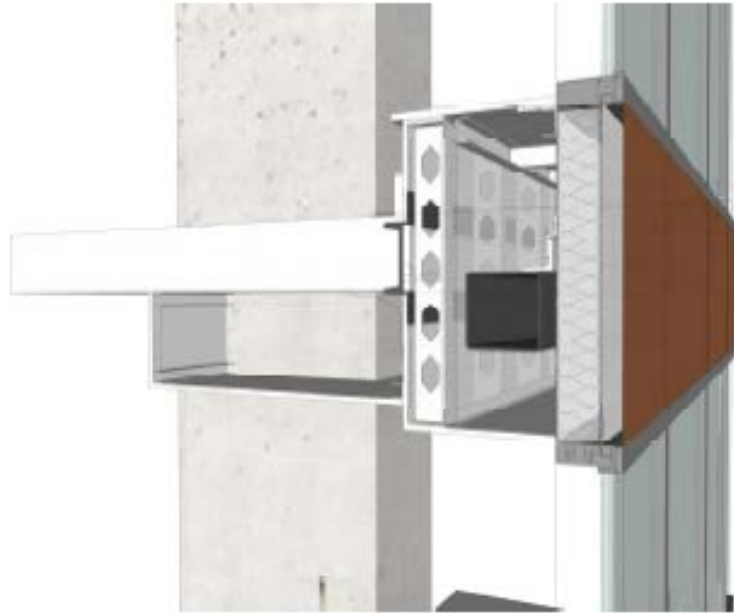
SECTION DEVELOPMENT



Low sill - apartment

There are three typical window sections:

- Low sill - apartment
- High sill - apartment
- Office building



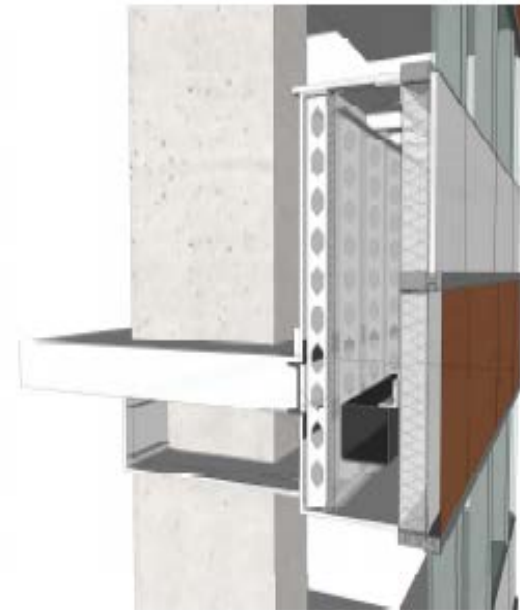
SECTION DEVELOPMENT



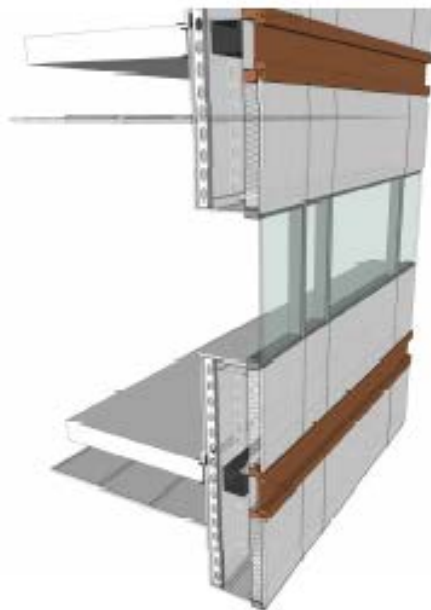
High sill - apartment

There are three typical window sections:

- Low sill - apartment
- High sill - apartment
- Office building



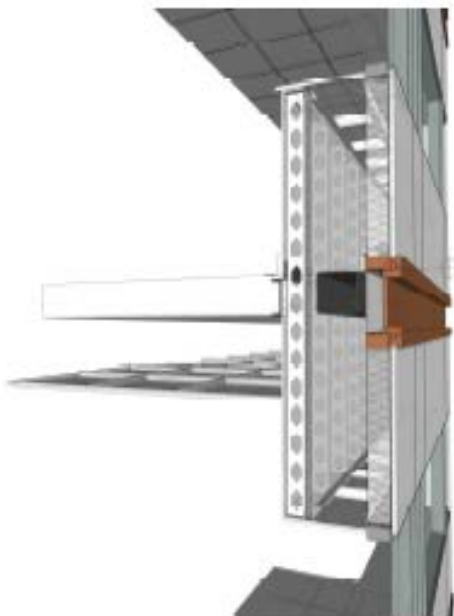
SECTION DEVELOPMENT



Office Building

There are three typical window sections:

- Low sill - apartment
- High sill - apartment
- Office building





A

ROLLCALL VOTE

Yeas: Judd, Jones, Conlin, Grove, Judd, Lyon, Miller

Nays: None

Absent: Hughes

T# 07-42-13

CORRESPONDENCE (none)

T# 07-43-13

GENERAL BUSINESS

- Building Official Report: Exterior repair/improvements at 555 S. Old Woodward Ave.

Mr. Johnson explained the issue is whether the repair/improvements are considered maintenance of the building and not an expansion of a non-conforming use. The building is non-conforming because it does not meet the current height requirement. In order to accomplish the goals of eliminating water leaks, air infiltration, and to improve the building's overall appearance, this is the minimum dimension they would need to come out. The proposal is not an addition to the building; it is a new curtain wall right along side of the one that is there.

He feels this is maintenance and therefore does not require a variance. They are doing the least possible to achieve their maintenance goals and comply with the advanced Code requirements. Floor area will not be increased. Further, if the building was the right height this would be a non-issue. There is no problem with distance to the property line. It was agreed that this determination will be helpful down the road in working with other building owners.

Motion by Mr. Lyon

Seconded by Mr. Jones in regard to the building official's memorandum of July 1, 2013 with respect to the 555 S. Old Woodward Ave. renovation, he would move to confirm the interpretation of the building official that the proposed project to re-skin the exterior of the building falls under maintenance of an existing non-conformance and not expansion of an existing non-conformance. He would tie the motion as far as possible to the prints, pictures, and renderings provided by the building official tonight.

Motion carried, 7-0.

ROLLCALL VOTE

Yeas: Lyon, Jones, Conlin, Grove, Judd, Lillie, Miller

Nays: None

Absent: Hughes

T# 07-44-13

ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 11:25 p.m.

Bruce R. Johnson, Building Official

DESIGN REVIEW BOARD
MINUTES OF OCTOBER 21, 2015
Municipal Building Commission Room
151 Martin, Birmingham, Michigan

Minutes of the regular meeting of the Design Review Board ("DRB") held Wednesday, October 21, 2015. Chairman John Henke called the meeting to order at 7:20 p.m.

Present: Chairman John Henke; Board Members Mark Coir, Natalia Dukas, Thomas Trapnell, Michael Willoughby; Student Representative Patrick Rogers

Absent: Board Members Keith Deyer, Shelli Weisberg; Student Representative Zoe Bowers,

Administration: Matthew Baka, Sr. Planner
Carole Salutes, Recording Secretary

10-21-15

The chairman offered the option of postponement to the applicant because a motion would require an affirmative vote by four board members out of the five that were present. The applicant wished to go forward this evening.

APPROVAL OF MINUTES
DRB Minutes of October 7, 2015

Motion by Mr. Willoughby
Seconded by Ms. Dukas to approve the DRB Minutes of October 7, 2015 as presented.

Motion carried, 5-0.

VOICE VOTE

Yeas: Willoughby, Dukas, Coir, Henke, Trapnell

Nays: None

Absent: Deyer, Weisberg

10-22-15

DESIGN REVIEW
555 S. Old Woodward Ave.
Office and residential building

Zoning: B-4 Business Residential

Proposal: The applicant proposes to renovate both the office and residential wings of the 555 Building by installing new glass curtain walls. The two buildings consist of lower level and first-story retail spaces and a three-story parking garage. The northern building contains three stories of offices and the southern building contains 11 stories of residential apartments. On the residential building (south) the applicant is proposing to remove the existing windows and install a new glass curtain wall at approximately 1 ft. from the existing curtain wall. The new curtain walls will begin above the parking garage levels.

North Building (Office): The applicant proposes to replace the existing windows on the three office stories of the north building and add a single pane glass sunscreen over the existing curtain wall. The new windows are proposed to be 1 in. double insulated glass in the existing aluminum frames. The new glass curtain wall is proposed to be comprised of ¼ in. single glazed fixed vision glass that is slightly tinted. The glass curtain wall is proposed to extend approximately 3 ft. from the existing curtain wall. The new curtain wall is proposed to be separated into 7 ft. wide sections of glass that are connected by aluminum mullions. There are two sizes of mullions proposed; larger 6 in. mullions will divide groupings of the 7 ft. sections.

On the Woodward Ave. side the proposal is predominately the same with the exception of the large section of concrete in the middle of the building. The new glass curtain wall is proposed to be mounted on the east and west sides of the building only.

South Building (residential): On the residential section of the proposal the applicant is proposing a new curtain wall that will extend the existing curtain wall 1 ft. 1 in. from the current façade. The existing windows are proposed to be removed. The new curtain wall is proposed to be a combination of 1 in. double insulated fixed vision glass and 1 in. double insulate operable awning windows. Beneath the clear glass windows the proposal shows slightly tinted fixed glass with a metal "shadow box" set behind the glass. The mullions on the new curtain wall are proposed to match the 6 in. and 2 ¼ in. mullions proposed for the north building with similar 7 ft. spacing. The new glass curtain wall is proposed to be mounted on the east and west sides of the building only.

The building official has ruled that the applicant can add a minimum amount to the building to improve it. Anything beyond that would exceed his interpretation of the Ordinance. However, he has said that the office side of this building exceeds his original ruling and increases the non-conformance. Therefore, any approval tonight would have to be conditional upon meeting with the building official and/or getting a variance for height and depth of the glazing from the Board of Zoning Appeals ("BZA").

Mr. Bob Ziegelman, Luckenbach Ziegelman Architects, showed slides that mainly addressed the office side of the building. In their original authorization dated 09-08-2013 the DRB granted approval for repair and maintenance of the 555 Office Building. Tonight they are requesting approval to amend the repair and maintenance plan to include both the office building and the residential structure and encompass the entire 555 Gateway complex. The double wall system must adhere to OSHA standards which mandate it be placed 3 ft. away from the building to allow for maintenance. Because of the workable glazing on the apartment building the new curtain wall can be placed up against the building with no problem as to maintenance. The curtain wall structure will be hung from columns at the roofline. It is tied back at every floor on the way down for wind shear.

Mr. Willoughby noted that the proposal for the office side is a highly effective way to reduce energy cost and be able to maintain the glass on both the new curtain wall and the existing curtain wall. He supported the proposal and encouraged the BZA and/or Mr. Johnson to approve it. Ms. Dukas and Mr. Coir concurred.

Motion by Mr. Willoughby

Seconded by Ms. Dukas to approve the new curtain wall for 555 S. Old Woodward Ave. apartment building as submitted, and approval for the office building with the condition that it is approved by Mr. Johnson or the BZA.

There were no comments from the public on that motion at 7:44 p.m.

Motion carried, 5-0.

VOICE VOTE

Yeas: Willoughby, Dukas, Coir, Henke, Trapnell

Nays: None

Absent: Deyer, Weisberg

10-23-15

MISCELLANEOUS BUSINESS AND COMMUNICATIONS

A. Staff Reports

-- Administrative Approvals

- 34901 Woodward Ave. - One set of non-lit, 3 in. deep, Morgan Stanley letters, 24.6 ft. overall, along the east elevation facing Woodward Ave.
- 1137 S. Adams - Installation of two dimensional signs with accent lighting located on the north wall west wall.

- 525 Southfield Rd., Vasileff Medical Group - Resurface three signs on property, one each on the north wall, west wall, and one two sided on the NW corner of property.
- 34120 Woodward Ave. - Install wall signage on the front and side of the building.
- Violation Notices (none)

B. Communications

- Commissioners' Comments

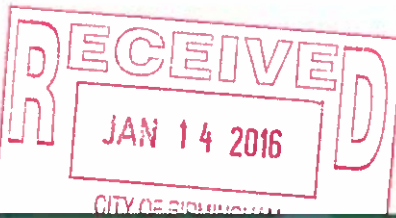
Ms. Dukas commented that the proposed signage for Vasileff Medical Group does not seem particularly appropriate for a residential area because of the color selections. Mr. Willoughby thought the sign would have been more compatible with its surroundings if it blended with the building. If a sign contrasts with the building it would be best for it to come before the board.

10-24-15

ADJOURNMENT

No further business being evident, the board motioned to adjourn the meeting at 7:55 p.m.

Matthew Baka
Sr. Planner



124756

Application Date: 1-14-16Hearing Date: 2-9-16Received By: BMAPL16-000ZAppeal # 16-01**Board of Zoning Appeals Application**Type of Variance: Interpretation ☒ Dimensional _____ Land use _____ Sign ☒ Admin review**Property Information:**

Street address: 555 South Old Woodward	Sidwell Number:
Owners name: 555 Residential LLC	Phone #: (248) 645-1191
Owners address: 555 South Old Woodward, Suite 160	Email: jjreinhardt@gmail.com
City: State: Birmingham, Michigan	Zip code: 48009
Contact person: Jack Reinhart, Manager of Tartan Management, Ltd, Managing Member of	Phone #: (248) 645-1191

Petitioner Information: 555 Residential LLC

Petitioner name: 555 Residential LLC	Phone #: (248) 645-1191
Petitioner address: 555 South Old Woodward, Suite 160	Email: jjreinhardt@gmail.com
City: Birmingham	State: Michigan
	Zip Code: 48009

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: Richard D. RattnerDate: 1/14/2016

Richard D. Rattner, Esq., Attorney for Owner

HAS Sign. BM

**CITY OF BIRMINGHAM
BOARD OF ZONING APPEALS
RULES OF PROCEDURE**

ARTICLE I - Appeals

A. Appeals may be filed under the following conditions:

1. A property owner may appeal for variance, modification or adjustment of the requirements of the Zoning Ordinance.
2. A property owner may appeal for variance, modification or adjustment of the requirements of the Sign Ordinance.
3. Any aggrieved party may appeal the decision of the Planning Board and/or the Building Official in accordance with the City of Birmingham Zoning Ordinance, Article Eight, Section 8.01 (D) Appeals. If an appellant requests a review of any determination of the Building Official, a complete statement setting forth the facts and reasons for the disagreement with the Building Official's determination shall include the principal point, or points on the decision, order or section of the ordinance appealed from, on which the appeal is based.

B. Procedures of the Board of Zoning Appeals (BZA) are as follows:

1. Regular BZA meetings, which are open to the public, shall be held on the second Tuesday of the month at 7:30 P.M. provided there are pending appeals. There will be a maximum of seven appeals heard at the regular meeting which are taken in the order received. If an appeal is received on time after the initial seven appeals have been scheduled, it will be scheduled to the next regular meeting.
2. All applications for appeal shall be submitted to the Community Development Department on or before the 15th day of the month preceding the next regular meeting. If the 15th falls on a Saturday, Sunday, or legal holiday, the next working day shall be considered the last day of acceptance.
3. All property owners and occupants within 300 feet of the subject property will be given written notice of a hearing by the City of Birmingham.
4. See the application form for specific requirements. If the application is incomplete, the BZA may refuse to hear the appeal. The Building Official or City Planner may require the applicant to provide additional information as is deemed essential to fully advise the Board in reference to the appeal. Refusal or failure to comply shall be grounds for dismissal of the appeal at the discretion of the Board.

5. In variance requests, applicants must provide a statement that clearly sets forth all special conditions that may have contributed to a practical difficulty that is preventing a reasonable use of the property.
 6. Where the Birmingham Zoning Ordinance requires site plan approval of a project by the City Planning Board before the issuance of a building permit, applicants must obtain preliminary site plan approval by the Planning Board before appeal to the BZA for a variance request. If such appeal is granted by the BZA, the applicant must seek final site plan and design review approval from the Planning Board before applying for a building permit.
 7. An aggrieved party may appeal a Planning Board decision. Such appeal must be made within 30 days of the date of the decision. The BZA, in its discretion, may grant additional time in exceptional circumstances.
 8. Appeals from a decision of the Building Official shall be made within 30 days of the date of the order, denial of permit, or requirement or determination contested. The BZA, in its discretion, may grant additional time in exceptional circumstances.
 9. An appeal stays all proceedings in accordance with Act #202, Public Acts of 1969, Section 5(c), which amended Section 5 of Article #207 of the Public Acts of 1921.
- C. The order of hearings shall be:
1. Presentation of official records of the case by the Building Official or City Planner as presented on the application form.
 2. Applicant's presentation of his/her case—the applicant or his/her representative must be present at the appeal hearing.
 3. Interested parties' comments and view on the appeal.
 4. Rebuttal by applicant.
 5. The BZA may make a decision on the matter or request additional information.

ARTICLE II - Results of an Appeal

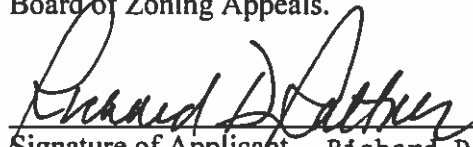
- A. The Board may reverse, affirm, vary or modify any order, requirement, decision or determination as in its opinion should be made, and to that end, shall have all the powers of the officer from whom the appeal has been taken.
- B. The decisions of the Board shall not become final until the expiration of five (5) days from the date of entry of such orders or unless the Board shall find that giving the order immediate effect is necessary for the preservation of property and/or personal rights and shall so certify on the record.

- C. Whenever any variation or modification of the Zoning Ordinance is authorized by resolution of the BZA, a Certificate of Survey must be submitted to the Community Development Department with the building permit application. A building permit must be obtained within one year of the approval date.
- D. Failure of the appellant, or his representative, to appear for his appeal hearing will result in the appeal being adjourned to the next regular meeting. If, after notice, the appellant fails to appear for the second time, it will result in an automatic withdrawal of the appeal. The appellant may reapply to the BZA.
- E. Any applicant may, with the consent of the Board, withdraw his application at any time before final action.
- F. Any decision of the Board favorable to the applicant is tied to the plans submitted, including any modifications approved by the Board at the hearing and agreed to by the applicant, and shall remain valid only as long as the information or data provided by the applicant is found to be correct and the conditions upon which the resolution was based are maintained.

ARTICLE III - Rehearings

- A. No rehearing of any decision of the Board shall be considered unless new evidence is submitted which could not reasonably have been presented at the previous hearing or unless there has been a material change of facts or law.
- B. Application or rehearing of a case shall be in writing and subject to the same rules as an original hearing, clearly stating the new evidence to be presented as the basis of an appeal for rehearing.

I certify that I have read and understand the above rules of procedure for the City of Birmingham Board of Zoning Appeals.


Signature of Applicant, Richard D. Rattner, Esq.

Attorney for Owner; Williams, Williams, Rattner & Plunkett, P.C.

1/14/2016



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

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Richard D. Rattner
rdr@wwrplaw.com

February 1, 2016

Board of Zoning Appeals
City of Birmingham
151 Martin Street
Birmingham, MI 48012

Re: 555 S. Old Woodward ("Applicant") – Plans for Maintenance and Repair
of the 555 Apartment Building ("Apartment Building") and the 555
Office Building ("Office Building") – collectively referred to as the "Project"

Dear Board of Zoning Appeals:

Please consider this letter supplemental to our letter of December 11, 2015 (attached) with regard to the Project and the issues related to maintenance and repair of the Project. This letter deals specifically with the Office Building only, since pursuant to his letter of January 11, 2016 ("2016 Letter") the Building Official has agreed that the repair and maintenance of the Apartment Building complies with the Building Official's interpretation of maintenance and repair of a nonconforming structure ("2013 Interpretation") as set forth in his report and interpretation introduced to the Board of Zoning Appeals on July 9, 2013. That is, the Building Official agreed that the proposed curtain wall on the Apartment Building is designed in accordance with the 2013 Interpretation regarding repair and maintenance of this nonconforming structure.

We appreciate the Building Official working through the issues related to the Project and whether the plans for the maintenance and repair of the Office Building complies with the maintenance and repair program and 2013 Interpretation introduced to the Board of Zoning Appeals on July 9, 2013. See Memorandum to the Board of Zoning Appeals dated July 1, 2013 attached to this letter. ("2013 Memo")

Background

The Design Review Board on October 21, 2015, enthusiastically granted approval to the Project. The Design Review Board understood that the Apartment Building design for the proposed curtain wall was approved by the Building Official, but that the Applicant and the Building Official were still working through issues related to the proposed design and installation of the new curtain wall for the Office Building.

Since the October 21, 2015 meeting of the Design Review Board, the Building Official and the Applicant have spent considerable time reviewing the proposed maintenance and repair project. In the Building Official's 2016 Letter, he stated that he agreed with the Applicant's conclusion that the proposed curtain wall on the Office Building projects the minimum distance from the building for a "double skin façade" wall type. The Building Official also noted that he can agree that the current proposal fits within the intent of the 2013 Interpretation, however, the Building Official determined that the Board of Zoning Appeals would have to rule on the design change. The Building Official's conclusion of that letter is that the "...current proposal for the new curtain wall on the north building meets the intent of the 2013 interpretation except that it is a different design than the one confirmed by the Board of Zoning Appeals."

Accordingly, we are now coming in front of the Board of Zoning Appeals so that the Board can review the matter the Building Official discussed in the 2016 Letter and provide information to the Board of Zoning Appeals to demonstrate that not only does the new curtain wall on the Office Building meet the intent of the 2013 interpretation, but the design of that curtain wall also complies with the spirit and intent of the 2013 interpretation.

Discussion of Office Building Maintenance and Repair Design

The Applicant has three main reasons to approach this maintenance and repair project as presented. First, a new curtain wall/solar screen cannot be attached to the existing façade. Second, the existing structure is capable of carrying a new load from the top of the structure, but not from its face. This is why the new design, by necessity, features the new curtain wall to be hung from the top of the structure. Third, the moisture from the outside is blocked by this new design. The inside condensation, on the other hand, is controlled and kept inside rather than escaping into the cavity wall.

Since the Apartment Building repair and maintenance design has been accepted by the Building Official, the natural question arises as to why the same design was not used on the Office Building as well as the Apartment Building. The central reason that the Apartment Building repair and maintenance is not used on the Office Building is that the architecture of the two buildings are different from one another and that the design system on the Apartment Building is not appropriate for application to the Office Building.

The two buildings have different purposes and are designed differently. The Apartment Building has *operable windows*, while the Office Building windows *do not open*. A structure that is used to maintain and repair the fixed glass is not the same as a design that must accommodate a building with operable windows.

In fact, a design for the Office Building with fixed windows is a simpler design than the

Apartment Building design. The Office Building design is simply a curtain wall or solar screen that can be applied to the building with very little invasive construction to the building during the application process. The Apartment Building requires a curtain wall framework so that windows in the Apartment Building may be opened to the outside air. The Office Building windows are all fixed glass and therefore the design presented by the Applicant is a much simpler architectural solution.

If one were to apply the Apartment Building design for maintenance and repair to the Office Building, the unfavorable result would be that all of the windows and metal panels on the wall of the Office Building would have to be scrapped and totally replaced. All of this scrap and replacement activity would be dumped into landfills causing an ecologically undesirable effect. Not only is this solution environmentally irresponsible, but because of the existing construction of the façade, it is practically impossible to accomplish without destroying the entire existing window wall and interior finishes.

There is absolutely no insulation in the existing window and metal panel system that clads the current Office Building. The curtain wall, which is essentially a solar screen that is applied to the building, resolves every one of the problems that would be caused by applying the Apartment Building design solution were attempted to be applied to the Office Building. Specifically, the process of construction of the Office Building curtain wall is much simpler and less invasive. It is the minimum necessary in order to repair and maintain the Office Building.

Secondly, there would be no mass scrapping of glass and metal to be carted off to landfills. Thirdly, the simple application of the curtain wall/solar screen can save up to 30% of the costs of heating and cooling the building. This conservation of energy is accomplished through a combination of wrapping the building in a structure that effectively provides a blanket of insulation around the building (which does not exist in the current building) and would also use solar energy trapped by this “double skin façade” for heating and cooling of the Office Building.

The fixed windows of the Office Building allow the Applicant to apply a simple curtain wall/solar screen technology without the invasive and complicated construction that is required for the Apartment Building with its moveable windows. This type of construction fulfills the very important element of the 2013 interpretation that any maintenance and repair to this type of building should be the minimum construction required in order to effectively and efficiently maintain and repair a building of this size and scale. This minimum construction approach, coupled with the very important conservation of energy and environmentally responsible approach to renovation, i.e., avoiding excess scrap and debris to be thrown into landfills, combine to make this design for the repair and maintenance of the Office Building a very favorable design which will ultimately be a benefit to not only the Applicant but the health,

safety and welfare of the community.

In Applicant's letter of December 11, 2015 (attached, the "December 2015 Letter"), several other points were made that are worth repeating in summary fashion with regard to the issue of the appropriateness of the proposed repair and maintenance of the Office Building and the distinct advantages offered to the City, to wit:

- It is agreed by both the Applicant the Building Official that the proposed curtain wall on the Apartment Building is designed in accordance with the 2013 interpretation of repair and maintenance projects, and that the current proposal for the Office Building fits within the intent of the interpretation made in 2013. The only issue for the Board of Zoning Appeals as outlined in the Building Official's 2016 Letter is the appropriateness of the design change from what was approved in 2013 to the simpler construction proposed here.
- It should be noted that the nonconformity of the 555 S. Old Woodward building relates only to the height of the existing structure and not any other element of the building. Therefore, any work done on this Project does not affect, expand or enlarge any of the nonconforming elements of the building.
- The maintenance and repair of the Office Building will eliminate water leaks, air filtration and improve the building's overall appearance and energy efficiency.
- It is agreed by the Building Official that the proposed curtain wall on the Office Building projects out from the building at the minimum distance for a "double skin façade" wall type. The proposed curtain wall/solar screen design presents the same advantages as the prior design in that the new curtain wall is designed to a minimum depth requirement to install the necessary structure to properly transfer wind loads in accordance with the code.
- All of the following refer to the issues raised 2013 Memo to the Board of Zoning Appeals by the Building Official and apply directly to the proposed new design for repair and maintenance of the Office Building.
 - The new curtain wall will allow the "...residents/occupants to remain in place during the construction." (See 2013 Memo, fourth paragraph, p. 1)
 - This newly designed system will properly "...transfer wind loads through girder beams into the building's columns." (See 2013 Memo, first grammatical paragraph, p. 2)

- Although the new curtain wall/solar screen will be applied to the building, this type of wall system "...will not increase the usable space within the building itself...and therefore...the existing occupancy square footage of the building will remain the same." (See 2013 Memo, first full grammatical paragraph, p. 2)
- The building complies with all other ordinance provisions except for the height of the building as stated above. (See 2013 Memo, second full grammatical paragraph, p. 2)
- The new curtain wall/solar screen complies with "...all ordinance regulations, including setbacks." (See 2013 Memo, second full grammatical paragraph, p. 2)
- The existing window and panel curtain wall is at the end of its useful life, does not have any built-in installation, and "does not comply with current wind load requirements..." Simply speaking, the system must be replaced or covered. (See 2013 Memo, second full grammatical paragraph, p. 2)
- This new curtain wall/solar screen is designed at a "minimum depth to install the system necessary to construct and maintain this design."
- By leaving the existing window wall in place, the new curtain wall/solar screen has the advantage of providing "...space for insulation necessary to meet energy code requirements and provides protection to the occupants in the building during construction." (See 2013 Memo, second grammatical paragraph, p. 2)

Conclusion

Similar to the conclusion of the 2013 Memorandum of the Building Official, Applicant's design for the repair and maintenance of the Office Building not only complies with all of the terms, conditions, spirit and intent of the 2013 Interpretation, but it is clear that the installation of this curtain wall and its design is intended to maintain the building in good condition and should be considered maintenance. As with the 2013 Interpretation, we contend that the current design fits within the interpretation of the Building Official in 2013 and that no further application of the Zoning Board of Appeals should be required.

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

Respectfully submitted,

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

Richard D. Rattner

Richard D. Rattner

RDR/cmc
Enclosures



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Richard D. Ratner
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December 11, 2015

Mr. Bruce Johnson
Building Official
City of Birmingham
151 Martin Street
Birmingham, MI 48012

Re: 555 S. Old Woodward – Plans for maintenance and repair of the office
building portion of the project

Dear Mr. Johnson:

This confirms our several meetings and discussions regarding the proposed maintenance and repair project proposed for the 555 building – the office building portion of that project.

You will recall that the Design Review Board, on October 21, 2015, enthusiastically granted approval to the proposed maintenance and repair project of the building with the following understanding: first, it was understood that the Building Official approved the plans for repair and maintenance of the south building (apartments) as the designs were submitted, and second, that the Building Official and the Petitioner were still working through the issues related to the maintenance and repair design for the north building (office building). (See Plans attached). The maintenance and repair design of the apartment building is different from the office building, and the Building Official had not yet approved the design of the office building as a maintenance and repair project. However, the Design Review Board approved the designs of both the office building and the apartment building. The meetings between the Petitioner and the Building Official since the Design Review Board meeting indicate that the Building Official does intend to approve the design and construction of this maintenance and repair proposed for the north building (office). This letter is to ask that if the Building Official does refuse to approve the repair and maintenance project on the office building, then that interpretation be reversed by the Board of Zoning Appeals.

Interpretation

Petitioner and Building Official have had several conversations and reviewed plans regarding the repair and maintenance proposed by the Petitioner for the office building, and the Building Official has indicated clearly that he is not comfortable with identifying this maintenance and repair program as one which falls within the guidelines that were set forth by the Building Official in his report and interpretation introduced to the Zoning Board of Appeals

on July 9, 2013 (see portion of the July 9, 2013 Agenda attached).

Petitioner contends that the proposed design for the maintenance and repair of the north building (office) at 555 S. Old Woodward meets all of the goals of not only the Building Official's report and interpretation from July of 2013, but also the spirit and intent of the ordinance which would allow a repair and maintenance of a nonconforming structure.

First, it should be noted that the nonconformity of the 555 S. Old Woodward building relates only to the height of the existing structure. Therefore, it could be stated that this is not an enlargement or enhancement of a nonconforming structure since the nonconforming part of the structure is not being enlarged or extended. The height remains the same. All of the issues revolve around the necessary work to be done for the construction of a screen wall as proposed in the attached plans.

The proposed screen wall is necessary for repair and maintenance and will eliminate water leaks, air filtration and improve the building's overall appearance and energy efficiency. This is the same goal today as it was in July of 2013.

The Building Official believed in 2013 that the 2013 design was "...the minimum dimension they would need to come out..." in order to accomplish the goal. This statement refers to the width between the existing curtain wall and the curtain wall that was proposed in 2013. Similarly, the new design is the minimum width necessary in order to accomplish the goal of repair and maintenance. It should be noted that no contractor would bid on the 2013 design and therefore it not only was not practical, but Petitioner maintains it would not work.

In 2013, the building department stated that the proposed 2013 design was not an "addition to the building, [but] is a new curtain wall right alongside the one that is there." This is exactly the same condition that is being proposed today. The new repair and maintenance design is actually a transparent solar screen that will exist and will be constructed "alongside" of the existing wall of the building. This new design is a vast improvement over the 2013 design. Some of the advantages including the following:

- a. This modern curtain wall is actually a transparent fixed glass solar screen that has the additional advantage of reducing energy consumption in the office building by approximately 30% as designed. This fact alone makes this repair and maintenance one that meets current codes and is updated to meet the modern energy standards which are desired in all buildings.
- b. The proposal incorporates the minimum dimension that can be used so that the curtain wall/transparent solar screen can be properly maintained in the future.

That is, this is the minimum dimension allowed so that this glass may be kept clean year round.

- c. The amount of space required for the maintenance of this curtain wall/transparent solar screen has been reduced to the minimum width allowed by OSHA regulations. This space between the existing building and the curtain wall/solar screen allows for cleaning, but does not increase any usable square footage in the building. It is important to note that the simple replacement of the existing curtain wall and existing panels causes an extreme practical hardship for the Petitioner and the citizens of the City of Birmingham. That is, if the existing windows and curtain wall were to be replaced, then the entire building would have to be shut down during construction and every tenant would have to vacate the building. Additionally, all of the glass, concrete and steel scraped as a result of the replacement would fill a landfill and cause hundreds of truck trips carrying waste to and from a landfill. None of this is required in the new system.
- d. The proposed curtain wall/transparent solar screen provides a veritable sunscreen for the building which helps control temperature in the building and cuts costs of heating and cooling by approximately 30%.
- e. It must be noted that the temperature cannot be controlled in the present office building in the summertime to less than 78° due to the constant leaks and escaping of energy through the windows and existing curtain wall. This will be resolved by the design, maintenance and repair that is proposed.
- f. Without the curtain wall/solar screen there is no way to practically maintain the building. Even if the windows were replaced, they would have to be continually caulked and the existing black panels would further deteriorate. Experts have told the Petitioner that the building, without this necessary repair and maintenance, will continue to lose heat and the interior spaces of the building will continue to leak and be subject to introduction of water seepage into the building. Currently, the building owner spends thousands of dollars per month in caulking. But caulking alone does not properly maintain the building or resolve the other problems that must be repaired and maintained. The proposed maintenance curtain wall /transparent solar screen, which fits the criteria of the building department for repair and maintenance, will resolve all of these issues in a way which restores integrity to the construction of this building by allowing it to be properly maintained and repaired for many years to come.

- g. "Repair and maintenance" issues with respect to nonconforming buildings often depend on the question of whether the maintenance and repair will create a more intense use (such as an addition of square footage for use by a commercial or office user, or such as increased size of the entire building so that the further parking is required). First, as stated above, one should keep in mind that the nonconformity of this building is its height, not its width or its relation to front, side or rear setbacks. The addition of the maintenance and repair system as proposed by the Petitioner does not result in the violation of any of the setbacks of this building, but rather all such construction of the proposed maintenance and repair project will be within the setbacks as required by the City. Second, there is no greater intensity and use because the floor space available for use by occupants is exactly the same as it is today. Thus, the proposed system falls squarely within the 2013 interpretation because the "floor area will not be increased." So there is no "extension" or "enlargement" of the use of this building or useable areas of the building, the repair and maintenance procedure is the minimal necessary, and the nonconforming feature of the building (the height) is not increased.

In July of 2013, the building department stated that it believed the prior repair concept was doing "the least possible to achieve their maintenance goals and comply with the advance code requirements." This is exactly the same as the system presented today. The proposed curtain wall/transparent solar screen is using the least possible construction to achieve a maintenance goal and to comply with the advance code requirements, including modern code requirements for energy use.

It was further noted in the July of 2013 meeting that "if the building was the right height, this would be a nonissue." The same situation exists today. If the building were conforming under a proper ordinance for this structure, this system would be a nonissue and in fact, is one that would probably be favored by the Building Official and the City due to its simple and superior solution to maintenance and repair of a building and its great improvement to the design of the building for the benefit of the citizens of the City of Birmingham.

In July of 2013, the building department stated that "this determination will be helpful down the road in working with other building owners." That is exactly what is happening today. The 2013 interpretation has allowed the apartment building to be approved by the Building Official, but the Building Official has still withheld its approval and in fact indicated it would deny approval, of the current design for the repair and maintenance of the office building.

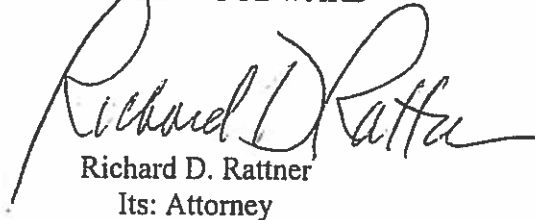
Conclusion

Since the Building Official has indicated that he would deny the design of the office building system of a curtain wall/transparent solar screen for the office building as not being within the interpretation of the 2013 report referred to in this letter, and therefore an extension or enlargement of a nonconforming structure, Petitioner requests that this interpretation be reviewed and reversed by the Zoning Board of Appeals, and the Zoning Board of Appeals grant:

- (a) that the design proposed for the office building is within the July 2013 interpretation and is not an extension or enlargement of a nonconforming structure; and
- (b) that the Petitioner be granted the approval to move forward with this design as a permitted repair and maintenance project as permitted by ordinance, contemplated by the Design Review Board and as set forth in Petitioner's plans.

Respectfully submitted,

555 S. OLD WOODWARD


Richard D. Rattner
Its: Attorney

RDR/cmc
Enclosures



City of Birmingham

A Walkable Community

January 11, 2016

Richard D. Rattner
Williams Williams Rattner & Plunkett, P.C.
380 N. Old Woodward Ave, Suite 300
Birmingham, MI 48009

RE: 555 S. Old Woodard – Proposed new curtain wall for the Office Building

Dear Mr. Rattner:

This is a response to your letter dated December 11, 2015, regarding the proposed new curtain walls for both the Office (north) and Apartment (south) buildings at 555 S. Old Woodward. You provided, in addition to the letter, plan sheets showing the proposed design and elevations. The new designs are different from the design my 2013 interpretation was based from that was confirmed by the Board of Zoning Appeals.

I agree with your conclusion that the proposed curtain wall on the south building is designed in accordance with the 2013 interpretation. The difference is in how the new curtain wall will be supported from the top of the existing columns, rather than attaching to the vertical face of the building as originally proposed. The new design actually projects out from the face of the existing wall less than the original proposal. Accordingly, the new design for this building clearly falls within the scope of the 2013 interpretation and can be considered maintenance. However, I am struggling drawing the same conclusion on the north building.

The new design is a different system than the original wall that the 2013 interpretation was based on and it projects a further distance out from the existing curtain wall. I agree with your conclusion that the proposed curtain wall on the north building projects the minimum distance for a "double skin façade" wall type. I compared your new design with the interpretation made in 2013, and cannot determine myself that it complies. The Board of Zoning Appeals when it confirmed the interpretation tied its approval as far as possible to the prints, pictures, and renderings provided in the interpretation documents. I can agree that current proposal fits within the intent of the interpretation made in 2013. However, I believe that the Board of Zoning Appeals would have to rule on the design change.

The current proposal for the new curtain wall on the north building meets the intent of the 2013 interpretation except that it is a different design than the one confirmed by the Board of Zoning Appeals. I have attached an application for appeal if you would like to pursue that route. Please feel free contacting me if you have any questions or would like to discuss further.

Best regards,


Bruce R. Johnson



MEMORANDUM

Building Division

DATE: July 1, 2013
TO: Zoning Board of Appeals
FROM: Bruce R. Johnson, Building Official
SUBJECT: 555 S. Old Woodward Renovation

This report is to inform the Board of Zoning Appeals of a proposed renovation to the exterior of the existing building complex located at 555 S. Old Woodward. The buildings at this property are legal nonconforming in regards to building height. In response to concerns expressed by the City Commission, Planning Board, and residents of poor visual appearance of the exterior of the buildings, the owners have decided to renovate the exteriors of the buildings. The paragraphs below will discuss the proposed renovation and the attached renderings will visually detail the project. I am seeking confirmation from the Board of Zoning Appeals that the proposed renovation will be considered maintenance not an enlargement.

The existing complex consists of two buildings. The building located on the north side of the property is used for commercial purposes and the building to the South for residential. The commercial building is 7 stories and 77.5 feet tall. The residential building is 15 stories and 141.83 feet in height. If the property were developed utilizing the provisions of the today's ordinance, the provisions of the D4 Overlay District would be applicable. The maximum height for the commercial building would be 4 stories and 58 feet to the surface of the flat roof. The residential building could have 5 stories and 58 feet to the surface of its flat roof. Accordingly, the upper 19.5 feet of the commercial building and the upper 83.83 feet of the residential building are legal nonconforming. Other than their height, both buildings conform to all other ordinance requirements.

Article 06 of the Zoning Ordinance regulates nonconforming buildings. In accordance with Section 6.02, nonconforming buildings are allowed to continue as long as they are maintained in good condition. A previously mentioned, the City has been encouraging the owners of the subject property to maintain their buildings and improve their overall appearance. The owners hired the design firm of Smith Group JJR to develop plans to renovate the exterior of both buildings.

The attached renderings and plan sections were recently presented to me by Brooke Smith of Smith Group JJR. During this meeting it was explained to me that the design concept is to install a new curtain wall system in front of the existing one. The new system will eliminate air and water infiltration the building has been plagued with from the beginning, will bring it into compliance with today's wind load requirements, and will dramatically improve the buildings appearance as suggested by the City. Installing the new curtain wall first will allow the residents/occupants to remain in place during construction. The new system is designed to

properly transfer wind loads through girder beams into the buildings columns. The new system with its contrasting colors adds depth to the façade improving the buildings appearance. Once the new curtain wall is installed, the existing windows will be removed from within each unit and then the opening will be finished and trimmed back to the new curtain wall assembly creating a window box.

The depth of the new window box measured from the existing windows to the new glazing is 16 inches. The depth of the new curtain wall measured from the existing one varies from 16 inches to 20 inches where new brick veneer is utilized. While the new curtain wall system will be installed on the building, it will not increase the usable space within the building itself. In other words, the existing occupancy square footage of the building will remain the same. The question becomes whether or not the new curtain wall can be considered maintenance.

As mentioned earlier, the building complies with all other ordinance provisions except for its height. The new curtain wall will comply with all ordinance regulations including setbacks. The existing curtain wall is at the end of its useful life, does not comply with current wind load requirements, and needs to be replaced. The new curtain wall is designed to a minimum depth to install girder beams to properly transfer the wind loads in accordance with the code. Leaving the existing curtain wall in place provides space for insulation necessary to meet energy code requirements and provides protection to the occupants in the building during construction. All of these facts indicate that the new curtain wall is being installed to maintain the building in good condition and therefore should be considered maintenance. Accordingly, application to the Board of Zoning Appeals would not be necessary.

555 South Old Woodward

**The Office Building
Maintenance and Repair Project**

**Birmingham Board of Zoning Appeals
February 9, 2016**



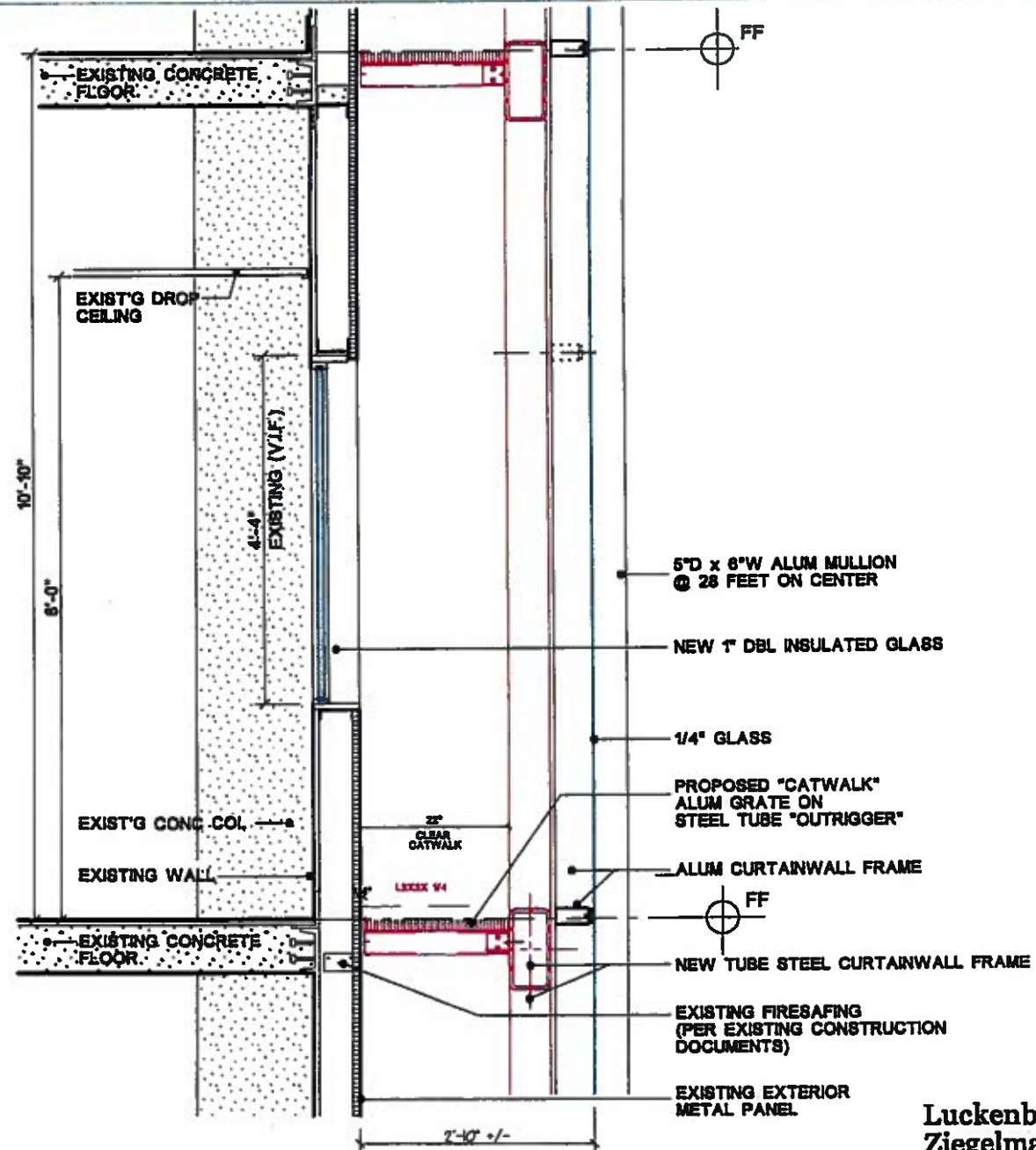
EXHIBIT F - VIEW FROM WEST (Old Woodward)

EXISTING



EXHIBIT E - VIEW FROM EAST (Woodward Avenue)

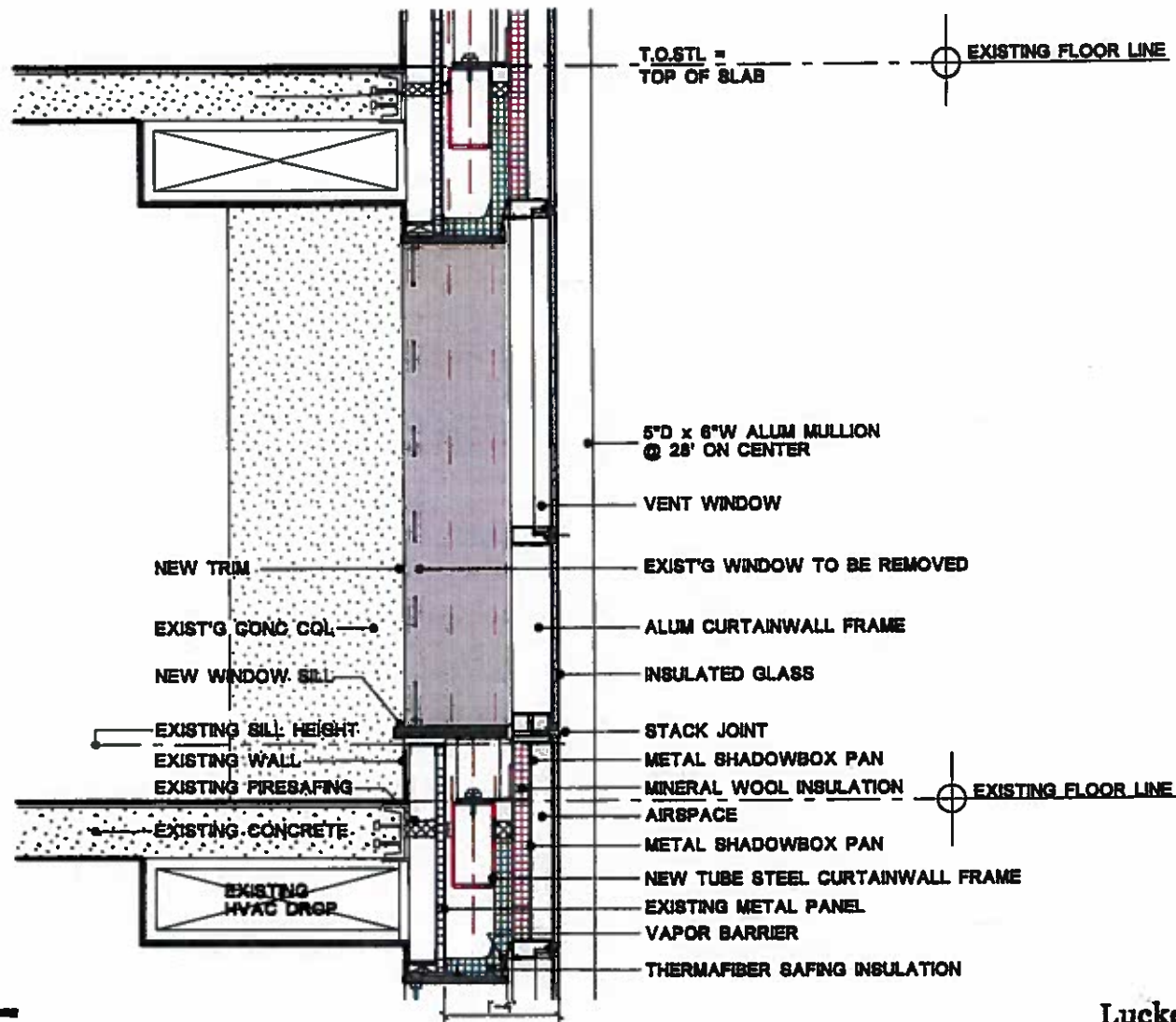
EXISTING



555
555 Old Woodward
Birmingham, MI

**OFFICE BUILDING
PARTIAL WALL SECTION**

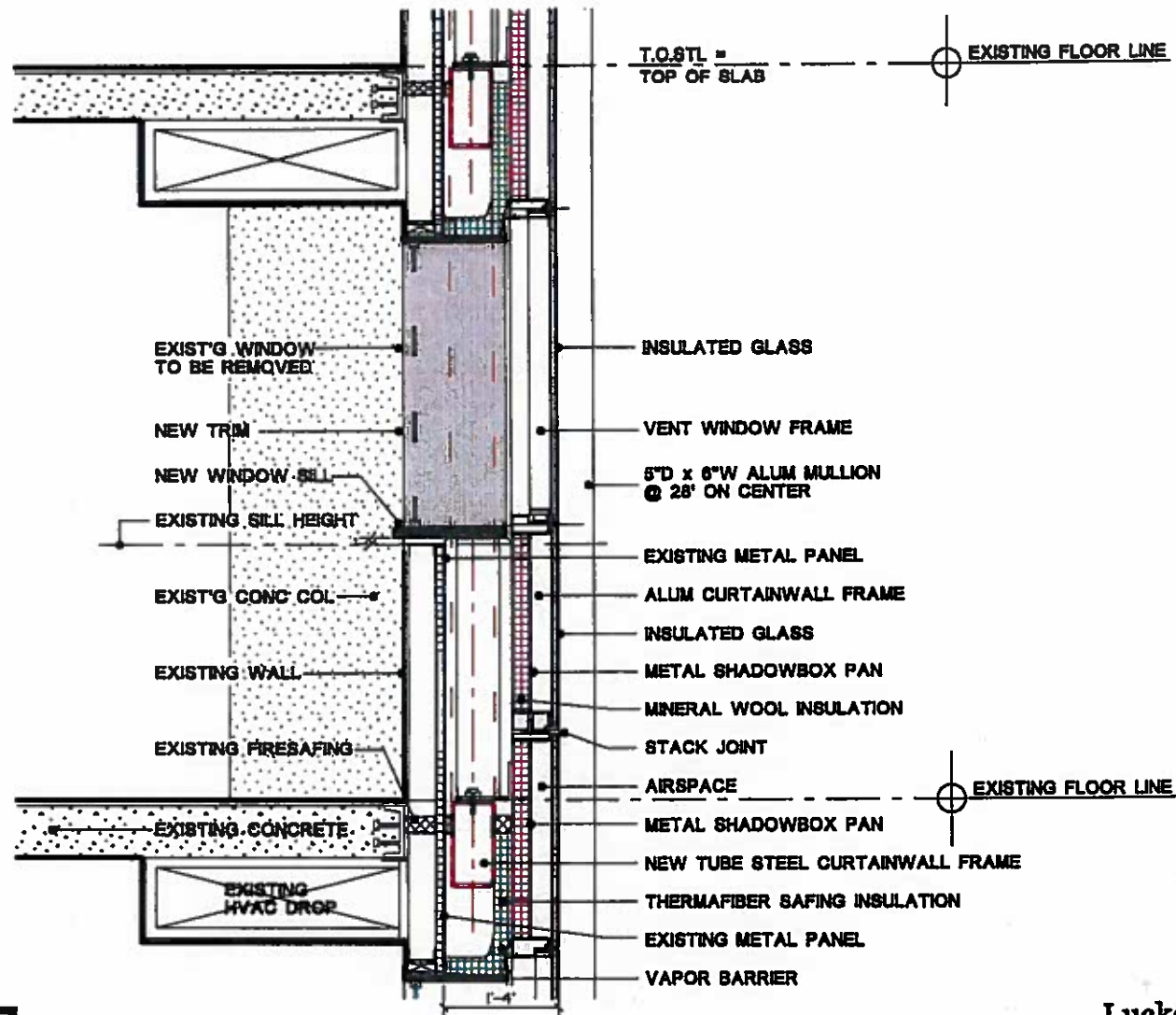
**Luckenbach
Ziegelman
Architects
PLLC**



555
 555 Old Woodward
 Birmingham, MI

APARTMENT BUILDING
 PARTIAL WALL SECTION
 Low Sill Condition

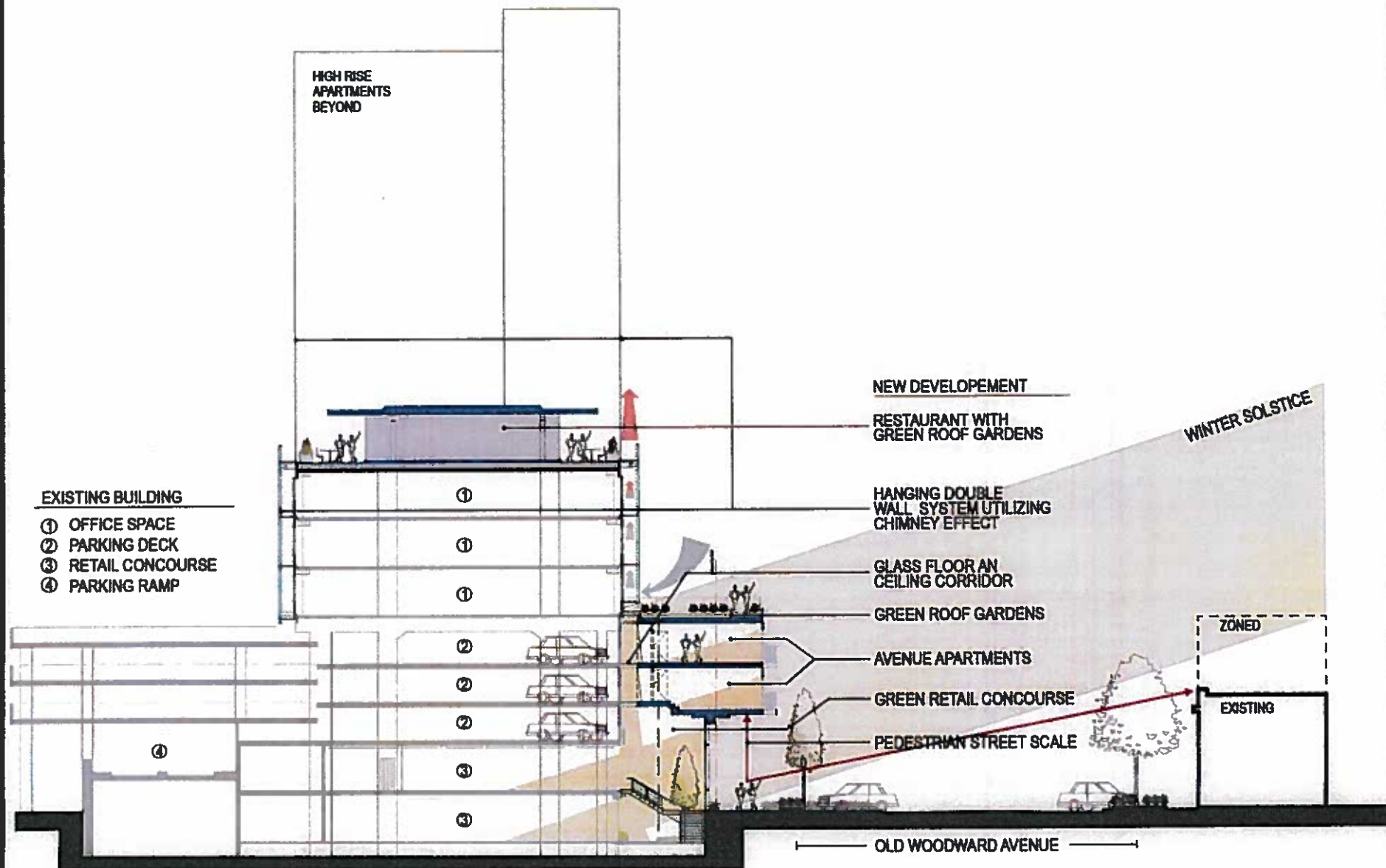
Luckenbach
 Ziegelman
 Architects
 PLLC

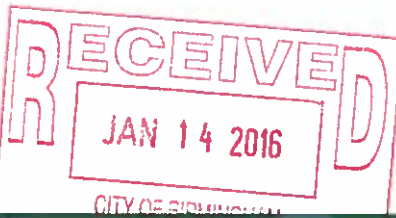


555
555 Old Woodward
Birmingham, MI

**APARTMENT BUILDING
PARTIAL WALL SECTION
High Sill Condition**

**Luckenbach
Ziegelman
Architects
PLLC**





124756

Application Date: 1-14-16Hearing Date: 2-9-16Received By: BMAPL16-000ZAppeal # 16-01**Board of Zoning Appeals Application**Type of Variance: Interpretation ☒ Dimensional _____ Land use _____ Sign ☒ Admin review _____**Property Information:**

Street address: 555 South Old Woodward	Sidwell Number:
Owners name: 555 Residential LLC	Phone #: (248) 645-1191
Owners address: 555 South Old Woodward, Suite 160	Email: jjreinhardt@gmail.com
City: State: Birmingham, Michigan	Zip code: 48009
Contact person: Jack Reinhart, Manager of Tartan Management, Ltd, Managing Member of	Phone #: (248) 645-1191

Petitioner Information: 555 Residential LLC

Petitioner name: 555 Residential LLC	Phone #: (248) 645-1191
Petitioner address: 555 South Old Woodward, Suite 160	Email: jjreinhardt@gmail.com
City: Birmingham State: Michigan	Zip Code: 48009

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'
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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: Richard D. RattnerDate: 1/14/2016

Richard D. Rattner, Esq., Attorney for Owner

HAS Sign. BM

**CITY OF BIRMINGHAM
BOARD OF ZONING APPEALS
RULES OF PROCEDURE**

ARTICLE I - Appeals

A. Appeals may be filed under the following conditions:

1. A property owner may appeal for variance, modification or adjustment of the requirements of the Zoning Ordinance.
2. A property owner may appeal for variance, modification or adjustment of the requirements of the Sign Ordinance.
3. Any aggrieved party may appeal the decision of the Planning Board and/or the Building Official in accordance with the City of Birmingham Zoning Ordinance, Article Eight, Section 8.01 (D) Appeals. If an appellant requests a review of any determination of the Building Official, a complete statement setting forth the facts and reasons for the disagreement with the Building Official's determination shall include the principal point, or points on the decision, order or section of the ordinance appealed from, on which the appeal is based.

B. Procedures of the Board of Zoning Appeals (BZA) are as follows:

1. Regular BZA meetings, which are open to the public, shall be held on the second Tuesday of the month at 7:30 P.M. provided there are pending appeals. There will be a maximum of seven appeals heard at the regular meeting which are taken in the order received. If an appeal is received on time after the initial seven appeals have been scheduled, it will be scheduled to the next regular meeting.
2. All applications for appeal shall be submitted to the Community Development Department on or before the 15th day of the month preceding the next regular meeting. If the 15th falls on a Saturday, Sunday, or legal holiday, the next working day shall be considered the last day of acceptance.
3. All property owners and occupants within 300 feet of the subject property will be given written notice of a hearing by the City of Birmingham.
4. See the application form for specific requirements. If the application is incomplete, the BZA may refuse to hear the appeal. The Building Official or City Planner may require the applicant to provide additional information as is deemed essential to fully advise the Board in reference to the appeal. Refusal or failure to comply shall be grounds for dismissal of the appeal at the discretion of the Board.

5. In variance requests, applicants must provide a statement that clearly sets forth all special conditions that may have contributed to a practical difficulty that is preventing a reasonable use of the property.
 6. Where the Birmingham Zoning Ordinance requires site plan approval of a project by the City Planning Board before the issuance of a building permit, applicants must obtain preliminary site plan approval by the Planning Board before appeal to the BZA for a variance request. If such appeal is granted by the BZA, the applicant must seek final site plan and design review approval from the Planning Board before applying for a building permit.
 7. An aggrieved party may appeal a Planning Board decision. Such appeal must be made within 30 days of the date of the decision. The BZA, in its discretion, may grant additional time in exceptional circumstances.
 8. Appeals from a decision of the Building Official shall be made within 30 days of the date of the order, denial of permit, or requirement or determination contested. The BZA, in its discretion, may grant additional time in exceptional circumstances.
 9. An appeal stays all proceedings in accordance with Act #202, Public Acts of 1969, Section 5(c), which amended Section 5 of Article #207 of the Public Acts of 1921.
- C. The order of hearings shall be:
1. Presentation of official records of the case by the Building Official or City Planner as presented on the application form.
 2. Applicant's presentation of his/her case—the applicant or his/her representative must be present at the appeal hearing.
 3. Interested parties' comments and view on the appeal.
 4. Rebuttal by applicant.
 5. The BZA may make a decision on the matter or request additional information.

ARTICLE II - Results of an Appeal

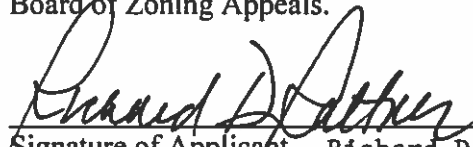
- A. The Board may reverse, affirm, vary or modify any order, requirement, decision or determination as in its opinion should be made, and to that end, shall have all the powers of the officer from whom the appeal has been taken.
- B. The decisions of the Board shall not become final until the expiration of five (5) days from the date of entry of such orders or unless the Board shall find that giving the order immediate effect is necessary for the preservation of property and/or personal rights and shall so certify on the record.

- C. Whenever any variation or modification of the Zoning Ordinance is authorized by resolution of the BZA, a Certificate of Survey must be submitted to the Community Development Department with the building permit application. A building permit must be obtained within one year of the approval date.
- D. Failure of the appellant, or his representative, to appear for his appeal hearing will result in the appeal being adjourned to the next regular meeting. If, after notice, the appellant fails to appear for the second time, it will result in an automatic withdrawal of the appeal. The appellant may reapply to the BZA.
- E. Any applicant may, with the consent of the Board, withdraw his application at any time before final action.
- F. Any decision of the Board favorable to the applicant is tied to the plans submitted, including any modifications approved by the Board at the hearing and agreed to by the applicant, and shall remain valid only as long as the information or data provided by the applicant is found to be correct and the conditions upon which the resolution was based are maintained.

ARTICLE III - Rehearings

- A. No rehearing of any decision of the Board shall be considered unless new evidence is submitted which could not reasonably have been presented at the previous hearing or unless there has been a material change of facts or law.
- B. Application or rehearing of a case shall be in writing and subject to the same rules as an original hearing, clearly stating the new evidence to be presented as the basis of an appeal for rehearing.

I certify that I have read and understand the above rules of procedure for the City of Birmingham Board of Zoning Appeals.


Signature of Applicant, Richard D. Rattner, Esq.

Attorney for Owner; Williams, Williams, Rattner & Plunkett, P.C.

1/14/2016



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

Richard D. Rattner
rdr@wwrplaw.com

February 1, 2016

Board of Zoning Appeals
City of Birmingham
151 Martin Street
Birmingham, MI 48012

Re: 555 S. Old Woodward ("Applicant") – Plans for Maintenance and Repair
of the 555 Apartment Building ("Apartment Building") and the 555
Office Building ("Office Building") – collectively referred to as the "Project"

Dear Board of Zoning Appeals:

Please consider this letter supplemental to our letter of December 11, 2015 (attached) with regard to the Project and the issues related to maintenance and repair of the Project. This letter deals specifically with the Office Building only, since pursuant to his letter of January 11, 2016 ("2016 Letter") the Building Official has agreed that the repair and maintenance of the Apartment Building complies with the Building Official's interpretation of maintenance and repair of a nonconforming structure ("2013 Interpretation") as set forth in his report and interpretation introduced to the Board of Zoning Appeals on July 9, 2013. That is, the Building Official agreed that the proposed curtain wall on the Apartment Building is designed in accordance with the 2013 Interpretation regarding repair and maintenance of this nonconforming structure.

We appreciate the Building Official working through the issues related to the Project and whether the plans for the maintenance and repair of the Office Building complies with the maintenance and repair program and 2013 Interpretation introduced to the Board of Zoning Appeals on July 9, 2013. See Memorandum to the Board of Zoning Appeals dated July 1, 2013 attached to this letter. ("2013 Memo")

Background

The Design Review Board on October 21, 2015, enthusiastically granted approval to the Project. The Design Review Board understood that the Apartment Building design for the proposed curtain wall was approved by the Building Official, but that the Applicant and the Building Official were still working through issues related to the proposed design and installation of the new curtain wall for the Office Building.

Since the October 21, 2015 meeting of the Design Review Board, the Building Official and the Applicant have spent considerable time reviewing the proposed maintenance and repair project. In the Building Official's 2016 Letter, he stated that he agreed with the Applicant's conclusion that the proposed curtain wall on the Office Building projects the minimum distance from the building for a "double skin façade" wall type. The Building Official also noted that he can agree that the current proposal fits within the intent of the 2013 Interpretation, however, the Building Official determined that the Board of Zoning Appeals would have to rule on the design change. The Building Official's conclusion of that letter is that the "...current proposal for the new curtain wall on the north building meets the intent of the 2013 interpretation except that it is a different design than the one confirmed by the Board of Zoning Appeals."

Accordingly, we are now coming in front of the Board of Zoning Appeals so that the Board can review the matter the Building Official discussed in the 2016 Letter and provide information to the Board of Zoning Appeals to demonstrate that not only does the new curtain wall on the Office Building meet the intent of the 2013 interpretation, but the design of that curtain wall also complies with the spirit and intent of the 2013 interpretation.

Discussion of Office Building Maintenance and Repair Design

The Applicant has three main reasons to approach this maintenance and repair project as presented. First, a new curtain wall/solar screen cannot be attached to the existing façade. Second, the existing structure is capable of carrying a new load from the top of the structure, but not from its face. This is why the new design, by necessity, features the new curtain wall to be hung from the top of the structure. Third, the moisture from the outside is blocked by this new design. The inside condensation, on the other hand, is controlled and kept inside rather than escaping into the cavity wall.

Since the Apartment Building repair and maintenance design has been accepted by the Building Official, the natural question arises as to why the same design was not used on the Office Building as well as the Apartment Building. The central reason that the Apartment Building repair and maintenance is not used on the Office Building is that the architecture of the two buildings are different from one another and that the design system on the Apartment Building is not appropriate for application to the Office Building.

The two buildings have different purposes and are designed differently. The Apartment Building has *operable windows*, while the Office Building windows *do not open*. A structure that is used to maintain and repair the fixed glass is not the same as a design that must accommodate a building with operable windows.

In fact, a design for the Office Building with fixed windows is a simpler design than the

Apartment Building design. The Office Building design is simply a curtain wall or solar screen that can be applied to the building with very little invasive construction to the building during the application process. The Apartment Building requires a curtain wall framework so that windows in the Apartment Building may be opened to the outside air. The Office Building windows are all fixed glass and therefore the design presented by the Applicant is a much simpler architectural solution.

If one were to apply the Apartment Building design for maintenance and repair to the Office Building, the unfavorable result would be that all of the windows and metal panels on the wall of the Office Building would have to be scrapped and totally replaced. All of this scrap and replacement activity would be dumped into landfills causing an ecologically undesirable effect. Not only is this solution environmentally irresponsible, but because of the existing construction of the façade, it is practically impossible to accomplish without destroying the entire existing window wall and interior finishes.

There is absolutely no insulation in the existing window and metal panel system that clads the current Office Building. The curtain wall, which is essentially a solar screen that is applied to the building, resolves every one of the problems that would be caused by applying the Apartment Building design solution were attempted to be applied to the Office Building. Specifically, the process of construction of the Office Building curtain wall is much simpler and less invasive. It is the minimum necessary in order to repair and maintain the Office Building.

Secondly, there would be no mass scrapping of glass and metal to be carted off to landfills. Thirdly, the simple application of the curtain wall/solar screen can save up to 30% of the costs of heating and cooling the building. This conservation of energy is accomplished through a combination of wrapping the building in a structure that effectively provides a blanket of insulation around the building (which does not exist in the current building) and would also use solar energy trapped by this “double skin façade” for heating and cooling of the Office Building.

The fixed windows of the Office Building allow the Applicant to apply a simple curtain wall/solar screen technology without the invasive and complicated construction that is required for the Apartment Building with its moveable windows. This type of construction fulfills the very important element of the 2013 interpretation that any maintenance and repair to this type of building should be the minimum construction required in order to effectively and efficiently maintain and repair a building of this size and scale. This minimum construction approach, coupled with the very important conservation of energy and environmentally responsible approach to renovation, i.e., avoiding excess scrap and debris to be thrown into landfills, combine to make this design for the repair and maintenance of the Office Building a very favorable design which will ultimately be a benefit to not only the Applicant but the health,

safety and welfare of the community.

In Applicant's letter of December 11, 2015 (attached, the "December 2015 Letter"), several other points were made that are worth repeating in summary fashion with regard to the issue of the appropriateness of the proposed repair and maintenance of the Office Building and the distinct advantages offered to the City, to wit:

- It is agreed by both the Applicant the Building Official that the proposed curtain wall on the Apartment Building is designed in accordance with the 2013 interpretation of repair and maintenance projects, and that the current proposal for the Office Building fits within the intent of the interpretation made in 2013. The only issue for the Board of Zoning Appeals as outlined in the Building Official's 2016 Letter is the appropriateness of the design change from what was approved in 2013 to the simpler construction proposed here.
- It should be noted that the nonconformity of the 555 S. Old Woodward building relates only to the height of the existing structure and not any other element of the building. Therefore, any work done on this Project does not affect, expand or enlarge any of the nonconforming elements of the building.
- The maintenance and repair of the Office Building will eliminate water leaks, air filtration and improve the building's overall appearance and energy efficiency.
- It is agreed by the Building Official that the proposed curtain wall on the Office Building projects out from the building at the minimum distance for a "double skin façade" wall type. The proposed curtain wall/solar screen design presents the same advantages as the prior design in that the new curtain wall is designed to a minimum depth requirement to install the necessary structure to properly transfer wind loads in accordance with the code.
- All of the following refer to the issues raised 2013 Memo to the Board of Zoning Appeals by the Building Official and apply directly to the proposed new design for repair and maintenance of the Office Building.
 - The new curtain wall will allow the "...residents/occupants to remain in place during the construction." (See 2013 Memo, fourth paragraph, p. 1)
 - This newly designed system will properly "...transfer wind loads through girder beams into the building's columns." (See 2013 Memo, first grammatical paragraph, p. 2)

- Although the new curtain wall/solar screen will be applied to the building, this type of wall system "...will not increase the usable space within the building itself...and therefore...the existing occupancy square footage of the building will remain the same." (See 2013 Memo, first full grammatical paragraph, p. 2)
- The building complies with all other ordinance provisions except for the height of the building as stated above. (See 2013 Memo, second full grammatical paragraph, p. 2)
- The new curtain wall/solar screen complies with "...all ordinance regulations, including setbacks." (See 2013 Memo, second full grammatical paragraph, p. 2)
- The existing window and panel curtain wall is at the end of its useful life, does not have any built-in installation, and "does not comply with current wind load requirements..." Simply speaking, the system must be replaced or covered. (See 2013 Memo, second full grammatical paragraph, p. 2)
- This new curtain wall/solar screen is designed at a "minimum depth to install the system necessary to construct and maintain this design."
- By leaving the existing window wall in place, the new curtain wall/solar screen has the advantage of providing "...space for insulation necessary to meet energy code requirements and provides protection to the occupants in the building during construction." (See 2013 Memo, second grammatical paragraph, p. 2)

Conclusion

Similar to the conclusion of the 2013 Memorandum of the Building Official, Applicant's design for the repair and maintenance of the Office Building not only complies with all of the terms, conditions, spirit and intent of the 2013 Interpretation, but it is clear that the installation of this curtain wall and its design is intended to maintain the building in good condition and should be considered maintenance. As with the 2013 Interpretation, we contend that the current design fits within the interpretation of the Building Official in 2013 and that no further application of the Zoning Board of Appeals should be required.

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

Respectfully submitted,

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

Richard D. Rattner

Richard D. Rattner

RDR/cmc
Enclosures



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Attorneys and Counselors

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Fax: (248) 642-0856

Richard D. Ratner
rdr@wwrplaw.com

December 11, 2015

Mr. Bruce Johnson
Building Official
City of Birmingham
151 Martin Street
Birmingham, MI 48012

Re: 555 S. Old Woodward – Plans for maintenance and repair of the office
building portion of the project

Dear Mr. Johnson:

This confirms our several meetings and discussions regarding the proposed maintenance and repair project proposed for the 555 building – the office building portion of that project.

You will recall that the Design Review Board, on October 21, 2015, enthusiastically granted approval to the proposed maintenance and repair project of the building with the following understanding: first, it was understood that the Building Official approved the plans for repair and maintenance of the south building (apartments) as the designs were submitted, and second, that the Building Official and the Petitioner were still working through the issues related to the maintenance and repair design for the north building (office building). (See Plans attached). The maintenance and repair design of the apartment building is different from the office building, and the Building Official had not yet approved the design of the office building as a maintenance and repair project. However, the Design Review Board approved the designs of both the office building and the apartment building. The meetings between the Petitioner and the Building Official since the Design Review Board meeting indicate that the Building Official does intend to approve the design and construction of this maintenance and repair proposed for the north building (office). This letter is to ask that if the Building Official does refuse to approve the repair and maintenance project on the office building, then that interpretation be reversed by the Board of Zoning Appeals.

Interpretation

Petitioner and Building Official have had several conversations and reviewed plans regarding the repair and maintenance proposed by the Petitioner for the office building, and the Building Official has indicated clearly that he is not comfortable with identifying this maintenance and repair program as one which falls within the guidelines that were set forth by the Building Official in his report and interpretation introduced to the Zoning Board of Appeals

on July 9, 2013 (see portion of the July 9, 2013 Agenda attached).

Petitioner contends that the proposed design for the maintenance and repair of the north building (office) at 555 S. Old Woodward meets all of the goals of not only the Building Official's report and interpretation from July of 2013, but also the spirit and intent of the ordinance which would allow a repair and maintenance of a nonconforming structure.

First, it should be noted that the nonconformity of the 555 S. Old Woodward building relates only to the height of the existing structure. Therefore, it could be stated that this is not an enlargement or enhancement of a nonconforming structure since the nonconforming part of the structure is not being enlarged or extended. The height remains the same. All of the issues revolve around the necessary work to be done for the construction of a screen wall as proposed in the attached plans.

The proposed screen wall is necessary for repair and maintenance and will eliminate water leaks, air filtration and improve the building's overall appearance and energy efficiency. This is the same goal today as it was in July of 2013.

The Building Official believed in 2013 that the 2013 design was "...the minimum dimension they would need to come out..." in order to accomplish the goal. This statement refers to the width between the existing curtain wall and the curtain wall that was proposed in 2013. Similarly, the new design is the minimum width necessary in order to accomplish the goal of repair and maintenance. It should be noted that no contractor would bid on the 2013 design and therefore it not only was not practical, but Petitioner maintains it would not work.

In 2013, the building department stated that the proposed 2013 design was not an "addition to the building, [but] is a new curtain wall right alongside the one that is there." This is exactly the same condition that is being proposed today. The new repair and maintenance design is actually a transparent solar screen that will exist and will be constructed "alongside" of the existing wall of the building. This new design is a vast improvement over the 2013 design. Some of the advantages including the following:

- a. This modern curtain wall is actually a transparent fixed glass solar screen that has the additional advantage of reducing energy consumption in the office building by approximately 30% as designed. This fact alone makes this repair and maintenance one that meets current codes and is updated to meet the modern energy standards which are desired in all buildings.
- b. The proposal incorporates the minimum dimension that can be used so that the curtain wall/transparent solar screen can be properly maintained in the future.

That is, this is the minimum dimension allowed so that this glass may be kept clean year round.

- c. The amount of space required for the maintenance of this curtain wall/transparent solar screen has been reduced to the minimum width allowed by OSHA regulations. This space between the existing building and the curtain wall/solar screen allows for cleaning, but does not increase any usable square footage in the building. It is important to note that the simple replacement of the existing curtain wall and existing panels causes an extreme practical hardship for the Petitioner and the citizens of the City of Birmingham. That is, if the existing windows and curtain wall were to be replaced, then the entire building would have to be shut down during construction and every tenant would have to vacate the building. Additionally, all of the glass, concrete and steel scraped as a result of the replacement would fill a landfill and cause hundreds of truck trips carrying waste to and from a landfill. None of this is required in the new system.
- d. The proposed curtain wall/transparent solar screen provides a veritable sunscreen for the building which helps control temperature in the building and cuts costs of heating and cooling by approximately 30%.
- e. It must be noted that the temperature cannot be controlled in the present office building in the summertime to less than 78° due to the constant leaks and escaping of energy through the windows and existing curtain wall. This will be resolved by the design, maintenance and repair that is proposed.
- f. Without the curtain wall/solar screen there is no way to practically maintain the building. Even if the windows were replaced, they would have to be continually caulked and the existing black panels would further deteriorate. Experts have told the Petitioner that the building, without this necessary repair and maintenance, will continue to lose heat and the interior spaces of the building will continue to leak and be subject to introduction of water seepage into the building. Currently, the building owner spends thousands of dollars per month in caulking. But caulking alone does not properly maintain the building or resolve the other problems that must be repaired and maintained. The proposed maintenance curtain wall /transparent solar screen, which fits the criteria of the building department for repair and maintenance, will resolve all of these issues in a way which restores integrity to the construction of this building by allowing it to be properly maintained and repaired for many years to come.

- g. "Repair and maintenance" issues with respect to nonconforming buildings often depend on the question of whether the maintenance and repair will create a more intense use (such as an addition of square footage for use by a commercial or office user, or such as increased size of the entire building so that the further parking is required). First, as stated above, one should keep in mind that the nonconformity of this building is its height, not its width or its relation to front, side or rear setbacks. The addition of the maintenance and repair system as proposed by the Petitioner does not result in the violation of any of the setbacks of this building, but rather all such construction of the proposed maintenance and repair project will be within the setbacks as required by the City. Second, there is no greater intensity and use because the floor space available for use by occupants is exactly the same as it is today. Thus, the proposed system falls squarely within the 2013 interpretation because the "floor area will not be increased." So there is no "extension" or "enlargement" of the use of this building or useable areas of the building, the repair and maintenance procedure is the minimal necessary, and the nonconforming feature of the building (the height) is not increased.

In July of 2013, the building department stated that it believed the prior repair concept was doing "the least possible to achieve their maintenance goals and comply with the advance code requirements." This is exactly the same as the system presented today. The proposed curtain wall/transparent solar screen is using the least possible construction to achieve a maintenance goal and to comply with the advance code requirements, including modern code requirements for energy use.

It was further noted in the July of 2013 meeting that "if the building was the right height, this would be a nonissue." The same situation exists today. If the building were conforming under a proper ordinance for this structure, this system would be a nonissue and in fact, is one that would probably be favored by the Building Official and the City due to its simple and superior solution to maintenance and repair of a building and its great improvement to the design of the building for the benefit of the citizens of the City of Birmingham.

In July of 2013, the building department stated that "this determination will be helpful down the road in working with other building owners." That is exactly what is happening today. The 2013 interpretation has allowed the apartment building to be approved by the Building Official, but the Building Official has still withheld its approval and in fact indicated it would deny approval, of the current design for the repair and maintenance of the office building.

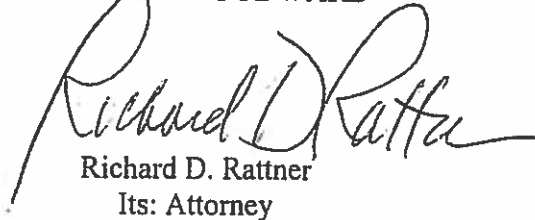
Conclusion

Since the Building Official has indicated that he would deny the design of the office building system of a curtain wall/transparent solar screen for the office building as not being within the interpretation of the 2013 report referred to in this letter, and therefore an extension or enlargement of a nonconforming structure, Petitioner requests that this interpretation be reviewed and reversed by the Zoning Board of Appeals, and the Zoning Board of Appeals grant:

- (a) that the design proposed for the office building is within the July 2013 interpretation and is not an extension or enlargement of a nonconforming structure; and
- (b) that the Petitioner be granted the approval to move forward with this design as a permitted repair and maintenance project as permitted by ordinance, contemplated by the Design Review Board and as set forth in Petitioner's plans.

Respectfully submitted,

555 S. OLD WOODWARD


Richard D. Rattner
Its: Attorney

RDR/cmc
Enclosures



City of Birmingham

A Walkable Community

January 11, 2016

Richard D. Rattner
Williams Williams Rattner & Plunkett, P.C.
380 N. Old Woodward Ave, Suite 300
Birmingham, MI 48009

RE: 555 S. Old Woodard – Proposed new curtain wall for the Office Building

Dear Mr. Rattner:

This is a response to your letter dated December 11, 2015, regarding the proposed new curtain walls for both the Office (north) and Apartment (south) buildings at 555 S. Old Woodward. You provided, in addition to the letter, plan sheets showing the proposed design and elevations. The new designs are different from the design my 2013 interpretation was based from that was confirmed by the Board of Zoning Appeals.

I agree with your conclusion that the proposed curtain wall on the south building is designed in accordance with the 2013 interpretation. The difference is in how the new curtain wall will be supported from the top of the existing columns, rather than attaching to the vertical face of the building as originally proposed. The new design actually projects out from the face of the existing wall less than the original proposal. Accordingly, the new design for this building clearly falls within the scope of the 2013 interpretation and can be considered maintenance. However, I am struggling drawing the same conclusion on the north building.

The new design is a different system than the original wall that the 2013 interpretation was based on and it projects a further distance out from the existing curtain wall. I agree with your conclusion that the proposed curtain wall on the north building projects the minimum distance for a "double skin façade" wall type. I compared your new design with the interpretation made in 2013, and cannot determine myself that it complies. The Board of Zoning Appeals when it confirmed the interpretation tied its approval as far as possible to the prints, pictures, and renderings provided in the interpretation documents. I can agree that current proposal fits within the intent of the interpretation made in 2013. However, I believe that the Board of Zoning Appeals would have to rule on the design change.

The current proposal for the new curtain wall on the north building meets the intent of the 2013 interpretation except that it is a different design than the one confirmed by the Board of Zoning Appeals. I have attached an application for appeal if you would like to pursue that route. Please feel free contacting me if you have any questions or would like to discuss further.

Best regards,


Bruce R. Johnson



MEMORANDUM

Building Division

DATE: July 1, 2013
TO: Zoning Board of Appeals
FROM: Bruce R. Johnson, Building Official
SUBJECT: 555 S. Old Woodward Renovation

This report is to inform the Board of Zoning Appeals of a proposed renovation to the exterior of the existing building complex located at 555 S. Old Woodward. The buildings at this property are legal nonconforming in regards to building height. In response to concerns expressed by the City Commission, Planning Board, and residents of poor visual appearance of the exterior of the buildings, the owners have decided to renovate the exteriors of the buildings. The paragraphs below will discuss the proposed renovation and the attached renderings will visually detail the project. I am seeking confirmation from the Board of Zoning Appeals that the proposed renovation will be considered maintenance not an enlargement.

The existing complex consists of two buildings. The building located on the north side of the property is used for commercial purposes and the building to the South for residential. The commercial building is 7 stories and 77.5 feet tall. The residential building is 15 stories and 141.83 feet in height. If the property were developed utilizing the provisions of the today's ordinance, the provisions of the D4 Overlay District would be applicable. The maximum height for the commercial building would be 4 stories and 58 feet to the surface of the flat roof. The residential building could have 5 stories and 58 feet to the surface of its flat roof. Accordingly, the upper 19.5 feet of the commercial building and the upper 83.83 feet of the residential building are legal nonconforming. Other than their height, both buildings conform to all other ordinance requirements.

Article 06 of the Zoning Ordinance regulates nonconforming buildings. In accordance with Section 6.02, nonconforming buildings are allowed to continue as long as they are maintained in good condition. A previously mentioned, the City has been encouraging the owners of the subject property to maintain their buildings and improve their overall appearance. The owners hired the design firm of Smith Group JJR to develop plans to renovate the exterior of both buildings.

The attached renderings and plan sections were recently presented to me by Brooke Smith of Smith Group JJR. During this meeting it was explained to me that the design concept is to install a new curtain wall system in front of the existing one. The new system will eliminate air and water infiltration the building has been plagued with from the beginning, will bring it into compliance with today's wind load requirements, and will dramatically improve the buildings appearance as suggested by the City. Installing the new curtain wall first will allow the residents/occupants to remain in place during construction. The new system is designed to

properly transfer wind loads through girder beams into the buildings columns. The new system with its contrasting colors adds depth to the façade improving the buildings appearance. Once the new curtain wall is installed, the existing windows will be removed from within each unit and then the opening will be finished and trimmed back to the new curtain wall assembly creating a window box.

The depth of the new window box measured from the existing windows to the new glazing is 16 inches. The depth of the new curtain wall measured from the existing one varies from 16 inches to 20 inches where new brick veneer is utilized. While the new curtain wall system will be installed on the building, it will not increase the usable space within the building itself. In other words, the existing occupancy square footage of the building will remain the same. The question becomes whether or not the new curtain wall can be considered maintenance.

As mentioned earlier, the building complies with all other ordinance provisions except for its height. The new curtain wall will comply with all ordinance regulations including setbacks. The existing curtain wall is at the end of its useful life, does not comply with current wind load requirements, and needs to be replaced. The new curtain wall is designed to a minimum depth to install girder beams to properly transfer the wind loads in accordance with the code. Leaving the existing curtain wall in place provides space for insulation necessary to meet energy code requirements and provides protection to the occupants in the building during construction. All of these facts indicate that the new curtain wall is being installed to maintain the building in good condition and therefore should be considered maintenance. Accordingly, application to the Board of Zoning Appeals would not be necessary.

555 South Old Woodward

**The Office Building
Maintenance and Repair Project**

**Birmingham Board of Zoning Appeals
February 9, 2016**

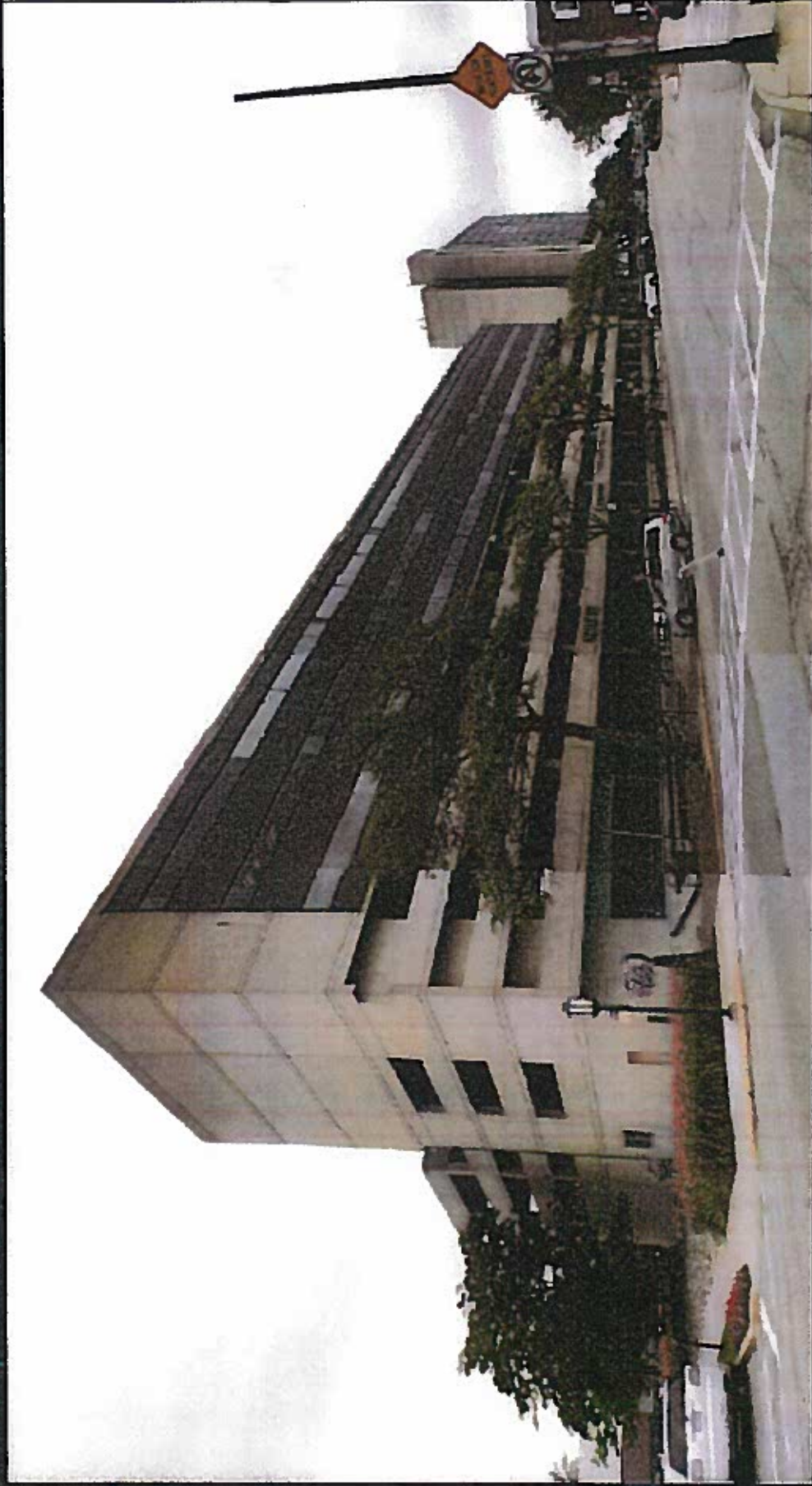


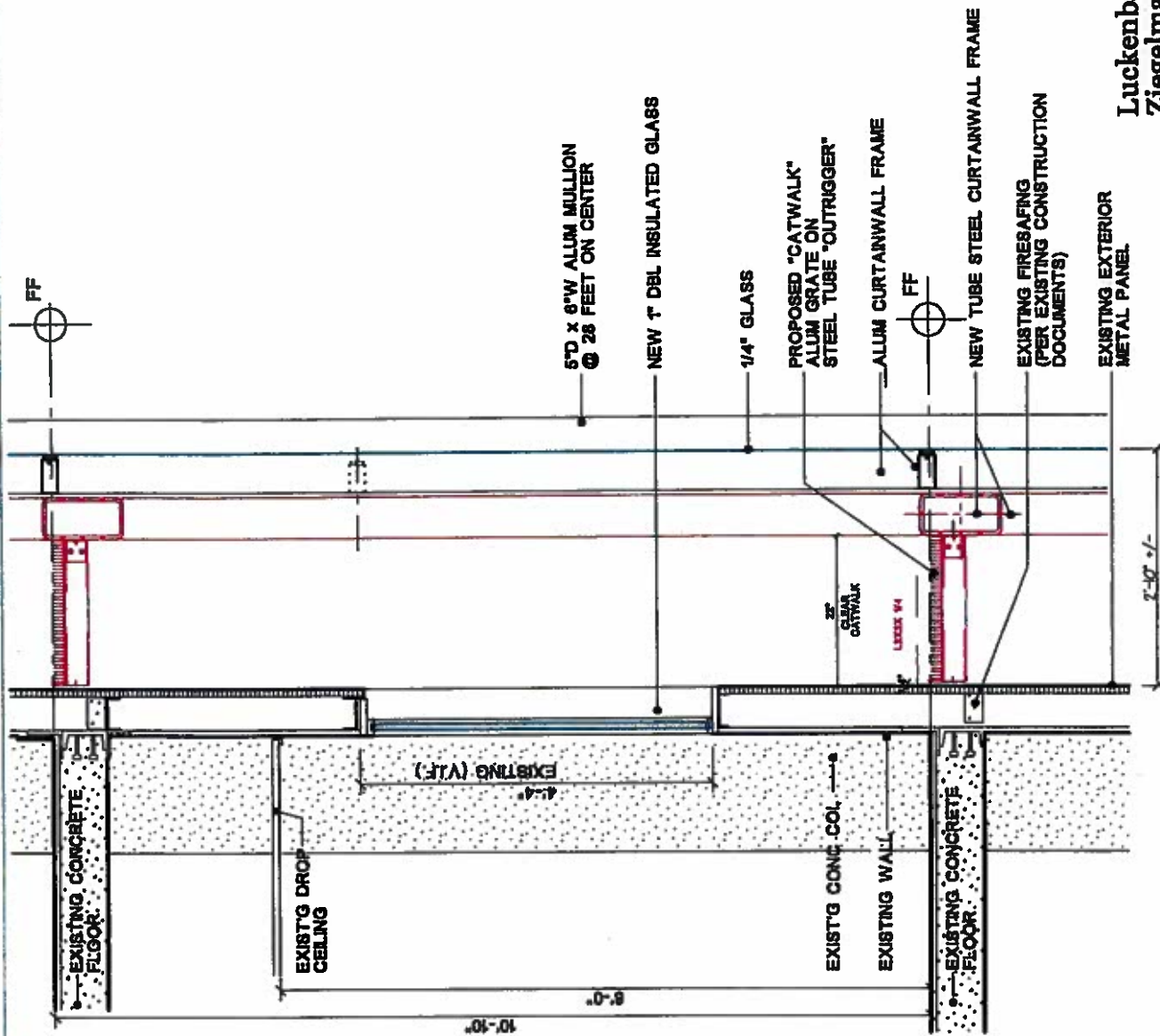
EXHIBIT F - VIEW FROM WEST (Old Woodward)

EXISTING



EXHIBIT E - VIEW FROM EAST (Woodward Avenue)

EXISTING



**OFFICE BUILDING
PARTIAL WALL SECTION**

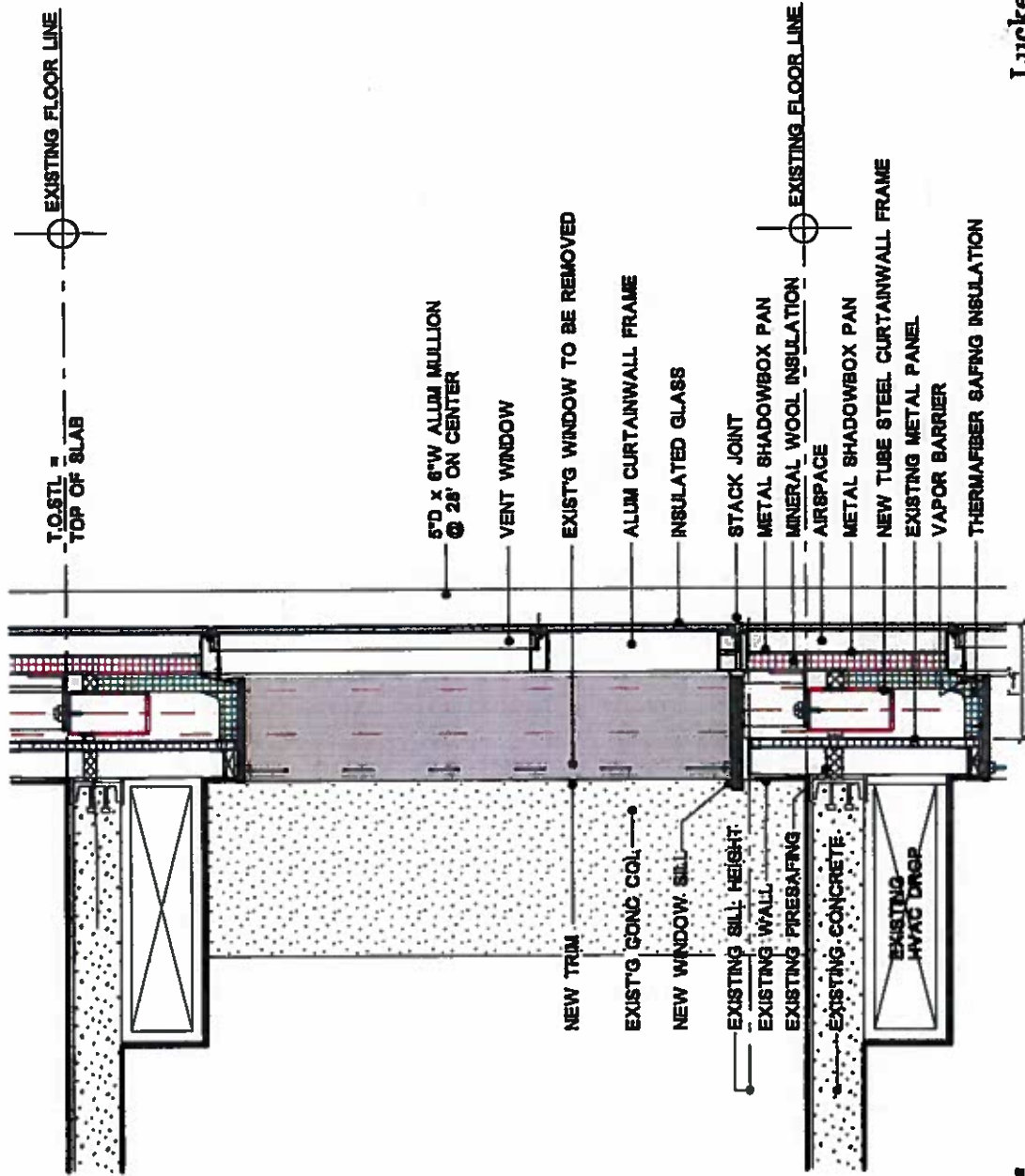
**Luckenbach
Ziegelman
Architects
PLLC**

555
555 Old Woodward
Birmingham, MI

555
 555 Old Woodward
 Birmingham, MI

**APARTMENT BUILDING
 PARTIAL WALL SECTION
 Low Sill Condition**

**Luckenbach
 Ziegelman
 Architects
 PLLC**



**APARTMENT BUILDING
PARTIAL WALL SECTION
High Sill Condition**

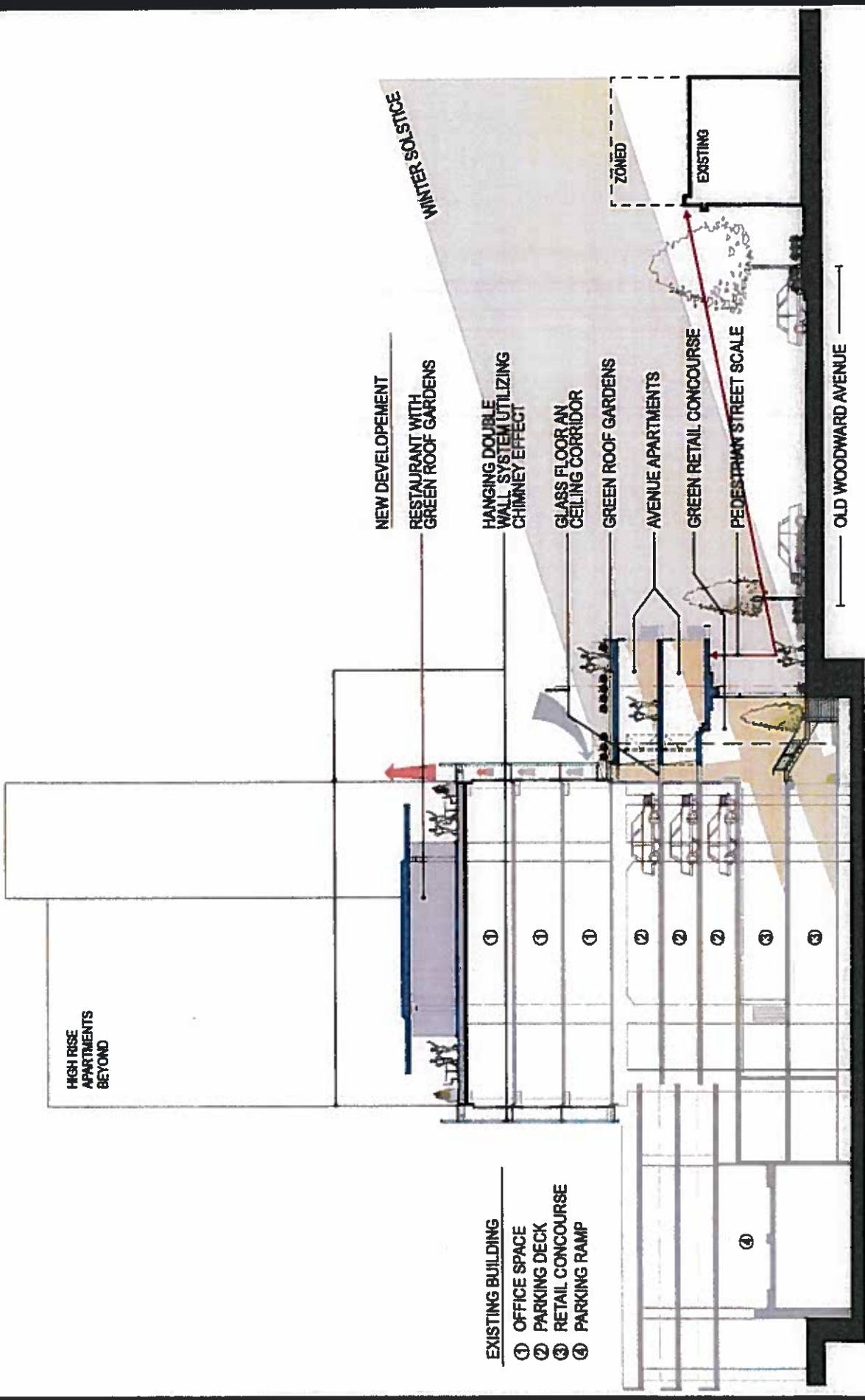
Architectural section drawing of a building facade showing a window replacement and insulation details. The drawing includes labels for existing and new components, structural elements, and floor lines.

Labels (from left to right):

- EXIST'G. WINDOW TO BE REMOVED
- NEW TRIM
- NEW WINDOW SILL
- EXISTING SILL HEIGHT
- EXIST'G CONC COL
- EXISTING WALL
- EXISTING PRESAFING
- EXISTING CONCRETE
- EXISTING HVAC DROP
- INSULATED GLASS
- VENT WINDOW FRAME
- 6" D x 8" W ALUM MULLION @ 28" ON CENTER
- EXISTING METAL PANEL
- ALUM CURTAINWALL FRAME
- INSULATED GLASS
- METAL SHADOWBOX PAN
- MINERAL WOOL INSULATION
- STACK JOINT
- AIRSPACE
- METAL SHADOWBOX PAN
- NEW TUBE STEEL CURTAINWALL FRAME
- THERMAFIBER SAFING INSULATION
- EXISTING METAL PANEL
- VAPOR BARRIER

Structural and Floor Lines:

- T.O. STL = TOP OF SLAB
- EXISTING FLOOR LINE
- EXISTING FLOOR LINE



NEW DEVELOPMENT

RESTAURANT WITH
GREEN ROOF GARDENS

HANGING DOUBLE
WALL SYSTEM UTILIZING
CHIMNEY EFFECT

GLASS FLOOR AND
CEILING CORRIDOR

GREEN ROOF GARDENS

AVENUE APARTMENTS

GREEN RETAIL CONCOURSE

PEDESTRIAN STREET SCALE

EXISTING

ZONED

OLD WOODWARD AVENUE

WINTER SOL STICE

HIGH RISE
APARTMENTS
BEYOND

EXISTING BUILDING

① OFFICE SPACE

② PARKING DECK

③ RETAIL CONCOURSE

④ PARKING RAMP