

# BOARD OF ZONING APPEALS AGENDA

City of Birmingham  
Commission Room of the Municipal Building  
151 Martin Street, Birmingham, Michigan  
May 10, 2016  
7:30 PM

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

	Address	Petitioner	Appeal	Type/Reason
1.	369 N OLD WOODWARD	ALDEN	16-10	DIMENSIONAL

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, APRIL 12, 2016**  
City Commission Room  
151 Martin Street, Birmingham, Michigan

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Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, April 12, 2016. Chairman Charles Lillie convened the meeting at 8 p.m.

**Present:** Chairman Charles Lillie; Board Members Kevin Hart, Jeffery Jones, Vice-Chairman Peter Lyon, Erik Morganroth; Alternate Board Members Jason Canvasser, Cynthia Grove

**Absent:** Board Members Randolph Judd, John Miller

**Administration:** Matthew Baka, Senior Planner  
Brooks Cowan, Community Development Dept.  
Bruce Johnson, Building Official  
Carole Salutes, Recording Secretary  
Scott Worthington, Assistant Building Official

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

**T# 04-26-16**

**APPROVAL OF THE MINUTES OF THE BZA MEETING OF MARCH 8, 2016**

**Motion by Mr. Jones**

**Seconded by Mr. Lyon to approve the Minutes of the BZA meeting of March 8, 2016 as presented.**

**Motion carried, 7-0.**

VOICE VOTE

Yeas: Jones, Lyon, Canvasser, Grove, Hart, Lillie, Morganrot  
Nays: None  
Absent: Judd, Miller

**T# 04-27-16**

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

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

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

This property is zoned R-3.

Mr. Worthington explained the applicant is proposing to demolish the existing home and build a new home on a 40 ft. wide interior lot. The existing non-conforming house to the west was built with a 2.70 ft. side setback. The applicant has moved the house over from the minimum 9 ft. to a 10 ft. side setback. All other setbacks and distance requirements are conforming. In the notice, "Section 4.69" should be changed to "Section 4.74." The language of the updated Ordinance has not changed.

Chairman Lillie observed that it looks like the owner of the house to the west has added on because part of the rear of the house is set back from the lot line.

Mr. Fareed Mojaradi, the homeowner, noted the house will be moved 1 ft. away from the west property line in comparison to the present structure. The neighbors are delighted that the house will be coming down.

At 8:10 p.m. no one in the audience wanted to comment on this appeal.

**Motion by Mr. Lyon**

**Seconded by Mr. Jones in regards to Appeal 16-07, 1375 Webster, to grant the variance as advertised. The appellant seeks a variance for the minimum distance between principal buildings. He believes that strict compliance would be unduly burdensome. He does not believe this is self-created primarily because and only because the adjacent house is existing non-conforming. He would note that the appellant has done some mitigation by reducing the width of the house by about a foot to decrease the size of the requested variance. He would tie the motion to the plans submitted.**

**Motion carried, 7-0.**

ROLLCALL VOTE

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

Nays: None

Absent: Judd, Miller

**T# 04-28-16**

**369 N. OLD WOODWARD AVE.  
(Appeal 16-10)**

The owners of the property known as 369 N. Old Woodward Ave. request the following variance to allow the construction of a five-story mixed-use building in the R-6/D-4 Zone that exceeds the minimum lot area per unit.

- A. **Chapter 126, Article 02, section 2.16**, of the Zoning Ordinance requires that buildings with residential units provide a minimum lot area of 1,375 sq. ft. per one (1) bedroom unit and 1,750 sq. ft. per two (2) bedroom unit. The applicant is proposing twenty-six (26) two bedroom units and three (3) one bedroom units requiring 49,625 sq. ft. of land area with 39,204 sq. ft. provided. Therefore, a variance of 10,421 sq. ft. of lot area is requested.

Or in the Alternative:

- B. **Chapter 126, Article 8, Section 8.01 (D)** of the Zoning Ordinance allows for an appeal of a decision of the building official. The building official has determined that the proposed project located in the R-6/D-4 Zone is required to comply with the minimum lot area per unit requirement of the R-6 Zone.

This property is zoned R-6/D-4.

A.

Mr. Baka advised the property was recently rezoned to D-4 by the City Commission at the request of the applicant to be included in the Overlay Zone which allows up to five stories if the fifth story is residential. The R-6 Zone allows 40 ft. and three stories. The additional height allows the applicant more density; however, due to the minimum lot area they are not able to take advantage of that unless they are granted a variance. The Downtown Overlay Zone was drafted specifically to encourage more residential in the Downtown. That is why the bonus floor is only permitted if it is residential.

In response to the chairman, Mr. Baka said this is one of two R-6 parcels in D-4. The other lot is very small and could not handle this type of development. Further, if this parcel did not have R-6 zoning, only D-4, then a variance would not be needed. He

clarified for Mr. Jones they are equating lot size to the number of units, but not specifically the size of the units. In answer to a question from Mr. Lyon, Mr. Baka advised if there is a conflict the Overlay overrides the underlying zoning, but because the Overlay doesn't speak directly to minimum lot area in this situation, the underlying zoning prevails.

Mr. Baka clarified for the chairman that the intent of R-6 was to be a buffer to single-family residential property. He went on to note this property is unique because on three sides it is surrounded by City-owned property and not residential.

Mr. Jones said the developer has made a marketing decision that these are the style and number of units that he desires. But under the Condominium Act when the developer owns all of the units, he can amend them. Also upon appropriate votes from condo association members, many things can change. Then the question is whether the City has a legitimate purpose in interfering with what the developer chooses to use under the condominium project. Mr. Johnson said if the variance were granted the petitioner cannot exceed that number of units but they can reduce the number of units and still conform to the requirements of the Ordinance. However, the intent of the Overlay is to encourage more density in the Downtown.

Mr. Richard Rattner, 380 N. Old Woodward Ave., presented a PowerPoint. It showed that the parcel is bordered on three sides by public property and the east side by N. Old Woodward Ave. They are asking a variance from the minimum lot size/unit as set forth in Article 2, section 2.16. The property is in a D-4 Zone of the Overlay District with an underlying zoning of R-6.

The PowerPoint explained for each requirement how they meet the four conditions necessary for the granting of a variance, as follows:

- Article 8.03 (F) (3) (a) (i) - Because of special conditions applicable to the property in question, the provisions of the Zoning Ordinance unreasonably prevent the property owner from using the property for a permitted purpose;
- Article 8.03 (F) (3) (a) (ii) - Literal enforcement of the Chapter will result in unnecessary hardship;
- Article 8.03 (F) (3) (a) (iii) - The granting of the variance will not be contrary to the spirit and purpose of the Zoning Ordinance nor contrary of public health, safety and welfare;
- Article 8.03 (F) (3) (a) (iv) - The granting of the variance will result in substantial justice to the property owners, the owners of the property in the area and the general public.

Mr. Rattner did not feel the intent of the minimum lot area/unit makes sense when you wipe out all the other requirements of R-6. He went on to advise they have an agreement to deed land at the south end of their property to the City to be used as part of a future Bates St. right-of-way, as the City is looking at potentially redeveloping the N.

Old Woodward Parking Structure and/or the surface parking lot behind. In addition they will need an Easement Agreement from the City to get access to and from the underground parking levels from the City property.

He noted the practical difficulty and hardship they experience is not self-created, but exists because the property is isolated at the end of the D-4 Zone, is surrounded by public property, and is an unusual size and shape. The normal R-6 Zoning District borders on single-family residential. The location of this property is not the same as any other R-6 Zoning District in the City. Further, the requirement of the R-6 Zoning District as to the minimum lot area/unit when applied to this property is inconsistent with all of the accepted planning and zoning goals of the City which comply with the purpose and objective of the Downtown Birmingham 2016 Plan that encourages more residential in the Downtown.

Mr. Jones pointed out the survey does not have the same legal description as the application. He does not see the existing Master Deed and inquired how much of the property that the developer owns will be dedicated to the condominium. Mr. Rattner replied the only property they will not use is the portion they are deeding to the City. Chairman Lillie observed the requested variance is based on the size of the lot. If the applicant is going to dedicate some of their property to the City for the road, they will have less land and therefore will need a bigger variance than was advertised.

The board took a quick break at 9:08 p.m. to allow the applicant to discuss matters.

Mr. Lyon noted the original variance request was for 10,421 sq. ft. of lot area for three one (1) bedroom and 26 two (2) bedroom units. He proposed the petitioner request a variance of 10,421 sq. ft. not to exceed three one (1) bedroom and 26 two (2) bedroom units subject to the area of the new plot once they give up the land. The variance is about the number of units as it relates to the land, and they may have to reduce that number in order to meet the R-6 requirement on the remaining land after part of it has been deeded to the City.

Mr. Lyon explained the formula is the number of one (1) bedroom units x 1,375 + the number of two (2) bedroom units x 1,350. Add those up and it can't exceed the land left over + 10,421 sq. ft. Therefore, the number of units will have to come down in order to meet the requirements for land area of the remaining portion.

There was no one in the audience who wished to comment on this appeal at 9:48 p.m.

Mr. Rattner received clarification that the Ordinance specifies the square footage of land required/unit. The unit size is irrelevant. He expressed the desire to table this appeal to the next BZA meeting.

**Motion by Mr. Jones**

**Seconded by Mr. Morganroth, based on the petitioner's request, to adjourn Appeal 16-10, 369 N. Old Woodward Ave., (A) to the next regularly scheduled BZA meeting on May 10, 2016.**

**Motion carried, 7-0.**

VOICE VOTE

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

Nays: None

Absent: Judd, Miller

B.

Regarding the building official's decision, Mr. Rattner argued that the minimum floor area/unit should not apply to a new building in the D-4 Zone. There are four different sections of the D-4 Overlay Zone that speak to this. First is Section 3.02 (B) (4) that states "Where a new building is proposed, the use and sites shall be subject to the Downtown Birmingham Overlay District."

Secondly, there are three sections in Section 3.03 (A, C, and D) that speak to the fact that in a D-4 Zone the provisions of the Downtown Birmingham Overlay District, when in conflict with other articles of the Zoning Ordinance, shall take precedence.

Mr. Johnson said there is no question that the Overlay D-4 is intended for the underlying B-4 Zone District. In the Ordinance B-4 only regulates floor area ratio but not minimum lot area/unit. If you go around the other Overlay Zone Districts, in the B-2, O-2 and the other underlying Zone Districts they have both of those requirements, floor area ratio and minimum lot area/unit. Those are typically the Overlay Districts that directly abut single-family residential. Therefore, tonight's case is unique. Maybe it should have been B-4 but it is not; it is R-6 surrounded by public property. If it was exempt from minimum lot area/unit also, then that would be true for all of the other Overlay Zone Districts that directly abut single-family residential. He does not believe that was the intent of the Overlay District

Replying to Mr. Canvasser, Mr. Johnson indicated that the city attorney is verbally in support of the interpretation.

At 9:48 p.m. there was no one in the audience that wanted to discuss this part of the appeal.

**Motion by Mr. Lyon**

**Seconded by Mr. Jones in regard to Appeal 16-10, 369 N. Old Woodward Ave., (B) the appellant seeks to overturn the decision of the building official. He moves to deny. Both parties have made persuasive arguments. He can see the point. He looks at the old regulation, it indicates you would develop under the Overlay. He**

looks at the new one and it says "shall be regulated," but it doesn't say exclusively. Overturning the building official requires the board to define an abuse of discretion. On a 50/50 split, it is not an abuse of discretion in his opinion. Therefore, he would uphold the decision of the building official.

**Motion carried, 7-0.**

VOICE VOTE

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

Nays: None

Absent: Judd, Miller

**T# 04-29-16**

**CORRESPONDENCE** (none)

**T# 04-30-16**

**GENERAL BUSINESS**

**T# 04-31-16**

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

**T# 04-32-16**

**ADJOURNMENT**

No further business being evident, the board members passed a motion to adjourn at 10:15 p.m.

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Bruce R. Johnson, Building Official



# **CASE DESCRIPTION**

## **369 N. Old Woodward (16-10)**

**Hearing date: May 10, 2016**

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

- A. **Chapter 126, Article 02, section 2.16**, minimum lot area per unit, of the Zoning Ordinance requires that buildings with residential units provide a minimum lot area of 1375 sq. ft. per one (1) bedroom unit and 1750 sq. ft. per two (2) bedroom unit. The applicant is proposing twenty-six (26) two bedroom units and three (3) one bedroom units requiring 49,625 sq.ft. of land area with 34,328 sq.ft. provided. Therefore, a variance of 15,297 sq. ft. is requested.

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

This property is zoned R6/D4.

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Matthew Baka  
Senior Planner

Application Date: 3-15-16

Hearing Date: 4-12-16



Received By: BM

Appeal # 16-10

**Board of Zoning Appeals Application**

Type of Variance: Interpretation  Dimensional  Land use \_\_\_\_\_ Sign \_\_\_\_\_ Admin review \_\_\_\_\_

**Property Information:**

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

**Petitioner Information: \***

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

**Required Attachments:**

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

**General Information:**

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

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

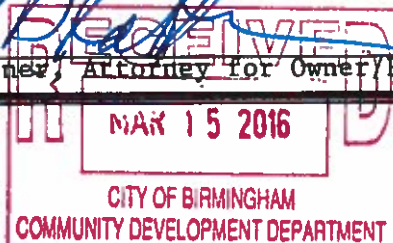
Location of all requested variances must be highlighted on plans and survey. All dimensions to be taken in feet to the first decimal point.

Variance chart example:	Required 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.

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

Signature of Owner: [Signature] Date: 3-15-16  
Richard D. Rattner, Attorney for Owner/Petitioner



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

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

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

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

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

**03-47-16**

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

**Motion by Mr. Williams**

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

**Motion carried, 5-0.**

VOICE VOTE

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

Nays: None

Abstain: Share

Absent: Clein, Koseck, Lazar

**03-48-16**

**CHAIRPERSON'S COMMENTS**

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

**03-49-16**

**APPROVAL OF THE AGENDA (no change)**

**03-50-16**

**UNFINISHED BUSINESS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### *Design Review*

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

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

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

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

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

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

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

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

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

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

**Motion by Mr. Williams**

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

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

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

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

**Motion carried, 6-0.**

**ROLLCALL VOTE**

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

Nays: None

Absent: Clein, Koseck, Lazar

**03-51-16**

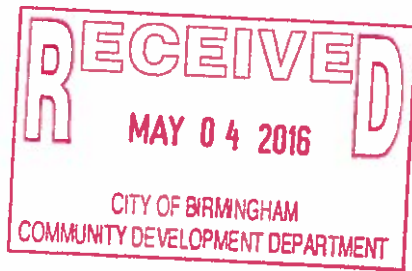
**SPECIAL LAND USE PERMIT ("SLUP") REVIEW**

**FINAL SITE PLAN REVIEW**

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

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

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



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

April 18, 2016

Richard D. Rattner  
rd@wwrplaw.com

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

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

Dear Members of the Board of Zoning Appeals:

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

### Introduction

This letter follows a full discussion and adjournment of this matter at the Board of Zoning Appeals on April 12, 2016, and is revised to set forth and further emphasize the reasons for Petitioner’s request that the “Minimum Lot Area Per Unit” requirement of the R6 zoning district, at Article 2, Sec. 2.16, should not be applied to this Property, as distinct from other properties in the R6 zoning district. The application of such a dimensional requirement in this circumstance, given the unusual nature and uniqueness of the Property, has no real purpose as it will have no effect on the dimensions of the building. It will not change the overall size of the building but have the unintended consequence of forcing the Petitioner to artificially modify the *uses* in the building to add either more retail or office spaces if the number of dwelling units is in any way adversely affected or limited by such a dimensional requirement in the R6 zone. This dimensional variance request is not a request for an Ordinance interpretation, but rather, is a dimensional variance request caused by the physical characteristics and location of this very unique parcel of property. The “Minimum Lot Area Per Unit” is a dimensional requirement that attempts to control the size and design of R6 buildings, but in this case since the building is in a D4 overlay zone, it has no such affect, as the property is controlled in all other issues of design and use by the form based Downtown Birmingham Overlay D4 District. Petitioner strongly believes that the application of this “Minimum Lot Size per Unit” provision of the R6 Ordinance should be varied so that it is not applicable in this particular circumstance. This requirement unfairly limits Petitioner’s use of the Property in the same manner as other property owners may enjoy.

The variance requested is necessary to preserve the enjoyment and substantial property rights possessed by other property owners in the same D4 Zone of the Downtown Birmingham Overlay District. Further, with the granting of this variance provides the following relief: (i) the Property Owner will not be unreasonably prevented from the use of the Property for a permitted purpose by a literal interpretation of the Zoning Ordinance that serves no purpose in this circumstance; (ii) the literal enforcement of the Zoning Ordinance will not result in unfair and unnecessary hardship to the Petitioner; (iii) the granting of the variance will not be contrary to the spirit and purpose of the Zoning Ordinance nor contrary to the public health safety and welfare; and (iv) the granting of the variance will result in substantial justice to the Property Owner, the owners of property and the general public. Finally, the practical difficulty and unnecessary hardships experienced by the Petitioner are not caused by the Petitioner. The granting of this variance will produce a situation where the development of this Property and building in this part of the D4 Zone will, in all ways, comply with the purpose and objective of the Downtown Birmingham 2016 Plan.

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

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

The subject Property (see legal description attached as Exhibit A) is in the D4 Zone of the Downtown Birmingham Overlay District with an underlying zoning of R6. The building is a new building, and as a “new building,” is subject to the Downtown Birmingham Overlay District requirements. This building is designed under the D4 Zone requirements. However, during a review of the project, it was determined by the Building Department that the R6 zoning district requirement of “minimum lot area per unit” applies to this Property. Petitioner contends that, given the unique circumstances of this Property and the resulting unnecessary hardship experienced by the Property Owner, the facts of this case present strong support for Petitioner’s request for a dimensional variance. Accordingly, Petitioner asks that the Board of Zoning Appeals grant the dimensional variance as set forth in this letter.



**The dimension variance requested by Petitioner from the "Minimum Lot Area per Unit" requirement of Art. 2, sec.2.16 is 15,297 square feet. That is, Petitioner requests that it may have as many units in the building as allowed for a building of 49,625 sf in the R6 zoning district taking into account the "Minimum Lot Area per Unit" requirement of that R6 zone. The square foot variance requested herein is calculated as follows:**

<i>Total Existing Area of Site (See Exhibit A)*:</i>	
<i>(Prior to Intended Quit Claim Deed to City)</i>	<i>= 35,442 sf</i>
<i>Less: Area Intended to be Quit Claimed to City (See Exhibit C)</i>	<i>= 1,114 sf</i>
<i>Net Area of Site</i>	
<i>(After Intended Quit Claim Deed to City)</i>	<i>= 34,328 sf</i>
<i>Lot Area per R6 requirement of "Minimum Lot Area per Unit"</i>	<i>= 49,625 sf **</i>
<i>Less: Total Area of Site After Intended Quit Claim Deed to City</i>	<i>= 34,328 sf *** Total SF</i>
<i>Variance Request</i>	<i>= 15,297 sf</i>

*\*All areas rounded off to nearest foot*

*\*\*Calculation based upon: 26 - 2 Bedroom @ 1,750 = 45,500 sf*

*3 - 1 Bedroom @ 1375 = 4,125 sf*

*Total Site Required 49,625 sf*

*\*\*\*Calculation: Total Site Before Quit Claim Deed to City = 35,442 sf*

*Area Intended to be Quit Claimed to City = 1,114 sf*

*Net Area of Site After Intended Quit Claim Deed to City = 34,328 sf*

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

**ARTICLE 8.03(F)(3)(a)(i) - BECAUSE OF SPECIAL CONDITIONS APPLICABLE TO THE PROPERTY IN QUESTION THE PROVISIONS OF THE ZONING ORDINANCE, IF STRICTLY APPLIED, UNREASONABLY PREVENT THE PROPERTY OWNER FROM USING THE PROPERTY FOR A PERMITTED PURPOSE.**

There are exceptional and extraordinary circumstances and conditions applicable to the subject Property because of the placement of the Property, the size and location of the Property and its zoning along North Old Woodward Avenue. These unusual circumstances cause a practical difficulty and unnecessary hardship for the Property Owner and prevent the Property Owner from using the Property in the same manner as other property owners within the same zoning district, i.e., the D4 Zone. Other owners in the D4 Zone may freely build a new building and all elements of the building, including setbacks, height, use, and all other requirements pursuant to the regulations set

forth in the Downtown Birmingham Overlay District. The unusual application of one element of the R6 zoning district to this Property has no effect on the size of the building itself or its placement, but does have a damaging effect on the use of the building and reduction of units that are allowed in the building. A strict application of the Zoning Ordinance in this unique circumstance causes this building to be held to the same standards that are applicable to the R6 zoning district when the R6 property constitutes a buffer zone.

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

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

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

The literal enforcement of the “minimum lot area per unit” requirement of the R6 zoning district as it applies to a D4 Zone building will result in a practical difficulty and an unnecessary hardship to the Petitioner. The Property is zoned as a D4 Zone overlay with an underlying R6 zoning district. Although the building is designed to be built in all respects as intended by the Zoning Ordinance, that is, with the standards of the D4 Zone, it is clear that the application of the “minimum lot area per unit” limitation found in the R6 zoning district, if applied to this particular property in this unique situation, will not only cause the Petitioner a practical difficulty and an unnecessary hardship, but also causes a conflict between the standards of the D4 Zone and the R6

zoning district standards. First, unlike other R6 zoning districts in the City, the Property abuts all public property or a public street. Other R6 zoning district properties are intended as buffer zones to single family residential. The hardship that is caused is that this R6 zoning district standard does not coordinate with either the unusual location of the Property, or the D4 Zone building design - requirements. The result is that application of the “minimum lot area per unit” does not affect the size of the building, but has the unintended result of artificially and arbitrarily limiting the use of the building by reducing the number of units. This literal enforcement of the “minimum lot area per unit” requirement has no purpose in this circumstance. The hardship is caused because of the unique siting of this Property and the requirements of the Zoning Ordinance that the building be built under the D4 Zone regulations.

Also, there is a direct conflict between the use of this building as permitted in the D4 Zone and the limitation of that use if the R6 zoning district “minimum lot area per unit” standard is literally enforced. All other elements of the building are D4 Zone requirements, including without limitation the fact that the building must be moved forward to the frontage line (whereas in the R6 zoning district there is a front setback). There are no setbacks required in the D4 Zone as there are required in the R6 zoning district. The “minimum lot area per unit” requirement of the R6 zoning district is obviously set forth in order to control the size of the multifamily dwellings in the R6 zoning district that buffer on single family residential zoning districts. This Property is not a buffer for a single family and therefore the literal enforcement of the Zoning Ordinance is not only difficult to coordinate with the D4 Zone, but is actually in conflict with that requirement and has no purpose in this unique circumstance.

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

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

The granting of the variance requested by Petitioner will not be contrary to the spirit and purpose of the Zoning Ordinance nor will it be detrimental to the public health, safety and welfare. In fact, Petitioner maintains that the construction of the proposed building in its entirety in accordance with the Downtown Birmingham Overlay District requirements, and not with the R6 zoning district requirements, is squarely within the purpose and intent of the Zoning Ordinance. All other elements of this building must be built in accordance with the Downtown Birmingham

Overlay District. The building must be moved to the frontage line, the height is pursuant to the Overlay District Ordinance, the placement of other elements of the building are in accordance with the Overlay District Ordinance. The size and location of the building are in accordance with elements of the Downtown Birmingham Overlay District, and, importantly, the building does not constitute a buffer next to single family residential, as in the case with other R6 zoning districts in the City. This “buffer” zone intent of the R6 zoning district does not reasonably apply to property which is not in a location that is a buffer to any district.

On the other hand, the purpose, spirit and intent of the Downtown Birmingham Overlay District is clearly set forth in Section 3.01. It encourages the development in the D4 Zone in accordance with the Downtown Birmingham Overlay District (see Section 3.01(A)). Further, the purpose of the Downtown Birmingham Overlay Districts is to encourage a “form of development” that will maintain and enhance the economic vitality of the Downtown Birmingham and “...maintain the desired character of the City of Birmingham as stated in the Downtown Birmingham 2016 Plan...” See Section 3.01(B).

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

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

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

The granting of the variance will result in substantial justice to the owner of the Property and the neighboring owners of the Property and the general public. The purposes of the Downtown Birmingham Overlay District are set forth above. The fulfillment of these requirements and the purpose of the Downtown Birmingham Overlay District have been determined by the Planning Commission and the City Commission as being a benefit to the health, safety and welfare of the community. The purpose and planning goals of the Downtown Birmingham Overlay District has been enforced for several years, and has resulted in a vibrant downtown which has benefitted the community as a whole. It would be inconsistent if one property in the D4 Zone were to be singled out and not be able to be used as a D4 building. The R6 zoning district was not intended to be an isolated zone. This Property is isolated. The location of this Property is on the very north end of the Overlay District, and not bordered by any residential property. The unique location of this Property and its triangular size and shape have caused the Petitioner to request that the Property, as unique as it is, be treated as a D4 Zone building and be permitted to be developed under the D4 Zone.

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

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

**THE PRACTICAL DIFFICULTY AND HARDSHIP IS NOT SELF-CREATED.**

The practical difficulty and hardship experienced by this Petitioner is not self-created but exists because of the size, shape, location and natural features of the Property. This Property is isolated at the end of the D4 Zone, is surrounded by public property, and is an unusual size and

shape. The design of the building under the D4 Zone is made possible as a result of the requirements of the D4 Zone. The reasons for this variance and the current development plan is to benefit the City of Birmingham with a building and development that is complimentary to, and consistent with the 2016 Plan as well as the ordinances of the City of Birmingham.

The variance requested in this Petition is further necessary in order to deal with the difficult problems caused by the physical nature and location of this building. The Property is triangular in shape and bordered on one side by a park. On the east side is North Old Woodward, the south side is adjacent to a parking structure and the west side faces a surface parking lot. The shape of the Property, and the fact that it is surrounded by public property causes a unique problem of design and shape of the building. These design elements are resolved pursuant to the D4 Zone.

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

The granting of this dimensional variance in this circumstance given the unique location and special circumstances of this Property is a result of the unique physical characteristics of the Property which creates a practical difficulty and hardship that prevent the Petitioner from the use of the Property in the same manner as enjoyed by other property owners in the area. None of these unique characteristics were created by the Petitioner, but are a result of physical characteristics of an unusually located and shaped property bordered by all public property on a public street.

#### **CONCLUSION FOR REQUESTED DIMENSIONAL VARIANCE**

The variance requested is necessary to preserve the enjoyment and substantial property rights possessed by other property owners in the same D4 Zone of the Downtown Birmingham Overlay District. Further, with the granting of this variance provides the following relief: (i) the Property Owner will not be unreasonably prevented from the use of the Property for a permitted purpose by a literal interpretation of the Zoning Ordinance that serves no purpose in this circumstance; (ii) the literal enforcement of the Zoning Ordinance will not result in unfair and unnecessary hardship to the Petitioner; (iii) the granting of the variance will not be contrary to the spirit and purpose of the Zoning Ordinance nor contrary to the public health safety and welfare; and (iv) the granting of the variance will result in substantial justice to the Property Owner, the owners of property and the general public. Finally, the practical difficulty and unnecessary hardships experienced by the Petitioner are not caused by the Petitioner. The granting of this variance will

produce a situation where the development of this Property and building in this part of the D4 Zone will, in all ways, comply with the purpose and objective of the Downtown Birmingham 2016 Plan.

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

Very truly yours,

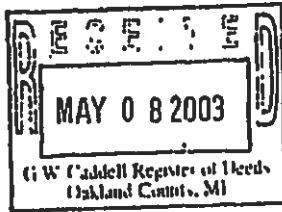
WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, P.C.



Richard D. Rattner

RDR/cmc  
Enclosure

LIBER 29097 PAGE 719



C.S. 1,80 58-03

229692  
LIBER 29097 PAGE 719  
\$172.00 DEED COMBINED  
14.00 REMUNERATION  
05/08/2003 03:57:14 P.M. RECEIPT# 3876  
PAID RECORDED - OAKLAND COUNTY  
G. WILLIAM CADDILL, CLERK OF DEEDS IN CHARGE

**MASTER DEED**

**BROOKSIDE TOWNHOMES OF BIRMINGHAM**

XX

THIS MASTER DEED is made and executed on this 7<sup>th</sup> day of May, 2003, by Addison-Kaftan, L.L.C., a Michigan limited liability company (hereinafter referred to as "Developer"), whose address is 25505 West Twelve Mile Road, Suite 2600, Southfield, Michigan 48034, pursuant to the provisions of the Michigan Condominium Act (Act 59 of the Public Acts of 1978, as amended).

WHEREAS, Developer desires by recording this Master Deed, together with the Bylaws attached hereto as Exhibit A and the Condominium Subdivision Plan attached hereto as Exhibit B (both of which are hereby incorporated herein by reference and made a part hereof), to establish the real property described in Article II below, together with the improvements located and to be located thereon, and the appurtenances thereto, as a residential condominium project under the provisions of the Act.

NOW, THEREFORE, Developer, by recording this Master Deed, hereby establishes Brookside Townhomes of Birmingham as a residential condominium project under the Act and declares that Brookside Townhomes of Birmingham shall be held, conveyed, hypothecated, encumbered, leased, rented, occupied, improved, and otherwise utilized, subject to the provisions of the Act, and the covenants, conditions, restrictions, uses, limitations and affirmative obligations set forth in this Master Deed and Exhibits A and B hereto, all of which shall be deemed to run with the land and be a burden and a benefit to Developer, its successors and assigns, and any persons acquiring or owning an interest in the Condominium Premises, and their grantees, successors, heirs, personal representatives and assigns.

**ARTICLE I**

**TITLE AND NATURE**

The Condominium Project shall be known as Brookside Townhomes of Birmingham, Oakland County Condominium Subdivision Plan No. 1532. The Condominium Project is established in accordance with the Act. The Units contained in the Condominium, including the number, boundaries, dimensions, area and volume of each Unit, are set forth completely in the Condominium Subdivision Plan attached to this Master Deed as Exhibit B. Each Unit is capable of individual utilization by virtue of having its own entrance from and exit to a Common Element of the Condominium Project. Each Co-owner in the Condominium Project shall have an exclusive right to his Unit and shall have an undivided and inseparable right to share with other Co-owners the Common Elements of the Condominium Project.

OK-G.K.

O.K. - RC



## ARTICLE II

## LEGAL DESCRIPTION

The land which is subject to the Condominium Project established by this Master Deed is described as follows:

A parcel of land being part of the Southwest 1/4 of Section 25, T. 21N., R. 10 E., City of Birmingham, Oakland County, Michigan, described as the North 40.00 feet of Lot 16 and all of Lots 17 and 18 of "Assessor's Plat No. 27", a replat of Lots 25 through 39, inclusive, Lot 52 and part of Lots 53 and 54 of "Northern Add'n." (sometimes called "Willits Plat"), Lots 6 through 9, inclusive, and Lots 11 through 15, inclusive, of "Park Subdivision" of part of Lots 53 through 56, inclusive, 58 and 59 of "Willits Plat of Northern Add'n." according to the Plat thereof as recorded in Liber 6 of Plats, Page 46, Oakland County Records. Excepting therefrom a portion of Lot 18 deeded to the City of Birmingham through Quit Claim Deed recorded in Liber 27485, Page 626, Oakland County Records and described as commencing at the Northeast corner of said Lot 18, thence S. 69°26'20" W. (record) 109.97 feet (measured) along the North line of said Lot 18 to a point on the approximate centerline of the Rouge River and point of beginning; thence from said point of beginning and continuing S. 69°26'20" W. (record) 77.49 feet (measured) along said North line of Lot 18 to the Northwest corner of said Lot 18; thence S. 30°40'20" E. (record) 61.14 feet (measured) along the West line of said Lot 18 to a point on said approximate centerline of the Rouge River; thence the following two (2) courses along said approximate centerline of the Rouge River, N. 34°11'59" E., 77.00 feet and N. 05°16'41" E., 22.00 feet to the point of beginning.

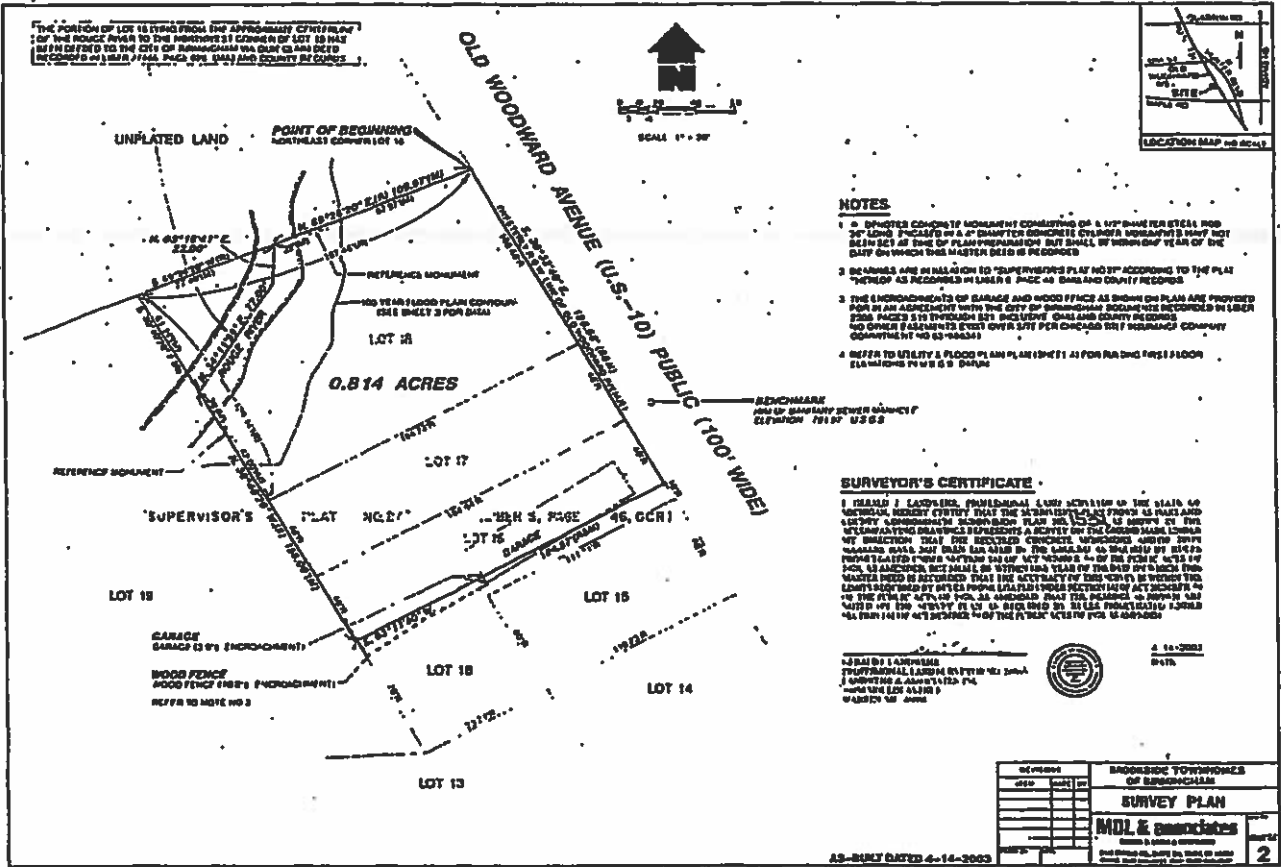
More particularly described as beginning at the Northeast corner of said Lot 18 of "Assessor's Plat No. 27" (said point also being on the Westerly right-of-way line of Old Woodward Avenue, public, 100 feet wide); thence from said point of beginning S. 30°33'40" E., 196.68 feet (record and measured) along the East line of said Lots 16, 17 and 18 and Westerly right-of-way line of Old Woodward Avenue; thence S. 63°11'53" W., 184.57 feet (record and measured) to a point on the West line of said Lot 16; thence N. 30°40'20" W. (record) 156.00 feet (measured) along the West line of said Lots 16, 17 and 18 to a point on the approximate centerline of the Rouge River as defined in Quit Claim Deed recorded in Liber 27485, Page 626, Oakland County Records; thence the following two (2) courses along said approximate centerline of the Rouge River, N. 34°11'59" E., 77.00 feet and N. 05°16'41" E., 22.00 feet to a point on the North line of said Lot 18; thence N. 69°26'20" E. (record) 109.97 feet (measured) along said North line of Lot 18 to the point of beginning. Containing 0.814 acres or 35,442 square feet of land.

## ARTICLE III

## DEFINITIONS

Certain terms are utilized in this Master Deed and Exhibits A and B, and are or may be used in various other instruments such as, by way of example and not limitation, the Articles of Incorporation and rules and regulations of the Brookside Townhomes Condominium Association, a Michigan nonprofit corporation, and deeds, mortgages, liens, land contracts, easements and other instruments affecting the establishment of, or transfer of, interests in Brookside Townhomes of Birmingham. Wherever used in such documents or any other pertinent instruments, the terms set forth below shall be defined as follows:





THE PORTION OF LOT 16 LYING FROM THE APPROXIMATE CENTERLINE OF THE ROUGE RIVER TO THE NORTHEAST CORNER OF LOT 16 HAS BEEN DEPOSITED TO THE CITY OF BROADVIEW VIA DEED RECORDED IN LIBER 2766, PAGE 906, 2843 AND SQUARE 82 CORNER.

**NOTES**

1. MONUMENTS CONFORM TO MONUMENT CONVENTIONS OF ILLINOIS PER STATE 1905 20' LONG PINNACLES IN 4" DIAMETER BENCHMANS INDICATIVE 2' HIGH MUST BE IN SET AS TIME OF PLAN PREPARATION BUT SHALL BE WITHIN ONE YEAR OF THE DATE ON WHICH THIS MASTER DEED IS RECORDED.
2. BENCHMANS ARE IN ALL LOTS TO "SUPERVISOR'S PLAN NO. 27" ACCORDING TO THE PLAN THEREOF AS RECORDED IN LIBER 6 PAGE 48 BENCH AND CURVE RECORDS.
3. THE ENCROACHMENTS OF GARAGE AND WOOD FENCE AS SHOWN ON PLAN ARE PROVIDED FOR IN AN AGREEMENT WITH THE CITY OF BROADVIEW BOUNDARIES RECORDED IN LIBER 2766 PAGES 810 THROUGH 817 INCLUDING CHAIN AND CURVE RECORDS AND OTHER AGREEMENTS EXCEPT OWNER'S CITY OF CHICAGO FIRE INSURANCE COMPANY DOCUMENT NO. 63-000331.
4. REFER TO UTILITY & FLOOD PLAN PLANS SHEET 11 FOR RAIN AND FLOOD FLOOR ELEVATIONS PER W.S.D. DRAWING.

**SURVEYOR'S CERTIFICATE**

I, JEROME J. LAMARCA, PROFESSIONAL LAND SURVEYOR OF THE STATE OF ILLINOIS, HEREBY CERTIFY THAT THE ABOVE SURVEY PLAN FROM AS PART AND CITY RECORDS AND RECORDS PLAN NO. 27, IS CORRECT IN THE MEASUREMENTS THEREIN REPRESENTING A SURVEY OF THE LANDS HEREIN SHOWN BY BENCHMANS THAT HAVE BEEN MADE IN THE COURSE OF MY DUTY AS A SURVEYOR. I HAVE PERSONALLY EXAMINED THE MONUMENTS AND BENCHMANS SHOWN ON THIS PLAN AND HAVE BEEN SATISFIED THAT THE ACCURACY OF THIS SURVEY IS WITHIN THE LIMITS REQUIRED BY THE ILLINOIS PROFESSIONAL LAND SURVEYORS ACT. I HAVE ALSO PERSONALLY EXAMINED THE CHAIN AND CURVE RECORDS AND OTHER AGREEMENTS EXCEPT OWNER'S CITY OF CHICAGO FIRE INSURANCE COMPANY DOCUMENT NO. 63-000331.

JEROME J. LAMARCA  
 PROFESSIONAL LAND SURVEYOR NO. 11710  
 11710 N. W. 117th St.  
 WILSON, ILL. 60181

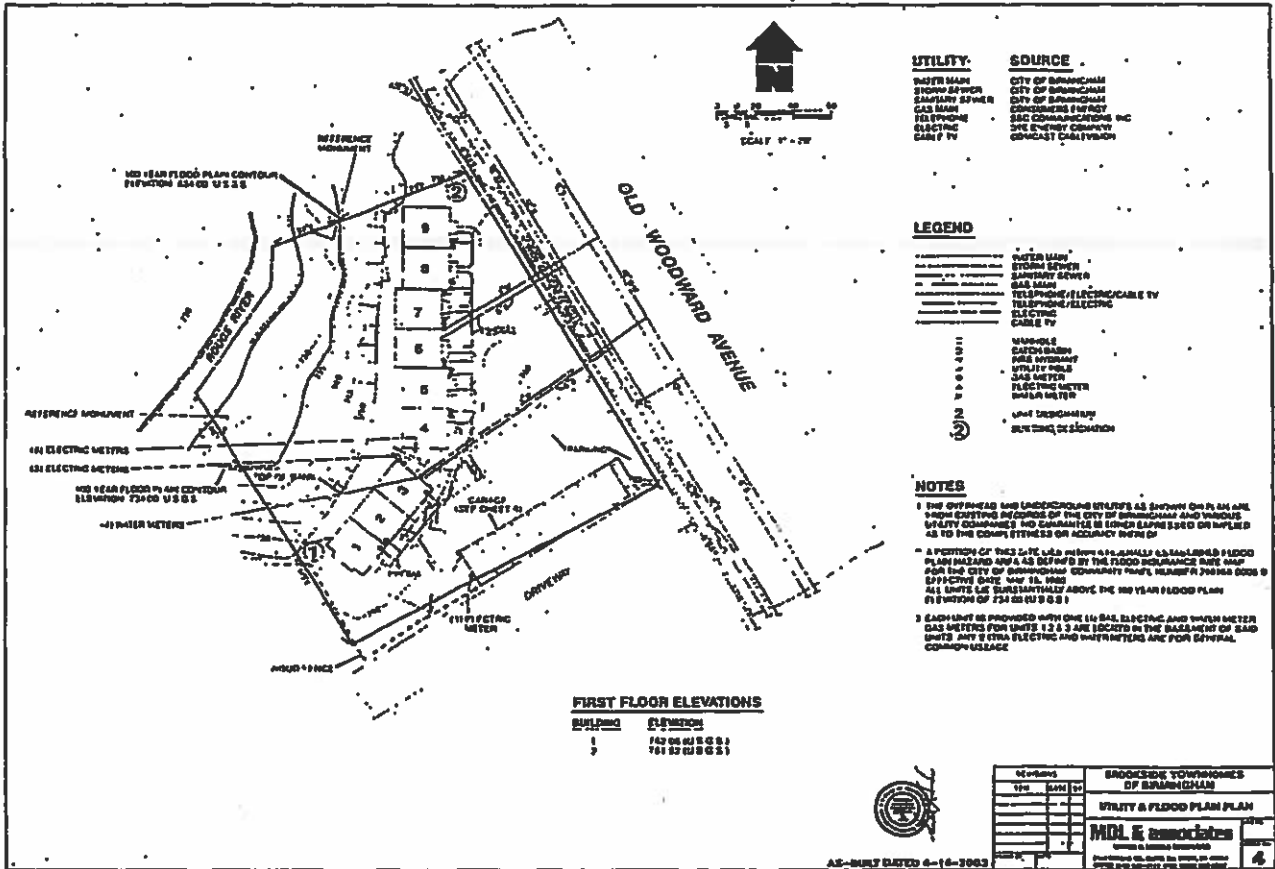


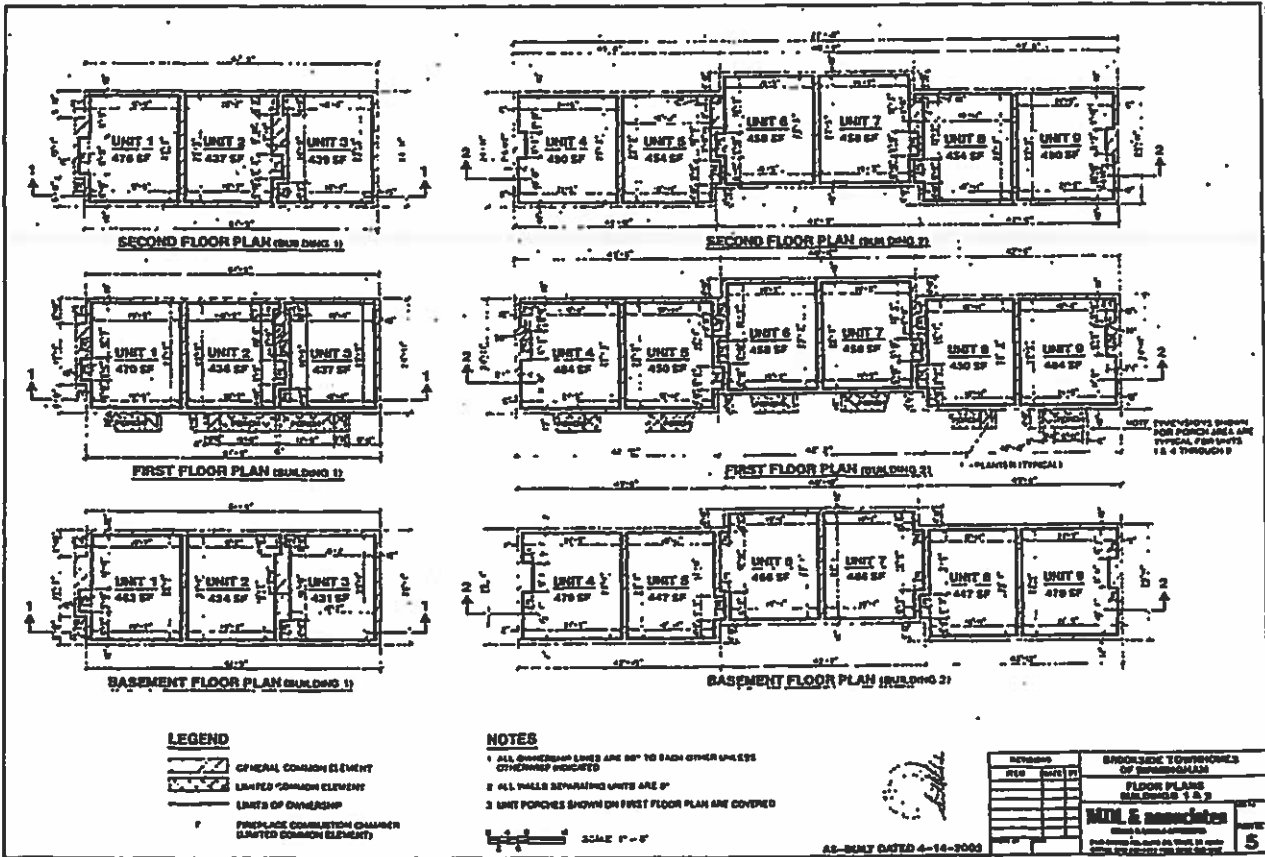
4-14-2003  
 DATE

OWNER		BROADSIDE TOWNSHIP OF BROADVIEW	
DATE	SCALE	SURVEY PLAN	
		MOL & Associates	
		SHEET 2	

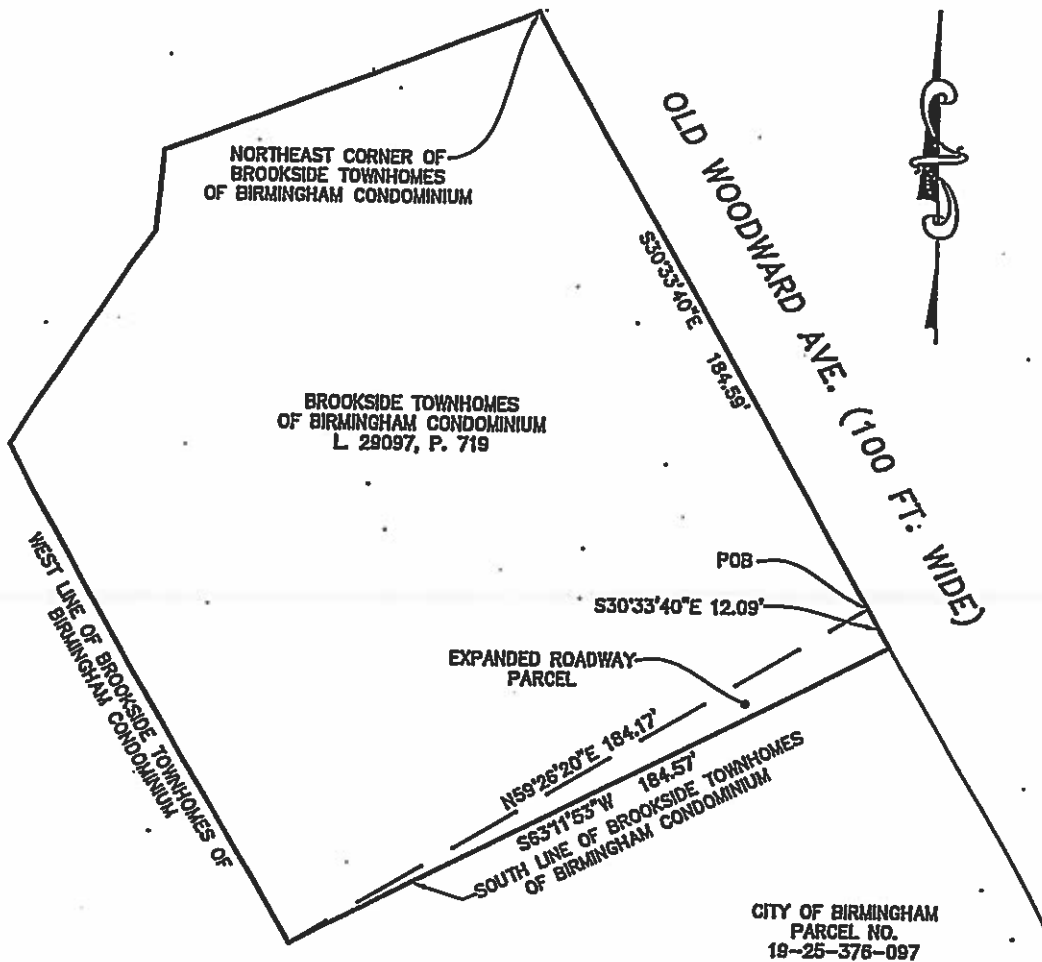
AS-BUILT DATED 4-14-2003







## "EXPANDED ROADWAY PARCEL"



### DESCRIPTION:

COMMENCING AT THE NORTHEAST CORNER OF BROOKSIDE TOWNHOMES OF BIRMINGHAM CONDOMINIUM, ACCORDING TO THE MASTER DEED RECORDED IN LIBER 29097, PAGE 719, OAKLAND COUNTY RECORDS, OAKLAND COUNTY, MICHIGAN; THENCE S30°33'40"E 184.59 FEET ALONG THE WESTERLY LINE OF OLD WOODWARD AVENUE (100 FEET WIDE) TO THE POINT OF BEGINNING; THENCE CONTINUING S30°33'40"E 12.09 FEET; THENCE S63°11'53"W 184.57 FEET ALONG THE SOUTH LINE OF SAID BROOKSIDE TOWNHOMES OF BIRMINGHAM CONDOMINIUM; THENCE N59°26'20"E 184.17 FEET TO THE POINT OF BEGINNING.

REV. 11/04/2015  
 REV. 11/02/2015  
 REV. 10/27/2015

**ALPINE**  
 ENGINEERING, INC.  
 CIVIL ENGINEERS & LAND SURVEYORS

46892 WEST ROAD  
 SUITE 109  
 NOVI, MICHIGAN 48377  
 (248) 926-3701 (BUS)  
 (248) 926-3765 (FAX)

CLIENT: <b>ALDEN DEVELOPMENT GROUP</b>	DATE: 10-19-15
<b>ACCESS EASEMENT</b>	DRAWN BY: JRV
	CHECKED BY: GLM
<b>369 N. OLD WOODWARD AVE.</b> SECTION: 25 TOWNSHIP: 2N RANGE: 10E CITY OF BIRMINGHAM OAKLAND COUNTY MICHIGAN	0 20 40
	FBK: 1
	CH#: 14-472
	SCALE FOR 1"=40 FL VER 1"= FL