

# BOARD OF ZONING APPEALS AGENDA

City of Birmingham  
Commission Room of the Municipal Building  
151 Martin Street, Birmingham, Michigan  
Tuesday, January 10, 2017  
7:30 PM

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

	Address	Petitioner	Appeal	Type/Reason
1.	404 PARK	404 PARK LLC	16-35	DIMENSIONAL/USE
2.	2100 E MAPLE	WHOLE FOODS	17-01	SIGN

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, DECEMBER 13, 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, December 13, 2016. Chairman Charles Lillie convened the meeting at 7:30 p.m.

**Present:** Chairman Charles Lillie; Board Members Kevin Hart, Jeffery Jones, Randolph Judd, Peter Lyon, John Miller, Erik Morganroth; Alternate Board Member

**Absent:** Alternate Board Members Jason Canvasser, Cynthia Grove

**Administration:** Matthew Baka, Sr. Planner  
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 are no interpretations on this evening's agenda.

**T# 12-93-16**

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

**Motion by Mr. Jones**

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

**Motion carried, 7-0.**

**VOICE VOTE**

**Yeas:** Jones, Morganroth, Hart, Judd, Lillie, Lyon, Miller

Nays: None  
Absent: None

**T# 12-94-16**

**555 S. OLD WOODWARD AVE.  
(Appeal 16-39)**

The owner of the property known as **555 S. Old Woodward Ave.** are requesting the following variance to illuminate an existing building identification sign above the first floor sign band at the Triple Nickel restaurant:

**A. Chapter 86, Article 01, Section 1.10 B (5) d of the Sign Ordinance** states that non-illuminated signs which identify the entire structure may be permitted above the first floor. The applicant is requesting a variance to allow illumination of the existing building identification sign.

This property is zoned B-3.

Mr. Baka noted the applicant appeared before the Design Review Board on November 2, 2016 for a review of the proposed illumination. The Board did not approve the sign, as it does not comply with the Sign Ordinance. However they did express that they had no objection to the proposal.

Chairman Lillie pointed out that the applicant already has two small illuminated signs. Mr. Baka added that they are not maxed out on their signage. In response to Mr. Jones, Mr. Baka explained if an illuminated sign of the same size was placed below the line between the first and second floor it would be compliant with the Ordinance. Discussion brought out that the mechanical screening at the top of the building is illuminated and allowable because it is architectural lighting. Further, lighting that washes the side of the building, including the sign, would be allowed.

Mr. Judd received confirmation that the protruding sign on the east side of the same elevation could be larger. He noted that traveling south on Woodward Ave. trees pretty well block the view of the building until practically to the side streets. Coming northbound, illumination could be beneficial.

Mr. Miller noted that there are a number of illuminated signs along Woodward Ave. between Oak and Lincoln that are at least as high or higher. Mr. Baka explained that is because they are on one-story buildings. Mr. Hart added that mezzanines are not included as a story.

Mr. Jack Reinhart, one of the partners of Triple Nickel, was present with Mr. Paul Deters with Metro Detroit Signs. Mr. Reinhart explained that people cannot find Triple Nickel

because it is in darkness and tucked into the parking structure. This section of Woodward Ave. is dark and unlit. At 55 mph this building signage cannot be seen from Woodward Ave. without being lit up. He believes their proposed lighting is undersized and subtle. It has to do with aesthetics and the artistic presentation to the community. They could comply with the Ordinance and do a three times larger sign at street level, but he does not think that helps them or the City.

Responding to Mr. Jones, Mr. Reinhart said the Sign Ordinance has not changed since he built his building. Mr. Judd stated that the City has an Ordinance and whether the board agrees with it or not, they are not supposed to care. The BZA is there to interpret the law. Mr. Reinhart answered that the board has the ability to superimpose practicality over a statute.

The chairman took public comment at 8 p.m.

Mr. Paul Deters asked the board to consider that the restaurant business is an impulse business. A lot of people driving down the road make their decision about where to eat when they identify a sign.

**Motion by Mr. Miller**

**Seconded by Mr. Hart to approve Appeal 16-39, 555 S. Old Woodward Ave., Triple Nickel, He believes the appeal is really about the incredibly unique location of this building, and really nothing else. This location is so unique to the City that Mr. Miller thinks approval here would certainly not set a precedent for any other building, or any other type of sign. The building is located in an ugly, dead zone. A block to the north is a raw parking deck with transformers lined in front of it, completely dark and unlit. To the south there are dumpsters and more parking deck.**

**So there is this entrepreneur that is attempting to vitalize this one part of Woodward Ave. that is the darkest, most unappealing part of the stretch of Woodward Ave. between Lincoln and Oak. And, between Lincoln and Oak there are a number of signs that are taller than this, such as The Madney Group; 390 Park; 300 Park; Holiday Inn Express; Kroger right on the corner, the word "Pharmacy;" AAA; Papa Joe's; Wells Fargo; PNC Bank; The Private Group; not to mention anything on N. Old Woodward Ave. on the other side with the Birmingham Theater; Merrillwood; The Plaza.**

**Therefore he doesn't believe the board is doing anything that would be negative in terms of the neighborhood, and he thinks it would be enhancing, if you want to call that the neighborhood - that stretch of Woodward Ave. The board would really be enhancing that neighborhood and livening it up by adding some lighting and some identity to that dead zone.**

**Mr. Miller thinks this problem has not been self-created. Again, it is due to the unique quality of the site and the unique circumstances of the property. For those reasons he thinks because of this unique piece the board should approve the appeal. Further, he feels that would be an asset to that stretch of Woodward Ave. where the building is located. The motion is tied to the plans as submitted.**

Mr. Judd thought the argument presented by the petitioner was very good. However in this case, once again, this board is not here to make the law. They have the unenviable task of interpreting the ordinances. He doesn't see anything that sways him In this and therefore won't support the motion.

Mr. Morganroth spoke in support of the motion. He lives in this area and appreciates the activity the restaurant has created at this end of Birmingham. He sees the value in what the applicant is trying to accomplish.

Mr. Jones said he would not be able to support the motion. Discretion in the board's instance is limited by the statute. Appeals from this board go to Circuit Court. So, there is a consideration as to whether the board wishes to have the City engage in certain expenses it might not otherwise incur. He feels a design conforming to the Ordinance could have achieved what the applicant desires. The applicant could have constructed a one-story building and put the sign at the top if that was a major concern. Mr. Jones does not think this application has met any one of the four criteria for a variance because he doesn't believe there is an unnecessary hardship. They can put up signage, so he will not be supporting the motion.

Chairman Lillie announced he will not be supporting the motion either. He does not believe the petitioner has established a practical difficulty. In fact he has indicated that he can comply with the Ordinance. The board would be setting a very bad example by approving a variance for somebody who says they can comply with the Ordinance.

Mr. Hart thought this is a perfect example of the appellant demonstrating that he does have a practical difficulty. This is a wonderful building that does substantial justice to the surrounding neighborhood. It is a unique circumstance, and a challenging building. He feels the board should look very closely at what can help this business and what can help the community. There is no injustice to any neighboring properties and he thinks the appellant has demonstrated difficulty and that is why he supports the motion.

Chairman Lillie clarified that the BZA's function is to determine whether or not there is a practical difficulty; not to help businesses.

Mr. Lyon said in this case the board is dealing with the name of a building, which is a little more than just the name of a business within a building, such as the Powerhouse Gym's appeal which this board did not pass. He is swayed by the fact this is a small building standing next to the largest buildings in the City. He went on to note that the

granting of this variance would not be detrimental to the surrounding property owners; that the granting of the variance would not be contrary to the general intent of the Chapter; the granting of the variance will result in substantial justice being done concerning public benefits; and that other property owners will not be adversely affected by the variance. So, for those slim margins, Mr. Lyon indicated his support for the motion.

**Motion carried, 4-3.**

ROLLCALL VOTE

Yeas: Miller, Hart, Lyon, Morganroth

Nays: Jones, Judd, Lillie

Absent: None

**T# 12-95-16**

**1982 BOWERS  
(Appeal 16-40)**

The owner of the property known as **1982 Bowers** requests the following variance to construct a new house.

**A. Chapter 126, Article 4, Section 4.74 of the Zoning Ordinance** requires a minimum of 14 ft. between principal structures. The proposed house is 12.2 ft. away from the adjacent house to the east; therefore a variance of 1.8 ft. is requested.

This property is zoned R-2.

Mr. Worthington noted the existing house sits 5 ft. off the property line and the proposed house is 5.7 ft. off the property line. Therefore the amount of encroachment for the new house is reduced by .7 ft.

Chairman Lillie noted this is a 9-5, 9-5, 5-9 situation.

Mr. Jason Kriger, Architect, observed they are improving the existing condition by building further away from the house to the east. They cannot build a narrower house in order to comply completely because it would be extremely long. Also it would not be a very practical floor plan and nothing like that exists in the neighborhood.

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

**Motion by Mr. Miller**

**Seconded by Mr. Morganroth with regard to Appeal 16-40, 1982 Bowers. Mr. Miller proposes to support the appeal. He believes it is due to the existing**

**conditions of the adjacent properties. The board has seen similar situations like this before. Granting of the appeal will allow the property to be fully developed in a similar fashion to the rest of the neighborhood. The board will be enhancing and reinforcing the neighborhood by supporting this appeal. The house will conform to the other houses on the same street.**

**Mr. Miller believes this is not a self-created. Again, it is due to the houses located on either side and he would tie the approval to the plans as submitted.**

**Motion carried, 7-0.**

ROLLCALL VOTE

Yeas: Miller, Morganroth, Jones, Judd, Hart, Lillie, Lyon

Nays: None

Absent: None

**T# 12-96-16**

**538 PLEASANT  
(Appeal 16-41)**

The owner of the property known as **538 Pleasant** is requesting variances to replace the existing attached garage roof.

**A. Chapter 126, Article 2, Section 2.04 of the Zoning Ordinance** requires a minimum setback of 5 ft. The existing attached garage is 3.8 ft. off the property line; therefore a variance of 1.2 ft. is requested.

**B. Chapter 126, Article 2, Section 2.04 of the Zoning Ordinance** requires a total side yard setback of 17.5 ft. The existing attached garage has a total side yard setback of 13.8 ft.; therefore a variance of 3.7 ft. is requested.

**C. Chapter 126, Article 4, Section 4.74 of the Zoning Ordinance** requires a minimum 17.5 ft. between principal structures. The attached garage is 10.8 ft. away from the adjacent house to the south; therefore a variance of 6.7 ft. is requested.

This property is zoned R-1A.

Mr. Worthington advised the existing home was built in 1941. The owner wants to replace the existing flat roof with a new pitched roof over the existing attached garage, staying within the existing plane. The 6 in. overhang will match what they have now.

Mr. Benjamin Fisher, the homeowner, passed around copies of a cut-away of the roof. He believes the variances may be partially due to the neighbor's house because it sits

closer to his lot line than to theirs in the front part of the home. This work would be done as part of a second-floor addition to the rest of the home. The addition will go over the existing flat roof. There will be no living space over the garage; he will maintain the same exact structure.

There was no one in the audience to offer comment at 8:28 p.m.

**Motion by Mr. Lyon**

**Seconded by Mr. Jones in regard to Appeal 16-41, 538 Pleasant, to approve the three variances advertised. The appellant seeks a variance under Chapter 126, Article 2, Section 2.04 requiring a minimum side setback of 5 ft. The existing garage is 3,8 ft., requiring the new roof of the existing garage to have a variance of 1.2 ft. Chapter 126, Article 2, Section 2.04 requires a total side yard setback of 17.5 ft. However, the existing attached garage has a total side yard setback of 13.8 ft. There a variance of 3.7 ft. is needed to build a new roof. Chapter 126, Article 4, Section 4.74 requires a minimum of 17.5 ft. between principal structures. The attached garage is 10.8 ft. away from the adjacent house to the south, therefore a variance of 6.7 ft. is requested to build a roof on the existing garage.**

**Mr. Lyon believes that strict compliance is unduly burdensome. In this case the appellant seeks replace a flat roof and put a pitch on it. Recognizing the rain and snow and other things we get in this section of the country he believes this does substantial justice to the appellant as well as the homeowner. He is not expanding the footprint and it is a minimal sloped roof. Mr. Lyon thinks this is the minimum variance that would be necessitated for a pitched roof in this area. He tied the motion to the plans presented tonight.**

**Motion carried, 7-0.**

Mr. Miller said he will support the motion. He added that with the design of the existing home the flat roof on the garage is kind of a surprise. So he believes these variances will allow the garage to be more compatible with the existing home and also to have a more reasonable design within the context of the rest of the neighborhood.

**ROLLCALL VOTE**

Yeas: Lyon, Jones, Hart, Judd, Lillie, Miller, Morganroth

Nays: None

Absent: None

**T# 12-97-16**

**CORRESPONDENCE (none)**

**T# 12-98-16**



## **GENERAL BUSINESS**

Chairman Lillie thought someone should look into the issue on glazing. The whole first floor of the Triple Nickel is kitchen on the Woodward Ave. side. It is all exposed to the public and looks terrible. There is the same thing on the Townsend. Also, it is terrible to look at Save-On Drugs. Mr. Johnson stated planning is aware of these concerns and has been working to address them.

**T# 12-99-16**

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

**T# 12-100-16**

## **ADJOURNMENT**

No further business being evident, the board members passed a motion to adjourn at 8:32 p.m.

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Bruce R. Johnson, Building Official

# **CASE DESCRIPTION**

## **404 Park 16-35**

**Hearing date: January 10, 2017**

The owners of the property known as 404 Park are requesting the following use and dimensional variances to construct a multiple-family residential building in the R2 zone.

- A. Chapter 126, Article 2, Section 2.07 of the Zoning Ordinance permits the development of the subject property for an R-2 dwelling – one family. The applicant is proposing a four (4) unit multi-family dwelling; therefore, a use variance to allow a multi-family dwelling is requested
- B. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance allows maximum lot coverage of 30% (3,732 sq. ft.). The applicant is proposing 55.9% (6954 sq. ft.) of lot coverage; therefore, a variance of 25.9% (3222 sq. ft.) is requested.
- C. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires a minimum open space of 40% (4976 sq. ft.). The applicant is proposing 22.5% (2,799 sq. ft.) open space; therefore, a variance of 17.5% (2,177 sq. ft.) is requested.
- D. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires a minimum rear setback of 30'. The applicant is proposing a rear setback of 13'; therefore, a variance of 17' is requested.
- E. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires combined front and rear setback of 55'. The applicant is proposing a combined front and rear setback of 33.5'; therefore, a variance of 21.5' is requested.
- F. Chapter 126, Article 4, Section 4.61 A (2) of the Zoning Ordinance requires a minimum side yard setback of 10' for homes on a corner lot. The applicant is proposing a 4' side yard setback; therefore, a variance of 6' is requested.
- G. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires a minimum lot area per unit of 6,000 sq. ft. The applicant is proposing four (4) units for a minimum lot area per unit of 3,000 sq. ft.; therefore, a variance of 3,000 sq. ft. per unit is requested.

## **CASE DESCRIPTION**

- H. Chapter 126, Article 4, Section 4.75 of the Zoning Ordinance requires an attached garage to be setback 5' from the point of the front facade set furthest back from the front property line. The applicant is proposing to place the garage 3.5' in front of the house; therefore, a variance of 8.5' is requested.

**Staff Notes:** The property located at **404 Park** has been under consideration for rezoning several times in the past 4 years. Most recently, the applicant requested rezoning to the newly created TZ1 transition zone. This request was denied by the City Commission on June 27, 2016. Accordingly, the applicant is now requesting the necessary variances to construct a multiple-family dwelling as would be permitted under the development standards of the TZ1 zone.

This property is zoned R2, Single Family Residential.

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Matthew Baka  
Senior Planner

Application Date: 9/15/2016



Hearing Date: 10-13-16

Received By: SM

Appeal # 16-35

### Board of Zoning Appeals Application

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

#### Property Information:

Street address: 404 Park St., Birmingham, MI		Sidwell Number: 19-25-451-021 (019)	
Owners name: 404 Park, LLC		Phone #: (248) 433-0575	
Owners address: 30100 Telegraph Road, Suite 366		Email: cmd@corepartners.net	
City: State: Bingham Farms, MI		Zip code: 48025	
Contact person: Charles DiMaggio		Phone #: (248) 433-0575	

#### Petitioner Information:

Petitioner name: 404 Park, LLC		Phone #: (248) 433-0575	
Petitioner address: 30100 Telegraph Road, Suite 366		Email: cmd@corepartners.net	
City: Bingham Farms		State: MI	
		Zip Code: 48025	

#### Required Attachments:

- Original Certified Survey X Original BZA application X 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. Rattner

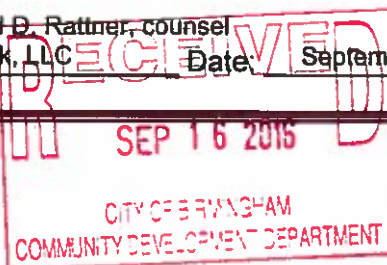
By Richard D. Rattner, counsel  
for 404 Park, LLC Date: September 15, 2016

Revised 12/9/2013

HAS SIGN BY

13/9/20

Richard D. Rattner



**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 15<sup>th</sup> day of the month preceding the next regular meeting. If the 15<sup>th</sup> 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

By Richard D. Rattner, counsel  
for 404 Park, LLC



REVISED



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

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Suite 300  
Birmingham, Michigan 48009

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

December 14, 2016

Richard D. Rattner  
rdr@wwrplaw.com

**HAND DELIVERED**

Board of Zoning Appeals  
City of Birmingham  
151 Martin St.  
Birmingham, MI 48012

**Re: 404 Park Street, Birmingham, MI ("Property") – 404 Park, LLC ("Applicant")  
Use and Dimensional Variance Application ("Application") – Supplement**

Dear Members of the Board of Zoning Appeals:

Please accept the following as a hardship letter on behalf of the Applicant in support of its request for the following variances:

- A. Use Variance. A use variance from Birmingham Zoning Ordinance ("Zoning Ordinance") Section 2.08 to allow the development of a 4-unit multiple-family dwelling on the Property (the ordinance does not allow a multiple-family dwelling to be built) in the R-2 District).
- B. The Following Dimensional Variances:
  - (i) Minimum Lot Coverage. The variance of 25.9% from Zoning Ordinance Section 2.08 to allow a maximum lot coverage of 55.9% (Zoning Ordinance requirement is a maximum of 30%);
  - (ii) Minimum Open Space. A variance of 17.5% from Zoning Ordinance Section 2.08 to allow a minimum open space of 22.5% (Zoning Ordinance requirement is a minimum of 40%);
  - (iii) Rear Setback. A variance of 13 feet from Zoning Ordinance Section 2.08 to allow a rear setback of 17 feet (Zoning Ordinance requirement is a minimum of 30 feet);
  - (iv) Combined Front and Rear Setback. A variance of 21.5 feet from Zoning Ordinance Section 2.08 to allow a combined front and rear yard setback of 33.5 feet (ordinance requirement is a minimum of 55 feet);



- (v) Side Yard Setback. A variance of 1 foot from Zoning Ordinance Section 2.08 to allow a side yard setback of 4 feet on Oakland Avenue (Zoning Ordinance requirement is 5 feet);
- (vi) Minimum Lot Area per Unit. A variance of 3,000 square feet from Zoning Ordinance Section 2.08 to allow a minimum lot area per unit of 3,000 square feet for 4 units (Zoning Ordinance requirement is 6,000 square feet per unit – proposed development includes 4 units);
- (vii) Garage Setback. To allow a variance of 5 feet from Zoning Ordinance Section 4.75 to allow a setback for a garage from the front façade of a structure of 0 feet (Zoning Ordinance requirement is 5 feet).

#### **Executive Summary**

The Planning Department and the Planning Board have recommended that the Subject Property be rezoned to the Transitional Zoning District or TZ-1. The City Commission, at its meeting of June 27, 2016, denied the Applicant's rezoning application. The Applicant now files this Application to obtain the necessary variances in order to use the Property in a reasonable manner and develop this parcel as anticipated and envisioned by the City's Planning Board and professional consultants.

**ARTICLE 8.01(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 its size and location. The Property is surrounded by Woodward, Oakland and Park on three of the four sides. These unusual circumstances cause a practical difficulty and unnecessary hardship for the Applicant and prevent the Applicant from using the Property in the same manner as other property owners within the R2 zoning district.

The Property is uniquely situated in a location that prevents its feasible development into a single-family residence, pursuant to the R2 Zoning District, as exists on neighboring lots. None of the other properties in the area share three sides with major roadways, or have extensive frontage on busy thoroughfares. The other properties on Oakland Ave. to the immediate west of 404 Park Street are used either as office (at Oakland Ave. and N. Old Woodward) or as residential. These residential uses exist on typical rectangular lots with a clearly defined front yard. The Property has three potential front yards.

The size of this Property is approximately 12,400 sq. ft. The R2 Zoning Ordinance requires that a 4-unit multiple-family structure be on a minimum lot of size of 24,000 sq. ft., or 6,000 sq. ft. per unit. In order to fulfill the planning goal of a buffering use of multiple-family of reasonable size units, the Applicant will require a variance for the minimum lot area per unit of 3,000 sq. ft. (4 x 3,000 sq. ft. = 12,000 sq. ft.).

Granting these minor use and dimensional variances will allow Applicant to develop the Property as multiple-family residential. Applicant requires no other dimensional variances. Denying these variances would prevent the Applicant from developing a multiple-family structure, and reasonably using the Property as a "buffer use," as envisioned by the Planning staff and consultants. Therefore, a strict application of the Ordinance would prevent the Property from being used for the residential use other property owners enjoy, while at the same time frustrating the planning goals of building a structure that buffers the neighborhood to the North.

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

The literal enforcement of the permitted uses and development requirements of the R2 Zoning District will result in a practical difficulty and an unnecessary hardship to the Applicant. The successful development of the Property as single family residential is "highly improbable" according to the City and its consultants.

Pursuant to the studies performed by the City's staff and consultants, literal enforcement of this ordinance, and the failure to grant the variances requested, will prevent the use of the Property in a reasonable manner, that is a 4-unit multiple-family structure. This proposed use is in compliance with the long-range plan for residential buffer uses along Oakland Ave. These variances will also allow the newly proposed structure to buffer the existing single-family dwellings to the North from the more intense office, commercial and parking uses to the South side of Oakland Ave.

By granting the use variance and the requested dimensional variances, the Applicant believes that it can develop the property into a 4-unit multiple-family use that will be attractive and a benefit to the community. By denying the requested variances, the literal enforcement of the Zoning Ordinance will result in practical difficulty and unnecessary hardship to the Applicant and Applicant will not be able to make reasonable use of the Property.

**ARTICLE 8.01(F)(3)(a)(iii) – THE GRANTING OF THE VARIANCES 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 variances requested by Applicant will not be contrary to the spirit and

purpose of the Zoning Ordinance nor will they be detrimental to the public health, safety and welfare of the City's citizens. Applicant maintains that the construction of a 4-unit multiple-family residential structure, pursuant to the use and dimensional variances requested herein, is squarely within the purpose and intent of the Zoning Ordinance, the 2016 Plan and fits the long-range plan for this residential area according to the careful studies performed for the City by its consultants and staff. The 2016 Plan recognizes the need for transition areas to separate the downtown area from adjoining residential areas. The Property is one of those transitional areas.

The proposed 4-unit multiple-family residential structure is in compliance with future land use studies. The granting of the use and dimensional variances requested herein will be consistent with the spirit, purpose and intent of the Zoning Ordinance.

**ARTICLE 8.01(F)(3)(a)(iv) – THE GRANTING OF THE VARIANCES 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 requested use and dimensional variances will result in substantial justice to the Applicant, the owners of property neighboring the Property and the general public. The Property has been vacant since 1989. The purpose of the R2 Zoning District has been enforced for years and the uses allowed are residential. The Property's proposed use is also residential. As such, the granting of these use and dimensional variances will result in substantial justice to the Applicant by allowing the Applicant to use this uniquely located Property for the residential use required and permitted in the R2 Zoning District while, at the same time, to reasonably develop a 4-unit multiple-family structure that buffers the existing neighborhood, which goal is consistent with the plan for that area.

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

The practical difficulty and hardship experienced by this Applicant is not self-created. The Applicant purchased the Property in 2013. When purchased, the Property was a vacant lot bordered on three sides by roads. The unique circumstances of the Property relate to the physical characteristics of the lots i.e., its location (surrounded by three major streets). The Applicant is not the cause of the practical difficulty and unnecessary hardship it now faces. The Applicant simply wants to develop the Property in a manner consistent with the Zoning Ordinance.

**Conclusion**

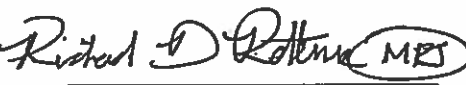
The Applicant seeks to build a 4-unit multiple-family dwelling on the Property. As the Property is zoned R2, the Applicant is limited to a single family residence. The Applicant seeks

a use variance to permit it to construct a 4-unit multiple-family structure on the Property. The Applicant has also requested a number of minor dimensional variances to allow the development and construction of the proposed 4-unit multiple-family residence.

The variances requested are necessary to preserve the enjoyment and substantial property rights possessed by other property owners in the R2 Zoning District. Further, the granting of the requested variances provides the following relief: (i) the Applicant will not be unreasonably prevented from the use of the Property for a permitted purpose by a literal interpretation of the Zoning Ordinance; (ii) the literal enforcement of the Zoning Ordinance will not result in unfair and unnecessary hardship to the Applicant; (iii) the granting of the variance will not be contrary to the spirit and purpose of the Zoning Ordinance nor contrary to the public health safety and welfare; and (iv) the granting of the variance will result in substantial justice to the Applicant, the owners of property and the general public. Finally, the practical difficulty and unnecessary hardships experienced by the Applicant are not caused by the Applicant. The granting of these variances will produce a situation where the development of this Property and building in the R2 Zoning District will comply with the purpose, spirit, intent and objective of the Zoning Ordinance and planning goals.

Applicant requests that the Board of Zoning Appeals favorably consider this Application and grant the use and dimensional variances as submitted.

Respectfully submitted,

By:   
Richard D. Rattner  
Attorney for Applicant

RDR/  
(01084888.04)  
Enclosure



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Richard D. Rattner  
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June 22, 2016

***HAND DELIVERED***

City Commission  
City of Birmingham  
151 Martin St.  
Birmingham, MI 48012

***Re: Application to Include 404 Park Street, Birmingham, MI ("Subject Property" or "Property") in the TZ-1 Zoning District ("Application") – 404 Park, LLC ("Applicant")***

Dear Members of the City Commission:

This letter supplements the Application filed by the Applicant on February 4, 2016. In filing the Application, the Applicant requests the rezoning of the Subject Property from R-2 Single-Family to TZ-1. The rezoning requested in the Application is intended to allow the long-time vacant Subject Property to be redeveloped into an attractive, 4 unit residential structure, consistent with the Birmingham Master Plan (1980) and the Downtown Birmingham 2016 Plan (1996).

**Executive Summary**

This matter, in one form or another, has been before this Commission several times since 2012 and has been the subject of extensive research, study and evaluation by the Applicant, the Planning Department and the Planning Board (the "Planning Board"). That research led to the 2015 establishment of the Transitional Zoning Districts by this City Commission. According to Section 2.41 of the Zoning Ordinance for the City of Birmingham (the "Zoning Ordinance"), part of the District Intent of the Transitional Zoning Districts is to "Provide for a reasonable and orderly transition from, and buffer between commercial uses and predominantly single-family residential areas or for property which either has direct access to a major traffic road or is located between major traffic roads and predominantly single-family residential areas." At every stage of this process the Planning Department and the Planning Board have recommended to this body that the Subject Property be rezoned as B2-C (Applicant's initial request prior to the establishment of the Transitional Zoning Districts) or TZ-1, including the Application now

before the City Commission. The requested rezoning complies with all applicable ordinances and the Master Planning Documents of the City of Birmingham. Rezoning of the Subject Property to TZ-1 will help to maintain the residential character of the Little San Francisco Neighborhood. To again refuse to make a decision on the Applicant's request or to deny same at this stage will represent an unreasonable infringement of the Applicant's substantive due process right to be free from arbitrary and capricious restriction of the use of its property.

The results of the City's research, study and evaluation, and more specifically, studies prepared by the City's consultants, show that redevelopment of the Subject Property as currently zoned for single-family residence (R-2), is highly improbable if not impossible due to the Property's unique characteristics. It is also clear that the City's decisions over the past thirty years have made it impossible to develop the Subject Property in *any* reasonably practicable manner. The City has implemented zoning ordinances and policies in the Birmingham Plan (1980) and the Downtown Birmingham 2016 Plan (1996) that seek to preserve the residential character of the Little San Francisco and other sensitive neighborhoods, while promoting the development of transitional zones that will serve to shield residential districts from encroaching commercial activities in the downtown area. The Planning Board has consistently and repeatedly determined that the requested rezoning of the Subject Property to TZ-1 and its subsequent development would meet all applicable zoning requirements and is in harmony with the City's stated planning objectives.

While the Applicant initially sought to rezone the Property from R-2 Residential to B2-C general business, following the creation of Transitional Zoning Districts it filed the Application on February 4, 2016 seeking rezoning to TZ-1. Under the new TZ-1 designation, the Applicant could erect one of three possible residential dwellings: (1) attached single-family, (2) multiple-family, and (3) one-family (R3). See §2.41 of the Birmingham Zoning Ordinance (the "Zoning Ordinance"). Rezoning the Subject Property to TZ-1 would help preserve the residential character of the area as required by the Birmingham Master Plan (1980) (the "Birmingham Plan") and the Downtown Birmingham 2016 Plan (the "2016 Plan", and referred to collectively with the Birmingham Plan as the "Master Planning Documents"), and foster the development of transitional zones as desired under the 2016 Plan.

Despite the recommendations of the Planning Board and the compelling information the Applicant has presented to it, the City Commission has repeatedly refused to formally act on the Applicant's rezoning applications, most recently on September 21, 2015, instead opting to send the matter back to the Planning Board for additional consideration. These decisions have been made contrary to studies prepared by its own consultants and the determinations of the Planning Board that the Subject Property cannot be feasibly developed as currently zoned and that the proposed rezoning will have no adverse effect on the neighborhood.

To deny this application to rezone the Property to TZ-1 in light of the substantial record supporting such a rezoning is simply not reasonable, and effectively denies the Applicant's right to develop its property in the manner recommended by the City's planners and consultants.

### **The facts and history of 404 Park Street**

#### **1. The history of 404 Park Street**

The Property, known as 404 Park Street, is shallow lot, with 155 feet of frontage on Oakland Avenue, 80 feet of frontage on Woodward Avenue, and 80 feet of frontage on Park Street. While Park Street is a well-traveled residential street, Oakland Avenue and Woodward Avenue are busy thoroughways providing ingress and egress to the Birmingham's busy downtown area and points beyond. The Property is situated in a de facto transitional area moving from the bustling downtown area to the established and historic neighborhood known as "Little San Francisco."

The evidence shows that the City has refused to rezone the Property for nearly three decades, and in effect made *any* use of the Property realistically impossible. Unfortunately, this Property has *remained vacant and unused since 1989* when the then owner razed a deteriorating single-family structure. Prior owners have twice-before requested that the Property be rezoned. First, in 1960 due to "heavy traffic and noise" and again in 1988 for redevelopment for moderate density residential use. Moreover, prior to Applicant's purchase of the Property in 2013, it had been on the market, without any willing purchaser, since 2006.

#### **2. The City Planning Department Recommended that the Applicant's First Rezoning Request from R-2 to B-2C Would Have No Adverse Effect on the Area**

In August 2012, the Applicant sought conditional rezoning of the Property from R-2, which requires a minimum lot size of 6,000 sq. ft. and permits only one residential unit per lot (the "Initial Application"). Section 2.07 of the Zoning Ordinance provides that uses in the R-2 Zone are limited to:

- adult foster care group home
- dwelling - one-family
- single-family cluster
- government office
- school - public
- park

Meanwhile, the B2-C (General Business) Zone requires a minimum lot size of 500 to 1,000 sq. ft. and permits the following residential uses:

- dwelling - multiple-family
- dwelling - one-family
- dwelling - two-family
- live/work unit

It was and remains the Applicant's intent to develop the Property in a manner that is appropriate for its unique location, consistent with the character of the surrounding neighborhood and in compliance with the City's Master Planning Documents. Initially, the Applicant sought to erect a 14-unit apartment structure. Such development would have fully complied with the requirements of a B2C designation, and the proposed residential development would have been a significantly less intensive use than a foster care home, school, or government offices as are already permitted.

The City Planner, in the Planning Department's report (the "2012 Report"), found "development of this parcel as a single family home has proven improbable and would result in a home that is *less desirable* then (sic) the neighboring homes." The 2012 Report continued to say that "rezoning would not adversely affect the surrounding property," and redevelopment would "provide a suitable transition from the commercial zone to the south while protecting the neighborhood to the north." (*Id.*). The Planning Department even noted that Applicant had, in light of its request for conditional zoning, previously agreed to deed restrictions that would limit the Property to residential uses. However, at its September 19, 2012 meeting, the Planning Board postponed a vote on the Initial Application until November 2012.

In the interim and after meeting with neighboring property owners, the Applicant adjusted its site plan and building design to address concerns raised by neighbors and comments of the Planning Board. Accommodations included reducing the number of proposed units to six, cutting the bulk of the development by 40%, reducing the height, and decreasing the number of parking spaces needed. However, a vote on the request was again postponed to the Planning Board's January 9, 2013 meeting. Finally, after six months of deliberation, the Planning Board, by a 4 – 2 vote, approved the Applicant's request for conditional rezoning to allow development of a six unit residence on January 9, 2013. As such, the application was reported favorably to the City Commission.

Once again, the Applicant was forced to endure additional delays. When the City Commission (the "Commission") took up the request at its February 25, 2013 meeting, it ignored the Planning Board's recommendation and denied the request. Instead, the Commission directed the Planning Board to "consider in the short term zoning for this particular area and in the long



term the overall plan on conditional rezoning.” (*Id.*). Diligently taking on this task, the City contracted LSL Planning, Inc. to conduct a study of the Oakland/Park area with a particular focus on short term and long term rezoning. LSL Planning presented its report (the “Oakland/Park Subarea Study”) to the Planning Board on May 8, 2013.

**3. The Oakland/Park Subarea Study found that redevelopment as a single-family residence was unreasonable and recommended either granting a use variance or rezoning the Property to allow moderate density residential use**

The focus of the Oakland/Park Subarea Study was providing zoning recommendations to the Planning Board. The Oakland/Park Subarea Study specifically discussed the transitional nature of certain “edge properties.” With regard to 404 Park Street, the study provided:

“While Birmingham has a strong single-family market, we do not believe this site can be expected to redevelop as a single family home due to site factors (location, shallow lot depth along Oakland, lack of screening along Woodward, views of multi-story buildings across Oakland, and the traffic volumes along Oakland). *These site characteristics are unique only to this lot. Under these conditions, attached, owner occupied residential units (approximately 4 units per building) seem to be the most appropriate use.*” (Emphasis added).

(*Id.* at 11). Moreover, the Oakland/Park Subarea Study provided that:

“We were asked to explore zoning options for the 404 Park area in more detail, to provide more specific guidance to the City for the site at Oakland and Park. The dimensional characteristics, parcel configurations, proximity to downtown and location along higher volume streets will influence the potential development. *Our recommended approach would be to allow modest density, attached residential types (4-unit buildings) at a density higher than what is allowed in the R-2 district, to be offset to some degree with higher quality screening and overall development quality.*” (Emphasis added)

(*Id.* at 13). The Oakland/Park Subarea Study continued by providing three options with regard to the development of 404 Park Street, (1) granting a variance, (2) rezoning the property to a higher density residential zone, or (3) Establishing a new transitional zoning district or voluntary overlay. (*Id.* at 13-14). The transitional zoning option was clearly the preferred option and the

Oakland/Park Subarea Study took pains to explain how certain criteria could be utilized to make the new zoning districts applicable to other similarly situated transitional properties. (*Id.* at 14).

**4. Transitional Zoning Districts were created and implemented in Birmingham as a result of the study and specifically targeted property with characteristics similar to 404 Park Street**

After further protracted deliberation between May 8, 2013, and June 24, 2015, the Planning Board eventually recommended that the Commission establish a new transitional zoning overlay containing a number of zones. The Planning Board further recommended that, in addition to the Property, that seven other properties from the Oakland/Park subarea be rezoned so as to be included in the transitional overlay. During the course of the legislative process regarding the Planning Board's recommendation, the overlay became traditional zoning districts and were limited to TZ-1 and TZ-3.

During its deliberative process in developing transitional zoning the Planning Board recommended that approximately 80 properties throughout Birmingham, identified as located in transitional areas between commercial and residential zones be rezoned to one of the transitional zoning districts. The Property was one such property identified as being located in a transitional area and was recommended to be rezoned TZ-1. Seven other properties in the Oakland/Park area that were originally included in the rezoning recommendation were removed by the Planning Board at the request of the individual landowners. *Id.*

On August 24, 2015, the Commission held a public hearing on the Planning Board's recommendations. At this hearing, several property owners from the neighborhood objected to the proposed rezoning of the Property. Despite the fact that the original recommendation included seven other properties, some protesting parties attempted to dissuade the Commission by raising false accusations of "spot zoning." *Id.* Fortunately, the City Attorney, citing the three year comprehensive planning process which preceded the Planning Board's recommendation, clarified that the rezoning of 404 Park Street is not spot zoning. *Id.* Yet again, voting on the proposed rezoning of 404 Park Street was postponed.

It is important to note that rezoning the Property to TZ-1 is NOT spot zoning. The basic feature of "spot zoning" is zoning that is inconsistent with surrounding *uses*. The proposed use of the Property is residential, which is consistent with the surrounding neighborhood. The recommendations of the Planning Board were made after several years of deliberation and study. The Planning Board recommended that numerous properties around the city be rezoned to the new transitional zoning districts. That 404 Park Street is the only property being rezoning in the Little San Francisco neighborhood is not, and cannot, be considered evidence of spot zoning as the other recommended properties were removed at the request of the owners.

On February 4, 2016, the Applicant filed this Application to request that the Property be rezoned from R-2 to the TZ-1 classification. The Planning Board again recommended that 404 Park Street be rezoned to TZ-1 to allow for the development of a 4-unit attached single family residence. (*Id.*). This recommendation marks the fourth such time that the Planning Board recommended rezoning of the Property. The Planning Board has recommended that the Property be rezoned on January 9, 2013, April 23, 2014, June 14, 2014 and April 27, 2016.

As the Planning Board's project of research, study and evaluation continued, and as it developed the transitional zoning districts, the Planning Board created a statement of the District Intent. Of particular relevance to this matter is that TZ-1 district permits only residential uses, specifically, dwellings for one family or multiple families, and attached single-family. See §2.41 of the Zoning Ordinance. Section 2.41 of the Zoning Ordinance contains the District Intent of the TZ-1 Zoning District (the "District Intent"). Section 2.41 provides as follows:

The TZ1 (Transition Zone) District is established to:

- (a) Provide for a reasonable and orderly transition from, and buffer between commercial uses and predominantly single family residential areas or for property which either has direct access to a major traffic road or is located between major traffic roads and predominantly single-family residential areas.
- (b) Develop a fully integrated, mixed-use, pedestrian-oriented environment between residential and commercial districts by providing for graduated uses from the less intense residential areas to the more intense commercial areas.
- (c) Plan for future growth of transitional uses which will protect and preserve the integrity and land values of residential areas.
- (d) Regulate building height and mass to achieve appropriate scale along streetscapes to ensure proper transition to nearby residential neighborhoods.
- (e) Regulate building and site design to ensure compatibility with adjacent residential neighborhoods.
- (f) Encourage right-of-way design that calms traffic and creates a distinction between less intense residential areas and more intense commercial areas.

Rezoning the Subject Property to TZ-1 from R-2 fulfills each of the six parts of the District Intent. The stated purpose of a TZ-1 district, as applied to the Property, is also wholly compatible with the Master Planning Documents because it would maintain a residential

character while providing for a transition from one district to another. Moreover, this statement of District Intent provides a solid foundation and plan for zoning and rezoning property in those areas designated as transition zones.

**5. The Commission refused to rezone the Subject Property despite the recommendation of the Planning Board, the proposal's compliance with all applicable Zoning Ordinances, as well as the Master Planning Documents**

At its September 21, 2015 meeting, the Commission voted on a motion to rezone the Property from R-2 to TZ-1. The motion failed 3-3-1, with one commissioner abstaining from the vote. Worthy of note is the fact that both the Mayor Sherman and Mayor Pro Tem Hoff, who voted against the motion, spoke well of the proposed 4-unit residence. Specifically, Mayor Sherman stated "it is not about this particular project, because I think this is an *ideal project as a buffer or transition area.*" (Video transcript of the Sept. 21, 2015 City Commission Meeting, at 2:51:30) (emphasis added). Mayor Pro Tem Rackline Hoff likewise stated, "It's not that I don't like the development. *I think the development is terrific. . . . It's the type of building I'd like to live in.*" (Id. at 2:50:24) (emphasis added).

However, each expressed concern about the opposition raised by the neighbors present at that meeting, despite the fact that the rezoning was not opposed by any government entity and came before the Commission on the recommendation of the Planning Board. (Id.). No evidence has ever been raised before the Commission or the Planning Board that the requested rezoning would conflict with city planning policies or that it would alter the fundamental character of the neighborhood. Additionally, the evidence presented shows that the Property will not have a noticeable effect on traffic and that there are no sewage or sanitation concerns. However, despite the overwhelming evidence supporting rezoning, the application was once again sent back to the Planning Board for further consideration.

Following that remand, another memo from the City Planning Director, Jana Ecker, echoed previous recommendations. Specifically, Ms. Ecker wrote

The planning Division finds that the proposed rezoning of . . . 404 Park from R-2 to TZ-1 would create an appropriate transition from the five story central business district to the south to the two and a half story residential neighborhood to the north. Such a buffer *would not adversely affect the surrounding property and would provide a suitable transition from the commercial zone in the south, while protecting the stable neighborhood in the north.* (emphasis added).

Ms. Ecker's memo further reported that no concerns were raised with regard to this project from any of the applicable City departments.

After the public hearing at the Planning Board on April 27, 2016, the Planning Board once again, *by unanimous vote*, recommended that the Property be rezoned to TZ-1.

**a. Rezoning 404 Park Street from R-2 to TZ-1 is consistent with the Master Planning Documents**

Section 1.04 of the Zoning Ordinance provides that the purpose of the Zoning Ordinance is to "...guide the growth and development of the City in accordance with the goals, objectives and strategies stated within the Birmingham Master Plan ("Birmingham Plan"), and Downtown Birmingham 2016 Plan ("2016 Plan")."

The Birmingham Plan acknowledged that redevelopment of areas near the business district was often "preceded by rezoning for higher residential densities." The Birmingham Plan recognized that this sensitive neighborhood specifically may be "under repeated pressure for piecemeal rezoning to non-residential use." (*Id.*). As it pertains to the Subject Property, *the proposed rezoning only allows for residential uses.*

The Vision Statement, contained in Appendix I of the 2016 Plan (the "Vision Statement"), lays out the principles guiding the development of the downtown area, which borders the Property directly to the south. The fourth tenet of the Vision Statement is particularly relevant; "[e]nsure good land use transitions and structural form and mass to the traditional residential neighborhoods surrounding downtown." (*Id.*). The Vision Statement also contains the City's desire to "[c]reate and reinforce identifiable districts within the downtown to provide a sense of place and a variety of experiences." (*Id.*). Additionally, the 1963 Birmingham Design Plan provides "[o]n the fringe of the retail center, new offices and medium density residential structures are being developed as transition zones to the single family residential areas beyond." Due to expansive commercial development in the region, the Subject Property is now on the fringe of two vastly different zoning districts and represents the ideal site for transitional zoning. It is accurate to attribute the City's decision to create the Transition Zoning Districts to the Subject Property and almost thirty years of its inability to be developed.

The record before the Commission is clear, the goal of rezoning the Subject Property is to foster the development of a transitional buffer between distinct districts of the City. For these reasons and more, the proposed rezoning and development is consistent with the City's land use policies.

- b. The uncontested evidence shows that rezoning is necessary to preserve the Applicant's property rights, that the current zoning classification is no longer appropriate, and that the proposed zoning will not be detrimental to the surrounding properties**

On numerous occasions Applicant has presented evidence to the Planning Commission that rezoning is necessary. None of this evidence has been contradicted or countered by the City. As such, while the Commission has discretion in reaching its decision, there is no factual basis for it to deny the application.

The Subject Property is uniquely situated in a location that prevents its feasible development into a single-family residence as has been done on the neighboring lots. None of the other properties in the area share three boundaries with major roadways, and none have as extensive of frontage on busy thoroughfares as the Subject Property. The few other "edge properties" to the immediate west of 404 Park Street all have deep lots (from north to south) and share only one of their shortest Planning Borders (about 80 feet) with Oakland Avenue. The longer Planning Borders abut quiet residential streets or other lots.

Looking to the surrounding development, it also becomes clear that R-2 residential zoning is no longer appropriate for edge properties. Directly south of the Property, across Oakland Avenue from the Subject Property is a four-story office building. To the southwest is a five-story parking garage. Just two streets over, the other edge property for the neighborhood are three-story office buildings. In fact, the majority of properties that border the Little San Francisco neighborhood have already been converted to commercial uses.

Additionally, the proposed development will have no measurable impact on existing traffic. The Southeast Michigan Council of Government ("SEMCOG") estimated annual average daily traffic ("AADT") flow on the relevant stretch of Oakland Avenue to be 5,100 in 2013, which has certainly increased in the interim. Moreover, MDOT estimated the AADT of Woodward to be over 61,000 cars in 2013. These statistics demonstrate two things. *First, that four added residential units will have no noticeable impact on traffic. Second, there are clear negative externalities associated with passing traffic that impede development as currently zoned.* Referring back to the 2016 Plan, it is clear that a multi-unit residential structure on this Property would provide the neighborhood to the north with significantly more effective barrier to encroaching uses than a single family home or, more importantly, a vacant lot.

Finally, as suggested, the proposed development will preserve the quality and character of the neighborhood. If rezoned, the Property will remain residential and be self-parking. It will direct any minimal new traffic toward Oakland and away from the neighborhood through the installment of new signage, and it will shield the other properties from the undesirable views and sounds of traffic, offices and a parking structure. Rather than deter from the neighborhood, the

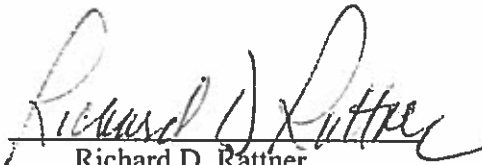
redevelopment of 404 Park Street will serve as a shield for the neighborhood as traffic volume continues to increase and the downtown area continues to expand.

### Conclusion

The City Commission's decision regarding the requested rezoning must be based on consideration of legitimate concerns about the health, safety, and general welfare of the City. The Commission has been presented with overwhelming evidence that the proposed redevelopment is consistent with City planning policies, all applicable zoning ordinances, and will have a beneficial, rather than negative, impact on the surrounding neighborhood. In light of the substantial record before the Commission to date, it is requested that the Commission grant the Applicant's rezoning request as has been recommended by the Planning Board on four separate occasions.

Respectfully submitted,

By:



Richard D. Ratner

Attorney for Applicant

RDR/  
(01061358.03)  
Enclosures



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March 11, 2016

Richard D. Ratner  
rdr@wwrplaw.com

***Hand-Delivered***

Planning Board  
City Commission  
City of Birmingham  
151 Martin St.  
Birmingham, MI 48009

***Re: Application to Include 404 Park St., Birmingham, MI ("Subject Property" or "Property") in the TZ1 Zoning District ("Application") – 404 Park, LLC ("Applicant")***

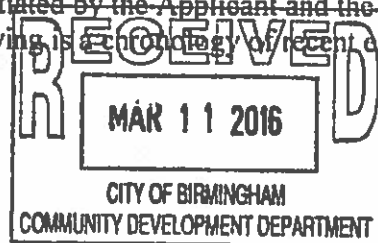
Dear Members of the Planning Board and City Commission:

This letter supplements the Application filed by the Applicant on February 4, 2016. In filing the Application, the Applicant requests the rezoning of the Subject Property from R-2 Single-Family to TZ1. The rezoning requested in the Application is intended to allow the long-time vacant Subject Property to be redeveloped into an attractive, 4 unit residential structure, consistent with the 2016 Master Plan.

**The Subject Property and Chronology of Rezoning History**

The Subject Property is located on the north side of Oakland Avenue between Woodward Avenue and Park Street, just to the north of "Downtown Birmingham" as identified in the 2016 Plan. The Property has approximately 80 feet of frontage on Woodward Avenue, 80 feet of frontage on Park Street and 155 feet of frontage on Oakland Avenue. It contains approximately 12,560 square feet. The Property has been vacant since 1989, when the then-owner razed a deteriorating single family structure. See survey, attached hereto and incorporated by reference as Exhibit 1, and aerial photographs, attached hereto and incorporated by reference as Exhibits 2A and 2B.

Applicant seeks to rezone the Subject Property to permit its development as a four (4) unit residence pursuant to the TZ1 zoning classification. Two recent attempts have failed to rezone the Subject Property to permit either a multiple-family dwelling or such uses as permitted under the new TZ1 zone. One such rezoning attempt was initiated by the Applicant and the other attempt to rezone was initiated by the City itself. The following is a chronology of recent events





regarding the Subject Property:

- August 30, 2012, Burton-Katzman Manager LLC, an affiliate and on behalf of Applicant, makes application to the City for a “Conditional Rezoning” of the Property from R-2 Single Family Residential to B2C General Business for the sole and express purpose of entering into a conditional zoning agreement with the City to permit construction of a 14 unit apartment building. In its September 13, 2012 memorandum to the Planning Board, the City’s Planning Department concludes that the rezoning “would not adversely affect the surrounding property”, that “development of this parcel as a single family home has proven improbable” and that the proposed conditional rezoning “would provide a suitable transition from the commercial zone to the south while protecting the neighborhood to the north.”
- January 9, 2013, the Planning Board, after an extensive 5 month study of the Conditional Zoning Request, recommended to the City Commission that it approve a Conditional Rezoning of the Property to permit a 6 unit residence.
- February 25, 2013, the City Commission denied the Conditional Rezoning, but in its motion to deny, the City Commission requested that the Planning Board “...consider in the short term...” which zoning would be proper for this Property, and, “... in the long term, the overall plan on conditional rezoning.”
- February 27, 2013, the Planning Board began the planning and zoning task assigned to it by the City Commission. As part of its work, the Planning Board retained a planning consultant company, LSL Planning, Inc. to prepare the Oakland/Park Subarea Study (the “Study”).
- May 8, 2013, LSL Planning, Inc. presented its study, attached as Exhibit 3, to the Planning Board. In part and specifically as to the Subject Property, the Study, at Pg. 11, provides:

“While Birmingham has a strong single-family market, we do not believe this site can be expected to redevelop as a single family home due to site factors (location, shallow lot depth along Oakland, lack of screening along Woodward, views of multi-story buildings across Oakland, and the traffic volumes along Oakland). **These site characteristics are unique only to this lot. Under these conditions, attached, owner occupied residential units (approximately 4 units per building) seem to be the most appropriate use.**” (Emphasis added)

The Study further provides, at Pg. 13:

**“We were asked to explore zoning options for the 404 Park area in more detail, to provide more specific guidance to the City for the site at Oakland and Park. The dimensional characteristics, parcel configurations, proximity to downtown and location along higher volume streets will influence the potential development. Our recommended approach would be to allow modest density, attached residential types (4-unit buildings) at a density higher than what is allowed in the R-2 district, to be offset to some degree with higher quality screening and overall development quality.” (Emphasis added)**

- May 8, 2013 to April 23, 2014, the Planning Board continued to work on the task assigned by the City Commission.
- April 23, 2014, the Planning Board recommended to the City Commission that it establish and apply various Transitional Overlay Zones to numerous properties through the City. The Planning Board concurred with the recommendation of LSL Planning, Inc. and recommended a Transitional Overlay Zone that would, among other things, permit development of a 4 unit residence on the Property.
- June 9, 2014, the City Commission received the Planning Board Transitional Zoning Overlay recommendations, but postponed action, referring the matter back to the Planning Board due to concerns regarding legal noticing of public hearings and changes to be recommended by the City Administration.
- October 8, 2014 to June 24, 2015, the Planning Board held additional public hearings and deliberations on transitional zoning. During these deliberations the Planning Board determined that transitional zoning districts should not be in the form of optional overlays, but rather in the form of new zoning districts. The Planning Board also determined that 7 additional properties in the Oakland/Park area should be included in its transitional zoning recommendations to the City Commission. These consist of 2 properties north of the Subject Property and 5 properties immediately west of the Subject Property along Oakland Avenue.
- June 24, 2015, the Planning Board adopted transitional zoning recommendations for approximately 80 properties, including the Subject Property. As to the Subject Property, the Planning Board again recommended that it be rezoned to permit a 4 unit residence; i.e. TZ1 Attached Single Family. However several of the 7 property owners that had their properties included in the transitional zoning recommendations for the Oakland/Park area during the October 8 to June 24 study period, requested to have their properties removed. The Planning Board obliged, leaving 404 Park as the sole property in the Oakland/Park

area recommended for transitional zoning; i.e. TZ1 Attached Single Family.

- July 13, 2015, the City Commission received the Planning Board recommendations and set a public hearing for August 24, 2015.
- August 24, 2015, during the public hearing several property owners in the area of the Subject Property objected to the rezoning, and alleged a rezoning to TZ1 was “spot zoning” on the basis that the Property was the sole property in the Oakland/Park area recommended to be rezoned to TZ1. To correct this misuse of the term “spot zoning”, the Birmingham City Attorney opined that the rezoning of 404 Park does not constitute “spot zoning,” citing the Planning Board’s 3-year long comprehensive planning process which preceded its recommendation. The City Commission adjourned the public hearing on September 21, 2015.
- September 21, 2015, the City Commission voted on rezoning the Property. A motion is made to approve the rezoning of 404 Park from R-2 Single Family to TZ1, which failed on a 3-3-1 vote. The result of the vote is a denial of the Planning Board’s recommendation to rezone the Subject Property. In reviewing the meeting minutes and video it should be noted that while the Mayor and Commissioner Hoff were opposed to the rezoning, they each spoke well of the proposed 4 unit residence.

#### **Section 1.04 – Compliance with the Goals, Objectives and Strategies of the Master Plans**

Section 1.04 of the Birmingham Zoning Ordinance (“Zoning Ordinance”) provides that the purpose of the Zoning Ordinance is to “...guide the growth and development of the City in accordance with the goals, objectives and strategies stated within the Birmingham Master Plan (“Birmingham Plan”), and Downtown Birmingham 2016 Plan (“2016 Plan”).” A review of the Birmingham Plan (1980) and the 2016 Plan (1996) reveals that the request in the Application to rezone the Subject Property to TZ1 meets the spirit and intent of the Zoning Ordinance as well as “The Downtown Birmingham Vision Statement” (“Vision Statement”) of the 2016 Plan (See p. 181 of the 2016 Plan). A copy of the Vision Statement is attached hereto and incorporated by reference as Exhibit 4. This rezoning will provide for residential uses and encourage an updated pedestrian friendly development to coordinate a transitional buffer zone between the higher density office and commercial uses to the south and the mature single family uses to the north, as provided for in the 2016 Plan Vision Statement

Although the 2016 Plan does not specifically include the Subject Property, the proposed rezoning of the Property is consistent with the Vision Statement from that Plan. It is also consistent with recently enacted planning objectives of the City regarding transitional areas as set forth in the “District Intent” for the TZ1 Transitional zone (See, Section 2.41) of the Zoning Ordinance.

One of the applicable bullet points of the Vision Statement is to “[e]nsure good land use transitions and structural form and mass to the traditional residential neighborhoods surrounding downtown.” The new TZ1 Transitional Zone was created, in part, to accommodate this concept as expressed in the Vision Statement. A TZ1 zoning for the Property is clearly appropriate as it fulfills the planning principal of buffering and providing orderly “good land use” transitions and structural form and mass between the higher density office, commercial and public (a parking structure) uses, on the one hand, and the “...traditional residential neighborhoods...” on the other.

A second part of the Vision Statement is to “[c]reate and reinforce identifiable districts within the downtown to provide a sense of place and a variety of experiences.” Although the Property sits just north of Downtown Birmingham, the rezoning of the Property and its transitional location respects and protects the identifiable residential neighborhood to the north. Said another way, it acts as a protection for that residential neighborhood as it creates a natural transitional buffer that shields those residents from higher density uses to the south.

Further, the Vision Statement encourages “...a diverse mix of uses...especially residential.” The 2016 Plan deals mainly with the Property to the south (across Oakland). However, this rezoning will accomplish a goal of the 2016 Plan by allowing, as a permitted use, a structure that is obviously intended for use in a transitional area.

Simply stated, the proposed rezoning complies with the spirit and intent of the Vision Statement regardless of the fact that the 2016 Plan does not specifically study the Property. The principals of the 2016 Plan, together with the District Intent of the TZ1 Zoning District (discussed below) give clear and convincing guidance for the planning vision of Birmingham. The rezoning of this Property to TZ1 accomplishes the City’s carefully created Master Plan for land use.

### **The TZ1 Zoning District**

Transitional zoning districts were the result of the planning consultant’s (LSL Planning, Inc.) Study of the Oakland/Park subarea. As the project proceeded from a general discussion of the use and zoning of the properties in that area to a TZ1 zoning district, the Planning Board created a statement of the District Intent. Section 2.41 of the Zoning Ordinance contains the stated intent of the TZ1 Zoning District (the “District Intent”). The pertinent provisions of Section 2.41 provide as follows:

- (a) Provide for a **reasonable and orderly transition from, and buffer between** commercial uses and predominantly single-family residential areas or for property which either has direct access to a major traffic road or is located between major traffic roads and predominantly single-family residential areas.

- (b) **Develop a fully integrated, mixed-use, pedestrian-oriented environment between residential and commercial districts by providing for graduated uses from the less intense residential areas to the more intense commercial areas.**
- (c) **Plan for future growth of transitional uses which will protect and preserve the integrity and land values of residential areas.**
- (d) **Regulate building height and mass to achieve appropriate scale along streetscapes to ensure proper transition to nearby residential neighborhoods.**
- (e) **Regulate building and site design to ensure compatibility with adjacent residential neighborhoods.**
- (f) **Encourage right-of-way design that calms traffic and creates a distinction between less intense residential areas and more intense commercial areas. (Emphasis added)**

The rezoning of the Subject Property to TZ1 from R-2 fulfills each of the six part statement of the "District Intent" adopted by the City. This statement of District Intent provides a solid foundation and plan for zoning and rezoning property in those areas designated as transition zones. The rezoning of this Property will: (a) provide a reasonable and orderly transition, and a buffer between commercial use to the south and the mature single family residential to the north; (b) provide a fully integrated, mixed-use, pedestrian environment between residential and commercial districts; (c) provide for future growth of transitional uses and thereby serve to "...protect and preserve..." the single family use to the north; (d) "...achieve an appropriate scale along streetscapes..."; (e) "...regulate building and site design to ensure compatibility ..." with residential neighborhoods to the north; and (f) create a "...distinction between less intense residential areas and more intense commercial areas...".

In summary the rezoning of the Property is in compliance with all principals of the relevant portions of the City's Master Plans and Zoning Ordinance statements of intent for land use. Further a specific planning study and three years of hard work on the part of the Planning Board and the City Commission have clearly identified this Property as one that should be rezoned to TZ1, as was originally recommended. This Application is an opportunity to amend the Zoning Ordinance so that this Property is allowed to enjoy the uses that the Master Plan and District Intent statement clearly anticipated was a fair, just and reasonable zoning that would benefit of the health, safety and welfare of this community..

**Rezoning Amendment – Sec. 7.02B.2.b.i.–iii.**

The Zoning Ordinance, at Sec. 7.02, requires that as part of an application for rezoning,

the petitioner address certain issues to be considered by the Planning Board and the City Commission, in addition to the unambiguous guidance set forth in the City Master Plans. Please consider the following comments with respect to these issues.

**Sec. 7.02B.2.b.i. – An Explanation of Why the Rezoning is Necessary for the Preservation and Enjoyment of the Rights and Usage Commonly Associated with Property Ownership**

The Applicant has been unable to develop the Subject Property in accordance with the Master Plan and the 2016 Plan, depriving the Applicant of the enjoyment of a right commonly associated with property ownership. The rezoning of the Subject Property from R-2 to TZ1 would result in the preservation and enjoyment of such rights of property ownership. These rights of usage include, among others, the right to develop the Subject Property in a manner consistent with the 2016 Plan. The Planning Department has advised the Planning Board that development of the Subject Property as a single family home “has proven improbable.” During the first attempt to rezone the Property with conditions the Planning Department also advised that the then-proposed conditional zoning “would provide a suitable transition from the commercial zone to the south while protecting the neighborhood to the north.”

The other properties in the area of the Subject Property are not similarly situated. None of them are bounded by three major streets. None of them are located on a shallow lot (from north to south). None of them have a side facing Woodward with no screening. In fact, the development Applicant intends to build, once the Subject Property is rezoned TZ1, is not only in total accord with the District Intent but also with the 2016 Plan. The rezoning to TZ1 zoning allows the Applicant the preservation and enjoyment of the rights and usage commonly associated with property ownership.

**Sec. 7.02B.2.b.ii. – An Explanation of Why the Existing Zoning Classification is No Longer Appropriate**

After reviewing the 2016 Plan, the Zoning Ordinance and the minutes of the Planning Board during the three years of transitional zoning deliberations, it is clear that the existing zoning should be updated so that a residential use can be built that complies with the TZ1 District Intent and the 2016 Plan. The TZ1 zoning allows the contemplated use. The development of the Subject Property would be pursuant to an ordinance that was enacted to establish, encourage and foster buffers between commercial and residential areas. A vacant lot cannot effectively buffer or protect the residential neighborhood to the north. Redevelopment of the Subject Property as a single family residence does not accomplish any of the important goals of the TZ1 Zoning District or the goals of other land use plans which are the basis for the Zoning Ordinance.

Redevelopment as a single family residence does not: provide for a reasonable and orderly transition from, and buffer between commercial uses and predominantly single-family residential areas; develop a fully integrated, mixed-use, pedestrian-oriented environment between residential and commercial districts; plan for future growth of transitional uses which will protect and preserve the integrity and land values of residential areas; regulate building height and mass to achieve appropriate scale along streetscapes to ensure proper transition to nearby residential neighborhoods; regulate building and site design to ensure compatibility with adjacent residential neighborhoods; or encourage right-of-way design that calms traffic and creates a distinction between less intense residential areas and more intense commercial areas. The current zoning of the Property is not in compliance with the City's master plan and is no longer appropriate. A rezoning to TZ1 would remedy this problem.

It is fair and reasonable that the Subject Property should be able to enjoy the same benefits that other properties in the surrounding areas enjoy. The simple R-2 zoning is no longer appropriate because of the incredibly sophisticated development that has occurred to all properties in the area of the Subject Property. The use of the Subject Property for a single family residence is not only inconsistent with the Zoning Ordinance and 2016 Plan, but it limits the use of the Subject Property so that its value to the community and to the Applicant is unfairly diminished.

Inclusion of the Subject Property in the TZ1 Zoning District will enhance the form based zoning that has reinvigorated Birmingham. The R-2 zone is simply no longer appropriate in this area as a part of this dynamic mixed use, pedestrian friendly, urban setting.

**Sec. 7.02B.2.b.iii. – An Explanation of Why the Proposed Zoning will not be Detrimental to the Surrounding Properties**

Rezoning the Subject Property to TZ1 will not be detrimental to the surrounding properties, in fact, it will protect the single family neighborhood to the north by providing a clear buffer between traditional single family uses and commercial uses. Therefore this rezoning will be a positive development for all the citizens of Birmingham. The rezoning of the Subject Property will allow for the development of a modern and attractive residential structure which will be enjoyed by all of the residents of Birmingham. The contemplated plans for the Subject Property, which comply with the TZ1 requirements, are at a height, density and aesthetic that coordinates with the surrounding properties. Certainly the intended use developed in a modern way is a great improvement over its current vacant condition.

**Conclusion**

All of these facts taken together with the coordination of streetscape and use of future development lead to the conclusion that the rezoning of the Subject Property from R-2 to TZ1 will be a clear benefit to the health, safety and welfare of all the citizens of Birmingham.

Applicant respectfully requests that this Petition for rezoning the Subject Property from R-2 to TZ1 be approved.

Respectfully submitted,

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

By:    
Richard D. Rattner  
Attorney for Applicant



**EXHIBIT 1**

**SURVEY**



**EXHIBIT 2A**

**AERIAL PHOTOGRAPH**

Exhibit 2A



Property



1999

**EXHIBIT 2B**

**AERIAL PHOTOGRAPH**

EXHIBIT 2B



Woodward Ave

Property

Park St

Oakland Ave

© 2004 Google

43° 26' 35" N 88° 12' 55" W

Map Data © 2004 Google

**EXHIBIT 3**

**LSL PLANNING, INC. STUDY**



# Oakland/Park Subarea Study

## Purpose

The Oakland/Park area in Birmingham, like much of the city, has some unique features. Tucked behind wooded views along Woodward and the shops and offices along Old Woodward and Oakland is a tightly knit historic neighborhood. Most passersby do not even realize there is a quality historic neighborhood. Woods along Woodward Avenue provide an effective screen along the neighborhood's east edge. Other edges between the mostly single-family neighborhood and non-residential uses are generally fairly well buffered, through landscaping, walls and setbacks. There are, however, some lots adjacent to the neighborhood "edges" that are not as well buffered or have distinct site conditions that make them candidates for a possible land use change. Those parcels are the focus of this study.

One such lot, at the northeast corner of Park and Oakland Streets, was recently the topic of a rezoning request. The applicant proposed a conditional rezoning to B2C to allow a reduced front yard setback for a set of six attached residential units. In response to extensive neighborhood comments voicing opposition to the rezoning, and feeling any zoning action on an individual parcel would be premature, the City Commission recommended that the area first needed an overall planning study.

## Scope and Methodology

LSL Planning, Inc. was retained by the City of Birmingham to create a subarea analysis for the study area illustrated below. The subarea is bounded by Oakland to the south, N. Old Woodward to the west, Woodward Avenue to the east and the neighborhood south of Oak Street. This study evaluates the types of land uses, views, transition areas, traffic, access, pedestrian conditions, building heights and setbacks, and zoning.

Our technical analysis also considered the Ideas and concerns of the neighborhood expressed at public meetings. While there were a variety of comments, all of which were thoughtfully considered, the key topics emphasized are listed below:

1. Protecting the integrity of the neighborhood and property values;
2. Strong preferences for single-family development on the vacant lot at Oakland/Park and a belief that it is a reasonable use;



Study area



LSL Planning, Inc.  
Sustainable Planning Solutions

Prepared by LSL Planning

1

Draft 5/3/2013



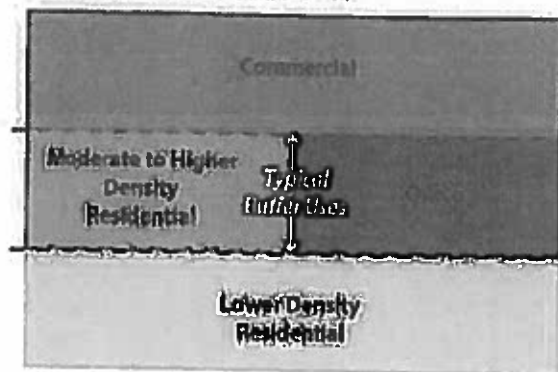
3. Desire by some to retain the Brookside Terrace condominiums;
4. Ideas or support for traffic calming and pedestrian crossing improvements; and
5. Concern about rental housing especially if there are more than four units (which the City Assessor stated is classified as "commercial").

We also considered information from the City Assessor on factors that influence property values. Typically, assessed values are based on standard factors such as comparable sales in the vicinity. When a single family home is adjacent to another use, there can be a 5 to 15% drop in the assessed value. The extent of the impact depends on factors such as, condition of the structure, traffic, and adjacent uses (type, condition, buffering, views). Different types of adjacent land uses can be made more compatible through site design and buffering aimed at reducing or avoiding negative impacts on assessed values.

## Edges and Transitions

In land use planning, an important consideration is to manage land use arrangements to minimize conflicts. Land use conflicts may occur when incompatible uses are adjacent. The result can be short- and long-term consequences or nuisances that can influence the desirability and value of one or more properties. In a downtown or mixed use district, the buyers are aware that the array of uses is part of the appeal. But in single-family neighborhoods near the downtown or mixed use district, there is an expectation of solidarity among uses in the neighborhood.

*Typical Land Use Transition Pattern*



There are a number of factors that influence the extent of the conflict and its impacts. A key factor is the intensity of the use. Certain more intense uses are generally directed to be separated from other uses. This is one reason why in planning and zoning communities have a series of land use classes or zoning districts that specify the permitted uses.

Due to the impacts of non-single-family uses (views, noise, traffic, parking, late-night hours, etc.) single-family neighborhoods are often separated from retail, entertainment, and service businesses by uses transitioning the intensity between the districts – higher density housing or offices are typical applications of these transitional buffer uses (see diagram at right). In more urban/mature cities like Birmingham, residential uses often abut commercial uses with little room for transitional uses. In such cases, the uses can be more compatible by incorporating design features such as setbacks, landscaping, parking and access location,

### Typical Transitional Land Uses between Single-Family and Commercial

- Single-family detached homes (with suitable buffers as defined below)
- Attached single-family homes
- Multiple-family residential at an appropriate scale and density (see design considerations below)
- Single-family homes converted to offices
- Offices (with suitable buffers as defined below)
- Parks/open space
- Institutional uses (schools, libraries, etc)
- Buffers: setbacks, walls, landscape, etc.

lighting, or building design. Typically, the buffering is provided on the lot of the more intense use.

Where single-family or lower density residential neighborhoods directly abut higher intensity uses, the edges of districts (on both the commercially zoned side and residential side) are often the focus of a city's master plan and zoning regulations. These lots are scrutinized to ensure a suitable transition between the districts exists. Properties on the edges of districts may feel development pressures from adjacent zoning districts typically from the more intense district. Having well-defined transitional uses or design buffers can preserve the integrity of single-family neighborhoods from encroachment of unwelcome uses. Birmingham has dozens of examples where single-family has long remained stable when abutting non-single-family. But there are also other examples where former owner-occupied single-family homes have been converted to rentals, duplexes, or offices. In many cases, these non-single-family uses have long served as a transitional use.

### **Design Considerations for Transitions**

One of the objectives of the City is to protect its neighborhoods. Changes in use and zoning can potentially erode that character. But the City also has goals for vibrant, mixed use districts, a walkable city and a diversity of land uses for fiscal security. In the neighborhood edge area where the single or two-family abut other uses, the non-residential use should be designed so that it provides a transition but also forms a solid demarcation for a zoning boundary.

These design considerations were taken into account when analyzing the subarea's key parcels susceptible to change in the next section.

#### **Typical site design buffers between residential and non-residential uses**

- Landscaping
- Attractive, well-maintained walls and fences
- Some additional setbacks especially for buildings with more height or mass than neighbors
- Low lighting impact

### **Site Analysis of Key Parcels Susceptible to Change**

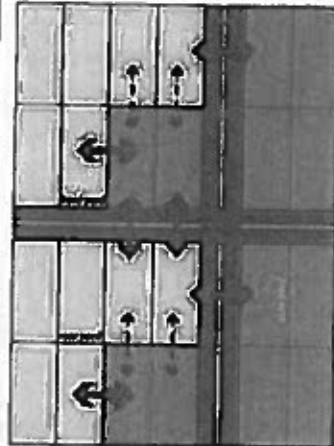
The areas in the Oakland/Park Subarea that front or are adjacent to commercial uses are defined on the following map (titled "Adjacency Analysis") in green as parcels most susceptible to change. This does not mean a change is necessary, just that those are the parcels that should be focused on in a land use evaluation such as this report. Seven properties were identified for further study to determine if on-site design considerations provide sufficient buffers to support long-term viability of the uses, or if a change in land use, zoning, or site design may be appropriate to provide an appropriate buffer between the uses. These properties were evaluated for buffering design considerations, as described above, to determine what can be done to prevent change or what might be changed to protect the adjacent uses.

Each parcel classified as susceptible to change was evaluated and classified as follows:

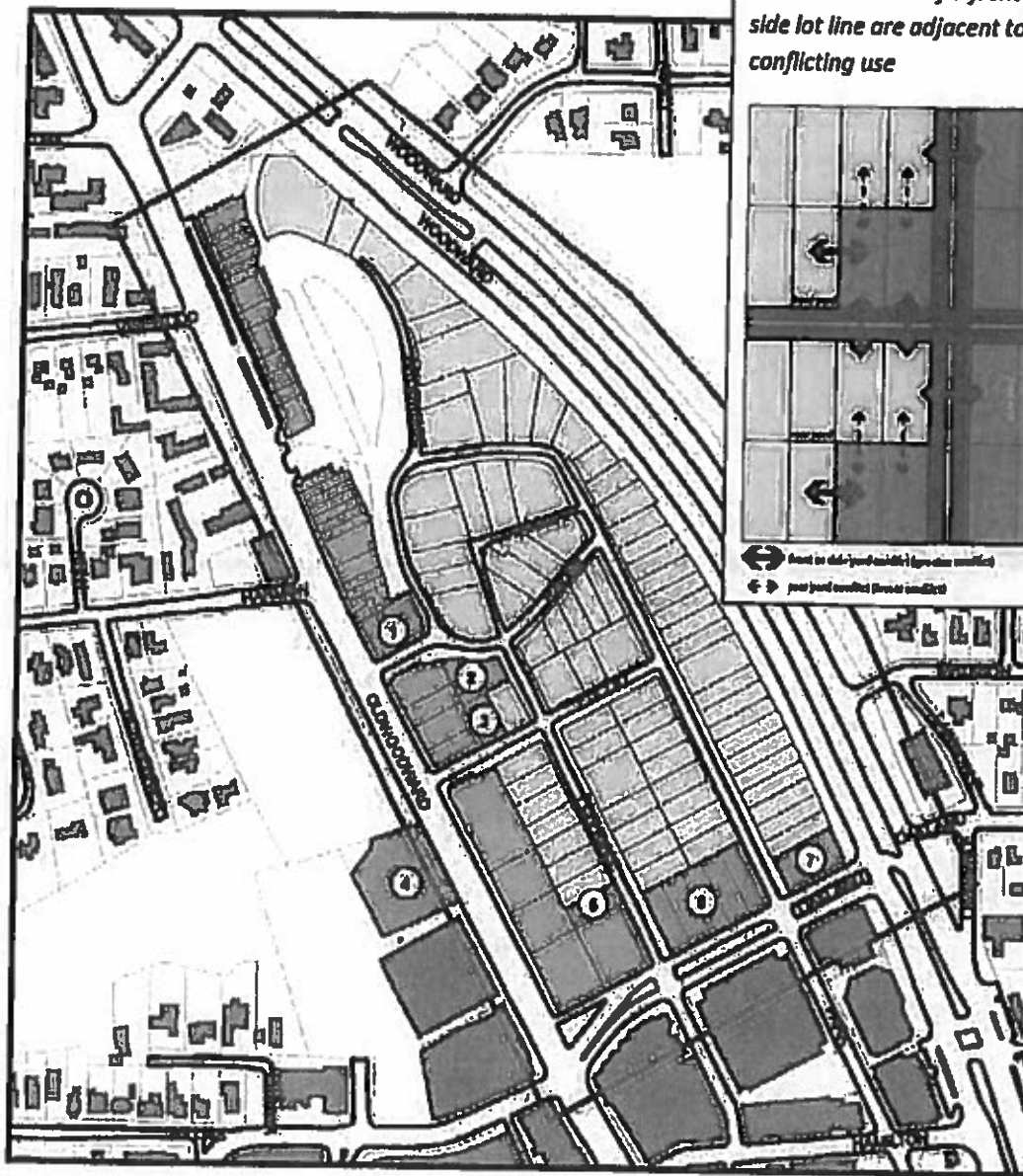
1. Buffering sufficient, no change in land use is warranted or recommended;
2. Generally the uses are compatible and some buffering exists, but could be greatly enhanced; or
3. Conditions unique to the parcel (traffic, views, lot size, etc) warrant a consideration of a change in the land use; the condition may be beyond a buffering solution.

The findings for each such parcel are provided on the following pages.

Generally, when a rear lot line abuts a conflicting use it is of less concern than if a front or side lot line are adjacent to a conflicting use



front to side yard conflict (front yard conflict)  
rear yard conflict (rear yard conflict)



- Core Residential
- Office/Commercial
- Parcels Susceptible to Change

Traditional parcels are defined by either fronting or being adjacent to a non-residential use (front or side yard) or fronting a non-local street.

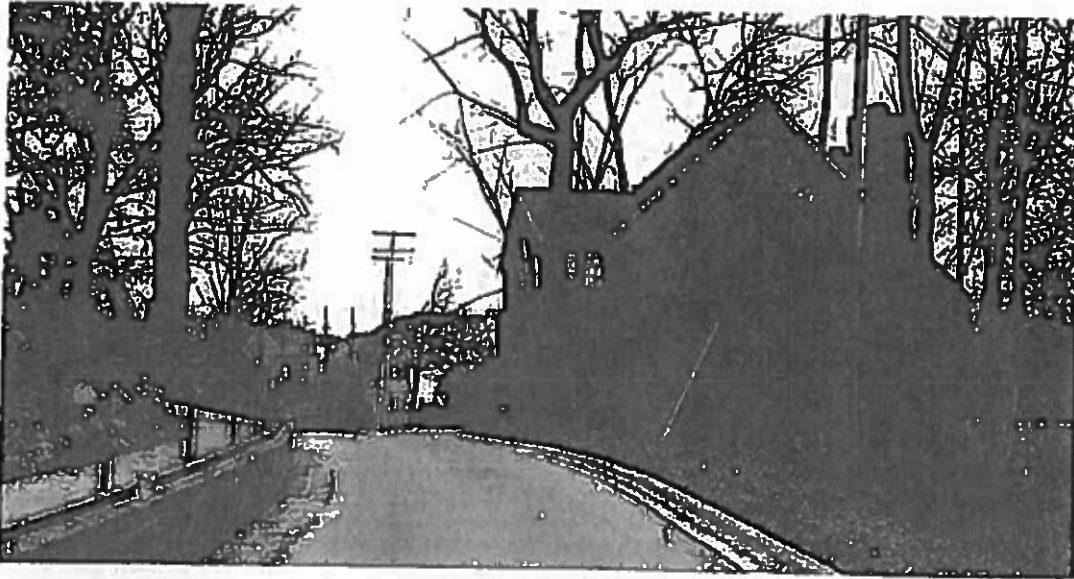
Oakland/Park Subarea  
Adjacency Analysis  
Map Created 4-8-13

Red Edge  
Shading Features  
To Print

Data Source: City of Birmingham  
Map by CGL, LSL Planning, Inc.

City of Birmingham  
LSL Planning, Inc.

## ① Brookside/Ravine Area



### Existing Conditions

The attached condos on the north side of Ravine at N. Old Woodward are a good transitional use between the retail uses on N. Old Woodward and the single-family homes in the subarea. The condos are buffered from the retail by the wooded area adjacent to the Rouge River. This wooded area also does a very good job of buffering between the shops along N. Old Woodward and the homes on Brookside, but ends at the lots edge.

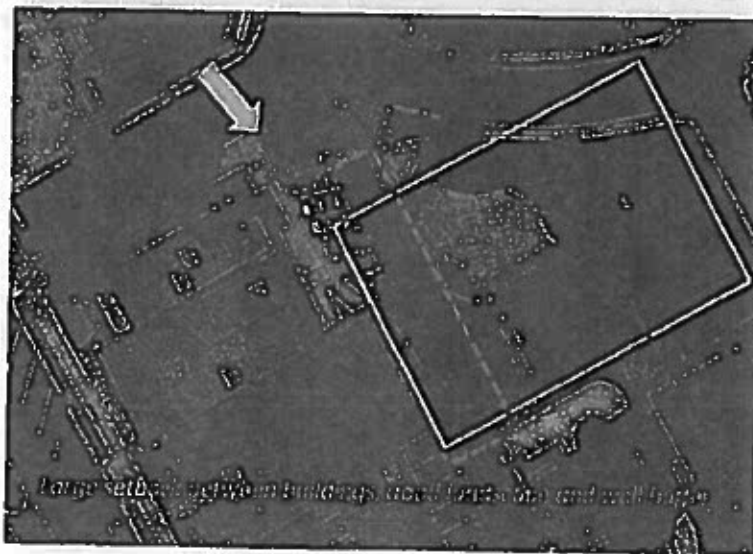
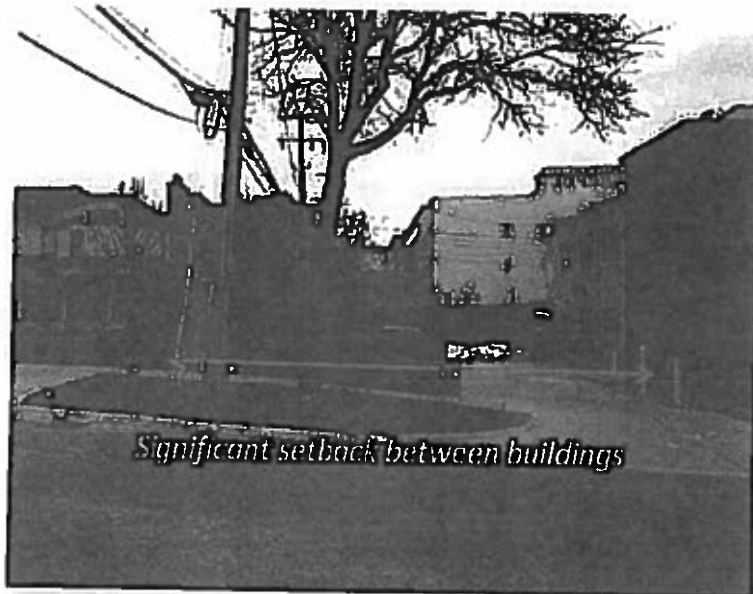
### Recommendation

- There is no reason to support any change of land use or zoning in this area.



*While the views from homes on Brookside to the businesses along N. Old Woodward are less obstructed in winter months with less foliage, what remains of the vegetation decently screens the rear loading/parking areas of the businesses.*

## ② Ravine/Ferndale Area



### Existing Conditions

The site contains a brick wall and depressed parking lot. It is well landscaped, contains a substantial setback, and is closely tied to adjacent residential.

### Recommendation

- There is no reason to consider land use changes in this area.
- Additional landscaping along Ravine would help with views of the parking/loading from the street.

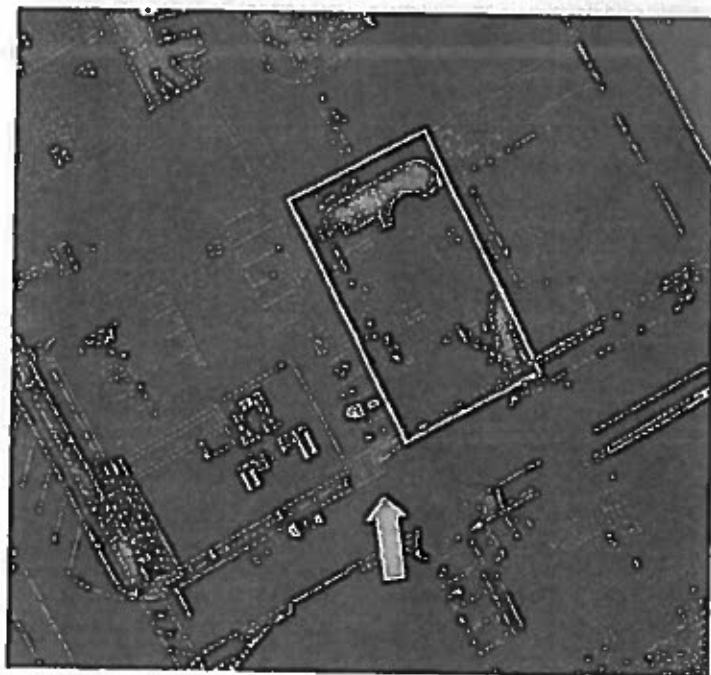
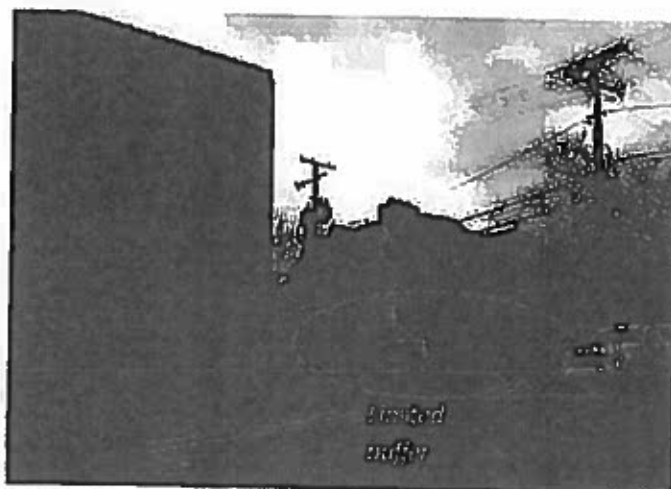
### ③ Euclid Area

#### Existing Conditions

This site has a shallow setback with parked cars adjacent to the front yard. Minimal buffers do not include a wall or significant landscaping, as is ideally desired.

#### Recommendations

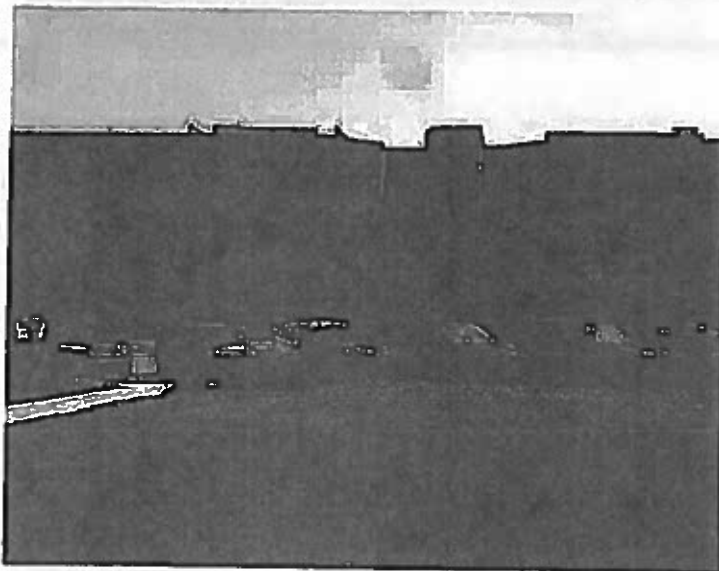
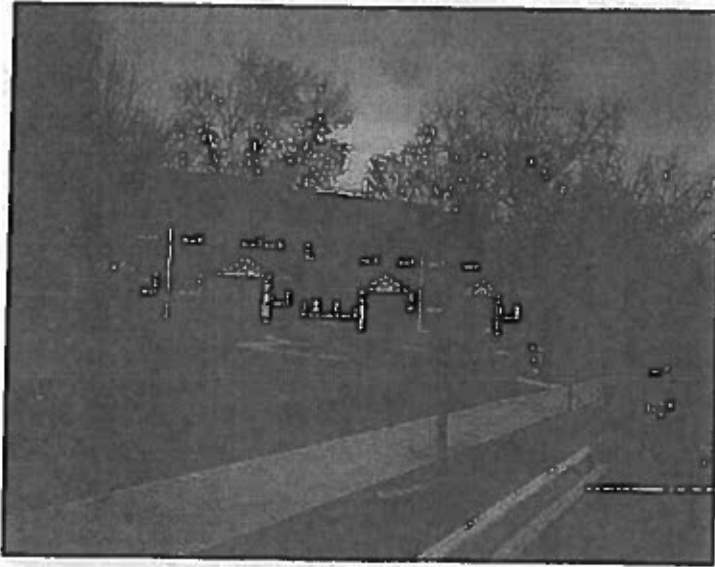
- No change in land use is suggested.
- Work toward additional buffer with larger parking setback with landscaping and/or screen wall.
- Consider traffic calming treatments, such as curb bump outs to better distinguish office from residential street.



*Consider improvements to Euclid that will help calm traffic. See the Complete Streets and Traffic Calming Concepts section of our report for more information:*

1. Curb-bump outs
2. Speed table
3. Clearly marked crossings
4. Signage

#### ④ Brookside Terrace Area



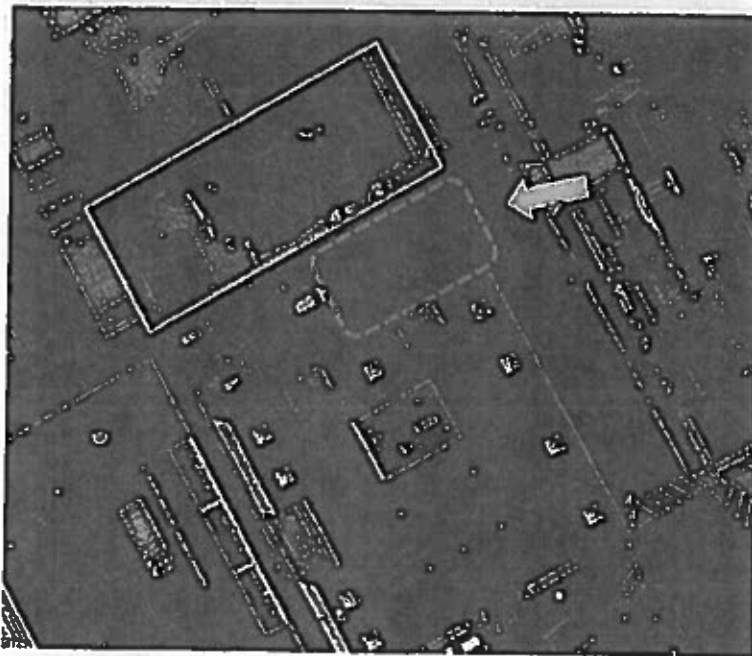
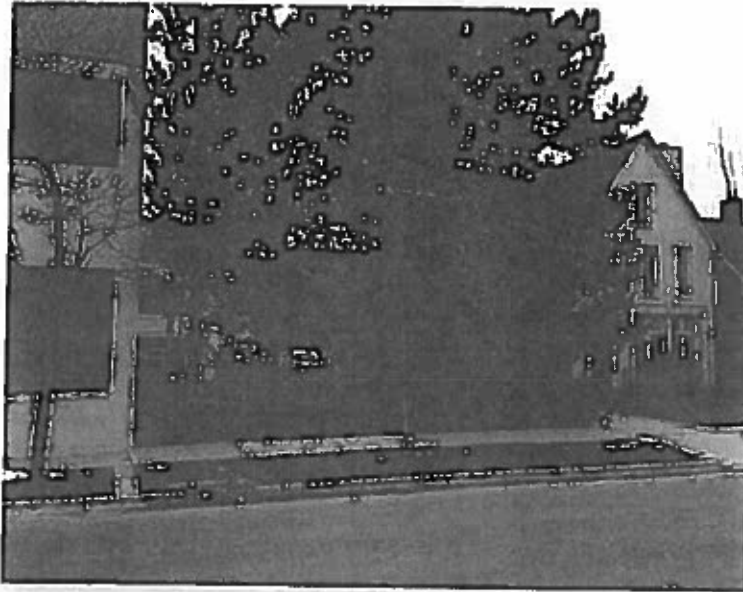
##### **Existing Conditions**

The Brookside Terrace condominiums front onto N. Old Woodward, with a large setback from the street, which provide a nice greenspace along N. Old Woodward. The site backs onto the river, providing nice vistas, both of the river and residential homes on the other bank. Parking, via a structure and on-street facilities are provided to accommodate the moderate density on the site.

##### **Recommendations**

- Plan for redevelopment into office or mixed-use.

## ⑤ Ferndale Area



### Existing Conditions

This site includes an office building. A substantial landscaped area and setback separates the residential from the office. Rear yard parking, located adjacent to the garage/drive, includes a hedgerow buffer.

### Recommendation

- No changes are recommended in this area.



## ⑥ Oakland Area

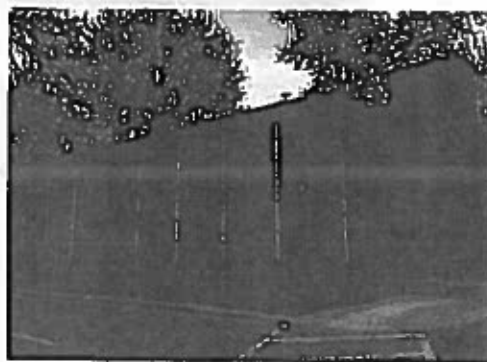


### Existing Conditions

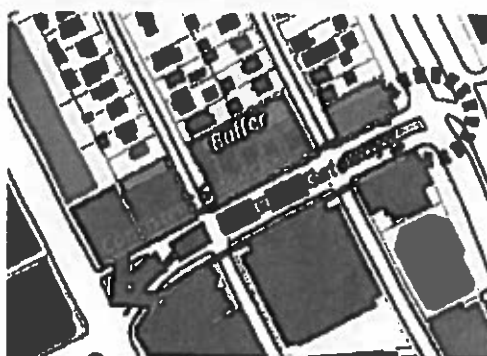
The properties fronting Oakland are somewhat buffered from the parking deck across the street by the width of the right-of-way and the landscaped median. Unlike most of the homes in the neighborhood, the views from those lots look onto a four story office building and multi-story parking deck. These properties have historically been residential (2 are rentals) but the traffic volumes on Oakland are high for residential uses.

### Recommendations

As a key entrance to downtown from Woodward, Oakland Avenue could support more intense uses along its frontage, similar to those on the westernmost block of Oakland at N. Old Woodward. From an urban design perspective, this street could benefit from shallow setbacks on both sides of the street to better frame Oakland as a gateway to downtown. Should the current single-family houses (a mixture of renter- and owner-occupied homes) redevelop, a logical extension of that zero-foot front yard setback characteristic would be acceptable at the other borders of the neighborhood and across Oakland, with deeper rear yard setbacks adjacent to single-family residential. Similar to those office/commercial and attached residential buildings fronting Old Woodward, businesses or attached residential units (no more than 3 stories) would complement the character of other conditions located at the periphery of downtown while protecting the established single-family neighborhood behind. This would provide a better transition to the neighbors to the rear than the current houses fronting Oakland have as a transition. Some additional zoning suggestions are provided later in this report.

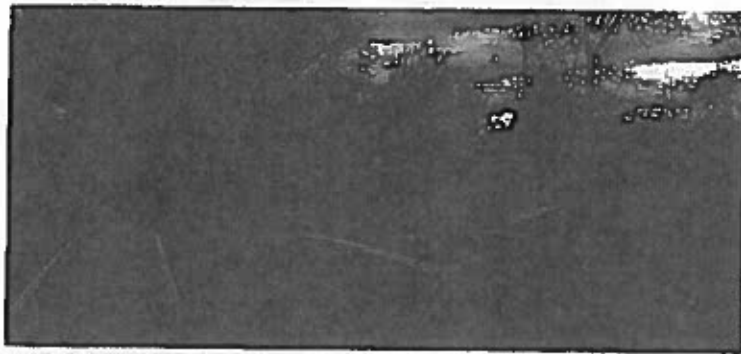


*While the median contains some landscaping, the tall trees are insufficient to fully block the view of the imposing parking deck across the street.*



*Consider marked pedestrian crossings with "Failure to Yield to Pedestrians, minimum \$50 fine" signs*

## ⑦ 404 Park Area



### Existing Conditions

This vacant property is located at the corner of busy Woodward Avenue and Oakland. The views across Oakland of the office building and

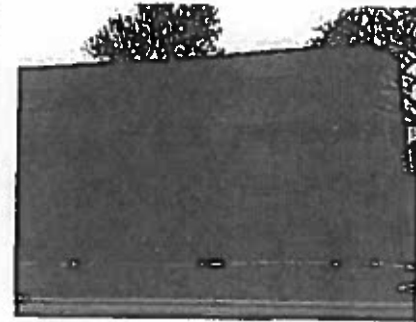
parking structure are not well shielded by the landscaped median. Unlike the other lots along the east side of Park Street, there are no woods to help screen views and noise from Woodward Avenue. The addition of screening along Woodward may be limited in order to protect sight distance along eastbound Oakland given the skewed intersection angle.

### Recommendations

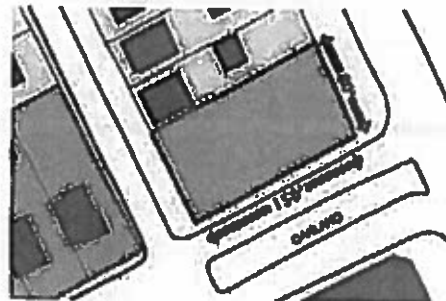
While Birmingham has a strong single family market, we do not believe this site can be expected to redevelop as a single family home due to site factors (location, shallow lot depth along Oakland, lack of screening along Woodward, views of multi-story buildings

across Oakland, and the traffic volumes along Oakland). These site characteristics are unique only to this lot. Under these conditions, attached, owner-occupied residential units (approximately 4 units per building) seem to be the most appropriate use. If designed to complement the existing neighborhood architecture and housing types, this site could have more potential to redevelop into a more complementary development.

Development that can present a residential façade along both Oakland and Park, parking located closer to Woodward, and setbacks consistent with established development, could help accomplish two important goals in this area to protect the single-family neighborhood; minimize impacts from associated parking facilities; and strengthen Oakland as a gateway into downtown.



*While the median contains some landscaping, the tall trees do not fully block the view of the office building across the street.*



*This study area measures 150' wide by 80' deep, which is a challenge to redevelopment.*



*Examples of 3- and 4-unit buildings at Brown and Bates shows how attached single-family residential types can be compatible with residential. Materials and buildings would need to be revised to fit on the study site, but these images illustrate the type of quality that can be achieved.*



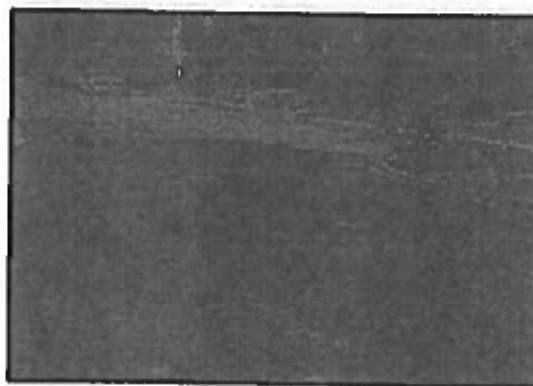
## Complete Streets and Traffic Calming Concepts

Generally the neighborhood streets are designed for appropriate low speed auto travel. Sidewalks are provided along both sides of the streets. To help prevent non-residents from parking in the neighborhood, on-street parking requires a permit. The City has made many improvements to calm traffic and improve the environment for pedestrians, especially along North Ole Woodward. The angled parking, medians and signalized pedestrian crosswalks have helped transform this district into another City asset. We did hear or see some comments from the neighborhood about cut-through traffic, but traffic speeds do not seem to be a problem. There are some additional enhancements that could help meet the City's objectives for "Complete Streets" designed for all types of users, and also to better distinguish the residential and non-residential segments.

- **Curb-bump outs.** At critical neighborhood entry points, where commercial uses end, curb bump-outs and perhaps a band of different pavement could help better mark the neighborhood and discourage cut-through traffic. Some of the streets, such as Park, are too narrow for a bump out, but others, such as Euclid, can accommodate a shallow bump-out.
- **Improved crossings.** An additional pedestrian crossing of Oakland at Ferndale could be evaluated by the City's Engineering Department. This could include a marked crosswalk and a sign to yield to pedestrians.
- **Speed tables.** A speed table is a slightly raised (2 to 3 inches) segment of pavement that combined with a change in pavement or a bump out can help distinguish the residential part of the street. These traffic calming measures can help discourage cut-through traffic and slightly lower speeds. A differentiation in pavement color and levels requires the motorist to notice their speed and reduce it to drive over the tables.



*Curb-bump outs, such as the one recommended along Euclid Avenue, can help distinguish the entry into the neighborhood. It may also allow installation of a tree to improve screening for the adjacent home. This could also include some type of decorative pavement or a speed table as shown below.*



## Zoning Analysis and Recommendations

**Current Zoning and Dimensional Requirements.** With the exception of the Brookside/Ravine parcel (①), which is zoned B-1, Neighborhood Business, and the Brookside Terrace (④) which is zoned R-6, Multiple-Family Residential, parcels evaluated are zoned R-2, Single Family Residential. Key dimensional standards for these districts are as follows:

	Allowed Uses	Min. Lot Size	Min. Front Setback	Minimum Side Setback	Min. Rear Setback	Max Height
R-2	<ul style="list-style-type: none"> <li>SF Residential</li> <li>Adult Care</li> <li>Limited Institutional</li> </ul>	6,000 s.f.	Average along block or 25'	<ul style="list-style-type: none"> <li>One side = 9' or 10% of lot width</li> <li>Both sides = 14' or 25% of lot width</li> <li>Lots over 100' wide = 10' for one side and 25' for both</li> <li>Minimum 5'</li> </ul>	30'	26' to 30'
R-6	<ul style="list-style-type: none"> <li>SF Residential</li> <li>Duplexes</li> <li>Multi-Family</li> </ul>	1,375 s.f. to 2,500 s.f.	25'		30'	30' / 2 stories
B-1	<ul style="list-style-type: none"> <li>Institutional Uses</li> <li>Offices</li> <li>Limited retail &amp; service uses</li> </ul>	N/A	0	0	20'	30' / 2 stories

**Current Buffer Requirements.** As noted, required setbacks, screening, building height, and other design can influence a development's compatibility with adjacent uses. The following summarize the key requirements in the Birmingham Zoning Ordinance as they might relate to the evaluated parcels:

- **Screening.** Section 4.05 requires screening around waste receptacles and mechanical equipment, and a six foot tall masonry screen wall between parking lots and abutting single-family residential zoning districts.
- **Landscaping.** Section 4.20 requires multiple family projects to provide one deciduous and one evergreen tree for each two units proposed, in addition to one street tree for each 40 feet of road frontage.
- **Lighting.** There is very little regulation for parking lot lighting in the Zoning Ordinance that would relate to redevelopment within the study area.

### Recommendations

We were asked to explore zoning options for the 404 Park Area (②) in more detail, to provide more specific guidance to the City for the site at Oakland and Park. The dimensional characteristics, parcel configurations, proximity to the downtown and location along higher volume streets will influence the potential development. Our recommended approach would be to allow modest density, attached residential types (4-unit buildings) at a density higher than what is allowed in the R-2 district, to be offset to some degree with higher quality screening and overall development quality. The following discuss the various ways that this could be achieved and our suggested approach:

1. **Grant Variances.** The City has the authority to grant variances of the dimensional and use restrictions in the Zoning Ordinance. Use and dimensional variances should only be issued in extremely unusual cases, and should be avoided where the desired redevelopment is expected to require several variances.

In this case, the shape of the parcel along does not prevent development into single-family

homes according to the requirements of the R-2 district. However, there are some physical factors that make development of a single family home questionable. We believe an alternatives development option, attached single-family units, is more reasonable and can serve as a buffer for the adjacent residences. A use variance, along with dimensional variances, is an option. Even if the property owner can demonstrate there is a "demonstrated hardship" to warrant a use variance, such a procedure is often not viewed as a good policy approach.

2. **Rezone the Property.** Rezoning of the site from R-2 to a higher intensity designation, such as the R-8 zoning district would allow additional uses including multiple-family uses, but not commercial uses, which can help alleviate concern from the neighborhood residents. In addition, the dimensional requirements are less than those in the R-2. Particularly, the minimum lot size is reduced to 3,000 s.f., the rear setback is reduced to 20', and open space and lot coverage requirements are eliminated, which could accommodate more intense uses. They could also, however, create a development that, without performance standards, may not achieve the compatibility, transitions and buffers desired for this site.
3. **Establish a New District or Overlay.** The recommended approach is to develop a new, urban residential district that could be applied to select sites in anticipation of redevelopment. The provisions could apply if sites are rezoned, or it could be applied as an overlay. The primary benefit of this option is that the City can establish the provisions it feels appropriate for these sites rather than trying to force them into an existing district. Key aspects of this district could include:
  - a. Shifting of the approval focus from the dimensional requirements to a set of performance-based standards. If chosen, standards including but not limited to the following should be included:
    - 1) The development includes building heights, screening and landscaping that consider adjacent land uses and development patterns to ensure proper transition to nearby residential neighborhoods; and
    - 2) The development provides an alternative housing type not typically found in the City, such as senior housing, attached single-family, or other targeted types.
  - b. Because the conditions of the 404 Park Area are not specific to that study area, applicability provisions could be included to allow this district to be applied to other sites that either:
    - 1) Abut both a single-family residential district and a non-residential district, or
    - 2) Are located along a major non-residential road that abuts a single family district.
  - c. Specific standards of the district should include design considerations such as:
    - 1) Additional screening standards for transitional sites, such as inclusion of additional landscaping, building step-backs, and other provisions that we expect will be needed;
    - 2) Additional parking location options, which are limited to on-site facilities in the R-2 district; and
    - 3) Maximum illumination levels, limits on late-night activity, noise restrictions or other standards that may help protect nearby residents.
    - 4) Incentives or other market-based zoning approaches that are more likely to result in the development activity that is desired.
  - d. A development agreement should be required with each approval, to detail the parameters for development relative to the specific conditions and factors for each site. The agreement should address issues such as maximum density, buffer quality, architecture, etc.

**EXHIBIT 4**

**VISION STATEMENT**

### THE DOWNTOWN BIRMINGHAM VISION STATEMENT

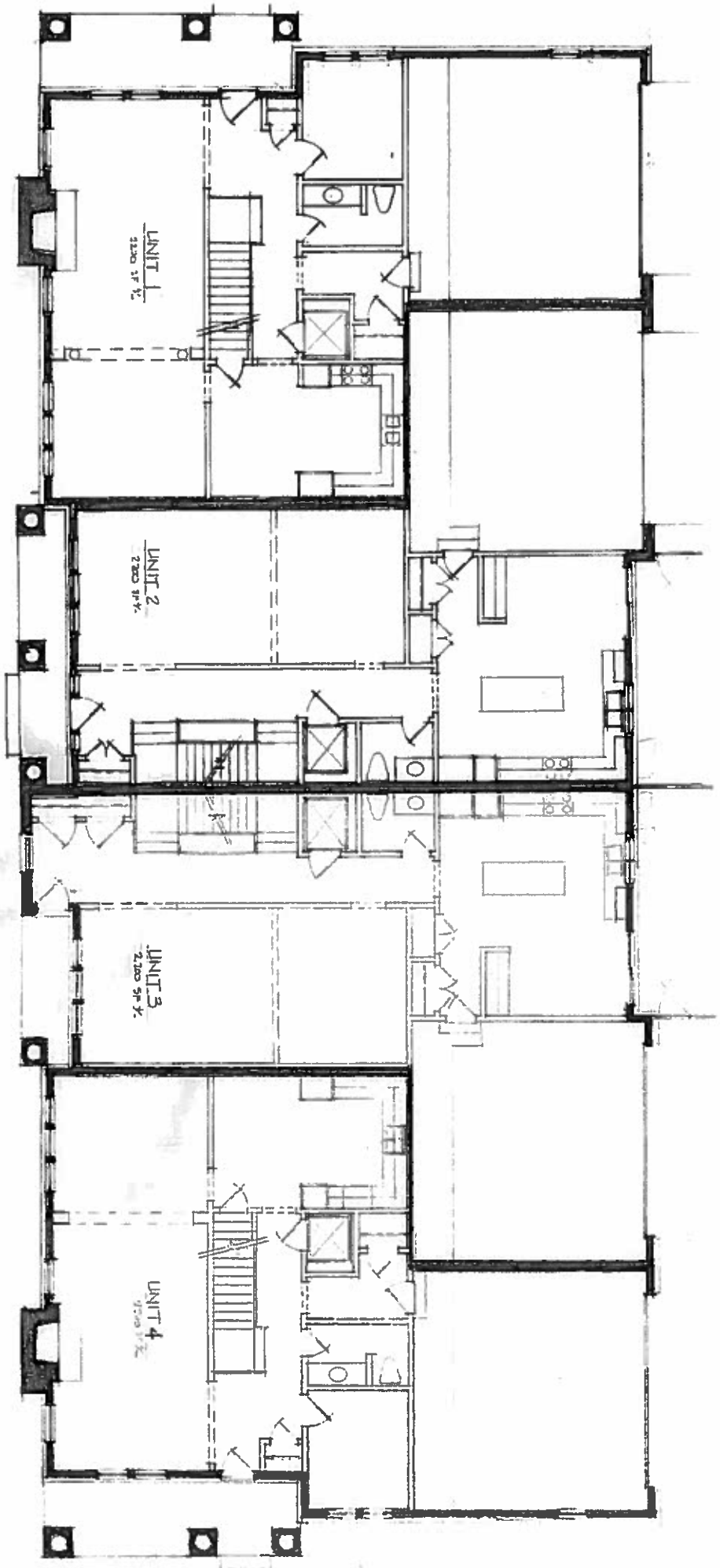
Because downtown Birmingham plays such an integral part in the lives of its residents and serves as a regional destination for so many others, those determining the course of our downtown must continue to build on our treasured heritage when addressing the challenges of the future.

The Downtown Birmingham 2016 Master Plan must:

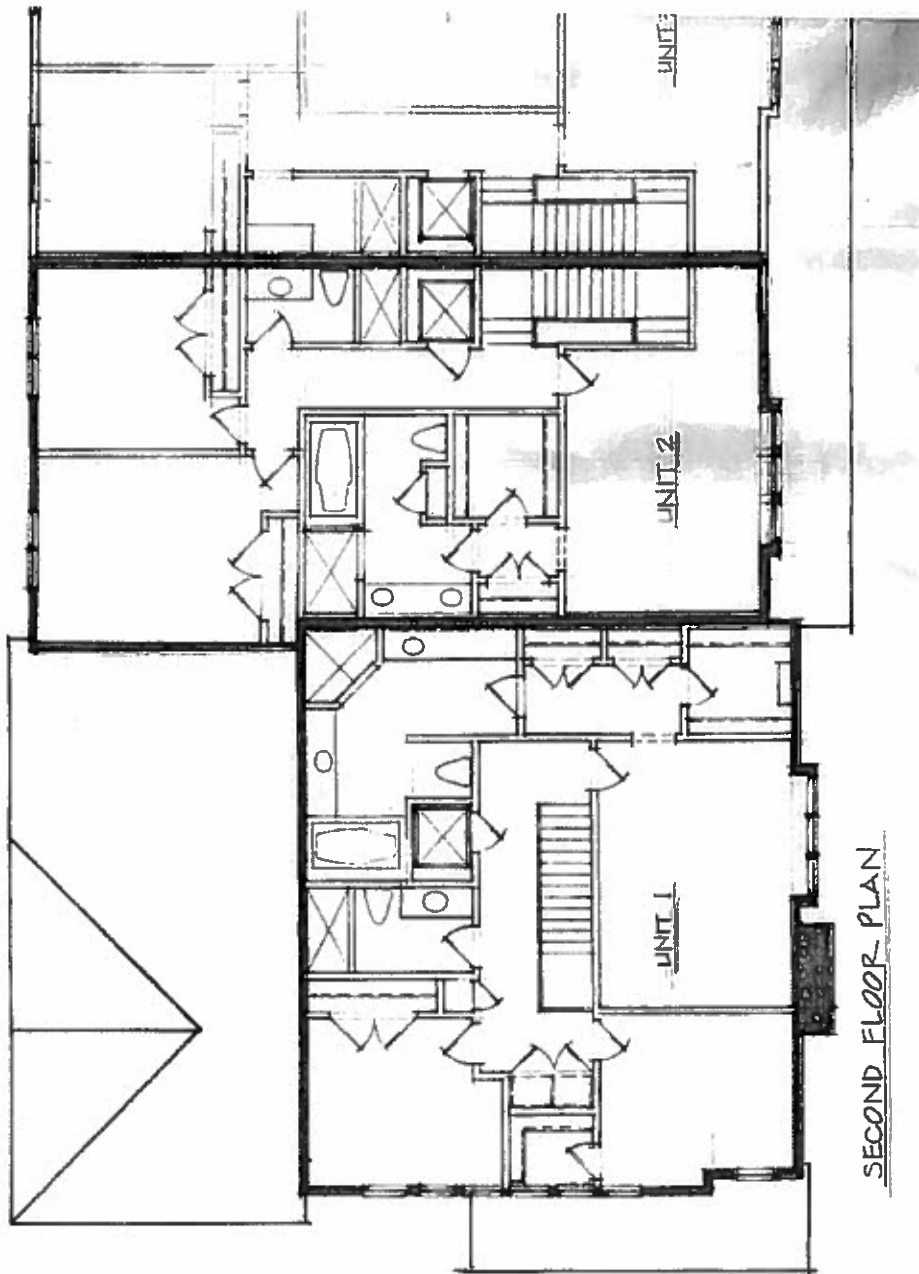
- Ensure the economic viability of the downtown business community.
  - Be designed for the safety, comfort, convenience, and enjoyment of pedestrians, rather than vehicular traffic.
  - Strengthen the spatial and architectural character of the downtown area and ensure buildings are compatible, in mass and scale, with their immediate surroundings and the downtown's traditional two- to four-story buildings.
  - Ensure good land use transitions and structural compatibility in form and mass to the traditional, residential neighborhoods surrounding downtown.
  - Recognize Birmingham's unique past through architecture, landscape, signage, lighting, and/or public art.
  - Create and reinforce identifiable districts within the downtown to provide a sense of place and a variety of experiences.
  - Encourage a diverse mix of uses including retail, commercial, entertainment, cultural, civic, and especially residential
  - Encourage first floor retail businesses, services, and other activities which are required for everyday living.
- Enhance the natural environment and integrate park land and green space into the downtown experience.
- Create a strong identification for civic buildings and public spaces and contextualism in the design of public projects.
  - Strengthen residents civic life by promoting private and public cultural and civic events, and providing sites for civic and public buildings.
  - Cultivate the development of cultural and artistic resources, both public and private, and create appropriate and contextually designed spaces for the integration of art and music into the downtown area.
  - Provide easily accessible, identifiable, and convenient parking in an amount to support downtown density and use.
  - Recognize the types of vehicular traffic, both regional and destination, circulating in and around downtown and attempt to facilitate that vehicular traffic without sacrificing downtown's pedestrian experience.
  - Provide for the future by maintaining and enhancing the infrastructure for necessary services and future technologies.
  - Develop plans and set strategies for the downtown's success by utilizing the resources of Birmingham's business, civic, and governmental organizations.
  - Strive to achieve a downtown for people of all ages, ethnic backgrounds, and incomes.

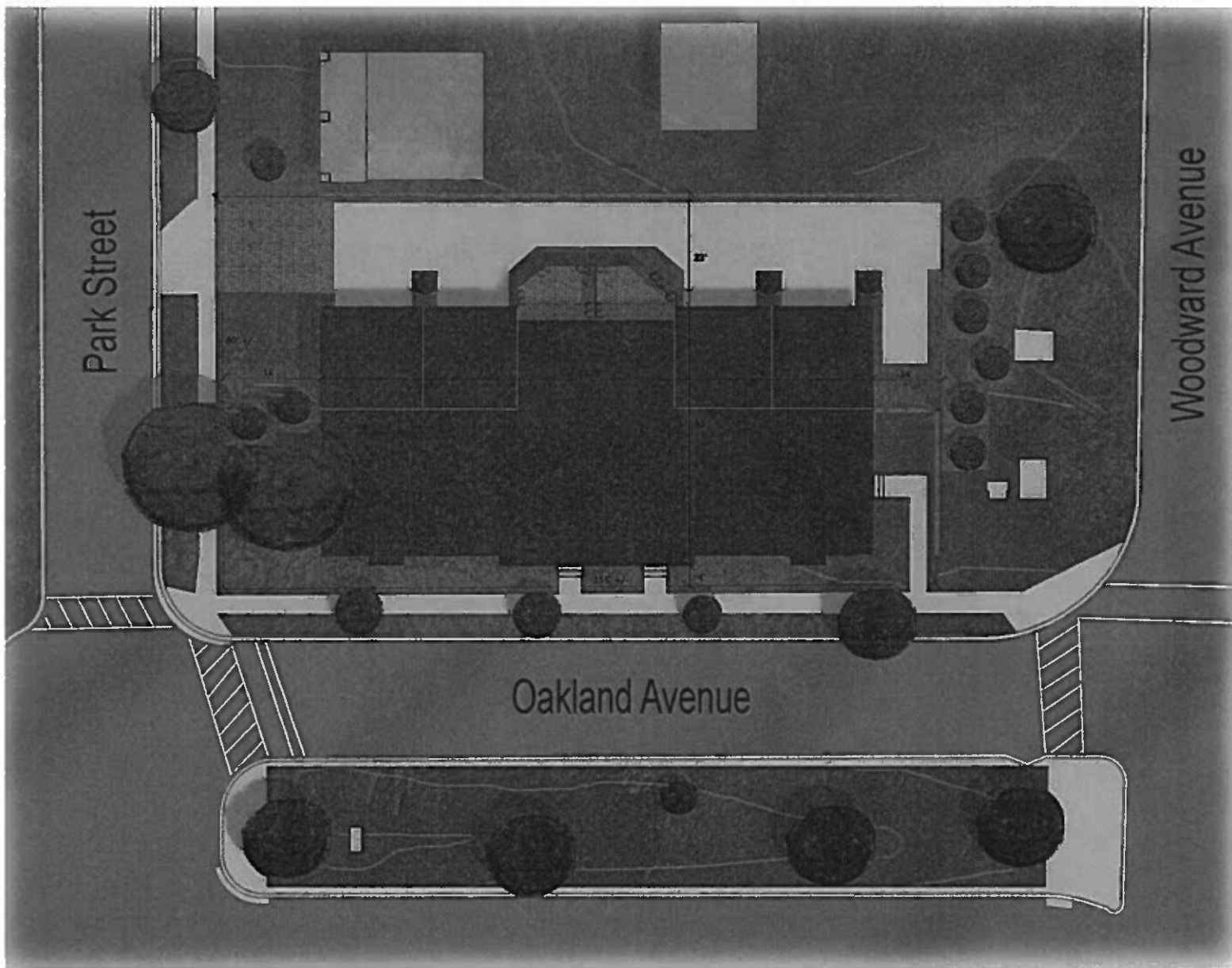
Adopted by the Downtown Planning Advisory Committee on October 10, 1996.

FIRST FLOOR PLAN  
1/4" = 1'-0"



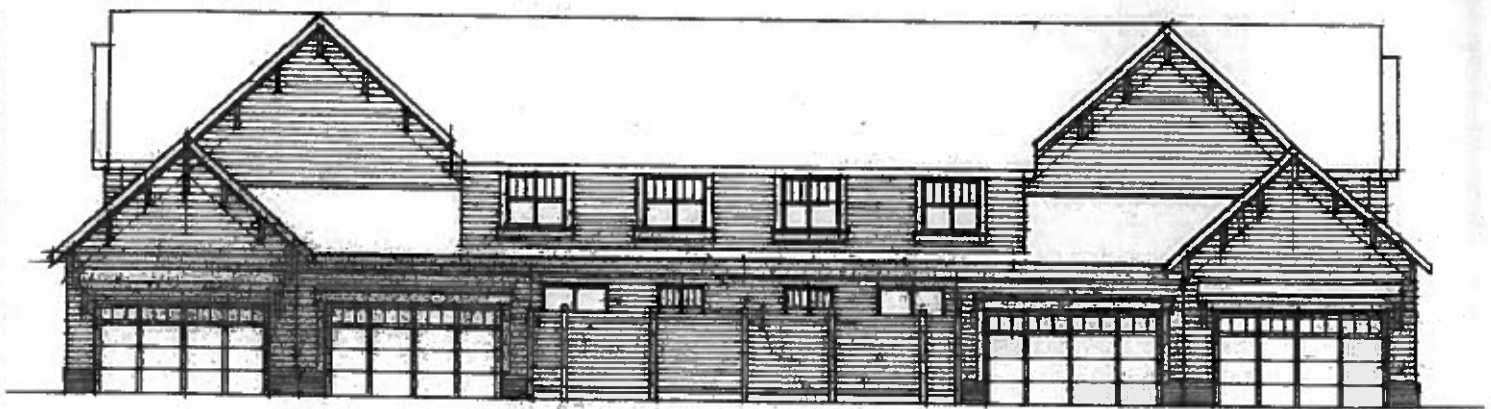








EAST ELEVATION  
WINDWARD SIDE.



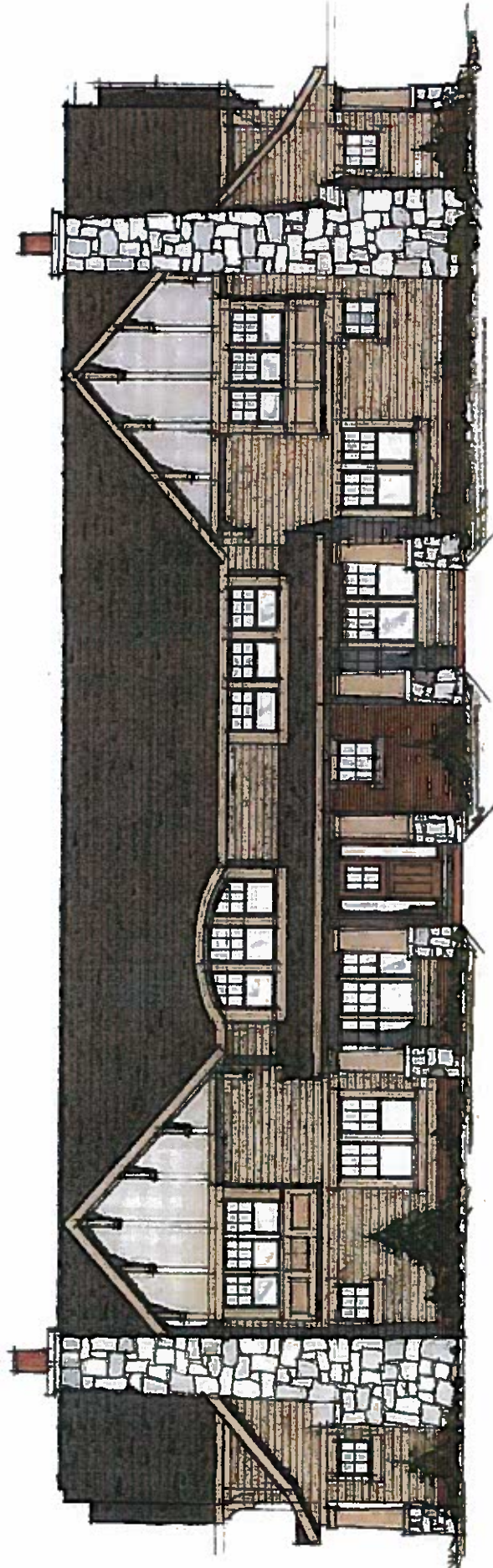
NORTH ELEVATION  
8/3/22



WEST ELEVATION

404 PARK STREET

BURTON-KATZMAN DEVELOPMENT

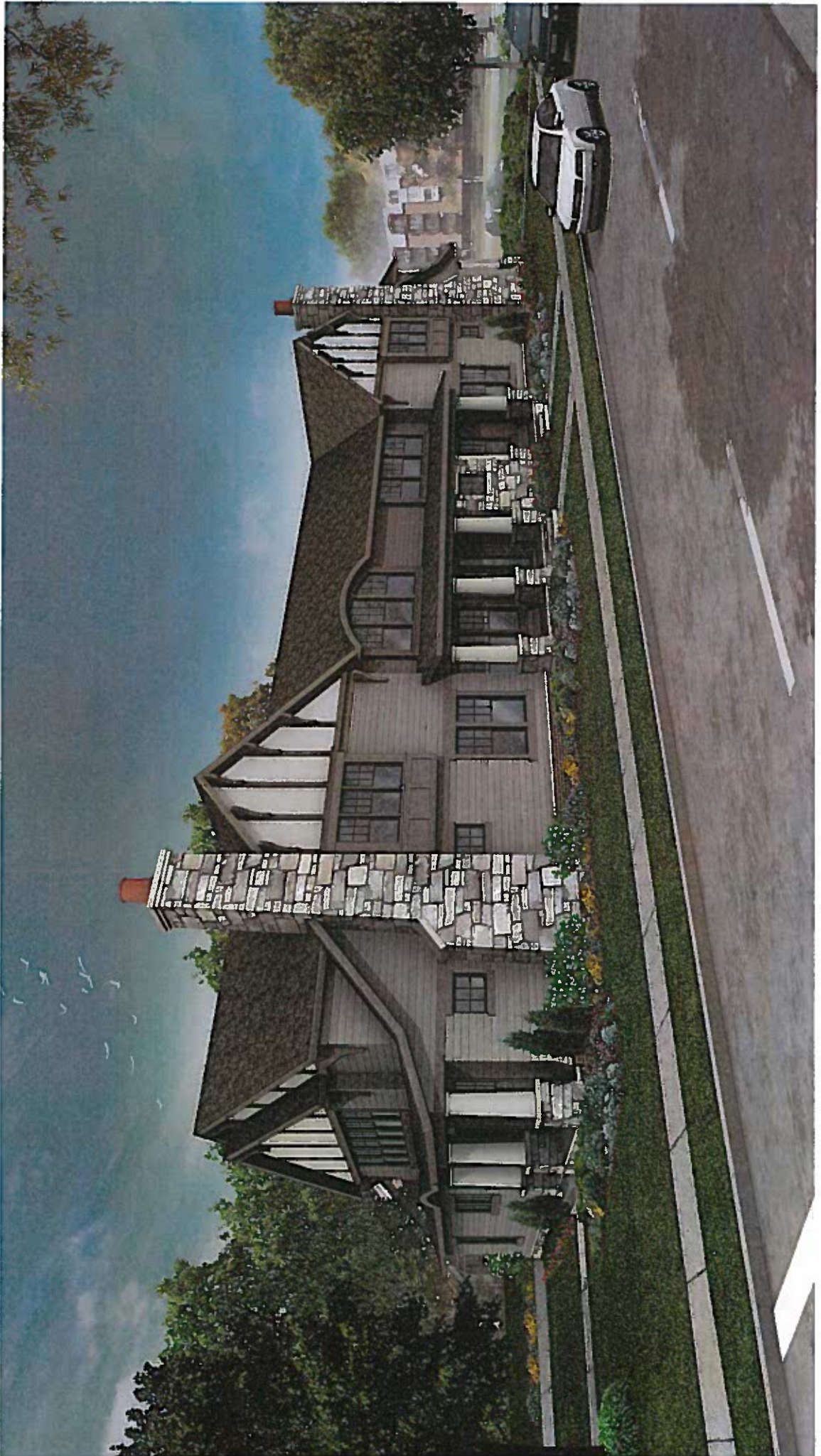


SOUTH ELEVATION

404 PARK STREET

BURTON-KATZMAN DEVELOPMENT





**BIRMINGHAM CITY COMMISSION MINUTES**  
**JUNE 27, 2016**  
**MUNICIPAL BUILDING, 151 MARTIN**  
**7:30 P.M.**

**I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Rackeline J. Hoff, Mayor, called the meeting to order at 7:33 PM.

**II. ROLL CALL**

ROLL CALL:	Present,	Mayor Hoff Commissioner Bordman Commissioner Boutros Commissioner DeWeese Commissioner Harris Mayor Pro Tem Nickita Commissioner Sherman
	Absent,	None

Administration: City Manager Valentine, City Attorney Currier, Clerk Pierce, City Planner Ecker, City Engineer O'Meara, Finance Director Gerber, Deputy Treasurer Klobucar, DPS Director Wood, Police Chief Clemence

**III. PROCLAMATIONS, CONGRATULATORY RESOLUTIONS, AWARDS, APPOINTMENTS, RESIGNATIONS AND CONFIRMATIONS, ADMINISTRATION OF OATHS, INTRODUCTION OF GUESTS AND ANNOUNCEMENTS.**

**06-192-16 U.S. CONGRESSMAN – 11<sup>th</sup> DISTRICT  
DAVE TROTT**

Congressman Trott presented an update on legislation passed in Washington.

**06-193-16 APPOINTMENT TO THE  
MARTHA BALDWIN PARK BOARD**

**MOTION:** Motion by Harris:

To appoint Bob Kenning, 1700 Villa, on the Martha Baldwin Park Board to serve the remainder of a four-year term to expire May 1, 2020.

**MOTION:** Motion by Bordman:

To appoint Ronald Buchanan, 1280 Suffield, on the Martha Baldwin Park Board to serve the remainder of a four-year term to expire May 1, 2019.

**MOTION:** Motion by DeWeese:

To appoint Jane McKee, 392 Ferndale, on the Martha Baldwin Park Board to serve the remainder of a four-year term to expire May 1, 2020.

**MOTION:** Motion by Sherman:

To appoint Linda Forrester, 1252 South Bates, on the Martha Baldwin Park Board to serve the remainder of a four-year term to expire May 1, 2019.



ROLL CALL VOTE:	Yeas,	Commissioner Bordman Commissioner Boutros Commissioner DeWeese Commissioner Harris Mayor Pro Tem Nickita Commissioner Sherman Mayor Hoff
	Nays,	None
	Absent,	None
	Abstention,	1 (Hoff from Item A – absent)

**06-196-16                      SPECIAL EVENT REQUEST  
BIRMINGHAM HARRIERS 5K RUN/WALK**

Terri McArdle, representing the Birmingham Harriers Run, confirmed for Commissioner Bordman that set up on site will begin at 7:00 AM, but any set up along the course will begin at 8:00 AM.

Commissioner Bordman expressed concern with noise that would affect the neighborhood.

**MOTION:** Motion by Bordman, seconded by Harris:

To approve a request submitted by the Seaholm Cross Country Team to hold Birmingham Harriers 5K Run/Walk on August 7, 2016, contingent upon compliance with all permit and insurance requirements and payment of all fees and, further pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.

VOTE:                      Yeas, 7  
                                 Nays, None  
                                 Absent, None

<b>V.        UNFINISHED BUSINESS</b>
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<b>VI.      NEW BUSINESS</b>
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**06-197-16                      PUBLIC HEARING TO CONSIDER A REZONING  
404 PARK STREET**

Mayor Hoff opened the Public Hearing to consider the rezoning of 404 Park Street at 7:56 PM.

City Planner Ecker explained the proposal to rezone the property at 404 Park. She noted that it is two lots located on the north side of Oakland between Park Street and Woodward Avenue. She explained the history of the rezoning attempts and study of this site by the Planning Board and LSL Planning.

Ms. Ecker noted that the proposal is to rezone this property to the TZ1 zoning category. She explained that the applicant is proposing four units and have stated that they intend to comply with the recommendations of the LSL sub-area plan. She explained that the current zoning R-2 would allow for two detached single family units. Under the proposal TZ1, they would be allowed to have four attached single family units. Ms. Ecker explained the standards that must be reviewed for a rezoning application.

Mayor Pro Tem Nickita disclosed that he had past involvement with the development interest on this site. City Attorney Currier explained the decision by the Board of Ethics that this is not a conflict of interest as it was a past business relationship.

Mayor Pro Tem Nickita questioned the dialog in the sub-area plan and how it focused on the one site versus all three sites to the north, specifically 404 and the site adjacent to the west. Ms. Ecker explained that the Oakland Park Sub-Area Plan clearly delineated the two. One of the areas of the study was the Oakland Area along the north side of Oakland. 404 Park was distinguished as a separate area only because it made up part of the Oakland gateway into the downtown and it was unique fronting on three streets and having a narrow depth compared to the other lots. The views across Oakland of the office building and parking structure were not well shielded by the median landscaping and the house would have to be closer to Oakland due to the shallow depth of the lot. Ms. Ecker explained that all of Oakland was considered a gateway as having some similar characteristics.

Ms. Ecker confirmed for Mayor Pro Tem Nickita that the residential density capacity of an R8 versus a TZ1 are the same.

Rick Rattner, attorney representing the applicant, reviewed the history of this parcel and the ordinance. He further explained why rezoning was necessary, why the existing zoning is no longer appropriate, and why the proposed rezoning would not be detrimental to the surrounding properties.

Tom Ryan, attorney representing Mr. & Mrs. Host at 416 Park, noted that a transitional zone is a buffer zone between the lower density neighborhood to protect it from the higher density property. He stated that Oakland has been the buffer. He noted that he is not convinced it is necessary to rezone.

The following individuals spoke in opposition to the rezoning:

William Finnicum, owner of 404 Bates

Paul Gillin, 271 & 273 Eculid

Kathryn Gaines, 343 Ferndale

Jane McKee, 392 Ferndale

Paul Reagan, 997 Purdy

Michael Schuck, 247 Oakland and owns 267 Oakland

Benjamin Gill, 520 Park

Bella Fichtenberg, 430 Park

Gina Russo, 431 Park

Commissioner Harris disclosed that he was involved in litigation with an entity named FCB. One of the members of FCB is the owner of 404 Park. He noted that FCB was adverse to his client and the case is now settled.

Commissioner Sherman pointed out that the last time the Commission looked at this was in September, 2015, not only at this parcel, but across the City and evaluating whether certain parcels should be rezoned at that time to TZ1, TZ2, or TZ3. Looking at what was presented then and now, he sees no difference. There is nothing different in the plan, no facts have changed and the sole reason this is back to the Commission is the argument that the City initiated that process to look at all of the zoning and this was initiated by the developer. He stated that he questions the original reason it was reviewed because a developer came forward

and wanted contractual zoning and the City is not interested in contractual zoning. The Commission had LSL prepare a study and look at a number of parcels around the City. LSL provided recommendations as to what could be done. LSL looked at the area of Ferndale to Woodward and from Oakland back one parcel. The study said that 404 may have had some differences, but when you look at the language used for all of them, LSL said if the City wanted additional transitional buffering, this is the area that should be used.

Commissioner Sherman pointed out that in looking at Oakland, it is commercial zoning, residential, then it would be transitional. He stated that doing this does not make sense. If the City is going to have transitional zoning, it should be congruent. He stated that the property is zoned R2. Just because the developer wants it to be something else, does not mean it should be if it does not fit in with the view of the City according to its plans for how things should be interpreted. He stated that he is not in support of the request to rezone.

Commissioner DeWeese stated that he will not support a change in zoning as he believes that nothing has been fundamentally changed. To make the decision to change any parcel, a case would have to be made for changing all the parcels.

Mayor Pro Tem Nickita commented that the study on transitional zoning needs to be looked at as a unit.

**MOTION:** Motion by Sherman, seconded by DeWeese:

To deny the rezoning of the property at 404 Park Street, Parcel #1925451021, lots 66 and 67 of Oak Grove Addition from R-2 Single Family Residential to TZ-1 Transitional.

The Mayor closed the Public Hearing at 9:37 PM.

Mayor Hoff expressed concern with prolonging this and stated that it is the Commission's responsibility to make a decision. She expressed opposition to the motion.

Commissioner DeWeese commented that it should be dealt with as a unit. He suggested it be reviewed with the master plan.

Commissioner Harris expressed support of the motion and agreed that a review of the entire block would be consistent with what the Commission requested back in the fall. He stated that he is having a hard time finding the community benefit to the rezoning.

VOTE:           Yeas, 5  
                  Nays, 2 (Bordman, Hoff)  
                  Absent, None

Commissioner Bordman pointed out that the property owner has a right to return in one year to ask for a rezoning.

Commissioner Sherman explained that back in September, the Commissioners had requested that before this came back, the entire Oakland area be reviewed to evaluate whether the entire area should be transition zoning from commercial to Woodward. This was never done. He stated that the Planning Board should return to the Commission with a report.

Commissioner DeWeese stated that the master plan is coming up within a year. He would rather wait and have them look at it in the context of the new master plan.

Commissioner Bordman stated that it is not fair to the residents to wait for possibilities. If the Commissioners want the Planning Board to review this, give them a time certain within two to three months so the residents have peace of mind about what is happening with this property.

**MOTION:** Motion by Sherman, seconded by Nickita:

To direct staff to gather information about the RFP, the review and revisions to the master plan, and input from the planning board as to process that would best be used to analyze Oakland Avenue from Old Woodward to Woodward.

Commissioner Bordman stated that she will not be supporting the motion because she does not agree with it in principle. She stated that this should be sent right to the Planning Board to examine.

Mayor Pro Tem Nickita stated that the bigger picture has to be considered and not focusing on one particular property.

VOTE: Yeas, 6  
Nays, 1 (Bordman)  
Absent, None

**06-198-16 PUBLIC HEARING OF NECESSITY FOR  
SEWER LATERAL REPLACEMENT WITHIN THE  
VILLA AVENUE PAVING PROJECT AREA**

Mayor Hoff opened the Public Hearing of Necessity for sewer lateral replacement within the Villa Ave. Paving Project at 10:16 PM.

City Engineer O'Meara explained that the price normally charged to the residents is based on the low bidder price. He suggested a new formula be used based on the average price of all the bidders which would be \$65.33 per foot.

Commissioner Sherman noted that this has been done on other projects where the contract has been substantially higher than the average price.

Bob Kenning, resident, commented that he has been extremely pleased with the work of the current contractor.

The Mayor closed the Public Hearing at 10:21 PM.

**MOTION:** Motion by Sherman, seconded by DeWeese:

To declare necessity for replacement of sewer laterals within the Villa Ave. Paving Project. The public hearing of confirmation will be held on Monday, July 11, 2016, at 7:30 P.M:

WHEREAS, The City Commission has passed Ordinance No. 1906, to establish and adopt requirements and procedures for the replacement of sewer lateral lines when the City street is open for repairs or reconstruction; and



Bruce Johnson &lt;bjohnson@bhamgov.org&gt;

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**Mr. Johnson, can you please forward the following to the Board of Zoning Appeals?  
Thank you!**

1 message

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**Andrew DeAngelis** <adeangelis@ntvbmedia.com>  
To: "BJohnson@bhamgov.org" <BJohnson@bhamgov.org>

Tue, Dec 27, 2016 at 5:42 PM

Dear Board of Zoning Appeals,

I live at 647 Park St and am writing to you re the 404 Park St. rezoning request. It's my understanding that the request is for a 4 apartment building at the corner of Oakland Ave. and Park St. One of the concerns that I have heard regarding this location is parking. If the plan includes ample parking, and the City is prepared to vigorously prohibit illegal parking on Park St. I favor this plan. This is a corner that is more "business or commercial" than residential and I think this would clearly fit into the neighborhood.

Very best regards,

**Andy DeAngelis**

President

NTVB Media, Inc.

Cell 586-665-0860

[adeangelis@ntvbmedia.com](mailto:adeangelis@ntvbmedia.com)[www.ntvbmedia.com](http://www.ntvbmedia.com)



Bruce Johnson &lt;bjohnson@bhamgov.org&gt;

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**404 Park ST**

1 message

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**GINA MARIE RUSSO** <russo@msn.com>

Tue, Dec 27, 2016 at 5:32 PM

To: "bjohnson@bhamgov.org" &lt;bjohnson@bhamgov.org&gt;

Dear Board of Zoning Appeal,

The definition of hardship is: difficult to endure, suffering, a lack of comfort or deprivation.

I find it difficult to understand why 404 Park St. is now being considered for 'Hardship'.

This particular piece of property is a large parcel of land, that if the hardship is because he has not been able to get an over inflated asking price, for 20 years? Or because the lot is oddly shaped, which is a large rectangle, for one large home?

In my opinion neither of these reasons should be considered to allow the zoning to be changed. The past four years he has been turned down numerous times by the City of Birmingham. It is my understanding at this new tactic to go before you to review this case as a hardship makes me wonder why if one house cannot be built on this hardship lot, what makes it not hardship enough for four houses? If anything should be considered a hardship, it should be what we the neighbors, the 100 footers have had to deal with for the past 4 or more years, fighting to keep our neighborhood intact! As one of the hundred footers, I feel the City, thus far, has made the proper decision to say NO to such nonsense. Please put this issue to rest one final time and say No again.

Thank you,

Gina Russo  
431 Park St  
Birmingham MI 48009

December 21, 2016

Board of Zoning Appeals

City of Birmingham

151 Martin Street

Birmingham, Michigan 48012

Re: 404 Park Use and Dimensional Variances Application

Dear Members of the Board of Zoning Appeals:

Developers have owned this property since 1983, and they have applied for rezoning for four decades and been denied. Their only hardship is their unwillingness to build single family residences as they perceive little profit whereas building a multiple-family dwelling would increase profits.

The immediate, affected neighbors as well as the 100 footers have UNANIMOUSLY fought this rezoning for four decades. We have been part of The Little San Francisco neighborhood for over a Century and bought/built our homes believing we are part of a cohesive neighborhood. These variances, if passed, would allow these single family residential lots to be the very definition of spot zoning. On August 20, 2015 City Attorney Tim Currier wrote "Spot Zoning is a zoning for private gain designed to favor or benefit a particular individual or group and not the welfare of the community as a whole". Their passage creates a huge building with eight garages and very little green space, and unnecessarily exacerbates density in an already dense neighborhood. Further, many million dollar houses are being built on the east side of Park where thirty single family homes back up on Woodward and none of us feign hardship. These proposed variances are unwanted and unwarranted, and their passage will only create neighborhood hardship.

If these variances are passed, this will be an end run around the very process which has consistently denied their requests. Please protect our single family residences and our neighborhood by turning down these variances. Thank you for your attention in this matter of grave concern.

Respectfully,

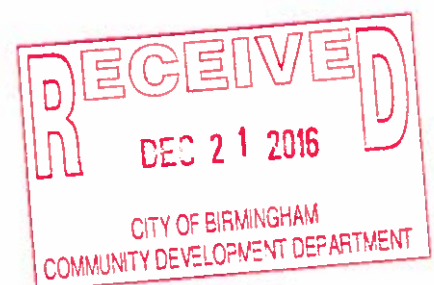
  
Brad and Laura Host

416 Park

Birmingham, Mi. 48009

248.219.2249

248.357.1000



December 27, 2016

Mr. Bruce Johnson, Building Official

City of Birmingham

Hand-delivered

Re: BZA Board Hearing January 10, 2017 on 404 Park Hardship Variances

Dear Mr. Johnson,

Enclosed are eighteen (18) letters which should be included in the BZA packets on January 4, 2017. There are many letters missing including the Thals/Wetsmans' letters (dating back to 1989), Paul Gillin's letters, Sharon Self's letters, Ann and Tom Stallcamp's and others. All of these are available in the various Planning Board or City Commission minutes, and we would like them included as well.

Thank you for your attention in this matter of concern, and we appreciate your assistance.

Best wishes,

Brad and Laura Host

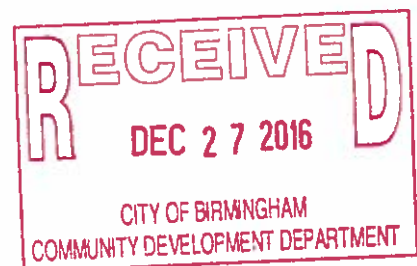
416 Park Street

Birmingham, Michigan 48009

248.219.2249

248.357.1000

Encl.- 18 letters





From: [DCarney@berrymoorman.com](mailto:DCarney@berrymoorman.com)

To: [gdilgard@hotmail.com](mailto:gdilgard@hotmail.com); [sdm984@sbcglobal.net](mailto:sdm984@sbcglobal.net); [rackyhoff@hotmail.com](mailto:rackyhoff@hotmail.com); [mcdaniel\\_tom@hotmail.com](mailto:mcdaniel_tom@hotmail.com); [gordon4bham@aol.com](mailto:gordon4bham@aol.com); [stuart.sherman@sbcglobal.net](mailto:stuart.sherman@sbcglobal.net); [markforbirmingham@yahoo.com](mailto:markforbirmingham@yahoo.com)

CC: [Lbroski@bhamgov.org](mailto:Lbroski@bhamgov.org)

Date: Tue, 19 Feb 2013 18:59:54 -0500

Subject: 404 Park Rezoning

Dear Mayor Dilgard and Commissioners:

This email is my objection to the possible rezoning of 404 Park Street. I understand that many of the property owners on Park have filed objections with you and I believe that those objections should be respected. I further understand that this property (404 Park) has been before previous city commissions on zoning requests in the past and that those zoning requests have been rejected. The current city commission should respect those prior decisions unless there is a compelling reason for change (I am not aware of any compelling reason). The area around 404 Park is sensitive due to congestion, water run off issues, and height issues. The neighbors have good reason for their concerns and objections. I urge you to reject the rezoning of 404 Park consistent with the neighbors objections. Thank you for your consideration on this issue.

Donald F. Carney, Jr.  
255 E. Brown Street, Suite 320  
Birmingham, MI 48009

T: (248) 645-9680

F: (248) 645-1233

email: [dcarney@berrymoorman.com](mailto:dcarney@berrymoorman.com)

website: [www.berrymoorman.com](http://www.berrymoorman.com)

JUN 13 2013

June 10, 2015

The Planning Board

City of Birmingham

RE: Proposal Rezoning Oakland/Park from R2 to TZ1

Dear Planning Board,

We, the undersigned, are 100% of the aforementioned single family residences you are considering rezoning. We fervently believe you should remove Oakland/Park from your rezoning considerations for the following reasons:

- 1) We have been part of The Ravines neighborhood for over a Century and bought/built our homes believing we are part of a cohesive neighborhood.
- 2) The Ravines is close to the Downtown but not part of the Downtown.
- 3) Oakland Street has long been a natural buffer for our neighborhood. The boulevard with four lanes has afforded us a wide separation from the Downtown.
- 4) We have always been a part of a very close—both figuratively and literally—neighborhood.
- 5) Any increase in density will only exacerbate existing traffic and parking problems.
- 6) Any application of TZ1 Classification in The Ravines neighborhood will adversely affect property values as well as degrade the comprehensive clarity of our single family residences neighborhood.

This rezoning proposal is an issue of grave concern, and we believe intensifying our density is unwanted, imprudent, and unwarranted. Historically, The Ravines has been single family residences within a very well defined perimeter imparting a very cohesive neighborhood close to the Downtown, and we have withstood the test of time. All of us steadfastly oppose any rezoning of our neighborhood.

Respectfully submitted,

July 13, 2015

ZONING PROTEST PETITION

Birmingham City Commission,

151 Martin Street,

Birmingham, Mich. 48009

RE: 404 Park Rezoning from R2 to TZ1, Parcel#1925451021, Lots 66 and 67 of Oak Grove Addition

Dear City Commissioners,

We, the undersigned owners of at least 20% of the area of land included within an area extending outward 100 feet from any point on the boundary of the land included in the proposed zoning map change, hereby protest, pursuant to MCL 125.3403(1) and the corresponding section of the City Zoning Ordinance, the proposed rezoning of 404 Park Street from R-2 to TZ1. As interested property owners, we also request, pursuant to MCL 125.3401, that the City Commission hold a public hearing on the proposed rezoning .

Respectfully submitted,

Laura W. Host 416 Park Street

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Date: 7/13/15

Gary B. Smith 424 Park Street

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Neil Fichtenberg 430 Park Street

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Gina Russo 431 Park Street

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Beverly McCotter 287 Oakland

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F.Michael Schuck 267 Oakland

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F. Michael Schuck 247 Oakland

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Susan J. Smith

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Contact person for above property owners: Brad Host 248.219.2249 or 248.357.1000

August 14, 2015

Birmingham City Commission,  
151 Martin,  
Birmingham, Michigan 48009

RE: Spot Rezoning from R2 to TZ1, Parcel 1925451021, Lot 66 and 67 of  
Oak Grove Addition, commonly known as 404 Park

Dear City Commissioners,

404 Park's transitional rezoning discussion started three years ago as spot zoning, and now three years later it ends up as spot zoning. It is possibly the purest SPOT ZONING ever attempted in our City. Little San Francisco neighborhood has enjoyed over a Century as a cohesive neighborhood, and this proposed rezoning is truly a leap across Oakland from the Downtown, an obvious attempt to expand the Downtown into our neighborhood. This is wrong.

On June 24<sup>th</sup>, the Planning Board 4-3 vote includes some noteworthy statements not reflected in the minutes. All three dissenters are in favor of transitional zoning in concept, BUT believe it should not be implemented at 404 Park. Also, on three separate occasions the Planning Board's Bert Koseck said in these three years of hearings NOT ONE PERSON--- excepting the developer--- has said anything positive about 404 Park's proposed rezoning. Lastly, Planning Board member Stuart Jeffares stated rezoning to a four unit apartment building was a more acceptable alternative to having two houses built like the ones on the west side of Telegraph, just south of Square Lake; his analogy is a huge conceit since no one can legislate aesthetics, and --more importantly--he is asserting he knows what is best for the neighborhood despite our neighborhood's persistent, unanimous disapproval.

You all bought single family residences in Birmingham to live here and had certain expectations when purchasing your home. If you had a choice, would you live next door to a four unit apartment building? Your immediate answer is NO. Laura and I purchased our single family residence 416 Park Street twenty five years ago and are delighted to be so close to town and plan to expand our house someday for our retirement. We enjoy being in a single family, close knit neighborhood, and took it for granted there would be single family residence on either side. 404 Park's rezoning will DOUBLE the density, and we will be looking at four two-car garages with ten cars running close by our living room. As the most directly affected single family residence, this spot zoning is unnecessary, unwarranted, and unwanted. You should expunge 404 Park's from your transitional rezoning parcels as this spot zoning would be a detriment to our whole neighborhood.

Respectfully,

Brad and Laura Host  
416 Park St.  
248-219-2249 or 248-357-1000



Brad Host <wolverinecontractors@gmail.com>

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## Re: 404 Park Street Proposed Rezoning

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Brad Host <wolverinecontractors@gmail.com>

Wed, Aug 19, 2015 at 3:20 PM

To: dlurie2001@comcast.net

Lovely and thanks!!!

On Wed, Aug 19, 2015 at 3:14 PM, <dlurie2001@comcast.net> wrote:

Dear Birmingham City Commissioners:

We object strongly to the proposed rezoning of 404 Park Street.

If the specific "spot" rezoning can be done at 404 Park Street, why not on every other block on every other street attached to our downtown community. Simply put, it is a blind attempt to allow more density in our single family neighborhoods.

Please consider the consequences - not just on Park Street but on all other streets that surround the downtown area. Please do not allow the proposed rezoning.

I hope the City Commission thinks about the needs of single family homeowners and citizens above all others.

Thank you,

Dave and Kay Lurie  
755 Lakeview Ave  
Birmingham, MI

Mayor Sherman,

8/19/2015

Mayor Pro Tem Hoff,

Commissioner Dilgard,

Commissioner McDaniel,

Commissioner Moore,

Commissioner Nickita,

and

Commissioner Rinschler:

I am writing on behalf of Brad Host's effort to contest spot zoning in an area that has economic impact on his Park Avenue property.

All of us property owners in Birmingham base our purchases of property on the belief that our property will not diminish in value or use because of changes in city zoning. I'm sure that could be said of your own property.

Please honor all property owners in Birmingham by giving Mr. Host stable land use.

Any of us would expect the same of our City Commission.

Sincerely,

Scott Matthews  
145 Larchlea  
Birmingham, MI 48009

On Thu, Aug 20, 2015 at 12:12 PM, Norman Ash <norman@oakvent.com> wrote:

Hello my City Commissioners,

I strongly object to the proposed spot rezoning from R2 to TZ1 of 404 Park.

As a homeowner for over 35 years of 582 Puritan, I feel that it is important to maintain single family homes within our various neighborhoods. These single family homes balance the ongoing development in the downtown and commercial areas of the city.

Therefore I urge you to vote no on the spot rezoning of 404 Park, which would enable a 4 unit apartment building to be built in the "Little San Francisco "neighborhood.

I am sending this email due to being out of town for the upcoming meeting.

Best regards,

Norman Ash

582 Puritan

Birmingham MI

JUN 13 2016

— Original Message —

From: Cynthia Link

To: gdilgard@hotmail.com

Sent: Sunday, August 23, 2015 2:47 PM

Subject: Rezoning

Hi George,

As you know I'm addicted to watching the Planning Board and the City Commission on Channel 15. I've been considering the issues involved in the transitional zoning issues and have been impressed by the thorough identification of questionable sites all over the city.

The most hotly debated site is on Oakland/Park Street and I've finally concluded that the current zoning should be retained. I'm influenced by many factors. The area under consideration for rezoning is contiguous to a solid residential area and unlike other areas there are no other commercial or multi dwelling structures in the vicinity. The comment made at one of the meetings about not rewarding a developer who overpays for a piece of property in hope of getting it rezoned is a major argument. The property might be the least desirable location for a single family dwelling, but that problem is solved by a lower price for the land. The divided road really protects the residential nature of that area and with none of the other properties in the next block deteriorating as a result of their location, it is wrong to spot zone it for a multi-dwelling. I've discussed this issue with Bob and with Tom Hughes and they also strongly agree.

Bob and I are very impressed by the decisions made by the Planning Board and the City Commission over the years and their decisions have made this a magnificent community. I find distasteful some of the overzealous arguments put forth on this and other issues. We fully support the decision to evaluate the restriping of West Maple Road and are impressed with the improvements in traffic flow and building design that are under consideration for the Whole Food site.

Thank you for your wise consideration of this and other issues. I hope that the voters in Birmingham elect commission members that will operate in the similar open and thoughtful fashion.

Sincerely,

Cynthia Link

p.s. Although I'm acquainted with the other Commission members, I have not emailed them. Can you easily pass on my views to them?





brad host <braddhost@gmail.com>

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## Fwd: Spot Zoning for 404 Park

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hughestombarb@aol.com <hughestombarb@aol.com>  
To: braddhost@gmail.com

Tue, Sep 22, 2015 at 12:03 PM

For you file, our earlier email to City. Tom

-----Original Message-----

From: hughestombarb <hughestombarb@aol.com>  
To: stuart.sherman <stuart.sherman@sbcglobal.net>; rackyhoff <rackyhoff@hotmail.com>; gdilgard <gdilgard@hotmail.com>; mdaniel\_tom <mdaniel\_tom@hotmail.com>; sdm984 <sdm984@sbcglobal.net>; markforbirmingham <markforbirmingham@yahoo.com>  
Sent: Mon, Aug 24, 2015 12:09 pm  
Subject: Spot Zoning for 404 Park

Barbara and I cannot attend the City Commission meeting this evening, however, we want you to know that we continue to oppose approval of the spot zoning request for 404 Park. The approval of this request will set a dangerous precedent that endangers homeowners across the City as property is redeveloped.

Tom and Barbara Hughes  
1300 Birmingham Blvd  
Birmingham, MI 48009-1999  
248.644.2082

JUN 13 2015

May 6, 2016

ZONING PROTEST PETITION

Birmingham City Commission,

151 Martin Street,

Birmingham, Mich. 48009

RE: 404 Park Rezoning from R2 to TZI, Parcel#1925451021, Lots 66 and 67 of Oak Grove Addition

Dear City Commissioners,

We, the undersigned owners of 100% of the area of land included within an area extending outward 100 feet from any point on the boundary of the land included in the proposed zoning map change, hereby protest, pursuant to MCL 125.3403(1) and the corresponding section of the City Zoning Ordinance, the proposed rezoning of 404 Park Street from R-2 to TZ1. As interested property owners, we also request, pursuant to MCL 125.3401, that the City Commission hold a public hearing on the proposed rezoning.

Respectfully submitted,

Laura W. Host 416 Park Street

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Date: 5/6/16

Gary B. Smith 424 Park Street

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Neil Fichtenberg 430 Park Street

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Gina Russo 431 Park Street

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Beverly McCotter 287 Oakland

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F. Michael Schuck 267 Oakland

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F. Michael Schuck 247 Oakland

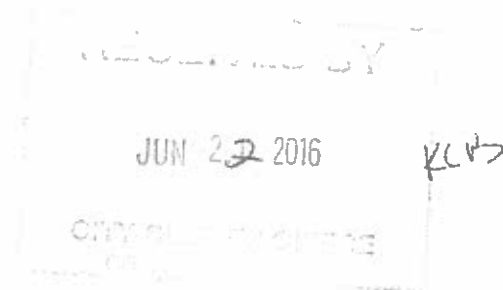
Susan J. Smith

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Contact person for above property owners: Brad Host 248.219.2249 or 248.357.1000

Darryl B. Hazel  
Sheila M. McEntee  
987 Arden Lane  
Birmingham, MI. 48009  
June 18, 2016

Birmingham City Commission  
City of Birmingham  
151 Martin St.  
Birmingham, MI 48009



Dear Commissioners:

We have been residents of Birmingham since 1987. We chose to live in Birmingham and raise our children here because it was an outstanding residential community with a vibrant downtown. We are concerned that we are eroding our residential areas and becoming more focused on the development of downtown.

It troubles us that the Commission is being asked to consider a zoning change that would allow condominiums to be built in what is now a residential area. Our sense is this issue was decided last September when the Commission rejected the proposal to have transitional zoning (including this same proposal) abut residential space, and through some technicality, or outright contempt for the Commission and its September decision, the developer brings his project back less than a year later, virtually unchanged. We believe that anything other than a rejection of this latest proposal, which would affirm last September's decision, would establish a very poor precedent.

Thank you for your consideration.

From: tommark70@hotmail.com  
To: rackyhoff@hotmail.com; mnickita@bhamgov.org; pbordman@bhamgov.org; pboardman@bhamgov.org  
cdeweese@bhamgov.org; aharris@bhamgov.org; ssherman@bhamgov.org  
CC: jvalentine@bhamgov.org  
Subject: Rezoning of 404 Park, Birmingham, MI  
Date: Mon, 20 Jun 2016 16:06:29 -0400

Dear Birmingham City Commissioners:

I am writing this to express my disappointment in the Commission's decision to take up the Rezoning of 404 Park, a matter that was settled last autumn by the then elected Commission. Considerable public debate went into the formulation of that decision, and now we are at it again based on a minor administrative detail related to who files for rezoning. I sincerely hope that the Commission spends its time on more pressing business this week, rather retreading old ground on an already settled matter. Further, this can become unsettling precedent to anyone dealing with the Commission, if its previous decisions are reviewed and possibly overturned even though the prevailing facts and circumstances have not changed.

Thank you,

Thomas Mark  
635 Puritan Avenue  
Birmingham, MI 48009  
248-644-8451

JUN 22 2016



Brad Host <wolverinecontractors@gmail.com>

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## Commission Meeting --- June 27-- Transitional Zoning

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Martha Moyer <marthamoyer@gmail.com>

Tue, Jun 14, 2016 at 5:04 PM

To: rackyhoff@hotmail.com, mnickita@bhamgov.org, pbordman@bhamgov.org, pboutros@bhamgov.org, cdeweese@bhamgov.org, aharris@bhamgov.org, ssherman@bhamgov.org

Dear Commissioners — our family has lived in Birmingham for over 35 years. In raising our family here we have enjoyed the many benefits of this fine community. Our children are graduates of our public school system, I have served our community on the Library Board and we appreciate the “small town feel.....(with) recreational and cultural advantages of a prosperous urban area”.

When reflecting on the qualities of this community we can be proud of its ‘live-ability’ .... but I submit— the greatest attribute is the strength and cohesiveness of its neighborhoods.

I know that you will be revisiting the Transitional Zoning issue on June 27 and I implore you to avoid the enticement of spot zoning that undermines the character and integrity of a neighborhood. I hope that you will keep neighborhoods of single family residences unimpaired.

Thanks for your service to our community and your thoughtful deliberation on this important issue.

Very truly yours

Martha R. Moyer  
1245 Lake Park

***Louis W. Meldman, Ph.D.***  
1825 Yosemite, Suite 10  
Birmingham, MI 48009 USA  
Telephone: 248.379.6786  
Email: [LWMeldman@gmail.com](mailto:LWMeldman@gmail.com)

JUN 2 2016

City of Birmingham Commissioners  
151 Martin Street  
Birmingham, Michigan 48009

21 June 2016

Dear Commissioners,

I was dismayed to learn that the Commission has not put the matter of rezoning 404 Park from R2 to TZ1 to rest once and for all. The issues involved in this case have been argued minutely and exhaustively and repeatedly over many years and a rational decision was arrived at by the Commission on September 21, 2015: the parcel should not be rezoned. That should have been the end of it. And yet there remain some who exhibit a mania to revisit this question de novo despite there being no new facts, no new law, no new rationale, no new circumstances, no new anything to add to this settled matter. At this point, without making any substantive accusations, an objective observer might logically conclude that there is at least the appearance of graft or payola involved in this controversy. One sincerely hopes not, of course, but can we please finally retire this dead horse and refrain from further beating it to a pulp.

In Pro Per,



Louis W. Meldman, Ph.D.

June 22, 2016

Members of the City Commission,

Please accept this letter as my request for you to once again reject the proposed rezoning of 404 Park.

I make this request based on 2 major factors:

**#1. The petitioner has not met the burden required to request the rezoning.**

As you know, there are 3 main criteria that must be met for rezoning to be considered.

*Requirement #1: Why is rezoning necessary for the preservation and enjoyment of the rights of usage?*

Petitioners response:

1. TZ1 is only way to build the building we want.
2. Development of a single family has proven improbable
3. This is a unique property in that it has a shallow lot, is bounded on 3 sides, and has no screening from Woodward.

My observations about response:

It seems a primary reason this property has not been developed since 1983 is the property owners are developers. Since 1988 these developers have continued to push for rezoning and have had no real interest in developing the property as single family residential. As clearly stated in the petition the owners are only interested in building multi-family residential. In 16 years I have never been aware of a legitimate attempt to develop this property as single-family residences. In fact the developers know this is a desirable lot and location and by their own statement to the Planning Board would expect to command rents of \$10,000 per month per unit - 3,500 square foot units at \$3.50 a square foot was the precise estimate given. Lastly, rezoning would do nothing to solve the unique features of this property that the petitioner believes make it unlikely to be developed.

*Requirement #2: Explanation of why current zoning is no longer appropriate?*

Petitioners response:

1. R2 is old and was created years ago
2. TZ1 allows for contemplated use
3. Not in compliance with the City's master plan
4. A vacant lot cannot be a buffer

My observations about response:

There are currently at least 4 homes being developed in our neighborhood under R2 zoning. This demonstrates that R2 zoning, while old, does work and works for property owners in our neighborhood. Stating that new zoning would allow you to build what you want is not an argument for why the current

- *I look to you, our elected officials, to do the right thing for the residents and the city.*
- 5. Maybe it will be a detrimental to your property values - but maybe it won't - no one knows for sure – let's try it and maybe it will work
  - *This feels like a gamble that I, as a property owner, should not be required to take.*

In conclusion, the Developer has not met the burden required to make the zoning request and based on that alone this rezoning request should be denied.

Thank you for your close and thoughtful attention to this very important matter.

Kathryn Gaines  
343 Ferndale  
Birmingham, MI 48009





Attorneys at Law  
2055 Orchard Lake Road  
Sylvan Lake, Michigan 48320  
www.hsc-law.com

Main (248) 731-3080  
Fax (248) 731-3081

John D. Staran  
Direct (248) 731-3088  
jstaran@hsc-law.com

January 6, 2017

*Via Facsimile & U.S. Mail*

Board of Zoning Appeals  
City of Birmingham  
151 Martin Street, P.O. Box 3001  
Birmingham, MI 48012-3001

Re: *Use Variance / 404 Park St., Birmingham, MI*  
*Appeal No. 16-35*

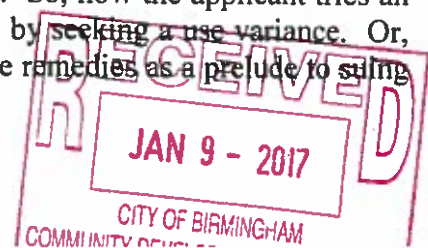
Dear BZA members:

We represent Brad and Laura Host, the owners of 416 Park, which is adjacent to the vacant property at 404 Park for which use and dimensional variances are requested to allow the property to be used for a multiple-family building. It appears the applicant will not take "no" for an answer. The subject property has been zoned R-2 Single-Family Residential District for decades, and, as the Case Description in the BZA's agenda packet explains, the applicant has multiple times unsuccessfully sought to rezone the property to the TZ1 Transition Zone district. Indeed, the City Commission has twice, since 2015, denied requests to rezone the property – most recently last Summer. So now, the Hosts find themselves and their neighborhood threatened again by a zoning variance request. So, what has changed in the meantime to warrant a different result on this variance request? The answer is absolutely nothing!

Our clients strongly oppose the variance requests, and we urge the BZA to be consistent with the City Commission and protect the Hosts and their "Little San Francisco" neighborhood from the unwarranted incursion of an incompatible and inappropriate multi-family land use by denying the variance requests. Denying the requests is the right thing to do for a number of reasons grounded in sound planning and zoning principles.

#### **Standards for Use Variance.**

The use variance request relates to the applicant's desire to use the longstanding R-2 zoned property at 404 Park for a multi-family development similar to what would be permitted under TZ1 zoning. The problem is the City Commission has already rejected the applicant's requests to rezone the property to TZ1 – not just once, but twice. So, now the applicant tries an alternative, end-run approach to circumvent the rezoning denials by seeking a use variance. Or, perhaps the applicant is merely exhausting its local administrative remedies as a prelude to suing



the City in a zoning lawsuit. Regardless of the applicant's intent, the use variance request is meritless and should be denied under the applicable use variance standards.

The standard for non-use or dimensional variances is "practical difficulties." But, the standard for use variances is the more stringent "unnecessary hardship" test. MCL 125.3604(7). Michigan law also requires a 2/3 super-majority vote of the ZBA in order to approve a use variance. MCL 125.3603(2). For a use variance, the Michigan Zoning Enabling Act requires, and Michigan courts have held, that unnecessary hardship must be demonstrated with substantial evidence showing all of the following factors: (1) The property cannot reasonably be used for the purposes permitted in the zoning district; (2) The circumstances giving rise to the variance request are unique to the property and not general conditions of the neighborhood itself; (3) The use authorized by the variance will not alter the essential character of the area; and (4) The applicant's problem is not self-created. *Janssen v Holland Twp ZBA*, 252 Mich App 197, 201 (2002). This four-part test for unnecessary hardship is clearly not met by this variance application, and that should be the central focus of the BZA's deliberation and decision.

**There Are No Special Conditions Or Exceptional Circumstances Applicable to the Property.**

Similar to its unsuccessful pitch to the City Commission to rezone the property, the applicant contends there is a need for a "buffer use" on its property, and that its buffer use will actually be a good thing for the single-family neighborhood it adjoins. Transition or buffer uses can be an effective zoning technique when properly implemented, but not here. The need for a transition zone or use buffer to achieve zoning compatibility in all instances where a non-residential zoning district or land use is adjacent to single-family residential is a fallacy. Indeed, the modern zoning concept of form-based zoning, which focuses on physical form and layout of structures and improvements rather than separation of uses as its guiding principle, is proof of that. And, in some cases even simple landscaping between land uses can serve as an adequate use buffer. In the case of 404 Park, the applicant's proposed multi-family "buffer use" is a solution in search of a problem.

Oakland Avenue provides a very clear, well-defined, and logical demarcation between the business district to the south and the single-family residential neighborhood to the north. It has an attractive dividing median and provides nearly 100 feet of separation between the parking structure and office buildings on the south side and the subject property on the north side. The business properties to the south of Oakland Avenue are at their highest intensity in terms of activity, lights, traffic and noise during weekdays, and much less so on weeknights and weekends when homeowners on the north side are more likely to be affected. Parking restrictions in the neighborhood north of Oakland Avenue further mitigate and protect the residents against adverse effects of traffic and parking problems. The proposed variances, on the other hand, will allow a non-single family residential land use to intrude beyond this boundary line and actually create an undesirable precedent that may lead to future requests of a similar nature affecting the welfare and integrity of the Little San Francisco neighborhood.

### **The Longstanding R-2 Single Family Residential District Designation Remains Reasonable.**

The threshold inquiry for any use variance or rezoning proposal is not what is the highest and best use or what is most desirable or profitable for a prospective developer, but rather the focus should be on whether the property can be reasonably used under the current zoning. Unless the answer to that question is no, then the decision to deny the use variance request is an easy one to make. The City's planning and legal advisors have undoubtedly advised the BZA that the law does not require the City to zone or allow every property to be used for its highest and best (i.e., most profitable) use, but rather to allow a reasonable use. In the case of 404 Park, a demonstration that the site cannot be reasonably redeveloped and used for single-family residential cannot be convincingly made. We do not doubt the subject property may be worth more if marketed or developed for multi-family purposes. It may be worth even more for commercial, retail or office. But, that is not the appropriate line of inquiry. The appropriate and threshold inquiry should be is there anything wrong with the current single-family zoning designation, or – asked another way – can the subject property no longer be reasonably used for single family residential? The answer to this question is no. Until razed in 1988, the subject property was improved with a house, and upon information and belief, the commercial owners of the property ever since that time have made no real effort to re-build a house on the site or to market the site at a prevailing residential property price.

As further testament to the validity and continuing vitality of the current R-2 single family zoning, consider the other similarly situated homesteads along Oakland Avenue at 233, 247, 267 and 287 Oakland Ave. and 300 Ferndale. And, of course, the Little San Francisco neighborhood behind them, which they are an integral part of, continues to thrive and prosper.

We have all heard and probably used the expression, "If it isn't broken, don't fix it." That expression is apropos here. The surrounding area is single family residential on three sides, with R-2 to the north and west, and R-7 to the east. The area to the south, across boulevard Oakland Avenue, is zoned PP and B-4. Rather than provide a protective buffer to the residential neighborhood north of Oakland Avenue, the requested use variance and proposed redevelopment of 404 Park for an apartment building will have the opposite, adverse impact. It will create a foothold and precedent for non-single family residential uses to intrude into the neighborhood on the north side of Oakland Avenue, where none currently exist in the immediate area. Rather than protect the neighborhood residents from the effects of the parking structure and office buildings located south of Oakland Avenue, the proposed rezoning of 404 Park will expose the neighbors to a new higher intensity, multi-family use with increased density, a larger and taller profile, greater lot coverage, more impervious surfaces, and increased noise, traffic and parking under the guise of a transition zone where none is needed.

### **The Granting Of A Use Variance Will Effectively Create a Spot Zone.**

Our Michigan Supreme Court has defined spot zoning as the creation of a small zone of inconsistent use within a larger zone. *Penning v Owens*, 340 Mich 355, 367 (1954). We believe that is exactly what will result here if 404 Park is granted a use variance.

January 6, 2017

Page 4

Spot zoning is a disfavored practice. The requested use variance for 404 Park will not benefit anyone but the owner of 404 Park. And, it will definitely not benefit the single-family residential neighborhood it is an integral part of. Nor is it needed to buffer or protect those residents from the business district to their south, the proximity to which has not adversely impacted their neighborhood. Instead, the proposed variances will create an island of inconsistent zoning and land use amid a larger, well-defined sea of single family residences. It will alter the essential character of the area. Granting a use variance for 404 Park will serve only to benefit and profit its owner to the detriment of the neighbors and neighborhood.

**The Additional Dimensional Variances Requested Further Evinces The Incompatibility Of The Proposed Use.**

Besides the use variance, the applicant has a laundry list of 7 dimensional variances it needs in order to shoe-horn its apartment building into the established single-family residential neighborhood its property is part of. This, in and of itself, demonstrates the inappropriateness and incompatibility of the applicant's proposed use and redevelopment of 404 Park. The applicant may as well ask the City to unzone its property altogether!

We hope the BZA will take into account our clients' serious concerns. Please strictly apply the variance standards, and do the right thing to promote the public health, safety and welfare of the City by turning down these variance requests. Please do not circumvent the City Commission's rezoning denial decisions or try to fix zoning that is not broken by granting variances that are not warranted and will establish an inconsistent land use and precedent in an otherwise cohesive and beloved single family residential neighborhood. Consistent with the City Commission's rezoning denial decision last Summer, the requested variances should be denied.

Very truly yours,

  
John D. Staran

JDS/ijd

cc: Mr. Timothy J. Currier, City Attorney  
Client



Attorneys at Law  
2055 Orchard Lake Road  
Sylvan Lake, Michigan 48320  
www.hsc-law.com

Main (248) 731-3080  
Fax (248) 731-3081

John D. Staran  
Direct (248) 731-3088  
jstaran@hsc-law.com

June 24, 2016

***Via Facsimile & U.S. Mail***

Birmingham City Commission  
151 Martin Street, P.O. Box 3001  
Birmingham, MI 48012-3001

**Re: *Rezoning 404 Park, Birmingham, MI***

Dear City Commissioners:

We represent Brad and Laura Host, the owners of 416 Park, which is adjacent to the vacant property at 404 Park that is proposed for rezoning from its longstanding R-2 Single-Family Residential District to the new TZ1 Transition Zone district. Less than a year ago, the City Commission rejected a similar rezoning proposal the City itself initiated. Now, the Hosts and their neighbors find themselves and their neighborhood threatened again – this time by a developer initiated rezoning proposal. Except for who initiated it, the rezoning proposal is essentially the same as what the Commission rejected last year. So, what has changed in the meantime to warrant a different result? The answer is nothing!

Our clients strongly oppose the rezoning, and we urge the City Commission, as elected representatives of the Hosts and the many other residents of their “Little San Francisco” neighborhood, to please deny this proposed rezone. Denying the rezone is the right thing to do for a number of reasons grounded in sound planning and zoning principles.

**A Transition Zone Is Unnecessary.**

The newly created transition zone district is designed to create a use buffer between incompatible land uses or zoning districts by providing separation and protection for less intensive zoning or land uses from incompatible adverse effects of an adjacent more intensive zoning district or land use. Transition zones can be an effective zoning technique when properly implemented, and in some of the areas being considered by the City Commission for rezoning to TZ, it may be appropriate. But, the need for a transition zone or use buffer to achieve zoning compatibility in all instances where a non-residential zoning district or land use is adjacent to single-family residential is a fallacy. Indeed, the modern zoning concept of form-based zoning, which focuses on physical form and layout of structures and improvements rather than separation of uses as its guiding principle, is proof of that. And, in some cases even simple landscaping

between land uses can serve as an adequate use buffer. In the case of 404 Park, the proposed transition zone designation is a solution in search of a problem that does not exist.

Oakland Avenue provides a very clear, well-defined, and logical demarcation between the business district to the south and the single-family residential neighborhood to the north. It has an attractive dividing median and provides nearly 100 feet of separation between the parking structure and office buildings on the south side and the subject property on the north side. The business properties to the south of Oakland Avenue are at their highest intensity in terms of activity, lights, traffic and noise during weekdays, and much less so on weeknights and weekends when homeowners on the north side are more likely to be affected. Parking restrictions in the neighborhood north of Oakland Avenue further mitigate and protect the residents against adverse effects of traffic and parking problems. The proposed rezoning, on the other hand, will allow a non-single family residential land use to intrude beyond this boundary line and create an undesirable precedent that may lead to future requests of a similar nature affecting the welfare and integrity of the Little San Francisco neighborhood.

#### **The Longstanding R-2 Single Family Residential District Designation Remains Reasonable.**

The threshold inquiry for any rezoning proposal should not be what is the highest and best use or what is most desirable or profitable for a prospective developer, but rather the appropriate and legal question should be whether the current zoning is reasonable for the property. Unless the answer to that question is no, then the decision to deny the rezoning proposal is an easy decision to make. The City's planning and legal advisors have undoubtedly advised the City Commission that the law does not require the City to zone every property for its highest and best (i.e., most profitable) use, but rather to allow a reasonable use. In the case of 404 Park, a demonstration that the site cannot be reasonably redeveloped and used for single-family residential has not been convincingly made. We do not doubt that the subject property may be worth more if marketed or developed for multi-family purposes. It may be worth even more for commercial, retail or office. But, that is not the appropriate line of inquiry. The appropriate and threshold inquiry should be is there anything wrong with the current single-family zoning designation, or – asked another way – can the subject property no longer be reasonably used for single family residential? The answer to this question is no. Until razed in 1988, the subject property was improved with a house, and upon information and belief, the commercial owners of the property ever since that time have made no real effort to re-build a house on the site or to market the site at a prevailing residential property price.

As further testament to the validity and continuing vitality of the current R-2 single family zoning, consider the other similarly situated homesteads along Oakland Avenue at 233, 247, 267 and 287 Oakland Ave. and 300 Ferndale. And, of course, the Little San Francisco neighborhood behind them, which they are an integral part of, continues to thrive and prosper.

We have all heard and probably used the expression, "If it isn't broken, don't fix it." That expression is apropos here. The surrounding area is single family residential on three sides, with R-2 to the north and west, and R-7 to the east. The area to the south, across boulevard

Oakland Avenue, is zoned PP and B-4. Rather than provide a protective buffer to the residential neighborhood north of Oakland Avenue, this proposed rezoning and proposed redevelopment of 404 Park for an apartment building will have the opposite, adverse impact. It will create a foothold and precedent for non-single family residential uses to intrude into the neighborhood on the north side of Oakland Avenue, where none currently exist in the immediate area. Rather than protect the neighborhood residents from the effects of the parking structure and office buildings located south of Oakland Avenue, the proposed rezoning of 404 Park will expose the neighbors to a new higher intensity, multi-family use with increased density, a larger and taller profile, greater lot coverage, more impervious surfaces, and increased noise, traffic and parking under the guise of a transition zone where none is needed.

### **This Is Spot Zoning.**

City Attorney Tim Currier, last time around, provided the City Commission with a letter about spot zoning, which the City Attorney explained is often misunderstood. Perhaps some do misunderstand, but nevertheless, our Supreme Court has defined spot zoning as the creation of a small zone of inconsistent use within a larger zone. *Penning v Owens*, 340 Mich 355, 367 (1954). We believe that is exactly what will result here if 404 Park is rezoned. Especially noteworthy in the City Attorney's letter is the statement of the doctrine:

Spot zoning has come to mean arbitrary and unreasonable zoning action by which a smaller area is singled out of a larger area or district and specially zoned for a use classification totally different from and inconsistent with the classification of surrounding land, and not in accordance with the comprehensive plan. *Spot zoning is a zoning for private gain designed to favor or benefit a particular individual or group and not the welfare of the community as a whole.* [Emphasis added]

The City Attorney's letter ultimately concluded the proposed transitional zoning amendments do not constitute spot zoning, but we respectfully disagree. To determine spot zoning requires a case specific analysis of the particular facts and circumstances involved. Although, spot zoning may not be illegal per se, it is universally frowned upon by planners, municipal attorneys, judges, and zoning scholars alike. It is a disfavored practice. The proposed rezoning of 404 Park will not benefit anyone but the owner of 404 Park. And, it will definitely not benefit the single-family residential neighborhood it is an integral part of. Nor is it needed to buffer or protect those residents from the business district to their south, the proximity to which has not adversely impacted their neighborhood. Instead, the proposed rezoning will create an island of inconsistent zoning and land use amid a larger, well-defined sea of single family residences. Rezoning 404 Park as proposed will serve only to benefit and profit its owner to the detriment of the neighbors and neighborhood.

We commend the City Commission for their thoughtful consideration and approach to the proposed rezoning last September, and we hope the Commission will take into account our client's serious concerns as the Commission strives to do the right thing to promote the public

June 24, 2016  
Page 4

health, safety and welfare of its taxpaying, voting residents. In closing, we urge and caution the City Commission to not try to fix zoning that is not broken by creating a so-called transition zone that is not needed at this location and will establish an inconsistent land use and precedent in an otherwise cohesive and beloved single family residential neighborhood. Consistent with the City Commission's decision last September, this rezoning proposal should be denied.

Very truly yours,

  
John D. Staran

JDS/ijd

cc: Mr. Timothy J. Currier, City Attorney  
Thomas J. Ryan, Esq.  
Client



01/06/2017



Dear Zoning Board of Appeals,

I am writing to oppose the re-zoning of 404 Park Street, on the corner of Park and Oakland, to multi-family status.

The lot now referred to as 404 Park is a double lot that 25 years ago (+ or -) had a small sturdy craftsman house that the new owner had torn down to prepare for maximizing the use of the space. It was a home identical to the one next door, and similar to several others along Park St that have been remodeled and rehabilitated over the years to accommodate larger families and changing needs of residents. But the new owner of 404 Park had a vision of the potential for development on this site. Politics in Birmingham however were not amenable to his plans. So he waited. At around the same time on the other end of Oakland, at the corner of Ferndale, four houses away, local architects were designing two single family homes as models of what in-town homes could be. These homes stand today as beautiful examples of their efforts. One of the homes in 2010 received a prestigious AIA 25-yr award as an example of a sustainable in-town dwelling that had stood the test of time. Two other homes along Oakland are by any measure "historic" and well maintained properties. One is a Craftsman home; the other is earlier, a Victorian. Either could qualify for inclusion in a coffee table book on historic homes. The owners of all these homes love and care for them. They view Oakland Ave with its wide grassed tree-lined boulevard as a more than adequate buffer to the commercial buildings to the south, and thus not in need of any further 'transition'. In addition to the homes along Oakland there are two beautiful homes on Park across from what would become the parking lot for the proposed 404 Park development.

.All of these properties would be negatively affected by the incursion of a multi-family property with the implication that adjoining properties could be next for a zoning change. The anxiety regarding the zoning issue has a direct impact on the value of these surrounding single family homes. The people who own, maintain and live in these homes are universally opposed to a multi-family building on their corner. These homes are not 'tear-downs'.

Beyond the immediately adjoining properties is the impact of a multi-family dwelling on the neighborhood as a whole. The Ravines area is small, with approximately 90 homes. It is two blocks wide and 3-4 blocks long. There are only four entrances/egresses into the neighborhood—at Park, Ferndale, Euclid and Ravine. Increasing the density on any lot in the neighborhood affects everyone to a greater or lesser degree in terms of traffic, parking and drainage issues.

Over the several years that the development of 404 Park has been on the table we have had numerous meetings in neighborhood homes including a discussion of case law as it applies to 'spot zoning' or 'transition zoning'. The classic example is of a large residential development far from commercial services that wish to rezone a parcel for the provision of needed amenities for the surrounding neighborhood—such as a grocery, hardware, drugstore or even a 'big box' store. This qualifying example has no bearing on the discussion of our site. The surrounding neighbors here in large majority see no benefit to the proposed building at 404 Park. Therefore I ask that you reject the applicants request for multi-family development. There is no 'shared benefit' to this proposal. The only benefit is to the property owner.

Thank you for your time, energy and consideration.  
Sharon Self  
227 Euclid



## FINNICUM BROWNIE ARCHITECTS

June 27, 2016

Birmingham City Commission  
151 Martin Street P.O. Box 3001  
Birmingham, MI 48012-3001

Re: Proposed rezoning 404 Park Street

Dear City Commissioners,

As a City of Birmingham property owner, I object to the proposed rezoning of 404 Park Street from R@ to TZ1. Because this rezoning will only benefit the owner of the property it is clearly spot zoning. Residents should be secure in the knowledge that they live in a particular zoning district and are free from detrimental fringe development that is contrary to that district.

As an architect trained in planning and experienced in designing within the constraints of the City of Birmingham zoning ordinance I object to the proposed rezoning. I understand and value the appropriate use of transitional zoning. However, in this instance it is not necessary and inappropriate because in no way does it meet the measure of the TZ1 District Intent as itemized in Section 2.41 of the City of Birmingham Zoning Ordinance.

*The TZ1 (Transition Zone) District is established to:*

a). *Provide for a reasonable and orderly transition from, and buffer between commercial uses and predominantly single-family residential areas.*

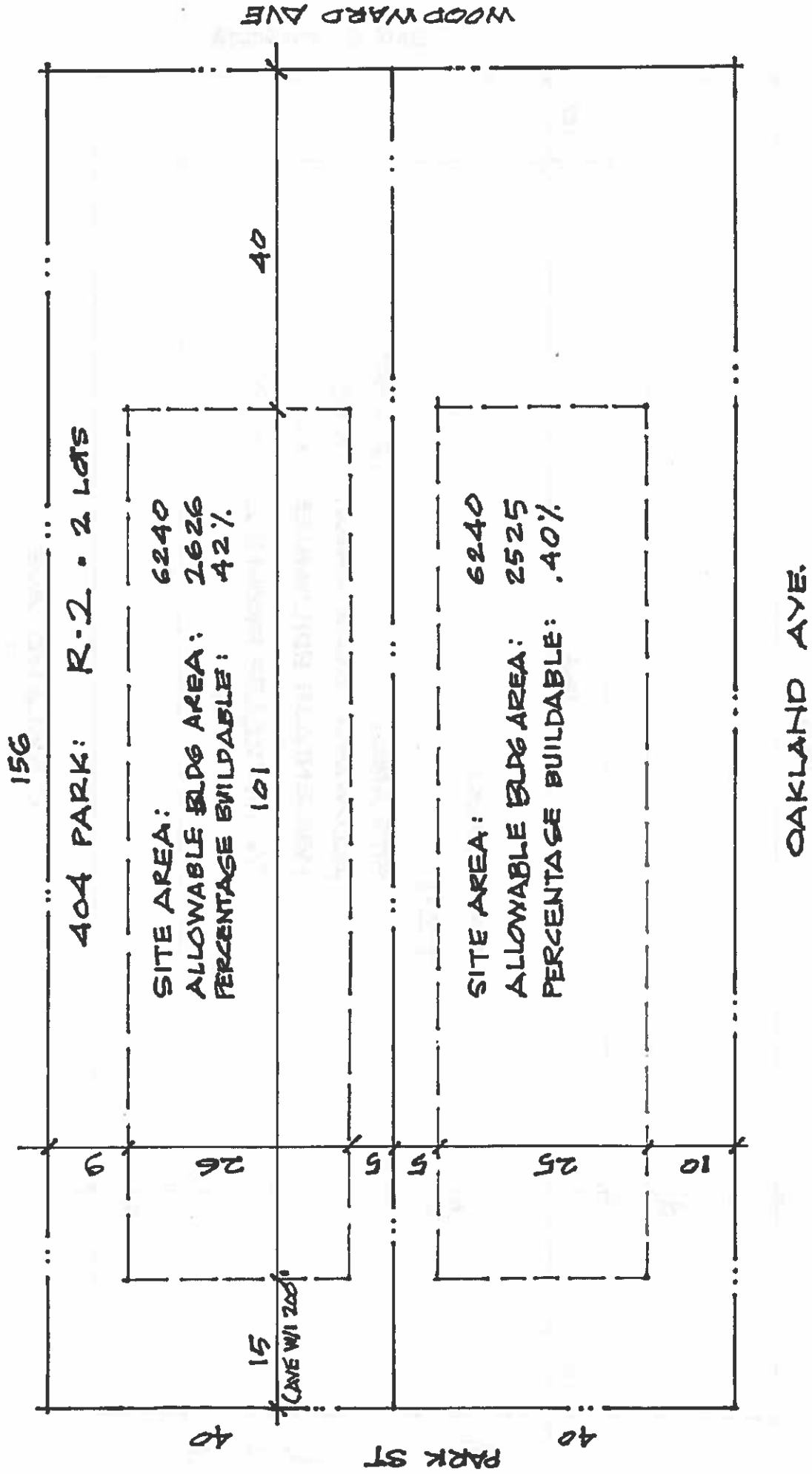
One property does not form a buffer. As others have eloquently described, Oakland Avenue provides a very effective transition.

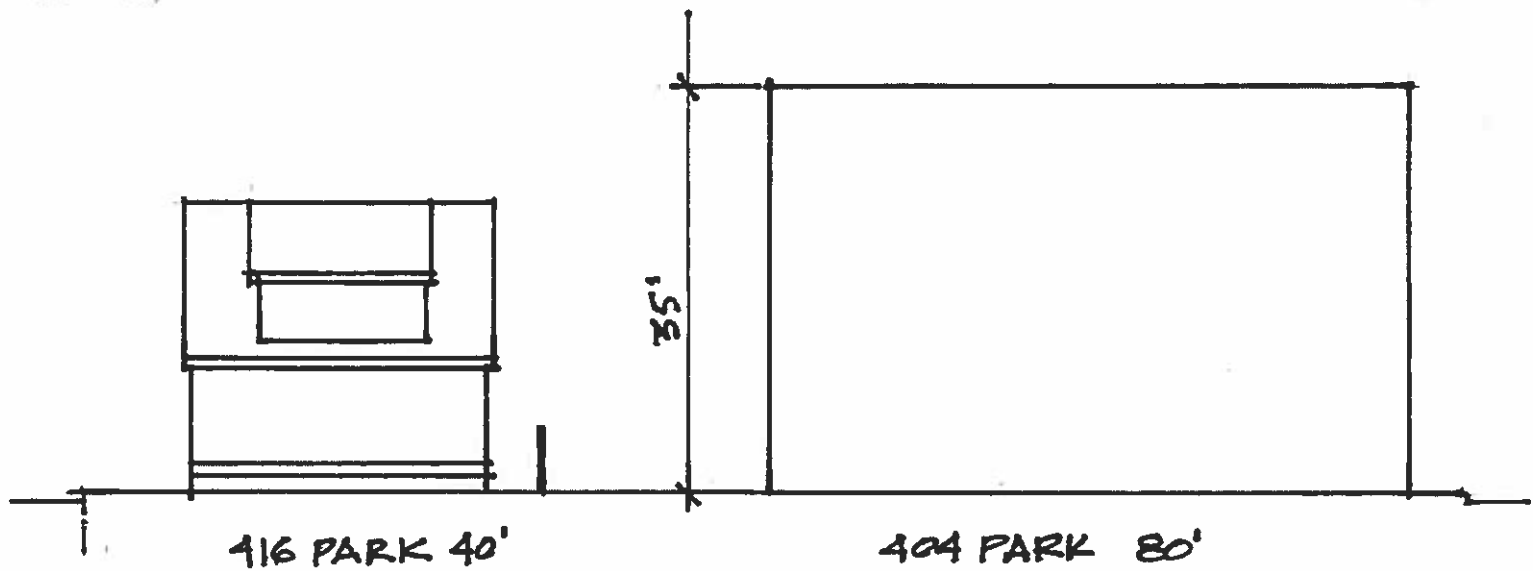
b). *Develop a fully integrated, mixed-use, pedestrian-oriented environment between residential and commercial districts by providing for graduated uses from the less intense residential areas to the more intense commercial areas.*

The Little San Francisco Area is already pedestrian friendly. Increasing the density and disrupting the scale of the neighborhood with the incongruous introduction of and apartment building will destroy the unity of the area.

c). *Plan for future growth of transitional uses which will protect and preserve the integrity and land values of residential areas.*

Future growth of transitional zoning along Oakland Avenue would further erode the integrity of a cohesive, well defined residential area. Rezoning for 404 Park would be the first destructive domino.





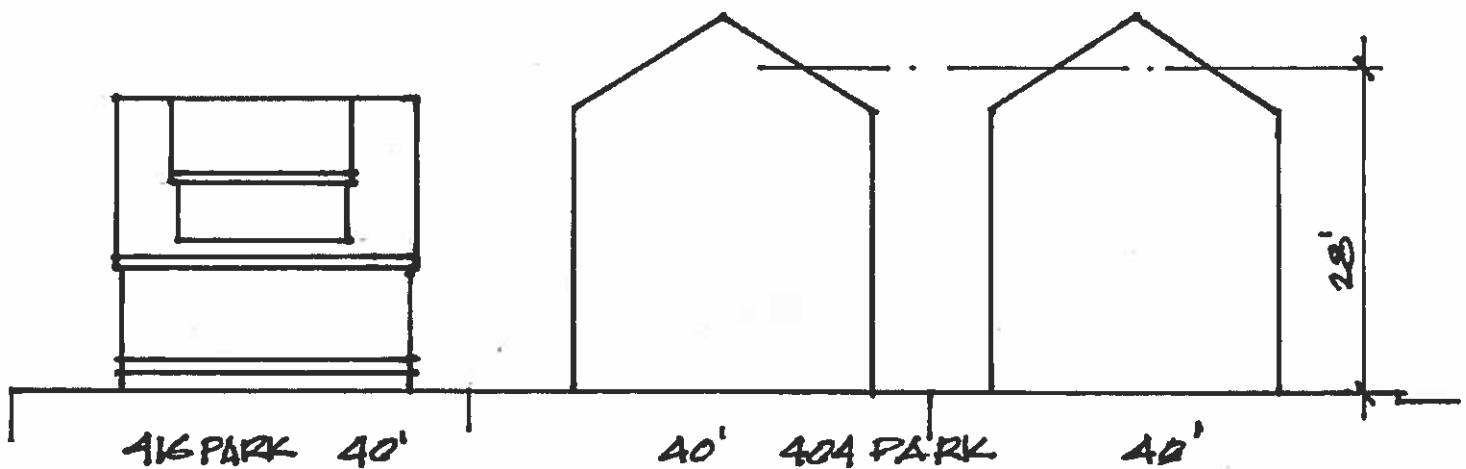
TZ-1

ALLOWABLE BUILDABLE VOLUME:

261,800 CF + PENTHOUSE

117,572 INCREASE OVER R-2

+ 81.5%



R-2

ALLOWABLE BUILDABLE VOLUME:

73,528 + 70,700 = 144,228 CF



Attorneys at Law  
2055 Orchard Lake Road  
Sylvan Lake, Michigan 48320  
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Main (248) 731-3080  
Fax (248) 731-3081

John D. Staran  
Direct (248) 731-3088  
jstaran@hsc-law.com

September 16, 2015

***Via Facsimile & U.S. Mail***

Birmingham City Commission  
151 Martin Street, P.O. Box 3001  
Birmingham, MI 48012-3001

Re: ***Rezoning 404 Park, Birmingham, MI***

Dear City Commissioners:

We represent Brad and Laura Host, the owners of 416 Park, which is adjacent to the vacant property at 404 Park that is proposed for rezoning from its longstanding R-2 Single-Family Residential District to the new TZ1 Transition Zone district. A divided Planning Commission forwarded the rezoning proposal to the City Commission on a 4-3 vote. Our clients strongly oppose the rezoning, and we urge the City Commission, as elected representatives of the Hosts and the many other residents of their "Little San Francisco" neighborhood, to please deny this proposed rezoning. Denying the rezoning is the right thing to do for a number of reasons grounded in sound planning and zoning principles.

**A Transition Zone Is Unnecessary.**

The newly created transition zone district is designed to create a use buffer between incompatible land uses or zoning districts by providing separation and protection for less intensive zoning or land uses from incompatible adverse effects of an adjacent more intensive zoning district or land use. Transition zones can be an effective zoning technique when properly implemented, and in some of the areas being considered by the City Commission for rezoning to TZ, it may be appropriate. But, the need for a transition zone or use buffer to achieve zoning compatibility in all instances where a non-residential zoning district or land use is adjacent to single-family residential is a fallacy. Indeed, the modern zoning concept of form-based zoning, which focuses on physical form and layout of structures and improvements rather than separation of uses as its guiding principle, is proof of that. And, in some cases even simple landscaping between land uses can serve as an adequate use buffer. In the case of 404 Park, the proposed transition zone designation is a solution in search of a problem that does not exist.

Oakland Avenue provides a very clear, well-defined, and logical demarcation between the business district to the south and the single-family residential neighborhood to the north. It has an attractive dividing median and provides nearly 100 feet of separation between the parking structure and office buildings on the south side and the subject property on the north side. The business

properties to the south of Oakland Avenue are at their highest intensity in terms of activity, lights, traffic and noise during weekdays, and much less so on weeknights and weekends when homeowners on the north side are more likely to be affected. Parking restrictions in the neighborhood north of Oakland Avenue further mitigate and protect the residents against adverse effects of traffic and parking problems. The proposed rezoning, on the other hand, will allow a non-single family residential land use to intrude beyond this boundary line and create an undesirable precedent that may lead to future requests of a similar nature affecting the welfare and integrity of the Little San Francisco neighborhood.

### **The Longstanding R-2 Single Family Residential District Designation Remains Reasonable.**

The threshold inquiry for any rezoning proposal should be whether the current zoning is reasonable for the property. Unless the answer to that question is no, then the decision to deny the rezoning proposal is an easy decision to make. The City's planning and legal advisors have undoubtedly advised the City Commission that the law does not require the City to zone every property for its highest and best (i.e., most profitable) use, but rather to allow a reasonable use. In the case of 404 Park, a demonstration that the site cannot be reasonably redeveloped and used for single-family residential has not been convincingly made. We do not doubt that the subject property may be worth more if marketed or developed for multi-family purposes. It may be worth even more for commercial, retail or office. But, that is not the appropriate line of inquiry. The appropriate and threshold inquiry should be is there anything wrong with the current single-family zoning designation, or – asked another way – can the subject property no longer be reasonably used for single family residential? The answer to this question is no. Until razed in 1988, the subject property was improved with a house, and upon information and belief, the commercial owners of the property ever since that time have made no real effort to re-build a house on the site or to market the site at a prevailing residential property price.

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We have all heard and probably used the expression, "If it isn't broken, don't fix it." That expression is apropos here. The surrounding area is single family residential on three sides, with R-2 to the north and west, and R-7 to the east. The area to the south, across boulevard Oakland Avenue, is zoned PP and B-4. Rather than provide a protective buffer to the residential neighborhood north of Oakland Avenue, this proposed rezoning and proposed redevelopment of 404 Park for an apartment building will have the opposite, adverse impact. It will create a foothold and precedent for non-single family residential uses to intrude into the neighborhood on the north side of Oakland Avenue, where none currently exist in the immediate area. Rather than protect the neighborhood residents from the effects of the parking structure and office buildings located south of Oakland Avenue, the proposed rezoning of 404 Park will expose the neighbors to a new higher intensity, multi-family use with increased density, a larger and taller profile, greater lot coverage, more impervious surfaces, and increased noise, traffic and parking under the guise of a transition zone where none is needed.

**This Is Spot Zoning.**

City Attorney Tim Currier recently provided the City Commission with a letter about spot zoning, which the City Attorney explained is often misunderstood. Nevertheless, our Supreme Court has defined spot zoning as the creation of a small zone of inconsistent use within a larger zone. *Penning v Owens*, 340 Mich 355, 367 (1954). We believe that is exactly what will result here if 404 Park is rezoned. Especially noteworthy in the City Attorney's letter is the statement of the doctrine:

Spot zoning has come to mean arbitrary and unreasonable zoning action by which a smaller area is singled out of a larger area or district and specially zoned for a use classification totally different from and inconsistent with the classification of surrounding land, and not in accordance with the comprehensive plan. *Spot zoning is a zoning for private gain designed to favor or benefit a particular individual or group and not the welfare of the community as a whole.* [Emphasis added]

The City Attorney's letter ultimately concludes the proposed transitional zoning amendments do not constitute spot zoning, but we respectfully disagree. To determine spot zoning requires a case specific analysis of the particular facts and circumstances involved. Although, spot zoning may not be illegal per se, it is universally frowned upon by planners, municipal attorneys, judges zoning scholars alike. It is a disfavored practice. The proposed rezoning of 404 Park will not benefit anyone but the owner of 404 Park. It will definitely not benefit the single-family residential neighborhood it is an integral part of, and it is not needed to buffer or protect those residents from the business district to their south, the proximity to which has not adversely impacted their neighborhood. Instead, the proposed rezoning will create an island of inconsistent zoning and land use amid a larger, well-defined sea of single family residences. Rezoning 404 Park as proposed will serve only to benefit and profit its owner to the detriment of the neighbors and neighborhood.

We commend the City Commission for their thoughtful consideration and approach to the proposed rezoning, and we hope the Commission will take into account our client's serious concerns as the Commission strives to do the right thing to promote the public health, safety and welfare of its taxpaying, voting residents. In closing, we urge and caution the City Commission to not try to fix zoning that is not broken by creating a so-called transition zone that is not needed at this location and will establish an inconsistent land use and precedent in an otherwise cohesive and beloved single family residential neighborhood.

Very truly yours,

John D. Staran

JDS/ijj

cc: Mr. Timothy J. Currier, City Attorney  
Thomas J. Ryan, Esq.  
Client



Brigette Moran &lt;bmoran@bhamgov.org&gt;

---

**Fwd: Opposition to variance for 404 Park St**

1 message

Bruce Johnson &lt;bjohnson@bhamgov.org&gt;

Mon, Jan 9, 2017 at 5:18 PM

To: Brigette Moran &lt;Bmoran@bhamgov.org&gt;

Brigette,

Please print copies to be passed out the the meeting. Thanks!

Bruce

----- Forwarded message -----

From: **James Crowl** <james.crowl345@gmail.com>

Date: Sun, Jan 8, 2017 at 8:54 AM

Subject: Opposition to variance for 404 Park St

To: bjohnson@bhamgov.org

My wife and I have recently completed building our home at 468 Park St. During the 3 year process we have followed the various appeals pertaining to the property at 404 Park. We chose (and were very fortunate to have found) the Park St property for it's unique location within a very unique and vibrant neighborhood. We wish to clearly voice our opposition to the proposed use variance for 404 Park St as we feel that such a variance would undermine and significantly damage the feel and flavor of our very special neighborhood. We would appreciate the inclusion of this email in the documents to be presented during the upcoming 404 Park St Hardship Appeal meeting.

Thank you

James & Grace Crowl  
468 Park St  
Birmingham

---

Bruce R. Johnson, B.C.O. | Building Official | 248.530.1842 (office) | 248.530.1292 (fax)

*Get the latest news from the City of Birmingham delivered to your inbox.*

*Visit <http://bhamgov.org/bhamnews> to sign up.*



# **CASE DESCRIPTION**

## **2100 E. Maple 17-01**

**Hearing date: January 10, 2017**

The owners of the property known as 2100 E. Maple are requesting the following variances to allow four (4) signs at the Whole Foods Market:

- A. Chapter 86, Article 01, Section 1.04 B General Sign Standards states that for all buildings, including multi-tenant office or retail buildings, the combined area of all types of signs shall not exceed 1 square foot (1.5 square feet for addresses on Woodward Avenue) for each linear foot of principal building frontage. The principal building frontage for this building is 265.5' allowing 265.5 sq. ft. of signage. The applicant is proposing 791.8 sq. ft. of signage; therefore, a variance of 526.3 sq. ft. is requested.
- B. Chapter 86, Article 01 Table B, Name Letter Signs states that for buildings with more than 100 linear feet of building frontage, the total area of all signs placed on walls other than the principal frontage shall not exceed 100 square feet. The applicant is proposing 556.29 of signage on secondary elevations; therefore, a variance of 456.29 sq. ft. is requested.
- C. Chapter 86, Article 01 Table B, Name Letter Signs states that the maximum height of name letter signs is limited to 24 inches. The applicant is proposing two signs at 13'1" and two signs at 6'5"; therefore, variances of 11'1" and 4'5" respectively are requested.
- D. Chapter 86, Article 01 section 1.05 (K) 6, Permanent Business Sign and Broadcast Media Device Standards states that no wall signs shall project more than 9 inches measured from the wall to which it is attached to the outer surface. The applicant is proposing two signs that will project 11"; therefore a variance of 2" is requested.
- E. Chapter 86, Article 01 section 1.05 (K) 6, Permanent Business Sign and Broadcast Media Device Standards states that no electrical raceway shall have a thickness greater than 4 inches. The applicant is proposing electrical raceways that are 6" thick therefore a variance of 2" is requested.

**Staff Notes:** The applicant was granted Final Site Plan approval by the Planning Board on September 30, 2015. At that time the applicant did not provide sufficient detail to determine compliance with the sign ordinance. Accordingly, the applicant was informed that they would be required to obtain approval for the signage at a later date.

## **CASE DESCRIPTION**

This property is zoned B2, General Business.

---

Matthew Baka  
Senior Planner

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**CITY OF BIRMINGHAM  
REGULAR MEETING OF THE PLANNING BOARD  
WEDNESDAY, SEPTEMBER 30, 2015  
City Commission Room  
151 Martin Street, Birmingham, Michigan**

---

Minutes of the regular meeting of the City of Birmingham Planning Board held on September 30, 2015. Chairman Scott Clein convened the meeting at 7:30 p.m.

**Present:** Chairman Scott Clein; Board Members Robin Boyle, Bert Koseck, Gillian Lazar, Janelle Whipple-Boyce; Alternate Board Members Stuart Jeffares, Daniel Share

**Absent:** Board Members Carroll DeWeese, Bryan Williams; Student Representatives Scott Casperson, Andrea Laverty

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

**09-184-15**

**APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING  
OF SEPTEMBER 9, 2015**

**Motion by Mr. Boyle**

**Seconded by Mr. Koseck to approve the Minutes of September 9, 2015 as presented.**

**Motion carried, 6-0.**

**VOICE VOTE**

Yeas: Boyce, Koseck, Clein, Jeffares, Lazar, Share

Nays: None

Abstain: Whipple-Boyce

Absent: DeWeese, Williams

**09-185-15**

**CHAIRPERSON'S COMMENTS (none)**

**09-186-15**

**APPROVAL OF THE AGENDA (approved).**

## FINAL SITE PLAN AND DESIGN REVIEW

### 1. 2100 E. Maple Rd. Whole Foods

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

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

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

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

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

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

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

#### *Design Review*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Motion by Ms. Whipple-Boyce**

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

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

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

There was no discussion from the public at 9 pm.

**Motion carried, 7-0.**

**ROLLCALL VOTE**

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

Nays: None

Absent: DeWeese, Williams

Application Date: 12-13-16



Hearing Date: 1-10-16

Received By: Bm

Appeal # 17-01

### Board of Zoning Appeals Application

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

#### Property Information:

Street address:	2100 E Maple Road	Sidwell Number:	
Owners name:	Whole Foods Market	Phone #:	847-508-0513
Owners address:	640 N LaSalle Ste. 300	Email:	Jim.Szymczak@wholefoods.com
City: State:	Chicago, IL	Zip code:	60654
Contact person:	Lisa Neal (agent)	Phone #:	630-543-9490

#### Petitioner Information:

Petitioner name:	Doyle Signs, Inc	Phone #:	630-543-9490
Petitioner address:	232 W Interstate Road	Email:	Permits@DoyleSigns.com
City:	Addison,	State:	IL
		Zip Code:	60101

#### 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: Lisa Neal Lisa Neal (agent) Date: 12/12/16



**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 15<sup>th</sup> day of the month preceding the next regular meeting. If the 15<sup>th</sup> 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**

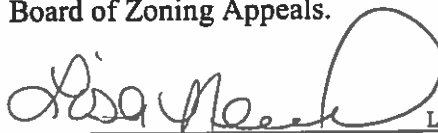
- A. The Board may reverse, affirm, vary or modify any order, requirement, decision or determination as in its opinion should be made, and to that end, shall have all the powers of the officer from whom the appeal has been taken.
- B. The decisions of the Board shall not become final until the expiration 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

Lisa Neal (agent)

CONSENT OF PROPERTY OWNER

I, LINDEN D. NELSON, OF THE STATE OF MICHIGAN AND COUNTY OF  
(Name of property owner)

OAKLAND STATE THE FOLLOWING:

1. That I am the owner of real estate located at 2100 E. Maple Rd;  
(Address of affected property)
2. That I have read and examined the Application for Administrative Approval made to the City of Birmingham by:  
(Name of applicant)
3. That I have no objections to, and consent to the request(s) described in the Application made to the City of Birmingham.

Dated: 1/2/16

LINDEN D. NELSON  
Owner's Name (Please Print)

[Signature]  
Owner's Signature



Doyle Signs, Inc., *General Sign Contractors*  
232 Interstate Road, P.O. Box 1068  
Addison, IL 60101  
Office: (630)543-9490 Fax: (630)543-9493  
permits@doylesigns.com

December 15, 2016

To whom it may concern,

Whole Foods Market is requesting four variations from the Birmingham sign code in order to install signage that exceeds the allowable square footage, overall height, and projection of signs. These specific variations are as follows:

- Section 1.04 (B) of the sign code does not allow for more than 1 square foot of signage per linear foot of Principal Building Frontage (PBF): Whole Foods Market's PBF is 265'5", and it wishes the city to approve its total proposed signage of 791.8 square feet.
- Section 1.04 (B) of the sign code limits buildings with over 100 linear feet of PBF to not more than 100 square feet of signage placed on walls other than the PBF: Whole Foods Market requests that the city approve secondary signage comprising 556.29 square feet.
- Sign code Article 031, Table B, "Name Letter Signs" does not allow for name signs to exceed 24" in height: Whole Foods Market requests that the city approve its proposed signs of 13'1" and 6'5" in height, respectively.
- Article 01 Section 1.05 (K) 6 of the sign ordinance does not allow for raceways more than 4" deep: Whole Foods Market requests that the city approve its proposal to use structural steel supports that are 6" deep as raceways.

The Birmingham sign ordinance states that the Principal Building Frontage is "The width of the building on the side where the primary entrance to the business is located, which may or may not front a street". In this instance, Whole Foods Market has entrances on both the North and South elevations. Given these two customer access points, the extremely large size of the building itself, the fact that it has direct line of site to two thoroughfares, and the nature of visibility obstructions inherent to the site, Whole Foods Market feels that the entire 791.8 square feet of proposed signage is necessary for it to have adequate visibility and will enable it to be competitive with its peers.

Whole Foods Market feels that the signs as proposed, though taller than the 24" allowed by code, will be proportionate to the size of the building, and comparable to the signage of nearby competitors such as Target and Kroger, both of which are less than half a mile away in Troy. Right next door to this store, also in Troy, is an L.A. Fitness gym which has much larger signs on a similar sized building. As the first retail establishment encountered when entering Birmingham from the East on Maple Rd, Whole Foods Market feels that allowing the taller signs as proposed will provide it with more visibility and a less jarring appearance when compared to the building that abuts it.

While the East elevation is obstructed by the LA Fitness mentioned above, it also has a direct line of site to Doyle Drive. Whole Foods Market feels that the secondary sign to the East is necessary to attract the attention of traffic on that street, as well as Westbound drivers on Maple Rd. The secondary sign on the South elevation will direct customers from the main parking lot to the entrance above which it will be mounted.

The West elevation will be obstructed by the presence of the railway underpass, and the tree line that runs along the tracks will produce a visual obstruction of the secondary sign to the West. These will also decrease the visibility of the sign on the North elevation until Eastbound vehicles on Maple Rd. are almost directly in front of the store. Whole Foods Market believes that the

signage as proposed will increase the viability of the store in general, bringing customers to shop in Birmingham.

Regarding projection, the proposed Whole Foods Market letters are 5" deep and the structural supports that the signs are mounted to are 6" deep. While they do contain the signs' electrical components, these steel tubes are actually architectural components of the building facades that have been designed to provide the sole mounting for the signs in front of the glass storefronts, and prevent them from being attached directly to the glass. Whole Foods Market is asking the city to approve the use of this steel tube support structure as a raceway larger than 4" deep, rather than have to add a 4" raceway in order to meet the ordinance requirement.

All four of the proposed signs are composed of individual characters and are much smaller in actual area than the Birmingham ordinance's method of requiring a rectangle to enclose the extreme limits of the irregular shape. Reducing the signage on a commercial facility that has four architecturally complete facades is a major hardship, and we therefore sincerely ask you to consider this appeal.

Respectfully,

Lisa Neal  
As agent of Whole Foods Market  
Doyle Signs, Inc.