

BOARD OF ZONING APPEALS AGENDA

City of Birmingham
Commission Room of the Municipal Building
151 Martin Street, Birmingham, Michigan
November 14, 2017
7:30 PM

1. ROLL CALL
2. APPROVAL OF THE MINUTES OF:
 - a) September 12, 2017
 - b) October 17, 2017
3. APPEALS

	Address	Petitioner	Appeal	Type/Reason
1.	273 EUCLID	NEEPER	17-27	DIMENSIONAL
2.	611 HUMPHREY	STULIBERG	17-30	DIMENSIONAL
3.	460 W. MAPLE	DUL	17-26	DIMENSIONAL
4.	415 W. MERRILL	GEHEB	17-28	DIMENSIONAL
5.	34965 WOODWARD	CATALYST DEV	17-31	INTERPRETATION
6.	34965 WOODWARD	WOODWARD BROWN ASSOC	17-32	INTERPRETATION

4. CORRESPONDENCE
5. GENERAL BUSINESS
 - a) April 13, 2004, City Attorney Letter
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, SEPTEMBER 12, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, September 12, 2017. Chairman Charles Lillie convened the meeting at 7:30 p.m.

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

Absent: Alternate Board Members Kristen Baiardi, Jason Canvasser

Administration: Bruce Johnson, Building Official
Mike Morad, Asst. Building Official
Carole Salutes, Recording Secretary
Jeff Zielke, Building Inspector

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 who serve staggered three-year terms. They sit at the pleasure of the City Commission to hear appeals from petitioners who are seeking variances from the City's Zoning Ordinance. Under Michigan law, a dimensional variance requires four affirmative votes from this board, and the petitioner must show a practical difficulty. A land use variance requires five affirmative votes and the petitioner has to show a hardship. There are no land use variances called for this evening. Also, appeals are heard by the board as far as interpretations or rulings. Four affirmative votes are required to reverse an interpretation or ruling. There are no interpretations on this evening's agenda.

T# 09-60-17

APPROVAL OF THE MINUTES OF THE BZA MEETING OF AUGUST 8, 2017

Motion by Mr. Judd

Seconded by Mr. Morganroth to approve the Minutes of the BZA meeting of August 8, 2017 as presented.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None
Absent: None

T# 09-61-17

**1583 RUFFNER
Appeal 17-21**

The owners of the property known as 1583 Ruffner request the following variances to construct a two-story addition to the rear of the existing home.

A. Chapter 126, Article 2, section 2.10 of the Zoning Ordinance requires both side yard setbacks for this property total 14.00 ft. The total side yard setbacks proposed is 8.46 ft.; therefore, a 5.54 ft. variance is requested.

B. Chapter 126, Article 4, section 4.61 (2) of the Zoning Ordinance requires a minimum street side yard setback to be 10.00 ft. The proposed setback is 3.46 ft; therefore, a variance of 6.54 ft. is requested.

C. Chapter 126, Article 4, section 4.61 (2) of the Zoning Ordinance requires the attached garage to be setback 15.00 ft. from the street side property line. The proposed setback is 13.10 ft.; therefore, a variance of 1.90 ft. is requested.

D. Chapter 126, Article 4, section 4.74 (C) of the Zoning Ordinance requires a minimum distance between principal residential buildings for this lot to be 14.00 ft. The proposed distance is 10.14 ft., therefore a variance of 3.86 ft. is requested.

E. Chapter 126, Article 4, section 4.61 (2) of the Zoning Ordinance requires a minimum street side yard setback to be 10.00 ft. A proposed covered porch is set back 3.46 ft. with a 1.00 ft. overhang; therefore, variances of 6.54 ft. for the porch and 5.87 ft. for the overhang are requested.

This property is zoned R-3 Single-Family Residential.

Mr. Johnson advised that the existing two-story colonial home was constructed in 1926 and is located on the NW corner of Ruffner and Torry St.. The existing lot dimensions are as originally platted. The applicant is proposing a two-story addition to the rear of the home with an attached garage accessed from the side street. The lot tapers as it goes back. It is 40 ft. wide in the front and 37.03 ft. in the rear which is driving some of the need for request (C). The neighboring home on the abutting lot to the west was constructed in 2012-2013.

Chairman Lillie pointed out a problem with variance (E). One survey shows the NE corner of the porch to be 3.46 ft. off the lot line. However the property line tapers back

and the variance request should be larger. If the lot line was parallel the petitioner would have had 2.5 more ft. to build in. He received clarification from Mr. Johnson that the house to the west did not need variances when it was constructed. Also Mr. Johnson noted that if the petitioner built a detached garage instead of attaching it a variance would still be needed.

Mr. Johnson went on to explain regarding variance (C) that the 15 ft. setback requirement for attached garages is a fairly new ordinance provision. Prior to that, attached garages only needed to maintain the same setback as the house. However, the City was receiving complaints about cars parked over the sidewalk, because 10 ft. was not enough room to park a vehicle without blocking the sidewalk.

Mr. Jones asked what the petitioner has done to mitigate the amount of variances requested. Mr. Johnson verified that after the petitioner spoke with Mr. Worthington the variances were reduced from what was initially proposed.

Mr. Hart noted that if the garage was detached the petitioner would still need a variance for lot coverage. The current proposal to attach the garage seems to be a much lesser evil.

Ms. Janine Sova spoke for her daughter, Victoria Miller, who is the owner of the property. Ms. Sova said the house was purchased before the new 15 ft. setback requirement was in place. She explained the reasons for the variances. They worked on the plans over four months trying to conform to the Ordinance. The inside depth of the garage is only 19 ft. which is quite narrow for a car.

Chairman Lillie explained to her that with variance (E) the problem is that a setback of 3.46 ft. has been advertised to the public and probably a larger variance is needed. Because of that the City will have to re-advertise on that one item. Mr. Johnson noted that when the designer drew the plans he did them in accordance with the Certified Survey, but put the dimension in the wrong location. If the requested variance is granted the porch would have to be moved in about 4 in. The petitioners agreed to that and Mr. Johnson said he would need new drawings that conform to the Survey.

At 8:05 p.m. Mr. Larry Alessi, the designer, commented that part of the width of the living room is the stairway down to the garage. They moved the stairway from inside the garage into the house to decrease the size of the garage. Also the whole structure was pulled back to reduce two variances. They looked at a design that would only require a variance for lot coverage and potentially side yard setback, but that was discouraged because lot coverage would be over by about 80 sq. ft.

Motion by Mr. Miller

Seconded by Mr. Jones to approve variances A, B, C, D, and E for Appeal 17-21 at 1538 Ruffner. He believes this situation was created by three things:

- **One is the diminishing size of the lot;**
- **The second is the fact that it is a corner lot and the BZA has encountered that before;**
- **Thirdly, the position of the existing residence on the lot, which is very close to Torry St., makes connecting up difficult there.**

So, Mr. Miller sees those three difficulties preventing the petitioner from meeting the exact Zoning Ordinance as written and conformity does become burdensome because of that.

He also feels that this addition will do substantial justice to the neighborhood. It is a great improvement on the house. They have tried to mitigate the situation. It is a very narrow garage. Also, the house as it proceeds north does step back and increases the distance from Torry St. and diminishes the mass of the house as it goes north.

For those reasons the problem certainly wasn't self-created and he would move to approve tied to the dimensions as advertised and contingent upon revised drawings depicting the porch being set back approximately 4 in.

Mr. Lyon was concerned about the ordinance for attached garages on 40 ft. lots. Mr. Johnson observed if the lot didn't taper back the way it does he thought they could fit it in. Mr. Lyon indicated his support for the motion because of the unique characteristics of the tapered lot and the existing non-conforming residence. He also noted the petitioner took quite a few steps to mitigate the variances and the impact to the neighbor.

Motion carried, 7-0.

ROLLCALL

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

Nays: None

Absent: None

T# 09-62-17

767 HARMON

Appeal 17-24

The owners of the property known as 767 Harmon request a variance from the maximum height of a fence in the front open space:

A. Chapter 126, Article 4, Section 4.11 (2) requires fences located in the front open space not exceed 3.00 ft. in height. The fence panel height is 4.17 ft. and the post

height is 5.17 ft.; therefore, variances of 1.17 ft. for the fence panel and 2.17 ft. for the posts are requested.

This property is zoned R-2 Single-Family Residential.

Two pieces of correspondence have been received from neighbors, one commenting on the variance request and one in favor of it.

Mr. Johnson noted that the Building Dept. received a complaint on or about June 27, 2017 that a new fence in the front open space at this location was too tall. A Code Enforcement Officer investigated and determined the fence was too tall and issued a violation notice. The property owner called the department the next day and stated that the fence was installed approximately five years ago to replace an existing deteriorated fence. The applicant is seeking a variance to allow the existing fence to remain at its current height. Pictures were presented showing how the original fence looked and how it looks today. In response to the Chairman, Mr. Johnson said the Fence Ordinance has been in existence since 1963. He explained for Mr. Judd that installation of a fence requires a permit. There was no permit drawn for this particular fence.

Mr. Ryan Goodman, the homeowner, said he purchased the house over five years ago when it was approaching 100 years in age. It needed a multitude of repairs both interior and exterior, including the fence at the front which was rotting and falling down. It was a complete eyesore for the entire street. The president of the Millpond Neighborhood Association has written a nice letter on their behalf detailing how the fence and other improvements that have been made have enhanced the appeal of the neighborhood.

In response to the Chairman's question Mr. Goodman said he cannot comply with the Ordinance now because the vinyl material cannot be cut down. Also he cannot lower the fence into the ground. Further, it would be a financial hardship to tear out the fence and replace it.

Mr. Jones stated the BZA has parameters they are required to meet in order to grant or deny a variance. Mr. Lyon added there are four points that need to be met in order to convince the board beyond a reasonable doubt that a variance is needed. The most important is that the need for a variance is not self-created. Mr. Miller asked Mr. Goodman why he did not pull a permit. His answer was that he assumed it had been pulled by his landscaper. Chairman Lillie concluded he was relying on his agent and the fact that his agent didn't do it is the petitioner's problem.

Discussion followed that letters from neighbors are worth something, but they are not the deciding factor in granting a variance. Responding to Mr. Jones, Mr. Goodman said it is possible to rip the fence out and have no fence there. Mr. Jones explained that the act of putting in a new fence requires compliance with the zoning then in effect. If the

applicant had applied for a permit it would have been pointed out to him that the fence had to be 3 ft. in height.

At 8:25 p.m. no one in the audience wished to comment on this variance request.

Motion by Mr. Jones

Seconded by Mr. Judd as it relates to appeal 17-24 having the address of 767 Harmon, he would move to deny, as the requirements with which we are all aware and which the applicant signs when he files the appeal are not met.

In fact, the board heard nothing relating to the physical nature of the property as to why there is a practical difficulty. In fact, we heard just the opposite. Mr. Lyon's statement relating to is it not self-created, he thinks is ample reason enough. For those reasons, non-compliance with any of the four criteria that we are to decide upon are why he would move to deny.

Mr. Miller concurred with the motion. He would be afraid of going down a slippery slope if the board approves this. It would set a very difficult precedent.

Mr. Jones added that approval of the motion would not only be a slippery slope, but it would become a totally subjective matter. That is something that would fall outside of this board's parameters. The requirements to grant approval have not been met.

Mr. Lyon said there is no choice but to deny.

Motion to deny carried, 7-0.

ROLLCALL

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

Nays: None

Absent: None

T# 09-63-17

490 LAKESIDE

Appeal 17-25

The owners of the property known as 490 Lakeside request the following variances to replace an existing trellis roof on a rooftop terrace.

A. Chapter 126, Article 2, Section 2.06 of the Zoning Ordinance requires a maximum roof height of 30.00 ft. for this property. The proposed roof height is 32.00 ft.; therefore, a variance of 2.00 ft. is requested.

B. Chapter 126, Article 2, Section 2.06 of the Zoning Ordinance requires a maximum eave height of 24.00 ft. The proposed eave height is 29.00 ft.; therefore, a variance of 5.00 ft. is requested.

This property is zoned R-1 Single-Family Residential.

Mr. Johnson explained that the existing home was constructed in 2001. There is a rooftop terrace area at the front of the home accessed from the habitable attic area. The applicant is proposing to replace the existing trellis roof above the terrace with a sloped roof. In response to the Chairman Mr. Johnson indicated that he is not aware of any variances that were needed when the house was built. Mr. Jones received clarification that the proposed bell shaped roof will not exceed the roofline height.

Mr. Miller observed it would seem that the existing height and the proposed are in proximity to one another.

Mr. Brad Baqua from AZD Architects represented the homeowner, Mr. Arya Afrakhteh. He advised they explored a number of options with the roof configuration. None of them lent themselves aesthetically to the style of the home. The existing trellis height and the eave height are within a few inches of each other. They were very conscious about keeping the new roof lower than the main peak of the house and in balance with the mass of the house. The roofing material will be metal or copper. Aesthetically the roof will have no affect on any of the neighbors in that it will not obstruct their enjoyment of their properties in any way. If the trellis were lowered it would not be usable because of headline issues.

In response to Chairman Lillie, Mr. Baqua said the sloped roof is 5 ft. high in order to balance with the mass of the house. A flat roof did not lend itself to the aesthetics of the home in their opinion. The bell shaped roof improves the look. There is a dropped ceiling on the interior to make that shape work. He indicated for the Chairman that a flat roof would match what the house looks like now.

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

Motion by Mr. Miller

Seconded by Mr. Lyon on Appeal 17-25 at 490 Lakeside to approve Variance (B) only, which is Chapter 126, Article 2, section 2.06. That relates to the proposed eave height and to the existing eave height. He thinks there is an existing condition and it is really not changing with the proposed design. So he thinks the petitioner would find conformity unnecessarily burdensome because you can't really lower the eave height and still walk out on the porch. There is only about 7 or 7.5 ft. now. Again, he finds that quite burdensome.

It is a unique circumstance that this is already built. Because that porch is already built he doesn't see that eave height as being self-created. It is something that was inherited and he thinks that would reasonably do justice to the neighborhood, that type of modification but maintaining that implied or the new built eave height, which seems reasonable to him.

So Mr. Miller would move to approve the eave height as dimensioned on the drawings, separate from the concerns for Variance (A) and tie that to an administratively approved modification to support the existing "eave."

Motion carried, 7-0.

ROLLCALL

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

Nays: None

Absent: None

Motion by Mr. Miller

Seconded by Mr. Morganroth on Appeal 17-25 at 490 Lakeside to deny Variance (A). He cannot get around that it is completely self-created and actually relatively frivolous in terms of going past the height restrictions. Certainly a slightly different profile of the roof can be within the zoning envelope and he thinks that can be done pretty easily. There is no real practical difficulty here that he sees so he would move to deny.

Motion carried, 7-0.

ROLLCALL

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

Nays: None

Absent: None

T# 09-64-17

CORRESPONDENCE (none)

T# 09-65-17

GENERAL BUSINESS

Mr. Johnson introduced Jeff Zielke and Mike Morad to the board.

T# 09-66-17

OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA (no public was left)

T# 09-67-17

ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 8:45 p.m.

A handwritten signature in blue ink, appearing to read "Bruce R. Johnson", is written over a horizontal line.

Bruce R. Johnson, Building Official

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, OCTOBER 17, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, October 17, 2017. Chairman Charles Lillie convened the meeting at 7:30 p.m.

Present: Chairman Charles Lillie; Board Members Kevin Hart, Randolph Judd, Vice-Chairman Peter Lyon, John Miller, Alternate Board Members Kristen Biardi, Jason Canvasser

Absent: Jeffery Jones, Erik Morganroth

Administration: Matthew Baka, Sr. Planner
Bruce Johnson, Building Official
Mike Morad, Asst. Building Official
Carole Salutes, Recording Secretary
Jeff Zielke, Building Inspector

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 who serve staggered three-year terms. 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# 11-68-17

APPROVAL OF THE MINUTES OF THE BZA MEETING OF SEPTEMBER 12, 2017

Motion by Mr. Judd

Seconded by Mr. Lyon to postpone approval of the Minutes of the BZA meeting of September 12, 2017 to the November meeting as there was an ambiguity in the wording with regard to Mr. Jones' motion on Page 6.

Motion carried, 7-0.

VOICE VOTE

Yeas: Judd, Lyon, Biardi, Canvasser, Hart, Lillie, Miller

Nays: None

Absent: Jones, Morganroth

T# 11-69-17

539 S. BATES ST.

Appeal 17-29

The owners of the property known as 539 S. Bates St. request the following variance to construct an addition to their existing home.

A. Chapter 126, Article 4, section 4.74 (C) of the Zoning Ordinance requires a minimum distance between principal residential buildings to this lot to be 17.50 ft. with 7.76 ft. proposed; therefore, a variance of 9.74 ft. is requested.

This property is zoned R-3 Single-Family Residential.

Mr. Johnson advised that the dimensions stated above are as advertised. However, the appellant has verified the actual dimension between the proposed addition and the existing attached garage to the south at its closest point is 7.82 ft., requiring a lesser variance amount of 9.68 ft.

The existing home was built in 1880 and is a designated historical structure. The property owner received approval on November 2, 2016 from the Historic District Commission ("HDC") to construct an addition to the existing home. A Building Permit was issued on April 24, 2017 to construct the addition after the plans were reviewed and approved by the Building Dept. After the permit was issued they were notified by DTE on June 29, 2017 that the location of the addition would be in violation of the National Electrical Code and DTE minimum clearances between the addition and the high voltage power lines. Therefore the Building Dept. issued a stop work order on June 30, 2017, due to the clearance violation.

The property owner redesigned the addition to meet the clearance requirements from the power lines and submitted an Administrative Approval Application to the Planning Dept. for the changes. They shifted the house to the south to comply with all of the setback requirements on their property (redesign of the interior and exterior from what was initially proposed). The house is now proposed to be 5.22 ft. from the south property line. They meet their combined total side yard setbacks of 17.5 ft.; however they are also required to have 17.5 ft. between principal structures.

The attached garage on the neighboring lot to the south (551 S. Bates St.) did receive a variance to be 3 ft. off the lot line prior to being constructed in 1986. That is where the distance between structures is non-conforming to today's Ordinance. The revised plan has been administratively approved with the condition that the applicant seeks approval from the BZA for the minimum distance between principal structures.

Responding to the Chairman, Mr. Johnson said the neighbor's garage to the south is 2.62 ft. off the side property line. The petitioner's lot is 70 ft. wide and the property directly to the south is 50 ft. wide. There are also power lines that run along the rear (easterly) property line. The applicant is working with DTE on the vertical clearance requirements there.

Mr. Lyon inquired how far DTE pushed the building envelope from the north lot line. Mr. Johnson replied the applicant went 14 ft. from the side property line.

Chairman Lillie summarized that assuming there was no house built on the lot to the south, no variances would be required by the petitioner because they meet all of their required setbacks except minimum distance between principal structures.

Mr. H. Adam Cohen, Steinhardt Pesnick & Cohen, spoke on behalf of Michael and Barbara Horowitz, the petitioners, regarding practical difficulty. Mr. Cohen provided the general background after the Horowitzes agreed to buy the home at 539 S. Bates St. contingent on their ability to resurrect a prior approval from the HDC on the historic home. The HDC reinstated the expired approval. The Horowitzes then advised the HDC that they would return with minor modifications to the property. Approximately one year ago the Horowitzes returned to the HDC with some minor modifications and the HDC unanimously approved the modifications with very positive comments.

In reliance of that approval, the Horowitzes closed on the purchase of the home. The City then issued a Building Permit to build the addition along with the minor modifications. Construction began. During the permit and approval process, DTE asserted some concerns about creating clearance with the power lines on the east. Resolution was worked out and construction continued. While work was going on, DTE for the first time claimed that it was concerned about the clearance between its poles and wires on the north and the Horowitzes' proposed addition. The City then issued a stop work order. The stop work order was issued four months ago. That order led to a lengthy series of meetings and communications over many weeks among representatives for the City, DTE, and the Horowitzes, including attorneys, building officials, engineers, and others.

On August 16, 2017, two proposals were made to the Horowitz Family:

- One was that they could apply to the HDC for a permit to demolish the historically designated structure. The process would consume many months and such approval is unlikely according to the City.

- The second proposal was that DTE could elevate the power poles and power lines on the eastern side of the property and relocate them on the northerly side. There was no certainty that the relocation was feasible from an engineering standpoint and the process would also take months at an estimated cost of approximately \$345,000.

Concerned that both alternatives would yield substantial construction delays, uncertainty, significant cost, and potential litigation, the Horowitzes went back to their architect, William Finnicum, and redesigned their proposed addition. The new design has received favorable responses from the various City and DTE attorneys, and other representatives and officials. While the new design meets the City's setback requirements, its construction requires a dimensional variance from the City's Ordinance regulating distance between principal residential buildings on the property's southerly side.

Mr. Cohen said there are several sources of practical difficulty to support their variance request:

- The Horowitzes already obtained approval from the HDC twice under their ownership.
- By now they had obtained a Building Permit and started work on the property.
- It was DTE, not the Horowitz Family, who belatedly objected to the construction and caused the issuance of a stop work order.
- The cost and the time associated with the other two proposals that are extraordinarily risky, not necessarily feasible from an engineering standpoint, and extremely time consuming to a family who is trying to move into a house.
- In 1986 the adjacent property owner to the south obtained a variance to construct a garage addition to the home's northerly side. Therefore that neighbor's garage is nonconforming as to its side yard setback requirement. Moreover, the neighbor's lot is only 50 ft. wide, meaning that lot's distance between buildings is only 14 ft.; not the 17.5 ft. applicable to the Horowitz property which is 70 ft. in width.
- It would be inequitable to reward a neighbor who was first in time to get a variance, and to punish a subsequent neighbor who was second in time and received all approvals to design and build a project which has now been stopped.
- The proximity of the neighbor's garage is the only thing that compels a variance.

These practical difficulties were not self-created and the Horowitz Family has incurred considerable expense and extraordinary hardship through all of this. They have worked to collaborate with the City, with DTE, and with everyone involved to create a solution to this problem.

Finally, in no sense would issuance of the requested variance impair the health, safety, and welfare of the greater community. One of the virtues of this plan is that it has the

effect of relocating the driveway to the north so it is consistent with the northerly driveways adjoining other homes along the street.

Mr. Horowitz showed pictures of the historic house and its relationship to the garage next door and to the DTE pole.

Chairman Lillie pointed out that neither history nor cost are criteria for establishing practical difficulty.

Mr. Lyon summarized the discussion to this point: The house to the south has a 2.6 ft. setback. It originally received a variance in 1986 of 3.3 ft. The larger setback is on the north side.

Mr. Johnson clarified that the DTE horizontal distance requirement is identical to that in the National Electrical Code. The City's position does not support DTE's required clearance, but that of the National Electrical Code. They are both the same. Mr. Cohen pointed out that DTE caused the City to issue the stop work order.

Responding to Mr. Lyon regarding alternatives that were pursued to reduce the required variance, Mr. Cohen stated that Mr. William Finnicum, the Horowitzes' architect, worked very diligently to avoid many possible variance requirements. This was as tight as he could possibly get it. Mr. Lyon went on to inquire why the Horowitzes want such a large house, and Mr. Cohen replied their family has certain bulk needs. They are not building a larger house than the one that was already approved by the HDC three times and for which a Building Permit was granted.

The Chairman took comments from members of the audience at 8:15 p.m.

Mr. Eric A. Parzianello, Hubbard Snitchler & Parzianello, PLC, spoke to represent both Ms. Jane Synnestvedt, and Ms. Barda. He said there was no notice delivered to them nor was there a notice at the property. He noted his clients do not feel that any of the circumstances described amount to practical hardship for the variance to be granted. There was some suggestion that the DTE issue was a surprise, but in November 2016 the HDC meeting notes from the Building Dept. said the applicant must provide a clearance letter from DTE indicating that the setbacks were approved by DTE. That apparently didn't happen.

There are no provisions of the Ordinance that will prevent the Horowitzes from using the property for a permitted purpose; there is no unnecessary hardship, it is all cost and size requirements; the narrowing of the distance between buildings constitutes some safety issues preventing emergency ability to access the homes.

Regarding whether the variance would result in substantial justice to the property owner and the general public, the public would all weigh in favor of denying the variance.

Mr. Cohen stated that in November 2016 DTE raised an issue about the lines on the east . The Horowitzes and DTE reached a resolution which is why DTE never said another word until after the Building Permit was issued. It was not until after construction started that DTE voiced concern about the lines on the north. Secondly, not a single safety professional has indicated there is any problem with the narrow area between the proposed addition and the neighbor's garage to the south. Further, the distance between the proposed addition to the home and the home to the south is very large.

Mr. Johnson clarified for the record that the revised plan was not approved by the HDC; it was administratively approved in the Planning Dept.

Mr. John Henke, a neighbor and chairman of the HDC, said he is speaking to clarify the record. The HDC has neither been consulted on this plan nor approved it. Secondly, this evening's hearing was never posted in front of the property. Third, immediately adjacent to the south lot line of the second house to the south of the subject property is a driveway on the north side of the property of the third house. Chairman Lillie answered that it was presented that all of the driveways are on the north side, and if the variance request is approved this driveway would also be on the north side. Mr. Henke continued that if the variance is granted there will be a 2 1/2 story structure immediately adjacent to a 1 1/2 story structure. The Chairman indicated that is not something the BZA decides on. Mr. Henke concluded that speaking as a neighbor, he sees this as a self-created problem.

Ms. Jane Synnestvedt, 551 S. Bates St., immediately south of the subject property said she has a passion for older homes and purchased her home because she felt the Bates St. Historic District offered protection for her 1907 home. If the proposed addition goes up it will affect the light that comes into her house on that side. She thought that a solution might be to shrink the size of the Horowitzes' house. There are a number of neighbors that agree with her.

Motion by Mr. Judd

Seconded by Mr. Lyon in regard to Appeal 17-29, 539 S. Bates St. The representative of the petitioner has certainly noted that this is a thorny problem. In fact, Mr. Judd has never seen a confluence of conflicting interests on a piece of property that is quite as complete as this one. We have a historic home; we have DTE with a setback controlling; we have a house to the south that was granted a variance in 1986 (by the way, nothing the past board did or that we do is precedent).

The question is whether any of these or added together is enough to constitute practical difficulty in this particular situation. Mr. Judd feels that they are. He thinks that strict compliance with the setbacks in this case would unreasonably

prevent the owner from using the property for a permitted purpose and would render conformity to the restrictions unnecessarily burdensome.

Further, to grant the variance would do substantial justice to the applicant as well as other property owners in the district.

We are the Board of Zoning Appeals, we are not the Historic Board; we are not the City Commission; we deal with the issue at hand and that does not include worrying about or considering the historic nature of the area. There is a board for that purpose so we will be very circumspect in our decision.

Mr. Judd feels that to allow a lesser relaxation would give substantial relief to the owner of the property and be more consistent with justice to the property owners.

The third point this board deals with is whether or not this is due to unique circumstances. Well, as he noted, there are a lot of unique circumstances here. The historic home has been before the Historic District Commission twice. The plans that have been submitted have been approved, and the main problem suddenly becomes DTE. DTE is certainly not a self-created problem as noted. The setback required by DTE has really thrown this entire project off. Mr. Judd indicated he is an attorney, not an architect, but he looked at the plans and tried to figure out how you could shift that house, but you can't touch the historic home which sits in the middle. That is the fulcrum and it is not going anywhere. So, that is the problem that we have to deal with. Added to that problem is in 1986 members of this board, none of whom were on the board at that time, granted a variance. That variance, once again, is butting up against the subject project from the south.

Mr. Judd feels the solution that has been presented by the petitioner is the one that will work in this case. Therefore he would move to grant this appeal and tie it to the plans as presented.

Mr. Lyon said he supported the variance because the house to the south is not a conforming structure. This is a bit of our 9-5, 9-5, 9-5 rule where Birmingham is a bit unique in the required distance between buildings. The neighbors to the south intruded on the required 5 ft. setback (actually more than they were allowed to). Were it not for that structure this board would not even be meeting tonight. The City has supported the DTE required distance from their lines. Therefore it requires the petitioner to put the large driveway setback on the north side of the structure. That leaves the south side of the structure with the smaller setback which would normally be 5 ft. were it not for the neighbor's garage that is 2.7 ft. from the south lot line of the subject property. So for those reasons, Mr. Lyon thinks that a practical difficulty has been established; it is not self-created; and it is definitely unique to the property.

Mr. Miller commented in support of the appeal. There are many unique circumstances here, but the garage to the south and its variance are an over-riding factor for him.

Chairman Lillie indicated he would support the motion for the reasons stated by Mr. Judd. He also pointed out that the board has run into this situation before where adjoining lots have different widths. It causes a problem for the larger lot owner because the smaller lot owner is able to comply because he doesn't have to be as far away from the lot line. Besides that, the variance that was obtained in 1986 has exacerbated the problem.

Motion carried, 7-0.

ROLLCALL VOTE

Yeas: Judd, Lyon, Biardi, Canvasser, Hart, Lillie, Miller

Nays: None

Absent: Jones, Morganroth

T# 11-70-17

CORRESPONDENCE (none)

T# 11-71-17

GENERAL BUSINESS

Mr. Johnson announced that the December meeting will be on December 5 due to holidays occurring in the second week.

T# 11-72-17

OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA (no public was left)

T# 11-73-17

ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 8:40 p.m.



Bruce R. Johnson, Building Official

CASE DESCRIPTION

273 Euclid (17-27)

Hearing date: November 14, 2017

The owners of the property known as 273 Euclid is requesting the following variance to allow for the construction of a new single family home with a detached garage.

- A. Chapter 126, Article 2, Section 2.10** of the Zoning Ordinance requires a maximum roof height of the house for R-3 of 28.00 feet for this property. The proposed roof height is 32.56 feet; therefore a variance of 4.56 feet is requested.
- B. Chapter 126, Article 2, Section 2.10** of the Zoning Ordinance requires maximum lot coverage of 30.00%. The proposed lot coverage is 31.70% (3179 SF); therefore a variance of 1.70% (179 SF) is requested.
- C. Chapter 126, Article 2, Section 2.10** of the Zoning Ordinance requires a minimum combined front and rear setback of 55.00 feet for this property. The proposed combined setback is 54.70 feet; therefore a variance of 0.30 feet is requested.
- D. Chapter 126, Article 2, Section 2.10** of the Zoning Ordinance requires a maximum roof height for the accessory building for R-3 of 14.5 feet for this property. The proposed eave height is 18.25 feet; therefore a variance of 3.75 feet is requested.
- E. Chapter 126, Article 2, Section 2.10** of the Zoning Ordinance requires a maximum eave height for the accessory building for R-3 of 12.0 feet for this property. The proposed eave height is 13.98 feet; therefore a variance of 1.98 feet is requested.

Staff Notes: The property is zoned R4 and currently has a duplex or two family home. The duplex is proposed to be demolished and replaced with a single family home. A single family home is permitted in a R4 district following the R3 single family development standards. Development in R4 districts requires site plan approval. The applicant was granted Preliminary Site Plan approval on October 25, 2017. Planning Board Minutes are included.

Note: variances B and C above for lot coverage and minimum combined front and rear setbacks have been resolved since the publishing. The appellant revised the drawing to be in compliance.

Jeff Zielke

Jeff Zielke
Plan Reviewer

273 Euclid



Application Date: 8-15-17



Hearing Date: 11-14-17

Received By: JZ

Appeal # 17-27

Board of Zoning Appeals Application

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

Property Information:

Street address: <u>271-273 EUCLID</u>	Sidwell Number: <u>19-25-331-009+19-25-331-010</u>
Owners name: <u>G.F. PROPERTIES, LLC</u>	Phone #: <u>248 644-4840</u>
Owners address: <u>4111 ANDOVER, WEST 2nd FLOOR</u>	Email: <u>J.SCHLUSSEL@CARSONFISHER.COM</u>
City: State: <u>BIRMINGHAM MI</u>	Zip code: <u>38202</u>
Contact person: <u>JEFF SCHLUSSEL</u>	Phone #: <u>248 644-4840</u>

Petitioner Information:

Petitioner name: <u>BRIAN NEEFER</u>	Phone #: <u>248 259 1704</u>
Petitioner address: <u>6030 N. OLDWOODWARD #203</u>	Email: <u>BRIAN@BRIANNEEFER.COM</u>
City: <u>BHAM</u> State: <u>MI</u>	Zip Code: <u>38209</u>

Required Attachments:

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

General Information:

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

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

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

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

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

Signature of Owner: _____ Date: _____

Brian Neeper
ARCHITECTURE P.C.

630 N. Old Woodward, Suite 203 Birmingham, MI 48009 248. 259. 1784 brianneeper.com



City of Birmingham
Board of Zoning Appeals
151 Martin St.
Birmingham, MI 48009

Re: 271/273 Euclid

August 15, 2017

Members of the Board,

On the behalf of my client, GF Properties, LLC, I respectfully request your consideration for the approval of the required dimensional variances to allow the construction of the proposed new single-family residence. The existing property is zoned R4 and has a 2 family duplex on site. The property has some exceptional grading challenges, unique to this site, which make it substantially more difficult to achieve a typical 2-story residence within the requirements of the ordinance, than at other sites in this neighborhood.

The site, on the corner of Park and Euclid, maintains near level grading along the curb, then falls roughly 7' to the rear of the property. The interpretation of the required heights for this site are taken from the lowest existing grade at the proposed structure. Thus, our base line for the required height calculations is roughly 5'-6" lower than the curb heights at the street fronts. The Building and Eave heights for the proposed house and accessory garage structure will need variances as indicated below.

Variance A - Building Height

The required building height for R-3 is 28'-0". We are requesting a 4'-6 3/4" variance for a building height of 32'-6 3/4". Please note that the existing R4 zoning would allow a 35'-0" building height.

Variance B - Accessory Structure Building Height

The required building height for R-3 accessory structure is 14'-6". We are requesting a 3'-9" variance for a building height of 18'-3".

Variance C - Accessory Structure Eave Height

The required eave height for R-3 accessory structure is 12'-0". We are requesting a 1'-11 3/4" variance for an eave height of 13'-11 3/4".

I have taken great care in the architectural design to set the predominant eave heights on the proposed house lower than typical and within in the allowable eave height. I believe the architecture of the proposed home will fit the scale of the site and the surrounding neighborhood's architecture. We believe the approval of this variance request will allow my client to build an attractive and functional single-family residence without any negative impact to the adjacent neighbors or the "Little San Francisco" neighborhood as a whole.

Thank you for your consideration.

Sincerely,

Brian Neeper
Architect

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, OCTOBER 25, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on October 25, 2017. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Stuart Jeffares, Bert Koseck, Vice-Chairperson Gillian Lazar, Janelle Whipple-Boyce, Bryan Williams; Alternate Board Member Daniel Share; Student Representative Ariana Afrakhteh (left at 8:45 p.m.)

Absent: Board Member Robin Boyle; Alternate Board Member Lisa Prasad; Student Representative Isabella Niskar

Administration: Matthew Baka, Sr. Planner
Jana Ecker, Planning Director
Carole Salutes, Recording Secretary

10-190-17

**APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING OF
SEPTEMBER 27, 2017**

Motion by Mr. Share

Seconded by Mr. Jeffares to approve the Minutes of the Regular Planning Board Meeting of September 27, 2017

Motion carried,

VOICE VOTE

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

Nays: None

Abstain: Lazar, Williams

Absent: Boyle

10-191-17

CHAIRPERSON'S COMMENTS

The Chairman noted that various types of hearings will be heard this evening.

10-192-17

Absent: Boyle

10-196-17

PRELIMINARY SITE PLAN REVIEW

1. 271-273 Euclid (existing duplex) - Request for approval of a Preliminary Site Plan to allow construction of a new single-family residence in an R-4 Two-Family Residential Zoning District

Ms. Ecker explained the subject site is .23 acres (10,019 sq. ft.) in size and is located in an R-4 Two-Family Residential Zone, in the Little San Francisco neighborhood. The site currently contains a duplex which is proposed to be demolished, and a new single-family home is to be constructed. The new home will feature two stories with a basement, an attached garage and a detached garage, which will be located behind the house. Article 2, section 2.11 of the Zoning Ordinance states that single-family dwellings are permitted uses in the R-4 Zone, but must be reviewed under R-3 Single-Family Residential Zone standards. Further, as the property is zoned R-4 Two-Family Residential, site plan review by the Planning Board is required in accordance with Article 7, section 7.25, Site Plan Review, of the Zoning Ordinance.

Based on the information provided, it appears that the applicant will be required to seek variances for non-compliant setbacks, the home height, lot coverage, required open space, and the building height and eave height of the detached garage. ***The applicant will be required to comply with all development standards or obtain variances from the Board of Zoning Appeals ("BZA").***

The applicant must provide open space calculations for the proposed single-family home that are greater than or equal to 40% open space with a minimum of 65% front open space unpaved, or seek a variance from the BZA.

The applicant must provide an increased combined front and rear setback to meet the required 55 ft. or obtain a variance from the BZA.

The applicant will be going before the BZA to have the variance issues addressed.

Mr. Brian Neefer, Brian Neefer Architecture P.C., 630 N. Old Woodward Ave. said he is not clear whether he is supposed to use the recorded front to back depth of the lot at 100 ft. or the actual measured distance of 99.66 ft. He found out the two-story wood deck structure counts as lot coverage, and that is what has them over the required coverage. Therefore, they will remove the upper portion of that deck to meet the coverage. He has done all he can to keep the height of the eaves of the house down, especially from the street front. If the topography was more traditional and did not present a walk-out situation at the rear they would fall within the height requirements. From the front the house meets the allowable building height.

He explained the house has both an attached and a detached garage because it can't be added onto the back. The dimensions of the detached garage are 23 ft. x 13 ft.

No one from the public commented on the proposal at 9:07 p.m.

Motion by Mr. Koseck

Seconded by Ms. Whipple-Boyce to approve the Preliminary Site Plan for 271-273 Euclid with the following conditions:

1. Applicant comply with the principal and accessory structure height and accessory structure eave heights or obtain variances from the Board of Zoning Appeals;
2. Applicant comply with the lot coverage and open space requirements or obtain variances from the Board of Zoning Appeals;
3. The applicant provide an increased combined front and rear yard setback to meet the required 55 ft. or obtain a variance from the Board of Zoning Appeals;
4. Applicant add two street trees as required along Park St.;
5. Applicant add the required City sidewalk along Park St.;
6. Applicant submit specifications on the proposed mechanical units as well as the landscaping screenwall to ensure proper screening;
7. Applicant submit complete landscaping and photometric plans at Final Site Plan Review; and
8. Compliance with the requests of City departments.

Mr. Koseck advised the applicant to try and reduce the degree of variances so they comply with the ordinance to the greatest extent possible. He added this is a great house with a lot of design sensitivity - even the detached garage.

Chairman Clein was reluctant to allow so many variances to go before the Board of Zoning Appeals. This is a brand new building and they want a third car, but it can't fit within the overall lot coverage and the height is over.

Mr. Williams noted the City of Birmingham approach on zoning issues with the bifurcation on a matter like this between two different bodies that don't talk to each other, and don't meet with each other just asks for problems.

Motion carried, 6-1.

VOICE VOTE

Yeas: Koseck, Whipple-Boyce, Jeffares, Lazar, Share, Williams

Nays: Clein

Absent: Boyle

The board took a short recess at 9:10 p.m.

10-197-17

~~STUDY SESSION~~

~~Personal Services Definition~~

~~Mr. Share recused himself because he represents a property owner in the Redline Retail District.~~

~~Ms. Lazar recused herself because of a familial relationship with a property owner in the Redline Retail District.~~

~~Chairman Clein recalled the Planning Board has held several public hearings on the definition of Personal Services, and provided a definition to the City Commission along with a recommendation as to what to do with the definition. The City Commission has asked for~~

CASE DESCRIPTION

415 W. Merrill (17-28)

Hearing date: November 14, 2017

The owners of the property known as 415 W. Merrill are requesting the following variances to construct a detached garage.

- A. Chapter 126, Article 2, Section 2.06** of the Zoning Ordinance requires a maximum lot coverage of 30% with 37.80% (1827.95 SF) proposed; therefore a variance of 7.80% (377.20 SF) is requested.
- B. Chapter 126, Article 2, Section 2.06** of the Zoning Ordinance requires a minimum of 40% open space with 36.60% (1767.85 SF) proposed; therefore a variance of 3.40% (166.49 SF) is requested.
- C. Chapter 126, Article 4, Section 4.03(J)** of the Zoning Ordinance requires Dormers on accessory structures are limited to 50.00% of the width of the roof per elevation. The roof width is 27.00 feet and the proposed Dormers on the East and West elevations are 85.00% (23.00 feet); therefore a variance of 35.00% (9.50 feet) is requested.

Staff Notes: The current home was built in 1884 and is historically designated. The Historical District Commission has approved the garage and the meeting minutes are included.

This property is zoned R-8.

Matt Baka

Matt Baka
City Planner

415 W Merrill



Application Date: 9-1-17

Received By: BM



Hearing Date: Oct. 17, 2017

Appeal # 17-28

Board of Zoning Appeals Application

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

Property Information:

Street address: <u>415 W Merrill</u>	Sidwell Number:
Owners name: <u>Virginia & Michael Gehel</u>	Phone #: <u>248-802-2774</u>
Owners address: <u>645 Lone Pine Rd</u>	Email: <u>vfgehel49@gmail</u>
City: State: <u>Bloomfield Hills</u>	Zip code: <u>48304</u>
Contact person:	Phone #:

Petitioner Information:

Petitioner name: <u>Kevin Hart & Associates</u>	Phone #: <u>248-642-9427</u>
Petitioner address: <u>700 E Maple STE 101</u>	Email:
City: <u>Birmingham</u> State: <u>Michigan</u>	Zip Code: <u>48009</u>

Required Attachments:

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

General Information:

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

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

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

Variance chart example:	Required 25'	Existing 24'	Proposed 24'	Amount of Variance 1'
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By signing this application I agree to conform to all applicable laws of the City of Birmingham. All information submitted on this application is accurate to the best of my knowledge. Changes to the plans are not allowed without approval from the Building Official or City Planner.

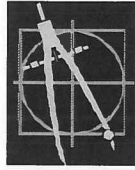
Signature of Owner: Virginia B Gehel

Date: 8-29-17

Hardship letter E-mailed.
HAS SIGN.

CITY OF BIRMINGHAM
Date 09/01/2017 4:14:23 PM
Ref 11450
Receipt 389693
Amount \$310.00

KEVIN D. HART, AIA



**ARCHITECTURE
PLANNING / DESIGN / ENGINEERING**

October 24, 2017

City of Birmingham Board of Zoning Appeals
151 Martin Street
Birmingham, Michigan 483009

Subject: Geheb Residence-415 West Merrill Street

Dear Members of the Board,

Thank you for your review of this variance request. The Geheb Family is planning to restore and renovate the historic home on the corner of Chester and Merrill Street in Birmingham. Taking on the role of stewards to the home, they have carefully considered how to make improvements to the home that will be in keeping with the original integrity of the structure. Virginia and Michael Geheb are committed to preserving the historical character of the house while proposing some minor improvements to their home.

The proposed changes to the main house are as follows:

1. The existing South facing porch is proposed to be enclosed. The existing floor platform, columns and roof shall remain in place. Existing turned spindles and top rails are to be reapplied to the outward face of the new in-filled walls to maintain the old geometry of the porch.
2. The existing East elevation porch along Chester Street, is to remain as-is entirely. The existing South elevation entry door of the house is to be repurposed on the new garage/carriage house as a man door and will be finish stained to match its current color and hue.
3. Interior floor plan renovations were carefully placed within the existing walls and roof.
4. The new austere 22' x 25' garage was designed to reflect the proportion and geometry of the existing house. Today a standard two car garage would be 25' x 25'. The roof pitch, window and door sizes, siding, trim boards and historic colors are all details that will carry the architectural theme from the original home. The original home likely had a carriage house or stable of similar size and proportion. The stable structure would have been built on-grade in 1884 and would not have survived the years without a floor slab.

Variance Challenges:

- A. The existing home is non conforming with encroachments on the front and side yard setbacks. The existing East side of the home is encroaching the side yard setback by 9.5' and the existing North side of the home is encroaching the front yard setback by 13.2'.
- B. The existing home is also non-conforming with the existing impervious coverage at 42%. Our proposed renovation reduces the impervious coverage to 25.6%, bringing the home into compliance by 16.4%.
- C. The Maximum Building Coverage is 30%. Building coverage is currently at 28%. The proposed configuration of the home is at 37.8% requiring a variance of 7.8%. This equates to 377 square feet.
- D. The Open Area Requirement is 40% minimum; with the existing home at 30% open space. The proposed construction improves the open area requirement to 36.6%, but will still need a variance of 3.4%. This equates to 164 square feet of the property.

The requirements for variances were not self-created. The current home is non-conforming in its current state. The historic nature of the house will not allow an attached garage structure. Allowing the variances will not adversely effect neighboring properties and strict compliance to the ordinance will be unduly burdensome to the owners. Virginia and Michael Geheb have been very careful to keep the exterior of the home true to its original construction. The new structure was designed to provide a modest and practical solution to a necessary component of the residence. Renovating an historic home this day and age is very challenging. We respectfully request your approval of this project.

Please feel free to contact me if you have any questions. Thank you.

Sincerely,

Patricia Keller

700 EAST MAPLE, SUITE 101 • BIRMINGHAM, MI 48009 • (248) 642-9427



KEVIN D. HART, AIA



**ARCHITECTURE
PLANNING / DESIGN / ENGINEERING**

GEHEB RESIDENCE BZA HIGHLIGHTS

1. The house is an existing non-conforming structure with existing encroachments on the front and side yard setbacks.
2. Existing impervious lot coverage is at 42% and is not conforming to the 30% maximum allowable. The new layout has improved to 25.6%, and is now in conformance as a result of this proposed plan. We are decreasing the pervious coverage by 16.4%.
3. The original 1884 historic home had a stable or carriage house associated with it and the property. It was an on-grade structure with dirt floors, and did not survive the passage of time.
4. Several of the existing neighboring properties have lot coverage percentages that do not conform to the ordinance, including the property directly to the south. That property, located at 410 Townsend, has an open area of only 28%. Again, our open area is at 36.6%.
5. The existing condition of the property was not self-created.
6. The proposal was unanimously approved by the City of Birmingham Historic District Commission and the City of Birmingham Planning Commission this year. Both meeting had Public Notices.
7. The design of the detached garage was carefully orchestrated to be in keeping with the City of Birmingham Historic District Guidelines and in scale with the existing home. The plans are harmonious with neighboring properties in size and height. The height of the building to the south is xx'-x". The proposed garage height is xx'-0" and is in conformance with the ordinance.
8. The two car garage size in a minimal scale of 25' x 22'. The minimum standard dimensions for a two-car garage is usually 25' x 25'.
9. The open area of the proposed property is improved from the existing 30%, to the proposed 36.6%. An improvement of 6.6%. (Still needing a 3.4% variance for the 40% ordinance requirement.)

**BIRMINGHAM HISTORIC DISTRICT COMMISSION
MINUTES OF AUGUST 16, 2017**

Municipal Building Commission Room
151 Martin, Birmingham, Michigan

Minutes of the regular meeting of the Historic District Commission ("HDC") held Wednesday, August 16, 2017. Chairman John Henke called the meeting to order at 7 p.m.

Present: Chairman John Henke; Board Member, Thomas Trapnell, Shelli Weisberg, Michael Willoughby; Alternate Board Member Adam Charles

Absent: Board Members Keith Deyer, Natalia Dukas; Alternate Board Member Dulce Fuller; Student Representatives Josh Chapnick, Griffin Pfaff

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

08-37-17

APPROVAL OF MINUTES

HDC Minutes of July 19, 2017

Motion by Mr. Trapnell

Seconded by Ms. Weisberg to approve the HDC Minutes of May 3, 2017 as presented.

Motion carried, 5-0.

VOICE VOTE

Yeas: Trapnell, Weisberg, Charles, Henke, Willoughby

Nays: None

Absent: Deyer, Dukas

The Chairman noted that only five of seven board members were present this evening. He offered applicants the opportunity to adjourn their hearing to the next HDC meeting when a more full board might be present. All applicants wished to be heard this evening.

08-38-17

HISTORIC DESIGN REVIEW

There were no comments from members of the public on the motion at 7:05 p.m.

VOICE VOTE

Yeas: Weisberg, Charles, Henke, Trapnell, Willoughby

Nays: None

Absent: Deyer, Dukas

08-39-17

HISTORIC DESIGN REVIEW

415 W. Merrill

New Abigail Carter House Garage and Design Changes to Home

Zoning: R-8 Multiple-Family Residential

History: The oldest portion of the Carter house dates to 1884. At some point a second story was added. The house was reportedly moved in 1918 to make room for Baldwin High School. The Carter family occupied the house until 1950. The home was then used as a boarding house for many years. The house was designated historic in 1983 at the age of 99.

Proposal: The applicant is proposing to construct a detached carriage house-style garage with a cross gable roof south of the historic home at 415 W. Merrill. The proposed garage will accommodate two cars on the first floor and contain habitable attic space on the second floor. The proposed garage will be set back 14.88 ft. from the principal building and at least 4 ft. from each lot line to satisfy the setback requirements. Additionally, the proposed garage appears to have an eave height of 8 ft. above grade. The applicant has indicated that the garage will be closely detailed to match the historic features of the existing historic house. The applicant is also proposing to make alterations to the existing historic house. Some of these changes include the construction of a pergola, enclosure of the existing back porch, relocation of a staircase, and the addition/alteration of windows.

New Garage: The east elevation of the proposed garage will consist predominantly of two separate entrances for two cars. Each entrance will be enclosed with its own garage door containing two clerestory windows. As demonstrated in the submitted plans, the proposed garage will face S. Chester where it will be made accessible by a driveway connecting to the street. The applicant is also proposing one double-hung, vertically-proportioned window. The north elevation will feature two double hung windows and one entry door with a pitched roof awning. At the second story, the applicant is proposing one larger double-hung window. The west elevation will predominantly consist of blank siding with the exception of one double-hung window featured on the second story.

Lighting: The applicant is proposing to install nine 8 in. x 10 in. x 24 in. traditional coach light fixtures with a 60 watt lumen on the garage. In addition, the applicant is proposing to install three lighting receptacles: one at the north front door; one at the east side dust porch; and one at the south entry porch. The applicant must demonstrate the location of each of the proposed light fixtures and receptacles in plans and submit specifications sheets for the indicated traditional coach light fixtures.

Mr. Kevin Hart, Architect for the homeowners, Virginia and Michael Geheb, came forward to propose adding two fixed windows to the second story of the west elevation as well as a double hung window on the first floor closer to the southwest corner of the house.

The plans demonstrate the relocation of a staircase to provide access to the south entry of the proposed enclosed porch. Their proposal will increase the grass and pervious surface on the site.

Mr. Willoughby suggested changing the height of the lap on the garage. It is 4 in. on the house. It would be interesting to do 8 in. on the garage. Mr. Hart agreed and said that would fall within the spirit of differentiation when adding on to a historic property.

Motion by Mr. Willoughby

Seconded by Ms. Weisberg to approve the Historic Design Review for 415 W. Merrill as submitted save for the architect's discretion to modify the size of the siding and corner boards on the garage. Architect to submit a new drawing.

Motion carried, 5-0.

There were no comments on the motion from members of the audience at 7:23 p.m.

VOICE VOTE

Yeas: Willoughby, Weisberg, Charles, Henke, Trapnell

Nays: None

Absent: Deyer, Dukas

08-40-17

FINAL HISTORIC SIGN/ ~~DESIGN~~ REVIEW

166 W. Maple Rd.

Caruso Caruso

Central Business Historic District

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, OCTOBER 25, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on October 25, 2017. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Stuart Jeffares, Bert Koseck, Vice-Chairperson Gillian Lazar, Janelle Whipple-Boyce, Bryan Williams; Alternate Board Member Daniel Share; Student Representative Ariana Afrakhteh (left at 8:45 p.m.)

Absent: Board Member Robin Boyle; Alternate Board Member Lisa Prasad; Student Representative Isabella Niskar

Administration: Matthew Baka, Sr. Planner
Jana Ecker, Planning Director
Carole Salutes, Recording Secretary

10-190-17

**APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING OF
SEPTEMBER 27, 2017**

Motion by Mr. Share

Seconded by Mr. Jeffares to approve the Minutes of the Regular Planning Board Meeting of September 27, 2017

Motion carried,

VOICE VOTE

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

Nays: None

Abstain: Lazar, Williams

Absent: Boyle

10-191-17

CHAIRPERSON'S COMMENTS

The Chairman noted that various types of hearings will be heard this evening.

10-192-17

There are no comments from the public at this time.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Williams that the Planning Board recommends approval to the City Commission of the applicant's request for Final Site Plan and a SLUP for 33353 Woodward Ave., Tide Dry Cleaners with the following conditions:

- 1. The total square footage of signage must be reduced to 108 sq. ft. or less;**
- 2. The canopy must be attached to the building.**

Motion carried, 7-0.

No one from the audience commented on the motion at 8:14 p.m.

VOICE VOTE

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

Nays: None

Absent: Boyle

10-195-17

FINAL SITE PLAN AND DESIGN REVIEW

1. 415 W. Merrill (existing residence) - Request for approval of the Revised Final Site Plan to allow construction of a detached garage in an R-8 Multiple Family Residential Zone District

Mr. Baka advised the subject site is .111 acres (4,836 sq. ft.) in the R-8 Attached Single-family Residential Zone. The site currently contains a single-family home, which is a designated historic structure. The addition of the garage and minor changes to the home were approved by the Historic District Commission ("HDC") on August 16, 2017. However, as the home is located in a multi-family district, site plan review is required for the accessory structure. Article 2, Section 2.19 of the Zoning Ordinance states that one- family dwellings are permitted uses in the R-8 zone, but must be reviewed under R-3 Single-Family Residential Zone standards.

In addition, the home is a designated historic structure known as the Abigail Carter House. The oldest portion of the Carter house dates to 1884. At some point a second story was added. The house was reportedly moved in 1918 to make room for Baldwin High School. The Carter family occupied the house until 1950. The home was then used as a boarding house for many years. The house was designated historic in 1983 at the age of 99. On August 16, 2017 the current proposal was reviewed and approved by the HDC for changes to the existing house as well as construction of the new garage.

The accessory structure appears to meet the required bulk, area and placement regulations for accessory structures in the R-3 Zoning District. ***The applicant will be seeking variances, though, for the minimum open space, the maximum lot coverage in the R-3 zone, and dormers that are proposed to occupy 85% of the frontage of the property.***

Design Review

The east elevation of the proposed garage will consist predominantly of two separate entrances for two cars. Each entrance will be enclosed with its own garage door containing two clerestory windows. The proposed garage will face S. Chester where it will be made accessible by a

driveway connecting to the street. The applicant is also proposing one double-hung, vertically proportioned window. The north elevation will feature two double-hung windows and one entry door with a pitched roof awning. At the second story, the applicant is proposing one larger double-hung window. The west elevation will predominantly consist of plank siding with the exception of one double-hung window featured on the second story.

Mr. Baka said the applicant is allowed 30% lot coverage and they are asking for 37% lot coverage. Mr. Jeffares said that is 7 percentage points which is 20 percent over what is permitted.

Mr. Kevin Hart, architect for the homeowners, Virginia and Michael Geheb, said the lot is somewhat of a challenge and some of the items on the existing home are difficult to work with. The home was vacant for nearly two years before it was purchased by the Gehebs in January 2017. He indicated that he had a tough time interpreting a cross gable as a dormer but that is pretty much the way the ordinance is written. He felt they could make modifications to the west elevation to conform, thereby only requiring two variances.

The impervious coverage on the lot is presently non-conforming because the yard is covered with concrete slabs. They plan to reduce the non-conforming impervious coverage from 42% down to 25.6% impervious coverage.

The owners are very serious about trying to maintain the house, but also being able to live in the house and to have a two-car garage. The proposed garage is 23 ft. x 25 ft. with an interior staircase which uses up a lot of space.

The open area has improved to 36% and the variance they are asking is 164 sq. ft. or 3.4%.

The house is existing non-conforming with a lot of existing hardships that are not self-created.

The Chairman took comments from the public at 8:29 p.m.

Mr. Mike Cumming, Attorney, said he is the trustee and legal title owner of 410 Townsend, right across the alley. His client, Mary Laura Cantress who is in her 90s, put her property in trust for her three children. They have asked him to attend this meeting. He hopes for the opportunity to come to some compromise with the petitioners. The family objects to tonight's proposal. They feel the house with the variances is too much structure for the site. It is so tall that it might invade some of his client's privacy. Further, the essential character of the neighborhood may be affected along with reducing the property values. The proposed garage looks a little like an additional house on the property.

Ms. Nezanine Hassan, also from Dykema Gossett Attorneys, said she too represents the trustees. This is a very large variance and the combined garage and home will exceed the maximum lot coverage by over 20%. It also will exceed the open space requirements significantly. Additionally, the proposed dormers really make the garage structure look like a second home. The lot will be completely covered with structure and it will change the integrity and aesthetics of the neighborhood.

Ms. Patty Shane, 662 Purdy, spoke against the structure being built.

Ms. Suzanne White, 420 Townsend, said that she and her husband are not in favor of this structure.

Chairman Clein made the following points in light of what was mentioned in the public comments:

- The height of the proposed garage meets the ordinance requirements;
- Usable space on the second story is permitted;
- Interior staircases are permitted and encouraged;
- This board has no authority to provide approvals for variances. Variance requests are reviewed by the Board of Zoning Appeals.

Mr. Hart stated the survey shows the house to the west has a larger garage than the one proposed. They are asking for a 7% variance which equates to 335 sq. ft. over on lot coverage.

Ms. Whipple-Boyce noted the board will only review improvements proposed for the site. If she was a neighbor she would much prefer to lose a sea of concrete and see a pretty structure that compliments the property. There are surrounding properties that cover much more of their lot. She thinks this is a real improvement and is excited to see it happen.

Mr. Share said the plan is suitable, the Historic Design Commission has passed on it, and he is prepared to vote in favor, subject to the required variances.

Mr. Jeffares affirmed that in the State of Michigan there is a fundamental property right to have a garage. Therefore, he would move this along.

Ms. Afrakhteh observed there is already concrete in place, so she thinks the garage may not be as big an issue as if there was all greenery there and they were replacing it with a garage. Therefore, she agreed the garage probably is a good idea, especially because the petitioner doesn't have one.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Koseck to approve the Final Site Plan for 415 W. Merrill with the following condition:

1. The applicant must obtain the required variances from the Board of Zoning Appeals.

Mr. Koseck did not believe the proposed garage would negatively impact real estate values. He feels the way the garage has been designed is complimentary to the historic home on its unique site, so he is in support of the motion.

At 8:45 p.m. members of the public were invited to come forward and talk about the motion.

Ms. Suzanne White spoke again. She said they don't have backyards and their terraces view right into this. That is more of a problem than looking off and seeing the old house.

Mr. Mike Cumming received confirmation that the petitioners cannot have a dwelling unit in the garage and lease it out. It cannot be permanent living space for a second family.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

CASE DESCRIPTION

460 W. Maple (17-26)

Hearing date: November 14, 2017

The owners of the property known as 460 W. Maple are requesting the following variance.

- A. Chapter 126, Article 4, Section 4.03(B)** of the Zoning Ordinance requires that accessory buildings or structures shall be at least 3 feet from any lot line. The applicant is proposing to construct a structure to allow for the installation of a ground mounted mechanical unit 0.00 feet from the eastern property line; therefore a variance of 3.00 feet is requested.

Staff Notes: The property is a designated historic structure within the City of Birmingham. The proposed location of the ground mounted AC unit was reviewed by the Historic District Commission on October 18, 2017. The draft minutes from that meeting are attached.

This property is zoned R-6.

Matt Baka

Matt Baka
City Planner

460 W Maple



Application Date: 8/15



Hearing Date: 10-17-17

Received By: M Baka

Appeal # 17-28

Board of Zoning Appeals Application

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

Property Information:

Street address: <u>460 MAPLE</u>	Sidwell Number: <u>19-25-356-012</u>
Owners name: <u>ERIC CHARLES DESIGNS</u>	Phone #: <u>248-647-3650</u>
Owners address: <u>P.O. Box 2659</u>	Email: _____
City: State: <u>BIRMINGHAM MI</u>	Zip code: <u>48012</u>
Contact person: <u>TIM SHOEMAKER, MSO&A, INC.</u>	Phone #: <u>734-320-1313</u>

Petitioner Information:

Petitioner name: <u>MICHAEL DUL + ASSOC., INC.</u>		Phone #: <u>248-644-3410</u>
Petitioner address: <u>212 DAINES ST.</u>		Email: <u>MDUL@MSOUL.COM</u>
City: <u>BIRMINGHAM</u>	State: <u>MI</u>	Zip Code: <u>48009</u>

Required Attachments:

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

General Information:

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

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

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

Variance chart example:	Required 25'	Existing 24'	Proposed 24'	Amount of Variance 1'
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By signing this application I agree to conform to all applicable laws of the City of Birmingham. All information submitted on this application is accurate to the best of my knowledge. Changes to the plans are not allowed without approval from the Building Official or City Planner.

Signature of Owner: 

Date: 8-15-17

OWNER'S REP



MEMORANDUM

TO: City of Birmingham (BZA)
151 Martin Street
P. O. Box 3001
Birmingham, MI 48012-3001

MEMO NO. 1
PROJECT/FILE NO: 14188
PROJECT: **Eric Charles Designs**
460 Maple Rd.
Birmingham, MI 48009
CC: Eric Jirgens - ECD
Derek Davis - TSA
File

FROM: Tim Shoemaker, Designer / Project Manager, PLA

RE: **Variance Request**

DATE: August 15, 2017

Michael J. Dul & Associates, Inc. is the petitioner for Eric Charles Designs and the landscape architect for Eric Charles Designs at 460 Maple Road.

We are requesting consideration for the following variance request:

1.) DIMENSIONAL VARIANCE OF 3' – GARAGE AIR CONDITIONER (AC) LOCATION

When the original site and architectural plans were submitted to the City of Birmingham Building Department for permit, the now proposed garage AC unit location was not accounted for. The currently proposed site plan locates the AC unit on the east side of the restored garage within the average 3' wide space available.

As shown on the submitted plans prepared by Michael J. Dul & Associates, inc. dated 08/15/17, the proposed AC location is adjacent to the following other *off site* utilities:

- Transformer:
 - Size: 5' W x 6' L x 4'-6" H
 - Located 2'-3" east of the property line
- Garbage Dumpster:
 - Size: 5'-6" W x 7' L x 48" H
 - Located +/- 2' east of the property line
- Parking Space:
 - Car parked in this location during standard business hours

The proposed AC location fits into the character of its immediate surroundings and will not create any additional visual disturbance to the neighboring properties. Due to the size of the adjacent utilities, the proposed AC would only be fully visible from a direct south or direct north viewpoint.

After considering other site locations, it has been determined that the proposed location is the best possible solution. The AC cannot be located on the north side the garage due to unavailable space within the property (less than 24"). The AC cannot be located on the south side of the garage due circulation requirements relating to the main building's handicap access ramp and the site's driveway. The west side of the garage should not be considered an acceptable location because it will negatively impact the site's main usable green space. Locating the unit on the west side will also take away from and harm the site's historical image as the proposed west side is intended to be landscaped both ornamentally and as a usable vegetable garden for office use.

We respectively submit the attached drawings and BZA application, dated August 15, 2017 to the City of Birmingham for consideration of granting the requested 3' dimensional variance.

-end-

**BIRMINGHAM HISTORIC DISTRICT COMMISSION
MINUTES OF OCTOBER 18, 2017**

Municipal Building Commission Room
151 Martin, Birmingham, Michigan

Minutes of the regular meeting of the Historic District Commission ("HDC") held Wednesday, October 18, 2017. Chairman John Henke called the meeting to order at 7 p.m.

Present: Chairman John Henke; Board Members Doug Burley, Thomas Trapnell, Michael Willoughby; Alternate Board Member

Absent: Board Members Keith Deyer, Natalia Dukas; Alternate Board Members Adam Charles, Dulce Fuller; Student Representatives Josh Chapnick, Griffin Pfaff

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

10-48-17

**APPROVAL OF MINUTES
HDC Minutes of September 13, 2017**

**Motion by Mr. Willoughby
Seconded by Mr. Trapnell to approve the HDC Minutes of September 13, 2017 as presented.**

Motion carried, 4-0.

VOICE VOTE

Yeas: Willoughby, Trapnell, Burley, Henke

Nays: None

Absent: Deyer, Dukas

The Chairman noted that only four of six board members were present this evening and four affirmative votes are needed to pass a motion. He offered the applicant the opportunity to adjourn their hearing to the next HDC meeting when a more full board might be present. The applicant wished to go forward.

10-49-17

**HISTORIC DESIGN REVIEW
460 W. Maple Rd.
Chatfield-Campbell House**

Zoning: R-6 Multiple-Family Residential

History: Mr. Baka noted the Chatfield-Campbell House is significant because it is one of the oldest remaining houses in Birmingham. The original house was constructed in 1865, and in 1885, part of the roof was raised to add the second story. In 1928, a brick addition designed by Wallace Frost, and constructed by Scott Hersey, was added to the rear of the house. The notoriety of Wallace Frost added to the significant history of the house. Members of the same family lived in the house from 1887 to 2007. The house was purchased by Eric Charles Designs in 2009 for use as an interior design studio.

The building received Historic Design Review approval at the October 7, 2009, the November 17, 2010, July 20, 2011, and February 6, 2013 HDC meetings. The applicant was granted a variance by the Board of Zoning Appeals ("BZA") in 2009 and renewed in 2010 to permit an office use for the structure.

Proposal: On September 13, 2017 the HDC held a special meeting to review revisions to the approved plan that include fencing, two gates, and landscaping. The proposal also included the location of a new AC unit on the east side of the garage. Due to a conflict of interest for one of the commissioners, the AC unit was not reviewed at that time. Accordingly, they are now returning to the HDC for review of the AC unit.

HDC comments from the meeting of September 13, 2017: Mr. Willoughby announced this commission's purpose is to keep the integrity of historic structures in their community intact. So, in his opinion, the further the AC unit is away from the building, the better. Given the fact it is behind a transformer it will not be seen and that seems like the smartest place to put it. Therefore, he encouraged the members of the BZA to grant the variance.

Mr. Eric Jirgens, the property owner, explained they had previously received variances for two AC units that sit on the west side of the main residence. This unit would service the barn only. Chairman Henke said he has no issues with the placement of this unit. All the HDC can do is build a record to send forward to the BZA for them to deal with.

Mr. Willoughby indicated he does a lot of work with Mr. Seboldt's company and they do not do landscaping. Therefore he does not see that Mr. Charles would have a conflict of interest with the landscape. Mr. Charles said he is comfortable with that.

Mr. Michael Dul, Landscape Architect, passed out a colored diagram to the commission members and went on to describe his extensive proposal. They are even planting on the adjacent property with the owner's permission, and they are very happy to cooperate with the planting. They are trying to make this condensed site very elegant and fitting. The garden will be maintained in a low key manner as a showpiece for the design studio. The proposed lantern in the front yard is pretty much a duplicate of the historic fixture, as is the panel sign that will hang from the post. They hope to place the utilities all in one area. Along the right-of-way low-grow sumac will be planted which is durable and has great fall color.

Mr. Charles inquired about what will be done to keep the pleached Linden trees from infringing into the very constricted alleyway. Mr. Dul said they are a canopy street tree and will be a great ceiling for the alley. He didn't think there would be a problem.

It was noted that the fencing material color will need to be submitted for administrative approval.

Motion by Mr. Willoughby

Seconded by Mr. Trapnell to approve the landscape plan for 460 W. Maple Rd. in its entirety as submitted.

There were no comments from the public on the motion.

Motion carried, 4-0.

VOICE VOTE

Yeas: Willoughby, Trapnell, Charles, Henke

Nays: None

Absent: Deyer, Weisberg, Dukas

This evening the applicant is seeking approval for the installation of a ground mounted AC unit 0 ft. from the east lot line. However, the Zoning Ordinance requires a 3 ft. side setback for any structure. ***If approved in concept by the HDC, the applicant will be required to obtain a variance from the BZA to allow the installation of the AC unit within the required side open space.***

Mr. Willoughby recalled his statement from last month that from a historic perspective the further the air conditioning system gets away from the historic building the better. The fact that it is stuck behind a transformer and a dumpster is even better yet.

Motion by Mr. Willoughby

Seconded by Mr. Burley to approve the location of the AC unit right where they have it and recommend to the BZA that they grant the variance for 460 W. Maple Rd.

There were no comments from the public on the motion at 7:12 p.m.

Motion carried, 4-0.

VOICE VOTE

Yeas: Willoughby, Burley, Henke, Trapnell

Nays: None

Absent: Deyer, Dukas

10-50-17

MISCELLANEOUS BUSINESS AND COMMUNICATIONS

A. Staff Reports

-- Administrative Approvals

CASE DESCRIPTION

611 HUMPHREY (17-30)

Hearing date: November 14, 2017

The owners of the property known as 611 Humphrey is requesting the following variance to allow for the construction of a porch.

- A. Chapter 126, Article 4, Section 4.61(2)** of the Zoning Ordinance requires a minimum street side yard setback to be 10.00 feet. The existing and proposed setback is 6.50 feet; therefore a variance of 3.50 feet is requested.

Staff Notes: The existing house was constructed in 1925. The owners propose to replace an existing front porch with a new one that extends the width of the front of the home.

This property is zoned R-3.

Jeff Zielke

Jeff Zielke
Plan Reviewer

611 Humphrey



Application Date: 9-25-17



Hearing Date: 11-14-17

Received By: JZ

Appeal # 17-30

Board of Zoning Appeals Application

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

Property Information:

Street address: <u>Cell Humphrey Ave</u>	Sidwell Number: _____
Owners name: <u>David Dulberg - Dr Tracey Stulberg</u>	Phone #: <u>248 703 5871</u>
Owners address: <u>Cell Humphrey Ave</u>	Email: <u>drtraceebrief-therapy.net</u>
City: State: <u>Birmingham MI</u>	Zip code: <u>48009</u>
Contact person: <u>Dr. Tracey Stulberg</u>	Phone #: <u>248 703 5871</u>

Petitioner Information:

Petitioner name: <u>Dr. Tracey Stulberg</u>	Phone #: <u>248 703 5871</u>
Petitioner address: <u>Cell Humphrey Ave</u>	Email: <u>drtraceebrief-therapy.net</u>
City: <u>Birmingham</u> State: <u>MI</u>	Zip Code: <u>48009</u>

Required Attachments:

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

General Information:

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

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

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

Variance chart example:	Required	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: Tracey Stulberg, Ph.D.

Date: 9-25-17

611 Humphrey Avenue
Birmingham, Michigan 48009
Phone: 248.703.5871

September 5, 2017

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

Subject: 611 Humphrey Avenue- Total Side Yard Setback Dimensional Variance

Dear Zoning Board Members:

Our residence on Humphrey Avenue in Birmingham, Michigan is an existing non-conforming structure that protrudes into the Total Side Yard Setback by 3.5'. We are proposing to build an austere 161.25 square foot brick paver porch and canopy that extends the length of the front of the house (21.5').

The existing Total Side Dimensional distance is 6.5' and the proposed Total Side Dimensional distance also remains at 6.5'. The Total Side Dimensional requirement (10') will need a variance of 3.5'.

We have resided at this residence since 1987 and have successfully completed two renovations; one, in 1997 that required a variance. This proposed construction will not extend into the side yard beyond the existing line of the house. The Side Yard Setback issue was not self-created, as the home was built in the 1920's and we took ownership in 1987, prior to the "Total Side Dimensional" requirement in the ordinance. As the current Side Yard Setback requirement is 10 feet, our front door and porch already encroach on the setback requirements. We are unable to move the door due to the multiple existing windows. Forcing us to build our porch within these new setbacks would create an undue hardship, as either the porch would then need to begin in the middle of our front door or we would be unable to build a porch at all; thus depriving us of rights commonly enjoyed by other properties in our district. As the porch currently stands, it is in disrepair and at risk of being injurious to the neighborhood. The proposed porch and canopy is harmonious and within scale of the existing house and neighborhood.

We respectfully request relief from the 10' Total Side Dimensional distance requirement with a variance of 3.5'. Please feel free to contact me at 248-703-5871 if you have any questions.

Thank you,

Respectfully yours,



Tracey Styberg, Ph.D.



David Dulberg

CASE DESCRIPTION

34965 Woodward (17-31)

Hearing date: November 14, 2017

Appeal No. 17-32: The owners of the property known as 34977 Woodward are appealing the decision of the Planning Board to grant preliminary site plan approval for the property located at 34965 Woodward.

A. Chapter 126, Article 7, Section 7.31 of the Zoning Ordinance grants adjacent property owners aggrieved by a decision of the Planning Board the right to appeal that decision to the Board of Zoning Appeals.

Staff Notes: The property is zoned B4/D4 which allows for the construction of a five story building with site plan approval from the Planning Board. The application was granted preliminary site plan approval for the construction of a 5 story building on September 13, 2017. Planning Board Minutes are included.

Matthew Baka

Matthew Baka
Senior Planner

34965 Woodward



Application Date: 10-12-17



Hearing Date: 11-14-17

Received By: BM

Appeal # 17-31

Board of Zoning Appeals Application

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

Property Information:

Street address: 34965 Woodward Avenue		Sidwell Number: 08-19-36-207-008	
Owners name: Alden Development Group		Phone #: n/a	
Owners address: 189 West Merrill Street		Email: n/a	
City: State: Birmingham, Michigan		Zip code: 48009	
Contact person: n/a		Phone #: n/a	

Petitioner Information:

Petitioner name: Catalyst Development Co., LLC		Phone #: 248-203-0739	
Petitioner address: 34977 Woodward Avenue		Email: agreene@dykema.com	
City: Birmingham	State: Michigan	Zip Code: 48009	

Required Attachments:

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

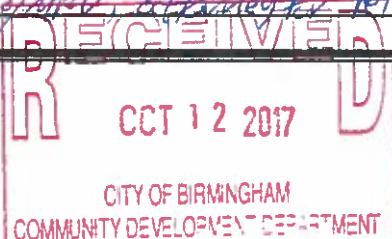
Location of all requested variances must be highlighted on plans and survey. All dimensions to be taken in feet to the first decimal point.

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 plan are not allowed without approval from the Building Official or City Planner.

Signature of Owner: Alan Greene Date: 10/11/17

Revised 12/9/2013



CITY OF BIRMINGHAM
Date 10/12/2017 4:21:00 PM
Ref: 0042622
Recd: 395818
Amount: \$560.00

Page 1

POST SIGN
BM

BOARD OF ZONING APPEALS

STATEMENT OF CATALYST DEVELOPMENT CO., LLC AND WOODWARD BROWN ASSOCIATES, LLC IN SUPPORT OF THEIR APPEAL FROM THE PLANNING BOARD'S GRANT OF PRELIMINARY SITE PLAN APPROVAL FOR NEW DEVELOPMENT AT 34965 WOODWARD AVENUE

Woodward Brown Associates, LLC, the developer and owner of the Balmoral Building located at 34901 - 34953 Woodward, and Catalyst Development Co., LLC. (collectively with Woodward Brown Associates, LLC, the "Petitioners"), the developer and owner of the Greenleaf Trust Building located at 34977 Woodward, respectfully submit this summary of the reasons why the decision of the Planning Board granting Alden Development Group, the developer of a proposed new building at 34965 Woodward (the "Project"), preliminary site plan approval, should be reversed by the BZA. The Project at issue is a proposed five-story building on the former site of the Peabody's restaurant and parking lot. As explained further below and in separate affidavits submitted by design professionals and others, and based on the evidence previously submitted into the record and considered by the Planning Board,¹ the proposed preliminary site plan (1) violates the requirements of Section 7.27 of the Zoning Ordinance, (2) is inconsistent with the City's Downtown Birmingham 2016 Master Plan (the "Master Plan"), and (3) cannot be constructed, used, or maintained as proposed without material damage to the existing Balmoral and Greenleaf Trust Buildings and without trespassing onto those properties.

A. Background Regarding the Balmoral and Greenleaf Trust Buildings

The Balmoral Building was completed in 2015 and is located to the south of the Project. The Building was constructed as a stand-alone building and was intended to be a major landmark along the Woodward Avenue (or Hunter Road) corridor. All four facades were designed to enhance the aesthetics of the corridor and maintain and promote the economic vitality of the City. The Building includes significant architectural details to provide interest and prominence to the location of the Building at one of the key entry points to downtown Birmingham. The northern façade (which abuts the proposed new Project) is constructed with cast stone and has 50 windows, with decorative metal balustrades. (See Balmoral Building north elevation, **Attachment 1**.) None of the windows on the Balmoral Building are fire-rated, nor were they required to be. Indeed, even the mechanical penthouse on the north elevation contains decorative windows. The façade is not planar in that it has insets for the windows and other architectural features to create a distinctive and attractive viewpoint for southbound traffic on Woodward, as desired and requested by the City in the planning and design process.

While the first floor of the Balmoral Building is constructed on the north property line adjacent to the former Peabody's restaurant parking lot and the existing frame shop building, approximately 97% of the second through fifth floors is set back at least 5 feet from the property line. The Building is 100% occupied with tenants primarily focused on financial services,

¹ The Petitioners hereby incorporate by reference into their instant appeals the correspondence submitted by attorney Alan Greene dated August 22, 2017 and September 11, 2017, and all materials attached thereto.

including Morgan Stanley, The Private Bank and PNC Bank. Indeed, PNC Bank has signage on the north façade of the Building as approved by the City.

The Greenleaf Trust Building located at the corner of Maple and Woodward was completed in 2010. This Building was transformative for a key entry point into downtown Birmingham. The Building was also constructed as a stand-alone structure with significant architectural design features and windows on all four facades. (See Greenleaf Trust Building south elevation facade, **Attachment 2.**) As the Planning Department stated in its May 22, 2008 recommendation for site plan approval, “[t]he proposed development implements the recommendations contained in the 2016 Plan as the applicant is proposing a mixed use building with the physical qualities necessary to enhance the architecture of existing buildings downtown, to create a focal point for the entrance to downtown, and is built to all property lines to continue the pedestrian –oriented character of downtown to the west of the site.” (**Attachment 3**, at page 2.) The design of the Greenleaf Trust Building was carefully scrutinized by the Planning Board because it was considered a critical gateway into downtown Birmingham.

Like the Balmoral, the south facade of the Greenleaf Trust Building, which abuts the proposed new Project, contains architecturally significant features, has a variety of setbacks, is not planar, and includes 47 windows, 25 of which are not fire-rated. The entire facade is comprised of Mankato stone. Greenleaf Trust has both residential occupants with windows facing south and the following business tenants with space on the south side of the building: Ogletree Deakins Law Firm and Finnea Group.² Similar to the Balmoral, the first floor of the Greenleaf Trust Building is constructed to the property line and was physically attached to the former Peabody’s restaurant. The second, third and fourth floors are only partially constructed to the property line (approximately 50% of those floors are set back 15’ from the property line) and no part of the fifth floor is built to the property line.

Both buildings, with the encouragement and approval of the City, established the character of the southwest entry into downtown Birmingham, which had been previously occupied by a gas station and low-rise commercial structures. They were designed to present high quality architectural facades facing the Peabody’s property that would not only enhance the value of the Peabody’s property but provide attractive and valuable adjacent facades if the Peabody’s property was ever to be redeveloped.

B. The Proposed Alden Development Project

Unlike the Balmoral and Greenleaf Trust Buildings (and every other significant building on the west side of Woodward adjacent to downtown – such as 555 and Birmingham Place), the proposed Project (yet to be named) has windows on only two sides of the building. The north

² Catalyst entered into an agreement with the former owners of the Peabody property which covers certain aspects of the relationship of the Greenleaf Trust Building to a potential future re-development of the Peabody’s property. But that agreement did not waive the obligation of the applicant here to comply with the requirements of the Zoning Ordinance with respect to compatibility, appropriate design and other standards as described in part C below, or Catalyst’s right to object to same.

and south elevations of the Project are proposed as five-story monolithic block masonry facades with no architectural character whatsoever and built to the property line on all five floors. These featureless walls will completely block and render useless the south elevation windows and architectural details of the Greenleaf Trust Building and the north elevation of the Balmoral Building. The proposed Project will block light and air to existing tenant spaces and render it nearly impossible for any these buildings to make proper repairs, clean windows and otherwise maintain the facades. The Project also replaces an existing land use that had adequate parking for the business located on the site, with one for which no adequate parking is available (*See Part E below.*) And, the Project eliminates all existing pedestrian access from Woodward (Hunter) to Peabody. For the reasons described below, the preliminary site plan failed to satisfy the mandatory requirements of the Zoning Ordinance and should have been denied by the Planning Board.

C. The Project Does Not Meet the Mandatory Requirements of Section 7.27 of the Zoning Ordinance.

Section 7.27 of the Zoning Ordinance (excerpts from the Ordinance are included as **Attachment 4**) mandates that the "Planning Board or the Design Review Board **shall not grant approval** for any development **unless the conditions given in this sub-section have been met.**" (Emphasis added.) As more fully explained below and at the public meetings before the Planning Board, several *required* conditions have not been met. Indeed, the applicant submitted no evidence whatsoever demonstrating that the conditions have been met. Rather, the applicant simply asserted that the development complies with setback, height and other dimensional requirements. This is not enough. The City has discretion to approve this application only if it otherwise meets the Ordinance, which it does not.

The resolution to approve the preliminary site plan was drafted by and presented to the Planning Board for consideration by Planning Board member Bryan Williams. As demonstrated further below, the Planning Board, in its effort to find compliance with specific standards where the applicant presented no evidence whatsoever to support such compliance, stretches the meaning of those standards to their breaking point, rendering them essentially meaningless.

Section 7.27(1) – The location, size and height of the building, walls and fences shall be such that there is adequate landscaped open space so as to provide light, air and access to the persons occupying the structure.

While this first standard under Section 7.27 does not really directly impact the Balmoral and Greenleaf Trust Buildings, satisfying the standard could help avoid the negative impacts to Balmoral and Greenleaf Trust discussed below. While there is no landscaped open space at all associated with the new development, the clear intent of the section is to provide adequate light and air to the occupants of the new Project. As noted by members of the Planning Board itself, the proposed development is significantly deficient in this regard. (*See comment summary of Planning Board Member, Bert Koseck, in the Meeting Minutes from the August 23, 2017 Planning Board Meeting, p 9* ("Mr. Koseck thought that maximizing square footage creates a little bit of a 'B' type of space. If they could pull the walls in on the upper floors by creating

light wells and windows it would make the building even better in terms of marketability and lease rates.”)).

The Project is a relatively large building with extensive floor plates; yet, there are windows on only two facades, leaving large featureless five-story block walls on two sides. This poses a significant challenge to providing adequate light and air to the future tenants of the Project. Most of the residential units appear to have only a single window in the entire 1500 plus square foot residential unit. This lack of air and light is not caused by the necessity of existing conditions, where the deficiencies might be excused or overlooked, but simply due to the desire of the applicant to squeeze every square foot of potential rentable area out of the site, thereby prioritizing quantity over quality.

While it is not even really an applicable consideration, the applicant presented no evidence whatsoever that it needs the additional square footage to make the Project economically feasible. In any event, as one Planning Board member observed, a more appropriate design consistent with the above standards could yield greater rents that would offset the loss of rents for the small amount of space lost. As previously noted, neither the Balmoral or Greenleaf Trust Buildings were constructed to the property lines on all floors. The Petitioners here gave up rentable square footage to create the buildings desired and mandated by the City.

Section 7.27(2) – The location, size and height of the building, walls and fences shall be such that there will be no interference with adequate light, air and access to adjacent land and structures.

As previously stated, there are 50 windows on the north façade of the Balmoral Building facing the proposed new building. **None of them are fire-rated, nor were they required to be.** As to the Greenleaf Trust Building, there are 47 windows on the south façade facing the proposed new building. 25 of them are fire-rated but the rest are not. Both buildings are fully occupied with business and residential tenants whose offices and residences have been designed around the light available from functional windows. No one is saying that these tenants have a right to an unrestricted view shed, but they are entitled to adequate light, air and access as required by the Zoning Ordinance. The Project as presently designed with respect to the south and north elevations, however, deprives the Petitioners of such light, air and access.

As to the observation of the Planning Board that the Balmoral and Greenleaf Trust buildings also used zero lot line provisions in the construction of their buildings, the statement is partially true but entirely misleading. Both buildings were constructed in a manner that satisfied the Master Plan and design criteria of the City as to the quality and aesthetics demanded by the City for all four elevations. Unlike the current proposal, which calls for featureless five-story block facades to the north and south, utilizing every possible square foot of space, neither the Balmoral Building nor the Greenleaf Trust Building maximized the use of the zero lot line setbacks on the facades facing the former Peabody’s restaurant. Both projects sacrificed rentable square footage to create the quality and type of project designs desired and mandated by the City.

For the Balmoral Building, the percentage of each floor on the north elevation built at or near the property line is as follows: first floor—100%; second floor—3.1%; third floor—2.8%;

and fourth floor—3.6%. The proposed new development is built to the property line 100% on all 4 floors. The massing differential on the fifth floors is even more dramatic. The fifth level of the new building contains approximately 18,705 square feet, or nearly 98% of the building's lower level floor plates. This should be compared to the total of 3,015 usable square feet (for a single residential unit) on the south end of the fifth floor of the Balmoral Building, which is a small fraction of the overall floor plates for the lower floors.

With respect to the Greenleaf Trust Building, the percentage of each floor on the south elevation built at or near the property line is as follows: first floor—100%; second floor—53.8%; third floor—53.8%; fourth floor—53.8%; and fifth floor—00%. Had the Greenleaf Trust Building constructed a maximum size building to the south property line (in the manner now proposed by applicant), it would have realized another 5,757 square feet of rentable area.

While the zero lot line setback represents a maximum allowable building under the terms of the Zoning Ordinance, it must be applied in the context of existing and neighboring development as specifically dictated by the standards set forth in Ordinance Section 7.27. Further, the impact of a redevelopment on such existing and neighboring development must be evaluated under the standards of the Ordinance. There is no question that the current proposed site plan deprives both the Balmoral and Greenleaf Trust Buildings of adequate light and air. Neither the Balmoral Building nor the Greenleaf Trust Building were designed or constructed to abut a new high-rise structure built to the property line on all levels using the most basic and unattractive façade materials. While it may be true that most of the general public may never see such unattractive facades, the many tenants (residential and office) and their guests and invitees looking out of a total of 97 windows, will see nothing else.

There were several comments made at a Planning Board meeting on the Project as to how the owners of the two adjacent buildings should have predicted that the existing Peabody's restaurant might be sold and that someone might want to build a massive infill project that would block all air and light to the existing buildings and constructed those buildings accordingly. This presumption is completely false. On the contrary, a review of the comprehensive record for both buildings reveals not a single discussion, comment or suggestion from staff or the Planning Board with respect to not requiring an attractive facade with light and air on all elevations of these buildings. (See affidavits of the project architects and managers completely rebutting the position of the Planning Board, included with these Petitions.) On the contrary, and as just one example, when it appeared that the cost of the Balmoral project would exceed budget, the owners approached the Planning Department about implementing some value engineering items, including the elimination of the decorative window railings on the north side windows of the project. The Planning Department, however, rejected this modest proposal and Balmoral's project manager was told that the exterior design must remain the same or be improved and removing the decorative railings could not be approved. (See **Attachment 5** hereto, Affidavit of Thomas L. Phillips.)

The applicant offered absolutely no rebuttal or explanation for the necessity of a design that blocked light and air to its neighbors. In an effort to fill the void, the resolution prepared by Mr. Williams and adopted by the Planning Board noted that because each of the neighboring buildings had three other elevations with exposure to light and air, the impact of the Project did

not violate the Zoning Ordinance. (See Planning Board Minutes, September 13, 2017, at p. 4.) With all due respect, such an observation is ridiculous and renders the Ordinance meaningless. It cannot have been the intent of the standard to only apply to development that would completely encircle an existing building or use. This standard is clearly not met by the proposed development.

Section 7.27(3) – The location, size and height of the building, walls and fences shall be such that they will not hinder the reasonable development of adjoining property nor diminish the value thereof.

This standard is clearly not satisfied. In fact, there was no discussion or analysis whatsoever of this standard in the applicant's submittals. On the other hand, the Petitioners submitted to the Planning Board a detailed broker's opinion of value that describes in great detail the **significant diminution in value** of the neighboring buildings that would result from the proposed development as presently designed. This result is self-evident. The negative valuation impacts include—the complete loss of value of an expensive large façade on each building; the loss of light and air and impact on both the nature, quality and pool of available and future tenants; the decrease in rental value of the impacted spaces which would result in loss of market values of the buildings (keep in mind that the interior spaces were designed around the light and views from the windows); the increased maintenance and operational costs of repairs to the facades due to lack of access and the danger of debris and water infiltration impacting buildings that are not designed or constructed to fully abut each other. (See **Attachment 6**; Letter from commercial broker and limited real estate appraiser, Drew Schmidt.). Finally, the lack of parking and likely interference with existing parking arrangements will have a significant negative influence on the values of the adjacent buildings as described more fully in Part E below.

The diminution of value of the adjacent properties that would be caused by the proposed development should be compared to the opposite result achieved by the Greenleaf Trust and Balmoral Buildings. Before the development of Petitioners' buildings, this block was characterized by old unattractive low rise commercial structures and a gas station. Both the Greenleaf Trust and Balmoral projects combined to make this block one of the most desirable new locations for the highest value office properties in the City at the time, including by making road and other improvements for traffic flow. The Peabody's property values and marketability skyrocketed as a result of the neighboring developments. In stark contrast, the Project will have a substantial negative impact on the value of Petitioners' buildings – see, e.g., Drew Schmidt's "conservative" estimate that the Project's proposed north elevation will cause a **\$1,000,000** diminution in value to the Greenleaf Trust Building. (See Attachment 6, p 3.)

In another effort to supply a rationale where the applicant failed to do so, the resolution read by Mr. Williams, suggested that, while property values may have been diminished, all properties are impacted by new development and that the impact did not rise to the level of materiality required under the Zoning Ordinance. (9/13/17 Planning Board Meeting Minutes, at pp. 4-5). This statement about the impact of development on the values of existing projects, the materiality of the loss of value to the Petitioners' buildings, or even the relevance of materiality are all unsupported by one iota of information in the record. Most important—the **standard is**

absolute—the new construction must not diminish the value of existing structures. There is no qualifying adjective indicating that the diminution of value must be “material” or “substantial.” And, even if there was such a standard, it would have been clearly met here. In sum, this standard was not met by the applicant.

Section 7.27(5) – The proposed development will be compatible with other uses and buildings in the neighborhood and will not be contrary to the spirit and purpose of this chapter.

The positions expressed above also apply here and will not be repeated. But in summary, five-story featureless block walls on or near the property lines are not compatible with the adjacent buildings, which are not built entirely on the property lines and were not designed or constructed to be fully attached to a new infill building. (See Attachment 5 and Attachment 7, Affidavit of the design architect for the Balmoral Building, Jason Novotny.) This incompatibility raises serious issues of constructability, maintenance, operation and repairs to all three buildings. We presented information from the designers of the Greenleaf Trust and Balmoral Buildings expressing the views that the new building as proposed cannot be constructed or maintained without trespassing on and causing damage to the neighboring properties. While these issues were acknowledged by members of the Planning Board, they were not addressed in any manner by the applicant. The reaction was more a shrug of the shoulders and the attitude that we can address those issues later. This is particularly troubling in light of recent comments from the applicant’s own geotechnical consultant, who is advising the applicant of “the benefits of not excavating all the way to the property line because of ... the need to restore waterproofing and/or other damage that potentially could result from an excavation immediately next to the Greenleaf Building.” (See Attachment 8, 10/4/17 e-mail from Timothy J. Mitchell, Vice President of SME).

But if the proposed building cannot be built, properly maintained, or repaired as presently proposed because of the inter-relationship of the proposed building with existing structures, then the proposed building is not compatible as required by the Zoning Ordinance and such compatibility questions should be addressed and resolved now. The City’s approval and encouragement of the design of the south elevation of the Greenleaf Trust Building and the north elevation of the Balmoral Building rendered impossible the concept of a five-story, zero lot line infill building on the Peabody property because it simply cannot comply with the City’s zoning requirements, including the aforementioned requirement of compatibility.

D. The Project Is Not Consistent With The Master Plan

Because the Project is within the City’s downtown overlay district and the applicant is seeking to construct a larger building than would otherwise be required in the underlying B-4 zoning district, additional standards apply to the site plan approval process. Those additional standards include the requirement that the development plan “implement” the Downtown Birmingham 2016 Plan (the “Master Plan”).³ (See Zoning Ordinance, Section 3.01A.) The

³ Section 3.04A.3 also provides for buildings in the D4 zone that, “All buildings containing a fifth story shall be designed harmoniously with adjacent structures in terms of mass, scale

current proposal fails to do so. The Master Plan does not and never did envision a single large block of new, attached high rise buildings running continuously from Maple to Brown along Woodward. In fact, all of the significant buildings in addition to Petitioners' buildings along this Woodward Avenue corridor are stand-alone structures (e.g., the 555 Building). Indeed, when the Greenleaf Trust Building was approved, the Master Plan envisioned that the Peabody's site would one day be acquired by the City for a new parking garage. (Attachment 3, p 3.)

Moreover, when the Balmoral and Greenleaf Trust Buildings were being evaluated, the developers and City had to consider the existing conditions, which included an adjacent restaurant operation that could have remained forever. Thus, both projects spent a great deal of money on the facades adjacent to the restaurant, which enhanced the aesthetic views of the owners of the Peabody property and the value of that property. As an example, the general contractor for the Balmoral Building calculated that the north wall of the project cost in excess of \$500,000 over the cost to have simply constructed a block wall as now proposed for the adjacent structure. Moreover, there was no indication to anyone as to when the Peabody restaurant might be redeveloped, if ever, or to the extent redeveloped, the manner, scope and proposed uses for the development. It could have been redeveloped for multiple different uses at different heights. What if it was proposed to be a three-story building without residential use? Or a parking garage as envisioned by the Master Plan? Had Greenleaf Trust and Balmoral not constructed the attractive façades, the City would have been left with two highly visible, tall block walls towering over a shorter infill development at the gateway to downtown Birmingham and visible to thousands of vehicles and visitors driving by Woodward on a daily basis.

Now, according to the City standards previously discussed, the re-developers of the Project need to consider the existing conditions of the adjacent buildings in connection with their proposed development. The character of the corridor has now been established as one consisting of high quality and architecturally significant stand-alone buildings. This standard was both ignored and violated in the proceedings before the Planning Board.

E. There Is No Parking Available To Accommodate The Project

It is ironic that the Master Plan adopted in 1996 envisioned the need for additional parking in this corridor and specifically identified the Peabody's parcel as a location for a future parking deck, because rather than provide for such parking, the Planning Department's analysis of the parking situation for the proposed Project makes it clear that **there is no parking capacity available for the Project:**

"The traffic study acknowledges that the City's parking system is operating near capacity, and does not presently have the

and proportion to the best extent possible." (Emphasis added.) For all of the reasons expressed above regarding the more general site plan standards and as explained further in the Affidavits submitted with these appeals, this mandatory standard for projects in the overlay district has not been satisfied. Indeed, as explained at the end of this submission, there are several modifications that could easily be made by to the Project that might fulfill this obligation "to the best extent possible."

capacity to accommodate the additional demand that this building will create. On page 22 of the report, the writer states that "it is reasonable" to assume that the manager of the parking system will explore the possibility of adding an additional floor on the top of the Peabody St. Structure.

Further, the writer indicates that "the study assumes that possibility to be both viable and successfully completed..." The Board is cautioned that the parking structure was not designed with the intention that it could be expanded in the upward direction to create additional capacity, and that this assumption should not be figured into the study. Further, while the parking system is ready and able to operate rooftop valet assist programs to add capacity during peak hours in its other four structures, no such plan is in place at the Peabody St. Structure.

The rooftop valet system requires one to two additional staff on days it operates, and allows the system to fit 50 to 75 additional cars on the roof level by parking them closer together than what can be done when self-parked. Due to the limited land area at this site, and the present configuration of the roof, there is insufficient space available in this structure to make such a program feasible. The study should not proceed with the assumption that an additional level can or will..."

(See Planning Department Report dated August 17, 2017 (without exhibits), **Attachment 9** hereto). No solutions have been proposed by the applicant or the City. The prospect that the City will approve a massive redevelopment project utilizing every square inch of the property knowing that there is absolutely no parking available to serve the future business tenants of the Project is somewhat mind-boggling, particularly to the extent that it would harm the business operations of other existing businesses and tenants in this corridor. At the very least, the subject merits consideration and scrutiny in connection with any consideration of approving a site plan containing a proposed building constructed to the very maximum limit of height and square footage that one might squeeze onto this redevelopment property.

Although parking has been an issue for some time in downtown Birmingham, there has never been an instance where the parking assessment has been so blunt and without ambiguity—**there is no parking available to serve this development!** As explained in the affidavits submitted by the ownership of the Greenleaf Trust and Balmoral Buildings (attached hereto as **Attachment 10** and **Attachment 11**, respectively), even on the heels of an economic downturn, they worked for several years before the approval and completion of construction of their projects to get on waiting lists and obtain parking commitments at various places throughout downtown in order to lock up sufficient parking to make available to future tenants and paid for those spaces long before the tenants took occupancy. The affidavits (as well as the letter from Signature Associates included as **Attachment 12**) make clear that even then, the limitations on parking caused many potential high value tenants to look elsewhere and, in any case, they would

not have obtained any office tenants without being able to assign or commit sufficient spaces for the tenants and their employees.

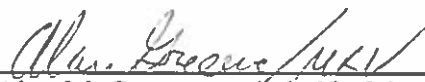
As the above-mentioned parking analysis makes clear, the situation is far worse today. The City is opening itself up to a buzz saw of litigation. The applicant will demand that the City make parking spaces available for its proposed future tenants—whether by taking it away from other businesses and projects or reducing the number of public parking spots in neighboring decks or on the street. The applicant would say that the City has approved its project without requiring any parking arrangements and thus committed to make available sufficient parking for the success of the Project. Without such parking, the applicant would argue that its entire investment and project success is at risk, exposing the City to economic liability. Moreover to the extent that the City responds by taking away, limiting or squeezing the remaining parking opportunities to the existing Greenleaf Trust and Balmoral Buildings, the standards discussed above, including that the Project not cause a reduction in value of neighboring properties, cannot be met. It is somewhat incredulous that this unambiguous and blunt statement of there being no parking capacity available to serve the Project merited not a single discussion or mention at the Planning Board meetings.

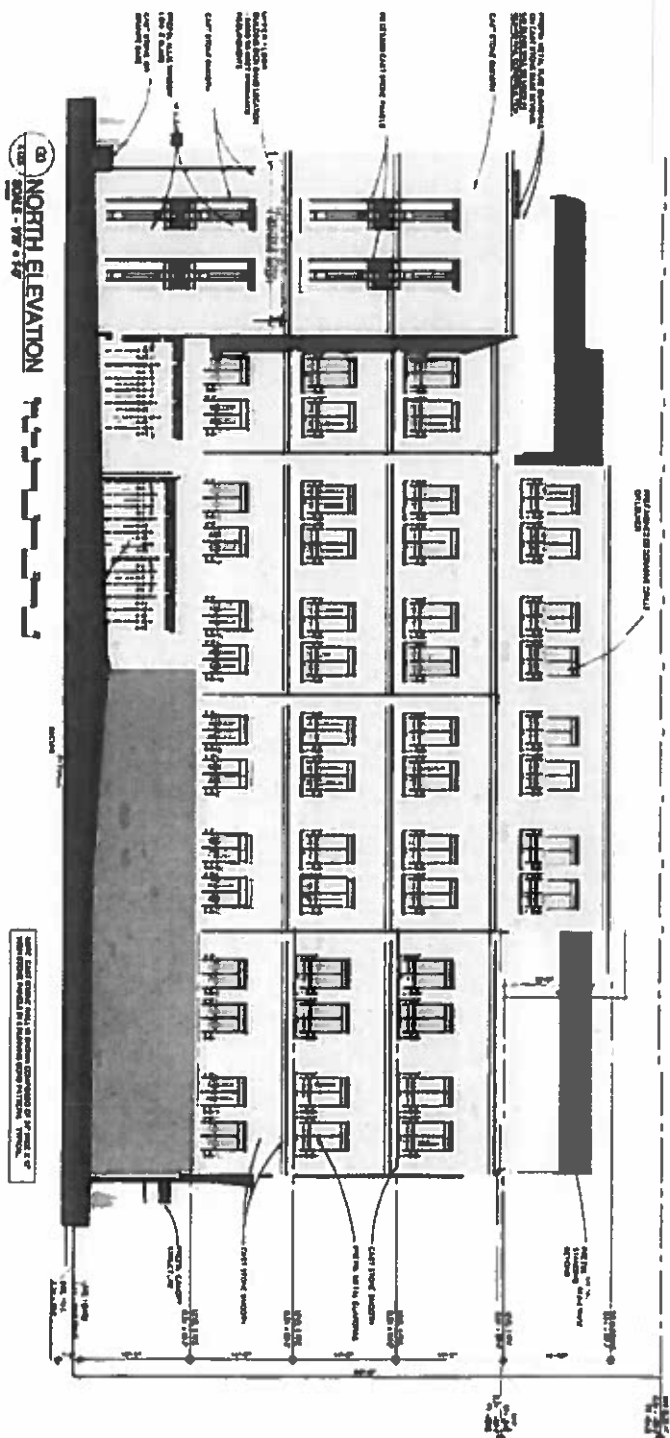
F. Some Suggestions for Revising the Project Plan to Satisfy Zoning Ordinance Standards.

The Petitioners do not want to appear presumptuous and it is not our place to tell our neighbor what to do. But Petitioners are developers as well. They understand that a building will be constructed on the former Peabody's site. There are some relatively simple design solutions that could result in a Project that might better meet or come closer to meeting the requirements previously discussed, which could even enhance the value of the Project, even though the developer may lose of a small amount of rentable area or spend a little more money on its north and south building facades. Such design solutions would include, without limitation, the inclusion of reasonable setbacks along the Project's north and south property lines above the first floor. This simple modification, alone, would allow the applicant more economical construction and maintenance of the building envelope, while also providing air and daylight to the Project's residents, commercial tenants, and neighboring properties. Also, the addition of facade details to the Project's north and south elevations that are consistent with the quality of the facades surrounding the Project would improve the Project's compatibility with the design and construction of surrounding properties, including the Greenleaf Trust Building and Balmoral Building.

G. Conclusion and Relief Requested

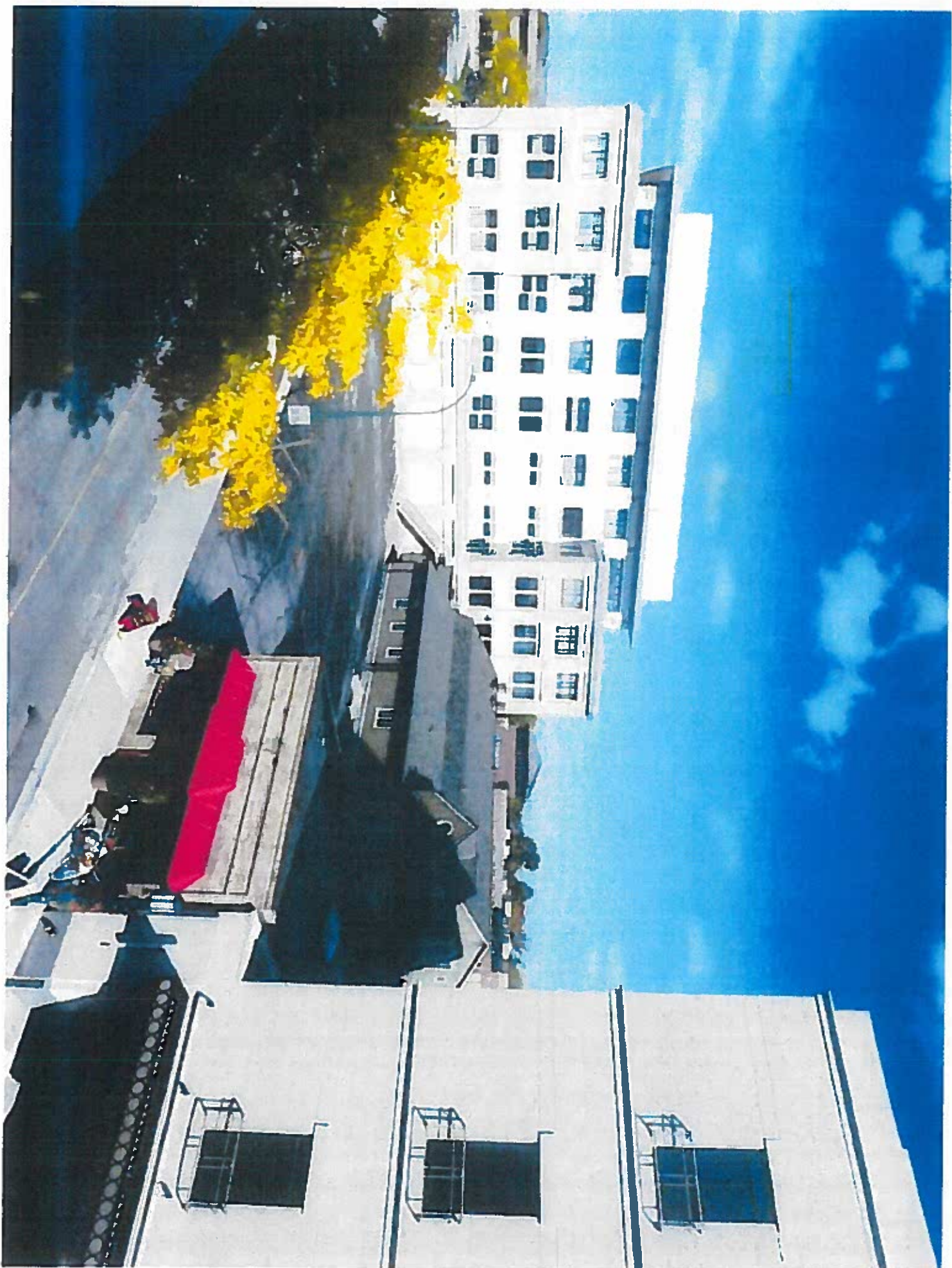
For all of the reasons set forth in this summary and the accompanying materials, the Petitioners respectfully request that the decision granting preliminary site plan approval be reversed as not satisfying the mandatory standards of the Zoning Ordinance, or in the alternative, that the matter be remanded back to the Planning Board for further review and consideration of the Applicant's proposal because the current record before the Planning Board is insufficient to demonstrate compliance with those mandatory standards.


Alan M. Greene, on behalf of the Petitioners











Preliminary Site Plan & CIS Review
34977 Woodward – Catalyst Development
May 28, 2008

Date: May 22, 2008

To: Planning Board Members

From: Jana L. Ecker, Planning Director

Re: 34977 Woodward – Catalyst Development
Preliminary Site Plan & Community Impact Study Review

Community Impact Study

I. INTRODUCTION

The subject site, 34977 Woodward, is currently the site of a vacant gas station and has a total land area of 0.315 acres. It is located on the southwest corner of Maple and Woodward Avenue. The applicant is proposing to increase the area of the site to 0.343 acres by squaring off the intersection of Maple and Peabody to improve the pedestrian crossing and to allow expansion of the corner of their building into the right-of-way. The applicant is proposing to demolish the existing building and surface parking lot to construct a mixed use development. The proposed development will consist of one large building containing a maximum of 5 residential units and 45,404 sq.ft. of office / retail space. The applicant was required to prepare a Community Impact Study in accordance with Article 7, section 7.27(E) of the Zoning Ordinance as they are proposing a new building containing more than 20,000 square feet of gross floor area.

II. COMMUNITY IMPACT STUDY

As stated above, the applicant was required to prepare a Community Impact Study given the size of the proposed development. The Zoning Ordinance recognizes that buildings of a certain size may affect community services, the environment, and neighboring properties. The CIS acts as a foundation for discussion between the Planning Board and the applicant, beyond the normal scope of information addressed in the preliminary site plan review application. The Planning Board "accepts" the CIS prior to taking action on a Preliminary Site Plan.

A. Planning & Zoning Issues:

Use

The site is currently zoned B-4, Business-Residential, and is zoned D-4 on the Regulating Plan of the Downtown Birmingham 2016 Plan ("2016 Plan"). The proposed residential units, office space, restaurant and

Preliminary Site Plan & CIS Review
34977 Woodward – Catalyst Development
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parking facility are permitted principal and/or accessory uses in the B-4 and D-4 zone district in accordance with Article 2, section 2.37 of the Zoning Ordinance (B-4) and Article 3, section 3.04(C) (D-4).

Overlay District Compliance

Article 3, section 3.01 of the Zoning Ordinance states that the purposes of the Overlay District are to:

- (a) Encourage and direct development within the boundaries of the Overlay Zoning District and implement the 2016 Plan;
- (b) Encourage a form of development that will achieve the physical qualities necessary to maintain and enhance the economic vitality of downtown Birmingham and to maintain the desired character of the City of Birmingham as stated in the 2016 Plan;
- (c) Encourage the renovation of buildings; ensure that new buildings are compatible with their context and the desired character of the city; ensure that all uses relate to the pedestrian; and, ensure that retail be safeguarded along specific street frontages; and
- (d) Ensure that new buildings are compatible with and enhance the historic districts which reflect the city's cultural, social, economic, political, and architectural heritage.

The proposed development implements the recommendations contained in the 2016 Plan as the applicant is proposing a mixed use building with the physical qualities necessary to enhance the architecture of existing buildings downtown, to create a focal point for the entrance to downtown, and is built to all property lines to continue the pedestrian-oriented character of downtown to the west of the site. In addition, the applicant has provided a massing study of the surrounding area to illustrate the compatibility of the proposed structure with surrounding buildings, both existing and proposed.

A flat roof is proposed, along with extensive use of Mankato stone and Indiana limestone, with metal panels, metal and glass canopies and bronze painted aluminum garage door panels. The proposed building design and materials are compatible with other buildings in the vicinity and the character of the Downtown Overlay District. Finally, the proposed development and uses relate to the pedestrian as the building is essentially proposed on the property lines and was designed with extensive human scale detailing on the first floor, including canopies, large storefront windows, pedestrian entrances from the front, pedestrian level building lighting, a dedicated first floor sign band, and street furniture to enhance the pedestrian experience. In addition, the frontage along Maple

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is required to be used for retail use in accordance with the 2016 Plan, and the applicant is proposing a restaurant and theater use on the first floor of the proposed building. Both of these uses fall within the definition of retail contained in the Zoning Ordinance.

Master Plan Compliance: 2016 Plan

The CIS presented states that the goals and objectives of the City's master plan were to encourage additional residential downtown and require first floor retail uses. The proposed development adds two floors of residential units, and provides retail uses on the ground floor along both Maple and Woodward.

In addition to these general goals and objectives, the Downtown Birmingham 2016 Master Plan ("2016 Plan") also contained specific recommendations for this area, named the "Maple Road Gateway". The 2016 Plan states that the Maple Road entry to downtown is currently flanked by two gasoline stations, both of which still exist today, but are vacant. The Plan states that portions of both of these sites as a pair could form a significant gateway to downtown and should share a similar height, massing and, as much as possible, architectural syntax. Previously, a five story mixed use building was approved for the northwest corner of Maple and Woodward. This building was similar in height and massing to the proposed Catalyst development. It was also similar in terms of the design and materials, from the use of stone, to metal panels to screen the rooftop mechanical. However, the site plan for the northwest corner of Woodward and Maple has since expired. No new concepts have been proposed at this time. Accordingly, the Catalyst building will be the first one of the twin buildings to be constructed, and should be used as a model for the height, scale and design of the building that will ultimately be constructed on the northwest corner, in accordance with the recommendations of the 2016 Plan.

The 2016 Plan further recommended that the City attempt to secure and hold this site, and additional parcels to the south, to construct a substantial new parking deck. Appendix G-9 recommends a mixed use liner building on the northern half of this site and the eastern portion of this site, with approximately one third of the site (the SW portion) to be utilized for a parking deck. Appendix G-9 also recommends the use of the entire Peabody Restaurant site and the Great Frame Up for use as a parking deck. At this time, the City is not interested in constructing additional parking structures within the downtown, and neither of the two southern parcels are available for sale.

Finally, Appendix G-11 provides a rendering of the conceptual build-out of the portion of Maple Road from Park Street to Woodward Avenue. The

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rendering illustrates a substantial mass of building on the northern half of the subject site, to be matched in scale, mass and architecture to another twin building on the north side of Maple. As discussed above, the Catalyst building, if approved, will be the first of the two gateway buildings to be constructed, and any proposals for a building on the northwest corner of Maple and Woodward will be required to mirror the height, scale and design of this building. The illustrations contained in the 2016 Plan recommend five story buildings on both of the Maple gateway sites, which is the height proposed by Catalyst at this time. However, the rendering also shows sloped roofs on both twin buildings. Catalyst is proposing a flat roof building which is compatible with other buildings in the vicinity. Finally, the 2016 Plan recommends that any proposed development at the Maple Road gateway should be carefully scrutinized at the time of development given its prominence as a gateway to the downtown core of Birmingham. The northeast corner of the site also provides a terminated vista, which requires distinct and prominent architectural features of enhanced character and visibility to provide a positive visual landmark.

Soil and Contamination Issues

The CIS states that there are no known sensitive soils on site and that a soil retention system will be required for site excavation due to the proposed limits of development. Site slopes are minimal and there is no potential for extraordinary soil erosion control measures for the development of this site.

The applicant has provided a Preliminary Geotechnical Evaluation, prepared by Soil and Materials Engineers, Inc, which identifies several minor concerns. Soil borings were taken on site in five locations on March 17, and 18, 2008, at depths of 30' to 60' below grade. Soil borings generally showed surface pavement overlying sand and clay fill, overlying natural clay. Foreign odors were noted at borings B1, B2 and B5, providing evidence of contamination. Please see below for further details on environmental issues on the site.

Overall, the report concludes that native soil at the site is stiff to hard natural clay, and will be suitable for grade-slab support, provide the sub-grade is properly prepared during construction. However, the report states that significant asphalt, sand and clay fill exist on the site overlying the clay below, and that existing fill is likely to be encountered at the base of the excavation in the vicinity of boring B4. This fill should be undercut to natural soils and backfilled with engineered fill. The report also states that provisions should be included for dealing with possible below grade obstructions from previous developments (utilities etc.) and other unknowns that may be discovered during construction. The Building Department will address any soil concerns in specific detail before issuing

a building permit.

In addition, water was found at a level 6' to 23' below grade in borings B1, B2 and B4. The report states that the groundwater appears to be perched within the fill and granular layers above the natural clay. The report finds that this water should be manageable with construction pumping and sumps, but special dewatering techniques may be required. The report states that summer construction is desirable, as this would be the best time for moisture conditioning of the soil that is required to achieve suitable moisture levels for compaction.

Finally, the report states that a temporary earth retention system will likely be required to provide adequate lateral support for surrounding improvements and utilities and to maintain the sides of the excavation during construction, and that construction traffic would use designated haul roads and should not be allowed to randomly traffic the site as the clays on site are highly sensitive to disturbance from such traffic.

The applicant has also provided a Phase 1 Environmental Site Assessment Report to identify contamination on the site, given its previous use as a gasoline service station. The report, prepared by Soil and Materials Engineers ("SME") and dated May 2, 2008, states that the property is listed as a Closed Leaking Underground Storage Tank ("LUST") site, and the presence of regulated hazardous substances in soil and groundwater on the property was identified. The report states that the following recognized environmental conditions were found in connection with the site:

- Known and potentially remaining contamination associated with the former use of the property as a gasoline/service station and auto repair shop;
- Potential for three underground storage tanks with unknown contents on the property; and
- Potential for migration of contamination from the north-adjointing and southwest-adjointing sites.

The applicant intends to remove any underground storage tanks and contaminated soil, and clean the site to the required levels for the proposed development. They intend to apply to the Birmingham Brownfield Redevelopment Authority for reimbursement of funds that will be utilized for clean up of the site.

The applicant has provided an estimate of 6,000 cubic yards of material to be excavated from the site. The CIS states that the proposed haul route from the site will be a right turn onto Maple Road and then a right or left turn onto Woodward.

C. Utilities, Noise and Air Issues:

In accordance with the 2016 Plan, all utilities on the site should be buried to visually enhance the site. The applicant has indicated the source of all required private utilities to be provided to the site, but has not provided verification of all required utility easements. The CIS states that all utility easements will be co-ordinated with the City and the utility companies. This will be required prior to obtaining a building permit.

As noted in the CIS, current ambient noise levels at the site fall within normally unacceptable ranges using federal guidelines. The noise report prepared by Kolano and Saha Engineers, Inc. states that HUD has defined a DNL between 55 and 65 dB as the level of noise which "is normally acceptable", with the goal of achieving an interior noise level no more than a DNL 45dB in spaces considered to be "noise sensitive" such as bedrooms and living rooms. Noise readings at the site taken between April 2nd and 3rd, 2008 showed an average DNL of 67.8dB. However, given the expected acoustical isolation performance of the building shell, it is anticipated that the goal for interior noise levels recommended in the federal guidelines will be achieved.

The applicant has also stated that the project site will comply with the City's commercial noise limits of 90 dBA (daytime) and 75 dBA (nighttime).

The CIS states that the nearest air quality monitoring stations are in Oak Park and Pontiac. No air quality violations or permits were found at or near the site. The applicant has stated that the proposed development will not impact air quality in the area.

D. Environmental Design and Historic Values:

The applicant has indicated that no demonstrable destruction of natural features or landscaping will take place at the site, and that the proposed design will be sensitive to the character of the neighborhood. A massing study was provided to illustrate the height and mass of the proposed building relative to adjacent buildings. A complete design review, including streetscape elements, will be conducted as a part of the Final Site Plan review process.

The site is not listed on the National Register of Historic Places, nor is it on the City's list of historic sites. Review by the SHPO and HDC is not required.

E. Refuse, Sewer and Water:

The CIS states that all refuse and recycled materials will be stored within the building on the ground level. Access to the trash area will be provided via a solid gate entry off of Peabody Street. The application states that a total of 3 large and 7 small trash receptacles will be enclosed in the trash room. One large and two small receptacles will be dedicated to recycling. Private trash collection will be provided.

The CIS further states that there is adequate water service to the site and that the existing combined sewers on the site will be sufficient to service the development.

F. Public Safety:

The applicant has stated that the proposed development is bounded on three sides by public streets, and thus provides easy access for police, fire and emergency vehicles. The sole elevator designated for office use and both residential elevators will be designed to accommodate an emergency stretcher as required by law. The Police Department has not expressed any concerns with the proposed development, but will be required to review the proposed security system for the building, upon selection.

The applicant has stated that the proposed building will comply with NFPA fire codes and will be fully sprinkled. The underground parking level will be served by a dry-pipe sprinkler system, and the remainder of the building will be served by a wet sprinkler system.

G. Transportation Issues:

The applicant has provided a traffic study prepared by Birchler Arroyo Associates Inc., dated April 2008. The traffic report concluded that the peak-hour traffic volumes on Woodward have declined a total of 16 – 17% in the AM peak hour and 10 -14% in the PM peak hours over the last several years, thus allowing ample capacity to accommodate new traffic. The report concludes that all five signalized intersections in the vicinity evaluated as a part of the study enjoy a peak hour level of service of B or better and that the new development will not affect these service levels. Finally, the traffic study concludes that the proposed mitigation of traffic impacts approved as part of the Blackward Development at 34901-34953 Woodward to add an all-way stop control at Brown and Peabody and the marking of separate left and right turn lanes on the southbound Peabody approach will be sufficient to handle the increase in traffic due to this development. The City's traffic consultant, Wells and Associates, will provide a thorough review of the applicant's traffic

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study prior to the Planning Board meeting on May 28, 2008.

H. Parking Issues:

The applicant has indicated that 10 parking spaces are proposed on site in the underground parking level. In addition, on-street parking is available on Woodward and Peabody, and public parking is available throughout the downtown. A thorough discussion of the parking requirements is contained in the attached site plan report.

I. Natural Features:

The petitioner has indicated that there will be no impact on natural features or bodies of water as a result of the proposed development.

J. Departmental Reports

1. Engineering Division – The Engineering Division provided the following comments:

Regarding the proposed Maple Rd. sidewalk, we have the following concerns:

- 1.a. The proposed sidewalk is only 8 feet wide, due to the limited right-of-way in this area, combined with the need for a five lane road to manage traffic demand on this segment of Maple Rd. The tree grates proposed on the plan must actually be constructed 6 inches behind the existing curb to provide a section of concrete for the grate to anchor to. Since the grate is 4 ft. square, this would leave only 3.5 ft. for the City sidewalk between the tree grate and the building wall. The City sidewalk **MUST** be five feet wide, particularly in this busy corridor. If the applicant desires to have trees on this frontage, the building wall must be moved south 18 inches to provide the minimum amount of space for the sidewalk to function.
- b. If the building is to be constructed as shown, the City will need to enter into a long-term lease with the building owner to allow use of the publicly owned land southeast of the Maple Rd./Peabody St. intersection. In our attempt to create a pedestrian-friendly environment, the City should avoid overly narrow City sidewalks, particularly where vehicle traffic levels are as high as they are here. The thirty foot long section just east of the Maple Rd. lobby door is proposed such that the excessively narrow sidewalk is being extended further to the west than necessary (i.e.: an 8 ft. wide would be provided for the public when in fact a larger section of public property exists for this purpose today). The Engineering

Dept. will advise that no less than ten foot sidewalks be provided along Maple Rd. for that portion where a lease to private use is being entertained.

2. Construction of this project will be difficult given the shortage of space available in the adjacent rights-of-way for construction staging. The applicant should be aware that the City will not be in a position to allow any lane closures of Maple Rd. longer than for short time periods (less than a day) during the life of the project. Further, assuming the existing sidewalk will be closed during construction, there will be no space available to provide a sidewalk shed. Construction of this property cannot be conducted concurrently with a project on the north side of the block, as there would be no space left for pedestrian access. In addition, the applicant needs to be aware that the proposed reconstruction of the Maple Rd./Park St./Peabody St. traffic signal, which will incorporate a Maple Rd. pedestrian crossing, will be required to be implemented prior to closure of the Maple Rd. sidewalk, thereby providing a safe access for Maple Rd. south side pedestrians to Woodward Ave. The City will expect the modernization of this traffic signal to include a mast arm design matching others currently being installed in the downtown Birmingham area.
3. The C.I.S. indicates that a zoning variance will be required to construct the building without a loading zone. In discussions with the owner, it is their proposal to park trucks on Peabody St. during low traffic periods of the day to accomplish daily loading needs. It is important to remember that Peabody St. will be converted into a three-lane road in the near future, meaning that the northbound traffic lane will be up against the curb, in direct conflict with where trucks would have to park as proposed. Creating an inherently dangerous situation on a new building when alternatives exist seems like poor planning. In a previous discussion with the owner, it was noted that a loading zone could be created by using the existing parking area in the Woodward Ave. right-of-way directly south of the site. Using this area would be significantly safer than what is proposed. Waiving this requirement is not in the best interest of the City or the public that will use Peabody St. well into the future.
4. The current crosswalk for Woodward Ave. at this site's corner is extra close to the intersection due to the presence of an existing driveway approach. Once the driveway approach is removed, the crosswalk can be moved south, which would reduce the distance of the crossing, and improve safety for pedestrians by allowing turning traffic more reaction time before having to cross the crosswalk. It is

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expected that this crosswalk relocation would be an appropriate part of the final sidewalk streetscape plan for this project.

5. Being in the downtown area, the owner will be required to sign a Streetscape Agreement, agreeing to pay for all costs necessary to finish the E. Maple Rd. and Peabody St. frontages of the property with the City's standard streetscape consisting of exposed aggregate sidewalk, landscaping, etc. The sidewalk on the Woodward Ave. frontage shall have the small sawcut pattern to carry this design theme on this side of the building as well. The agreement must be signed prior to the issuance of a construction permit.

The following permits will be required from the Engineering Division for this project:

- A. Sidewalk/Drive Approach Permit (for all pavement installed in the right-of-way).
- B. Right-of-Way Permit (for excavations in the right-of-way).
- C. Street Obstruction Permit (for partial obstructions of the City sidewalk or alley).

In addition, a permit will be required from the Michigan Dept. of Transportation (MDOT) for any use and construction within the Woodward Ave. right-of-way.

2. Department of Public Services – DPS had no concerns.
3. Fire Department - The Fire Department has advised that the Fire Department Connection must be located on the address side of the building, and a fire hydrant placed within 100' of this connection, with the location of both to be approved by the Fire Marshal.
4. Police Department – The Police Department has indicated that they are concerned about the traffic patterns at Maple and Peabody, and with the vehicular access to the underground parking level. The City's traffic consultant will provide a full traffic review by May 28, 2008.
5. Building Division – The Building Department will provide their comments prior to the May 28th, 2008 Planning Board meeting.

K. Summary of CIS:

The Planning Division finds that the applicant's CIS is complete, and recommends approval, with the following conditions:

1. The applicant co-ordinate with the City and the utility companies to determine the location of any utility easements; and
2. Approval of the traffic study by the City's traffic consultant, Wells and Associates.

L. Suggested Action:

1. To accept the Community Impact Study as provided by the applicant for the proposed development at 34977 Woodward with the following conditions:

1. The applicant co-ordinate with the City and the utility companies to determine the location of any utility easements; and
2. Approval of the traffic study by the City's traffic consultant, Wells and Associates.

Or

To decline the Community Impact Study as provided by the applicant for the proposed development at 34977 Woodward for the following reasons:

- a. _____
- b. _____
- c. _____

Or

To postpone action on the Community Impact Study as provided by the applicant for the proposed development at 349077 Woodward, allowing the applicant the opportunity to address the issues raised above.

Preliminary Site Plan Review

III. Preliminary Site Plan Review

Please see the attached Zoning Compliance Summary Sheet for detailed zoning compliance information.

1.0 Introduction

The subject site, 34977 Woodward, is currently the site of a vacant gas station and has a total land area of 0.315 acres. It is located on the southwest corner of Maple and Woodward Avenue. The applicant is proposing to increase the area of the site to 0.343 acres by squaring off the intersection of Maple and Peabody to improve the pedestrian crossing and to allow expansion of the corner of their building into the right-of-way. The applicant is proposing to demolish the existing building and surface parking lot to construct a mixed use development. The proposed development will consist of one large building containing a maximum of 5 residential units and 45,404 sq.ft. of office / retail space.

2.0 Land Use and Zoning

- 2.1 Existing Land Use – The site currently consists of a vacant building and a surface parking lot. The site was previously utilized as a gasoline service center, and is now used for temporary parking for construction vehicles. The existing building is proposed to be demolished to allow construction of the new mixed use building.
- 2.2 Zoning – The site is zoned B-4, Business Residential, and is zoned D-4 in the Downtown Overlay District. The applicant has elected to develop the site under the Overlay District regulations. The existing use and surrounding uses appear to conform to the permitted uses of the Zoning District.
- 2.3 Summary of Adjacent Land Use and Zoning - The following chart summarizes existing land use and zoning adjacent to and/or in the vicinity of the subject site, including the proposed 2016 Regulating Plan zones.

	North	South	East	West
Existing Land Use	Vacant gasoline service station	Restaurant & Surface Parking	Vacant Hotel and Commercial	Mixed Use – Retail & Commercial
Existing Zoning District	B-4 Business Residential	B-4 Business Residential	B-2, General Business	B-4 Business Residential
Overlay Zoning District	D-4	D-4	MU7 – Mixed Use	D-4

A map of the area showing the subject property highlighted in red and showing the surrounding properties and the existing zoning is attached for your review.

3.0 Use of Site

In accordance with Article 3, section 3.04(c) of the Zoning Ordinance, the proposed retail, office and residential uses are permitted in the Downtown Overlay District. The applicant has elected to develop under the Downtown Overlay District regulations.

4.0 Setback and Height Requirements

The attached summary analysis provides the required and proposed bulk, area, and placement regulations for the proposed project. The applicant meets the bulk, height, area and placement requirements for the D-4 Overlay District zoning. The applicant will be required to obtain variances from the Board of Zoning Appeals for the required loading spaces and associated screening.

5.0 Screening and Landscaping

5.1 Dumpster Screening – The applicant is proposing to store all trash within the proposed building. A private collection service will be utilized.

5.2 Parking Lot Screening – The applicant is proposing 10 on-site parking spaces, to be located on an underground level. Thus, all parking is fully screened by the building itself.

- 5.3 Mechanical Equipment Screening** – The applicant is proposing to house the mechanical equipment on the rooftop. Rooftop screening is required for all proposed rooftop mechanical units. Article 04, 4.49 (C)(8) of the Zoning Ordinance requires that all rooftop mechanical equipment must be obscured by a screen wall constructed of materials compatible with the materials used on the building, that provides an effective permanent visual barrier that minimizes the visual impact of the equipment from other points of observation and that:
- (a) The screen walls must be less than 10 feet in height; and
 - (b) The screen walls shall, to the best extent possible, not extend above the top edge of an imaginary plane extending upward no more than 45 degrees from the eave line.

The applicant is proposing to screen all rooftop mechanical units with 10' 9" high screen walls around all of the proposed rooftop mechanical equipment. The proposed screen walls will not extend past an imaginary 45 degree plane from the eave line, and they have been integrated into the design of the building to give the building a more substantial presence. The applicant has provided dimensions and specification sheets for all of the proposed rooftop mechanical equipment, with the exception of the residential condensing units (which are usually 3' in height) that demonstrates that all units will be fully screened by the screen wall. **The applicant must provide details on the residential condensing units prior to Final Site Plan and Design Review.**

The location of electrical transformer(s) has not yet been determined. The applicant has provided an electrical room on the underground parking level which could house a transformer. The plans note that the applicant is negotiating with the owners of Peabody's to locate the transformer(s) on the Peabody property. If the transformer is proposed outside of the building, appropriate screening will be required. **The applicant must provide details on the size, location and required screening for all transformers prior to Final Site Plan and Design Review.**

- 5.4 Landscaping** – A detailed landscape plan has been provided. It shows an extensive use of container plantings and the addition of street trees along Maple, Woodward and Peabody. Planters are proposed on all sides of the building. Proposed perennials for the planters include Variegated Sweet Flag, Montgomery Astilbe, Happy Returns Daylily, Fire and Ice and Halcyon Hosta and Northwind Switch Grass. In accordance with Article 4, section 4.20 LA-01, the only required landscaping is 1 street tree / 40' of street frontage. The applicant has 320' of street frontage, and thus 8 street trees are required. Nine are proposed. Specifically, two "Princeton Sentry" Ginkgo street trees with

tree grates are proposed on Peabody, four "Princeton Sentry" Ginkgo trees are proposed on Maple with tree grates, and three "Skyline" Honey Locust trees are proposed on Woodward, to be surrounded by grass in the MDOT right-of-way. A permit from MDOT will be required for changes in the right-of-way along Woodward.

6.0 Parking, Loading and Circulation

- 6.1 Parking – The subject site is located within the Parking Assessment District and thus no parking is required for the retail or office uses. A maximum of five residential units are proposed, and thus 8 on-site parking spaces are required. The applicant is proposing 10 parking spaces in the underground parking level.
- 6.2 Loading – In accordance with Article 4, section 4.21 of the Zoning Ordinance, 1 loading space is required for the restaurant use (less than 20,000 sq.ft.), and 1 is required for the office use (less than 50,000 sq.ft.). Due to the constraints of the site, the applicant is not able to provide any loading spaces on site, and intends to apply to the Board of Zoning Appeals for the required variance. The applicant met with the Engineering Department and it was agreed that the loading for the site should occur from the Woodward Avenue right-of-way due to potential traffic conflicts on Peabody.
- 6.3 Vehicular Circulation and Access – The proposed development includes the removal of two curb cuts along Woodward, and the removal of one curb cut on Maple. The existing curb cut on Peabody will be reconfigured, but vehicular access to the site will continue off of Peabody at the southwest corner of the site. There will be private access only to the underground parking level, which only contains 10 parking spaces. A permit from MDOT will be required for changes in the right-of-way along Woodward.
- 6.4 Pedestrian Circulation and Access – The applicant has provided pedestrian entrances directly from the public sidewalks at the corner of Maple and Peabody to the office and restaurant lobby, which is accessible directly from Maple, and directly from Peabody. Pedestrian entry to the residential lobby has been provided on the Maple elevation towards the center of the building. Secondary pedestrian access to the building has also been provided off of Woodward at the southeast corner of the site. These entrances are not located on the frontage lines as required by the Zoning Ordinance. However, the City Attorney has advised that this provision is in conflict with the Michigan Building Code, and that state law supercedes our local ordinance. Accordingly,

the requirement that the doorway be located “on the frontage line” cannot be enforced. As such, the City Attorney has advised that a variance is not required.

- 6.5 Streetscape – The applicant has proposed a sidewalk expansion at the northwest corner of the site to improve the pedestrian crossing at the intersection of Maple and Peabody. This intersection has long been identified as one ripe for improvement. The 2016 Plan recommended the removal of the concrete island, and the realignment of the intersection to line up with Park Street to the north, and to reduce the distance of the crossing for pedestrians. The applicant has met with the Engineering and Planning Departments to review their proposal for this intersection. The changes as proposed will significantly reduce the distance for pedestrians to cross Peabody, and will eliminate the concrete island, as recommended in the 2016 Plan. The reconfiguration also expands the width of the public sidewalk to create a plaza area at the corner of Maple and Peabody. The proposed realignment also lines up with Park Street to the north, which would allow for this intersection to return to a full movement intersection if the City so chooses when the gas station on the north side of Maple redevelops.

The City will require the execution of a streetscape agreement outlining all required improvements in the right-of-way, including new sidewalks, curbs, tree wells etc. The applicant is currently proposing the use of contemporary furnishings similar to those under consideration for the Triangle District. However, the streetscape standards in the Downtown Overlay require the use of the traditional City benches, trash receptacles, pedestrian scale lights and hanging baskets in Birmingham Green. The proposed location of benches and trash receptacles as shown on the plan will add to the pedestrian experience and create intimate public gathering spaces.

7.0 Lighting

The applicant is proposing 25 custom sconce light fixtures (40W) to be affixed to the building at a height of 6.75' above grade. Additional fixtures are proposed for the upper level terraces as required by Code, and sign lighting is also proposed. A photometric plan and specification sheets for all light fixtures must be provided at the time of Final Site Plan Review. Lighting will be reviewed in detail as part of the Final Site Plan & Design Review.

8.0 Departmental Reports

8.1 Engineering Division – The Engineering Division had the following comments:

Regarding the proposed Maple Rd. sidewalk, we have the following concerns:

- 1.a. The proposed sidewalk is only 8 feet wide, due to the limited right-of-way in this area, combined with the need for a five lane road to manage traffic demand on this segment of Maple Rd. The tree grates proposed on the plan must actually be constructed 6 inches behind the existing curb to provide a section of concrete for the grate to anchor to. Since the grate is 4 ft. square, this would leave only 3.5 ft. for the City sidewalk between the tree grate and the building wall. The City sidewalk **MUST** be five feet wide, particularly in this busy corridor. If the applicant desires to have trees on this frontage, the building wall must be moved south 18 inches to provide the minimum amount of space for the sidewalk to function.
- b. If the building is to be constructed as shown, the City will need to enter into a long-term lease with the building owner to allow use of the publicly owned land southeast of the Maple Rd./Peabody St. intersection. In our attempt to create a pedestrian-friendly environment, the City should avoid overly narrow City sidewalks, particularly where vehicle traffic levels are as high as they are here. The thirty foot long section just east of the Maple Rd. lobby door is proposed such that the excessively narrow sidewalk is being extended further to the west than necessary (i.e.: an 8 ft. wide would be provided for the public when in fact a larger section of public property exists for this purpose today). The Engineering Dept. will advise that no less than ten foot sidewalks be provided along Maple Rd. for that portion where a lease to private use is being entertained.
2. Construction of this project will be difficult given the shortage of space available in the adjacent rights-of-way for construction staging. The applicant should be aware that the City will not be in a position to allow any lane closures of Maple Rd. longer than for short time periods (less than a day) during the life of the project. Further, assuming the existing sidewalk will be closed during construction, there will be no space available to provide a sidewalk shed. Construction of this property cannot be conducted concurrently with a project on the north side of the block, as there

would be no space left for pedestrian access. In addition, the applicant needs to be aware that the proposed reconstruction of the Maple Rd./Park St./Peabody St. traffic signal, which will incorporate a Maple Rd. pedestrian crossing, will be required to be implemented prior to closure of the Maple Rd. sidewalk, thereby providing a safe access for Maple Rd. south side pedestrians to Woodward Ave. The City will expect the modernization of this traffic signal to include a mast arm design matching others currently being installed in the downtown Birmingham area.

3. The C.I.S. indicates that a zoning variance will be required to construct the building without a loading zone. In discussions with the owner, it is their proposal to park trucks on Peabody St. during low traffic periods of the day to accomplish daily loading needs. It is important to remember that Peabody St. will be converted into a three-lane road in the near future, meaning that the northbound traffic lane will be up against the curb, in direct conflict with where trucks would have to park as proposed. Creating an inherently dangerous situation on a new building when alternatives exist seems like poor planning. In a previous discussion with the owner, it was noted that a loading zone could be created by using the existing parking area in the Woodward Ave. right-of-way directly south of the site. Using this area would be significantly safer than what is proposed. Waiving this requirement is not in the best interest of the City or the public that will use Peabody St. well into the future.
4. The current crosswalk for Woodward Ave. at this site's corner is extra close to the intersection due to the presence of an existing driveway approach. Once the driveway approach is removed, the crosswalk can be moved south, which would reduce the distance of the crossing, and improve safety for pedestrians by allowing turning traffic more reaction time before having to cross the crosswalk. It is expected that this crosswalk relocation would be an appropriate part of the final sidewalk streetscape plan for this project.
5. Being in the downtown area, the owner will be required to sign a Streetscape Agreement, agreeing to pay for all costs necessary to finish the E. Maple Rd. and Peabody St. frontages of the property with the City's standard streetscape consisting of exposed aggregate sidewalk, landscaping, etc. The sidewalk on the Woodward Ave. frontage shall have the small sawcut pattern to carry this design theme on this side of the building as well. The agreement must be signed prior to the issuance of a construction permit.

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The following permits will be required from the Engineering Division for this project:

- A. Sidewalk/Drive Approach Permit (for all pavement installed in the right-of-way).
- B. Right-of-Way Permit (for excavations in the right-of-way).
- C. Street Obstruction Permit (for partial obstructions of the City sidewalk or alley).

In addition, a permit will be required from the Michigan Dept. of Transportation (MDOT) for any use and construction within the Woodward Ave. right-of-way.

In accordance with the requirements of the Engineering Department, the applicant will be required to adjust the footprint of the building just east of the office and restaurant lobby by stepping it back to provide the required 10' sidewalk width on the public property that will be subject to the long term lease. In addition, the applicant will be required to shift the tree wells along Woodward 6" to the south, and shift the proposed planters and building piers along Woodward 12" or so to the south to ensure that a 5' clear pedestrian path exists from the edge of the tree grate to the northern edge of the building. The applicant would be required to provide the City with an easement for the portion of the 5' sidewalk that would be located on private property (approximately a 1' strip).

- 8.2 Department of Public Services – DPS has no concerns.
- 8.3 Fire Department - The Fire Department has advised that the Fire Department Connection must be located on the address side of the building, and a fire hydrant placed within 100' of this connection, with the location of both to be approved by the Fire Marshal.
- 8.4 Police Department – The Police Department has indicated that they are concerned about the traffic patterns at Maple and Peabody, and with the vehicular access to the underground parking level. The City's traffic consultant will provide a full traffic review by May 28, 2008.
- 8.5 Building Division – The Building Department will provide their comments prior to the May 28th, 2008 Planning Board meeting.

9.0 Design Review

A full design review will be conducted at the time of Final Site Plan and Design Review. However, the applicant has submitted full elevation drawings on sheets A-7 and A-8. The applicant is proposing to utilize the following materials:

- Mankato Stone in polished Golden Amber and Golden Buff;
- Indiana Limestone with a sugar cube finish and a bush-hammered finish;
- bronze finish aluminum windows and doors;
- 1" bronze tint insulated glass windows and doors with Low-E coating;
- metal panels with a Kynar finish to match the Indiana limestone and the bronze aluminum finish of the windows;
- custom bronze painted aluminum canopies and sunshades;
- custom bronze painted aluminum solid panel for the dumpster screening; and
- custom bronze painted aluminum open panels for the parking access doors.

The Planning Division will reserve detailed comments regarding architectural standards and design related issues for the Final Site Plan and Design Review. However, in reviewing the plans, the following issues were noted: no details have been provided on the percentage of glazing for any elevation, although it appears that the minimum glazing requirements for the first floor have not been met on the west elevation, and a sample of the bronze tinted glass has not been provided (only clear or lightly tinted glass is permitted). At the time of Final Site Plan approval, the applicant will be required to provide information regarding the percentage of glazing on each elevation to determine if the 70% glazing requirement has been met and must provide samples of all materials proposed.

10.0 Downtown Birmingham 2016 Overlay District

The site is located within the D-4 zone of the DB 2016 Regulating Plan, within the Downtown Birmingham Overlay District. The DB 2016 Report encourages four or five story buildings along Woodward Avenue. The proposed development implements the recommendations contained in the 2016 Plan as the applicant is proposing a five story mixed use building with the physical qualities necessary to enhance the architecture of existing buildings downtown, to create a focal point for the entrance to downtown, and is built to all property lines to continue the pedestrian-oriented character of downtown to the west of the site. For further

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discussion of compliance with the 2016 Plan, please see the corresponding section in the CIS portion of this report.

11.0 Approval Criteria

In accordance with Article 7, section 7.27 of the Zoning Ordinance, the proposed plans for development must meet the following conditions:

- (1) The location, size and height of the building, walls and fences shall be such that there is adequate landscaped open space so as to provide light, air and access to the persons occupying the structure.
- (2) The location, size and height of the building, walls and fences shall be such that there will be no interference with adequate light, air and access to adjacent lands and buildings.
- (3) The location, size and height of the building, walls and fences shall be such that they will not hinder the reasonable development of adjoining property nor diminish the value thereof.
- (4) The site plan, and its relation to streets, driveways and sidewalks, shall be such as to not interfere with or be hazardous to vehicular and pedestrian traffic.
- (5) The proposed development will be compatible with other uses and buildings in the neighborhood and will not be contrary to the spirit and purpose of this chapter.
- (6) The location, shape and size of required landscaped open space is such as to provide adequate open space for the benefit of the inhabitants of the building and the surrounding neighborhood.

12.0 Recommendation

The Planning Division recommends that the Planning Board APPROVE the Preliminary Site Plan for 34977 Woodward with the following conditions:

1. Provision of specification sheets for the residential condensing units prior to Final Site Plan and Design Review;
2. Provision of details on the size, location and required screening for all transformers prior to Final Site Plan and Design Review;
3. Obtain a loading space variance from the Board of Zoning Appeals;
4. Preparation of a streetscape plan with all required Downtown streetscape elements prior to Final Site Plan and Design Review;
5. Provision of a photometric plan and specification sheets for all light

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- fixtures;
- 6. Provision of information regarding the percentage of glazing on each elevation prior to Final Site Plan and Design Review; and
- 7. Adjustment of the building footprint and planters along Woodward to provide a 10' clear pedestrian walking path on the property that will be subject to the long term lease, and a 5' clear path east to Woodward.

13.0 Sample Motion Language

Motion to APPROVE the Preliminary Site Plan for 34977 Woodward subject to the following conditions:

1. Provision of specification sheets for the residential condensing units prior to Final Site Plan and Design Review;
2. Provision of details on the size, location and required screening for all transformers prior to Final Site Plan and Design Review;
3. Obtain a loading space variance from the Board of Zoning Appeals;
4. Preparation of a streetscape plan with all required Downtown streetscape elements prior to Final Site Plan and Design Review;
5. Provision of a photometric plan and specification sheets for all light fixtures;
6. Provision of information regarding the percentage of glazing on each elevation prior to Final Site Plan and Design Review; and
7. Adjustment of the building footprint and planters along Woodward to provide a 10' clear pedestrian walking path on the property that will be subject to the long term lease, and a 5' clear path east to Woodward.

OR

Motion to DENY the Preliminary Site Plan for 34977 Woodward.

OR

Motion to POSTPONE the Preliminary Site Plan for 34977 Woodward until the outstanding issues can be addressed.

Site Plan Review

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- B. Preliminary Site Plan Review is designed to give the developer a tentative approval prior to development of construction plans. Preliminary review may not be required for additions or alterations to existing buildings, which in the judgement of the City Planner are considered to be minor in nature. After final site plans are completed, the petitioner shall submit them to the Planning Board for final Site Plan Review of non-historic properties. The Planning Board and the Historic District Commission shall jointly review the final Site Plan for historic properties.
- C. Final Site Plan Review must be applied for within six months of the granting of preliminary Site Plan approval. All provisions of applicable ordinances must be met, and any special conditions or requirements imposed by the appropriate reviewing body and in granting preliminary approval must be incorporated into the plans. Final Site Plan approval for both new construction and additions shall be given only after all phases of the plan have been approved by the appropriate reviewing body. It shall be the responsibility of the applicant to advise the Planning Department of any changes to a Site Plan which has received final Site Plan and Design Review approval, and for requesting the necessary approval from the planning division and/or Planning Board for such changes.
- D. The Building Official shall not issue a building permit for any building when the plans therefor are required to be reviewed by the Planning Board, the Design Review Board, or the Historic District Commission pursuant to this section until approval has been obtained and the signatures of the approving members of the appropriate reviewing body have been inscribed on the plans on file with the City Planner. However, if the appropriate reviewing body fails to act on any application within 30 days from the date an application for review is filed, the Building Official may, if the appropriate reviewing body has had an opportunity to act thereon, issue such permit without Planning Board, Design Review Board, or Historic District Commission action.

7.27 Requirements

- A. Site Plan approval shall be granted only to a person, persons, or entity owning or otherwise controlling the entire area included within the proposed lot or building site.
- B. The Planning Board or the Design Review Board shall not grant approval for any development unless the conditions given in this subsection have been met.
 - 1. The location, size and height of the building, walls and fences shall be such that there is adequate landscaped open space so as to provide light, air and access to the persons occupying the building.
 - 2. The location, size and height of the building, walls and fences shall be such that there will be no interference with adequate light, air and access to adjacent lands and buildings.
 - 3. The location, size and height of the building, walls and fences shall be such that they will not hinder the reasonable development of adjoining property nor diminish the value thereof.
 - 4. The Site Plan, and its relation to streets, driveways and sidewalks, shall be such as to not interfere with or be hazardous to vehicular and pedestrian traffic.
 - 5. The proposed development will be compatible with other uses and buildings in the neighborhood and will not be contrary to the spirit and purpose of this chapter.
 - 6. The location, shape and size of required landscaped open space is such as to provide adequate open space for the benefit of the inhabitants of the building and the surrounding neighborhood.
- C. Site Plans submitted for review by the Planning Board and/or the Design Review Board shall be reviewed by appropriate City departments to assure compliance with city codes, policies and/or regulations.
- D. The petitioner shall be responsible for any costs incurred by consultants, including but not limited to traffic and environmental, contracted by the City to review the proposed Site Plan and/or community impact study as determined by the city planner.

- E. A community impact study (CIS) shall be required:
 - 1. For a new structure and/or building of 20,000 square feet of gross floor area or greater, to be prepared by the petitioner, for review by the Planning Board at the preliminary Site Plan Review.
 - 2. For a new structure and/or building or addition to an existing structure and/or building equaling less than 20,000 square feet of combined gross floor area, to be prepared by the petitioner upon determination by the Planning Board at preliminary Site Plan Review that the proposed development may exert a significant impact upon one or more of those elements cited in subsection (F) of this section. The CIS shall be reviewed by the Planning Board at a second preliminary Site Plan Review.
 - 3. For an addition to an existing structure and/or building with a combined gross floor area of 20,000 square feet or more, provided that the addition has a gross floor area greater than 10% of the gross floor area of the existing structure and/or building, for review by the Planning Board at the preliminary Site Plan Review.
- F. A community impact study, when required, shall provide information pertinent to the following:
 - 1. Planning/zoning issues, including conformance with master plan, urban design plan, this chapter, and other applicable city codes and policies.
 - 2. Land development issues, including topographic and soil conditions and site safety concerns.
 - 3. Private utilities consumption, including electrical needs and natural gas utilization.
 - 4. Noise level conditions.
 - 5. Air quality conditions.
 - 6. Environmental design and historic values including visual quality and historic resources.
 - 7. Community facilities and services, including refuse collection, sanitary and storm sewer, and water supply.
 - 8. Public safety needs, including police, fire and emergency medical services.
 - 9. Open space landscaping and recreation, including cultural elements.
 - 10. Transportation issues, including pedestrian access and circulation, auto and delivery vehicle traffic, and parking concerns.
 - 11. Natural features preservation, enhancement, and/or replacement.
 - 12. Other information as reasonably may be required by the city to assure an adequate analysis of all existing and proposed site features and conditions.
- G. The preparer(s) of a CIS must meet the following minimum professional qualifications:
 - 1. Be registered in the state in their respective professions, when licensing is a state requirement for the practice of the profession (e.g. professional engineer, registered land surveyor, registered architect, etc.); or
 - 2. In those instances where the state does not require licensing for the practice of a profession (e.g., planner, urban designer, economist, etc.), the preparer shall, in the opinion of the city, possess acceptable credentials (e.g., appropriate college degree(s), membership in professional societies, etc.) to render an expert opinion in the matter and provide documentation which adequately illustrates professional experience gained while preparing CIS related materials on similar projects for other municipalities.

7.28 Approval

Site Plan approval shall be valid for a period of one year from the date it is granted. Upon request, the appropriate reviewing body may grant an extension of not in excess of one year to the applicant prior to the expiration date. Any application for extension of Site Plan approval must be filed on or before the expiration of the original Site Plan approval. An extension may be granted upon compliance with all applicable zoning requirements that are in effect at the time of filing of the application for the extension. All plans must show any revisions that are a result of Zoning Ordinance amendments at the time of filing. The Building Official shall not issue a permit for such work unless a valid final Site Plan and design plan are in effect.

Downtown Birmingham Overlay District

3.01 Purpose

The purposes of the Downtown Birmingham Overlay District are to:

- A. Encourage and direct development within the boundaries of the Downtown Birmingham Overlay District and implement the Downtown Birmingham 2016 Plan;
- B. Encourage a form of development that will achieve the physical qualities necessary to maintain and enhance the economic vitality of Downtown Birmingham and to maintain the desired character of the City of Birmingham as stated in the Downtown Birmingham 2016 Plan;
- C. Encourage the renovation of buildings; ensure that new buildings are compatible with their context and the desired character of the city; ensure that all uses relate to the pedestrian; and, ensure that retail be safeguarded along specific street frontages; and
- D. Ensure that new buildings are compatible with and enhance the historic districts which reflect the city's cultural, social, economic, political, and architectural heritage.

3.02 Applicability

- A. The Downtown Birmingham Overlay District shall be an overlay district that applies over the existing zoning districts.
- B. Use and development of land within the Downtown Birmingham Overlay District shall be regulated as follows:
 - 1. Any existing use shall be permitted to continue and the use shall be subject to the underlying zoning requirements and not the Downtown Birmingham Overlay District.
 - 2. Where the usage within an existing building is proposed to be expanded by more than 50% of the existing size, the new use shall be subject to the building use standards of the Downtown Birmingham Overlay District to the maximum extent practical, as determined by the Planning Board.
 - 3. Any expansion to an existing building that expands the area of the building by more than 40% of the existing building area shall subject the entire building to the requirements of the Downtown Birmingham Overlay District and shall be brought into compliance with the requirements of the Downtown Birmingham Overlay District to the maximum extent practical, as determined by the Planning Board.
 - 4. Where a new building is proposed, the use and site shall be subject to the requirements of the Downtown Birmingham Overlay District.
- C. Development applications within the Downtown Birmingham Overlay District shall be required to follow the Site Plan Review and Design Review standards contained in Article 7.
- D. A Downtown Birmingham Overlay District Regulating Plan has been adopted that divides the Downtown Birmingham Overlay District into zones. Each zone designated on the Regulating Plan prescribes requirements for building form, height and use as follows:
 - D2: Downtown Two or Three Stories
 - D3: Downtown Three or Four Stories
 - D4: Downtown Four or Five Stories
 - C: Community Use
 - P: Parking

3.03 General Standards

- A. The design of buildings and sites shall be regulated by the provisions of the Downtown Birmingham Overlay District.
- B. Section 3.01 to Section 3.04 shall govern the design of all privately owned land within the Downtown Birmingham Overlay District.
- C. The provisions of the Downtown Birmingham Overlay District, when in conflict with other articles of the Zoning Ordinance, shall take precedence.
- D. The provisions of the Downtown Birmingham Overlay District shall specifically supersede the floor-area-ratio, maximum height, and minimum setback regulations contained in each two-page layout in Article 2 of the Zoning Ordinance.

Downtown Birmingham Overlay District

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- E. The provisions of the building and building regulations Chapter 22 of the Birmingham City Code and the historic preservation regulations in Chapter 62 of the Birmingham City Code, when in conflict with the Downtown Birmingham Overlay District, shall take precedence.
- F. The design of community buildings and improvements shall not be subject to the specific standards of this article, but shall be subject to design review by the Planning Board.
- G. Locations designated on the Regulating Plan for new parking garages and civic buildings shall be reserved for such development.

3.04 Specific Standards

- A. Building Height, Overlay: The various elements of building height shall be determined as follows for the various zones designated on the Regulating Plan:
 - 1. D2 Zone (two or three stories):
 - a. Eave line for sloped roofs shall be no more than 34 feet.
 - b. Peak or ridge of any sloped roof shall be no more than 46 feet as measured to the average grade.
 - c. Maximum overall height including the mechanical and other equipment shall be no more than 56 feet.
 - d. A third story is permitted if it is used only for residential.
 - e. All buildings in D2 Zone containing a third story should be designed harmoniously with adjacent structures in terms of mass, scale and proportion, to the best extent possible.
 - f. A third story shall continue in a different plane, beginning at the eave line, not greater than 45 degrees measured to the horizontal or setback 10 feet from any building facade.
 - g. All buildings constructed in the D2 Zone must have a minimum eave height of 20 feet.
 - 2. D3 Zone (three or four stories):
 - a. Eave line for sloped roofs shall be no more than 46 feet.
 - b. Peak or ridge of any sloped roof shall be no more than 58 feet as measured to the average grade.
 - c. Maximum overall height including the mechanical and other equipment shall be no more than 68 feet.
 - d. A fourth story is permitted if it is used only for residential.
 - e. All buildings in D3 Zone containing a fourth story should be designed harmoniously with adjacent structures in terms of mass, scale and proportion, to the best extent possible.
 - f. The fourth story shall continue in a different plane, beginning at the eave line, no greater than 45 degrees measured to the horizontal or setback 10 feet from any building facade.
 - g. All buildings constructed in a D3 Zone must contain a minimum of 2 stories and must have a minimum eave height of 20 feet.
 - 3. D4 Zone (four or five stories):
 - a. Eave line shall be no more than 58 feet.
 - b. Peak or ridge of any sloped roof shall be no more than 70 feet as measured to the average grade.
 - c. Maximum overall height including mechanical and other equipment shall be no more than 80 feet.
 - d. The fifth story is permitted if it is used only for residential.
 - e. All buildings containing a fifth story should be designed harmoniously with adjacent structures in terms of mass, scale and proportion, to the best extent possible.
 - f. The fifth story shall continue in a different plane, beginning at the eave line, no greater than 45 degrees measured to the horizontal or set back 10 feet from any building facade.
 - g. All buildings constructed in the D4 Zone must contain a minimum of 2 stories and must have a minimum eave height of 20 feet.
 - 4. C and P Zones: Downtown Birmingham Overlay District building height shall comply with the underlying height restrictions listed in each two-page layout in Article 2 of the Zoning Ordinance, but may be negotiated by the Planning Board.
 - 5. Stories at sidewalk level shall be a minimum of 10 feet in height from finished floor to finished ceiling. The Planning Board may reduce this standard for renovations to existing buildings that do not meet this standard.
 - 6. A transition line shall be provided between the first and second stories. The transition shall be detailed to facilitate an awning.

Downtown Birmingham Overlay District

7. The maximum width of all dormers per street elevation on buildings may not exceed 33% of the width of the roof plane on the street elevation on which they are located.
- B. Building placement. Buildings and their elements shall be placed on lots as follows:
 1. Front building facades at the first story shall be located at the frontage line, except the Planning Board may adjust the required front yard to the average front setback of any abutting building.
 2. In the absence of a building facade, a screenwall shall be built along the frontage line and aligned with the adjacent building facade. Screenwalls shall be between 2.5 and 3.5 feet in height and made of brick, stone or other masonry material matching the building. Upon approval by the Planning Board, screenwalls may be a continuous, maintained evergreen hedge or metal fencing. Screenwalls may have openings a maximum of 25 feet to allow vehicular and pedestrian access.
 3. Side setbacks shall not be required.
 4. A minimum of 10 foot rear yard setback shall be provided from the midpoint of the alley, except that the Planning Board may allow this setback to be reduced or eliminated. In the absence of an alley, the rear setback shall be equal to that of an adjacent, preexisting building.
 5. First-floor awnings may encroach upon the frontage line and public sidewalk, but must avoid the street trees; provide at least 8 feet of clearance above the sidewalk; and be set back a minimum of 2 feet from the road curb.
 6. Upper-floor awnings shall be permitted only on vertically proportioned windows, provided that the awning is only the width of the window, encroaches upon the frontage line no more than 3 feet, and is not used as a backlit sign.
 7. Loading docks and service areas shall be permitted only within rear yards. Doors for access to interior loading docks and service areas shall not face a public street.
 8. All buildings shall have their principal pedestrian entrance on a frontage line.
- C. Building use. Buildings shall accommodate the following range of uses for the various designations on the Regulating Plan of the Downtown Birmingham Overlay District:
 1. Uses shall be limited to those allowed in each underlying zoning district, unless otherwise specifically provided for herein.
 2. The following uses and conditions are prohibited:
 - a. Automatic food and drink vending machines outdoors;
 - b. Drive-in facilities or any commercial use that encourages patrons to remain in their automobiles while receiving goods or services;
 - c. Outdoor advertising.
 3. Community uses (C).
 4. Those sites designated as parking uses (P) on the Regulating Plan shall be premises used primarily for parking, except retail frontages shall be encouraged at the first floor level.
 5. Those sites designated D2 Zone, D3 Zone, or D4 Zone on the Regulating Plan may be used for any commercial, office or residential use as allowed in the underlying zoning district. Upper story uses may be commercial, office or residential, provided that no commercial or office use shall be located on a story above a residential use.
 6. Buildings that have frontage along the required retail frontages, as specified on the Regulating Plan, shall consist of retail with a minimum depth of 20 feet from the frontage line within the first story. Lobbies for hotels, offices, and multiple-family dwellings may be considered as part of the required retail frontage, provided that any such lobby occupies no more than 50% of the frontage of said building.
 7. Retail, office or residential uses are required to have minimum depth of 20 feet from the frontage line on all stories. The remaining depth may be used for off-street parking. Parking access on a frontage line shall be an opening a maximum of 25 feet wide. Openings for parking garage access shall repeat the same rhythm and proportion as the rest of the building to maintain a consistent streetscape.
 8. In any D2 Zone, D3 Zone, or D4 Zone, the first floor shall consist of retail with a minimum depth of 20 feet from the frontage line where designated on the Regulating Plan as a retail frontage line in conformance with Section 3.04(C)(5) and Section 3.04(C)(6).

9. Office use is limited to one story, except:
 - a. In any D3 Zone or D4 Zone, a two-story building dedicated to office use is permissible; and
 - b. In a D4 Zone, two stories may be dedicated to office use when the Planning Board permits a fifth story.
 10. Bistros are permitted with a valid Special Land Use Permit with the following conditions:
 - a. No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats;
 - b. Alcohol is served only to seated patrons, except those standing in a defined bar area;
 - c. No dance area is provided;
 - d. Only low key entertainment is permitted;
 - e. Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
 - f. A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;
 - g. All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
 - h. Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, enclosed platform must be erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.
 11. Establishments operating with a liquor license obtained under Chapter 10, Alcoholic Liquors, Article II, Division 3, Licenses for Economic Development, are permitted with a valid Special Land Use Permit only on those parcels on Woodward Avenue identified on Exhibit I; Appendix C.
- D. Parking requirements.
1. For all nonresidential uses located within the parking assessment district, parking on the site shall not be required, provided such site is in full compliance with the requirements of the parking assessment district.
 2. For all residential uses located within the parking assessment district, the on-site parking requirements contained in Section 4.46, Section 4.49, Section 4.50 and Section 4.51 may be complied with through leasing the required spaces from an off-site parking area, provided the requirements of Section 4.45(G) are met and all parking is supplied on site or within 300 feet of the residential lobby entrance of the building.
 3. For all sites located outside of the parking assessment district, off-street parking must be provided in accordance with the requirements of Article 4 for parking, loading and screening.
 4. Notwithstanding the above regulations, residential dwelling units within the existing second and third floors of landmark buildings, as defined in Section 62-87 of the Birmingham City Code, located within the central business historic district are exempt from required off-street parking requirements.
 5. Off-street parking contained in the first story shall not be permitted within 20 feet of any building facade on a frontage line or between the building facade and the frontage line.
 6. The placement of two abutting off-street parking lots with continuous street frontages shall not be permitted.
- E. Architectural standards. All buildings shall be subject to the following physical requirements:
1. At least 90% of the exterior finish material on all facades that face a street shall be limited to the following: glass, brick, cut stone, cast stone, coarsely textured stucco, or wood. Dryvit or E.F.I.S is prohibited.
 2. The primary colors of building exteriors shall be compatible with the colors of adjacent buildings and in character with the surrounding area, although the trim may be of a contrasting color.
 3. Blank walls shall not face a public street. Walls facing a public street shall include windows and architectural features customarily found on the front facade of a building, such as awnings, cornice work, edge detailing or decorative finish materials.
 4. Storefronts shall be directly accessible from public sidewalks. Each storefront must have transparent areas, equal to 70% of its portion of the facade, between one and eight feet from the ground. The wood or metal armature (structural elements to support canopies or signage) of such storefronts shall be painted, bronze, or powder-coated.

5. Storefronts shall have mullion systems, with doorways and signage integrally designed. Mullion systems shall be painted, powder-coated, or stained.
 6. The glazed area of a facade above the first floor shall not exceed 35% of the total area, with each facade being calculated independently.
 7. Glass shall be clear or lightly tinted only. Opaque applications shall not be applied to the glass surface.
 8. Facade openings, including porches, windows, and colonnades, shall be vertical in proportion.
 9. Sliding doors and sliding windows are prohibited along frontage lines.
 10. (Reserved for future use.)
 11. Cantilevered mansard roofs are prohibited.
 12. Balconies, railings, and porch structures shall be metal, wood, cast concrete, or stone.
 13. Facades may be supplemented by awnings, which shall be straight sheds without side flaps, not cubed or curved. Awnings shall be between 8 and 12 feet above sidewalk grade at the lower drip edge.
 14. Outside dining tables and chairs shall be primarily metal, wood, or similar material. Plastic outside dining tables and chairs shall be prohibited.
 15. Any building that terminates a view, as designated on the Regulating Plan, shall provide distinct and prominent architectural features of enhanced character and visibility, which reflect the importance of the building's location and create a positive visual landmark.
 16. Flat roofs shall be enclosed by parapets. Rooftop mechanical and other equipment shall be limited, positioned and screened to minimize views from adjacent properties and public rights-of-way in accordance with the regulations set forth in Section 4.16, Section 4.18, and Section 4.54.
- F. **Signage Standards.** Signage, when provided, shall be as follows:
1. **Building Sign Design Plan:** For all newly constructed or exterior renovated buildings, an overall building sign design plan shall be approved by the appropriate reviewing body.
 2. **Design:** Signage shall be integrally designed and painted with the storefront.
 3. **Address Numbers:** Address numbers shall be a maximum of 8 inches in vertical dimension.
 4. **Sign Band:**
 - a. **General:** A single external sign band or zone may be applied to the facade of a building between the first and second floors, provided that it shall be a maximum of 1.5 feet in vertical dimension by any horizontal dimension.
 - b. **Woodward Avenue Address:** The external sign band or zone shall be a maximum of 2 feet in vertical dimension by any horizontal dimension. The sign band or zone may contain multiple individual signs, but all must refer to a tenant of the building whose principal square footage is on the first floor.
 - c. Lowercase letters with ascenders and descenders that extend beyond the limits of the sign height by a maximum of 50% will not be calculated into total sign area.
 - d. Each business whose principal square footage is on the first story, may have one sign per entry.
 - e. Where the Historic District Commission, Design Review Board or Planning Board has determined that a horizontal sign band is not architecturally feasible based on building design, an alternative design will be considered, provided the following conditions are met:
 - i. The sign must fit within the total sign area allowed for the business;
 - ii. The sign must be compatible with the building's street design and will enhance the streetscape.
 - iii. The sign adheres to the goals of the 2016 Plan.
 5. **Building Identification:**
 - a. Signage identifying the entire structure by a building name may be permitted on the sign band.
 - b. One sign will be allowed on the principal building frontage.
 - c. Two identical signs will be allowed on each elevation of a corner building.
 - d. Non-illuminated signs identifying the entire structure by a building name may be permitted above the first floor provided the following conditions apply:
 - i. The building must be located on Woodward;
 - ii. A tenant name must have legal naming rights to the building;
 - iii. The sign must be located on the top floor; and
 - iv. Only one Building Identification sign may be located on the principal building frontage.

6. **Tenant Directory Sign:** A directory sign may be comprised of individual nameplates no larger than one square foot each, or a changeable copy board for characters not exceeding one inch in height.
7. **Additional Signs:** Additional pedestrian signs for first floor tenants shall meet the following requirements:
 - a. These signs shall be attached to a building perpendicular to the facade, and extend up to 4 feet from the facade.
 - b. These signs shall be a maximum of 1.5 feet in vertical dimension and 4 feet in horizontal dimension.
 - c. There may be one (1) individual pedestrian sign for each business located on the first floor, provided that such signs are spaced no less than 20 feet apart horizontally; this shall not deny any first floor place of business at least one projecting sign.
8. **Glass:** The storefront glass may be stenciled with signage not to exceed 1.5 feet in vertical dimension and 4 feet in horizontal dimension.
9. **First Floor Awning:** The valance shall not be more than 9 inches in height. The valance of an awning may be stenciled with signage totaling no more than 33% of the valance area.
10. **Lighting:**
 - a. **General:** External signs shall not be internally illuminated, but may be back lit or externally lit.
 - b. **Woodward Avenue Address:** External signs may be internally illuminated.

AFFIDAVIT OF THOMAS L. PHILLIPS

I, Thomas L. Phillips, being first duly sworn, depose and state as follows:

1. I am over the age of eighteen. I am currently and have been since 1998 the Vice President at Hobbs + Black, an architecture and engineering firm that has been in business since 1965. I hold a Bachelor of Science in Architecture, Architectural Design and Urban Planning degree, as well as a Bachelor of Science in Business Administration degree from Lawrence Technological University. I am also the current Vice Chair of the City of Dexter Planning Commission, where I have served since 2005. I have been practicing architecture in the state of Michigan for 30 years and am currently the Director of the Corporate Office Studio at Hobbs + Black. I can competently testify to the facts contained herein if called upon to do so.

2. This Affidavit is based upon my personal knowledge and review of documentation pertaining to the proposed development of 34965 Woodward (the "Peabody Site"), as well as past information prepared for the review and approval of the Balmoral building at 34953 Woodward, Birmingham, MI (the "Balmoral Building").

3. I was the lead Project Manager for the Balmoral Building and was personally involved in the site plan review and approval process. In this role, I met with the City planning staff, attended Planning and BZA presentations and reviews, and had many discussions with City staff and engineers throughout the approval and construction process, which was completed in 2015.

4. This Affidavit is made for the purpose of documenting my observations, concerns and professional analysis and opinion of the issues and problems presented by the proposed mixed use redevelopment at the Peabody Site in the context of the City of Birmingham's ("Birmingham") Master Plan and the project's negative impact on the Balmoral Building, which

is directly adjacent to the Peabody Site. I can competently testify to the facts contained herein if called upon to do so.

5. I concur with the stated findings of the Dykema letters dated August 22, 2017 and September 11, 2017, as well as those set forth in the Tower Pinkster letter dated August 21, 2017. (Letters are attached hereto.) The intent of this Affidavit is to provide supplemental technical comments relative to the proposed project at the Peabody Site and its impact on the Balmoral Building.

Balmoral Building Design and Planning Review

6. From the outset of my involvement in the development of the building design of the Balmoral Building, the City expressed a strong desire for detailed, high quality elevations facing all property lines (including the north facing elevation adjacent to the Peabody Site), as opposed to blank concrete walls that anticipated typical urban infill structures. Accordingly, all elevations, including the north elevation, were designed and constructed with decorative cast stone walls, sculptural metal panels and windows with custom designed metal rails. The north elevation has 50 windows with decorative metal balustrades and even the mechanical penthouse on the north elevation contains decorative windows.

7. The façade for the north elevation is not planar in that it has insets for the windows and other architectural features to create a distinctive and attractive viewpoint for southbound traffic on Woodward, as desired and requested by the City in the planning and design process. In fact, when it appeared that the cost of the Balmoral project would exceed budget, the owners approached the Planning Department about implementing some value engineering items, including the elimination of the decorative window railings on the north side windows of the project. The Planning Department, however, rejected this proposal and I was told that the exterior design must remain the same or be improved and that removing the decorative railings could not be administratively approved.

8. By granting preliminary site plan approval for the proposed development at the Peabody Site, and thus allowing the Peabody Site to be developed with two elevations consisting of plain masonry walls built to the property line at a 5-story elevation, it is my opinion that the Planning Board is holding the applicant to an alternate and less stringent set of standards than what was required for City approval of the Balmoral Building.

Environmental Impact and Constructability

9. In my professional opinion, the applicant's design ignores the opportunities presented by the Balmoral Building and will present, at a minimum, the following concerns which will negatively impact the Balmoral Building during construction and over time:

- I. Construction of an exterior south wall without trespassing on, over or under the Balmoral Building's will be impossible or, at a minimum, cause the applicant significant expense using "blind construction" methods to construct the structure from the interior of the site. The proposed south-facing wall is different than typical urban infill abutting wall construction because those walls are enclosed and no longer exposed to weather after construction is completed. In this case, the applicant's south-facing wall would abut the Balmoral Building's five-foot setback (above the 1st floor) so it will be exposed to weather and deterioration over time. When the wall cracks or suffers sealant joint failure over time, there will be no practical way to repair it without trespassing on the Balmoral property. If the wall is set back 5 to 10 feet, the wall will be more economical to construct and maintain over time.
- II. By its nature, heavy construction is an imprecise process and damage to the Balmoral Building will be practically unavoidable. Ideally, the damage will be cosmetic rather than structural, but both types of damage are not uncommon under these circumstances. A video survey should be required in advance of construction to confirm the current state and condition of the Balmoral structure as a means to evaluate any future concerns or claims.
- III. The foundation supporting areas of the north wall of the Balmoral Building bear higher than normal structural loads as four stories are supported across the 40 foot span of the drive-thru. The applicant proposes to excavate two stories of parking below grade immediately adjacent to these heavy foundations, which will require some form of support during construction to prevent undermining the structural stability of the Balmoral Building. While not the only method, permanent foundation underpinning below our foundations may be the most economical approach. Such a design would require careful coordination and cooperation of the parties to implement successfully.

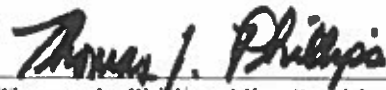
- IV. Flashing between the drive-thru roof and Frame Shop will need to be reworked to flash across the space and to their new wall.
- V. The natural grade of the ground slopes from north to south along Woodward and the applicant should be required to demonstrate that storm water within the Peabody Site will be properly contained.

Design Approach

10. The requirement for architects to design new structures that are compatible with neighboring properties is a common theme throughout the City's Master Plan and is required under the Zoning Ordinance. Such compatibility is also synergistic with economic value, resulting in projects that are successful and continue to maintain the City's success as an urban destination over the decades. In my professional opinion, the proposed design for the mixed-use development at the Peabody Site is inconsistent and incompatible with the design and construction of both the Balmoral Building and the Greenleaf Trust Building, which is located directly to the north of the Peabody Site. Specifically, the complete lack of windows, and absence of any setback distance on the north and south elevations, render the proposed development incongruous with the Balmoral Building and Greenleaf Trust Building, both of which were required by the City to be constructed with four highly aesthetic facades.

11. As a firm with more than 50 years of experience, we acknowledge that the nature of "value" is an important topic and significant driver of building design. While maximizing square footage is one approach to optimize value, our experience shows that in some circumstances, providing tenants greater access to air and daylight can add more value to the building than the square footage required to do so. Again, this is a requirement of the City's Zoning Ordinance. At the direction of the City Planning Board, the Balmoral Building was designed and constructed in a way that did not simply maximize all available square footage, and the Peabody Site should be constructed to compliment, and not mask, the neighboring architecture which was required by the City. This could be achieved with the inclusion of

reasonable setbacks along the Peabody Site's north and south property lines above the first floor and façade details that are consistent with the both the quality of other facades on the east and west side of the project, as well as with the Balmoral and Greenleaf Trust buildings. Some modest and creative design change would also allow the applicant more economical construction and maintenance of its building envelope, while providing air and daylight to office and residential tenants in the neighboring buildings and providing pedestrian access in a manner consistent with City planning.

A handwritten signature in black ink, reading "Thomas L. Phillips". The signature is written in a cursive style with a horizontal line underneath it.

Thomas L. Phillips, Vice President

Bailey Schmidt LLC

255 E. Brown Street, Suite 105
Birmingham, MI 48009

October 9, 2017

Ms. Patti Owens
Catalyst Development Company, LLC
Vice President & Managing Director
100 West Michigan Avenue
Suite 300
Kalamazoo, MI 49007

RE: The Greenleaf Trust Building, Birmingham, MI

Dear Patti:

As an active commercial and residential broker in Birmingham and as the leasing agent for the Greenleaf Trust Building for the past seven years, you asked me to review the plans for the proposed five-story, mixed-use development south of your building at the site of the former Peabody's restaurant and provide you with my analysis of the impact this development will have on your property. As you know, I have significant experience in the Birmingham and Michigan commercial and residential real estate markets. I have been an Associate Broker since 1987 (license #6502125825) and I also attained the professional accreditation of Certified Public Accountant in 1985 (Certificate #15603). In addition, I have been a Limited Real Estate Appraiser since 2012 (license #1201074517). Over the past three decades I have worked on commercial development and acquisition transactions involving office, residential, retail, and high tech properties, and having an aggregate value in excess of \$500 million. As a commercial broker since 1988, I have been involved in leasing and sale brokerage transactions involving over two million square feet and having over \$300 million of transaction value. Since 2013, through the appraisal firm Wieme, Rende & Associates, PC of Troy, Michigan, I have assisted in the appraisal of over 200 commercial properties with an aggregate value of over \$400 million of appraised market value. This is a summary of my extensive real estate experience acquired over the decades since 1987.

Now, with respect to your property—The Greenleaf Trust mixed-use building—you have asked me to review and analyze the anticipated impact of the five-story block wall which the developer plans to construct along your southern property line and within approximately a foot or so of your building. You asked me to opine on the possible impact this wall may have on the rental rates you may be able to achieve once the wall is constructed and, as a result, the corresponding effect on your property's value. Obviously, any reduction in rental rates will cause a reduction in the property's overall value.

Ms. Patti Owens
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As a preamble to my comments on the impact that the proposed wall will have on your property's value, it is necessary to reiterate that the Greenleaf Trust Building is among the finest mixed-use properties in Birmingham or all of Michigan for that matter. This market position has been attained by virtue of your building's outstanding design features and high quality construction materials. Your building was placed in service in 2010 or so in the aftermath of the recession of 2008. Birmingham, like most of Michigan, was experiencing difficult times. Nonetheless, you developed a Class A project and spared no expense to construct a magnificent mixed-use building. In fact, your building has attained record rental rates for its five apartments that, to the best of my knowledge, surpasses over 99.99% of apartment rents ever attained anywhere in the state of Michigan. This trend has proven to be durable and continues to this day. That is quite an accomplishment which could only be attained as a result of the significant capital, design and planning investment you made with the goal of constructing one of the finest properties in Birmingham and all of Michigan.

And what effect has your building had on the City of Birmingham? It led the way to Birmingham's commercial property recovery. It has lifted all properties by virtue of its success. All property owners have benefitted from your foresight and investment. I, for one, am very grateful for what you have done for our community.

Regarding the proposed wall to be built within a foot or so of your southern property line, I believe that once it is built it will have a significant, negative impact on your future rental rates, especially for four of your five affected apartment units. Your ability to attain "record setting" rental rates at the levels you have consistently attained over the past seven years may be diminished for these units. Your five apartments have consistently attained rents ranging from \$45 up to and over \$60 per square foot per annum. Your office rents have been at the \$35 per square foot level. These are meaningful rents not only to you as the owner, but to the Birmingham market as a whole. I cannot state strongly enough that the trend you established has benefitted all Birmingham residents and property owners. New records are being set every year for homes and condo values as well as commercial properties in Birmingham. The Greenleaf Trust Building certainly has played a major part in the local market's success by the setting the high end of the market.

Of the four apartments which currently have windows on the southern side of your building, three have kitchens which will have a direct view of the block wall once the same is constructed one foot from your building's southern property line. Views from bedrooms, libraries and bathrooms will also be adversely impacted. Based upon the meaningful deterioration of these views, I estimate that you could possibly experience a reduction in rental rates in excess of 25% for the four apartments affected by the wall. For instance, one of the penthouse

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units which is currently leased for \$14,500 per month may, in the future after the wall is built, require a monthly rent reduction to approximately \$10,000. This suggests a "possible" loss of rental income of 31% $((\$14,500 - \$10,000) / \$14,500 = 31\%)$. Similar reductions may likely be required on the other three effected apartment units as well.

I believe a reduction to your office rents may also be required. It is hard to estimate how much this reduction may be.

Let me be "conservative" in estimating a possible rent reduction scenario. Let us suppose that only four of your apartments are affected and none of the commercial space experiences diminished rental revenue (although this is unlikely if the wall is built with one foot of your property line as currently proposed). Further, let me conservatively estimate that the four units will require only a 10% rent reduction (I will not address the possible adverse effect on your continued ability to secure 5 year leases nor the effect that would have on increased vacancy losses and turnover costs). Below is a table which identifies the current rent on the 4 affected apartments with an estimated 10% reduction in rents capped at a 6% cap rate to derive a value loss estimate of \$1,000,000 to your building.

<u>Premises</u>	<u>SF</u>	<u>Current Monthly Rent</u>	<u>Annual rent per sf</u>	<u>10.00% reduction</u>	<u>Possible reduced annual rent / sf</u>
Unit #1	3,339	\$14,500	\$52.11	- (\$5.21)	= \$46.90
Unit #2	2,653	\$10,000	\$45.23	- (\$4.52)	= \$40.71
Unit #3	3,351	\$14,500	\$51.92	- (\$5.19)	= \$46.73
Unit #4	<u>2,757</u>	\$12,000	\$52.23	- (\$5.22)	= \$47.01
	12,100				
Avg. reduction		(\$5.04)			
X SF affected	x	<u>12,100 sf</u>			
Possible lost revenues =		(\$60,953.36)			
Capped at	\	<u>6.00%</u>			
Possible value loss =		<u>(\$1,015,889)</u>			
Rounded to =		<u>(\$1,000,000)</u>			

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This simple analysis identifies a minimal value loss estimate with just 4 apartment units having a 10% rent reduction. To be conservative, there is no loss attributed to the 2nd and 3rd floor office space which have lease premises along the southern exposure. The revenue loss drops right to the bottom line for value purposes and the rental loss is capitalized at a 6% cap rate which the Greenleaf Trust Building commands based upon current market conditions (prior to the wall construction within one foot of your southern property line). See below for the monthly reduction estimate which, at 10%, results in a rent reduction ranging from \$1,000 up to \$1,450 per month. Further, this contemplates the apartments remaining as rental units. No thought was given to the apartments being converted to condominiums.

<u>Premises:</u>	<u>SF:</u>	<u>Reduced</u> <u>annual rent / sf</u>	<u>Reduced</u> <u>Monthly Rent</u>	<u>Current</u> <u>Monthly Rent</u>	<u>Monthly</u> <u>Rent Reduction</u>
Unit #1	3,339	\$46.90	\$13,050	\$14,500	(\$1,450)
Unit #2	2,653	\$40.71	\$9,000	\$10,000	(\$1,000)
Unit #3	3,351	\$46.73	\$13,050	\$14,500	(\$1,450)
Unit #4	<u>2,757</u>	\$47.01	\$10,800	\$12,000	(\$1,200)
	12,100				

Generally speaking, the construction of a block wall within one foot of your southern property line will render the affected units (apartment and office) to a level below the Birmingham market standard for high-end luxury apartments and office space. Thus, your building will go from a trend setting, top-in-class asset to a nice but albeit partially impaired and partially diminished property.

Further, it is possible that the affected portion of your building may require significant, future interior modifications as a possible remedy to mitigate the adverse rental impact in the event rental losses turn out to be catastrophic. There is no way of knowing at this time if future interior modifications will be required. If modifications in the future are required, the impact could be significant. For example, three of the four apartments have high-end kitchens which will lose all or a portion of their views. A possible remedy may be to re-locate the kitchens elsewhere within the premises. I can only imagine how much the re-designing and re-configuring these luxury apartment interiors would cost. In addition, this type of remedy would also require the abandonment of the remaining useful life of the existing high-end improvements previously made at a substantial cost and investment.

A far better remedy to alleviate the harm caused by the proposed construction would be modify the design to leave a reasonable set-back from

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your property line for the 2nd, 3rd, 4th, and 5th floors. A little space between the buildings would go a long way to mitigating the potential for a dramatic value loss resulting from construction of the proposed wall located within one foot of your building.

In conclusion, I am sorry to say that, in my professional opinion, a five-story block wall constructed within one foot of your southern property line will have a significant, adverse effect on your property's marketability and value. Given that the Balmoral Building is similarly situated in relation to the Peabody development (with an identical five-story masonry wall to be constructed at its north property line), I would also expect to see similar negative impacts on the value of the Balmoral Building, although I have not undertaken a specific economic analysis of same. At this time, I can only make an educated guess, based on my vast experience in the local market and knowledge of your building, as to what the full extent of the damage will be. I know your building as well as anyone as I have personally leased all of the space. I know the discerning tastes of your clientele. I have met them and I can say with the utmost confidence that once the wall is built, the affected areas of your building will surely be met with market resistance.

Sincerely yours,
Bailey Schmidt Inc.

Drew J. Schmidt

Drew J. Schmidt
President

AFFIDAVIT OF JASON B. NOVOTNY, AIA LEED AP

I, Jason B. Novotny, being first duly sworn, depose and state as follows:

1. I am over the age of eighteen. I am currently the Senior Principal, Director of Design at TowerPinkster, an architecture and engineering firm that has been in business since 1953. I hold a Bachelor of Science and Masters of Architecture degrees from the University of Michigan. I have been a licensed Architect in the state of Michigan since October 2000. During my first 13 years of employment, I worked for Eckert Wordell Architects and was the Project Manager and Designer for Catalyst Development.

2. This Affidavit is based upon my personal knowledge and review of documentation pertaining to the proposed development of 34965 Woodward (the "Peabody Site"), as well as past information prepared for the review and approval of the Greenleaf Trust building at 34977 Woodward, Birmingham, MI (the "Greenleaf Trust Building").

3. I was personally involved in the concept design options, site planning, and further acted as the Project Architect and Design lead for the Greenleaf Trust building. In this role, I met with the City planning staff, attended Planning and BZA presentations and reviews, and held tabletop reviews with City staff and engineers from late 2007 through the project completion in 2010.

4. This Affidavit is made for the purpose of documenting my observations, concerns and professional analysis and opinion of the issues and problems presented by the proposed redevelopment at the Peabody Site in the context of the City of Birmingham's ("Birmingham") Master Plan, existing structures to the north and south of the Peabody Site, and the East Gateway entry zone to downtown Birmingham. I can competently testify to the facts contained herein if called upon to do so.

Downtown Birmingham 2016, a Master Plan for the City of Birmingham, Michigan

5. Based upon my review of the key recommendations contained within the Master Plan, the creation of a Gateway East entry to downtown Birmingham is noted as Specific Project 8, on page 58 of the Master Plan. The narrative in this section and the graphics that support the narrative recommend two "Bookend" buildings that frame a view to downtown Birmingham proper from the east approach. These were defined as buildings which would create a gateway by using similar syntax, height, and massing. Furthermore, the goal was to create a pair of buildings which would be so unique as to create a distinctive landmark within the region or nation. See illustration on page 114-116 of Master Plan. This possibility still exists, as the site north of Maple has not yet been developed.

6. The graphics and narrative in Specific Project 8 of the Master Plan also illustrate that the development to the south of the Gateway should be deferential in scale to the corner buildings in order to create building hierarchy, rather than a single massing of buildings on adjacent properties.

7. Furthermore, there are suggestions as to the development of parking infill in the location of the Peabody Site to support the growth of the downtown area. Indeed, the Master Plan suggested that the City attempt to acquire the Peabody property for additional parking (*see*, e.g., Appendix G – 9 to Master Plan). While the Master Plan does not prohibit further retail or office development at the Peabody Site, it recognizes that without further parking provisions in the area beyond those currently available, parking availability to downtown visitors and tenants once a larger, multi-story building is contemplated will be further compromised.

Greenleaf Trust Building CIS and Planning review

8. Specific and essential to the development of the building design in 2008 of the Greenleaf Trust Building was the concept that the Building become one of the two "Gateway"

elements referenced in the Master Plan, and that the Building be of particularly high design and quality materials to announce the entry into Birmingham and terminate the vista from the east approach to downtown. Materials were carefully chosen, and were considered in the context an approved, but later abandoned development planned to the north in order to harmonize and create the unique gateway feature. This approach was taken at the initial suggestion of the Birmingham planning department, and became one of the signature themes of our design efforts. Creation of a timeless, expressive building to anchor the Southwest corner became a driving factor. The City expressed a strong desire in the architectural review of the project to have a building with four distinct and attractive elevations, including the south elevation adjacent to the developed Peabody site. The articulation, detailing and materials used on this facade were identical in quality to that of the other elevations. A simple masonry wall with no windows on the south elevation would have been a far less expensive development option but would not have been acceptable to Birmingham's site plan review due to the prominent South elevation viewed from Woodward Avenue.

9. It was always considered, and even discussed in workshops, that the potential for infill structures at the Peabody Site would step down in scale, perhaps to structured parking or secondary liner buildings. In the Community Impact Study ("CIS") narrative prepared by staff during site plan review for the Greenleaf Trust Building, it notes, "[t]he 2016 Plan further recommended that the City attempt to secure and hold this site, and the additional parcels to the south, to construct a substantial new parking deck." Considerations for the future potential development south of the Greenleaf Trust Building were incorporated into the building, anticipating perhaps a 2-3 story parking structure, especially on the south facade, where the building was inset to create a light well should future building to the south be developed.

10. Based upon the numerous meetings I had with City Staff during the early design phases, there was an expectation expressed from all parties that this building needed to be designed fully with 4 attractive facades which included fenestration that met the local zoning requirements, but also was tasteful and integrated into the architectural language of the downtown environment. There was a reliance on the guidance of the City to emphasize the Greenleaf Trust building as the gateway structure that the Master Plan envisioned, and to have it stand out as a significant and independent entrance to downtown. By allowing development on the Applicant's property to occur at a matching height, with zero setbacks, and with north and south elevations without any windows nor setbacks, as I describe more fully below, the Planning Board is holding the Applicant to an entirely different and lesser set of standards than it held either the Greenleaf Trust project or the Balmoral Building.

34965 Woodward- Peabody Redevelopment Site Plan and CIS Planning Review

11. In my review of the initial submittals for the CIS for the Peabody Site, I have identified a number of items of concern related to the design and implementation of the overall design of the building which, in my professional opinion, are not comparable or compatible with the other uses and buildings in the neighborhood, particularly with the Greenleaf Trust Building and Balmoral Building located on the south side of the proposed development, nor is it consistent with the Master Plan, as to which the Greenleaf Trust Building carefully adhered. The lack of compatibility and other areas of concern not properly addressed by the applicant Alden Development ("Applicant") include, without limitation, the following:

- a. The design of the south and north façades, which consist of massive 5 story featureless block walls build entirely on the property lines, is incompatible with the structures and facades of the south wall of the Greenleaf Trust Building and north wall of the Balmoral Buildings. The facades of the neighboring buildings are constructed with the same high quality materials and to the same design standards as the other facades on the buildings. Both building facades contain a total of 97 tenant windows, most of which were set back from the property lines to create light and air. In an effort to maximize every square inch of rentable

space and reduce cost of design and construction, the design of the south and north facades of the proposed new building are not compatible with the existing facades of the Greenleaf Trust and Balmoral Buildings and take away the light and air designed for those buildings. The new project is an infill project and should be designed with some intention of harmonious contextual language with the neighboring structures. The design as presented is overly modern, and detracts from the architectural languages of both the Greenleaf Trust Building and Balmoral Buildings, particularly because the buildings are proposed to adjoin one another creating the visual image of one large massive structure.


- b. A lack of submittal of the Building and Site exterior lighting concepts, fixtures and an understanding of the implication to the neighboring sites. This was indicated as completed on the Applicants checklist but no document in the set exists to show locations, foot candle levels, or the detrimental impact these might have on the previously developed adjacent sites, with residential occupants. Both the Greenleaf and Balmoral projects were required to undertake this effort.
- c. A potential overuse of glass/glazing based upon allowable percentages for the upper floors of the development based upon code requirements for openings. Both the Greenleaf and Balmoral Buildings were designed with the required level of first floor openness, and then switch to more conventional masonry and punched openings to keep the differentiation of first floor Retail and upper floor Office/Residential in place. The proposed Peabody Site redevelopment does not illustrate that care in detailing, and instead proposes larger expanses of glass with a far more foreign, contemporary look than the surrounding Buildings.
- d. No discussions to date about the potential logistics of constructing a zero lot line building with neighboring sites. Without a careful engineering study and coordination with the neighboring properties, building a structure directly against another structure offers serious challenges in both the support of the structure and the method of construction employed. During the construction of the Greenleaf Trust Building, this process was not only undertaken very early on in the design phase, but was also a part of the CIS submittal, to satisfy concerns of both Birmingham and the neighbors at the Peabody site. The level of design care to ensure no disruption to both the restaurant in 2008 and its patrons was substantial, and carefully discussed by the Construction Manager to minimize debris and noise/vibration.
- c. To date, the Peabody Site redevelopment project has provided no such information, nor conversations to either the property owners of the Greenleaf Trust Building and Balmoral Building, nor the City as part of their submittals to address concerns of constructability, disruption of operations, or impact on neighboring sites. If the project cannot be constructed as depicted without trespassing on, over or under the neighbors' properties, it should not be approved. This shows a disregard for the tenants and visitors of the two currently occupied buildings, and their established place within downtown Birmingham.
- f. A false statement, to the effect of the Applicant indicating how the proposed structure has been studied to impact, block or degrade views, or create a new focal

point. There is no supporting evidence in any of the submittals indicating the impact on neighboring buildings based upon the proposed massing of the new building. This omission on the part of the Applicant shows a lack of careful design consideration, for the sake of maximizing footprint and rentable areas. Birmingham strongly encouraged this study during the original review of the Greenleaf Trust Building design, and provided suggestions and guidance on creating an iconic structure now anchoring the corner of Maple and Woodward.

- g. A lack of acknowledgement to the interference or impairment of ambient conditions necessary to enjoy the physical environment, which is yet another item indicated as provided in the CIS submittal, but not visible in the packet submitted. An opportunity exists to coordinate the architecture of the Peabody Site with the two adjacent existing structures, to create something unified and more than just three buildings that end at the lot line and directly abut each other. This is what I believe is contemplated by the standards required for site plan approval in the Zoning Ordinance, to which I adhered in the planning and design of the Greenleaf Trust Building. Instead, the redevelopment creates solid walls to its neighbors to the north and south, blocking windows and views without grace or concern. Furthermore, the interior spaces created on these windowless areas create deep floor plates lacking natural light from 2 sides. By simply pulling inwards these two walls on floors 3-5, much of this could be avoided, and natural daylighting provided to both the Peabody Site and two existing buildings.

12. We understand the importance of well-considered planning and design in Birmingham and feel that with some coordinated effort among stakeholders in this area, and a more inclusive process with the immediate neighbors, a more successful outcome may occur that leaves all parties, including Birmingham, with a sense of creating a more vibrant block in this critical downtown area. If the Applicant was not fixated on developing nearly 100% of the entirety of the footprint on every available floor, there likely could be a compatible, harmonious, and neighborly design solution which would be more consistent with the Master Plan and possibly satisfy the requirements for site plan approval in the Zoning Ordinance. But the current design, in my opinion, falls far short of those standards.

[Signature page to follow]



Jason B. Novotny, AIA LEED AP

STATE OF MICHIGAN)
) SS.
COUNTY OF Kalamazoo)

The foregoing was acknowledged before me this 10 day of October, 2017 by Jason B. Novotny, AIA LEED AP, Senior Principal Director of Design.

Heather Kirby

Notary Public, State of Michigan, County of St. Joseph
Acting in the County of Kalamazoo
My Commission Expires: 7/2/2023

7/2/23

From: Tim Mitchell [<mailto:mitchell@sme-usa.com>]
Sent: Tuesday, October 03, 2017 2:57 PM
To: Patti Owens
Cc: Joel Rinkel
Subject: Peabody's

Hello Patti,

I hope your time up north was awesome.

To follow up on Peabody's, SME is assisting Matt Shiffman – Alden Development with geotechnical evaluations and earth retention design for their proposed development on the Peabody's site.

We have discussed with Alden the benefits of not excavating all the way to the property line because of the presence of the existing Peabody's underpinning and attachment to the Greenleaf Building, and the need to restore waterproofing and/or other damage that potentially could result from an excavation immediately next to the Greenleaf Building. We plan to provide recommendations that will allow them to perform the necessary construction in a manner that does not affect your building. However, our role is as a technical advisor and not a decision-maker so the owner will make the final decisions as to the building layout and positioning.

We have also recommended performing a pre-construction building condition survey of the Greenleaf building so that the building condition can be evaluated before and after construction to document whether the construction activities have an impact on the building. We may also suggest monitoring vibrations, dependent on our review of the proposed construction activities.

Please let me know if you have any questions or if there is anything we can do to help you during the construction process.

Sincerely,
Tim

Timothy J. Mitchell, PE | Vice President
3301 Tech Circle Drive | Kalamazoo, MI 49008-5611
269.323.3555 o | 269.207.0398 c | mitchell@sme-usa.com



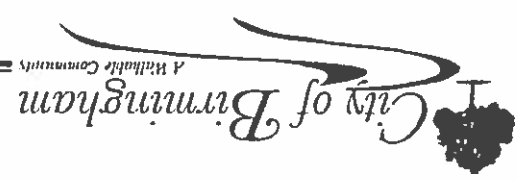
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MEMORANDUM
Community Development

DATE: August 17, 2017
TO: Planning Board Members
FROM: Matthew Baka, Senior Planner
APPROVED: Jana Ecker, Planning Director
SUBJECT: 34965 Woodward Avenue – Preliminary Site Plan Review

The applicant has submitted an application for Preliminary Site Plan review to construct a five story building in the B4/D4 zoning district. The property is located on the west side of Woodward Avenue on Peabody Street at the former location of Peabody's Restaurant and the former Art & Frame Station.

On July 26, 2017 the Planning Board reviewed the CIS & Preliminary Site Plan application for 34965 Woodward. At that time, the Planning Board decided to accept the Community Impact Statement but postponed the Preliminary Site Plan review. The Board requested that the applicant provide additional information regarding the interfacing of the proposed building with the two existing buildings on each side and how they will abut. Also, the Board requested that the applicant provide additional renderings of the new building in context with the adjacent buildings. In addition, the postponentment was granted to provide the applicant time to engage with the neighboring property owners in light of the public comments made at the meeting. The applicant has now provided new details and renderings in addition to the previously submitted plans in order to provide additional information for the Planning Board to consider.

1.0 Land Use and Zoning

- 1.1. Existing Land Use – The previous land uses on the site were a vacant two-story commercial building and a one story shop. The buildings were demolished in March, 2017 to allow construction of the proposed five story mixed use building.
- 1.2. Zoning – The property is zoned B-4 Business-Residential, and D-4 in the Downtown Overlay District. The proposed retail, office, commercial and residential uses, and surrounding uses appear to conform to the permitted uses of the zoning district, including the off street parking facility in the form of two levels of parking decks below the development.
- 1.3. Summary of Adjacent Land Use and Zoning – The following chart summarizes

existing land use and zoning adjacent to and/or in the vicinity of the subject site, including the 2016 Regulating Plan

	North	South	East	West
Existing Land Use	Retail/ Commercial	Retail/ Commercial	Open Space/Parking	Parking/ Commercial
Existing Zoning District	B-4 Business Residential	B-4 Business Residential	B-2 General Business	B-4 Business Residential
Overlay Zoning District	D-4	D-4	MU-7	D-4

1. Setback and Height Requirements

The attached summary analysis provides the required and proposed bulk, area, and placement regulations for the proposed project. The applicant meets all of the bulk, area and placement requirements for the D-4 Downtown Overlay District.

3.0 Screening and Landscaping

3.1 Dumpster Screening – The applicant is proposing to store all trash inside the building envelope along the north side on a mechanical platform. The plans indicate trash chutes on all levels that lead to a trash compactor accessible via the entry drive, but this is not clearly illustrated on the plans. The applicant must clarify how the trash will be stored on this platform on the plans.

3.2 Parking Lot Screening – Two levels of proposed parking will be placed underground with eleven (11) angled parking spaces in the right of way on Woodward. No parking lot screening is required.

3.3 Mechanical Equipment Screening – A rooftop plan has been submitted indicating six (6) roof top units to be located within a decorative stainless steel metal grate screen wall. The applicant will be required to provide specification sheets on mechanical equipment and verify that the screen wall is tall enough to sufficiently screen the proposed units at Final Site Plan.

3.4 Landscaping – The Downtown Overlay District requires that one street tree be provided for every 40' of street frontage. This development is

4.0 Parking, Loading and Circulation

required to have 5 trees along Peabody Street, and 4 trees along Woodward Avenue. The current plans depict two (2) trees on Peabody. **The applicant will be required to submit plans with 9 total trees, or get a waiver from the Staff Arborist.** Parking lot landscaping requirements do not apply in the Downtown Overlay District.

Streetscape Elements – The applicant will be expected to reconstruct the streetscape to the current streetscape standards which would include brushed concrete walking path with exposed aggregate border and pedestrian scale street lights along Peabody. The street lights are typically required every 40'. The frontage along Peabody is approximately 200' requiring five (5) lights. Sheet SD.3 appears to show five (5) street lights proposed however, they only two of the lights are clearly labeled. **The number of lights must be clarified by the applicant.** The Planning Board may also wish to require benches and trash/recycling receptacles to the streetscape if they deem fit.

4.1 Parking – In accordance with Article 4, section 4.43 (PK) of the Zoning Ordinance, a total of 15 parking spaces are required for the residential level of the building (10 units x 1.5 parking spaces). No on-site parking is required for the proposed retail or office uses as the site is located within the Parking Assessment District. The applicant is proposing 90 parking spaces on site in a two-level underground parking deck and 11 angled parking spaces on the street. The total number of parking spaces provided on the plans is 101. All parking spaces meet the minimum size requirement of 180 square feet.

In accordance with Article 3, section 3.04(D)(5), Downtown Birmingham Overlay District, parking contained in the first story of a building shall not be permitted within 20' of any building facade on a frontage line or between the building facade and the frontage line. The proposal meets this requirement, as all parking is below the 1st floor.

4.2 Loading – In accordance with Article 4, section 4.24 C (2) of the Zoning Ordinance, developments with over 50,000 ft² of office space require 2 usable off-street loading spaces, and commercial uses from 5,001 to 20,000 ft² require 1 usable off-street loading space. The plans do not display any off-street loading spaces. **The applicant will need to submit plans demonstrating the size and location of 3 usable off-street loading spaces, or obtain a variance from the Zoning Board of Appeals.**

4.3 Vehicular Circulation and Access – Access to the underground parking garage will be via a garage door on the southwest corner of the building, along Peabody Street. Access to the 11 on street parking spaces will be along a one way pull-off from southbound Woodward Avenue.

4.4 **Pedestrian Circulation and Access**—The applicant is proposing pedestrian entrances at three points of the building. The primary entrance to the retail space will front onto Peabody St. at the center of the facade. An additional entrance is proposed along the Woodward frontage, also centrally located. Along Peabody St. there is a proposed entrance to the elevator lobby that will provide access to the residential units. All entrances are accessible from a City sidewalk.

5.0 Lighting

The applicant has not submitted any information regarding lighting at this time. Specifications for any proposed lighting and a photometric plan must be submitted at Final Site Plan review to determine compliance with the Zoning Ordinance lighting standards.

6.0 Departmental Reports

6.1 **Engineering Division**—The Engineering Dept. has reviewed the plans dated June 5th, 2017, and the CIS dated June 5th, 2017 for the above project. The following comments are offered:

1. The traffic study acknowledges that the City's parking system is operating near capacity, and does not presently have the capacity to accommodate the additional demand that this building will create. On page 22 of the report, the writer states that "it is reasonable" to assume that the manager of the parking system will explore the possibility of adding an additional floor on the top of the Peabody St. Structure.

Further, the writer indicates that "the study assumes that possibility to be both viable and successfully completed..." The Board is cautioned that the parking structure was not designed with the intention that it could be expanded in the upward direction to create additional capacity, and that this assumption should not be figured into the study. Further, while the parking system is ready and able to operate rooftop valet assist programs to add capacity during peak hours in its other four structures, no such plan is in place at the Peabody St. Structure.

The rooftop valet system requires one to two additional staff on days it operates, and allows the system to fit 50 to 75 additional cars on the roof level by parking them closer together than what can be done when self-parked. Due to the limited land area at this site, and the present configuration of the roof, there is insufficient space available in this structure to make such a program feasible. The study should not proceed with the assumption that an additional level can or will

be built at this facility.

2. The preliminary site plans show the building frontage is proposed set back off the property line on the Peabody St. frontage of the building. The owner will be required to sign a recordable ingress/egress easement for the public to use this area as a public sidewalk, prior to the issuance of a building permit.

3. The following permits will be required from the Engineering Dept. for this project:

1. Sidewalk/Drive Approach Permit (for all pavement installed in the right of way).
2. Right-of-Way Permit (for excavations in the right-of-way).
3. Street Obstruction Permit (for partial obstructions of the City sidewalk or alley).

In addition, a permit will be required from the Michigan Dept. of Transportation (MDOT) for any use and construction within the Woodward Ave. right-of-way.

6.2 Department of Public Services – DPS has no concerns.

6.3 Fire Department – The Fire Department has no concerns at this time.

6.4 Police Department – The Police Department has no concerns at this time.

6.5 Building Division – The Building Division has no concerns at this time.

7.0 Design Review

The applicant is proposing to utilize the following materials for the construction of the five-story, mixed use building:

- Stone panels along the lower level of all facades;
- Masonry veneer along the upper levels of all facades;
- Stone for the base of the building;
- Steel window and door system; and
- Extensive window glazing on all facades.

The design of the building also includes balcony projections from the third floor on both facades of the building. The issue of projections over the right of way was recently discussed at the joint City Commission/Planning Board meeting. Staff intends to consult with the City Attorney prior to Final Site Plan review to determine if an air rights agreement will be necessary to approve this aspect of the design.

No material samples or colors have been provided at this time, but will be required at the time of Final Site Plan review.

Article 3, section 3.04(E), Downtown Overlay District, of the Zoning Ordinance contains architectural and design standards that will apply to this building, including specific requirements for the design and relief of front facades, glazing requirements, window and door standards and proportions, roof design, building materials, awnings and other pedestrian scaled architectural features.

The proposed building appears to meet the architectural standards set out in Article 3, Downtown Birmingham Overlay District, of the Zoning Ordinance as the first floor storefronts are directly accessible from the sidewalk, the storefront windows are vertically proportioned, no blank walls face a public street, and the main entries incorporate canopy features to add architectural interest on a pedestrian scale.

The building also appears to meet the architectural standards set out in Article 3 of the Zoning Ordinance which requires that at least 90% of the exterior finish of the building is glass, brick, cut stone, cast stone, coarsely textured stucco, or wood. In addition, the percentage of glazing for the facade and upper levels has been provided and demonstrates that the storefront minimum of 70% is met, and the maximum upper level of 35% has not been exceeded.

8.0 Approval Criteria

In accordance with Article 7, section 7.27 of the Zoning Ordinance, the proposed plans for development must meet the following conditions:

- (1) The location, size and height of the building, walls and fences shall be such that there is adequate landscaped open space so as to provide light, air and access to the persons occupying the structure.
- (2) The location, size and height of the building, walls and fences shall be such that there will be no interference with adequate light, air and access to adjacent lands and buildings.
- (3) The location, size and height of the building, walls and fences shall be such that they will not hinder the reasonable development of adjoining property and not diminish the value thereof.
- (4) The site plan, and its relation to streets, driveways and sidewalks, shall be such as to not interfere with or be hazardous to vehicular and pedestrian traffic.
- (5) The proposed development will be compatible with other uses and buildings in the neighborhood and will not be contrary to the spirit and purpose of this chapter.
- (6) The location, shape and size of required landscaped open space is such as to provide adequate open space for the benefit of the inhabitants of the building and the surrounding neighborhood.

9.0 Recommendation

Based on a review of the site plan revisions submitted, the Planning Division recommends that the Planning Board **APPROVE** the Preliminary Site Plan for 34965 Woodward with the following conditions:

- (1) The applicant will be required to submit plans with 9 total street trees, or get a waiver from the Staff Arborist;
- (2) The Applicant verify that there will be five (5) pedestrian lights on Peabody;
- (3) Applicant must provide a photometric plan and lighting specifications at the time of Final Site Plan Review;
- (4) The applicant will be required to provide a specification sheet for all mechanical units to verify that the screen wall is tall enough to sufficiently screen the proposed units;
- (5) The applicant will need to submit plans demonstrating the size and location of 3 usable off-street loading spaces, or obtain a variance from the Zoning Board of Appeals;
- (6) Applicant comply with the requests of all City Departments; and
- (7) Provide material and color samples at Final Site Plan review.

10.0 Sample Motion Language

Motion to APPROVE the Preliminary Site Plan for 34965 Woodward subject to the following conditions:

- (1) The applicant will be required to submit plans with 9 total trees, or get a waiver from the Staff Arborist;
- (2) The Applicant verify that there will be five (5) pedestrian lights on Peabody;
- (3) Applicant must provide a photometric plan and lighting specifications at the time of Final Site Plan Review;
- (4) The applicant will be required to provide specification sheets for all mechanical units to verify that the screen wall is tall enough to sufficiently screen the proposed units;
- (5) The applicant will need to submit plans demonstrating the size and location of 3 usable off-street loading spaces, or obtain a variance from the Zoning Board of Appeals;
- (6) Applicant comply with the requests of all City Departments; and
- (7) Provide material and color samples at Final Site Plan review.

OR

Motion to DENY the Preliminary Site Plan for 34965 Woodward

OR

Motion to POSTPONE the Preliminary Site Plan for 34965 Woodward.

AFFIDAVIT OF PATTI OWENS

1. Patti Owens, being first duly sworn, depose and state as follows:

1. I am over the age of eighteen. I am currently the Vice President and Managing Director of Catalyst Development Co., L.L.C. ("Catalyst"), the developer and owner of the mixed-use development at 34977 Woodward, Birmingham, MI (the "Greenleaf Trust Building").

2. This Affidavit is based upon my personal knowledge and review of documentation pertaining to the proposed development of 34965 Woodward (the "Peabody Site"), as well as past information prepared for the review and approval of the Greenleaf Trust Building. I can competently testify to the facts contained herein if called upon to do so.

The City's Permitting Process for the Greenleaf Trust Building

3. As the Vice President and Managing Director of Catalyst, I was involved in and have personal knowledge of the City's permitting process for the Greenleaf Trust Building. From the outset of the City's consideration of the project in 2007, it was expressed that the City desired, and would require, that the Greenleaf Trust Building be of particularly high design and quality. The concept promoted by the City was that the Greenleaf Trust Building would become one of the two "Gateway" elements for the City's downtown, as referenced in the City's Master Plan. As such, the City required a building design that included four distinct and attractive facades, including the south-facing facade which is adjacent to the Peabody Site.

4. In compliance with the City's design requirements, the south facade of the Greenleaf Trust Building contains architecturally significant features, is constructed with Mankato stone, has a variety of setbacks, and includes 47 windows. The Greenleaf Trust Building has both residential and commercial occupants with windows facing south.

5. When the Greenleaf Trust Building was approved for construction by the City in 2008, the Peabody Site was occupied by a one-story restaurant and no one knew if, when or how

the property would ever be redeveloped. Nonetheless, Catalyst considered the possibility of future redevelopment of the Peabody Site and incorporated into the building's design an inset on the south facade to create a light well should a future building to the south be developed. Specifically, the building's second, third, and fourth floors are only partially constructed to the property line (with approximately 50% of those floors being set back 15' from the property line) and no part of the fifth floor is built to the property line. Based, in part, on the Community Impact Study narrative prepared by staff during site plan review for the Greenleaf Trust Building, where it is noted that, "[t]he 2016 Plan further recommended that the City attempt to secure and hold this site, and the additional parcels to the south, to construct a substantial new parking deck." Catalyst anticipated that a 2-3 story parking structure might one day be constructed on the Peabody Site. With that understanding and reasonable expectation, Catalyst entered into certain agreements with the previous owners of the Peabody Site related to potential future redevelopment of the property.

6. However, based on the City's strict design requirements for approval of the Greenleaf Trust Building and other new construction projects in the City's downtown area, Catalyst never contemplated the City's future approval of a five-story, featureless facade being constructed on the northern property line of the Peabody Site. Indeed, the proposed facade on the northern elevation of the Peabody Site development is inferior in design, quality, and architectural character, as compared to what the City required of Catalyst's southern elevation. Although Catalyst understood that portions of a new development might abut portions of the Greenleaf Trust Building (as was the case with the former Peabody's restaurant), Catalyst could not have anticipated that the City would apply a less stringent set of design standards for the developers of the Peabody Site than those which were applied to the design of the Greenleaf Trust Building.

Downtown Parking Problems

7. When the Greenleaf Trust Building was designed and constructed, the availability of parking for the building's tenants and visitors was a major concern due to the known shortage of parking capacity in the City's downtown area. In order to address this concern and ensure there would be adequate parking for Catalyst's tenants, Catalyst constructed underground parking and secured numerous parking spaces at various parking structures in the City. Without these efforts to lock up tenant parking well in advance of construction being completed, Catalyst would not have been able to lease out its commercial space in the Greenleaf Trust Building to full occupancy.

8. In the years since the Greenleaf Trust Building was constructed, the parking situation in downtown Birmingham has only worsened. This is supported by the City staff's comment in the Planning Department Report dated August 7, 2017, that "the City's parking system is operating near capacity, and does not presently have the capacity to accommodate the additional demand that this building will create." The proposed mixed-use development at the Peabody Site will further exacerbate the parking problems in the City's downtown area, which will have a direct negative impact on Catalyst's visitors and tenants, which will, in turn, decrease the marketability and value of the Greenleaf Trust Building.

[Signature and notarization on following page]

Patti Owens
Patti Owens

STATE OF MICHIGAN)
) SS
COUNTY OF Kalamazoo)

The foregoing instrument was acknowledged before me this 10 day of October, 2017 by Patti Owens, Vice President and Managing Director of Catalyst Development Co., L.L.C., on behalf of said company.

Kimberly Dudley
Name: Kimberly Dudley
Notary Public, State of MI, County of Van Buren
Acting in the County of Kalamazoo
My Commission Expires: 08-26-2020

AFFIDAVIT OF HARVEY WEISS

I, Harvey Weiss, being first duly sworn, depose and state as follows:

1. I am over the age of eighteen. I am currently an agent of Woodward Brown Associates, LLC, the developer and owner of the mixed-use development at 34953 Woodward, Birmingham, MI (the "Balmoral Building"). I have been a successful developer of various mixed use projects throughout the State of Michigan over the past 30 years. This Affidavit is based upon my personal knowledge and review of documentation pertaining to the proposed development of 34965 Woodward (the "Peabody Site"), as well as past information prepared for the review and approval of the Balmoral Building.

The Design and Construction of the Balmoral Building

2. In my role as an agent of Woodward Brown Associates, LLC, I was actively involved in the design and permitting process for the Balmoral Building between 2009 and 2014. During that time, I attended multiple public hearings before City bodies, and participated in multiple meetings and communications with City staff, consultants, engineers, and officials. Further, I was constantly updated by our design and engineering professionals on their communications with the City throughout the permitting process. I also oversaw the process of leasing out the commercial spaces within the Balmoral Building with our marketing team.

3. At the time of the Balmoral permitting process, it was unknown if or when the Peabody Site would ever be redeveloped or what type of development might one day be erected. As Peabody's was a one-story building, it was evident throughout the permitting process that the City wanted all four elevations of the Balmoral Building to be designed and built with a consistent design and uniform construction of the highest quality. The City also clearly expressed a concern regarding the aesthetics of the North elevation of the Balmoral Building, due to its visibility from Woodward Avenue and the building's role as part of the "gateway" to

the City's downtown area. In accord with the City's direction, the Balmoral Building was built with four high-quality and equally attractive facades, including the building's North elevation, which contains 50 windows, and will be completely masked by the proposed five-story, featureless, masonry wall to be constructed on the south property line of the Peabody Site. Such a plain and architecturally simple facade would not have been approved by the City for any elevation of the Balmoral Building, so it would appear that a much less rigorous design standard is now being applied in the City's review of the proposed development at the Peabody Site. Furthermore, the proposed five-story wall that is to be constructed within one foot of our northern property line – and just a few feet from our tenants' windows – will unquestionably have a substantial, negative effect on the Balmoral Building's marketability and value.

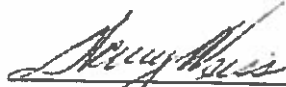
Parking Issues in Downtown Birmingham

4. It is well known and well documented that parking capacity in the City's downtown area is woefully insufficient. The same was true in 2014 when the Balmoral Building was constructed and ownership was attempting to negotiate leases with potential tenants at the building. During lease negotiations, the availability of parking was a top concern for potential tenants and many potential tenants were lost due to these concerns. But for building ownership's construction of underground parking and prior efforts to obtain and lock up parking spaces in various downtown parking facilities throughout the course of several years well in advance of completing the building, we would not have been able to lease all of the spaces in the building.

5. The parking situation in the City's downtown has only worsened since 2014 and the proposed development at the Peabody Site will only exacerbate the current problem. As noted by the City staff in the Planning Department Report dated August 7, 2017, "the City's parking system is operating near capacity, and does not presently have the capacity to accommodate the additional demand that this building will create." Thus, the proposed

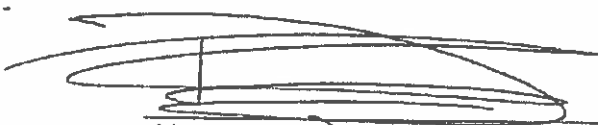
development will likely interfere with our tenants' ability to park, and we will be further harmed by this development in the form of decreased marketability and potential loss of existing and future tenants.

[Signature and notarization on following page]


Harvey Weiss

STATE OF MICHIGAN)
) SS
COUNTY OF Oakland)

The foregoing instrument was acknowledged before me this 10th day of October, 2017 by Harvey Weiss, an agent for Woodward Brown Associates, LLC, on behalf of said company.


Name: Derek Anthony Putrus
Notary Public, State of MI, County of Oakland
Acting in the County of Oakland
My Commission Expires: 9.29.19


DEREK ANTHONY PUTRUS
Notary Public - Michigan
Oakland County
My Comm. Expires 9.29.19



**SIGNATURE
ASSOCIATES**

One Towne Square, Suite 1200
Southfield, MI 48076

1 (248) 948 9000
www.signatureassociates.com

September 29, 2017

Mr. Harvey Weiss
Weiss Properties

32820 Woodward Avenue, #200
Royal Oak, Michigan 48073

**SUBJECT: BALMORAL BUILDING BIRMINGHAM, MICHIGAN
IMPACT ON PARKING ISSUES FOR LEASE-UP**

Dear Harvey:

In response to your inquiry regarding our experience in leasing the Balmoral, parking concerns were the on-going concern by prospects. We appreciate that it may have taken longer than intended; especially when considering the desirability of the Birmingham market and the beauty of the building. However, the concerns over parking tended to be an on-going subject for each and every tenant and an impediment to leasing space in the building. But for your previous efforts to obtain and lock up spaces in various downtown parking facilities well in advance of completing the building, we would likely not have been able to complete the lease-up.

We lost many tenant prospects because their lack of confidence that parking would not be a problem for their employees and clients.

According to their advisors, several potential tenants – office and retail uses – who were very interested in the building went elsewhere due, at least in substantial part, to the parking concerns. Companies such as Angle Advisors, Discovery Channel, MVP Collaboration, Facebook, McCann and IBM all sought alternative solutions. Restaurants like Fogo de Chou were challenged by the constraints as well.

Moreover, we had countless inquiries from potential tenants who declined going deeper into discussions without on-site parking. The concern was simply lack of capacity at the Peabody garage. It has become well-known in the community that there are times you cannot find available spaces in the Peabody garage.

We hope Birmingham continues to enjoy its success as it is a premier city, but fear that the lack of parking will have a continuing and growing negative influence.

Again, thank you for the opportunity to work with you and your team.

Sincerely,

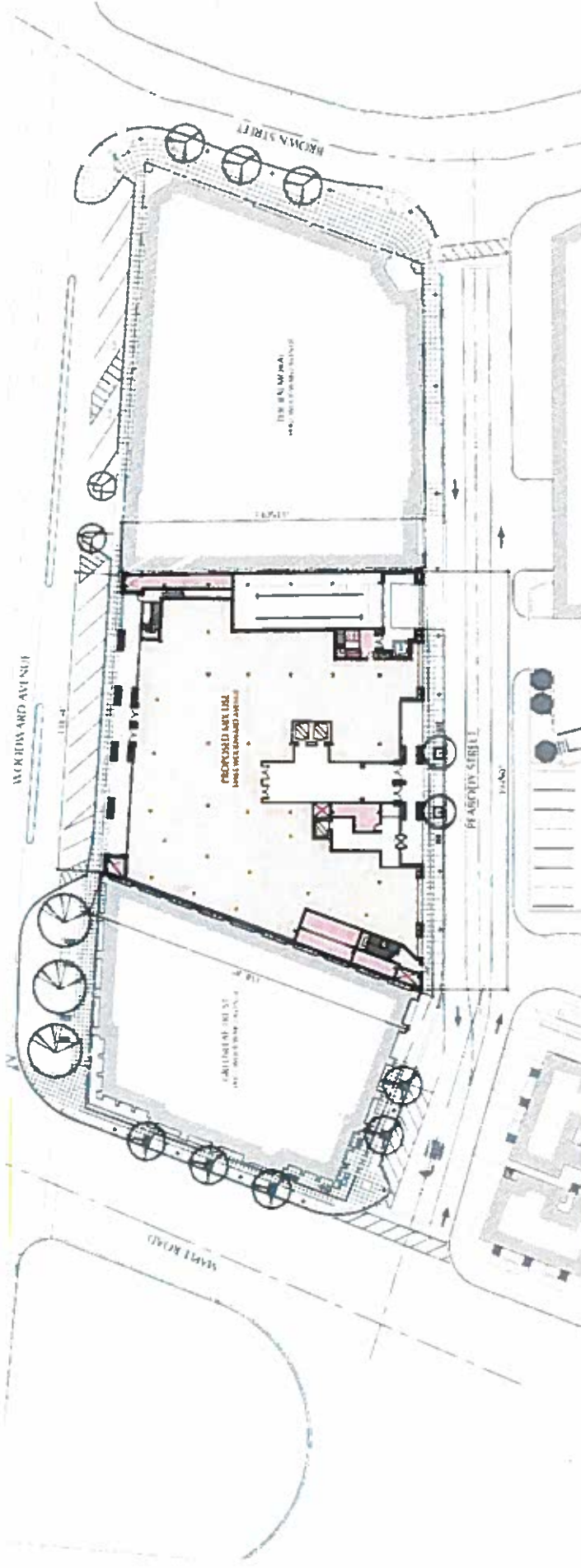
SIGNATURE ASSOCIATES

David T. Miller
Associate Broker | Principal

DTM/bjn



14965 Woodward Avenue + 215 Peabody Street
Birmingham, Michigan 48009



Occupancy Areas

Occupancy	Location in Building	Net Usable Area
Office	Levels 2 + 3	44,285 SF
Commercial	Level 4	18,605 SF
Retail / Office	Level 1	14,855 SF
Residential	Levels 4 + 5	17,465 SF

Parking Tabulation

Residential	1.5 spaces / Apartment	Required	Provided
Apartment	10 Apartments x 1.5	15 spaces	15 spaces
Total		15 spaces	90 spaces
Total with 11 street parking spaces			101 spaces

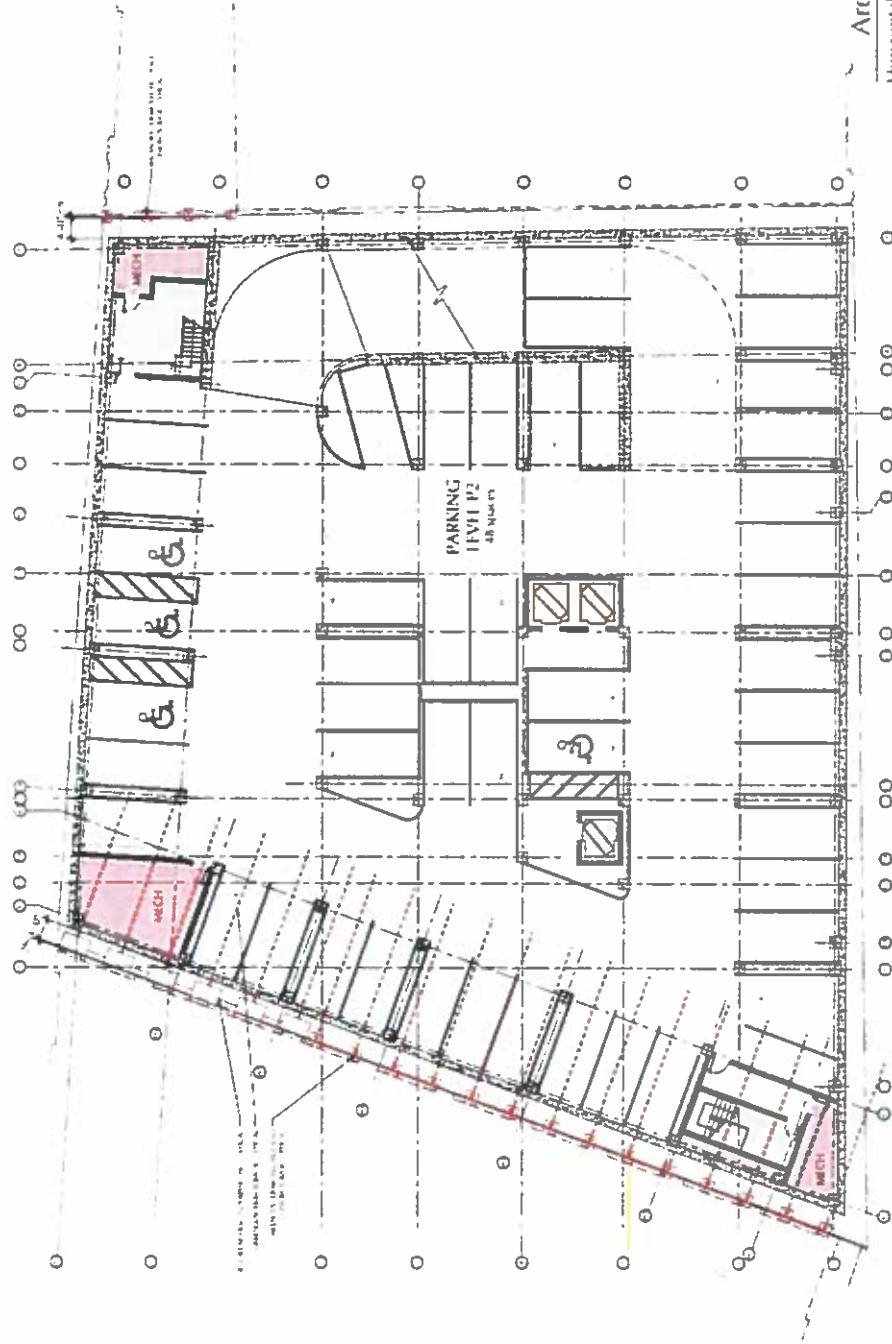
Building Calculations

Location	Spaces / Units	Net Usable Area	Gross Area
Parking Level P2	48 Parking spaces	22,425 SF	23,700 SF
Parking Level P1	42 Parking spaces	22,405 SF	23,700 SF
Level 1	11 Street Parking	20,070 SF	21,540 SF
Level 2	-	22,735 SF	23,790 SF
Level 3	-	23,540 SF	24,540 SF
Level 4	1 Apartments	22,960 SF	24,245 SF
Level 5	9 Apartments	18,705 SF	20,435 SF
Total	-	152,880 SF	161,910 SF
Total Site Area			25,215 SF

CHRISTOPHER J. LONGORIA
ARCHITECT
INTERIORS
10000 Woodward Avenue, Suite 400, Birmingham, AL 35203



34965 Woodward Avenue + 215 Peabody Street
Birmingham, Michigan 48009



Area Calculations

Horizontal Circulation	120 SF
Vertical Circulation	700 SF
Mech. / Storage	710 SF
Parking	20,895 SF
Net Usable Area	22,425 SF
Gross Area	23,700 SF

PARKING LEVEL P2 - 48 spaces

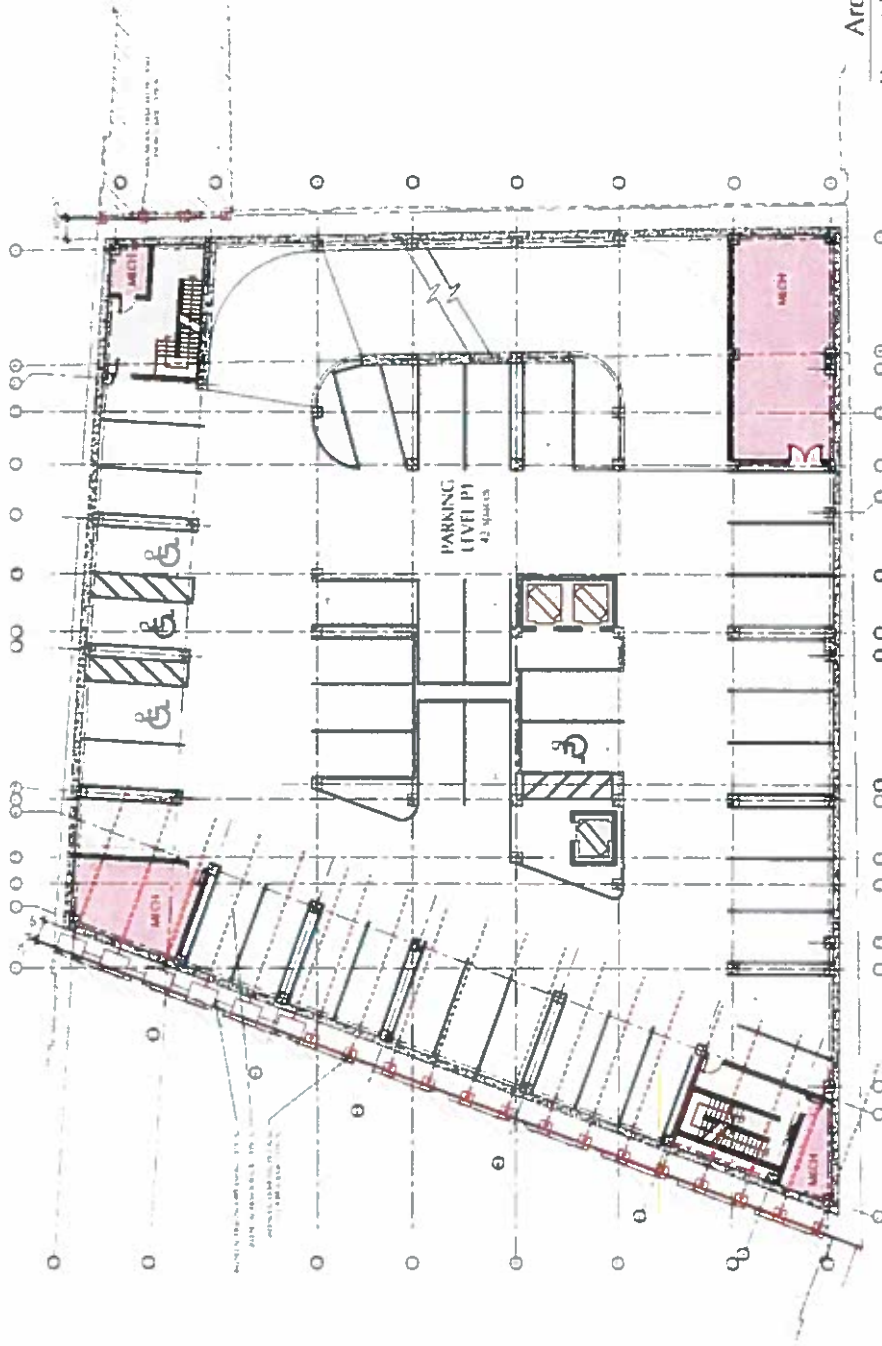
CHRISTOPHER J. LONGE AIA
ARCHITECTURE
IN P L L C
30 Peabody Street, Suite 200, Birmingham, AL 35203

SCALE: 1" = 10'-0"

SD.1



14965 Woodward Avenue + 215 Peabody Street
Birmingham, Michigan 48009



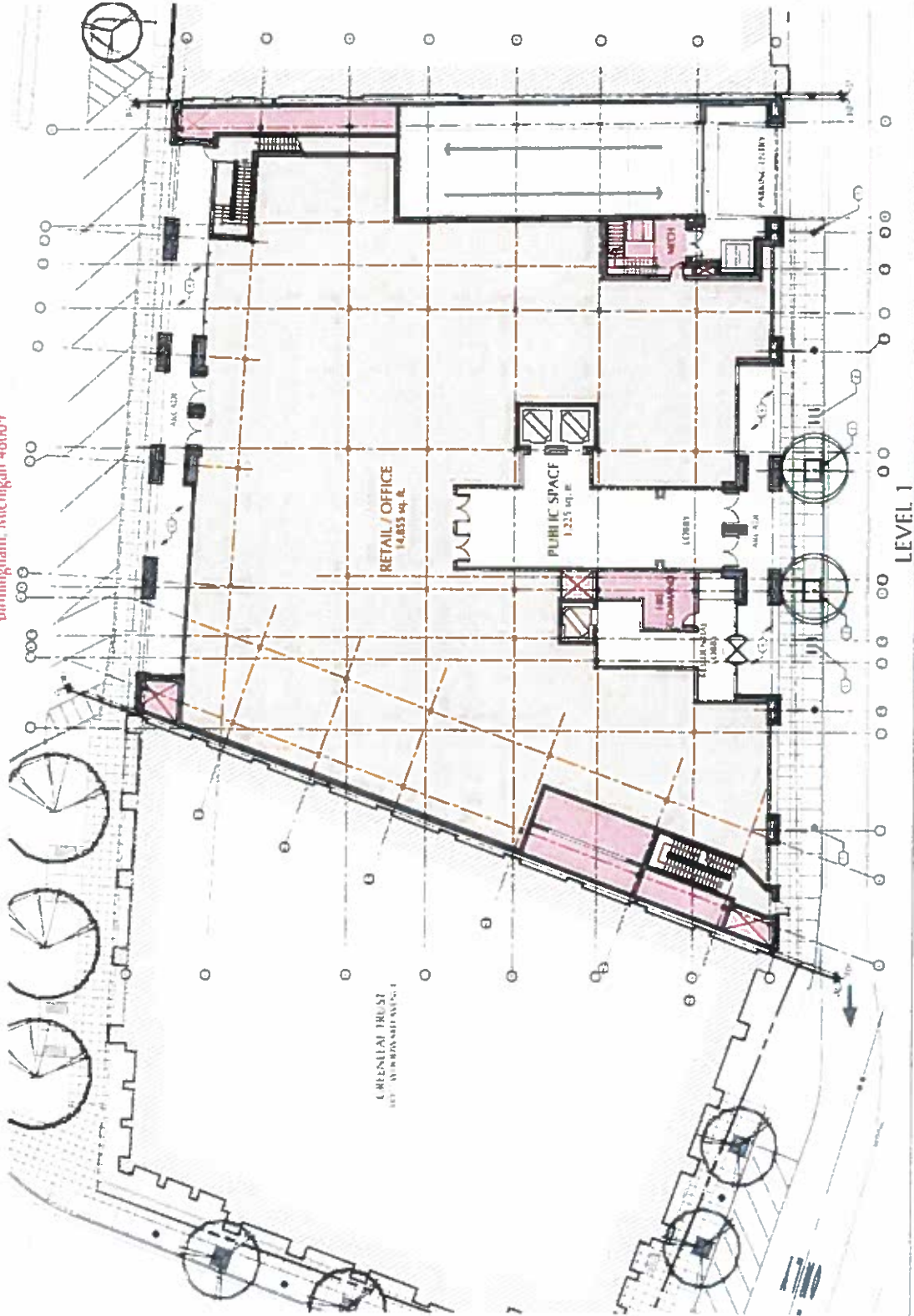
Area Calculations

Horizontal Circulation	120 SF
Vertical Circulation	795 SF
Mech. / Storage	1,475 SF
Parking	20,015 SF
Net Usable Area	22,405 SF
Gross Area	24,700 SF

PARKING LEVEL P1 - 42 spaces

CHRISTOPHER J. LONGE AIA
ARCHITECTURAL
INTERIORS
at Peabody Birmingham Building 48009 24,700 SF

SD.2



MECH. PLATFORM

Notes:

- (1) Pedestrian lamp post
- (2) Bike rack
- (1) Tree bed with metal grating
- (4) 1 spaced aggregate concrete

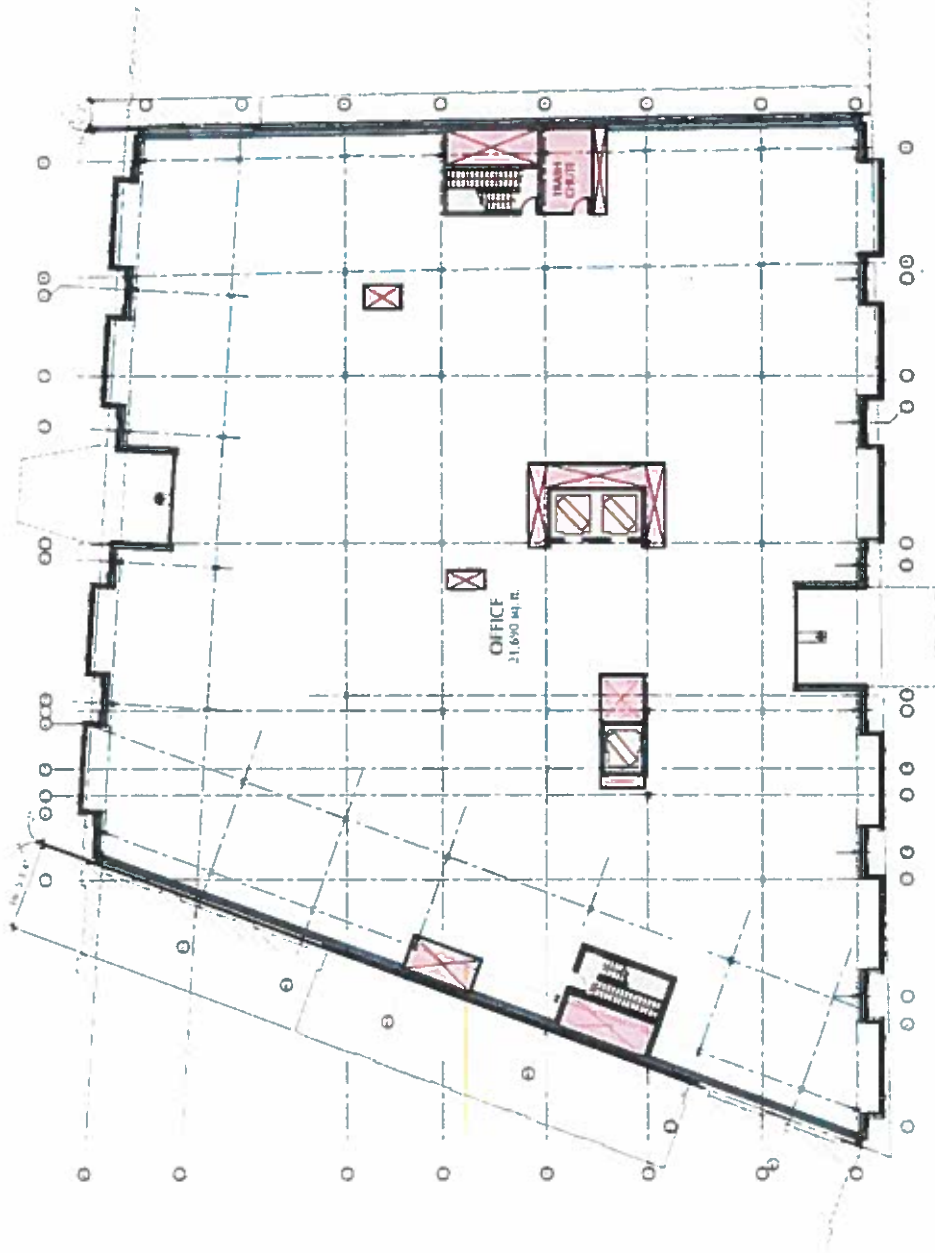
Area Calculations

Retail / Office	14,855 SF
Horizontal Circulation	1,710 SF
Vertical Circulation	730 SF
Mech / Storage	595 SF
Parking	2,180 SF
Net Usable Area	20,070 SF
Gross Area	21,540 SF
Arcade Area	1,910 SF

LEVEL 1

ADG

34965 Woodward Avenue • 215 Peabody Street
Birmingham, Michigan 48009



Area Calculations

Office	21,690 SF
Vertical Circulation	575 SF
Mech / Storage	470 SF
Net Usable Area	22,735 SF
Gross Area	24,790 SF

LEVEL 2

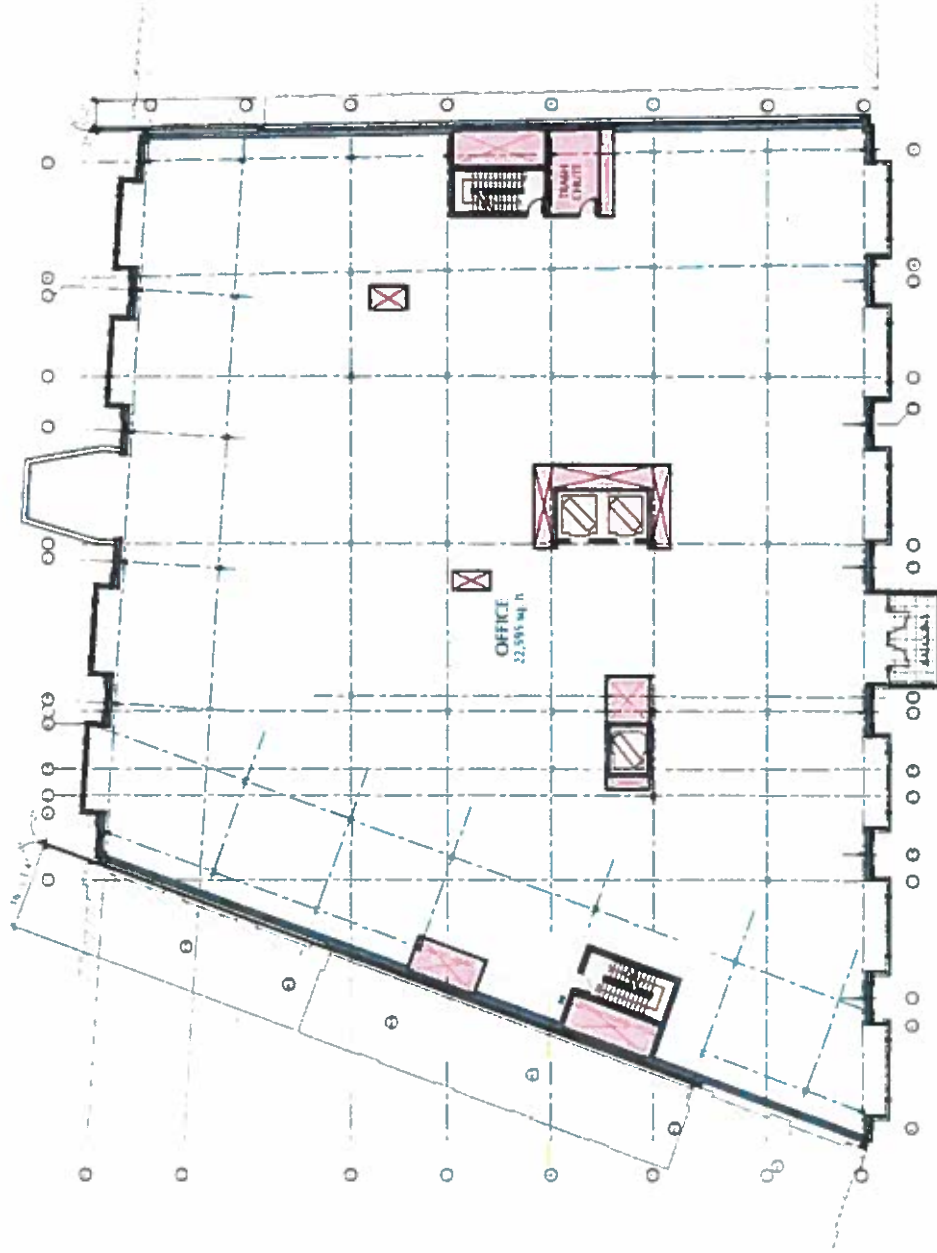
CHRISTOPHER J LONGE AIA
ARCHITECTURE
INTERIORS
4000 1st Avenue, Birmingham, Alabama 35203-4000

SD.4

SCALE: 1" = 20'-0"



34945 Woodward Avenue + 215 Peabody Street
Birmingham, Michigan 48004



Area Calculations

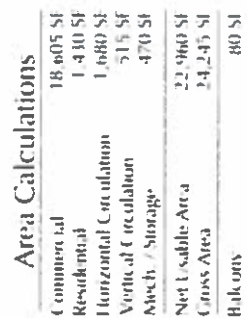
Office	22,595 Sf
Vertical Circulation	515 Sf
Mech. / Storage	470 Sf
Net Usable Area	23,580 Sf
Gross Area	24,530 Sf
Balkony	160 Sf

LEVEL 3

CHRISTOPHER J. LONGE AIA
ARCHITECTURAL
INTERIORS
24 Peabody Street, Birmingham, AL 35203

SCALE 1" = 30'-0"

SD.5



LEVEL 4

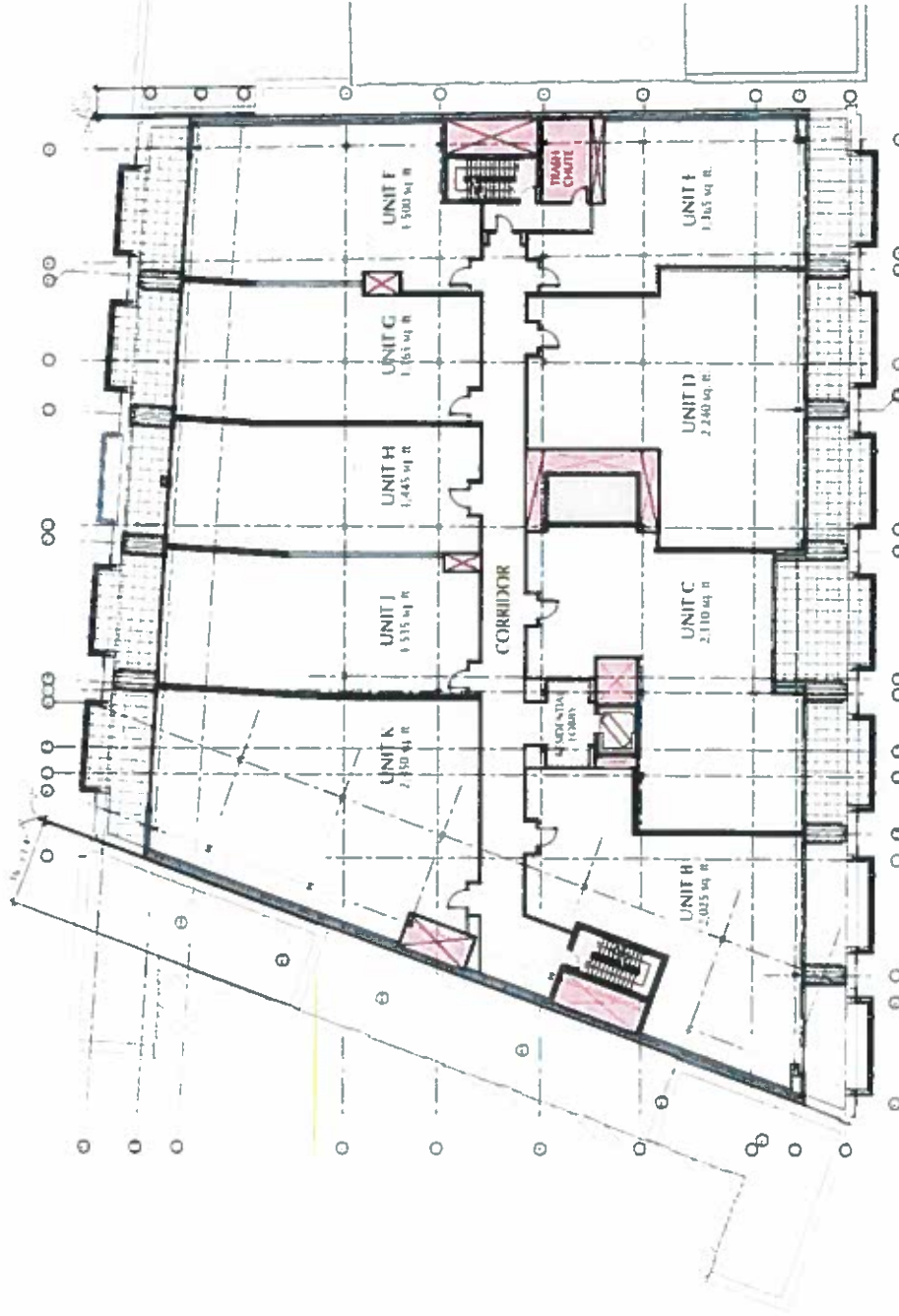
CHRISTOPHER J. LONGE AIA
ARCHITECTURE
INTERNET @ 3

9.05

50-111-100-10



34965 Woodward Avenue + 215 Parkway Street
Birmingham, Michigan 48009



Area Calculations

Residential	16,035 SF
Horizontal Circulation	1,685 SF
Vertical Circulation	515 SF
Mech. / Storage	470 SF
Net Usable Area	18,705 SF
Gross Area	20,445 SF
Exterior Terrace	1,495 SF

LEVEL 5

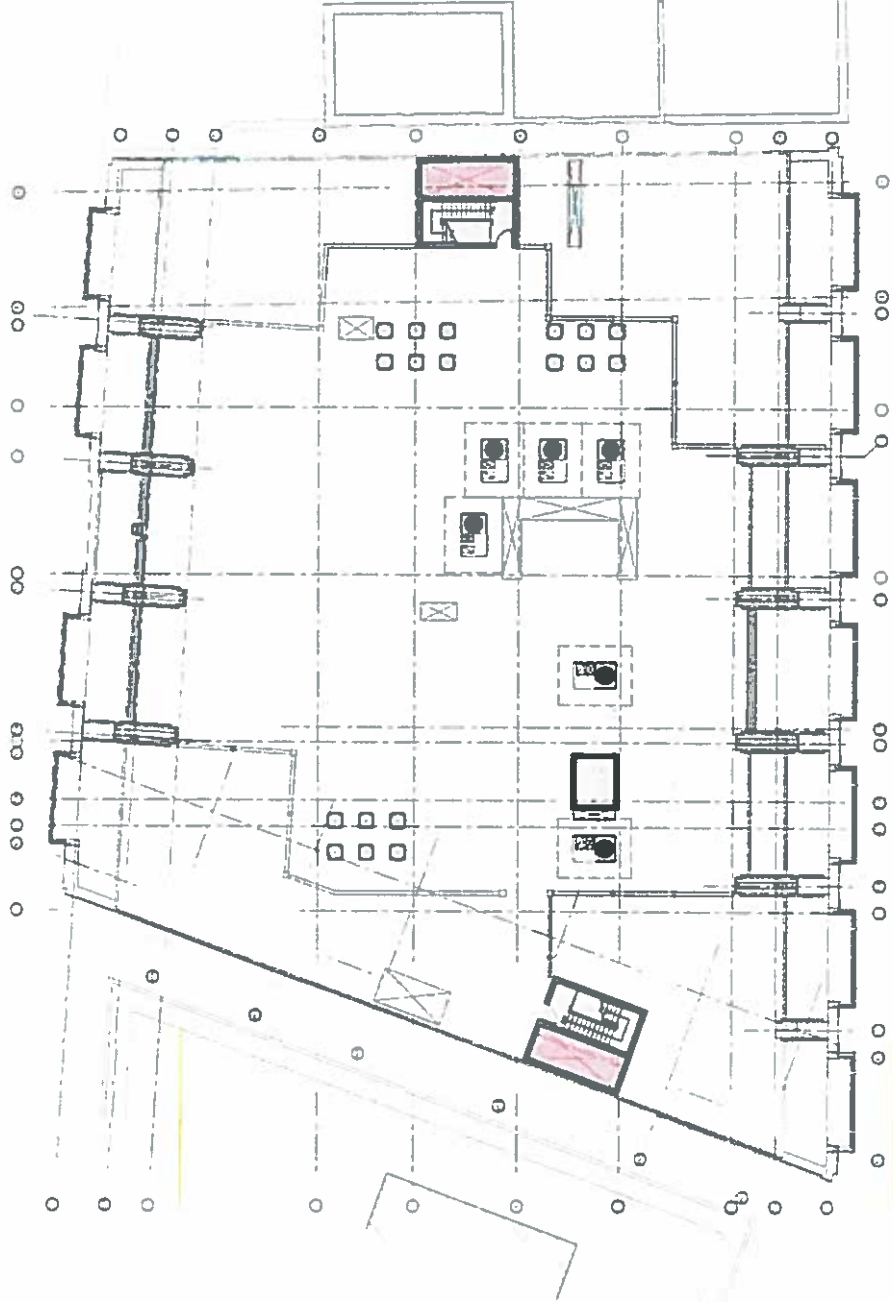
CHRISTOPHER J. LANGE AIA
ARCHITECTURE
INTERIORS
11000 Levee Street, Suite 100, Dallas, TX 75244

SCALE: 1" = 20'-0"

SD.7



34965 Woodward Avenue • 215 Piedmont Street
Birmingham, Michigan 48004



ROOF LEVEL

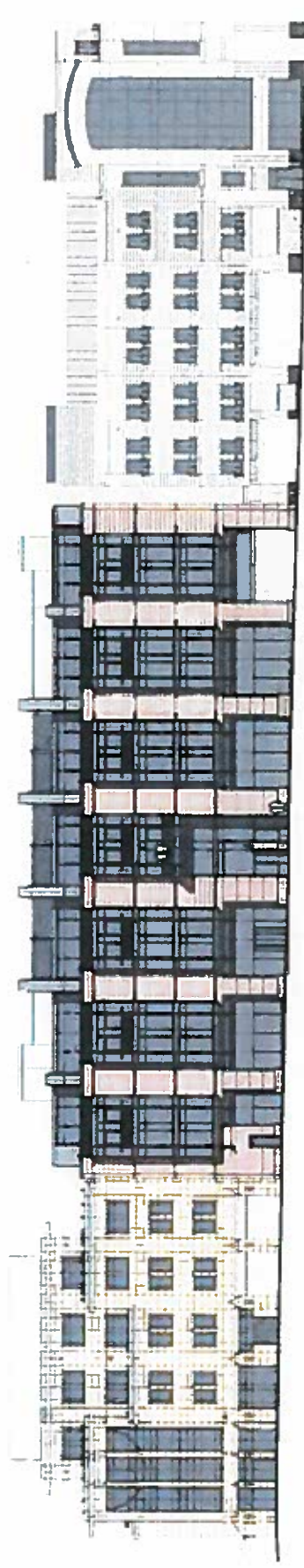
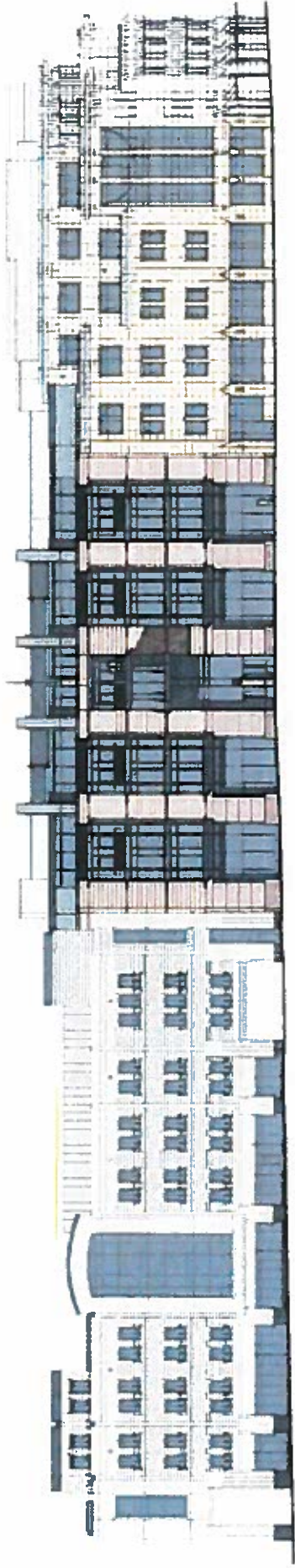
CHRISTOPHER J. LONGE AIA
ARCHITECTURE
INTERIORS
a Practice Incorporated • 10000 10th Ave. N.E. • Atlanta, GA 30328

SCALE 1" = 20'-0"

SD.8



14965 Woodward Avenue • 215 Parkway Street
Birmingham, Michigan 48009



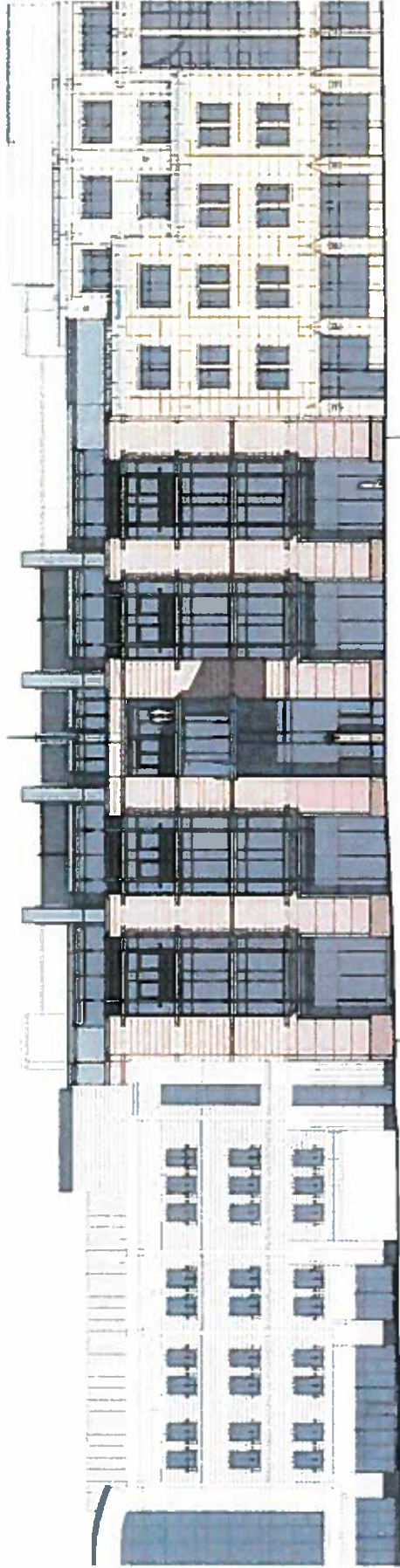
STREETSCAPE ELEVATIONS

CHRISTOPHER J. LONGE AIA
ARCHITECTURAL
INTERIORS
4110000, Birmingham, Michigan 48009

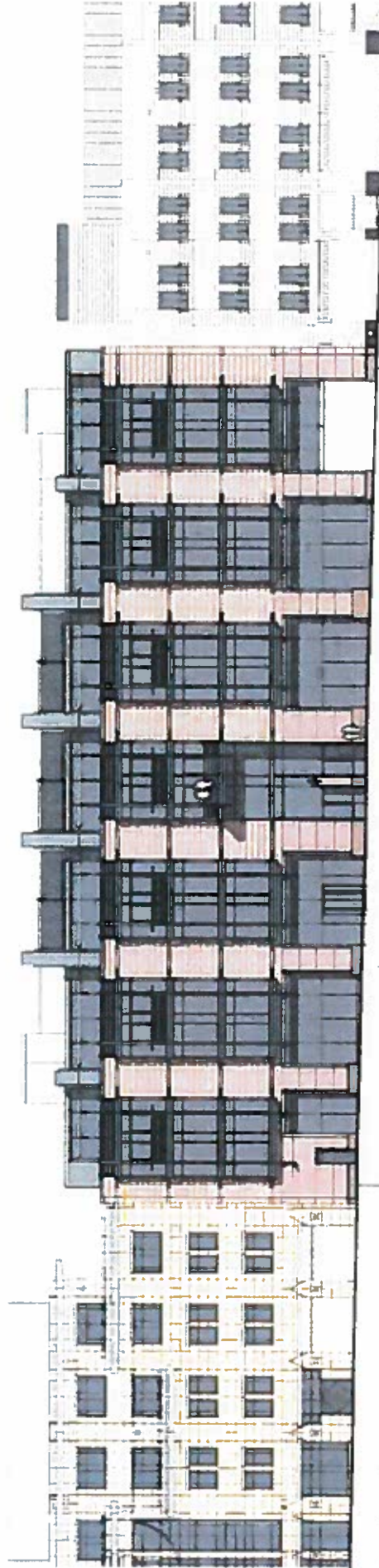
SD.9



34945 Woodward Avenue + 215 Palisades Street
Birmingham, Michigan 48009



INTERIOR GLAZING - 75%
EXTERIOR GLAZING - 45%



INTERIOR GLAZING - 75%
EXTERIOR GLAZING - 45%

FRONT ELEVATIONS

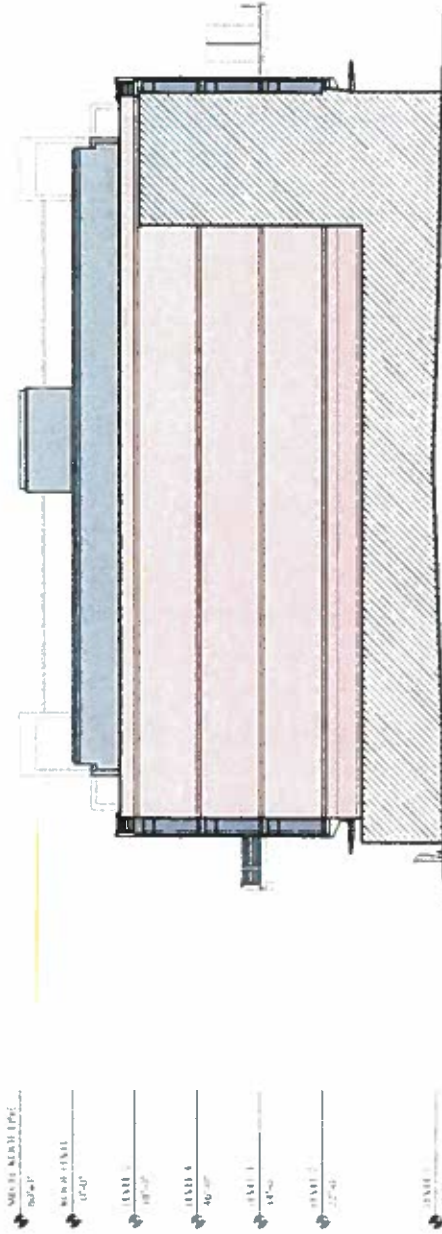
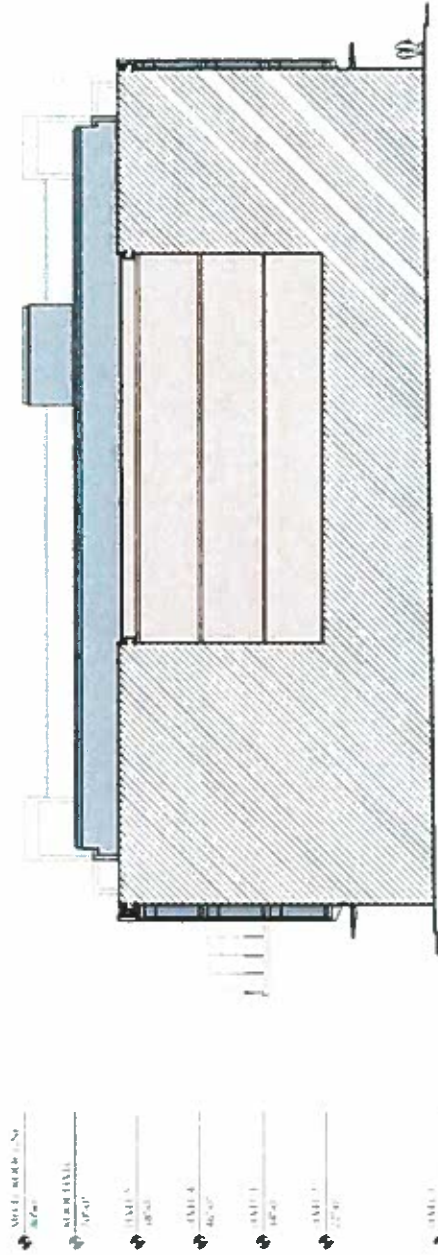
CHRISTOPHER J. LONGE AIA
ARCHITECTURE
INTERIORS
34945 Woodward Avenue + 215 Palisades Street
Birmingham, Michigan 48009

SCALE: 1" = 10'-0"

SD 10



34965 Woodward Avenue + 215 Peabody Street
Birmingham, Michigan 48009



SIDE ELEVATIONS

CHRISTOPHER J LONGCEAIA
ARCHITECTURE
IN T E R I O R S
34 Peabody Street, Birmingham, Michigan 48009

SCALE 1" = 40'-0"

SD.11



34965 Woodward Avenue ~ 215 Piedmont Street
Birmingham, McEugan 480049



ENLARGED ELEVATION VIEWS

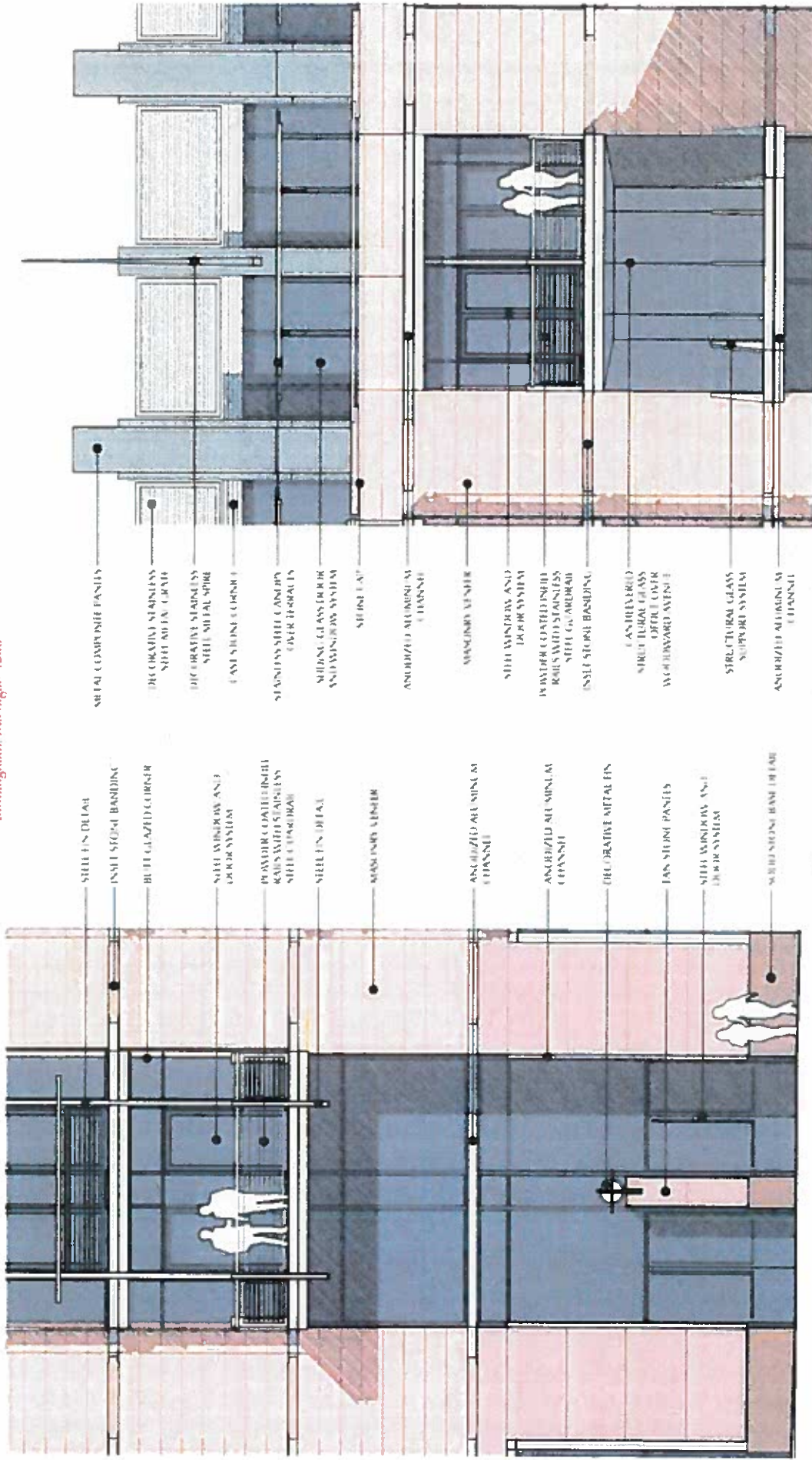
CHRISTOPHER J LONGE AIA
ARCHITECTURE
INTERIORS
at 1000 10th Avenue, Suite 1000, Birmingham, AL 35203

SCALE: 1/16" = 1'-0"

SD.12



34965 Woodward Avenue + 215 Peabody Street
Birmingham, Michigan 48009

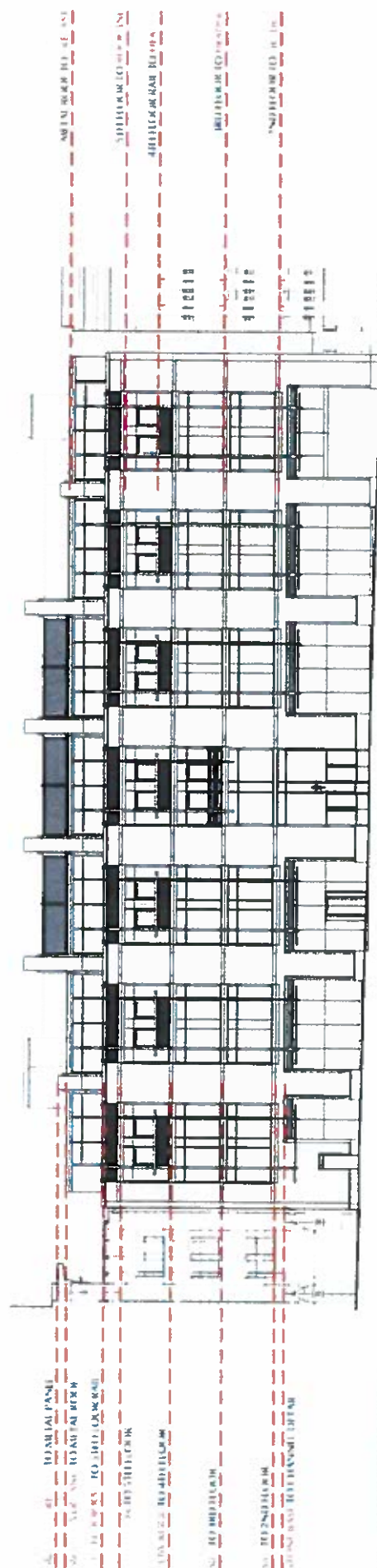


ENLARGED ELEVATION VIEWS

CHRISTOPHER J LONGE AIA
ARCHITECTURAL
INTERIORS
34965 Woodward Avenue + 215 Peabody Street
Birmingham, Michigan 48009

SCALE 1/16" = 1'-0"

SD.13



ELEVATION DIAGRAMS

CHRISTOPHER LONGE AIA
ARCHITECTURE
INTERIORS

17402 11VJ5

SD.14



14965 Woodward Avenue • #115 Peabody Street
Birmingham, Michigan 48009



SECTION DIAGRAM

CHRISTOPHER J. LONGCEAIA
ARCHITECT
INTERIORS

SCALE: 1/16" = 1'-0"

SD 15



34965 Woodward Avenue + 215 Peabody Street
Birmingham, Michigan 48009



WOODWARD RENDER

CHRISTOPHER J LONGCE AIA
ARCHITECTURE
INTERIORS
121 Peabody Street, Suite 2000, Birmingham, AL 35203



34965 Woodward Avenue + 215 Peabody Street
Birmingham, Michigan 48009



PEABODY RENDER

CHRISTOPHER J LONGE AIA
ARCHITECTURE
INTERIORS
137 Peabody Street, Suite 100, Birmingham, AL 35203 205.363.1000



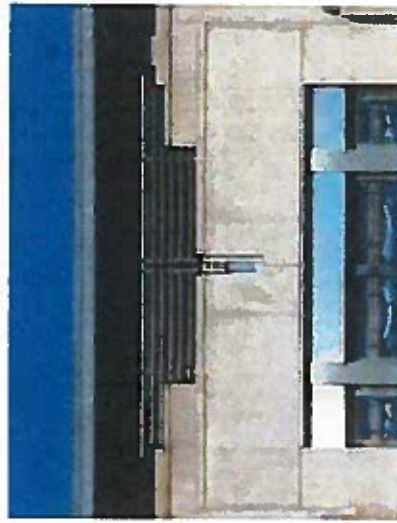
34965 Woodward Avenue + 215 Peabody Street
Birmingham, Michigan 48009



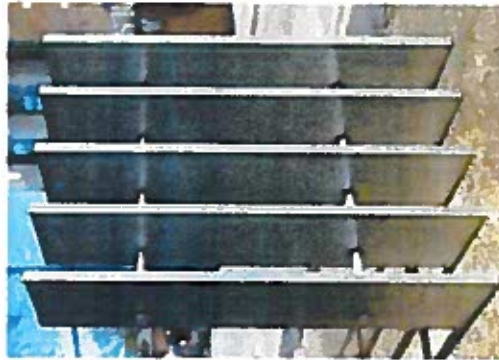
CANOPY DETAIL



STRUCTURAL GLAZING WITH GLASS FINS



STAINLESS STEEL RAILING SYSTEM



ALUMINUM BAR GRATING



CANTILEVERED GLASS STRUCTURE



AIRLITE LOUVERS



MASONRY VENEER



STONE PANELS



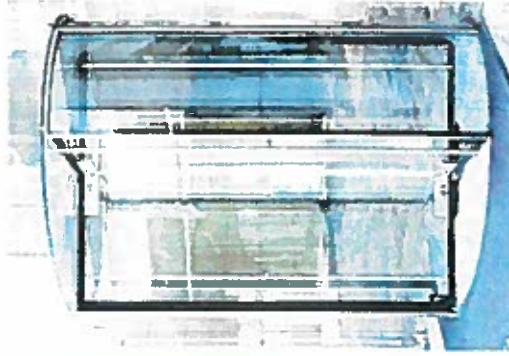
SOLID BASE STONE



METAL PANEL SYSTEM



ZINC STOREFRONT SYSTEM



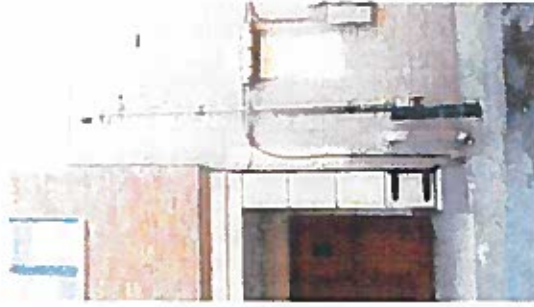
GLASS REVOLVING DOOR SYSTEM

MATERIAL SAMPLES

CHRISTOPHER J LONGE AIA
ARCHITECTURE
INTERIORS
1211 Peabody, Birmingham, Michigan 48009 205-381-0000



34965 Woodward Avenue + 215 Peabody Street
Birmingham, Michigan 48009



EXISTING CONDITIONS

CHRISTOPHER J LONGE AIA
ARCHITECTURE
INTERIORS
121 Fourth Street, Suite 1000 | 202.555.1000



34965 Woodward Avenue + 215 Peabody Street
Birmingham, Michigan 48009



EXISTING CONDITIONS

CHRISTOPHER J LONGE AIA
ARCHITECTURE
INTERIORS
34965 Woodward Avenue + 215 Peabody Street
Birmingham, Michigan 48009

SD.20



34965 Woodward Avenue + 215 Peabody Street
Birmingham, Michigan 48009



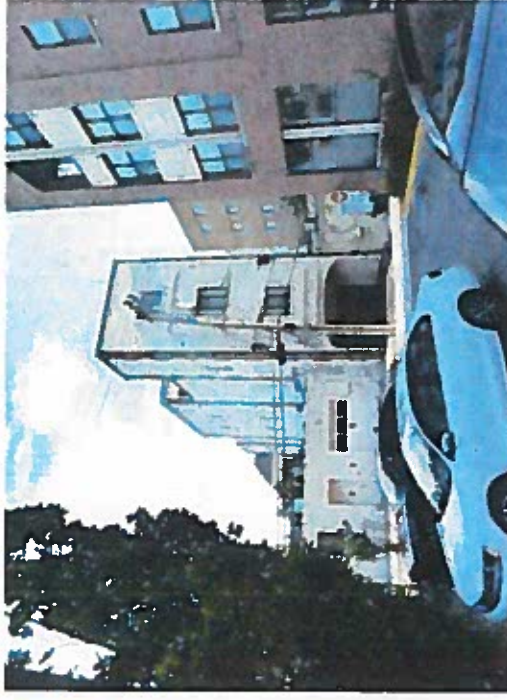
EXISTING CONDITIONS

CHRISTOPHER J LONGE AIA
ARCHITECTURE
INTERIORS
101 Peabody Street, Suite 1000 | 205.333.8888

SD.21



34965 Woodward Avenue + 215 Peabody Street
Birmingham, Michigan 48009



EXISTING CONDITIONS

CHRISTOPHER J LONGE AIA
ARCHITECTURE
INTERIORS
1417 Franklin Boulevard Birmingham, AL 35204
205.944.5500

SD.22



34965 Woodward Avenue + 215 Peabody Street
Birmingham, Michigan 48009



EXISTING CONDITIONS

CHRISTOPHER J LONGE AIA
ARCHITECTURE
INTERIORS
104 Phoenix Birmingham, Michigan 48009 205.344.8882

SD.23

9/13/2017

Page 1

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2

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7

CITY OF BIRMINGHAM

8

9

MEETING OF THE PLANNING BOARD

10

11

Wednesday, September 13, 2017

12

13

7:30 p.m.

14

15

CITY COMMISSION ROOM

16

17

151 Martin Street

18

19

BIRMINGHAM, MICHIGAN 48009

20

21

22

23

24

25

Regarding 34965 Woodward Avenue, Peabody

1 MEMBERS:
2
3 SCOTT CLEIN
4 JANELLE BOYCE
5 ROBIN BOYLE
6 STUART JEFFARES
7 BERT KOSECK
8 GILLIAN LAZAR
9 J. BRYAN WILLIAMS
10 LISA PRASAD
11 DANIEL SHARE
12

13 PLANNING DIRECTOR:
14
15 JANA ECKER
16
17
18
19
20
21
22
23
24
25

1 that you would like me to review again?
2 MS. LAZAR: How does the board feel about
3 that? Would you like to do it?
4 MR. KOSECK: Are there any fundamental
5 changes from what we've seen?
6 MS. LAZAR: You would like to?
7 SPEAKER MATT: No, there are no revisions.
8 MR. KOSECK: No revisions?
9 MS. LAZAR: No revisions? All right.
10 That's fine. Thank you, Matt.
11 All right. Questions from the board? No?
12 Would the applicant care to come up,
13 please?
14 MR. RASSEL: Good evening, members of the
15 planning board. Richard Rassel, 380 North Old
16 Woodward, Birmingham, Michigan, with Williams Williams
17 Rattner and Plunkett, and I represent Alden
18 Development Group. We have with us this evening the
19 site architect, the project architect, Chris Long. We
20 have members of the ownership group here as well.
21 Basically, I think at this stage we were
22 able to present our thoughts and furtherance of
23 encouraging this board to move this process through
24 preliminary site plan at the August 23rd meeting. We
25 appreciate your patience greatly in working with us to

1 SPEAKER MATT: Okay. So as you know, this
2 has been reviewed a couple times previously. Last
3 time the board discussed this was on August 23rd, and
4 at that time there was extensive discussion about the
5 interface of the proposed building with the two
6 neighboring buildings to the north and the south, and
7 the planning board requested that the staff do some
8 research on the history of those buildings and the
9 approval process and whether or not the planning board
10 actually required those windows to be there.

11 We did go back and look at all the minutes
12 that were available. Certainly, there was a lot of
13 minutes on the site to the south going back many, many
14 years, and also, the site to the north we -- after
15 thoroughly examining all the minutes, we didn't find
16 any references by the board or staff encouraging those
17 windows, though there were some comments by the
18 building department relating to putting windows on the
19 property line and that they specifically were not
20 permitted, but that was later resolved through the use
21 of fire-rated glass.

22 Certainly, if you want me to go through the
23 site plan again tonight, I'm more than happy to do so,
24 but if you want me to just leave our comments at
25 that -- or are there specific aspects of the building

1 listen to our view of the fact that the master plan
2 and the zoning ordinance and -- in all respects, treat
3 this project as compliant. I think the staff has
4 obviously worked hard at looking at the research that
5 was directed to it, and we appreciate that.

6 We've had a chance to review the planning
7 staff's report of September 8th, and we find that the
8 information in there to be relevant to the question
9 that has been presented relative to the windows that
10 were installed on the north and south facades to our
11 neighbors, but I think at this stage of the
12 proceeding, we've had numerous comments. We're
13 willing to work with our neighbors in the aspect to
14 final design, should that be necessary, to try to make
15 the best project available for, not only our project
16 group, but for the betterment of the city and for this
17 important gateway.

18 So we look forward to moving this project
19 along and moving towards final site plan review and
20 working into the design aspects, working with staff in
21 the building department. We're here, obviously, to
22 answer any questions that you may have. We think that
23 we were very thorough in our examination of what was
24 agreed to between our neighbors and us and the
25 knowledge that they have, relative to this project.

1 and we think that all of that's been put in -- in
 2 favorable perspective, relative to our request, to be
 3 advanced through this preliminary site plan this
 4 evening. So if there are any site design issues or
 5 issues for ownership or issues that I can answer for
 6 you, please let me know.
 7 MS. LAZAR: Questions from the board? No?
 8 Okay.
 9 Thank you very much.
 10 MR. RASSEL: Thank you.
 11 MR. KOSECK: Just so everybody -- this is
 12 the preliminary site plan approval, not final.
 13 MS. ECKER: Right.
 14 MR. KOSECK: So it's about the siting of
 15 the building, the form, the mass, the -- so it's not
 16 materials. It's not the architecture. It's not
 17 the -- it's -- it's preliminary at this point.
 18 MS. ECKER: That's correct.
 19 MS. LAZAR: Take it to the public.
 20 SPEAKER: Can I --
 21 MS. LAZAR: Yes, of course.
 22 SPEAKER: Is there -- Matt and Jana, to the
 23 best of your knowledge, is there --
 24 SPEAKER: Can't hear. Speak up, folks.
 25 SPEAKER: Is the building being able to --

1 built up to the lot lines? Is that within our
 2 ordinance?
 3 MS. ECKER: Yes.
 4 SPEAKER: That's allowed?
 5 MS. ECKER: That's allowed.
 6 SPEAKER: Is there anything that you guys
 7 know about where they gave up that right? Or that --
 8 MS. ECKER: Peabody property?
 9 SPEAKER: Yes.
 10 MS. ECKER: No.
 11 SPEAKER: Is there any -- okay.
 12 MS. LAZAR: Any other questions before we
 13 take -- okay.
 14 Any further comments from the public?
 15 Would anybody care to come up?
 16 MR. GREENE: Thank you. Again, my name's
 17 Alan Greene, and I'm at 39577 Woodward Avenue. That's
 18 Michigan. I'm not gonna repeat -- you guys got my
 19 letter, and you've heard me before, so I'm not going
 20 to repeat all that. I will just summarize and say,
 21 again, you know, I'm here representing the members of
 22 the Greenleaf Trust Building, the Balmoral Building,
 23 and, as we have emphasized, you have specific
 24 standards in your ordinance that go beyond just coming
 25 in and showing that, you know, you meet the setbacks,

1 and it's within the height, because you're in a city
 2 downtown area, and, specifically, with respect to
 3 those standards, I think we presented our information
 4 as to why this proposed new building does not meet
 5 those standards.
 6 It's not compatible on the north and south
 7 side with the structures that exist, and I mean
 8 compatible, not that it's the same design. It has
 9 nothing to do with the design itself. It's the nature
 10 of the construction, the quality of the construction,
 11 the recesses of the construction, whether or not, you
 12 know, 97 windows on these two buildings are going to
 13 look out at a blank wall, that sort of thing. And
 14 we've explained all that.
 15 It's also -- deprives those buildings of
 16 light and air, which is a specific standard of your
 17 ordinance. It also materially impacts the value of
 18 those buildings negatively, not only just the money
 19 that was spent on building those facades in the first
 20 place, but also the value of the space and the
 21 disputes that are now going to occur, who are now
 22 going to be deprived of light and air, et cetera.
 23 And we've also pointed out that the way --
 24 because these buildings weren't designed to be fully
 25 abutting the way they're designing it is, it's going

1 to cause innumerable and, we think, insurmountable
 2 issues with respect to the ongoing maintenance and
 3 operation and repair of both buildings, or all three
 4 buildings, on the way it's constructed right now.
 5 There are many alternatives that can
 6 address these concerns that we have, and I could say
 7 that since the very first meeting we were here, there
 8 hasn't been a single change to the site plan, not a
 9 single revision at all, with respect to what you see
 10 before you. It is what they presented, and they're
 11 just trying to maximize -- I get it -- maximize their
 12 square footage that they can get out of the building.
 13 So I didn't see anything in the record that
 14 has been presented by the applicant that actually
 15 addresses those standards specifically, only that, you
 16 know, we're allowed to do it, that sort of thing. No
 17 one's -- no one's come up and said you're wrong,
 18 Mr. Greene and broker and neighbors, that we're not
 19 going to impact your value whatsoever, your building.
 20 Those are specific standards that your ordinance
 21 requires, and we don't think that they're met here.
 22 So we would ask that, at least with respect to this
 23 particular site plan, that it be denied.
 24 Thank you.
 25 MS. LAZAR: Any other comments from the

1 public?

2 Bring it back to the board. Mr. Williams?

3 MR. WILLIAMS: I have -- with indulgence of
4 the other members of the board -- I have a lengthy
5 statement to make followed by a motion. So I'm going
6 to start, if that's all right.

7 I would say these comments are mine. Since
8 our meeting on August 23rd, I've had the opportunity
9 to review more carefully the materials submitted by
10 the applicant and by the neighboring property owners
11 in the context of the full zoning ordinance. I've
12 also listened to the comments tonight.

13 First of all, I want to thank Matt and Jana
14 for researching approval documentation for the
15 Greenleaf Trust and Balmoral buildings. Their
16 conclusion that there was no encouragement or
17 requirement by the planning board or staff to install
18 windows on the south and north property lines,
19 respectively, is important. I have concluded that the
20 applicant's proposal meets the requirements of the
21 zoning ordinance for preliminary site plan approval.

22 The report of the staff makes that
23 abundantly clear, as does the letters of Beier Howlett
24 dated August 23rd and September 13, which have been
25 incorporated into the record and which form part of

1 enough parking to meet the requirements of the zoning
2 ordinance for its residential component. On numerous
3 occasions, this board has made it clear that it will
4 not and cannot prevent owners in the parking
5 assessment district from developing their property
6 because there may be a shortage of parking Monday
7 through Friday at lunchtime.

8 The fact that the city may not have built
9 enough public parking does not change the fact that
10 this property owner and its predecessors, like many
11 others, have paid into the parking assessment district
12 with the understanding that will not have to -- have
13 to have on-site parking for nonresidential uses.

14 Three: The plan violates 7.27B2, the light
15 and air clause of the zoning ordinance. Counsel for
16 Dykema Gossett has made an argument that construction
17 of the -- of this building to the lot line will
18 prevent adequate light and air reaching the adjacent
19 properties in violation of section 7.27B2 of the
20 zoning ordinance. I believe a significant word is
21 "adequate." In any event, taking the language of the
22 ordinance at face value, there will be adequate light
23 and air to both the Greenleaf Trust and Balmoral
24 buildings if this building is constructed to the lot
25 line as proposed.

1 the basis for my comments. The adjoining property
2 owner's objections are detailed and weighty, but they
3 do not justify denying the site plan. Let me respond
4 to each of the major points which they have raised.

5 First, that the project is not consistent
6 with a master plan. The 2016 downtown plan approved
7 in 1996 envisions one possible future for this
8 property but not the only possible future. The fact
9 that the 2016 plan recommended that the site might
10 ultimately be a good one for a parking deck did not
11 mandate that it be so, and, in fact, the city has
12 taken no steps to require the property to construct
13 the parking deck. The proposed office and residential
14 use is permitted by the zoning.

15 The property owner need not wait to find
16 out if the city will someday decide it wishes to
17 acquire the property for parking, nor do the drawings
18 in the plan that are illustrative of possible future
19 conditions the architects mentioned in their comments
20 constitute a limitation on the property's use. In
21 fact, a five-story building with a top-floor
22 residential is consistent with the zoning ordinance
23 and is not inconsistent with the master plan.

24 Item two: No parking. The site is in the
25 parking assessment district. The site has more than

1 Each building has unimpeded light and air
2 on three of their four facades. The Balmoral
3 Building's windows are set back at least five feet on
4 the north facade. That five-foot well provides
5 adequate light and air. The affected windows on the
6 Greenleaf Building are those at both the east and west
7 end of the south facade, as the center of the
8 Greenleaf Building south facade also has a well where
9 the windows are set back from the property line.

10 Each one of the affected windows on the
11 part of the south facade built through the lot line
12 have windows that face to the east and west, there as
13 into the window well in the center and facing the
14 street on the outside so that their light is at least
15 good and arguably better than that provided to the
16 Balmoral Building. The ordinance does not guarantee
17 no change in the amount of light and air, merely that
18 the board assure itself that there is adequate light
19 and air. In my opinion there is.

20 Item four, section 7.7B3, the diminished
21 value section: Counsel makes the argument the
22 building will diminish the value of the adjacent
23 buildings, thus the preliminary site plan cannot be
24 approved. He supports his argument with the written
25 opinion of the real estate broker for the Greenleaf

Building that the four residential apartments on the south wall will have diminishment of income due to the loss of views. The penthouse rent will be reduced from \$14,000 a month to \$10,000 a month, still beyond by budget I would add. The other apartments might likely have reductions, and the office would have a reduction as well, although it is hard to estimate that amount.

Presumably, his opinion would be similar for the Balmoral Building, where nothing in his letter distinguishes between those rental spaces on the window wall of the Greenleaf Building and those at the wall and the property line. Section 7.27B3 has two parts. One is that the location size and height of the building won't interfere with the reasonable development of adjoining property, and it obviously does not. The second is that the development will not diminish the value of the adjoining property.

Assuming that there is some reduction in rental income and that translate into some diminished value of the building, some reduction, no matter how small is, I do not believe, what the ordinance aims at. Many property owners might object to any building being built next to them and argue that any development will diminish their property value. It

construct a building on the lot line.

The Balmoral Building inferentially knew as well since it constructed with a blank wall along the easternmost part of the north facade. The question of what amount of diminished -- diminish in the value would trigger the violation of the ordinance need not be determined tonight. Reference to the basic purposes of zoning shows that the purpose of regulation is to prevent a major loss in value.

Nothing suggested to us indicates that the financial return that Balmoral or Greenleaf buildings will have after the Peabody building is constructed will not be reasonable or economically viable, although it may not be as high as it would be if the property owner in the middle of these two buildings continued to allow it to be vacant or limited its development to one or two stories.

One of the purposes of the zoning ordinance is to make public health -- is to promote public health, moral safety, comfort, convenience, and general welfare. Reading the requirements of 7.27B3 as an absolute bar against any building permitted by the terms of the zoning ordinance that negatively affects his neighbors would turn the zoning ordinance from a public shield, which it is clearly intended to

neither is nor should be the job of this board to choose between competing speculations whether proposed construction will reduce or increase value to a small degree.

Zoning is necessarily a three-point balance between the rights of adjoining property owners to develop their properties as they see fit, the right of their neighbor to not be disturbed, and the right of the people as embodied in the municipality to regulate land uses to achieve public purposes, some of which are listed in section 7.24 of the ordinance, for example, subsection F, to sustain the comfort, health, tranquility, and contentment of residents and attract new residents by reason of the city's favorable environment.

The construction that is proposed was completely foreseeable, although I do not think it is necessary for us to decide whether, or to what extent, the owner of the Green -- the Greenleaf Building waived the right to make the objection she makes to the preliminary site plan. It is noteworthy that not only was this issue foreseeable, it was actually foreseen. The earth retention system and construction barricade agreement of November 28, 2008, specifically mentions that owner of the Peabody site could

be, into a private sword benefiting the first to build.

Fifth: The proposed building is not compatible with the adjacent properties. Section 7.27B5 of the zoning ordinance requires the planning board to determine whether or not the proposed building will be compatible with other uses in buildings in the neighborhood and will not be contrary to the spirit and purpose of this chapter. We heard much about compatibility at the August 23rd meeting.

Regardless of whether compatibility is determined within the framework of visual appearance or on a structural basis, such as the alignment of floor levels, height, and mass, this building proposed is compatible and does comply with the spirit and purpose of the zoning ordinance.

The mixed-use nature is permitted. The visual effect of height, mass, and floor alignment, given the grades, are compatible. The zoning ordinance itself, and I believe, as Mr. Jeffares pointed out at the last meeting at section 7.24B, discourages monotonous construction, so that the objections that the building does not have masonry and punched windows is, to me, of no persuasive effect.

Six: Construction will necessarily result

1 in trespass. Simply put, that is not an issue that is
2 relevant to site plan review. The civil law
3 adequately provides remedies to property owners if
4 their neighbors invade their land without legal
5 justification. If the developer of the Peabody site
6 can't build what he is proposing to build without
7 trespassing or if doing so would be too expensive, he
8 will necessarily have to abandon the design and
9 resubmit for some other type of building. It is not a
10 basis to deny a site plan.

11 There are plenty of reasons for these three
12 property owners to cooperate. The comments made about
13 maintenance alone justify cooperation between the
14 parties. It isn't our place to dictate how those
15 interests can or should ultimately be resolved or if
16 they can be harmonized. I want to point out that
17 every communication device in use today has the
18 capability of two-way functionality.

19 I am loath to hold it for or against one
20 party that discussions have not been as frequent or as
21 wide-ranging as we, or any particular party, may wish.
22 Some of the issues that the property owners have
23 raised are things, as Mr. Koseck points out, that we
24 will consider at final site plan review. I can assure
25 you that this board will carry out a searching,

1 comprehensive review of the criteria for final site
2 plan approval.

3 Based on these, my personal comments and on
4 the record, including such facts and reasons as any of
5 my colleagues willing to join in this motion
6 articulate, I move approval of the preliminary site
7 plan for 34965 Woodward Avenue as submitted, subject
8 to the following seven conditions: One, the applicant
9 submit plans with nine total trees or obtain a waiver
10 from the staff arborist; two, the applicant verify
11 that there will be five pedestrian lights on Peabody;
12 three, the applicant provide a photometric plan and
13 lighting specifications at the time of final site plan
14 review; four, the applicant provide specification
15 sheets for all mechanical units to verify that the
16 screen wall is tall enough to sufficiently screen the
17 proposed units; five, the applicant submit plans
18 demonstrating the size and location of three usable
19 off-street loading spaces or obtain a variance from
20 the Zoning Board of Appeals; six, the applicant comply
21 with the requests of all city departments; and, seven,
22 the applicant provide material and color samples at
23 final site plan review.

24 MS. LAZAR: Thank you, Mr. Williams.

25 Do we have a second? Any discussion about

1 the motion? Mr. Koseck?

2 MR. KOSECK: I don't think there's anything
3 to add. I think you've touched on all the issues that
4 I see here, and, you know, there will be
5 constructability challenges just like there are
6 (inaudible) building that we saw last week and somehow
7 those things, I hope, get worked out, but I see it
8 exactly as you did, so I'm going to support the
9 motion.

10 MS. LAZAR: Any further comments from the
11 board?

12 Take it to the public. Any comments from
13 the public?

14 Bring it back to the board.

15 Yes, Mr. Williams.

16 MR. WILLIAMS: I want to make a comment
17 that almost all of my comments are -- were written
18 out, and I've given that to Carol, and so for those
19 interested in the record, the comments, almost
20 verbatim, will be repeated for the record in the
21 minutes.

22 MS. LAZAR: Thank you for all your efforts
23 too.

24 Okay. Okay. Then I think we'll do a roll
25 call, please.

1 MS. ECKER: Mr. Williams?

2 MR. WILLIAMS: Yes.

3 MS. ECKER: Mr. Jeffares?

4 MR. JEFFARES: Yes.

5 MS. ECKER: Mr. Boyle?

6 MR. BOYLE: Yes.

7 MS. ECKER: Mr. Koseck?

8 MR. KOSECK: Yes.

9 MS. ECKER: Ms. Lazar?

10 MS. LAZAR: Yes.

11 MS. ECKER: Chairman Clein is recused.

12 MS. LAZAR: Thank you, to the public. We
13 look forward to seeing you further along in the
14 process.

15 MS. ECKER: Thank you.

9/13/2017

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1 CERTIFICATE OF NOTARY
2 STATE OF MICHIGAN)
3) SS
4 COUNTY OF OAKLAND)
5

6 I, Susanne Ellen Gorman, a Notary Public in
7 and for the above county and state, do hereby certify
8 that the above recording was taken before me at the
9 time and place hereinbefore set forth; that this is a
10 true, full and correct transcript of my stenographic
11 notes so taken; and that I am not related to, nor of
12 counsel to either party nor interested in the event of
13 this cause.
14



15 *Susanne Ellen Gorman*

16 Susanne Ellen Gorman, CSR-9271 RPR
17 Notary Public,
18 Oakland County, Michigan.
19
20
21
22
23
24

25 My Commission expires: September 14, 2023

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**CITY OF BIRMINGHAM
PLANNING BOARD ACTION ITEMS
OF WEDNESDAY, JULY 26, 2017**

Item	Page
OLD BUSINESS 2010 Cole St., New mixed-use building (partially demolished building) Request for Community Impact Study ("CIS") and Preliminary Site Plan Review to allow the construction of a new three-story mixed-use building (postponed from June 28, 2017, request to postpone to August 23, 2017)	2
Motion by Mr. Boyle Seconded by Ms. Whipple-Boyce to postpone the hearing for 2010 Cole St. to August 23, 2017.	2
Motion carried, 4-0.	2
SPECIAL LAND USE PERMIT ("SLUP") REVIEW FINAL SITE PLAN AND DESIGN REVIEW 375 S. Eton, District Lofts Request for approval of a commercial office use over 6,000 sq. ft. in size	2
Motion by Mr. Boyle Seconded by Mr. Koseck to recommend approval of the Final Site Plan and Special Land Use Permit for 375 S. Eton subject to the following condition: 1) The applicant adds one or more entrances along S. Eton and obtain Administrative Approval for same.	3
Motion carried, 4-0.	3
FINAL SITE PLAN AND DESIGN REVIEW 298 S. Old Woodward Ave. (former Doctors House Call Building) Request for approval of a new five-story hotel with commercial and residential uses	3
Motion by Ms. Whipple-Boyce Seconded by Mr. Boyle to postpone the matter of 298 S. Old Woodward Ave. to August 9, 2017.	4
Motion carried, 4-0.	4
COMMUNITY IMPACT STATEMENT ("CIS") REVIEW PRELIMINARY SITE PLAN REVIEW 34965 Woodward Ave. (former Peabody's Restaurant)	4

Item	Page
Request for approval of the CIS to allow a new five-story mixed-use building to be constructed	
<p>Motion by Mr. Boyle Seconded by Mr. Koseck to accept the CIS as provided by the applicant for the proposed development at 34965 Woodward with the following conditions: (1) Provide mitigation strategies for control of noise, vibration and dust; (2) Applicant will be required to bury all utilities on the site; and (3) Applicant provide information on all life safety issues and Fire Dept. approval, as well as details on the proposed security system provided to and approved by the Police Dept.</p>	<p>7</p>
<p>Motion carried, 4-0.</p>	<p>8</p>
<p>Motion by Mr. Boyle to postpone a decision on the Preliminary Site Plan for 34965 Woodward Ave. to August 23, 2017.</p>	<p>9</p>
<p>Motion carried, 4-0.</p>	<p>9</p>

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, JULY 26, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on July 26, 2017. Vice-Chairperson Gillian Lazar convened the meeting at 7:31 p.m.

Present: Vice Chairperson Gillian Lazar; Board Members Robin Boyle, Bert Koseck, Janelle Whipple-Boyce; Student Representatives Ariana Afrakhteh, Isabella Niskar

Absent: Chairman Scott Clein; Board Members Stuart Jeffares, Bryan Williams; Alternate Board Members Lisa Prasad, Daniel Share

Administration: Matthew Baka, Sr. Planner
Jana Ecker, Planning Director
Carole Salutes, Recording Secretary

07-138-17

APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING OF JULY 12, 2017

It was discovered there were not enough members present at the July 12 meeting to form a quorum. Therefore, the minutes were postponed to the August 9, 2017 Planning Board meeting.

07-139-17

CHAIRPERSON'S COMMENTS

Ms. Ecker advised that only four board members are present and one member has to recuse herself on any substantive issue with regard to 298 S. Old Woodward Ave., the Boutique Hotel. Therefore, there will not be a quorum of the Planning Board present to discuss the hotel and that matter will be postponed to a future date. All other hearings may proceed with the caveat that everyone knows that in order for something to pass the support of all four members is needed. None of the applicants stepped forward to ask for postponement to a later date.

07-140-17

APPROVAL OF THE AGENDA

Vice-Chairperson Lazar announced that 2010 Cole St. has asked for postponement to August 23, 2017.

07-141-17

OLD BUSINESS

**1. 2010 Cole St., New mixed-use building (partially demolished building)
Request for Community Impact Study ("CIS") and Preliminary Site Plan Review to
allow the construction of a new three-story mixed-use building (postponed from June
28, 2017, request to postpone to August 23, 2017)**

Vice-Chairperson Ms. Lazar indicated she is recusing herself regarding substantive issues on this matter due to a familial relationship with the applicant. However, the City Attorney has advised that her presence may be counted towards a quorum and that she may vote on this procedural matter so long as no substantive issues are discussed.

Motion by Mr. Boyle

Seconded by Ms. Whipple-Boyce to postpone the hearing for 2010 Cole St. to August 23, 2017,

Motion carried, 4-0.

VOICE VOTE

Yeas: Boyle, Whipple-Boyce, Koseck, Lazar

Nays: None

Absent: Clein, Jeffares, Williams

07-142-17

**SPECIAL LAND USE PERMIT ("SLUP") REVIEW
FINAL SITE PLAN AND DESIGN REVIEW**

375 S. Eton, District Lofts

Request for approval of a commercial office use over 6,000 sq. ft. in size

Ms. Ecker explained the subject site is part of a larger site including the existing Big Rock Chop House, the parking deck, the Reserve banquet facility, and the District Lofts Villa St. Building A and Building B (currently under construction), and has a total land area of 3.54 acres. It is located on the southeast corner of S. Eton and Maple Rd., and extends down to Villa St. to the south.

The applicant is completing construction of the final phase of the entire development which was originally approved on August 6, 2006. This final phase includes a four-story mixed-use building containing 18 residential loft units, and office space on the first floor (Building B). A single office tenant (Oppenheimer Financial) is now proposing to occupy approximately 10,000 sq. ft. of space on the first floor of Building B. The first-floor use is now proposed to change from retail/residential to office use. As the single office user wishes to occupy more than 6,000 sq. ft., a SLUP and approval from the Planning Board and City Commission is required.

Design Review

The proposed building design matches the contemporary style of the existing District Lofts building next door, while using some traditional style materials to blend in with the historic Big Rock Restaurant and The Reserve to create a building design that is harmonious with both the

Mixed-Use ("MX") District on the east side of Eton and the Single-Family Residential District on the west side of Eton. Overall, the proposed design of Building B is compatible with the vision for the MX District contained in the Eton Road Corridor Plan. The only design changes that are proposed at this time with the proposed conversion from retail/residential to office use on the first floor are the proposed decommissioning of several doors along all elevations. The only office entrance open to the public is proposed at the southwest corner of the building, facing Villa St. The residential entrance is on the east elevation.

Signage: The applicant has submitted plans that depict signage on the west and south elevations. The name letter signs are proposed to be placed 12 ft. above finish grade and are 18 in. high and 9 ft. long. The signs will feature the name of the tenant, Oppenheimer, in brushed stainless steel metal lettering. The lettering will be attached to the metal canopy over the west and south elevations. The signs will be 31.40 sq. ft. which is well under the maximum allowed by the Birmingham Sign Ordinance for that building.

Mr. Victor Saroki, Architect, was present with Messrs. John Kelly and J.C. Cataldo, the contractors representing ownership. Oppenheimer will employ approximately thirty people in Birmingham. They plan to take out a few doors and replace them with windows that are consistent with the existing storefront windows. In their opinion this is a good use and it meets the design guidelines that were intended for the Eton Rd. Corridor Plan. He passed around a sample of the brushed stainless sign material.

Motion by Mr. Boyle

Seconded by Mr. Koseck to recommend approval of the Final Site Plan and Special Land Use Permit for 375 S. Eton subject to the following condition:

1) The applicant adds one or more entrances along S. Eton and obtain Administrative Approval for same.

There were no comments from the public regarding the motion at 7:50 p.m.

Motion carried, 4-0.

VOICE VOTE

Yeas: Boyle, Koseck, Lazar, Whipple-Boyce

Nays: None

Absent: Clein, Jeffares, Williams

07-143-17

FINAL SITE PLAN AND DESIGN REVIEW

298 S. Old Woodward Ave. (former Doctors House Call Building)

Request for approval of a new five-story hotel with commercial and residential uses

Vice-Chairperson Ms. Lazar indicated she is recusing herself regarding substantive issues on this matter due to a familial relationship with the applicant. However, the City Attorney has advised that her presence may be counted towards a quorum and that she may vote on this procedural matter so long as no substantive issues are discussed.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Boyle to postpone the matter of 298 S. Old Woodward Ave. to August 9, 2017.

Motion carried, 4-0.

VOICE VOTE

Yeas: Whipple-Boyce, Boyle, Koseck, Lazar

Nays: None

Absent: Clein, Jeffares, Williams

07-144-17

**COMMUNITY IMPACT STATEMENT ("CIS") REVIEW
PRELIMINARY SITE PLAN REVIEW**

34965 Woodward Ave. (former Peabody's Restaurant)

Request for approval of the CIS to allow a new five-story mixed-use building to be constructed

Mr. Baka explained the subject site is currently vacant land where the former Peabody's Restaurant and the Art & Frame Station were located, and has a total land area of .597 acres. It is located on the east side of Peabody St., on the west side of Woodward Ave. and south of Maple Rd. The applicant is proposing to construct a 161,910 sq. ft. (including basement levels), five-story mixed-use building. The building will provide two levels of underground off-street parking; first floor retail/office; second and third floors office; fourth floor commercial/residential; and fifth floor residential. Parking for the residential units will be provided below grade in the parking garage. As the building is located within the Parking Assessment District, no on-site parking is required for retail, commercial or office uses. The applicant was required to prepare a Community Impact Study in accordance with Article 7, section 7.27(E) of the Zoning Ordinance as they are proposing a new building containing more than 20,000 sq. ft. of gross floor area.

CIS

The proposed development and its uses relate to the pedestrian, as the building is located at the property line and is proposed with human scale detailing on the first floor, including canopies, large windows, attractive stone and masonry facades, and elegant pedestrian entrances from both adjacent streets. The 2016 Plan encourages proper building mass and scale that creates an environment that is comfortable to pedestrians walking Downtown. The proposed development will help improve the visual appearance of the area by introducing a denser, more compact development with enough height to create a street wall along Peabody St. and Woodward Ave. The main entry to the building is located on Peabody St.

The applicant has submitted a Phase 1 Environmental Site Assessment by SME dated August 5, 2016. The report indicates that there is some evidence of recognized environmental conditions ("RECs") associated with this property. SME concluded that the reported presence of contaminated soil and groundwater; the potential for additional environmental impact from unreported and/or undetected releases of hazardous substances and/or petroleum products associated with the properties historical uses (vehicle manufacturing and repair operations); and the potential for cross contamination by a northern site which was formerly a vehicle repair and gasoline station, are all considered to be REC's.

An abbreviated Phase 2 Environmental Site Assessment ("ESA") dated August 5, 2016 was also submitted by the applicant as a part of the CIS. Phase 2 involved the collecting and analyzing of

13 soil samples and two groundwater samples by SME. The results of SME's sampling were supplemented by a previous Phase 2 ESA conducted by McDowell & Associates on April 26th, 2015 where 12 soil samples were collected and analyzed.

Evidence of petroleum and other pollutants were found in the soil samples. The applicant has submitted a Brownfield Redevelopment Plan for the proposed development site dated March 16, 2016. The purpose of this is to seek reimbursement for the eligible remediation activities performed on the property. The necessity for a Brownfield Plan arose from the results of the Phase 1 and Phase 2 ESA.

Conclusions in the CIS were that although the building is located within Birmingham's Parking Assessment District which requires no additional parking, additional parking spaces are needed to service the retail options proposed on the first floor. The applicant is proposing 90 off-street parking spaces and 11 on-street parking spaces to alleviate the stress on the Parking Assessment District. The traffic impact study also notes that westbound left turns onto Peabody St. from Maple Rd. would benefit from extending the turn lane full width all the way to the near Woodward Ave. crosswalk due to the larger queue lengths imposed by the new development. Other traffic impacts of the development will be relatively minor.

Mr. Chris Longe, Architect for the project, responded to Mr. Boyle. They expect to have ten or more rental units. Employees and residents will have access to the on-site parking. He was confident that people using the building will find places to park.

Ms. Ecker stated the first floor is not required to be retail on the Woodward Ave. or Peabody sides.

Regarding noise, Mr. Longe said the mechanicals have been placed in the middle of their building, so noise does not impact the buildings to the north and south.

The Vice-Chairman called for comments from members of the public at 8:20 p.m.

Mr. Allen Green, 39577 Woodward Ave., Bloomfield Hills, represented the ownership of Balmoral, the building to the south of the proposed project. He voiced their objections to the project. Their building, along with the Greenleaf Trust, was designed as a gateway. Each side has windows and decorative architectural elements. Those features will essentially be hidden and that will cause a huge financial issue for their building. He did not see any way they could build this without trespassing on the Balmoral property. If the developer moved the building, adjusted the lot lines and created a visually impactful north and south wall between the buildings, it would be a huge improvement to the corridor. Two sides of two beautiful buildings would not be hidden and destroyed. He asked the board to consider the alternatives. Lastly, there has been no discussion with their neighboring developer about their plans and how the Balmoral building would be impacted.

Ms. Ecker stated the applicant has the right to build on their property. There would be some logistical issues to work out but the Building and Engineering Depts. would work with the applicant on those. Depending on where the windows were built, there was never an expectation that they would remain unblocked. A developer can either set back the windows a certain distance from the property line, or keep them there and use fire rated glass. In many cases when windows are constructed closer than would be permitted, there is a signed agreement by the owners saying they understand those windows could be covered up if the property next door gets developed to its potential.

Mr. Allen Green noted there are serious parking issues in that area. It has been a nightmare to get parking permits for their various tenants. He additionally remarked that each of the 1,500 sq. ft. apartment units proposed only has one window.

Mr. Koseck observed the Zoning Ordinance promotes contiguous buildings and not gaps or alleys between buildings. Cities are made up of buildings that have a variety of building materials and architectural styles. Apartments with one window are designed all the time. They are called lofts.

Ms. Patti Owens with Catalyst Development Co., the developer of Greenleaf Trust, said she has not had any input or conversation with the developers of this project. She doesn't feel that the massing is congruent with the vision for the City as was outlined to them and mandated to them by the City during the planning and development of their Greenleaf Trust Building. So they built what they felt was the idea of Birmingham which was to have a gateway building, a jewel on that corner. The proposed project feels like it is not a strong and harmonious continuation. The project's terraces that face east are within a handshake of the Greenleaf terraces facing east. This proposed building needs to be its own beautiful thing. Shrink it back a little bit. She understood when they built the building that their views to the south would be impacted if something else was built. So that is in their agreement and they installed the fireproof glass on those windows. However, that is only on two bays. The rest of their building is set back and has regular windows. Additionally, maintenance of the building would be severely impacted as they are currently dealing with an algae problem.

Her view of parking in the area is that it is an absolute nightmare. She recommended that the Planning Board take a good hard look at that to make sure they are not overburdening that area with not enough parking for this rather large development.

Mr. Boyle suggested looking at Fifth Ave, Washington Blvd, Princess St. to see the fantastic street walls that have been constructed over time using different architects, owners, and sites. That is the reality of a city. Just walk along Maple Rd. That was built over time using different heights, different materials, different owners and it works. So it will be difficult for the speakers to make their case to him.

Mr. Koseck said he knows the building can go up without touching the neighbors. Ms. Whipple-Boyce noted the Varsity Shop site knew to consider the impact their adjoining neighbors might have when they decided not to put windows on the side of their building. She finds it unfortunate that covering the adjoining windows wasn't considered in the applicant's CIS.

Vice Chairperson Lazar encouraged the applicant to engage in conversation with the neighbors to the north and south in order to reach some kind of agreement. Ms. Whipple-Boyce agreed they should have gone the extra mile and engaged their neighbors. This is a huge impact on them and there is no assessment of that impact in the CIS.

Mr. Chris Longe said he knows there has been communication between the developer and the Greenleaf Building. He assured they can build this building. The building to the south is designed in such a way that it anticipates an infill building. The stair tower is solid block as it abuts the property and the window wall steps back whatever the code minimum is, anticipating the wall going up. There is also a 1 ft. easement on the north side abutting the Greenleaf Building. The agreement mentions there might be a building there some day and goes so far

as to talk about taking off the window awnings in that case. The strict letter of the law has been met as far as the CIS.

Mr. Koseck thought the concerns he has heard from the neighbors are more design concerns rather than CIS concerns. Vice-Chairperson Lazar observed that by adopting the CIS the Planning Board is not approving the project.

Motion by Mr. Boyle

Seconded by Mr. Koseck to accept the CIS as provided by the applicant for the proposed development at 34965 Woodward with the following conditions:

- (1) Provide mitigation strategies for control of noise, vibration and dust;**
- (2) Applicant will be required to bury all utilities on the site; and**
- (3) Applicant provide information on all life safety issues and Fire Dept. approval, as well as details on the proposed security system provided to and approved by the Police Dept.**

No one from the audience wished to speak on the motion at 9:15 p.m.

Motion carried, 4-0.

ROLLCALL VOTE

Yeas: Boyle, Koseck, Lazar, Whipple-Boyce

Nays: None

Absent: Clein, Jeffares, Williams

Preliminary Site Plan

Mr. Baka reported on the Preliminary Site Plan. The property is zoned B-4 in the underlying zoning and D-4 in the Downtown Overlay District. In accordance with Article 4, section 4.24 C (2) of the Zoning Ordinance, developments with over 50,000 sq. ft. of office space require two usable off-street loading spaces, and commercial uses from 5,001 to 20,000 sq. ft. require one usable off-street loading space. The plans do not display any off-street loading spaces. ***The applicant will need to submit plans demonstrating the size and location of three usable off-street loading spaces, or obtain a variance from the Board of Zoning Appeals.***

Design Review

The applicant is proposing to utilize the following materials for the construction of the five-story, mixed-use building:

- Stone panels along the lower level of all façades;
- Masonry veneer along the upper levels of all façades;
- Stone for the base of the building;
- Steel window and door system;
- Extensive window glazing on all facades.

Discussion considered the distinction between office and commercial on the fourth floor. Mr. Koseck noted the intent to get to five floors was to have residential on floors 4 and 5 in order to populate the Downtown and not put an additional burden on the parking structures.

Mr. Chris Longe said his building will have a significant entrance off of Woodward Ave. and off of Peabody St. He went through a PowerPoint and described the exterior elevation and interior layout along with the proposed materials. The building goes to the property line but the actual

first floor steps back on both the Woodward Ave. and Peabody St. sides. The reason for that is there is only 5 ft. of sidewalk there. They will internally brace the building because of the configuration of the site. Ten residential units are anticipated and 15 parking spaces are allowed for them. They would be open to putting windows on the side of their building, but didn't think it would be proper to do considering their proximity to the north and south neighbors.

Members of the public were invited to comment at this time.

Ms. Patti Owens reiterated her disappointment about the lack of communication between the developer and their neighbors. She agrees the proposed building needs to happen but she believes it should be stepped back to allow each building to stand on its own. She doesn't think that one building should benefit at another's detriment.

Mr. Allen Green said they are concerned about the value of their building and the operational issues. When the proposed building goes up next to them it will block the air and light of the 50 windows on that side. Their tenants looking out of those 50 windows a few feet away will see only a masonry wall. Further, no details have been provided about maintenance and how the properties relate to each other. For the buildings to be consistent with each other there may be insets anywhere between 5 and 15 ft. to be compatible with the buildings on either side. He asked the board to consider these issues, how the buildings interrelate, and whether this building is harmonious and meets the standards that are required in the Overlay District to get the fifth floor.

Mr. Koseck commented there are only four board members present and this is a sizable important project. He would like some additional information that would help him understand the design and how it speaks to the neighbors. He wanted to see a rendering of this building and how it relates to the neighboring buildings. Also, he wanted a cross section between the buildings to understand how they are abutting. Ms. Whipple-Boyce indicated she likes the building very much. She appreciates the contrast and the differentiation. In addition to what Mr. Koseck asked for, she wanted clarity on the fourth floor uses. She requested the applicant to review Article 7, 7.27 to see if they are meeting the ordinance well enough. Also, she wanted everyone to talk to each other.

Mr. Boyle thought the comments made by his colleagues are all very relevant.

Motion by Mr. Boyle to postpone a decision on the Preliminary Site Plan for 34965 Woodward Ave. to August 23, 2017.

At 10:20 p.m. there were no comments on the motion from members of the public.

Motion carried, 4-0.

VOICE VOTE

Yeas: Boyle, Koseck, Lazar, Whipple-Boyce

Nays: None

Absent: Clein, Jeffares, Williams

07-145-17

MISCELLANEOUS BUSINESS AND COMMUNICATIONS

- a. Communications (none)
- b. Administrative Approval Correspondence
 - 856 N. Old Woodward Ave., The Pearl - Details for administrative approval request are in response to Planning Dept. comments dated 06-01-2017 for Project Number JTBE17-00. When the first architect designed the structure it wasn't enough to carry the load of the building. The next architect had to change where all the columns were placed throughout the building and make other changes according to the realignment.
- c. Draft Agenda for the Regular Planning Board Meeting on August 9, 2017
 - Definition of Personal Service, public hearing;
 - 298 S. Old Woodward Ave., Final Site Plan and Design Review;
 - Bistro regulations, study session;
 - DRB review process vs the Planning Board, study session;
 - Economic Development boundaries, study session.
- d. Other Business
 - At their last meeting the City Commission reviewed the Planning Board's Action List in light of some of the comments that were made at the joint meeting. They re-prioritized some of the items on that list.

It was discussed that the City Commission has begun using the Planning Board Action List to establish their policy priorities with regard to planning. Recently they have taken a more active role in looking at the Action List.

07-146-17

PLANNING DIVISION ACTION ITEMS

- a. Staff report on previous requests (none)
- b. Additional items from tonight's meeting (none)

07-147-17

ADJOURNMENT

No further business being evident, the Chairman adjourned the meeting at 10:30 p.m.

Jana Ecker
Planning Director

**CITY OF BIRMINGHAM
PLANNING BOARD ACTION ITEMS
OF WEDNESDAY, AUGUST 23, 2017**

Item	Page
OLD BUSINESS	
Preliminary Site Plan Review	
1. 2010 Cole St. New mixed-use building (partially demolished building) Request for Preliminary Site Plan Review to allow the construction of a new three-story mixed-use building (postponed from July 26, 2017)	2
Motion by Mr. Share Seconded by Mr. Koseck to approve the Preliminary Site Review for 2010 Cole St. including setting the front setback to match the front setback of the adjacent pre-existing building to the east, subject to the following conditions: 1) The applicant provide a floor plan indicating the number of rooms within the two residential units to ensure all density requirements have been met; 2) The applicant verify that the first story floor-to-ceiling finished height is at least 12 ft. or obtain a variance from the Board of Zoning Appeals; 3) The applicant submit rooftop plans and specification sheets for all proposed rooftop mechanical units and screening at Final Site Plan; 4) The applicant submit a detailed landscape plan with the size of all plant material at the time of planting to verify size requirements have been met including landscaping on the east parking lot; 5) The applicant add two street trees and four street lights or obtain a variance from the Board of Zoning Appeals; 6) The applicant submit a photometric plan and specification sheets for all proposed light fixtures at Final Site Plan Review; 7) The applicant provide a full list of building and screenwall materials and specifications sheets, as well as glazing calculations at Final Site Plan Review; 8) The applicant comply with the requirements of all City Departments; and 9) The applicant add bike parking to the site.	4
Motion carried, 4-2.	5
2. 34965 Woodward Ave. (former Peabody's Restaurant) Request for approval of the Preliminary Site Plan to allow a new five-story mixed-use building to be constructed (postponed from July 26, 2017)	6

Item	Page
<p>Motion by Mr. Share Seconded by Mr. Williams to postpone the application for Preliminary Site Plan for 34965 Woodward Ave. to September 13, 2017 and to suspend the rules to hear a site plan at that meeting.</p>	11
<p>Motion carried, 7-0.</p>	11
<p>FINAL SITE PLAN AND DESIGN REVIEW</p>	
<p>1. 277 Pierce St. (former Varsity Shop) Request for approval of a five-story mixed-use building with first-floor retail</p>	11
<p>Motion by Mr. Koseck Seconded by Mr. Boyle to approve the Final Site Plan and Design Review for 277 Pierce St. subject to the following conditions: 1) The applicant provide noise and vibration mitigation strategies prior to obtaining a Building Permit; 2) The applicant obtain a variance from the BZA to allow a commercial use above a residential use or eliminate the residential use in the lower level of the building; 3) Comply with the requests of all City Departments; and 4) The applicant reduce the light levels 5 ft. out from the property lines along Pierce and Merrill Sts. and obtain administrative approval, or obtain a variance from the BZA.</p>	13
<p>Motion carried, 7-0.</p>	13
<p>2. 344 Hamilton Row (Seven Greens Salad Co.) Final Design Review for approval of an outdoor dining platform in the street</p>	13
<p>Motion by Ms. Whipple-Boyce Seconded by Mr. Williams to approve the Final Design Review application for 344 Hamilton Row with the following conditions: 1) The applicant must receive a variance from the BZA in order to extend beyond their own storefront, or cut the platform back to be only in front of their storefront for administrative approval; 2) The applicant must provide a trash receptacle in the outdoor dining area; and 3) Address the issues raised by City Departments.</p>	14

Item	Page
Motion carried, 7-0.	14
MISCELLANEOUS BUSINESS AND COMMUNICATIONS	
a. <u>Communications</u>	15
Motion by Mr. Williams	
Seconded by Mr. Jeffares to consider an application for the rezoning of 191 N. Chester on September 13, 2017 and to waive the rules as to study sessions.	15
Motion carried, 7-0.	15

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, AUGUST 23, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on August 23, 2017. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Vice- Chairperson Gillian Lazar, Janelle Whipple-Boyce, Bryan Williams; Alternative Board Member Daniel Share

Absent: Alternate Board Members Lisa Prasad; Student Representatives Ariana Afrakhteh, Isabella Niskar

Administration: Matthew Baka, Sr. Planner
Jana Ecker, Planning Director
Carole Salutes, Recording Secretary

08-159-17

**APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING
OF AUGUST 9, 2017**

Ms. Whipple-Boyce made a change:

Page 9 - Second paragraph, third sentence, replace "to not allow" with "to allow."

Motion by Ms. Lazar

Seconded by Mr. Koseck to approve the Minutes of the Regular Planning Board Meeting of August 9, 2017 as amended.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Abstain: None

Absent: None

08-160-17

CHAIRPERSON'S COMMENTS (none)

08-161-17

APPROVAL OF THE AGENDA (no change)

08-162-17

OLD BUSINESS

Preliminary Site Plan Review

1. 2010 Cole St.

New mixed-use building (partially demolished building)

Request for Preliminary Site Plan Review to allow the construction of a new three-story mixed-use building (postponed from July 26, 2017)

Ms. Lazar recused herself due to a familial relationship. Chairman Clein recused himself from this and the next item on the agenda for business reasons. Mr. Share joined the board.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Koseck for Mr. Boyle to take the gavel as acting chairman.

Motion carried, 6-0.

VOICE VOTE

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

Nays: None

Absent: Prasad

Ms. Ecker described the subject site as a 0.77 acre parcel. The applicant has demolished a portion of an existing commercial building and is proposing to expand the first story and construct two additional stories above. The proposed first story of the building will consist of retail, fitness, and enclosed private residential parking spaces; the second story will be office space; and the third story will contain two residential units, giving the proposed building a grand total of 25,603 sq. ft.

On April 26, 2017, the applicant appeared before the Planning Board for a CIS and Preliminary Site Plan review. A motion to accept the CIS for 2010 Cole St. was made and passed with seven conditions. At this time the applicant has submitted soil boring information at the specific locations requested by the Planning Division, but none of the other six conditions of approval have been met regarding the CIS.

The board postponed the Preliminary Site Plan based on concerns about vehicle circulation in the parking lots (dead end lots causing cars to reverse back out onto Cole St.) and a request from the Planning Board that the longer side of the building be rotated to run along Cole St. instead of facing the parking lot on the east portion of the property. The site as proposed does not provide adequate parking for a restaurant. The applicant stated that a restaurant will not occupy the first floor of the development.

On June 28, 2017, the applicant appeared before the Planning Board with a revised site plan that provided two turnaround areas for vehicles at the south end of each of the parking lots to address the circulation issues raised by the Planning Board. Board members discussed the proposed changes and several members expressed a desire to have full circulation around the south end of the building to ensure that drivers would not have to back up through the parking lots to get back to Cole St. Also they felt that vehicles would end up parking in the turnaround area. Board members also expressed concern again about the orientation of the building towards the interior of the lot, and not along the street frontage. The board advised that they needed to hear a strong financial justification as to why they should approve the proposed orientation of the building which is not as recommended in the Eton Rd. Corridor Plan. After much discussion, the matter was postponed to August 23, 2017. There have been no revisions to the plan since last time. The owner is present to provide some financial justification as to why the changes, at least as to the orientation of the building, cannot be physically supported.

Mr. Share was concerned that all the parking lot landscaping is on the west side and there is none on the east side.

Mr. Jason Krieger with Krieger Klatt Architects was present along with Mr. Mark Mitchell, the owner and developer of the property. Mr. Krieger noted they tried to design the building in order to minimize any disturbance on the site because of the contaminants. They feel their plan is the best suited design for this site and to make the project financially feasible.

Mr. Mark Mitchell, 102 Pierce, said he bought the site in order to develop it and make Cole St. look a little better. The current building has been sealed from contaminants. Turning the building around would require a substantial environmental cleanup that would cost \$1 million or more. It would be difficult to get a return on that. He also would like to have the parking go around the back of the building but when he takes three stories off the building the economics just don't work. He is happy to take a couple more parking spots out to create a turn around so that cars pulling in don't have to back out.

Mr. Mitchell noted for Mr. Share that all of the contamination is currently encapsulated. They would re-encapsulate it again to make all the levels the same for the proposed structure. Also, they can modify the site plan to include some landscaping on the east side of the parking lot. Mr. Krieger replied to Ms. Whipple-Boyce's inquiry by saying the parking on the east side of the building will likely be for employees or guests. The primary parking for the public will be on the west side.

Mr. Koseck was concerned with the safety aspect of the parking and turnaround. Mr. Mitchell replied that the economic cleanup of taking 8 ft. off the rear wall of the building would cost several hundred thousand dollars. Tenants would already have to pay \$255/sq. ft. as the building currently sits. Then there would be the economics of not having the additional retail space or the office on the first and second floors. Mr. Koseck noted the driveway on the east side is right up against the building and doors exit out from the building directly onto the driveway.

The Acting Chairman called for comments from the audience at 8 p.m.

Mr. Greg Bogart, Sr. Vice-President of Colliers International, stated that if any more economic changes are made, this project will not make any sense. Once people see this building, he thinks it will spur other development in the area.

Mr. Jeffares expressed his thought that although this proposal is not absolutely the panacea of what they are looking for, it seems to make sense for the site.

Ms. Whipple-Boyce said she would love to see this development happen in this part of town; but she is disappointed that the building wasn't moved up to the street. However as a compromise she can accept the placement of the building. Nonetheless, she is struggling with the circulation of the traffic. She genuinely doesn't believe that the hatched lines will work as a place for people to turn around safely and get back out. What she does believe is that people will park in the hatched spots when they can't find anything else and vehicles will have no alternative other than to back out that long distance. What she would really like to see is the back end of the building shaved off so cars can drive behind it. She cannot support the creation of an unsafe condition on the south side.

Mr. Share recognized that with environmentally challenged sites like this, if development is to occur compromises will have to be made.

Motion by Mr. Share

Seconded by Mr. Koseck to approve the Preliminary Site Review for 2010 Cole St. including setting the front setback to match the front setback of the adjacent pre-existing building to the east subject to the following conditions:

- 1) The applicant provide a floor plan indicating the number of rooms within the two residential units to ensure all density requirements have been met;**
- 2) The applicant verify that the first story floor-to-ceiling finished height is at least 12 ft. or obtain a variance from the Board of Zoning Appeals;**
- 3) The applicant submit rooftop plans and specification sheets for all proposed rooftop mechanical units and screening at Final Site Plan;**
- 4) The applicant submit a detailed landscape plan with the size of all plant material at the time of planting to verify size requirements have been met including landscaping on the east parking lot;**
- 5) The applicant add two street trees and four street lights or obtain a variance from the Board of Zoning Appeals;**
- 6) The applicant submit a photometric plan and specification sheets for all proposed light fixtures at Final Site Plan Review;**
- 7) The applicant provide a full list of building and screen wall materials and specifications sheets, as well as glazing calculations at Final Site Plan Review;**
- 8) The applicant comply with the requirements of all City Departments; and**
- 9) The applicant add bike parking to the site.**

There were no comments from members of the public.

Mr. Koseck announced he cannot support the motion. There has been significant development in the Rail District and it has complied with the Zoning Ordinance. The

fundamental thing is that the safety issue scares him. The only argument he hears about taking any square footage off the building is financial.

Acting Chairman Boyle noted the board cannot verify the developer's financial statement and they have to take his word. Also, there is the concern that the building as configured may result in a circulation challenge that is certainly not satisfying to board members.

Mr. Mitchell stated he cannot take a slice off the rear to provide circulation that goes one way around the building. He said it would take \$32,400 off the rental income and that doesn't calculate in the increased environmental costs because of disturbing the ground. They are currently dealing with parking without the 8 ft. being taken off the building and there is no way to turn around. There is a utility easement that prevents a driveway easement from looping around the back of the adjacent building to the south.

Mr. Krieger explained the driveway to the west is over 22 ft. and easy to back out of. The spaces would be signed and policed by building management. In order to make a one-way drive, 10 ft. would have to come off the back of the building. The only issue with one-way is they would have to move their dumpsters to the east or the west and that would take out more parking.

Motion carried, 4-2.

ROLLCALL VOTE

Yeas: Share, Williams, Boyle, Jeffares

Nays: Koseck, Whipple-Boyce

Recused: Clein, Lazar

Absent: Prasad

Acting Chairman Boyle asked the applicant to spend quite a lot of time looking at the site plan and thinking about how they might use the three extra spaces to reach some of the challenges that Mr. Koseck has correctly raised about the safety and circulation.

08-163-17

Vice-Chairperson Lazar rejoined the board and took over the gavel.

2. 34965 Woodward Ave. (former Peabody's Restaurant)

Request for approval of the Preliminary Site Plan to allow a new five-story mixed-use building to be constructed (postponed from July 26, 2017)

Mr. Baka explained the petitioner has submitted an application for Preliminary Site Plan Review to construct a five-story building in the B4/D4 Zoning District. The property is located on the west side of Woodward Ave. on Peabody St. at the former location of Peabody's Restaurant and the former Art & Frame Station.

On July 26, 2017 the Planning Board reviewed the CIS & Preliminary Site Plan application for 34965 Woodward Ave. At that time, the board requested that the applicant provide additional information regarding the interfacing of the proposed

building with the two existing buildings on each side and how they will abut. Also, the board requested that the applicant provide additional renderings of the new building in context with the adjacent buildings. In addition, postponement was granted to provide the applicant time to engage with the neighboring property owners in light of the public comments made at the meeting. The applicant has now provided new details and renderings in addition to the previously submitted plans in order to supply additional information for the Planning Board to consider.

Design Review

The applicant is proposing to utilize the following materials for the construction of the five-story, mixed use building:

- Stone panels along the lower level of all façades;
- Masonry veneer along the upper levels of all façades;
- Stone for the base of the building;
- Steel window and door system; and
- Extensive window glazing on all facades.

The design of the building also includes balcony projections from the third floor on both facades of the building. The issue of projections over the right-of-way was recently discussed at the joint City Commission/Planning Board meeting. Staff intends to consult with the City Attorney prior to Final Site Plan Review to determine if an air rights agreement will be necessary to approve this aspect of the design.

Motion by Mr. Williams

Seconded by Mr. Jeffares to receive and file the following correspondence:

- E-mail dated August 17 from Christopher Longe with attachments;
- E-mail dated August 22 from Richard Rassel;
- E-mail dated August 23 from Clinton Baller;
- Letter dated August 21 addressed to Patti Owens from Bailey Schmidt. LLC;
- Letter dated August 21 addressed to Patti Owens from Aura Pinkster;
- Letter dated August 22 from Hobbs & Black Architects;
- Letter dated August 22 from Alan M. Greene, Dykema Gossett PLLC;
- Letter dated August 23 from Timothy Currier, Beier Howlett.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Recused: Clein

Absent: Prasad

Mr. Chris Longe, Architect for the redevelopment of the Peabody site, came forward. He showed their building in context with the entire block. Also, he showed how their building would interface with both the north and the south facades of the adjacent buildings. The buildings roughly equate in terms of their overall height and floor height. The earth retention system tiebacks into the Peabody property that were used for construction of the Greenleaf Trust Building were depicted. The intention with their

building is that someone can walk from Woodward Ave. through a leased space all the way to Peabody St. He included a number of pictures showing local conditions where buildings are abutting.

Mr. Longe noted they made efforts to meet with their neighbors as suggested at the last meeting. They have done that to the extent of meeting with the Balmoral folks, but because of scheduling issues there has not been a meeting with the people from the Catalyst building to the north.

Vice Chairperson Lazar called for comments from the public at 8:35 p.m.

Mr. Steve Simona, 32820 Woodward Ave., Suite 240, Royal Oak, was present on behalf of the Balmoral ownership. He observed they built something of the highest quality that they felt the City envisioned and required of them. They want to see the Peabody site developed, but not to their detriment. As currently proposed, the south wall would block fifty windows and light and air to their building. They feel what the applicant is proposing is not compatible with their building nor consistent with what was required of the Balmoral Building, or what the Zoning Ordinance requires. They will not allow trespass onto their property for maintenance.

Mr. Jason Novotny, Tower Pinkster, Architects, spoke on behalf of Catalyst Development and the Greenleaf Trust Building. When they brought the Greenleaf Trust Building to the board in 2008, it was viewed as one of two buildings that would be the crown jewel on the east entry to Downtown, following the principles that were laid out in the Master Plan. Between the two tower buildings the Master Plan calls for a two or three story parking structure. They worked towards developing an attractive, four-sided building. A blank wall would not fly. He is sure the Balmoral had the same discussions with their north elevation. Some of the things he sees that would have a significant impact to either the north or south sites are:

- Lighting;
- Glazing calculations do not play out.

Mr. Tom Phillips, Hobbs & Black Architects, 100 N. State St., Ann Arbor, said the Balmoral Building has much the same story. In designing the building they worked carefully with the City and were encouraged to develop the north side because it was a gateway and a key visual element on the drive south along Woodward Ave. Both of the buildings offer the applicant a unique site in that the occupants are not looking at blank walls. They are looking at two expensive, high quality elevations. By stepping back four or five feet from the property line, the applicant would provide a reasonable amount of light between the buildings as they face each other all the way up. As it exists the applicant's design offers no opportunity to maintain their exterior walls without trespassing.

Mr. Alan Greene, 3955 Woodward Ave., Dykema Gossett, PLLC, represented Woodward Brown Associates, the developer and owner of the Balmoral Building. Mr. Greene noted they have a very valuable building with a facade of 50 windows, made of stone, with balustrades. Tenants look for a space that has windows, but with the proposed building they will look straight into a brick wall. Further, the interior design is built around the windows. The real estate developer for Balmoral has submitted a letter

saying that the proposed building as currently designed and set will greatly diminish the value of the two buildings. The loss of investment on the walls, the impact on the tenants, the ability to rent the spaces, and how much they can be rented for will all contribute to diminished value. These two buildings were not built as if they were going to be blocked by other buildings. He urged the board to either deny the site plan or give guidance to the developer as to what they might like to see so they can come back with something better.

Mr. Clinton Ballard, 388 Greenwood, said the developer wants to maximize his floor area but is constrained by height. As the City has already zoned for seven to nine story buildings right across the street, it would be very interesting to have the infill building go seven to nine stories, provided adequate setbacks are respected. This would leave the developer with an equitable amount of leasable space and room for parking, and all three developers would enjoy access to light and views.

In response to Mr. Share, Mr. Baka explained that if windows are within 5 ft. of the property line they must be fire rated. Mr. Longe verified for Mr. Share that the view of the facade travelling up and down Woodward Ave. would not be materially different if the building was on the lot line or 5 ft. off. He added that it is an odd feature to not have the buildings touch. Mr. Tom Phillips said the 5 ft. setback would double the visual access to light and air - a 10 ft. view shed.

Mr. Novotny pointed out for Mr. Share why he thinks the design of the infill building is incompatible with the adjacent buildings. Their buildings have primarily punched window openings on a masonry facade and the proposed building has glass strip windows across the front.

Mr. Share received clarification from Mr. Novotny that if the building is built to the lot line, it is a problem for all three buildings with regard to maintenance issues. One building will have to flash into the other building so that water will not enter. Mr. Phillips explained these are not abutting buildings in the sense that they can be flashed together. So the applicant's building on a zero lot line would have an exterior wall facing the lot line and open to the weather with no way to maintain it without trespassing onto Balmoral property,

Mr. Novotny explained for Mr. Share that the first floor of both the Balmoral and Greenleaf Trust buildings abut the lot line. Beyond that, both buildings are set back 5 ft. Greenleaf's situation differs from Balmoral's in that the fifth story balconies would abut one another from the Greenleaf Trust Building to the Peabody Building. He does not believe the Balmoral has that same circumstance with outdoor spaces that are side-by-side. Mr. Longe noted there is a demising wall between them. Mr. Novotny added another difference between the Balmoral and Greenleaf buildings is the glass that is currently abutting the lot line for the Greenleaf building is fire rated so that it has the potential to be a zero lot line material.

Mr. Share queried how interior lighting on the north and south elevations is handled on the Peabody Building. Mr. Longe responded that there is natural light that comes in from the glazing on the other two facades.

Mr. Koseck thought that maximizing square footage area creates a little bit of "B" type of space. If they could pull the walls in on the upper floors by creating light wells and windows it would make the building even better in terms of marketability and lease rates. Further, he thought that architectural compatibility is the next step in review and not for this evening. Mr. Longe responded that it is an odd condition to have buildings not meet. The two buildings chose on their own to make their facades that face inwards towards Peabody's something nicer than they had to be. As any architect will tell you, one has to prepare for eventualities.

Mr. Share and Mr. Williams were in agreement that a lot of information came in today and it requires more study. Mr. Williams said he was not prepared to take any action on the proposal tonight.

Mr. Rick Rassel, Williams Williams Rattner & Plunkett, PC, 380 N. Old Woodward Ave., the legal counsel to Alden Development Group, the applicant, spoke about the importance of perspective:

- Mr. Currier and the planning staff are aligned on the questions that have been posed in Mr. Greene's letter;
- The proposal is consistent with the Master Plan and with the Zoning Ordinance;
- They are in a zero lot line infill district;
- The proposed parking and height of the building is consistent with the Zoning Ordinance;
- Mr. Currier has opined that the construction impact and future maintenance issues are not concerns for the Planning Board to be taking into account at this stage of the Preliminary Site Plan approval;
- The question comes down to a couple of things. Mr. Currier has observed in his letter that the zero lot line construction as proposed is consistent with the Zoning Ordinance and has been used in many parts of Downtown Birmingham. The owners of the Balmoral and Catalyst buildings installed fire related glass windows facing the former Peabody's lot in anticipation of potential zero lot line construction;
- Peabody's granted Catalyst an easement to construct sun shades; the sunshades to be taken down in the event of future construction of the Peabody building;
- The argument about incompatibility is really about economic harm as a result of this building being built to the lot lines which Balmoral and Catalyst absolutely knew of and agreed not to contest. Incompatibility is not about design review standards or architecture.

It is important that this process move along this evening.

Mr. Alan Greene stated that there are no fire rated windows on the north elevation of Balmoral. The compatibility is related to the nature of the construction. The things they did on their elevation were encouraged by the City. To not require the same here is where it is incompatible in his view. Additionally, Standard 7.27 (3) states that the location, size, and height of the building shall not diminish the value of neighboring property. They believe that the way it is being done now it will. What the board has before it reflects not a single change as a result of their meetings with Mr. Shifman.

Mr. Williams indicated that he would like information about the City's encouragement of construction on the south and north sides respectively as preserved in the record at both the Preliminary and Final Site Plan Reviews for both buildings. It is important that the board understand that issue. Mr. Boyle added that the board's perspective on development has changed since construction of the Balmoral and Catalyst buildings. He agreed with Mr. Williams that the board needs to see what they actually talked about at that time.

Ms. Whipple-Boyce said she had hoped that the developers would meet and come up with a great plan for all properties. Unfortunately, it doesn't sound like that will happen. She believes that as Staff and the City Attorney have advised, the Peabody proposal satisfies the requirements of the Zoning Ordinance. It will be tricky and complicated getting the building up and maintaining it. There seems to be a lot of good reasons to re-look at what is being proposed.

Mr. Jeffares said he always assumed that another building would be built on this site. To him, by this building being a little different, the other two buildings pop.

Motion by Mr. Share

Seconded by Mr. Williams to postpone the application for Preliminary Site Plan for 34965 Woodward Ave. to September 13, 2017 and to suspend the rules to hear a site plan at that meeting.

There were no comments on the motion from members of the public.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Recused: Clein

Absent: Prasad

08-164-17

FINAL SITE PLAN AND DESIGN REVIEW

Chairman Clein rejoined the board and Mr. Share, the alternate board member, left.

1. 277 Pierce St. (former Varsity Shop)

Request for approval of a five-story mixed-use building with first-floor retail

Ms. Ecker advised the subject parcel is currently the site of the Varsity Shop, and has a total land area of .111 acres. It is located on the northeast corner of Pierce St. and E. Merrill St.

The applicant is proposing to demolish the existing 8,387 sq. ft. two-story building to construct a 27,000 sq. ft., five-story mixed-use building. The building will provide a lower level recreation area for the residential unit, first floor retail, second floor retail or

commercial, third and fourth floor office use, and fifth floor residential use. Parking for the residential unit will be provided at grade in a two car garage adjacent to the public alley located on the east side of the building.

As the proposed site is located within the Central Business Historic District, the applicant was required to obtain approval from the Historic District Commission ("HDC") to demolish the existing building, and approval for the construction of the new mixed-use building. Demolition approval was granted in 2016, and approval for construction of the new five-story building was obtained by the HDC at their meeting on July 19, 2017.

CIS

The applicant was also required to prepare a Community Impact Study ("CIS") in accordance with Article 7, section 7.27(E) of the Zoning Ordinance as they are proposing a new building containing more than 20,000 sq. ft. of gross floor area. On May 24, 2017, the Planning Board reviewed and accepted the CIS with six conditions. All of the information has now been provided except that no information has yet been provided on proposed mitigation strategies for the control of noise or vibration during construction.

Site Plan

On May 24, 2017 after accepting the CIS, the Planning Board reviewed the Preliminary Site Plan for 277 Pierce, and after much discussion, voted to approve the site plan with several conditions.

The applicant has now provided a photometric plan and specification sheets for the proposed lighting; has verified that the rooftop screening is sufficient to screen the proposed rooftop mechanical units; and they have obtained approval from the HDC; and have provided material and color samples for review. The applicant has also provided contextual renderings as requested by the Planning Board.

Design Review

The applicant has submitted design materials for review. The proposed plans for the five-story, mixed-use building indicate the following materials:

- Flash Red Velour Brick on all facades;
- Flashed Manganese Velour accenting brick;
- Buff limestone for the base and caps of the building;
- Leathered Cambrian Black granite below ground floor windows;
- Aluminum building panels for the third floor façade;
- Metal coping along the parapet;
- Aluminum windows and doors;
- Stainless steel cladding entry canopies with laminated and frosted glass; and
- Extensive window glazing (clear glass) on all facades.

A materials board was passed around.

Ms. Ecker advised that the development conforms to the building standards envisioned in the Downtown Birmingham 2016 Plan, as it is designed with high quality materials, is built to the property lines, and has pedestrian scale details including steel and glass canopies, extensive window glazing, stainless steel cladding, and tasteful streetscape landscaping.

In accordance with the Planning Board's comments about the blank wall that was proposed on the north elevation, the wall has now been differentiated by the addition of four recessed panels of different colored brick along with six fire rated glass windows.

Mr. Victor Saroki, Architect, was present along with Ms. Evan Yaldo, Project Architect from his office; Mr. Tony Antone, Vice-President for Kojaian Management; and Mr. Jim Butler, PEA, Civil Engineer. Mr. Saroki indicated they intend to satisfy all of the issues in the report. They are of the opinion that the Building Code allows one stairway as opposed to two for the one residential unit at the top. They intend to demonstrate that to the Building Official in order to get his approval.

With regard to noise and vibration controls, they will work with the owner's construction manager to come up with some strategies for review with staff prior to submitting for a Building Permit. Their intention is to appear before the BZA to request a variance for a residential use as an amenity on the lower level below a commercial use.

Motion by Mr. Koseck

Seconded by Mr. Boyle to approve the Final Site Plan & Design Review for 277 Pierce St. subject to the following conditions:

- 1) The applicant provide noise and vibration mitigation strategies prior to obtaining a Building Permit;**
- 2) The applicant obtain a variance from the BZA to allow a commercial use above a residential use or eliminate the residential use in the lower level of the building;**
- 3) Comply with the requests of all City Departments; and**
- 4) The applicant reduce the light levels 5 ft. out from the property lines along Pierce and Merrill Sts. and obtain administrative approval, or obtain a variance from the BZA.**

Mr. Koseck observed the use of the lower level is unique and no ordinance could have contemplated that. He thinks the applicant has a case to be made to the BZA.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Prasad

08-165-17

2. 344 Hamilton Row (Seven Greens Salad Co.)

Final Design Review for approval of an outdoor dining platform in the street

Mr. Baka advised the building is located on the south side of Hamilton Row between Ferndale Ave. and Park St. The applicant proposes to construct an outdoor dining deck utilizing one existing parallel parking space and a "no parking" space. The applicant was approved for the use of one on-street parking space by the Parking Advisory Committee on April 5, 2017.

The tables and chairs proposed for the outdoor dining platform are synthetic teak outdoor/indoor furniture with black frames. No umbrellas are proposed at this time. The location of the platform allows for the required 5 ft. pedestrian path to be maintained on the sidewalk.

The parallel parking space that the dining platform was approved to use extends in front of the neighboring property at 360 Hamilton Row, which is currently occupied by Luxe Homes. The plans as submitted depict the dining platform extending in front of that storefront as well for the length of the parking space. However, as indicated in Article 4.0, section 4.44, (A), 7 (c), the platform is not permitted to extend in front of the neighboring storefront as it is not vacant. ***Accordingly, the applicant will need to receive a variance from the Board of Zoning Appeals to extend in front of the neighboring property.***

Design

The applicant intends to construct the deck of the platform with six adjoining "TREX" decking platforms. The deck is proposed to be enclosed by a 42 in. high aluminum railing on all four sides with a 5 ft. opening in front of the restaurant. Sample material and color selections were not provided. The applicant must indicate what color the material will be for the decking and railing.

Ms. Kelly Schafer, the restaurant owner, said the railings will be black aluminum and the Trex decking is brownish and matches the chairs.

There was no audience present to comment.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Williams to approve the Final Design Review application for 344 Hamilton Row with the following conditions:

- 1) The applicant must receive a variance from the BZA in order to extend beyond their own storefront, or cut the platform back to be only in front of their storefront for administrative approval;**
- 2) The applicant must provide a trash receptacle in the outdoor dining area; and**
- 3) Address the issues raised by City Departments.**

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Prasad

08-166-17

MISCELLANEOUS BUSINESS AND COMMUNICATIONS

a. Communications

- Ms. Ecker explained the property owner of 191 N. Chester, The First Church of Christ Scientist has submitted an application for rezoning from TZ-1 to TZ-2. The applicant will be out of the country on September 27 so they ask if it is possible to add them to the study session meeting on September 13 because otherwise they would have to wait until the end of October.

Motion by Mr. Williams

Seconded by Mr. Jeffares to consider an application for the rezoning of 191 N. Chester on September 13, 2017 and to waive the rules as to study sessions.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Prasad

b. Administrative Approval Correspondence

- 602 Riverside, Unit #6, Riverside Place Condominium - Revision to the site plan to adjust the location of the rear retaining walls.
- 300 Strathmore, Big Beaver and Adams Replace - Project consists of the installation and operation of antennas and associated equipment cabinet(s) for Verizon Wireless Telecommunications Network. A total of six antennas, 12 remote jack in heads and one Ray cap mounted on an existing monopole and cabinet(s) are proposed at the site.
- 999 Haynes - Moving Dumpster enclosure.

c. Draft Agenda for the Regular Planning Board Meeting on September 13, 2017

- 34965 Woodward Ave., Preliminary Site Plan Review;
- 191 N. Chester, Application for Rezoning from TZ-1 to TZ-2;
- Bistro Requirements study session;
- Economic Development Licenses expansion of boundaries study session;
- DRB and Planning Board Review process study session

d. Other Business (none)

08-167-17

PLANNING DIVISION ACTION ITEMS

- a. Staff report on previous requests (none)
- b. Additional items from tonight's meeting (none)

08-168-17

ADJOURNMENT

No further business being evident, the Chairman adjourned the meeting at 10:39 p.m.

Jana Ecker
Planning Director

APPROVED

**CITY OF BIRMINGHAM
PLANNING BOARD ACTION ITEMS
OF WEDNESDAY, SEPTEMBER 13, 2017**

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1. 34965 Woodward Ave. - Mixed-Use Building (former Peabody's Restaurant)	2
Request for approval of the Preliminary Site Plan to allow a new five-story mixed-use building to be constructed (postponed from July 26 and August 23, 2017)	
Motion by Mr. Williams	7
Seconded by Mr. Jeffares that based on these comments and on the record, including such facts and reasons as any of my colleagues willing to join in this motion articulate, I move the approval of the Preliminary Site Plan for 34965 Woodward Avenue, as submitted, subject to the following seven conditions:	
1. The Applicant submit plans with nine total trees or obtain a waiver from the staff arborist;	
2. The Applicant verify that there will be five pedestrian lights on Peabody;	
3. The Applicant provide a photometric plan and lighting specifications at the time of Final Site Plan Review;	
4. The Applicant provide specification sheets for all mechanical units to verify that the screen wall is tall enough to sufficiently screen the proposed units;	
5. The Applicant submit plans demonstrating the size and location of three usable off-street loading spaces or obtain a variance from the Board of Zoning Appeals;	
6. The Applicant comply with the requests of all City Departments;	
7. The Applicant provide material and color samples at Final Site Plan Review.	8
Motion carried, 5-0.	
REZONING REQUEST	
1. 191 N. Chester, First Church of Christ, Scientist	8
Request for rezoning from TZ-1 to TZ-2 (Transitional Zoning) to allow	

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the adaptive reuse of the existing building for office use	10
<p>Motion by Mr. Koseck Seconded by Mr. Boyle to recommend approval to the City Commission for the rezoning of 191 N. Chester from TZ-1 (Transitional Zone 1) to TZ-2 (Transitional Zone 2).</p> <p>Motion carried, 6-0.</p>	10
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1. Economic Development Liquor License Boundaries	12
<p>Motion by Mr. Williams Seconded by Mr. Boyle to set a public hearing for October 25, 2017 to expand the boundaries of the Economic Development Liquor License to include the south end of the Triangle District and from Holland south in the Rail District.</p> <p>Motion carried, 6-0.</p>	12
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b. <u>Administrative Approval Request</u>	17
<p>Motion by Mr. Williams Seconded by Mr. Jeffares to administratively approve all of the proposed changes with the exception of the frosted glass on garage doors.</p> <p>Motion carried, 4-0.</p>	17

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, SEPTEMBER 13, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on September 13, 2017. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Vice- Chairperson Gillian Lazar, Bryan Williams

Absent: Board Member Janelle Whipple-Boyce; Alternate Board Members Lisa Prasad, Daniel Share; Student Representatives Ariana Afrakhteh, Isabella Niskar

Administration: Matthew Baka, Sr. Planner
Jana Ecker, Planning Director
Carole Salutes, Recording Secretary

09-169-17

**APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING OF
AUGUST 23, 2017**

Motion by Ms. Lazar

Seconded by Mr. Boyle to approve the Minutes of the Regular Planning Board Meeting of August 23, 2017 as presented.

Motion carried, 6-0.

VOICE VOTE

Yeas: Lazar, Clein, Boyle, Jeffares, Koseck, Williams

Nays: None

Absent: Whipple-Boyce

09-170-17

CHAIRPERSON'S COMMENTS

The Chairman advised the meeting tonight would consist of site plans as well as study sessions.

09-171-17

APPROVAL OF THE AGENDA (no change)

OLD BUSINESS

Preliminary Site Plan Review

- 1. 34965 Woodward Ave. - Mixed-Use Building (former Peabody's Restaurant)**
Request for approval of the Preliminary Site Plan to allow a new five-story mixed-use building to be constructed (postponed from July 26 and August 23, 2017)

Chairman Clein announced that he will recuse himself on this matter as he has in the past due to a business relationship with the project. Vice-Chairperson Lazar took the gavel.

Motion by Mr. Williams

Seconded by Mr. Koseck to receive and file the following correspondence received this evening:

- **Letter from Ron Rea dated 09-11-17;**
- **Letter from Alan M. Green of Dykema Gossett dated 09-11-17;**
- **Letter from Tim Currier, Beier Howlett dated 09-13-17.**

Motion carried, 6-0.

VOICE VOTE

Yeas: Williams, Koseck, Boyle, Jeffares, Lazar

Nays: None

Recused: Clein

Absent: Whipple-Boyce

Mr. Baka recalled that the applicant has submitted an application for Preliminary Site Plan Review to construct a five-story building in the B4/D4 District. The property is located on the west side of Woodward Ave. on Peabody at the former location of Peabody' Restaurant and the former Art & Frame Station.

On July 26, 2017 the Planning Board reviewed the CIS and Preliminary Site Plan application for 34965 Woodward Ave. At that time the Planning Board decided to accept the Community Impact Statement but postponed the Preliminary Site Plan Review. The board requested additional information regarding the interfacing of the proposed building with the adjacent buildings on each side along with renderings of the new building in context with the adjacent buildings. Additionally, the postponement was granted to provide the applicant time to engage with the neighboring property owners in light of public comments made at the meeting.

Mr. Baka recalled this proposal has been reviewed at several previous meetings. The last time it was discussed was on August 23, 2017. At that time there was extensive discussion about the interface of the proposed building with the two adjacent buildings. The Planning Board requested staff to do some research on the history of those buildings. The stated intent of providing this information was to determine if the buildings to the north and south of the subject site were encouraged or required to provide windows that abut the shared property lines of 34965 Woodward Ave.

A thorough review of the minutes and staff reports revealed no encouragement or requirements by the Planning Board or staff to install windows on the property lines abutting the 34965

Woodward Ave. site. The only comment was from the Building Dept. that indicated windows were not permitted on the property line. This was later resolved through the use of fire rated glass.

There have been no revisions to the plans that the board has already seen.

The plans do not display any off-street loading spaces. ***The applicant will need to submit plans demonstrating the size and location of three usable off-street loading spaces, or obtain a variance from the Board of Zoning Appeals ("BZA").***

Mr. Richard Rassel, Williams, Williams, Rattner and Plunkett, 380 N. Old Woodward Ave., spoke to represent Alden Development Group. With him was the Project Architect, Mr. Chris Longe and members of the ownership group. Mr. Rassel encouraged the board to move the project through Preliminary Site Plan Review. He noted that the Master Plan and the Zoning Ordinance in all respects treat this project as compliant. They are willing to work with their neighbors on the aspect of final design to try to achieve the best possible project for this important gateway to the City.

Mr. Alan Greene, Dykema Gossett, 39577 Woodward Ave., said he represents the owners of the Greenleaf Trust and Balmoral Buildings. He has presented information as to why this proposed new building is not compatible on the north and south side with the structures that exist. Ninety-seven windows on these two buildings are going to look out at a blank wall. Also, those buildings would be deprived of light and air which is a specific standard of the ordinance. Further, the material value of the buildings will be negatively impacted. They have also pointed out there will be numerous issues with respect to ongoing maintenance and repair of all three buildings. There are many alternatives that can address these concerns, but the site plan has not been revised since it was presented. The applicant is trying to maximize the space. He asked that this particular site plan be denied.

Mr. Williams gave a lengthy statement for inclusion in the record:

Since our meeting on August 23, 2017, I have had the opportunity to review more carefully the materials submitted by the applicant and by the neighboring property owners in the context of the full Zoning Ordinance. I have also listened to the comments tonight.

I want to thank Matt and Jana for researching approval documentation for the Greenleaf Trust & Balmoral Buildings. Their conclusion that there was no encouragement or requirement by the Planning Board or staff to install windows on the South & North property lines, respectively, is important.

I have concluded that the Applicant's proposal meets the requirements of the Zoning Ordinance for Preliminary Site Plan approval. The report of the staff makes that abundantly clear, as do the letters of Beier, Howlett dated August 23, 2017, and September 13, 2017 which have also been incorporated into the record and which form part of the basis for my comments.

The adjoining property owners' objections are detailed and weighty, but they do not justify denying the site plan. Let me respond to each of the major points which they have raised:

1. **The Project is not consistent with the Master Plan.**

The 2016 Downtown Plan approved in 1996 envisions one possible future for this property, but not the only possible future. The fact that the 2016 Plan recommended that the

site might ultimately be a good one for a parking deck did not mandate that it be so; and in fact the City has taken no steps to acquire the property to construct a parking deck. The proposed office and residential use is permitted by the zoning. The property owner need not wait to find out if the City will someday decide it wishes to acquire the property for parking. Nor do the drawings in the Plan that are illustrative of possible future conditions the architects mentioned in their comments constitute a limitation on the property's use.

In fact, a five-story building with the top floor residential is consistent with the Zoning Ordinance and is not inconsistent with the Master Plan.

2. **No Parking.**

The Site is in the Parking Assessment District. The site has more than enough parking to meet the requirements of the Zoning Ordinance for its residential component. On numerous occasions, this Board has made it clear that it will not and cannot prevent owners in the Parking Assessment District from developing their property because there may be a shortage of parking Monday through Friday at lunch time. The fact that the City may not have built enough public parking does not change the fact that this property owner and its predecessors, like many others, have paid into the Parking Assessment District with the understanding that it will not have to have on-site parking for non-residential uses.

3. **The Plan Violates Section 7.27.B(2), the Light and Air Clause of the Zoning Ordinance.**

Dykema Gossett has made an argument that construction of this building to the lot line will prevent adequate light and air reaching the adjacent properties in violation of Section 7.27.B(2) of the Zoning Ordinance.

I believe the significant word is "adequate".

In any event, taking the language of the ordinance at face value, there will be adequate light and air to both the Greenleaf Trust and Balmoral Buildings if this building is constructed to the lot line as proposed. Each building has unimpeded light and air on three of their four facades. The Balmoral Building's windows are set back 5 ft. on its north facade. That 5 ft. well provides adequate light and air. The affected windows on the Greenleaf Building are those at both the east and west end of the south facade, as the center of the Greenleaf Building's south facade also has a well where the windows are set back from the property line. Each one of the affected windows on the part of the south facade built to the lot line have windows that face the east and the west; that is, into the window well in the center and facing the street on the outside so that their light is at least as good, and arguably better, than that provided to the Balmoral Building.

The ordinance does not guarantee no change in the amount of light and air, merely that this Board assure itself that there is "adequate" light and air. In my opinion, there is.

4. **Section 7.27.B(3) – The Diminished Value Section.**

Counsel makes the argument that the building will diminish the value of the adjacent buildings; thus the Preliminary Site Plan cannot be approved. He supports his argument with the written opinion of the real estate broker for the Greenleaf Building that the four residential apartments on the south wall will have diminished rental income due to the loss of views. The penthouse rent will be reduced from \$14,000.00 a month to \$10,000.00 a month, still beyond my personal "budget". The other apartments "may likely" have reductions, and the office would have a reduction as well, although it is hard to estimate that amount. Presumably his

opinion would be similar for the Balmoral Building, although nothing in his letter distinguishes between those rental spaces on the window well of the Greenleaf Building and those at the wall on the property line.

Section 7.27.B(3) has two parts: one is that the location, size and height of the building won't interfere with the reasonable development of adjoining property, and it obviously does not. The second is that the development will not diminish the value of the adjoining property. Assuming that there is some reduction in rental income and that translates into some diminished value of the building, some reduction, no matter how small, is, I do not believe, what the ordinance aims at. Many property owners might object to any building being built next to them and argue that any development will diminish their property value. It neither is nor should be the job of this Board to choose between competing speculations whether proposed construction will reduce or increase value to a small degree.

Zoning is necessarily a three-pronged balance between the rights of adjoining property owners to develop their properties as they see fit; the right of their neighbor to not be disturbed; and the right of the people as embodied in the municipality to regulate land use to achieve public purposes, some of which are listed in Section 7.24 of the Zoning Ordinance – for example, sub-section (f) "to sustain the comfort, health, tranquility and contentment of residents and attract new residents by reason of the City's favorable environment".

The construction that is proposed was completely foreseeable. Although I do not think it is necessary for us to decide whether or to what extent the owner of the Greenleaf Building waived the right to make the objection she makes to the Preliminary Site Plan, it is noteworthy that not only was this issue foreseeable, it was actually foreseen. The Earth Retention System and Construction Barricade Agreement of November 28, 2008 specifically mentions that the owner of the Peabody site could construct a building on the lot line. The Balmoral Building inferentially knew as well, since it is constructed with a blank wall along the eastern-most part of its north facade.

The question of what amount of diminution of value would trigger the violation of the Zoning Ordinance need not be determined tonight. Reference to the basic purposes of zoning shows that the purpose of regulation is to prevent a major loss in value. Nothing suggested to us indicates that the financial return that Balmoral or Greenleaf Buildings will have after the Peabody Building is constructed will not be reasonable or economically viable, although it may not be as high as it would be if the property owner in the middle of these two buildings continued to allow it to be vacant or limited its development to one or two stories.

One of the purposes of the Zoning Ordinance is to promote public health, moral safety, comfort, convenience and general welfare. Reading the requirements of Section 7.27.B(3) as an absolute bar against any building permitted by the terms of the Zoning Ordinance that negatively affects its neighbors would turn the Zoning Ordinance from a public shield, which it clearly is intended to be, into a private sword benefitting the first to build.

5. **The Proposed Building Is Not Compatible With The Adjacent Properties.**

Section 7.27.B(5) of the Zoning Ordinance requires the Planning Board to determine whether or not the proposed Building "will be compatible with other uses and buildings in the neighborhood, and will not be contrary to the spirit and purpose of this Chapter".

We heard much about compatibility at the August 23 meeting. Regardless of whether the compatibility is determined within the framework of visual appearance or on a structural

basis, such as the alignment of floor levels, height and mass, this Building proposed is compatible and does comply with the spirit and purpose of the Zoning Ordinance. The mixed-use nature is permitted. The visual effect of height, mass and floor alignment, given the grades, are compatible. The Zoning Ordinance itself, at Section 7.24.B, as Mr. Jeffares pointed out at the last meeting, discourages monotonous construction so that the objections that the building does not have masonry with punched windows is to me of no persuasive effect.

6. **Construction Will Necessarily Result In Trespass.**

Simply put, that is not an issue that is relevant to site plan review. The civil law adequately provides remedies to property owners if their neighbors invade their land without legal justification. If the developer of the Peabody site can't build what he is proposing to build without trespassing, or if doing so would be too expensive, he will necessarily have to abandon this design and resubmit for some other type of building. It is not a basis to deny a site plan.

There are plenty of reasons for these three property owners to cooperate. The comments made about maintenance alone justify cooperation between the parties. It isn't our place to dictate how those interests can or should ultimately be resolved or if they can be harmonized. I'll only point out that every communication device in use today has the capability of two-way functionality. I am loathe to hold it for or against one party that discussions have not been as frequent or as wide-ranging as we or any particular party may wish.

Some of the issues that the property owners have raised are things, as Mr. Koseck points out, that we will consider at Final Site Plan review. I can assure you that this Board will carry out a searching, comprehensive review of the criteria for Final Site Plan Approval.

Motion by Mr. Williams

Seconded by Mr. Jeffares that based on these comments and on the record, including such facts and reasons as any of my colleagues willing to join in this motion articulate, I move the approval of the Preliminary Site Plan for 34965 Woodward Avenue, as submitted, subject to the following seven conditions:

1. **The Applicant submit plans with nine total trees or obtain a waiver from the staff arborist;**
2. **The Applicant verify that there will be five pedestrian lights on Peabody;**
3. **The Applicant provide a photometric plan and lighting specifications at the time of Final Site Plan Review;**
4. **The Applicant provide specification sheets for all mechanical units to verify that the screen wall is tall enough to sufficiently screen the proposed units;**
5. **The Applicant submit plans demonstrating the size and location of three usable off-street loading spaces or obtain a variance from the Board of Zoning Appeals;**
6. **The Applicant comply with the requests of all City Departments; and**
7. **The Applicant provide material and color samples at Final Site Plan Review.**

Mr. Koseck observed he doesn't think there is anything to add. He thinks Mr. Williams has touched on all of the issues that he sees. There will be constructability challenges just like there is in the building that the board saw last week.

There were no public comments at 7:57 p.m.

Motion carried, 5-0.

ROLLCALL VOTE

Yeas: Williams, Jeffares, Boyle, Koseck, Lazar

Nays: None

Recused: Clein

Absent: Whipple-Boyce

09-173-17

REZONING REQUEST

**1. 191 N. Chester, First Church of Christ, Scientist
Request for rezoning from TZ-1 to TZ-2 (Transitional Zoning) to allow the
adaptive reuse of the existing building for office use**

Chairman Clein returned to chair the meeting.

Ms. Ecker reported that the property owner is requesting the rezoning of the property to keep the building as-is on site while renovating the inside for an office use.

The subject site is located on the west side of N. Chester, with single-family homes to the north and office/commercial buildings to the south (Integra Building) and east (McCann Worldgroup Building). The area of the site is .40 acres, the building is 16,000 sq. ft. in size. The subject property is in the Downtown Overlay District and was zoned C - Community Use, due to its former use as a church. At the time of the transitional rezoning the City Commission created the TZ-1 Zone District and the TZ-3 Zone District. They did not create the TZ-2 Zone District then and the property was rezoned TZ-1 which allows only a residential use and not an office use.

The applicant lists a number of reasons that with the City's adoption of TZ-2 into the Zoning Ordinance, the TZ-2 classification would be better suited. The applicant would like to repurpose the existing church building into an office use. While office use is permitted in the TZ-2 Zoning District, any office use over 3,000 sq. ft. in size would require a Special Land Use Permit ("SLUP"). The applicant has affirmed the building is not suitable for adaptive reuse to residential.

The applicant had meetings with the adjoining property owners who have indicated a desire to keep the existing building as opposed to demolishing it and increasing and changing the height and mass with a new structure. They felt building as it stands would have the least impact on the neighborhood in terms of scale, visibility, and traffic.

The applicant has tried to market the building as a religious institution but has been unsuccessful in finding someone who is interested.

The only physical modification done to the building was in 1956 when an addition was added to the existing church. The church building is still in fair condition today.

Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable Master Plan documents, current zoning and recent development trends in the area, the Planning Dept. finds that the applicant meets the established ordinance requirements to qualify for a rezoning of the property from TZ-1 (Transitional Zone 1) to TZ-2 (Transitional Zone 2) to permit the adaptive reuse of the building for office/commercial use. Given the recommendations of the Master Plan and the 2016 Plan, the existing mix of uses in the immediate neighborhood, and given the age and character of the building, the proposal to adaptively reuse the building is appropriate and compatible with the area. The Planning Board will make a recommendation to the City Commission and the City Commission shall make the final determination on whether this potential rezoning should be approved.

Mr. Boyle asked what design oversight there might be with this building if it was rezoned to TZ-2. Ms. Ecker replied that just the design of the building would go to the Design Review Board or come to the Planning Board for review. If they are going to propose over 3,000 sq. ft. of office use, it will come to the Planning Board because it would require a SLUP which would bring in all of the design elements as well as the signage. Then it would go to the City Commission for the final decision.

In response to Mr. Koseck, Ms. Ecker said the applicant has the option to seek a use variance for the building. The Chairman asked about the difference between TZ-1 and TZ-2 with regard to massing and height. Ms. Ecker advised that TZ-1 allows three stories and 35 ft. in height with a minimum of two stories. In TZ-2 only a two-story maximum is allowed.

Ms. Ecker explained for Mr. Boyle that there is no requirement that there must be a mix of uses on a transitional zoned property.

Mr. Williams said a question for the City Attorney would be whether the site can be rezoned to TZ-2 with the condition that the building structure remain the same. Ms. Ecker noted the Planning Board at this level has not made a recommendation to go down the conditional rezoning path.

The applicant, Mr. Sam Surnow, 320 Martin, said they have spent a lot of time over the last three years trying to figure out what to do because they acquired the property before it was rezoned to TZ-1. Based on feedback from all of the neighbors and the different departments, they have been guided in the direction of rezoning the existing building for office use. They feel it is the best choice. It seems that a residential development would have the potential to change the impact on the neighborhood. On-site parking will be needed to be marketable and to attract tenants. Therefore they will have to take away a few thousand feet in the lower level to make room for ten or fifteen parking spaces. Then, after taking away the common areas, the office space left will be much less than 16,000 sq. ft.

Mr. Surnow stated that they decided not to apply for a use variance with the BZA because having a use variance in a TZ-1 Zone that is meant for residential use only would be contradictory. Also if the City could have rezoned to TZ-2 which didn't exist at the time, it probably would have. They don't have an issue with coming up with an agreement stating they will preserve exactly what is there if the City Commission requested that.

Mr. Kevin Biddison, 320 Martin, added they are excited hopefully to be involved in another project with the Surnows. This is really a similar challenge to what they did with the post office and they are looking to do some of the very same things and create multi-uses for smaller businesses which can tuck into the very unusual nature of the building.

No one from the public came forward with comments at 8:38 p.m.

Mr. Boyle observed that office space is changing. He hoped this iconic building will be redesigned and repurposed in such a way that it can accommodate the contemporary office and how it is going to operate. Also, he thought a mixed use in some shape or form might enliven this street.

Mr. Koseck noted this is a unique building on a challenging site. The Chester Parking Structure is least used so the project could help to populate that. These developers have a proven track record and he is in favor of the proposal to rezone.

Motion by Mr. Koseck

Seconded by Mr. Boyle to recommend approval to the City Commission for the rezoning of 191 N. Chester from TZ-1 (Transitional Zone 1) to TZ-2 (Transitional Zone 2).

Chairman Clein thought the adaptive reuse that is being proposed is awesome and the rezoning to facilitate that makes perfect sense. However he has concerns about rezoning, and that means ten years from now the building could be razed and a 17,000 sq. ft. site could turn into 30,000 sq. ft. of something. He leans toward approving the request because he feels this is a fantastic project but he thinks the Commission needs to weigh those concerns.

At 8:43 p.m. there were no comments from the members of the public on the motion.

Motion carried, 6-0.

ROLLCALL VOTE

Yeas: Koseck, Boyle, Clein, Jeffares, Lazar, Williams

Nays: None

Absent: Whipple-Boyce

09-174-17

STUDY SESSIONS

1. Economic Development Liquor License Boundaries

Ms. Ecker recalled that in 2009 the City Commission approved the creation of an Economic Development Liquor License as an incentive to encourage development in certain areas of the City. The properties that are eligible for this incentive are predominantly located on or near Woodward Ave.

On July 10, 2017, the City Commission amended the Planning Board's Action List to include a review of the Economic Development License boundaries as the third priority. Accordingly, the

Planning Board began discussions again regarding the expansion of the Economic Development Liquor License areas to include the Triangle and/or Rail District(s) or other areas of the City.

On August 9, 2017, the Planning Board discussed the expansion of the Economic Liquor License areas, specifically to expand the opportunities in the Triangle District, and to allow such licenses in the Rail District. Board members discussed several options, and ultimately directed staff to come back to the board with revised ordinance language and a revised map to include all of the Triangle District, with the exception of the single-family residential area at the north end; all of the Rail District with the exception of the Crosswinds development; and parcels along the east side of Adams adjacent to the Triangle District which do not abut single-family residential zoned parcels.

Board members made the following changes to the Economic Development License boundaries that were depicted on the revised map that was provided:

- Take out the parcel behind All Seasons because it butts up to single-family even though it is zoned O-1.
- Include two parcels to the west of Elm between Holland and Lincoln in the Triangle District. Exclude the two parcels east of Elm;
- Continue to leave Baker's Square out.

With regard to the southwest corner of Quarton and Woodward Ave., Ms. Ecker said there is a judgment on record which has established the terms for future development.

Chairman Clein called for comments from the audience at 9:07 p.m.

Mr. Rick Rattner, 380 N. Old Woodward Ave., stated there are 39 liquor licenses in the City and all of them except four are in the Downtown Development Overlay District. He submitted that the whole Downtown District should be part of the Economic Development License Boundary map. Developers are spending incredible amounts of money along Woodward Ave. and Old Woodward Ave. and that area is the engine of this community. The developers should be allowed to apply for a Special Land Use Permit and then go about getting the license as economically as possible.

Secondly, the piece of property at Quarton and Woodward Ave. belongs to his client. It has been vacant since 1989 when a gas station was torn down and they had a lawsuit with the City. The property was too small to do anything with until the Road Commission for Oakland County abandoned 33 ft. of the right-of-way. On the other side is a very small DTE station. In the back is a public alley, and then Gasow Veterinary to the south. So it is a very good buildable piece and he doesn't know why it hasn't sold.

Mr. Williams thought that a rather limited area of the Rail District could use a big investment. Mr. Koseck noted his sense is that the intention of the Economic Development Liquor License was to shift attention to areas that are under developed. He is happy with the map as the board has amended it. Mr. Williams was also in favor of the map. The Downtown area currently has a lot of places to get a drink so he thinks this tool should go east because both of those districts are underdeveloped in terms of \$10 million type of developments. From the City's standpoint those are the two areas this group sees as being ripe for such development.

The group agreed as to the expansion into the Triangle area and the Rail District as modified tonight.

Motion by Mr. Williams

Seconded by Mr. Boyle to set a public hearing for October 25, 2017 to expand the boundaries of the Economic Development Liquor License to include the south end of the Triangle District and from Holland south in the Rail District.

There were no comments from the public on that motion at 9:34 p.m.

Motion carried, 6-0.

VOICE VOTE

Yeas: Williams, Boyle, Jeffares, Clein, Koseck, Lazar

Nays: None

Absent: Whipple-Boyce

Motion by Mr. Jeffares

Seconded by Mr. Williams to include in the boundaries of the Economic Development Liquor License map the one parcel at the SW corner Woodward Ave. and Quarton.

There were no comments from members of the public on the motion.

Motion carried, 4-2.

ROLLCALL VOTE

Yeas: Jeffares, Williams, Koseck, Lazar

Nays: Boyle, Clein

Absent: Whipple-Boyce

09-175-17

2. Bistro Regulations

Mr. Baka noted that in 2007 the City of Birmingham amended the Zoning Ordinance to create the bistro concept that allows small eclectic restaurants to obtain a liquor license. Bistros are defined in Article 09 of the Zoning Ordinance as restaurants with a full service kitchen with interior seating for no more than 65 people and additional seating for outdoor dining. Bistros are permitted in certain zone districts with a valid Special Land Use Permit ("SLUP") along with several conditions.

As the bistro concept has evolved over the past 10 years, new applicants have sought creative ways to make their establishments distinctive from other restaurants and bistros in the City, and to increase the number of seats through the use of all season outdoor dining.

There have been several issues raised:

- Use of Eisenglass – extends the time period outdoor dining areas are in operation which increases the number of seats for restaurant as a whole for a majority of the year;
- On-street Dining/Rooftop Dining – the use of on-street parking spaces and rooftops in addition to the sidewalk area allows the addition of larger outdoor dining areas;
- Parking Needs – the expansion of outdoor dining increases the number of people dining at the restaurant, which increases parking demand;

- Building Code Requirements – the enclosure of outdoor dining areas triggers Building Code regulations such as Energy Code compliance, fire suppression requirements, fire separation distances and exterior wall fire resistive ratings.

At the joint City Commission/Planning Board meeting of June 19, 2017 the issue of clarifying bistro regulations was discussed at length. On July 24th, 2017 the City Commission moved the review of bistros up on the Planning Board's Action List.

On August 9, 2017 the Planning Board held a study session to begin to consider addressing the issues of parking, outdoor dining and Eisenglass enclosures. Discussion revealed that the Planning Board did not support regulating the number of outdoor dining seats, or requiring additional parking for such outdoor dining areas. There was unanimous support on the board for restricting the use of enclosures on outdoor dining areas to ensure that outdoor dining is truly seasonal. There was also discussion about setting different standards for the interior number of seats in different areas.

Accordingly the draft language has been revised to provide options that would eliminate the ability to utilize enclosures year round. The language is now silent on the issues of limiting the number of outdoor seats and requiring additional parking for those seating areas.

At this time four proposed options have been added to the ordinance language:

- Permanent enclosures shall not be permitted for outdoor dining areas.
- Weather proof enclosures facilitating year around dining outdoors are not permitted.
- Outdoor dining is not permitted between November 16 and March 31.
- The use of any type of enclosure system (including but not limited to fabric, Eisenglass, vinyl panels, drapes, plant materials shall not be permitted for outdoor dining areas.

Mr. Koseck indicated that in his mind outdoor dining areas should not be framed with walls whether they are temporary or permanent. These areas were never intended to be quasi interior space. Discussion considered eliminating the date restriction and eliminating walls and plastic enclosures. People can sit outdoors on a nice winter day if they choose; however outdoor furniture must be brought inside each night and platforms have to come down in the winter. Board members thought that railings on decks in the street should be limited to 42 in. in height.

To sum up the issues that were previously discussed:

- The use of Eisenglass and the Building Code requirements of such enclosures have been covered in that outdoor dining areas must truly be outdoors, not within enclosed areas;
- The board was not interested in adding extra parking requirements for outdoor dining;
- Setting a maximum number of outdoor dining seats is not a concern as they are all SLUPs and thus subject to individual review;
- Everyone was okay with rooftop dining, but the priority is that there must be outdoor dining in the front first and foremost.

Mr. Jeffares was in favor of increasing the capacity of bistros for the Triangle and Rail Districts and Mr. Williams liked that concept. It was discussed that providing shared parking might be an incentive to increase inside seating from 65. However, Mr. Koseck thought that requiring shared parking complicates things. Mr. Baka agreed to bring draft ordinance language for the next meeting.

3. Renovation and New Construction of Commercial and Mixed-Use Buildings

Mr. Baka advised that questions have been posed recently as to the procedure for determining what level of board review is required for the renovation of an existing building or construction of a new building. The Zoning Ordinance establishes the review process for new construction and renovation of existing buildings. However, the Zoning Ordinance is not clear as to the extent an existing building can be renovated before it is deemed new construction, and it is not clear as to what specific changes trigger site plan review. There are three boards that review building improvements: the Planning Board, the Design Review Board and the Historic District Commission.

Article 7, section 7.25 provides for site plan review for new development of all historic properties by the Historic District Commission and the Planning Board, and for site plan review for new development of non-historic properties by the Planning Board.

Article 7, section 7.08 states that for all new non-historic construction projects the Planning Board is responsible for conducting both the site plan review and design review. All plans for projects not requiring site plan review or HDC review such as exterior alternations, lighting, signs, equipment or other structures that substantially alter the exterior appearance of the building shall be reviewed by the DRB. Finally, Article 7, section 7.08 states that all Special Land Use Permit ("SLUP") reviews will be conducted by the City Commission, with recommendations from the Planning Board. The Design Review Board is responsible for conducting design reviews for new construction and the alteration of existing buildings when no site plan review is required. However, it is not explicitly delineated when a design review is required or when a site plan review is required.

City policy for many years has been to require proposals that add square footage to a building or make changes to a site that would affect vehicle or circulation patterns to obtain site plan approval. Proposals that are limited to modifying the exterior of the building but do not expand the building or alter the site are required to obtain only design review.

At the joint City Commission/Planning Board meeting on June 19, 2017 discussion occurred regarding current planning issues in the City. When discussing the regulations regarding the renovation of existing buildings, several deficiencies and/or ambiguities were identified in the Zoning Ordinance. Specifically, the question was raised as to what triggers a site plan review as opposed to a design review. There was a general consensus among the group that these issues should be studied by the Planning Board with the goal of providing recommendations to the City Commission for ordinance amendments that will clarify which type of reviews are required.

In an attempt to create objective criteria to delineate between what requires site plan review and what requires design review, the Planning Staff has provided draft ordinance language which would codify the existing City policy as described above.

The issue was discussed at the Planning Board meeting on August 9, 2017. The meeting reaffirmed the issue that right now there is no distinction between minor renovations and major re-builds of commercial buildings in Birmingham, and the possibility of a threshold being introduced to determine which board (DRB or PB) will perform the review. Members of the Planning Board agreed that the ordinance language should be clarified to say:

- A full Site Plan Review is required if more than 33.3% of the exterior elevations are torn down;

- The addition of square footage to any development shall be considered an expansion which requires site plan review;
- Any alteration which significantly alters the traffic or pedestrian circulation functions on a site as determined by the City Planner shall also require Site Plan Review.

Accordingly, the Planning Division is once again providing the draft ordinance language for comment by the Planning Board.

Mr. Baka explained if this ordinance language was in place Fred Lavery Audi Dealer would not have received approval offa demolition permit because they would not have had Site Plan Review, which would have been required as more than 33.3% of the building sides were removed. The DRB looks at the site, but does not consider the streetscape requirements.

Chairman Clein stated they are trying to avoid four walls going away and being rebuilt that feel like new construction but with no regard to any other site plan issues.

It was agreed to defer this topic to a future date.

09-177-17

MISCELLANEOUS BUSINESS AND COMMUNICATIONS

a. Communications

b. Administrative Approval Request

- 298 S. Old Woodward Ave., boutique hotel

Chairman Clein recused himself for business reasons and Ms. Lazar recused herself for familial reasons. Mr. Boyle took over chairmanship.

Mr. Charlie Stetson, Booth Hanson Architects, showed in a PowerPoint a few items they have worked on that have varied from the approved plans:

- Loading dock and garage entry have been flipped;
- Door to the loading dock is screened with open air wire mesh material;
- The entrance on Brown St. has been eliminated;
- Main entry to the hotel has been revised to have two pairs of doors with a vestibule and no revolving door, basically the same materials;
- Pre-function space has been moved into a bay to the north;
- In lower level 1 they propose removing three parking spots and adding a salon. Required parking per the Ordinance is 22 spaces and now they will have 53 spots;
- Mezzanine level openings in the wall to the loading dock below are new;
- Exterior stone colors have been changed to soften the contrast between the darker stone elements and the lighter. Samples of the original limestone were passed around along with the lightened limestone that was chosen.
- The metal was lightened up so it is in the color range of the other two materials;
- Frames around the windows are proposed to be the darker of the two stones;
- Frosted glass panels were introduced inside the garage entry and exit doors that previously were painted metal. Ms. Ecker said that under the ordinance frosted glass cannot be used;
- Add new opening to provide fresh air next to the loading dock outside.

Mr. Koseck said he liked the plan before and he likes it now. It is easier to carry luggage through a vestibule than through a revolving door. Mr. Williams said the closing of the Brown St. entrance is a non-event for him. None of the board members had any concerns.

Motion by Mr. Williams

Seconded by Mr. Jeffares to administratively approve all of the proposed changes with the exception of the frosted glass on garage doors.

Motion carried, 4-0.

VOICE VOTE

Yeas: Williams, Jeffares, Boyle, Koseck

Nays: None

Recused: Clein, Lazar

Absent: Whipple-Boyce

c. Draft Agenda for the Regular Planning Board Meeting on September 27, 2017

- 525 Southfield, Preliminary Site Plan for new attached single-family residential units;
- 33353 Woodward Ave., revised Final Site Plan and SLUP for dry cleaning delivery to cars;
- 2000 - 2070 Villa, new submittal for expired site plan; and
- 505 N. Old Woodward, Salvador Scaloppini SLUP and Final Site Plan Review.

d. Draft Agenda for the Regular Planning Board Meeting on October 25, 2017

- Economic Development public hearing
- 271 Euclid, Preliminary Site Plan Review

e. Other Business

- Joint Planning Board/City Commission meeting September 18 at DPS;
- Ms. Lazar observed Hawthorne Electric windows are completely covered.

09-178-17

PLANNING DIVISION ACTION ITEMS

- a. Staff report on previous requests (none)
- b. Additional items from tonight's meeting (none)

09-179-17

ADJOURNMENT

No further business being evident, the Chairman adjourned the meeting at 10:45 p.m.

Jana Ecker
Planning Director

DRAFT

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, SEPTEMBER 13, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on September 13, 2017. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Vice- Chairperson Gillian Lazar, Bryan Williams

Absent: Board Member Janelle Whipple-Boyce; Alternate Board Members Lisa Prasad, Daniel Share; Student Representatives Ariana Afrakhteh, Isabella Niskar

Administration: Matthew Baka, Sr. Planner
Jana Ecker, Planning Director
Carole Salutes, Recording Secretary

09-169-17

APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING OF AUGUST 23, 2017

Motion by Ms. Lazar

Seconded by Mr. Boyle to approve the Minutes of the Regular Planning Board Meeting of August 23, 2017 as presented.

Motion carried, 6-0.

VOICE VOTE

Yeas: Lazar, Clein, Boyle, Jeffares, Koseck, Williams

Nays: None

Absent: Whipple-Boyce

09-170-17

CHAIRPERSON'S COMMENTS

The Chairman advised the meeting tonight would consist of site plans as well as study sessions.

09-171-17

APPROVAL OF THE AGENDA (no change)

OLD BUSINESS

Preliminary Site Plan Review

**1. 34965 Woodward Ave. - Mixed-Use Building (former Peabody's Restaurant)
Request for approval of the Preliminary Site Plan to allow a new five-story
mixed-use building to be constructed** (postponed from July 26 and August 23,
2017)

Chairman Clein announced that he will recuse himself on this matter as he has in the past due to a business relationship with the project. Vice-Chairperson Lazar took the gavel.

Motion by Mr. Williams

Seconded by Mr. Koseck to receive and file the following correspondence received this evening:

- **Letter from Ron Rea dated 09-11-17;**
- **Letter from Alan M. Green of Dykema Gossett dated 09-11-17;**
- **Letter from Tim Currier, Beier Howlett dated 09-13-17.**

Motion carried, 6-0.

VOICE VOTE

Yeas: Williams, Koseck, Boyle, Jeffares, Lazar

Nays: None

Recused: Clein

Absent: Whipple-Boyce

Mr. Baka recalled that the applicant has submitted an application for Preliminary Site Plan Review to construct a five-story building in the B4/D4 District. The property is located on the west side of Woodward Ave. on Peabody at the former location of Peabody' Restaurant and the former Art & Frame Station.

On July 26, 2017 the Planning Board reviewed the CIS and Preliminary Site Plan application for 34965 Woodward Ave. At that time the Planning Board decided to accept the Community Impact Statement but postponed the Preliminary Site Plan Review. The board requested additional information regarding the interfacing of the proposed building with the adjacent buildings on each side along with renderings of the new building in context with the adjacent buildings. Additionally, the postponement was granted to provide the applicant time to engage with the neighboring property owners in light of public comments made at the meeting.

Mr. Baka recalled this proposal has been reviewed at several previous meetings. The last time it was discussed was on August 23, 2017. At that time there was extensive discussion about the interface of the proposed building with the two adjacent buildings. The Planning Board requested staff to do some research on the history of those buildings. The stated intent of providing this information was to determine if the buildings to the north and south of the subject site were encouraged or required to provide windows that abut the shared property lines of 34965 Woodward Ave.

A thorough review of the minutes and staff reports revealed no encouragement or requirements by the Planning Board or staff to install windows on the property lines abutting the 34965

Woodward Ave. site. The only comment was from the Building Dept. that indicated windows were not permitted on the property line. This was later resolved through the use of fire rated glass.

There have been no revisions to the plans that the board has already seen.

The plans do not display any off-street loading spaces. ***The applicant will need to submit plans demonstrating the size and location of three usable off-street loading spaces, or obtain a variance from the Board of Zoning Appeals ("BZA").***

Mr. Richard Rassel, Williams, Williams, Rattner and Plunkett, 380 N. Old Woodward Ave., spoke to represent Alden Development Group. With him was the Project Architect, Mr. Chris Longe and members of the ownership group. Mr. Rassel encouraged the board to move the project through Preliminary Site Plan Review. He noted that the Master Plan and the Zoning Ordinance in all respects treat this project as compliant. They are willing to work with their neighbors on the aspect of final design to try to achieve the best possible project for this important gateway to the City.

Mr. Alan Greene, Dykema Gossett, 39577 Woodward Ave., said he represents the owners of the Greenleaf Trust and Balmoral Buildings. He has presented information as to why this proposed new building is not compatible on the north and south side with the structures that exist. Ninety-seven windows on these two buildings are going to look out at a blank wall. Also, those buildings would be deprived of light and air which is a specific standard of the ordinance. Further, the material value of the buildings will be negatively impacted. They have also pointed out there will be numerous issues with respect to ongoing maintenance and repair of all three buildings. There are many alternatives that can address these concerns, but the site plan has not been revised since it was presented. The applicant is trying to maximize the space. He asked that this particular site plan be denied.

Mr. Williams gave a lengthy statement for inclusion in the record:

Since our meeting on August 23, 2017, I have had the opportunity to review more carefully the materials submitted by the applicant and by the neighboring property owners in the context of the full Zoning Ordinance. I have also listened to the comments tonight.

I want to thank Matt and Jana for researching approval documentation for the Greenleaf Trust & Balmoral Buildings. Their conclusion that there was no encouragement or requirement by the Planning Board or staff to install windows on the South & North property lines, respectively, is important.

I have concluded that the Applicant's proposal meets the requirements of the Zoning Ordinance for Preliminary Site Plan approval. The report of the staff makes that abundantly clear, as do the letters of Beier, Howlett dated August 23, 2017, and September 13, 2017 which have also been incorporated into the record and which form part of the basis for my comments.

The adjoining property owners' objections are detailed and weighty, but they do not justify denying the site plan. Let me respond to each of the major points which they have raised:

1. **The Project is not consistent with the Master Plan.**

The 2016 Downtown Plan approved in 1996 envisions one possible future for this property, but not the only possible future. The fact that the 2016 Plan recommended that the

site might ultimately be a good one for a parking deck did not mandate that it be so; and in fact the City has taken no steps to acquire the property to construct a parking deck. The proposed office and residential use is permitted by the zoning. The property owner need not wait to find out if the City will someday decide it wishes to acquire the property for parking. Nor do the drawings in the Plan that are illustrative of possible future conditions the architects mentioned in their comments constitute a limitation on the property's use.

In fact, a five-story building with the top floor residential is consistent with the Zoning Ordinance and is not inconsistent with the Master Plan.

2. **No Parking.**

The Site is in the Parking Assessment District. The site has more than enough parking to meet the requirements of the Zoning Ordinance for its residential component. On numerous occasions, this Board has made it clear that it will not and cannot prevent owners in the Parking Assessment District from developing their property because there may be a shortage of parking Monday through Friday at lunch time. The fact that the City may not have built enough public parking does not change the fact that this property owner and its predecessors, like many others, have paid into the Parking Assessment District with the understanding that it will not have to have on-site parking for non-residential uses.

3. **The Plan Violates Section 7.27.B(2), the Light and Air Clause of the Zoning Ordinance.**

Dykema Gossett has made an argument that construction of this building to the lot line will prevent adequate light and air reaching the adjacent properties in violation of Section 7.27.B(2) of the Zoning Ordinance.

I believe the significant word is "adequate".

In any event, taking the language of the ordinance at face value, there will be adequate light and air to both the Greenleaf Trust and Balmoral Buildings if this building is constructed to the lot line as proposed. Each building has unimpeded light and air on three of their four facades. The Balmoral Building's windows are set back 5 ft. on its north facade. That 5 ft. well provides adequate light and air. The affected windows on the Greenleaf Building are those at both the east and west end of the south facade, as the center of the Greenleaf Building's south facade also has a well where the windows are set back from the property line. Each one of the affected windows on the part of the south facade built to the lot line have windows that face the east and the west; that is, into the window well in the center and facing the street on the outside so that their light is at least as good, and arguably better, than that provided to the Balmoral Building.

The ordinance does not guarantee no change in the amount of light and air, merely that this Board assure itself that there is "adequate" light and air. In my opinion, there is.

4. **Section 7.27.B(3) – The Diminished Value Section.**

Counsel makes the argument that the building will diminish the value of the adjacent buildings; thus the Preliminary Site Plan cannot be approved. He supports his argument with the written opinion of the real estate broker for the Greenleaf Building that the four residential apartments on the south wall will have diminished rental income due to the loss of views. The penthouse rent will be reduced from \$14,000.00 a month to \$10,000.00 a month, still beyond my personal "budget". The other apartments "may likely" have reductions, and the office would have a reduction as well, although it is hard to estimate that amount. Presumably his

opinion would be similar for the Balmoral Building, although nothing in his letter distinguishes between those rental spaces on the window well of the Greenleaf Building and those at the wall on the property line.

Section 7.27.B(3) has two parts: one is that the location, size and height of the building won't interfere with the reasonable development of adjoining property, and it obviously does not. The second is that the development will not diminish the value of the adjoining property. Assuming that there is some reduction in rental income and that translates into some diminished value of the building, some reduction, no matter how small, is, I do not believe, what the ordinance aims at. Many property owners might object to any building being built next to them and argue that any development will diminish their property value. It neither is nor should be the job of this Board to choose between competing speculations whether proposed construction will reduce or increase value to a small degree.

Zoning is necessarily a three-pronged balance between the rights of adjoining property owners to develop their properties as they see fit; the right of their neighbor to not be disturbed; and the right of the people as embodied in the municipality to regulate land uses to achieve public purposes, some of which are listed in Section 7.24 of the Zoning Ordinance – for example, sub-section (f) “to sustain the comfort, health, tranquility and contentment of residents and attract new residents by reason of the City's favorable environment”.

The construction that is proposed was completely foreseeable. Although I do not think it is necessary for us to decide whether or to what extent the owner of the Greenleaf Building waived the right to make the objection she makes to the Preliminary Site Plan, it is noteworthy that not only was this issue foreseeable, it was actually foreseen. The Earth Retention System and Construction Barricade Agreement of November 28, 2008 specifically mentions that the owner of the Peabody site could construct a building on the lot line. The Balmoral Building inferentially knew as well, since it is constructed with a blank wall along the eastern-most part of its north facade.

The question of what amount of diminution of value would trigger the violation of the Zoning Ordinance need not be determined tonight. Reference to the basic purposes of zoning shows that the purpose of regulation is to prevent a major loss in value. Nothing suggested to us indicates that the financial return that Balmoral or Greenleaf Buildings will have after the Peabody Building is constructed will not be reasonable or economically viable, although it may not be as high as it would be if the property owner in the middle of these two buildings continued to allow it to be vacant or limited its development to one or two stories.

One of the purposes of the Zoning Ordinance is to promote public health, moral safety, comfort, convenience and general welfare. Reading the requirements of Section 7.27.B(3) as an absolute bar against any building permitted by the terms of the Zoning Ordinance that negatively affects its neighbors would turn the Zoning Ordinance from a public shield, which it clearly is intended to be, into a private sword benefitting the first to build.

5. **The Proposed Building Is Not Compatible With The Adjacent Properties.**

Section 7.27.B(5) of the Zoning Ordinance requires the Planning Board to determine whether or not the proposed Building “will be compatible with other uses and buildings in the neighborhood, and will not be contrary to the spirit and purpose of this Chapter”.

We heard much about compatibility at the August 23 meeting. Regardless of whether the compatibility is determined within the framework of visual appearance or on a structural

basis, such as the alignment of floor levels, height and mass, this Building proposed is compatible and does comply with the spirit and purpose of the Zoning Ordinance. The mixed-use nature is permitted. The visual effect of height, mass and floor alignment, given the grades, are compatible. The Zoning Ordinance itself, at Section 7.24.B, as Mr. Jeffares pointed out at the last meeting, discourages monotonous construction so that the objections that the building does not have masonry with punched windows is to me of no persuasive effect.

6. **Construction Will Necessarily Result In Trespass.**

Simply put, that is not an issue that is relevant to site plan review. The civil law adequately provides remedies to property owners if their neighbors invade their land without legal justification. If the developer of the Peabody site can't build what he is proposing to build without trespassing, or if doing so would be too expensive, he will necessarily have to abandon this design and resubmit for some other type of building. It is not a basis to deny a site plan.

There are plenty of reasons for these three property owners to cooperate. The comments made about maintenance alone justify cooperation between the parties. It isn't our place to dictate how those interests can or should ultimately be resolved or if they can be harmonized. I'll only point out that every communication device in use today has the capability of two-way functionality. I am loathe to hold it for or against one party that discussions have not been as frequent or as wide-ranging as we or any particular party may wish.

Some of the issues that the property owners have raised are things, as Mr. Koseck points out, that we will consider at Final Site Plan review. I can assure you that this Board will carry out a searching, comprehensive review of the criteria for Final Site Plan Approval.

Motion by Mr. Williams

Seconded by Mr. Jeffares that based on these comments and on the record, including such facts and reasons as any of my colleagues willing to join in this motion articulate, I move the approval of the Preliminary Site Plan for 34965 Woodward Avenue, as submitted, subject to the following seven conditions:

1. **The Applicant submit plans with nine total trees or obtain a waiver from the staff arborist;**
2. **The Applicant verify that there will be five pedestrian lights on Peabody;**
3. **The Applicant provide a photometric plan and lighting specifications at the time of Final Site Plan Review;**
4. **The Applicant provide specification sheets for all mechanical units to verify that the screen wall is tall enough to sufficiently screen the proposed units;**
5. **The Applicant submit plans demonstrating the size and location of three usable off-street loading spaces or obtain a variance from the Board of Zoning Appeals;**
6. **The Applicant comply with the requests of all City Departments; and**
7. **The Applicant provide material and color samples at Final Site Plan Review.**

Mr. Koseck observed he doesn't think there is anything to add. He thinks Mr. Williams has touched on all of the issues that he sees. There will be constructability challenges just like there is in the building that the board saw last week.

There were no public comments at 7:57 p.m.

Motion carried, 5-0.

ROLLCALL VOTE

Yeas: Williams, Jeffares, Boyle, Koseck, Lazar

Nays: None

Recused: Clein

Absent: Whipple-Boyce

09-173-17

REZONING REQUEST

1. 191 N. Chester, First Church of Christ, Scientist Request for rezoning from TZ-1 to TZ-2 (Transitional Zoning) to allow the adaptive reuse of the existing building for office use

Chairman Clein returned to chair the meeting.

Ms. Ecker reported that the property owner is requesting the rezoning of the property to keep the building as-is on site while renovating the inside for an office use.

The subject site is located on the west side of N. Chester, with single-family homes to the north and office/commercial buildings to the south (Integra Building) and east (McCann Worldgroup Building). The area of the site is .40 acres, the building is 16,000 sq. ft. in size. The subject property is in the Downtown Overlay District and was zoned C - Community Use, due to its former use as a church. At the time of the transitional rezoning the City Commission created the TZ-1 Zone District and the TZ-3 Zone District. They did not create the TZ-2 Zone District then and the property was rezoned TZ-1 which allows only a residential use and not an office use.

The applicant lists a number of reasons that with the City's adoption of TZ-2 into the Zoning Ordinance, the TZ-2 classification would be better suited. The applicant would like to repurpose the existing church building into an office use. While office use is permitted in the TZ-2 Zoning District, any office use over 3,000 sq. ft. in size would require a Special Land Use Permit ("SLUP"). The applicant has affirmed the building is not suitable for adaptive reuse to residential.

The applicant had meetings with the adjoining property owners who have indicated a desire to keep the existing building as opposed to demolishing it and increasing and changing the height and mass with a new structure. They felt building as it stands would have the least impact on the neighborhood in terms of scale, visibility, and traffic.

The applicant has tried to market the building as a religious institution but has been unsuccessful in finding someone who is interested.

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, AUGUST 23, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on August 23, 2017. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Vice- Chairperson Gillian Lazar, Janelle Whipple-Boyce, Bryan Williams; Alternative Board Member Daniel Share

Absent: Alternate Board Members Lisa Prasad; Student Representatives Ariana Afrakhteh, Isabella Niskar

Administration: Matthew Baka, Sr. Planner
Jana Ecker, Planning Director
Carole Salutes, Recording Secretary

08-159-17

**APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING
OF AUGUST 9, 2017**

Ms. Whipple-Boyce made a change:
Page 9 - Second paragraph, third sentence, replace "to not allow" with "to allow."

Motion by Ms. Lazar

Seconded by Mr. Koseck to approve the Minutes of the Regular Planning Board Meeting of August 9, 2017 as amended.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Abstain: None

Absent: None

08-160-17

CHAIRPERSON'S COMMENTS (none)

fundamental thing is that the safety issue scares him. The only argument he hears about taking any square footage off the building is financial.

Acting Chairman Boyle noted the board cannot verify the developer's financial statement and they have to take his word. Also, there is the concern that the building as configured may result in a circulation challenge that is certainly not satisfying to board members.

Mr. Mitchell stated he cannot take a slice off the rear to provide circulation that goes one way around the building. He said it would take \$32,400 off the rental income and that doesn't calculate in the increased environmental costs because of disturbing the ground. They are currently dealing with parking without the 8 ft. being taken off the building and there is no way to turn around. There is a utility easement that prevents a driveway easement from looping around the back of the adjacent building to the south.

Mr. Krieger explained the driveway to the west is over 22 ft. and easy to back out of. The spaces would be signed and policed by building management. In order to make a one-way drive, 10 ft. would have to come off the back of the building. The only issue with one-way is they would have to move their dumpsters to the east or the west and that would take out more parking.

Motion carried, 4-2.

ROLLCALL VOTE

Yeas: Share, Williams, Boyle, Jeffares

Nays: Koseck, Whipple-Boyce

Recused: Clein, Lazar

Absent: Prasad

Acting Chairman Boyle asked the applicant to spend quite a lot of time looking at the site plan and thinking about how they might use the three extra spaces to reach some of the challenges that Mr. Koseck has correctly raised about the safety and circulation.

08-163-17

Vice-Chairperson Lazar rejoined the board and took over the gavel.

2. 34965 Woodward Ave. (former Peabody's Restaurant)

Request for approval of the Preliminary Site Plan to allow a new five-story mixed-use building to be constructed (postponed from July 26, 2017)

Mr. Baka explained the petitioner has submitted an application for Preliminary Site Plan Review to construct a five-story building in the B4/D4 Zoning District. The property is located on the west side of Woodward Ave. on Peabody St. at the former location of Peabody's Restaurant and the former Art & Frame Station.

On July 26, 2017 the Planning Board reviewed the CIS & Preliminary Site Plan application for 34965 Woodward Ave. At that time, the board requested that the applicant provide additional information regarding the interfacing of the proposed

building with the two existing buildings on each side and how they will abut. Also, the board requested that the applicant provide additional renderings of the new building in context with the adjacent buildings. In addition, postponement was granted to provide the applicant time to engage with the neighboring property owners in light of the public comments made at the meeting. The applicant has now provided new details and renderings in addition to the previously submitted plans in order to supply additional information for the Planning Board to consider.

Design Review

The applicant is proposing to utilize the following materials for the construction of the five-story, mixed use building:

- Stone panels along the lower level of all façades;
- Masonry veneer along the upper levels of all façades;
- Stone for the base of the building;
- Steel window and door system; and
- Extensive window glazing on all facades.

The design of the building also includes balcony projections from the third floor on both facades of the building. The issue of projections over the right-of-way was recently discussed at the joint City Commission/Planning Board meeting. Staff intends to consult with the City Attorney prior to Final Site Plan Review to determine if an air rights agreement will be necessary to approve this aspect of the design.

Motion by Mr. Williams

Seconded by Mr. Jeffares to receive and file the following correspondence:

- **E-mail dated August 17 from Christopher Longe with attachments;**
- **E-mail dated August 22 from Richard Rassel;**
- **E-mail dated August 23 from Clinton Baller;**
- **Letter dated August 21 addressed to Patti Owens from Bailey Schmidt. LLC;**
- **Letter dated August 21 addressed to Patti Owens from Aura Pinkster;**
- **Letter dated August 22 from Hobbs & Black Architects;**
- **Letter dated August 22 from Alan M. Greene, Dykema Gossett PLLC;**
- **Letter dated August 23 from Timothy Currier, Beier Howlett.**

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Recused: Clein

Absent: Prasad

Mr. Chris Longe, Architect for the redevelopment of the Peabody site, came forward. He showed their building in context with the entire block. Also, he showed how their building would interface with both the north and the south facades of the adjacent buildings. The buildings roughly equate in terms of their overall height and floor height. The earth retention system tiebacks into the Peabody property that were used for construction of the Greenleaf Trust Building were depicted. The intention with their

building is that someone can walk from Woodward Ave. through a leased space all the way to Peabody St. He included a number of pictures showing local conditions where buildings are abutting.

Mr. Longe noted they made efforts to meet with their neighbors as suggested at the last meeting. They have done that to the extent of meeting with the Balmoral folks, but because of scheduling issues there has not been a meeting with the people from the Catalyst building to the north.

Vice Chairperson Lazar called for comments from the public at 8:35 p.m.

Mr. Steve Simona, 32820 Woodward Ave., Suite 240, Royal Oak, was present on behalf of the Balmoral ownership. He observed they built something of the highest quality that they felt the City envisioned and required of them. They want to see the Peabody site developed, but not to their detriment. As currently proposed, the south wall would block fifty windows and light and air to their building. They feel what the applicant is proposing is not compatible with their building nor consistent with what was required of the Balmoral Building, or what the Zoning Ordinance requires. They will not allow trespass onto their property for maintenance.

Mr. Jason Novotny, Tower Pinkster, Architects, spoke on behalf of Catalyst Development and the Greenleaf Trust Building. When they brought the Greenleaf Trust Building to the board in 2008, it was viewed as one of two buildings that would be the crown jewel on the east entry to Downtown, following the principles that were laid out in the Master Plan. Between the two tower buildings the Master Plan calls for a two or three story parking structure. They worked towards developing an attractive, four-sided building. A blank wall would not fly. He is sure the Balmoral had the same discussions with their north elevation. Some of the things he sees that would have a significant impact to either the north or south sites are:

- Lighting;
- Glazing calculations do not play out.

Mr. Tom Phillips, Hobbs & Black Architects, 100 N. State St., Ann Arbor, said the Balmoral Building has much the same story. In designing the building they worked carefully with the City and were encouraged to develop the north side because it was a gateway and a key visual element on the drive south along Woodward Ave. Both of the buildings offer the applicant a unique site in that the occupants are not looking at blank walls. They are looking at two expensive, high quality elevations. By stepping back four or five feet from the property line, the applicant would provide a reasonable amount of light between the buildings as they face each other all the way up. As it exists the applicant's design offers no opportunity to maintain their exterior walls without trespassing.

Mr. Alan Greene, 3955 Woodward Ave., Dykema Gossett, PLLC, represented Woodward Brown Associates, the developer and owner of the Balmoral Building. Mr. Greene noted they have a very valuable building with a facade of 50 windows, made of stone, with balustrades. Tenants look for a space that has windows, but with the proposed building they will look straight into a brick wall. Further, the interior design is built around the windows. The real estate developer for Balmoral has submitted a letter

saying that the proposed building as currently designed and set will greatly diminish the value of the two buildings. The loss of investment on the walls, the impact on the tenants, the ability to rent the spaces, and how much they can be rented for will all contribute to diminished value. These two buildings were not built as if they were going to be blocked by other buildings. He urged the board to either deny the site plan or give guidance to the developer as to what they might like to see so they can come back with something better.

Mr. Clinton Ballard, 388 Greenwood, said the developer wants to maximize his floor area but is constrained by height. As the City has already zoned for seven to nine story buildings right across the street, it would be very interesting to have the infill building go seven to nine stories, provided adequate setbacks are respected. This would leave the developer with an equitable amount of leasable space and room for parking, and all three developers would enjoy access to light and views.

In response to Mr. Share, Mr. Baka explained that if windows are within 5 ft. of the property line they must be fire rated. Mr. Longe verified for Mr. Share that the view of the facade travelling up and down Woodward Ave. would not be materially different if the building was on the lot line or 5 ft. off. He added that it is an odd feature to not have the buildings touch. Mr. Tom Phillips said the 5 ft. setback would double the visual access to light and air - a 10 ft. view shed.

Mr. Novotny pointed out for Mr. Share why he thinks the design of the infill building is incompatible with the adjacent buildings. Their buildings have primarily punched window openings on a masonry facade and the proposed building has glass strip windows across the front.

Mr. Share received clarification from Mr. Novotny that if the building is built to the lot line, it is a problem for all three buildings with regard to maintenance issues. One building will have to flash into the other building so that water will not enter. Mr. Phillips explained these are not abutting buildings in the sense that they can be flashed together. So the applicant's building on a zero lot line would have an exterior wall facing the lot line and open to the weather with no way to maintain it without trespassing onto Balmoral property,

Mr. Novotny explained for Mr. Share that the first floor of both the Balmoral and Greenleaf Trust buildings abut the lot line. Beyond that, both buildings are set back 5 ft. Greenleaf's situation differs from Balmoral's in that the fifth story balconies would abut one another from the Greenleaf Trust Building to the Peabody Building. He does not believe the Balmoral has that same circumstance with outdoor spaces that are side-by-side. Mr. Longe noted there is a demising wall between them. Mr. Novotny added another difference between the Balmoral and Greenleaf buildings is the glass that is currently abutting the lot line for the Greenleaf building is fire rated so that it has the potential to be a zero lot line material.

Mr. Share queried how interior lighting on the north and south elevations is handled on the Peabody Building. Mr. Longe responded that there is natural light that comes in from the glazing on the other two facades.

Mr. Koseck thought that maximizing square footage area creates a little bit of "B" type of space. If they could pull the walls in on the upper floors by creating light wells and windows it would make the building even better in terms of marketability and lease rates. Further, he thought that architectural compatibility is the next step in review and not for this evening. Mr. Longe responded that it is an odd condition to have buildings not meet. The two buildings chose on their own to make their facades that face inwards towards Peabody's something nicer than they had to be. As any architect will tell you, one has to prepare for eventualities.

Mr. Share and Mr. Williams were in agreement that a lot of information came in today and it requires more study. Mr. Williams said he was not prepared to take any action on the proposal tonight.

Mr. Rick Rassel, Williams Williams Rattner & Plunkett, PC, 380 N. Old Woodward Ave., the legal counsel to Alden Development Group, the applicant, spoke about the importance of perspective:

- Mr. Currier and the planning staff are aligned on the questions that have been posed in Mr. Greene's letter;
- The proposal is consistent with the Master Plan and with the Zoning Ordinance;
- They are in a zero lot line infill district;
- The proposed parking and height of the building is consistent with the Zoning Ordinance;
- Mr. Currier has opined that the construction impact and future maintenance issues are not concerns for the Planning Board to be taking into account at this stage of the Preliminary Site Plan approval;
- The question comes down to a couple of things. Mr. Currier has observed in his letter that the zero lot line construction as proposed is consistent with the Zoning Ordinance and has been used in many parts of Downtown Birmingham. The owners of the Balmoral and Catalyst buildings installed fire related glass windows facing the former Peabody's lot in anticipation of potential zero lot line construction;
- Peabody's granted Catalyst an easement to construct sun shades; the sunshades to be taken down in the event of future construction of the Peabody building;
- The argument about incompatibility is really about economic harm as a result of this building being built to the lot lines which Balmoral and Catalyst absolutely knew of and agreed not to contest. Incompatibility is not about design review standards or architecture.

It is important that this process move along this evening.

Mr. Alan Greene stated that there are no fire rated windows on the north elevation of Balmoral. The compatibility is related to the nature of the construction. The things they did on their elevation were encouraged by the City. To not require the same here is where it is incompatible in his view. Additionally, Standard 7.27 (3) states that the location, size, and height of the building shall not diminish the value of neighboring property. They believe that the way it is being done now it will. What the board has before it reflects not a single change as a result of their meetings with Mr. Shifman.

Mr. Williams indicated that he would like information about the City's encouragement of construction on the south and north sides respectively as preserved in the record at both the Preliminary and Final Site Plan Reviews for both buildings. It is important that the board understand that issue. Mr. Boyle added that the board's perspective on development has changed since construction of the Balmoral and Catalyst buildings. He agreed with Mr. Williams that the board needs to see what they actually talked about at that time.

Ms. Whipple-Boyce said she had hoped that the developers would meet and come up with a great plan for all properties. Unfortunately, it doesn't sound like that will happen. She believes that as Staff and the City Attorney have advised, the Peabody proposal satisfies the requirements of the Zoning Ordinance. It will be tricky and complicated getting the building up and maintaining it. There seems to be a lot of good reasons to re-look at what is being proposed.

Mr. Jeffares said he always assumed that another building would be built on this site. To him, by this building being a little different, the other two buildings pop.

Motion by Mr. Share

Seconded by Mr. Williams to postpone the application for Preliminary Site Plan for 34965 Woodward Ave. to September 13, 2017 and to suspend the rules to hear a site plan at that meeting.

There were no comments on the motion from members of the public.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Recused: Clein

Absent: Prasad

08-164-17

FINAL SITE PLAN AND DESIGN REVIEW

Chairman Clein rejoined the board and Mr. Share, the alternate board member, left.

1. 277 Pierce St. (former Varsity Shop)

Request for approval of a five-story mixed-use building with first-floor retail

Ms. Ecker advised the subject parcel is currently the site of the Varsity Shop, and has a total land area of .111 acres. It is located on the northeast corner of Pierce St. and E. Merrill St.

The applicant is proposing to demolish the existing 8,387 sq. ft. two-story building to construct a 27,000 sq. ft., five-story mixed-use building. The building will provide a lower level recreation area for the residential unit, first floor retail, second floor retail or

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, JULY 26, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on July 26, 2017. Vice-Chairperson Gillian Lazar convened the meeting at 7:31 p.m.

Present: Vice Chairperson Gillian Lazar; Board Members Robin Boyle, Bert Koseck, Janelle Whipple-Boyce; Student Representatives Ariana Afrakhteh, Isabella Niskar

Absent: Chairman Scott Clein; Board Members Stuart Jeffares, Bryan Williams; Alternate Board Members Lisa Prasad, Daniel Share

Administration: Matthew Baka, Sr. Planner
Jana Ecker, Planning Director
Carole Salutes, Recording Secretary

07-138-17

APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING OF JULY 12, 2017

It was discovered there were not enough members present at the July 12 meeting to form a quorum. Therefore, the minutes were postponed to the August 9, 2017 Planning Board meeting.

07-139-17

CHAIRPERSON'S COMMENTS

Ms. Ecker advised that only four board members are present and one member has to recuse herself on any substantive issue with regard to 298 S. Old Woodward Ave., the Boutique Hotel. Therefore, there will not be a quorum of the Planning Board present to discuss the hotel and that matter will be postponed to a future date. All other hearings may proceed with the caveat that everyone knows that in order for something to pass the support of all four members is needed. None of the applicants stepped forward to ask for postponement to a later date.

07-140-17

APPROVAL OF THE AGENDA

Vice-Chairperson Lazar announced that 2010 Cole St. has asked for postponement to August 23, 2017.

Motion carried, 4-0.

VOICE VOTE

Yeas: Whipple-Boyce, Boyle, Koseck, Lazar

Nays: None

Absent: Clein, Jeffares, Williams

07-144-17

**COMMUNITY IMPACT STATEMENT ("CIS") REVIEW
PRELIMINARY SITE PLAN REVIEW**

**34965 Woodward Ave. (former Peabody's Restaurant)
Request for approval of the CIS to allow a new five-story mixed-use building to be constructed**

Mr. Baka explained the subject site is currently vacant land where the former Peabody's Restaurant and the Art & Frame Station were located, and has a total land area of .597 acres. It is located on the east side of Peabody St., on the west side of Woodward Ave. and south of Maple Rd. The applicant is proposing to construct a 161,910 sq. ft. (including basement levels), five-story mixed-use building. The building will provide two levels of underground off-street parking; first floor retail/office; second and third floors office; fourth floor commercial/residential; and fifth floor residential. Parking for the residential units will be provided below grade in the parking garage. As the building is located within the Parking Assessment District, no on-site parking is required for retail, commercial or office uses. The applicant was required to prepare a Community Impact Study in accordance with Article 7, section 7.27(E) of the Zoning Ordinance as they are proposing a new building containing more than 20,000 sq. ft. of gross floor area.

CIS

The proposed development and its uses relate to the pedestrian, as the building is located at the property line and is proposed with human scale detailing on the first floor, including canopies, large windows, attractive stone and masonry facades, and elegant pedestrian entrances from both adjacent streets. The 2016 Plan encourages proper building mass and scale that creates an environment that is comfortable to pedestrians walking Downtown. The proposed development will help improve the visual appearance of the area by introducing a denser, more compact development with enough height to create a street wall along Peabody St. and Woodward Ave. The main entry to the building is located on Peabody St.

The applicant has submitted a Phase 1 Environmental Site Assessment by SME dated August 5, 2016. The report indicates that there is some evidence of recognized environmental conditions ("RECs") associated with this property. SME concluded that the reported presence of contaminated soil and groundwater; the potential for additional environmental impact from unreported and/or undetected releases of hazardous substances and/or petroleum products associated with the properties historical uses (vehicle manufacturing and repair operations); and the potential for cross contamination by a northern site which was formerly a vehicle repair and gasoline station, are all considered to be REC's.

An abbreviated Phase 2 Environmental Site Assessment ("ESA") dated August 5, 2016 was also submitted by the applicant as a part of the CIS. Phase 2 involved the collecting and analyzing of

13 soil samples and two groundwater samples by SME. The results of SME's sampling were supplemented by a previous Phase 2 ESA conducted by McDowell & Associates on April 26th, 2015 where 12 soil samples were collected and analyzed.

Evidence of petroleum and other pollutants were found in the soil samples. The applicant has submitted a Brownfield Redevelopment Plan for the proposed development site dated March 16, 2016. The purpose of this is to seek reimbursement for the eligible remediation activities performed on the property. The necessity for a Brownfield Plan arose from the results of the Phase 1 and Phase 2 ESA.

Conclusions in the CIS were that although the building is located within Birmingham's Parking Assessment District which requires no additional parking, additional parking spaces are needed to service the retail options proposed on the first floor. The applicant is proposing 90 off-street parking spaces and 11 on-street parking spaces to alleviate the stress on the Parking Assessment District. The traffic impact study also notes that westbound left turns onto Peabody St. from Maple Rd. would benefit from extending the turn lane full width all the way to the near Woodward Ave. crosswalk due to the larger queue lengths imposed by the new development. Other traffic impacts of the development will be relatively minor.

Mr. Chris Longe, Architect for the project, responded to Mr. Boyle. They expect to have ten or more rental units. Employees and residents will have access to the on-site parking. He was confident that people using the building will find places to park.

Ms. Ecker stated the first floor is not required to be retail on the Woodward Ave. or Peabody sides.

Regarding noise, Mr. Longe said the mechanicals have been placed in the middle of their building, so noise does not impact the buildings to the north and south.

The Vice-Chairman called for comments from members of the public at 8:20 p.m.

Mr. Allen Green, 39577 Woodward Ave., Bloomfield Hills, represented the ownership of Balmoral, the building to the south of the proposed project. He voiced their objections to the project. Their building, along with the Greenleaf Trust, was designed as a gateway. Each side has windows and decorative architectural elements. Those features will essentially be hidden and that will cause a huge financial issue for their building. He did not see any way they could build this without trespassing on the Balmoral property. If the developer moved the building, adjusted the lot lines and created a visually impactful north and south wall between the buildings, it would be a huge improvement to the corridor. Two sides of two beautiful buildings would not be hidden and destroyed. He asked the board to consider the alternatives. Lastly, there has been no discussion with their neighboring developer about their plans and how the Balmoral building would be impacted.

Ms. Ecker stated the applicant has the right to build on their property. There would be some logistical issues to work out but the Building and Engineering Depts. would work with the applicant on those. Depending on where the windows were built, there was never an expectation that they would remain unblocked. A developer can either set back the windows a certain distance from the property line, or keep them there and use fire rated glass. In many cases when windows are constructed closer than would be permitted, there is a signed agreement by the owners saying they understand those windows could be covered up if the property next door gets developed to its potential.

Mr. Allen Green noted there are serious parking issues in that area. It has been a nightmare to get parking permits for their various tenants. He additionally remarked that each of the 1,500 sq. ft. apartment units proposed only has one window.

Mr. Koseck observed the Zoning Ordinance promotes contiguous buildings and not gaps or alleys between buildings. Cities are made up of buildings that have a variety of building materials and architectural styles. Apartments with one window are designed all the time. They are called lofts.

Ms. Patti Owens with Catalyst Development Co., the developer of Greenleaf Trust, said she has not had any input or conversation with the developers of this project. She doesn't feel that the massing is congruent with the vision for the City as was outlined to them and mandated to them by the City during the planning and development of their Greenleaf Trust Building. So they built what they felt was the idea of Birmingham which was to have a gateway building, a jewel on that corner. The proposed project feels like it is not a strong and harmonious continuation. The project's terraces that face east are within a handshake of the Greenleaf terraces facing east. This proposed building needs to be its own beautiful thing. Shrink it back a little bit. She understood when they built the building that their views to the south would be impacted if something else was built. So that is in their agreement and they installed the fireproof glass on those windows. However, that is only on two bays. The rest of their building is set back and has regular windows. Additionally, maintenance of the building would be severely impacted as they are currently dealing with an algae problem.

Her view of parking in the area is that it is an absolute nightmare. She recommended that the Planning Board take a good hard look at that to make sure they are not overburdening that area with not enough parking for this rather large development.

Mr. Boyle suggested looking at Fifth Ave, Washington Blvd, Princess St. to see the fantastic street walls that have been constructed over time using different architects, owners, and sites. That is the reality of a city. Just walk along Maple Rd. That was built over time using different heights, different materials, different owners and it works. So it will be difficult for the speakers to make their case to him.

Mr. Koseck said he knows the building can go up without touching the neighbors. Ms. Whipple-Boyce noted the Varsity Shop site knew to consider the impact their adjoining neighbors might have when they decided not to put windows on the side of their building. She finds it unfortunate that covering the adjoining windows wasn't considered in the applicant's CIS.

Vice Chairperson Lazar encouraged the applicant to engage in conversation with the neighbors to the north and south in order to reach some kind of agreement. Ms. Whipple-Boyce agreed they should have gone the extra mile and engaged their neighbors. This is a huge impact on them and there is no assessment of that impact in the CIS.

Mr. Chris Longe said he knows there has been communication between the developer and the Greenleaf Building. He assured they can build this building. The building to the south is designed in such a way that it anticipates an infill building. The stair tower is solid block as it abuts the property and the window wall steps back whatever the code minimum is, anticipating the wall going up. There is also a 1 ft. easement on the north side abutting the Greenleaf Building. The agreement mentions there might be a building there some day and goes so far

as to talk about taking off the window awnings in that case. The strict letter of the law has been met as far as the CIS.

Mr. Koseck thought the concerns he has heard from the neighbors are more design concerns rather than CIS concerns. Vice-Chairperson Lazar observed that by adopting the CIS the Planning Board is not approving the project.

Motion by Mr. Boyle

Seconded by Mr. Koseck to accept the CIS as provided by the applicant for the proposed development at 34965 Woodward with the following conditions:

- (1) Provide mitigation strategies for control of noise, vibration and dust;**
- (2) Applicant will be required to bury all utilities on the site; and**
- (3) Applicant provide information on all life safety issues and Fire Dept. approval, as well as details on the proposed security system provided to and approved by the Police Dept.**

No one from the audience wished to speak on the motion at 9:15 p.m.

Motion carried, 4-0.

ROLLCALL VOTE

Yeas: Boyle, Koseck, Lazar, Whipple-Boyce

Nays: None

Absent: Clein, Jeffares, Williams

Preliminary Site Plan

Mr. Baka reported on the Preliminary Site Plan. The property is zoned B-4 in the underlying zoning and D-4 in the Downtown Overlay District. In accordance with Article 4, section 4.24 C (2) of the Zoning Ordinance, developments with over 50,000 sq. ft. of office space require two usable off-street loading spaces, and commercial uses from 5,001 to 20,000 sq. ft. require one usable off-street loading space. The plans do not display any off-street loading spaces. ***The applicant will need to submit plans demonstrating the size and location of three usable off-street loading spaces, or obtain a variance from the Board of Zoning Appeals.***

Design Review

The applicant is proposing to utilize the following materials for the construction of the five-story, mixed-use building:

- Stone panels along the lower level of all façades;
- Masonry veneer along the upper levels of all façades;
- Stone for the base of the building;
- Steel window and door system;
- Extensive window glazing on all facades.

Discussion considered the distinction between office and commercial on the fourth floor. Mr. Koseck noted the intent to get to five floors was to have residential on floors 4 and 5 in order to populate the Downtown and not put an additional burden on the parking structures.

Mr. Chris Longe said his building will have a significant entrance off of Woodward Ave. and off of Peabody St. He went through a PowerPoint and described the exterior elevation and interior layout along with the proposed materials. The building goes to the property line but the actual

first floor steps back on both the Woodward Ave. and Peabody St. sides. The reason for that is there is only 5 ft. of sidewalk there. They will internally brace the building because of the configuration of the site. Ten residential units are anticipated and 15 parking spaces are allowed for them. They would be open to putting windows on the side of their building, but didn't think it would be proper to do considering their proximity to the north and south neighbors.

Members of the public were invited to comment at this time.

Ms. Patti Owens reiterated her disappointment about the lack of communication between the developer and their neighbors. She agrees the proposed building needs to happen but she believes it should be stepped back to allow each building to stand on its own. She doesn't think that one building should benefit at another's detriment.

Mr. Allen Green said they are concerned about the value of their building and the operational issues. When the proposed building goes up next to them it will block the air and light of the 50 windows on that side. Their tenants looking out of those 50 windows a few feet away will see only a masonry wall. Further, no details have been provided about maintenance and how the properties relate to each other. For the buildings to be consistent with each other there may be insets anywhere between 5 and 15 ft. to be compatible with the buildings on either side. He asked the board to consider these issues, how the buildings interrelate, and whether this building is harmonious and meets the standards that are required in the Overlay District to get the fifth floor.

Mr. Koseck commented there are only four board members present and this is a sizable important project. He would like some additional information that would help him understand the design and how it speaks to the neighbors. He wanted to see a rendering of this building and how it relates to the neighboring buildings. Also, he wanted a cross section between the buildings to understand how they are abutting. Ms. Whipple-Boyce indicated she likes the building very much. She appreciates the contrast and the differentiation. In addition to what Mr. Koseck asked for, she wanted clarity on the fourth floor uses. She requested the applicant to review Article 7, 7.27 to see if they are meeting the ordinance well enough. Also, she wanted everyone to talk to each other.

Mr. Boyle thought the comments made by his colleagues are all very relevant.

Motion by Mr. Boyle to postpone a decision on the Preliminary Site Plan for 34965 Woodward Ave. to August 23, 2017.

At 10:20 p.m. there were no comments on the motion from members of the public.

Motion carried, 4-0.

VOICE VOTE

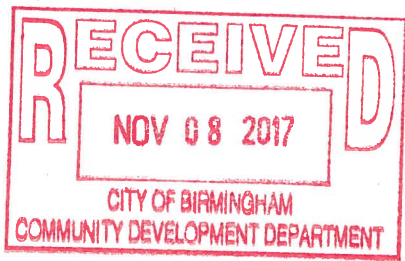
Yeas: Boyle, Koseck, Lazar, Whipple-Boyce

Nays: None

Absent: Clein, Jeffares, Williams

07-145-17

MISCELLANEOUS BUSINESS AND COMMUNICATIONS



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November 8, 2017

Richard E. Rassel, III
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City of Birmingham Board of Zoning Appeals
Attn: Bruce Johnson, Building Official
151 Martin Street, P.O. Box 3001
Birmingham, MI 48012-3001

Re: 34965 Woodward Ave., Birmingham, MI (former Peabody's restaurant) (the "Property")

Dear Members of the City of Birmingham Board of Zoning Appeals:

The undersigned represents Peabody Owner LLC, a Michigan limited liability company, and Alden Development Group (collectively "ADG"), the owner and developer, respectively, of the Property that is the subject of certain Board of Zoning Appeals Applications submitted by Catalyst Development Company ("Catalyst") and Woodward Brown Associates ("WBA") (collectively the "Appeals") relating to the Birmingham Planning Board's September 13, 2017 grant of preliminary site plan approval with respect to ADG's re-development of the Property (the "Project").

ADG, in response and opposition to the Appeals, adopts and incorporates by reference:

- (i) Findings of fact and conclusions relative to the Birmingham Zoning Ordinance ("Ordinance") as determined by the Planning Board at its September 13, 2017 Meeting (the "Planning Board Meeting") at which a Motion was passed unanimously by the Planning Board, on Motion of Member Williams, to grant preliminary site plan approval to the Project. (*Exhibit A – verbatim transcript of Planning Board Meeting*);
- (ii) A September 8, 2017 Memorandum sent from Matthew Baka, Birmingham Planning Division, to the Planning Board setting forth in detail the basis upon which the Planning Division recommended that the Planning Board "APPROVE" preliminary site plan approval for the Project subject to the (7) design conditions accepted by ADG. (*Exhibit B – September 8, 2017 Memorandum to Planning Board*);
- (iii) City Attorney Currier's August 23, 2017 letter stating that there are were **no legal impediments** to the Planning Board's consideration of ADG's preliminary site plan relative to the Project with respect to: (a) consistency with the City Master Plan; (b) proposed zero lot line construction consistent with the Ordinance; (c) proposed onsite parking which exceeds the required minimum; nor (d) possible

trespass during construction as the means and method of construction of the Project have not yet been determined and the possibility of future trespass concerns is not a component reviewed by the Planning Board. (*Exhibit C – August 23, 2017 Currier letter*)

Despite transparently self-interested protestations to the contrary by Catalyst and WBA in the Appeals, the record here plainly establishes that **ADG satisfied all requirements of Section 7.27 of the Ordinance relative the Planning Board’s consideration and grant of preliminary site plan approval in favor of ADG and the Project.**

ADG specifically references the following relevant excerpts from the comments and Motion by Planning Board Member Williams at the Planning Board Meeting in support of preliminary site plan approval for the Project and in rebuttal to issues raised by Catalyst and WBA, identical issues to those raised in the Appeals (*See Exhibit A – verbatim transcript of Planning Board Meeting*):

“First of all, I want to thank Matt and Jana for researching approval documentation for the Greenleaf Trust and Balmoral buildings. **Their conclusion that there was no encouragement or requirement by the planning board for staff to install windows on the south and north property lines, respectively, is important. I have concluded that the applicant's proposal meets the requirements of the zoning ordinance for preliminary site plan approval.**

The report of the staff makes that abundantly clear, as does the letters of Beier Howlett dated August 23rd and September 13, which have been incorporated into the record and which form part of the basis for my comments. **The adjoining property owner's objections are detailed and weighty, but they do not justify denying the site plan.** Let me respond to each of the major points which they have raised.” Ex. A, transcript pp. 10-11 - Williams (emphasis added).

“The proposed office and residential use is **permitted by the zoning**...In fact, a five-story building with a top-floor residential is consistent with the zoning ordinance and is **not inconsistent with the master plan.**” Ex. A, transcript, p. 11-Williams (emphasis added).

“The site has **more than enough parking to meet the requirements** of the zoning ordinance for its residential component.” Ex. A, transcript, pp. 11-12 - Williams (emphasis added).

“...there will be **adequate light and air** to both the Greenleaf Trust and Balmoral buildings if this building is constructed to the lot line as proposed.” Ex. A, transcript, p. 12 - Williams (emphasis added).

"The ordinance does not guarantee no change in the amount of light and air, merely that the board assure itself that there is adequate light and air. In my opinion there is." Ex. A, transcript p. 13 - Williams (emphasis added).

"Many property owners might object to any building being built next to them and argue that any development will diminish their property value. It neither is nor should be the job of this board to choose between competing speculations whether proposed construction will reduce or increase value to a small degree." Ex. A, transcript, pp. 14-15- Williams.

"The construction that is proposed was completely foreseeable, although I do not think it is necessary for us to decide whether, or to what extent, the owner of the Green -- **the Greenleaf Building waived the right to make the objection she makes to the preliminary site plan. It is noteworthy that not only was this issue foreseeable, it was actually foreseen. The earth retention system and construction barricade agreement of November 28, 2008, specifically mentions that owner of the Peabody site could construct a building on the lot line.**" Ex. A, transcript, pp. 15-16 - Williams (emphasis added).

"Reference to the basic purposes of zoning shows that the purpose of regulation is to prevent a major loss in value. **Nothing suggested to us indicates** that the financial return that Balmoral or Greenleaf buildings will have after the Peabody building is constructed **will not be reasonable or economically viable...**" Ex. A, transcript, p. 16 - Williams (emphasis added).

"Regarding the requirements of 7.2783 as an absolute bar against any building permitted by the terms of the zoning ordinance that negatively affects his neighbors would turn the zoning ordinance from a public shield, which it is clearly intended to be, into a private sword benefitting the first to build." Ex. A, transcript pp. 16-17 - Williams (emphasis added).

"...this building proposed is compatible and does comply with the spirit and purpose of the zoning ordinance." Ex. A, transcript, p. 17- Williams (emphasis added).

"Six: Construction will necessarily result in trespass. Simply put, that is not an issue that is relevant to site plan review. The civil law adequately provides remedies to property owners if their neighbors invade their land without legal justification." Ex. A, transcript pp. 17-18 - Williams.

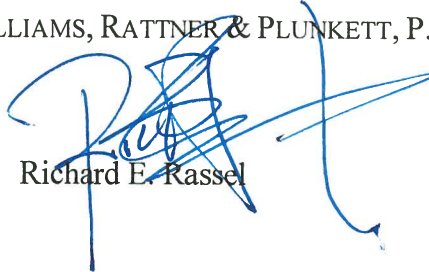
City of Birmingham Board of Zoning Appeals
November 8, 2017
Page -4-

Based on these, my personal comments and on the record, including such facts and reasons as any of my colleagues willing to join in this motion articulate, I move approval of the preliminary site plan for 34965 Woodward Avenue as submitted." Ex. A, transcript, p. 19 - Williams.

Representatives of ADG and the undersigned will be at the BZA hearing to address any questions or concerns that you may have.

Very truly yours,

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



Richard E. Rassel

Enc.

EXHIBIT A

9/13/2017

Page 1

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CITY OF BIRMINGHAM

8

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MEETING OF THE PLANNING BOARD

10

11

Wednesday, September 13, 2017

12

13

7:30 p.m.

14

15

CITY COMMISSION ROOM

16

17

151 Martin Street

18

19

BIRMINGHAM, MICHIGAN 48009

20

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22

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24

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Regarding 34965 Woodward Avenue, Peabody

9/13/2017

Page 2

1 MEMBERS:
2
3 SCOTT CLEIN
4 JANELLE BOYCE
5 ROBIN BOYLE
6 STUART JEFFARES
7 BERT KOSECK
8 GILLIAN LAZAR
9 J. BRYAN WILLIAMS
10 LISA PRASAD
11 DANIEL SHARE
12
13 PLANNING DIRECTOR:
14
15 JANA ECKER
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Page 4

1 that you would like me to review again?
2 MS. LAZAR: How does the board feel about
3 that? Would you like to do it?
4 MR. KOSECK: Are there any fundamental
5 changes from what we've seen?
6 MS. LAZAR: You would like to?
7 SPEAKER MATT: No, there are no revisions.
8 MR. KOSECK: No revisions?
9 MS. LAZAR: No revisions? All right.
10 That's fine. Thank you, Matt.
11 All right. Questions from the board? No?
12 Would the applicant care to come up,
13 please?
14 MR. RASSEL: Good evening, members of the
15 planning board. Richard Rassel, 380 North Old
16 Woodward, Birmingham, Michigan, with Williams Williams
17 Rattner and Plunkett, and I represent Alden
18 Development Group. We have with us this evening the
19 site architect, the project architect, Chris Long. We
20 have members of the ownership group here as well.
21 Basically, I think at this stage we were
22 able to present our thoughts and furtherance of
23 encouraging this board to move this process through
24 preliminary site plan at the August 23rd meeting. We
25 appreciate your patience greatly in working with us to

Page 3

1 SPEAKER MATT: Okay. So as you know, this
2 has been reviewed a couple times previously. Last
3 time the board discussed this was on August 23rd, and
4 at that time there was extensive discussion about the
5 interface of the proposed building with the two
6 neighboring buildings to the north and the south, and
7 the planning board requested that the staff do some
8 research on the history of those buildings and the
9 approval process and whether or not the planning board
10 actually required those windows to be there.
11 We did go back and look at all the minutes
12 that were available. Certainly, there was a lot of
13 minutes on the site to the south going back many, many
14 years, and also, the site to the north we -- after
15 thoroughly examining all the minutes, we didn't find
16 any references by the board or staff encouraging those
17 windows, though there were some comments by the
18 building department relating to putting windows on the
19 property line and that they specifically were not
20 permitted, but that was later resolved through the use
21 of fire-rated glass.
22 Certainly, if you want me to go through the
23 site plan again tonight, I'm more than happy to do so,
24 but if you want me to just leave our comments at
25 that -- or are there specific aspects of the building

Page 5

1 listen to our view of the fact that the master plan
2 and the zoning ordinance and -- in all respects, treat
3 this project as compliant. I think the staff has
4 obviously worked hard at looking at the research that
5 was directed to it, and we appreciate that.
6 We've had a chance to review the planning
7 staff's report of September 8th, and we find that the
8 information in there to be relevant to the question
9 that has been presented relative to the windows that
10 were installed on the north and south facades to our
11 neighbors, but I think at this stage of the
12 proceeding, we've had numerous comments. We're
13 willing to work with our neighbors in the aspect to
14 final design, should that be necessary, to try to make
15 the best project available for, not only our project
16 group, but for the betterment of the city and for this
17 important gateway.
18 So we look forward to moving this project
19 along and moving towards final site plan review and
20 working into the design aspects, working with staff in
21 the building department. We're here, obviously, to
22 answer any questions that you may have. We think that
23 we were very thorough in our examination of what was
24 agreed to between our neighbors and us and the
25 knowledge that they have, relative to this project,

2 (Pages 2 to 5)

9/13/2017

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1 and we think that all of that's been put in -- in
2 favorable perspective, relative to our request, to be
3 advanced through this preliminary site plan this
4 evening. So if there are any site design issues or
5 issues for ownership or issues that I can answer for
6 you, please let me know.
7 MS. LAZAR: Questions from the board? No?
8 Okay.
9 Thank you very much.
10 MR. RASSEL: Thank you.
11 MR. KOSECK: Just so everybody -- this is
12 the preliminary site plan approval, not final.
13 MS. ECKER: Right.
14 MR. KOSECK: So it's about the siting of
15 the building, the form, the mass, the -- so it's not
16 materials. It's not the architecture. It's not
17 the -- it's -- it's preliminary at this point.
18 MS. ECKER: That's correct.
19 MS. LAZAR: Take it to the public.
20 SPEAKER: Can I --
21 MS. LAZAR: Yes, of course.
22 SPEAKER: Is there -- Matt and Jana, to the
23 best of your knowledge, is there --
24 SPEAKER: Can't hear. Speak up, folks.
25 SPEAKER: Is the building being able to --

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1 built up to the lot lines? Is that within our
2 ordinance?
3 MS. ECKER: Yes.
4 SPEAKER: That's allowed?
5 MS. ECKER: That's allowed.
6 SPEAKER: Is there anything that you guys
7 know about where they gave up that right? Or that --
8 MS. ECKER: Peabody property?
9 SPEAKER: Yes.
10 MS. ECKER: No.
11 SPEAKER: Is there any -- okay.
12 MS. LAZAR: Any other questions before we
13 take -- okay.
14 Any further comments from the public?
15 Would anybody care to come up?
16 MR. GREENE: Thank you. Again, my name's
17 Alan Greene, and I'm at 39577 Woodward Avenue. That's
18 Michigan. I'm not gonna repeat -- you guys got my
19 letter, and you've heard me before, so I'm not going
20 to repeat all that. I will just summarize and say,
21 again, you know, I'm here representing the members of
22 the Greenleaf Trust Building, the Balmoral Building,
23 and, as we have emphasized, you have specific
24 standards in your ordinance that go beyond just coming
25 in and showing that, you know, you meet the setbacks,

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1 and it's within the height, because you're in a city
2 downtown area, and, specifically, with respect to
3 those standards, I think we presented our information
4 as to why this proposed new building does not meet
5 those standards.
6 It's not compatible on the north and south
7 side with the structures that exist, and I mean
8 compatible, not that it's the same design. It has
9 nothing to do with the design itself. It's the nature
10 of the construction, the quality of the construction,
11 the recesses of the construction, whether or not, you
12 know, 97 windows on these two buildings are going to
13 look out at a blank wall, that sort of thing. And
14 we've explained all that.
15 It's also -- deprives those buildings of
16 light and air, which is a specific standard of your
17 ordinance. It also materially impacts the value of
18 those buildings negatively, not only just the money
19 that was spent on building those facades in the first
20 place, but also the value of the space and the
21 disputes that are now going to occur, who are now
22 going to be deprived of light and air, et cetera.
23 And we've also pointed out that the way --
24 because these buildings weren't designed to be fully
25 abutting the way they're designing it is, it's going

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1 to cause innumerable and, we think, insurmountable
2 issues with respect to the ongoing maintenance and
3 operation and repair of both buildings, or all three
4 buildings, on the way it's constructed right now.
5 There are many alternatives that can
6 address these concerns that we have, and I could say
7 that since the very first meeting we were here, there
8 hasn't been a single change to the site plan, not a
9 single revision at all, with respect to what you see
10 before you. It is what they presented, and they're
11 just trying to maximize -- I get it -- maximize their
12 square footage that they can get out of the building.
13 So I didn't see anything in the record that
14 has been presented by the applicant that actually
15 addresses those standards specifically, only that, you
16 know, we're allowed to do it, that sort of thing. No
17 one's -- no one's come up and said you're wrong,
18 Mr. Greene and broker and neighbors, that we're not
19 going to impact your value whatsoever, your building.
20 Those are specific standards that your ordinance
21 requires, and we don't think that they're met here.
22 So we would ask that, at least with respect to this
23 particular site plan, that it be denied.
24 Thank you.
25 MS. LAZAR: Any other comments from the

3 (Pages 6 to 9)

1 public?

2 Bring it back to the board. Mr. Williams?

3 MR. WILLIAMS: I have -- with indulgence of
4 the other members of the board -- I have a lengthy
5 statement to make followed by a motion. So I'm going
6 to start, if that's all right.

7 I would say these comments are mine. Since
8 our meeting on August 23rd, I've had the opportunity
9 to review more carefully the materials submitted by
10 the applicant and by the neighboring property owners
11 in the context of the full zoning ordinance. I've
12 also listened to the comments tonight.

13 First of all, I want to thank Matt and Jana
14 for researching approval documentation for the
15 Greenleaf Trust and Balmoral buildings. Their
16 conclusion that there was no encouragement or
17 requirement by the planning board or staff to install
18 windows on the south and north property lines,
19 respectively, is important. I have concluded that the
20 applicant's proposal meets the requirements of the
21 zoning ordinance for preliminary site plan approval.

22 The report of the staff makes that
23 abundantly clear, as does the letters of Beier Howlett
24 dated August 23rd and September 13, which have been
25 incorporated into the record and which form part of

1 the basis for my comments. The adjoining property
2 owner's objections are detailed and weighty, but they
3 do not justify denying the site plan. Let me respond
4 to each of the major points which they have raised.

5 First, that the project is not consistent
6 with a master plan. The 2016 downtown plan approved
7 in 1996 envisions one possible future for this
8 property but not the only possible future. The fact
9 that the 2016 plan recommended that the site might
10 ultimately be a good one for a parking deck did not
11 mandate that it be so, and, in fact, the city has
12 taken no steps to require the property to construct
13 the parking deck. The proposed office and residential
14 use is permitted by the zoning.

15 The property owner need not wait to find
16 out if the city will someday decide it wishes to
17 acquire the property for parking, nor do the drawings
18 in the plan that are illustrative of possible future
19 conditions the architects mentioned in their comments
20 constitute a limitation on the property's use. In
21 fact, a five-story building with a top-floor
22 residential is consistent with the zoning ordinance
23 and is not inconsistent with the master plan.

24 Item two: No parking. The site is in the
25 parking assessment district. The site has more than

1 enough parking to meet the requirements of the zoning
2 ordinance for its residential component. On numerous
3 occasions, this board has made it clear that it will
4 not and cannot prevent owners in the parking
5 assessment district from developing their property
6 because there may be a shortage of parking Monday
7 through Friday at lunchtime.

8 The fact that the city may not have built
9 enough public parking does not change the fact that
10 this property owner and its predecessors, like many
11 others, have paid into the parking assessment district
12 with the understanding that will not have to -- have
13 to have on-site parking for nonresidential uses.

14 Three: The plan violates 7.27B2, the light
15 and air clause of the zoning ordinance. Counsel for
16 Dykema Gossett has made an argument that construction
17 of the -- of this building to the lot line will
18 prevent adequate light and air reaching the adjacent
19 properties in violation of section 7.27B2 of the
20 zoning ordinance. I believe a significant word is
21 "adequate." In any event, taking the language of the
22 ordinance at face value, there will be adequate light
23 and air to both the Greenleaf Trust and Balmoral
24 buildings if this building is constructed to the lot
25 line as proposed.

1 Each building has unimpeded light and air
2 on three of their four facades. The Balmoral
3 Building's windows are set back at least five feet on
4 the north facade. That five-foot well provides
5 adequate light and air. The affected windows on the
6 Greenleaf Building are those at both the east and west
7 end of the south facade, as the center of the
8 Greenleaf Building south facade also has a well where
9 the windows are set back from the property line.

10 Each one of the affected windows on the
11 part of the south facade built through the lot line
12 have windows that face to the east and west, there as
13 into the window well in the center and facing the
14 street on the outside so that their light is at least
15 good and arguably better than that provided to the
16 Balmoral Building. The ordinance does not guarantee
17 no change in the amount of light and air, merely that
18 the board assure itself that there is adequate light
19 and air. In my opinion there is.

20 Item four, section 7.7B3, the diminished
21 value section: Counsel makes the argument the
22 building will diminish the value of the adjacent
23 buildings, thus the preliminary site plan cannot be
24 approved. He supports his argument with the written
25 opinion of the real estate broker for the Greenleaf

1 Building that the four residential apartments on the
2 south wall will have diminishment of income due to the
3 loss of views. The penthouse rent will be reduced
4 from \$14,000 a month to \$10,000 a month, still beyond
5 by budget I would add. The other apartments might
6 likely have reductions, and the office would have a
7 reduction as well, although it is hard to estimate
8 that amount.

9 Presumably, his opinion would be similar
10 for the Balmoral Building, where nothing in his letter
11 distinguishes between those rental spaces on the
12 window wall of the Greenleaf Building and those at the
13 wall and the property line. Section 7.27B3 has two
14 parts. One is that the location size and height of
15 the building won't interfere with the reasonable
16 development of adjoining property, and it obviously
17 does not. The second is that the development will not
18 diminish the value of the adjoining property.

19 Assuming that there is some reduction in
20 rental income and that translate into some diminished
21 value of the building, some reduction, no matter how
22 small is, I do not believe, what the ordinance aims
23 at. Many property owners might object to any building
24 being built next to them and argue that any
25 development will diminish their property value. It

1 neither is nor should be the job of this board to
2 choose between competing speculations whether proposed
3 construction will reduce or increase value to a small
4 degree.

5 Zoning is necessarily a three-point balance
6 between the rights of adjoining property owners to
7 develop their properties as they see fit, the right of
8 their neighbor to not be disturbed, and the right of
9 the people as embodied in the municipality to regulate
10 land uses to achieve public purposes, some of which
11 are listed in section 7.24 of the ordinance, for
12 example, subsection F, to sustain the comfort, health,
13 tranquility, and contentment of residents and attract
14 new residents by reason of the city's favorable
15 environment.

16 The construction that is proposed was
17 completely foreseeable, although I do not think it is
18 necessary for us to decide whether, or to what extent,
19 the owner of the Green – the Greenleaf Building
20 waived the right to make the objection she makes to
21 the preliminary site plan. It is noteworthy that not
22 only was this issue foreseeable, it was actually
23 foreseen. The earth retention system and construction
24 barricade agreement of November 28, 2008, specifically
25 mentions that owner of the Peabody site could

1 construct a building on the lot line.

2 The Balmoral Building inferentially knew as
3 well since it constructed with a blank wall along the
4 easternmost part of the north facade. The question of
5 what amount of diminished -- diminish in the value
6 would trigger the violation of the ordinance need not
7 be determined tonight. Reference to the basic
8 purposes of zoning shows that the purpose of
9 regulation is to prevent a major loss in value.

10 Nothing suggested to us indicates that the
11 financial return that Balmoral or Greenleaf buildings
12 will have after the Peabody building is constructed
13 will not be reasonable or economically viable,
14 although it may not be as high as it would be if the
15 property owner in the middle of these two buildings
16 continued to allow it to be vacant or limited its
17 development to one or two stories.

18 One of the purposes of the zoning ordinance
19 is to make public health -- is to promote public
20 health, moral safety, comfort, convenience, and
21 general welfare. Reading the requirements of 7.27B3
22 as an absolute bar against any building permitted by
23 the terms of the zoning ordinance that negatively
24 affects his neighbors would turn the zoning ordinance
25 from a public shield, which it is clearly intended to

1 be, into a private sword benefitting the first to
2 build.

3 Fifth: The proposed building is not
4 compatible with the adjacent properties. Section
5 7.27B5 of the zoning ordinance requires the planning
6 board to determine whether or not the proposed
7 building will be compatible with other uses in
8 buildings in the neighborhood and will not be contrary
9 to the spirit and purpose of this chapter. We heard
10 much about compatibility at the August 23rd meeting.

11 Regardless of whether compatibility is
12 determined within the framework of visual appearance
13 or on a structural basis, such as the alignment of
14 floor levels, height, and mass, this building proposed
15 is compatible and does comply with the spirit and
16 purpose of the zoning ordinance.

17 The mixed-use nature is permitted. The
18 visual effect of height, mass, and floor alignment,
19 given the grades, are compatible. The zoning
20 ordinance itself, and I believe, as Mr. Jeffares
21 pointed out at the last meeting at section 7.24B,
22 discourages monotonous construction, so that the
23 objections that the building does not have masonry and
24 punched windows is, to me, of no persuasive effect.

25 Six: Construction will necessarily result

1 in trespass. Simply put, that is not an issue that is
 2 relevant to site plan review. The civil law
 3 adequately provides remedies to property owners if
 4 their neighbors invade their land without legal
 5 justification. If the developer of the Peabody site
 6 can't build what he is proposing to build without
 7 trespassing or if doing so would be too expensive, he
 8 will necessarily have to abandon the design and
 9 resubmit for some other type of building. It is not a
 10 basis to deny a site plan.
 11 There are plenty of reasons for these three
 12 property owners to cooperate. The comments made about
 13 maintenance alone justify cooperation between the
 14 parties. It isn't our place to dictate how those
 15 interests can or should ultimately be resolved or if
 16 they can be harmonized. I want to point out that
 17 every communication device in use today has the
 18 capability of two-way functionality.
 19 I am loath to hold it for or against one
 20 party that discussions have not been as frequent or as
 21 wide-ranging as we, or any particular party, may wish.
 22 Some of the issues that the property owners have
 23 raised are things, as Mr. Koseck points out, that we
 24 will consider at final site plan review. I can assure
 25 you that this board will carry out a searching,

1 comprehensive review of the criteria for final site
 2 plan approval.
 3 Based on these, my personal comments and on
 4 the record, including such facts and reasons as any of
 5 my colleagues willing to join in this motion
 6 articulate, I move approval of the preliminary site
 7 plan for 34965 Woodward Avenue as submitted, subject
 8 to the following seven conditions: One, the applicant
 9 submit plans with nine total trees or obtain a waiver
 10 from the staff arborist; two, the applicant verify
 11 that there will be five pedestrian lights on Peabody;
 12 three, the applicant provide a photometric plan and
 13 lighting specifications at the time of final site plan
 14 review; four, the applicant provide specification
 15 sheets for all mechanical units to verify that the
 16 screen wall is tall enough to sufficiently screen the
 17 proposed units; five, the applicant submit plans
 18 demonstrating the size and location of three usable
 19 off-street loading spaces or obtain a variance from
 20 the Zoning Board of Appeals; six, the applicant comply
 21 with the requests of all city departments; and, seven,
 22 the applicant provide material and color samples at
 23 final site plan review.
 24 MS. LAZAR: Thank you, Mr. Williams.
 25 Do we have a second? Any discussion about

1 the motion? Mr. Koseck?
 2 MR. KOSECK: I don't think there's anything
 3 to add. I think you've touched on all the issues that
 4 I see here, and, you know, there will be
 5 constructability challenges just like there are
 6 (inaudible) building that we saw last week and somehow
 7 those things, I hope, get worked out, but I see it
 8 exactly as you did, so I'm going to support the
 9 motion.
 10 MS. LAZAR: Any further comments from the
 11 board?
 12 Take it to the public. Any comments from
 13 the public?
 14 Bring it back to the board.
 15 Yes, Mr. Williams.
 16 MR. WILLIAMS: I want to make a comment
 17 that almost all of my comments are -- were written
 18 out, and I've given that to Carol, and so for those
 19 interested in the record, the comments, almost
 20 verbatim, will be repeated for the record in the
 21 minutes.
 22 MS. LAZAR: Thank you for all your efforts
 23 too.
 24 Okay. Okay. Then I think we'll do a roll
 25 call, please.

1 MS. ECKER: Mr. Williams?
 2 MR. WILLIAMS: Yes.
 3 MS. ECKER: Mr. Jeffares?
 4 MR. JEFFARES: Yes.
 5 MS. ECKER: Mr. Boyle?
 6 MR. BOYLE: Yes.
 7 MS. ECKER: Mr. Koseck?
 8 MR. KOSECK: Yes.
 9 MS. ECKER: Ms. Lazar?
 10 MS. LAZAR: Yes.
 11 MS. ECKER: Chairman Clein is recused.
 12 MS. LAZAR: Thank you, to the public. We
 13 look forward to seeing you further along in the
 14 process.
 15 MS. ECKER: Thank you.

9/13/2017

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CERTIFICATE OF NOTARY
STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

I, Susanne Ellen Gorman, a Notary Public in
and for the above county and state, do hereby certify
that the above recording was taken before me at the
time and place hereinbefore set forth; that this is a
true, full and correct transcript of my stenographic
notes so taken; and that I am not related to, nor of
counsel to either party nor interested in the event of
this cause.



Susanne Ellen Gorman
Susanne Ellen Gorman, CSR-9271 RPR
Notary Public,
Oakland County, Michigan.

My Commission expires: September 14, 2023

A			
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EXHIBIT B



MEMORANDUM

Community Development

DATE: September 8, 2017

TO: Planning Board Members

FROM: Matthew Baka, Senior Planner

APPROVED: Jana Ecker, Planning Director

SUBJECT: 34965 Woodward Avenue – Preliminary Site Plan Review

The applicant has submitted an application for Preliminary Site Plan review to construct a five story building in the B4/D4 zoning district. The property is located on the west side of Woodward Avenue on Peabody Street at the former location of Peabody's Restaurant and the former Art & Frame Station.

On July 26, 2017 the Planning Board reviewed the CIS & Preliminary Site Plan application for 34965 Woodward. At that time, the Planning Board decided to accept the Community Impact Statement but postponed the Preliminary Site Plan review. The Board requested that the applicant provide additional information regarding the interfacing of the proposed building with the two existing buildings on each side and how they will abut. Also, the Board requested that the applicant provide additional renderings of the new building in context with the adjacent buildings. In addition, the postponement was granted to provide the applicant time to engage with the neighboring property owners in light of the public comments made at the meeting. In response to this discussion the applicant provided new details and renderings in addition to the previously submitted plans in order to provide additional information for the Planning Board to consider at the August 23rd Planning Board Meeting.

On August 23, 2017 the Planning Board reviewed the proposed project again and held further discussions with the applicant and representatives for the neighboring properties. Many of the challenges of constructing the proposed building were discussed as well as the ancillary effects of the proposal on the neighboring buildings. As a result of this discussion, the Planning Board postponed the review to the meeting of September 13th and requested that staff provide the minutes from the previous Planning Board meetings when both 34901 Woodward and 34977 Woodward were reviewed. The stated intent of providing this information is to determine if the buildings to the north and south of the subject site were encouraged or required to provide windows that abut the shared property lines of 34965 Woodward. Accordingly, the staff reports for the Final Site Plan reviews for both buildings have been attached which include all minutes from previous meetings for each site respectively. A thorough review of the minutes and staff report revealed no encouragement or requirements by the Planning Board or staff to install windows on the property lines abutting the 34965 Woodward site. The only comments made by staff regarding this issue were by the Building Department. For the Catalyst Building the

Building Department indicated that windows were not permitted on the property line. This was later resolved through the use of fire rated glass. Similar comments were provided for the proposed windows on the north elevation of the Balmoral Building.

1.0 Land Use and Zoning

- 1.1. Existing Land Use – The previous land uses on the site were a vacant two-story commercial building and a one story shop. The buildings were demolished in March, 2017 to allow construction of the proposed five story mixed use building.
- 1.2. Zoning – The property is zoned B-4 Business-Residential, and D-4 in the Downtown Overlay District. The proposed retail, office, commercial and residential uses, and surrounding uses appear to conform to the permitted uses of the zoning district, including the off street parking facility in the form of two levels of parking decks below the development.
- 1.3. Summary of Adjacent Land Use and Zoning - The following chart summarizes existing land use and zoning adjacent to and/or in the vicinity of the subject site, including the 2016 Regulating Plan

	North	South	East	West
Existing Land Use	Retail/ Commercial	Retail/ Commercial	Open Space/Parking	Parking/ Commercial
Existing Zoning District	B-4 Business Residential	B-4 Business Residential	B-2 General Business	B-4 Business Residential
Overlay Zoning District	D-4	D-4	MU-7	D-4

1. Setback and Height Requirements

The attached summary analysis provides the required and proposed bulk, area, and placement regulations for the proposed project. The applicant meets all of the bulk, area and placement requirements for the D-4 Downtown Overlay District.

3.0 Screening and Landscaping

- 3.1 Dumpster Screening – The applicant is proposing to store all trash inside the building envelope along the north side on a mechanical platform. The plans indicate trash chutes on all levels that lead to a trash compactor accessible via

the entry drive, but this is not clearly illustrated on the plans. **The applicant must clarify how the trash will be stored on this platform on the plans.**

- 3.2 Parking Lot Screening – Two levels of proposed parking will be placed underground with eleven (11) angled parking spaces in the right of way on Woodward. No parking lot screening is required.
- 3.3 Mechanical Equipment Screening – A rooftop plan has been submitted indicating six (6) roof top units to be located within a decorative stainless steel metal grate screen wall. **The applicant will be required to provide specification sheets on mechanical equipment and verify that the screen wall is tall enough to sufficiently screen the proposed units at Final Site Plan.**
- 3.4 Landscaping – The Downtown Overlay District requires that one street tree be provided for every 40' of street frontage. This development is required to have 5 trees along Peabody Street, and 4 trees along Woodward Avenue. The current plans depict two (2) trees on Peabody. **The applicant will be required to submit plans with 9 total trees, or get a waiver from the Staff Arborist.** Parking lot landscaping requirements do not apply in the Downtown Overlay District.
- 3.5 Streetscape Elements – The applicant will be expected to reconstruct the streetscape to the current streetscape standards which would include brushed concrete walking path with exposed aggregate border and pedestrian scale street lights along Peabody. The street lights are typically required every 40'. The frontage along Peabody is approximately 200' requiring five (5) lights. Sheet SD.3 appears to show five (5) street lights proposed however, they only two of the lights are clearly labeled. **The number of lights must be clarified by the applicant.** The Planning Board may also wish to require benches and trash/recycling receptacles to the streetscape if they deem fit.

4.0 Parking, Loading and Circulation

- 4.1 Parking – In accordance with Article 4, section 4.43 (PK) of the Zoning Ordinance, a total of 15 parking spaces are required for the residential level of the building (10 units x 1.5 parking spaces). No on-site parking is required for the proposed retail or office uses as the site is located within the Parking Assessment District. The applicant is proposing 90 parking spaces on site in a two-level underground parking deck and 11 angled parking spaces on the street. The total number of parking spaces provided on the plans is 101. All parking spaces meet the minimum size requirement of 180 square feet.

In accordance with Article 3, section 3.04(D)(5), Downtown Birmingham Overlay District, parking contained in the first story of a building shall not be permitted within 20' of any building façade on a frontage line or between the building facade and the frontage line. The proposal meets this requirement, as all parking is below the 1st floor.

- 4.2 Loading – In accordance with Article 4, section 4.24 C (2) of the Zoning Ordinance, developments with over 50,000 ft² of office space require 2 usable off-street loading spaces, and commercial uses from 5,001 to 20,000 ft² require 1 usable off-street loading space. The plans do not display any off-street loading spaces. **The applicant will need to submit plans demonstrating the size and location of 3 usable off-street loading spaces, or obtain a variance from the Zoning Board of Appeals.**
- 4.3 Vehicular Circulation and Access – Access to the underground parking garage will be via a garage door on the southwest corner of the building, along Peabody Street. Access to the 11 on street parking spaces will be along a one way pull-off from southbound Woodward Avenue.
- 4.4 Pedestrian Circulation and Access –The applicant is proposing pedestrian entrances at three points of the building. The primary entrance to the retail space will front onto Peabody St. at the center of the façade. An additional entrance is proposed along the Woodward frontage, also centrally located. Along Peabody St. there is a proposed entrance to the elevator lobby that will provide access to the residential units. All entrances are accessible from a City sidewalk.

5.0 Lighting

The applicant has not submitted any information regarding lighting at this time. **Specifications for any proposed lighting and a photometric plan must be submitted at Final Site Plan review to determine compliance with the Zoning Ordinance lighting standards.**

6.0 Departmental Reports

6.1 Engineering Division –The Engineering Dept. has reviewed the plans dated June 5th, 2017, and the CIS dated June 5th, 2017 for the above project. The following comments are offered:

1. The traffic study acknowledges that the City's parking system is operating near capacity, and does not presently have the capacity to accommodate the additional demand that this building will create. On page 22 of the report, the writer states that "it is reasonable" to assume that the manager of the parking system will explore the possibility of adding an additional floor on the top of the Peabody St. Structure.

Further, the writer indicates that "the study assumes that possibility to be both viable and successfully completed..." The Board is cautioned that the parking structure was not designed with the intention that it could be expanded in the upward direction to create additional capacity, and that this assumption should not be figured into the study. Further, while the parking system is ready and able to operate rooftop valet assist programs to add

capacity during peak hours in its other four structures, no such plan is in place at the Peabody St. Structure.

The rooftop valet system requires one to two additional staff on days it operates, and allows the system to fit 50 to 75 additional cars on the roof level by parking them closer together than what can be done when self-parked. Due to the limited land area at this site, and the present configuration of the roof, there is insufficient space available in this structure to make such a program feasible. The study should not proceed with the assumption that an additional level can or will be built at this facility.

2. The preliminary site plans show the building frontage is proposed set back off the property line on the Peabody St. frontage of the building. The owner will be required to sign a recordable ingress/egress easement for the public to use this area as a public sidewalk, prior to the issuance of a building permit.
3. The following permits will be required from the Engineering Dept. for this project:
 1. Sidewalk/Drive Approach Permit (for all pavement installed in the right of way).
 2. Right-of-Way Permit (for excavations in the right-of-way).
 3. Street Obstruction Permit (for partial obstructions of the City sidewalk or alley).

In addition, a permit will be required from the Michigan Dept. of Transportation (MDOT) for any use and construction within the Woodward Ave. right-of-way.

6.2 Department of Public Services – DPS has no concerns.

6.3 Fire Department – The Fire Department has no concerns at this time.

6.4 Police Department – The Police Department has no concerns at this time.

6.5 Building Division – The Building Division has no concerns at this time.

7.0 Design Review

The applicant is proposing to utilize the following materials for the construction of the five-story, mixed use building:

- Stone panels along the lower level of all façades;
- Masonry veneer along the upper levels of all façades;
- Stone for the base of the building;
- Steel window and door system; and
- Extensive window glazing on all facades.

The design of the building also includes balcony projections from the third floor on both facades of the building. The issue of projections over the right of way was recently discussed at the joint City Commission/Planning Board meeting. Staff intends to consult with the City Attorney prior to Final Site Plan review to determine if an air rights agreement will be necessary to approve this aspect of the design.

No material samples or colors have been provided at this time, but will be required at the time of Final Site Plan review.

Article 3, section 3.04(E), Downtown Overlay District, of the Zoning Ordinance contains architectural and design standards that will apply to this building, including specific requirements for the design and relief of front façades, glazing requirements, window and door standards and proportions, roof design, building materials, awnings and other pedestrian scaled architectural features.

The proposed building appears to meet the architectural standards set out in Article 3, Downtown Birmingham Overlay District, of the Zoning Ordinance as the first floor storefronts are directly accessible from the sidewalk, the storefront windows are vertically proportioned, no blank walls face a public street, and the main entries incorporate canopy features to add architectural interest on a pedestrian scale.

The building also appears to meet the architectural standards set out in Article 3 of the Zoning Ordinance which requires that at least 90% of the exterior finish of the building is glass, brick, cut stone, cast stone, coarsely textured stucco, or wood. In addition, the percentage of glazing for the facade and upper levels has been provided and demonstrates that the storefront minimum of 70% is met, and the maximum upper level of 35% has not been exceeded.

8.0 Approval Criteria

In accordance with Article 7, section 7.27 of the Zoning Ordinance, the proposed plans for development must meet the following conditions:

- (1) The location, size and height of the building, walls and fences shall be such that there is adequate landscaped open space so as to provide light, air and access to the persons occupying the structure.
- (2) The location, size and height of the building, walls and fences shall be such that there will be no interference with adequate light, air and access to adjacent lands and buildings.
- (3) The location, size and height of the building, walls and fences shall be such that they will not hinder the reasonable development of adjoining property and not diminish the value thereof.
- (4) The site plan, and its relation to streets, driveways and sidewalks, shall be such as to not interfere with or be hazardous to vehicular and pedestrian traffic.
- (5) The proposed development will be compatible with other uses and buildings in the

neighborhood and will not be contrary to the spirit and purpose of this chapter.

- (6) The location, shape and size of required landscaped open space is such as to provide adequate open space for the benefit of the inhabitants of the building and the surrounding neighborhood.

9.0 Recommendation

Based on a review of the site plan revisions submitted, the Planning Division recommends that the Planning Board **APPROVE** the Preliminary Site Plan for 34965 Woodward with the following conditions:

- (1) The applicant will be required to submit plans with 9 total street trees, or get a waiver from the Staff Arborist;
- (2) The Applicant verify that there will be five (5) pedestrian lights on Peabody;
- (3) Applicant must provide a photometric plan and lighting specifications at the time of Final Site Plan Review;
- (4) The applicant will be required to provide a specification sheet for all mechanical units to verify that the screen wall is tall enough to sufficiently screen the proposed units;
- (5) The applicant will need to submit plans demonstrating the size and location of 3 usable off-street loading spaces, or obtain a variance from the Zoning Board of Appeals;
- (6) Applicant comply with the requests of all City Departments; and
- (7) Provide material and color samples at Final Site Plan review.

10.0 Sample Motion Language

Motion to APPROVE the Preliminary Site Plan for 34965 Woodward subject to the following conditions:

- (1) The applicant will be required to submit plans with 9 total trees, or get a waiver from the Staff Arborist;
- (2) The Applicant verify that there will be five (5) pedestrian lights on Peabody;
- (3) Applicant must provide a photometric plan and lighting specifications at the time of Final Site Plan Review;
- (4) The applicant will be required to provide specification sheets for all mechanical units to verify that the screen wall is tall enough to sufficiently screen the proposed units;
- (5) The applicant will need to submit plans demonstrating the size and location of 3 usable off-street loading spaces, or obtain a variance from the Zoning Board of Appeals;
- (6) Applicant comply with the requests of all City Departments; and
- (7) Provide material and color samples at Final Site Plan review.

OR

Motion to DENY the Preliminary Site Plan for 34965 Woodward

OR

Motion to POSTPONE the Preliminary Site Plan for 34965 Woodward.

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, JULY 26, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on July 26, 2017. Vice-Chairperson Gillian Lazar convened the meeting at 7:31 p.m.

Present: Vice Chairperson Gillian Lazar; Board Members Robin Boyle, Bert Koseck, Janelle Whipple-Boyce; Student Representatives Ariana Afrakhteh, Isabella Niskar

Absent: Chairman Scott Clein; Board Members Stuart Jeffares, Bryan Williams; Alternate Board Members Lisa Prasad, Daniel Share

Administration: Matthew Baka, Sr. Planner

EXHIBIT C

Beier Howlett

ATTORNEYS AND COUNSELORS

TIMOTHY J. CURRIER
tcurrier@bhlaw.us.com
Telephone (248) 645-9400
Fax (248) 645-9344

August 23, 2017

Ms. Jana Ecker, Planning Director
City of Birmingham
151 Martin Street, P.O. Box 3001
Birmingham, MI 48012-3001

Re: 34965 Woodward Ave. – Request for Preliminary Site Plan Approval

Dear Ms. Ecker:

You have forwarded to me Mr. Alan M. Greene's letter of August 22, 2017 for review. In Mr. Greene's letter, on behalf of his client, he objects to "the proposed preliminary site plan" which he contends 1) "violates the requirements of Section 7.27 of the zoning ordinance, 2) is inconsistent with the City's Downtown Birmingham 2016 Master Plan; and, 3) cannot be constructed as proposed without material change to the existing Balmoral Agreement Trust Buildings without trespassing under those properties."

The purpose of this general review is to advise us as to whether there are any legal impediments for the Planning Board to consider the request for preliminary site plan approval as submitted. By way of background, I have also reviewed the 2016 Plan, and this particular lot was part of an integrated mixed use development which was to encompass the whole block. As proposed, it is consistent with the Master Plan.

The zero lot line construction, as proposed, is also consistent with the zoning ordinance for this area, and has been used in many parts of downtown Birmingham. By way of interest, the owners of the Balmoral Building and Catalyst Building were required to install fire rated glass windows facing the former Peabody's lot in anticipation of the potential zero lot line construction. This they did when those buildings were constructed. It is also interesting to note that they have used zero lot line provision in the construction of their buildings.

This letter also raised that the parking was insufficient for the building proposed. The zoning ordinance requires that they provide onsite parking for the residential component of the project. The residential component would require 15 onsite parking spaces. A review of the proposed site plan, there is approximately 90 parking spaces on site, which far exceed the required minimum. In addition, this building is located within the parking assessment district which satisfies the parking requirement. Where these cars would be parked in the City would be subject to further discussion with the administration.

Beier Howlett

Ms. Jana Ecker
August 23, 2017
Page 2

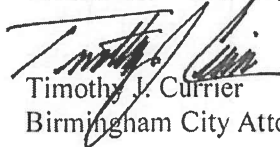
The question as to trespass during construction was also raised. The means and method of construction have not yet been determined, but as such it is not a component reviewed by the Planning Board.

Although, I had a brief time to review this material, I believe there is no legal impediment for the Planning Board to consider the proposed preliminary site plan as submitted.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

BEIER HOWLETT, P.C.



Timothy J. Currier
Birmingham City Attorney

TJC/jc

cc: Mr. Joseph A. Valentine, City Manager
City of Birmingham

CASE DESCRIPTION

34965 Woodward (17-32)

Hearing date: November 14, 2017

Appeal No. 17-32: The owners of the property known as 34901 Woodward are appealing the decision of the Planning Board to grant preliminary site plan approval for the property located at 34965 Woodward.

A. Chapter 126, Article 7, Section 7.31 of the Zoning Ordinance grants adjacent property owners aggrieved by a decision of the Planning Board the right to appeal that decision to the Board of Zoning Appeals.

Staff Notes: The property is zoned B4/D4 which allows for the construction of a five story building with preliminary and final site plan approval from the Planning Board. The application was granted preliminary site plan approval for the construction of a 5 story building on September 13, 2017. Planning Board Minutes are included.

Matthew Baka

Matthew Baka
Senior Planner

34965 Woodward





Dykema Gossett PLLC
39577 Woodward Avenue
Suite 300
Bloomfield Hills, MI 48304

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Tel: (248) 203-0700

Fax: (248) 203-0763

Michael R. Vogt

Direct Dial: (248) 203-0739

Direct Fax: (855) 233-1789

Email: MVogt@dykema.com

October 11, 2017

Via Hand Delivery

Ms. Jana Ecker
Planning Director
City of Birmingham
151 Martin Street
Birmingham, MI 48009-3368

Re: 34965 Woodward Ave. (Former Peabody's Restaurant)—Appeal of Preliminary Site Plan Approval

Dear Ms. Ecker:

Enclosed with this correspondence are two BZA Applications related to the Planning Board's grant of preliminary site plan approval for the development project at the above-referenced address, as well as checks for the applicable filing fees and all required and supporting materials.

Sincerely,

DYKEMA GOSSETT PLLC

Michael R. Vogt

Enclosures

Application Date: 10-12-17



Hearing Date: 11-14-17

Received By: BM

Appeal # 17-32

Board of Zoning Appeals Application

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

Property Information:

Street address: 34965 Woodward Avenue		Sidwell Number: 08-19-36-207-008	
Owners name: Alden Development Group		Phone #: n/a	
Owners address: 189 West Merrill Street		Email: n/a	
City: State: Birmingham, Michigan		Zip code: 48009	
Contact person: n/a		Phone #: n/a	

Petitioner Information:

Petitioner name: Woodward Brown Associates, LLC		Phone #: 248-203-0739	
Petitioner address: 34901 - 34953 Woodward Avenue		Email: agreene@dykema.com	
City: Birmingham	State: Michigan	Zip Code: 48009	

Required Attachments:

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

General Information:

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

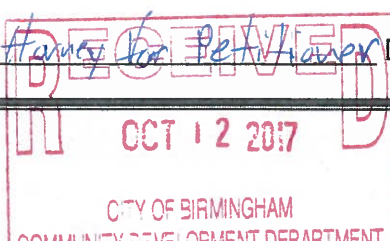
The BZA review fee is **\$310.00** for single family residential; **\$510.00** for all others; and **\$50.00** for the public notice sign.

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

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

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

Signature of Owner: Alan Greengrass, attorney for Petitioner Date: 10/11/17



DATE 10/12/2017 4:29 PM
RECEIVED
395821
Amount \$560.00

BOARD OF ZONING APPEALS

STATEMENT OF CATALYST DEVELOPMENT CO., LLC AND WOODWARD BROWN ASSOCIATES, LLC IN SUPPORT OF THEIR APPEAL FROM THE PLANNING BOARD'S GRANT OF PRELIMINARY SITE PLAN APPROVAL FOR NEW DEVELOPMENT AT 34965 WOODWARD AVENUE

Woodward Brown Associates, LLC, the developer and owner of the Balmoral Building located at 34901 - 34953 Woodward, and Catalyst Development Co., LLC. (collectively with Woodward Brown Associates, LLC, the "Petitioners"), the developer and owner of the Greenleaf Trust Building located at 34977 Woodward, respectfully submit this summary of the reasons why the decision of the Planning Board granting Alden Development Group, the developer of a proposed new building at 34965 Woodward (the "Project"), preliminary site plan approval, should be reversed by the BZA. The Project at issue is a proposed five-story building on the former site of the Peabody's restaurant and parking lot. As explained further below and in separate affidavits submitted by design professionals and others, and based on the evidence previously submitted into the record and considered by the Planning Board,¹ the proposed preliminary site plan (1) violates the requirements of Section 7.27 of the Zoning Ordinance, (2) is inconsistent with the City's Downtown Birmingham 2016 Master Plan (the "Master Plan"), and (3) cannot be constructed, used, or maintained as proposed without material damage to the existing Balmoral and Greenleaf Trust Buildings and without trespassing onto those properties.

A. Background Regarding the Balmoral and Greenleaf Trust Buildings

The Balmoral Building was completed in 2015 and is located to the south of the Project. The Building was constructed as a stand-alone building and was intended to be a major landmark along the Woodward Avenue (or Hunter Road) corridor. All four facades were designed to enhance the aesthetics of the corridor and maintain and promote the economic vitality of the City. The Building includes significant architectural details to provide interest and prominence to the location of the Building at one of the key entry points to downtown Birmingham. The northern façade (which abuts the proposed new Project) is constructed with cast stone and has 50 windows, with decorative metal balustrades. (See Balmoral Building north elevation, **Attachment 1**.) None of the windows on the Balmoral Building are fire-rated, nor were they required to be. Indeed, even the mechanical penthouse on the north elevation contains decorative windows. The façade is not planar in that it has insets for the windows and other architectural features to create a distinctive and attractive viewpoint for southbound traffic on Woodward, as desired and requested by the City in the planning and design process.

While the first floor of the Balmoral Building is constructed on the north property line adjacent to the former Peabody's restaurant parking lot and the existing frame shop building, approximately 97% of the second through fifth floors is set back at least 5 feet from the property line. The Building is 100% occupied with tenants primarily focused on financial services,

¹ The Petitioners hereby incorporate by reference into their instant appeals the correspondence submitted by attorney Alan Greene dated August 22, 2017 and September 11, 2017, and all materials attached thereto.

including Morgan Stanley, The Private Bank and PNC Bank. Indeed, PNC Bank has signage on the north façade of the Building as approved by the City.

The Greenleaf Trust Building located at the corner of Maple and Woodward was completed in 2010. This Building was transformative for a key entry point into downtown Birmingham. The Building was also constructed as a stand-alone structure with significant architectural design features and windows on all four facades. (See Greenleaf Trust Building south elevation facade, **Attachment 2**.) As the Planning Department stated in its May 22, 2008 recommendation for site plan approval, “[t]he proposed development implements the recommendations contained in the 2016 Plan as the applicant is proposing a mixed use building with the physical qualities necessary to enhance the architecture of existing buildings downtown, to create a focal point for the entrance to downtown, and is built to all property lines to continue the pedestrian –oriented character of downtown to the west of the site.” (**Attachment 3**, at page 2.) The design of the Greenleaf Trust Building was carefully scrutinized by the Planning Board because it was considered a critical gateway into downtown Birmingham.

Like the Balmoral, the south facade of the Greenleaf Trust Building, which abuts the proposed new Project, contains architecturally significant features, has a variety of setbacks, is not planar, and includes 47 windows, 25 of which are not fire-rated. The entire facade is comprised of Mankato stone. Greenleaf Trust has both residential occupants with windows facing south and the following business tenants with space on the south side of the building: Ogletree Deakins Law Firm and Finnea Group.² Similar to the Balmoral, the first floor of the Greenleaf Trust Building is constructed to the property line and was physically attached to the former Peabody’s restaurant. The second, third and fourth floors are only partially constructed to the property line (approximately 50% of those floors are set back 15’ from the property line) and no part of the fifth floor is built to the property line.

Both buildings, with the encouragement and approval of the City, established the character of the southwest entry into downtown Birmingham, which had been previously occupied by a gas station and low-rise commercial structures. They were designed to present high quality architectural facades facing the Peabody’s property that would not only enhance the value of the Peabody’s property but provide attractive and valuable adjacent facades if the Peabody’s property was ever to be redeveloped.

B. The Proposed Alden Development Project

Unlike the Balmoral and Greenleaf Trust Buildings (and every other significant building on the west side of Woodward adjacent to downtown – such as 555 and Birmingham Place), the proposed Project (yet to be named) has windows on only two sides of the building. The north

² Catalyst entered into an agreement with the former owners of the Peabody property which covers certain aspects of the relationship of the Greenleaf Trust Building to a potential future re-development of the Peabody’s property. But that agreement did not waive the obligation of the applicant here to comply with the requirements of the Zoning Ordinance with respect to compatibility, appropriate design and other standards as described in part C below, or Catalyst’s right to object to same.

and south elevations of the Project are proposed as five-story monolithic block masonry facades with no architectural character whatsoever and built to the property line on all five floors. These featureless walls will completely block and render useless the south elevation windows and architectural details of the Greenleaf Trust Building and the north elevation of the Balmoral Building. The proposed Project will block light and air to existing tenant spaces and render it nearly impossible for any these buildings to make proper repairs, clean windows and otherwise maintain the facades. The Project also replaces an existing land use that had adequate parking for the business located on the site, with one for which no adequate parking is available (*See Part E below.*) And, the Project eliminates all existing pedestrian access from Woodward (Hunter) to Peabody. For the reasons described below, the preliminary site plan failed to satisfy the mandatory requirements of the Zoning Ordinance and should have been denied by the Planning Board.

C. The Project Does Not Meet the Mandatory Requirements of Section 7.27 of the Zoning Ordinance.

Section 7.27 of the Zoning Ordinance (excerpts from the Ordinance are included as **Attachment 4**) mandates that the “Planning Board or the Design Review Board **shall not grant approval** for any development **unless the conditions given in this sub-section have been met.**” (Emphasis added.) As more fully explained below and at the public meetings before the Planning Board, several *required* conditions have not been met. Indeed, the applicant submitted no evidence whatsoever demonstrating that the conditions have been met. Rather, the applicant simply asserted that the development complies with setback, height and other dimensional requirements. This is not enough. The City has discretion to approve this application only if it otherwise meets the Ordinance, which it does not.

The resolution to approve the preliminary site plan was drafted by and presented to the Planning Board for consideration by Planning Board member Bryan Williams. As demonstrated further below, the Planning Board, in its effort to find compliance with specific standards where the applicant presented no evidence whatsoever to support such compliance, stretches the meaning of those standards to their breaking point, rendering them essentially meaningless.

Section 7.27(1) – The location, size and height of the building, walls and fences shall be such that there is adequate landscaped open space so as to provide light, air and access to the persons occupying the structure.

While this first standard under Section 7.27 does not really directly impact the Balmoral and Greenleaf Trust Buildings, satisfying the standard could help avoid the negative impacts to Balmoral and Greenleaf Trust discussed below. While there is no landscaped open space at all associated with the new development, the clear intent of the section is to provide adequate light and air to the occupants of the new Project. As noted by members of the Planning Board itself, the proposed development is significantly deficient in this regard. (*See comment summary of Planning Board Member, Bert Koseck, in the Meeting Minutes from the August 23, 2017 Planning Board Meeting, p 9* (“Mr. Koseck thought that maximizing square footage creates a little bit of a ‘B’ type of space. If they could pull the walls in on the upper floors by creating

light wells and windows it would make the building even better in terms of marketability and lease rates.”)).

The Project is a relatively large building with extensive floor plates; yet, there are windows on only two facades, leaving large featureless five-story block walls on two sides. This poses a significant challenge to providing adequate light and air to the future tenants of the Project. Most of the residential units appear to have only a single window in the entire 1500 plus square foot residential unit. This lack of air and light is not caused by the necessity of existing conditions, where the deficiencies might be excused or overlooked, but simply due to the desire of the applicant to squeeze every square foot of potential rentable area out of the site, thereby prioritizing quantity over quality.

While it is not even really an applicable consideration, the applicant presented no evidence whatsoever that it needs the additional square footage to make the Project economically feasible. In any event, as one Planning Board member observed, a more appropriate design consistent with the above standards could yield greater rents that would offset the loss of rents for the small amount of space lost. As previously noted, neither the Balmoral or Greenleaf Trust Buildings were constructed to the property lines on all floors. The Petitioners here gave up rentable square footage to create the buildings desired and mandated by the City.

Section 7.27(2) – The location, size and height of the building, walls and fences shall be such that there will be no interference with adequate light, air and access to adjacent land and structures.

As previously stated, there are 50 windows on the north façade of the Balmoral Building facing the proposed new building. **None of them are fire-rated, nor were they required to be.** As to the Greenleaf Trust Building, there are 47 windows on the south façade facing the proposed new building. 25 of them are fire-rated but the rest are not. Both buildings are fully occupied with business and residential tenants whose offices and residences have been designed around the light available from functional windows. No one is saying that these tenants have a right to an unrestricted view shed, but they are entitled to adequate light, air and access as required by the Zoning Ordinance. The Project as presently designed with respect to the south and north elevations, however, deprives the Petitioners of such light, air and access.

As to the observation of the Planning Board that the Balmoral and Greenleaf Trust buildings also used zero lot line provisions in the construction of their buildings, the statement is partially true but entirely misleading. Both buildings were constructed in a manner that satisfied the Master Plan and design criteria of the City as to the quality and aesthetics demanded by the City for all four elevations. Unlike the current proposal, which calls for featureless five-story block facades to the north and south, utilizing every possible square foot of space, neither the Balmoral Building nor the Greenleaf Trust Building maximized the use of the zero lot line setbacks on the facades facing the former Peabody’s restaurant. Both projects sacrificed rentable square footage to create the quality and type of project designs desired and mandated by the City.

For the Balmoral Building, the percentage of each floor on the north elevation built at or near the property line is as follows: first floor—100%; second floor—3.1%; third floor—2.8%;

and fourth floor—3.6%. The proposed new development is built to the property line 100% on all 4 floors. The massing differential on the fifth floors is even more dramatic. The fifth level of the new building contains approximately 18,705 square feet, or nearly 98% of the building's lower level floor plates. This should be compared to the total of 3,015 usable square feet (for a single residential unit) on the south end of the fifth floor of the Balmoral Building, which is a small fraction of the overall floor plates for the lower floors.

With respect to the Greenleaf Trust Building, the percentage of each floor on the south elevation built at or near the property line is as follows: first floor—100%; second floor—53.8%; third floor—53.8%; fourth floor—53.8%; and fifth floor—00%. Had the Greenleaf Trust Building constructed a maximum size building to the south property line (in the manner now proposed by applicant), it would have realized another 5,757 square feet of rentable area.

While the zero lot line setback represents a maximum allowable building under the terms of the Zoning Ordinance, it must be applied in the context of existing and neighboring development as specifically dictated by the standards set forth in Ordinance Section 7.27. Further, the impact of a redevelopment on such existing and neighboring development must be evaluated under the standards of the Ordinance. There is no question that the current proposed site plan deprives both the Balmoral and Greenleaf Trust Buildings of adequate light and air. Neither the Balmoral Building nor the Greenleaf Trust Building were designed or constructed to abut a new high-rise structure built to the property line on all levels using the most basic and unattractive façade materials. While it may be true that most of the general public may never see such unattractive facades, the many tenants (residential and office) and their guests and invitees looking out of a total of 97 windows, will see nothing else.

There were several comments made at a Planning Board meeting on the Project as to how the owners of the two adjacent buildings should have predicted that the existing Peabody's restaurant might be sold and that someone might want to build a massive infill project that would block all air and light to the existing buildings and constructed those buildings accordingly. This presumption is completely false. On the contrary, a review of the comprehensive record for both buildings reveals not a single discussion, comment or suggestion from staff or the Planning Board with respect to not requiring an attractive facade with light and air on all elevations of these buildings. (See affidavits of the project architects and managers completely rebutting the position of the Planning Board, included with these Petitions.) On the contrary, and as just one example, when it appeared that the cost of the Balmoral project would exceed budget, the owners approached the Planning Department about implementing some value engineering items, including the elimination of the decorative window railings on the north side windows of the project. The Planning Department, however, rejected this modest proposal and Balmoral's project manager was told that the exterior design must remain the same or be improved and removing the decorative railings could not be approved. (See **Attachment 5** hereto, Affidavit of Thomas L. Phillips.)

The applicant offered absolutely no rebuttal or explanation for the necessity of a design that blocked light and air to its neighbors. In an effort to fill the void, the resolution prepared by Mr. Williams and adopted by the Planning Board noted that because each of the neighboring buildings had three other elevations with exposure to light and air, the impact of the Project did

not violate the Zoning Ordinance. (See Planning Board Minutes, September 13, 2017, at p. 4.) With all due respect, such an observation is ridiculous and renders the Ordinance meaningless. It cannot have been the intent of the standard to only apply to development that would completely encircle an existing building or use. This standard is clearly not met by the proposed development.

Section 7.27(3) – The location, size and height of the building, walls and fences shall be such that they will not hinder the reasonable development of adjoining property nor diminish the value thereof.

This standard is clearly not satisfied. In fact, there was no discussion or analysis whatsoever of this standard in the applicant's submittals. On the other hand, the Petitioners submitted to the Planning Board a detailed broker's opinion of value that describes in great detail the **significant diminution in value** of the neighboring buildings that would result from the proposed development as presently designed. This result is self-evident. The negative valuation impacts include—the complete loss of value of an expensive large façade on each building; the loss of light and air and impact on both the nature, quality and pool of available and future tenants; the decrease in rental value of the impacted spaces which would result in loss of market values of the buildings (keep in mind that the interior spaces were designed around the light and views from the windows); the increased maintenance and operational costs of repairs to the facades due to lack of access and the danger of debris and water infiltration impacting buildings that are not designed or constructed to fully abut each other. (See **Attachment 6**; Letter from commercial broker and limited real estate appraiser, Drew Schmidt.). Finally, the lack of parking and likely interference with existing parking arrangements will have a significant negative influence on the values of the adjacent buildings as described more fully in Part E below.

The diminution of value of the adjacent properties that would be caused by the proposed development should be compared to the opposite result achieved by the Greenleaf Trust and Balmoral Buildings. Before the development of Petitioners' buildings, this block was characterized by old unattractive low rise commercial structures and a gas station. Both the Greenleaf Trust and Balmoral projects combined to make this block one of the most desirable new locations for the highest value office properties in the City at the time, including by making road and other improvements for traffic flow. The Peabody's property values and marketability skyrocketed as a result of the neighboring developments. In stark contrast, the Project will have a substantial negative impact on the value of Petitioners' buildings – see, e.g., Drew Schmidt's "conservative" estimate that the Project's proposed north elevation will cause a **\$1,000,000** diminution in value to the Greenleaf Trust Building. (See Attachment 6, p 3.)

In another effort to supply a rationale where the applicant failed to do so, the resolution read by Mr. Williams, suggested that, while property values may have been diminished, all properties are impacted by new development and that the impact did not rise to the level of materiality required under the Zoning Ordinance. (9/13/17 Planning Board Meeting Minutes, at pp. 4-5). This statement about the impact of development on the values of existing projects, the materiality of the loss of value to the Petitioners' buildings, or even the relevance of materiality are all unsupported by one iota of information in the record. Most important—the **standard is**

absolute—the new construction must not diminish the value of existing structures. There is no qualifying adjective indicating that the diminution of value must be “material” or “substantial.” And, even if there was such a standard, it would have been clearly met here. In sum, this standard was not met by the applicant.

Section 7.27(5) – The proposed development will be compatible with other uses and buildings in the neighborhood and will not be contrary to the spirit and purpose of this chapter.

The positions expressed above also apply here and will not be repeated. But in summary, five-story featureless block walls on or near the property lines are not compatible with the adjacent buildings, which are not built entirely on the property lines and were not designed or constructed to be fully attached to a new infill building. (See Attachment 5 and **Attachment 7**, Affidavit of the design architect for the Balmoral Building, Jason Novotny.) This incompatibility raises serious issues of constructability, maintenance, operation and repairs to all three buildings. We presented information from the designers of the Greenleaf Trust and Balmoral Buildings expressing the views that the new building as proposed cannot be constructed or maintained without trespassing on and causing damage to the neighboring properties. While these issues were acknowledged by members of the Planning Board, they were not addressed in any manner by the applicant. The reaction was more a shrug of the shoulders and the attitude that we can address those issues later. This is particularly troubling in light of recent comments from the applicant’s own geotechnical consultant, who is advising the applicant of “the benefits of not excavating all the way to the property line because of ... the need to restore waterproofing and/or other damage that potentially could result from an excavation immediately next to the Greenleaf Building.” (See **Attachment 8**, 10/4/17 e-mail from Timothy J. Mitchell, Vice President of SME).

But if the proposed building cannot be built, properly maintained, or repaired as presently proposed because of the inter-relationship of the proposed building with existing structures, then the proposed building is not compatible as required by the Zoning Ordinance and such compatibility questions should be addressed and resolved now. The City’s approval and encouragement of the design of the south elevation of the Greenleaf Trust Building and the north elevation of the Balmoral Building rendered impossible the concept of a five-story, zero lot line infill building on the Peabody property because it simply cannot comply with the City’s zoning requirements, including the aforementioned requirement of compatibility.

D. The Project Is Not Consistent With The Master Plan

Because the Project is within the City’s downtown overlay district and the applicant is seeking to construct a larger building than would otherwise be required in the underlying B-4 zoning district, additional standards apply to the site plan approval process. Those additional standards include the requirement that the development plan “implement” the Downtown Birmingham 2016 Plan (the “Master Plan”).³ (See Zoning Ordinance, Section 3.01A.) The

³ Section 3.04A.3 also provides for buildings in the D4 zone that, “All buildings containing a fifth story **shall be designed harmoniously with adjacent structures in terms of mass, scale**

current proposal fails to do so. The Master Plan does not and never did envision a single large block of new, attached high rise buildings running continuously from Maple to Brown along Woodward. In fact, all of the significant buildings in addition to Petitioners' buildings along this Woodward Avenue corridor are stand-alone structures (e.g., the 555 Building). Indeed, when the Greenleaf Trust Building was approved, the Master Plan envisioned that the Peabody's site would one day be acquired by the City for a new parking garage. (Attachment 3, p 3.)

Moreover, when the Balmoral and Greenleaf Trust Buildings were being evaluated, the developers and City had to consider the existing conditions, which included an adjacent restaurant operation that could have remained forever. Thus, both projects spent a great deal of money on the facades adjacent to the restaurant, which enhanced the aesthetic views of the owners of the Peabody property and the value of that property. As an example, the general contractor for the Balmoral Building calculated that the north wall of the project cost in excess of \$500,000 over the cost to have simply constructed a block wall as now proposed for the adjacent structure. Moreover, there was no indication to anyone as to when the Peabody restaurant might be redeveloped, if ever, or to the extent redeveloped, the manner, scope and proposed uses for the development. It could have been redeveloped for multiple different uses at different heights. What if it was proposed to be a three-story building without residential use? Or a parking garage as envisioned by the Master Plan? Had Greenleaf Trust and Balmoral not constructed the attractive façades, the City would have been left with two highly visible, tall block walls towering over a shorter infill development at the gateway to downtown Birmingham and visible to thousands of vehicles and visitors driving by Woodward on a daily basis.

Now, according to the City standards previously discussed, the re-developers of the Project need to consider the existing conditions of the adjacent buildings in connection with their proposed development. The character of the corridor has now been established as one consisting of high quality and architecturally significant stand-alone buildings. This standard was both ignored and violated in the proceedings before the Planning Board.

E. There Is No Parking Available To Accommodate The Project

It is ironic that the Master Plan adopted in 1996 envisioned the need for additional parking in this corridor and specifically identified the Peabody's parcel as a location for a future parking deck, because rather than provide for such parking, the Planning Department's analysis of the parking situation for the proposed Project makes it clear that **there is no parking capacity available for the Project:**

"The traffic study acknowledges that the City's parking system is operating near capacity, and does not presently have the

and proportion to the best extent possible." (Emphasis added.) For all of the reasons expressed above regarding the more general site plan standards and as explained further in the Affidavits submitted with these appeals, this mandatory standard for projects in the overlay district has not been satisfied. Indeed, as explained at the end of this submission, there are several modifications that could easily be made by to the Project that might fulfill this obligation "to the best extent possible."

capacity to accommodate the additional demand that this building will create. On page 22 of the report, the writer states that "it is reasonable" to assume that the manager of the parking system will explore the possibility of adding an additional floor on the top of the Peabody St. Structure.

Further, the writer indicates that "the study assumes that possibility to be both viable and successfully completed..." The Board is cautioned that the parking structure was not designed with the intention that it could be expanded in the upward direction to create additional capacity, and that this assumption should not be figured into the study. Further, while the parking system is ready and able to operate rooftop valet assist programs to add capacity during peak hours in its other four structures, no such plan is in place at the Peabody St. Structure.

The rooftop valet system requires one to two additional staff on days it operates, and allows the system to fit 50 to 75 additional cars on the roof level by parking them closer together than what can be done when self-parked. Due to the limited land area at this site, and the present configuration of the roof, there is insufficient space available in this structure to make such a program feasible. The study should not proceed with the assumption that an additional level can or will..."

(See Planning Department Report dated August 17, 2017 (without exhibits), **Attachment 9** hereto). No solutions have been proposed by the applicant or the City. The prospect that the City will approve a massive redevelopment project utilizing every square inch of the property knowing that there is absolutely no parking available to serve the future business tenants of the Project is somewhat mind-boggling, particularly to the extent that it would harm the business operations of other existing businesses and tenants in this corridor. At the very least, the subject merits consideration and scrutiny in connection with any consideration of approving a site plan containing a proposed building constructed to the very maximum limit of height and square footage that one might squeeze onto this redevelopment property.

Although parking has been an issue for some time in downtown Birmingham, there has never been an instance where the parking assessment has been so blunt and without ambiguity—**there is no parking available to serve this development!** As explained in the affidavits submitted by the ownership of the Greenleaf Trust and Balmoral Buildings (attached hereto as **Attachment 10** and **Attachment 11**, respectively), even on the heels of an economic downturn, they worked for several years before the approval and completion of construction of their projects to get on waiting lists and obtain parking commitments at various places throughout downtown in order to lock up sufficient parking to make available to future tenants and paid for those spaces long before the tenants took occupancy. The affidavits (as well as the letter from Signature Associates included as **Attachment 12**) make clear that even then, the limitations on parking caused many potential high value tenants to look elsewhere and, in any case, they would

not have obtained any office tenants without being able to assign or commit sufficient spaces for the tenants and their employees.


As the above-mentioned parking analysis makes clear, the situation is far worse today. The City is opening itself up to a buzz saw of litigation. The applicant will demand that the City make parking spaces available for its proposed future tenants—whether by taking it away from other businesses and projects or reducing the number of public parking spots in neighboring decks or on the street. The applicant would say that the City has approved its project without requiring any parking arrangements and thus committed to make available sufficient parking for the success of the Project. Without such parking, the applicant would argue that its entire investment and project success is at risk, exposing the City to economic liability. Moreover to the extent that the City responds by taking away, limiting or squeezing the remaining parking opportunities to the existing Greenleaf Trust and Balmoral Buildings, the standards discussed above, including that the Project not cause a reduction in value of neighboring properties, cannot be met. It is somewhat incredulous that this unambiguous and blunt statement of there being no parking capacity available to serve the Project merited not a single discussion or mention at the Planning Board meetings.

F. Some Suggestions for Revising the Project Plan to Satisfy Zoning Ordinance Standards.

The Petitioners do not want to appear presumptuous and it is not our place to tell our neighbor what to do. But Petitioners are developers as well. They understand that a building will be constructed on the former Peabody's site. There are some relatively simple design solutions that could result in a Project that might better meet or come closer to meeting the requirements previously discussed, which could even enhance the value of the Project, even though the developer may lose of a small amount of rentable area or spend a little more money on its north and south building facades. Such design solutions would include, without limitation, the inclusion of reasonable setbacks along the Project's north and south property lines above the first floor. This simple modification, alone, would allow the applicant more economical construction and maintenance of the building envelope, while also providing air and daylight to the Project's residents, commercial tenants, and neighboring properties. Also, the addition of facade details to the Project's north and south elevations that are consistent with the quality of the facades surrounding the Project would improve the Project's compatibility with the design and construction of surrounding properties, including the Greenleaf Trust Building and Balmoral Building.

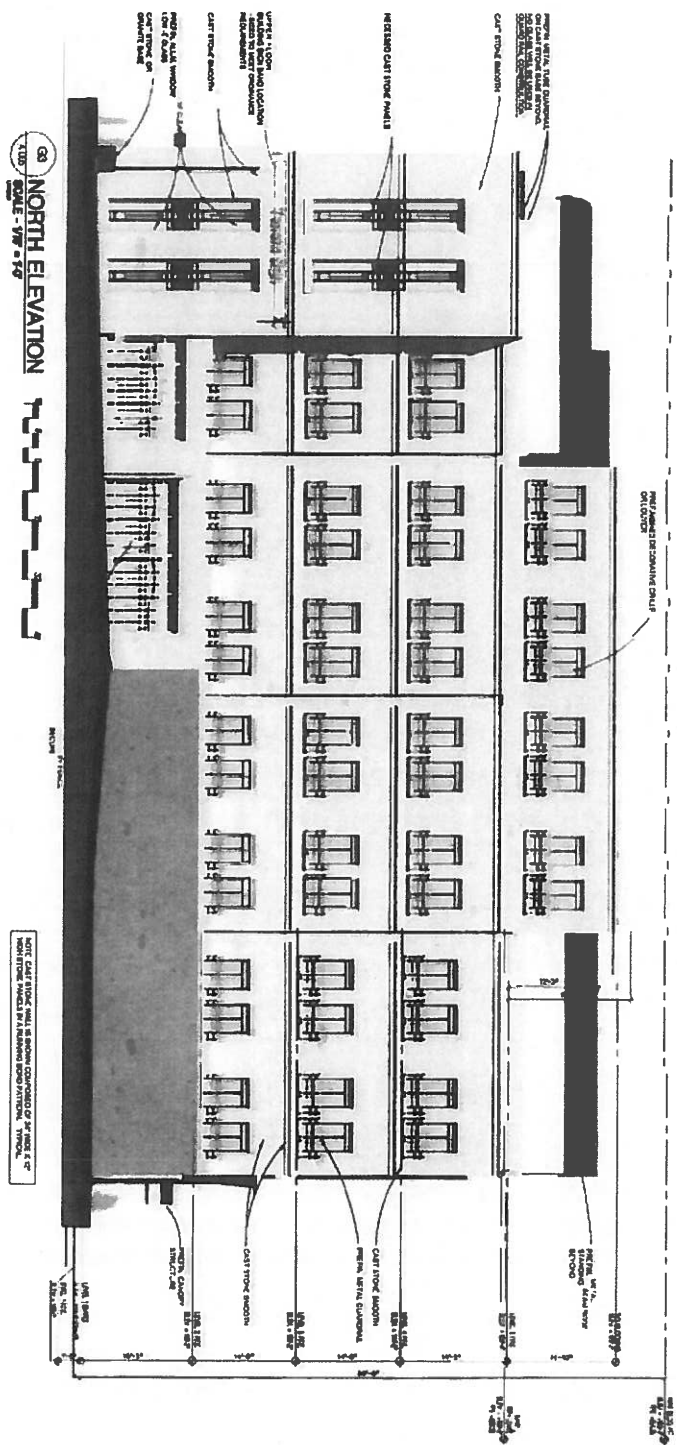
G. Conclusion and Relief Requested

For all of the reasons set forth in this summary and the accompanying materials, the Petitioners respectfully request that the decision granting preliminary site plan approval be reversed as not satisfying the mandatory standards of the Zoning Ordinance, or in the alternative, that the matter be remanded back to the Planning Board for further review and consideration of the Applicant's proposal because the current record before the Planning Board is insufficient to demonstrate compliance with those mandatory standards.


Alan M. Greene, on behalf of the Petitioners















Preliminary Site Plan & CIS Review
34977 Woodward – Catalyst Development
May 28, 2008

Date: May 22, 2008

To: Planning Board Members

From: Jana L. Ecker, Planning Director

Re: **34977 Woodward – Catalyst Development
Preliminary Site Plan & Community Impact Study Review**

Community Impact Study

I. INTRODUCTION

The subject site, 34977 Woodward, is currently the site of a vacant gas station and has a total land area of 0.315 acres. It is located on the southwest corner of Maple and Woodward Avenue. The applicant is proposing to increase the area of the site to 0.343 acres by squaring off the intersection of Maple and Peabody to improve the pedestrian crossing and to allow expansion of the corner of their building into the right-of-way. The applicant is proposing to demolish the existing building and surface parking lot to construct a mixed use development. The proposed development will consist of one large building containing a maximum of 5 residential units and 45,404 sq.ft. of office / retail space. The applicant was required to prepare a Community Impact Study in accordance with Article 7, section 7.27(E) of the Zoning Ordinance as they are proposing a new building containing more than 20,000 square feet of gross floor area.

II. COMMUNITY IMPACT STUDY

As stated above, the applicant was required to prepare a Community Impact Study given the size of the proposed development. The Zoning Ordinance recognizes that buildings of a certain size may affect community services, the environment, and neighboring properties. The CIS acts as a foundation for discussion between the Planning Board and the applicant, beyond the normal scope of information addressed in the preliminary site plan review application. The Planning Board "accepts" the CIS prior to taking action on a Preliminary Site Plan.

A. Planning & Zoning Issues:

Use

The site is currently zoned B-4, Business-Residential, and is zoned D-4 on the Regulating Plan of the Downtown Birmingham 2016 Plan ("2016 Plan"). The proposed residential units, office space, restaurant and

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parking facility are permitted principal and/or accessory uses in the B-4 and D-4 zone district in accordance with Article 2, section 2.37 of the Zoning Ordinance (B-4) and Article 3, section 3.04(C) (D-4).

Overlay District Compliance

Article 3, section 3.01 of the Zoning Ordinance states that the purposes of the Overlay District are to:

- (a) Encourage and direct development within the boundaries of the Overlay Zoning District and implement the 2016 Plan;
- (b) Encourage a form of development that will achieve the physical qualities necessary to maintain and enhance the economic vitality of downtown Birmingham and to maintain the desired character of the City of Birmingham as stated in the 2016 Plan;
- (c) Encourage the renovation of buildings; ensure that new buildings are compatible with their context and the desired character of the city; ensure that all uses relate to the pedestrian; and, ensure that retail be safeguarded along specific street frontages; and
- (d) Ensure that new buildings are compatible with and enhance the historic districts which reflect the city's cultural, social, economic, political, and architectural heritage.

The proposed development implements the recommendations contained in the 2016 Plan as the applicant is proposing a mixed use building with the physical qualities necessary to enhance the architecture of existing buildings downtown, to create a focal point for the entrance to downtown, and is built to all property lines to continue the pedestrian-oriented character of downtown to the west of the site. In addition, the applicant has provided a massing study of the surrounding area to illustrate the compatibility of the proposed structure with surrounding buildings, both existing and proposed.

A flat roof is proposed, along with extensive use of Mankato stone and Indiana limestone, with metal panels, metal and glass canopies and bronze painted aluminum garage door panels. The proposed building design and materials are compatible with other buildings in the vicinity and the character of the Downtown Overlay District. Finally, the proposed development and uses relate to the pedestrian as the building is essentially proposed on the property lines and was designed with extensive human scale detailing on the first floor, including canopies, large storefront windows, pedestrian entrances from the front, pedestrian level building lighting, a dedicated first floor sign band, and street furniture to enhance the pedestrian experience. In addition, the frontage along Maple

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is required to be used for retail use in accordance with the 2016 Plan, and the applicant is proposing a restaurant and theater use on the first floor of the proposed building. Both of these uses fall within the definition of retail contained in the Zoning Ordinance.

Master Plan Compliance: 2016 Plan

The CIS presented states that the goals and objectives of the City's master plan were to encourage additional residential downtown and require first floor retail uses. The proposed development adds two floors of residential units, and provides retail uses on the ground floor along both Maple and Woodward.

In addition to these general goals and objectives, the Downtown Birmingham 2016 Master Plan ("2016 Plan") also contained specific recommendations for this area, named the "Maple Road Gateway". The 2016 Plan states that the Maple Road entry to downtown is currently flanked by two gasoline stations, both of which still exist today, but are vacant. The Plan states that portions of both of these sites as a pair could form a significant gateway to downtown and should share a similar height, massing and, as much as possible, architectural syntax. Previously, a five story mixed use building was approved for the northwest corner of Maple and Woodward. This building was similar in height and massing to the proposed Catalyst development. It was also similar in terms of the design and materials, from the use of stone, to metal panels to screen the rooftop mechanical. However, the site plan for the northwest corner of Woodward and Maple has since expired. No new concepts have been proposed at this time. Accordingly, the Catalyst building will be the first one of the twin buildings to be constructed, and should be used as a model for the height, scale and design of the building that will ultimately be constructed on the northwest corner, in accordance with the recommendations of the 2016 Plan.

The 2016 Plan further recommended that the City attempt to secure and hold this site, and additional parcels to the south, to construct a substantial new parking deck. Appendix G-9 recommends a mixed use liner building on the northern half of this site and the eastern portion of this site, with approximately one third of the site (the SW portion) to be utilized for a parking deck. Appendix G-9 also recommends the use of the entire Peabody Restaurant site and the Great Frame Up for use as a parking deck. At this time, the City is not interested in constructing additional parking structures within the downtown, and neither of the two southern parcels are available for sale.

Finally, Appendix G-11 provides a rendering of the conceptual build-out of the portion of Maple Road from Park Street to Woodward Avenue. The

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rendering illustrates a substantial mass of building on the northern half of the subject site, to be matched in scale, mass and architecture to another twin building on the north side of Maple. As discussed above, the Catalyst building, if approved, will be the first of the two gateway buildings to be constructed, and any proposals for a building on the northwest corner of Maple and Woodward will be required to mirror the height, scale and design of this building. The illustrations contained in the 2016 Plan recommend five story buildings on both of the Maple gateway sites, which is the height proposed by Catalyst at this time. However, the rendering also shows sloped roofs on both twin buildings. Catalyst is proposing a flat roof building which is compatible with other buildings in the vicinity. Finally, the 2016 Plan recommends that any proposed development at the Maple Road gateway should be carefully scrutinized at the time of development given its prominence as a gateway to the downtown core of Birmingham. The northeast corner of the site also provides a terminated vista, which requires distinct and prominent architectural features of enhanced character and visibility to provide a positive visual landmark.

Soil and Contamination Issues

The CIS states that there are no known sensitive soils on site and that a soil retention system will be required for site excavation due to the proposed limits of development. Site slopes are minimal and there is no potential for extraordinary soil erosion control measures for the development of this site.

The applicant has provided a Preliminary Geotechnical Evaluation, prepared by Soil and Materials Engineers, Inc, which identifies several minor concerns. Soil borings were taken on site in five locations on March 17, and 18, 2008, at depths of 30' to 60' below grade. Soil borings generally showed surface pavement overlying sand and clay fill, overlaying natural clay. Foreign odors were noted at borings B1, B2 and B5, providing evidence of contamination. Please see below for further details on environmental issues on the site.

Overall, the report concludes that native soil at the site is stiff to hard natural clay, and will be suitable for grade-slab support, provide the sub-grade is properly prepared during construction. However, the report states that significant asphalt, sand and clay fill exist on the site overlaying the clay below, and that existing fill is likely to be encountered at the base of the excavation in the vicinity of boring B4. This fill should be undercut to natural soils and backfilled with engineered fill. The report also states that provisions should be included for dealing with possible below grade obstructions from previous developments (utilities etc.) and other unknowns that may be discovered during construction. The Building Department will address any soil concerns in specific detail before issuing

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a building permit.

In addition, water was found at a level 6' to 23' below grade in borings B1, B2 and B4. The report states that the groundwater appears to be perched within the fill and granular layers above the natural clay. The report finds that this water should be manageable with construction pumping and sumps, but special dewatering techniques may be required. The report states that summer construction is desirable, as this would be the best time for moisture conditioning of the soil that is required to achieve suitable moisture levels for compaction.

Finally, the report states that a temporary earth retention system will likely be required to provide adequate lateral support for surrounding improvements and utilities and to maintain the sides of the excavation during construction, and that construction traffic would use designated haul roads and should not be allowed to randomly traffic the site as the clays on site are highly sensitive to disturbance from such traffic.

The applicant has also provided a Phase 1 Environmental Site Assessment Report to identify contamination on the site, given its previous use as a gasoline service station. The report, prepared by Soil and Materials Engineers ("SME") and dated May 2, 2008, states that the property is listed as a Closed Leaking Underground Storage Tank ("LUST") site, and the presence of regulated hazardous substances in soil and groundwater on the property was identified. The report states that the following recognized environmental conditions were found in connection with the site:

- Known and potentially remaining contamination associated with the former use of the property as a gasoline/service station and auto repair shop;
- Potential for three underground storage tanks with unknown contents on the property; and
- Potential for migration of contamination from the north-adjoining and southwest-adjoining sites.

The applicant intends to remove any underground storage tanks and contaminated soil, and clean the site to the required levels for the proposed development. They intend to apply to the Birmingham Brownfield Redevelopment Authority for reimbursement of funds that will be utilized for clean up of the site.

The applicant has provided an estimate of 6,000 cubic yards of material to be excavated from the site. The CIS states that the proposed haul route from the site will be a right turn onto Maple Road and then a right or left turn onto Woodward.

C. Utilities, Noise and Air Issues:

In accordance with the 2016 Plan, all utilities on the site should be buried to visually enhance the site. **The applicant has indicated the source of all required private utilities to be provided to the site, but has not provided verification of all required utility easements. The CIS states that all utility easements will be co-ordinated with the City and the utility companies. This will be required prior to obtaining a building permit.**

As noted in the CIS, current ambient noise levels at the site fall within normally unacceptable ranges using federal guidelines. The noise report prepared by Kolano and Saha Engineers, Inc. states that HUD has defined a DNL between 55 and 65 dB as the level of noise which "is normally acceptable", with the goal of achieving an interior noise level no more than a DNL 45dB in spaces considered to be "noise sensitive" such as bedrooms and living rooms. Noise readings at the site taken between April 2nd and 3rd, 2008 showed an average DNL of 67.8dB. However, given the expected acoustical isolation performance of the building shell, it is anticipated that the goal for interior noise levels recommended in the federal guidelines will be achieved.

The applicant has also stated that the project site will comply with the City's commercial noise limits of 90 dBA (daytime) and 75 dBA (nighttime).

The CIS states that the nearest air quality monitoring stations are in Oak Park and Pontiac. No air quality violations or permits were found at or near the site. The applicant has stated that the proposed development will not impact air quality in the area.

D. Environmental Design and Historic Values:

The applicant has indicated that no demonstrable destruction of natural features or landscaping will take place at the site, and that the proposed design will be sensitive to the character of the neighborhood. A massing study was provided to illustrate the height and mass of the proposed building relative to adjacent buildings. A complete design review, including streetscape elements, will be conducted as a part of the Final Site Plan review process.

The site is not listed on the National Register of Historic Places, nor is it on the City's list of historic sites. Review by the SHPO and HDC is not required.

E. Refuse, Sewer and Water:

The CIS states that all refuse and recycled materials will be stored within the building on the ground level. Access to the trash area will be provided via a solid gate entry off of Peabody Street. The application states that a total of 3 large and 7 small trash receptacles will be enclosed in the trash room. One large and two small receptacles will be dedicated to recycling. Private trash collection will be provided.

The CIS further states that there is adequate water service to the site and that the existing combined sewers on the site will be sufficient to service the development.

F. Public Safety:

The applicant has stated that the proposed development is bounded on three sides by public streets, and thus provides easy access for police, fire and emergency vehicles. The sole elevator designated for office use and both residential elevators will be designed to accommodate an emergency stretcher as required by law. The Police Department has not expressed any concerns with the proposed development, but will be required to review the proposed security system for the building, upon selection.

The applicant has stated that the proposed building will comply with NFPA fire codes and will be fully sprinkled. The underground parking level will be served by a dry-pipe sprinkler system, and the remainder of the building will be served by a wet sprinkler system.

G. Transportation Issues:

The applicant has provided a traffic study prepared by Birchler Arroyo Associates Inc., dated April 2008. The traffic report concluded that the peak-hour traffic volumes on Woodward have declined a total of 16 – 17% in the AM peak hour and 10 -14% in the PM peak hours over the last several years, thus allowing ample capacity to accommodate new traffic. The report concludes that all five signalized intersections in the vicinity evaluated as a part of the study enjoy a peak hour level of service of B or better and that the new development will not affect these service levels. Finally, the traffic study concludes that the proposed mitigation of traffic impacts approved as part of the Blackward Development at 34901-34953 Woodward to add an all-way stop control at Brown and Peabody and the marking of separate left and right turn lanes on the southbound Peabody approach will be sufficient to handle the increase in traffic due to this development. **The City's traffic consultant, Wells and Associates, will provide a thorough review of the applicant's traffic**

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study prior to the Planning Board meeting on May 28, 2008.

H. Parking Issues:

The applicant has indicated that 10 parking spaces are proposed on site in the underground parking level. In addition, on-street parking is available on Woodward and Peabody, and public parking is available throughout the downtown. A thorough discussion of the parking requirements is contained in the attached site plan report.

I. Natural Features:

The petitioner has indicated that there will be no impact on natural features or bodies of water as a result of the proposed development.

J. Departmental Reports

1. Engineering Division – The Engineering Division provided the following comments:

Regarding the proposed Maple Rd. sidewalk, we have the following concerns:

- 1.a. The proposed sidewalk is only 8 feet wide, due to the limited right-of-way in this area, combined with the need for a five lane road to manage traffic demand on this segment of Maple Rd. The tree grates proposed on the plan must actually be constructed 6 inches behind the existing curb to provide a section of concrete for the grate to anchor to. Since the grate is 4 ft. square, this would leave only 3.5 ft. for the City sidewalk between the tree grate and the building wall. The City sidewalk **MUST** be five feet wide, particularly in this busy corridor. If the applicant desires to have trees on this frontage, the building wall must be moved south 18 inches to provide the minimum amount of space for the sidewalk to function.
- b. If the building is to be constructed as shown, the City will need to enter into a long-term lease with the building owner to allow use of the publicly owned land southeast of the Maple Rd./Peabody St. intersection. In our attempt to create a pedestrian-friendly environment, the City should avoid overly narrow City sidewalks, particularly where vehicle traffic levels are as high as they are here. The thirty foot long section just east of the Maple Rd. lobby door is proposed such that the excessively narrow sidewalk is being extended further to the west than necessary (i.e.: an 8 ft. wide would be provided for the public when in fact a larger section of public property exists for this purpose today). The Engineering

Dept. will advise that no less than ten foot sidewalks be provided along Maple Rd. for that portion where a lease to private use is being entertained.

2. Construction of this project will be difficult given the shortage of space available in the adjacent rights-of-way for construction staging. The applicant should be aware that the City will not be in a position to allow any lane closures of Maple Rd. longer than for short time periods (less than a day) during the life of the project. Further, assuming the existing sidewalk will be closed during construction, there will be no space available to provide a sidewalk shed. Construction of this property cannot be conducted concurrently with a project on the north side of the block, as there would be no space left for pedestrian access. In addition, the applicant needs to be aware that the proposed reconstruction of the Maple Rd./Park St./Peabody St. traffic signal, which will incorporate a Maple Rd. pedestrian crossing, will be required to be implemented prior to closure of the Maple Rd. sidewalk, thereby providing a safe access for Maple Rd. south side pedestrians to Woodward Ave. The City will expect the modernization of this traffic signal to include a mast arm design matching others currently being installed in the downtown Birmingham area.
3. The C.I.S. indicates that a zoning variance will be required to construct the building without a loading zone. In discussions with the owner, it is their proposal to park trucks on Peabody St. during low traffic periods of the day to accomplish daily loading needs. It is important to remember that Peabody St. will be converted into a three-lane road in the near future, meaning that the northbound traffic lane will be up against the curb, in direct conflict with where trucks would have to park as proposed. Creating an inherently dangerous situation on a new building when alternatives exist seems like poor planning. In a previous discussion with the owner, it was noted that a loading zone could be created by using the existing parking area in the Woodward Ave. right-of-way directly south of the site. Using this area would be significantly safer than what is proposed. Waiving this requirement is not in the best interest of the City or the public that will use Peabody St. well into the future.
4. The current crosswalk for Woodward Ave. at this site's corner is extra close to the intersection due to the presence of an existing driveway approach. Once the driveway approach is removed, the crosswalk can be moved south, which would reduce the distance of the crossing, and improve safety for pedestrians by allowing turning traffic more reaction time before having to cross the crosswalk. It is

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expected that this crosswalk relocation would be an appropriate part of the final sidewalk streetscape plan for this project.

5. Being in the downtown area, the owner will be required to sign a Streetscape Agreement, agreeing to pay for all costs necessary to finish the E. Maple Rd. and Peabody St. frontages of the property with the City's standard streetscape consisting of exposed aggregate sidewalk, landscaping, etc. The sidewalk on the Woodward Ave. frontage shall have the small sawcut pattern to carry this design theme on this side of the building as well. The agreement must be signed prior to the issuance of a construction permit.

The following permits will be required from the Engineering Division for this project:

- A. Sidewalk/Drive Approach Permit (for all pavement installed in the right-of-way).
- B. Right-of-Way Permit (for excavations in the right-of-way).
- C. Street Obstruction Permit (for partial obstructions of the City sidewalk or alley).

In addition, a permit will be required from the Michigan Dept. of Transportation (MDOT) for any use and construction within the Woodward Ave. right-of-way.

2. Department of Public Services – DPS had no concerns.
3. Fire Department - The Fire Department has advised that the Fire Department Connection must be located on the address side of the building, and a fire hydrant placed within 100' of this connection, with the location of both to be approved by the Fire Marshal.
4. Police Department – The Police Department has indicated that they are concerned about the traffic patterns at Maple and Peabody, and with the vehicular access to the underground parking level. The City's traffic consultant will provide a full traffic review by May 28, 2008.
5. Building Division – The Building Department will provide their comments prior to the May 28th, 2008 Planning Board meeting.

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K. Summary of CIS:

The Planning Division finds that the applicant's CIS is complete, and recommends approval, with the following conditions:

1. The applicant co-ordinate with the City and the utility companies to determine the location of any utility easements; and
2. Approval of the traffic study by the City's traffic consultant, Wells and Associates.

L. Suggested Action:

1. To accept the Community Impact Study as provided by the applicant for the proposed development at 34977 Woodward with the following conditions:

1. The applicant co-ordinate with the City and the utility companies to determine the location of any utility easements; and
2. Approval of the traffic study by the City's traffic consultant, Wells and Associates.

Or

To decline the Community Impact Study as provided by the applicant for the proposed development at 34977 Woodward for the following reasons:

- a. _____
- b. _____
- c. _____

Or

To postpone action on the Community Impact Study as provided by the applicant for the proposed development at 349077 Woodward, allowing the applicant the opportunity to address the issues raised above.

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Preliminary Site Plan Review

III. Preliminary Site Plan Review

Please see the attached Zoning Compliance Summary Sheet for detailed zoning compliance information.

1.0 Introduction

The subject site, 34977 Woodward, is currently the site of a vacant gas station and has a total land area of 0.315 acres. It is located on the southwest corner of Maple and Woodward Avenue. The applicant is proposing to increase the area of the site to 0.343 acres by squaring off the intersection of Maple and Peabody to improve the pedestrian crossing and to allow expansion of the corner of their building into the right-of-way. The applicant is proposing to demolish the existing building and surface parking lot to construct a mixed use development. The proposed development will consist of one large building containing a maximum of 5 residential units and 45,404 sq.ft. of office / retail space.

2.0 Land Use and Zoning

- 2.1 Existing Land Use – The site currently consists of a vacant building and a surface parking lot. The site was previously utilized as a gasoline service center, and is now used for temporary parking for construction vehicles. The existing building is proposed to be demolished to allow construction of the new mixed use building.
- 2.2 Zoning – The site is zoned B-4, Business Residential, and is zoned D-4 in the Downtown Overlay District. The applicant has elected to develop the site under the Overlay District regulations. The existing use and surrounding uses appear to conform to the permitted uses of the Zoning District.
- 2.3 Summary of Adjacent Land Use and Zoning - The following chart summarizes existing land use and zoning adjacent to and/or in the vicinity of the subject site, including the proposed 2016 Regulating Plan zones.

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	North	South	East	West
Existing Land Use	Vacant gasoline service station	Restaurant & Surface Parking	Vacant Hotel and Commercial	Mixed Use – Retail & Commercial
Existing Zoning District	B-4 Business Residential	B-4 Business Residential	B-2, General Business	B-4 Business Residential
Overlay Zoning District	D-4	D-4	MU7 – Mixed Use	D-4

A map of the area showing the subject property highlighted in red and showing the surrounding properties and the existing zoning is attached for your review.

3.0 Use of Site

In accordance with Article 3, section 3.04(c) of the Zoning Ordinance, the proposed retail, office and residential uses are permitted in the Downtown Overlay District. The applicant has elected to develop under the Downtown Overlay District regulations.

4.0 Setback and Height Requirements

The attached summary analysis provides the required and proposed bulk, area, and placement regulations for the proposed project. The applicant meets the bulk, height, area and placement requirements for the D-4 Overlay District zoning. The applicant will be required to obtain variances from the Board of Zoning Appeals for the required loading spaces and associated screening.

5.0 Screening and Landscaping

5.1 Dumpster Screening – The applicant is proposing to store all trash within the proposed building. A private collection service will be utilized.

5.2 Parking Lot Screening – The applicant is proposing 10 on-site parking spaces, to be located on an underground level. Thus, all parking is fully screened by the building itself.

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- 5.3 Mechanical Equipment Screening – The applicant is proposing to house the mechanical equipment on the rooftop. Rooftop screening is required for all proposed rooftop mechanical units. Article 04, 4.49 (C)(8) of the Zoning Ordinance requires that all rooftop mechanical equipment must be obscured by a screen wall constructed of materials compatible with the materials used on the building, that provides an effective permanent visual barrier that minimizes the visual impact of the equipment from other points of observation and that:
- (a) The screen walls must be less than 10 feet in height; and
 - (b) The screen walls shall, to the best extent possible, not extend above the top edge of an imaginary plane extending upward no more than 45 degrees from the eave line.

The applicant is proposing to screen all rooftop mechanical units with 10' 9" high screen walls around all of the proposed rooftop mechanical equipment. The proposed screen walls will not extend past an imaginary 45 degree plane from the eave line, and they have been integrated into the design of the building to give the building a more substantial presence. The applicant has provided dimensions and specification sheets for all of the proposed rooftop mechanical equipment, with the exception of the residential condensing units (which are usually 3' in height) that demonstrates that all units will be fully screened by the screen wall. **The applicant must provide details on the residential condensing units prior to Final Site Plan and Design Review.**

The location of electrical transformer(s) has not yet been determined. The applicant has provided an electrical room on the underground parking level which could house a transformer. The plans note that the applicant is negotiating with the owners of Peabody's to locate the transformer(s) on the Peabody property. If the transformer is proposed outside of the building, appropriate screening will be required. **The applicant must provide details on the size, location and required screening for all transformers prior to Final Site Plan and Design Review.**

- 5.4 Landscaping – A detailed landscape plan has been provided. It shows an extensive use of container plantings and the addition of street trees along Maple, Woodward and Peabody. Planters are proposed on all sides of the building. Proposed perennials for the planters include Variegated Sweet Flag, Montgomery Astilbe, Happy Returns Daylilly, Fire and Ice and Halcyon Hosta and Northwind Switch Grass. In accordance with Article 4, section 4.20 LA-01, the only required landscaping is 1 street tree / 40' of street frontage. The applicant has 320' of street frontage, and thus 8 street trees are required. Nine are proposed. Specifically, two "Princeton Sentry" Ginkgo street trees with

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tree grates are proposed on Peabody, four "Princeton Sentry" Ginkgo trees are proposed on Maple with tree grates, and three "Skyline" Honey Locust trees are proposed on Woodward, to be surrounded by grass in the MDOT right-of-way. A permit from MDOT will be required for changes in the right-of-way along Woodward.

6.0 Parking, Loading and Circulation

- 6.1 Parking – The subject site is located within the Parking Assessment District and thus no parking is required for the retail or office uses. A maximum of five residential units are proposed, and thus 8 on-site parking spaces are required. The applicant is proposing 10 parking spaces in the underground parking level.
- 6.2 Loading – In accordance with Article 4, section 4.21 of the Zoning Ordinance, 1 loading space is required for the restaurant use (less than 20,000 sq.ft.), and 1 is required for the office use (less than 50,000 sq.ft.). **Due to the constraints of the site, the applicant is not able to provide any loading spaces on site, and intends to apply to the Board of Zoning Appeals for the required variance.** The applicant met with the Engineering Department and it was agreed that the loading for the site should occur from the Woodward Avenue right-of-way due to potential traffic conflicts on Peabody.
- 6.3 Vehicular Circulation and Access – The proposed development includes the removal of two curb cuts along Woodward, and the removal of one curb cut on Maple. The existing curb cut on Peabody will be reconfigured, but vehicular access to the site will continue off of Peabody at the southwest corner of the site. There will be private access only to the underground parking level, which only contains 10 parking spaces. A permit from MDOT will be required for changes in the right-of-way along Woodward.
- 6.4 Pedestrian Circulation and Access – The applicant has provided pedestrian entrances directly from the public sidewalks at the corner of Maple and Peabody to the office and restaurant lobby, which is accessible directly from Maple, and directly from Peabody. Pedestrian entry to the residential lobby has been provided on the Maple elevation towards the center of the building. Secondary pedestrian access to the building has also been provided off of Woodward at the southeast corner of the site. **These entrances are not located on the frontage lines as required by the Zoning Ordinance. However, the City Attorney has advised that this provision is in conflict with the Michigan Building Code, and that state law supercedes our local ordinance. Accordingly,**

the requirement that the doorway be located “on the frontage line” cannot be enforced. As such, the City Attorney has advised that a variance is not required.

- 6.5 Streetscape – The applicant has proposed a sidewalk expansion at the northwest corner of the site to improve the pedestrian crossing at the intersection of Maple and Peabody. This intersection has long been identified as one ripe for improvement. The 2016 Plan recommended the removal of the concrete island, and the realignment of the intersection to line up with Park Street to the north, and to reduce the distance of the crossing for pedestrians. The applicant has met with the Engineering and Planning Departments to review their proposal for this intersection. The changes as proposed will significantly reduce the distance for pedestrians to cross Peabody, and will eliminate the concrete island, as recommended in the 2016 Plan. The reconfiguration also expands the width of the public sidewalk to create a plaza area at the corner of Maple and Peabody. The proposed realignment also lines up with Park Street to the north, which would allow for this intersection to return to a full movement intersection if the City so chooses when the gas station on the north side of Maple redevelops.

The City will require the execution of a streetscape agreement outlining all required improvements in the right-of-way, including new sidewalks, curbs, tree wells etc. The applicant is currently proposing the use of contemporary furnishings similar to those under consideration for the Triangle District. However, the streetscape standards in the Downtown Overlay require the use of the traditional City benches, trash receptacles, pedestrian scale lights and hanging baskets in Birmingham Green. The proposed location of benches and trash receptacles as shown on the plan will add to the pedestrian experience and create intimate public gathering spaces.

7.0 Lighting

The applicant is proposing 25 custom sconce light fixtures (40W) to be affixed to the building at a height of 6.75' above grade. Additional fixtures are proposed for the upper level terraces as required by Code, and sign lighting is also proposed. **A photometric plan and specification sheets for all light fixtures must be provided at the time of Final Site Plan Review.** Lighting will be reviewed in detail as part of the Final Site Plan & Design Review.

8.0 Departmental Reports

8.1 Engineering Division – The Engineering Division had the following comments:

Regarding the proposed Maple Rd. sidewalk, we have the following concerns:

- 1.a. The proposed sidewalk is only 8 feet wide, due to the limited right-of-way in this area, combined with the need for a five lane road to manage traffic demand on this segment of Maple Rd. The tree grates proposed on the plan must actually be constructed 6 inches behind the existing curb to provide a section of concrete for the grate to anchor to. Since the grate is 4 ft. square, this would leave only 3.5 ft. for the City sidewalk between the tree grate and the building wall. The City sidewalk **MUST** be five feet wide, particularly in this busy corridor. If the applicant desires to have trees on this frontage, the building wall must be moved south 18 inches to provide the minimum amount of space for the sidewalk to function.
- b. If the building is to be constructed as shown, the City will need to enter into a long-term lease with the building owner to allow use of the publicly owned land southeast of the Maple Rd./Peabody St. intersection. In our attempt to create a pedestrian-friendly environment, the City should avoid overly narrow City sidewalks, particularly where vehicle traffic levels are as high as they are here. The thirty foot long section just east of the Maple Rd. lobby door is proposed such that the excessively narrow sidewalk is being extended further to the west than necessary (i.e.: an 8 ft. wide would be provided for the public when in fact a larger section of public property exists for this purpose today). The Engineering Dept. will advise that no less than ten foot sidewalks be provided along Maple Rd. for that portion where a lease to private use is being entertained.
2. Construction of this project will be difficult given the shortage of space available in the adjacent rights-of-way for construction staging. The applicant should be aware that the City will not be in a position to allow any lane closures of Maple Rd. longer than for short time periods (less than a day) during the life of the project. Further, assuming the existing sidewalk will be closed during construction, there will be no space available to provide a sidewalk shed. Construction of this property cannot be conducted concurrently with a project on the north side of the block, as there

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would be no space left for pedestrian access. In addition, the applicant needs to be aware that the proposed reconstruction of the Maple Rd./Park St./Peabody St. traffic signal, which will incorporate a Maple Rd. pedestrian crossing, will be required to be implemented prior to closure of the Maple Rd. sidewalk, thereby providing a safe access for Maple Rd. south side pedestrians to Woodward Ave. The City will expect the modernization of this traffic signal to include a mast arm design matching others currently being installed in the downtown Birmingham area.

3. The C.I.S. indicates that a zoning variance will be required to construct the building without a loading zone. In discussions with the owner, it is their proposal to park trucks on Peabody St. during low traffic periods of the day to accomplish daily loading needs. It is important to remember that Peabody St. will be converted into a three-lane road in the near future, meaning that the northbound traffic lane will be up against the curb, in direct conflict with where trucks would have to park as proposed. Creating an inherently dangerous situation on a new building when alternatives exist seems like poor planning. In a previous discussion with the owner, it was noted that a loading zone could be created by using the existing parking area in the Woodward Ave. right-of-way directly south of the site. Using this area would be significantly safer than what is proposed. Waiving this requirement is not in the best interest of the City or the public that will use Peabody St. well into the future.
4. The current crosswalk for Woodward Ave. at this site's corner is extra close to the intersection due to the presence of an existing driveway approach. Once the driveway approach is removed, the crosswalk can be moved south, which would reduce the distance of the crossing, and improve safety for pedestrians by allowing turning traffic more reaction time before having to cross the crosswalk. It is expected that this crosswalk relocation would be an appropriate part of the final sidewalk streetscape plan for this project.
5. Being in the downtown area, the owner will be required to sign a Streetscape Agreement, agreeing to pay for all costs necessary to finish the E. Maple Rd. and Peabody St. frontages of the property with the City's standard streetscape consisting of exposed aggregate sidewalk, landscaping, etc. The sidewalk on the Woodward Ave. frontage shall have the small sawcut pattern to carry this design theme on this side of the building as well. The agreement must be signed prior to the issuance of a construction permit.

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The following permits will be required from the Engineering Division for this project:

- A. Sidewalk/Drive Approach Permit (for all pavement installed in the right-of-way).
- B. Right-of-Way Permit (for excavations in the right-of-way).
- C. Street Obstruction Permit (for partial obstructions of the City sidewalk or alley).

In addition, a permit will be required from the Michigan Dept. of Transportation (MDOT) for any use and construction within the Woodward Ave. right-of-way.

In accordance with the requirements of the Engineering Department, the applicant will be required to adjust the footprint of the building just east of the office and restaurant lobby by stepping it back to provide the required 10' sidewalk width on the public property that will be subject to the long term lease. In addition, the applicant will be required to shift the tree wells along Woodward 6" to the south, and shift the proposed planters and building piers along Woodward 12" or so to the south to ensure that a 5' clear pedestrian path exists from the edge of the tree grate to the northern edge of the building. The applicant would be required to provide the City with an easement for the portion of the 5' sidewalk that would be located on private property (approximately a 1' strip).

8.2 Department of Public Services – DPS has no concerns.

8.3 Fire Department - The Fire Department has advised that the Fire Department Connection must be located on the address side of the building, and a fire hydrant placed within 100' of this connection, with the location of both to be approved by the Fire Marshal.

8.4 Police Department – The Police Department has indicated that they are concerned about the traffic patterns at Maple and Peabody, and with the vehicular access to the underground parking level. The City's traffic consultant will provide a full traffic review by May 28, 2008.

8.5 Building Division – The Building Department will provide their comments prior to the May 28th, 2008 Planning Board meeting.

9.0 Design Review

A full design review will be conducted at the time of Final Site Plan and Design Review. However, the applicant has submitted full elevation drawings on sheets A-7 and A-8. The applicant is proposing to utilize the following materials:

- Mankato Stone in polished Golden Amber and Golden Buff;
- Indiana Limestone with a sugar cube finish and a bush-hammered finish;
- bronze finish aluminum windows and doors;
- 1" bronze tint insulated glass windows and doors with Low-E coating;
- metal panels with a Kynar finish to match the Indiana limestone and the bronze aluminum finish of the windows;
- custom bronze painted aluminum canopies and sunshades;
- custom bronze painted aluminum solid panel for the dumpster screening; and
- custom bronze painted aluminum open panels for the parking access doors.

The Planning Division will reserve detailed comments regarding architectural standards and design related issues for the Final Site Plan and Design Review. However, in reviewing the plans, the following issues were noted: no details have been provided on the percentage of glazing for any elevation, although it appears that the minimum glazing requirements for the first floor have not been met on the west elevation, and a sample of the bronze tinted glass has not been provided (only clear or lightly tinted glass is permitted). **At the time of Final Site Plan approval, the applicant will be required to provide information regarding the percentage of glazing on each elevation to determine if the 70% glazing requirement has been met and must provide samples of all materials proposed.**

10.0 Downtown Birmingham 2016 Overlay District

The site is located within the D-4 zone of the DB 2016 Regulating Plan, within the Downtown Birmingham Overlay District. The DB 2016 Report encourages four or five story buildings along Woodward Avenue. The proposed development implements the recommendations contained in the 2016 Plan as the applicant is proposing a five story mixed use building with the physical qualities necessary to enhance the architecture of existing buildings downtown, to create a focal point for the entrance to downtown, and is built to all property lines to continue the pedestrian-oriented character of downtown to the west of the site. For further

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discussion of compliance with the 2016 Plan, please see the corresponding section in the CIS portion of this report.

11.0 Approval Criteria

In accordance with Article 7, section 7.27 of the Zoning Ordinance, the proposed plans for development must meet the following conditions:

- (1) The location, size and height of the building, walls and fences shall be such that there is adequate landscaped open space so as to provide light, air and access to the persons occupying the structure.
- (2) The location, size and height of the building, walls and fences shall be such that there will be no interference with adequate light, air and access to adjacent lands and buildings.
- (3) The location, size and height of the building, walls and fences shall be such that they will not hinder the reasonable development of adjoining property nor diminish the value thereof.
- (4) The site plan, and its relation to streets, driveways and sidewalks, shall be such as to not interfere with or be hazardous to vehicular and pedestrian traffic.
- (5) The proposed development will be compatible with other uses and buildings in the neighborhood and will not be contrary to the spirit and purpose of this chapter.
- (6) The location, shape and size of required landscaped open space is such as to provide adequate open space for the benefit of the inhabitants of the building and the surrounding neighborhood.

12.0 Recommendation

The Planning Division recommends that the Planning Board APPROVE the Preliminary Site Plan for 34977 Woodward with the following conditions:

1. Provision of specification sheets for the residential condensing units prior to Final Site Plan and Design Review;
2. Provision of details on the size, location and required screening for all transformers prior to Final Site Plan and Design Review;
3. Obtain a loading space variance from the Board of Zoning Appeals;
4. Preparation of a streetscape plan with all required Downtown streetscape elements prior to Final Site Plan and Design Review;
5. Provision of a photometric plan and specification sheets for all light

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- fixtures;
- 6. Provision of information regarding the percentage of glazing on each elevation prior to Final Site Plan and Design Review; and
- 7. Adjustment of the building footprint and planters along Woodward to provide a 10' clear pedestrian walking path on the property that will be subject to the long term lease, and a 5' clear path east to Woodward.

13.0 Sample Motion Language

Motion to APPROVE the Preliminary Site Plan for 34977 Woodward subject to the following conditions:

1. Provision of specification sheets for the residential condensing units prior to Final Site Plan and Design Review;
2. Provision of details on the size, location and required screening for all transformers prior to Final Site Plan and Design Review;
3. Obtain a loading space variance from the Board of Zoning Appeals;
4. Preparation of a streetscape plan with all required Downtown streetscape elements prior to Final Site Plan and Design Review;
5. Provision of a photometric plan and specification sheets for all light fixtures;
6. Provision of information regarding the percentage of glazing on each elevation prior to Final Site Plan and Design Review; and
7. Adjustment of the building footprint and planters along Woodward to provide a 10' clear pedestrian walking path on the property that will be subject to the long term lease, and a 5' clear path east to Woodward.

OR

Motion to DENY the Preliminary Site Plan for 34977 Woodward.

OR

Motion to POSTPONE the Preliminary Site Plan for 34977 Woodward until the outstanding issues can be addressed.

Site Plan Review

- B. Preliminary Site Plan Review is designed to give the developer a tentative approval prior to development of construction plans. Preliminary review may not be required for additions or alterations to existing buildings, which in the judgement of the City Planner are considered to be minor in nature. After final site plans are completed, the petitioner shall submit them to the Planning Board for final Site Plan Review of non-historic properties. The Planning Board and the Historic District Commission shall jointly review the final Site Plan for historic properties.
- C. Final Site Plan Review must be applied for within six months of the granting of preliminary Site Plan approval. All provisions of applicable ordinances must be met, and any special conditions or requirements imposed by the appropriate reviewing body and in granting preliminary approval must be incorporated into the plans. Final Site Plan approval for both new construction and additions shall be given only after all phases of the plan have been approved by the appropriate reviewing body. It shall be the responsibility of the applicant to advise the Planning Department of any changes to a Site Plan which has received final Site Plan and Design Review approval, and for requesting the necessary approval from the planning division and/or Planning Board for such changes.
- D. The Building Official shall not issue a building permit for any building when the plans therefor are required to be reviewed by the Planning Board, the Design Review Board, or the Historic District Commission pursuant to this section until approval has been obtained and the signatures of the approving members of the appropriate reviewing body have been inscribed on the plans on file with the City Planner. However, if the appropriate reviewing body fails to act on any application within 30 days from the date an application for review is filed, the Building Official may, if the appropriate reviewing body has had an opportunity to act thereon, issue such permit without Planning Board, Design Review Board, or Historic District Commission action.

7.27 Requirements

- A. Site Plan approval shall be granted only to a person, persons, or entity owning or otherwise controlling the entire area included within the proposed lot or building site.
- B. The Planning Board or the Design Review Board shall not grant approval for any development unless the conditions given in this subsection have been met.
 - 1. The location, size and height of the building, walls and fences shall be such that there is adequate landscaped open space so as to provide light, air and access to the persons occupying the building.
 - 2. The location, size and height of the building, walls and fences shall be such that there will be no interference with adequate light, air and access to adjacent lands and buildings.
 - 3. The location, size and height of the building, walls and fences shall be such that they will not hinder the reasonable development of adjoining property nor diminish the value thereof.
 - 4. The Site Plan, and its relation to streets, driveways and sidewalks, shall be such as to not interfere with or be hazardous to vehicular and pedestrian traffic.
 - 5. The proposed development will be compatible with other uses and buildings in the neighborhood and will not be contrary to the spirit and purpose of this chapter.
 - 6. The location, shape and size of required landscaped open space is such as to provide adequate open space for the benefit of the inhabitants of the building and the surrounding neighborhood.
- C. Site Plans submitted for review by the Planning Board and/or the Design Review Board shall be reviewed by appropriate City departments to assure compliance with city codes, policies and/or regulations.
- D. The petitioner shall be responsible for any costs incurred by consultants, including but not limited to traffic and environmental, contracted by the City to review the proposed Site Plan and/or community impact study as determined by the city planner.

Site Plan Review

- E. A community impact study (CIS) shall be required:
 1. For a new structure and/or building of 20,000 square feet of gross floor area or greater, to be prepared by the petitioner, for review by the Planning Board at the preliminary Site Plan Review.
 2. For a new structure and/or building or addition to an existing structure and/or building equaling less than 20,000 square feet of combined gross floor area, to be prepared by the petitioner upon determination by the Planning Board at preliminary Site Plan Review that the proposed development may exert a significant impact upon one or more of those elements cited in subsection (F) of this section. The CIS shall be reviewed by the Planning Board at a second preliminary Site Plan Review.
 3. For an addition to an existing structure and/or building with a combined gross floor area of 20,000 square feet or more, provided that the addition has a gross floor area greater than 10% of the gross floor area of the existing structure and/or building, for review by the Planning Board at the preliminary Site Plan Review.
- F. A community impact study, when required, shall provide information pertinent to the following:
 1. Planning/zoning issues, including conformance with master plan, urban design plan, this chapter, and other applicable city codes and policies.
 2. Land development issues, including topographic and soil conditions and site safety concerns.
 3. Private utilities consumption, including electrical needs and natural gas utilization.
 4. Noise level conditions.
 5. Air quality conditions.
 6. Environmental design and historic values including visual quality and historic resources.
 7. Community facilities and services, including refuse collection, sanitary and storm sewer, and water supply.
 8. Public safety needs, including police, fire and emergency medical services.
 9. Open space landscaping and recreation, including cultural elements.
 10. Transportation issues, including pedestrian access and circulation, auto and delivery vehicle traffic, and parking concerns.
 11. Natural features preservation, enhancement, and/or replacement.
 12. Other information as reasonably may be required by the city to assure an adequate analysis of all existing and proposed site features and conditions.
- G. The preparer(s) of a CIS must meet the following minimum professional qualifications:
 1. Be registered in the state in their respective professions, when licensing is a state requirement for the practice of the profession (e.g. professional engineer, registered land surveyor, registered architect, etc.); or
 2. In those instances where the state does not require licensing for the practice of a profession (e.g., planner, urban designer, economist, etc.), the preparer shall, in the opinion of the city, possess acceptable credentials (e.g., appropriate college degree(s), membership in professional societies, etc.) to render an expert opinion in the matter and provide documentation which adequately illustrates professional experience gained while preparing CIS related materials on similar projects for other municipalities.

7.28 Approval

Site Plan approval shall be valid for a period of one year from the date it is granted. Upon request, the appropriate reviewing body may grant an extension of not in excess of one year to the applicant prior to the expiration date. Any application for extension of Site Plan approval must be filed on or before the expiration of the original Site Plan approval. An extension may be granted upon compliance with all applicable zoning requirements that are in effect at the time of filing of the application for the extension. All plans must show any revisions that are a result of Zoning Ordinance amendments at the time of filing. The Building Official shall not issue a permit for such work unless a valid final Site Plan and design plan are in effect.

Downtown Birmingham Overlay District

3.01 Purpose

The purposes of the Downtown Birmingham Overlay District are to:

- A. Encourage and direct development within the boundaries of the Downtown Birmingham Overlay District and implement the Downtown Birmingham 2016 Plan;
- B. Encourage a form of development that will achieve the physical qualities necessary to maintain and enhance the economic vitality of Downtown Birmingham and to maintain the desired character of the City of Birmingham as stated in the Downtown Birmingham 2016 Plan;
- C. Encourage the renovation of buildings; ensure that new buildings are compatible with their context and the desired character of the city; ensure that all uses relate to the pedestrian; and, ensure that retail be safeguarded along specific street frontages; and
- D. Ensure that new buildings are compatible with and enhance the historic districts which reflect the city's cultural, social, economic, political, and architectural heritage.

3.02 Applicability

- A. The Downtown Birmingham Overlay District shall be an overlay district that applies over the existing zoning districts.
- B. Use and development of land within the Downtown Birmingham Overlay District shall be regulated as follows:
 1. Any existing use shall be permitted to continue and the use shall be subject to the underlying zoning requirements and not the Downtown Birmingham Overlay District.
 2. Where the usage within an existing building is proposed to be expanded by more than 50% of the existing size, the new use shall be subject to the building use standards of the Downtown Birmingham Overlay District to the maximum extent practical, as determined by the Planning Board.
 3. Any expansion to an existing building that expands the area of the building by more than 40% of the existing building area shall subject the entire building to the requirements of the Downtown Birmingham Overlay District and shall be brought into compliance with the requirements of the Downtown Birmingham Overlay District to the maximum extent practical, as determined by the Planning Board.
 4. Where a new building is proposed, the use and site shall be subject to the requirements of the Downtown Birmingham Overlay District.
- C. Development applications within the Downtown Birmingham Overlay District shall be required to follow the Site Plan Review and Design Review standards contained in Article 7.
- D. A Downtown Birmingham Overlay District Regulating Plan has been adopted that divides the Downtown Birmingham Overlay District into zones. Each zone designated on the Regulating Plan prescribes requirements for building form, height and use as follows:
 - D2: Downtown Two or Three Stories
 - D3: Downtown Three or Four Stories
 - D4: Downtown Four or Five Stories
 - C: Community Use
 - P: Parking

3.03 General Standards

- A. The design of buildings and sites shall be regulated by the provisions of the Downtown Birmingham Overlay District.
- B. Section 3.01 to Section 3.04 shall govern the design of all privately owned land within the Downtown Birmingham Overlay District.
- C. The provisions of the Downtown Birmingham Overlay District, when in conflict with other articles of the Zoning Ordinance, shall take precedence.
- D. The provisions of the Downtown Birmingham Overlay District shall specifically supersede the floor-area-ratio, maximum height, and minimum setback regulations contained in each two-page layout in Article 2 of the Zoning Ordinance.

Downtown Birmingham Overlay District

- E. The provisions of the building and building regulations Chapter 22 of the Birmingham City Code and the historic preservation regulations in Chapter 62 of the Birmingham City Code, when in conflict with the Downtown Birmingham Overlay District, shall take precedence.
- F. The design of community buildings and improvements shall not be subject to the specific standards of this article, but shall be subject to design review by the Planning Board.
- G. Locations designated on the Regulating Plan for new parking garages and civic buildings shall be reserved for such development.

3.04 Specific Standards

- A. Building Height, Overlay: The various elements of building height shall be determined as follows for the various zones designated on the Regulating Plan:
 - 1. D2 Zone (two or three stories):
 - a. Eave line for sloped roofs shall be no more than 34 feet.
 - b. Peak or ridge of any sloped roof shall be no more than 46 feet as measured to the average grade.
 - c. Maximum overall height including the mechanical and other equipment shall be no more than 56 feet.
 - d. A third story is permitted if it is used only for residential.
 - e. All buildings in D2 Zone containing a third story should be designed harmoniously with adjacent structures in terms of mass, scale and proportion, to the best extent possible.
 - f. A third story shall continue in a different plane, beginning at the eave line, not greater than 45 degrees measured to the horizontal or setback 10 feet from any building facade.
 - g. All buildings constructed in the D2 Zone must have a minimum eave height of 20 feet.
 - 2. D3 Zone (three or four stories):
 - a. Eave line for sloped roofs shall be no more than 46 feet.
 - b. Peak or ridge of any sloped roof shall be no more than 58 feet as measured to the average grade.
 - c. Maximum overall height including the mechanical and other equipment shall be no more than 68 feet.
 - d. A fourth story is permitted if it is used only for residential.
 - e. All buildings in D3 Zone containing a fourth story should be designed harmoniously with adjacent structures in terms of mass, scale and proportion, to the best extent possible.
 - f. The fourth story shall continue in a different plane, beginning at the eave line, no greater than 45 degrees measured to the horizontal or setback 10 feet from any building facade.
 - g. All buildings constructed in a D3 Zone must contain a minimum of 2 stories and must have a minimum eave height of 20 feet.
 - 3. D4 Zone (four or five stories):
 - a. Eave line shall be no more than 58 feet.
 - b. Peak or ridge of any sloped roof shall be no more than 70 feet as measured to the average grade.
 - c. Maximum overall height including mechanical and other equipment shall be no more than 80 feet.
 - d. The fifth story is permitted if it is used only for residential.
 - e. All buildings containing a fifth story should be designed harmoniously with adjacent structures in terms of mass, scale and proportion, to the best extent possible.
 - f. The fifth story shall continue in a different plane, beginning at the eave line, no greater than 45 degrees measured to the horizontal or set back 10 feet from any building facade.
 - g. All buildings constructed in the D4 Zone must contain a minimum of 2 stories and must have a minimum eave height of 20 feet.
 - 4. C and P Zones: Downtown Birmingham Overlay District building height shall comply with the underlying height restrictions listed in each two-page layout in Article 2 of the Zoning Ordinance, but may be negotiated by the Planning Board.
 - 5. Stories at sidewalk level shall be a minimum of 10 feet in height from finished floor to finished ceiling. The Planning Board may reduce this standard for renovations to existing buildings that do not meet this standard.
 - 6. A transition line shall be provided between the first and second stories. The transition shall be detailed to facilitate an awning.

Downtown Birmingham Overlay District

7. The maximum width of all dormers per street elevation on buildings may not exceed 33% of the width of the roof plane on the street elevation on which they are located.
- B. Building placement. Buildings and their elements shall be placed on lots as follows:
 1. Front building facades at the first story shall be located at the frontage line, except the Planning Board may adjust the required front yard to the average front setback of any abutting building.
 2. In the absence of a building facade, a screenwall shall be built along the frontage line and aligned with the adjacent building facade. Screenwalls shall be between 2.5 and 3.5 feet in height and made of brick, stone or other masonry material matching the building. Upon approval by the Planning Board, screenwalls may be a continuous, maintained evergreen hedge or metal fencing. Screenwalls may have openings a maximum of 25 feet to allow vehicular and pedestrian access.
 3. Side setbacks shall not be required.
 4. A minimum of 10 foot rear yard setback shall be provided from the midpoint of the alley, except that the Planning Board may allow this setback to be reduced or eliminated. In the absence of an alley, the rear setback shall be equal to that of an adjacent, preexisting building.
 5. First-floor awnings may encroach upon the frontage line and public sidewalk, but must avoid the street trees; provide at least 8 feet of clearance above the sidewalk; and be set back a minimum of 2 feet from the road curb.
 6. Upper-floor awnings shall be permitted only on vertically proportioned windows, provided that the awning is only the width of the window, encroaches upon the frontage line no more than 3 feet, and is not used as a backlit sign.
 7. Loading docks and service areas shall be permitted only within rear yards. Doors for access to interior loading docks and service areas shall not face a public street.
 8. All buildings shall have their principal pedestrian entrance on a frontage line.
- C. Building use. Buildings shall accommodate the following range of uses for the various designations on the Regulating Plan of the Downtown Birmingham Overlay District:
 1. Uses shall be limited to those allowed in each underlying zoning district, unless otherwise specifically provided for herein.
 2. The following uses and conditions are prohibited:
 - a. Automatic food and drink vending machines outdoors;
 - b. Drive-in facilities or any commercial use that encourages patrons to remain in their automobiles while receiving goods or services;
 - c. Outdoor advertising.
 3. Community uses (C).
 4. Those sites designated as parking uses (P) on the Regulating Plan shall be premises used primarily for parking, except retail frontages shall be encouraged at the first floor level.
 5. Those sites designated D2 Zone, D3 Zone, or D4 Zone on the Regulating Plan may be used for any commercial, office or residential use as allowed in the underlying zoning district. Upper story uses may be commercial, office or residential, provided that no commercial or office use shall be located on a story above a residential use.
 6. Buildings that have frontage along the required retail frontages, as specified on the Regulating Plan, shall consist of retail with a minimum depth of 20 feet from the frontage line within the first story. Lobbies for hotels, offices, and multiple-family dwellings may be considered as part of the required retail frontage, provided that any such lobby occupies no more than 50% of the frontage of said building.
 7. Retail, office or residential uses are required to have minimum depth of 20 feet from the frontage line on all stories. The remaining depth may be used for off-street parking. Parking access on a frontage line shall be an opening a maximum of 25 feet wide. Openings for parking garage access shall repeat the same rhythm and proportion as the rest of the building to maintain a consistent streetscape.
 8. In any D2 Zone, D3 Zone, or D4 Zone, the first floor shall consist of retail with a minimum depth of 20 feet from the frontage line where designated on the Regulating Plan as a retail frontage line in conformance with Section 3.04(C)(5) and Section 3.04(C)(6).

Downtown Birmingham Overlay District

9. Office use is limited to one story, except:
 - a. In any D3 Zone or D4 Zone, a two-story building dedicated to office use is permissible; and
 - b. In a D4 Zone, two stories may be dedicated to office use when the Planning Board permits a fifth story.
 10. Bistros are permitted with a valid Special Land Use Permit with the following conditions:
 - a. No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats;
 - b. Alcohol is served only to seated patrons, except those standing in a defined bar area;
 - c. No dance area is provided;
 - d. Only low key entertainment is permitted;
 - e. Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
 - f. A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;
 - g. All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
 - h. Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, enclosed platform must be erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.
 11. Establishments operating with a liquor license obtained under Chapter 10, Alcoholic Liquors, Article II, Division 3, Licenses for Economic Development, are permitted with a valid Special Land Use Permit only on those parcels on Woodward Avenue identified on Exhibit 1; Appendix C.
- D. Parking requirements.
1. For all nonresidential uses located within the parking assessment district, parking on the site shall not be required, provided such site is in full compliance with the requirements of the parking assessment district.
 2. For all residential uses located within the parking assessment district, the on-site parking requirements contained in Section 4.46, Section 4.49, Section 4.50 and Section 4.51 may be complied with through leasing the required spaces from an off-site parking area, provided the requirements of Section 4.45(G) are met and all parking is supplied on site or within 300 feet of the residential lobby entrance of the building.
 3. For all sites located outside of the parking assessment district, off-street parking must be provided in accordance with the requirements of Article 4 for parking, loading and screening.
 4. Notwithstanding the above regulations, residential dwelling units within the existing second and third floors of landmark buildings, as defined in Section 62-87 of the Birmingham City Code, located within the central business historic district are exempt from required off-street parking requirements.
 5. Off-street parking contained in the first story shall not be permitted within 20 feet of any building facade on a frontage line or between the building facade and the frontage line.
 6. The placement of two abutting off-street parking lots with continuous street frontages shall not be permitted.
- E. Architectural standards. All buildings shall be subject to the following physical requirements:
1. At least 90% of the exterior finish material on all facades that face a street shall be limited to the following: glass, brick, cut stone, cast stone, coarsely textured stucco, or wood. Dryvit or E.F.I.S is prohibited.
 2. The primary colors of building exteriors shall be compatible with the colors of adjacent buildings and in character with the surrounding area, although the trim may be of a contrasting color.
 3. Blank walls shall not face a public street. Walls facing a public street shall include windows and architectural features customarily found on the front facade of a building, such as awnings, cornice work, edge detailing or decorative finish materials.
 4. Storefronts shall be directly accessible from public sidewalks. Each storefront must have transparent areas, equal to 70% of its portion of the facade, between one and eight feet from the ground. The wood or metal armature (structural elements to support canopies or signage) of such storefronts shall be painted, bronze, or powder-coated.

5. Storefronts shall have mullion systems, with doorways and signage integrally designed. Mullion systems shall be painted, powder-coated, or stained.
 6. The glazed area of a facade above the first floor shall not exceed 35% of the total area, with each facade being calculated independently.
 7. Glass shall be clear or lightly tinted only. Opaque applications shall not be applied to the glass surface.
 8. Facade openings, including porches, windows, and colonnades, shall be vertical in proportion.
 9. Sliding doors and sliding windows are prohibited along frontage lines.
 10. (Reserved for future use.)
 11. Cantilevered mansard roofs are prohibited.
 12. Balconies, railings, and porch structures shall be metal, wood, cast concrete, or stone.
 13. Facades may be supplemented by awnings, which shall be straight sheds without side flaps, not cubed or curved. Awnings shall be between 8 and 12 feet above sidewalk grade at the lower drip edge.
 14. Outside dining tables and chairs shall be primarily metal, wood, or similar material. Plastic outside dining tables and chairs shall be prohibited.
 15. Any building that terminates a view, as designated on the Regulating Plan, shall provide distinct and prominent architectural features of enhanced character and visibility, which reflect the importance of the building's location and create a positive visual landmark.
 16. Flat roofs shall be enclosed by parapets. Rooftop mechanical and other equipment shall be limited, positioned and screened to minimize views from adjacent properties and public rights-of-way in accordance with the regulations set forth in Section 4.16, Section 4.18, and Section 4.54.
- F. Signage Standards. Signage, when provided, shall be as follows:
1. Building Sign Design Plan: For all newly constructed or exterior renovated buildings, an overall building sign design plan shall be approved by the appropriate reviewing body.
 2. Design: Signage shall be integrally designed and painted with the storefront.
 3. Address Numbers: Address numbers shall be a maximum of 8 inches in vertical dimension.
 4. Sign Band:
 - a. General: A single external sign band or zone may be applied to the facade of a building between the first and second floors, provided that it shall be a maximum of 1.5 feet in vertical dimension by any horizontal dimension.
 - b. Woodward Avenue Address: The external sign band or zone shall be a maximum of 2 feet in vertical dimension by any horizontal dimension. The sign band or zone may contain multiple individual signs, but all must refer to a tenant of the building whose principal square footage is on the first floor.
 - c. Lowercase letters with ascenders and descenders that extend beyond the limits of the sign height by a maximum of 50% will not be calculated into total sign area.
 - d. Each business whose principal square footage is on the first story, may have one sign per entry.
 - e. Where the Historic District Commission, Design Review Board or Planning Board has determined that a horizontal sign band is not architecturally feasible based on building design, an alternative design will be considered, provided the following conditions are met:
 - i. The sign must fit within the total sign area allowed for the business;
 - ii. The sign must be compatible with the building's street design and will enhance the streetscape.
 - iii. The sign adheres to the goals of the 2016 Plan.
 5. Building Identification:
 - a. Signage identifying the entire structure by a building name may be permitted on the sign band.
 - b. One sign will be allowed on the principal building frontage.
 - c. Two identical signs will be allowed on each elevation of a corner building.
 - d. Non-illuminated signs identifying the entire structure by a building name may be permitted above the first floor provided the following conditions apply:
 - i. The building must be located on Woodward;
 - ii. A tenant name must have legal naming rights to the building;
 - iii. The sign must be located on the top floor; and
 - iv. Only one Building Identification sign may be located on the principal building frontage.

Downtown Birmingham Overlay District

Article
03

6. Tenant Directory Sign: A directory sign may be comprised of individual nameplates no larger than one square foot each, or a changeable copy board for characters not exceeding one inch in height.
7. Additional Signs: Additional pedestrian signs for first floor tenants shall meet the following requirements:
 - a. These signs shall be attached to a building perpendicular to the facade, and extend up to 4 feet from the facade.
 - b. These signs shall be a maximum of 1.5 feet in vertical dimension and 4 feet in horizontal dimension.
 - c. There may be one (1) individual pedestrian sign for each business located on the first floor, provided that such signs are spaced no less than 20 feet apart horizontally; this shall not deny any first floor place of business at least one projecting sign.
8. Glass: The storefront glass may be stenciled with signage not to exceed 1.5 feet in vertical dimension and 4 feet in horizontal dimension.
9. First Floor Awning: The valance shall not be more than 9 inches in height. The valance of an awning may be stenciled with signage totaling no more than 33% of the valance area.
10. Lighting:
 - a. General: External signs shall not be internally illuminated, but may be back lit or externally lit.
 - b. Woodward Avenue Address: External signs may be internally illuminated.

AFFIDAVIT OF THOMAS L. PHILLIPS

I, Thomas L. Phillips, being first duly sworn, depose and state as follows:

1. I am over the age of eighteen. I am currently and have been since 1998 the Vice President at Hobbs + Black, an architecture and engineering firm that has been in business since 1965. I hold a Bachelor of Science in Architecture, Architectural Design and Urban Planning degree, as well as a Bachelor of Science in Business Administration degree from Lawrence Technological University. I am also the current Vice Chair of the City of Dexter Planning Commission, where I have served since 2005. I have been practicing architecture in the state of Michigan for 30 years and am currently the Director of the Corporate Office Studio at Hobbs + Black. I can competently testify to the facts contained herein if called upon to do so.

2. This Affidavit is based upon my personal knowledge and review of documentation pertaining to the proposed development of 34965 Woodward (the "Peabody Site"), as well as past information prepared for the review and approval of the Balmoral building at 34953 Woodward, Birmingham, MI (the "Balmoral Building").

3. I was the lead Project Manager for the Balmoral Building and was personally involved in the site plan review and approval process. In this role, I met with the City planning staff, attended Planning and BZA presentations and reviews, and had many discussions with City staff and engineers throughout the approval and construction process, which was completed in 2015.

4. This Affidavit is made for the purpose of documenting my observations, concerns and professional analysis and opinion of the issues and problems presented by the proposed mixed use redevelopment at the Peabody Site in the context of the City of Birmingham's ("Birmingham") Master Plan and the project's negative impact on the Balmoral Building, which

is directly adjacent to the Peabody Site. I can competently testify to the facts contained herein if called upon to do so.

5. I concur with the stated findings of the Dykema letters dated August 22, 2017 and September 11, 2017, as well as those set forth in the Tower Pinkster letter dated August 21, 2017. (Letters are attached hereto.) The intent of this Affidavit is to provide supplemental technical comments relative to the proposed project at the Peabody Site and its impact on the Balmoral Building.

Balmoral Building Design and Planning Review

6. From the outset of my involvement in the development of the building design of the Balmoral Building, the City expressed a strong desire for detailed, high quality elevations facing all property lines (including the north facing elevation adjacent to the Peabody Site), as opposed to blank concrete walls that anticipated typical urban infill structures. Accordingly, all elevations, including the north elevation, were designed and constructed with decorative cast stone walls, sculptural metal panels and windows with custom designed metal rails. The north elevation has 50 windows with decorative metal balustrades and even the mechanical penthouse on the north elevation contains decorative windows.

7. The façade for the north elevation is not planar in that it has insets for the windows and other architectural features to create a distinctive and attractive viewpoint for southbound traffic on Woodward, as desired and requested by the City in the planning and design process. In fact, when it appeared that the cost of the Balmoral project would exceed budget, the owners approached the Planning Department about implementing some value engineering items, including the elimination of the decorative window railings on the north side windows of the project. The Planning Department, however, rejected this proposal and I was told that the exterior design must remain the same or be improved and that removing the decorative railings could not be administratively approved.

8. By granting preliminary site plan approval for the proposed development at the Peabody Site, and thus allowing the Peabody Site to be developed with two elevations consisting of plain masonry walls built to the property line at a 5-story elevation, it is my opinion that the Planning Board is holding the applicant to an alternate and less stringent set of standards than what was required for City approval of the Balmoral Building.

Environmental Impact and Constructability

9. In my professional opinion, the applicant's design ignores the opportunities presented by the Balmoral Building and will present, at a minimum, the following concerns which will negatively impact the Balmoral Building during construction and over time:

- I. Construction of an exterior south wall without trespassing on, over or under the Balmoral Building's will be impossible or, at a minimum, cause the applicant significant expense using "blind construction" methods to construct the structure from the interior of the site. The proposed south-facing wall is different than typical urban infill abutting wall construction because those walls are enclosed and no longer exposed to weather after construction is completed. In this case, the applicant's south-facing wall would abut the Balmoral Building's five-foot setback (above the 1st floor) so it will be exposed to weather and deterioration over time. When the wall cracks or suffers sealant joint failure over time, there will be no practical way to repair it without trespassing on the Balmoral property. If the wall is set back 5 to 10 feet, the wall will be more economical to construct and maintain over time.
- II. By its nature, heavy construction is an imprecise process and damage to the Balmoral Building will be practically unavoidable. Ideally, the damage will be cosmetic rather than structural, but both types of damage are not uncommon under these circumstances. A video survey should be required in advance of construction to confirm the current state and condition of the Balmoral structure as a means to evaluate any future concerns or claims.
- III. The foundation supporting areas of the north wall of the Balmoral Building bear higher than normal structural loads as four stories are supported across the 40 foot span of the drive-thru. The applicant proposes to excavate two stories of parking below grade immediately adjacent to these heavy foundations, which will require some form of support during construction to prevent undermining the structural stability of the Balmoral Building. While not the only method, permanent foundation underpinning below our foundations may be the most economical approach. Such a design would require careful coordination and cooperation of the parties to implement successfully.

- IV. Flashing between the drive-thru roof and Frame Shop will need to be reworked to flash across the space and to their new wall.
- V. The natural grade of the ground slopes from north to south along Woodward and the applicant should be required to demonstrate that storm water within the Peabody Site will be properly contained.

Design Approach

10. The requirement for architects to design new structures that are compatible with neighboring properties is a common theme throughout the City's Master Plan and is required under the Zoning Ordinance. Such compatibility is also synergistic with economic value, resulting in projects that are successful and continue to maintain the City's success as an urban destination over the decades. In my professional opinion, the proposed design for the mixed-use development at the Peabody Site is inconsistent and incompatible with the design and construction of both the Balmoral Building and the Greenleaf Trust Building, which is located directly to the north of the Peabody Site. Specifically, the complete lack of windows, and absence of any setback distance on the north and south elevations, render the proposed development incongruous with the Balmoral Building and Greenleaf Trust Building, both of which were required by the City to be constructed with four highly aesthetic facades.

11. As a firm with more than 50 years of experience, we acknowledge that the nature of "value" is an important topic and significant driver of building design. While maximizing square footage is one approach to optimize value, our experience shows that in some circumstances, providing tenants greater access to air and daylight can add more value to the building than the square footage required to do so. Again, this is a requirement of the City's Zoning Ordinance. At the direction of the City Planning Board, the Balmoral Building was designed and constructed in a way that did not simply maximize all available square footage, and the Peabody Site should be constructed to compliment, and not mask, the neighboring architecture which was required by the City. This could be achieved with the inclusion of

reasonable setbacks along the Peabody Site's north and south property lines above the first floor and façade details that are consistent with the both the quality of other facades on the east and west side of the project, as well as with the Balmoral and Greenleaf Trust buildings. Some modest and creative design change would also allow the applicant more economical construction and maintenance of its building envelope, while providing air and daylight to office and residential tenants in the neighboring buildings and providing pedestrian access in a manner consistent with City planning.



Thomas L. Phillips, Vice President

Bailey Schmidt LLC

255 E. Brown Street, Suite 105
Birmingham, MI 48009

October 9, 2017

Ms. Patti Owens
Catalyst Development Company, LLC
Vice President & Managing Director
100 West Michigan Avenue
Suite 300
Kalamazoo, MI 49007

RE: The Greenleaf Trust Building, Birmingham, MI

Dear Patti:

As an active commercial and residential broker in Birmingham and as the leasing agent for the Greenleaf Trust Building for the past seven years, you asked me to review the plans for the proposed five-story, mixed-use development south of your building at the site of the former Peabody's restaurant and provide you with my analysis of the impact this development will have on your property. As you know, I have significant experience in the Birmingham and Michigan commercial and residential real estate markets. I have been an Associate Broker since 1987 (license #6502125825) and I also attained the professional accreditation of Certified Public Accountant in 1985 (Certificate #15603). In addition, I have been a Limited Real Estate Appraiser since 2012 (license #1201074517). Over the past three decades I have worked on commercial development and acquisition transactions involving office, residential, retail, and high tech properties, and having an aggregate value in excess of \$500 million. As a commercial broker since 1988, I have been involved in leasing and sale brokerage transactions involving over two million square feet and having over \$300 million of transaction value. Since 2013, through the appraisal firm Wieme, Rende & Associates, PC of Troy, Michigan, I have assisted in the appraisal of over 200 commercial properties with an aggregate value of over \$400 million of appraised market value. This is a summary of my extensive real estate experience acquired over the decades since 1987.

Now, with respect to your property—The Greenleaf Trust mixed-use building—you have asked me to review and analyze the anticipated impact of the five-story block wall which the developer plans to construct along your southern property line and within approximately a foot or so of your building. You asked me to opine on the possible impact this wall may have on the rental rates you may be able to achieve once the wall is constructed and, as a result, the corresponding effect on your property's value. Obviously, any reduction in rental rates will cause a reduction in the property's overall value.

Ms. Patti Owens
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October 9, 2017

As a preamble to my comments on the impact that the proposed wall will have on your property's value, it is necessary to reiterate that the Greenleaf Trust Building is among the finest mixed-use properties in Birmingham or all of Michigan for that matter. This market position has been attained by virtue of your building's outstanding design features and high quality construction materials. Your building was placed in service in 2010 or so in the aftermath of the recession of 2008. Birmingham, like most of Michigan, was experiencing difficult times. Nonetheless, you developed a Class A project and spared no expense to construct a magnificent mixed-use building. In fact, your building has attained record rental rates for its five apartments that, to the best of my knowledge, surpasses over 99.99% of apartment rents ever attained anywhere in the state of Michigan. This trend has proven to be durable and continues to this day. That is quite an accomplishment which could only be attained as a result of the significant capital, design and planning investment you made with the goal of constructing one of the finest properties in Birmingham and all of Michigan.

And what effect has your building had on the City of Birmingham? It led the way to Birmingham's commercial property recovery. It has lifted all properties by virtue of its success. All property owners have benefitted from your foresight and investment. I, for one, am very grateful for what you have done for our community.

Regarding the proposed wall to be built within a foot or so of your southern property line, I believe that once it is built it will have a significant, negative impact on your future rental rates, especially for four of your five affected apartment units. Your ability to attain "record setting" rental rates at the levels you have consistently attained over the past seven years may be diminished for these units. Your five apartments have consistently attained rents ranging from \$45 up to and over \$60 per square foot per annum. Your office rents have been at the \$35 per square foot level. These are meaningful rents not only to you as the owner, but to the Birmingham market as a whole. I cannot state strongly enough that the trend you established has benefitted all Birmingham residents and property owners. New records are being set every year for homes and condo values as well as commercial properties in Birmingham. The Greenleaf Trust Building certainly has played a major part in the local market's success by the setting the high end of the market.

Of the four apartments which currently have windows on the southern side of your building, three have kitchens which will have a direct view of the block wall once the same is constructed one foot from your building's southern property line. Views from bedrooms, libraries and bathrooms will also be adversely impacted. Based upon the meaningful deterioration of these views, I estimate that you could possibly experience a reduction in rental rates in excess of 25% for the four apartments affected by the wall. For instance, one of the penthouse

Ms. Patti Owens
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units which is currently leased for \$14,500 per month may, in the future after the wall is built, require a monthly rent reduction to approximately \$10,000. This suggests a "possible" loss of rental income of 31% $((\$14,500 - \$10,000) / \$14,500 = 31\%)$. Similar reductions may likely be required on the other three effected apartment units as well.

I believe a reduction to your office rents may also be required. It is hard to estimate how much this reduction may be.

Let me be "conservative" in estimating a possible rent reduction scenario. Let us suppose that only four of your apartments are affected and none of the commercial space experiences diminished rental revenue (although this is unlikely if the wall is built with one foot of your property line as currently proposed). Further, let me conservatively estimate that the four units will require only a 10% rent reduction (I will not address the possible adverse effect on your continued ability to secure 5 year leases nor the effect that would have on increased vacancy losses and turnover costs). Below is a table which identifies the current rent on the 4 affected apartments with an estimated 10% reduction in rents capped at a 6% cap rate to derive a value loss estimate of \$1,000,000 to your building.

<u>Premises:</u>	<u>SF:</u>	<u>Current</u> <u>Monthly Rent</u>	<u>Annual rent</u> <u>per sf</u>	<u>10.00%</u> <u>reduction</u>	<u>Possible reduced</u> <u>annual rent / sf</u>
Unit #1	3,339	\$14,500	\$52.11	- (\$5.21)	= \$46.90
Unit #2	2,653	\$10,000	\$45.23	- (\$4.52)	= \$40.71
Unit #3	3,351	\$14,500	\$51.92	- (\$5.19)	= \$46.73
Unit #4	<u>2,757</u>	\$12,000	\$52.23	- (\$5.22)	= \$47.01
	12,100				
Avg. reduction		(\$5.04)			
X SF affected	x	<u>12,100</u> sf			
Possible lost revenues =		(\$60,953.36)			
Capped at	\	<u>6.00%</u>			
Possible value loss =		<u>(\$1,015,889)</u>			
Rounded to =		<u>(\$1,000,000)</u>			

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This simple analysis identifies a minimal value loss estimate with just 4 apartment units having a 10% rent reduction. To be conservative, there is no loss attributed to the 2nd and 3rd floor office space which have lease premises along the southern exposure. The revenue loss drops right to the bottom line for value purposes and the rental loss is capitalized at a 6% cap rate which the Greenleaf Trust Building commands based upon current market conditions (prior to the wall construction within one foot of your southern property line). See below for the monthly reduction estimate which, at 10%, results in a rent reduction ranging from \$1,000 up to \$1,450 per month. Further, this contemplates the apartments remaining as rental units. No thought was given to the apartments being converted to condominiums.

<u>Premises:</u>	<u>SF:</u>	<u>Reduced annual rent / sf</u>	<u>Reduced Monthly Rent</u>	<u>Current Monthly Rent</u>	<u>Monthly Rent Reduction</u>
Unit #1	3,339	\$46.90	\$13,050	\$14,500	(\$1,450)
Unit #2	2,653	\$40.71	\$9,000	\$10,000	(\$1,000)
Unit #3	3,351	\$46.73	\$13,050	\$14,500	(\$1,450)
Unit #4	<u>2,757</u>	\$47.01	\$10,800	\$12,000	(\$1,200)
	12,100				

Generally speaking, the construction of a block wall within one foot of your southern property line will render the affected units (apartment and office) to a level below the Birmingham market standard for high-end luxury apartments and office space. Thus, your building will go from a trend setting, top-in-class asset to a nice but albeit partially impaired and partially diminished property.

Further, it is possible that the affected portion of your building may require significant, future interior modifications as a possible remedy to mitigate the adverse rental impact in the event rental losses turn out to be catastrophic. There is no way of knowing at this time if future interior modifications will be required. If modifications in the future are required, the impact could be significant. For example, three of the four apartments have high-end kitchens which will lose all or a portion of their views. A possible remedy may be to re-locate the kitchens elsewhere within the premises. I can only imagine how much the re-designing and re-configuring these luxury apartment interiors would cost. In addition, this type of remedy would also require the abandonment of the remaining useful life of the existing high-end improvements previously made at a substantial cost and investment.

A far better remedy to alleviate the harm caused by the proposed construction would be modify the design to leave a reasonable set-back from

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your property line for the 2nd, 3rd, 4th, and 5th floors. A little space between the buildings would go a long way to mitigating the potential for a dramatic value loss resulting from construction of the proposed wall located within one foot of your building.

In conclusion, I am sorry to say that, in my professional opinion, a five-story block wall constructed within one foot of your southern property line will have a significant, adverse effect on your property's marketability and value. Given that the Balmoral Building is similarly situated in relation to the Peabody development (with an identical five-story masonry wall to be constructed at its north property line), I would also expect to see similar negative impacts on the value of the Balmoral Building, although I have not undertaken a specific economic analysis of same. At this time, I can only make an educated guess, based on my vast experience in the local market and knowledge of your building, as to what the full extent of the damage will be. I know your building as well as anyone as I have personally leased all of the space. I know the discerning tastes of your clientele. I have met them and I can say with the utmost confidence that once the wall is built, the affected areas of your building will surely be met with market resistance.

Sincerely yours,
Bailey Schmidt Inc.

Drew J. Schmidt

Drew J. Schmidt
President

AFFIDAVIT OF JASON B. NOVOTNY, AIA LEED AP

I, Jason B. Novotny, being first duly sworn, depose and state as follows:

1. I am over the age of eighteen. I am currently the Senior Principal, Director of Design at TowerPinkster, an architecture and engineering firm that has been in business since 1953. I hold a Bachelor of Science and Masters of Architecture degrees from the University of Michigan. I have been a licensed Architect in the state of Michigan since October 2000. During my first 13 years of employment, I worked for Eckert Wordell Architects and was the Project Manager and Designer for Catalyst Development.

2. This Affidavit is based upon my personal knowledge and review of documentation pertaining to the proposed development of 34965 Woodward (the "Peabody Site"), as well as past information prepared for the review and approval of the Greenleaf Trust building at 34977 Woodward, Birmingham, MI (the "Greenleaf Trust Building").

3. I was personally involved in the concept design options, site planning, and further acted as the Project Architect and Design lead for the Greenleaf Trust building. In this role, I met with the City planning staff, attended Planning and BZA presentations and reviews, and held tabletop reviews with City staff and engineers from late 2007 through the project completion in 2010.

4. This Affidavit is made for the purpose of documenting my observations, concerns and professional analysis and opinion of the issues and problems presented by the proposed redevelopment at the Peabody Site in the context of the City of Birmingham's ("Birmingham") Master Plan, existing structures to the north and south of the Peabody Site, and the East Gateway entry zone to downtown Birmingham. I can competently testify to the facts contained herein if called upon to do so.

Downtown Birmingham 2016, a Master Plan for the City of Birmingham, Michigan

5. Based upon my review of the key recommendations contained within the Master Plan, the creation of a Gateway East entry to downtown Birmingham is noted as Specific Project 8, on page 58 of the Master Plan. The narrative in this section and the graphics that support the narrative recommend two "Bookend" buildings that frame a view to downtown Birmingham proper from the east approach. These were defined as buildings which would create a gateway by using similar syntax, height, and massing. Furthermore, the goal was to create a pair of buildings which would be so unique as to create a distinctive landmark within the region or nation. See illustration on page 114-116 of Master Plan. This possibility still exists, as the site north of Maple has not yet been developed.

6. The graphics and narrative in Specific Project 8 of the Master Plan also illustrate that the development to the south of the Gateway should be deferential in scale to the corner buildings in order to create building hierarchy, rather than a single massing of buildings on adjacent properties.

7. Furthermore, there are suggestions as to the development of parking infill in the location of the Peabody Site to support the growth of the downtown area. Indeed, the Master Plan suggested that the City attempt to acquire the Peabody property for additional parking (see, e.g., Appendix G – 9 to Master Plan). While the Master Plan does not prohibit further retail or office development at the Peabody Site, it recognizes that without further parking provisions in the area beyond those currently available, parking availability to downtown visitors and tenants once a larger, multi-story building is contemplated will be further compromised.

Greenleaf Trust Building CIS and Planning review

8. Specific and essential to the development of the building design in 2008 of the Greenleaf Trust Building was the concept that the Building become one of the two "Gateway"

elements referenced in the Master Plan, and that the Building be of particularly high design and quality materials to announce the entry into Birmingham and terminate the vista from the east approach to downtown. Materials were carefully chosen, and were considered in the context an approved, but later abandoned development planned to the north in order to harmonize and create the unique gateway feature. This approach was taken at the initial suggestion of the Birmingham planning department, and became one of the signature themes of our design efforts. Creation of a timeless, expressive building to anchor the Southwest corner became a driving factor. The City expressed a strong desire in the architectural review of the project to have a building with four distinct and attractive elevations, including the south elevation adjacent to the developed Peabody site. The articulation, detailing and materials used on this facade were identical in quality to that of the other elevations. A simple masonry wall with no windows on the south elevation would have been a far less expensive development option but would not have been acceptable to Birmingham's site plan review due to the prominent South elevation viewed from Woodward Avenue.

9. It was always considered, and even discussed in workshops, that the potential for infill structures at the Peabody Site would step down in scale, perhaps to structured parking or secondary liner buildings. In the Community Impact Study ("CIS") narrative prepared by staff during site plan review for the Greenleaf Trust Building, it notes, "[t]he 2016 Plan further recommended that the City attempt to secure and hold this site, and the additional parcels to the south, to construct a substantial new parking deck." Considerations for the future potential development south of the Greenleaf Trust Building were incorporated into the building, anticipating perhaps a 2-3 story parking structure, especially on the south facade, where the building was inset to create a light well should future building to the south be developed.

10. Based upon the numerous meetings I had with City Staff during the early design phases, there was an expectation expressed from all parties that this building needed to be designed fully with 4 attractive facades which included fenestration that met the local zoning requirements, but also was tasteful and integrated into the architectural language of the downtown environment. There was a reliance on the guidance of the City to emphasize the Greenleaf Trust building as the gateway structure that the Master Plan envisioned, and to have it stand out as a significant and independent entrance to downtown. By allowing development on the Applicant's property to occur at a matching height, with zero setbacks, and with north and south elevations without any windows nor setbacks, as I describe more fully below, the Planning Board is holding the Applicant to an entirely different and lesser set of standards than it held either the Greenleaf Trust project or the Balmoral Building.

34965 Woodward- Peabody Redevelopment Site Plan and CIS Planning Review

11. In my review of the initial submittals for the CIS for the Peabody Site, I have identified a number of items of concern related to the design and implementation of the overall design of the building which, in my professional opinion, are not comparable or compatible with the other uses and buildings in the neighborhood, particularly with the Greenleaf Trust Building and Balmoral Building located on the south side of the proposed development, nor is it consistent with the Master Plan, as to which the Greenleaf Trust Building carefully adhered. The lack of compatibility and other areas of concern not properly addressed by the applicant Alden Development ("Applicant") include, without limitation, the following:

- a. The design of the south and north façades, which consist of massive 5 story featureless block walls build entirely on the property lines, is incompatible with the structures and facades of the south wall of the Greenleaf Trust Building and north wall of the Balmoral Buildings. The facades of the neighboring buildings are constructed with the same high quality materials and to the same design standards as the other facades on the buildings. Both building facades contain a total of 97 tenant windows, most of which were set back from the property lines to create light and air. In an effort to maximize every square inch of rentable

space and reduce cost of design and construction, the design of the south and north facades of the proposed new building are not compatible with the existing facades of the Greenleaf Trust and Balmoral Buildings and take away the light and air designed for those buildings. The new project is an infill project and should be designed with some intention of harmonious contextual language with the neighboring structures. The design as presented is overly modern, and detracts from the architectural languages of both the Greenleaf Trust Building and Balmoral Buildings, particularly because the buildings are proposed to adjoin one another creating the visual image of one large massive structure.

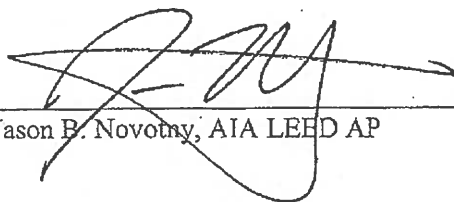
- b. A lack of submittal of the Building and Site exterior lighting concepts, fixtures and an understanding of the implication to the neighboring sites. This was indicated as completed on the Applicants checklist but no document in the set exists to show locations, foot candle levels, or the detrimental impact these might have on the previously developed adjacent sites, with residential occupants. Both the Greenleaf and Balmoral projects were required to undertake this effort.
- c. A potential overuse of glass/glazing based upon allowable percentages for the upper floors of the development based upon code requirements for openings. Both the Greenleaf and Balmoral Buildings were designed with the required level of first floor openness, and then switch to more conventional masonry and punched openings to keep the differentiation of first floor Retail and upper floor Office/Residential in place. The proposed Peabody Site redevelopment does not illustrate that care in detailing, and instead proposes larger expanses of glass with a far more foreign, contemporary look than the surrounding Buildings.
- d. No discussions to date about the potential logistics of constructing a zero lot line building with neighboring sites. Without a careful engineering study and coordination with the neighboring properties, building a structure directly against another structure offers serious challenges in both the support of the structure and the method of construction employed. During the construction of the Greenleaf Trust Building, this process was not only undertaken very early on in the design phase, but was also a part of the CIS submittal, to satisfy concerns of both Birmingham and the neighbors at the Peabody site. The level of design care to ensure no disruption to both the restaurant in 2008 and its patrons was substantial, and carefully discussed by the Construction Manager to minimize debris and noise/vibration.
- e. To date, the Peabody Site redevelopment project has provided no such information, nor conversations to either the property owners of the Greenleaf Trust Building and Balmoral Building, nor the City as part of their submittals to address concerns of constructability, disruption of operations, or impact on neighboring sites. If the project cannot be constructed as depicted without trespassing on, over or under the neighbors' properties, it should not be approved. This shows a disregard for the tenants and visitors of the two currently occupied buildings, and their established place within downtown Birmingham.
- f. A false statement, to the effect of the Applicant indicating how the proposed structure has been studied to impact, block or degrade views, or create a new focal

point. There is no supporting evidence in any of the submittals indicating the impact on neighboring buildings based upon the proposed massing of the new building. This omission on the part of the Applicant shows a lack of careful design consideration, for the sake of maximizing footprint and rentable areas. Birmingham strongly encouraged this study during the original review of the Greenleaf Trust Building design, and provided suggestions and guidance on creating an iconic structure now anchoring the corner of Maple and Woodward.

- g. A lack of acknowledgement to the interference or impairment of ambient conditions necessary to enjoy the physical environment, which is yet another item indicated as provided in the CIS submittal, but not visible in the packet submitted. An opportunity exists to coordinate the architecture of the Peabody Site with the two adjacent existing structures, to create something unified and more than just three buildings that end at the lot line and directly abut each other. This is what I believe is contemplated by the standards required for site plan approval in the Zoning Ordinance, to which I adhered in the planning and design of the Greenleaf Trust Building. Instead, the redevelopment creates solid walls to its neighbors to the north and south, blocking windows and views without grace or concern. Furthermore, the interior spaces created on these windowless areas create deep floor plates lacking natural light from 2 sides. By simply pulling inwards these two walls on floors 3-5, much of this could be avoided, and natural daylighting provided to both the Peabody Site and two existing buildings.

12. We understand the importance of well-considered planning and design in Birmingham and feel that with some coordinated effort among stakeholders in this area, and a more inclusive process with the immediate neighbors, a more successful outcome may occur that leaves all parties, including Birmingham, with a sense of creating a more vibrant block in this critical downtown area. If the Applicant was not fixated on developing nearly 100% of the entirety of the footprint on every available floor, there likely could be a compatible, harmonious, and neighborly design solution which would be more consistent with the Master Plan and possibly satisfy the requirements for site plan approval in the Zoning Ordinance. But the current design, in my opinion, falls far short of those standards.

[Signature page to follow]


Jason B. Novotny, AIA LEED AP

STATE OF MICHIGAN)
) SS.
COUNTY OF Kalamazoo)

The foregoing was acknowledged before me this 10 day of October, 2017 by Jason B. Novotny, AIA LEED AP, Senior Principal Director of Design.

Heather Kirby
Notary Public, State of Michigan, County of St. Joseph
Acting in the County of Kalamazoo
My Commission Expires: 7/2/2023



From: Tim Mitchell [<mailto:mitchell@sme-usa.com>]
Sent: Tuesday, October 03, 2017 2:57 PM
To: Patti Owens
Cc: Joel Rinkel
Subject: Peabody's

Hello Patti,

I hope your time up north was awesome.

To follow up on Peabody's, SME is assisting Matt Shiffman – Alden Development with geotechnical evaluations and earth retention design for their proposed development on the Peabody's site.

We have discussed with Alden the benefits of not excavating all the way to the property line because of the presence of the existing Peabody's underpinning and attachment to the Greenleaf Building, and the need to restore waterproofing and/or other damage that potentially could result from an excavation immediately next to the Greenleaf Building. We plan to provide recommendations that will allow them to perform the necessary construction in a manner that does not affect your building. However, our role is as a technical advisor and not a decision-maker so the owner will make the final decisions as to the building layout and positioning.

We have also recommended performing a pre-construction building condition survey of the Greenleaf building so that the building condition can be evaluated before and after construction to document whether the construction activities have an impact on the building. We may also suggest monitoring vibrations, dependent on our review of the proposed construction activities.

Please let me know if you have any questions or if there is anything we can do to help you during the construction process.

Sincerely,
Tim

Timothy J. Mitchell, PE | Vice President
3301 Tech Circle Drive | Kalamazoo, MI 49008-5611
269.323.3555 o | 269.207.0398 c | mitchell@sme-usa.com



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MEMORANDUM

Community Development

DATE: August 17, 2017

TO: Planning Board Members

FROM: Matthew Baka, Senior Planner

APPROVED: Jana Ecker, Planning Director

SUBJECT: 34965 Woodward Avenue – Preliminary Site Plan Review

The applicant has submitted an application for Preliminary Site Plan review to construct a five story building in the B4/D4 zoning district. The property is located on the west side of Woodward Avenue on Peabody Street at the former location of Peabody's Restaurant and the former Art & Frame Station.

On July 26, 2017 the Planning Board reviewed the CIS & Preliminary Site Plan application for 34965 Woodward. At that time, the Planning Board decided to accept the Community Impact Statement but postponed the Preliminary Site Plan review. The Board requested that the applicant provide additional information regarding the interfacing of the proposed building with the two existing buildings on each side and how they will abut. Also, the Board requested that the applicant provide additional renderings of the new building in context with the adjacent buildings. In addition, the postponement was granted to provide the applicant time to engage with the neighboring property owners in light of the public comments made at the meeting. The applicant has now provided new details and renderings in addition to the previously submitted plans in order to provide additional information for the Planning Board to consider.

1.0 Land Use and Zoning

- 1.1. Existing Land Use – The previous land uses on the site were a vacant two-story commercial building and a one story shop. The buildings were demolished in March, 2017 to allow construction of the proposed five story mixed use building.
- 1.2. Zoning – The property is zoned B-4 Business-Residential, and D-4 in the Downtown Overlay District. The proposed retail, office, commercial and residential uses, and surrounding uses appear to conform to the permitted uses of the zoning district, including the off street parking facility in the form of two levels of parking decks below the development.
- 1.3. Summary of Adjacent Land Use and Zoning - The following chart summarizes

existing land use and zoning adjacent to and/or in the vicinity of the subject site, including the 2016 Regulating Plan

	North	South	East	West
Existing Land Use	Retail/ Commercial	Retail/ Commercial	Open Space/Parking	Parking/ Commercial
Existing Zoning District	B-4 Business Residential	B-4 Business Residential	B-2 General Business	B-4 Business Residential
Overlay Zoning District	D-4	D-4	MU-7	D-4

1. Setback and Height Requirements

The attached summary analysis provides the required and proposed bulk, area, and placement regulations for the proposed project. The applicant meets all of the bulk, area and placement requirements for the D-4 Downtown Overlay District.

3.0 Screening and Landscaping

- 3.1 Dumpster Screening – The applicant is proposing to store all trash inside the building envelope along the north side on a mechanical platform. The plans indicate trash chutes on all levels that lead to a trash compactor accessible via the entry drive, but this is not clearly illustrated on the plans. **The applicant must clarify how the trash will be stored on this platform on the plans.**
- 3.2 Parking Lot Screening – Two levels of proposed parking will be placed underground with eleven (11) angled parking spaces in the right of way on Woodward. No parking lot screening is required.
- 3.3 Mechanical Equipment Screening – A rooftop plan has been submitted indicating six (6) roof top units to be located within a decorative stainless steel metal grate screen wall. **The applicant will be required to provide specification sheets on mechanical equipment and verify that the screen wall is tall enough to sufficiently screen the proposed units at Final Site Plan.**
- 3.4 Landscaping – The Downtown Overlay District requires that one street tree be provided for every 40' of street frontage. This development is

required to have 5 trees along Peabody Street, and 4 trees along Woodward Avenue. The current plans depict two (2) trees on Peabody. **The applicant will be required to submit plans with 9 total trees, or get a waiver from the Staff Arborist.** Parking lot landscaping requirements do not apply in the Downtown Overlay District.

- 3.5 Streetscape Elements – The applicant will be expected to reconstruct the streetscape to the current streetscape standards which would include brushed concrete walking path with exposed aggregate border and pedestrian scale street lights along Peabody. The street lights are typically required every 40'. The frontage along Peabody is approximately 200' requiring five (5) lights. Sheet SD.3 appears to show five (5) street lights proposed however, they only two of the lights are clearly labeled. **The number of lights must be clarified by the applicant.** The Planning Board may also wish to require benches and trash/recycling receptacles to the streetscape if they deem fit.

4.0 Parking, Loading and Circulation

- 4.1 Parking – In accordance with Article 4, section 4.43 (PK) of the Zoning Ordinance, a total of 15 parking spaces are required for the residential level of the building (10 units x 1.5 parking spaces). No on-site parking is required for the proposed retail or office uses as the site is located within the Parking Assessment District. The applicant is proposing 90 parking spaces on site in a two-level underground parking deck and 11 angled parking spaces on the street. The total number of parking spaces provided on the plans is 101. All parking spaces meet the minimum size requirement of 180 square feet.

In accordance with Article 3, section 3.04(D)(5), Downtown Birmingham Overlay District, parking contained in the first story of a building shall not be permitted within 20' of any building façade on a frontage line or between the building facade and the frontage line. The proposal meets this requirement, as all parking is below the 1st floor.

- 4.2 Loading – In accordance with Article 4, section 4.24 C (2) of the Zoning Ordinance, developments with over 50,000 ft² of office space require 2 usable off-street loading spaces, and commercial uses from 5,001 to 20,000 ft² require 1 usable off-street loading space. The plans do not display any off-street loading spaces. **The applicant will need to submit plans demonstrating the size and location of 3 usable off-street loading spaces, or obtain a variance from the Zoning Board of Appeals.**
- 4.3 Vehicular Circulation and Access – Access to the underground parking garage will be via a garage door on the southwest corner of the building, along Peabody Street. Access to the 11 on street parking spaces will be along a one way pull-off from southbound Woodward Avenue.

- 4.4 Pedestrian Circulation and Access –The applicant is proposing pedestrian entrances at three points of the building. The primary entrance to the retail space will front onto Peabody St. at the center of the façade. An additional entrance is proposed along the Woodward frontage, also centrally located. Along Peabody St. there is a proposed entrance to the elevator lobby that will provide access to the residential units. All entrances are accessible from a City sidewalk.

5.0 Lighting

The applicant has not submitted any information regarding lighting at this time. **Specifications for any proposed lighting and a photometric plan must be submitted at Final Site Plan review to determine compliance with the Zoning Ordinance lighting standards.**

6.0 Departmental Reports

- 6.1 Engineering Division –The Engineering Dept. has reviewed the plans dated June 5th, 2017, and the CIS dated June 5th, 2017 for the above project. The following comments are offered:

1. The traffic study acknowledges that the City's parking system is operating near capacity, and does not presently have the capacity to accommodate the additional demand that this building will create. On page 22 of the report, the writer states that "it is reasonable" to assume that the manager of the parking system will explore the possibility of adding an additional floor on the top of the Peabody St. Structure.

Further, the writer indicates that "the study assumes that possibility to be both viable and successfully completed..." The Board is cautioned that the parking structure was not designed with the intention that it could be expanded in the upward direction to create additional capacity, and that this assumption should not be figured into the study. Further, while the parking system is ready and able to operate rooftop valet assist programs to add capacity during peak hours in its other four structures, no such plan is in place at the Peabody St. Structure.

The rooftop valet system requires one to two additional staff on days it operates, and allows the system to fit 50 to 75 additional cars on the roof level by parking them closer together than what can be done when self-parked. Due to the limited land area at this site, and the present configuration of the roof, there is insufficient space available in this structure to make such a program feasible. The study should not proceed with the assumption that an additional level can or will

be built at this facility.

2. The preliminary site plans show the building frontage is proposed set back off the property line on the Peabody St. frontage of the building. The owner will be required to sign a recordable ingress/egress easement for the public to use this area as a public sidewalk, prior to the issuance of a building permit.
3. The following permits will be required from the Engineering Dept. for this project:
 1. Sidewalk/Drive Approach Permit (for all pavement installed in the right of way).
 2. Right-of-Way Permit (for excavations in the right-of-way).
 3. Street Obstruction Permit (for partial obstructions of the City sidewalk or alley).

In addition, a permit will be required from the Michigan Dept. of Transportation (MDOT) for any use and construction within the Woodward Ave. right-of-way.

6.2 Department of Public Services – DPS has no concerns.

6.3 Fire Department – The Fire Department has no concerns at this time.

6.4 Police Department – The Police Department has no concerns at this time.

6.5 Building Division – The Building Division has no concerns at this time.

7.0 Design Review

The applicant is proposing to utilize the following materials for the construction of the five-story, mixed use building:

- Stone panels along the lower level of all façades;
- Masonry veneer along the upper levels of all façades;
- Stone for the base of the building;
- Steel window and door system; and
- Extensive window glazing on all facades.

The design of the building also includes balcony projections from the third floor on both facades of the building. The issue of projections over the right of way was recently discussed at the joint City Commission/Planning Board meeting. Staff intends to consult with the City Attorney prior to Final Site Plan review to determine if an air rights agreement will be necessary to approve this aspect of the design.

No material samples or colors have been provided at this time, but will be required at the time of Final Site Plan review.

Article 3, section 3.04(E), Downtown Overlay District, of the Zoning Ordinance contains architectural and design standards that will apply to this building, including specific requirements for the design and relief of front façades, glazing requirements, window and door standards and proportions, roof design, building materials, awnings and other pedestrian scaled architectural features.

The proposed building appears to meet the architectural standards set out in Article 3, Downtown Birmingham Overlay District, of the Zoning Ordinance as the first floor storefronts are directly accessible from the sidewalk, the storefront windows are vertically proportioned, no blank walls face a public street, and the main entries incorporate canopy features to add architectural interest on a pedestrian scale.

The building also appears to meet the architectural standards set out in Article 3 of the Zoning Ordinance which requires that at least 90% of the exterior finish of the building is glass, brick, cut stone, cast stone, coarsely textured stucco, or wood. In addition, the percentage of glazing for the facade and upper levels has been provided and demonstrates that the storefront minimum of 70% is met, and the maximum upper level of 35% has not been exceeded.

8.0 Approval Criteria

In accordance with Article 7, section 7.27 of the Zoning Ordinance, the proposed plans for development must meet the following conditions:

- (1) The location, size and height of the building, walls and fences shall be such that there is adequate landscaped open space so as to provide light, air and access to the persons occupying the structure.
- (2) The location, size and height of the building, walls and fences shall be such that there will be no interference with adequate light, air and access to adjacent lands and buildings.
- (3) The location, size and height of the building, walls and fences shall be such that they will not hinder the reasonable development of adjoining property and not diminish the value thereof.
- (4) The site plan, and its relation to streets, driveways and sidewalks, shall be such as to not interfere with or be hazardous to vehicular and pedestrian traffic.
- (5) The proposed development will be compatible with other uses and buildings in the neighborhood and will not be contrary to the spirit and purpose of this chapter.
- (6) The location, shape and size of required landscaped open space is such as to provide adequate open space for the benefit of the inhabitants of the building and the surrounding neighborhood.

9.0 Recommendation

Based on a review of the site plan revisions submitted, the Planning Division recommends that the Planning Board **APPROVE** the Preliminary Site Plan for 34965 Woodward with the following conditions:

- (1) The applicant will be required to submit plans with 9 total street trees, or get a waiver from the Staff Arborist;
- (2) The Applicant verify that there will be five (5) pedestrian lights on Peabody;
- (3) Applicant must provide a photometric plan and lighting specifications at the time of Final Site Plan Review;
- (4) The applicant will be required to provide a specification sheet for all mechanical units to verify that the screen wall is tall enough to sufficiently screen the proposed units;
- (5) The applicant will need to submit plans demonstrating the size and location of 3 usable off-street loading spaces, or obtain a variance from the Zoning Board of Appeals;
- (6) Applicant comply with the requests of all City Departments; and
- (7) Provide material and color samples at Final Site Plan review.

10.0 Sample Motion Language

Motion to APPROVE the Preliminary Site Plan for 34965 Woodward subject to the following conditions:

- (1) The applicant will be required to submit plans with 9 total trees, or get a waiver from the Staff Arborist;
- (2) The Applicant verify that there will be five (5) pedestrian lights on Peabody;
- (3) Applicant must provide a photometric plan and lighting specifications at the time of Final Site Plan Review;
- (4) The applicant will be required to provide specification sheets for all mechanical units to verify that the screen wall is tall enough to sufficiently screen the proposed units;
- (5) The applicant will need to submit plans demonstrating the size and location of 3 usable off-street loading spaces, or obtain a variance from the Zoning Board of Appeals;
- (6) Applicant comply with the requests of all City Departments; and
- (7) Provide material and color samples at Final Site Plan review.

OR

Motion to DENY the Preliminary Site Plan for 34965 Woodward

OR

Motion to POSTPONE the Preliminary Site Plan for 34965 Woodward.

AFFIDAVIT OF PATTI OWENS

I, Patti Owens, being first duly sworn, depose and state as follows:

1. I am over the age of eighteen. I am currently the Vice President and Managing Director of Catalyst Development Co., L.L.C. ("Catalyst"), the developer and owner of the mixed-use development at 34977 Woodward, Birmingham, MI (the "Greenleaf Trust Building").

2. This Affidavit is based upon my personal knowledge and review of documentation pertaining to the proposed development of 34965 Woodward (the "Peabody Site"), as well as past information prepared for the review and approval of the Greenleaf Trust Building. I can competently testify to the facts contained herein if called upon to do so.

The City's Permitting Process for the Greenleaf Trust Building

3. As the Vice President and Managing Director of Catalyst, I was involved in and have personal knowledge of the City's permitting process for the Greenleaf Trust Building. From the outset of the City's consideration of the project in 2007, it was expressed that the City desired, and would require, that the Greenleaf Trust Building be of particularly high design and quality. The concept promoted by the City was that the Greenleaf Trust Building would become one of the two "Gateway" elements for the City's downtown, as referenced in the City's Master Plan. As such, the City required a building design that included four distinct and attractive facades, including the south-facing facade which is adjacent to the Peabody Site.

4. In compliance with the City's design requirements, the south facade of the Greenleaf Trust Building contains architecturally significant features, is constructed with Mankato stone, has a variety of setbacks, and includes 47 windows. The Greenleaf Trust Building has both residential and commercial occupants with windows facing south.

5. When the Greenleaf Trust Building was approved for construction by the City in 2008, the Peabody Site was occupied by a one-story restaurant and no one knew if, when or how

the property would ever be redeveloped. Nonetheless, Catalyst considered the possibility of future redevelopment of the Peabody Site and incorporated into the building's design an inset on the south facade to create a light well should a future building to the south be developed. Specifically, the building's second, third, and fourth floors are only partially constructed to the property line (with approximately 50% of those floors being set back 15' from the property line) and no part of the fifth floor is built to the property line. Based, in part, on the Community Impact Study narrative prepared by staff during site plan review for the Greenleaf Trust Building, where it is noted that, "[t]he 2016 Plan further recommended that the City attempt to secure and hold this site, and the additional parcels to the south, to construct a substantial new parking deck," Catalyst anticipated that a 2-3 story parking structure might one day be constructed on the Peabody Site. With that understanding and reasonable expectation, Catalyst entered into certain agreements with the previous owners of the Peabody Site related to potential future redevelopment of the property.

6. However, based on the City's strict design requirements for approval of the Greenleaf Trust Building and other new construction projects in the City's downtown area, Catalyst never contemplated the City's future approval of a five-story, featureless façade being constructed on the northern property line of the Peabody Site. Indeed, the proposed façade on the northern elevation of the Peabody Site development is inferior in design, quality, and architectural character, as compared to what the City required of Catalyst's southern elevation. Although Catalyst understood that portions of a new development might abut portions of the Greenleaf Trust Building (as was the case with the former Peabody's restaurant), Catalyst could not have anticipated that the City would apply a less stringent set of design standards for the developers of the Peabody Site than those which were applied to the design of the Greenleaf Trust Building.

Downtown Parking Problems

7. When the Greenleaf Trust Building was designed and constructed, the availability of parking for the building's tenants and visitors was a major concern due to the known shortage of parking capacity in the City's downtown area. In order to address this concern and ensure there would be adequate parking for Catalyst's tenants, Catalyst constructed underground parking and secured numerous parking spaces at various parking structures in the City. Without these efforts to lock up tenant parking well in advance of construction being completed, Catalyst would not have been able to lease out its commercial space in the Greenleaf Trust Building to full occupancy.

8. In the years since the Greenleaf Trust Building was constructed, the parking situation in downtown Birmingham has only worsened. This is supported by the City staff's comment in the Planning Department Report dated August 7, 2017, that "the City's parking system is operating near capacity, and does not presently have the capacity to accommodate the additional demand that this building will create." The proposed mixed-use development at the Peabody Site will further exacerbate the parking problems in the City's downtown area, which will have a direct negative impact on Catalyst's visitors and tenants, which will, in turn, decrease the marketability and value of the Greenleaf Trust Building.

[Signature and notarization on following page]

Patti Owens
Patti Owens

STATE OF MICHIGAN)
COUNTY OF Kalamazoo) SS

The foregoing instrument was acknowledged before me this 10 day of October, 2017 by Patti Owens, Vice President and Managing Director of Catalyst Development Co., L.L.C., on behalf of said company.

Kimberly Dudley
Name: Kimberly Dudley
Notary Public, State of MI, County of Van Buren
Acting in the County of Kalamazoo
My Commission Expires: 08-26-2020

AFFIDAVIT OF HARVEY WEISS

I, Harvey Weiss, being first duly sworn, depose and state as follows:

1. I am over the age of eighteen. I am currently an agent of Woodward Brown Associates, LLC, the developer and owner of the mixed-use development at 34953 Woodward, Birmingham, MI (the "Balmoral Building"). I have been a successful developer of various mixed use projects throughout the State of Michigan over the past 30 years. This Affidavit is based upon my personal knowledge and review of documentation pertaining to the proposed development of 34965 Woodward (the "Peabody Site"), as well as past information prepared for the review and approval of the Balmoral Building.

The Design and Construction of the Balmoral Building

2. In my role as an agent of Woodward Brown Associates, LLC, I was actively involved in the design and permitting process for the Balmoral Building between 2009 and 2014. During that time, I attended multiple public hearings before City bodies, and participated in multiple meetings and communications with City staff, consultants, engineers, and officials. Further, I was constantly updated by our design and engineering professionals on their communications with the City throughout the permitting process. I also oversaw the process of leasing out the commercial spaces within the Balmoral Building with our marketing team.

3. At the time of the Balmoral permitting process, it was unknown if or when the Peabody Site would ever be redeveloped or what type of development might one day be erected. As Peabody's was a one-story building, it was evident throughout the permitting process that the City wanted all four elevations of the Balmoral Building to be designed and built with a consistent design and uniform construction of the highest quality. The City also clearly expressed a concern regarding the aesthetics of the North elevation of the Balmoral Building, due to its visibility from Woodward Avenue and the building's role as part of the "gateway" to

the City's downtown area. In accord with the City's direction, the Balmoral Building was built with four high-quality and equally attractive facades, including the building's North elevation, which contains 50 windows, and will be completely masked by the proposed five-story, featureless, masonry wall to be constructed on the south property line of the Peabody Site. Such a plain and architecturally simple facade would not have been approved by the City for any elevation of the Balmoral Building, so it would appear that a much less rigorous design standard is now being applied in the City's review of the proposed development at the Peabody Site. Furthermore, the proposed five-story wall that is to be constructed within one foot of our northern property line – and just a few feet from our tenants' windows – will unquestionably have a substantial, negative effect on the Balmoral Building's marketability and value.

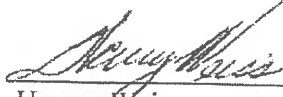
Parking Issues in Downtown Birmingham

4. It is well known and well documented that parking capacity in the City's downtown area is woefully insufficient. The same was true in 2014 when the Balmoral Building was constructed and ownership was attempting to negotiate leases with potential tenants at the building. During lease negotiations, the availability of parking was a top concern for potential tenants and many potential tenants were lost due to these concerns. But for building ownership's construction of underground parking and prior efforts to obtain and lock up parking spaces in various downtown parking facilities throughout the course of several years well in advance of completing the building, we would not have been able to lease all of the spaces in the building.

5. The parking situation in the City's downtown has only worsened since 2014 and the proposed development at the Peabody Site will only exacerbate the current problem. As noted by the City staff in the Planning Department Report dated August 7, 2017, "the City's parking system is operating near capacity, and does not presently have the capacity to accommodate the additional demand that this building will create." Thus, the proposed


development will likely interfere with our tenants' ability to park, and we will be further harmed by this development in the form of decreased marketability and potential loss of existing and future tenants.

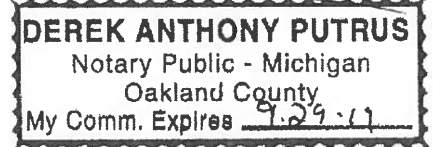
[Signature and notarization on following page]


Harvey Weiss

STATE OF MICHIGAN)
) SS
COUNTY OF Oakland)

The foregoing instrument was acknowledged before me this 10th day of October, 2017 by Harvey Weiss, an agent for Woodward Brown Associates, LLC, on behalf of said company.


Name: Derek Anthony Putrus
Notary Public, State of MI, County of Oakland
Acting in the County of Oakland
My Commission Expires: 9.29.19





**SIGNATURE
ASSOCIATES**

One Towne Square, Suite 1200
Southfield, MI 48076

1 (248) 948 9000
www.signatureassociates.com

September 29, 2017

Mr. Harvey Weiss
Weiss Properties
32820 Woodward Avenue., #200
Royal Oak, Michigan 48073

**SUBJECT: BALMORAL BUILDING BIRMINGHAM, MICHIGAN
IMPACT ON PARKING ISSUES FOR LEASE-UP**

Dear Harvey:

In response to your inquiry regarding our experience in leasing the Balmoral, parking concerns were the on-going concern by prospects. We appreciate that it may have taken longer than intended; especially when considering the desirability of the Birmingham market and the beauty of the building. However, the concerns over parking tended to be an on-going subject for each and every tenant and an impediment to leasing space in the building. But for your previous efforts to obtain and lock up spaces in various downtown parking facilities well in advance of completing the building, we would likely not have been able to complete the lease-up.

We lost many tenant prospects because their lack of confidence that parking would not be a problem for their employees and clients.

According to their advisors, several potential tenants – office and retail uses – who were very interested in the building went elsewhere due, at least in substantial part, to the parking concerns. Companies such as Angle Advisors, Discovery Channel, MVP Collaboration, Facebook, McCann and IBM all sought alternative solutions. Restaurants like Fogo de Chou were challenged by the constraints as well.

Moreover, we had countless inquiries from potential tenants who declined going deeper into discussions without on-site parking. The concern was simply lack of capacity at the Peabody garage. It has become well-known in the community that there are times you cannot find available spaces in the Peabody garage.

We hope Birmingham continues to enjoy its success as it is a premier city, but fear that the lack of parking will have a continuing and growing negative influence.

Again, thank you for the opportunity to work with you and your team.

Sincerely,

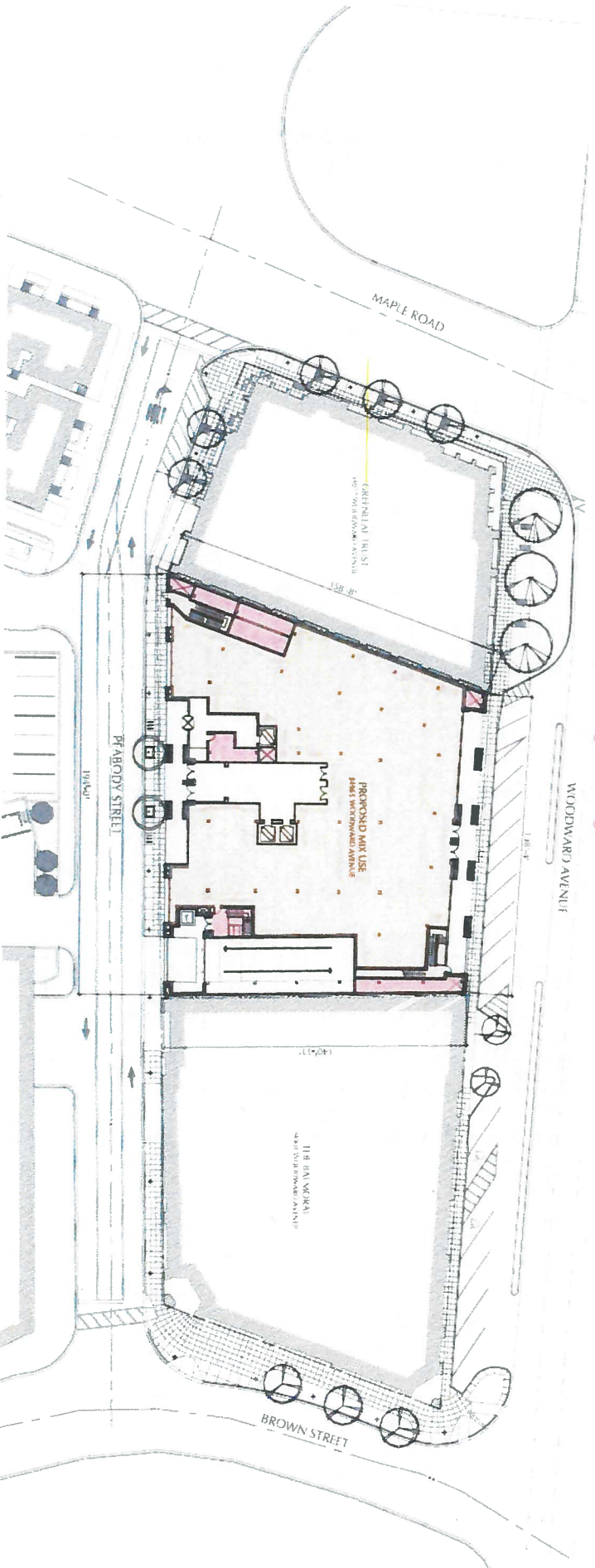
SIGNATURE ASSOCIATES

David T. Miller
Associate Broker | Principal

DTM/bjn



34965 Woodward Avenue + 215 Peabody Street
Birmingham, Michigan 48009



Occupancy Areas

Occupancy	Location in Building	Net Usable Area
Office	Levels 2, 3	44,285 SF
Commercial	Level 4	18,605 SF
Retail / Office	Level 1	14,855 SF
Residential	Levels 4 + 5	17,465 SF

Parking Tabulation

Residential	Required	Provided
1.5 spaces / Apartment	15 spaces	15 spaces
10 Apartments x 1.5		
Total	15 spaces	90 spaces
Total with 11 street parking spaces		101 spaces

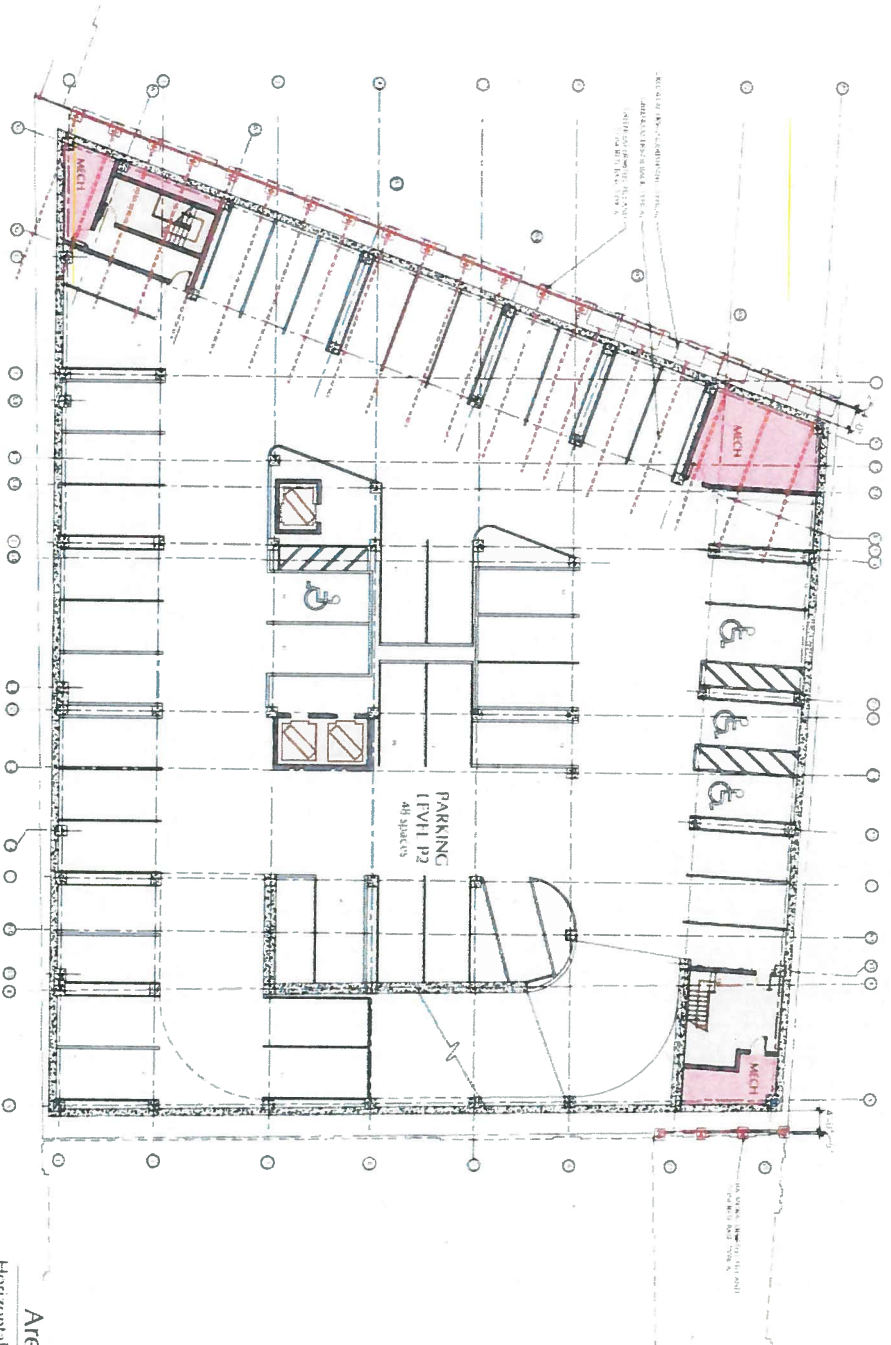
Building Calculations

Location	Spaces / Units	Net Usable Area	Gross Area
Parking level P2	48 Parking spaces	22,425 SF	23,700 SF
Parking level P1	42 Parking spaces	22,405 SF	23,700 SF
Level 1	11 Street Parking	20,070 SF	21,510 SF
Level 2	-	22,735 SF	23,790 SF
Level 3	-	23,530 SF	24,530 SF
Level 4	1 Apartments	22,960 SF	24,245 SF
Level 5	9 Apartments	18,705 SF	20,435 SF
Total	-	152,880 SF	161,910 SF
Total Site Area			25,215 SF

CHRISTOPHER J LONGORIA
ARCHITECTURE
11010 Woodward Avenue, Suite 1000
Birmingham, AL 35226



34965 Woodward Avenue + 215 Peachtree Street
Birmingham, Michigan 48009



PARKING LEVEL P2 - 48 spaces

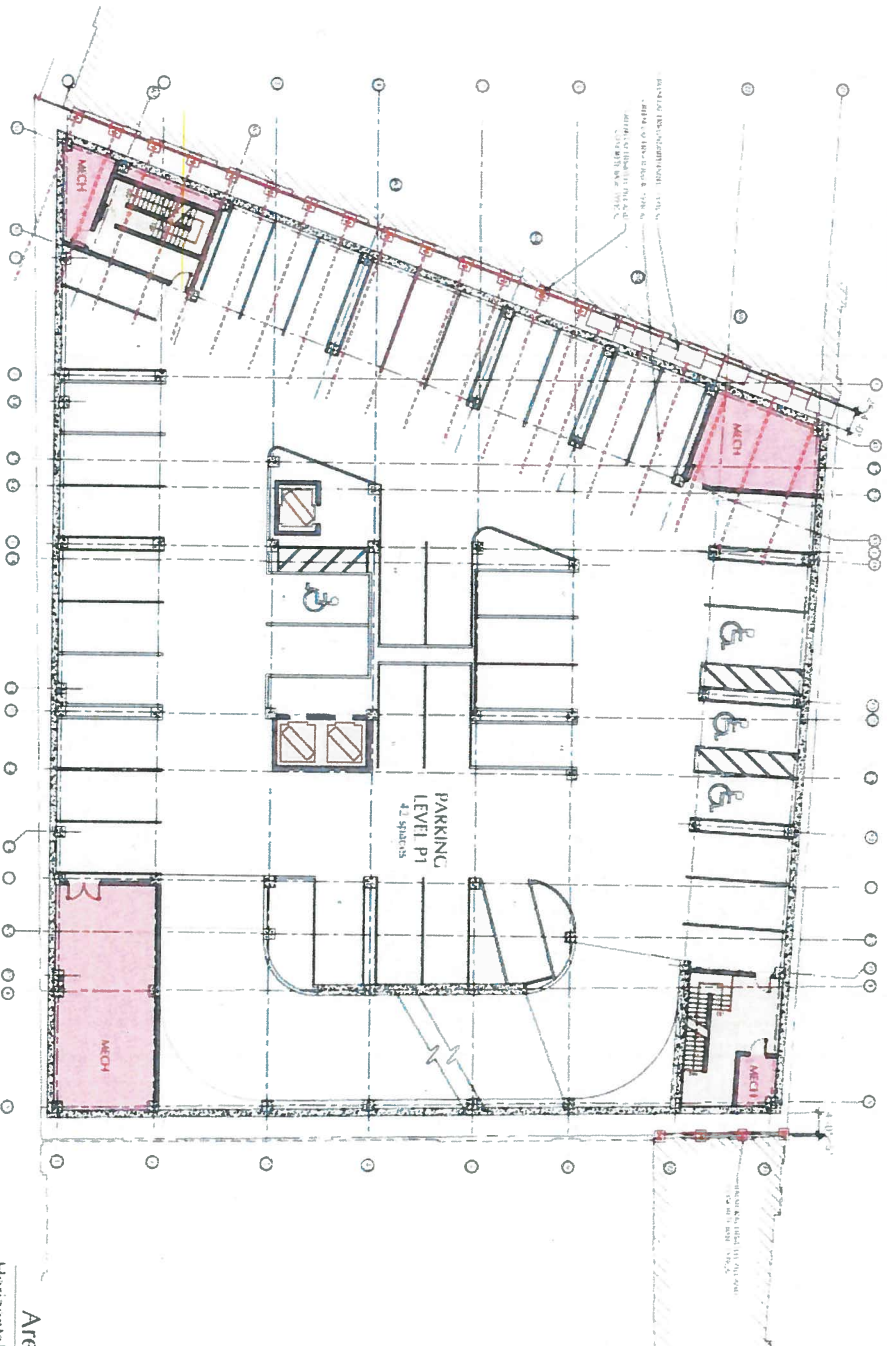
Area Calculations	
Horizontal Circulation	120 SF
Vertical Circulation	700 SF
Mech. / Storage	710 SF
Parking	20,895 SF
Net Usable Area	22,425 SF
Gross Area	23,700 SF

SCALE: 1" = 20'-0"

CHRISTOPHER J. LONGE AIA
ARCHITECTURE
1 N T E R I O R S
of French, Birmingham, Michigan 48009



34965 Woodward Avenue + 215 Peabody Street
Birmingham, Michigan 48009

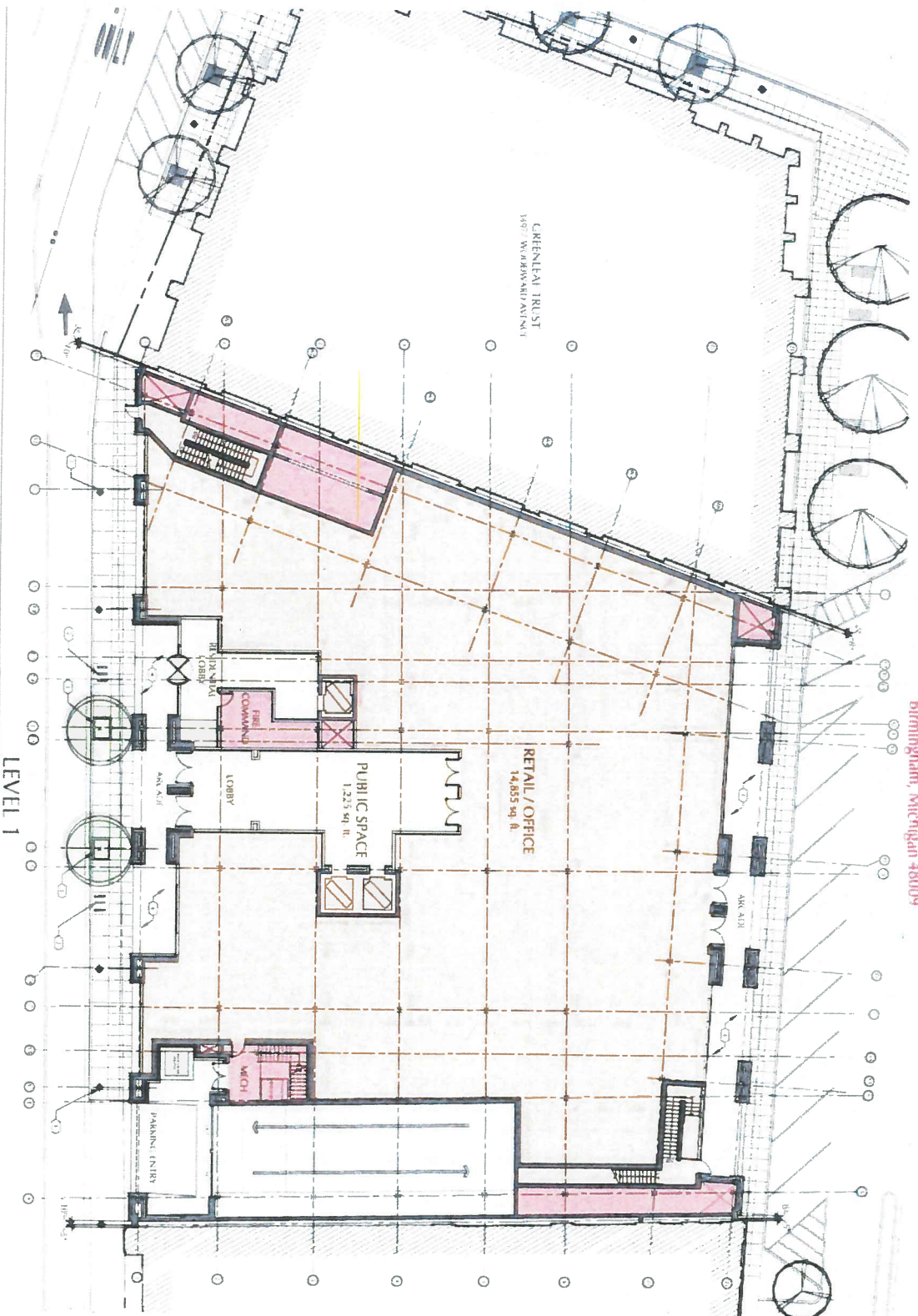


PARKING LEVEL P1 - 42 spaces

CHRISTOPHER J. LONGORIA
ARCHITECTURE
INTERIORS
4415 Irving Boulevard, Birmingham, AL 35212

Area Calculations	
Horizontal Circulation	120 SF
Vertical Circulation	795 SF
Mech. / Storage	1,475 SF
Parking	20,015 SF
Net Usable Area	22,405 SF
Gross Area	23,700 SF

SCALE: 1" = 20'-0"

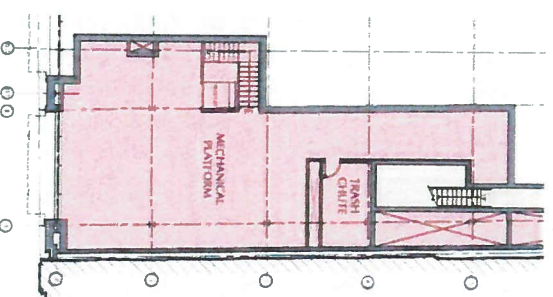


LEVEL 1

CHRISTOPHER J LONGE AIA
ARCHITECTURE
INTERIORS

© 2014 Christopher J. Longe AIA Architecture, Inc.

SCALE: 1" = 20'-0"



MECH. PLATFORM

Notes:

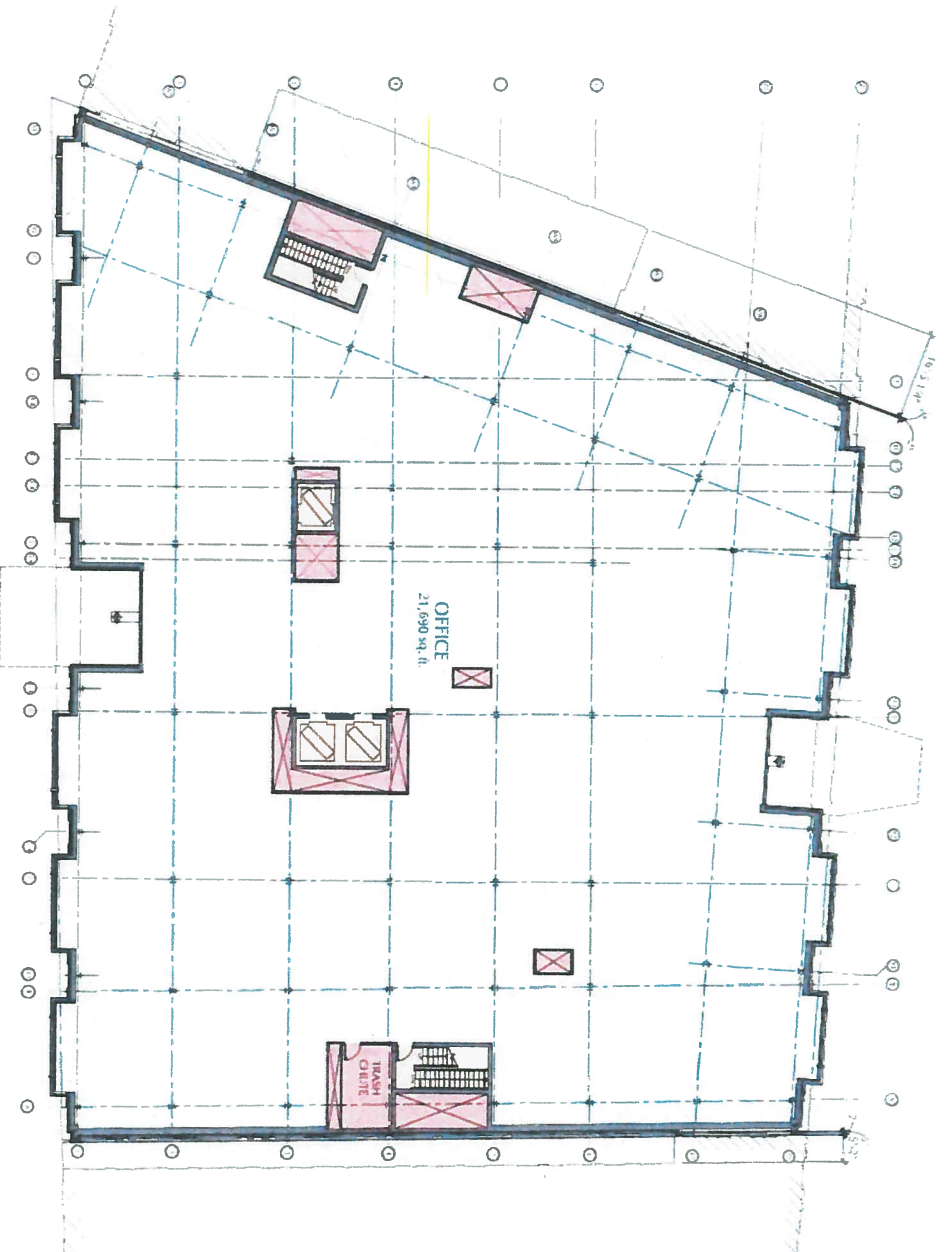
- (1) Pedestrian lamp post
- (2) Bike rack
- (1) Tree bed with metal grating
- (4) Exposed aggregate concrete

Area Calculations

Retail / Office	14,855 SF
Horizontal Circulation	1,710 SF
Vertical Circulation	730 SF
Mech / Storage	595 SF
Parking	2,180 SF
Net Usable Area	20,070 SF
Gross Area	21,510 SF
Academy Area	1,910 SF



34965 Woodward Avenue + 215 Peabody Street
Birmingham, Michigan 48009



LEVEL 2

Area Calculations

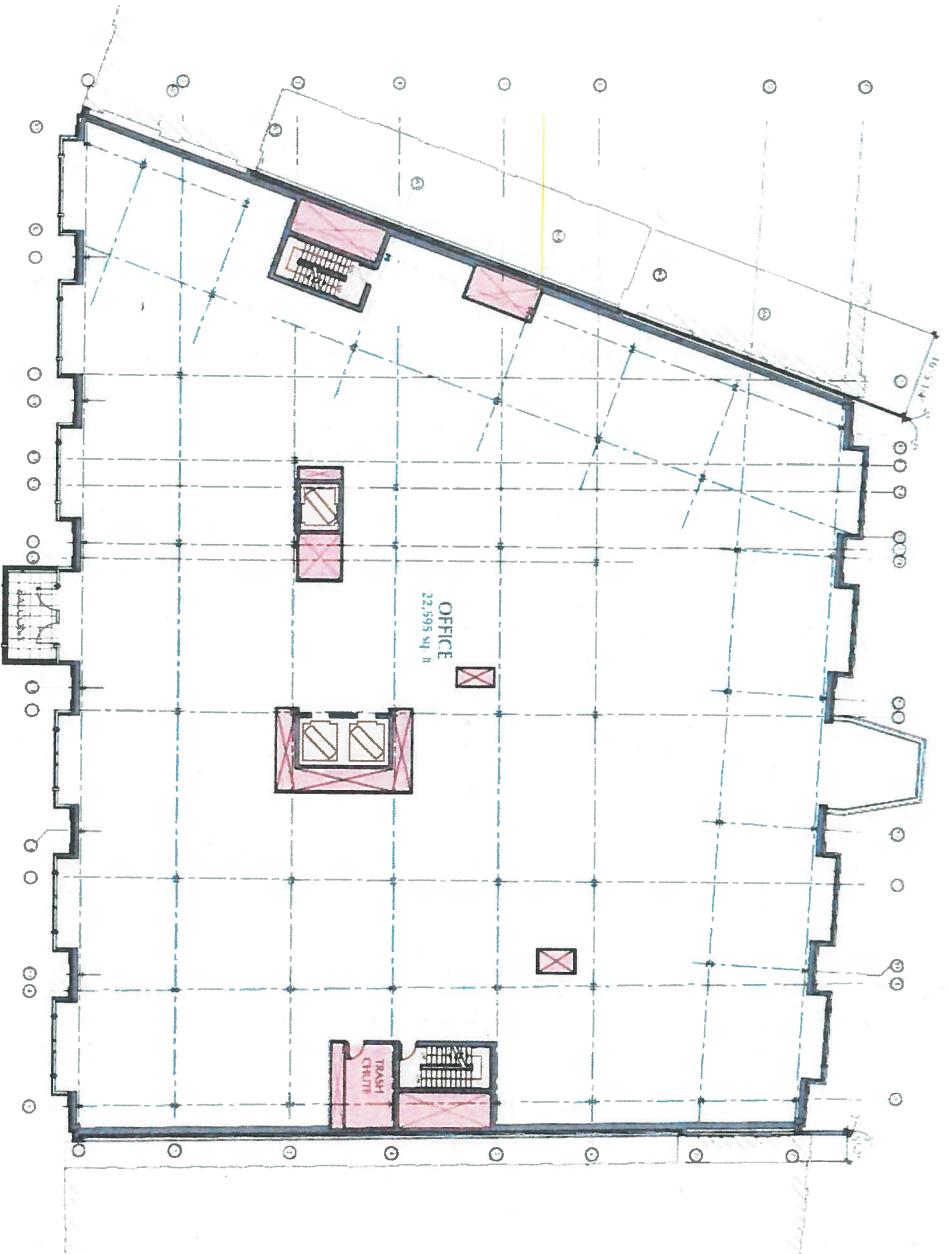
Office	21,690 SF
Vertical Circulation	575 SF
Mech. / Storage	470 SF
Net Usable Area	22,735 SF
Gross Area	23,790 SF

SCALE: 1" = 20'-0"

CHRISTOPHER J. LONGE AIA
ARCHITECTURE
INTERNATIONAL
2000 Woodward Avenue, Suite 2000
Birmingham, Alabama 35203



34965 Woodward Avenue + 215 Pearlbury Street
Birmingham, Michigan 48009



LEVEL 3

Area Calculations

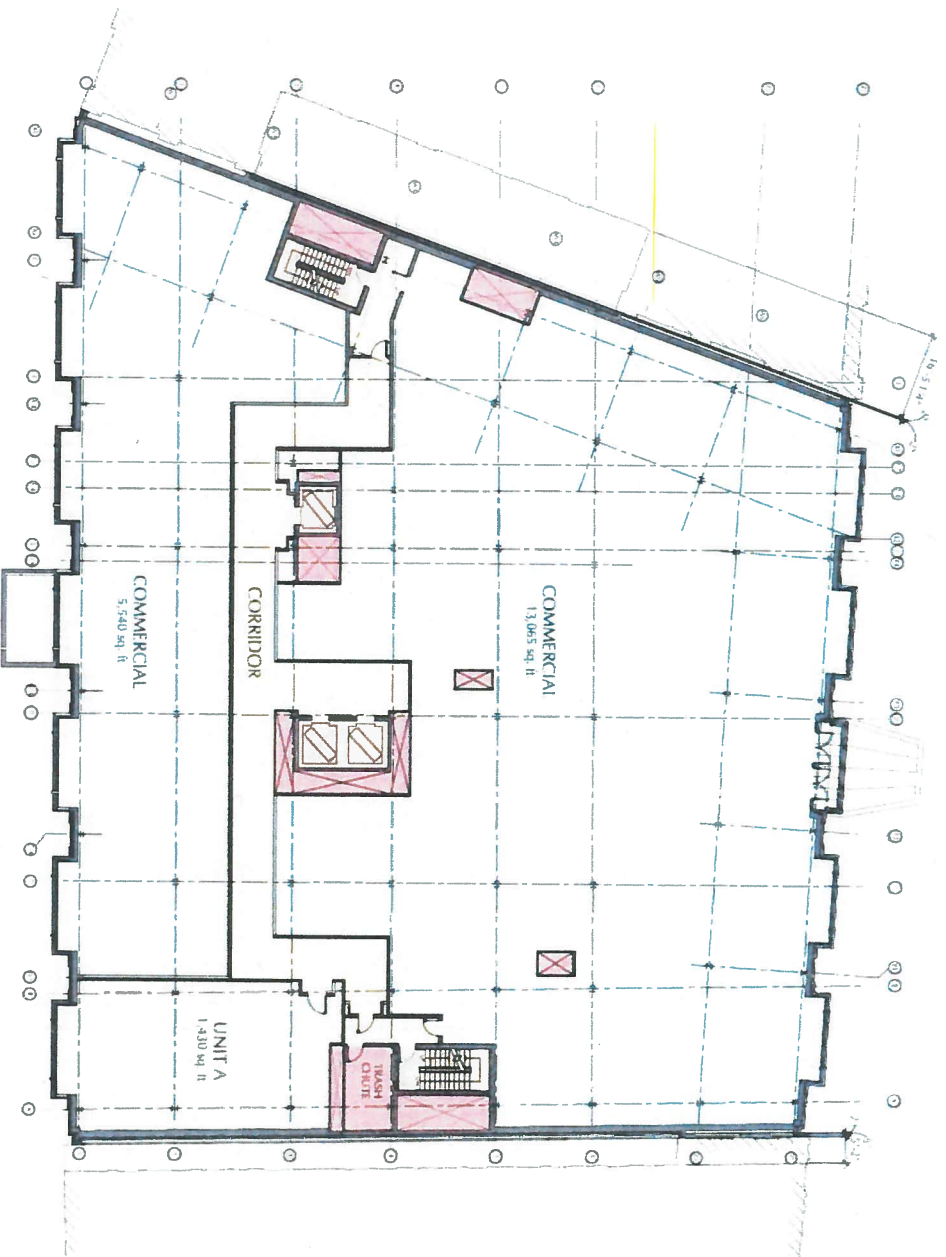
Office	22,595 SF
Vertical Circulation	515 SF
Mech. / Storage	470 SF
Net Usable Area	23,580 SF
Gross Area	24,530 SF
Balcony	160 SF

SCALE: 1" = 20'-0"

CHRISTOPHER J. LONGE AIA
ARCHITECTURE
INTERNETWORKS
201 Franklin Boulevard, Birmingham, AL 35203



34965 Woodward Avenue + 215 Peabody Street
Birmingham, Michigan 48009



LEVEL 4

CHRISTOPHER J LONGORIA
ARCHITECTURE
INTERNATIONAL
3410 Peachtree Boulevard, Suite 400, Atlanta, GA 30326

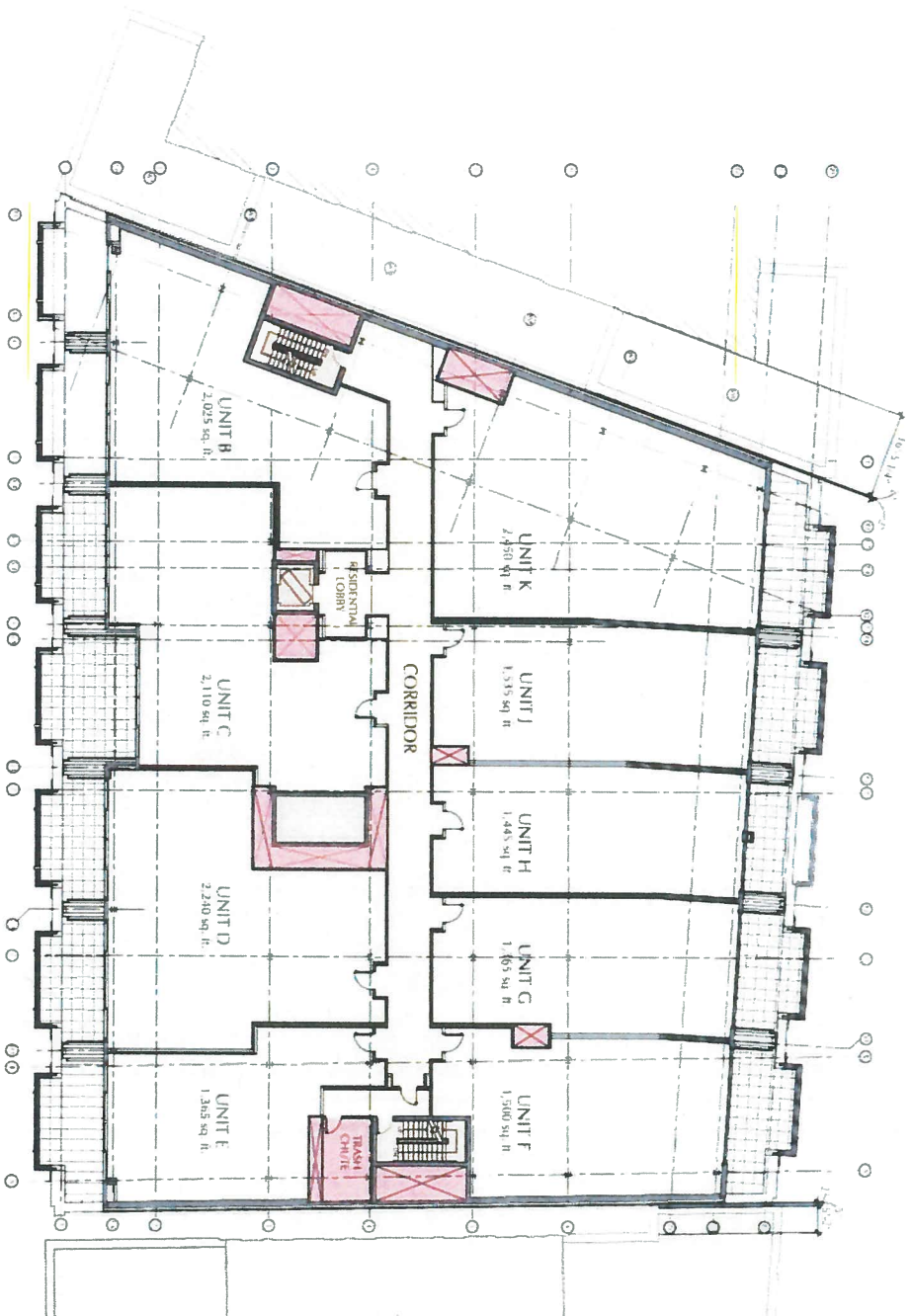
Area Calculations	
Commercial	18,605 SF
Residential	1,430 SF
Horizontal Circulation	1,680 SF
Vertical Circulation	515 SF
Mech. / Storage	470 SF
Net Usable Area	22,960 SF
Gross Area	24,245 SF
Balcony	80 SF

SCALE: 1" = 20'-0"

SD.6



34965 Woodward Avenue + 215 Peakbody Street
Birmingham, Michigan 48009



LEVEL 5

CHRISTOPHER J. LONGE AIA
ARCHITECTURE
INTERIORS
34965 Woodward Avenue + 215 Peakbody Street
Birmingham, Michigan 48009

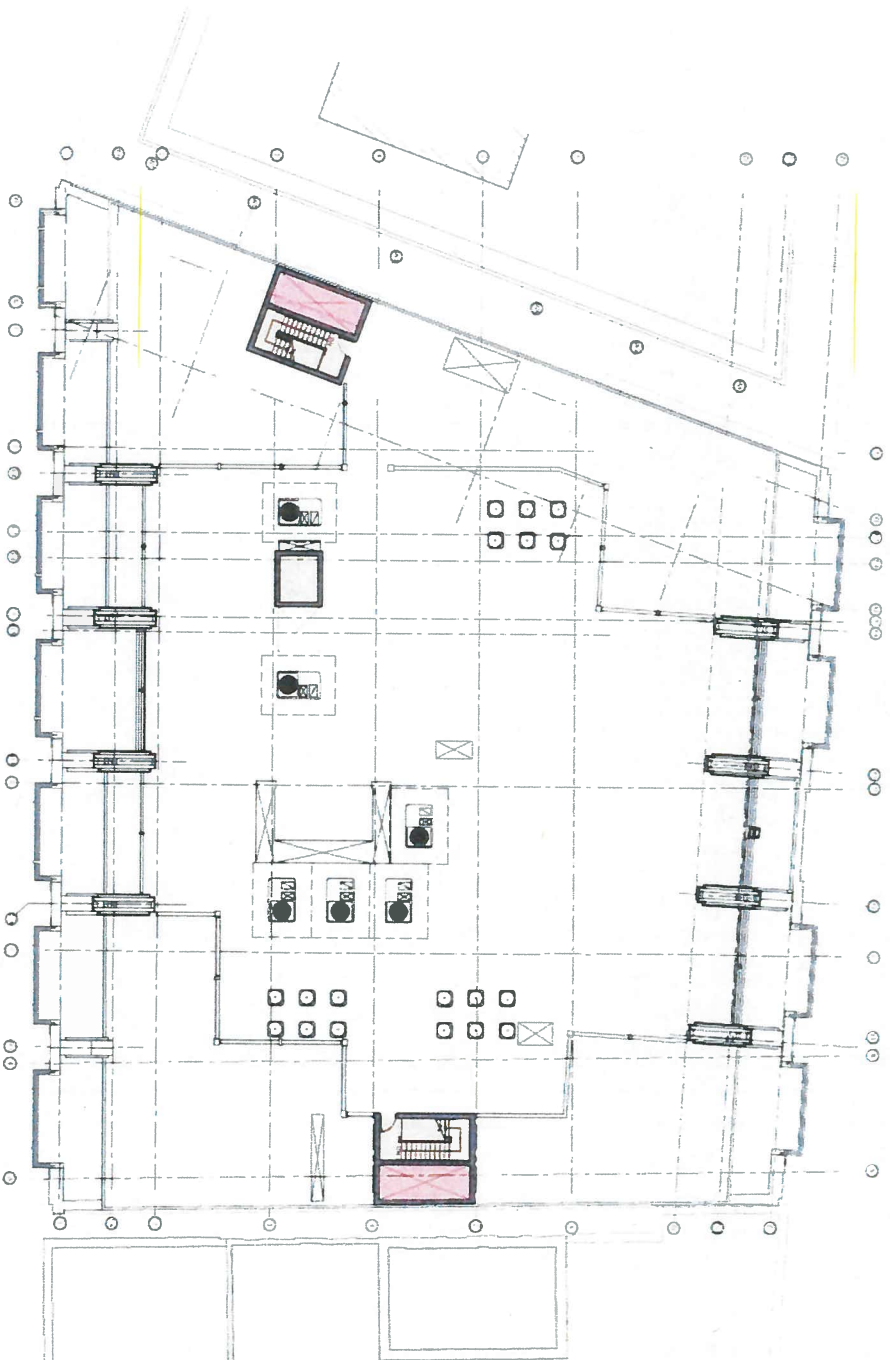
Area Calculations	
Residential	16,035 SF
Horizontal Circulation	1,685 SF
Vertical Circulation	515 SF
Mech. / Storage	470 SF
Net Usable Area	18,705 SF
Gross Area	20,435 SF
Exterior Terrace	3,395 SF

SCALE: 1" = 20'-0"

SD.7



34965 Woodward Avenue + 215 Piedmont Street
Birmingham, Michigan 48009



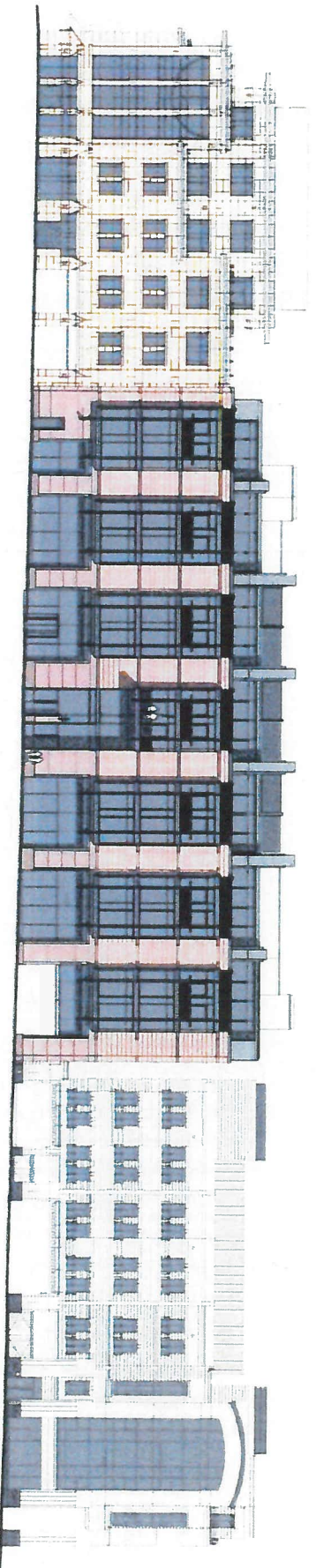
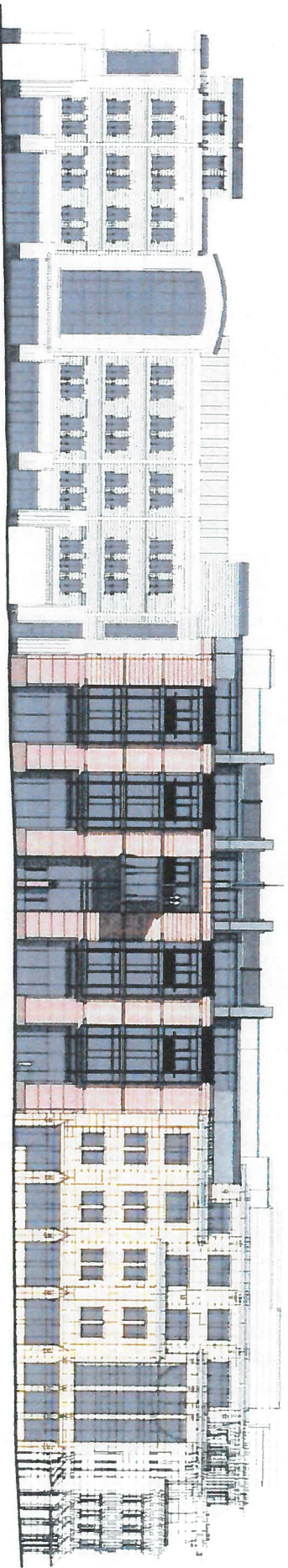
ROOF LEVEL

CHRISTOPHER J. LONGE AIA
ARCHITECTURE
INTERIORS
34965 Woodward Avenue, Suite 400
Birmingham, AL 35202

SCALE: 1" = 20'-0"



34965 Woodward Avenue + 215 Pearlbody Street
Birmingham, Michigan 48009



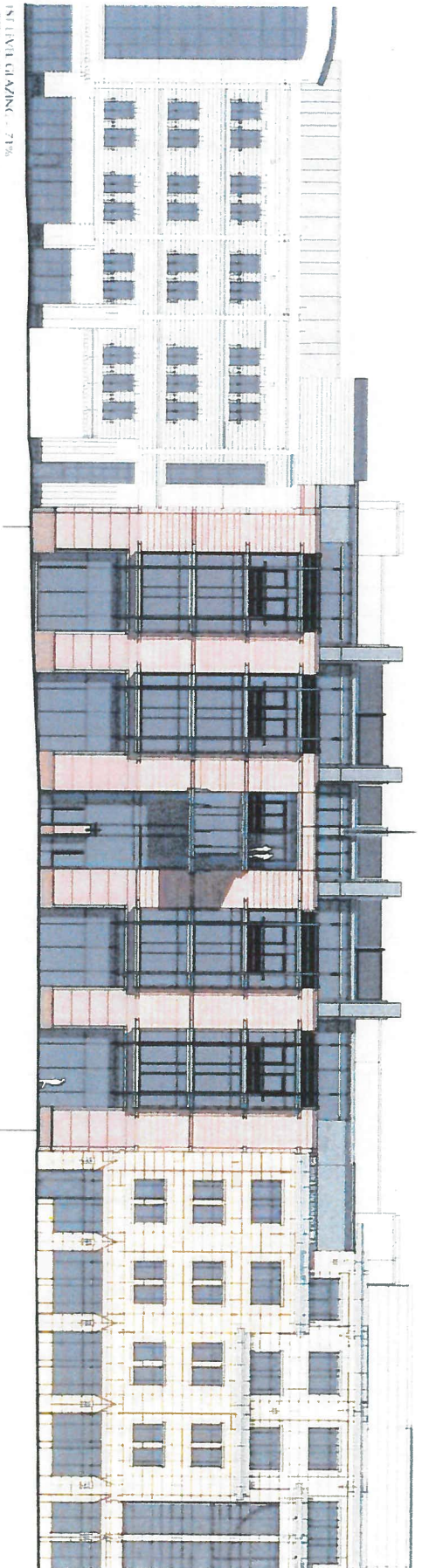
STREETSCAPE ELEVATIONS

CHRISTOPHER J LONGE AIA
ARCHITECTURE
INTERIORS
14700A Birmingham, Michigan 48009

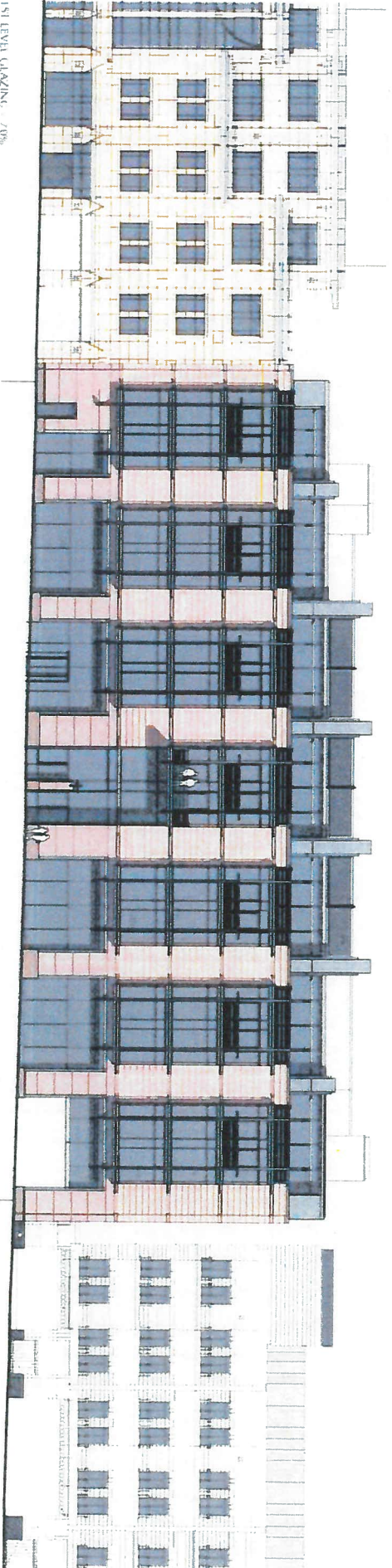
SD.9



34965 Woodward Avenue + 215 Peakview Street
Birmingham, Michigan 48009



1ST LEVEL GLAZING - 71%
UPPER LEVEL GLAZING - 39%



1ST LEVEL GLAZING - 71%
UPPER LEVEL GLAZING - 39%

FRONT ELEVATIONS

CHRISTOPHER J LONGE AIA
ARCHITECTURE
INTERIORS

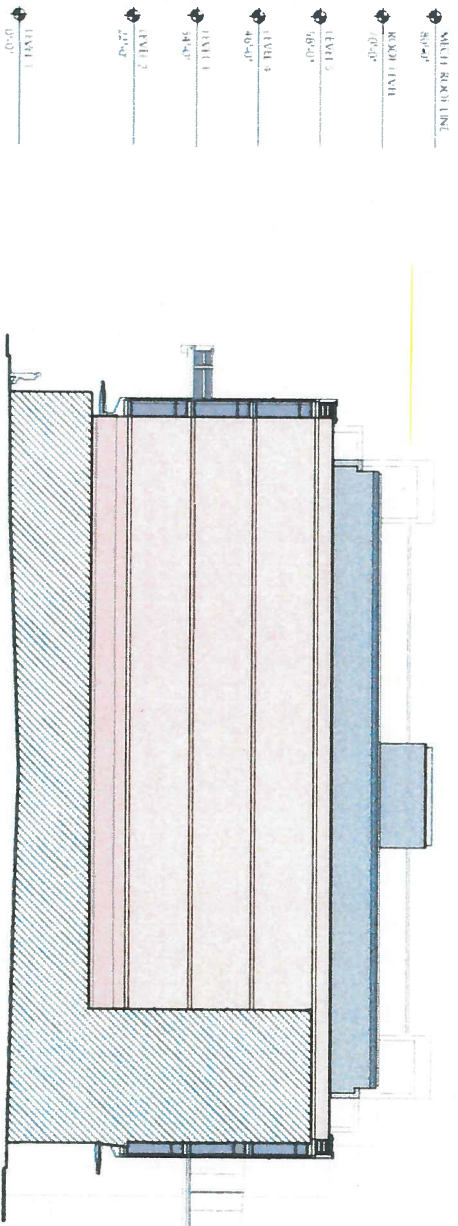
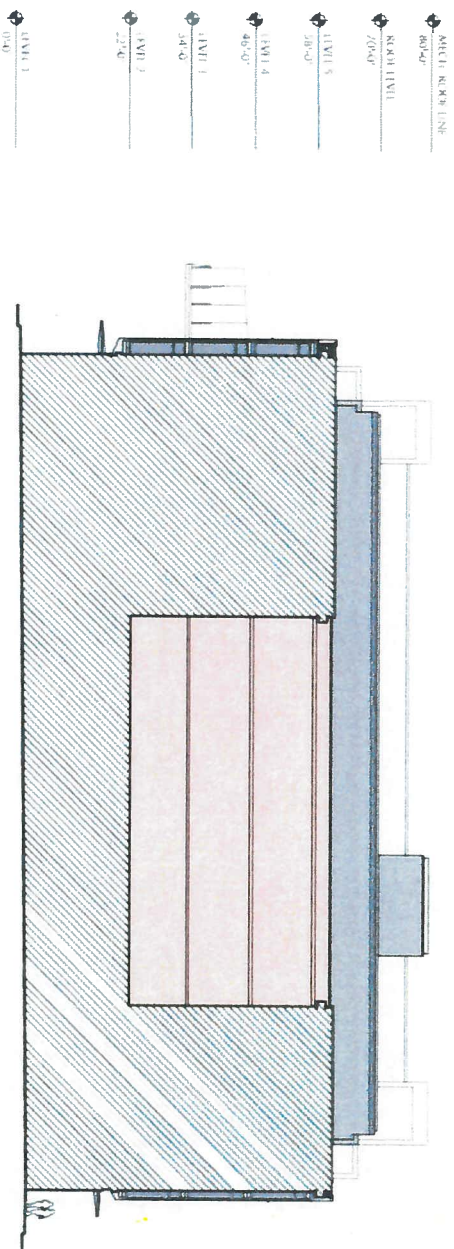
34965 Woodward Avenue + 215 Peakview Street
Birmingham, Michigan 48009

SD.10

SCALE: 1" = 20'-0"



34965 Woodward Avenue + 215 Peabody Street
Birmingham, Michigan 48009



SIDE ELEVATIONS

CHRISTOPHER J. LONGE AIA
ARCHITECTURE
INTERIORS
34965 Woodward Avenue + 215 Peabody Street

SCALE: 1" = 20'-0"

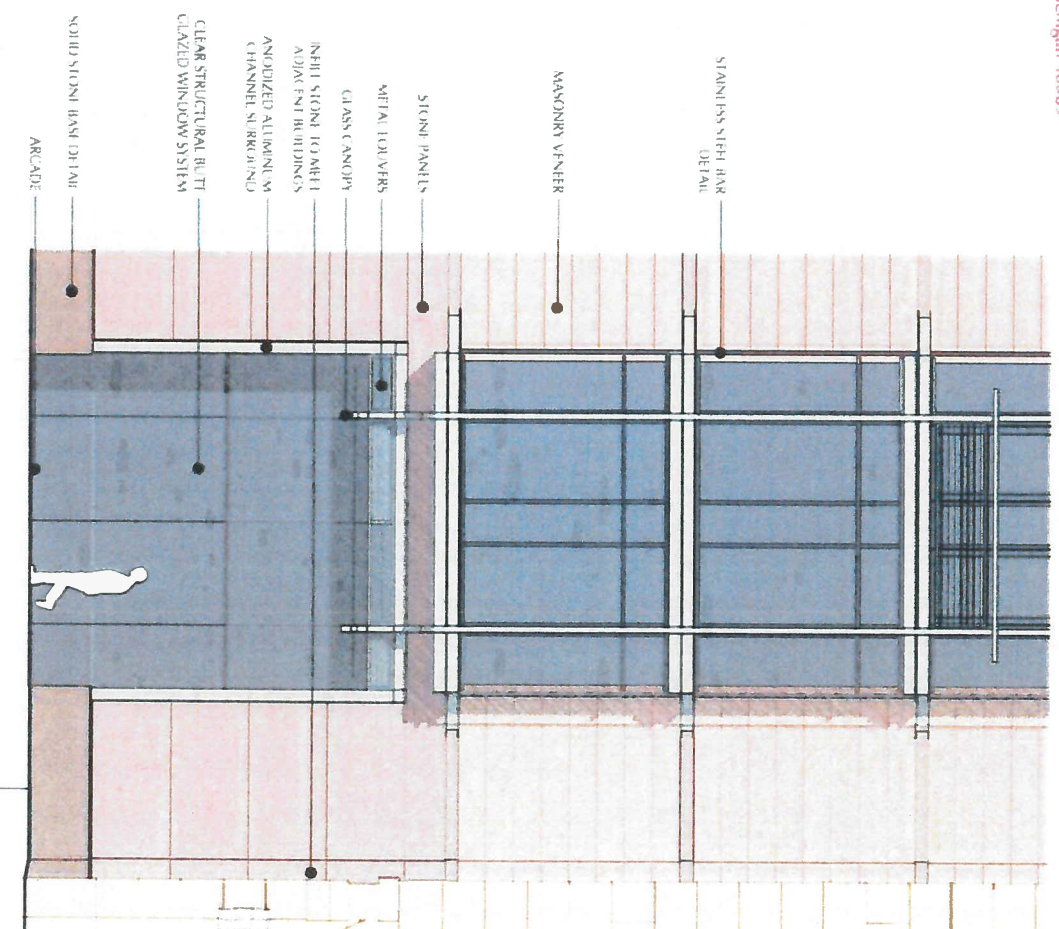


34965 Woodward Avenue + 215 Peabody Street
Birmingham, Michigan 48009



- METAL COMPOSITE PANELS
- DECORATIVE STAINLESS STEEL METAL GRATE
- CANT STONE CORNICE
- STAINLESS STEEL CANOPY OVER TERRACES
- SLEEPING GLASS DOOR AND WINDOW SYSTEM
- STONE CAP
- POWDER COATED INHIBIT RAILS WITH STAINLESS STEEL CABLE RAIL
- BUILT GLAZED CORNER
- STEEL WINDOW AND DOOR SYSTEM
- INSULATED STONE HANDLING
- STEEL FIN DETAIL
- ANODIZED ALUMINUM CHANNEL

ENLARGED ELEVATION VIEWS



- STAINLESS STEEL BAR DETAIL
- MANDARIN VENER
- STONE PANELS
- METAL LOUVERS
- GLASS CANOPY
- INSULATED STONE TO METAL JOINTS
- ANODIZED ALUMINUM CHANNEL SURROUND
- CLEAR STRUCTURAL BUILT GLAZED WINDOW SYSTEM
- SOLID STONE BASE DETAIL
- ARCADE

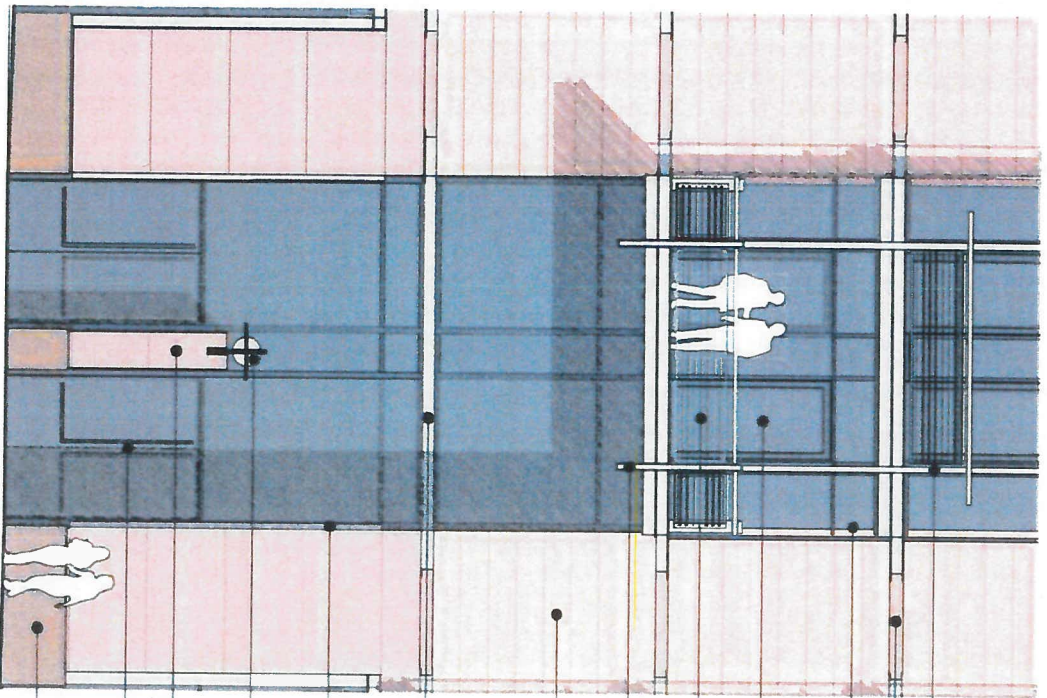
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CHRISTOPHER J. LONGE AIA
ARCHITECTURE
INTERIORS
OF PRACTICE, BIRMINGHAM, MICHIGAN 48009

SD.12

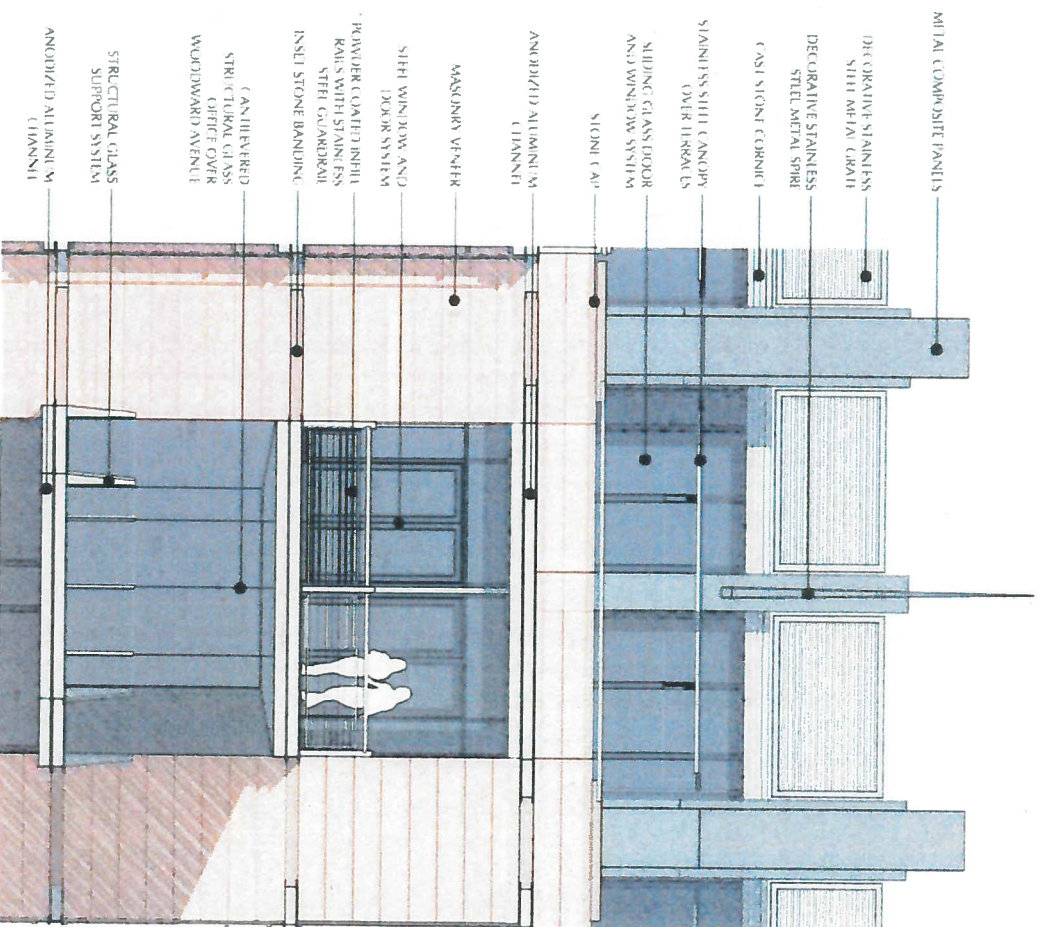


34965 Woodward Avenue + 215 Peabody Street
Birmingham, Michigan 48099



STEEL LIN DETAIL
INSET STONE BANDING
BUILT CLAFED CORNER
STEEL WINDOW AND
DOOR SYSTEM
POWDER COATED INHIL
RAILS WITH STAINLESS
STEEL GUARDRAIL
STEEL FIN DETAIL
MASONRY VENEER
ANODIZED ALUMINUM
CHANNEL
ANODIZED ALUMINUM
CHANNEL
DECORATIVE METAL FIN
TAN STONE PANELS
STEEL WINDOW AND
DOOR SYSTEM
SOLID STONE BASE DETAIL

ENLARGED ELEVATION VIEWS



METAL COMPOSITE PANELS
DECORATIVE STAINLESS
STEEL METAL CORNER
DECORATIVE STAINLESS
STEEL METAL SPIRE
CAST STONE CORNER
STAINLESS STEEL CANOPY
OVER TERRACE
SLIDING GLASS DOOR
AND WINDOW SYSTEM
STONE CAP
ANODIZED ALUMINUM
CHANNEL
MASONRY VENEER
STEEL WINDOW AND
DOOR SYSTEM
POWDER COATED INHIL
RAILS WITH STAINLESS
STEEL GUARDRAIL
INSET STONE BANDING
CANITHEFERED
STRUCTURAL GLASS
OFFICE COVER
WOODWARD AVENUE
STRUCTURAL GLASS
SUPPORT SYSTEM
ANODIZED ALUMINUM
CHANNEL

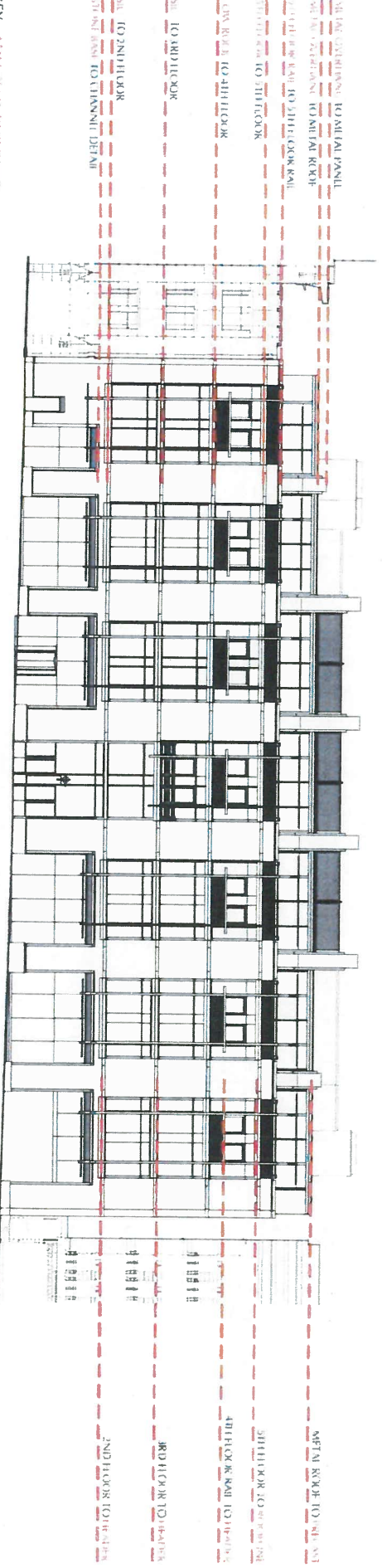
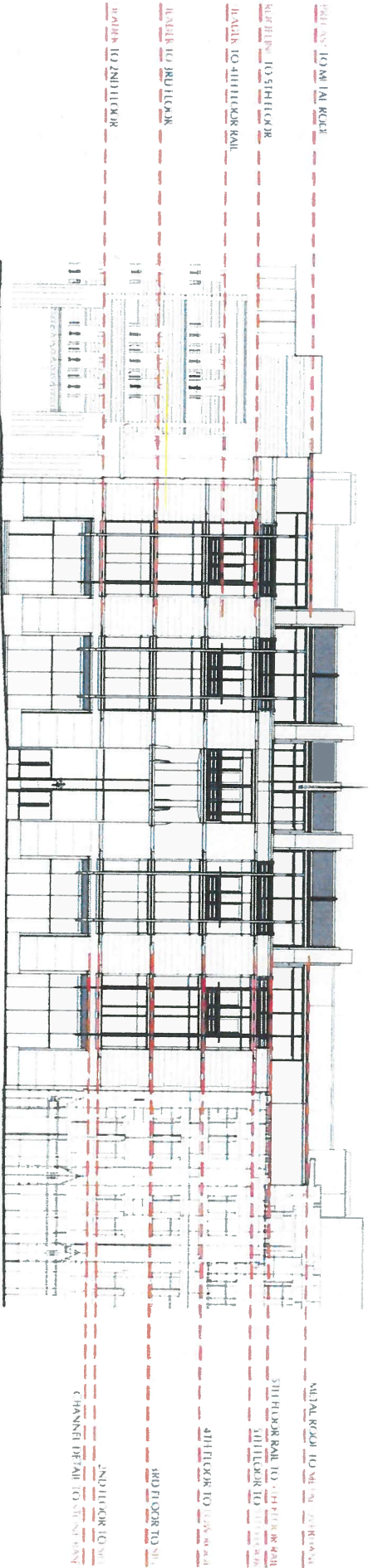
SCALE: 3/16" = 1'-0"

CHRISTOPHER J LONGE AIA
ARCHITECTURE
34 Peabody Street, Birmingham, Michigan 48099

SD.13



34965 Woodward Avenue + 215 Peabody Street
Birmingham, Michigan 48009



KEY: ADJACENT BUILDINGS
PEABODY REDEVELOPMENT PROPOSAL

ELEVATION DIAGRAMS

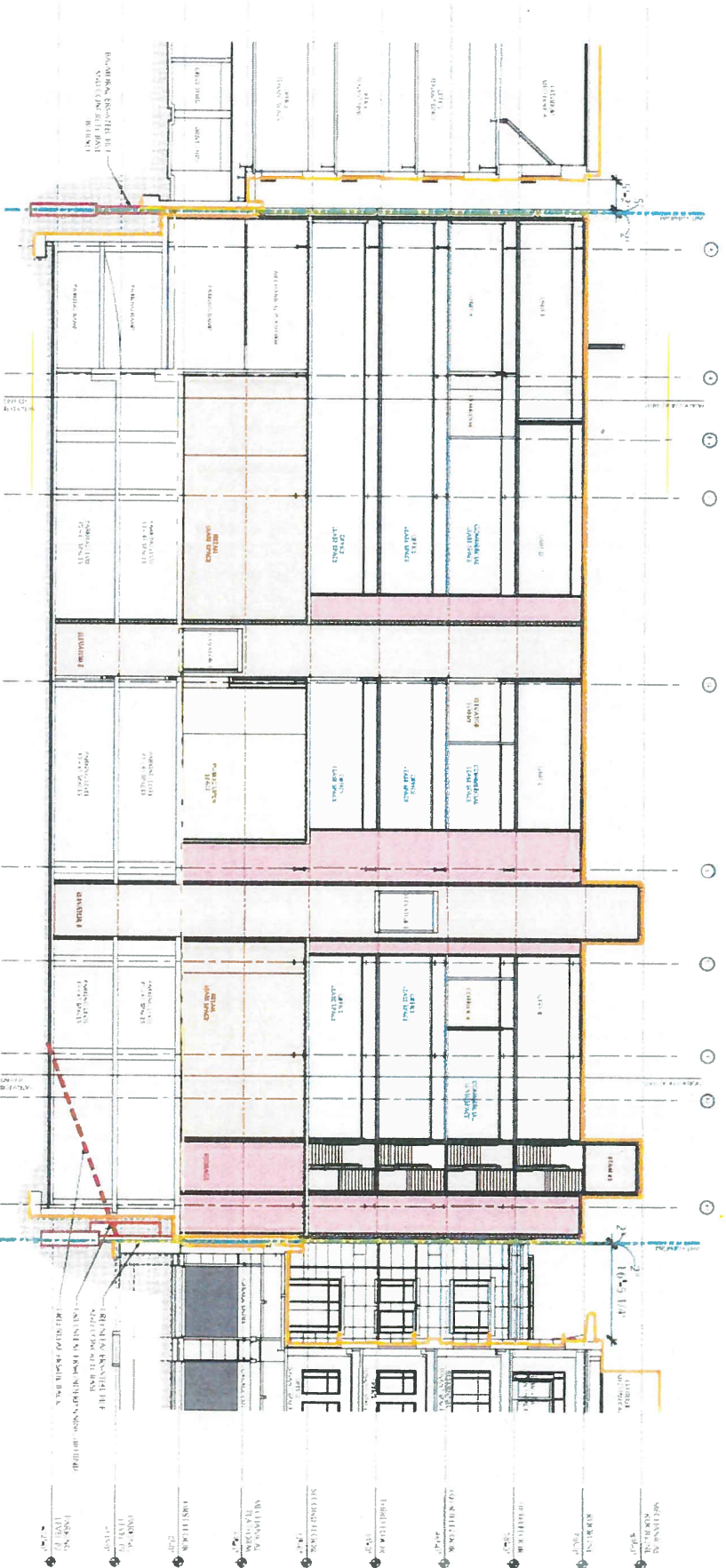
SCALE: 1" = 20'-0"

CHRISTOPHER J. LONGORIA
ARCHITECTURE
INTERNATIONAL
215 Peabody Street, Birmingham, AL 35203

SD.14



34965 Woodward Avenue + 215 Peakway Street
Birmingham, Michigan 48009



SECTION DIAGRAM

SCALE: 1/16" = 1'-0"

CHRISTOPHER J LONGE AIA
ARCHITECTURE
INTERIORS
34965 Woodward Avenue + 215 Peakway Street
Birmingham, Michigan 48009

SD.15



34965 Woodward Avenue + 215 Peabody Street
Birmingham, Michigan 48009



WOODWARD RENDER

CHRISTOPHER J LONGE AIA
ARCHITECTURE
INTERIORS
101 Peabody Birmingham, Michigan 48009



34965 Woodward Avenue + 215 Peabody Street
Birmingham, Michigan 48009



PEABODY RENDER

CHRISTOPHER J. LONGE AIA
ARCHITECTURE
INTERIORS
161 Peabody Street, Birmingham, AL 35203



34965 Woodward Avenue + 215 Peabody Street
Birmingham, Michigan 48009



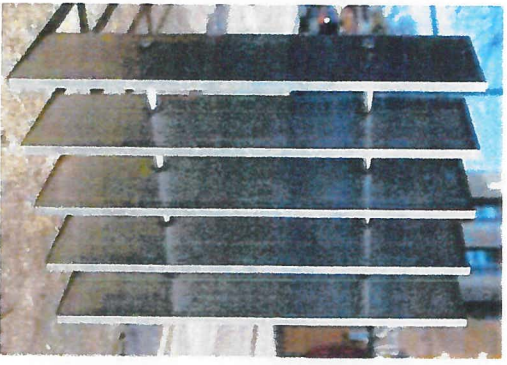
CANOPY DETAIL



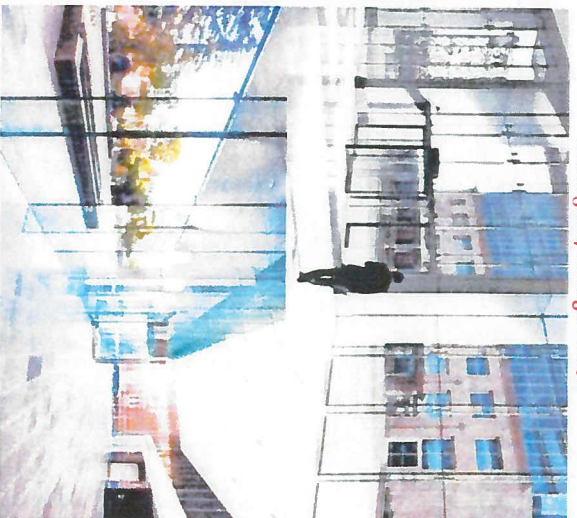
CANTILEVERED GLASS STRUCTURE



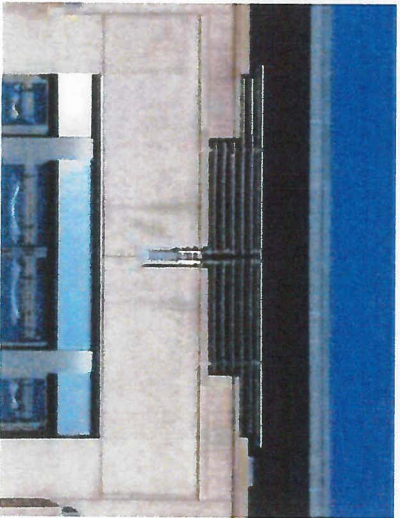
AIRCOTE LOUVERS



ALUMINUM BAR GRATING



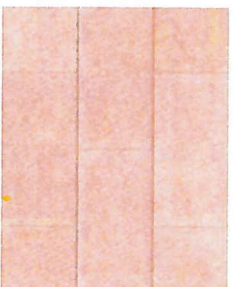
STRUCTURAL GLAZING WITH GLASS FINIS



STAINLESS STEEL RAILING SYSTEM



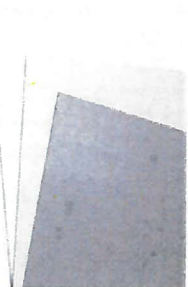
MASONRY VENEER



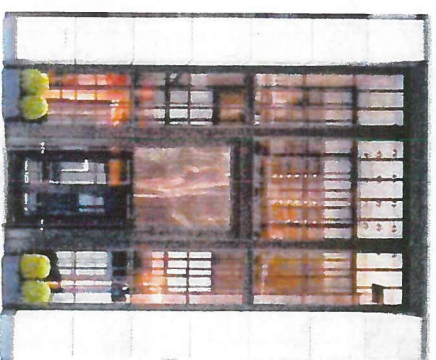
STONE PANELS



SOLID BASE STONE



METAL PANEL SYSTEM



ZINC STOREFRONT SYSTEM



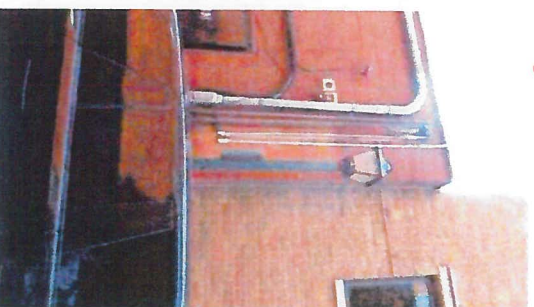
GLASS REVOLVING DOOR SYSTEM

MATERIAL SAMPLES

CHRISTOPHER J LONGE AIA
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INTERIORS
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Birmingham, Michigan 48009

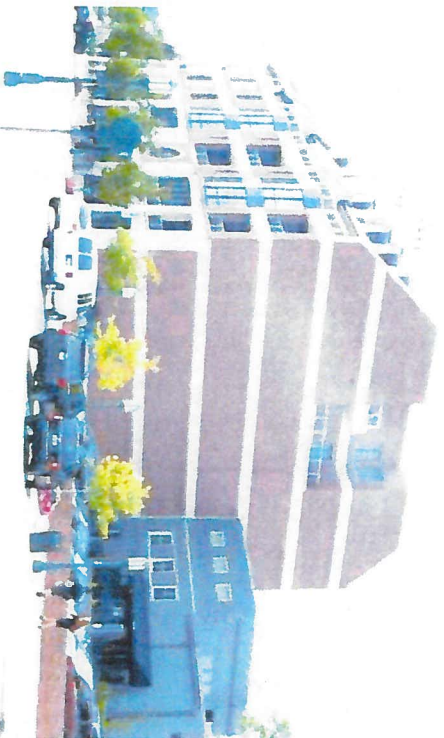
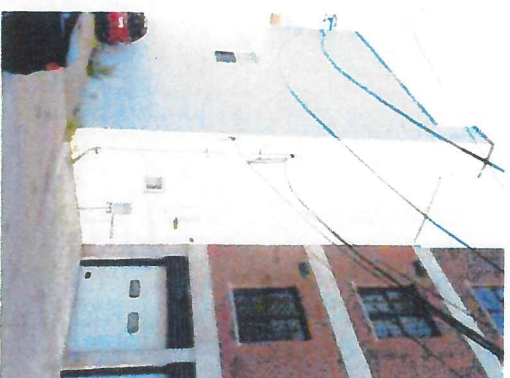
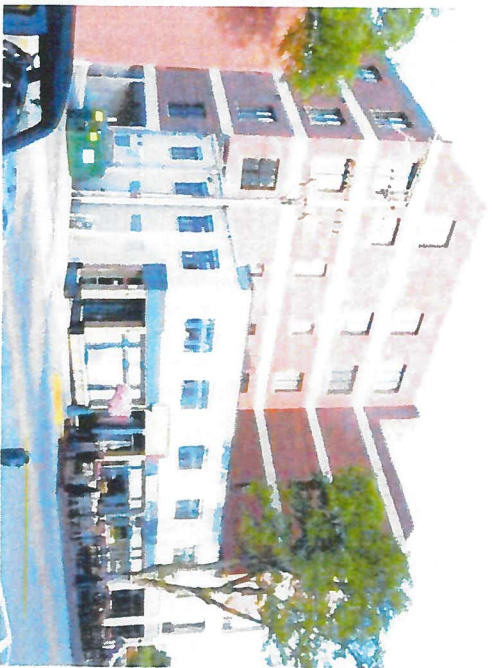


EXISTING CONDITIONS

CHRISTOPHER J LONGE AIA
ARCHITECTURE
INTERIORS
181 Nevada Birmingham, Michigan 48009 248 360 0940



34965 Woodward Avenue + 215 Peabody Street
Birmingham, Michigan 48009

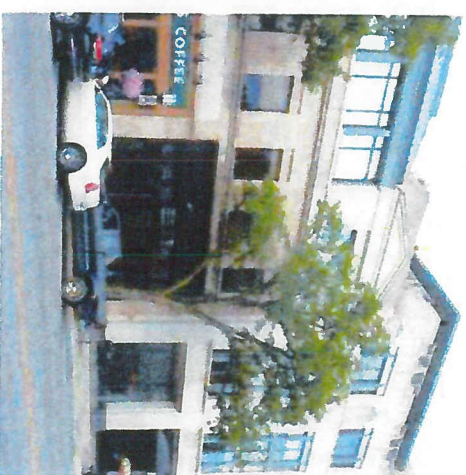


EXISTING CONDITIONS

CHRISTOPHER J LONGE AIA
ARCHITECTURE
INTERIORS
181 Fourth Birmingham, Michigan 48009 205 385 6100



34965 Woodward Avenue + 215 Peabody Street
Birmingham, Michigan 48009



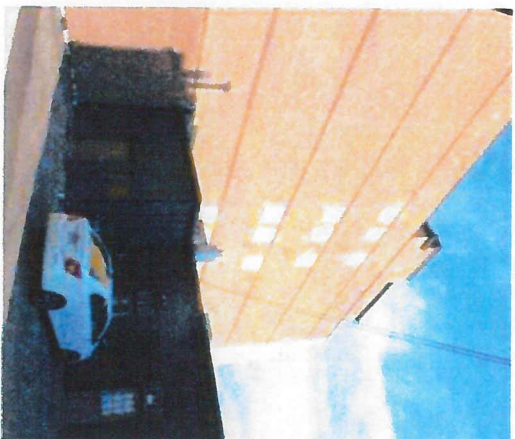
EXISTING CONDITIONS

CHRISTOPHER J LONGE AIA
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INTERIORS
161 Peabody Birmingham, Michigan 48009 248 366 0640

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34965 Woodward Avenue + 215 Peabody Street
Birmingham, Michigan 48009

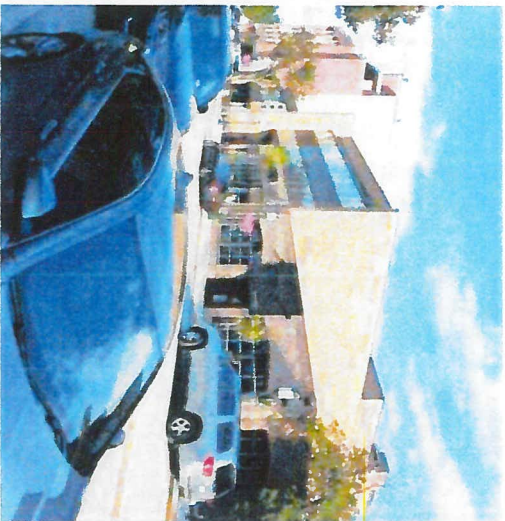


EXISTING CONDITIONS

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161 Irondale Birmingham, Michigan 48009 248 868 6800



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Birmingham, Michigan 48009



EXISTING CONDITIONS

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164 Peabody, Birmingham, Michigan 48003 204.254.6940

9/13/2017

Page 1

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CITY OF BIRMINGHAM

8

9

MEETING OF THE PLANNING BOARD

10

11

Wednesday, September 13, 2017

12

13

7:30 p.m.

14

15

CITY COMMISSION ROOM

16

17

151 Martin Street

18

19

BIRMINGHAM, MICHIGAN 48009

20

21

22

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24

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Regarding 34965 Woodward Avenue, Peabody

9/13/2017

Page 2

1 MEMBERS:
2
3 SCOTT CLEIN
4 JANELLE BOYCE
5 ROBIN BOYLE
6 STUART JEFFARES
7 BERT KOSECK
8 GILLIAN LAZAR
9 J. BRYAN WILLIAMS
10 LISA PRASAD
11 DANIEL SHARE
12
13 PLANNING DIRECTOR:
14
15 JANA ECKER
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Page 4

1 that you would like me to review again?
2 MS. LAZAR: How does the board feel about
3 that? Would you like to do it?
4 MR. KOSECK: Are there any fundamental
5 changes from what we've seen?
6 MS. LAZAR: You would like to?
7 SPEAKER MATT: No, there are no revisions.
8 MR. KOSECK: No revisions?
9 MS. LAZAR: No revisions? All right.
10 That's fine. Thank you, Matt.
11 All right. Questions from the board? No?
12 Would the applicant care to come up,
13 please?
14 MR. RASSEL: Good evening, members of the
15 planning board. Richard Rassel, 380 North Old
16 Woodward, Birmingham, Michigan, with Williams Williams
17 Rattner and Plunkett, and I represent Alden
18 Development Group. We have with us this evening the
19 site architect, the project architect, Chris Long. We
20 have members of the ownership group here as well.
21 Basically, I think at this stage we were
22 able to present our thoughts and furtherance of
23 encouraging this board to move this process through
24 preliminary site plan at the August 23rd meeting. We
25 appreciate your patience greatly in working with us to

Page 3

1 SPEAKER MATT: Okay. So as you know, this
2 has been reviewed a couple times previously. Last
3 time the board discussed this was on August 23rd, and
4 at that time there was extensive discussion about the
5 interface of the proposed building with the two
6 neighboring buildings to the north and the south, and
7 the planning board requested that the staff do some
8 research on the history of those buildings and the
9 approval process and whether or not the planning board
10 actually required those windows to be there.
11 We did go back and look at all the minutes
12 that were available. Certainly, there was a lot of
13 minutes on the site to the south going back many, many
14 years, and also, the site to the north we -- after
15 thoroughly examining all the minutes, we didn't find
16 any references by the board or staff encouraging those
17 windows, though there were some comments by the
18 building department relating to putting windows on the
19 property line and that they specifically were not
20 permitted, but that was later resolved through the use
21 of fire-rated glass.
22 Certainly, if you want me to go through the
23 site plan again tonight, I'm more than happy to do so,
24 but if you want me to just leave our comments at
25 that -- or are there specific aspects of the building

Page 5

1 listen to our view of the fact that the master plan
2 and the zoning ordinance and -- in all respects, treat
3 this project as compliant. I think the staff has
4 obviously worked hard at looking at the research that
5 was directed to it, and we appreciate that.
6 We've had a chance to review the planning
7 staff's report of September 8th, and we find that the
8 information in there to be relevant to the question
9 that has been presented relative to the windows that
10 were installed on the north and south facades to our
11 neighbors, but I think at this stage of the
12 proceeding, we've had numerous comments. We're
13 willing to work with our neighbors in the aspect to
14 final design, should that be necessary, to try to make
15 the best project available for, not only our project
16 group, but for the betterment of the city and for this
17 important gateway.
18 So we look forward to moving this project
19 along and moving towards final site plan review and
20 working into the design aspects, working with staff in
21 the building department. We're here, obviously, to
22 answer any questions that you may have. We think that
23 we were very thorough in our examination of what was
24 agreed to between our neighbors and us and the
25 knowledge that they have, relative to this project,

2 (Pages 2 to 5)

1 and we think that all of that's been put in -- in
2 favorable perspective, relative to our request, to be
3 advanced through this preliminary site plan this
4 evening. So if there are any site design issues or
5 issues for ownership or issues that I can answer for
6 you, please let me know.

7 MS. LAZAR: Questions from the board? No?
8 Okay.

9 Thank you very much.

10 MR. RASSEL: Thank you.

11 MR. KOSECK: Just so everybody -- this is
12 the preliminary site plan approval, not final.

13 MS. ECKER: Right.

14 MR. KOSECK: So it's about the siting of
15 the building, the form, the mass, the -- so it's not
16 materials. It's not the architecture. It's not
17 the -- it's -- it's preliminary at this point.

18 MS. ECKER: That's correct.

19 MS. LAZAR: Take it to the public.

20 SPEAKER: Can I --

21 MS. LAZAR: Yes, of course.

22 SPEAKER: Is there -- Matt and Jana, to the
23 best of your knowledge, is there --

24 SPEAKER: Can't hear. Speak up, folks.

25 SPEAKER: Is the building being able to --

1 and it's within the height, because you're in a city
2 downtown area, and, specifically, with respect to
3 those standards, I think we presented our information
4 as to why this proposed new building does not meet
5 those standards.

6 It's not compatible on the north and south
7 side with the structures that exist, and I mean
8 compatible, not that it's the same design. It has
9 nothing to do with the design itself. It's the nature
10 of the construction, the quality of the construction,
11 the recesses of the construction, whether or not, you
12 know, 97 windows on these two buildings are going to
13 look out at a blank wall, that sort of thing. And
14 we've explained all that.

15 It's also -- deprives those buildings of
16 light and air, which is a specific standard of your
17 ordinance. It also materially impacts the value of
18 those buildings negatively, not only just the money
19 that was spent on building those facades in the first
20 place, but also the value of the space and the
21 disputes that are now going to occur, who are now
22 going to be deprived of light and air, et cetera.

23 And we've also pointed out that the way --
24 because these buildings weren't designed to be fully
25 abutting the way they're designing it is, it's going

1 built up to the lot lines? Is that within our
2 ordinance?

3 MS. ECKER: Yes.

4 SPEAKER: That's allowed?

5 MS. ECKER: That's allowed.

6 SPEAKER: Is there anything that you guys
7 know about where they gave up that right? Or that --

8 MS. ECKER: Peabody property?

9 SPEAKER: Yes.

10 MS. ECKER: No.

11 SPEAKER: Is there any -- okay.

12 MS. LAZAR: Any other questions before we
13 take -- okay.

14 Any further comments from the public?

15 Would anybody care to come up?

16 MR. GREENE: Thank you. Again, my name's
17 Alan Greene, and I'm at 39577 Woodward Avenue. That's
18 Michigan. I'm not gonna repeat -- you guys got my
19 letter, and you've heard me before, so I'm not going
20 to repeat all that. I will just summarize and say,
21 again, you know, I'm here representing the members of
22 the Greenleaf Trust Building, the Balmoral Building,
23 and, as we have emphasized, you have specific
24 standards in your ordinance that go beyond just coming
25 in and showing that, you know, you meet the setbacks,

1 to cause innumerable and, we think, insurmountable
2 issues with respect to the ongoing maintenance and
3 operation and repair of both buildings, or all three
4 buildings, on the way it's constructed right now.

5 There are many alternatives that can
6 address these concerns that we have, and I could say
7 that since the very first meeting we were here, there
8 hasn't been a single change to the site plan, not a
9 single revision at all, with respect to what you see
10 before you. It is what they presented, and they're
11 just trying to maximize -- I get it -- maximize their
12 square footage that they can get out of the building.

13 So I didn't see anything in the record that
14 has been presented by the applicant that actually
15 addresses those standards specifically, only that, you
16 know, we're allowed to do it, that sort of thing. No
17 one's -- no one's come up and said you're wrong,
18 Mr. Greene and broker and neighbors, that we're not
19 going to impact your value whatsoever, your building.
20 Those are specific standards that your ordinance
21 requires, and we don't think that they're met here.
22 So we would ask that, at least with respect to this
23 particular site plan, that it be denied.

24 Thank you.

25 MS. LAZAR: Any other comments from the

1 public?

2 Bring it back to the board. Mr. Williams?

3 MR. WILLIAMS: I have -- with indulgence of
4 the other members of the board -- I have a lengthy
5 statement to make followed by a motion. So I'm going
6 to start, if that's all right.

7 I would say these comments are mine. Since
8 our meeting on August 23rd, I've had the opportunity
9 to review more carefully the materials submitted by
10 the applicant and by the neighboring property owners
11 in the context of the full zoning ordinance. I've
12 also listened to the comments tonight.

13 First of all, I want to thank Matt and Jana
14 for researching approval documentation for the
15 Greenleaf Trust and Balmoral buildings. Their
16 conclusion that there was no encouragement or
17 requirement by the planning board or staff to install
18 windows on the south and north property lines,
19 respectively, is important. I have concluded that the
20 applicant's proposal meets the requirements of the
21 zoning ordinance for preliminary site plan approval.

22 The report of the staff makes that
23 abundantly clear, as does the letters of Beier Howlett
24 dated August 23rd and September 13, which have been
25 incorporated into the record and which form part of

1 the basis for my comments. The adjoining property
2 owner's objections are detailed and weighty, but they
3 do not justify denying the site plan. Let me respond
4 to each of the major points which they have raised.

5 First, that the project is not consistent
6 with a master plan. The 2016 downtown plan approved
7 in 1996 envisions one possible future for this
8 property but not the only possible future. The fact
9 that the 2016 plan recommended that the site might
10 ultimately be a good one for a parking deck did not
11 mandate that it be so, and, in fact, the city has
12 taken no steps to require the property to construct
13 the parking deck. The proposed office and residential
14 use is permitted by the zoning.

15 The property owner need not wait to find
16 out if the city will someday decide it wishes to
17 acquire the property for parking, nor do the drawings
18 in the plan that are illustrative of possible future
19 conditions the architects mentioned in their comments
20 constitute a limitation on the property's use. In
21 fact, a five-story building with a top-floor
22 residential is consistent with the zoning ordinance
23 and is not inconsistent with the master plan.

24 Item two: No parking. The site is in the
25 parking assessment district. The site has more than

1 enough parking to meet the requirements of the zoning
2 ordinance for its residential component. On numerous
3 occasions, this board has made it clear that it will
4 not and cannot prevent owners in the parking
5 assessment district from developing their property
6 because there may be a shortage of parking Monday
7 through Friday at lunchtime.

8 The fact that the city may not have built
9 enough public parking does not change the fact that
10 this property owner and its predecessors, like many
11 others, have paid into the parking assessment district
12 with the understanding that will not have to -- have
13 to have on-site parking for nonresidential uses.

14 Three: The plan violates 7.27B2, the light
15 and air clause of the zoning ordinance. Counsel for
16 Dykema Gossett has made an argument that construction
17 of the -- of this building to the lot line will
18 prevent adequate light and air reaching the adjacent
19 properties in violation of section 7.27B2 of the
20 zoning ordinance. I believe a significant word is
21 "adequate." In any event, taking the language of the
22 ordinance at face value, there will be adequate light
23 and air to both the Greenleaf Trust and Balmoral
24 buildings if this building is constructed to the lot
25 line as proposed.

1 Each building has unimpeded light and air
2 on three of their four facades. The Balmoral
3 Building's windows are set back at least five feet on
4 the north facade. That five-foot well provides
5 adequate light and air. The affected windows on the
6 Greenleaf Building are those at both the east and west
7 end of the south facade, as the center of the
8 Greenleaf Building south facade also has a well where
9 the windows are set back from the property line.

10 Each one of the affected windows on the
11 part of the south facade built through the lot line
12 have windows that face to the east and west, there as
13 into the window well in the center and facing the
14 street on the outside so that their light is at least
15 good and arguably better than that provided to the
16 Balmoral Building. The ordinance does not guarantee
17 no change in the amount of light and air, merely that
18 the board assure itself that there is adequate light
19 and air. In my opinion there is.

20 Item four, section 7.7B3, the diminished
21 value section: Counsel makes the argument the
22 building will diminish the value of the adjacent
23 buildings, thus the preliminary site plan cannot be
24 approved. He supports his argument with the written
25 opinion of the real estate broker for the Greenleaf

1 Building that the four residential apartments on the
2 south wall will have diminishment of income due to the
3 loss of views. The penthouse rent will be reduced
4 from \$14,000 a month to \$10,000 a month, still beyond
5 by budget I would add. The other apartments might
6 likely have reductions, and the office would have a
7 reduction as well, although it is hard to estimate
8 that amount.

9 Presumably, his opinion would be similar
10 for the Balmoral Building, where nothing in his letter
11 distinguishes between those rental spaces on the
12 window wall of the Greenleaf Building and those at the
13 wall and the property line. Section 7.27B3 has two
14 parts. One is that the location size and height of
15 the building won't interfere with the reasonable
16 development of adjoining property, and it obviously
17 does not. The second is that the development will not
18 diminish the value of the adjoining property.

19 Assuming that there is some reduction in
20 rental income and that translate into some diminished
21 value of the building, some reduction, no matter how
22 small is, I do not believe, what the ordinance aims
23 at. Many property owners might object to any building
24 being built next to them and argue that any
25 development will diminish their property value. It

1 neither is nor should be the job of this board to
2 choose between competing speculations whether proposed
3 construction will reduce or increase value to a small
4 degree.

5 Zoning is necessarily a three-point balance
6 between the rights of adjoining property owners to
7 develop their properties as they see fit, the right of
8 their neighbor to not be disturbed, and the right of
9 the people as embodied in the municipality to regulate
10 land uses to achieve public purposes, some of which
11 are listed in section 7.24 of the ordinance, for
12 example, subsection F, to sustain the comfort, health,
13 tranquility, and contentment of residents and attract
14 new residents by reason of the city's favorable
15 environment.

16 The construction that is proposed was
17 completely foreseeable, although I do not think it is
18 necessary for us to decide whether, or to what extent,
19 the owner of the Green -- the Greenleaf Building
20 waived the right to make the objection she makes to
21 the preliminary site plan. It is noteworthy that not
22 only was this issue foreseeable, it was actually
23 foreseen. The earth retention system and construction
24 barricade agreement of November 28, 2008, specifically
25 mentions that owner of the Peabody site could

1 construct a building on the lot line.

2 The Balmoral Building inferentially knew as
3 well since it constructed with a blank wall along the
4 easternmost part of the north facade. The question of
5 what amount of diminished -- diminish in the value
6 would trigger the violation of the ordinance need not
7 be determined tonight. Reference to the basic
8 purposes of zoning shows that the purpose of
9 regulation is to prevent a major loss in value.

10 Nothing suggested to us indicates that the
11 financial return that Balmoral or Greenleaf buildings
12 will have after the Peabody building is constructed
13 will not be reasonable or economically viable,
14 although it may not be as high as it would be if the
15 property owner in the middle of these two buildings
16 continued to allow it to be vacant or limited its
17 development to one or two stories.

18 One of the purposes of the zoning ordinance
19 is to make public health -- is to promote public
20 health, moral safety, comfort, convenience, and
21 general welfare. Reading the requirements of 7.27B3
22 as an absolute bar against any building permitted by
23 the terms of the zoning ordinance that negatively
24 affects his neighbors would turn the zoning ordinance
25 from a public shield, which it is clearly intended to

1 be, into a private sword benefitting the first to
2 build.

3 Fifth: The proposed building is not
4 compatible with the adjacent properties. Section
5 7.27B5 of the zoning ordinance requires the planning
6 board to determine whether or not the proposed
7 building will be compatible with other uses in
8 buildings in the neighborhood and will not be contrary
9 to the spirit and purpose of this chapter. We heard
10 much about compatibility at the August 23rd meeting.

11 Regardless of whether compatibility is
12 determined within the framework of visual appearance
13 or on a structural basis, such as the alignment of
14 floor levels, height, and mass, this building proposed
15 is compatible and does comply with the spirit and
16 purpose of the zoning ordinance.

17 The mixed-use nature is permitted. The
18 visual effect of height, mass, and floor alignment,
19 given the grades, are compatible. The zoning
20 ordinance itself, and I believe, as Mr. Jeffares
21 pointed out at the last meeting at section 7.24B,
22 discourages monotonous construction, so that the
23 objections that the building does not have masonry and
24 punched windows is, to me, of no persuasive effect.

25 Six: Construction will necessarily result

1 in trespass. Simply put, that is not an issue that is
2 relevant to site plan review. The civil law
3 adequately provides remedies to property owners if
4 their neighbors invade their land without legal
5 justification. If the developer of the Peabody site
6 can't build what he is proposing to build without
7 trespassing or if doing so would be too expensive, he
8 will necessarily have to abandon the design and
9 resubmit for some other type of building. It is not a
10 basis to deny a site plan.

11 There are plenty of reasons for these three
12 property owners to cooperate. The comments made about
13 maintenance alone justify cooperation between the
14 parties. It isn't our place to dictate how those
15 interests can or should ultimately be resolved or if
16 they can be harmonized. I want to point out that
17 every communication device in use today has the
18 capability of two-way functionality.

19 I am loath to hold it for or against one
20 party that discussions have not been as frequent or as
21 wide-ranging as we, or any particular party, may wish.
22 Some of the issues that the property owners have
23 raised are things, as Mr. Koseck points out, that we
24 will consider at final site plan review. I can assure
25 you that this board will carry out a searching,

1 comprehensive review of the criteria for final site
2 plan approval.

3 Based on these, my personal comments and on
4 the record, including such facts and reasons as any of
5 my colleagues willing to join in this motion
6 articulate, I move approval of the preliminary site
7 plan for 34965 Woodward Avenue as submitted, subject
8 to the following seven conditions: One, the applicant
9 submit plans with nine total trees or obtain a waiver
10 from the staff arborist; two, the applicant verify
11 that there will be five pedestrian lights on Peabody;
12 three, the applicant provide a photometric plan and
13 lighting specifications at the time of final site plan
14 review; four, the applicant provide specification
15 sheets for all mechanical units to verify that the
16 screen wall is tall enough to sufficiently screen the
17 proposed units; five, the applicant submit plans
18 demonstrating the size and location of three usable
19 off-street loading spaces or obtain a variance from
20 the Zoning Board of Appeals; six, the applicant comply
21 with the requests of all city departments; and, seven,
22 the applicant provide material and color samples at
23 final site plan review.

24 MS. LAZAR: Thank you, Mr. Williams.

25 Do we have a second? Any discussion about

1 the motion? Mr. Koseck?

2 MR. KOSECK: I don't think there's anything
3 to add. I think you've touched on all the issues that
4 I see here, and, you know, there will be
5 constructability challenges just like there are
6 (inaudible) building that we saw last week and somehow
7 those things, I hope, get worked out, but I see it
8 exactly as you did, so I'm going to support the
9 motion.

10 MS. LAZAR: Any further comments from the
11 board?

12 Take it to the public. Any comments from
13 the public?

14 Bring it back to the board.

15 Yes, Mr. Williams.

16 MR. WILLIAMS: I want to make a comment
17 that almost all of my comments are -- were written
18 out, and I've given that to Carol, and so for those
19 interested in the record, the comments, almost
20 verbatim, will be repeated for the record in the
21 minutes.

22 MS. LAZAR: Thank you for all your efforts
23 too.

24 Okay. Okay. Then I think we'll do a roll
25 call, please.

1 MS. ECKER: Mr. Williams?

2 MR. WILLIAMS: Yes.

3 MS. ECKER: Mr. Jeffares?

4 MR. JEFFARES: Yes.

5 MS. ECKER: Mr. Boyle?

6 MR. BOYLE: Yes.

7 MS. ECKER: Mr. Koseck?

8 MR. KOSECK: Yes.

9 MS. ECKER: Ms. Lazar?

10 MS. LAZAR: Yes.

11 MS. ECKER: Chairman Clein is recused.

12 MS. LAZAR: Thank you, to the public. We
13 look forward to seeing you further along in the
14 process.

15 MS. ECKER: Thank you.

9/13/2017

Page 22

1 CERTIFICATE OF NOTARY
2 STATE OF MICHIGAN)
3) SS
4 COUNTY OF OAKLAND)
5

6 I, Susanne Ellen Gorman, a Notary Public in
7 and for the above county and state, do hereby certify
8 that the above recording was taken before me at the
9 time and place hereinbefore set forth; that this is a
10 true, full and correct transcript of my stenographic
11 notes so taken; and that I am not related to, nor of
12 counsel to either party nor interested in the event of
13 this cause.
14



15 *Susanne Ellen Gorman*

16 Susanne Ellen Gorman, CSR-9271 RPR
17 Notary Public,
18 Oakland County, Michigan.
19
20
21
22
23
24

25 My Commission expires: September 14, 2023

7 (Page 22)

A
 abandon 18:8
 able 4:22 6:25
 absolute 16:22
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**CITY OF BIRMINGHAM
PLANNING BOARD ACTION ITEMS
OF WEDNESDAY, JULY 26, 2017**

Item	Page
OLD BUSINESS 2010 Cole St., New mixed-use building (partially demolished building) Request for Community Impact Study ("CIS") and Preliminary Site Plan Review to allow the construction of a new three-story mixed-use building (postponed from June 28, 2017, request to postpone to August 23, 2017)	2
Motion by Mr. Boyle Seconded by Ms. Whipple-Boyce to postpone the hearing for 2010 Cole St. to August 23, 2017.	2
Motion carried, 4-0.	2
SPECIAL LAND USE PERMIT ("SLUP") REVIEW FINAL SITE PLAN AND DESIGN REVIEW 375 S. Eton, District Lofts Request for approval of a commercial office use over 6,000 sq. ft. in size	2
Motion by Mr. Boyle Seconded by Mr. Koseck to recommend approval of the Final Site Plan and Special Land Use Permit for 375 S. Eton subject to the following condition: 1) The applicant adds one or more entrances along S. Eton and obtain Administrative Approval for same.	3
Motion carried, 4-0.	3
FINAL SITE PLAN AND DESIGN REVIEW 298 S. Old Woodward Ave. (former Doctors House Call Building) Request for approval of a new five-story hotel with commercial and residential uses	3
Motion by Ms. Whipple-Boyce Seconded by Mr. Boyle to postpone the matter of 298 S. Old Woodward Ave. to August 9, 2017.	4
Motion carried, 4-0.	4
COMMUNITY IMPACT STATEMENT ("CIS") REVIEW PRELIMINARY SITE PLAN REVIEW 34965 Woodward Ave. (former Peabody's Restaurant)	4

Item	Page
<p>Request for approval of the CIS to allow a new five-story mixed-use building to be constructed</p> <p>Motion by Mr. Boyle Seconded by Mr. Koseck to accept the CIS as provided by the applicant for the proposed development at 34965 Woodward with the following conditions: (1) Provide mitigation strategies for control of noise, vibration and dust; (2) Applicant will be required to bury all utilities on the site; and (3) Applicant provide information on all life safety issues and Fire Dept. approval, as well as details on the proposed security system provided to and approved by the Police Dept.</p> <p>Motion carried, 4-0.</p> <p>Motion by Mr. Boyle to postpone a decision on the Preliminary Site Plan for 34965 Woodward Ave. to August 23, 2017.</p> <p>Motion carried, 4-0.</p>	<p>7</p> <p>8</p> <p>9</p> <p>9</p>

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, JULY 26, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on July 26, 2017. Vice-Chairperson Gillian Lazar convened the meeting at 7:31 p.m.

Present: Vice Chairperson Gillian Lazar; Board Members Robin Boyle, Bert Koseck, Janelle Whipple-Boyce; Student Representatives Ariana Afrakhteh, Isabella Niskar

Absent: Chairman Scott Clein; Board Members Stuart Jeffares, Bryan Williams; Alternate Board Members Lisa Prasad, Daniel Share

Administration: Matthew Baka, Sr. Planner
Jana Ecker, Planning Director
Carole Salutes, Recording Secretary

07-138-17

APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING OF JULY 12, 2017

It was discovered there were not enough members present at the July 12 meeting to form a quorum. Therefore, the minutes were postponed to the August 9, 2017 Planning Board meeting.

07-139-17

CHAIRPERSON'S COMMENTS

Ms. Ecker advised that only four board members are present and one member has to recuse herself on any substantive issue with regard to 298 S. Old Woodward Ave., the Boutique Hotel. Therefore, there will not be a quorum of the Planning Board present to discuss the hotel and that matter will be postponed to a future date. All other hearings may proceed with the caveat that everyone knows that in order for something to pass the support of all four members is needed. None of the applicants stepped forward to ask for postponement to a later date.

07-140-17

APPROVAL OF THE AGENDA

Vice-Chairperson Lazar announced that 2010 Cole St. has asked for postponement to August 23, 2017.

07-141-17

OLD BUSINESS

**1. 2010 Cole St., New mixed-use building (partially demolished building)
Request for Community Impact Study ("CIS") and Preliminary Site Plan Review to
allow the construction of a new three-story mixed-use building** (postponed from June
28, 2017, request to postpone to August 23, 2017)

Vice-Chairperson Ms. Lazar indicated she is recusing herself regarding substantive issues on this matter due to a familial relationship with the applicant. However, the City Attorney has advised that her presence may be counted towards a quorum and that she may vote on this procedural matter so long as no substantive issues are discussed.

Motion by Mr. Boyle

**Seconded by Ms. Whipple-Boyce to postpone the hearing for 2010 Cole St. to August
23, 2017,**

Motion carried, 4-0.

VOICE VOTE

Yeas: Boyle, Whipple-Boyce, Koseck, Lazar

Nays: None

Absent: Clein, Jeffares, Williams

07-142-17

SPECIAL LAND USE PERMIT ("SLUP") REVIEW FINAL SITE PLAN AND DESIGN REVIEW

375 S. Eton, District Lofts

Request for approval of a commercial office use over 6,000 sq. ft. in size

Ms. Ecker explained the subject site is part of a larger site including the existing Big Rock Chop House, the parking deck, the Reserve banquet facility, and the District Lofts Villa St. Building A and Building B (currently under construction), and has a total land area of 3.54 acres. It is located on the southeast corner of S. Eton and Maple Rd., and extends down to Villa St. to the south.

The applicant is completing construction of the final phase of the entire development which was originally approved on August 6, 2006. This final phase includes a four-story mixed-use building containing 18 residential loft units, and office space on the first floor (Building B). A single office tenant (Oppenheimer Financial) is now proposing to occupy approximately 10,000 sq. ft. of space on the first floor of Building B. The first-floor use is now proposed to change from retail/residential to office use. As the single office user wishes to occupy more than 6,000 sq. ft., a SLUP and approval from the Planning Board and City Commission is required.

Design Review

The proposed building design matches the contemporary style of the existing District Lofts building next door, while using some traditional style materials to blend in with the historic Big Rock Restaurant and The Reserve to create a building design that is harmonious with both the

Mixed-Use ("MX") District on the east side of Eton and the Single-Family Residential District on the west side of Eton. Overall, the proposed design of Building B is compatible with the vision for the MX District contained in the Eton Road Corridor Plan. The only design changes that are proposed at this time with the proposed conversion from retail/residential to office use on the first floor are the proposed decommissioning of several doors along all elevations. The only office entrance open to the public is proposed at the southwest corner of the building, facing Villa St. The residential entrance is on the east elevation.

Signage: The applicant has submitted plans that depict signage on the west and south elevations. The name letter signs are proposed to be placed 12 ft. above finish grade and are 18 in. high and 9 ft. long. The signs will feature the name of the tenant, Oppenheimer, in brushed stainless steel metal lettering. The lettering will be attached to the metal canopy over the west and south elevations. The signs will be 31.40 sq. ft. which is well under the maximum allowed by the Birmingham Sign Ordinance for that building.

Mr. Victor Saroki, Architect, was present with Messrs. John Kelly and J.C. Cataldo, the contractors representing ownership. Oppenheimer will employ approximately thirty people in Birmingham. They plan to take out a few doors and replace them with windows that are consistent with the existing storefront windows. In their opinion this is a good use and it meets the design guidelines that were intended for the Eton Rd. Corridor Plan. He passed around a sample of the brushed stainless sign material.

Motion by Mr. Boyle

Seconded by Mr. Koseck to recommend approval of the Final Site Plan and Special Land Use Permit for 375 S. Eton subject to the following condition:

1) The applicant adds one or more entrances along S. Eton and obtain Administrative Approval for same.

There were no comments from the public regarding the motion at 7:50 p.m.

Motion carried, 4-0.

VOICE VOTE

Yeas: Boyle, Koseck, Lazar, Whipple-Boyce

Nays: None

Absent: Clein, Jeffares, Williams

07-143-17

FINAL SITE PLAN AND DESIGN REVIEW

298 S. Old Woodward Ave. (former Doctors House Call Building)

Request for approval of a new five-story hotel with commercial and residential uses

Vice-Chairperson Ms. Lazar indicated she is recusing herself regarding substantive issues on this matter due to a familial relationship with the applicant. However, the City Attorney has advised that her presence may be counted towards a quorum and that she may vote on this procedural matter so long as no substantive issues are discussed.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Boyle to postpone the matter of 298 S. Old Woodward Ave. to August 9, 2017.

Motion carried, 4-0.

VOICE VOTE

Yeas: Whipple-Boyce, Boyle, Koseck, Lazar

Nays: None

Absent: Clein, Jeffares, Williams

07-144-17

**COMMUNITY IMPACT STATEMENT ("CIS") REVIEW
PRELIMINARY SITE PLAN REVIEW**

34965 Woodward Ave. (former Peabody's Restaurant)

Request for approval of the CIS to allow a new five-story mixed-use building to be constructed

Mr. Baka explained the subject site is currently vacant land where the former Peabody's Restaurant and the Art & Frame Station were located, and has a total land area of .597 acres. It is located on the east side of Peabody St., on the west side of Woodward Ave. and south of Maple Rd. The applicant is proposing to construct a 161,910 sq. ft. (including basement levels), five-story mixed-use building. The building will provide two levels of underground off-street parking; first floor retail/office; second and third floors office; fourth floor commercial/residential; and fifth floor residential. Parking for the residential units will be provided below grade in the parking garage. As the building is located within the Parking Assessment District, no on-site parking is required for retail, commercial or office uses. The applicant was required to prepare a Community Impact Study in accordance with Article 7, section 7.27(E) of the Zoning Ordinance as they are proposing a new building containing more than 20,000 sq. ft. of gross floor area.

CIS

The proposed development and its uses relate to the pedestrian, as the building is located at the property line and is proposed with human scale detailing on the first floor, including canopies, large windows, attractive stone and masonry facades, and elegant pedestrian entrances from both adjacent streets. The 2016 Plan encourages proper building mass and scale that creates an environment that is comfortable to pedestrians walking Downtown. The proposed development will help improve the visual appearance of the area by introducing a denser, more compact development with enough height to create a street wall along Peabody St. and Woodward Ave. The main entry to the building is located on Peabody St.

The applicant has submitted a Phase 1 Environmental Site Assessment by SME dated August 5, 2016. The report indicates that there is some evidence of recognized environmental conditions ("RECs") associated with this property. SME concluded that the reported presence of contaminated soil and groundwater; the potential for additional environmental impact from unreported and/or undetected releases of hazardous substances and/or petroleum products associated with the properties historical uses (vehicle manufacturing and repair operations); and the potential for cross contamination by a northern site which was formerly a vehicle repair and gasoline station, are all considered to be REC's.

An abbreviated Phase 2 Environmental Site Assessment ("ESA") dated August 5, 2016 was also submitted by the applicant as a part of the CIS. Phase 2 involved the collecting and analyzing of

13 soil samples and two groundwater samples by SME. The results of SME's sampling were supplemented by a previous Phase 2 ESA conducted by McDowell & Associates on April 26th, 2015 where 12 soil samples were collected and analyzed.

Evidence of petroleum and other pollutants were found in the soil samples. The applicant has submitted a Brownfield Redevelopment Plan for the proposed development site dated March 16, 2016. The purpose of this is to seek reimbursement for the eligible remediation activities performed on the property. The necessity for a Brownfield Plan arose from the results of the Phase 1 and Phase 2 ESA.

Conclusions in the CIS were that although the building is located within Birmingham's Parking Assessment District which requires no additional parking, additional parking spaces are needed to service the retail options proposed on the first floor. The applicant is proposing 90 off-street parking spaces and 11 on-street parking spaces to alleviate the stress on the Parking Assessment District. The traffic impact study also notes that westbound left turns onto Peabody St. from Maple Rd. would benefit from extending the turn lane full width all the way to the near Woodward Ave. crosswalk due to the larger queue lengths imposed by the new development. Other traffic impacts of the development will be relatively minor.

Mr. Chris Longe, Architect for the project, responded to Mr. Boyle. They expect to have ten or more rental units. Employees and residents will have access to the on-site parking. He was confident that people using the building will find places to park.

Ms. Ecker stated the first floor is not required to be retail on the Woodward Ave. or Peabody sides.

Regarding noise, Mr. Longe said the mechanicals have been placed in the middle of their building, so noise does not impact the buildings to the north and south.

The Vice-Chairman called for comments from members of the public at 8:20 p.m.

Mr. Allen Green, 39577 Woodward Ave., Bloomfield Hills, represented the ownership of Balmoral, the building to the south of the proposed project. He voiced their objections to the project. Their building, along with the Greenleaf Trust, was designed as a gateway. Each side has windows and decorative architectural elements. Those features will essentially be hidden and that will cause a huge financial issue for their building. He did not see any way they could build this without trespassing on the Balmoral property. If the developer moved the building, adjusted the lot lines and created a visually impactful north and south wall between the buildings, it would be a huge improvement to the corridor. Two sides of two beautiful buildings would not be hidden and destroyed. He asked the board to consider the alternatives. Lastly, there has been no discussion with their neighboring developer about their plans and how the Balmoral building would be impacted.

Ms. Ecker stated the applicant has the right to build on their property. There would be some logistical issues to work out but the Building and Engineering Depts. would work with the applicant on those. Depending on where the windows were built, there was never an expectation that they would remain unblocked. A developer can either set back the windows a certain distance from the property line, or keep them there and use fire rated glass. In many cases when windows are constructed closer than would be permitted, there is a signed agreement by the owners saying they understand those windows could be covered up if the property next door gets developed to its potential.

Mr. Allen Green noted there are serious parking issues in that area. It has been a nightmare to get parking permits for their various tenants. He additionally remarked that each of the 1,500 sq. ft. apartment units proposed only has one window.

Mr. Koseck observed the Zoning Ordinance promotes contiguous buildings and not gaps or alleys between buildings. Cities are made up of buildings that have a variety of building materials and architectural styles. Apartments with one window are designed all the time. They are called lofts.

Ms. Patti Owens with Catalyst Development Co., the developer of Greenleaf Trust, said she has not had any input or conversation with the developers of this project. She doesn't feel that the massing is congruent with the vision for the City as was outlined to them and mandated to them by the City during the planning and development of their Greenleaf Trust Building. So they built what they felt was the idea of Birmingham which was to have a gateway building, a jewel on that corner. The proposed project feels like it is not a strong and harmonious continuation. The project's terraces that face east are within a handshake of the Greenleaf terraces facing east. This proposed building needs to be its own beautiful thing. Shrink it back a little bit. She understood when they built the building that their views to the south would be impacted if something else was built. So that is in their agreement and they installed the fireproof glass on those windows. However, that is only on two bays. The rest of their building is set back and has regular windows. Additionally, maintenance of the building would be severely impacted as they are currently dealing with an algae problem.

Her view of parking in the area is that it is an absolute nightmare. She recommended that the Planning Board take a good hard look at that to make sure they are not overburdening that area with not enough parking for this rather large development.

Mr. Boyle suggested looking at Fifth Ave, Washington Blvd, Princess St. to see the fantastic street walls that have been constructed over time using different architects, owners, and sites. That is the reality of a city. Just walk along Maple Rd. That was built over time using different heights, different materials, different owners and it works. So it will be difficult for the speakers to make their case to him.

Mr. Koseck said he knows the building can go up without touching the neighbors. Ms. Whipple-Boyce noted the Varsity Shop site knew to consider the impact their adjoining neighbors might have when they decided not to put windows on the side of their building. She finds it unfortunate that covering the adjoining windows wasn't considered in the applicant's CIS.

Vice Chairperson Lazar encouraged the applicant to engage in conversation with the neighbors to the north and south in order to reach some kind of agreement. Ms. Whipple-Boyce agreed they should have gone the extra mile and engaged their neighbors. This is a huge impact on them and there is no assessment of that impact in the CIS.

Mr. Chris Longe said he knows there has been communication between the developer and the Greenleaf Building. He assured they can build this building. The building to the south is designed in such a way that it anticipates an infill building. The stair tower is solid block as it abuts the property and the window wall steps back whatever the code minimum is, anticipating the wall going up. There is also a 1 ft. easement on the north side abutting the Greenleaf Building. The agreement mentions there might be a building there some day and goes so far

as to talk about taking off the window awnings in that case. The strict letter of the law has been met as far as the CIS.

Mr. Koseck thought the concerns he has heard from the neighbors are more design concerns rather than CIS concerns. Vice-Chairperson Lazar observed that by adopting the CIS the Planning Board is not approving the project.

Motion by Mr. Boyle

Seconded by Mr. Koseck to accept the CIS as provided by the applicant for the proposed development at 34965 Woodward with the following conditions:

- (1) Provide mitigation strategies for control of noise, vibration and dust;**
- (2) Applicant will be required to bury all utilities on the site; and**
- (3) Applicant provide information on all life safety issues and Fire Dept. approval, as well as details on the proposed security system provided to and approved by the Police Dept.**

No one from the audience wished to speak on the motion at 9:15 p.m.

Motion carried, 4-0.

ROLLCALL VOTE

Yeas: Boyle, Koseck, Lazar, Whipple-Boyce

Nays: None

Absent: Clein, Jeffares, Williams

Preliminary Site Plan

Mr. Baka reported on the Preliminary Site Plan. The property is zoned B-4 in the underlying zoning and D-4 in the Downtown Overlay District. In accordance with Article 4, section 4.24 C (2) of the Zoning Ordinance, developments with over 50,000 sq. ft. of office space require two usable off-street loading spaces, and commercial uses from 5,001 to 20,000 sq. ft. require one usable off-street loading space. The plans do not display any off-street loading spaces. ***The applicant will need to submit plans demonstrating the size and location of three usable off-street loading spaces, or obtain a variance from the Board of Zoning Appeals.***

Design Review

The applicant is proposing to utilize the following materials for the construction of the five-story, mixed-use building:

- Stone panels along the lower level of all façades;
- Masonry veneer along the upper levels of all façades;
- Stone for the base of the building;
- Steel window and door system;
- Extensive window glazing on all facades.

Discussion considered the distinction between office and commercial on the fourth floor. Mr. Koseck noted the intent to get to five floors was to have residential on floors 4 and 5 in order to populate the Downtown and not put an additional burden on the parking structures.

Mr. Chris Longe said his building will have a significant entrance off of Woodward Ave. and off of Peabody St. He went through a PowerPoint and described the exterior elevation and interior layout along with the proposed materials. The building goes to the property line but the actual

first floor steps back on both the Woodward Ave. and Peabody St. sides. The reason for that is there is only 5 ft. of sidewalk there. They will internally brace the building because of the configuration of the site. Ten residential units are anticipated and 15 parking spaces are allowed for them. They would be open to putting windows on the side of their building, but didn't think it would be proper to do considering their proximity to the north and south neighbors.

Members of the public were invited to comment at this time.

Ms. Patti Owens reiterated her disappointment about the lack of communication between the developer and their neighbors. She agrees the proposed building needs to happen but she believes it should be stepped back to allow each building to stand on its own. She doesn't think that one building should benefit at another's detriment.

Mr. Allen Green said they are concerned about the value of their building and the operational issues. When the proposed building goes up next to them it will block the air and light of the 50 windows on that side. Their tenants looking out of those 50 windows a few feet away will see only a masonry wall. Further, no details have been provided about maintenance and how the properties relate to each other. For the buildings to be consistent with each other there may be insets anywhere between 5 and 15 ft. to be compatible with the buildings on either side. He asked the board to consider these issues, how the buildings interrelate, and whether this building is harmonious and meets the standards that are required in the Overlay District to get the fifth floor.

Mr. Koseck commented there are only four board members present and this is a sizable important project. He would like some additional information that would help him understand the design and how it speaks to the neighbors. He wanted to see a rendering of this building and how it relates to the neighboring buildings. Also, he wanted a cross section between the buildings to understand how they are abutting. Ms. Whipple-Boyce indicated she likes the building very much. She appreciates the contrast and the differentiation. In addition to what Mr. Koseck asked for, she wanted clarity on the fourth floor uses. She requested the applicant to review Article 7, 7.27 to see if they are meeting the ordinance well enough. Also, she wanted everyone to talk to each other.

Mr. Boyle thought the comments made by his colleagues are all very relevant.

Motion by Mr. Boyle to postpone a decision on the Preliminary Site Plan for 34965 Woodward Ave. to August 23, 2017.

At 10:20 p.m. there were no comments on the motion from members of the public.

Motion carried, 4-0.

VOICE VOTE

Yeas: Boyle, Koseck, Lazar, Whipple-Boyce

Nays: None

Absent: Clein, Jeffares, Williams

07-145-17

MISCELLANEOUS BUSINESS AND COMMUNICATIONS

- a. Communications (none)
- b. Administrative Approval Correspondence
 - 856 N. Old Woodward Ave., The Pearl - Details for administrative approval request are in response to Planning Dept. comments dated 06-01-2017 for Project Number JTBE17-00. When the first architect designed the structure it wasn't enough to carry the load of the building. The next architect had to change where all the columns were placed throughout the building and make other changes according to the realignment.
- c. Draft Agenda for the Regular Planning Board Meeting on August 9, 2017
 - Definition of Personal Service, public hearing;
 - 298 S. Old Woodward Ave., Final Site Plan and Design Review;
 - Bistro regulations, study session;
 - DRB review process vs the Planning Board, study session;
 - Economic Development boundaries, study session.
- d. Other Business
 - At their last meeting the City Commission reviewed the Planning Board's Action List in light of some of the comments that were made at the joint meeting. They re-prioritized some of the items on that list.

It was discussed that the City Commission has begun using the Planning Board Action List to establish their policy priorities with regard to planning. Recently they have taken a more active role in looking at the Action List.

07-146-17

PLANNING DIVISION ACTION ITEMS

- a. Staff report on previous requests (none)
- b. Additional items from tonight's meeting (none)

07-147-17

ADJOURNMENT

No further business being evident, the Chairman adjourned the meeting at 10:30 p.m.

Jana Ecker
Planning Director

**CITY OF BIRMINGHAM
PLANNING BOARD ACTION ITEMS
OF WEDNESDAY, AUGUST 23, 2017**

Item	Page
OLD BUSINESS Preliminary Site Plan Review	
1. 2010 Cole St. New mixed-use building (partially demolished building) Request for Preliminary Site Plan Review to allow the construction of a new three-story mixed-use building (postponed from July 26, 2017)	<p style="text-align: center;">2</p>
<p style="padding-left: 40px;">Motion by Mr. Share</p> <p>Seconded by Mr. Koseck to approve the Preliminary Site Review for 2010 Cole St. including setting the front setback to match the front setback of the adjacent pre-existing building to the east, subject to the following conditions:</p> <ol style="list-style-type: none"> 1) The applicant provide a floor plan indicating the number of rooms within the two residential units to ensure all density requirements have been met; 2) The applicant verify that the first story floor-to-ceiling finished height is at least 12 ft. or obtain a variance from the Board of Zoning Appeals; 3) The applicant submit rooftop plans and specification sheets for all proposed rooftop mechanical units and screening at Final Site Plan; 4) The applicant submit a detailed landscape plan with the size of all plant material at the time of planting to verify size requirements have been met including landscaping on the east parking lot; 5) The applicant add two street trees and four street lights or obtain a variance from the Board of Zoning Appeals; 6) The applicant submit a photometric plan and specification sheets for all proposed light fixtures at Final Site Plan Review; 7) The applicant provide a full list of building and screenwall materials and specifications sheets, as well as glazing calculations at Final Site Plan Review; 8) The applicant comply with the requirements of all City Departments; and 9) The applicant add bike parking to the site. 	<p style="text-align: center;">4</p>
<p style="padding-left: 40px;">Motion carried, 4-2.</p>	<p style="text-align: center;">5</p>
2. 34965 Woodward Ave. (former Peabody's Restaurant) Request for approval of the Preliminary Site Plan to allow a new five-story mixed-use building to be constructed (postponed from July 26, 2017)	<p style="text-align: center;">6</p>

Item	Page
<p>Motion by Mr. Share Seconded by Mr. Williams to postpone the application for Preliminary Site Plan for 34965 Woodward Ave. to September 13, 2017 and to suspend the rules to hear a site plan at that meeting.</p>	11
<p>Motion carried, 7-0.</p>	11
<p>FINAL SITE PLAN AND DESIGN REVIEW</p>	
<p>1. 277 Pierce St. (former Varsity Shop) Request for approval of a five-story mixed-use building with first-floor retail</p>	11
<p>Motion by Mr. Koseck Seconded by Mr. Boyle to approve the Final Site Plan and Design Review for 277 Pierce St. subject to the following conditions: 1) The applicant provide noise and vibration mitigation strategies prior to obtaining a Building Permit; 2) The applicant obtain a variance from the BZA to allow a commercial use above a residential use or eliminate the residential use in the lower level of the building; 3) Comply with the requests of all City Departments; and 4) The applicant reduce the light levels 5 ft. out from the property lines along Pierce and Merrill Sts. and obtain administrative approval, or obtain a variance from the BZA.</p>	13
<p>Motion carried, 7-0.</p>	13
<p>2. 344 Hamilton Row (Seven Greens Salad Co.) Final Design Review for approval of an outdoor dining platform in the street</p>	13
<p>Motion by Ms. Whipple-Boyce Seconded by Mr. Williams to approve the Final Design Review application for 344 Hamilton Row with the following conditions: 1) The applicant must receive a variance from the BZA in order to extend beyond their own storefront, or cut the platform back to be only in front of their storefront for administrative approval; 2) The applicant must provide a trash receptacle in the outdoor dining area; and 3) Address the issues raised by City Departments.</p>	14

Item	Page
Motion carried, 7-0.	14
MISCELLANEOUS BUSINESS AND COMMUNICATIONS	
a. <u>Communications</u>	15
Motion by Mr. Williams	
Seconded by Mr. Jeffares to consider an application for the rezoning of	15
191 N. Chester on September 13, 2017 and to waive the rules as to study	
sessions.	
Motion carried, 7-0.	15

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, AUGUST 23, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on August 23, 2017. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Vice- Chairperson Gillian Lazar, Janelle Whipple-Boyce, Bryan Williams; Alternative Board Member Daniel Share

Absent: Alternate Board Members Lisa Prasad; Student Representatives Ariana Afrakhteh, Isabella Niskar

Administration: Matthew Baka, Sr. Planner
Jana Ecker, Planning Director
Carole Salutes, Recording Secretary

08-159-17

**APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING
OF AUGUST 9, 2017**

Ms. Whipple-Boyce made a change:

Page 9 - Second paragraph, third sentence, replace "to not allow" with "to allow."

Motion by Ms. Lazar

Seconded by Mr. Koseck to approve the Minutes of the Regular Planning Board Meeting of August 9, 2017 as amended.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Abstain: None

Absent: None

08-160-17

CHAIRPERSON'S COMMENTS (none)

08-161-17

APPROVAL OF THE AGENDA (no change)

08-162-17

OLD BUSINESS

Preliminary Site Plan Review

1. 2010 Cole St.

New mixed-use building (partially demolished building)

Request for Preliminary Site Plan Review to allow the construction of a new three-story mixed-use building (postponed from July 26, 2017)

Ms. Lazar recused herself due to a familial relationship. Chairman Clein recused himself from this and the next item on the agenda for business reasons. Mr. Share joined the board.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Koseck for Mr. Boyle to take the gavel as acting chairman.

Motion carried, 6-0.

VOICE VOTE

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

Nays: None

Absent: Prasad

Ms. Ecker described the subject site as a 0.77 acre parcel. The applicant has demolished a portion of an existing commercial building and is proposing to expand the first story and construct two additional stories above. The proposed first story of the building will consist of retail, fitness, and enclosed private residential parking spaces; the second story will be office space; and the third story will contain two residential units, giving the proposed building a grand total of 25,603 sq. ft.

On April 26, 2017, the applicant appeared before the Planning Board for a CIS and Preliminary Site Plan review. A motion to accept the CIS for 2010 Cole St. was made and passed with seven conditions. At this time the applicant has submitted soil boring information at the specific locations requested by the Planning Division, but none of the other six conditions of approval have been met regarding the CIS.

The board postponed the Preliminary Site Plan based on concerns about vehicle circulation in the parking lots (dead end lots causing cars to reverse back out onto Cole St.) and a request from the Planning Board that the longer side of the building be rotated to run along Cole St. instead of facing the parking lot on the east portion of the property. The site as proposed does not provide adequate parking for a restaurant. The applicant stated that a restaurant will not occupy the first floor of the development.

On June 28, 2017, the applicant appeared before the Planning Board with a revised site plan that provided two turnaround areas for vehicles at the south end of each of the parking lots to address the circulation issues raised by the Planning Board. Board members discussed the proposed changes and several members expressed a desire to have full circulation around the south end of the building to ensure that drivers would not have to back up through the parking lots to get back to Cole St. Also they felt that vehicles would end up parking in the turnaround area. Board members also expressed concern again about the orientation of the building towards the interior of the lot, and not along the street frontage. The board advised that they needed to hear a strong financial justification as to why they should approve the proposed orientation of the building which is not as recommended in the Eton Rd. Corridor Plan. After much discussion, the matter was postponed to August 23, 2017. There have been no revisions to the plan since last time. The owner is present to provide some financial justification as to why the changes, at least as to the orientation of the building, cannot be physically supported.

Mr. Share was concerned that all the parking lot landscaping is on the west side and there is none on the east side.

Mr. Jason Krieger with Krieger Klatt Architects was present along with Mr. Mark Mitchell, the owner and developer of the property. Mr. Krieger noted they tried to design the building in order to minimize any disturbance on the site because of the contaminants. They feel their plan is the best suited design for this site and to make the project financially feasible.

Mr. Mark Mitchell, 102 Pierce, said he bought the site in order to develop it and make Cole St. look a little better. The current building has been sealed from contaminants. Turning the building around would require a substantial environmental cleanup that would cost \$1 million or more. It would be difficult to get a return on that. He also would like to have the parking go around the back of the building but when he takes three stories off the building the economics just don't work. He is happy to take a couple more parking spots out to create a turn around so that cars pulling in don't have to back out.

Mr. Mitchell noted for Mr. Share that all of the contamination is currently encapsulated. They would re-encapsulate it again to make all the levels the same for the proposed structure. Also, they can modify the site plan to include some landscaping on the east side of the parking lot. Mr. Krieger replied to Ms. Whipple-Boyce's inquiry by saying the parking on the east side of the building will likely be for employees or guests. The primary parking for the public will be on the west side.

Mr. Koseck was concerned with the safety aspect of the parking and turnaround. Mr. Mitchell replied that the economic cleanup of taking 8 ft. off the rear wall of the building would cost several hundred thousand dollars. Tenants would already have to pay \$255/sq. ft. as the building currently sits. Then there would be the economics of not having the additional retail space or the office on the first and second floors. Mr. Koseck noted the driveway on the east side is right up against the building and doors exit out from the building directly onto the driveway.

The Acting Chairman called for comments from the audience at 8 p.m.

Mr. Greg Bogart, Sr. Vice-President of Colliers International, stated that if any more economic changes are made, this project will not make any sense. Once people see this building, he thinks it will spur other development in the area.

Mr. Jeffares expressed his thought that although this proposal is not absolutely the panacea of what they are looking for, it seems to make sense for the site.

Ms. Whipple-Boyce said she would love to see this development happen in this part of town; but she is disappointed that the building wasn't moved up to the street. However as a compromise she can accept the placement of the building. Nonetheless, she is struggling with the circulation of the traffic. She genuinely doesn't believe that the hatched lines will work as a place for people to turn around safely and get back out. What she does believe is that people will park in the hatched spots when they can't find anything else and vehicles will have no alternative other than to back out that long distance. What she would really like to see is the back end of the building shaved off so cars can drive behind it. She cannot support the creation of an unsafe condition on the south side.

Mr. Share recognized that with environmentally challenged sites like this, if development is to occur compromises will have to be made.

Motion by Mr. Share

Seconded by Mr. Koseck to approve the Preliminary Site Review for 2010 Cole St. including setting the front setback to match the front setback of the adjacent pre-existing building to the east subject to the following conditions:

- 1) The applicant provide a floor plan indicating the number of rooms within the two residential units to ensure all density requirements have been met;**
- 2) The applicant verify that the first story floor-to-ceiling finished height is at least 12 ft. or obtain a variance from the Board of Zoning Appeals;**
- 3) The applicant submit rooftop plans and specification sheets for all proposed rooftop mechanical units and screening at Final Site Plan;**
- 4) The applicant submit a detailed landscape plan with the size of all plant material at the time of planting to verify size requirements have been met including landscaping on the east parking lot;**
- 5) The applicant add two street trees and four street lights or obtain a variance from the Board of Zoning Appeals;**
- 6) The applicant submit a photometric plan and specification sheets for all proposed light fixtures at Final Site Plan Review;**
- 7) The applicant provide a full list of building and screen wall materials and specifications sheets, as well as glazing calculations at Final Site Plan Review;**
- 8) The applicant comply with the requirements of all City Departments; and**
- 9) The applicant add bike parking to the site.**

There were no comments from members of the public.

Mr. Koseck announced he cannot support the motion. There has been significant development in the Rail District and it has complied with the Zoning Ordinance. The

fundamental thing is that the safety issue scares him. The only argument he hears about taking any square footage off the building is financial.

Acting Chairman Boyle noted the board cannot verify the developer's financial statement and they have to take his word. Also, there is the concern that the building as configured may result in a circulation challenge that is certainly not satisfying to board members.

Mr. Mitchell stated he cannot take a slice off the rear to provide circulation that goes one way around the building. He said it would take \$32,400 off the rental income and that doesn't calculate in the increased environmental costs because of disturbing the ground. They are currently dealing with parking without the 8 ft. being taken off the building and there is no way to turn around. There is a utility easement that prevents a driveway easement from looping around the back of the adjacent building to the south.

Mr. Krieger explained the driveway to the west is over 22 ft. and easy to back out of. The spaces would be signed and policed by building management. In order to make a one-way drive, 10 ft. would have to come off the back of the building. The only issue with one-way is they would have to move their dumpsters to the east or the west and that would take out more parking.

Motion carried, 4-2.

ROLLCALL VOTE

Yeas: Share, Williams, Boyle, Jeffares

Nays: Koseck, Whipple-Boyce

Recused: Clein, Lazar

Absent: Prasad

Acting Chairman Boyle asked the applicant to spend quite a lot of time looking at the site plan and thinking about how they might use the three extra spaces to reach some of the challenges that Mr. Koseck has correctly raised about the safety and circulation.

08-163-17

Vice-Chairperson Lazar rejoined the board and took over the gavel.

2. 34965 Woodward Ave. (former Peabody's Restaurant)

Request for approval of the Preliminary Site Plan to allow a new five-story mixed-use building to be constructed (postponed from July 26, 2017)

Mr. Baka explained the petitioner has submitted an application for Preliminary Site Plan Review to construct a five-story building in the B4/D4 Zoning District. The property is located on the west side of Woodward Ave. on Peabody St. at the former location of Peabody's Restaurant and the former Art & Frame Station.

On July 26, 2017 the Planning Board reviewed the CIS & Preliminary Site Plan application for 34965 Woodward Ave. At that time, the board requested that the applicant provide additional information regarding the interfacing of the proposed

building with the two existing buildings on each side and how they will abut. Also, the board requested that the applicant provide additional renderings of the new building in context with the adjacent buildings. In addition, postponement was granted to provide the applicant time to engage with the neighboring property owners in light of the public comments made at the meeting. The applicant has now provided new details and renderings in addition to the previously submitted plans in order to supply additional information for the Planning Board to consider.

Design Review

The applicant is proposing to utilize the following materials for the construction of the five-story, mixed use building:

- Stone panels along the lower level of all façades;
- Masonry veneer along the upper levels of all façades;
- Stone for the base of the building;
- Steel window and door system; and
- Extensive window glazing on all facades.

The design of the building also includes balcony projections from the third floor on both facades of the building. The issue of projections over the right-of-way was recently discussed at the joint City Commission/Planning Board meeting. Staff intends to consult with the City Attorney prior to Final Site Plan Review to determine if an air rights agreement will be necessary to approve this aspect of the design.

Motion by Mr. Williams

Seconded by Mr. Jeffares to receive and file the following correspondence:

- E-mail dated August 17 from Christopher Longe with attachments;
- E-mail dated August 22 from Richard Rassel;
- E-mail dated August 23 from Clinton Baller;
- Letter dated August 21 addressed to Patti Owens from Bailey Schmidt. LLC;
- Letter dated August 21 addressed to Patti Owens from Aura Pinkster;
- Letter dated August 22 from Hobbs & Black Architects;
- Letter dated August 22 from Alan M. Greene, Dykema Gossett PLLC;
- Letter dated August 23 from Timothy Currier, Beier Howlett.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Recused: Clein

Absent: Prasad

Mr. Chris Longe, Architect for the redevelopment of the Peabody site, came forward. He showed their building in context with the entire block. Also, he showed how their building would interface with both the north and the south facades of the adjacent buildings. The buildings roughly equate in terms of their overall height and floor height. The earth retention system tiebacks into the Peabody property that were used for construction of the Greenleaf Trust Building were depicted. The intention with their

building is that someone can walk from Woodward Ave. through a leased space all the way to Peabody St. He included a number of pictures showing local conditions where buildings are abutting.

Mr. Longe noted they made efforts to meet with their neighbors as suggested at the last meeting. They have done that to the extent of meeting with the Balmoral folks, but because of scheduling issues there has not been a meeting with the people from the Catalyst building to the north.

Vice Chairperson Lazar called for comments from the public at 8:35 p.m.

Mr. Steve Simona, 32820 Woodward Ave., Suite 240, Royal Oak, was present on behalf of the Balmoral ownership. He observed they built something of the highest quality that they felt the City envisioned and required of them. They want to see the Peabody site developed, but not to their detriment. As currently proposed, the south wall would block fifty windows and light and air to their building. They feel what the applicant is proposing is not compatible with their building nor consistent with what was required of the Balmoral Building, or what the Zoning Ordinance requires. They will not allow trespass onto their property for maintenance.

Mr. Jason Novotny, Tower Pinkster, Architects, spoke on behalf of Catalyst Development and the Greenleaf Trust Building. When they brought the Greenleaf Trust Building to the board in 2008, it was viewed as one of two buildings that would be the crown jewel on the east entry to Downtown, following the principles that were laid out in the Master Plan. Between the two tower buildings the Master Plan calls for a two or three story parking structure. They worked towards developing an attractive, four-sided building. A blank wall would not fly. He is sure the Balmoral had the same discussions with their north elevation. Some of the things he sees that would have a significant impact to either the north or south sites are:

- Lighting;
- Glazing calculations do not play out.

Mr. Tom Phillips, Hobbs & Black Architects, 100 N. State St., Ann Arbor, said the Balmoral Building has much the same story. In designing the building they worked carefully with the City and were encouraged to develop the north side because it was a gateway and a key visual element on the drive south along Woodward Ave. Both of the buildings offer the applicant a unique site in that the occupants are not looking at blank walls. They are looking at two expensive, high quality elevations. By stepping back four or five feet from the property line, the applicant would provide a reasonable amount of light between the buildings as they face each other all the way up. As it exists the applicant's design offers no opportunity to maintain their exterior walls without trespassing.

Mr. Alan Greene, 3955 Woodward Ave., Dykema Gossett, PLLC, represented Woodward Brown Associates, the developer and owner of the Balmoral Building. Mr. Greene noted they have a very valuable building with a facade of 50 windows, made of stone, with balustrades. Tenants look for a space that has windows, but with the proposed building they will look straight into a brick wall. Further, the interior design is built around the windows. The real estate developer for Balmoral has submitted a letter

saying that the proposed building as currently designed and set will greatly diminish the value of the two buildings. The loss of investment on the walls, the impact on the tenants, the ability to rent the spaces, and how much they can be rented for will all contribute to diminished value. These two buildings were not built as if they were going to be blocked by other buildings. He urged the board to either deny the site plan or give guidance to the developer as to what they might like to see so they can come back with something better.

Mr. Clinton Ballard, 388 Greenwood, said the developer wants to maximize his floor area but is constrained by height. As the City has already zoned for seven to nine story buildings right across the street, it would be very interesting to have the infill building go seven to nine stories, provided adequate setbacks are respected. This would leave the developer with an equitable amount of leasable space and room for parking, and all three developers would enjoy access to light and views.

In response to Mr. Share, Mr. Baka explained that if windows are within 5 ft. of the property line they must be fire rated. Mr. Longe verified for Mr. Share that the view of the facade travelling up and down Woodward Ave. would not be materially different if the building was on the lot line or 5 ft. off. He added that it is an odd feature to not have the buildings touch. Mr. Tom Phillips said the 5 ft. setback would double the visual access to light and air - a 10 ft. view shed.

Mr. Novotny pointed out for Mr. Share why he thinks the design of the infill building is incompatible with the adjacent buildings. Their buildings have primarily punched window openings on a masonry facade and the proposed building has glass strip windows across the front.

Mr. Share received clarification from Mr. Novotny that if the building is built to the lot line, it is a problem for all three buildings with regard to maintenance issues. One building will have to flash into the other building so that water will not enter. Mr. Phillips explained these are not abutting buildings in the sense that they can be flashed together. So the applicant's building on a zero lot line would have an exterior wall facing the lot line and open to the weather with no way to maintain it without trespassing onto Balmoral property,

Mr. Novotny explained for Mr. Share that the first floor of both the Balmoral and Greenleaf Trust buildings abut the lot line. Beyond that, both buildings are set back 5 ft. Greenleaf's situation differs from Balmoral's in that the fifth story balconies would abut one another from the Greenleaf Trust Building to the Peabody Building. He does not believe the Balmoral has that same circumstance with outdoor spaces that are side-by-side. Mr. Longe noted there is a demising wall between them. Mr. Novotny added another difference between the Balmoral and Greenleaf buildings is the glass that is currently abutting the lot line for the Greenleaf building is fire rated so that it has the potential to be a zero lot line material.

Mr. Share queried how interior lighting on the north and south elevations is handled on the Peabody Building. Mr. Longe responded that there is natural light that comes in from the glazing on the other two facades.

Mr. Koseck thought that maximizing square footage area creates a little bit of "B" type of space. If they could pull the walls in on the upper floors by creating light wells and windows it would make the building even better in terms of marketability and lease rates. Further, he thought that architectural compatibility is the next step in review and not for this evening. Mr. Longe responded that it is an odd condition to have buildings not meet. The two buildings chose on their own to make their facades that face inwards towards Peabody's something nicer than they had to be. As any architect will tell you, one has to prepare for eventualities.

Mr. Share and Mr. Williams were in agreement that a lot of information came in today and it requires more study. Mr. Williams said he was not prepared to take any action on the proposal tonight.

Mr. Rick Rassel, Williams Williams Rattner & Plunkett, PC, 380 N. Old Woodward Ave., the legal counsel to Alden Development Group, the applicant, spoke about the importance of perspective:

- Mr. Currier and the planning staff are aligned on the questions that have been posed in Mr. Greene's letter;
- The proposal is consistent with the Master Plan and with the Zoning Ordinance;
- They are in a zero lot line infill district;
- The proposed parking and height of the building is consistent with the Zoning Ordinance;
- Mr. Currier has opined that the construction impact and future maintenance issues are not concerns for the Planning Board to be taking into account at this stage of the Preliminary Site Plan approval;
- The question comes down to a couple of things. Mr. Currier has observed in his letter that the zero lot line construction as proposed is consistent with the Zoning Ordinance and has been used in many parts of Downtown Birmingham. The owners of the Balmoral and Catalyst buildings installed fire related glass windows facing the former Peabody's lot in anticipation of potential zero lot line construction;
- Peabody's granted Catalyst an easement to construct sun shades; the sunshades to be taken down in the event of future construction of the Peabody building;
- The argument about incompatibility is really about economic harm as a result of this building being built to the lot lines which Balmoral and Catalyst absolutely knew of and agreed not to contest. Incompatibility is not about design review standards or architecture.

It is important that this process move along this evening.

Mr. Alan Greene stated that there are no fire rated windows on the north elevation of Balmoral. The compatibility is related to the nature of the construction. The things they did on their elevation were encouraged by the City. To not require the same here is where it is incompatible in his view. Additionally, Standard 7.27 (3) states that the location, size, and height of the building shall not diminish the value of neighboring property. They believe that the way it is being done now it will. What the board has before it reflects not a single change as a result of their meetings with Mr. Shifman.

Mr. Williams indicated that he would like information about the City's encouragement of construction on the south and north sides respectively as preserved in the record at both the Preliminary and Final Site Plan Reviews for both buildings. It is important that the board understand that issue. Mr. Boyle added that the board's perspective on development has changed since construction of the Balmoral and Catalyst buildings. He agreed with Mr. Williams that the board needs to see what they actually talked about at that time.

Ms. Whipple-Boyce said she had hoped that the developers would meet and come up with a great plan for all properties. Unfortunately, it doesn't sound like that will happen. She believes that as Staff and the City Attorney have advised, the Peabody proposal satisfies the requirements of the Zoning Ordinance. It will be tricky and complicated getting the building up and maintaining it. There seems to be a lot of good reasons to re-look at what is being proposed.

Mr. Jeffares said he always assumed that another building would be built on this site. To him, by this building being a little different, the other two buildings pop.

Motion by Mr. Share

Seconded by Mr. Williams to postpone the application for Preliminary Site Plan for 34965 Woodward Ave. to September 13, 2017 and to suspend the rules to hear a site plan at that meeting.

There were no comments on the motion from members of the public.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Recused: Clein

Absent: Prasad

08-164-17

FINAL SITE PLAN AND DESIGN REVIEW

Chairman Clein rejoined the board and Mr. Share, the alternate board member, left.

1. 277 Pierce St. (former Varsity Shop)

Request for approval of a five-story mixed-use building with first-floor retail

Ms. Ecker advised the subject parcel is currently the site of the Varsity Shop, and has a total land area of .111 acres. It is located on the northeast corner of Pierce St. and E. Merrill St.

The applicant is proposing to demolish the existing 8,387 sq. ft. two-story building to construct a 27,000 sq. ft., five-story mixed-use building. The building will provide a lower level recreation area for the residential unit, first floor retail, second floor retail or

commercial, third and fourth floor office use, and fifth floor residential use. Parking for the residential unit will be provided at grade in a two car garage adjacent to the public alley located on the east side of the building.

As the proposed site is located within the Central Business Historic District, the applicant was required to obtain approval from the Historic District Commission ("HDC") to demolish the existing building, and approval for the construction of the new mixed-use building. Demolition approval was granted in 2016, and approval for construction of the new five-story building was obtained by the HDC at their meeting on July 19, 2017.

CIS

The applicant was also required to prepare a Community Impact Study ("CIS") in accordance with Article 7, section 7.27(E) of the Zoning Ordinance as they are proposing a new building containing more than 20,000 sq. ft. of gross floor area. On May 24, 2017, the Planning Board reviewed and accepted the CIS with six conditions. All of the information has now been provided except that no information has yet been provided on proposed mitigation strategies for the control of noise or vibration during construction.

Site Plan

On May 24, 2017 after accepting the CIS, the Planning Board reviewed the Preliminary Site Plan for 277 Pierce, and after much discussion, voted to approve the site plan with several conditions.

The applicant has now provided a photometric plan and specification sheets for the proposed lighting; has verified that the rooftop screening is sufficient to screen the proposed rooftop mechanical units; and they have obtained approval from the HDC; and have provided material and color samples for review. The applicant has also provided contextual renderings as requested by the Planning Board.

Design Review

The applicant has submitted design materials for review. The proposed plans for the five-story, mixed-use building indicate the following materials:

- Flash Red Velour Brick on all facades;
- Flashed Manganese Velour accenting brick;
- Buff limestone for the base and caps of the building;
- Leathered Cambrian Black granite below ground floor windows;
- Aluminum building panels for the third floor façade;
- Metal coping along the parapet;
- Aluminum windows and doors;
- Stainless steel cladding entry canopies with laminated and frosted glass; and
- Extensive window glazing (clear glass) on all facades.

A materials board was passed around.

Ms. Ecker advised that the development conforms to the building standards envisioned in the Downtown Birmingham 2016 Plan, as it is designed with high quality materials, is built to the property lines, and has pedestrian scale details including steel and glass canopies, extensive window glazing, stainless steel cladding, and tasteful streetscape landscaping.

In accordance with the Planning Board's comments about the blank wall that was proposed on the north elevation, the wall has now been differentiated by the addition of four recessed panels of different colored brick along with six fire rated glass windows.

Mr. Victor Saroki, Architect, was present along with Ms. Evan Yaldo, Project Architect from his office; Mr. Tony Antone, Vice-President for Kojaian Management; and Mr. Jim Butler, PEA, Civil Engineer. Mr. Saroki indicated they intend to satisfy all of the issues in the report. They are of the opinion that the Building Code allows one stairway as opposed to two for the one residential unit at the top. They intend to demonstrate that to the Building Official in order to get his approval.

With regard to noise and vibration controls, they will work with the owner's construction manager to come up with some strategies for review with staff prior to submitting for a Building Permit. Their intention is to appear before the BZA to request a variance for a residential use as an amenity on the lower level below a commercial use.

Motion by Mr. Koseck

Seconded by Mr. Boyle to approve the Final Site Plan & Design Review for 277 Pierce St. subject to the following conditions:

- 1) The applicant provide noise and vibration mitigation strategies prior to obtaining a Building Permit;**
- 2) The applicant obtain a variance from the BZA to allow a commercial use above a residential use or eliminate the residential use in the lower level of the building;**
- 3) Comply with the requests of all City Departments; and**
- 4) The applicant reduce the light levels 5 ft. out from the property lines along Pierce and Merrill Sts. and obtain administrative approval, or obtain a variance from the BZA.**

Mr. Koseck observed the use of the lower level is unique and no ordinance could have contemplated that. He thinks the applicant has a case to be made to the BZA.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Prasad

08-165-17

2. 344 Hamilton Row (Seven Greens Salad Co.)

Final Design Review for approval of an outdoor dining platform in the street

Mr. Baka advised the building is located on the south side of Hamilton Row between Ferndale Ave. and Park St. The applicant proposes to construct an outdoor dining deck utilizing one existing parallel parking space and a "no parking" space. The applicant was approved for the use of one on-street parking space by the Parking Advisory Committee on April 5, 2017.

The tables and chairs proposed for the outdoor dining platform are synthetic teak outdoor/indoor furniture with black frames. No umbrellas are proposed at this time. The location of the platform allows for the required 5 ft. pedestrian path to be maintained on the sidewalk.

The parallel parking space that the dining platform was approved to use extends in front of the neighboring property at 360 Hamilton Row, which is currently occupied by Luxe Homes. The plans as submitted depict the dining platform extending in front of that storefront as well for the length of the parking space. However, as indicated in Article 4.0, section 4.44, (A), 7 (c), the platform is not permitted to extend in front of the neighboring storefront as it is not vacant. **Accordingly, the applicant will need to receive a variance from the Board of Zoning Appeals to extend in front of the neighboring property.**

Design

The applicant intends to construct the deck of the platform with six adjoining "TREX" decking platforms. The deck is proposed to be enclosed by a 42 in. high aluminum railing on all four sides with a 5 ft. opening in front of the restaurant. Sample material and color selections were not provided. The applicant must indicate what color the material will be for the decking and railing.

Ms. Kelly Schafer, the restaurant owner, said the railings will be black aluminum and the Trex decking is brownish and matches the chairs.

There was no audience present to comment.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Williams to approve the Final Design Review application for 344 Hamilton Row with the following conditions:

- 1) The applicant must receive a variance from the BZA in order to extend beyond their own storefront, or cut the platform back to be only in front of their storefront for administrative approval;**
- 2) The applicant must provide a trash receptacle in the outdoor dining area; and**
- 3) Address the issues raised by City Departments.**

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Prasad

08-166-17

MISCELLANEOUS BUSINESS AND COMMUNICATIONS

- a. Communications

- Ms. Ecker explained the property owner of 191 N. Chester, The First Church of Christ Scientist has submitted an application for rezoning from TZ-1 to TZ-2. The applicant will be out of the country on September 27 so they ask if it is possible to add them to the study session meeting on September 13 because otherwise they would have to wait until the end of October.

Motion by Mr. Williams

Seconded by Mr. Jeffares to consider an application for the rezoning of 191 N. Chester on September 13, 2017 and to waive the rules as to study sessions.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Prasad

b. Administrative Approval Correspondence

- 602 Riverside, Unit #6, Riverside Place Condominium - Revision to the site plan to adjust the location of the rear retaining walls.
- 300 Strathmore, Big Beaver and Adams Replace - Project consists of the installation and operation of antennas and associated equipment cabinet(s) for Verizon Wireless Telecommunications Network. A total of six antennas, 12 remote jack in heads and one Ray cap mounted on an existing monopole and cabinet(s) are proposed at the site.
- 999 Haynes - Moving Dumpster enclosure.

c. Draft Agenda for the Regular Planning Board Meeting on September 13, 2017

- 34965 Woodward Ave., Preliminary Site Plan Review;
- 191 N. Chester, Application for Rezoning from TZ-1 to TZ-2;
- Bistro Requirements study session;
- Economic Development Licenses expansion of boundaries study session;
- DRB and Planning Board Review process study session

d. Other Business (none)

08-167-17

PLANNING DIVISION ACTION ITEMS

- a. Staff report on previous requests (none)
- b. Additional items from tonight's meeting (none)

08-168-17

ADJOURNMENT

No further business being evident, the Chairman adjourned the meeting at 10:39 p.m.

Jana Ecker
Planning Director

APPROVED

**CITY OF BIRMINGHAM
PLANNING BOARD ACTION ITEMS
OF WEDNESDAY, SEPTEMBER 13, 2017**

Item	Page
OLD BUSINESS Preliminary Site Plan Review	
1. 34965 Woodward Ave. - Mixed-Use Building (former Peabody's Restaurant)	2
Request for approval of the Preliminary Site Plan to allow a new five-story mixed-use building to be constructed (postponed from July 26 and August 23, 2017)	
Motion by Mr. Williams	7
Seconded by Mr. Jeffares that based on these comments and on the record, including such facts and reasons as any of my colleagues willing to join in this motion articulate, I move the approval of the Preliminary Site Plan for 34965 Woodward Avenue, as submitted, subject to the following seven conditions:	
1. The Applicant submit plans with nine total trees or obtain a waiver from the staff arborist;	
2. The Applicant verify that there will be five pedestrian lights on Peabody;	
3. The Applicant provide a photometric plan and lighting specifications at the time of Final Site Plan Review;	
4. The Applicant provide specification sheets for all mechanical units to verify that the screen wall is tall enough to sufficiently screen the proposed units;	
5. The Applicant submit plans demonstrating the size and location of three usable off-street loading spaces or obtain a variance from the Board of Zoning Appeals;	
6. The Applicant comply with the requests of all City Departments;	
7. The Applicant provide material and color samples at Final Site Plan Review.	8
Motion carried, 5-0.	
REZONING REQUEST	
1. 191 N. Chester, First Church of Christ, Scientist Request for rezoning from TZ-1 to TZ-2 (Transitional Zoning) to allow	8

Item	Page
the adaptive reuse of the existing building for office use	10
<p>Motion by Mr. Koseck Seconded by Mr. Boyle to recommend approval to the City Commission for the rezoning of 191 N. Chester from TZ-1 (Transitional Zone 1) to TZ-2 (Transitional Zone 2).</p> <p>Motion carried, 6-0.</p>	10
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**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, SEPTEMBER 13, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on September 13, 2017. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Vice- Chairperson Gillian Lazar, Bryan Williams

Absent: Board Member Janelle Whipple-Boyce; Alternate Board Members Lisa Prasad, Daniel Share; Student Representatives Ariana Afrakhteh, Isabella Niskar

Administration: Matthew Baka, Sr. Planner
Jana Ecker, Planning Director
Carole Salutes, Recording Secretary

09-169-17

APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING OF AUGUST 23, 2017

Motion by Ms. Lazar

Seconded by Mr. Boyle to approve the Minutes of the Regular Planning Board Meeting of August 23, 2017 as presented.

Motion carried, 6-0.

VOICE VOTE

Yeas: Lazar, Clein, Boyle, Jeffares, Koseck, Williams

Nays: None

Absent: Whipple-Boyce

09-170-17

CHAIRPERSON'S COMMENTS

The Chairman advised the meeting tonight would consist of site plans as well as study sessions.

09-171-17

APPROVAL OF THE AGENDA (no change)

OLD BUSINESS

Preliminary Site Plan Review

- 1. 34965 Woodward Ave. - Mixed-Use Building (former Peabody's Restaurant)**
Request for approval of the Preliminary Site Plan to allow a new five-story mixed-use building to be constructed (postponed from July 26 and August 23, 2017)

Chairman Clein announced that he will recuse himself on this matter as he has in the past due to a business relationship with the project. Vice-Chairperson Lazar took the gavel.

Motion by Mr. Williams

Seconded by Mr. Koseck to receive and file the following correspondence received this evening:

- **Letter from Ron Rea dated 09-11-17;**
- **Letter from Alan M. Green of Dykema Gossett dated 09-11-17;**
- **Letter from Tim Currier, Beier Howlett dated 09-13-17.**

Motion carried, 6-0.

VOICE VOTE

Yeas: Williams, Koseck, Boyle, Jeffares, Lazar

Nays: None

Recused: Clein

Absent: Whipple-Boyce

Mr. Baka recalled that the applicant has submitted an application for Preliminary Site Plan Review to construct a five-story building in the B4/D4 District. The property is located on the west side of Woodward Ave. on Peabody at the former location of Peabody' Restaurant and the former Art & Frame Station.

On July 26, 2017 the Planning Board reviewed the CIS and Preliminary Site Plan application for 34965 Woodward Ave. At that time the Planning Board decided to accept the Community Impact Statement but postponed the Preliminary Site Plan Review. The board requested additional information regarding the interfacing of the proposed building with the adjacent buildings on each side along with renderings of the new building in context with the adjacent buildings. Additionally, the postponement was granted to provide the applicant time to engage with the neighboring property owners in light of public comments made at the meeting.

Mr. Baka recalled this proposal has been reviewed at several previous meetings. The last time it was discussed was on August 23, 2017. At that time there was extensive discussion about the interface of the proposed building with the two adjacent buildings. The Planning Board requested staff to do some research on the history of those buildings. The stated intent of providing this information was to determine if the buildings to the north and south of the subject site were encouraged or required to provide windows that abut the shared property lines of 34965 Woodward Ave.

A thorough review of the minutes and staff reports revealed no encouragement or requirements by the Planning Board or staff to install windows on the property lines abutting the 34965

Woodward Ave. site. The only comment was from the Building Dept. that indicated windows were not permitted on the property line. This was later resolved through the use of fire rated glass.

There have been no revisions to the plans that the board has already seen.

The plans do not display any off-street loading spaces. ***The applicant will need to submit plans demonstrating the size and location of three usable off-street loading spaces, or obtain a variance from the Board of Zoning Appeals ("BZA").***

Mr. Richard Rassel, Williams, Williams, Rattner and Plunkett, 380 N. Old Woodward Ave., spoke to represent Alden Development Group. With him was the Project Architect, Mr. Chris Longe and members of the ownership group. Mr. Rassel encouraged the board to move the project through Preliminary Site Plan Review. He noted that the Master Plan and the Zoning Ordinance in all respects treat this project as compliant. They are willing to work with their neighbors on the aspect of final design to try to achieve the best possible project for this important gateway to the City.

Mr. Alan Greene, Dykema Gossett, 39577 Woodward Ave., said he represents the owners of the Greenleaf Trust and Balmoral Buildings. He has presented information as to why this proposed new building is not compatible on the north and south side with the structures that exist. Ninety-seven windows on these two buildings are going to look out at a blank wall. Also, those buildings would be deprived of light and air which is a specific standard of the ordinance. Further, the material value of the buildings will be negatively impacted. They have also pointed out there will be numerous issues with respect to ongoing maintenance and repair of all three buildings. There are many alternatives that can address these concerns, but the site plan has not been revised since it was presented. The applicant is trying to maximize the space. He asked that this particular site plan be denied.

Mr. Williams gave a lengthy statement for inclusion in the record:

Since our meeting on August 23, 2017, I have had the opportunity to review more carefully the materials submitted by the applicant and by the neighboring property owners in the context of the full Zoning Ordinance. I have also listened to the comments tonight.

I want to thank Matt and Jana for researching approval documentation for the Greenleaf Trust & Balmoral Buildings. Their conclusion that there was no encouragement or requirement by the Planning Board or staff to install windows on the South & North property lines, respectively, is important.

I have concluded that the Applicant's proposal meets the requirements of the Zoning Ordinance for Preliminary Site Plan approval. The report of the staff makes that abundantly clear, as do the letters of Beier, Howlett dated August 23, 2017, and September 13, 2017 which have also been incorporated into the record and which form part of the basis for my comments.

The adjoining property owners' objections are detailed and weighty, but they do not justify denying the site plan. Let me respond to each of the major points which they have raised:

1. **The Project is not consistent with the Master Plan.**

The 2016 Downtown Plan approved in 1996 envisions one possible future for this property, but not the only possible future. The fact that the 2016 Plan recommended that the

site might ultimately be a good one for a parking deck did not mandate that it be so; and in fact the City has taken no steps to acquire the property to construct a parking deck. The proposed office and residential use is permitted by the zoning. The property owner need not wait to find out if the City will someday decide it wishes to acquire the property for parking. Nor do the drawings in the Plan that are illustrative of possible future conditions the architects mentioned in their comments constitute a limitation on the property's use.

In fact, a five-story building with the top floor residential is consistent with the Zoning Ordinance and is not inconsistent with the Master Plan.

2. **No Parking.**

The Site is in the Parking Assessment District. The site has more than enough parking to meet the requirements of the Zoning Ordinance for its residential component. On numerous occasions, this Board has made it clear that it will not and cannot prevent owners in the Parking Assessment District from developing their property because there may be a shortage of parking Monday through Friday at lunch time. The fact that the City may not have built enough public parking does not change the fact that this property owner and its predecessors, like many others, have paid into the Parking Assessment District with the understanding that it will not have to have on-site parking for non-residential uses.

3. **The Plan Violates Section 7.27.B(2), the Light and Air Clause of the Zoning Ordinance.**

Dykema Gossett has made an argument that construction of this building to the lot line will prevent adequate light and air reaching the adjacent properties in violation of Section 7.27.B(2) of the Zoning Ordinance.

I believe the significant word is "adequate".

In any event, taking the language of the ordinance at face value, there will be adequate light and air to both the Greenleaf Trust and Balmoral Buildings if this building is constructed to the lot line as proposed. Each building has unimpeded light and air on three of their four facades. The Balmoral Building's windows are set back 5 ft. on its north facade. That 5 ft. well provides adequate light and air. The affected windows on the Greenleaf Building are those at both the east and west end of the south facade, as the center of the Greenleaf Building's south facade also has a well where the windows are set back from the property line. Each one of the affected windows on the part of the south facade built to the lot line have windows that face the east and the west; that is, into the window well in the center and facing the street on the outside so that their light is at least as good, and arguably better, than that provided to the Balmoral Building.

The ordinance does not guarantee no change in the amount of light and air, merely that this Board assure itself that there is "adequate" light and air. In my opinion, there is.

4. **Section 7.27.B(3) – The Diminished Value Section.**

Counsel makes the argument that the building will diminish the value of the adjacent buildings; thus the Preliminary Site Plan cannot be approved. He supports his argument with the written opinion of the real estate broker for the Greenleaf Building that the four residential apartments on the south wall will have diminished rental income due to the loss of views. The penthouse rent will be reduced from \$14,000.00 a month to \$10,000.00 a month, still beyond my personal "budget". The other apartments "may likely" have reductions, and the office would have a reduction as well, although it is hard to estimate that amount. Presumably his

opinion would be similar for the Balmoral Building, although nothing in his letter distinguishes between those rental spaces on the window well of the Greenleaf Building and those at the wall on the property line.

Section 7.27.B(3) has two parts: one is that the location, size and height of the building won't interfere with the reasonable development of adjoining property, and it obviously does not. The second is that the development will not diminish the value of the adjoining property. Assuming that there is some reduction in rental income and that translates into some diminished value of the building, some reduction, no matter how small, is, I do not believe, what the ordinance aims at. Many property owners might object to any building being built next to them and argue that any development will diminish their property value. It neither is nor should be the job of this Board to choose between competing speculations whether proposed construction will reduce or increase value to a small degree.

Zoning is necessarily a three-pronged balance between the rights of adjoining property owners to develop their properties as they see fit; the right of their neighbor to not be disturbed; and the right of the people as embodied in the municipality to regulate land uses to achieve public purposes, some of which are listed in Section 7.24 of the Zoning Ordinance – for example, sub-section (f) “to sustain the comfort, health, tranquility and contentment of residents and attract new residents by reason of the City's favorable environment”.

The construction that is proposed was completely foreseeable. Although I do not think it is necessary for us to decide whether or to what extent the owner of the Greenleaf Building waived the right to make the objection she makes to the Preliminary Site Plan, it is noteworthy that not only was this issue foreseeable, it was actually foreseen. The Earth Retention System and Construction Barricade Agreement of November 28, 2008 specifically mentions that the owner of the Peabody site could construct a building on the lot line. The Balmoral Building inferentially knew as well, since it is constructed with a blank wall along the eastern-most part of its north facade.

The question of what amount of diminution of value would trigger the violation of the Zoning Ordinance need not be determined tonight. Reference to the basic purposes of zoning shows that the purpose of regulation is to prevent a major loss in value. Nothing suggested to us indicates that the financial return that Balmoral or Greenleaf Buildings will have after the Peabody Building is constructed will not be reasonable or economically viable, although it may not be as high as it would be if the property owner in the middle of these two buildings continued to allow it to be vacant or limited its development to one or two stories.

One of the purposes of the Zoning Ordinance is to promote public health, moral safety, comfort, convenience and general welfare. Reading the requirements of Section 7.27.B(3) as an absolute bar against any building permitted by the terms of the Zoning Ordinance that negatively affects its neighbors would turn the Zoning Ordinance from a public shield, which it clearly is intended to be, into a private sword benefitting the first to build.

5. **The Proposed Building Is Not Compatible With The Adjacent Properties.**

Section 7.27.B(5) of the Zoning Ordinance requires the Planning Board to determine whether or not the proposed Building “will be compatible with other uses and buildings in the neighborhood, and will not be contrary to the spirit and purpose of this Chapter”.

We heard much about compatibility at the August 23 meeting. Regardless of whether the compatibility is determined within the framework of visual appearance or on a structural

basis, such as the alignment of floor levels, height and mass, this Building proposed is compatible and does comply with the spirit and purpose of the Zoning Ordinance. The mixed-use nature is permitted. The visual effect of height, mass and floor alignment, given the grades, are compatible. The Zoning Ordinance itself, at Section 7.24.B, as Mr. Jeffares pointed out at the last meeting, discourages monotonous construction so that the objections that the building does not have masonry with punched windows is to me of no persuasive effect.

6. **Construction Will Necessarily Result In Trespass.**

Simply put, that is not an issue that is relevant to site plan review. The civil law adequately provides remedies to property owners if their neighbors invade their land without legal justification. If the developer of the Peabody site can't build what he is proposing to build without trespassing, or if doing so would be too expensive, he will necessarily have to abandon this design and resubmit for some other type of building. It is not a basis to deny a site plan.

There are plenty of reasons for these three property owners to cooperate. The comments made about maintenance alone justify cooperation between the parties. It isn't our place to dictate how those interests can or should ultimately be resolved or if they can be harmonized. I'll only point out that every communication device in use today has the capability of two-way functionality. I am loathe to hold it for or against one party that discussions have not been as frequent or as wide-ranging as we or any particular party may wish.

Some of the issues that the property owners have raised are things, as Mr. Koseck points out, that we will consider at Final Site Plan review. I can assure you that this Board will carry out a searching, comprehensive review of the criteria for Final Site Plan Approval.

Motion by Mr. Williams

Seconded by Mr. Jeffares that based on these comments and on the record, including such facts and reasons as any of my colleagues willing to join in this motion articulate, I move the approval of the Preliminary Site Plan for 34965 Woodward Avenue, as submitted, subject to the following seven conditions:

- 1. The Applicant submit plans with nine total trees or obtain a waiver from the staff arborist;**
- 2. The Applicant verify that there will be five pedestrian lights on Peabody;**
- 3. The Applicant provide a photometric plan and lighting specifications at the time of Final Site Plan Review;**
- 4. The Applicant provide specification sheets for all mechanical units to verify that the screen wall is tall enough to sufficiently screen the proposed units;**
- 5. The Applicant submit plans demonstrating the size and location of three usable off-street loading spaces or obtain a variance from the Board of Zoning Appeals;**
- 6. The Applicant comply with the requests of all City Departments; and**
- 7. The Applicant provide material and color samples at Final Site Plan Review.**

Mr. Koseck observed he doesn't think there is anything to add. He thinks Mr. Williams has touched on all of the issues that he sees. There will be constructability challenges just like there is in the building that the board saw last week.

There were no public comments at 7:57 p.m.

Motion carried, 5-0.

ROLLCALL VOTE

Yeas: Williams, Jeffares, Boyle, Koseck, Lazar

Nays: None

Recused: Clein

Absent: Whipple-Boyce

09-173-17

REZONING REQUEST

1. 191 N. Chester, First Church of Christ, Scientist

Request for rezoning from TZ-1 to TZ-2 (Transitional Zoning) to allow the adaptive reuse of the existing building for office use

Chairman Clein returned to chair the meeting.

Ms. Ecker reported that the property owner is requesting the rezoning of the property to keep the building as-is on site while renovating the inside for an office use.

The subject site is located on the west side of N. Chester, with single-family homes to the north and office/commercial buildings to the south (Integra Building) and east (McCann Worldgroup Building). The area of the site is .40 acres, the building is 16,000 sq. ft. in size. The subject property is in the Downtown Overlay District and was zoned C - Community Use, due to its former use as a church. At the time of the transitional rezoning the City Commission created the TZ-1 Zone District and the TZ-3 Zone District. They did not create the TZ-2 Zone District then and the property was rezoned TZ-1 which allows only a residential use and not an office use.

The applicant lists a number of reasons that with the City's adoption of TZ-2 into the Zoning Ordinance, the TZ-2 classification would be better suited. The applicant would like to repurpose the existing church building into an office use. While office use is permitted in the TZ-2 Zoning District, any office use over 3,000 sq. ft. in size would require a Special Land Use Permit ("SLUP"). The applicant has affirmed the building is not suitable for adaptive reuse to residential.

The applicant had meetings with the adjoining property owners who have indicated a desire to keep the existing building as opposed to demolishing it and increasing and changing the height and mass with a new structure. They felt building as it stands would have the least impact on the neighborhood in terms of scale, visibility, and traffic.

The applicant has tried to market the building as a religious institution but has been unsuccessful in finding someone who is interested.

The only physical modification done to the building was in 1956 when an addition was added to the existing church. The church building is still in fair condition today.

Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable Master Plan documents, current zoning and recent development trends in the area, the Planning Dept. finds that the applicant meets the established ordinance requirements to qualify for a rezoning of the property from TZ-1 (Transitional Zone 1) to TZ-2 (Transitional Zone 2) to permit the adaptive reuse of the building for office/commercial use. Given the recommendations of the Master Plan and the 2016 Plan, the existing mix of uses in the immediate neighborhood, and given the age and character of the building, the proposal to adaptively reuse the building is appropriate and compatible with the area. The Planning Board will make a recommendation to the City Commission and the City Commission shall make the final determination on whether this potential rezoning should be approved.

Mr. Boyle asked what design oversight there might be with this building if it was rezoned to TZ-2. Ms. Ecker replied that just the design of the building would go to the Design Review Board or come to the Planning Board for review. If they are going to propose over 3,000 sq. ft. of office use, it will come to the Planning Board because it would require a SLUP which would bring in all of the design elements as well as the signage. Then it would go to the City Commission for the final decision.

In response to Mr. Koseck, Ms. Ecker said the applicant has the option to seek a use variance for the building. The Chairman asked about the difference between TZ-1 and TZ-2 with regard to massing and height. Ms. Ecker advised that TZ-1 allows three stories and 35 ft. in height with a minimum of two stories. In TZ-2 only a two-story maximum is allowed.

Ms. Ecker explained for Mr. Boyle that there is no requirement that there must be a mix of uses on a transitional zoned property.

Mr. Williams said a question for the City Attorney would be whether the site can be rezoned to TZ-2 with the condition that the building structure remain the same. Ms. Ecker noted the Planning Board at this level has not made a recommendation to go down the conditional rezoning path.

The applicant, Mr. Sam Surnow, 320 Martin, said they have spent a lot of time over the last three years trying to figure out what to do because they acquired the property before it was rezoned to TZ-1. Based on feedback from all of the neighbors and the different departments, they have been guided in the direction of rezoning the existing building for office use. They feel it is the best choice. It seems that a residential development would have the potential to change the impact on the neighborhood. On-site parking will be needed to be marketable and to attract tenants. Therefore they will have to take away a few thousand feet in the lower level to make room for ten or fifteen parking spaces. Then, after taking away the common areas, the office space left will be much less than 16,000 sq. ft.

Mr. Surnow stated that they decided not to apply for a use variance with the BZA because having a use variance in a TZ-1 Zone that is meant for residential use only would be contradictory. Also if the City could have rezoned to TZ-2 which didn't exist at the time, it probably would have. They don't have an issue with coming up with an agreement stating they will preserve exactly what is there if the City Commission requested that.

Mr. Kevin Biddison, 320 Martin, added they are excited hopefully to be involved in another project with the Surnows. This is really a similar challenge to what they did with the post office and they are looking to do some of the very same things and create multi-uses for smaller businesses which can tuck into the very unusual nature of the building.

No one from the public came forward with comments at 8:38 p.m.

Mr. Boyle observed that office space is changing. He hoped this iconic building will be redesigned and repurposed in such a way that it can accommodate the contemporary office and how it is going to operate. Also, he thought a mixed use in some shape or form might enliven this street.

Mr. Koseck noted this is a unique building on a challenging site. The Chester Parking Structure is least used so the project could help to populate that. These developers have a proven track record and he is in favor of the proposal to rezone.

Motion by Mr. Koseck

Seconded by Mr. Boyle to recommend approval to the City Commission for the rezoning of 191 N. Chester from TZ-1 (Transitional Zone 1) to TZ-2 (Transitional Zone 2).

Chairman Clein thought the adaptive reuse that is being proposed is awesome and the rezoning to facilitate that makes perfect sense. However he has concerns about rezoning, and that means ten years from now the building could be razed and a 17,000 sq. ft. site could turn into 30,000 sq. ft. of something. He leans toward approving the request because he feels this is a fantastic project but he thinks the Commission needs to weigh those concerns.

At 8:43 p.m. there were no comments from the members of the public on the motion.

Motion carried, 6-0.

ROLLCALL VOTE

Yeas: Koseck, Boyle, Clein, Jeffares, Lazar, Williams

Nays: None

Absent: Whipple-Boyce

09-174-17

STUDY SESSIONS

1. Economic Development Liquor License Boundaries

Ms. Ecker recalled that in 2009 the City Commission approved the creation of an Economic Development Liquor License as an incentive to encourage development in certain areas of the City. The properties that are eligible for this incentive are predominantly located on or near Woodward Ave.

On July 10, 2017, the City Commission amended the Planning Board's Action List to include a review of the Economic Development License boundaries as the third priority. Accordingly, the

Planning Board began discussions again regarding the expansion of the Economic Development Liquor License areas to include the Triangle and/or Rail District(s) or other areas of the City.

On August 9, 2017, the Planning Board discussed the expansion of the Economic Liquor License areas, specifically to expand the opportunities in the Triangle District, and to allow such licenses in the Rail District. Board members discussed several options, and ultimately directed staff to come back to the board with revised ordinance language and a revised map to include all of the Triangle District, with the exception of the single-family residential area at the north end; all of the Rail District with the exception of the Crosswinds development; and parcels along the east side of Adams adjacent to the Triangle District which do not abut single-family residential zoned parcels.

Board members made the following changes to the Economic Development License boundaries that were depicted on the revised map that was provided:

- Take out the parcel behind All Seasons because it butts up to single-family even though it is zoned O-1.
- Include two parcels to the west of Elm between Holland and Lincoln in the Triangle District. Exclude the two parcels east of Elm;
- Continue to leave Baker's Square out.

With regard to the southwest corner of Quarton and Woodward Ave., Ms. Ecker said there is a judgment on record which has established the terms for future development.

Chairman Clein called for comments from the audience at 9:07 p.m.

Mr. Rick Rattner, 380 N. Old Woodward Ave., stated there are 39 liquor licenses in the City and all of them except four are in the Downtown Development Overlay District. He submitted that the whole Downtown District should be part of the Economic Development License Boundary map. Developers are spending incredible amounts of money along Woodward Ave. and Old Woodward Ave. and that area is the engine of this community. The developers should be allowed to apply for a Special Land Use Permit and then go about getting the license as economically as possible.

Secondly, the piece of property at Quarton and Woodward Ave. belongs to his client. It has been vacant since 1989 when a gas station was torn down and they had a lawsuit with the City. The property was too small to do anything with until the Road Commission for Oakland County abandoned 33 ft. of the right-of-way. On the other side is a very small DTE station. In the back is a public alley, and then Gasow Veterinary to the south. So it is a very good buildable piece and he doesn't know why it hasn't sold.

Mr. Williams thought that a rather limited area of the Rail District could use a big investment. Mr. Koseck noted his sense is that the intention of the Economic Development Liquor License was to shift attention to areas that are under developed. He is happy with the map as the board has amended it. Mr. Williams was also in favor of the map. The Downtown area currently has a lot of places to get a drink so he thinks this tool should go east because both of those districts are underdeveloped in terms of \$10 million type of developments. From the City's standpoint those are the two areas this group sees as being ripe for such development.

The group agreed as to the expansion into the Triangle area and the Rail District as modified tonight.

Motion by Mr. Williams

Seconded by Mr. Boyle to set a public hearing for October 25, 2017 to expand the boundaries of the Economic Development Liquor License to include the south end of the Triangle District and from Holland south in the Rail District.

There were no comments from the public on that motion at 9:34 p.m.

Motion carried, 6-0.

VOICE VOTE

Yeas: Williams, Boyle, Jeffares, Clein, Koseck, Lazar

Nays: None

Absent: Whipple-Boyce

Motion by Mr. Jeffares

Seconded by Mr. Williams to include in the boundaries of the Economic Development Liquor License map the one parcel at the SW corner Woodward Ave. and Quarton.

There were no comments from members of the public on the motion.

Motion carried, 4-2.

ROLLCALL VOTE

Yeas: Jeffares, Williams, Koseck, Lazar

Nays: Boyle, Clein

Absent: Whipple-Boyce

09-175-17

2. Bistro Regulations

Mr. Baka noted that in 2007 the City of Birmingham amended the Zoning Ordinance to create the bistro concept that allows small eclectic restaurants to obtain a liquor license. Bistros are defined in Article 09 of the Zoning Ordinance as restaurants with a full service kitchen with interior seating for no more than 65 people and additional seating for outdoor dining. Bistros are permitted in certain zone districts with a valid Special Land Use Permit ("SLUP") along with several conditions.

As the bistro concept has evolved over the past 10 years, new applicants have sought creative ways to make their establishments distinctive from other restaurants and bistros in the City, and to increase the number of seats through the use of all season outdoor dining.

There have been several issues raised:

- Use of Eisenglass – extends the time period outdoor dining areas are in operation which increases the number of seats for restaurant as a whole for a majority of the year;
- On-street Dining/Rooftop Dining – the use of on-street parking spaces and rooftops in addition to the sidewalk area allows the addition of larger outdoor dining areas;
- Parking Needs – the expansion of outdoor dining increases the number of people dining at the restaurant, which increases parking demand;

- Building Code Requirements – the enclosure of outdoor dining areas triggers Building Code regulations such as Energy Code compliance, fire suppression requirements, fire separation distances and exterior wall fire resistive ratings.

At the joint City Commission/Planning Board meeting of June 19, 2017 the issue of clarifying bistro regulations was discussed at length. On July 24th, 2017 the City Commission moved the review of bistros up on the Planning Board's Action List.

On August 9, 2017 the Planning Board held a study session to begin to consider addressing the issues of parking, outdoor dining and Eisenglass enclosures. Discussion revealed that the Planning Board did not support regulating the number of outdoor dining seats, or requiring additional parking for such outdoor dining areas. There was unanimous support on the board for restricting the use of enclosures on outdoor dining areas to ensure that outdoor dining is truly seasonal. There was also discussion about setting different standards for the interior number of seats in different areas.

Accordingly the draft language has been revised to provide options that would eliminate the ability to utilize enclosures year round. The language is now silent on the issues of limiting the number of outdoor seats and requiring additional parking for those seating areas.

At this time four proposed options have been added to the ordinance language:

- Permanent enclosures shall not be permitted for outdoor dining areas.
- Weather proof enclosures facilitating year around dining outdoors are not permitted.
- Outdoor dining is not permitted between November 16 and March 31.
- The use of any type of enclosure system (including but not limited to fabric, Eisenglass, vinyl panels, drapes, plant materials shall not be permitted for outdoor dining areas.

Mr. Koseck indicated that in his mind outdoor dining areas should not be framed with walls whether they are temporary or permanent. These areas were never intended to be quasi interior space. Discussion considered eliminating the date restriction and eliminating walls and plastic enclosures. People can sit outdoors on a nice winter day if they choose; however outdoor furniture must be brought inside each night and platforms have to come down in the winter. Board members thought that railings on decks in the street should be limited to 42 in. in height.

To sum up the issues that were previously discussed:

- The use of Eisenglass and the Building Code requirements of such enclosures have been covered in that outdoor dining areas must truly be outdoors, not within enclosed areas;
- The board was not interested in adding extra parking requirements for outdoor dining;
- Setting a maximum number of outdoor dining seats is not a concern as they are all SLUPs and thus subject to individual review;
- Everyone was okay with rooftop dining, but the priority is that there must be outdoor dining in the front first and foremost.

Mr. Jeffares was in favor of increasing the capacity of bistros for the Triangle and Rail Districts and Mr. Williams liked that concept. It was discussed that providing shared parking might be an incentive to increase inside seating from 65. However, Mr. Koseck thought that requiring shared parking complicates things. Mr. Baka agreed to bring draft ordinance language for the next meeting.

3. Renovation and New Construction of Commercial and Mixed-Use Buildings

Mr. Baka advised that questions have been posed recently as to the procedure for determining what level of board review is required for the renovation of an existing building or construction of a new building. The Zoning Ordinance establishes the review process for new construction and renovation of existing buildings. However, the Zoning Ordinance is not clear as to the extent an existing building can be renovated before it is deemed new construction, and it is not clear as to what specific changes trigger site plan review. There are three boards that review building improvements: the Planning Board, the Design Review Board and the Historic District Commission.

Article 7, section 7.25 provides for site plan review for new development of all historic properties by the Historic District Commission and the Planning Board, and for site plan review for new development of non-historic properties by the Planning Board.

Article 7, section 7.08 states that for all new non-historic construction projects the Planning Board is responsible for conducting both the site plan review and design review. All plans for projects not requiring site plan review or HDC review such as exterior alternations, lighting, signs, equipment or other structures that substantially alter the exterior appearance of the building shall be reviewed by the DRB. Finally, Article 7, section 7.08 states that all Special Land Use Permit ("SLUP") reviews will be conducted by the City Commission, with recommendations from the Planning Board. The Design Review Board is responsible for conducting design reviews for new construction and the alteration of existing buildings when no site plan review is required. However, it is not explicitly delineated when a design review is required or when a site plan review is required.

City policy for many years has been to require proposals that add square footage to a building or make changes to a site that would affect vehicle or circulation patterns to obtain site plan approval. Proposals that are limited to modifying the exterior of the building but do not expand the building or alter the site are required to obtain only design review.

At the joint City Commission/Planning Board meeting on June 19, 2017 discussion occurred regarding current planning issues in the City. When discussing the regulations regarding the renovation of existing buildings, several deficiencies and/or ambiguities were identified in the Zoning Ordinance. Specifically, the question was raised as to what triggers a site plan review as opposed to a design review. There was a general consensus among the group that these issues should be studied by the Planning Board with the goal of providing recommendations to the City Commission for ordinance amendments that will clarify which type of reviews are required.

In an attempt to create objective criteria to delineate between what requires site plan review and what requires design review, the Planning Staff has provided draft ordinance language which would codify the existing City policy as described above.

The issue was discussed at the Planning Board meeting on August 9, 2017. The meeting reaffirmed the issue that right now there is no distinction between minor renovations and major re-builds of commercial buildings in Birmingham, and the possibility of a threshold being introduced to determine which board (DRB or PB) will perform the review. Members of the Planning Board agreed that the ordinance language should be clarified to say:

- A full Site Plan Review is required if more than 33.3% of the exterior elevations are torn down;

- The addition of square footage to any development shall be considered an expansion which requires site plan review;
- Any alteration which significantly alters the traffic or pedestrian circulation functions on a site as determined by the City Planner shall also require Site Plan Review.

Accordingly, the Planning Division is once again providing the draft ordinance language for comment by the Planning Board.

Mr. Baka explained if this ordinance language was in place Fred Lavery Audi Dealer would not have received approval offa demolition permit because they would not have had Site Plan Review, which would have been required as more than 33.3% of the building sides were removed. The DRB looks at the site, but does not consider the streetscape requirements.

Chairman Clein stated they are trying to avoid four walls going away and being rebuilt that feel like new construction but with no regard to any other site plan issues.

It was agreed to defer this topic to a future date.

09-177-17

MISCELLANEOUS BUSINESS AND COMMUNICATIONS

- a. Communications
- b. Administrative Approval Request

- 298 S. Old Woodward Ave., boutique hotel

Chairman Clein recused himself for business reasons and Ms. Lazar recused herself for familial reasons. Mr. Boyle took over chairmanship.

Mr. Charlie Stetson, Booth Hanson Architects, showed in a PowerPoint a few items they have worked on that have varied from the approved plans:

- Loading dock and garage entry have been flipped;
- Door to the loading dock is screened with open air wire mesh material;
- The entrance on Brown St. has been eliminated;
- Main entry to the hotel has been revised to have two pairs of doors with a vestibule and no revolving door, basically the same materials;
- Pre-function space has been moved into a bay to the north;
- In lower level 1 they propose removing three parking spots and adding a salon. Required parking per the Ordinance is 22 spaces and now they will have 53 spots;
- Mezzanine level openings in the wall to the loading dock below are new;
- Exterior stone colors have been changed to soften the contrast between the darker stone elements and the lighter. Samples of the original limestone were passed around along with the lightened limestone that was chosen.
- The metal was lightened up so it is in the color range of the other two materials;
- Frames around the windows are proposed to be the darker of the two stones;
- Frosted glass panels were introduced inside the garage entry and exit doors that previously were painted metal. Ms. Ecker said that under the ordinance frosted glass cannot be used;
- Add new opening to provide fresh air next to the loading dock outside.

Mr. Koseck said he liked the plan before and he likes it now. It is easier to carry luggage through a vestibule than through a revolving door. Mr. Williams said the closing of the Brown St. entrance is a non-event for him. None of the board members had any concerns.

Motion by Mr. Williams

Seconded by Mr. Jeffares to administratively approve all of the proposed changes with the exception of the frosted glass on garage doors.

Motion carried, 4-0.

VOICE VOTE

Yeas: Williams, Jeffares, Boyle, Koseck

Nays: None

Recused: Clein, Lazar

Absent: Whipple-Boyce

c. Draft Agenda for the Regular Planning Board Meeting on September 27, 2017

- 525 Southfield, Preliminary Site Plan for new attached single-family residential units;
- 33353 Woodward Ave., revised Final Site Plan and SLUP for dry cleaning delivery to cars;
- 2000 - 2070 Villa, new submittal for expired site plan; and
- 505 N. Old Woodward, Salvador Scaloppini SLUP and Final Site Plan Review.

d. Draft Agenda for the Regular Planning Board Meeting on October 25, 2017

- Economic Development public hearing
- 271 Euclid, Preliminary Site Plan Review

e. Other Business

- Joint Planning Board/City Commission meeting September 18 at DPS;
- Ms. Lazar observed Hawthorne Electric windows are completely covered.

09-178-17

PLANNING DIVISION ACTION ITEMS

- a. Staff report on previous requests (none)
- b. Additional items from tonight's meeting (none)

09-179-17

ADJOURNMENT

No further business being evident, the Chairman adjourned the meeting at 10:45 p.m.

Jana Ecker
Planning Director

DRAFT

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, SEPTEMBER 13, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on September 13, 2017. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Vice- Chairperson Gillian Lazar, Bryan Williams

Absent: Board Member Janelle Whipple-Boyce; Alternate Board Members Lisa Prasad, Daniel Share; Student Representatives Ariana Afrakhteh, Isabella Niskar

Administration: Matthew Baka, Sr. Planner
Jana Ecker, Planning Director
Carole Salutes, Recording Secretary

09-169-17

APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING OF AUGUST 23, 2017

Motion by Ms. Lazar

Seconded by Mr. Boyle to approve the Minutes of the Regular Planning Board Meeting of August 23, 2017 as presented.

Motion carried, 6-0.

VOICE VOTE

Yeas: Lazar, Clein, Boyle, Jeffares, Koseck, Williams

Nays: None

Absent: Whipple-Boyce

09-170-17

CHAIRPERSON'S COMMENTS

The Chairman advised the meeting tonight would consist of site plans as well as study sessions.

09-171-17

APPROVAL OF THE AGENDA (no change)

OLD BUSINESS

Preliminary Site Plan Review

**1. 34965 Woodward Ave. - Mixed-Use Building (former Peabody's Restaurant)
Request for approval of the Preliminary Site Plan to allow a new five-story
mixed-use building to be constructed** (postponed from July 26 and August 23,
2017)

Chairman Clein announced that he will recuse himself on this matter as he has in the past due to a business relationship with the project. Vice-Chairperson Lazar took the gavel.

Motion by Mr. Williams

Seconded by Mr. Koseck to receive and file the following correspondence received this evening:

- **Letter from Ron Rea dated 09-11-17;**
- **Letter from Alan M. Green of Dykema Gossett dated 09-11-17;**
- **Letter from Tim Currier, Beier Howlett dated 09-13-17.**

Motion carried, 6-0.

VOICE VOTE

Yeas: Williams, Koseck, Boyle, Jeffares, Lazar

Nays: None

Recused: Clein

Absent: Whipple-Boyce

Mr. Baka recalled that the applicant has submitted an application for Preliminary Site Plan Review to construct a five-story building in the B4/D4 District. The property is located on the west side of Woodward Ave. on Peabody at the former location of Peabody' Restaurant and the former Art & Frame Station.

On July 26, 2017 the Planning Board reviewed the CIS and Preliminary Site Plan application for 34965 Woodward Ave. At that time the Planning Board decided to accept the Community Impact Statement but postponed the Preliminary Site Plan Review. The board requested additional information regarding the interfacing of the proposed building with the adjacent buildings on each side along with renderings of the new building in context with the adjacent buildings. Additionally, the postponement was granted to provide the applicant time to engage with the neighboring property owners in light of public comments made at the meeting.

Mr. Baka recalled this proposal has been reviewed at several previous meetings. The last time it was discussed was on August 23, 2017. At that time there was extensive discussion about the interface of the proposed building with the two adjacent buildings. The Planning Board requested staff to do some research on the history of those buildings. The stated intent of providing this information was to determine if the buildings to the north and south of the subject site were encouraged or required to provide windows that abut the shared property lines of 34965 Woodward Ave.

A thorough review of the minutes and staff reports revealed no encouragement or requirements by the Planning Board or staff to install windows on the property lines abutting the 34965

Woodward Ave. site. The only comment was from the Building Dept. that indicated windows were not permitted on the property line. This was later resolved through the use of fire rated glass.

There have been no revisions to the plans that the board has already seen.

The plans do not display any off-street loading spaces. ***The applicant will need to submit plans demonstrating the size and location of three usable off-street loading spaces, or obtain a variance from the Board of Zoning Appeals ("BZA").***

Mr. Richard Rassel, Williams, Williams, Rattner and Plunkett, 380 N. Old Woodward Ave., spoke to represent Alden Development Group. With him was the Project Architect, Mr. Chris Longe and members of the ownership group. Mr. Rassel encouraged the board to move the project through Preliminary Site Plan Review. He noted that the Master Plan and the Zoning Ordinance in all respects treat this project as compliant. They are willing to work with their neighbors on the aspect of final design to try to achieve the best possible project for this important gateway to the City.

Mr. Alan Greene, Dykema Gossett, 39577 Woodward Ave., said he represents the owners of the Greenleaf Trust and Balmoral Buildings. He has presented information as to why this proposed new building is not compatible on the north and south side with the structures that exist. Ninety-seven windows on these two buildings are going to look out at a blank wall. Also, those buildings would be deprived of light and air which is a specific standard of the ordinance. Further, the material value of the buildings will be negatively impacted. They have also pointed out there will be numerous issues with respect to ongoing maintenance and repair of all three buildings. There are many alternatives that can address these concerns, but the site plan has not been revised since it was presented. The applicant is trying to maximize the space. He asked that this particular site plan be denied.

Mr. Williams gave a lengthy statement for inclusion in the record:

Since our meeting on August 23, 2017, I have had the opportunity to review more carefully the materials submitted by the applicant and by the neighboring property owners in the context of the full Zoning Ordinance. I have also listened to the comments tonight.

I want to thank Matt and Jana for researching approval documentation for the Greenleaf Trust & Balmoral Buildings. Their conclusion that there was no encouragement or requirement by the Planning Board or staff to install windows on the South & North property lines, respectively, is important.

I have concluded that the Applicant's proposal meets the requirements of the Zoning Ordinance for Preliminary Site Plan approval. The report of the staff makes that abundantly clear, as do the letters of Beier, Howlett dated August 23, 2017, and September 13, 2017 which have also been incorporated into the record and which form part of the basis for my comments.

The adjoining property owners' objections are detailed and weighty, but they do not justify denying the site plan. Let me respond to each of the major points which they have raised:

1. **The Project is not consistent with the Master Plan.**

The 2016 Downtown Plan approved in 1996 envisions one possible future for this property, but not the only possible future. The fact that the 2016 Plan recommended that the

site might ultimately be a good one for a parking deck did not mandate that it be so; and in fact the City has taken no steps to acquire the property to construct a parking deck. The proposed office and residential use is permitted by the zoning. The property owner need not wait to find out if the City will someday decide it wishes to acquire the property for parking. Nor do the drawings in the Plan that are illustrative of possible future conditions the architects mentioned in their comments constitute a limitation on the property's use.

In fact, a five-story building with the top floor residential is consistent with the Zoning Ordinance and is not inconsistent with the Master Plan.

2. **No Parking.**

The Site is in the Parking Assessment District. The site has more than enough parking to meet the requirements of the Zoning Ordinance for its residential component. On numerous occasions, this Board has made it clear that it will not and cannot prevent owners in the Parking Assessment District from developing their property because there may be a shortage of parking Monday through Friday at lunch time. The fact that the City may not have built enough public parking does not change the fact that this property owner and its predecessors, like many others, have paid into the Parking Assessment District with the understanding that it will not have to have on-site parking for non-residential uses.

3. **The Plan Violates Section 7.27.B(2), the Light and Air Clause of the Zoning Ordinance.**

Dykema Gossett has made an argument that construction of this building to the lot line will prevent adequate light and air reaching the adjacent properties in violation of Section 7.27.B(2) of the Zoning Ordinance.

I believe the significant word is "adequate".

In any event, taking the language of the ordinance at face value, there will be adequate light and air to both the Greenleaf Trust and Balmoral Buildings if this building is constructed to the lot line as proposed. Each building has unimpeded light and air on three of their four facades. The Balmoral Building's windows are set back 5 ft. on its north facade. That 5 ft. well provides adequate light and air. The affected windows on the Greenleaf Building are those at both the east and west end of the south facade, as the center of the Greenleaf Building's south facade also has a well where the windows are set back from the property line. Each one of the affected windows on the part of the south facade built to the lot line have windows that face the east and the west; that is, into the window well in the center and facing the street on the outside so that their light is at least as good, and arguably better, than that provided to the Balmoral Building.

The ordinance does not guarantee no change in the amount of light and air, merely that this Board assure itself that there is "adequate" light and air. In my opinion, there is.

4. **Section 7.27.B(3) – The Diminished Value Section.**

Counsel makes the argument that the building will diminish the value of the adjacent buildings; thus the Preliminary Site Plan cannot be approved. He supports his argument with the written opinion of the real estate broker for the Greenleaf Building that the four residential apartments on the south wall will have diminished rental income due to the loss of views. The penthouse rent will be reduced from \$14,000.00 a month to \$10,000.00 a month, still beyond my personal "budget". The other apartments "may likely" have reductions, and the office would have a reduction as well, although it is hard to estimate that amount. Presumably his

opinion would be similar for the Balmoral Building, although nothing in his letter distinguishes between those rental spaces on the window well of the Greenleaf Building and those at the wall on the property line.

Section 7.27.B(3) has two parts: one is that the location, size and height of the building won't interfere with the reasonable development of adjoining property, and it obviously does not. The second is that the development will not diminish the value of the adjoining property. Assuming that there is some reduction in rental income and that translates into some diminished value of the building, some reduction, no matter how small, is, I do not believe, what the ordinance aims at. Many property owners might object to any building being built next to them and argue that any development will diminish their property value. It neither is nor should be the job of this Board to choose between competing speculations whether proposed construction will reduce or increase value to a small degree.

Zoning is necessarily a three-pronged balance between the rights of adjoining property owners to develop their properties as they see fit; the right of their neighbor to not be disturbed; and the right of the people as embodied in the municipality to regulate land uses to achieve public purposes, some of which are listed in Section 7.24 of the Zoning Ordinance – for example, sub-section (f) “to sustain the comfort, health, tranquility and contentment of residents and attract new residents by reason of the City's favorable environment”.

The construction that is proposed was completely foreseeable. Although I do not think it is necessary for us to decide whether or to what extent the owner of the Greenleaf Building waived the right to make the objection she makes to the Preliminary Site Plan, it is noteworthy that not only was this issue foreseeable, it was actually foreseen. The Earth Retention System and Construction Barricade Agreement of November 28, 2008 specifically mentions that the owner of the Peabody site could construct a building on the lot line. The Balmoral Building inferentially knew as well, since it is constructed with a blank wall along the eastern-most part of its north facade.

The question of what amount of diminution of value would trigger the violation of the Zoning Ordinance need not be determined tonight. Reference to the basic purposes of zoning shows that the purpose of regulation is to prevent a major loss in value. Nothing suggested to us indicates that the financial return that Balmoral or Greenleaf Buildings will have after the Peabody Building is constructed will not be reasonable or economically viable, although it may not be as high as it would be if the property owner in the middle of these two buildings continued to allow it to be vacant or limited its development to one or two stories.

One of the purposes of the Zoning Ordinance is to promote public health, moral safety, comfort, convenience and general welfare. Reading the requirements of Section 7.27.B(3) as an absolute bar against any building permitted by the terms of the Zoning Ordinance that negatively affects its neighbors would turn the Zoning Ordinance from a public shield, which it clearly is intended to be, into a private sword benefitting the first to build.

5. **The Proposed Building Is Not Compatible With The Adjacent Properties.**

Section 7.27.B(5) of the Zoning Ordinance requires the Planning Board to determine whether or not the proposed Building “will be compatible with other uses and buildings in the neighborhood, and will not be contrary to the spirit and purpose of this Chapter”.

We heard much about compatibility at the August 23 meeting. Regardless of whether the compatibility is determined within the framework of visual appearance or on a structural

basis, such as the alignment of floor levels, height and mass, this Building proposed is compatible and does comply with the spirit and purpose of the Zoning Ordinance. The mixed-use nature is permitted. The visual effect of height, mass and floor alignment, given the grades, are compatible. The Zoning Ordinance itself, at Section 7.24.B, as Mr. Jeffares pointed out at the last meeting, discourages monotonous construction so that the objections that the building does not have masonry with punched windows is to me of no persuasive effect.

6. **Construction Will Necessarily Result In Trespass.**

Simply put, that is not an issue that is relevant to site plan review. The civil law adequately provides remedies to property owners if their neighbors invade their land without legal justification. If the developer of the Peabody site can't build what he is proposing to build without trespassing, or if doing so would be too expensive, he will necessarily have to abandon this design and resubmit for some other type of building. It is not a basis to deny a site plan.

There are plenty of reasons for these three property owners to cooperate. The comments made about maintenance alone justify cooperation between the parties. It isn't our place to dictate how those interests can or should ultimately be resolved or if they can be harmonized. I'll only point out that every communication device in use today has the capability of two-way functionality. I am loathe to hold it for or against one party that discussions have not been as frequent or as wide-ranging as we or any particular party may wish.

Some of the issues that the property owners have raised are things, as Mr. Koseck points out, that we will consider at Final Site Plan review. I can assure you that this Board will carry out a searching, comprehensive review of the criteria for Final Site Plan Approval.

Motion by Mr. Williams

Seconded by Mr. Jeffares that based on these comments and on the record, including such facts and reasons as any of my colleagues willing to join in this motion articulate, I move the approval of the Preliminary Site Plan for 34965 Woodward Avenue, as submitted, subject to the following seven conditions:

1. **The Applicant submit plans with nine total trees or obtain a waiver from the staff arborist;**
2. **The Applicant verify that there will be five pedestrian lights on Peabody;**
3. **The Applicant provide a photometric plan and lighting specifications at the time of Final Site Plan Review;**
4. **The Applicant provide specification sheets for all mechanical units to verify that the screen wall is tall enough to sufficiently screen the proposed units;**
5. **The Applicant submit plans demonstrating the size and location of three usable off-street loading spaces or obtain a variance from the Board of Zoning Appeals;**
6. **The Applicant comply with the requests of all City Departments; and**
7. **The Applicant provide material and color samples at Final Site Plan Review.**

Mr. Koseck observed he doesn't think there is anything to add. He thinks Mr. Williams has touched on all of the issues that he sees. There will be constructability challenges just like there is in the building that the board saw last week.

There were no public comments at 7:57 p.m.

Motion carried, 5-0.

ROLLCALL VOTE

Yeas: Williams, Jeffares, Boyle, Koseck, Lazar

Nays: None

Recused: Clein

Absent: Whipple-Boyce

09-173-17

REZONING REQUEST

1. 191 N. Chester, First Church of Christ, Scientist Request for rezoning from TZ-1 to TZ-2 (Transitional Zoning) to allow the adaptive reuse of the existing building for office use

Chairman Clein returned to chair the meeting.

Ms. Ecker reported that the property owner is requesting the rezoning of the property to keep the building as-is on site while renovating the inside for an office use.

The subject site is located on the west side of N. Chester, with single-family homes to the north and office/commercial buildings to the south (Integra Building) and east (McCann Worldgroup Building). The area of the site is .40 acres, the building is 16,000 sq. ft. in size. The subject property is in the Downtown Overlay District and was zoned C - Community Use, due to its former use as a church. At the time of the transitional rezoning the City Commission created the TZ-1 Zone District and the TZ-3 Zone District. They did not create the TZ-2 Zone District then and the property was rezoned TZ-1 which allows only a residential use and not an office use.

The applicant lists a number of reasons that with the City's adoption of TZ-2 into the Zoning Ordinance, the TZ-2 classification would be better suited. The applicant would like to repurpose the existing church building into an office use. While office use is permitted in the TZ-2 Zoning District, any office use over 3,000 sq. ft. in size would require a Special Land Use Permit ("SLUP"). The applicant has affirmed the building is not suitable for adaptive reuse to residential.

The applicant had meetings with the adjoining property owners who have indicated a desire to keep the existing building as opposed to demolishing it and increasing and changing the height and mass with a new structure. They felt building as it stands would have the least impact on the neighborhood in terms of scale, visibility, and traffic.

The applicant has tried to market the building as a religious institution but has been unsuccessful in finding someone who is interested.

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, AUGUST 23, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on August 23, 2017. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Vice- Chairperson Gillian Lazar, Janelle Whipple-Boyce, Bryan Williams; Alternative Board Member Daniel Share

Absent: Alternate Board Members Lisa Prasad; Student Representatives Ariana Afrakhteh, Isabella Niskar

Administration: Matthew Baka, Sr. Planner
Jana Ecker, Planning Director
Carole Salutes, Recording Secretary

08-159-17

**APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING
OF AUGUST 9, 2017**

Ms. Whipple-Boyce made a change:
Page 9 - Second paragraph, third sentence, replace "to not allow" with "to allow."

Motion by Ms. Lazar

Seconded by Mr. Koseck to approve the Minutes of the Regular Planning Board Meeting of August 9, 2017 as amended.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Abstain: None

Absent: None

08-160-17

CHAIRPERSON'S COMMENTS (none)

fundamental thing is that the safety issue scares him. The only argument he hears about taking any square footage off the building is financial.

Acting Chairman Boyle noted the board cannot verify the developer's financial statement and they have to take his word. Also, there is the concern that the building as configured may result in a circulation challenge that is certainly not satisfying to board members.

Mr. Mitchell stated he cannot take a slice off the rear to provide circulation that goes one way around the building. He said it would take \$32,400 off the rental income and that doesn't calculate in the increased environmental costs because of disturbing the ground. They are currently dealing with parking without the 8 ft. being taken off the building and there is no way to turn around. There is a utility easement that prevents a driveway easement from looping around the back of the adjacent building to the south.

Mr. Krieger explained the driveway to the west is over 22 ft. and easy to back out of. The spaces would be signed and policed by building management. In order to make a one-way drive, 10 ft. would have to come off the back of the building. The only issue with one-way is they would have to move their dumpsters to the east or the west and that would take out more parking.

Motion carried, 4-2.

ROLLCALL VOTE

Yeas: Share, Williams, Boyle, Jeffares

Nays: Koseck, Whipple-Boyce

Recused: Clein, Lazar

Absent: Prasad

Acting Chairman Boyle asked the applicant to spend quite a lot of time looking at the site plan and thinking about how they might use the three extra spaces to reach some of the challenges that Mr. Koseck has correctly raised about the safety and circulation.

08-163-17

Vice-Chairperson Lazar rejoined the board and took over the gavel.

2. 34965 Woodward Ave. (former Peabody's Restaurant)

Request for approval of the Preliminary Site Plan to allow a new five-story mixed-use building to be constructed (postponed from July 26, 2017)

Mr. Baka explained the petitioner has submitted an application for Preliminary Site Plan Review to construct a five-story building in the B4/D4 Zoning District. The property is located on the west side of Woodward Ave. on Peabody St. at the former location of Peabody's Restaurant and the former Art & Frame Station.

On July 26, 2017 the Planning Board reviewed the CIS & Preliminary Site Plan application for 34965 Woodward Ave. At that time, the board requested that the applicant provide additional information regarding the interfacing of the proposed

building with the two existing buildings on each side and how they will abut. Also, the board requested that the applicant provide additional renderings of the new building in context with the adjacent buildings. In addition, postponement was granted to provide the applicant time to engage with the neighboring property owners in light of the public comments made at the meeting. The applicant has now provided new details and renderings in addition to the previously submitted plans in order to supply additional information for the Planning Board to consider.

Design Review

The applicant is proposing to utilize the following materials for the construction of the five-story, mixed use building:

- Stone panels along the lower level of all façades;
- Masonry veneer along the upper levels of all façades;
- Stone for the base of the building;
- Steel window and door system; and
- Extensive window glazing on all facades.

The design of the building also includes balcony projections from the third floor on both facades of the building. The issue of projections over the right-of-way was recently discussed at the joint City Commission/Planning Board meeting. Staff intends to consult with the City Attorney prior to Final Site Plan Review to determine if an air rights agreement will be necessary to approve this aspect of the design.

Motion by Mr. Williams

Seconded by Mr. Jeffares to receive and file the following correspondence:

- **E-mail dated August 17 from Christopher Longe with attachments;**
- **E-mail dated August 22 from Richard Rassel;**
- **E-mail dated August 23 from Clinton Baller;**
- **Letter dated August 21 addressed to Patti Owens from Bailey Schmidt. LLC;**
- **Letter dated August 21 addressed to Patti Owens from Aura Pinkster;**
- **Letter dated August 22 from Hobbs & Black Architects;**
- **Letter dated August 22 from Alan M. Greene, Dykema Gossett PLLC;**
- **Letter dated August 23 from Timothy Currier, Beier Howlett.**

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Recused: Clein

Absent: Prasad

Mr. Chris Longe, Architect for the redevelopment of the Peabody site, came forward. He showed their building in context with the entire block. Also, he showed how their building would interface with both the north and the south facades of the adjacent buildings. The buildings roughly equate in terms of their overall height and floor height. The earth retention system tiebacks into the Peabody property that were used for construction of the Greenleaf Trust Building were depicted. The intention with their

building is that someone can walk from Woodward Ave. through a leased space all the way to Peabody St. He included a number of pictures showing local conditions where buildings are abutting.

Mr. Longe noted they made efforts to meet with their neighbors as suggested at the last meeting. They have done that to the extent of meeting with the Balmoral folks, but because of scheduling issues there has not been a meeting with the people from the Catalyst building to the north.

Vice Chairperson Lazar called for comments from the public at 8:35 p.m.

Mr. Steve Simona, 32820 Woodward Ave., Suite 240, Royal Oak, was present on behalf of the Balmoral ownership. He observed they built something of the highest quality that they felt the City envisioned and required of them. They want to see the Peabody site developed, but not to their detriment. As currently proposed, the south wall would block fifty windows and light and air to their building. They feel what the applicant is proposing is not compatible with their building nor consistent with what was required of the Balmoral Building, or what the Zoning Ordinance requires. They will not allow trespass onto their property for maintenance.

Mr. Jason Novotny, Tower Pinkster, Architects, spoke on behalf of Catalyst Development and the Greenleaf Trust Building. When they brought the Greenleaf Trust Building to the board in 2008, it was viewed as one of two buildings that would be the crown jewel on the east entry to Downtown, following the principles that were laid out in the Master Plan. Between the two tower buildings the Master Plan calls for a two or three story parking structure. They worked towards developing an attractive, four-sided building. A blank wall would not fly. He is sure the Balmoral had the same discussions with their north elevation. Some of the things he sees that would have a significant impact to either the north or south sites are:

- Lighting;
- Glazing calculations do not play out.

Mr. Tom Phillips, Hobbs & Black Architects, 100 N. State St., Ann Arbor, said the Balmoral Building has much the same story. In designing the building they worked carefully with the City and were encouraged to develop the north side because it was a gateway and a key visual element on the drive south along Woodward Ave. Both of the buildings offer the applicant a unique site in that the occupants are not looking at blank walls. They are looking at two expensive, high quality elevations. By stepping back four or five feet from the property line, the applicant would provide a reasonable amount of light between the buildings as they face each other all the way up. As it exists the applicant's design offers no opportunity to maintain their exterior walls without trespassing.

Mr. Alan Greene, 3955 Woodward Ave., Dykema Gossett, PLLC, represented Woodward Brown Associates, the developer and owner of the Balmoral Building. Mr. Greene noted they have a very valuable building with a facade of 50 windows, made of stone, with balustrades. Tenants look for a space that has windows, but with the proposed building they will look straight into a brick wall. Further, the interior design is built around the windows. The real estate developer for Balmoral has submitted a letter

saying that the proposed building as currently designed and set will greatly diminish the value of the two buildings. The loss of investment on the walls, the impact on the tenants, the ability to rent the spaces, and how much they can be rented for will all contribute to diminished value. These two buildings were not built as if they were going to be blocked by other buildings. He urged the board to either deny the site plan or give guidance to the developer as to what they might like to see so they can come back with something better.

Mr. Clinton Ballard, 388 Greenwood, said the developer wants to maximize his floor area but is constrained by height. As the City has already zoned for seven to nine story buildings right across the street, it would be very interesting to have the infill building go seven to nine stories, provided adequate setbacks are respected. This would leave the developer with an equitable amount of leasable space and room for parking, and all three developers would enjoy access to light and views.

In response to Mr. Share, Mr. Baka explained that if windows are within 5 ft. of the property line they must be fire rated. Mr. Longe verified for Mr. Share that the view of the facade travelling up and down Woodward Ave. would not be materially different if the building was on the lot line or 5 ft. off. He added that it is an odd feature to not have the buildings touch. Mr. Tom Phillips said the 5 ft. setback would double the visual access to light and air - a 10 ft. view shed.

Mr. Novotny pointed out for Mr. Share why he thinks the design of the infill building is incompatible with the adjacent buildings. Their buildings have primarily punched window openings on a masonry facade and the proposed building has glass strip windows across the front.

Mr. Share received clarification from Mr. Novotny that if the building is built to the lot line, it is a problem for all three buildings with regard to maintenance issues. One building will have to flash into the other building so that water will not enter. Mr. Phillips explained these are not abutting buildings in the sense that they can be flashed together. So the applicant's building on a zero lot line would have an exterior wall facing the lot line and open to the weather with no way to maintain it without trespassing onto Balmoral property,

Mr. Novotny explained for Mr. Share that the first floor of both the Balmoral and Greenleaf Trust buildings abut the lot line. Beyond that, both buildings are set back 5 ft. Greenleaf's situation differs from Balmoral's in that the fifth story balconies would abut one another from the Greenleaf Trust Building to the Peabody Building. He does not believe the Balmoral has that same circumstance with outdoor spaces that are side-by-side. Mr. Longe noted there is a demising wall between them. Mr. Novotny added another difference between the Balmoral and Greenleaf buildings is the glass that is currently abutting the lot line for the Greenleaf building is fire rated so that it has the potential to be a zero lot line material.

Mr. Share queried how interior lighting on the north and south elevations is handled on the Peabody Building. Mr. Longe responded that there is natural light that comes in from the glazing on the other two facades.

Mr. Koseck thought that maximizing square footage area creates a little bit of "B" type of space. If they could pull the walls in on the upper floors by creating light wells and windows it would make the building even better in terms of marketability and lease rates. Further, he thought that architectural compatibility is the next step in review and not for this evening. Mr. Longe responded that it is an odd condition to have buildings not meet. The two buildings chose on their own to make their facades that face inwards towards Peabody's something nicer than they had to be. As any architect will tell you, one has to prepare for eventualities.

Mr. Share and Mr. Williams were in agreement that a lot of information came in today and it requires more study. Mr. Williams said he was not prepared to take any action on the proposal tonight.

Mr. Rick Rassel, Williams Williams Rattner & Plunkett, PC, 380 N. Old Woodward Ave., the legal counsel to Alden Development Group, the applicant, spoke about the importance of perspective:

- Mr. Currier and the planning staff are aligned on the questions that have been posed in Mr. Greene's letter;
- The proposal is consistent with the Master Plan and with the Zoning Ordinance;
- They are in a zero lot line infill district;
- The proposed parking and height of the building is consistent with the Zoning Ordinance;
- Mr. Currier has opined that the construction impact and future maintenance issues are not concerns for the Planning Board to be taking into account at this stage of the Preliminary Site Plan approval;
- The question comes down to a couple of things. Mr. Currier has observed in his letter that the zero lot line construction as proposed is consistent with the Zoning Ordinance and has been used in many parts of Downtown Birmingham. The owners of the Balmoral and Catalyst buildings installed fire related glass windows facing the former Peabody's lot in anticipation of potential zero lot line construction;
- Peabody's granted Catalyst an easement to construct sun shades; the sunshades to be taken down in the event of future construction of the Peabody building;
- The argument about incompatibility is really about economic harm as a result of this building being built to the lot lines which Balmoral and Catalyst absolutely knew of and agreed not to contest. Incompatibility is not about design review standards or architecture.

It is important that this process move along this evening.

Mr. Alan Greene stated that there are no fire rated windows on the north elevation of Balmoral. The compatibility is related to the nature of the construction. The things they did on their elevation were encouraged by the City. To not require the same here is where it is incompatible in his view. Additionally, Standard 7.27 (3) states that the location, size, and height of the building shall not diminish the value of neighboring property. They believe that the way it is being done now it will. What the board has before it reflects not a single change as a result of their meetings with Mr. Shifman.

Mr. Williams indicated that he would like information about the City's encouragement of construction on the south and north sides respectively as preserved in the record at both the Preliminary and Final Site Plan Reviews for both buildings. It is important that the board understand that issue. Mr. Boyle added that the board's perspective on development has changed since construction of the Balmoral and Catalyst buildings. He agreed with Mr. Williams that the board needs to see what they actually talked about at that time.

Ms. Whipple-Boyce said she had hoped that the developers would meet and come up with a great plan for all properties. Unfortunately, it doesn't sound like that will happen. She believes that as Staff and the City Attorney have advised, the Peabody proposal satisfies the requirements of the Zoning Ordinance. It will be tricky and complicated getting the building up and maintaining it. There seems to be a lot of good reasons to re-look at what is being proposed.

Mr. Jeffares said he always assumed that another building would be built on this site. To him, by this building being a little different, the other two buildings pop.

Motion by Mr. Share

Seconded by Mr. Williams to postpone the application for Preliminary Site Plan for 34965 Woodward Ave. to September 13, 2017 and to suspend the rules to hear a site plan at that meeting.

There were no comments on the motion from members of the public.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Recused: Clein

Absent: Prasad

08-164-17

FINAL SITE PLAN AND DESIGN REVIEW

Chairman Clein rejoined the board and Mr. Share, the alternate board member, left.

1. 277 Pierce St. (former Varsity Shop)

Request for approval of a five-story mixed-use building with first-floor retail

Ms. Ecker advised the subject parcel is currently the site of the Varsity Shop, and has a total land area of .111 acres. It is located on the northeast corner of Pierce St. and E. Merrill St.

The applicant is proposing to demolish the existing 8,387 sq. ft. two-story building to construct a 27,000 sq. ft., five-story mixed-use building. The building will provide a lower level recreation area for the residential unit, first floor retail, second floor retail or

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, JULY 26, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on July 26, 2017. Vice-Chairperson Gillian Lazar convened the meeting at 7:31 p.m.

Present: Vice Chairperson Gillian Lazar; Board Members Robin Boyle, Bert Koseck, Janelle Whipple-Boyce; Student Representatives Ariana Afrakhteh, Isabella Niskar

Absent: Chairman Scott Clein; Board Members Stuart Jeffares, Bryan Williams; Alternate Board Members Lisa Prasad, Daniel Share

Administration: Matthew Baka, Sr. Planner
Jana Ecker, Planning Director
Carole Salutes, Recording Secretary

07-138-17

APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING OF JULY 12, 2017

It was discovered there were not enough members present at the July 12 meeting to form a quorum. Therefore, the minutes were postponed to the August 9, 2017 Planning Board meeting.

07-139-17

CHAIRPERSON'S COMMENTS

Ms. Ecker advised that only four board members are present and one member has to recuse herself on any substantive issue with regard to 298 S. Old Woodward Ave., the Boutique Hotel. Therefore, there will not be a quorum of the Planning Board present to discuss the hotel and that matter will be postponed to a future date. All other hearings may proceed with the caveat that everyone knows that in order for something to pass the support of all four members is needed. None of the applicants stepped forward to ask for postponement to a later date.

07-140-17

APPROVAL OF THE AGENDA

Vice-Chairperson Lazar announced that 2010 Cole St. has asked for postponement to August 23, 2017.

Motion carried, 4-0.

VOICE VOTE

Yeas: Whipple-Boyce, Boyle, Koseck, Lazar

Nays: None

Absent: Clein, Jeffares, Williams

07-144-17

COMMUNITY IMPACT STATEMENT ("CIS") REVIEW PRELIMINARY SITE PLAN REVIEW

34965 Woodward Ave. (former Peabody's Restaurant) Request for approval of the CIS to allow a new five-story mixed-use building to be constructed

Mr. Baka explained the subject site is currently vacant land where the former Peabody's Restaurant and the Art & Frame Station were located, and has a total land area of .597 acres. It is located on the east side of Peabody St., on the west side of Woodward Ave. and south of Maple Rd. The applicant is proposing to construct a 161,910 sq. ft. (including basement levels), five-story mixed-use building. The building will provide two levels of underground off-street parking; first floor retail/office; second and third floors office; fourth floor commercial/residential; and fifth floor residential. Parking for the residential units will be provided below grade in the parking garage. As the building is located within the Parking Assessment District, no on-site parking is required for retail, commercial or office uses. The applicant was required to prepare a Community Impact Study in accordance with Article 7, section 7.27(E) of the Zoning Ordinance as they are proposing a new building containing more than 20,000 sq. ft. of gross floor area.

CIS

The proposed development and its uses relate to the pedestrian, as the building is located at the property line and is proposed with human scale detailing on the first floor, including canopies, large windows, attractive stone and masonry facades, and elegant pedestrian entrances from both adjacent streets. The 2016 Plan encourages proper building mass and scale that creates an environment that is comfortable to pedestrians walking Downtown. The proposed development will help improve the visual appearance of the area by introducing a denser, more compact development with enough height to create a street wall along Peabody St. and Woodward Ave. The main entry to the building is located on Peabody St.

The applicant has submitted a Phase 1 Environmental Site Assessment by SME dated August 5, 2016. The report indicates that there is some evidence of recognized environmental conditions ("RECs") associated with this property. SME concluded that the reported presence of contaminated soil and groundwater; the potential for additional environmental impact from unreported and/or undetected releases of hazardous substances and/or petroleum products associated with the properties historical uses (vehicle manufacturing and repair operations); and the potential for cross contamination by a northern site which was formerly a vehicle repair and gasoline station, are all considered to be REC's.

An abbreviated Phase 2 Environmental Site Assessment ("ESA") dated August 5, 2016 was also submitted by the applicant as a part of the CIS. Phase 2 involved the collecting and analyzing of

13 soil samples and two groundwater samples by SME. The results of SME's sampling were supplemented by a previous Phase 2 ESA conducted by McDowell & Associates on April 26th, 2015 where 12 soil samples were collected and analyzed.

Evidence of petroleum and other pollutants were found in the soil samples. The applicant has submitted a Brownfield Redevelopment Plan for the proposed development site dated March 16, 2016. The purpose of this is to seek reimbursement for the eligible remediation activities performed on the property. The necessity for a Brownfield Plan arose from the results of the Phase 1 and Phase 2 ESA.

Conclusions in the CIS were that although the building is located within Birmingham's Parking Assessment District which requires no additional parking, additional parking spaces are needed to service the retail options proposed on the first floor. The applicant is proposing 90 off-street parking spaces and 11 on-street parking spaces to alleviate the stress on the Parking Assessment District. The traffic impact study also notes that westbound left turns onto Peabody St. from Maple Rd. would benefit from extending the turn lane full width all the way to the near Woodward Ave. crosswalk due to the larger queue lengths imposed by the new development. Other traffic impacts of the development will be relatively minor.

Mr. Chris Longe, Architect for the project, responded to Mr. Boyle. They expect to have ten or more rental units. Employees and residents will have access to the on-site parking. He was confident that people using the building will find places to park.

Ms. Ecker stated the first floor is not required to be retail on the Woodward Ave. or Peabody sides.

Regarding noise, Mr. Longe said the mechanicals have been placed in the middle of their building, so noise does not impact the buildings to the north and south.

The Vice-Chairman called for comments from members of the public at 8:20 p.m.

Mr. Allen Green, 39577 Woodward Ave., Bloomfield Hills, represented the ownership of Balmoral, the building to the south of the proposed project. He voiced their objections to the project. Their building, along with the Greenleaf Trust, was designed as a gateway. Each side has windows and decorative architectural elements. Those features will essentially be hidden and that will cause a huge financial issue for their building. He did not see any way they could build this without trespassing on the Balmoral property. If the developer moved the building, adjusted the lot lines and created a visually impactful north and south wall between the buildings, it would be a huge improvement to the corridor. Two sides of two beautiful buildings would not be hidden and destroyed. He asked the board to consider the alternatives. Lastly, there has been no discussion with their neighboring developer about their plans and how the Balmoral building would be impacted.

Ms. Ecker stated the applicant has the right to build on their property. There would be some logistical issues to work out but the Building and Engineering Depts. would work with the applicant on those. Depending on where the windows were built, there was never an expectation that they would remain unblocked. A developer can either set back the windows a certain distance from the property line, or keep them there and use fire rated glass. In many cases when windows are constructed closer than would be permitted, there is a signed agreement by the owners saying they understand those windows could be covered up if the property next door gets developed to its potential.

Mr. Allen Green noted there are serious parking issues in that area. It has been a nightmare to get parking permits for their various tenants. He additionally remarked that each of the 1,500 sq. ft. apartment units proposed only has one window.

Mr. Koseck observed the Zoning Ordinance promotes contiguous buildings and not gaps or alleys between buildings. Cities are made up of buildings that have a variety of building materials and architectural styles. Apartments with one window are designed all the time. They are called lofts.

Ms. Patti Owens with Catalyst Development Co., the developer of Greenleaf Trust, said she has not had any input or conversation with the developers of this project. She doesn't feel that the massing is congruent with the vision for the City as was outlined to them and mandated to them by the City during the planning and development of their Greenleaf Trust Building. So they built what they felt was the idea of Birmingham which was to have a gateway building, a jewel on that corner. The proposed project feels like it is not a strong and harmonious continuation. The project's terraces that face east are within a handshake of the Greenleaf terraces facing east. This proposed building needs to be its own beautiful thing. Shrink it back a little bit. She understood when they built the building that their views to the south would be impacted if something else was built. So that is in their agreement and they installed the fireproof glass on those windows. However, that is only on two bays. The rest of their building is set back and has regular windows. Additionally, maintenance of the building would be severely impacted as they are currently dealing with an algae problem.

Her view of parking in the area is that it is an absolute nightmare. She recommended that the Planning Board take a good hard look at that to make sure they are not overburdening that area with not enough parking for this rather large development.

Mr. Boyle suggested looking at Fifth Ave, Washington Blvd, Princess St. to see the fantastic street walls that have been constructed over time using different architects, owners, and sites. That is the reality of a city. Just walk along Maple Rd. That was built over time using different heights, different materials, different owners and it works. So it will be difficult for the speakers to make their case to him.

Mr. Koseck said he knows the building can go up without touching the neighbors. Ms. Whipple-Boyce noted the Varsity Shop site knew to consider the impact their adjoining neighbors might have when they decided not to put windows on the side of their building. She finds it unfortunate that covering the adjoining windows wasn't considered in the applicant's CIS.

Vice Chairperson Lazar encouraged the applicant to engage in conversation with the neighbors to the north and south in order to reach some kind of agreement. Ms. Whipple-Boyce agreed they should have gone the extra mile and engaged their neighbors. This is a huge impact on them and there is no assessment of that impact in the CIS.

Mr. Chris Longe said he knows there has been communication between the developer and the Greenleaf Building. He assured they can build this building. The building to the south is designed in such a way that it anticipates an infill building. The stair tower is solid block as it abuts the property and the window wall steps back whatever the code minimum is, anticipating the wall going up. There is also a 1 ft. easement on the north side abutting the Greenleaf Building. The agreement mentions there might be a building there some day and goes so far

as to talk about taking off the window awnings in that case. The strict letter of the law has been met as far as the CIS.

Mr. Koseck thought the concerns he has heard from the neighbors are more design concerns rather than CIS concerns. Vice-Chairperson Lazar observed that by adopting the CIS the Planning Board is not approving the project.

Motion by Mr. Boyle

Seconded by Mr. Koseck to accept the CIS as provided by the applicant for the proposed development at 34965 Woodward with the following conditions:

- (1) Provide mitigation strategies for control of noise, vibration and dust;**
- (2) Applicant will be required to bury all utilities on the site; and**
- (3) Applicant provide information on all life safety issues and Fire Dept. approval, as well as details on the proposed security system provided to and approved by the Police Dept.**

No one from the audience wished to speak on the motion at 9:15 p.m.

Motion carried, 4-0.

ROLLCALL VOTE

Yeas: Boyle, Koseck, Lazar, Whipple-Boyce

Nays: None

Absent: Clein, Jeffares, Williams

Preliminary Site Plan

Mr. Baka reported on the Preliminary Site Plan. The property is zoned B-4 in the underlying zoning and D-4 in the Downtown Overlay District. In accordance with Article 4, section 4.24 C (2) of the Zoning Ordinance, developments with over 50,000 sq. ft. of office space require two usable off-street loading spaces, and commercial uses from 5,001 to 20,000 sq. ft. require one usable off-street loading space. The plans do not display any off-street loading spaces. ***The applicant will need to submit plans demonstrating the size and location of three usable off-street loading spaces, or obtain a variance from the Board of Zoning Appeals.***

Design Review

The applicant is proposing to utilize the following materials for the construction of the five-story, mixed-use building:

- Stone panels along the lower level of all façades;
- Masonry veneer along the upper levels of all façades;
- Stone for the base of the building;
- Steel window and door system;
- Extensive window glazing on all facades.

Discussion considered the distinction between office and commercial on the fourth floor. Mr. Koseck noted the intent to get to five floors was to have residential on floors 4 and 5 in order to populate the Downtown and not put an additional burden on the parking structures.

Mr. Chris Longe said his building will have a significant entrance off of Woodward Ave. and off of Peabody St. He went through a PowerPoint and described the exterior elevation and interior layout along with the proposed materials. The building goes to the property line but the actual

first floor steps back on both the Woodward Ave. and Peabody St. sides. The reason for that is there is only 5 ft. of sidewalk there. They will internally brace the building because of the configuration of the site. Ten residential units are anticipated and 15 parking spaces are allowed for them. They would be open to putting windows on the side of their building, but didn't think it would be proper to do considering their proximity to the north and south neighbors.

Members of the public were invited to comment at this time.

Ms. Patti Owens reiterated her disappointment about the lack of communication between the developer and their neighbors. She agrees the proposed building needs to happen but she believes it should be stepped back to allow each building to stand on its own. She doesn't think that one building should benefit at another's detriment.

Mr. Allen Green said they are concerned about the value of their building and the operational issues. When the proposed building goes up next to them it will block the air and light of the 50 windows on that side. Their tenants looking out of those 50 windows a few feet away will see only a masonry wall. Further, no details have been provided about maintenance and how the properties relate to each other. For the buildings to be consistent with each other there may be insets anywhere between 5 and 15 ft. to be compatible with the buildings on either side. He asked the board to consider these issues, how the buildings interrelate, and whether this building is harmonious and meets the standards that are required in the Overlay District to get the fifth floor.

Mr. Koseck commented there are only four board members present and this is a sizable important project. He would like some additional information that would help him understand the design and how it speaks to the neighbors. He wanted to see a rendering of this building and how it relates to the neighboring buildings. Also, he wanted a cross section between the buildings to understand how they are abutting. Ms. Whipple-Boyce indicated she likes the building very much. She appreciates the contrast and the differentiation. In addition to what Mr. Koseck asked for, she wanted clarity on the fourth floor uses. She requested the applicant to review Article 7, 7.27 to see if they are meeting the ordinance well enough. Also, she wanted everyone to talk to each other.

Mr. Boyle thought the comments made by his colleagues are all very relevant.

Motion by Mr. Boyle to postpone a decision on the Preliminary Site Plan for 34965 Woodward Ave. to August 23, 2017.

At 10:20 p.m. there were no comments on the motion from members of the public.

Motion carried, 4-0.

VOICE VOTE

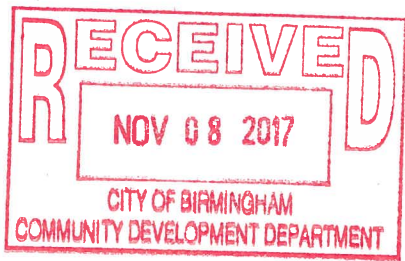
Yeas: Boyle, Koseck, Lazar, Whipple-Boyce

Nays: None

Absent: Clein, Jeffares, Williams

07-145-17

MISCELLANEOUS BUSINESS AND COMMUNICATIONS



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November 8, 2017

Richard E. Rassel, III
rer@wwrplaw.com

City of Birmingham Board of Zoning Appeals
Attn: Bruce Johnson, Building Official
151 Martin Street, P.O. Box 3001
Birmingham, MI 48012-3001

Re: 34965 Woodward Ave., Birmingham, MI (former Peabody's restaurant) (the "Property")

Dear Members of the City of Birmingham Board of Zoning Appeals:

The undersigned represents Peabody Owner LLC, a Michigan limited liability company, and Alden Development Group (collectively "ADG"), the owner and developer, respectively, of the Property that is the subject of certain Board of Zoning Appeals Applications submitted by Catalyst Development Company ("Catalyst") and Woodward Brown Associates ("WBA") (collectively the "Appeals") relating to the Birmingham Planning Board's September 13, 2017 grant of preliminary site plan approval with respect to ADG's re-development of the Property (the "Project").

ADG, in response and opposition to the Appeals, adopts and incorporates by reference:

- (i) Findings of fact and conclusions relative to the Birmingham Zoning Ordinance ("Ordinance") as determined by the Planning Board at its September 13, 2017 Meeting (the "Planning Board Meeting") at which a Motion was passed unanimously by the Planning Board, on Motion of Member Williams, to grant preliminary site plan approval to the Project. (*Exhibit A – verbatim transcript of Planning Board Meeting*);
- (ii) A September 8, 2017 Memorandum sent from Matthew Baka, Birmingham Planning Division, to the Planning Board setting forth in detail the basis upon which the Planning Division recommended that the Planning Board "APPROVE" preliminary site plan approval for the Project subject to the (7) design conditions accepted by ADG. (*Exhibit B – September 8, 2017 Memorandum to Planning Board*);
- (iii) City Attorney Currier's August 23, 2017 letter stating that there are were **no legal impediments** to the Planning Board's consideration of ADG's preliminary site plan relative to the Project with respect to: (a) consistency with the City Master Plan; (b) proposed zero lot line construction consistent with the Ordinance; (c) proposed onsite parking which exceeds the required minimum; nor (d) possible

trespass during construction as the means and method of construction of the Project have not yet been determined and the possibility of future trespass concerns is not a component reviewed by the Planning Board. (*Exhibit C – August 23, 2017 Currier letter*)

Despite transparently self-interested protestations to the contrary by Catalyst and WBA in the Appeals, the record here plainly establishes that **ADG satisfied all requirements of Section 7.27 of the Ordinance relative the Planning Board’s consideration and grant of preliminary site plan approval in favor of ADG and the Project.**

ADG specifically references the following relevant excerpts from the comments and Motion by Planning Board Member Williams at the Planning Board Meeting in support of preliminary site plan approval for the Project and in rebuttal to issues raised by Catalyst and WBA, identical issues to those raised in the Appeals (*See Exhibit A – verbatim transcript of Planning Board Meeting*):

“First of all, I want to thank Matt and Jana for researching approval documentation for the Greenleaf Trust and Balmoral buildings. **Their conclusion that there was no encouragement or requirement by the planning board for staff to install windows on the south and north property lines, respectively, is important. I have concluded that the applicant's proposal meets the requirements of the zoning ordinance for preliminary site plan approval.**

The report of the staff makes that abundantly clear, as does the letters of Beier Howlett dated August 23rd and September 13, which have been incorporated into the record and which form part of the basis for my comments. **The adjoining property owner's objections are detailed and weighty, but they do not justify denying the site plan.** Let me respond to each of the major points which they have raised.” Ex. A, transcript pp. 10-11 - Williams (emphasis added).

“The proposed office and residential use is **permitted by the zoning**...In fact, a five-story building with a top-floor residential is consistent with the zoning ordinance and is **not inconsistent with the master plan.**” Ex. A, transcript, p. 11-Williams (emphasis added).

“The site has **more than enough parking to meet the requirements** of the zoning ordinance for its residential component.” Ex. A, transcript, pp. 11-12 - Williams (emphasis added).

“...there will be **adequate light and air** to both the Greenleaf Trust and Balmoral buildings if this building is constructed to the lot line as proposed.” Ex. A, transcript, p. 12 - Williams (emphasis added).

"The ordinance does not guarantee no change in the amount of light and air, merely that the board assure itself that there is adequate light and air. In my opinion there is." Ex. A, transcript p. 13 - Williams (emphasis added).

"Many property owners might object to any building being built next to them and argue that any development will diminish their property value. It neither is nor should be the job of this board to choose between competing speculations whether proposed construction will reduce or increase value to a small degree." Ex. A, transcript, pp. 14-15- Williams.

"The construction that is proposed was completely foreseeable, although I do not think it is necessary for us to decide whether, or to what extent, the owner of the Green -- **the Greenleaf Building waived the right to make the objection she makes to the preliminary site plan. It is noteworthy that not only was this issue foreseeable, it was actually foreseen. The earth retention system and construction barricade agreement of November 28, 2008, specifically mentions that owner of the Peabody site could construct a building on the lot line.**" Ex. A, transcript, pp. 15-16 - Williams (emphasis added).

"Reference to the basic purposes of zoning shows that the purpose of regulation is to prevent a major loss in value. **Nothing suggested to us indicates** that the financial return that Balmoral or Greenleaf buildings will have after the Peabody building is constructed **will not be reasonable or economically viable...**" Ex. A, transcript, p. 16 - Williams (emphasis added).

"Regarding the requirements of 7.2783 as an absolute bar against any building permitted by the terms of the zoning ordinance that negatively affects his neighbors would turn the zoning ordinance from a public shield, which it is clearly intended to be, into a private sword benefitting the first to build." Ex. A, transcript pp. 16-17 - Williams (emphasis added).

"...this building proposed is compatible and does comply with the spirit and purpose of the zoning ordinance." Ex. A, transcript, p. 17- Williams (emphasis added).

"Six: Construction will necessarily result in trespass. Simply put, that is not an issue that is relevant to site plan review. The civil law adequately provides remedies to property owners if their neighbors invade their land without legal justification." Ex. A, transcript pp. 17-18 - Williams.

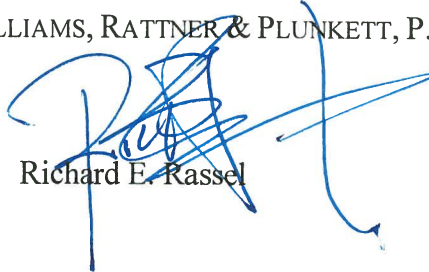
City of Birmingham Board of Zoning Appeals
November 8, 2017
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Based on these, my personal comments and on the record, including such facts and reasons as any of my colleagues willing to join in this motion articulate, I move approval of the preliminary site plan for 34965 Woodward Avenue as submitted." Ex. A, transcript, p. 19 - Williams.

Representatives of ADG and the undersigned will be at the BZA hearing to address any questions or concerns that you may have.

Very truly yours,

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



Richard E. Rassel

Enc.

EXHIBIT A

9/13/2017

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CITY OF BIRMINGHAM

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MEETING OF THE PLANNING BOARD

10

11

Wednesday, September 13, 2017

12

13

7:30 p.m.

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15

CITY COMMISSION ROOM

16

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151 Martin Street

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BIRMINGHAM, MICHIGAN 48009

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Regarding 34965 Woodward Avenue, Peabody

9/13/2017

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1 MEMBERS:
2
3 SCOTT CLEIN
4 JANELLE BOYCE
5 ROBIN BOYLE
6 STUART JEFFARES
7 BERT KOSECK
8 GILLIAN LAZAR
9 J. BRYAN WILLIAMS
10 LISA PRASAD
11 DANIEL SHARE
12
13 PLANNING DIRECTOR:
14
15 JANA ECKER
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1 that you would like me to review again?
2 MS. LAZAR: How does the board feel about
3 that? Would you like to do it?
4 MR. KOSECK: Are there any fundamental
5 changes from what we've seen?
6 MS. LAZAR: You would like to?
7 SPEAKER MATT: No, there are no revisions.
8 MR. KOSECK: No revisions?
9 MS. LAZAR: No revisions? All right.
10 That's fine. Thank you, Matt.
11 All right. Questions from the board? No?
12 Would the applicant care to come up,
13 please?
14 MR. RASSEL: Good evening, members of the
15 planning board. Richard Rassel, 380 North Old
16 Woodward, Birmingham, Michigan, with Williams Williams
17 Rattner and Plunkett, and I represent Alden
18 Development Group. We have with us this evening the
19 site architect, the project architect, Chris Long. We
20 have members of the ownership group here as well.
21 Basically, I think at this stage we were
22 able to present our thoughts and furtherance of
23 encouraging this board to move this process through
24 preliminary site plan at the August 23rd meeting. We
25 appreciate your patience greatly in working with us to

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1 SPEAKER MATT: Okay. So as you know, this
2 has been reviewed a couple times previously. Last
3 time the board discussed this was on August 23rd, and
4 at that time there was extensive discussion about the
5 interface of the proposed building with the two
6 neighboring buildings to the north and the south, and
7 the planning board requested that the staff do some
8 research on the history of those buildings and the
9 approval process and whether or not the planning board
10 actually required those windows to be there.
11 We did go back and look at all the minutes
12 that were available. Certainly, there was a lot of
13 minutes on the site to the south going back many, many
14 years, and also, the site to the north we -- after
15 thoroughly examining all the minutes, we didn't find
16 any references by the board or staff encouraging those
17 windows, though there were some comments by the
18 building department relating to putting windows on the
19 property line and that they specifically were not
20 permitted, but that was later resolved through the use
21 of fire-rated glass.
22 Certainly, if you want me to go through the
23 site plan again tonight, I'm more than happy to do so,
24 but if you want me to just leave our comments at
25 that -- or are there specific aspects of the building

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1 listen to our view of the fact that the master plan
2 and the zoning ordinance and -- in all respects, treat
3 this project as compliant. I think the staff has
4 obviously worked hard at looking at the research that
5 was directed to it, and we appreciate that.
6 We've had a chance to review the planning
7 staff's report of September 8th, and we find that the
8 information in there to be relevant to the question
9 that has been presented relative to the windows that
10 were installed on the north and south facades to our
11 neighbors, but I think at this stage of the
12 proceeding, we've had numerous comments. We're
13 willing to work with our neighbors in the aspect to
14 final design, should that be necessary, to try to make
15 the best project available for, not only our project
16 group, but for the betterment of the city and for this
17 important gateway.
18 So we look forward to moving this project
19 along and moving towards final site plan review and
20 working into the design aspects, working with staff in
21 the building department. We're here, obviously, to
22 answer any questions that you may have. We think that
23 we were very thorough in our examination of what was
24 agreed to between our neighbors and us and the
25 knowledge that they have, relative to this project,

2 (Pages 2 to 5)

9/13/2017

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1 and we think that all of that's been put in -- in
2 favorable perspective, relative to our request, to be
3 advanced through this preliminary site plan this
4 evening. So if there are any site design issues or
5 issues for ownership or issues that I can answer for
6 you, please let me know.
7 MS. LAZAR: Questions from the board? No?
8 Okay.
9 Thank you very much.
10 MR. RASSEL: Thank you.
11 MR. KOSECK: Just so everybody -- this is
12 the preliminary site plan approval, not final.
13 MS. ECKER: Right.
14 MR. KOSECK: So it's about the siting of
15 the building, the form, the mass, the -- so it's not
16 materials. It's not the architecture. It's not
17 the -- it's -- it's preliminary at this point.
18 MS. ECKER: That's correct.
19 MS. LAZAR: Take it to the public.
20 SPEAKER: Can I --
21 MS. LAZAR: Yes, of course.
22 SPEAKER: Is there -- Matt and Jana, to the
23 best of your knowledge, is there --
24 SPEAKER: Can't hear. Speak up, folks.
25 SPEAKER: Is the building being able to --

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1 built up to the lot lines? Is that within our
2 ordinance?
3 MS. ECKER: Yes.
4 SPEAKER: That's allowed?
5 MS. ECKER: That's allowed.
6 SPEAKER: Is there anything that you guys
7 know about where they gave up that right? Or that --
8 MS. ECKER: Peabody property?
9 SPEAKER: Yes.
10 MS. ECKER: No.
11 SPEAKER: Is there any -- okay.
12 MS. LAZAR: Any other questions before we
13 take -- okay.
14 Any further comments from the public?
15 Would anybody care to come up?
16 MR. GREENE: Thank you. Again, my name's
17 Alan Greene, and I'm at 39577 Woodward Avenue. That's
18 Michigan. I'm not gonna repeat -- you guys got my
19 letter, and you've heard me before, so I'm not going
20 to repeat all that. I will just summarize and say,
21 again, you know, I'm here representing the members of
22 the Greenleaf Trust Building, the Balmoral Building,
23 and, as we have emphasized, you have specific
24 standards in your ordinance that go beyond just coming
25 in and showing that, you know, you meet the setbacks,

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1 and it's within the height, because you're in a city
2 downtown area, and, specifically, with respect to
3 those standards, I think we presented our information
4 as to why this proposed new building does not meet
5 those standards.
6 It's not compatible on the north and south
7 side with the structures that exist, and I mean
8 compatible, not that it's the same design. It has
9 nothing to do with the design itself. It's the nature
10 of the construction, the quality of the construction,
11 the recesses of the construction, whether or not, you
12 know, 97 windows on these two buildings are going to
13 look out at a blank wall, that sort of thing. And
14 we've explained all that.
15 It's also -- deprives those buildings of
16 light and air, which is a specific standard of your
17 ordinance. It also materially impacts the value of
18 those buildings negatively, not only just the money
19 that was spent on building those facades in the first
20 place, but also the value of the space and the
21 disputes that are now going to occur, who are now
22 going to be deprived of light and air, et cetera.
23 And we've also pointed out that the way --
24 because these buildings weren't designed to be fully
25 abutting the way they're designing it is, it's going

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1 to cause innumerable and, we think, insurmountable
2 issues with respect to the ongoing maintenance and
3 operation and repair of both buildings, or all three
4 buildings, on the way it's constructed right now.
5 There are many alternatives that can
6 address these concerns that we have, and I could say
7 that since the very first meeting we were here, there
8 hasn't been a single change to the site plan, not a
9 single revision at all, with respect to what you see
10 before you. It is what they presented, and they're
11 just trying to maximize -- I get it -- maximize their
12 square footage that they can get out of the building.
13 So I didn't see anything in the record that
14 has been presented by the applicant that actually
15 addresses those standards specifically, only that, you
16 know, we're allowed to do it, that sort of thing. No
17 one's -- no one's come up and said you're wrong,
18 Mr. Greene and broker and neighbors, that we're not
19 going to impact your value whatsoever, your building.
20 Those are specific standards that your ordinance
21 requires, and we don't think that they're met here.
22 So we would ask that, at least with respect to this
23 particular site plan, that it be denied.
24 Thank you.
25 MS. LAZAR: Any other comments from the

3 (Pages 6 to 9)

1 public?

2 Bring it back to the board. Mr. Williams?

3 MR. WILLIAMS: I have -- with indulgence of
4 the other members of the board -- I have a lengthy
5 statement to make followed by a motion. So I'm going
6 to start, if that's all right.

7 I would say these comments are mine. Since
8 our meeting on August 23rd, I've had the opportunity
9 to review more carefully the materials submitted by
10 the applicant and by the neighboring property owners
11 in the context of the full zoning ordinance. I've
12 also listened to the comments tonight.

13 First of all, I want to thank Matt and Jana
14 for researching approval documentation for the
15 Greenleaf Trust and Balmoral buildings. Their
16 conclusion that there was no encouragement or
17 requirement by the planning board or staff to install
18 windows on the south and north property lines,
19 respectively, is important. I have concluded that the
20 applicant's proposal meets the requirements of the
21 zoning ordinance for preliminary site plan approval.

22 The report of the staff makes that
23 abundantly clear, as does the letters of Beier Howlett
24 dated August 23rd and September 13, which have been
25 incorporated into the record and which form part of

1 the basis for my comments. The adjoining property
2 owner's objections are detailed and weighty, but they
3 do not justify denying the site plan. Let me respond
4 to each of the major points which they have raised.

5 First, that the project is not consistent
6 with a master plan. The 2016 downtown plan approved
7 in 1996 envisions one possible future for this
8 property but not the only possible future. The fact
9 that the 2016 plan recommended that the site might
10 ultimately be a good one for a parking deck did not
11 mandate that it be so, and, in fact, the city has
12 taken no steps to require the property to construct
13 the parking deck. The proposed office and residential
14 use is permitted by the zoning.

15 The property owner need not wait to find
16 out if the city will someday decide it wishes to
17 acquire the property for parking, nor do the drawings
18 in the plan that are illustrative of possible future
19 conditions the architects mentioned in their comments
20 constitute a limitation on the property's use. In
21 fact, a five-story building with a top-floor
22 residential is consistent with the zoning ordinance
23 and is not inconsistent with the master plan.

24 Item two: No parking. The site is in the
25 parking assessment district. The site has more than

1 enough parking to meet the requirements of the zoning
2 ordinance for its residential component. On numerous
3 occasions, this board has made it clear that it will
4 not and cannot prevent owners in the parking
5 assessment district from developing their property
6 because there may be a shortage of parking Monday
7 through Friday at lunchtime.

8 The fact that the city may not have built
9 enough public parking does not change the fact that
10 this property owner and its predecessors, like many
11 others, have paid into the parking assessment district
12 with the understanding that will not have to -- have
13 to have on-site parking for nonresidential uses.

14 Three: The plan violates 7.27B2, the light
15 and air clause of the zoning ordinance. Counsel for
16 Dykema Gossett has made an argument that construction
17 of the -- of this building to the lot line will
18 prevent adequate light and air reaching the adjacent
19 properties in violation of section 7.27B2 of the
20 zoning ordinance. I believe a significant word is
21 "adequate." In any event, taking the language of the
22 ordinance at face value, there will be adequate light
23 and air to both the Greenleaf Trust and Balmoral
24 buildings if this building is constructed to the lot
25 line as proposed.

1 Each building has unimpeded light and air
2 on three of their four facades. The Balmoral
3 Building's windows are set back at least five feet on
4 the north facade. That five-foot well provides
5 adequate light and air. The affected windows on the
6 Greenleaf Building are those at both the east and west
7 end of the south facade, as the center of the
8 Greenleaf Building south facade also has a well where
9 the windows are set back from the property line.

10 Each one of the affected windows on the
11 part of the south facade built through the lot line
12 have windows that face to the east and west, there as
13 into the window well in the center and facing the
14 street on the outside so that their light is at least
15 good and arguably better than that provided to the
16 Balmoral Building. The ordinance does not guarantee
17 no change in the amount of light and air, merely that
18 the board assure itself that there is adequate light
19 and air. In my opinion there is.

20 Item four, section 7.7B3, the diminished
21 value section: Counsel makes the argument the
22 building will diminish the value of the adjacent
23 buildings, thus the preliminary site plan cannot be
24 approved. He supports his argument with the written
25 opinion of the real estate broker for the Greenleaf

1 Building that the four residential apartments on the
2 south wall will have diminishment of income due to the
3 loss of views. The penthouse rent will be reduced
4 from \$14,000 a month to \$10,000 a month, still beyond
5 by budget I would add. The other apartments might
6 likely have reductions, and the office would have a
7 reduction as well, although it is hard to estimate
8 that amount.

9 Presumably, his opinion would be similar
10 for the Balmoral Building, where nothing in his letter
11 distinguishes between those rental spaces on the
12 window wall of the Greenleaf Building and those at the
13 wall and the property line. Section 7.27B3 has two
14 parts. One is that the location size and height of
15 the building won't interfere with the reasonable
16 development of adjoining property, and it obviously
17 does not. The second is that the development will not
18 diminish the value of the adjoining property.

19 Assuming that there is some reduction in
20 rental income and that translate into some diminished
21 value of the building, some reduction, no matter how
22 small is, I do not believe, what the ordinance aims
23 at. Many property owners might object to any building
24 being built next to them and argue that any
25 development will diminish their property value. It

1 neither is nor should be the job of this board to
2 choose between competing speculations whether proposed
3 construction will reduce or increase value to a small
4 degree.

5 Zoning is necessarily a three-point balance
6 between the rights of adjoining property owners to
7 develop their properties as they see fit, the right of
8 their neighbor to not be disturbed, and the right of
9 the people as embodied in the municipality to regulate
10 land uses to achieve public purposes, some of which
11 are listed in section 7.24 of the ordinance, for
12 example, subsection F, to sustain the comfort, health,
13 tranquility, and contentment of residents and attract
14 new residents by reason of the city's favorable
15 environment.

16 The construction that is proposed was
17 completely foreseeable, although I do not think it is
18 necessary for us to decide whether, or to what extent,
19 the owner of the Green - the Greenleaf Building
20 waived the right to make the objection she makes to
21 the preliminary site plan. It is noteworthy that not
22 only was this issue foreseeable, it was actually
23 foreseen. The earth retention system and construction
24 barricade agreement of November 28, 2008, specifically
25 mentions that owner of the Peabody site could

1 construct a building on the lot line.

2 The Balmoral Building inferentially knew as
3 well since it constructed with a blank wall along the
4 easternmost part of the north facade. The question of
5 what amount of diminished -- diminish in the value
6 would trigger the violation of the ordinance need not
7 be determined tonight. Reference to the basic
8 purposes of zoning shows that the purpose of
9 regulation is to prevent a major loss in value.

10 Nothing suggested to us indicates that the
11 financial return that Balmoral or Greenleaf buildings
12 will have after the Peabody building is constructed
13 will not be reasonable or economically viable,
14 although it may not be as high as it would be if the
15 property owner in the middle of these two buildings
16 continued to allow it to be vacant or limited its
17 development to one or two stories.

18 One of the purposes of the zoning ordinance
19 is to make public health -- is to promote public
20 health, moral safety, comfort, convenience, and
21 general welfare. Reading the requirements of 7.27B3
22 as an absolute bar against any building permitted by
23 the terms of the zoning ordinance that negatively
24 affects his neighbors would turn the zoning ordinance
25 from a public shield, which it is clearly intended to

1 be, into a private sword benefitting the first to
2 build.

3 Fifth: The proposed building is not
4 compatible with the adjacent properties. Section
5 7.27B5 of the zoning ordinance requires the planning
6 board to determine whether or not the proposed
7 building will be compatible with other uses in
8 buildings in the neighborhood and will not be contrary
9 to the spirit and purpose of this chapter. We heard
10 much about compatibility at the August 23rd meeting.

11 Regardless of whether compatibility is
12 determined within the framework of visual appearance
13 or on a structural basis, such as the alignment of
14 floor levels, height, and mass, this building proposed
15 is compatible and does comply with the spirit and
16 purpose of the zoning ordinance.

17 The mixed-use nature is permitted. The
18 visual effect of height, mass, and floor alignment,
19 given the grades, are compatible. The zoning
20 ordinance itself, and I believe, as Mr. Jeffares
21 pointed out at the last meeting at section 7.24B,
22 discourages monotonous construction, so that the
23 objections that the building does not have masonry and
24 punched windows is, to me, of no persuasive effect.

25 Six: Construction will necessarily result

1 in trespass. Simply put, that is not an issue that is
 2 relevant to site plan review. The civil law
 3 adequately provides remedies to property owners if
 4 their neighbors invade their land without legal
 5 justification. If the developer of the Peabody site
 6 can't build what he is proposing to build without
 7 trespassing or if doing so would be too expensive, he
 8 will necessarily have to abandon the design and
 9 resubmit for some other type of building. It is not a
 10 basis to deny a site plan.
 11 There are plenty of reasons for these three
 12 property owners to cooperate. The comments made about
 13 maintenance alone justify cooperation between the
 14 parties. It isn't our place to dictate how those
 15 interests can or should ultimately be resolved or if
 16 they can be harmonized. I want to point out that
 17 every communication device in use today has the
 18 capability of two-way functionality.
 19 I am loath to hold it for or against one
 20 party that discussions have not been as frequent or as
 21 wide-ranging as we, or any particular party, may wish.
 22 Some of the issues that the property owners have
 23 raised are things, as Mr. Koseck points out, that we
 24 will consider at final site plan review. I can assure
 25 you that this board will carry out a searching,

1 comprehensive review of the criteria for final site
 2 plan approval.
 3 Based on these, my personal comments and on
 4 the record, including such facts and reasons as any of
 5 my colleagues willing to join in this motion
 6 articulate, I move approval of the preliminary site
 7 plan for 34965 Woodward Avenue as submitted, subject
 8 to the following seven conditions: One, the applicant
 9 submit plans with nine total trees or obtain a waiver
 10 from the staff arborist; two, the applicant verify
 11 that there will be five pedestrian lights on Peabody;
 12 three, the applicant provide a photometric plan and
 13 lighting specifications at the time of final site plan
 14 review; four, the applicant provide specification
 15 sheets for all mechanical units to verify that the
 16 screen wall is tall enough to sufficiently screen the
 17 proposed units; five, the applicant submit plans
 18 demonstrating the size and location of three usable
 19 off-street loading spaces or obtain a variance from
 20 the Zoning Board of Appeals; six, the applicant comply
 21 with the requests of all city departments; and, seven,
 22 the applicant provide material and color samples at
 23 final site plan review.
 24 MS. LAZAR: Thank you, Mr. Williams.
 25 Do we have a second? Any discussion about

1 the motion? Mr. Koseck?
 2 MR. KOSECK: I don't think there's anything
 3 to add. I think you've touched on all the issues that
 4 I see here, and, you know, there will be
 5 constructability challenges just like there are
 6 (inaudible) building that we saw last week and somehow
 7 those things, I hope, get worked out, but I see it
 8 exactly as you did, so I'm going to support the
 9 motion.
 10 MS. LAZAR: Any further comments from the
 11 board?
 12 Take it to the public. Any comments from
 13 the public?
 14 Bring it back to the board.
 15 Yes, Mr. Williams.
 16 MR. WILLIAMS: I want to make a comment
 17 that almost all of my comments are -- were written
 18 out, and I've given that to Carol, and so for those
 19 interested in the record, the comments, almost
 20 verbatim, will be repeated for the record in the
 21 minutes.
 22 MS. LAZAR: Thank you for all your efforts
 23 too.
 24 Okay. Okay. Then I think we'll do a roll
 25 call, please.

1 MS. ECKER: Mr. Williams?
 2 MR. WILLIAMS: Yes.
 3 MS. ECKER: Mr. Jeffares?
 4 MR. JEFFARES: Yes.
 5 MS. ECKER: Mr. Boyle?
 6 MR. BOYLE: Yes.
 7 MS. ECKER: Mr. Koseck?
 8 MR. KOSECK: Yes.
 9 MS. ECKER: Ms. Lazar?
 10 MS. LAZAR: Yes.
 11 MS. ECKER: Chairman Clein is recused.
 12 MS. LAZAR: Thank you, to the public. We
 13 look forward to seeing you further along in the
 14 process.
 15 MS. ECKER: Thank you.

9/13/2017

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CERTIFICATE OF NOTARY
STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

I, Susanne Ellen Gorman, a Notary Public in
and for the above county and state, do hereby certify
that the above recording was taken before me at the
time and place hereinbefore set forth; that this is a
true, full and correct transcript of my stenographic
notes so taken; and that I am not related to, nor of
counsel to either party nor interested in the event of
this cause.



Susanne Ellen Gorman
Susanne Ellen Gorman, CSR-9271 RPR
Notary Public,
Oakland County, Michigan.

My Commission expires: September 14, 2023

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EXHIBIT B



MEMORANDUM

Community Development

DATE: September 8, 2017

TO: Planning Board Members

FROM: Matthew Baka, Senior Planner

APPROVED: Jana Ecker, Planning Director

SUBJECT: 34965 Woodward Avenue – Preliminary Site Plan Review

The applicant has submitted an application for Preliminary Site Plan review to construct a five story building in the B4/D4 zoning district. The property is located on the west side of Woodward Avenue on Peabody Street at the former location of Peabody's Restaurant and the former Art & Frame Station.

On July 26, 2017 the Planning Board reviewed the CIS & Preliminary Site Plan application for 34965 Woodward. At that time, the Planning Board decided to accept the Community Impact Statement but postponed the Preliminary Site Plan review. The Board requested that the applicant provide additional information regarding the interfacing of the proposed building with the two existing buildings on each side and how they will abut. Also, the Board requested that the applicant provide additional renderings of the new building in context with the adjacent buildings. In addition, the postponement was granted to provide the applicant time to engage with the neighboring property owners in light of the public comments made at the meeting. In response to this discussion the applicant provided new details and renderings in addition to the previously submitted plans in order to provide additional information for the Planning Board to consider at the August 23rd Planning Board Meeting.

On August 23, 2017 the Planning Board reviewed the proposed project again and held further discussions with the applicant and representatives for the neighboring properties. Many of the challenges of constructing the proposed building were discussed as well as the ancillary effects of the proposal on the neighboring buildings. As a result of this discussion, the Planning Board postponed the review to the meeting of September 13th and requested that staff provide the minutes from the previous Planning Board meetings when both 34901 Woodward and 34977 Woodward were reviewed. The stated intent of providing this information is to determine if the buildings to the north and south of the subject site were encouraged or required to provide windows that abut the shared property lines of 34965 Woodward. Accordingly, the staff reports for the Final Site Plan reviews for both buildings have been attached which include all minutes from previous meetings for each site respectively. A thorough review of the minutes and staff report revealed no encouragement or requirements by the Planning Board or staff to install windows on the property lines abutting the 34965 Woodward site. The only comments made by staff regarding this issue were by the Building Department. For the Catalyst Building the

Building Department indicated that windows were not permitted on the property line. This was later resolved through the use of fire rated glass. Similar comments were provided for the proposed windows on the north elevation of the Balmoral Building.

1.0 Land Use and Zoning

- 1.1. Existing Land Use – The previous land uses on the site were a vacant two-story commercial building and a one story shop. The buildings were demolished in March, 2017 to allow construction of the proposed five story mixed use building.
- 1.2. Zoning – The property is zoned B-4 Business-Residential, and D-4 in the Downtown Overlay District. The proposed retail, office, commercial and residential uses, and surrounding uses appear to conform to the permitted uses of the zoning district, including the off street parking facility in the form of two levels of parking decks below the development.
- 1.3. Summary of Adjacent Land Use and Zoning - The following chart summarizes existing land use and zoning adjacent to and/or in the vicinity of the subject site, including the 2016 Regulating Plan

	North	South	East	West
Existing Land Use	Retail/ Commercial	Retail/ Commercial	Open Space/Parking	Parking/ Commercial
Existing Zoning District	B-4 Business Residential	B-4 Business Residential	B-2 General Business	B-4 Business Residential
Overlay Zoning District	D-4	D-4	MU-7	D-4

1. Setback and Height Requirements

The attached summary analysis provides the required and proposed bulk, area, and placement regulations for the proposed project. The applicant meets all of the bulk, area and placement requirements for the D-4 Downtown Overlay District.

3.0 Screening and Landscaping

- 3.1 Dumpster Screening – The applicant is proposing to store all trash inside the building envelope along the north side on a mechanical platform. The plans indicate trash chutes on all levels that lead to a trash compactor accessible via

the entry drive, but this is not clearly illustrated on the plans. **The applicant must clarify how the trash will be stored on this platform on the plans.**

- 3.2 Parking Lot Screening – Two levels of proposed parking will be placed underground with eleven (11) angled parking spaces in the right of way on Woodward. No parking lot screening is required.
- 3.3 Mechanical Equipment Screening – A rooftop plan has been submitted indicating six (6) roof top units to be located within a decorative stainless steel metal grate screen wall. **The applicant will be required to provide specification sheets on mechanical equipment and verify that the screen wall is tall enough to sufficiently screen the proposed units at Final Site Plan.**
- 3.4 Landscaping – The Downtown Overlay District requires that one street tree be provided for every 40' of street frontage. This development is required to have 5 trees along Peabody Street, and 4 trees along Woodward Avenue. The current plans depict two (2) trees on Peabody. **The applicant will be required to submit plans with 9 total trees, or get a waiver from the Staff Arborist.** Parking lot landscaping requirements do not apply in the Downtown Overlay District.
- 3.5 Streetscape Elements – The applicant will be expected to reconstruct the streetscape to the current streetscape standards which would include brushed concrete walking path with exposed aggregate border and pedestrian scale street lights along Peabody. The street lights are typically required every 40'. The frontage along Peabody is approximately 200' requiring five (5) lights. Sheet SD.3 appears to show five (5) street lights proposed however, they only two of the lights are clearly labeled. **The number of lights must be clarified by the applicant.** The Planning Board may also wish to require benches and trash/recycling receptacles to the streetscape if they deem fit.

4.0 Parking, Loading and Circulation

- 4.1 Parking – In accordance with Article 4, section 4.43 (PK) of the Zoning Ordinance, a total of 15 parking spaces are required for the residential level of the building (10 units x 1.5 parking spaces). No on-site parking is required for the proposed retail or office uses as the site is located within the Parking Assessment District. The applicant is proposing 90 parking spaces on site in a two-level underground parking deck and 11 angled parking spaces on the street. The total number of parking spaces provided on the plans is 101. All parking spaces meet the minimum size requirement of 180 square feet.

In accordance with Article 3, section 3.04(D)(5), Downtown Birmingham Overlay District, parking contained in the first story of a building shall not be permitted within 20' of any building façade on a frontage line or between the building facade and the frontage line. The proposal meets this requirement, as all parking is below the 1st floor.

- 4.2 Loading – In accordance with Article 4, section 4.24 C (2) of the Zoning Ordinance, developments with over 50,000 ft² of office space require 2 usable off-street loading spaces, and commercial uses from 5,001 to 20,000 ft² require 1 usable off-street loading space. The plans do not display any off-street loading spaces. **The applicant will need to submit plans demonstrating the size and location of 3 usable off-street loading spaces, or obtain a variance from the Zoning Board of Appeals.**
- 4.3 Vehicular Circulation and Access – Access to the underground parking garage will be via a garage door on the southwest corner of the building, along Peabody Street. Access to the 11 on street parking spaces will be along a one way pull-off from southbound Woodward Avenue.
- 4.4 Pedestrian Circulation and Access –The applicant is proposing pedestrian entrances at three points of the building. The primary entrance to the retail space will front onto Peabody St. at the center of the façade. An additional entrance is proposed along the Woodward frontage, also centrally located. Along Peabody St. there is a proposed entrance to the elevator lobby that will provide access to the residential units. All entrances are accessible from a City sidewalk.

5.0 Lighting

The applicant has not submitted any information regarding lighting at this time. **Specifications for any proposed lighting and a photometric plan must be submitted at Final Site Plan review to determine compliance with the Zoning Ordinance lighting standards.**

6.0 Departmental Reports

6.1 Engineering Division –The Engineering Dept. has reviewed the plans dated June 5th, 2017, and the CIS dated June 5th, 2017 for the above project. The following comments are offered:

1. The traffic study acknowledges that the City's parking system is operating near capacity, and does not presently have the capacity to accommodate the additional demand that this building will create. On page 22 of the report, the writer states that "it is reasonable" to assume that the manager of the parking system will explore the possibility of adding an additional floor on the top of the Peabody St. Structure.

Further, the writer indicates that "the study assumes that possibility to be both viable and successfully completed..." The Board is cautioned that the parking structure was not designed with the intention that it could be expanded in the upward direction to create additional capacity, and that this assumption should not be figured into the study. Further, while the parking system is ready and able to operate rooftop valet assist programs to add

capacity during peak hours in its other four structures, no such plan is in place at the Peabody St. Structure.

The rooftop valet system requires one to two additional staff on days it operates, and allows the system to fit 50 to 75 additional cars on the roof level by parking them closer together than what can be done when self-parked. Due to the limited land area at this site, and the present configuration of the roof, there is insufficient space available in this structure to make such a program feasible. The study should not proceed with the assumption that an additional level can or will be built at this facility.

2. The preliminary site plans show the building frontage is proposed set back off the property line on the Peabody St. frontage of the building. The owner will be required to sign a recordable ingress/egress easement for the public to use this area as a public sidewalk, prior to the issuance of a building permit.
3. The following permits will be required from the Engineering Dept. for this project:
 1. Sidewalk/Drive Approach Permit (for all pavement installed in the right of way).
 2. Right-of-Way Permit (for excavations in the right-of-way).
 3. Street Obstruction Permit (for partial obstructions of the City sidewalk or alley).

In addition, a permit will be required from the Michigan Dept. of Transportation (MDOT) for any use and construction within the Woodward Ave. right-of-way.

6.2 Department of Public Services – DPS has no concerns.

6.3 Fire Department – The Fire Department has no concerns at this time.

6.4 Police Department – The Police Department has no concerns at this time.

6.5 Building Division – The Building Division has no concerns at this time.

7.0 Design Review

The applicant is proposing to utilize the following materials for the construction of the five-story, mixed use building:

- Stone panels along the lower level of all façades;
- Masonry veneer along the upper levels of all façades;
- Stone for the base of the building;
- Steel window and door system; and
- Extensive window glazing on all facades.

The design of the building also includes balcony projections from the third floor on both facades of the building. The issue of projections over the right of way was recently discussed at the joint City Commission/Planning Board meeting. Staff intends to consult with the City Attorney prior to Final Site Plan review to determine if an air rights agreement will be necessary to approve this aspect of the design.

No material samples or colors have been provided at this time, but will be required at the time of Final Site Plan review.

Article 3, section 3.04(E), Downtown Overlay District, of the Zoning Ordinance contains architectural and design standards that will apply to this building, including specific requirements for the design and relief of front façades, glazing requirements, window and door standards and proportions, roof design, building materials, awnings and other pedestrian scaled architectural features.

The proposed building appears to meet the architectural standards set out in Article 3, Downtown Birmingham Overlay District, of the Zoning Ordinance as the first floor storefronts are directly accessible from the sidewalk, the storefront windows are vertically proportioned, no blank walls face a public street, and the main entries incorporate canopy features to add architectural interest on a pedestrian scale.

The building also appears to meet the architectural standards set out in Article 3 of the Zoning Ordinance which requires that at least 90% of the exterior finish of the building is glass, brick, cut stone, cast stone, coarsely textured stucco, or wood. In addition, the percentage of glazing for the facade and upper levels has been provided and demonstrates that the storefront minimum of 70% is met, and the maximum upper level of 35% has not been exceeded.

8.0 Approval Criteria

In accordance with Article 7, section 7.27 of the Zoning Ordinance, the proposed plans for development must meet the following conditions:

- (1) The location, size and height of the building, walls and fences shall be such that there is adequate landscaped open space so as to provide light, air and access to the persons occupying the structure.
- (2) The location, size and height of the building, walls and fences shall be such that there will be no interference with adequate light, air and access to adjacent lands and buildings.
- (3) The location, size and height of the building, walls and fences shall be such that they will not hinder the reasonable development of adjoining property and not diminish the value thereof.
- (4) The site plan, and its relation to streets, driveways and sidewalks, shall be such as to not interfere with or be hazardous to vehicular and pedestrian traffic.
- (5) The proposed development will be compatible with other uses and buildings in the

neighborhood and will not be contrary to the spirit and purpose of this chapter.

- (6) The location, shape and size of required landscaped open space is such as to provide adequate open space for the benefit of the inhabitants of the building and the surrounding neighborhood.

9.0 Recommendation

Based on a review of the site plan revisions submitted, the Planning Division recommends that the Planning Board **APPROVE** the Preliminary Site Plan for 34965 Woodward with the following conditions:

- (1) The applicant will be required to submit plans with 9 total street trees, or get a waiver from the Staff Arborist;
- (2) The Applicant verify that there will be five (5) pedestrian lights on Peabody;
- (3) Applicant must provide a photometric plan and lighting specifications at the time of Final Site Plan Review;
- (4) The applicant will be required to provide a specification sheet for all mechanical units to verify that the screen wall is tall enough to sufficiently screen the proposed units;
- (5) The applicant will need to submit plans demonstrating the size and location of 3 usable off-street loading spaces, or obtain a variance from the Zoning Board of Appeals;
- (6) Applicant comply with the requests of all City Departments; and
- (7) Provide material and color samples at Final Site Plan review.

10.0 Sample Motion Language

Motion to APPROVE the Preliminary Site Plan for 34965 Woodward subject to the following conditions:

- (1) The applicant will be required to submit plans with 9 total trees, or get a waiver from the Staff Arborist;
- (2) The Applicant verify that there will be five (5) pedestrian lights on Peabody;
- (3) Applicant must provide a photometric plan and lighting specifications at the time of Final Site Plan Review;
- (4) The applicant will be required to provide specification sheets for all mechanical units to verify that the screen wall is tall enough to sufficiently screen the proposed units;
- (5) The applicant will need to submit plans demonstrating the size and location of 3 usable off-street loading spaces, or obtain a variance from the Zoning Board of Appeals;
- (6) Applicant comply with the requests of all City Departments; and
- (7) Provide material and color samples at Final Site Plan review.

OR

Motion to DENY the Preliminary Site Plan for 34965 Woodward

OR

Motion to POSTPONE the Preliminary Site Plan for 34965 Woodward.

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, JULY 26, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on July 26, 2017. Vice-Chairperson Gillian Lazar convened the meeting at 7:31 p.m.

Present: Vice Chairperson Gillian Lazar; Board Members Robin Boyle, Bert Koseck, Janelle Whipple-Boyce; Student Representatives Ariana Afrakhteh, Isabella Niskar

Absent: Chairman Scott Clein; Board Members Stuart Jeffares, Bryan Williams; Alternate Board Members Lisa Prasad, Daniel Share

Administration: Matthew Baka, Sr. Planner

EXHIBIT C

Beier Howlett

ATTORNEYS AND COUNSELORS

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August 23, 2017

Ms. Jana Ecker, Planning Director
City of Birmingham
151 Martin Street, P.O. Box 3001
Birmingham, MI 48012-3001

Re: 34965 Woodward Ave. – Request for Preliminary Site Plan Approval

Dear Ms. Ecker:

You have forwarded to me Mr. Alan M. Greene's letter of August 22, 2017 for review. In Mr. Greene's letter, on behalf of his client, he objects to "the proposed preliminary site plan" which he contends 1) "violates the requirements of Section 7.27 of the zoning ordinance, 2) is inconsistent with the City's Downtown Birmingham 2016 Master Plan; and, 3) cannot be constructed as proposed without material change to the existing Balmoral Agreement Trust Buildings without trespassing under those properties."

The purpose of this general review is to advise us as to whether there are any legal impediments for the Planning Board to consider the request for preliminary site plan approval as submitted. By way of background, I have also reviewed the 2016 Plan, and this particular lot was part of an integrated mixed use development which was to encompass the whole block. As proposed, it is consistent with the Master Plan.

The zero lot line construction, as proposed, is also consistent with the zoning ordinance for this area, and has been used in many parts of downtown Birmingham. By way of interest, the owners of the Balmoral Building and Catalyst Building were required to install fire rated glass windows facing the former Peabody's lot in anticipation of the potential zero lot line construction. This they did when those buildings were constructed. It is also interesting to note that they have used zero lot line provision in the construction of their buildings.

This letter also raised that the parking was insufficient for the building proposed. The zoning ordinance requires that they provide onsite parking for the residential component of the project. The residential component would require 15 onsite parking spaces. A review of the proposed site plan, there is approximately 90 parking spaces on site, which far exceed the required minimum. In addition, this building is located within the parking assessment district which satisfies the parking requirement. Where these cars would be parked in the City would be subject to further discussion with the administration.

Beier Howlett

Ms. Jana Ecker
August 23, 2017
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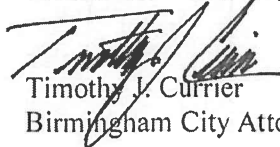
The question as to trespass during construction was also raised. The means and method of construction have not yet been determined, but as such it is not a component reviewed by the Planning Board.

Although, I had a brief time to review this material, I believe there is no legal impediment for the Planning Board to consider the proposed preliminary site plan as submitted.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

BEIER HOWLETT, P.C.



Timothy J. Currier
Birmingham City Attorney

TJC/jc

cc: Mr. Joseph A. Valentine, City Manager
City of Birmingham

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April 13, 2004

Mr. Thomas M. Markus, City Manager
City of Birmingham
151 Martin Street, P.O. Box 3001
Birmingham, MI 48012-3001

Re: Commissioner Attendance at Ethics Board Meeting

Dear Mr. Markus:

You requested our office to review the policies and research law regarding a question posed to you, which was stated as follows:

"I attended the Ethics Board hearing and the complaint against Ralph Seger.

Having attended a number of Board and Commission hearings/meetings over the years, I recall the chairs at those meetings refusing to hear testimony from a Commissioner.....stating that a Commissioner (having appointed the very board members he or she would be addressing) is in a 'coercive position' over the boards and commissions. Is there an ordinance or guideline? If so, would it apply to testimony by a Commissioner to the Ethics Board?"

Case law and City policy prohibit elected or appointed officials from appearing before a City board or commission as counsel or advocate for any party participating in the proceedings.

The City of Birmingham passed Resolution 1261 on August 5, 1968 regarding conflicts of interest. In paragraph 3 of the Resolution (**Exhibit 1**), it states as follows:

"3. No elected or appointed official should appear before any City board or commission as counsel or advocate for any party participating in any

proceedings before such board or commission, whether he is being paid for his services or not.”

In addition, the question was raised in January of 1971 by the then Building Official Howard C. Weber. On January 6, 1971 the City Attorney at that time, Dean Beier, issued an opinion (**Exhibit 2**) in which he stated:

“...no elected official may appear before the Board of Zoning Appeals as an advocate for either side of an issue coming before the Board.”

“.....

This decision is predicated on the fact that the Commissioners appoint the Board of Appeals and there is ‘legal coercion’ when one of the appointing officials appears before an appointed body.”

In Mr. Beier’s letter, he was referring to the case of *Barkey v Nick*, 11 Mich App 381 (1968), wherein the Court considered the situation where a City Commissioner appeared before the Board of Zoning Appeals representing his brother regarding a parking lot. The Court strongly held that such appearance by the City Commissioner was improper and any action taken based on the Commissioner’s appearance was void. The Court stated:

“We agree with petitioner that there has been an imposition of duress on the members of the board, not as a matter of fact, but as a matter of law, and that, in consequence of that duress, the action of the board is void. The presence of the city commissioner before the board brings with it the presence and powers of his office. It is basic to due process that in all judicial and *quasi*-judicial proceedings the deciding power must not seek to serve other than that of the voters, taxpayers, members of the general public, justice, and due process.”

Barkey v Nick, 11 Mich App 381 at
447 (1968)

In addition, the treatise *Law of Zoning and Planning* in Section 22.04(e) states:

“The appearance by a member of the legislative body or other officers of the municipality having the power of appointment of members of the body before whom he is appearing in behalf of a party to the application has been held to vitiate the proceedings.”

April 13, 2004

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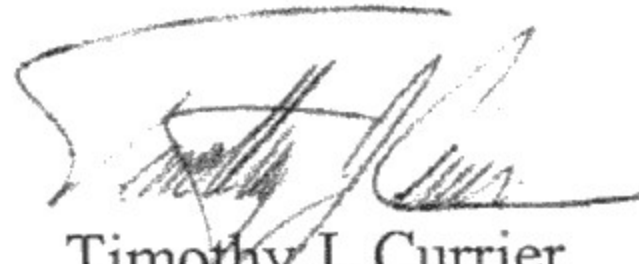
It is, therefore, the long-standing policy and law that members of the Commission cannot appear before the boards and commissions they appoint. An appearance by a Commissioner before the boards create duress on the members of the board, not as a matter of fact, but as a matter of law, and, therefore, a Commissioner should not appear before such boards and commissions. In addition, should a Commissioner appear before a board or commission, the Chair shall direct that the Commissioner not participate in the proceedings, as advised by Mr. Dean Beier in 1971.

In the event a Commissioner does appear before such board or commission and that participation is not challenged, any decision made by the board or commission that sides with the position taken by the City Commissioner may result in the action being declared void.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

BEIER HOWLETT, P.C.



Timothy J. Currier
Birmingham City Attorney

TJC/jc
Enclosures