

BOARD OF ZONING APPEALS AGENDA

City of Birmingham
Commission Room of the Municipal Building
151 Martin Street, Birmingham, Michigan
May 8, 2018
7:30 PM

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

	Address	Petitioner	Appeal	Type/Reason
1.	195 BALDWIN	BRAY	18-08	DIMENSIONAL
2.	411 COOLIDGE HWY	RIDDLE	18-10	DIMENSIONAL
3.	191 N CHESTER	SURNOW	18-11	DIMENSIONAL
4.	1066 CHAPIN	LIVE WELL	18-16	DIMENSIONAL
5.	34965 WOODWARD	CATALYST	18-17	DIMENSIONAL
6.	34965 WOODWARD	BALMORAL	18-18	DIMENSIONAL
7.	425 HARMON	LIEVOIS	18-19	DIMENSIONAL
8.	1185 WILLOW	SUAREZ	18-20	DIMENSIONAL

4. CORRESPONDENCE
5. GENERAL BUSINESS
 - a) Election of Vice Chairperson
6. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA
7. ADJOURNMENT

Title VI

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

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

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

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

BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, APRIL 10, 2018
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, April 10, 2018. Chairman Charles Lillie convened the meeting at 7:30 p.m.

Present: Vice-Chairman Peter Lyon; Board Members Kevin Hart (arrived at 8:12 p.m.), Jeffery Jones, Randolph Judd, Erik Morganroth; Alternate Board Members Jason Canvasser, Francis Rodriguez

Absent: Chairman Charles Lillie; Board Member John Miller

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

The Vice-Chairman welcomed everyone and explained the BZA procedure to the audience. Additionally, he noted that the members of the Zoning Board are appointed by the City Commission and are volunteers 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# 04-25-18

APPROVAL OF THE MINUTES OF THE BZA MEETING OF MARCH 13, 2018

Mr. Jones:

Page 8 - In the fourth paragraph, he was referring to the Powerhouse Gym sign on the other side of Jax Car Wash rather than Jax Car Wash.

Mr. Morganroth:

Page 2 - The voice vote should reflect "Absent: Miller;" and "Yeas: Morganroth, Canvasser, Hart, Jones, Judd, Lillie, Lyon."

Motion by Mr. Morganroth

Seconded by Mr. Jones to approve the Minutes of the BZA meeting of March 13, 2018 as amended.

Motion carried, 6-0.

VOICE VOTE

Yeas: Morganroth, Jones, Canvasser, Judd, Lyon, Rodriguez

Nays: None

Absent: Hart, Lillie, Miller

T# 04-26-18

1516 W. LINCOLN

Appeal 18-07

The owner(s) of the property known as 1516 W. Lincoln request the following variance(s) to construct a new single-family home with an attached garage:

A. **Chapter 126, Article 2, Section 2.08** of the Zoning Ordinance requires the front yard setback is the average of homes within 200.00 ft. The required front yard setback is 52.55 ft. The proposed front yard setback is 49.65 ft; therefore a variance of 2.90 ft. is requested.

This property is zoned R1-A.

Mr. Zielke advised the lot at this address is currently vacant. The existing homes in the 200.00 ft. to the east are on deeper lots and set back further from the front property line than the homes to the west. The recently constructed home to the neighboring west was granted a front yard setback variance on June 12, 2016. The applicant is asking to remove the over-sized lot to the east from the calculations which takes the average setback down to the 49.65 ft. Answering Mr. Canvasser, Mr. Zielke said the house is pushed right to the 30 ft. in the rear and cannot be moved any further back.

Ms. Diana Gjonaj, the homeowner along with her husband, advised they are seeking relief from a practical difficulty. With the exception of 1492 W. Lincoln they have the furthest setback on that street and one of narrowest lots. The lots to the east are much larger. Their neighbor directly to the east, 1510 W. Lincoln, similarly requested that the home at 1492 W. Lincoln be excluded from the calculation for front yard setback average, and it was approved by the BZA on July 12, 2016. They are planning to build a home that is just over 2,800 sq. ft. and believe that will keep within the spirit of the

neighborhood and will not be overbuilding. In response to Mr. Jones, she said they will still be behind both 1540 and 1510 which are neighbors directly to the east and directly to the west.

The Vice-Chairman asked for comments from the audience at 7:40 p.m.

Mr. Tom Lynch who lives with his family at 1580 W. Lincoln said they are supportive of the setback request as it is fair and reasonable and not self-created. The problem is just the uniqueness of some lots being deeper.

Motion by Mr. Morganroth

Seconded by Mr. Judd with regard to Case Number 18-07, 1516 W. Lincoln.

Regarding Chapter 126, Article 2, section 2.08 of the Zoning Ordinance, he moves to approve the appeal. He thinks this application is reasonable. The practical difficulty has been demonstrated with the single lot within 200 ft. that is atypical for the other adjacent homes to justify why this dimensional variance should be approved.

The need for a variance was not self-created. Further, it would be unduly burdensome for them to try to accommodate based on what is 200 ft. left and right, based on that unique home. For that reason, Mr. Morganroth moves to approve and tie his motion to the plans presented.

Motion carried, 6-0.

ROLLCALL VOTE

Yeas: Morganroth, Judd, Canvasser, Jones, Lyon, Rodriguez

Nays: None

Absent: Hart, Lillie, Miller

T# 04-27-18

195 BALDWIN

Appeal 18-08 (tabled from the BZA meeting of March 13, 2018)

The owners of the property known as 195 Baldwin request the following variances to renovate and construct an addition on an existing non-conforming home.

A. **Chapter 126, Article 2, Section 2.08** of the Zoning Ordinance requires the front yard setback is the average of homes within 200 ft. The required front yard setback for this property is 28.80 ft. The existing setback is 11.00 ft.; therefore, a variance of 17.80 ft. is requested.

B. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires a minimum rear yard setback of 30.00 ft. The existing setback is 5.00 ft.; therefore, a variance of 25.00 ft. is requested.

C. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires a minimum combined front and rear setback of 55.00 ft. The existing combined setback is 16.00 ft.; therefore, a variance of 39.00 ft. is requested.

D. Chapter 126, Article 4, Section 4.74 (C) of the Zoning Ordinance requires the minimum distance between structures on adjacent lots to be 25% of the total lot width. The required distance between is 43.75 ft. The proposed is 39.24 ft.; therefore, a variance of 4.51 ft. is requested.

E. Chapter 126, Article 4, Section 4.75 A (1) of the Zoning Ordinance requires that the attached garage be set back a minimum of 5.00 ft. from the portion of the front façade that is furthest set back from the front property line. The proposed garage is 6.76 ft. in front of the furthest front facade. Therefore, a variance of 11.76 ft. is requested.

This property is zoned R-2.

One letter in favor of granting the variances has been received.

Mr. Morad explained This home was granted variances previously in 2012 to construct a new single-family home with an attached garage. The owners are requesting similar variances that were initially applied in 2012, along with two additional for the proposed addition and renovation. The first three variances were granted in 2012. However because they were tied to the plans the applicants need to request them again for their proposed renovation.

Variance D is required because a corner of the house is now closer to the adjacent structure than the minimum would allow.

With regard to variance E, since the first three variances were granted, a new ordinance came into effect stating that the front face of the garage must be 5 ft. behind any portion of the front facade that is furthest set back from the front property line.

Mr. Morad recalled this case was before the board in March. There was an issue with the distance between structures, which is Variance D, that was published incorrectly at 40.71 ft. The reason was that the measurement was taken to the foundation rather than to the cantilever on the second floor. The initial variance was requested at 1.47 ft. and now they are required to have a 4.1 ft. variance.

Mr. Morad established there have been no changes to the plans since the last BZA meeting in March. This is a very unique situation since it is a flag lot.

Mr. Travis Bray, the homeowner, pointed out their lot is currently non-conforming due to its flag shape and its orientation to the street, which are some of the reasons for the initial variances in 2012. After the house was built they had two children and the house became no longer feasible for them. They are still requesting the same setback variances that were previously granted. Their hardship remains the flood plain on the side of the house and no ability to build a basement. That is what led them to this renovation. They are adding 400 sq. ft. which leaves them still under the 30% maximum lot coverage.

Mr. Judd stated he was supportive of the requested variances in 2012. However he is not supportive this time. His problem is that the applicant is enlarging on the variances that were previously granted. Also, the character of the house is being changed and it produces something that reminds him of storage containers. He asked Mr. Bray what would prevent him from using his property for a permitted purpose if the variances are denied.

Mr. Bray replied they want to maximize the amount of space within the house. They considered adding a story that would maintain some of the original rooflines. However, while it was still the same style, it created a very large mass on the north side of the home. They felt that affected more neighbors than the flatter design accomplishes.

With respect to the criteria for granting a variance, Mr. Judd was troubled about the second element which is doing substantial justice to surrounding property owners. He was worried about what kind of a view they would have with the proposed improvements. The last item is whether the problem is self-created and he felt it was. Lastly Mr. Judd was concerned about enlarging the non-conformity of distance between homes, Variance D.

Mr. Canvasser indicated that he also was struggling with Variance D. He asked about whether they had explored plans that would offer additional space but not need a variance. Mr. Bray said besides building up instead of out there was another option where they built east, but it visually encroached upon the established entryway.

Mr. Morganroth noted that the overhang really isn't storage; it is additional bedroom space. All of the bedrooms are 15 ft. wide, which is very generous. It sounds like their size could probably be mitigated. Mr. Bray said they looked at comparables and feel they are below some of the new construction sizes.

At 8:05 p.m. Vice-Chairman Lyon asked whether members of the audience wished to speak to this appeal.

Mr. Mark Thomas, 175 Baldwin, spoke in favor of increasing density over time. He hoped the variances would be granted so he would not lose these really good neighbors.

Motion by Mr. Judd

Seconded by Mr. Morganroth in regard to Appeal 18-08, 195 Baldwin. The petitioner seeks five variances for an existing home. It is noted from the history of the home that it has been before the board before back in 2012. In fact, extensive variances were granted to help change and rebuild the present property.

Mr. Judd would move to deny all five of the requested variances. He feels that the petitioner has not proven a practical difficulty in this case. He does not feel that strict compliance with the ordinances would unnecessarily prevent the owner from using the property for a permitted purpose and would render conformity with such restrictions unnecessarily burdensome.

We know that the home certainly can be used in its present state as a home and the change in the makeup of the family is what is driving this; not a condition of land or property.

He feels that to grant these variances would not do substantial justice to other property owners in the district and he doesn't feel it would give consistent justice to other property owners.

He does not feel that the plight of the owner is due to unique circumstances. While this is a problematic lot, that was addressed in 2012 with the construction of the present home built with the flood plain and other problems.

The last, as he said, is always a nettlesome problem. But he does feel in this case this problem is self-created. For those reasons, he would deny all of the variances requested.

Vice-Chairman Lyon indicated he will not support the motion. The house is not as massive with the flat roof as opposed to going up.

Motion to deny failed.

ROLLCALL VOTE

Yeas: Judd, Morganroth, Canvasser

Nays: Jones, Lyon, Rodriguez

Absent: Hart, Lillie, Miller

34965 WOODWARD AVE.
Appeal 18-12

The owners of the property known as 34965 Woodward Ave. request the following variance to allow zero (0) usable off-street loading spaces:

A. **Chapter 126, Article 04, section 4.24 C (4)** of the Zoning Ordinance requires three (3) usable loading spaces for buildings with greater than 50,000 sq. ft. of commercial space. This building has 58,760 sq. ft. of commercial space and thus a variance is requested to permit zero (0) loading spaces on site in lieu of the three (3) spaces required.

This property is zoned B-4.

Mr. Baka recalled the applicant was granted Final Site Plan Approval by the Planning Board On February 28, 2018 with the condition that they obtain a variance from the BZA in lieu of providing the required loading spaces. The adjacent Greenleaf Building to the north was awarded this variance in 2010. The Balmoral Building to the south was approved to provide loading spaces in the bank drive-thru

Mr. Morganroth asked what challenges the Greenleaf and Balmoral Buildings have had without loading spaces. Mr. Baka replied that to his knowledge they have not had any issues. Offices do not have large delivery trucks. The majority of the loading/unloading takes place in off hours on the Peabody side and not on Woodward Ave. Mr. Morganroth indicated that he has noticed congestion along Peabody if there is a truck in the way.

Mr. Baka noted the applicant would not be permitted to put a loading space between the front facade and the property line without a variance. However, in this case the front facade is built right up at the lot line as required.

Mr. Richard Rattner, 380 N. Old Woodward Ave., represented the owner of the Peabody site. He gave a PowerPoint presentation that highlighted the following:

- This is a unique triangular site that is between two zero lot line buildings.
- They have built two levels of underground parking containing 89 spaces. The entrance/exit is on the Peabody side. That preserves the required glazing, retail space for the building, and the public parking on Woodward Ave. and on Peabody. Further it maximizes pedestrian friendly access on both frontages.
- Every one of the four criteria for granting a variance have been met:
 - Strict application of the Ordinance unreasonably prevents the owner from a permitted use;
 - Literal enforcement results in unnecessary hardship;

- Granting the variance is not contrary to the spirit and purpose of the Ordinance nor contrary to health, safety, and welfare;
 - Granting the variance will result in substantial justice to the property owner.
- They also meet the fifth variance requirement, which is that this is not a self-created hardship.
- So, they feel this is in the spirit and purpose of the Ordinance because it fits within the D-4 Downtown Overlay District concept. It encourages the development of street-level retail, residential, and offices. With on-street loading and no on-property loading the building is cohesive and attractive, attracts pedestrians, and fits right into the 2016 Plan.

Mr. Jones inquired if there has been any thought about putting in just one loading space. Mr. Rattner replied that putting up a 20 ft. x 14 ft. area that is screened really destroys the cohesive nature of the on-street retail.

Responding to Mr. Hart, Mr. Rattner described why putting in three loading spaces on the Peabody side affects the interior underground parking. The whole building would have to be re-engineered. With that process, they would lose at least 30% of the 89 lower level parking spaces. Adding just one straight-in, straight-out space would also disturb everything underneath it, and again spaces would be lost.

Mr. Jones asked Mr. Rattner whether they have given some thought about the distinct possibility that the increased retail may increase the congestion on a limited size street by the virtue of having deliveries. Mr. Rattner said the increase of retail will bring foot traffic to that street. The way Peabody is now with curbside deliveries will be much more of a benefit to citizens. Also, the 89 spaces will take some burden off parking problems in the City.

Vice-Chairman Lyon asked if anyone in the audience wished to comment on this appeal.

Mr. Alan Greene, 39577 Woodward Ave., Bloomfield Hills, said he is appearing on behalf of Catalyst Development, the owner of the Greenleaf Trust Bldg. They do not object to some solution to the problem that has been raised. When Catalyst built their building, they asked for variances as well. For the same reasons Mr. Rattner mentioned, it didn't make sense to have a screened truck area on Peabody. So they asked for a variance for the screening and to have one of the two required loading spaces. They designed a turn-in loading space and received that variance.

His concern is that Peabody is a small street and the traffic there now is going to exponentially increase. It is unsafe to have no truck areas. The Balmoral can use Woodward Ave., and larger trucks can go into the drive-thru. Therefore he thinks their neighbor needs to be a little more creative and look at some solution.

Further, Mr. Greene noted the 89 underground parking spaces are not even close to the demand that will be generated by this 100,000 sq. ft. of building area. He pointed out that back In August 2017 the City Engineer wrote a report about the parking that would be generated by this building for the Preliminary Site Plan Review. He said 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. The assumption that an additional floor may be added on the top of the Peabody St. Structure should not be figured into the study.

Lastly, Mr. Green said all he would ask is that their neighbor look carefully at whether there really are alternatives that would not destroy the vision of their building or its aesthetics but would make it safe, and would provide some additional off-site parking for vehicles so they don't block the road.

Vice-Chairman Lyon recalled there used to be a drive lane before the Greenleaf Trust Bldg. went in. Catalyst took that lane out and made it the valet/loading area. Mr. Green established that the road was reconfigured entirely at the City's request and at Greenleaf's expense. The ability to have that cutaway into the right-of-way was approved as part of the variance request.

Mr. Chris Longe, Architect at 124 Peabody, addressed the technical reasons for not putting in a loading spot. He pointed out:

- They are in the Parking Assessment District and with their below ground spaces they are taking a load off of the Parking System.
- The Balmoral Bldg. received Final Site Plan Approval based on the fact they had a loading zone within their building that was supposed to be 14 ft. high. However they constructed the building with a loading zone with 8 ft. 6 in. clearance.
- The Greenleaf Bldg. has an area for pick-up and drop-off and for valet that is used by construction vans that park there pretty much all day long. A truck that services the Stand usually parks in the middle lane or on the west side of Peabody.
- Nobody uses any of those loading zones that both buildings claim. Everybody parks either in the middle of the road or off to the side.
- The Ordinance does not allow a curb cut in excess of 24 ft. To make this work another 12 ft. of curb cut would be needed. Glazing would be eliminated, which would need a variance. Backing in a truck and getting back out on a narrow street would be difficult.
- The greater benefit is to make this a viable City block without the advantage of an alley.

Motion by Mr. Judd

Seconded by Mr. Canvasser in regard to Appeal 18-12, 34965 Woodward Ave., the petitioner seeks a variance from three usable loading spaces for buildings greater than 50,000 sq. ft. of commercial spaces to zero (0). In making their argument the petitioner has noted the history of this particular building, the zoning, the 2016

Plan, the desire for a walkable community, the desire for street level shops, and relieving pressure on the parking structures adjacent.

After reviewing this, Mr. Judd would move to grant the variance under Chapter 126, Article 4, section 4.24 C (4). He feels that strict compliance would unreasonably prevent the owner from using the property for a permitted purpose or render conformity with such restrictions unnecessarily burdensome.

He also would note that the buildings to the north and the south of the petitioner's property have also been relieved of the requirement to have loading spaces. Specifically the building to the north utilizes a curb cut which also doubles for parking. The building to the south, the Balmoral Bldg., either uses the spaces in front or adjacent to the building or the drive-thru facilities offered by the bank. (Although when he walked through he was astonished that anyone would be able to do that.)

He feels that granting the variance would do substantial justice to the applicant and other property owners in the district, and lesser relaxation should be applied to give substantial relief to the owner of the property and is more consistent with justice to the other property owners.

He certainly does feel that the plight of the owner is due to unique circumstances of the building and the adjacent streets. Much has been made of how to do this without these spaces. He will be in New York next week and he expects to see exactly this occurring on frankly every street he will be on. Except in Birmingham he doesn't have to look at Moceres Produce trucks or Boors Head meat trucks.

Number 4, his favorite and Mr. Rattner's favorite, self creation: Is this a self-created problem? Mr. Judd supposed that everything that comes before this board is self-created. However, in this case he feels the petitioner has certainly argued adequate mitigation of this problem. It has been noted by one party who represents the building to the north that there has been a lack of creativity or imagination in the way this request has been handled. He feels that Mr. Longe, the architect, summed it up quite well by saying that this will work out. It always has. Traffic will have to accommodate, and deliveries will have to accommodate to certain times. For that reason Mr. Judd will attach his motion to the plans and once again, move to grant.

Mr. Jones indicated he will reluctantly support the motion. The applicant is asking for a 25% variance to remove the loading spaces. He will support it because he believes this property is so unique. He feels that no one coming on this island of commercial property is going to want to do or need to do anything but maximize it, whether it is this applicant or another. Creativity or otherwise, we come to this or some other

circumstance. So in this regard he thinks it is necessary and desirable for the City to have this development and he will reluctantly support it.

Mr. Morganroth said he too will support the motion reluctantly. He doesn't like to contribute to the challenges of Peabody and to the City of Birmingham and he is searching for another resolution. He understands the inability to put this truck loading in. He believes the applicant has properly demonstrated that this is a unique piece of property; it is a challenge, and for that reason he must support even though he wishes they had a better solution.

Mr. Hart noted he will wholeheartedly support the motion. The worst thing that could happen is that these loading areas end up creating a dead space in the back of the building and no one is going to want to walk there. The challenge is to create Peabody into something else from what it is now. The Planning Board and the appellant's architect have demonstrated that this is very important. So, he will support the motion.

Vice-Chairman Lyon established that he will also support the motion. He cannot think of a way to comply with the Ordinance that will not be a problem. As Mr. Longe indicated, trucks will probably have to use the street. He will leave enforcement to the Police Dept. to figure out how to keep from blocking traffic.

Motion carried, 7-0.

ROLLCALL VOTE

Yeas: Judd, Canvasser, Hart, Jones, Lyon, Morganroth, Rodriguez

Nays: None

Absent: Lillie, Miller

T# 04-29-18

857 REDDING

Appeal 18-13

The owner(s) of the property known as 857 Redding request the following variance(s) to construct a new detached garage:

A. **Chapter 126, Article 04, Section 4.03 (H)** of the Zoning Ordinance requires that the maximum area of the first floor of any accessory structure shall not exceed 500.00 sq. ft. in an R-3 District (575.00 sq. ft. with an interior staircase). The proposed garage is 675.00 sq. ft. Therefore, a variance of 100.00 sq. ft. is requested.

B. Chapter 126, Article 04, Section 4.03 (G) of the Zoning Ordinance requires that the maximum height of accessory structures is 14.50 ft. in an R-3 District. The proposed height is 15.50 ft. Therefore, a variance of 1.00 ft. is requested.

This property is zoned R4.

Two letters supporting the variances have been received.

Mr. Zielke explained this property location is zoned R-4 Two-Family Residential which permits the construction of single-family residential homes under the R-3 zoning regulations. This location currently has a single-family home constructed on it along with an existing non-conforming detached garage. The applicant is requesting variances to construct a new garage under the R-1 zoning regulations, as the surrounding single-family properties are in an R-1 Zoning District and the size of the lot exceeds the lot size requirements for an R-1 parcel. The proposed garage (675 sq. ft.) is smaller than the existing garage which is currently 760 sq. ft. Also proposed is a small addition at the back of the home

Vice-Chairman Lyon received clarification that if this was zoned R-1 the applicant would not be before the board because they would not need variance.

Mr. Mike Minna, the homeowner, explained the practical difficulty of his situation is the R-4 Multi-Family Zoning of his lot and its use as single-family. His home was built in the 1920s and the non-conforming garage is in dire need of being replaced. He has requested R-1 Zoning Standards because the majority of lots on his street are R-1. If he had the ability to attach the garage he would not need the variance because he would be within the building requirements for R-3. However there is a practical difficulty with attaching the garage, given the structure and the layout of the home. He does not believe his request is self-created because it has to do with R-4 zoning being applied to the R-3 standard.

No one in the audience wished to comment on this appeal at 9:30 p.m.

Motion by Mr. Jones

Seconded by Mr. Canvasser to approve the requested variances for Appeal 18-13, 857 Redding wherein the applicant is seeking a variance from Chapter 126, Article 04, section 4.03 (H) and Chapter 126, Article 04, section 4.03 (G). We have listened at length and certainly concur with the existing frustration between having an older house be there. He believes the applicant has sufficiently mitigated his request for a variance by seeking to comply with the R-1 standards, even though he did not need to. Mr. Jones thinks not only would the granting of the variance do substantial justice to the community, but he thinks to deny it would indicate that it would be a practical difficulty and an undue hardship for the applicant. He

would tie the request for variances to the plans and would also say that he does not believe this is self-created.

Vice-Chairman Lyon indicated he would support the motion. He thinks there is a clear case of practical difficulty here.

Motion carried, 7-0.

ROLLCALL VOTE

Yeas: Jones, Canvasser, Hart, Judd, Lyon, Morganroth, Rodriguez

Nays: None

Absent: Lillie, Miller

The board took a short recess at 9:33 p.m.

T# 04-30-18

34901 WOODWARD AVE.

Appeal 18-04

The owner(s) of the property known as 34901 Woodward Ave. request the following variances to allow two (2) signs on the exterior of the building:

A. Chapter 86, Article 01, Section 1.10 B (4) d Overlay Sign Standards states that each business whose principal square footage is on the first story may have one sign per entry. The principal square footage for this tenant is located on the third and fourth floors of the building. Therefore, a variance to allow an upper story tenant to have exterior signage is requested.

B. Chapter 86, Article 01, Section 1.10 B (4) d Overlay Sign Standards states that each business whose principal square footage is on the first story may have one sign per entry. The principal square footage for this tenant is located on the third and fourth floors of the building, which are accessible from one entrance on Peabody. The applicant is proposing two signs where one is permitted. Therefore, a variance to allow two signs where one entrance exists is requested.

This property is zoned B-4/D-4.

Mr. Baka explained that the applicant was previously permitted one building Identification sign as permitted by the Sign Ordinance. It is located at the top of the building façade along Woodward Ave. Two building identification signs are permitted on a corner building provided that the signs are identical. Since the signs currently proposed are of a different size than the existing one, the applicant was offered the option to remove the existing sign in order to install the two signs proposed. However,

the applicant is pursuing a variance instead. The Design Review Board ("DRB") reviewed the proposal on February 21, 2018 and found that the design was tasteful and compatible with the surrounding area.

Mr. Judd received clarification that the building tenant, Morgan Stanley, is allowed two building identification signs but they want three signs. Mr. Judd noticed that at the DRB meeting Mr. Harry Levan noted that no one can see the sign that is up high. Presumably the petitioner has a real attachment to that sign, despite the fact that it cannot be seen.

Mr. Baka explained for Mr. Canvasser that the Standard Sign Ordinance regulates signage by the width of the principal building frontage. On Woodward Ave. that number is multiplied by 1.5. The Overlay Sign Ordinance just identifies who can have signs and how many and how tall, but not how wide they can be.

Mr. Baka noted that the variances would allow signage to appear on three sides of the building, Peabody, Brown, and the existing sign on Woodward Ave.

Ms. Sarah Tom with Morgan Stanley indicated their main concern is the safety of their visitors to the building. Without the signs it is confusing about where to enter. That hardship is the main reason they are asking for the variances. Vice-Chairman Lyon inquired why they did not take up the offer to remove the main sign and put the other two up. Ms. Tom replied that as part of their lease the building naming rights sign is on Woodward Ave. Additionally the two proposed signs don't go over the amount of signage that has been approved for the building. Mr. Baka said when the building was designed it was approved for a Master Sign Plan by the DRB. The Sign Plan established where the sign band is and how tall the signs can be. There is not a limit on the number of signs, nor a specific square footage limit for this particular building because it was developed under the Overlay.

Mr. Canvasser asked if the concern is getting people in the door is there any reason why they couldn't have window signage. That may mitigate or eliminate the need for a variance. Mr. Baka said they could only have window signage in the windows above the business. Responding to Mr. Morganroth, he stated that a blade sign would not be allowed because Morgan Stanley is not located on the first floor.

No one from the public wished to speak on this appeal at 9:55 p.m.

Mr. Alan Greene clarified that the Master Sign Plan was very specific as to where the signs would go, that the signs were tasteful, and their height. It identified which floor the tenant was located. All the signs were approved incorrectly under the Standard Sign Ordinance but then the Overlay Sign Ordinance was applied because the building was developed under the Overlay, and it restricted signage for upper level tenants. Morgan Stanley is the largest tenant in the building, which is why they have the naming rights.

Motion by Mr. Judd

Seconded by Mr. Jones with respect to Appeal 18-14, 34901 Woodward Ave., the petitioner seeks a variance to the Overlay Sign District to place two signs over the entryway; one facing onto Brown and the other facing onto Peabody.

The building presently has a building designation sign on the east side facing Woodward Ave. The letters are 36 in. tall, establishing that Morgan Stanley is the lead tenant. The petitioner seeks the two additional signs with a height of 18 in. at the locations that have already been described.

Mr. Judd moved to approve this and he would like the petitioner to note that he is not impressed at all with the claim of worrying about safety for aged people like himself, white haired people wandering around in the street and not being able to find their way in, in inclement conditions. He is not buying that one at all, but he does feel that they do have some equity and have the right to have their name listed at these two locations. He is disappointed they could not reach an accord, which he thought was very reasonable by the way, with the City of Birmingham Planning Dept.

That said, Mr. Judd thinks that strict compliance would unreasonably prevent the owner from using the property for a permitted purpose and a purpose that other tenants presently enjoy.

He believes it would do substantial justice to the applicant and everybody else. The plight of the appellant is due to unique circumstances. He understands the conflict of the Standard Sign Ordinance for the rest of the City and the Sign Ordinance that applies to the Overlay District, which was discussed.

Is the problem self-created? You bet. But he thinks that once again, the equities mitigate here. So he would once again move to approve and tie it to the plans.

Motion carried, 7-0.

Vice-Chairman Lyon said he is struggling because he doesn't like the Ordinance and that is not a good reason to grant a variance. There is a substantial tenant and basically they should be allowed to have entrance signs that show where to enter the building. Because these variances are not detrimental to the property owners in the immediate vicinity and would result in substantial justice being done, he will support the motion.

ROLLCALL VOTE

Yeas: Judd, Jones, Canvasser, Hart, Lyon, Morganroth, Rodriguez

Nays: None

Absent: Lillie, Miller

T# 04-31-18

CORRESPONDENCE (none)

T# 04-32-18

GENERAL BUSINESS

Vice-Chairman Lyon said regarding Appeal 18-08, 195 Baldwin, it appears the board did not finish because it requires four affirmative votes to deny. The motion didn't pass; therefore there should be more discussion and possibly the appeal will be back before the board next month.

Secondly an election for vice-chairperson will be held at the next meeting because he will have to step down as he will no longer be a resident of the City of Birmingham. So, next month or possibly June will be his last meeting.

T# 04-33-18

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

T# 04-34-18

ADJOURNMENT

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

Bruce R. Johnson, Building Official

CASE DESCRIPTION

195 Baldwin (18-08)

Hearing date: May 8, 2018

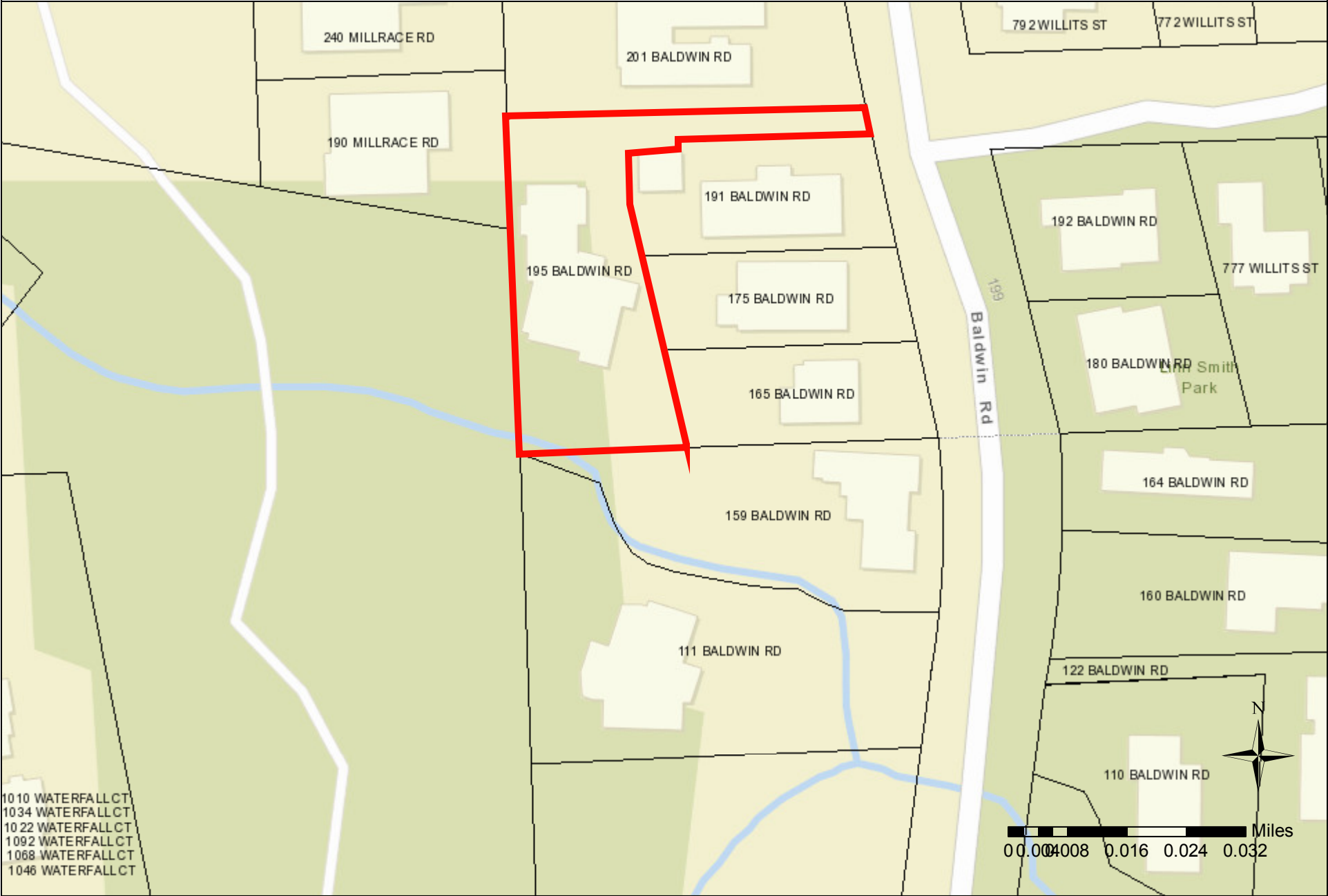
The owner(s) of the property known as 195 Baldwin request the following variance(s) to renovate and construct and addition on an existing non-conforming home:

- A. **Chapter 126, Article 2**, Section 2.08 of the Zoning Ordinance requires the front yard setback is the average of homes within 200 feet. The required front yard setback for this property is 28.80 feet. The existing setback of 11.00 feet; therefore, a variance of 17.80 feet is requested.
- B. **Chapter 126, Article 2**, Section 2.08 of the Zoning Ordinance requires a minimum rear yard setback is 30.00 feet. The existing setback is 5.00 feet; therefore, a variance of 25.00 feet is requested.
- C. **Chapter 126, Article 2**, Section 2.08 of the Zoning Ordinance requires a minimum combined front and rear setback of 55.00 feet. The existing combined setback is 16.00 feet; therefore, a variance of 39.00 feet is requested.
- D. **Chapter 126, Article 4**, Section 4.74 (C) of the Zoning Ordinance requires the minimum distance between structures on adjacent lots of 25% of the total lot width. The required distance between is 43.75 feet. The proposed is 39.58 feet; therefore, a variance of 4.17 feet is requested.
- E. **Chapter 126, Article 4**, Section 4.75 A (1) of the Zoning Ordinance requires that attached garages be setback a minimum of 5.00 feet from the portion of the front façade that is furthest setback from the front property line. The proposed garage is 6.76 feet in front of the furthest front facade. Therefore, a variance of 11.76 feet is requested.

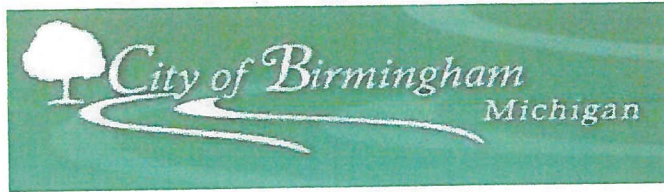
Staff Notes: This home was granted variances previously in 2012 to construct a new single family home with an attached garage. (BZA Case #12-14 minutes included). The owners are requesting similar variances that were initially applied in 2012, along with two additional for the proposed addition and renovation.

This property is zoned R2.

195 BALDWIN



Application Date: 2-15-18



Hearing Date: 2-13-18

Received By: BW

Appeal # 18-08

Board of Zoning Appeals Application

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

Property Information:

Street address: <u>195 BALDWIN</u>	Sidwell Number: <u>19-25-353-013</u>
Owners name: <u>TRAVIS AND REBECCA BRAY</u>	Phone #: <u>248-935-8546</u>
Owners address: <u>195 BALDWIN</u>	Email: <u>RJBRAY@EPITEC.COM</u>
City: State: <u>BIRMINGHAM, MI.</u>	Zip code: <u>48009</u>
Contact person: <u>JOSEPH MOSEY</u>	Phone #: <u>248-515-4477</u>

Petitioner Information:

Petitioner name: <u>JOSEPH MOSEY, RA</u>	Phone #: <u>248-515-4477</u>
Petitioner address: <u>108 CENTER, STE. 205</u>	Email: <u>JOSEPH@JMA-ARCHITECTS.CO</u>
City: <u>NORTHVILLE</u> State: <u>MI</u>	Zip Code: <u>48167</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.

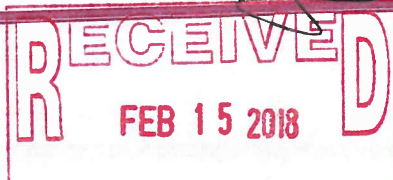
The BZA review fee is **\$310.00** for single family residential; **\$510.00** for all others; and **\$50.00** for the public notice sign.

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'
-------------------------	-----------------	-----------------	-----------------	--------------------------

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: Rebecca Bray Date: 2/15/2018





JOSEPH MOSEY
ARCHITECTURE, INC.

REQUEST FOR DIMENSIONAL VARIANCE CLARIFICATION

DATE: April 16th, 2018

PROJECT: Bray Residence

SUBJECT: 195 Baldwin

To: Zoning Board of Appeals
City of Birmingham
250 Martin Street
Birmingham, MI 48009

Dear Members of the Board:

The purpose of this letter is to respectfully request a clarification on the previous approved dimensional variance from this board to the Zoning Ordinance requirements from June 12, 2012.

Project background: In 2012 the current owners applied for multiple dimensional variances of which all were granted in a unanimous decision. The motion was approved 7-0. Some of the previous commentary of board members include the following:

- Mr. Judd stated that he felt “strict compliance with setbacks would unreasonably prevent the owner from using the property for a permitted purpose and would make such restrictions burdensome.”
- It was also said that “granting of these variances would do substantial justice to the applicant as well as to surrounding property owners”
- Mr. Judd also noted all neighbors who attended the 2012 meeting spoke in support of the motion.
- Ms. Gail Whitty, Mr. Thomas, Ms. Patti Kelter all residents in attendance spoke in favor of the previous variances.

Today we are asking the board to maintain and uphold the existing approved variances by your previous committee members. The conditions that existed in 2012 remain today. The lot is rare and unique, representing less than .025% of lots in Birmingham. The lot is still an unusual shaped “Flag Lot”, with a unique width that is more than double its depth. A portion of the lot contains property in a flood plain restricting expansion to the south. The circumstances remain problematic and difficult on the site. The proposed structure today seeks to contain the new building envelope within the previously approved variances of 2012. We are in no way asking to increase or build beyond the earlier setback variances approved. However, we are asking for a minimum distance variance to one residence. Due to the size of the lot width we are seeking a distance between buildings variance of 4.17'.

We are also asking for a variance to the required Garage setback from furthest forward-facing plane of the house. The condition, in effect, does not change from the current home as it was approved and built. The dimensions of Garage location and forward-facing plane are identical to the existing conditions.

Building Distances:

Existing House to	Required	Actual distances	Variance requested
Neighbor #190:	43'-9"	39'-7"	4'-2"
Neighbor #191	43'-9"	45'-4"	0
Neighbor#175	43'-9"	45'-1"	0
Neighbor #165	43'-9"	81'-3"	0

The petitioners at 195 Baldwin respectfully request this committee uphold the previously granted variances from 2012. They recognize that the additional square footages proposed reduces the distance between residences in a single case. Respectfully, they hope this committee can appreciate the 39'-7" distance maintaining and see your way to approving the 4'-2" variance they are seeking caused by this uncharacteristic lot dimension and circumstance for the neighborhood.

Sincerely,

Joseph M. Mosey, RA

CC: Travis Bray & Rebecca Bray

Attachment: See Previous Meeting Minutes dated June 12, 2012

BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS

TUESDAY, JUNE 12, 2012

Commission Chamber, City Hall
151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, June 12, 2012. Chairman Charles Lillie convened the meeting at 8 p.m.

Present: Chairman Charles Lillie; Board Members David Conlin, Kevin Hart, Thomas Hughes, Jeffery Jones, Randolph Judd, John Miller

Absent: Board Member Peter Lyon; Alternate Board Member Cynthia Grove

Administration: Matthew Baka, Planning Specialist
Bruce Johnson, Building Official
Carole Salutes, Recording Secretary
Scott Worthington, 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. 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 before the board this evening. Also, appeals are heard by the board as far as interpretations or rulings. There are no interpretations and/or use variances called for this evening. Four affirmative votes are required to reverse an interpretation or ruling.

06-34-12

APPROVAL OF THE MINUTES OF THE BZA MEETING OF APRIL 10, 2012

Motion by Mr. Conlin

Seconded by Mr. Miller to approve the Minutes of the BZA meeting of May 8, 2012 as presented.

Motion carried, 7-0.

VOICE VOTE

Yeas: Conlin, Miller, Hart, Hughes, Jones, Judd, Lillie

Nays: None

Absent: Lyon

Absent: Lyon

06-36-12

**195 BALDWIN
(Appeal 12-14)**

The owners of the property known as 195 Baldwin request the following variances to construct a new principal structure:

- A. Chapter 26, Article 2, Section 2.08 requires a minimum front yard setback of 28.8 ft, with 11 ft. proposed; therefore, a variance of 17.8 ft. is requested.
- B. Chapter 26, Article 2, Section 2.08 requires a rear yard setback of 30 ft., with 5 ft. proposed; therefore, a variance of 25 ft. is proposed.
- C. Chapter 28, Article 2, Section 2.08 requires a combined front and rear setback of 55 ft., with 16 ft. proposed; therefore, a variance of 39 ft. is requested.

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

Mr. Victor Saroki, Victor Saroki Associates, architect for the petitioners, Travis Bray and Rebecca Warchuck, indicated his clients have a signed Purchase Agreement contingent upon receiving the requested variances this evening.

Mr. Worthington explained only the point of the house sets at 5 ft. in the rear and the rest is staggered back. Mr. Judd noticed that public parkland lies adjacent to the west. Mr. Johnson noted that over the last few years the City has been taking more of a pro-active approach so that surrounding properties do not encroach on the public land.

Mr. Saroki indicated the proposed house footprint is larger by 48 sq. ft. than the house that existed. The existing house was 2,400 sq. ft. and the new house will be over 4,000 sq. ft. They are significantly below the lot coverage that is permissible by the Ordinance. The flag lot is unique in that its width is more than two times its depth. The significant hardships of the lot include a unique front and rear yard orientation, and that part of the property is in the flood plain. Therefore they feel that all of these circumstances result in a practical difficulty in developing the site. None of the circumstances were self-created. They also feel that the granting of the requested variances is a benefit to all and does substantial justice to the applicant.

All of the neighbors within 300 ft. were invited to an informal meeting so that they could ask questions. It was discussed that when the Ordinance is applied to this lot, the lot becomes unbuildable. They have brought the rooflines down because it brings down the scale of the house. Dormers have been created in the bedrooms and on the second floor for a more interesting look.

Chairman Lillie asked for comments from members of the audience at 9:15 p.m.

Ms. Gail Whitty, 165 Baldwin, likes the plan and spoke in favor of the appeal for variances.

Mr. Mark Thomas thought the design fits the neighborhood and hopes that it is approved.

Ms. Patti Kelter lives at 201 Baldwin, just north of the subject property. She said they are thrilled with the drawings and hopes they get approved.

Motion by Mr. Judd

Seconded by Mr. Jones in regard to Appeal 12-14, 195 Baldwin, the petitioner seeks three variances, all of which arise from Chapter 26, Article 2, Section 2.08. Variance (A) pertains to the minimum front yard setback, seeking a variance of 17.8 ft. Variance (B) is for the rear yard setback and seeks a variance of 25 ft. Variance (C) requires a variance for the combined front and rear yard setback of 39 ft.

In regards to Variances (A), (B), and (C), Mr. Judd would move to approve. He feels that strict compliance with these setbacks would unreasonably prevent the owner from using the property for a permitted purpose and would make such restrictions unnecessarily burdensome. He notes from the drawings that this is an extremely unusual lot and if the petitioner was required to meet these setbacks it would look like a necktie and is definitely an unbuildable section.

Secondly, the granting of these variances would do substantial justice to the applicant as well as to surrounding property owners. While this board is not bound by the opinions of the surrounding property owners, Mr. Judd does note that all who have spoken here tonight do support it. He feels it would give substantial release to the property owner and substantial justice to the other property owners.

A third point is whether the plight of the property owner is due to the unique circumstances of the property. In this case he has already addressed that. Its location is extremely unusual, being on a flag lot at the end of a vacated street, which causes some confusion as to whether the front of the house is on Willits or on Baldwin.

As to whether or not the problem is self-created, Mr. Judd feels in this case if this was an empty sheet of paper, he might have some problems as to whether or not Mr. Saroki has put his shoulder to the wheel and done the best job he could in limiting this. However, while he does feel there is a self-creation problem here, there is also mitigation. He feels that Mr. Saroki and his clients have

demonstrated a great deal of mitigation of these problems. For those reasons, Mr. Judd would move to approve and he would tie it to the plans.

Mr. Miller added that this proposal does meet the minimum distances between buildings. The setbacks would comply if the front of the lot was to the north as opposed to the way it is with the flag configuration. Also, the house is below the maximum lot coverage required. Therefore, he thinks that substantial justice has been done to the neighbors in that regard.

Mr. Conlin and Mr. Hughes complimented Mr. Saroki on his extraordinary presentation.

Motion carried, 7-0.

ROLLCALL VOTE

Yeas: Judd, Jones, Conlin, Hart, Hughes, Lillie, Miller

Nays: None

Absent: Lyon

06-37-12

**955 HUMPHREY
(Appeal 12-15)**

The owners of the property known as 955 Humphrey request the following variance to construct a new principal residence.

- A. Chapter 26, Article 4, Section 4.69 requires a minimum of 14 ft. between principal structures, with 11.1 ft. proposed; therefore, a variance of 2.9 ft. is requested.

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

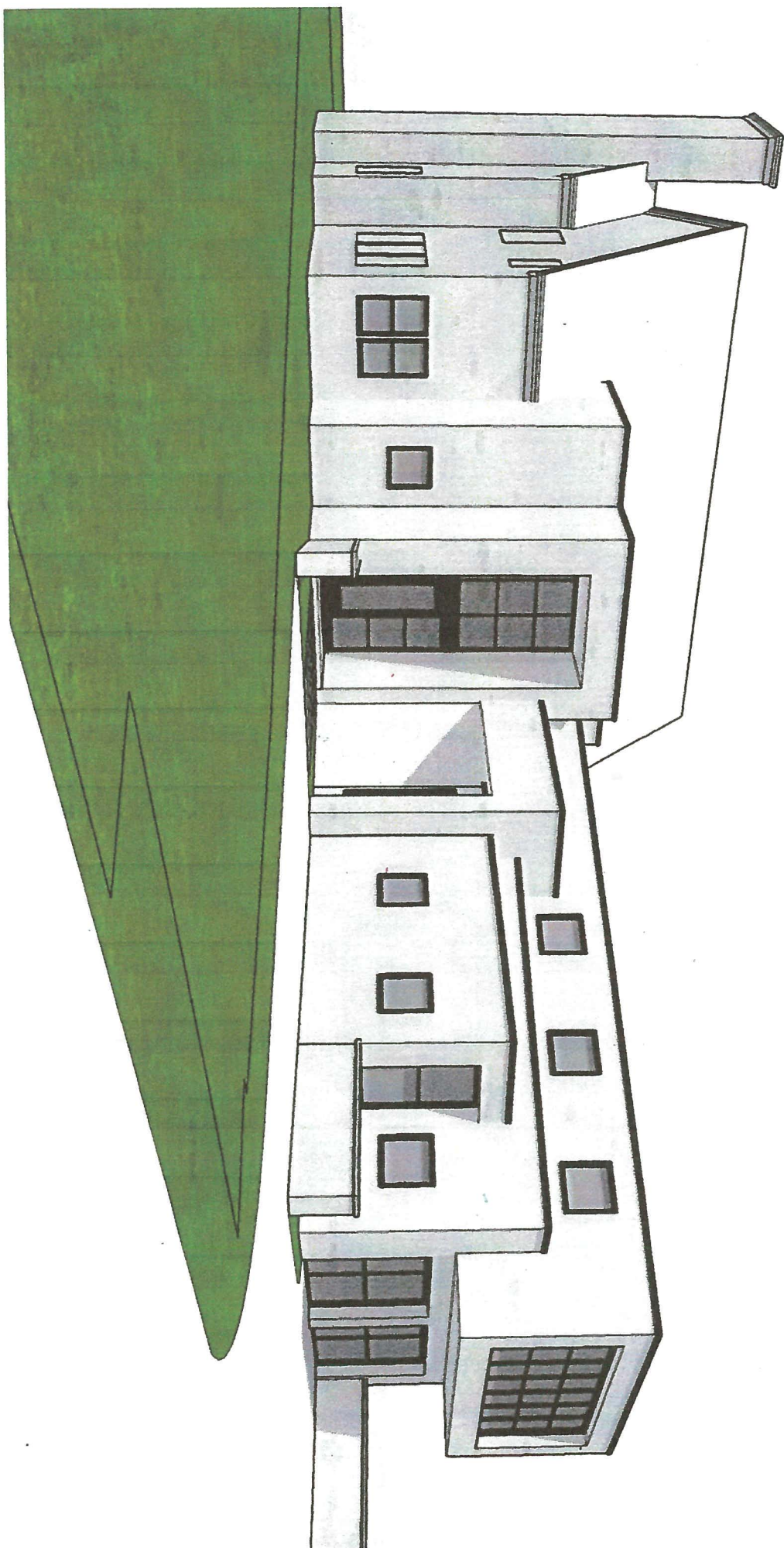
Mr. Worthington advised that the homes on either side of the subject lot do not meet the minimum 5 ft. setback from the lot line. However, they have an as-built survey for the house at Lot 1267 that shows 5 ft. from the property line.

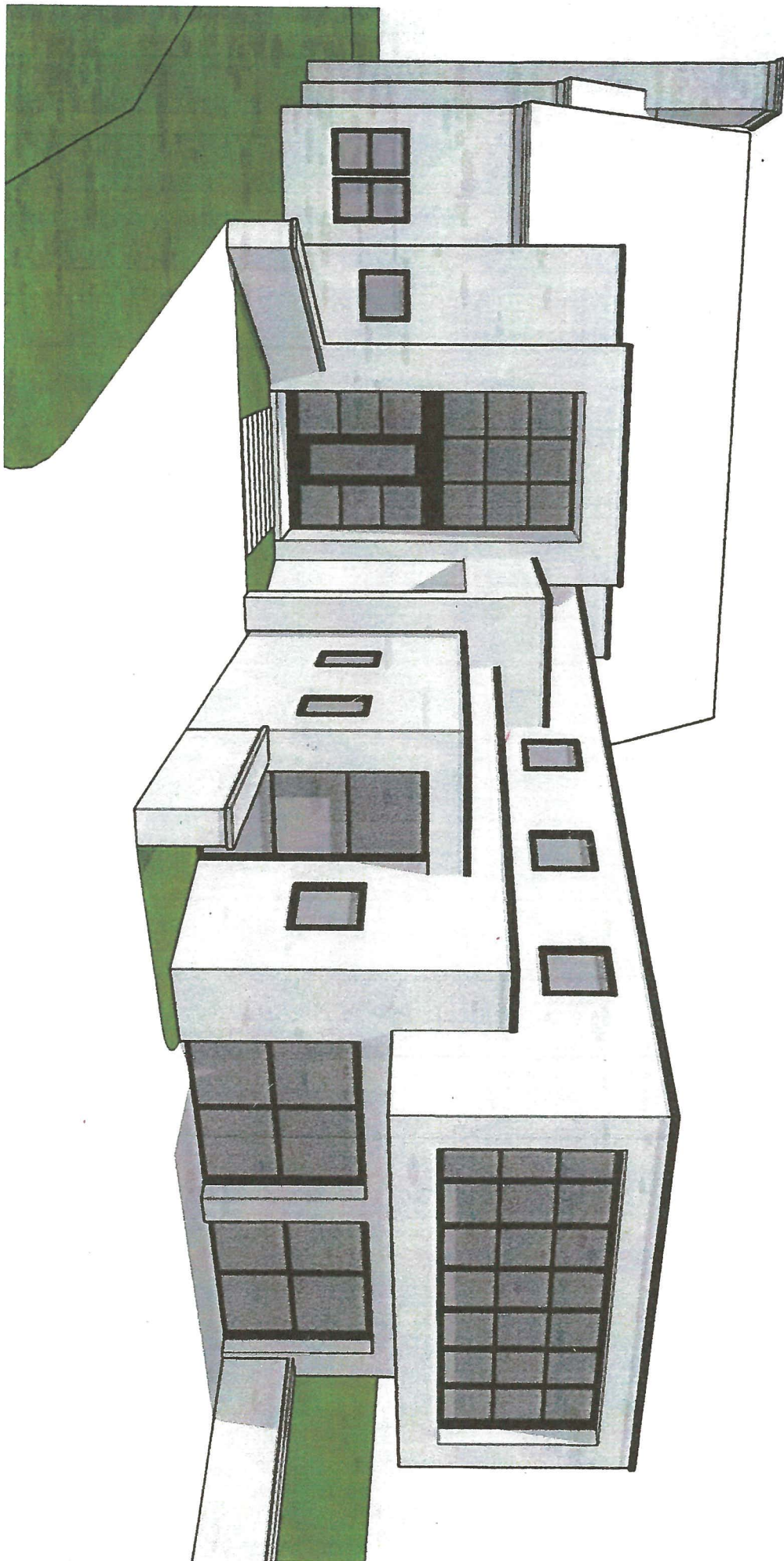
Mr. Conlin noted there is enough room for scaffolding on either side to service the home.

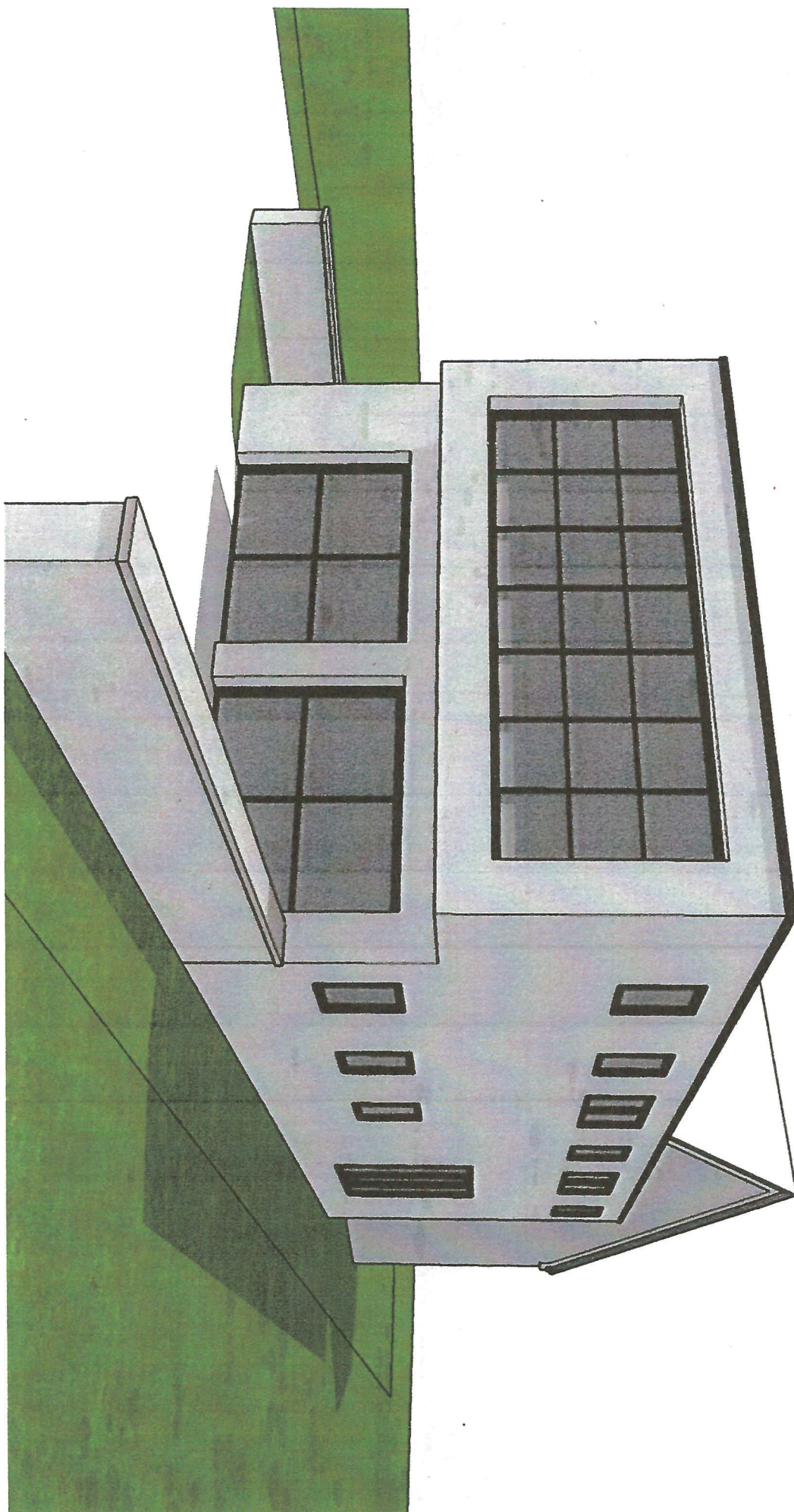
Mr. Rick Merlini, the property owner, said his hardship is the lack of having at least one adjacent driveway side facing his lot. He has reduced the width of the house to 24 ft. 10 in. and increased the small side yard to 6 ft. 2 in. to help minimize the variance request.

No one in the audience wished to comment on this petition at 9:31 p.m.

Motion by Mr. Miller







BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS

TUESDAY, JUNE 12, 2012

Commission Chamber, City Hall
151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, June 12, 2012. Chairman Charles Lillie convened the meeting at 8 p.m.

Present: Chairman Charles Lillie; Board Members David Conlin, Kevin Hart, Thomas Hughes, Jeffery Jones, Randolph Judd, John Miller

Absent: Board Member Peter Lyon; Alternate Board Member Cynthia Grove

Administration: Matthew Baka, Planning Specialist
Bruce Johnson, Building Official
Carole Salutes, Recording Secretary
Scott Worthington, 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. 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 before the board this evening. Also, appeals are heard by the board as far as interpretations or rulings. There are no interpretations and/or use variances called for this evening. Four affirmative votes are required to reverse an interpretation or ruling.

06-34-12

APPROVAL OF THE MINUTES OF THE BZA MEETING OF APRIL 10, 2012

Motion by Mr. Conlin

Seconded by Mr. Miller to approve the Minutes of the BZA meeting of May 8, 2012 as presented.

Motion carried, 7-0.

VOICE VOTE

Yeas: Conlin, Miller, Hart, Hughes, Jones, Judd, Lillie

Nays: None

Absent: Lyon

Absent: Lyon

06-36-12

**195 BALDWIN
(Appeal 12-14)**

The owners of the property known as 195 Baldwin request the following variances to construct a new principal structure:

- A. Chapter 26, Article 2, Section 2.08 requires a minimum front yard setback of 28.8 ft, with 11 ft. proposed; therefore, a variance of 17.8 ft. is requested.
- B. Chapter 26, Article 2, Section 2.08 requires a rear yard setback of 30 ft., with 5 ft. proposed; therefore, a variance of 25 ft. is proposed.
- C. Chapter 28, Article 2, Section 2.08 requires a combined front and rear setback of 55 ft., with 16 ft. proposed; therefore, a variance of 39 ft. is requested.

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

Mr. Victor Saroki, Victor Saroki Associates, architect for the petitioners, Travis Bray and Rebecca Warchuck, indicated his clients have a signed Purchase Agreement contingent upon receiving the requested variances this evening.

Mr. Worthington explained only the point of the house sets at 5 ft. in the rear and the rest is staggered back. Mr. Judd noticed that public parkland lies adjacent to the west. Mr. Johnson noted that over the last few years the City has been taking more of a pro-active approach so that surrounding properties do not encroach on the public land.

Mr. Saroki indicated the proposed house footprint is larger by 48 sq. ft. than the house that existed. The existing house was 2,400 sq. ft. and the new house will be over 4,000 sq. ft. They are significantly below the lot coverage that is permissible by the Ordinance. The flag lot is unique in that its width is more than two times its depth. The significant hardships of the lot include a unique front and rear yard orientation, and that part of the property is in the flood plain. Therefore they feel that all of these circumstances result in a practical difficulty in developing the site. None of the circumstances were self-created. They also feel that the granting of the requested variances is a benefit to all and does substantial justice to the applicant.

All of the neighbors within 300 ft. were invited to an informal meeting so that they could ask questions. It was discussed that when the Ordinance is applied to this lot, the lot becomes unbuildable. They have brought the rooflines down because it brings down the scale of the house. Dormers have been created in the bedrooms and on the second floor for a more interesting look.

Chairman Lillie asked for comments from members of the audience at 9:15 p.m.

Ms. Gail Whitty, 165 Baldwin, likes the plan and spoke in favor of the appeal for variances.

Mr. Mark Thomas thought the design fits the neighborhood and hopes that it is approved.

Ms. Patti Kelter lives at 201 Baldwin, just north of the subject property. She said they are thrilled with the drawings and hopes they get approved.

Motion by Mr. Judd

Seconded by Mr. Jones in regard to Appeal 12-14, 195 Baldwin, the petitioner seeks three variances, all of which arise from Chapter 26, Article 2, Section 2.08. Variance (A) pertains to the minimum front yard setback, seeking a variance of 17.8 ft. Variance (B) is for the rear yard setback and seeks a variance of 25 ft. Variance (C) requires a variance for the combined front and rear yard setback of 39 ft.

In regards to Variances (A), (B), and (C), Mr. Judd would move to approve. He feels that strict compliance with these setbacks would unreasonably prevent the owner from using the property for a permitted purpose and would make such restrictions unnecessarily burdensome. He notes from the drawings that this is an extremely unusual lot and if the petitioner was required to meet these setbacks it would look like a necktie and is definitely an unbuildable section.

Secondly, the granting of these variances would do substantial justice to the applicant as well as to surrounding property owners. While this board is not bound by the opinions of the surrounding property owners, Mr. Judd does note that all who have spoken here tonight do support it. He feels it would give substantial release to the property owner and substantial justice to the other property owners.

A third point is whether the plight of the property owner is due to the unique circumstances of the property. In this case he has already addressed that. Its location is extremely unusual, being on a flag lot at the end of a vacated street, which causes some confusion as to whether the front of the house is on Willits or on Baldwin.

As to whether or not the problem is self-created, Mr. Judd feels in this case if this was an empty sheet of paper, he might have some problems as to whether or not Mr. Saroki has put his shoulder to the wheel and done the best job he could in limiting this. However, while he does feel there is a self-creation problem here, there is also mitigation. He feels that Mr. Saroki and his clients have

demonstrated a great deal of mitigation of these problems. For those reasons, Mr. Judd would move to approve and he would tie it to the plans.

Mr. Miller added that this proposal does meet the minimum distances between buildings. The setbacks would comply if the front of the lot was to the north as opposed to the way it is with the flag configuration. Also, the house is below the maximum lot coverage required. Therefore, he thinks that substantial justice has been done to the neighbors in that regard.

Mr. Conlin and Mr. Hughes complimented Mr. Saroki on his extraordinary presentation.

Motion carried, 7-0.

ROLLCALL VOTE

Yeas: Judd, Jones, Conlin, Hart, Hughes, Lillie, Miller

Nays: None

Absent: Lyon

06-37-12

**955 HUMPHREY
(Appeal 12-15)**

The owners of the property known as 955 Humphrey request the following variance to construct a new principal residence.

- A. Chapter 26, Article 4, Section 4.69 requires a minimum of 14 ft. between principal structures, with 11.1 ft. proposed; therefore, a variance of 2.9 ft. is requested.

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

Mr. Worthington advised that the homes on either side of the subject lot do not meet the minimum 5 ft. setback from the lot line. However, they have an as-built survey for the house at Lot 1267 that shows 5 ft. from the property line.

Mr. Conlin noted there is enough room for scaffolding on either side to service the home.

Mr. Rick Merlini, the property owner, said his hardship is the lack of having at least one adjacent driveway side facing his lot. He has reduced the width of the house to 24 ft. 10 in. and increased the small side yard to 6 ft. 2 in. to help minimize the variance request.

No one in the audience wished to comment on this petition at 9:31 p.m.

Motion by Mr. Miller



Bruce Johnson <bjohnson@bhamgov.org>

Fwd: Fw: 195 Baldwin

1 message

Jeff Zielke <jzielke@bhamgov.org>
To: Bruce Johnson <Bjohnson@bhamgov.org>

Sun, Apr 1, 2018 at 11:41 AM

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

From: Gail Whitty <gailwhitty@prodigy.net>

Date: Sun, Apr 1, 2018, 11:00 AM

Subject: Fw: 195 Baldwin

To: Jeff Zielke <jzielke@bhamgov.org>, Rebecca Bray <rjbray@epitec.com>

To the Birmingham Board of Zoning Appeals:
Dear Chair and Board Members,

I will not be able to attend the hearing on April 10. I was at the hearing which got postponed a couple of weeks ago and saw the plans and heard the explanations. I have no objection to the plans of Rebecca and Travis Bray for their renovation project. My backyard ([165 Baldwin Road](#)) shares a border with their backyard. Let me know if you need anything from me other than this one statement.

Gail Whitty 165 Baldwin Road (41 years at that address), [248 723 0105](tel:2487230105)

CASE DESCRIPTION

411 Coolidge (18-10)

Hearing date: May 8, 2018

The owner(s) of the property known as 411 Coolidge request the following variance(s) to construct an addition with an attached garage to an existing non-conforming home:

- A. **Chapter 126, Article 4, Section 4.74 (C)** of the Zoning Ordinance requires the minimum distance between structures on adjacent lots of 25% of the total lot width. The required distance between is 14.00 feet. The proposed is 10.52 feet; therefore, a variance of 3.48 feet is requested.
- B. **Chapter 126, Article 4, Section 4.61(1)** of the Zoning Ordinance requires a corner lot which has on the side street an abutting interior residential lot shall have a minimum setback from the side street equal to the minimum front setback for the the zoning district in which such building is located. The required street side yard setback for this property is 26.30 feet. The proposed setback is 12.89 feet; therefore, a variance of 13.41 feet is requested.

Staff Notes: The property is a corner lot with a street facing side yard. The existing home is non-conforming. The applicant is proposing to construct an addition with attached garage on the property.

This property is zoned R2.

Jeff Zielke
Plan Examiner

Application Date: 2/15/18



Hearing Date: 13-13-18

Received By: BM

Appeal # 18-10

Board of Zoning Appeals Application

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

Property Information:

Street address: <u>411 Coolidge</u>	Sidwell Number: <u>20-30-429-033</u>
Owners name: <u>Melissa Feczko</u>	Phone #: <u>(708) 935-5366</u>
Owners address: <u>411 Coolidge</u>	Email: <u>mfecko@a1.net</u>
City: State: <u>Birmingham, MI</u>	Zip code: <u>48009</u>
Contact person: <u>Mike Riddle</u>	Phone #: <u>(248) 318-9584</u>

Petitioner Information:

Petitioner name: <u>Mike Riddle</u>	Phone #: <u>(248) 318-9584</u>
Petitioner address: <u>910 S. Orionville Rd #200</u>	Email: <u>mr2885@aol.com</u>
City: <u>Orionville</u> State: <u>MI</u>	Zip Code: <u>48462</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.

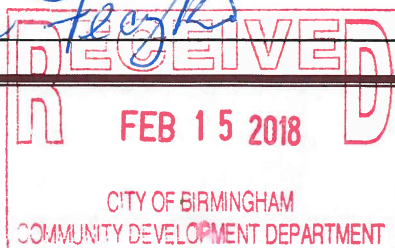
Location of all requested variances must be highlighted on plans and survey. All dimensions to be taken in feet to the first decimal point.

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: Melissa Feczko

Date: 2-15-18



Melissa Feczko

411 Coolidge
Birmingham, MI 48009
(708) 935-5366

February 15, 2018

City of Birmingham
151 Martin Street
Birmingham, MI 48009

Re: 411 Coolidge
Birmingham, MI 48009

To Whom It May Concern,

We are requesting for your consideration in allowing us to build an addition to the existing home that also includes an attached garage.

We have been working closely with City Officials to come up with a solution so that it would stay within the guidelines of City Ordinances. We've reduced the square footage of the print and we've changed the driveway to not interfere with taking down trees. We will continue to work closely with City Officials.

Our hardship is that the home was built in 1951, the setbacks were established years prior to, and it is on an existing corner lot with existing set-backs that are requiring us to come to you requesting a variance.

1. The first variance we are requesting is a 4 foot setback on the north side of the property. The required minimum setback is 5 feet. This is an existing setback.
2. The second variance we are requesting is to request a 9'10" distance between the two houses on the north side of the property. The minimum requirement is 14 feet. This also an existing setback.
3. The third variance request is to maintain the 14 foot existing house setback that abuts Buckingham Ave. The required setback from the South property is 25 feet due to the minimum buildable lot width of 25 feet for a corner lot. We are requesting to maintain the 14 foot existing house set back half of the south side property line.

We are asking to maintain the existing setbacks for our addition. We are not asking for any additional encroachments other than what currently exists.

We appreciate you time and consideration. We look forward to hearing from you.

Sincerely,


Melissa Feczko

411 COOLIDGE



CASE DESCRIPTION

Address: 191 N. Chester **Case No:** (18-011)

Hearing date: May 8, 2018

The owner(s) of the property known as 191 Chester request the following variance(s) to allow the renovation of an existing building for use as an office building.

- A. **Chapter 126, Chapter 126, Article 4, Section 4.24** of the Zoning Ordinance requires office uses in between 10,001 and 50,000 sq. ft. in size to provide one off-street loading space. The proposed development contains 22,470 sq. ft. of office space, thus is required to provide one off street loading space. The applicant is not proposing a loading space. Therefore, a variance for one loading space is requested.

Staff Notes: The applicant is proposing to renovate an existing Church building to be used for office. The applicant has stated that due to the nature of the proposed use as office, large delivery trucks will not visit the site. Also, due to site restrictions and the proximity to adjacent single family residential homes the creation of a loading space would negatively impact the neighborhood. The applicant is required to obtain a Special Land Use Permit (SLUP) for an office use over 3,000 sq. ft. The Planning Board recommended approval of the SLUP and final site plan to the City Commission on April 25, 2018. The applicant is schedule to appear before the City Commission for final approval on June 4, 2018

This property is zoned TZ-2.

191 N CHESTER



Application Date: 2/15/18Hearing Date: 2-15-18Received By: BMAppeal # 18-0011

Board of Zoning Appeals Application

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

Property Information:

Street address: <u>191 N CHESTER ST.</u>		Sidwell Number: _____
Owners name: <u>CHESTER ST. PARTNERS, LLC</u>	Phone #: <u>248-877-4000</u>	
Owners address: <u>320 MARTIN ST, SUITE 100</u>	Email: <u>sam@burnow.com</u>	
City: State: <u>BIRMINGHAM, MI</u>	Zip code: <u>48009</u>	
Contact person: <u>SAM BURNOW</u>	Phone #: <u>248-877-4000</u>	

Petitioner Information:

Petitioner name: <u>SAM BURNOW</u>	Phone #: <u>248-877-4000</u>
Petitioner address: <u>320 MARTIN ST, SUITE 100</u>	Email: <u>sam@burnow.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'
-------------------------	-----------------	-----------------	-----------------	--------------------------

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: 02/15/18

CITY OF BIRMINGHAM
Date 02/16/2018 8:53:21 AM
Ref 00146040
Recd 414110
Amount \$510.00

City of Birmingham BZA

Zoning Variance Request 191 Chester Street

To whom it may Concern,

On January 24th we received unanimous approval for the SLUP and Site Plan Approval from the Birmingham Planning Commission for the existing Church at 191 Chester to be renovated and used as an Office Building. That approval was contingent on either locating a place for the required 10' x 40' Loading space on site or obtaining from the BZA a variance from that specific requirement.

The existing site is very tight to the adjacent property line to the south (6'-0") and has large grade differences between the street and the finish grades around the other three sides of the building (4' to 6'). These dimensional barriers make it impossible to provide the required loading space on site. Since the building sits on the corner of Willits and Chester the available open sides of the building are either in a front yard along Chester on the east or the Residential street facing houses along Willits to the north.

1. Because of the above mentioned special conditions of this property the adjacent parcel setbacks and street elevations create an existing hardship and it is not practical to provide the required Loading Zone on site. The adjacent drive to the South is not on our property.
2. Literal and strict enforcement of the ordinance will result in unnecessary hardship since no existing space around the existing site will allow for the dimensional requirements and access required for this Loading Zone.
3. The granting of this variance will not be contrary to the spirit and purpose of the zoning ordinance nor contrary to public health, safety and welfare. This condition is common in and around the City Downtown area and the only areas that could be excavated or proposed on this site to place such a Loading Zone would fall adjacent to the Residential properties creating a negative impact on those residents.
4. The existing site conditions were not created by this petitioner, and the site does not lend a reasonable solution to provide this Required Loading Zone, in a

manner that would be appropriate in dimension or location to adjacent neighbors.

We are therefore asking to be granted a waiver from this requirement. As is typical in other office properties in Birmingham owned by the Surnow Company the need for large truck deliveries is very seldom and we are able to schedule those that might be required during off business hours to move in a new Tenant for instance. The majority of deliveries we incur are from UPS or other small vehicles such as the U.S Postal Carrier that could be easily accommodated for quick deliveries as they are all over the down town area.

Thank you for your consideration in this matter,

Sincerely, Sam Surnow

**CITY OF BIRMINGHAM
PLANNING BOARD ACTION ITEMS
OF WEDNESDAY, JANUARY 24, 2018**

Item	Page
FINAL SITE PLAN AND DESIGN REVIEW SPECIAL LAND USE PERMIT ("SLUP")	
1. 33588 Woodward Ave. (Shell Gas Station/Dunkin Donuts) Request for approval of a Revised Final Site Plan and Design to allow for construction of small addition for a restroom and new signage	2
Motion by Ms. Whipple-Boyce Seconded by Mr. Boyle to recommend APPROVAL the Final Site Plan and Special Land Use Permit amendment to the City Commission for 33588 Woodward Ave., Birmingham Shell, with the following conditions: (1) The applicant confirm that the ice and propane storage units are no more than 4 ft. in height, or obtain a variance from the BZA; (2) The applicant meet the requirements of all City Departments.	4
Motion carried. 7-0.	4
2. 191 N. Chester (Church of Christ, Scientist, renamed The Jeffrey) Request for approval of the Final Site Plan and Design to allow for exterior design and site changes to the existing building to convert to office use larger than 3,000 sq. ft. in size	4
Motion by Ms. Whipple-Boyce Seconded by Mr. Williams to recommend APPROVAL the Final Site Plan and Special Land Use Permit to the City Commission for 191 N. Chester, The Jeffrey, with the following conditions: 1. The applicant must add an additional tree along Willits, or obtain a waiver from the Staff Arborist; 2. The applicant replace the proposed Sweet Gum trees along Chester and provide irrigation for trees; 3. The applicant must submit revised plans showing the placement and measurements of one off-street loading space, or obtain a variance from the BZA; 4. The applicant will need to submit revised plans showing a railing made of metal, wood, cast concrete, or stone, or obtain a variance from the BZA; and 5. The applicant add bike racks.	6
Motion carried, 7-0.	6

Item	Page
FINAL SITE PLAN AND DESIGN REVIEW	
3. 885 Redding (new two-family construction) Request for approval of the Final Site Plan and Design Review to allow for construction of a new two-family residence	6
Motion by Mr. Boyle Seconded by Ms. Whipple-Boyce to APPROVE the Final Site Plan for 885 Redding with the following conditions: 1. The Planning Board approves the use of non-cut-off light fixtures as proposed; 2. The applicant must indicate what material will be used to screen the ground mounted mechanical; 3. The applicant must provide one evergreen tree or obtain a variance from the Board of Zoning Appeals; 4. The applicant addresses the concerns of all City Departments; and 5. The applicant reduces the dimensions of the rear turning areas to add to the percentage of permeable surfaces on-site.	7
Motion carried, 7-0.	8

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, JANUARY 24, 2018
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on January 24, 2018. 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

Also Present: Nasseem Ramin

Absent: Alternate Board Member Daniel Share; Student Representatives Ariana Afrakhteh, Isabella Niskar

Administration: Matthew Baka, Sr. Planner
Nicholas Dupuis, Planning Intern
Carole Salutes, Recording Secretary

01-12-18

APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING OF JANUARY 24, 2018

**Motion by Mr. Boyle
Seconded by Mr. Williams to approve the minutes of the Regular Planning Board Meeting of January 24, 2018 as presented.**

Motion carried, 7-0.

VOICE VOTE

Yeas: Boyle, Williams, Clein, Jeffares, Koseck, Whipple-Boyce

Nays: None

Abstain: Lazar

Absent: None

01-13-18

CHAIRPERSON'S COMMENTS

The chairman explained that the Final Site Plans and Special Land Use Permits will be taken together for 33588 Woodward Ave. and 191 N. Chester.

01-14-18

APPROVAL OF THE AGENDA (no change)

01-15-18

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

1. 33588 Woodward Ave. (Shell Gas Station/Dunkin Donuts)

Request for approval of a Revised Final Site Plan and Design to allow for construction of small addition for a restroom and new signage

Motion by Mr. Williams

Seconded by Ms. Lazar to receive and file the one-page document from Design Studio Interiors Planning. Project: Birmingham Gas Station Exterior Building Elevations.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

Mr. Baka advised the 0.34 acre subject site is located at the corner of Woodward Ave. and Chapin. The gas station was formerly a Citgo that was renovated several years ago and is now a Shell/Dunkin Donuts. The applicant is seeking a SLUP amendment to relocate the bathroom within the building, which will include a small addition of square footage to the building. The total added area is roughly 79 sq. ft. at the southwestern portion of the building, facing the parking lot. The addition will displace the ice and propane storage machines, which are proposed to be relocated to the side of the building, adjacent to the rear parking area.

The applicant must confirm that the ice and propane storage units are no more than 4 ft. in height, or obtain a variance from the Board of Zoning Appeals ("BZA").

Design Review

The proposed 79 sq. ft. addition to the southwest portion of the building will be for the relocation of a restroom to allow more counter space for the establishment. The applicant has indicated on the site plan that the addition will be constructed with the same brick and paint as the existing building. The applicant has submitted scaled and colored elevations and material specifications for Design Review.

Responding to Mr. Boyle, Mr. Baka stated that Beer and Wine signage was previously approved by the Planning Board. The Liquor signs are considered window signage as long as it is within 18 sq. ft. Therefore, the signs are compliant.

Mr. John Abbato with ADG, Farmington Hills, MI was present for Scott and Chris Barbat, the gas station owners. He explained the proposed addition will match the building design. Mr. Chris Barbat indicated the reason for the addition is to expand the counter in order to relocate the spirits from the sales area to behind the counter where customers can't get to them. He asked

to exchange the Beer and Wine channel letter sign with a liquor sign in the same style so they can get rid of the vinyl Liquor stickers on the windows.

The Chairman said he would be comfortable with an Administrative Approval for that, assuming tonight's proposal gets approved and everything else is in compliance.

Mr. Barbat added that relocating the bathroom to the front south side of the building results in a better flow of traffic where there is no conflict between the restroom line and the Dunkin Donuts line. As stated, it also allows them to take the spirits off the floor and locate them behind the counter which is safer.

Chairman Clein took public comments at 7:45 p.m.

Mr. Bob Chodum, 1408 Chapin, stated that construction of the gas station occurred after 7 p.m. week nights and on Sundays. The construction just about took over Chapin and he didn't have anywhere to park. The gas station is very close to residences and he feels it is too big for their neighborhood. Signs at the bicycle shop say to unload bicycles on Chapin and they are on City sign posts.

Ms. Joan Sutherland who also lives at 1408 Chapin asked if the proposal will alter parking at the gas station because they already park on her street and too close to the intersection.

Mr. Baka said the proposed construction will not displace any parking. Mr. Barbat stated they do not allow any of their employees to park in the street. They must park on the property. The small addition will not take out any of the parking spots. He will be very diligent in making sure the dumpster is always closed. This addition should be wrapped up within a week and in no way will they work before or after business hours.

Ms. Whipple-Boyce noted that if construction takes place other than from 7 a.m. to 7 p.m. Monday through Saturday the residents could notify the Police Dept.

Mr. Williams advised that the residents could attempt to handle some of the excess parking by petitioning for parking permits on their street. Also, they could pursue with the Police Dept. adding signs restricting right turns coming out of the gas station onto Chapin.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Boyle to recommend APPROVAL the Final Site Plan and Special Land Use Permit amendment to the City Commission for 33588 Woodward Ave., Birmingham Shell, with the following conditions:

- (1) The applicant confirm that the ice and propane storage units are no more than 4 ft. in height, or obtain a variance from the BZA;**
- (2) The applicant meet the requirements of all City Departments.**

Motion carried. 7-0.

VOICE VOTE

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

Nays: None

Absent: None

**2. 191 N. Chester (Church of Christ, Scientist, renamed The Jeffrey)
Request for approval of the Final Site Plan and Design to allow for exterior
design and site changes to the existing building to convert to office use larger
than 3,000 sq. ft. in size**

Mr. Dupuis explained the 0.40 acre subject site is located at the corner of Chester and Willits on the outer edge of Downtown Birmingham. The Planning Board recommended approval to the City Commission for a rezoning from TZ-1 to TZ-2 on September 13, 2017 to allow the former Church of Christ Scientist building to permit office use.

The City Commission approved the request for a rezoning to TZ-2. The transformed office building is proposed to contain 16,493 sq. ft. of office space. The Zoning Ordinance limits tenants of an office building to 3,000 sq. ft. per tenant in the TZ-2 District. The proposed floor plans for the renovated office building show three tenant lease spaces, all of which will be over the permitted 3,000 sq. ft. Thus, the applicant is seeking a SLUP to allow for three office tenants to each exceed 3,000 sq. ft. in area. A highlight of the proposed transformation of the former Church use to an office use is the proposed 1,355 sq. ft. addition to the front of the building. Along with the design of an overhead garage door off of Willits, a new roof, new windows, and new paint, a new lobby addition will create an entirely new look for the building.

Based on Article 4, section 4.20 of the Zoning Ordinance, the applicant is required to have two street trees along N. Chester and five street trees along Willits. ***Thus, the applicant must add an additional tree along Willits or obtain a waiver from the Staff Arborist.***

The Dept. of Public Services states that instead of Sweet Gums along Chester St., they require a different variety of tree for this location due to the fruit of the species and the proximity to the sidewalks. Also, irrigation should be installed.

The proposed development contains 16,493 sq. ft. of office space, thus is required to provide one off-street loading space. The applicant has not proposed an off-street loading space. ***Therefore, the applicant must submit revised plans showing the placement and measurements of one off-street loading space, or obtain a variance from the Board of Zoning Appeals ("BZA").***

Design Review

The transformation from Church to office will include the removal of the existing porch and entry to create an addition on the front of the building to be used as the primary entryway to the building, bringing it to the property line. There will also be repairs done and paint (SW 7069 Iron Ore) added to the existing masonry, a new quartz -zinc metal roof, a new garage with a 10 ft. x 8 ft. garage door (material and color unknown), and new windows added to the building. Some material samples and colors have been provided at this time, but the missing details must be provided.

For the new addition, the applicant is proposing new grey brick (manufacturer unknown), quartz -zinc metal paneling for coping and roofing, an aluminum clear glass window system, and a new anthra-zinc metal canopy in black for the new front entrance. This will modernize the front of the building and give it more of an office building look, as opposed to a Church look. The proposed addition will bring the building to the property line and the building's street

presence will match that of the McCann Building to the east and the Integra Building to the south.

The original building will be painted charcoal grey (SW 7069 Iron Ore) and have a new grey standing seam metal roof, along with 24 new clear glass windows/doors. The applicant is also proposing to create three new patios on the property, one off of the new addition, one off of the back of the building at the first floor, and finally, one on the second floor. The patio proposed with the addition will be enclosed with a powder coated aluminum railing. The other patios will be enclosed with an aluminum and tempered glass railing system. Article 3, Section 3.04 of the Zoning Ordinance requires balconies, railings and porch structures to be wood, metal, cast concrete, or stone. ***The applicant will need to submit revised plans showing a railing made of metal, wood, cast concrete, or stone, or obtain a variance from the BZA.***

The applicant is not proposing any signage at this time. The applicant has provided window samples showing clear glass with a visual light transmittance of 80% for the new windows.

Mr. Williams received confirmation that the applicant may have to come back for a SLUP amendment when the tenants and signage are identified.

Mr. Jeffares noted there are sterile cultivars of Sweet Gum trees that do not have fruit. Mr. Baka said the applicant would have to talk to the arborist and work that out.

Mr. Boyle felt that adding street furniture does not help in that particular location. Mr. Jeffares said he cannot fathom not having a bike rack on the property, assuming the building has been named after Jeffrey Surnow. There was general agreement on the bike racks.

Mr. Kevin Biddison, Biddison Architecture, 320 Martin, thought the adjustments that are planned will greatly improve the building. The tenant signage will go on the main brick frontage on the Chester side. There is an existing ground sign on the property but they do not know if it is something they would request.

Mr. Sam Surnow, the developer, 320 Martin, agreed there is no other location for signage other than on Chester.

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

Motion by Ms. Whipple-Boyce

Seconded by Mr. Williams to recommend APPROVAL the Final Site Plan and Special Land Use Permit to the City Commission for 191 N. Chester, The Jeffrey, with the following conditions:

- 1. The applicant must add an additional tree along Willits, or obtain a waiver from the Staff Arborist;**
- 2. The applicant replace the proposed Sweet Gum trees along Chester and provide irrigation for trees;**
- 3. The applicant must submit revised plans showing the placement and measurements of one off-street loading space, or obtain a variance from the BZA; 4. The applicant will need to submit revised plans showing a railing made of metal, wood, cast concrete, or stone, or obtain a variance from the BZA; and**
- 5. The applicant add bike racks.**

Ms. Whipple-Boyce and Mr. Koseck thought the applicant did a great job with the front of the building. Mr. Williams added this is great utilization of an existing structure.

There were no comments from the public on the motion.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

01-17-18

FINAL SITE PLAN AND DESIGN REVIEW

3. 885 Redding (new two-family construction)

Request for approval of the Final Site Plan and Design Review to allow for construction of a new two-family residence

Mr. Baka advised that the subject site is a 0.39 acre parcel located on the south side of Redding Rd. between Lakeside Dr. and North Old Woodward Ave. in the R-4 Zoning District. The applicant was previously approved on January 13, 2016 to construct a two-family residential development at the above-referenced address. However, the applicant decided not to build the project as approved and is now returning to the Planning Board to request approval of a new two-family residential development in a new configuration and design.

As the location and footprint of the new plan are completely different from the previous approval, the applicant is required to complete the Preliminary and Final Site Plan Approval process again. On November 29, 2017, the applicant was granted Preliminary Site Plan approval by the Planning Board with several conditions.

A landscaping plan was provided by the applicant that provides the required number of deciduous trees, however no evergreen trees are evident on the plan. ***The applicant must submit a landscaping plan that complies with the Ordinance requirements or obtain a variance from the Board of Zoning Appeals.***

Design Review

The applicant is currently proposing that the two-family structure be constructed as a row house style building with side-by-side gabled ends facing the front property line. The siding is proposed to be James Hardie lap siding with pine board trim painted white. The roof on the overhangs is proposed to be standing seam and all windows are proposed to be double hung.

Mr. Boyle expressed his opinion that the poured concrete driveways coming into the two properties take up a significant amount of the lot.

Mr. Richard Wiand with Hunter Roberts Homes said they could remove the turn-arounds in the back. He would be happy to reduce in any way possible the amount of concrete on the site, however the driveway is an efficient way of moving run-off. In response to Mr. Boyle he indicated they are building for spec.

Mr. Jeffares stated that some kind of turn-around is needed so that vehicles don't have to back out. Mr. Wiand responded they could work with the Staff to reduce the amount of concrete.

Mr. Koseck said the design is beautiful but it would fit better in some other neighborhoods within the City.

It was discussed that any changes such as the reduction of concrete or paint color could be administratively approved.

Motion by Mr. Boyle

Seconded by Ms. Whipple-Boyce to APPROVE the Final Site Plan for 885 Redding with the following conditions:

- 1. The Planning Board approves the use of non-cut-off light fixtures as proposed; 2. The applicant must indicate what material will be used to screen the ground mounted mechanical;**
- 3. The applicant must provide one evergreen tree or obtain a variance from the Board of Zoning Appeals;**
- 4. The applicant addresses the concerns of all City Departments; and**
- 5. The applicant reduces the dimensions of the rear turning areas to add to the percentage of permeable surfaces on-site.**

At this time there was no public left to comment on the motion.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

01-18-18

MISCELLANEOUS BUSINESS AND COMMUNICATIONS

a. Communications

- Long-Range Planning Meeting is scheduled for Saturday, January 27.
Mr. Williams hoped the Department would convey what he believes was the consensus of the Planning Board that the City consider retention of professional assistance for this board in conjunction with the study of retail.
- Mr. Jeffares thought glass rather than metal railings should be able to be approved along with various materials for dumpster doors instead of only wood.
- Ms. Lazar stated the Whole Foods situation is terribly disappointing in terms of visibility into the windows.
- Mr. Williams noted that between 14 Mile Rd. and Lincoln along Woodward Ave. is a sensitive area as far as increased traffic through the neighborhoods due to new developments along Woodward Ave.

- Mr. Boyle reported that there is a new bus service straight down Woodward Ave. called FAST, Frequent Accessible Safe Transit. However, there is nowhere for them to stop. So one of the northern stops is right at the junction of Maple Rd. and Woodward Ave. in the inside lane.
- b. Administrative Approval Requests
 - 385 S. Eton, District Lofts Building R - Placing A/C condensing unit at grade on east side of building.
 - 670 S. Old Woodward Ave. - Remove and replace front door entry - Denied.
 - 2023 Hazel, Eton St. Station II - Revised Final Site Plan was approved 09-28-16 to allow larger second-floor rear decks over the driveway at the Eton St. Station II Development. Future plans by other condo owners can be approved administratively if they are identical. We are requesting approval to construct the approved design at 2023 Hazel.
 - 33353 Woodward Ave., Woodward Commons - Request to make minor alterations to building facade,
 - 33633 Woodward Ave, Wesch Cleaners - Requesting the addition of one parking lot light pole set at max 13 ft. 0 in. located at the northwest corner of the northern parking lot to provide the required lighting within the drive area as requested by the Planning Dept. Additionally, wall mounted lights will be added to the north parking lot and will be added to the south parking lot to provide required lighting.
- c. Draft Agenda for the next Regular Planning Board meeting of February 28, 2018
 - Peabody Restaurant Site - Final Site Plan
 - 525 Southfield Rd. - Final Site Plan
 - Public Hearing on site plan submittal requirements
- d. Other Business (none)

01-19-18

PLANNING DIVISION ACTION ITEMS

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

01-20-18

ADJOURNMENT

No further business being evident, the Chairman adjourned the meeting at 8:50 p.m.

Jana L. Ecker
Planning Director

APPROVED

**CITY OF BIRMINGHAM
PLANNING BOARD ACTION ITEMS
OF WEDNESDAY, JANUARY 24, 2018**

Item	Page
FINAL SITE PLAN AND DESIGN REVIEW SPECIAL LAND USE PERMIT ("SLUP")	
1. 33588 Woodward Ave. (Shell Gas Station/Dunkin Donuts) Request for approval of a Revised Final Site Plan and Design to allow for construction of small addition for a restroom and new signage	2
Motion by Ms. Whipple-Boyce Seconded by Mr. Boyle to recommend APPROVAL the Final Site Plan and Special Land Use Permit amendment to the City Commission for 33588 Woodward Ave., Birmingham Shell, with the following conditions: (1) The applicant confirm that the ice and propane storage units are no more than 4 ft. in height, or obtain a variance from the BZA; (2) The applicant meet the requirements of all City Departments.	4
Motion carried. 7-0.	4
2. 191 N. Chester (Church of Christ, Scientist, renamed The Jeffrey) Request for approval of the Final Site Plan and Design to allow for exterior design and site changes to the existing building to convert to office use larger than 3,000 sq. ft. in size	4
Motion by Ms. Whipple-Boyce Seconded by Mr. Williams to recommend APPROVAL the Final Site Plan and Special Land Use Permit to the City Commission for 191 N. Chester, The Jeffrey, with the following conditions: 1. The applicant must add an additional tree along Willits, or obtain a waiver from the Staff Arborist; 2. The applicant replace the proposed Sweet Gum trees along Chester and provide irrigation for trees; 3. The applicant must submit revised plans showing the placement and measurements of one off-street loading space, or obtain a variance from the BZA; 4. The applicant will need to submit revised plans showing a railing made of metal, wood, cast concrete, or stone, or obtain a variance from the BZA; and 5. The applicant add bike racks.	6
Motion carried, 7-0.	6

Item	Page
FINAL SITE PLAN AND DESIGN REVIEW	
3. 885 Redding (new two-family construction) Request for approval of the Final Site Plan and Design Review to allow for construction of a new two-family residence	6
Motion by Mr. Boyle Seconded by Ms. Whipple-Boyce to APPROVE the Final Site Plan for 885 Redding with the following conditions: 1. The Planning Board approves the use of non-cut-off light fixtures as proposed; 2. The applicant must indicate what material will be used to screen the ground mounted mechanical; 3. The applicant must provide one evergreen tree or obtain a variance from the Board of Zoning Appeals; 4. The applicant addresses the concerns of all City Departments; and 5. The applicant reduces the dimensions of the rear turning areas to add to the percentage of permeable surfaces on-site.	7
Motion carried, 7-0.	8

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, JANUARY 24, 2018
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on January 24, 2018. 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

Also Present: Nasseem Ramin

Absent: Alternate Board Member Daniel Share; Student Representatives Ariana Afrakhteh, Isabella Niskar

Administration: Matthew Baka, Sr. Planner
Nicholas Dupuis, Planning Intern
Carole Salutes, Recording Secretary

01-12-18

APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING OF JANUARY 24, 2018

Motion by Mr. Boyle

Seconded by Mr. Williams to approve the minutes of the Regular Planning Board Meeting of January 24, 2018 as presented.

Motion carried, 7-0.

VOICE VOTE

Yeas: Boyle, Williams, Clein, Jeffares, Koseck, Whipple-Boyce

Nays: None

Abstain: Lazar

Absent: None

01-13-18

CHAIRPERSON'S COMMENTS

The chairman explained that the Final Site Plans and Special Land Use Permits will be taken together for 33588 Woodward Ave. and 191 N. Chester.

01-14-18

APPROVAL OF THE AGENDA (no change)

01-15-18

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

1. 33588 Woodward Ave. (Shell Gas Station/Dunkin Donuts)

Request for approval of a Revised Final Site Plan and Design to allow for construction of small addition for a restroom and new signage

Motion by Mr. Williams

Seconded by Ms. Lazar to receive and file the one-page document from Design Studio Interiors Planning. Project: Birmingham Gas Station Exterior Building Elevations.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

Mr. Baka advised the 0.34 acre subject site is located at the corner of Woodward Ave. and Chapin. The gas station was formerly a Citgo that was renovated several years ago and is now a Shell/Dunkin Donuts. The applicant is seeking a SLUP amendment to relocate the bathroom within the building, which will include a small addition of square footage to the building. The total added area is roughly 79 sq. ft. at the southwestern portion of the building, facing the parking lot. The addition will displace the ice and propane storage machines, which are proposed to be relocated to the side of the building, adjacent to the rear parking area.

The applicant must confirm that the ice and propane storage units are no more than 4 ft. in height, or obtain a variance from the Board of Zoning Appeals ("BZA").

Design Review

The proposed 79 sq. ft. addition to the southwest portion of the building will be for the relocation of a restroom to allow more counter space for the establishment. The applicant has indicated on the site plan that the addition will be constructed with the same brick and paint as the existing building. The applicant has submitted scaled and colored elevations and material specifications for Design Review.

Responding to Mr. Boyle, Mr. Baka stated that Beer and Wine signage was previously approved by the Planning Board. The Liquor signs are considered window signage as long as it is within 18 sq. ft. Therefore, the signs are compliant.

Mr. John Abbro with ADG, Farmington Hills, MI was present for Scott and Chris Barbat, the gas station owners. He explained the proposed addition will match the building design. Mr. Chris Barbat indicated the reason for the addition is to expand the counter in order to relocate the spirits from the sales area to behind the counter where customers can't get to them. He asked

to exchange the Beer and Wine channel letter sign with a liquor sign in the same style so they can get rid of the vinyl Liquor stickers on the windows.

The Chairman said he would be comfortable with an Administrative Approval for that, assuming tonight's proposal gets approved and everything else is in compliance.

Mr. Barbat added that relocating the bathroom to the front south side of the building results in a better flow of traffic where there is no conflict between the restroom line and the Dunkin Donuts line. As stated, it also allows them to take the spirits off the floor and locate them behind the counter which is safer.

Chairman Clein took public comments at 7:45 p.m.

Mr. Bob Chodum, 1408 Chapin, stated that construction of the gas station occurred after 7 p.m. week nights and on Sundays. The construction just about took over Chapin and he didn't have anywhere to park. The gas station is very close to residences and he feels it is too big for their neighborhood. Signs at the bicycle shop say to unload bicycles on Chapin and they are on City sign posts.

Ms. Joan Sutherland who also lives at 1408 Chapin asked if the proposal will alter parking at the gas station because they already park on her street and too close to the intersection.

Mr. Baka said the proposed construction will not displace any parking. Mr. Barbat stated they do not allow any of their employees to park in the street. They must park on the property. The small addition will not take out any of the parking spots. He will be very diligent in making sure the dumpster is always closed. This addition should be wrapped up within a week and in no way will they work before or after business hours.

Ms. Whipple-Boyce noted that if construction takes place other than from 7 a.m. to 7 p.m. Monday through Saturday the residents could notify the Police Dept.

Mr. Williams advised that the residents could attempt to handle some of the excess parking by petitioning for parking permits on their street. Also, they could pursue with the Police Dept. adding signs restricting right turns coming out of the gas station onto Chapin.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Boyle to recommend APPROVAL the Final Site Plan and Special Land Use Permit amendment to the City Commission for 33588 Woodward Ave., Birmingham Shell, with the following conditions:

- (1) The applicant confirm that the ice and propane storage units are no more than 4 ft. in height, or obtain a variance from the BZA;**
- (2) The applicant meet the requirements of all City Departments.**

Motion carried. 7-0.

VOICE VOTE

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

Nays: None

Absent: None

**2. 191 N. Chester (Church of Christ, Scientist, renamed The Jeffrey)
Request for approval of the Final Site Plan and Design to allow for exterior
design and site changes to the existing building to convert to office use larger
than 3,000 sq. ft. in size**

Mr. Dupuis explained the 0.40 acre subject site is located at the corner of Chester and Willits on the outer edge of Downtown Birmingham. The Planning Board recommended approval to the City Commission for a rezoning from TZ-1 to TZ-2 on September 13, 2017 to allow the former Church of Christ Scientist building to permit office use.

The City Commission approved the request for a rezoning to TZ-2. The transformed office building is proposed to contain 16,493 sq. ft. of office space. The Zoning Ordinance limits tenants of an office building to 3,000 sq. ft. per tenant in the TZ-2 District. The proposed floor plans for the renovated office building show three tenant lease spaces, all of which will be over the permitted 3,000 sq. ft. Thus, the applicant is seeking a SLUP to allow for three office tenants to each exceed 3,000 sq. ft. in area. A highlight of the proposed transformation of the former Church use to an office use is the proposed 1,355 sq. ft. addition to the front of the building. Along with the design of an overhead garage door off of Willits, a new roof, new windows, and new paint, a new lobby addition will create an entirely new look for the building.

Based on Article 4, section 4.20 of the Zoning Ordinance, the applicant is required to have two street trees along N. Chester and five street trees along Willits. ***Thus, the applicant must add an additional tree along Willits or obtain a waiver from the Staff Arborist.***

The Dept. of Public Services states that instead of Sweet Gums along Chester St., they require a different variety of tree for this location due to the fruit of the species and the proximity to the sidewalks. Also, irrigation should be installed.

The proposed development contains 16,493 sq. ft. of office space, thus is required to provide one off-street loading space. The applicant has not proposed an off-street loading space. ***Therefore, the applicant must submit revised plans showing the placement and measurements of one off-street loading space, or obtain a variance from the Board of Zoning Appeals ("BZA").***

Design Review

The transformation from Church to office will include the removal of the existing porch and entry to create an addition on the front of the building to be used as the primary entryway to the building, bringing it to the property line. There will also be repairs done and paint (SW 7069 Iron Ore) added to the existing masonry, a new quartz -zinc metal roof, a new garage with a 10 ft. x 8 ft. garage door (material and color unknown), and new windows added to the building. Some material samples and colors have been provided at this time, but the missing details must be provided.

For the new addition, the applicant is proposing new grey brick (manufacturer unknown), quartz -zinc metal paneling for coping and roofing, an aluminum clear glass window system, and a new anthra-zinc metal canopy in black for the new front entrance. This will modernize the front of the building and give it more of an office building look, as opposed to a Church look. The proposed addition will bring the building to the property line and the building's street

presence will match that of the McCann Building to the east and the Integra Building to the south.

The original building will be painted charcoal grey (SW 7069 Iron Ore) and have a new grey standing seam metal roof, along with 24 new clear glass windows/doors. The applicant is also proposing to create three new patios on the property, one off of the new addition, one off of the back of the building at the first floor, and finally, one on the second floor. The patio proposed with the addition will be enclosed with a powder coated aluminum railing. The other patios will be enclosed with an aluminum and tempered glass railing system. Article 3, Section 3.04 of the Zoning Ordinance requires balconies, railings and porch structures to be wood, metal, cast concrete, or stone. ***The applicant will need to submit revised plans showing a railing made of metal, wood, cast concrete, or stone, or obtain a variance from the BZA.***

The applicant is not proposing any signage at this time. The applicant has provided window samples showing clear glass with a visual light transmittance of 80% for the new windows.

Mr. Williams received confirmation that the applicant may have to come back for a SLUP amendment when the tenants and signage are identified.

Mr. Jeffares noted there are sterile cultivars of Sweet Gum trees that do not have fruit. Mr. Baka said the applicant would have to talk to the arborist and work that out.

Mr. Boyle felt that adding street furniture does not help in that particular location. Mr. Jeffares said he cannot fathom not having a bike rack on the property, assuming the building has been named after Jeffrey Surnow. There was general agreement on the bike racks.

Mr. Kevin Biddison, Biddison Architecture, 320 Martin, thought the adjustments that are planned will greatly improve the building. The tenant signage will go on the main brick frontage on the Chester side. There is an existing ground sign on the property but they do not know if it is something they would request.

Mr. Sam Surnow, the developer, 320 Martin, agreed there is no other location for signage other than on Chester.

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

Motion by Ms. Whipple-Boyce

Seconded by Mr. Williams to recommend APPROVAL the Final Site Plan and Special Land Use Permit to the City Commission for 191 N. Chester, The Jeffrey, with the following conditions:

- 1. The applicant must add an additional tree along Willits, or obtain a waiver from the Staff Arborist;**
- 2. The applicant replace the proposed Sweet Gum trees along Chester and provide irrigation for trees;**
- 3. The applicant must submit revised plans showing the placement and measurements of one off-street loading space, or obtain a variance from the BZA; 4. The applicant will need to submit revised plans showing a railing made of metal, wood, cast concrete, or stone, or obtain a variance from the BZA; and**
- 5. The applicant add bike racks.**

Ms. Whipple-Boyce and Mr. Koseck thought the applicant did a great job with the front of the building. Mr. Williams added this is great utilization of an existing structure.

There were no comments from the public on the motion.

Motion carried, 7-0.

VOICE VOTE

Yeas: Whipple-Boyce, Williams, Boyle, Klein, Jeffares, Koseck, Lazar

Nays: None

Absent: None

01-17-18

FINAL SITE PLAN AND DESIGN REVIEW

3. 885 Redding (new two-family construction)

Request for approval of the Final Site Plan and Design Review to allow for construction of a new two-family residence

Mr. Baka advised that the subject site is a 0.39 acre parcel located on the south side of Redding Rd. between Lakeside Dr. and North Old Woodward Ave. in the R-4 Zoning District. The applicant was previously approved on January 13, 2016 to construct a two-family residential development at the above-referenced address. However, the applicant decided not to build the project as approved and is now returning to the Planning Board to request approval of a new two-family residential development in a new configuration and design.

As the location and footprint of the new plan are completely different from the previous approval, the applicant is required to complete the Preliminary and Final Site Plan Approval process again. On November 29, 2017, the applicant was granted Preliminary Site Plan approval by the Planning Board with several conditions.

A landscaping plan was provided by the applicant that provides the required number of deciduous trees, however no evergreen trees are evident on the plan. ***The applicant must submit a landscaping plan that complies with the Ordinance requirements or obtain a variance from the Board of Zoning Appeals.***

Design Review

The applicant is currently proposing that the two-family structure be constructed as a row house style building with side-by-side gabled ends facing the front property line. The siding is proposed to be James Hardie lap siding with pine board trim painted white. The roof on the overhangs is proposed to be standing seam and all windows are proposed to be double hung.

Mr. Boyle expressed his opinion that the poured concrete driveways coming into the two properties take up a significant amount of the lot.

Mr. Richard Wiand with Hunter Roberts Homes said they could remove the turn-arounds in the back. He would be happy to reduce in any way possible the amount of concrete on the site, however the driveway is an efficient way of moving run-off. In response to Mr. Boyle he indicated they are building for spec.

Mr. Jeffares stated that some kind of turn-around is needed so that vehicles don't have to back out. Mr. Wiand responded they could work with the Staff to reduce the amount of concrete.

Mr. Koseck said the design is beautiful but it would fit better in some other neighborhoods within the City.

It was discussed that any changes such as the reduction of concrete or paint color could be administratively approved.

Motion by Mr. Boyle

Seconded by Ms. Whipple-Boyce to APPROVE the Final Site Plan for 885 Redding with the following conditions:

- 1. The Planning Board approves the use of non-cut-off light fixtures as proposed; 2. The applicant must indicate what material will be used to screen the ground mounted mechanical;**
- 3. The applicant must provide one evergreen tree or obtain a variance from the Board of Zoning Appeals;**
- 4. The applicant addresses the concerns of all City Departments; and**
- 5. The applicant reduces the dimensions of the rear turning areas to add to the percentage of permeable surfaces on-site.**

At this time there was no public left to comment on the motion.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

01-18-18

MISCELLANEOUS BUSINESS AND COMMUNICATIONS

a. Communications

- Long-Range Planning Meeting is scheduled for Saturday, January 27.
Mr. Williams hoped the Department would convey what he believes was the consensus of the Planning Board that the City consider retention of professional assistance for this board in conjunction with the study of retail.
- Mr. Jeffares thought glass rather than metal railings should be able to be approved along with various materials for dumpster doors instead of only wood.
- Ms. Lazar stated the Whole Foods situation is terribly disappointing in terms of visibility into the windows.
- Mr. Williams noted that between 14 Mile Rd. and Lincoln along Woodward Ave. is a sensitive area as far as increased traffic through the neighborhoods due to new developments along Woodward Ave.

- Mr. Boyle reported that there is a new bus service straight down Woodward Ave. called FAST, Frequent Accessible Safe Transit. However, there is nowhere for them to stop. So one of the northern stops is right at the junction of Maple Rd. and Woodward Ave. in the inside lane.

b. Administrative Approval Requests

- 385 S. Eton, District Lofts Building R - Placing A/C condensing unit at grade on east side of building.
- 670 S. Old Woodward Ave. - Remove and replace front door entry - Denied.
- 2023 Hazel, Eton St. Station II - Revised Final Site Plan was approved 09-28-16 to allow larger second-floor rear decks over the driveway at the Eton St. Station II Development. Future plans by other condo owners can be approved administratively if they are identical. We are requesting approval to construct the approved design at 2023 Hazel.
- 33353 Woodward Ave., Woodward Commons - Request to make minor alterations to building facade,
- 33633 Woodward Ave, Wesch Cleaners - Requesting the addition of one parking lot light pole set at max 13 ft. 0 in. located at the northwest corner of the northern parking lot to provide the required lighting within the drive area as requested by the Planning Dept. Additionally, wall mounted lights will be added to the north parking lot and will be added to the south parking lot to provide required lighting.

c. Draft Agenda for the next Regular Planning Board meeting of February 28, 2018

- Peabody Restaurant Site - Final Site Plan
- 525 Southfield Rd. - Final Site Plan
- Public Hearing on site plan submittal requirements

d. Other Business (none)

01-19-18

PLANNING DIVISION ACTION ITEMS

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

01-20-18

ADJOURNMENT

No further business being evident, the Chairman adjourned the meeting at 8:50 p.m.

Jana L. Ecker
Planning Director

APPROVED

CASE DESCRIPTION

1066 Chapin (18-16)

Hearing date: May 8, 2018

The owner(s) of the property known as 1066 Chapin request the following variance(s) to construct a new single family home with a detached garage:

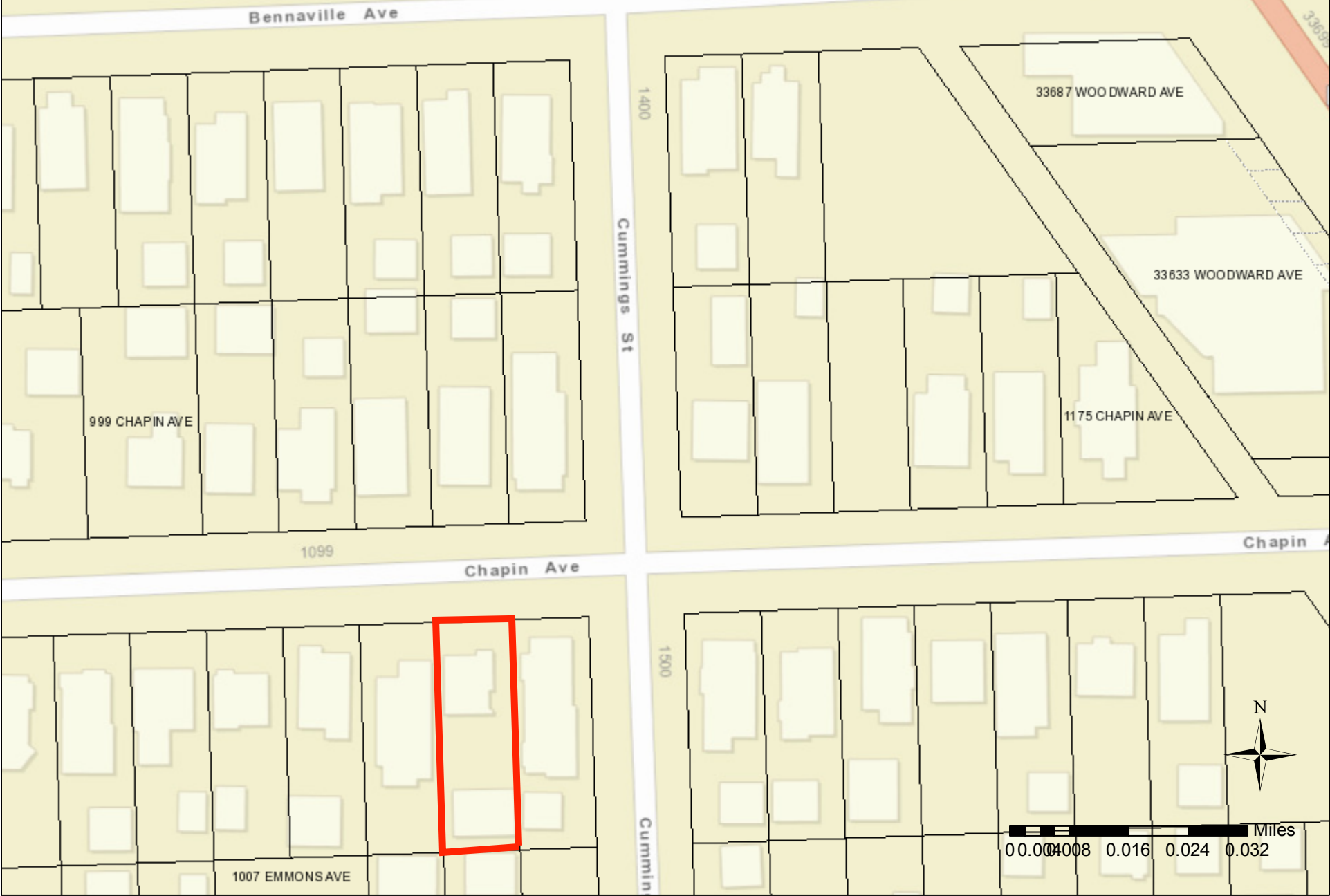
- A. Chapter 126, Article 4, Section 4.74 (C)** of the Zoning Ordinance requires the minimum distance between structures on adjacent lots of 25% of the total lot width. The required distance between is 14.00 feet. The proposed is 10.60 feet; therefore, a variance of 3.40 feet is requested.

Staff Notes: The proposed new single family home meets the zoning requirement on the property itself. This property is set between homes on each side that have side yard setbacks of the minimum 5.00 feet.

This property is zoned R3.

Jeff Zielke
Plan Examiner

1066 CHAPIN



Application Date: 3-26-18



Hearing Date: 5-8-18

Received By: BM

Appeal # 18-16

Board of Zoning Appeals Application

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

Property Information:

Street address: <u>1066 Chapin</u>	Sidwell Number: <u>19-36-432-023</u>
Owners name: <u>Live Well Custom Homes</u>	Phone #: <u>248 677 8484</u>
Owners address: <u>433 N Washington</u>	Email: <u>rick@livewellcustomhomes.com</u>
City: State: <u>Royal Oak MI</u>	Zip code: <u>48067</u>
Contact person: <u>Richard Merlini</u>	Phone #: <u>586 201 2500</u>

Petitioner Information:

Petitioner name: <u>Richard Merlini</u>	Phone #: <u>586 201 2500</u>
Petitioner address: <u>433 N. Washington</u>	Email: <u>rick@remgroups.com</u>
City: <u>Royal Oak</u> State: <u>MI</u>	Zip Code: <u>48067</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: 3-26-18

ZBA Request for 1066 Chapin Birmingham

I am requesting a dimensional variances of 3'.4" on the west side yard setback.

My hardship is that the current zoning ordinance works well on all interior lots. But when you get to a interior lot that do not have a neighboring driveway on either side, it cause unfair hardship as an owner to comply to the ordinances requirement of 14' between homes.

To minimize my variances request, I have reduced the home size and have moved the home 5'6" off the westerly lot line instead of the minimum of 5' to help minimize my request.

I would like to thank the board for their consideration of this matter.

Rick Merlini

Live Well Custom Homes

CASE DESCRIPTION

34965 Woodward (18-17)

Hearing date: May 8, 2018

Appeal No. 18-17: The owners of the property known as 34977 Woodward are appealing the decision of the Planning Board to grant final 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 final site plan approval for the construction of a 5 story building on February 28, 2018. Planning Board Minutes are included.

Matthew Baka

Matthew Baka
Senior Planner

34965 Woodward



**CITY OF BIRMINGHAM
PLANNING BOARD ACTION ITEMS
OF WEDNESDAY, FEBRUARY 28, 2018**

Item	Page
PUBLIC HEARING	
1. AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:	2
TO AMEND ARTICLE 7, SECTION 7.26, APPLICATION, TO AMEND THE SITE PLAN REVIEW SUBMITTAL REQUIREMENTS TO INCLUDE ADJACENT PROPERTY DETAILS	
TO AMEND ARTICLE 7, SECTION 7.34, SPECIAL LAND USE PERMIT REVIEW, TO AMEND THE SPECIAL LAND USE PERMIT REVIEW PROCESS TO INCLUDE SITE PLAN REVIEW SUBMITTAL REQUIREMENTS TO INCLUDE ADJACENT PROPERTY DETAILS	
Motion by Mr. Williams	
Seconded by Mr. Koseck to continue the public hearing to March 14, 2018 at 7:30 p.m.	3
Motion carried, 7-0.	
FINAL SITE PLAN AND DESIGN REVIEW	3
1. 525 Southfield Rd. (former Wellness Center)	
Final Site Plan and Design Review of request to demolish existing building and replace with eight-unit attached single-family residences	3
Motion by Ms. Whipple-Boyce	
Seconded by Mr. Jeffares to recommend APROVAL of the Final Site Plan and Design Review for 525 Southfield Rd. subject to the following conditions:	5
1. The applicant submit a specification sheet for the parking area screening wall for administrative approval to ensure that the screening is complementary to the building, uses proper materials, and meets the required dimensions;	
2. The applicant add one street tree to the Southfield Rd. or Watkins St. frontage, bringing the total number of street trees to 12, or obtain a waiver from the Staff Arborist;	
3. The applicant submit a revised photometric plan showing luminance levels no greater than 1.5 maintained foot candles at the northern property line;	
4. The applicant must submit specifications on the materials used in the construction of the building facade to complete the design review;	
5. The applicant must address the concerns of City Departments; and	
6. The Planning Board approves the use of cut-off fixtures as proposed.	

Item	Page
<p>Amended by Mr. Boyle and accepted:</p> <p>7. Regarding the open land to the south of the site, the land to be used for staging, that the land be restored per ordinance (until such time as the other development comes forward) with a landscape plan to be administratively approved. This condition would be maintained until, at a date yet to be determined, the owner brings a proposed development for that site.</p> <p>Motion carried, 7-0.</p>	5
<p>2. 34965 Woodward Ave. (former Peabody Restaurant and Frame Shop) Request for approval of a Final Site Plan and Design to allow for construction of a new five-story mixed-use building</p> <p>Motion by Mr. Boyle Seconded by Mr. Koseck to APPROVE the Final Site Plan and Design Review for 34965 Woodward Ave. and 215 Peabody St. subject to the following conditions:</p> <ol style="list-style-type: none"> 1. 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; 2. Comply with the requirements of City departments; and 3. The applicant update their civil plans to match the architectural site plans that were submitted. <p>Motion carried, 5-1.</p>	6 6 11
<p>3. 670 S. Old Woodward Ave. (Detroit Trading Co.) Final Site Plan and Design Review Request to replace existing entrance door with a garage door and sidelight and add a small 23 sq. ft. addition</p> <p>Motion by Mr. Boyle Seconded by Mr. Koseck to approve the Final Site Plan and Design Review for 670 S. Old Woodward Ave. with the following conditions as the proposed site plan meets the approval criteria set out in Article 7, section 7.27(B) of the Zoning Ordinance:</p> <ol style="list-style-type: none"> 1. The applicant will be required to provide the VLT% of the new door to verify compliance with this requirement; and 2. Address the concerns of City Departments. <p>Motion carried, 7-0.</p>	11 11 12

Item	Page
FINAL SITE PLAN REVIEW SPECIAL LAND USE PERMIT ("SLUP")	12
1. 1669 W. Maple Rd. (First Presbyterian Church) Request for approval of a Revised Final Site Plan and Design to permit a commercial catering business to operate in the existing church kitchen	13
Motion by Mr. Boyle Seconded by Mr. Williams to postpone 1669 W. Maple Rd. to March 14, 2018.	14
Motion carried, 7-0.	14

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, FEBRUARY 28, 2018
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on February 28, 2018. 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; Student Representatives Madison Dominato, Sam Fogel, Ellie McElroy

Also Present: Alternate Board Member Nasseem Ramin

Absent: Alternate Board Member Daniel Share

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

02-21-18

**APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING OF
JANUARY 24, 2018**

Ms. Lazar made the following correction:
Page 4 - Last paragraph, replace "antrha" with "anthra."

Motion by Ms. Whipple-Boyce

Seconded by Mr. Williams to approve the Minutes of the Regular Planning Board Meeting of January 24, 2018 as amended.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

02-22-18

CHAIRPERSON'S COMMENTS

The Chairman announced that three new students have joined the board: Madison Dominato, Sam Fogel and Ellie McElroy.

02-23-18

APPROVAL OF THE AGENDA (no change)

02-24-18

PUBLIC HEARING

1. AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 7, SECTION 7.26, APPLICATION, TO AMEND THE SITE PLAN REVIEW SUBMITTAL REQUIREMENTS TO INCLUDE ADJACENT PROPERTY DETAILS

TO AMEND ARTICLE 7, SECTION 7.34, SPECIAL LAND USE PERMIT REVIEW, TO AMEND THE SPECIAL LAND USE PERMIT REVIEW PROCESS TO INCLUDE SITE PLAN REVIEW SUBMITTAL REQUIREMENTS TO INCLUDE ADJACENT PROPERTY DETAIL

The public hearing opened at 7:34 p.m.

Ms. Ecker recalled that on December 4, 2017, the City Commission reviewed and approved the Special Land Use Permit ("SLUP") and Final Site Plan & Design Review for 33353 Woodward Ave. to allow Tide Dry Cleaners to open a storefront. During this review, several questions were raised by Commissioners and neighbors regarding the layout and proximity of adjacent properties, and the potential impact of the drive-in dry cleaning facility on the surrounding property owners.

At the end of the meeting, Commissioner Nickita specifically requested that the Planning Board review the existing submittal requirements for site plan reviews and SLUP reviews, to determine if amendments should be made to add additional details of the subject site and/or adjacent sites to provide context for discussion. This direction to the Planning Board was provided by the City Manager.

Accordingly, on January 10, 2018, the Planning Board discussed the proposed draft ordinance language to consider amending the submittal requirements for site plan review and SLUP review to require all applicants to include details of adjacent properties on their site plans. The board approved a motion to set a public hearing date for the amendments that would require all property lines, buildings and structures within 200 ft. of a subject site to be marked on the site plan drawings submitted. A comment was made that an aerial photo should suffice in providing these details. On January 27, 2018 at the Long Range Planning meeting this issue was also discussed. A comment was made by Commissioner Nickita that he did not believe that an aerial photo would be sufficient to meet the provision of adjacent property details.

Mr. Jeffares stated he would still prefer to have the aerial photo, at least in addition. Ms. Ecker said they could add and then bring back to the board language that would also require applicants to provide an aerial photo.

At 7:40 p.m. no one from the public had comments.

Motion by Mr. Williams

Seconded by Mr. Koseck to continue the public hearing to March 14, 2018 at 7:30 p.m.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

The public hearing closed at 7:42 p.m.

02-25-18

FINAL SITE PLAN AND DESIGN REVIEW

1. 525 Southfield Rd. (former Wellness Center)

Final Site Plan and Design Review of request to demolish existing building and replace with eight-unit attached single-family residences

Mr. Baka reported that the subject site is a 0.829 acre parcel confined by Southfield Rd. to the west, Brown St. to the north, and Watkins St. to the east in the R-8 Zoning District. The existing parcel currently contains a wellness center and parking lot. The applicant is proposing to demolish the existing building and parking lot to construct eight new attached single-family residential units that are proposed to be erected side by side in a single building facing Brown St. Each residential unit has its own stairway and individual front door that leads directly into each unit. The applicant appeared before the Planning Board on September 27, 2017 for Preliminary Site Plan Review and was approved with five conditions.

The applicant has updated the plans to reflect the request for a landscaping and photometric plan, and added four additional parking spaces, but has failed to include specification sheets for all of the screenwalls. A rooftop plan is not needed, as all mechanicals are proposed to be located within the attic of each unit. The applicant has also revised the east and west sides of the building to show more interest, adding numerous windows, some decorative features, and a base constructed of a different material.

The applicant must add one street tree to the Southfield Rd. or Watkins St. frontage, bringing the total number of street trees to twelve, or obtain a waiver from the Staff Arborist.

The Building Official has determined that the enclosed outdoor terraces on the back of each unit comply with the open space requirement of 180 sq. ft./unit mandated in Article 4, section 4.34 OS-05 of the Zoning Ordinance.

Design Review

The applicant is proposing to create eight units, each with a different façade facing Brown St. The units are comprised of varied high quality building materials with different and tasteful colors. The materials used include brick, limestone, painted wood trim, stucco, copper flashing, and painted metal features. The applicant has not submitted specifications on where the material will be sourced from, or what the exact colors will be. The applicant must submit

specifications on the materials used for the construction of the building to complete the Design Review.

The applicant is proposing a total of 52 new light fixtures at various locations on the property.

Mr. Williams received confirmation from Mr. Baka that the entire site is zoned R-8, including the parcel to the south. Permitted uses on that vacant land to the south are R-8 and R-3 single-family. Anything that happens on that portion of the property would have to return for site plan review.

Mr. Chris Longe, Architect, came forward to represent the applicant. He stated they will meet all of the ordinance requirements. As a result of discussion last time, they have added four guest parking spaces on the west/southwest side of the driveway. A brick wall with limestone cap traces the whole perimeter of the townhome development.

Mr. Boyle asked what the land to the south would look like in four years. Mr. Longe replied that what has been left vacant is a 10,000 sq. ft. site. The intent is to propose a single-family home that will be contextual with the townhomes and with the neighborhood. He explained for Mr. Boyle that it will be a staging area during construction for the townhomes. He will be back before the board in the next couple of weeks with a house design for that parcel. Until the house is constructed the site will be stabilized with grass.

Chairman Clein opened discussion from the audience at 8 p.m.

Mr. Alan Kaplan, 600 W. Brown St., was concerned the construction workers would park in their lot in Piety Hill Place. His other concern was there are only four extra spaces for this project. Therefore, visitors will also park in their lot and he feels that more excess parking is needed.

Ms. Colleen LeGoff, 543 Watkins St., wanted the green space returned after staging is completed until a house is built.

Mr. Paul Gozolo, 550 Watkins St., received confirmation there will not be accessible parking along his street because Watkins St. has residential permit parking. He questioned why the development needs to open up onto Watkins St. rather than onto Southfield Rd. Regarding the lot to the south, he asked that "single-family" be written into the agreement if it is approved. Lastly, he noted there are large, hundred year-old trees on the lot and it will not remain the same as it is now.

Mr. Baka explained the parking provided exceeds ordinance requirements by four spaces.

Mr. Longe stated that it is not feasible to enter the development off of Southfield Rd. that close to the corner. Also, entering off of Brown St. destroys the composition.

It was discussed that cars could be parallel parked along the wall that surrounds the complex when there is a need. There is 25 ft. between the garages and the wall.

Chairman Clein noted for Mr. Gozolo that the Planning Board does not have legal authority to put contract zoning in place to mandate single-family residential use for the southern lot.

Mr. Jeffares remembered that the former use on this site was a pediatric office. They probably had more people in and out in one day than this complex will have in a month.

Mr. Williams announced he would look askance at any attached single-family development going in on the south parcel.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Jeffares to recommend APROVAL of the Final Site Plan and Design Review for 525 Southfield Rd. subject to the following conditions:

- 1. The applicant submit a specification sheet for the parking area screening wall for administrative approval to ensure that the screening is complementary to the building, uses proper materials, and meets the required dimensions;**
- 2. The applicant add one street tree to the Southfield Rd. or Watkins St. frontage, bringing the total number of street trees to 12, or obtain a waiver from the Staff Arborist;**
- 3. The applicant submit a revised photometric plan showing luminance levels no greater than 1.5 maintained foot candles at the northern property line;**
- 4. The applicant must submit specifications on the materials used in the construction of the building facade to complete the design review;**
- 5. The applicant must address the concerns of City Departments; and**
- 6. The Planning Board approves the use of cut-off fixtures as proposed.**

Amended by Mr. Boyle and accepted:

7. Regarding the open land to the south of the site, the land to be used for staging, that the land be restored per ordinance (until such time as the other development comes forward) with a landscape plan to be administratively approved. This condition would be maintained until, at a date yet to be determined, the owner brings a proposed development for that site.

Motion carried, 7-0.

The Chairman called for public comments on the motion at 8:12 p.m.

Mr. Gozolo showed the board a picture of one of the mature trees on the property.

Mr. Koseck thought this is a great project. It has quality design, it has variety, it anchors the corner, and he feels that it fits that street.

ROLLCALL VOTE

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

Nays: None

Absent: None

02-26-18

2. 34965 Woodward Ave. (former Peabody Restaurant and Frame Shop)

Request for approval of a Final Site Plan and Design to allow for construction of a new five-story mixed-use building

Chairman Clein announced he would recuse himself as in the past, since his firm provided some consultant services at the front end of the project. Vice-Chairperson Lazar took over the gavel.

Motion by Mr. Williams

Seconded by Ms. Whipple-Boyce to introduce two pieces of correspondence into the formal record:

- **E-mail to Jana Ecker from Beier Howlett, City Attorney, dated 02-27-18; and**
- **Letter to Jana Ecker from Dykema Gossett, signed by Alan M Greene and dated 02-27-18 with a number of attachments.**

Motion carried, 6-0.

VOICE VOTE

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

Nays: None

Recused: Clein

Absent: None

Mr. Williams pointed out that a complaint against the City has been filed in Circuit Court by Dykema Gossett and litigation is pending. Ms. Ecker added the applicant also submitted an administrative appeal to the Board of Zoning Appeals for the Planning Board's Preliminary Site Plan approval and that appeal was denied. Further, a letter from the City Attorney states the litigation in this case does not affect what the Planning Board is doing tonight and the board should proceed in the normal course of business.

Ms. Ecker recalled the applicant has submitted an application for Final Site Plan and Design Review to construct a five-story mixed-use building in the B4/D4 Zoning District. The 0.579 acre 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 Community Impact Statement ("CIS") and Preliminary Site Plan Application for 34965 Woodward Ave. At that time, the Planning Board decided to accept the CIS 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. 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.

On August 23, 2017 the Planning Board 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 13, 2017 and requested that staff provide the minutes from the previous Planning Board meetings when both 34901 Woodward Ave. and 34977 Woodward Ave. were reviewed. A thorough review of the minutes revealed no encouragement or requirements by the Planning Board or by staff to require the installation of windows on the property lines abutting the 34965 Woodward Ave. site. The only comments made by Staff regarding this issue were by the Building Dept. For the Catalyst Building. The Building Dept. 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.

On September 13, 2017, the Planning Board unanimously approved the Preliminary Site Plan with several conditions.

Thus far, the applicant has complied with the conditions of approval and gained a waiver from the Staff Arborist, verified that there will be five pedestrian lights on Peabody St., provided a photometric plan and luminary specification sheets, provided mechanical unit specification sheets and screen wall details, provided material and color samples, and complied with the requests of all City Departments. ***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.*** The applicant meets their parking requirement by providing 88 spaces when only 15 are required.

Ms. Ecker advised that what has primarily changed since the Preliminary Site Plan Review is that on the north and south elevations the applicant has brought the building out to the front property line to match the adjacent buildings, but it then steps back about 4 ft. to provide a light well for the windows. Basically there will be about 9 ft. between the windows in order to accommodate the neighbors' concerns. Because the building has a zero side setback, the applicant was not required to set the building back, but they did so to address the neighbors' concerns.

Mr. Koseck noticed there is a bay protrusion on the third level that encroaches into M-Dot air rights. Ms. Ecker verified that in order to construct the bay the applicant would have to get an agreement with M-Dot to use the air rights.

Design Review

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

- Granite for the base of the building in charcoal gray;
- Tan stone panels for the façade of the first floor;
- Masonry veneer in a light salmon color for the second, third and fourth floors;
- Metal composite panels to clad the fifth floor and sections of the rooftop screening;
- Steel window and door systems on all elevations (Ultra white, ultra clear glass with 80% VLT);
- Anodized aluminum channel accents, powder coated balcony rails with steel guardrail, and steel fin details;
- Decorative stainless steel metal grates for rooftop mechanical screening;
- Metal pedestrian scale canopies on the Peabody St. and Woodward Ave. elevations; and
- Cantilevered structural glass for the section on the third floor.

Mr. Chris Longe, Architect, passed along samples of the various materials to be used in the project, with the exception of the garage door material.

The proposed building will uphold the vision of the Maple Gateway and Downtown Birmingham 2016 Plan.

The proposed building meets 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 entry has a canopy and adds architectural interest and pedestrian scale details for patrons going in and out of the building.

Calculations have been submitted for the glazing requirements outlined in Article 3, Section 3.04 of the Zoning Ordinance that show that the minimum 70% glazing requirements have been met

on the first floor, and the maximum 35% glazing requirements on the upper floors have been met.

The applicant has submitted Visual Light Transmittance ("VLT") calculations showing ultra white, ultra clear glazing with 80% VLT. However, the applicant has also indicated that they propose to use clear glass with a 78% VLT. The applicant has advised that the 80% VLT glass will be used on the ground floor level as required, and the 78% VLT glass will be used on the upper levels, thus meeting this requirement as well.

Mr. Boyle inquired if a pedestrian walking along would see a space between the buildings to the north and south, or will they touch. Mr. Longe answered they will physically touch at the corners with the exception of the SW corner where the Balmoral Building is 5 ft. off their property line above the second floor. Their Alden Building comes to the property line. Therefore a pedestrian would see a continuous street wall.

Mr. Longe spoke to say the changes since Preliminary Site Plan Review were made after consultation with their neighbors to the north and to the south.

Mr. Jeffares noted the proposed Alden Building has taken more off the Parking System with the 88 spaces they have provided which is significantly more than their adjacent neighbors who provided 10 and 13 spots.

Discussion turned to whether parking in the Alden Building could be run as a private parking facility. Mr. Ecker affirmed that it could, with the exception of 15 spaces that are required for the residential units. Mr. Longe noted that a sample of the garage door material was not provided because there is no garage door.

Vice Chairperson Lazar invited comments from the public at 9 p.m.

Mr. Alan Greene spoke on behalf of the ownership of the Balmoral Bldg., Woodward Brown Associates; and the Greenleaf Trust Bldg., Catalyst Development. Mr. Greene listed questions:

- The Final Site Plan documents were very unclear about what was happening on the north and south facades abutting their buildings. He has now heard the material that will be on those facades will replicate what is on the east and west facades. The plans do not clarify what the materials are on the north and south facades.
- It is unclear from the plans how the first floor of the Alden Bldg. relates to the first and second floor of the Balmoral Bldg. Their architects say the Balmoral windows will be blocked or partially blocked. Regarding the Catalyst Bldg. it appears to be a situation where the Alden Bldg. is built right to the balconies of the residential units, and fire rated windows were added so that people look right into the Catalyst residential balconies.
- To summarize, the Final Site Plan does not provide details about the two elevations; what the materials are on the south and north; do they carry through the entire elevation; what kind of windows are on the north and south; are the windows facing the Balmoral Bldg. fire rated; and are they the kind of glass that was just shown.

Mr. Green went on to state they still object that the Plan does not meet the requirements of the Master Plan; it does not meet the requirements of the Zoning Ordinance on various standards; it impacts the value of their buildings; there is not sufficient parking available; and there are constructability issues about how the building will be constructed without trespassing on or damaging their property.

Mr. Longe responded with respect to the materials and the windows that they are indicated on the elevation drawing:

- The same materials that are on the Woodward Ave. and Peabody St. facades will be replicated on the north and south sides that cannot be seen.
- The glazing is identical to what has been shown in terms of its clarity and the framing. It does not have to be fire rated.
- The configuration of the building above the second and third floors was not something that they presented; it is something that they responded to at the Catalyst architect's request.
- Their counsel has had discussions with Mr. Greene about construction and imposing on the property of the adjacent buildings. They are at the threshold of producing a schedule of activities so it will be known what is going to happen throughout the course of construction. They are hoping to get a license to operate in and around the adjacent buildings with proper notice, and to produce a long-term maintenance agreement that benefits the properties to the north and south.

Mr. Williams stated he has not had an opportunity to read the materials submitted late yesterday by Mr. Greene and therefore is reticent to vote tonight, other than to postpone consideration for two weeks. Further, he requested that the Planning Dept. respond specifically as to the validity of the assertions about the site plan that the Balmoral and Catalyst Buildings have made in the Greene letter. He wants the Building Dept. to respond to what the plans say and what Mr. Greene's clients say and here is the conclusion of the Building Dept. as to the validity of those assertions. This dispute is in litigation and at some point a judge is going to look at this. He wants the judge to have the complete record and that in his own case he has had the opportunity to read all of the materials in detail before saying yes or no for Final Site Plan Approval.

Additionally, on page 4 of the materials that were submitted to the Board of Zoning Appeals by Mr. Greene, a statement is made that the petitioners gave up rentable square footage to create the buildings desired and mandated by the City. Ms. Ecker has addressed that issue by saying there is nothing in the record to support the claim that the City mandated the setbacks of the two buildings. He asked Mr. Greene to prove his case and submit the documents where he can make that statement. If he cannot, then correct the record.

Mr. Koseck stated that he does not have to read the materials. In his mind the placement and form of the building all comply with the ordinance. He is trying not to get caught up in all of the legalities and feels that is up to someone else. He has never heard anyone on this board say anything about zero lot lines except that the walls should not be boring. Therefore, he feels the board can move forward on this.

In response to Mr. Jeffares, Mr. Longe said there are zero windows blocked on either the Catalyst or Balmoral Buildings on the north or south side of his building.

Ms. Whipple-Boyce thought it may be worth the two weeks to thoroughly review the letter and attachments received from Mr. Greene that probably none of them has had the opportunity to read. That would ensure they have covered all of their bases. Ms. Ecker noted that she spoke to Mr. Currier who said absolutely nothing in the package changes his position that the board should move ahead in the normal course of business.

Motion by Mr. Boyle

Seconded by Mr. Koseck to APPROVE the Final Site Plan and Design Review for 34965 Woodward Ave. and 215 Peabody St. subject to the following conditions:

- 1. 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;**
- 2. Comply with the requirements of City departments; and**
- 3. The applicant update their civil plans to match the architectural site plans that were submitted.**

There were no comments from the public on the motion at 9:12 p.m.

Motion carried, 5-1.

ROLLCALL VOTE

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

Nays: Williams

Recused: Clein

Absent: None

02-27-18

Vice- Chairperson Lazar turned the gavel back over to Chairman Clein.

3. 670 S. Old Woodward Ave. (Detroit Trading Co.)

Final Site Plan and Design Review Request to replace existing entrance door with a garage door and sidelight and add a small 23 sq. ft. addition

Mr. Baka reported the subject location is a 17,250 sq. ft. parcel with an existing one- story commercial building. The property is located on the west side of S. Old Woodward Ave. between George St. and E. Frank St. in the Downtown Overlay District. At this time, the applicant is proposing to add 24 sq. ft. to the building to allow for the installation of a new main entrance in the northeast corner. Further, the applicant is proposing to expand the door opening in order to have sufficient space to move a car into the building that will be visible from the front of the building. It should be noted that an auto showroom is not a permitted use in this Zone District, but an auto sales agency is a permitted use.

Design Review

The applicant is proposing to add a new door and transom window in the approximate location of the existing door. The new entrance is proposed to be a double door with a 9 ft. x 8 ft. combined opening. The hardware is proposed to be white to match the existing hardware and trim on the building. In accordance with the requirements of the Downtown Birmingham Overlay District, all glass must be clear with VLT% of 80 or higher. Thus, the applicant will be required to provide the VLT percent of the new door to verify compliance with this requirement.

In response to Mr. Jeffares, Ms. Ecker verified the property was legal and conforming prior to the Personal Services definition being adopted in November. Now it is legal non-conforming. The nature of the business being carried on there is still the same.

Mr. Boyle thought this is a perfectly good use of the property and is exactly the type of retail display the City has been looking for in the downtown. Mr. Baka said a showroom commonly is defined as a place where products are displayed. This property is zoned B-2B which allows

auto sales agencies but does not allow auto showrooms. Those are two separate uses within the ordinance.

Mr. Roger Young, Young and Young Architects, represented Detroit Trading Co. He stated the car is strictly a display vehicle and while cars are for sale by order, the display car itself will not be for sale. The intent is to display one vehicle only. The door will swing outward for only a few moments, although they certainly can look at an in-swing door. However, that would be more cumbersome based on what occurs within the interior space. He asked to be allowed to work with the Building Dept. on that. As to the VLT of the glazing, it will be clear with low-E coating. Also, they will place the Knox box where the Fire Dept. deems is most appropriate.

Motion by Mr. Boyle

Seconded by Mr. Koseck to approve the Final Site Plan and Design Review for 670 S. Old Woodward Ave. with the following conditions as the proposed site plan meets the approval criteria set out in Article 7, section 7.27(B) of the Zoning Ordinance:

- 1. The applicant will be required to provide the VLT% of the new door to verify compliance with this requirement; and**
- 2. Address the concerns of City Departments.**

There was no discussion from the public at 9:47 p.m.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

Motion by Ms. Whipple-Boyce

Seconded by Mr. Boyle to suspend the rules to take the Final Site Plan and SLUP for 1669 W. Maple Rd. together.

Motion carried,

VOICE VOTE

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

Nays: None

Absent: None

02-28-18

FINAL SITE PLAN REVIEW

SPECIAL LAND USE PERMIT ("SLUP")

1. 1669 W. Maple Rd. (First Presbyterian Church)

Request for approval of a Revised Final Site Plan and Design to permit a commercial catering business to operate in the existing church kitchen

Ms. Ecker explained that First Presbyterian Church is located on the south side of W. Maple Rd. between Pleasant and Larchlea Dr. The church is proposing to lease the kitchen in the lower level of the church to Canape Cart for the purpose of producing meals to be served off site. As a result of this change, the petitioner will require an amendment to their existing SLUP. Prior to the consideration of a SLUP Amendment, the City Commission refers the Site Plan and Design Review to the Planning Board. Should Planning Board approval be granted, a public hearing will be held by the City Commission to consider whether or not to grant the proposed SLUP Amendment.

This parcel of land is zoned R-1, Single Family Residential District. Churches are a permitted use in the R-1 District, subject to Special Land Use regulations. The church originally received a SLUP on May 13, 1991.

Canape Cart is a catering service run by two individuals whose operation formerly resided in the Drayton Avenue Presbyterian Church in Ferndale, Michigan. The closing of that church has forced Canape Cart to seek a new kitchen to lease to prepare their food offerings. The First Presbyterian Church has an existing kitchen located in the basement level of the Church. No changes are proposed to either the kitchen layout, the interior or the exterior of the Church. No signage is proposed for Canape Cart.

The lease with the church states that Canape Cart may use the kitchen daily anytime between the hours of 8 a.m. to 7 p.m.; however, the church has first right to use the kitchen for church events. Canape Cart proposes to prepare food in the church kitchen to be delivered and served at other venues in Metro Detroit. No details have been provided at this time as to the number or size of vehicles to be used to transport food to offsite locations.

Design Review

The kitchen is located in the lower level of the church on the southeast side of the building, facing the rear parking lot. The existing building will not be altered in any way, nor any new signage placed upon the building or the grounds. The amendment to the SLUP is consistent with the Zoning Ordinance; compatible with adjacent uses of land; the natural environment; the capabilities of public services and facilities affected by the land use; consistent with the public health, safety and welfare of the City; and will not be injurious to the surrounding neighborhood.

Motion by Mr. Williams

Seconded by Ms. Whipple-Boyce that an e-mail from James Goss, Business Manager, First Presbyterian Church-Birmingham. dated February 26, 2018, be formally made a part of the record.

Motion carried, 7-0.

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

Nays: None

Absent: None

Chairman Clein noted the church is allowed in an R-1 Zone. However, the use they are trying to add is commercial. The ordinance only allows an accessory use that is customarily incidental to the Church. It was discussed that there are commercial enterprises in various churches around town. Consensus of the board members was that they are in generally in favor of the proposal, but they don't have the power to approve the SLUP Amendment. It was determined

that a formal interpretation from the Building Official and a recommendation from the City Attorney would be needed to clear up the matter.

Ms. Kathleen O'Neal, co-owner of Canape Cart Catering and Mr. James Goss, Business Manager of First Presbyterian Church, came forward to speak.

Mr. Jeffares wanted assurance there would never be refrigerated trucks running outside. He had the same concern about holding cooking classes. Also, Mr. Goss assured him there would never be alcohol on the site.

Ms. O'Neal explained they have rented the Presbyterian Church in Ferndale for 25 years but now the building is being sold. She went on to say that they would be responsible for catering events within the church. Mr. Williams replied that would be incidental if the kitchen were to be used for church purposes.

Motion by Mr. Boyle

Seconded by Mr. Williams to postpone 1669 W. Maple Rd. to March 14, 2018.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

02-29-18

MISCELLANEOUS BUSINESS AND COMMUNICATIONS

a. Communications (none)

b. Administrative Approval Requests

- 2400 E. Lincoln, The Sheridan at Birmingham - Replace louvers with glazing on west elevation.
- 559 W. Brown - Minor design alterations and changes to landscape plan.
- Mr. Baka explained that Toast wants to install a semi-permanent awning over the entire dining deck. All were in favor.
- Mr. Baka advised that Commonwealth wants to change their deck from diamond plated steel to wood. They would still have a diamond plated transition from the sidewalk. The planters would remain, however Commonwealth would be willing to give up the bamboo. The railing would still be slatted steel along the sides. There were no concerns.

c. Draft Agenda for the next Regular Planning Board Meeting of March 14, 2018

- Continuation of the public hearing on Site Plan Review Standards;
- Continuation of 1669 W. Maple Rd. SLUP;
- Continuation of the discussion on retail;
- Planning Board Action List

Draft Agenda for the Regular Planning Board Meeting of March 28, 2018

- 857 Redding (Preliminary Site Plan);

- Morrie Restaurant, 250 N. Old Woodward (SLUP and Final Site Plan);
- Hotel at 298 S. Old Woodward Ave. (Revised Final Site Plan & Design).

d. Other Business (none)

02-30-18

PLANNING DIVISION ACTION ITEMS

a. Staff report on previous requests (none)

Additional items from tonight's meeting

- Mr. Jeffares noted with respect to aerial photos that they should go 300 ft. out. Everyone agreed.

02-31-18

ADJOURNMENT

No further business being evident, the Chairman adjourned the meeting at 10:20 p.m.

Jana L. Ecker
Planning Director

April 5, 2018

Mr. Bruce R. Johnson, Building Official
City of Birmingham
151 Martin Street, P.O. Box 3001
Birmingham, MI 48012-3001

Re: Variance Request Before the BZA Involving 34965 Woodward

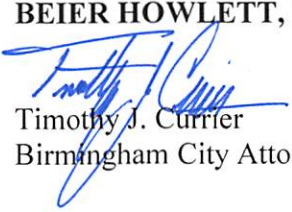
Dear Mr. Johnson:

Attached please find a copy of the February 27, 2018 letter I provided to the Planning Board regarding the litigation between *Catalyst Development and LLC Woodward Brown Associates, LLC and the Alden Development Group, now known as the Woodward Peabody Group*, in the Oakland County Circuit Court. Please be advised that the information I provided to the Planning Board in the attached letter has not changed. The status of the litigation has still resulted in no issuance of any Preliminary Injunctions or Restraining Orders. Therefore, the BZA can proceed in its normal course of action with respect to the requested variance that is coming before it.

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

Beier Howlett

ATTORNEYS AND COUNSELORS

TIMOTHY J. CURRIER
tcurrier@bhllaw.us.com
Telephone (248) 645-9400
Fax (248) 645-9344

February 27, 2018

VIA EMAIL: JECKER@BHAMGOV.ORG

Ms. Jana Ecker
City of Birmingham
151 Martin Street, P.O. Box 3001
Birmingham, MI 48012-3001

Re: Final Site Plan and Zoning Review for 34965 Woodward

Dear Ms. Ecker:

As you are aware, the above referenced site is the subject of litigation between Catalyst Development Co. 8, LLC, Woodward Brown Associates, LLC, and Alden Development Group, LLC, before the Oakland County Circuit Court. That having been said, please be aware that plaintiffs have not received nor have they sought any form of preliminary injunctive relief, such as a temporary restraining order or preliminary injunction. They have asked for an injunction in the body of their Complaint, but not as an immediate temporary remedy.

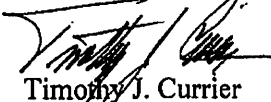
There is no impediment for the Planning Board to going forward and continue its final site plan and design review of the aforementioned project. I would recommend that the Planning Board proceed in its usual course in going through the final site plan and design review on this project as they would under any other circumstance.

I have included a copy of the Answer that the City has filed to the Complaint with this correspondence. As of this date I have not received any Answer from Alden Development to the Complaint. Should the circumstances change with respect to the litigation, I will advise you and the Planning Board as soon as possible.

Should 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/ck
Enclosure
cc: Joe Valentine, City Manager (w/encl.) (via email)

Application Date: 3-29-18



Hearing Date: 5-8-18

Received By: BM

Appeal # 18-18

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: Peabody Owner LLC *		Phone #: n/a	
Owners address: 27777 Franklin Rd., Ste. 200		Email: n/a	
City: State: Southfield, MI		Zip code: 48034	
Contact person: n/a		Phone #: n/a	

* Applicant for Final Site Plan Approval: Alden Development Group LLC

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

Signature of Owner: Alden McNamee Date: 3/28/2018



Dykema Gossett PLLC
39577 Woodward Avenue
Suite 300
Bloomfield Hills, MI 48304

WWW.DYKEMA.COM

Tel: (248) 203-0700

Fax: (248) 203-0763

Alan M. Greene

Direct Dial: (248) 203-0757

Direct Fax: (855) 236-1206

Email: AGreene@dykema.com

March 28, 2018

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 Final Site Plan Approval

Dear Ms. Ecker:

As stated in detail in my correspondence dated February 27, 2018, and on the record at the Planning Board's February 28, 2018 meeting, the owners of the parcels adjacent to the above-referenced property remain opposed to the proposed development (the "Project") because, among other reasons, the Project's proposed site plan does not satisfy the requirements of the City's Zoning Ordinance and depicts a building that cannot be constructed or maintained without material damage to the existing Balmoral and Catalyst Buildings and without trespassing onto the Balmoral and Catalyst Properties. Moreover, the final site plan submitted by the applicant leaves significant questions unanswered concerning the number of windows on the adjacent buildings that will be entirely blocked by the Project and the type of materials to be used in constructing the Project's northern and southern facades.

Further, the Project is inconsistent with the City's Downtown Birmingham 2016 Master Plan and, as the City itself has acknowledged, there is simply no parking capacity – or any plan to create additional parking capacity – to accommodate the increased parking demands caused by the Project. Indeed, the record reflects that the Planning Board gave almost no consideration whatsoever to the Project's negative impact on the City's already-dire parking situation.¹

Accordingly, enclosed with this correspondence are two BZA Applications related to the Planning Board's grant of final site plan approval for the Project, as well as checks for the

¹ See, e.g., Planning Board Member Boyle's comments at the February 28, 2018 meeting ("My only comment would be that it is a delight to discuss a major boding [*sic*] of this size and not revert to the P word; we barely discussed parking and it's absolutely a pleasure...."). (Emphasis added).

DyKEMA

Ms. Jana Ecker
March 28, 2018
Page 2

applicable filing fees and all required and supporting materials. Please contact me if you should have any questions related to the enclosed materials.

Sincerely,

DYKEMA GOSSETT PLLC



Alan M. Greene

Enclosures

**CITY OF BIRMINGHAM
PLANNING BOARD ACTION ITEMS
OF WEDNESDAY, FEBRUARY 28, 2018**

Item	Page
PUBLIC HEARING	
1. AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:	2
TO AMEND ARTICLE 7, SECTION 7.26, APPLICATION, TO AMEND THE SITE PLAN REVIEW SUBMITTAL REQUIREMENTS TO INCLUDE ADJACENT PROPERTY DETAILS	
TO AMEND ARTICLE 7, SECTION 7.34, SPECIAL LAND USE PERMIT REVIEW, TO AMEND THE SPECIAL LAND USE PERMIT REVIEW PROCESS TO INCLUDE SITE PLAN REVIEW SUBMITTAL REQUIREMENTS TO INCLUDE ADJACENT PROPERTY DETAILS	
Motion by Mr. Williams	
Seconded by Mr. Koseck to continue the public hearing to March 14, 2018 at 7:30 p.m.	3
Motion carried, 7-0.	
	3
FINAL SITE PLAN AND DESIGN REVIEW	
1. 525 Southfield Rd. (former Wellness Center)	
Final Site Plan and Design Review of request to demolish existing building and replace with eight-unit attached single-family residences	3
Motion by Ms. Whipple-Boyce	
Seconded by Mr. Jeffares to recommend APROVAL of the Final Site Plan and Design Review for 525 Southfield Rd. subject to the following conditions:	5
1. The applicant submit a specification sheet for the parking area screening wall for administrative approval to ensure that the screening is complementary to the building, uses proper materials, and meets the required dimensions;	
2. The applicant add one street tree to the Southfield Rd. or Watkins St. frontage, bringing the total number of street trees to 12, or obtain a waiver from the Staff Arborist;	
3. The applicant submit a revised photometric plan showing luminance levels no greater than 1.5 maintained foot candles at the northern property line;	
4. The applicant must submit specifications on the materials used in the construction of the building facade to complete the design review;	
5. The applicant must address the concerns of City Departments; and	
6. The Planning Board approves the use of cut-off fixtures as proposed.	

Item	Page
<p>Amended by Mr. Boyle and accepted:</p> <p>7. Regarding the open land to the south of the site, the land to be used for staging, that the land be restored per ordinance (until such time as the other development comes forward) with a landscape plan to be administratively approved. This condition would be maintained until, at a date yet to be determined, the owner brings a proposed development for that site.</p> <p>Motion carried, 7-0.</p>	<p>5</p>
<p>2. 34965 Woodward Ave. (former Peabody Restaurant and Frame Shop) Request for approval of a Final Site Plan and Design to allow for construction of a new five-story mixed-use building</p> <p>Motion by Mr. Boyle Seconded by Mr. Koseck to APPROVE the Final Site Plan and Design Review for 34965 Woodward Ave. and 215 Peabody St. subject to the following conditions:</p> <ol style="list-style-type: none"> 1. 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; 2. Comply with the requirements of City departments; and 3. The applicant update their civil plans to match the architectural site plans that were submitted. <p>Motion carried, 5-1.</p>	<p>6</p> <p>6</p> <p>11</p>
<p>3. 670 S. Old Woodward Ave. (Detroit Trading Co.) Final Site Plan and Design Review Request to replace existing entrance door with a garage door and sidelight and add a small 23 sq. ft. addition</p> <p>Motion by Mr. Boyle Seconded by Mr. Koseck to approve the Final Site Plan and Design Review for 670 S. Old Woodward Ave. with the following conditions as the proposed site plan meets the approval criteria set out in Article 7, section 7.27(B) of the Zoning Ordinance:</p> <ol style="list-style-type: none"> 1. The applicant will be required to provide the VLT% of the new door to verify compliance with this requirement; and 2. Address the concerns of City Departments. <p>Motion carried, 7-0.</p>	<p>11</p> <p>11</p> <p>12</p>

Item	Page
FINAL SITE PLAN REVIEW SPECIAL LAND USE PERMIT ("SLUP")	12
1. 1669 W. Maple Rd. (First Presbyterian Church) Request for approval of a Revised Final Site Plan and Design to permit a commercial catering business to operate in the existing church kitchen	13
Motion by Mr. Boyle Seconded by Mr. Williams to postpone 1669 W. Maple Rd. to March 14, 2018.	14
Motion carried, 7-0.	14

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, FEBRUARY 28, 2018
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on February 28, 2018. 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; Student Representatives Madison Dominato, Sam Fogel, Ellie McElroy

Also Present: Alternate Board Member Nasseem Ramin

Absent: Alternate Board Member Daniel Share

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

02-21-18

APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING OF JANUARY 24, 2018

Ms. Lazar made the following correction:
Page 4 - Last paragraph, replace "antrha" with "anthra."

Motion by Ms. Whipple-Boyce

Seconded by Mr. Williams to approve the Minutes of the Regular Planning Board Meeting of January 24, 2018 as amended.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

02-22-18

CHAIRPERSON'S COMMENTS

The Chairman announced that three new students have joined the board: Madison Dominato, Sam Fogel and Ellie McElroy.

02-23-18

APPROVAL OF THE AGENDA (no change)

02-24-18

PUBLIC HEARING

1. AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 7, SECTION 7.26, APPLICATION, TO AMEND THE SITE PLAN REVIEW SUBMITTAL REQUIREMENTS TO INCLUDE ADJACENT PROPERTY DETAILS

TO AMEND ARTICLE 7, SECTION 7.34, SPECIAL LAND USE PERMIT REVIEW, TO AMEND THE SPECIAL LAND USE PERMIT REVIEW PROCESS TO INCLUDE SITE PLAN REVIEW SUBMITTAL REQUIREMENTS TO INCLUDE ADJACENT PROPERTY DETAIL

The public hearing opened at 7:34 p.m.

Ms. Ecker recalled that on December 4, 2017, the City Commission reviewed and approved the Special Land Use Permit ("SLUP") and Final Site Plan & Design Review for 33353 Woodward Ave. to allow Tide Dry Cleaners to open a storefront. During this review, several questions were raised by Commissioners and neighbors regarding the layout and proximity of adjacent properties, and the potential impact of the drive-in dry cleaning facility on the surrounding property owners.

At the end of the meeting, Commissioner Nickita specifically requested that the Planning Board review the existing submittal requirements for site plan reviews and SLUP reviews, to determine if amendments should be made to add additional details of the subject site and/or adjacent sites to provide context for discussion. This direction to the Planning Board was provided by the City Manager.

Accordingly, on January 10, 2018, the Planning Board discussed the proposed draft ordinance language to consider amending the submittal requirements for site plan review and SLUP review to require all applicants to include details of adjacent properties on their site plans. The board approved a motion to set a public hearing date for the amendments that would require all property lines, buildings and structures within 200 ft. of a subject site to be marked on the site plan drawings submitted. A comment was made that an aerial photo should suffice in providing these details. On January 27, 2018 at the Long Range Planning meeting this issue was also discussed. A comment was made by Commissioner Nickita that he did not believe that an aerial photo would be sufficient to meet the provision of adjacent property details.

Mr. Jeffares stated he would still prefer to have the aerial photo, at least in addition. Ms. Ecker said they could add and then bring back to the board language that would also require applicants to provide an aerial photo.

At 7:40 p.m. no one from the public had comments.

Motion by Mr. Williams

Seconded by Mr. Koseck to continue the public hearing to March 14, 2018 at 7:30 p.m.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

The public hearing closed at 7:42 p.m.

02-25-18

FINAL SITE PLAN AND DESIGN REVIEW

1. 525 Southfield Rd. (former Wellness Center)

Final Site Plan and Design Review of request to demolish existing building and replace with eight-unit attached single-family residences

Mr. Baka reported that the subject site is a 0.829 acre parcel confined by Southfield Rd. to the west, Brown St. to the north, and Watkins St. to the east in the R-8 Zoning District. The existing parcel currently contains a wellness center and parking lot. The applicant is proposing to demolish the existing building and parking lot to construct eight new attached single-family residential units that are proposed to be erected side by side in a single building facing Brown St. Each residential unit has its own stairway and individual front door that leads directly into each unit. The applicant appeared before the Planning Board on September 27, 2017 for Preliminary Site Plan Review and was approved with five conditions.

The applicant has updated the plans to reflect the request for a landscaping and photometric plan, and added four additional parking spaces, but has failed to include specification sheets for all of the screenwalls. A rooftop plan is not needed, as all mechanicals are proposed to be located within the attic of each unit. The applicant has also revised the east and west sides of the building to show more interest, adding numerous windows, some decorative features, and a base constructed of a different material.

The applicant must add one street tree to the Southfield Rd. or Watkins St. frontage, bringing the total number of street trees to twelve, or obtain a waiver from the Staff Arborist.

The Building Official has determined that the enclosed outdoor terraces on the back of each unit comply with the open space requirement of 180 sq. ft./unit mandated in Article 4, section 4.34 OS-05 of the Zoning Ordinance.

Design Review

The applicant is proposing to create eight units, each with a different façade facing Brown St. The units are comprised of varied high quality building materials with different and tasteful colors. The materials used include brick, limestone, painted wood trim, stucco, copper flashing, and painted metal features. The applicant has not submitted specifications on where the material will be sourced from, or what the exact colors will be. The applicant must submit

specifications on the materials used for the construction of the building to complete the Design Review.

The applicant is proposing a total of 52 new light fixtures at various locations on the property.

Mr. Williams received confirmation from Mr. Baka that the entire site is zoned R-8, including the parcel to the south. Permitted uses on that vacant land to the south are R-8 and R-3 single-family. Anything that happens on that portion of the property would have to return for site plan review.

Mr. Chris Longe, Architect, came forward to represent the applicant. He stated they will meet all of the ordinance requirements. As a result of discussion last time, they have added four guest parking spaces on the west/southwest side of the driveway. A brick wall with limestone cap traces the whole perimeter of the townhome development.

Mr. Boyle asked what the land to the south would look like in four years. Mr. Longe replied that what has been left vacant is a 10,000 sq. ft. site. The intent is to propose a single-family home that will be contextual with the townhomes and with the neighborhood. He explained for Mr. Boyle that it will be a staging area during construction for the townhomes. He will be back before the board in the next couple of weeks with a house design for that parcel. Until the house is constructed the site will be stabilized with grass.

Chairman Clein opened discussion from the audience at 8 p.m.

Mr. Alan Kaplan, 600 W. Brown St., was concerned the construction workers would park in their lot in Piety Hill Place. His other concern was there are only four extra spaces for this project. Therefore, visitors will also park in their lot and he feels that more excess parking is needed.

Ms. Colleen LeGoff, 543 Watkins St., wanted the green space returned after staging is completed until a house is built.

Mr. Paul Gozolo, 550 Watkins St., received confirmation there will not be accessible parking along his street because Watkins St. has residential permit parking. He questioned why the development needs to open up onto Watkins St. rather than onto Southfield Rd. Regarding the lot to the south, he asked that "single-family" be written into the agreement if it is approved. Lastly, he noted there are large, hundred year-old trees on the lot and it will not remain the same as it is now.

Mr. Baka explained the parking provided exceeds ordinance requirements by four spaces.

Mr. Longe stated that it is not feasible to enter the development off of Southfield Rd. that close to the corner. Also, entering off of Brown St. destroys the composition.

It was discussed that cars could be parallel parked along the wall that surrounds the complex when there is a need. There is 25 ft. between the garages and the wall.

Chairman Clein noted for Mr. Gozolo that the Planning Board does not have legal authority to put contract zoning in place to mandate single-family residential use for the southern lot.

Mr. Jeffares remembered that the former use on this site was a pediatric office. They probably had more people in and out in one day than this complex will have in a month.

Mr. Williams announced he would look askance at any attached single-family development going in on the south parcel.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Jeffares to recommend APROVAL of the Final Site Plan and Design Review for 525 Southfield Rd. subject to the following conditions:

- 1. The applicant submit a specification sheet for the parking area screening wall for administrative approval to ensure that the screening is complementary to the building, uses proper materials, and meets the required dimensions;**
- 2. The applicant add one street tree to the Southfield Rd. or Watkins St. frontage, bringing the total number of street trees to 12, or obtain a waiver from the Staff Arborist;**
- 3. The applicant submit a revised photometric plan showing luminance levels no greater than 1.5 maintained foot candles at the northern property line;**
- 4. The applicant must submit specifications on the materials used in the construction of the building facade to complete the design review;**
- 5. The applicant must address the concerns of City Departments; and**
- 6. The Planning Board approves the use of cut-off fixtures as proposed.**

Amended by Mr. Boyle and accepted:

7. Regarding the open land to the south of the site, the land to be used for staging, that the land be restored per ordinance (until such time as the other development comes forward) with a landscape plan to be administratively approved. This condition would be maintained until, at a date yet to be determined, the owner brings a proposed development for that site.

Motion carried, 7-0.

The Chairman called for public comments on the motion at 8:12 p.m.

Mr. Gozolo showed the board a picture of one of the mature trees on the property.

Mr. Koseck thought this is a great project. It has quality design, it has variety, it anchors the corner, and he feels that it fits that street.

ROLLCALL VOTE

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

Nays: None

Absent: None

02-26-18

2. 34965 Woodward Ave. (former Peabody Restaurant and Frame Shop)

Request for approval of a Final Site Plan and Design to allow for construction of a new five-story mixed-use building

Chairman Clein announced he would recuse himself as in the past, since his firm provided some consultant services at the front end of the project. Vice-Chairperson Lazar took over the gavel.

Motion by Mr. Williams

Seconded by Ms. Whipple-Boyce to introduce two pieces of correspondence into the formal record:

- **E-mail to Jana Ecker from Beier Howlett, City Attorney, dated 02-27-18; and**
- **Letter to Jana Ecker from Dykema Gossett, signed by Alan M Greene and dated 02-27-18 with a number of attachments.**

Motion carried, 6-0.

VOICE VOTE

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

Nays: None

Recused: Clein

Absent: None

Mr. Williams pointed out that a complaint against the City has been filed in Circuit Court by Dykema Gossett and litigation is pending. Ms. Ecker added the applicant also submitted an administrative appeal to the Board of Zoning Appeals for the Planning Board's Preliminary Site Plan approval and that appeal was denied. Further, a letter from the City Attorney states the litigation in this case does not affect what the Planning Board is doing tonight and the board should proceed in the normal course of business.

Ms. Ecker recalled the applicant has submitted an application for Final Site Plan and Design Review to construct a five-story mixed-use building in the B4/D4 Zoning District. The 0.579 acre 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 Community Impact Statement ("CIS") and Preliminary Site Plan Application for 34965 Woodward Ave. At that time, the Planning Board decided to accept the CIS 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. 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.

On August 23, 2017 the Planning Board 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 13, 2017 and requested that staff provide the minutes from the previous Planning Board meetings when both 34901 Woodward Ave. and 34977 Woodward Ave. were reviewed. A thorough review of the minutes revealed no encouragement or requirements by the Planning Board or by staff to require the installation of windows on the property lines abutting the 34965 Woodward Ave. site. The only comments made by Staff regarding this issue were by the Building Dept. For the Catalyst Building. The Building Dept. 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.

On September 13, 2017, the Planning Board unanimously approved the Preliminary Site Plan with several conditions.

Thus far, the applicant has complied with the conditions of approval and gained a waiver from the Staff Arborist, verified that there will be five pedestrian lights on Peabody St., provided a photometric plan and luminary specification sheets, provided mechanical unit specification sheets and screen wall details, provided material and color samples, and complied with the requests of all City Departments. ***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.*** The applicant meets their parking requirement by providing 88 spaces when only 15 are required.

Ms. Ecker advised that what has primarily changed since the Preliminary Site Plan Review is that on the north and south elevations the applicant has brought the building out to the front property line to match the adjacent buildings, but it then steps back about 4 ft. to provide a light well for the windows. Basically there will be about 9 ft. between the windows in order to accommodate the neighbors' concerns. Because the building has a zero side setback, the applicant was not required to set the building back, but they did so to address the neighbors' concerns.

Mr. Koseck noticed there is a bay protrusion on the third level that encroaches into M-Dot air rights. Ms. Ecker verified that in order to construct the bay the applicant would have to get an agreement with M-Dot to use the air rights.

Design Review

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

- Granite for the base of the building in charcoal gray;
- Tan stone panels for the façade of the first floor;
- Masonry veneer in a light salmon color for the second, third and fourth floors;
- Metal composite panels to clad the fifth floor and sections of the rooftop screening;
- Steel window and door systems on all elevations (Ultra white, ultra clear glass with 80% VLT);
- Anodized aluminum channel accents, powder coated balcony rails with steel guardrail, and steel fin details;
- Decorative stainless steel metal grates for rooftop mechanical screening;
- Metal pedestrian scale canopies on the Peabody St. and Woodward Ave. elevations; and
- Cantilevered structural glass for the section on the third floor.

Mr. Chris Longe, Architect, passed along samples of the various materials to be used in the project, with the exception of the garage door material.

The proposed building will uphold the vision of the Maple Gateway and Downtown Birmingham 2016 Plan.

The proposed building meets 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 entry has a canopy and adds architectural interest and pedestrian scale details for patrons going in and out of the building.

Calculations have been submitted for the glazing requirements outlined in Article 3, Section 3.04 of the Zoning Ordinance that show that the minimum 70% glazing requirements have been met

on the first floor, and the maximum 35% glazing requirements on the upper floors have been met.

The applicant has submitted Visual Light Transmittance ("VLT") calculations showing ultra white, ultra clear glazing with 80% VLT. However, the applicant has also indicated that they propose to use clear glass with a 78% VLT. The applicant has advised that the 80% VLT glass will be used on the ground floor level as required, and the 78% VLT glass will be used on the upper levels, thus meeting this requirement as well.

Mr. Boyle inquired if a pedestrian walking along would see a space between the buildings to the north and south, or will they touch. Mr. Longe answered they will physically touch at the corners with the exception of the SW corner where the Balmoral Building is 5 ft. off their property line above the second floor. Their Alden Building comes to the property line. Therefore a pedestrian would see a continuous street wall.

Mr. Longe spoke to say the changes since Preliminary Site Plan Review were made after consultation with their neighbors to the north and to the south.

Mr. Jeffares noted the proposed Alden Building has taken more off the Parking System with the 88 spaces they have provided which is significantly more than their adjacent neighbors who provided 10 and 13 spots.

Discussion turned to whether parking in the Alden Building could be run as a private parking facility. Mr. Ecker affirmed that it could, with the exception of 15 spaces that are required for the residential units. Mr. Longe noted that a sample of the garage door material was not provided because there is no garage door.

Vice Chairperson Lazar invited comments from the public at 9 p.m.

Mr. Alan Greene spoke on behalf of the ownership of the Balmoral Bldg., Woodward Brown Associates; and the Greenleaf Trust Bldg., Catalyst Development. Mr. Greene listed questions:

- The Final Site Plan documents were very unclear about what was happening on the north and south facades abutting their buildings. He has now heard the material that will be on those facades will replicate what is on the east and west facades. The plans do not clarify what the materials are on the north and south facades.
- It is unclear from the plans how the first floor of the Alden Bldg. relates to the first and second floor of the Balmoral Bldg. Their architects say the Balmoral windows will be blocked or partially blocked. Regarding the Catalyst Bldg. it appears to be a situation where the Alden Bldg. is built right to the balconies of the residential units, and fire rated windows were added so that people look right into the Catalyst residential balconies.
- To summarize, the Final Site Plan does not provide details about the two elevations; what the materials are on the south and north; do they carry through the entire elevation; what kind of windows are on the north and south; are the windows facing the Balmoral Bldg. fire rated; and are they the kind of glass that was just shown.

Mr. Green went on to state they still object that the Plan does not meet the requirements of the Master Plan; it does not meet the requirements of the Zoning Ordinance on various standards; it impacts the value of their buildings; there is not sufficient parking available; and there are constructability issues about how the building will be constructed without trespassing on or damaging their property.

Mr. Longe responded with respect to the materials and the windows that they are indicated on the elevation drawing:

- The same materials that are on the Woodward Ave. and Peabody St. facades will be replicated on the north and south sides that cannot be seen.
- The glazing is identical to what has been shown in terms of its clarity and the framing. It does not have to be fire rated.
- The configuration of the building above the second and third floors was not something that they presented; it is something that they responded to at the Catalyst architect's request.
- Their counsel has had discussions with Mr. Greene about construction and imposing on the property of the adjacent buildings. They are at the threshold of producing a schedule of activities so it will be known what is going to happen throughout the course of construction. They are hoping to get a license to operate in and around the adjacent buildings with proper notice, and to produce a long-term maintenance agreement that benefits the properties to the north and south.

Mr. Williams stated he has not had an opportunity to read the materials submitted late yesterday by Mr. Greene and therefore is reticent to vote tonight, other than to postpone consideration for two weeks. Further, he requested that the Planning Dept. respond specifically as to the validity of the assertions about the site plan that the Balmoral and Catalyst Buildings have made in the Greene letter. He wants the Building Dept. to respond to what the plans say and what Mr. Greene's clients say and here is the conclusion of the Building Dept. as to the validity of those assertions. This dispute is in litigation and at some point a judge is going to look at this. He wants the judge to have the complete record and that in his own case he has had the opportunity to read all of the materials in detail before saying yes or no for Final Site Plan Approval.

Additionally, on page 4 of the materials that were submitted to the Board of Zoning Appeals by Mr. Greene, a statement is made that the petitioners gave up rentable square footage to create the buildings desired and mandated by the City. Ms. Ecker has addressed that issue by saying there is nothing in the record to support the claim that the City mandated the setbacks of the two buildings. He asked Mr. Greene to prove his case and submit the documents where he can make that statement. If he cannot, then correct the record.

Mr. Koseck stated that he does not have to read the materials. In his mind the placement and form of the building all comply with the ordinance. He is trying not to get caught up in all of the legalities and feels that is up to someone else. He has never heard anyone on this board say anything about zero lot lines except that the walls should not be boring. Therefore, he feels the board can move forward on this.

In response to Mr. Jeffares, Mr. Longe said there are zero windows blocked on either the Catalyst or Balmoral Buildings on the north or south side of his building.

Ms. Whipple-Boyce thought it may be worth the two weeks to thoroughly review the letter and attachments received from Mr. Greene that probably none of them has had the opportunity to read. That would ensure they have covered all of their bases. Ms. Ecker noted that she spoke to Mr. Currier who said absolutely nothing in the package changes his position that the board should move ahead in the normal course of business.

Motion by Mr. Boyle

Seconded by Mr. Koseck to APPROVE the Final Site Plan and Design Review for 34965 Woodward Ave. and 215 Peabody St. subject to the following conditions:

1. 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;
2. Comply with the requirements of City departments; and
3. The applicant update their civil plans to match the architectural site plans that were submitted.

There were no comments from the public on the motion at 9:12 p.m.

Motion carried, 5-1.

ROLLCALL VOTE

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

Nays: Williams

Recused: Clein

Absent: None

02-27-18

Vice- Chairperson Lazar turned the gavel back over to Chairman Clein.

3. 670 S. Old Woodward Ave. (Detroit Trading Co.)

Final Site Plan and Design Review Request to replace existing entrance door with a garage door and sidelight and add a small 23 sq. ft. addition

Mr. Baka reported the subject location is a 17,250 sq. ft. parcel with an existing one- story commercial building. The property is located on the west side of S. Old Woodward Ave. between George St. and E. Frank St. in the Downtown Overlay District. At this time, the applicant is proposing to add 24 sq. ft. to the building to allow for the installation of a new main entrance in the northeast corner. Further, the applicant is proposing to expand the door opening in order to have sufficient space to move a car into the building that will be visible from the front of the building. It should be noted that an auto showroom is not a permitted use in this Zone District, but an auto sales agency is a permitted use.

Design Review

The applicant is proposing to add a new door and transom window in the approximate location of the existing door. The new entrance is proposed to be a double door with a 9 ft. x 8 ft. combined opening. The hardware is proposed to be white to match the existing hardware and trim on the building. In accordance with the requirements of the Downtown Birmingham Overlay District, all glass must be clear with VLT% of 80 or higher. Thus, the applicant will be required to provide the VLT percent of the new door to verify compliance with this requirement.

In response to Mr. Jeffares, Ms. Ecker verified the property was legal and conforming prior to the Personal Services definition being adopted in November. Now it is legal non-conforming. The nature of the business being carried on there is still the same.

Mr. Boyle thought this is a perfectly good use of the property and is exactly the type of retail display the City has been looking for in the downtown. Mr. Baka said a showroom commonly is defined as a place where products are displayed. This property is zoned B-2B which allows

auto sales agencies but does not allow auto showrooms. Those are two separate uses within the ordinance.

Mr. Roger Young, Young and Young Architects, represented Detroit Trading Co. He stated the car is strictly a display vehicle and while cars are for sale by order, the display car itself will not be for sale. The intent is to display one vehicle only. The door will swing outward for only a few moments, although they certainly can look at an in-swing door. However, that would be more cumbersome based on what occurs within the interior space. He asked to be allowed to work with the Building Dept. on that. As to the VLT of the glazing, it will be clear with low-E coating. Also, they will place the Knox box where the Fire Dept. deems is most appropriate.

Motion by Mr. Boyle

Seconded by Mr. Koseck to approve the Final Site Plan and Design Review for 670 S. Old Woodward Ave. with the following conditions as the proposed site plan meets the approval criteria set out in Article 7, section 7.27(B) of the Zoning Ordinance:

- 1. The applicant will be required to provide the VLT% of the new door to verify compliance with this requirement; and**
- 2. Address the concerns of City Departments.**

There was no discussion from the public at 9:47 p.m.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

Motion by Ms. Whipple-Boyce

Seconded by Mr. Boyle to suspend the rules to take the Final Site Plan and SLUP for 1669 W. Maple Rd. together.

Motion carried,

VOICE VOTE

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

Nays: None

Absent: None

02-28-18

FINAL SITE PLAN REVIEW

SPECIAL LAND USE PERMIT ("SLUP")

1. 1669 W. Maple Rd. (First Presbyterian Church)

Request for approval of a Revised Final Site Plan and Design to permit a commercial catering business to operate in the existing church kitchen

Ms. Ecker explained that First Presbyterian Church is located on the south side of W. Maple Rd. between Pleasant and Larchlea Dr. The church is proposing to lease the kitchen in the lower level of the church to Canape Cart for the purpose of producing meals to be served off site. As a result of this change, the petitioner will require an amendment to their existing SLUP. Prior to the consideration of a SLUP Amendment, the City Commission refers the Site Plan and Design Review to the Planning Board. Should Planning Board approval be granted, a public hearing will be held by the City Commission to consider whether or not to grant the proposed SLUP Amendment.

This parcel of land is zoned R-1, Single Family Residential District. Churches are a permitted use in the R-1 District, subject to Special Land Use regulations. The church originally received a SLUP on May 13, 1991.

Canape Cart is a catering service run by two individuals whose operation formerly resided in the Drayton Avenue Presbyterian Church in Ferndale, Michigan. The closing of that church has forced Canape Cart to seek a new kitchen to lease to prepare their food offerings. The First Presbyterian Church has an existing kitchen located in the basement level of the Church. No changes are proposed to either the kitchen layout, the interior or the exterior of the Church. No signage is proposed for Canape Cart.

The lease with the church states that Canape Cart may use the kitchen daily anytime between the hours of 8 a.m. to 7 p.m.; however, the church has first right to use the kitchen for church events. Canape Cart proposes to prepare food in the church kitchen to be delivered and served at other venues in Metro Detroit. No details have been provided at this time as to the number or size of vehicles to be used to transport food to offsite locations.

Design Review

The kitchen is located in the lower level of the church on the southeast side of the building, facing the rear parking lot. The existing building will not be altered in any way, nor any new signage placed upon the building or the grounds. The amendment to the SLUP is consistent with the Zoning Ordinance; compatible with adjacent uses of land; the natural environment; the capabilities of public services and facilities affected by the land use; consistent with the public health, safety and welfare of the City; and will not be injurious to the surrounding neighborhood.

Motion by Mr. Williams

Seconded by Ms. Whipple-Boyce that an e-mail from James Goss, Business Manager, First Presbyterian Church-Birmingham. dated February 26, 2018, be formally made a part of the record.

Motion carried, 7-0.

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

Nays: None

Absent: None

Chairman Clein noted the church is allowed in an R-1 Zone. However, the use they are trying to add is commercial. The ordinance only allows an accessory use that is customarily incidental to the Church. It was discussed that there are commercial enterprises in various churches around town. Consensus of the board members was that they are in generally in favor of the proposal, but they don't have the power to approve the SLUP Amendment. It was determined

that a formal interpretation from the Building Official and a recommendation from the City Attorney would be needed to clear up the matter.

Ms. Kathleen O'Neal, co-owner of Canape Cart Catering and Mr. James Goss, Business Manager of First Presbyterian Church, came forward to speak.

Mr. Jeffares wanted assurance there would never be refrigerated trucks running outside. He had the same concern about holding cooking classes. Also, Mr. Goss assured him there would never be alcohol on the site.

Ms. O'Neal explained they have rented the Presbyterian Church in Ferndale for 25 years but now the building is being sold. She went on to say that they would be responsible for catering events within the church. Mr. Williams replied that would be incidental if the kitchen were to be used for church purposes.

Motion by Mr. Boyle

Seconded by Mr. Williams to postpone 1669 W. Maple Rd. to March 14, 2018.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

02-29-18

MISCELLANEOUS BUSINESS AND COMMUNICATIONS

a. Communications (none)

b. Administrative Approval Requests

- 2400 E. Lincoln, The Sheridan at Birmingham - Replace louvers with glazing on west elevation.
- 559 W. Brown - Minor design alterations and changes to landscape plan.
- Mr. Baka explained that Toast wants to install a semi-permanent awning over the entire dining deck. All were in favor.
- Mr. Baka advised that Commonwealth wants to change their deck from diamond plated steel to wood. They would still have a diamond plated transition from the sidewalk. The planters would remain, however Commonwealth would be willing to give up the bamboo. The railing would still be slatted steel along the sides. There were no concerns.

c. Draft Agenda for the next Regular Planning Board Meeting of March 14, 2018

- Continuation of the public hearing on Site Plan Review Standards;
- Continuation of 1669 W. Maple Rd. SLUP;
- Continuation of the discussion on retail;
- Planning Board Action List

Draft Agenda for the Regular Planning Board Meeting of March 28, 2018

- 857 Redding (Preliminary Site Plan);

- Morrie Restaurant, 250 N. Old Woodward (SLUP and Final Site Plan);
- Hotel at 298 S. Old Woodward Ave. (Revised Final Site Plan & Design).

d. Other Business (none)

02-30-18

PLANNING DIVISION ACTION ITEMS

a. Staff report on previous requests (none)

Additional items from tonight's meeting

- Mr. Jeffares noted with respect to aerial photos that they should go 300 ft. out. Everyone agreed.

02-31-18

ADJOURNMENT

No further business being evident, the Chairman adjourned the meeting at 10:20 p.m.

Jana L. Ecker
Planning Director



Dykema Gossett PLLC
39577 Woodward Avenue
Suite 300
Bloomfield Hills, MI 48304
WWW.DYKEMA.COM
Tel: (248) 203-0700
Fax: (248) 203-0763
Alan M. Greene
Direct Dial: (248) 203-0757
Direct Fax: (855) 236-1206
Email: AGreene@dykema.com

February 27, 2018

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)—Opposition to Request for Final Site Plan Approval

Dear Ms. Ecker:

Enclosed in connection with the above matter is an original and 10 copies of my letter (with Exhibits 1 – 3 attached) in opposition to the pending request for final site plan approval on behalf of the ownership of the Balmoral and Catalyst Buildings.

Please distribute the enclosed materials to the Planning Board. Thank you for considering our comments and observations.

Sincerely,

DYKEMA GOSSETT PLLC



Alan M. Greene

Enclosures

Cc: Harvey Weiss
Patti Owens



Dykema Gossett PLLC
39577 Woodward Avenue
Suite 300
Bloomfield Hills, MI 48304
WWW.DYKEMA.COM
Tel: (248) 203-0700
Fax: (248) 203-0763
Alan M. Greene
Direct Dial: (248) 203-0757
Direct Fax: (855) 236-1206
Email: AGreene@dykema.com

February 27, 2018

Via Email and Hand Delivery

Ms. Jana Ecker
Planning Director
City of Birmingham
151 Martin Street
Birmingham, Michigan

Re: 34965 Woodward Ave. (Former Peabody's Restaurant)—Opposition to Request for Final Site Plan Approval

Dear Ms. Ecker:

As you know, I represent both Woodward Brown Associates, LLC, the developer and owner of the real property and mixed-use building located at 34901 - 34953 Woodward Avenue, Birmingham, MI 48009 (the "Balmoral Property" or "Balmoral Building"), and Catalyst Development Co. 8, L.L.C., the developer and owner of the real property and mixed-use building located at 34977 Woodward Avenue, Birmingham, MI 48009 (the "Catalyst Property" or "Catalyst Building"). Both Woodward Brown and Catalyst opposed the City Planning Board's grant of preliminary site plan approval for the proposed mixed-use development at 34965 Woodward (the "Project") because, among other reasons, the Project's proposed site plan: (1) did not satisfy the requirements for preliminary site plan approval under Section 7.27 of the City's Zoning Ordinance; (2) was inconsistent with the City's Downtown Birmingham 2016 Master Plan; and (3) depicted a building that could not be constructed or maintained without material damage to the existing Balmoral and Catalyst Buildings and without trespassing onto the Balmoral and Catalyst Properties. For these reasons, as well as those set forth below and in the enclosed appeal statement (with Attachments 1 – 12) which was submitted to the City BZA on October 11, 2017, and is incorporated in its entirety into this correspondence, Woodward Brown and Catalyst respectfully request that the Planning Board deny final site plan approval for the Project.

Analysis of Proposed Final Site Plan

While the applicant's proposed final site plan (the "Proposed Final Site Plan") reflects some aesthetic changes from the originally proposed plans (a 4' setback from the north and south property lines above the first floor in select locations), the changes are insufficient to bring the



Ms. Jana Ecker
February 27, 2018
Page 2

site plan into compliance with the requirements of the Zoning Ordinance and the same deficiencies, issues and concerns identified during the preliminary site plan proceedings remain. In some instances, such as installing fire rated windows on the north property line facing directly into residential unit balconies of the Catalyst building, the revised drawings have exacerbated the previous concerns. Also, as reported by the City Engineer in his review, there is insufficient parking available to serve the development and no solution has been proposed or even explored. The detrimental harm to the Balmoral and Catalyst projects and their tenants caused by this issue alone is significant. Allowing the project to proceed in the face of this undisputed fact would violate the City's obligations under the Zoning Enabling Act to promote the public, health, safety and welfare. It would do just the opposite. Furthermore, the Proposed Final Site Plan introduces, at a minimum, the following new issues which, on their own, should lead the Planning Board to deny, or at least delay, final site plan approval for the Project:

1. ***The Proposed Final Site Plan's South Elevation is Misleading.***

The Proposed Final Site Plan omits the floor heights on the building elevation sheets, making a comparison with the Balmoral and Catalyst Buildings' floor elevations difficult. Specifically, Sheet DD.11 of the Proposed Final Site Plan is misleading because it only depicts the Project's windows (and omits the location of the Balmoral's windows), thus concealing the fact that, due to a substantial difference in floor heights, the Project's first floor wall (which is proposed to be built to within one foot of the property line) will be only seven (7) feet from the Balmoral Building's second floor windows. See enclosed rendering prepared by Thom Phillips of Hobbs & Black, demonstrating the discrepancy in floor heights between the Project and the Balmoral Building.

2. ***The Proposed Final Site Plan's East and West Elevations Fail to Meet the Zoning Ordinance Glazing Ratio Requirements.***

It is our understanding that the Zoning Ordinance requires no more than 35% glazing per facade above the first floor, and a minimum of 70% glazing for the first floor. However, the east and west elevations depicted at Sheet DD.10 of the Proposed Final Site Plan do not meet the Zoning Ordinance's glazing requirements and, instead, include the following deficient glazing ratios:

- ***East Elevation:*** 53% glazing on the first floor (i.e., 17% less than is required) and 50% glazing on floors 2-5 (i.e., 15% more than is permitted); and



Ms. Jana Ecker
February 27, 2018
Page 3

- *West Elevation*: 51% glazing on the first floor (i.e., 19% less than is required) and 52% glazing on floors 2-5 (i.e., 17% more than is permitted)¹
3. ***The Proposed Final Site Plan Lacks Significant Details Related to the Materials to be Used in the Project's Construction.***

The Proposed Final Site Plan is deficient and cannot be approved by the Planning Board unless and until the applicant amends the site plan to show the following crucial details: (1) demonstrate how the Project will be flashed and attached to the Catalyst Building; (2) demonstrate how the Project will manage drainage and water infiltration issues at the north and south property lines; (3) identify all proposed materials to be used in construction – various materials in the illustrated elevations are left unlabeled (*see, e.g.*, the locations on Sheet DD.12 where it appears that spandrel glass is proposed are left unlabeled). While these omitted details render it impossible to fully assess and evaluate the impact that the Project will have on the adjacent buildings, they also render the Proposed Final Site Plan incomplete as the City's Final Site Plan and Design Review Application Checklist requires both a "[l]ist of all materials to be used for the building, marked on the elevation drawings" and an "[i]temized list of all materials to be used, including size specifications, color, style, and the name of the manufacturer."

Conclusion

In conclusion, we appreciate the Planning Board's consideration of these comments and would respectfully request that the Planning Board either deny the Proposed Final Site Plan or table its consideration of same for further study and submission of a revised site plan that meets the requirements of the Zoning Ordinance and addresses the numerous deficiencies discussed herein.

I am enclosing multiple copies of this letter and would appreciate it if you would deliver copies to the members of the Planning Board.

Sincerely,

DYKEMA GOSSETT PLLC

Alan M. Greene

Cc: Harvey Weiss
Patti Owens

¹ See enclosed calculations prepared by Jason Novotny of TowerPinkster.

EXHIBIT 1

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 facade (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 facade 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 redevelopment 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 facades, 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.

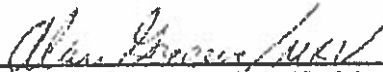
As the above-mentioned parking analysis makes clear, the situation is far worse today. The City is opening itself up to a buzz saw of litigation. The applicant will demand that the City make parking spaces available for its proposed future tenants—whether by taking it away from other businesses and projects 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.

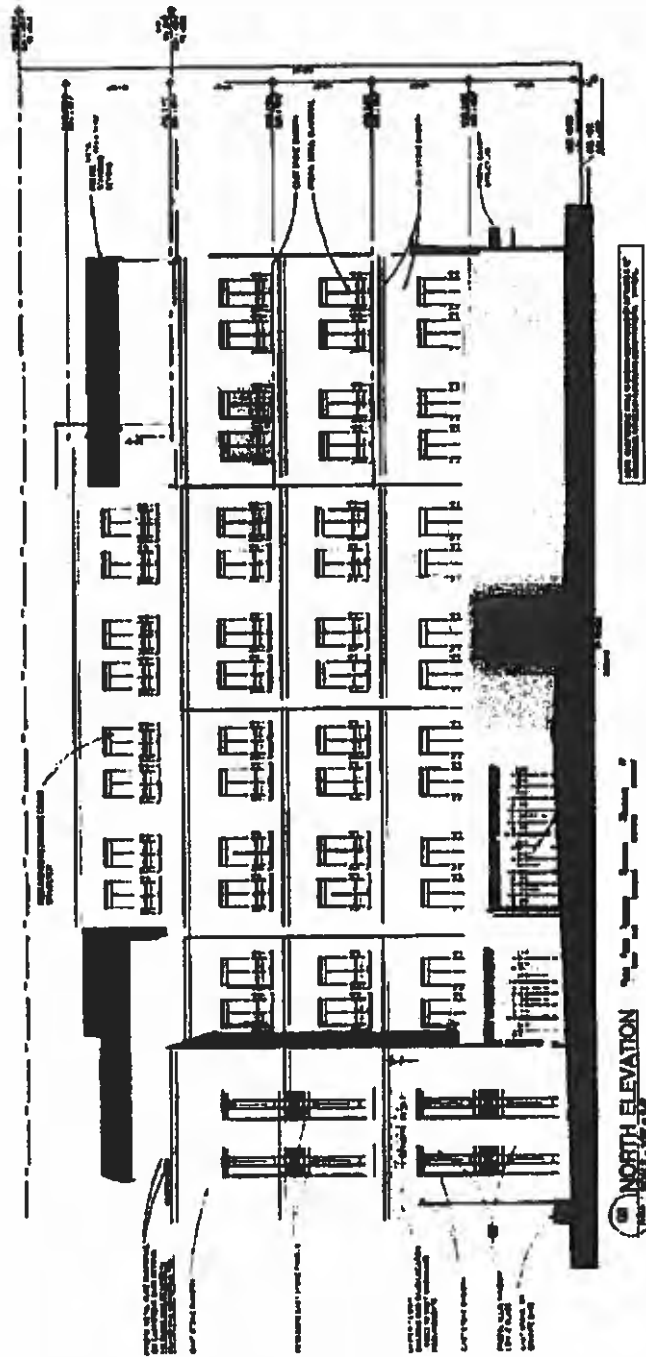
The Petitioners do not want to appear presumptuous and it is not our place to tell our neighbor what to do. But Petitioners are developers as well. They understand that a building will be constructed on the former Peabody's site. There are some relatively simple design solutions that could result in 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

ATTACHMENT 1



SCALE ELEVATION 03/26/2014

BIRMINGHAM, MICHIGAN 11-005

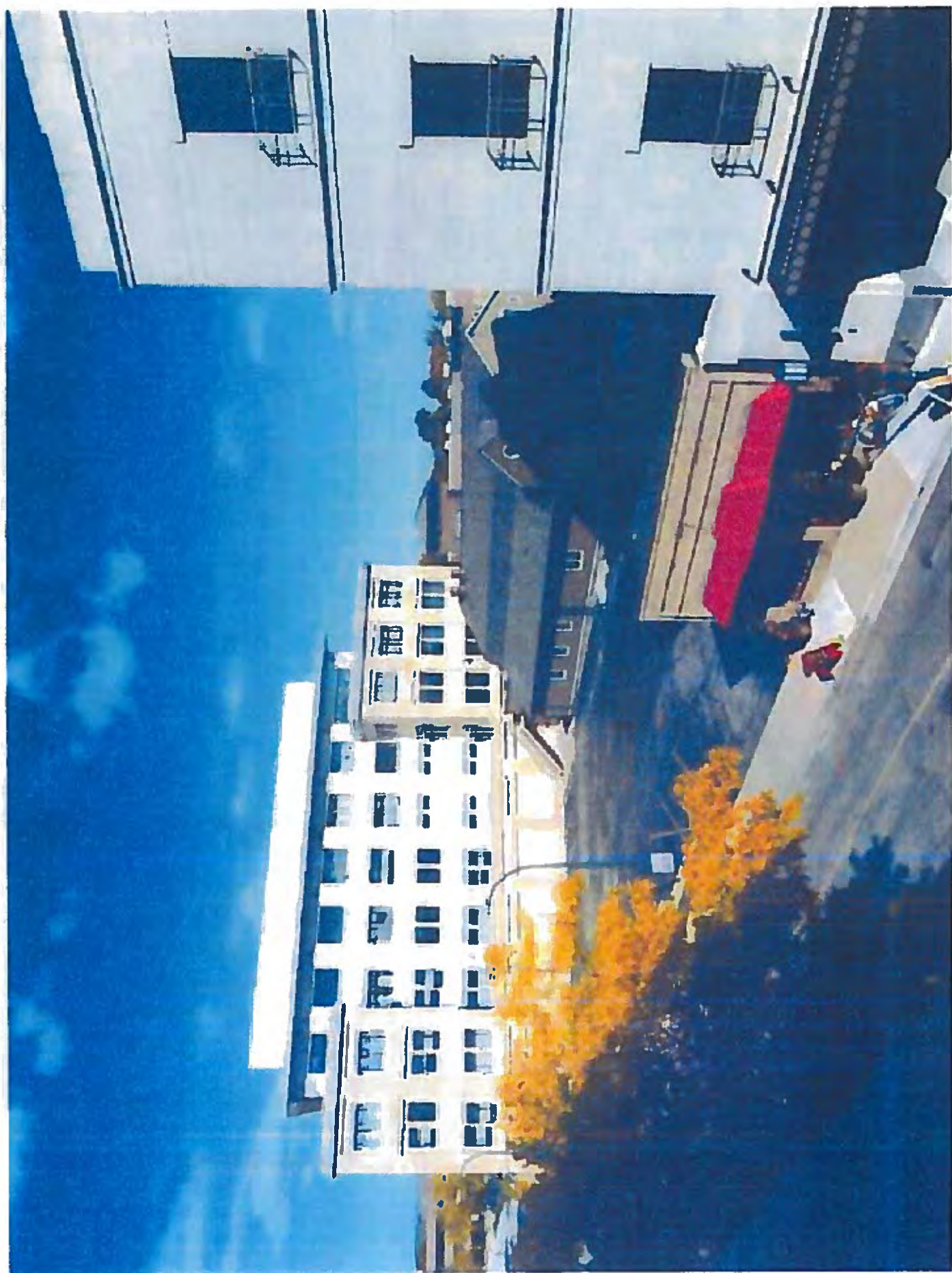
THE BALMORAL

HOBBS + BLACK ARCHITECTS
© 2014 Hobbs + Black Architects, Inc.





ATTACHMENT 2





ATTACHMENT 3

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
May 28, 2008

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

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

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

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

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

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

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

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

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

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

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

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

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.

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

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.

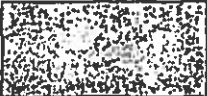
1.0 Introduction

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.

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

	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

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

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

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

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.

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

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

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

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

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

- 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.

ATTACHMENT 4

Site Plan Review

Article
07

- 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

Article
07

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

Article
03

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

Article
03

- 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

Article
03

7. The maximum width of all loggers 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

Article
03

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.

Downtown Birmingham Overlay District

Article
03

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.

ATTACHMENT 5

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

ATTACHMENT 6

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
Page 2 of 5
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
Page 3 of 5
October 9, 2017

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 =		(\$1,015,839)			
Rounded to =		<u>(\$1,000,000)</u>			

Ms. Patti Owens
Page 4 of 5
October 9, 2017

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

Ms. Patti Owens
Page 5 of 5
October 9, 2017

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

ATTACHMENT 7

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.

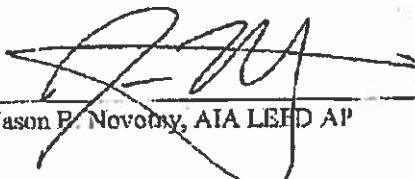
- b. A lack of submittal of the Building and Site exterior lighting concepts, fixtures and an understanding of the implication to the neighboring sites. This was indicated as completed on the Applicants checklist but no document in the set exists to show locations, foot candle levels, or the detrimental 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

7/2/22

ATTACHMENT 8

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



Passionate People Building and Revitalizing our World
Offices in Indiana, Michigan, and Ohio

www.sme-usa.com | Follow us on



For our Confidentiality and Electronic Communication Notices visit www.sme-usa.com/disclaimer.
If you cannot access the hyperlink, please email the sender.



Please consider the environment before printing this email

ATTACHMENT 9

Back to Agenda



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-1 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 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 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 façades.

The design of the building also includes balcony projections from the third floor on both façades 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.

ATTACHMENT 10

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 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

ATTACHMENT 11

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.

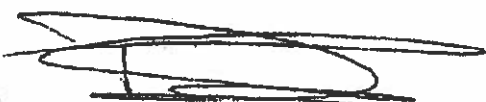
[Signature and notarization on following page]


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

ATTACHMENT 12



**SIGNATURE
ASSOCIATES**

One Towne Square, Suite 1200
Southfield, MI 48076

1 (248) 948 5000
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

EXHIBIT 2

PENTHOUSE ROOF

ROOF

5TH FLOOR

4TH FLOOR

3RD FLOOR

2ND FLOOR

1ST FLOOR ???

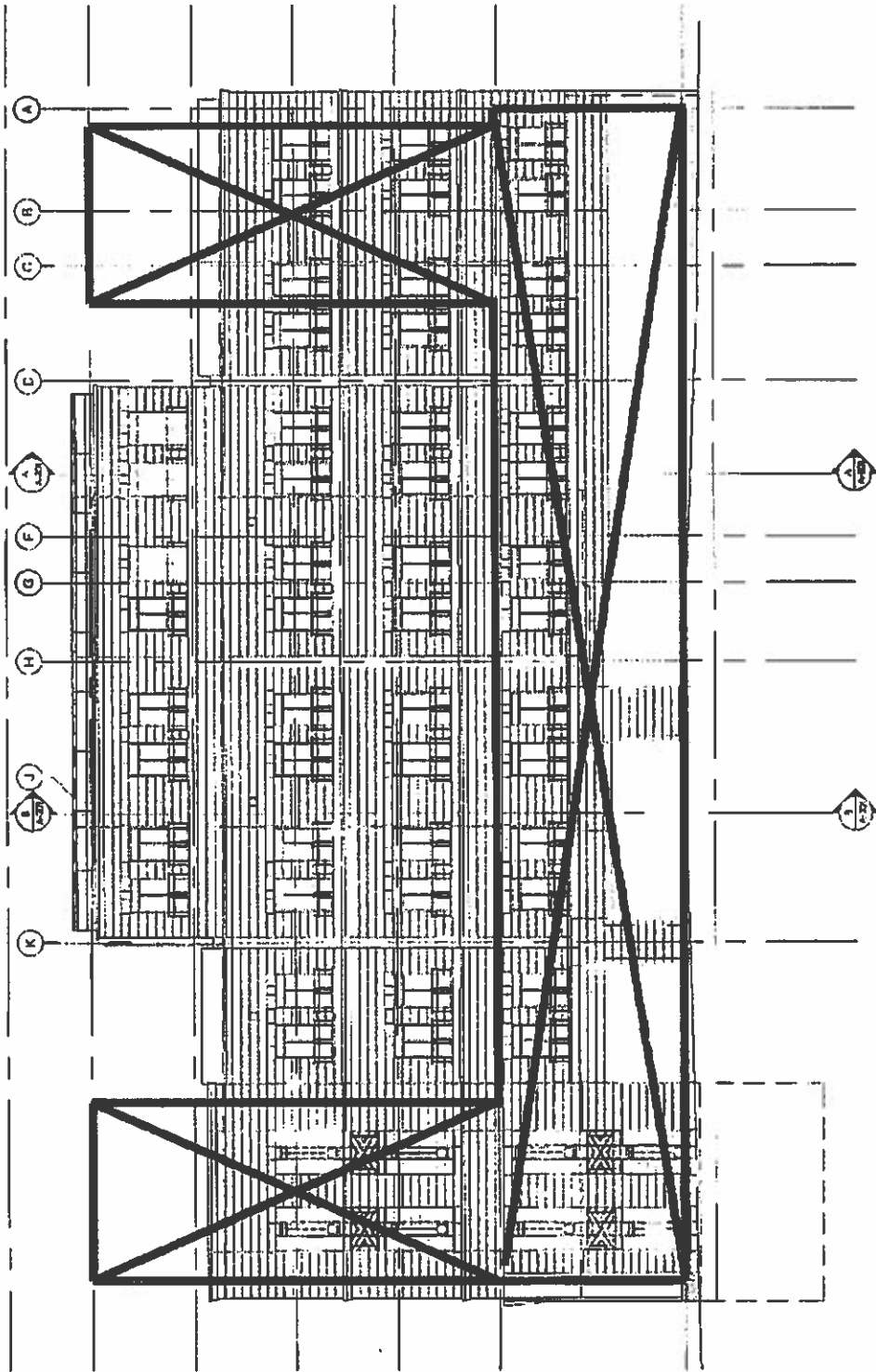
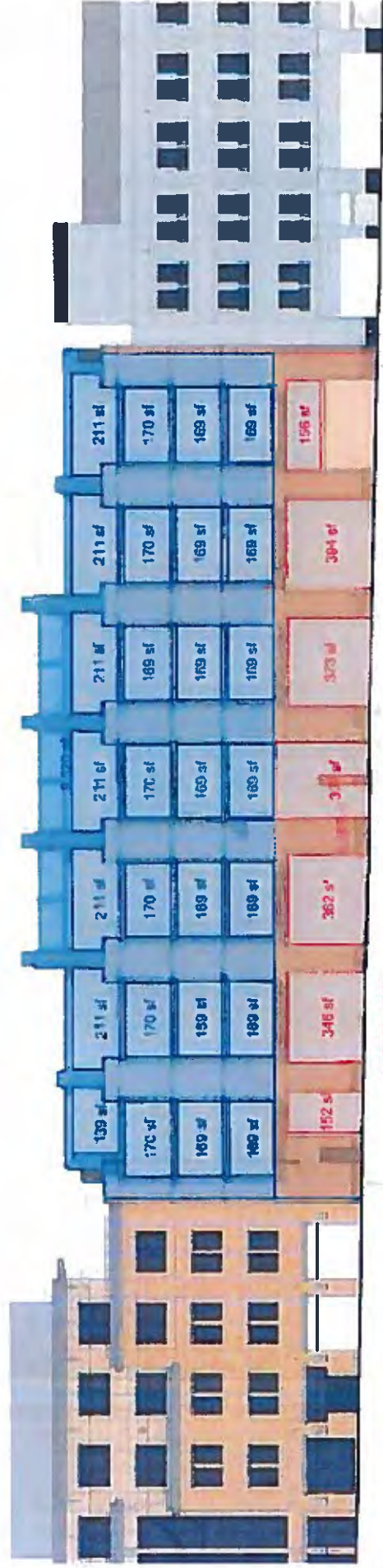


EXHIBIT 3



34955 Woodward Avenue + 215 Peabody Street
Birmingham, Michigan 48009



FRONT ELEVATIONS

CHRISTOPHER J LONGE AIA
ARCHITECTURE
INTERIORS
34955 Woodward Avenue 48009

SCALE: 1" = 20'-0"

Regular Meeting of the Planning Board
2/28/2018

Page 1

1

2

3

4

5

6

7

8

9 REGULAR MEETING OF THE PLANNING BOARD

10 WEDNESDAY, FEBRUARY 28, 2018 at 7:30 PM

11 CITY COMMISSION ROOM

12 151 MARTIN STREET, BIRMINGHAM

13

14

15

16

17

18

19

20

21

22

23

24

25

Regular Meeting of the Planning Board
2/28/2018

Page 2

1 Birmingham, Michigan
2 Held on February 28, 2018
3 About 7:30 p.m.
4
5 CHAIRMAN CLEIN: The next item is the final
6 site plan and design review for 34965 Woodward, former
7 Peabody's Restaurant and Frame Shop. Before we begin, I
8 will be recusing from this conversation as I have
9 throughout as my firm provided some consulting services
10 to the front end of the project and just feel it would
11 be a conflict to participate. I will then ask Mrs
12 Lazar to take the gavel.
13 VICE-CHAIRPERSON LAZAR: We are here to
14 review the final site plan design review for 34965
15 Woodward, formally the Peabody Restaurant and Frame
16 Shop. This is the request for a final site plan and
17 design to allow for the construction of the new
18 five-story mixed use building. And as Scott had done
19 prior to we will hear from the applicant once Jana has
20 made her presentation at which point the board -- it
21 will come back to the board and the applicant will,
22 obviously, you know, have some questions perhaps to
23 answer and then we'll take it to the public and then it
24 will come back to the board. Bryan, you have something?
25 MR. WILLIAMS: Yeah, preliminarily as is now

Page 4

1 did receive preliminary site plan approval, correct?
2 MS. ECKER: Correct.
3 MR. KOSECK: And today it's in front of us
4 for a final site plan approval, so the focus of final
5 site plan approval, so what's approved and where is
6 our -- the focus of our discussion going?
7 MS. ECKER: Well, the community impact study
8 has already been approved as has the preliminary site
9 plan. That generally deals with the placement massing,
10 scaling, et cetera of the building circulation that's
11 with regards to the site preliminary review of uses and
12 then the final set plan; and design is generally we
13 focus more on the design of the building, the
14 architectural details and materials, et cetera.
15 MR. KOSECK: Thank you.
16 MR. WILLIAMS: Jana, if you would during
17 your comments, and I know you will, take us through the
18 process that's happened since --
19 MS. ECKER: I most certainly will.
20 MR. WILLIAMS: -- we have approved this
21 preliminary site plan approval. I have not made a
22 motion to make a part of the record this proceedings
23 either the complaint that has been filed in the circuit
24 court or the answer of the city to the complaint that's
25 been filed in circuit court. I would simply point out

Page 3

1 my custom, I want to motion to introduce two letters and
2 one of the letters has a number of attachments but they
3 came in late. I think they should be made a formal part
4 of the record. First is a letter to Jana Ecker from
5 Beier Howlett city attorney dated February 27, 2018;
6 copy of which I think all the board members have. The
7 other's a letter from Dykema Gossett PLLC signed by Alan
8 Greene dated February 27, 2018 with a number of
9 attachments and pages and I think I move that both sets
10 of materials be made a part of the formal record for the
11 meeting.
12 VICE-CHAIRPERSON LAZAR: Okay. We don't
13 need to vote on that I believe, do we?
14 MR. WILLIAMS: Yes, we do.
15 VICE-CHAIRPERSON LAZAR: We do? Did you
16 have comment, Bert, before we --
17 MR. KOSECK: Not regarding that.
18 VICE-CHAIRPERSON LAZAR: Okay. All in
19 favor?
20 ALL: Aye.
21 MR. WILLIAMS: Thank you.
22 MR. KOSECK: I just want to interject and
23 maybe Mrs. Ecker was going to go there anyways but for
24 my own benefit, everybody's benefit, can you -- so this
25 was before us on a number of occasions in the past; it

Page 5

1 for the the record that the complaint and all the
2 exhibits and the answer of the city and its exhibits are
3 available under -- on the Internet under Oakland County
4 Circuit Court under the court Explorer program. If you
5 want copies, you have to pay but you can review both the
6 complaint, the exhibits, and the answer online. I
7 believe -- actually, you can't review it online you have
8 to order it if you're looking at it. The city itself
9 has been served, has answered, and I believe that the
10 city commission also has the copies of the pleadings so
11 far. I simply want to point out there's litigation
12 pending.
13 VICE-CHAIRPERSON LAZAR: Thank you,
14 Mr. Williams. Jana?
15 MRS. ECKER: That's correct. And just to
16 add on to that, obviously, the applicant also submitted
17 an administrative appeal to the Board of Zoning Appeals
18 for the planning board's preliminary site plan review.
19 That request for appeal was denied and presumably they
20 may appeal the final; however, the litigation in this
21 case has not -- does not affect what we're doing here
22 tonight and we're going through with the final site plan
23 and design review. You have a letter from the city
24 attorney that states to proceed in the normal course of
25 business and the litigation is handled, obviously, in a

Regular Meeting of the Planning Board
2/28/2018

Page 6

1 different realm.
2 Okay. So this property we all know where it
3 is; it's zone B4/D4; it's the site of the former Peabody
4 Restaurant and Frame Shop that was located at the west
5 end of that site. The Peabody restaurant was torn down
6 in March of 2017; the frame shop in December 2017, so
7 basically it's an empty site at this point. This
8 applicant was before the board back in July. They
9 started July 26th; they came forward with a CIS and a
10 preliminary site plan approval for this site. At that
11 time there was a lot of discussion, the community impact
12 study was accepted. The preliminary site plan was
13 postponed. There was some additional information
14 requested. We did have the property owners on either
15 side coming and talking about their concerns; and the
16 board requested that the applicant provide additional
17 information regarding the interfacing of the proposed
18 building with the two buildings on either side.
19 Now I would like to say that that is not to
20 say they didn't have construction drawings to show how
21 those buildings may or may not be attached, but more or
22 less you wanted to see how the streetscape would look
23 from both the Peabody and Woodward side with the three
24 buildings in a row then. So that is what they did
25 submit; they came back on August 23rd, at that time

Page 7

1 there was further discussion again. Then there was a
2 lot of discussion; at that time there were some comments
3 made by one of the attorneys that is involved in the
4 litigation that was referred to about some statements
5 that the city made on behalf of the north and south
6 facades of the adjacent buildings, so the board
7 requested that we pull all the minutes from those
8 meetings, review them, and come back at a later date to
9 see if any comments were or were not reflected in the
10 minutes. So we did do that, we came back, there were no
11 comments found supporting that comment in the minutes
12 but it came back on September 13th for the preliminary
13 site plan review and at that time the board did make a
14 motion to approve it. The proposed development, it's
15 five-story mixed use development, first floor retail,
16 some office and some residential units. The conditions
17 of approval were that they provide nine total street
18 trees or obtain a waiver from the staff arborist that
19 they provide five pedestrian lights on Peabody, that
20 they submit a photometric plan and specification sheet
21 for all lighting and mechanical units by final site
22 plan; that they provide plans demonstrating three usable
23 off-street loading spaces or obtain a variance from the
24 zone of boarding appeals; that the applicant complies
25 with the request of all departments, and that the

Page 8

1 applicant provide material and color samples at final
2 site plan review.
3 So thus far the applicant has addressed
4 those conditions, all of them except for the issue of
5 the loading spaces, and they will be applying to the
6 board of zoning appeals for a variance for the loading
7 spaces. Obviously, it's a trip -- it's a -- I forget
8 the word. Difficult; it's a difficult urban infill site
9 to provide loading and they have suggested the use of
10 loading on Peabody Street and of course there are has to
11 be through traffic maintained at all times along
12 Peabody, so while there is some loading on Peabody,
13 specifically in front of the Greenleaf Trust building
14 closer to Maple Road, we don't foresee any additional
15 loading spaces necessarily being used; not to say that
16 some trucks may not pull over and use it anyways, but
17 you can't count them as official loading spaces. So
18 they have provided a photometric plan, they have
19 provided five pedestrian street lights on Peabody, they
20 have talked to the staff arborist and obtained a waiver
21 for the trees based on the site. And they have also
22 provided spec sheets on all the lighting and mechanical
23 equipment. They've -- they have complied with the
24 requests of city departments, although I do have -- I
25 will make additional comments on that when we get there

Page 9

1 and they've provided material and color samples, which
2 when we get to that section I'll pass around. There's
3 quite a few.
4 So just to recap, again, what they're
5 proposing is five-story mixed use building that sits on
6 the site; you can see the site plan shown here. They're
7 proposing a residential lobby off of Peabody. They're
8 proposing entrances off of Peabody and also off of the
9 Woodward side. The vehicular entrance is off of
10 Peabody, as you can see down in this location here. All
11 of this was approved at preliminary site plan. They are
12 also just to remind you proposing two stories of
13 underground parking for a total -- I don't know why
14 but -- oh, there we go, okay -- for a total of 88 park
15 spaces below and they also have 11 parking spaces in the
16 right-of-way along Woodward.
17 Now based on their number of units that they
18 have they are required to have 10 units and they need a
19 space and a half for each unit so they need to have 10
20 -- 15 parking spaces is what the zoning ordinance
21 requires. They're providing 88 and they could go to the
22 commission and get credit for the 11 should they need
23 them on Woodward, but they don't because they meet their
24 parking requirements in providing 88 when there's only
25 15 required.

Regular Meeting of the Planning Board
2/28/2018

Page 10

1 What they have done to make some changes
2 since the last time they were here, the two lower levels
3 are pretty much the same. The first floor of the space
4 is pretty much the same. As I mentioned there is an
5 entrance off of Woodward, there's an entrance with an
6 arcade as they call it off of Peabody, which I think
7 they see as being one of the primary pedestrian
8 entrances because it's closer to downtown. There's also
9 a residential lobby off of Peabody and then there's the
10 entrance to the parking deck. What's changed since last
11 time, I think you heard, there was a lot of discussion
12 obviously with the adjacent property owners and while
13 there are zero lot line buildings on both sides and zero
14 lot line buildings are permitted in this zone district,
15 there was some discussion about potentially setting back
16 the building on the north and south elevations to
17 provide a little bit more light and air to the buildings
18 on either side. So since the preliminary site plan what
19 the applicant has done is they have changed those north
20 and south elevations. They are now providing on the
21 south elevation here you can see this area here, this
22 white area, so this is basically an area where the
23 building used to preliminarily came all the way out to
24 the property line. Now it comes out to the property
25 line to match the building to the south, but it also

Page 12

1 building to accommodate some of the concerns of the
2 adjacent neighbor to the north. Again, they're
3 proposing to set back the building in two locations,
4 four feet here and four feet here along this entire
5 line. You can see this is showing here as a terrace
6 below for the building to the north, so they have
7 basically where that's already open air they've provided
8 open air on either side of that. So this is different
9 from what they proposed last time. Again, this is a
10 zero-foot side setback that's required; they are not
11 required to set it in four feet but they did. They did
12 provide that. So that's what's changed on some of the
13 upper floors and then the top floor, again, has the
14 units provided up here and you can see that it's laid
15 out with a double corridor and then there are some
16 windows obviously on this side here on the north
17 elevation and, again, there are windows on the south
18 elevation where it's setback a little bit.

19 So that's what's primarily different from
20 the last time that you saw this. Couple of other things
21 we now have a roof plan to show the proposed rooftop
22 mechanical equipment. It's in the same place as last
23 time and now they're proposing screen angles because we
24 need all those details at this point. This is the
25 screening here and they're proposing a steel louvered

Page 11

1 then steps back four feet to provide a light wall
2 essentially for light and air to get into those windows.
3 And that extends all along this side of the building
4 except along Peabody here to mirror the other side of
5 the building. Stuart, you had a question?

6 MR. JEFFARES: Is that mirror, the same
7 setback four feet on the other side, too?

8 MS. ECKER: I think it's five on the other
9 side, five and a half or something. It's a little bit
10 more on the other side, but it's not the full 10. So
11 basically there would be about 9 feet between these
12 windows and that was presumably to accommodate the
13 neighbors who were requesting a little bit of relief
14 along that side, even though there is a zero side
15 setback on this property. You are not required to set
16 it in four feet. Now, obviously, the comments that
17 you've seen on other buildings when there are windows
18 that close to the property line they have to use
19 fire-rated glass, that's required by the state building
20 code; so but they can be constructed that way.

21 So this is all on the second floor. As you
22 move up to the upper floors you can also see they
23 maintain that setback on that south property line all
24 the way up to the top. On the northern property line,
25 again, they have also added some indentations to the

Page 13

1 system that will be angled in such a way that you can't
2 see that mechanical from the lower floors. With regards
3 to landscaping requirement it's really only the street
4 trees because they're in a downtown overlay and they
5 don't have any surface parking, so they have met all
6 their requirements for street trees. They do point out
7 they're also proposing to use some planters in and along
8 the arcade. Just pull it up here. So this being the
9 arcade and some of this area that's set back here and
10 they're proposing plantings in that space as well.

11 Just one other comment with regard to
12 parking all of the spaces do meet the 180-square foot
13 requirement I just forgot to mention that. They are
14 applying to the board of zoning appeals for the loading
15 space variance. The vehicular circulation as I already
16 mentioned is from the back off of Peabody. In the
17 overlay they're allowed to have an opening 25-feet wide
18 or less and they're proposing 20 feet so they meet that
19 requirement. With regards to pedestrian access, I've
20 already mentioned the -- you can access the site as a
21 pedestrian from both the Woodward elevation and Peabody
22 elevation. One of the issues that the engineering
23 department raised was with regards to the width of the
24 sidewalk that was proposed between the building and the
25 tree wells primarily on Peabody Street. They did

Regular Meeting of the Planning Board
2/28/2018

Page 14

1 provide a new blow up today. It's the same thing it's
2 just a blow up so that it's very clear that they do have
3 the required five feet in that area. I did talk to the
4 city engineer today and they indicated that that concern
5 came from the fact that they were reading the civil
6 drawings and in terms of the civil drawings for that
7 distance does not match the architectural site plan, so
8 we do want to make sure that we get that so they're
9 brought up so they're together and they both match.
10 With regards to lighting, they are proposing
11 a lot of different lighting ceiling fixtures and wall
12 fixtures. They do have a photometric plan; we've
13 reviewed the photometric plan. They meet all of the
14 requirements. The fixtures that are proposed are cut
15 off where proposed. There's a total of 17 ceiling
16 fixtures and that's in the area where the building steps
17 back on the east and west elevations and then there's 24
18 wall fixtures proposed for the elevations of the
19 building. So with regards to, you know what, I'm just
20 going to leave that up here a bit. So you can see again
21 this is -- oops -- showing the building as it fits into
22 the streetscape with the Greenleaf Trust, Catalyst
23 building at the north and the Bell Mora building at the
24 south, so this is the Woodward view; this is the Peabody
25 Street view, just so you can see it there.

Page 15

1 So other comments that were received from
2 departments, I mentioned the engineering department was
3 concerned about the loading on the street. The
4 applicant had said, well, you know the other two
5 buildings to the north and south both have loading on
6 the street; well, they're not supposed to have loading
7 on the street either; and in fact the building to the
8 south was required to maintain a 14-foot high entry to
9 their drivethrough so it could be used as loading and as
10 a result of this we went out to the site and verified
11 that they did not provide the 14 feet as they were
12 required, so they are going to have to address that as
13 well, because the loading should not be occurring on the
14 street except in the loading zone that's marked Peabody
15 close to Maple next to the Greenleaf Trust building
16 where it is permitted.
17 Some of the other comments as I mentioned
18 from the engineering department they had the comment
19 about the sidewalk not being five feet wide. The
20 applicant has clarified that yes it is five feet wide
21 and they've provided that drawing. We wanted to add a
22 condition that they make sure that the civil drawing is
23 amended to reflect what's proposed in the architectural
24 site drawing or site plan. Also, the engineering
25 department had some concerns about the spacing of the

Page 16

1 lights and trees. Again, I think maybe that was a bit
2 of an issue with regards to the civil site plan and the
3 architectural site plan as well.
4 Finally, the engineering department notes
5 with regards to the public right-of-way parking on
6 Woodward that two of the spaces at the north end of that
7 zone are angled slightly different from the rest and
8 they're concerned that if a large vehicle is placed in
9 that -- or is parked in that area it might cause issues.
10 You might wish to have the applicant discuss this;
11 however, this is not their property; it's not our
12 property; it's MDOT right-of-way, so any changes that
13 they make to what's there now would have to be approved
14 by MDOT. Engineering also indicated that a handicap
15 space must be added to the parking area along Woodward
16 because as you know city policy has changed and we're
17 now providing a minimum number of handicap parking
18 spaces for every so many public parking spaces. The
19 engineering department -- sorry, the public services
20 department had no comments nor did the fire department
21 or the police department. The only comment from the
22 building department was with regards to the mechanical
23 rooms and the parking levels. They open to the interior
24 exit stairwells and they are not allowed to do that
25 under the code. The only openings to interior exit

Page 17

1 stairways are those for exit access so they have to move
2 that door; have the mechanical room come off of the main
3 parking area. So with regards to design review, let me
4 just...
5 MR. JEFFARES: Jana, can I ask -- it's sort
6 of a site plan question?
7 MS. ECKER: Yes, please.
8 MR. JEFFARES: I don't even know what to
9 call it on the third level there's sort of a bay
10 protrusion. So the property line is the right-of-way of
11 MDOT, correct?
12 MS. ECKER: Correct.
13 MR. JEFFARES: And I'm not sure what our
14 ordinance permits or doesn't permit relative to I know
15 we had some discussion about some other buildings that
16 have sort of --
17 MS. ECKER: That's on our --
18 THE WITNESS: -- space, but this is
19 significant, so I think from a building code standpoint,
20 I think it's fine. From a zoning ordinance standpoint,
21 I'm curious how we deal with something that...
22 MS. ECKER: We do permit projections as long
23 as they're at least eight feet in height off the ground
24 so nobody walks and bumps -- walks along the sidewalk
25 and bumps their head. However, because they would be

Regular Meeting of the Planning Board
2/28/2018

Page 18

1 using the the air rights of MDOT they would have to have
2 an agreement with MDOT --

3 THE WITNESS: That's my question.

4 MS. ECKER: -- to use their property
5 essentially, which is the vertical property at the third
6 floor there. So that might be something that they would
7 have to work out with MDOT. If they couldn't, then they
8 would not be able to put that there.

9 MR. JEFFARES: Our ordinance in theory would
10 allow if they're five window assemblies that each one
11 could project out?

12 MS. ECKER: Well, I don't think our
13 ordinance is entirely clear and concise on projections
14 and that's the only reason why I'd bother the zoning
15 ordinance. I can't find anything in there that says you
16 could not do this at this time.

17 MR. JEFFARES: Thank you.

18 MS. ECKER: So with regards to the materials
19 that are proposed, you can see this is the Woodward
20 elevation. They're proposing granite for the base of
21 the building. I'm going to start passing around some
22 materials. Okay. All right. Chris is going pass out
23 materials. Granite for the base of the building in a
24 charcoal gray color. Tan stone panels for the facade of
25 the first floor. Masonry veneer in a light salmon

Page 20

1 On the upper floors it's a similar glass,
2 it's the same ultra white, clear but its has visible
3 light transmission level of 78 percent, which is allowed
4 on upper floors. So it has to be greater than 70
5 percent on the upper floors so they have 78. It's
6 slightly more tint on the upper floors but only by 2
7 percent. On the upper floors, again, they're only
8 permitted to have up to 35 percent glazing on the upper
9 floors and they've indicated that they do meet that
10 requirement. Couple of other things. Metal pedestrian
11 scaled canopies. Here I'll pass this around. To
12 provide architect --

13 MR. WILLIAMS: Before you leave the glazing
14 requirements, have we looked at that? I know you said
15 they represented the clients?

16 MS. ECKER: I did say that because the
17 reason -- what we do there is we have when they submit
18 the plans they do it through their CAD program or
19 whatever software they're using so they can run the
20 numbers on the glazing. It's very difficult for us to
21 hand calculate that, so because of the comments that
22 were raised in the Dykema letter today with regards to
23 basically disagreeing with the -- or the glazing levels
24 that were provided by the applicant, I did ask them to
25 do a similar breakdown as to what was shown in the

Page 19

1 color.

2 MR. LONGE: Sandstone.

3 MS. ECKER: Masonry veneer in a light salmon
4 color for second, and third, and fourth floors. I think
5 you had that. It's heavy, yes. So that's for the first
6 floor. This is for the upper floors that's coming
7 around.

8 MR. LONGE: That's the size, this is the
9 color. A little bit lighter than sandstone.

10 MS. ECKER: Metal composite panels to clad
11 the fifth floor and sections of the rooftop screening.
12 The rooftop screening itself is the louvers metal as I
13 mentioned, as well as some of the awnings and canopies
14 that are proposed on the Peabody and Woodward elevation.
15 The glass that's proposed for the windows, now here's an
16 area where we clarified our ordinance, 80 percent
17 visible light transmission is what's allowed. This is
18 the glass that's proposed. It's a steel window and door
19 system on all elevations, ultra white, ultra clear on
20 the first floor with 80 percent visible light
21 transmission, so it does meet the requirement. Also as
22 you know on the first floor they're required to have at
23 least a minimum of 70 percent glazing on the first floor
24 from 1 to 8 feet above grade. The applicant indicated
25 that they do in fact meet that requirement.

Page 21

1 Dykema letter to prove that they meet or do not meet the
2 glazing requirements on the first and upper floors,
3 which is what you have in front of you today.

4 And, again, the Dykema letter just came in
5 yesterday so I did just ask them to bring today showing
6 that they do meet the glazing requirements.

7 So with regards to the design of the
8 building, obviously, you have to have a vertical
9 proportion on the building. These are all some of the
10 design standards that are in the downtown overlay and
11 they all come from the 2016 plan. You have to have
12 first floor store fronts directly accessible to the
13 sidewalk, which they have. No blank walls facing a
14 public street and the main entry has canopies on
15 different areas along this building and pedestrian scale
16 detail on the first floor. Now this case the front of
17 the building under the zoning ordinance is Woodward but
18 realistically regardless of the technical zoning review
19 it has two fronts, one on Peabody and one on Woodward;
20 both of them contain levels of detail at the pedestrian
21 scale for patrons that are going in and out of the
22 building. We also looked at the percentage of materials
23 that are what we call high quality building materials,
24 brick, stone, glass, et cetera and they have met that
25 They have to have at least 90 percent of those

Regular Meeting of the Planning Board
2/28/2018

Page 22

1 materials; they do have 93.5 percent on the Woodward
2 facade and 92.5 on the Peabody facade, both of which are
3 above the 90 percent. So that's met as well.
4 In addition in the 2016 plan, this is part
5 of what we call the Maple gateway block and the Maple
6 gateway was envisioned as the main entrance to
7 Birmingham central business district. And the plan
8 recommends that buildings should be designed with
9 reference to the other share with -- to other buildings
10 sharing in similar height, mass, and as much
11 architectural syntax as possible. As you can see this
12 proposed building here does match the height of the
13 Greenleaf Trust building to the north. It's fairly
14 similar to the Balmoral building to the south; it's
15 obviously the same in terms of its footprinted massing,
16 et cetera. Also has a modern architectural design which
17 is featured in the abutting buildings.
18 So that's essentially it with regards to the
19 final site plan and design. I'm happy to answer any
20 other questions you have. Based on a review of the
21 plans submitted, we would recommend that you recommend
22 approval; that you provide approval for the final site
23 plan and design review for 34965 Woodward and 215
24 Peabody with the following conditions. One, the
25 applicant submits plans demonstrating the size and

Page 23

1 location of three usable off-street loading spaces or
2 obtain a variance from the board of zoning appeal, which
3 they indicated they do intend to do. Two, that they
4 comply with the requirements of city departments; and I
5 would also add in three as a result of today's findings
6 that the applicant update their civil plans to match the
7 architectural site plans that were submitted.
8 VICE-CHAIRPERSON LAZAR: Okay, Jana, thank
9 you very much. Are there further questions from the
10 board? Stuart?
11 MR. JEFFARES: Jana, when you talk about
12 massing is that -- just let me give you what I'm
13 thinking and tell me if this is on the right track. The
14 buildings on either side were built X high up to the
15 pretty much the max that the ordinance allowed and they
16 were built out as much as pretty much as the ordinance
17 allowed out to the lot lines and so this building we
18 would expect to do the same kind of things?
19 MS. ECKER: Correct. You know, I mean, a
20 simple example of something that wouldn't be consistent
21 massing wise, you know those places where you see the
22 buildings have come in and there's a little house
23 sitting here and there's five-story buildings on either
24 side. Obviously, that's not consistent massing. This
25 is consistent within a couple of feet.

Page 24

1 CHAIRMAN CLEIN: Robin?
2 MR. BOYLE: Just comment that MDOT controls
3 the skies, never mind the roads but we'll --
4 MR. WILLIAMS: They do a better job with pot
5 holes in the sky. Never run into one.
6 MR. BOYLE: Just to be clear when a
7 pedestrian were this to be built as presented to us
8 tonight, a pedestrian walking along would they see a
9 space between the buildings to the north and the
10 buildings to the south or will they touch?
11 MS. ECKER: I think that you want to direct
12 that question to the applicant's architect because
13 that -- yeah, I'm not the expert on that. So I think we
14 should ask them and, obviously, as I mentioned earlier
15 all of those details, specific construction details, and
16 how they'll touch, if they touch will be reviewed during
17 the building permit process but Chris can you answer
18 that?
19 MR. LONGE: Sure. They both physically
20 touch at the corners with the exception of would be the
21 southwest corner where the Balmoral building as it faces
22 the parking structure, their building is five foot some
23 inches off of their property line above the second
24 floor, so our building comes to effectively our property
25 line but there will be a five-foot gap there, which you

Page 25

1 can actually see in the elevation.
2 MR. BOYLE: Miss -- can we see that, Jana?
3 MS. ECKER: Well, you can kind of see it
4 here, because their building steps back.
5 MR. LONGE: Balmoral's building steps back.
6 MS. ECKER: Balmoral's, yes. And, again,
7 keep in mind for the Catalyst building and the Balmoral
8 building there will be areas in the center of the north
9 and south facade that will not touch because those are
10 those areas where they've recessed at four feet now.
11 MR. WILLIAMS: But you can't see those from
12 the street?
13 MS. ECKER: You can't see those from the
14 street, right. Except for in this little area here.
15 MR. WILLIAMS: That's where we need the
16 aerial.
17 MR. BOYLE: But I'm right in thinking -- I
18 don't want to press this, but the pedestrian would not
19 see a gap, am I right?
20 MS. ECKER: Correct. Except for this tiny
21 area right here where they'd be able to look down there
22 and see some of where the wall is set back five feet on
23 the Balmoral because they could look.
24 MR. BOYLE: But not on the first floor?
25 MS. ECKER: Not on the first floor. They'd

Regular Meeting of the Planning Board
2/28/2018

Page 26

1 both be on the other side of Woodward.
2 MR. BOYLE: That's my point. The pedestrian
3 walking along would see a street wall?
4 MS. ECKER: A street wall, yes. And a
5 continuous street wall from top to bottom at the other
6 three locations.
7 MR. BOYLE: Fine. Thank you.
8 VICE-CHAIRPERSON LAZAR: Other questions
9 from the board? Janelle?
10 MS. WHIPPLE-BOYCE: Jana, so one is retail,
11 floor one. Two and three are office. Four is something
12 called commercial, what is that can you tell us about
13 commercial with the one small unit on the end?
14 MS. ECKER: Commercial basically it's
15 defined in the zoning ordinance people have become very
16 creative at finding uses that do not fall under office
17 but are commercial. It's a very gray area and I think
18 it's something that we're probably going to be
19 addressing ordinance-wise as we talk about retail on the
20 first floor because this is an issue that comes up
21 repeatedly. The Balmoral building, for instance, to the
22 south has the same thing first floor retail, two floors
23 of office, one floor of commercial.
24 MS. WHIPPLE-BOYCE: With a residential unit
25 as well?

Page 27

1 MS. ECKER: Well, if the unit goes up to the
2 fifth floor, yes. So it is kind of one of those gray
3 areas that folks have got the two 'cause you can only
4 have a maximum of two floors of office and there are
5 some issues with that, obviously, not only with the gray
6 area on what's commercial; is it commercial but not
7 office; that's what they have to prove to the building
8 official. If it's commercial but not office. And then
9 the other area that we've brought this up during the
10 retail discussions is when people do the retail in the
11 redline retail district 20 feet, then they have office
12 in the back but they already have two floors of office;
13 you know, that's an issue there. So it is a gray area
14 in our ordinance.
15 MS. WHIPPLE-BOYCE: Can I just ask one more?
16 What would be an example of commercial? Can you think
17 of any that you know of?
18 MS. ECKER: I'm trying to think what some of
19 them that are out there and I can't think off the top of
20 my head what they are. I'm assuming that -- well, I
21 don't know.
22 MS. WHIPPLE-BOYCE: Okay.
23 MS. ECKER: And each one's a little unique
24 and makes their own argument when they come forward to
25 try to get occupancy for that space.

Page 28

1 MS. WHIPPLE-BOYCE: Okay, thank you.
2 VICE-CHAIRPERSON LAZAR: Any further
3 questions for Jana? Okay. Would the applicant like to
4 come forward please? Thank you, Jana.
5 MS. ECKER: You're welcome.
6 MR. LONGE: Chris Longe again. I don't have
7 a whole lot to add to what Jana's presented. I mean,
8 it's pretty clear and I think the clearest thing is that
9 we haven't changed a lot from the first time we were
10 here preliminary. Any change that we have made has been
11 made with some consultation with our neighbors to the
12 north and to the south and, in fact, we've reacted to
13 them with our building. I think you might even remember
14 I think the first meeting the Balmoral architect
15 suggested that four to five feet would be what they were
16 looking for, so that became as far as construction, too,
17 with our construction technique is roughly four feet the
18 setback, so we have reacted to that. We've taken the
19 floors from two and three all the way up to five, you
20 know, hollowing out the center area, providing windows
21 as I think even Bert suggested. Now we've lost 2,800
22 square feet which at 45 bucks a square foot is roughly
23 125 grand a year lost revenue and on top of that we got
24 two walls that would typically not be seen that are now
25 the same materials that the facade of the building is,

Page 29

1 which is another I'm sure 500, 600 grand. So it's not
2 an inexpensive thing that we've done to accommodate our
3 neighbors in the interest of being good neighbors. And
4 it's exactly as I think Janelle suggested early on and
5 we've endeavored to that, so this is our reaction to it
6 and Jana explained it very well. Answer questions.
7 VICE-CHAIRPERSON LAZAR: Questions from the
8 board?
9 MR. JEFFARES: This might be a little bit
10 more for Jana, but the building to the north and south
11 do they have one floor of parking or two?
12 MS. ECKER: Just one. They each have one.
13 MR. JEFFARES: So it's got to be much less
14 spaces then?
15 MR. LONGE: It is.
16 MS. ECKER: Right. The one to the north I
17 believe is 10 parking spaces and the one to the south I
18 want to say like 13, but I'm sure if I'm correct.
19 MR. JEFFARES: So you guys are taking way
20 much -- way more off of the parking system at your
21 expense?
22 MR. LONGE: Correct. Well, frankly, I mean
23 certain buildings took up passes years ago, you know,
24 that for somebody who's been in this building where I'm
25 at right now for 18 years I can't get a pass, so.

Regular Meeting of the Planning Board
2/28/2018

Page 30

1 VICE-CHAIRPERSON LAZAR: Any other questions
2 for the applicant? Robin?
3 MR. BOYLE: On the same line I don't know
4 whether you'd talked to this but could it be possible
5 that parking your building could become residential for
6 being connected to the users of the commercial and
7 office property that you're building?
8 MR. LONGE: I'm probably the wrong person to
9 ask that but as we represented early on we're not going
10 to restrict parking necessarily to the public because
11 it's a public building; people come in for appointments
12 and, obviously, the need for the parking for those who
13 are tenants in the building, but I can't answer that;
14 the developers here I'm certainly sure he could address
15 it a little bit
16 MR. BOYLE: Well, maybe we can address the
17 city planner on that?
18 MS. ECKER: Could it be run as a private
19 parking facility?
20 MR. BOYLE: Yes.
21 MS. ECKER: Yes, with the exception of 15
22 spaces because 15 are required exclusively -- not
23 exclusively -- are required for the residential unit, so
24 15 of them would have to remain completely for the use
25 of the building and, yes, they could do that. I don't

Page 31

1 imagine that they are but the 555 does that
2 MS. WHIPPLE-BOYCE: Birmingham place.
3 MR. JEFFARES: As somebody who parks in that
4 Peabody deck every single day, I would much rather have
5 it be for the all day business parkers, fill them up
6 with those guys, and the guys who come in and out to
7 transact a little bit of business, let them park in
8 Peabody; just increases my chances of finding a spot.
9 MR. LONGE: Got to be there early
10 VICE-CHAIRPERSON LAZAR: Any other questions
11 for the applicant?
12 MS. ECKER: You know, and can I just add one
13 thing? I forgot to mention that they did not provide
14 their garage door material.
15 MR. LONGE: Because there isn't one.
16 MS. ECKER: Well, it looks like there's one
17 way back in; no? Okay. So it looks open at the street
18 and then I thought I saw a line there
19 MR. LONGE: I don't think we have one. If
20 we did have one, it would be glass.
21 MS. ECKER: It looked like it was set quite
22 a bit from the street
23 MR. LONGE: 'Cause we're using that for
24 loading and unloading of trash and such, so. If there
25 was a garage door, it would be easily 20 feet back. But

Page 32

1 there isn't one at the moment
2 MS. WHIPPLE-BOYCE: Thank you
3 VICE-CHAIRPERSON LAZAR: Any further
4 questions? Okay. Take it to the public.
5 MR. GREENE: Thank you. I'm the infamous
6 Alan Greene from the letter. I'm here on behalf of the
7 ownership of the Balmoral building, Woodward Brown
8 Associates and the Greenleaf Trust Building, Catalyst
9 Development. We spent a lot of time in the preliminary
10 site plan going over our objections to the building.
11 I'm not going to go through all that again. You know,
12 our basic concern's really related to how the buildings
13 would be constructed, the fact that we had numerous
14 windows on our buildings and facades that were of equal
15 quality from our other facades and the original building
16 was going to be abutting right up against that. Just to
17 clarify the Balmoral building all of the upper floors
18 are set back five feet essentially except for the one
19 stairwell pier. So, you know, there's a fairly
20 substantial amount of space that was not built to the
21 maximum or to the property line and we have -- what did
22 I say -- 50 windows on that side. I do appreciate
23 the -- our neighbor and their willingness to sit down
24 with us. We did have dialogue; we've had discussions
25 but we had a lot of questions, too, and we still have

Page 33

1 concerns about what is being built. And I mostly have
2 questions, because these are final site plan questions I
3 want to ask.
4 I think I heard one answer just to the
5 presentation is that the final site plan documents were
6 very unclear about what was happening on the north and
7 south facades abutting our buildings. It's unclear,
8 they're not labelled in terms of material. It's a
9 single colored material and I think I just heard that
10 the nature of the material that's going to be on those
11 facades will be identical or the same or carried through
12 from what's on the east and west facades. So that was a
13 really important issue for us because whatever we're
14 going to look at, we were hoping to look at whatever
15 high quality material would be used, which was different
16 because in the preliminary site plan there really wasn't
17 much information on that and it looked like they were
18 just painted block walls.
19 So, again, it was not our place; we've never
20 been here intending to, you know, be a critique -- be a
21 critic of the architectural design; I mean, the
22 building's a nice building. But we wanted to make sure
23 that the facades were compatible and similar, so if
24 that's clarified my question is what are the materials
25 on the north and south facade, because it's not really

Regular Meeting of the Planning Board
2/28/2018

Page 34

1 clarified in the plans? The other thing of great
2 concern still is how are these buildings going to be
3 constructed and the fact that there still are a
4 significant number of windows that are blocked. It is
5 unclear to us from the plans -- I'll start with the
6 Balmoral now -- It's unclear to us from the plans how
7 the first floor property of the Alden building relates
8 to the first and second floor of the Balmoral building.
9 It appears that because of elevation changes, although
10 it seems to be represented there that the two first
11 floors would abut each other the whole way, it really
12 looks like it's going to be that the Alden building is
13 going to go all the way to the property line also on the
14 second or part of the second floor the Balmoral
15 building, which means you're going to have potentially
16 either windows of the second floor completely blocked or
17 partially blocked. It would be a very bizarre detail
18 and so that's a question that we have. Our architects
19 say that it looks like it's going to block those windows
20 or partially block those windows, but we can't tell from
21 the drawing, so that's another question we would have of
22 Chris in that regard

23 Also, what we had tried to persuade our
24 neighbor to do is, look, why don't you just move back
25 your facades above the first floor five feet away -- I'm

Page 35

1 still speaking of Balmoral, okay -- five feet away from
2 the Balmoral so each building is inset an equal amount.
3 You can get windows on the building. Yes, you'll lose a
4 little bit of rentable area but you'll gain the fact
5 that you'll have more valuable area because there are
6 windows there and your people will be able to look at a
7 really nice facade that we built and hopefully we'll be
8 able to look at a nice facade that you built ten feet
9 away, so they started that process, they elected to do
10 it four feet rather than five feet. I think we're five
11 and a half feet recessed, but they didn't do it on the
12 Peabody Street side by the pier there, which blocks
13 about two windows per floor, four floors up, and then it
14 also appears that the entire first -- second floor of
15 our windows would be blocked. So those are serious
16 issues for us.

17 On the Catalyst side we had a similar --
18 there were other positions that Catalyst had. Catalyst
19 building is set back in different spots significantly
20 greater, like those balconies are set back 15 feet and,
21 again, there was a discussion about why don't you set
22 back your building five feet across the back you can
23 have windows and they'll be some separation of the
24 buildings and it will be easier to construct and there
25 will be light and air provided for that building. What

Page 36

1 they ended up doing is in the least important area,
2 which are the two ends of the building where the --
3 where there's fire-rated glass windows on the Catalyst
4 building, that's where they set it back five feet but in
5 the center of the building they left it right to the
6 property line and then added fire-rated windows, so it
7 appears to be a situation where you got the -- their
8 building built right to the balconies of these
9 residential units now with fire-rated windows or
10 whatever kind of windows are there; people looking right
11 into the residential, you know, balconies or people in
12 the other building. So that's also objectionable; we're
13 not clear how they even plan to construct it in that
14 way

15 And then, finally, I have one other question
16 I think it was raised in the discussion about what kind
17 of windows are on those elevations. It is not, again,
18 the site plan has none of those details. There's no
19 details about the two elevations; what the materials are
20 on the south and north; do they carry through the entire
21 elevation; what kind of windows are on the north and
22 south; are the windows facing the Balmoral with these
23 fire-rated windows; are they the kind of glass that was
24 just shown to you? We don't know that because it's not
25 specified on the plans. So, again, I'm trying to limit

Page 37

1 my discussion here to some of the final site plan
2 details. We still object for all the many reasons that
3 we objected before that the plan does not meet the
4 requirements of the master plan; does not meet the
5 requirements of your zoning ordinance on various
6 standards; that it impacts the value of our building;
7 there isn't sufficient parking available and that's
8 going to be a negative issue; that there are
9 constructability issues, how they're going to build the
10 buildings without trespassing on our property or
11 damaging our property. All those things. But I
12 remember this commission you were very patient in
13 listening to us for three meetings and my architects but
14 I still remember one of the things that you guys said or
15 several of you comment is we'll get more of these
16 details during final site plan and those are the kind of
17 details that we're asking about here. What is the
18 design and materials on the north and south elevation;
19 what are the windows; how's -- you know, how are they
20 going to block what windows on our side and how will
21 they be attached or constructed? That's all I have to
22 say. Thank you.

23 VICE-CHAIRPERSON LAZAR: Any other comments
24 from the public? Chris do you wish to respond?

25 MR. LONGE: I do. With respect to the

Regular Meeting of the Planning Board
2/28/2018

Page 38

1 material and the windows they are indicated on the
2 elevation. You know, we have a one blow up of the
3 elevation that indicates what is what. The same
4 materials that are on the facade of the building both
5 the Woodward and Peabody side are going to be replicated
6 on the north and south sides, the sides you can't see
7 So I wanted to assure Alan that is the case.

8 Secondarily, the glazing is identical in
9 terms of its clarity and the framing. It does not have
10 to be fire glazed. There are, you know, codes that kind
11 of govern that sort of thing; we're allowed a certain
12 percentage of glass to wall area. I think it's 15
13 percent for anything between three and five feet and
14 five feet to ten feet is 25 percent and once you're
15 beyond that, it can be unlimited amount of glass. When
16 you are between zero and three it has to be fire-rated
17 glass. So we're beyond three feet so we can have 15
18 percent of our wall surface with unprotected windows, so
19 I want to make that clear as well they don't have to be
20 fire glazed. And one more point, the configuration of
21 the building above the second and third floors were not
22 something that we presented. It was something that we
23 responded to. The architect we met separately with the
24 Balmoral folks and we met again with the Catalyst folks.
25 And with respect to the Catalyst Building I did actually

Page 40

1 the course of past several months.

2 VICE-CHAIRPERSON LAZAR: Okay. Any
3 questions of Chris before he leaves? All right. Bryan,
4 do you have something to say. Are there any further
5 comments from the public? I'm going to bring it back to
6 the board.

7 MR. WILLIAMS: Well, yeah, I have a couple
8 of comments. I happen -- not happened -- happen, I'm
9 still practicing law. That's a comment on paragraph 51
10 of the complaint. The concern I have is these materials
11 showed up late yesterday; I've been busy all day; I
12 really have not had an opportunity to read the materials
13 submitted by Mr. Greene kind of in a cursory matter;
14 it's a three page letter and, Jana, I know you've
15 addressed at least one of the issues today. But I am
16 reticent to approve tonight where I haven't had an
17 opportunity to read 100 pages or whatever this is that
18 Mr. Greene has submitted and I want -- I think it's
19 important, at least I will express my view, it's
20 important that I want to read what he says and I want to
21 read it from cover to cover and I hadn't have the
22 opportunity because of the submission.

23 Now I'm not being critical of anybody
24 because under our timing the original site plan
25 materials weren't available until late Friday, and so I

Page 39

1 take the effort -- make the effort to propose something,
2 which was going close to the property line at the two
3 east and west sides of their building and then stepping
4 our building back to sort of reflect their terrace and,
5 in fact, their architect said, well, how about you try
6 it this way. So I took that drawing and we sort of
7 replicated in what you saw tonight, so, you know, it's
8 for --

9 VICE-CHAIRPERSON LAZAR: Can you operate a
10 little bit quicker on the actual concerns about
11 construction and imposing on their property?

12 MR. LONGE: Well, we've actually had
13 discussions about that; there's actually been some back
14 and forth with our counsel and Alan to kind of negotiate
15 those kinds of things. We're actually at the threshold
16 of producing a schedule of activities, so that they have
17 certainty what -- they know what's going to happen, you
18 know, throughout the course of a year or 18 months or
19 whatever it takes to construct. We were hoping to
20 obtain a license to actually operate in and around their
21 building with proper notice and we're hoping to have a
22 long-term maintenance agreement that benefits both
23 properties to north and south of us.

24 VICE-CHAIRPERSON LAZAR: All right.

25 MR. LONGE: That's all been discussed over

Page 41

1 think they responded as quickly as they could. It's
2 just under my schedule I didn't have a chance read it; I
3 didn't get it until Tuesday night. So I want to read
4 it, which means I'm not going to vote yes and I'm not
5 going to vote no on any motion tonight other than to
6 postpone consideration for a period of two weeks.

7 The second thing I'd like for the record
8 because we didn't have it at preliminary site plan
9 approval and I also want to make a comment that the
10 planning board didn't adopt my written decision; it
11 wasn't a decision it was comments I prepared in advance
12 and the motion was made on the basis of materials that
13 had been submitted four and five days before the
14 preliminary site plan; it wasn't on the basis of my
15 comments. So my comment wasn't in the form of a
16 decision in any event, but I want the time to review his
17 comments. I also want the planning department this time
18 to -- I'm requesting that Jana respond specifically to
19 the comments that the Balmoral and the Catalyst Building
20 has made in the Greene letter about the site plan and I
21 want the building department to respond to here's what
22 the plans say; here's what the -- Mr. Greene's clients
23 say; here's the conclusion of the building department as
24 to validity of those assertions. You've already pointed
25 out one, at least one as referenced in the letter, but I

Regular Meeting of the Planning Board
2/28/2018

Page 42

1 want something for the record.
2 Let's bear in mind this is a dispute that's
3 in litigation and I think we have to remember that and
4 at some point a judge is going to look at this and I
5 want the judge to have the complete record. I want the
6 judge to understand in my own case that I've had the
7 opportunity to read all of the materials in detail
8 before saying yes or no to any final site plan approval.
9 I want to say one other thing that I would
10 expect the parties and that is I don't want materials if
11 we postpone this two weeks delivered on Tuesday before a
12 Wednesday meeting. If they are, I won't read them. And
13 so if everybody's materials aren't in by Tuesday of next
14 week, which gives the planning department an opportunity
15 to respond by Friday, you're too late. One comment I
16 would like Mr. Greene to address specifically he
17 raises -- and I did have an opportunity to read this
18 because it was in the -- attached to the complaint. And
19 I'll pull up a copy now. On page four of the materials
20 that were submitted to the Board of Zoning Appeals a
21 statement is made at the last sentence of paragraph --
22 second complete paragraph, full paragraph, the
23 petitioner's here gave up rentable square footage
24 desired and mandated by the city. I think Jana has
25 addressed that issue by saying there's nothing in the

Page 43

1 record to support the claim that we mandated in effect
2 the setbacks of the other two buildings. Mr. Greene,
3 prove your case. Show me the documents where you can
4 make this statement. If you can't, correct the record.
5 If you can, I'd appreciate seeing the materials, because
6 basically you've heard the planning department say that
7 the statement is incorrect; submit it in writing in two
8 weeks or withdraw your comment now.
9 MR. GREENE: I am not withdrawing my
10 comment; I am not litigating my case in front of you.
11 MR. WILLIAMS: Okay.
12 MR. GREENE: If you look at the materials
13 though, there are affidavits in that material that talk
14 about the communications and if I could -- you know how
15 things work in this community. There were numerous
16 meetings --
17 VICE-CHAIRPERSON LAZAR: Sorry to interrupt,
18 but it did come back to the board.
19 MR. GREENE: Okay, I'm sorry.
20 VICE-CHAIRPERSON LAZAR: It's alright.
21 MR. WILLIAMS: If you don't want to say
22 anything, don't say anything. I'm sure you'll consider
23 my request to be ridiculous which is one of the --
24 MR. GREENE: No.
25 MR. WILLIAMS: -- comments you made in the

Page 44

1 pleading. Thank you.
2 MR. GREENE: I was going to respond but I
3 have to observe.
4 VICE-CHAIRPERSON LAZAR: Thank you.
5 MR. WILLIAMS: You've heard my request. I
6 don't want to act on this until I've read Mr. Greene's
7 materials. I think it's appropriate that I do so. I
8 lead to the rest of you how you want to proceed.
9 MR. KOSECK: And I'm trying -- I'm trying to
10 simplify this, so for me the fact that two people aren't
11 getting along or three people or whatever it is, you
12 know, in my mind I'm not sure I have to read that 'cause
13 anybody can come up here and throw a lawsuit at somebody
14 and, you know, we're going to back off and push things
15 off. I mean, as I view this thing, as I think I said
16 the last time, we're here for final site plan approval,
17 so the position in my mind -- because we voted for it; I
18 don't recall if it got unanimous support or not -- but
19 it got approved, so the placement of this building, the
20 form of the building, the placement of the walls in the
21 north and south elevations in my mind it all complies in
22 a, you know, coincidental way for a previous owner of
23 the site to the south, you know, I looked at that
24 project and I designed it to the property line and I
25 knew it was a fire wall, because that's what the

Page 45

1 building code deems and if you put windows on it, it's,
2 you know, as long as I've been here we've never mandated
3 it. I think there was a presentation earlier that
4 showed all kinds of places in our city that have
5 buildings adjacent to one another where some are, you
6 know, one might be five-stories the other one's
7 one-story next to it. That happens where we have blank
8 walls. Yes, I think we encourage it and I think
9 coincidentally the Varsity Shop site may have been in
10 front of us maybe the same time this has been presented.
11 Yeah, let's just not make it boring and through that I
12 think there maybe some brick patterns or inserts or
13 reveals or something. We didn't say it has to be glass.
14 I've never said it; I've never heard anybody say that on
15 this board.
16 So in my mind this complies; I'm trying to
17 not get caught up all the legalities. I think that's up
18 to somebody else. I'm looking at the fenestration, the
19 materials, the lighting, the archscaping, the
20 landscaping, all the other stuff. So maybe someone can
21 convince me that, you know -- and as you I'm busy, too,
22 and I get this stuff late and I can't read through all
23 of it and maybe understand and highlight it but in my
24 mind we can move forward on this.
25 VICE-CHAIRPERSON LAZAR: Stuart

Regular Meeting of the Planning Board
2/28/2018

Page 46

1 MR. JEFFARES: Actually I have some
2 questions for Bert, just so I understand this. So the
3 building you were talking about Varsity Shop that was
4 Victor Sardki who was working on that and he actually
5 came back, we asked him to maybe vary the brick because
6 we knew there was visibility of a building that could
7 lay up next to it. He knew that. He came back with and
8 actually punched in a couple of windows but he said I
9 know a building can go up next to it because of the
10 code, the ordinance, and he put fire-rated glass. So
11 here's my question for you is why would you put in -- I
12 mean, he said a couple of things, fire-rated glass costs
13 way more; is that true? And you can't really -- it's
14 not very clear when you look through it, so it's really
15 distorted, so why would you put that up unless you
16 anticipated a building would be within zero to three
17 feet? I mean, is there any time you would take that
18 expense to put in a distorted expensive window and once
19 you had a good idea there's going to -- there could be a
20 building right there?
21 MR. KOSECK: And I'll answer it. We saw
22 something else I think a month ago when there was a
23 historic building, a one-story building here on Maple
24 and a five-story building maybe next to it. So that has
25 I think the five-story building has windows on the

Page 47

1 side --
2 MS. WHIPPLE-BOYCE: It does and it's
3 fire-rated.
4 MR. KOSECK: It's fire-rated. So maybe that
5 owner said, well, that's a historic building next door.
6 I mean, it's probably not going to change maybe and took
7 the risk. But in my mind, you know, I tell my clients
8 if you choose to do it, first I think the city has to
9 accept it from a building code standpoint and there's
10 probably some paperwork that says, you know, that if
11 that, you know, that you have to do fire-rating and
12 other sorts of things and then you do it and, you know,
13 somebody else and, you know, in my mind, you know, I
14 didn't think Peabody's was going to be there for another
15 50 years or 100 years, so.
16 MR. JEFFARES: The rumors of its demise were
17 for the last 15 years. I have one another question and
18 this is for Chris. How many total windows are blocked
19 on either building there? I mean, where it's right up
20 to the building -- your building that's up to the lot
21 line and there's a window there?
22 MR. LONGE: On the south side abutting
23 Balmoral there are no windows blocked. On the north
24 side, I don't have it off the top of my head, but --
25 there are -- you know, because we're four feet off the

Page 48

1 property
2 MR. JEFFARES: So it's zero and zero?
3 VICE-CHAIRPERSON LAZAR: Robin.
4 MR. BOYLE: I was going to make a motion.
5 MS. WHIPPLE-BOYCE: May I say one thing?
6 MR. BOYLE: Yeah, go ahead, sorry.
7 MS. WHIPPLE-BOYCE: It's okay. So I came
8 here tonight prepared to approve this or give a yes vote
9 and I think Bryan makes a really good point and I think
10 it maybe worth the two weeks for a review of this packet
11 that probably most -- none of us read because we just
12 got it yesterday. And just to play it safe just to as
13 this proceeds and we'll be a court case and why wouldn't
14 it be worth our time to make sure that we've covered all
15 of our bases before we approve this building tonight?
16 That's my comment. I think two weeks is not asking a
17 lot to give us all an opportunity and maybe staff has
18 made it through all of this. Have you guys?
19 VICE-CHAIRPERSON LAZAR: We did.
20 MS. WHIPPLE-BOYCE: I mean, just to play it
21 safe, you know. We're in the middle of a lawsuit,
22 right, so why wouldn't we want to do that, so that we
23 can not be accused in the future of not having read all
24 of this material and not having done all of the things
25 that we think we're doing correctly.

Page 49

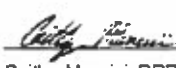
1 MR. JEFFARES: Question for Jana, did Tim
2 Courier read through the whole thing?
3 MS. ECKER: Yes, he did. And I talked to
4 him this afternoon.
5 MR. JEFFARES: So his letter was requested
6 after that?
7 MS. ECKER: No, his letter actually came
8 first by about a half an hour before the Dykema package
9 came but I did talk to Mr. Courier this afternoon on the
10 phone and I said does anything in this packet change
11 your position in the letter; he said absolutely not.
12 MR. JEFFARES: Okay.
13 MS. WHIPPLE-BOYCE: All right.
14 VICE-CHAIRPERSON LAZAR: Any other comments
15 before Robin makes a motion? Okay, Robin.
16 MR. BOYLE: My only comment would be that it
17 is a delight to discuss a major boding of this size and
18 not revert to the P word; we barely discussed parking
19 and it's absolutely a pleasure to be able to think in
20 land-use terms. I disagree with my colleagues I think
21 we've done a lot of work on this. I think we've thought
22 about this. It is a very important space in our city
23 and I think it behooves us if we believe that we've done
24 our job and we've gone through the material that we
25 actually make a decision. I appreciate Bryan's point; I

Regular Meeting of the Planning Board
2/28/2018

Page 50

1 understand it but I think I've reached a decision that,
2 you know, it may not stand tonight, but that's my
3 position, so accordingly I'd like to make a motion to
4 approve the final site plan and design review for 34965
5 Woodward Avenue and 215 Peabody subject to the following
6 conditions: One, the applicant submits plans
7 demonstrating the size and location of three usable
8 off-street loading spaces or obtain a variance from the
9 BZA; and two, comply with the requirements of the city
10 departments; and three, but I don't have good wording
11 for it, ensure that the applicant is using the up to
12 date
13 MS. ECKER: Update the civil plan to match
14 the architectural site plan.
15 MR. BOYLE: Thank you. These are the three
16 conditions that I would bring forward.
17 VICE-CHAIRPERSON LAZAR: Is there a second?
18 MR. JEFFARES: Second motion.
19 VICE-CHAIRPERSON LAZAR: Further discussion?
20 I just would like to make a comment I agree with Bryan
21 but at the same time since Jana has clarified that Tim
22 Courier will even though he had written the first letter
23 that we read before, but she's since spoken to him and
24 his recommendation was to go ahead and follow through
25 the process of a final site plan review, so I feel

Page 52

1 STATE OF MICHIGAN)
2)
3 COUNTY OF WASHTENAW)
4
5 CERTIFICATE OF NOTARY PUBLIC AND COURT REPORTER
6 I, Caitlyn Mancini, do hereby certify that the
7 foregoing portion of the City of Birmingham February 28,
8 2018 Planning Board meeting sent to me was duly recorded
9 by me stenographically and by me later reduced to
10 typewritten form by means of computer-aided
11 transcription; and I certify that this is a true and
12 correct transcript of my stenographic notes so taken.
13 I further certify that I am neither of counsel to
14 either party nor interested in the event of this cause.
15
16
17 
18 Caitlyn Mancini, RPR, CSR-8887
19 Notary Public,
20 Washtenaw County, Michigan
21 My Commission expires: August 15, 2021
22
23
24
25



Page 51

1 comfortable with that, so I will support the motion. So
2 in the meantime we'll take the motion back to the public
3 any comments? Any? Okay. Bring it back to the board.
4 I think we will do a rollcall on this please, Carole.
5 MS. SALUTES: Mr. Boyle?
6 MR. BOYLE: Yes.
7 MS. SALUTES: Mr. Koseck?
8 MR. KOSECK: Yes.
9 MS. SALUTES: Ms. Lazar?
10 VICE-CHAIRPERSON LAZAR: Yes.
11 MS. SALUTES: Ms. Whipple-Boyce?
12 MS. WHIPPLE-BOYCE: Yes.
13 MS. SALUTES: MR. Williams?
14 MR. WILLIAMS: No.
15 MS. SALUTES: And Chairman Clein is recused.
16 MR. LONGE: Can I vote?
17 UNKNOWN PERSON: Nope.
18 MS. SALUTES: Stuart?
19 MR. JEFFARES: Yes.
20 VICE-CHAIRPERSON LAZAR: Thank you very
21 much. Hope it works out well.
22 (Portion of meeting concluded.)
23
24
25

Regular Meeting of the Planning Board
2/28/2018

Page 53

A				
<p>able 18:8 25:21 35:6,8 49:19 absolutely 49:11 49:19 abut 34:11 abutting 22:17 32:16 33:7 47:22 accept 47:9 accepted 6:12 access 13:19,20 17:1 accessible 21:12 accommodate 11:12 12:1 29:2 accused 48:23 act 44:6 activities 39:16 actual 39:10 add 5:16 15:21 23:5 28:7 31:12 added 11:25 16:15 36:6 addition 22:4 additional 6:13 6:16 8:14,25 address 15:12 30:14,16 42:16 addressed 8:3 40:15 42:25 addressing 26:19 adjacent 7:6 10:12 12:2 45:5 administrative 5:17 adopt 41:10 advance 41:11 aerial 25:16 affect 5:21 affidavits 43:13 afternoon 49:4,9</p>	<p>ago 29:23 46:22 agree 50:20 agreement 18:2 39:22 ahead 48:6 50:24 air 10:17 11:2 12:7,8 18:1 35:25 alan 3:7 32:6 38:7 39:14 alden 34:7,12 allow 2:17 18:10 allowed 13:17 16:24 19:17 20:3 23:15,17 38:11 alright 43:20 amended 15:23 amount 32:20 35:2 38:15 angled 13:1 16:7 angles 12:23 answer 2:23 4:24 5:2,6 22:19 24:17 29:6 30:13 33:4 46:21 answered 5:9 anticipated 46:16 anybody 40:23 44:13 45:14 anyways 3:23 8:16 appeal 5:17,19 5:20 23:2 appeals 5:17 7:24 8:6 13:14 42:20 appears 34:9 35:14 36:7 applicant 2:19 2:21 5:16 6:8 6:16 7:24 8:1,3 10:19 15:4,20 16:10 19:24</p>	<p>20:24 22:25 23:6 28:3 30:2 31:11 50:6,11 applicants 24:12 applying 8:5 13:14 appointments 30:11 appreciate 32:22 43:5 49:25 appropriate 44:7 approval 4:1,4,5 4:21 6:10 7:17 22:22,22 41:9 42:8 44:16 approve 7:14 40:16 48:8,15 50:4 approved 4:5,8 4:20 9:11 16:13 44:19 arborist 7:18 8:20 arcade 10:6 13:8 13:9 architect 20:12 24:12 28:14 38:23 39:5 architects 34:18 37:13 architectural 4:14 14:7 15:23 16:3 22:11,16 23:7 33:21 50:14 archscaping 45:19 area 10:21,22,22 13:9 14:3,16 16:9,15 17:3 19:16 25:14,21 26:17 27:6,9 27:13 28:20 35:4,5 36:1 38:12</p>	<p>areas 21:15 25:8 25:10 27:3 arent 42:13 44:10 argument 27:24 asked 46:5 asking 37:17 48:16 assemblies 18:10 assertions 41:24 associates 32:8 assuming 27:20 assure 38:7 attached 6:21 37:21 42:18 attachments 3:2 3:9 attorney 3:5 5:24 attorneys 7:3 august 6:25 52:21 available 5:3 37:7 40:25 avenue 50:5 awnings 19:13 aye 3:20</p> <hr/> <p>B</p> <p>b4 6:3 back 2:21,24 6:8 6:25 7:8,10,12 10:15 11:1 12:3 13:9,16 14:17 25:4,5 25:22 27:12 31:17,25 32:18 34:24 35:19,20 35:22,22 36:4 39:4,13 40:5 43:18 44:14 46:5,7 51:2,3 balconies 35:20 36:8,11 balmoral 22:14 24:21 25:7,23</p>	<p>26:21 28:14 32:7,17 34:6,8 34:14 35:1,2 36:22 38:24 41:19 47:23 balmorals 25:5 25:6 barely 49:18 base 18:20,23 based 8:21 9:17 22:20 bases 48:15 basic 32:12 basically 6:7 10:22 11:11 12:7 20:23 26:14 43:6 basis 41:12,14 bay 17:9 bear 42:2 behalf 7:5 32:6 behooves 49:23 beier 3:5 believe 3:13 5:7 5:9 29:17 49:23 bell 14:23 benefit 3:24,24 benefits 39:22 bert 3:16 28:21 46:2 better 24:4 beyond 38:15,17 birmingham 1:12 2:1 22:7 31:2 52:7 bit 10:17 11:9,13 12:18 14:20 16:1 19:9 29:9 30:15 31:7,22 35:4 39:10 bizarre 34:17 blank 21:13 45:7 block 22:5 33:18 34:19,20 37:20 blocked 34:4,16</p>

Regular Meeting of the Planning Board
2/28/2018

Page 54

34:17 35:15 47:18,23 blocks 35:12 blow 14:1,2 38:2 board 1:9 2:20 2:21,24 3:6 5:17 6:8,16 7:6 7:13 8:6 13:14 23:2,10 26:9 29:8 40:6 41:10 42:20 43:18 45:15 51:3 52:8 boarding 7:24 boards 5:18 boding 49:17 boring 45:11 bother 18:14 bottom 26:5 boyle 24:2,6 25:2,17,24 26:2,7 30:3,16 30:20 48:4,6 49:16 50:15 51:5,6 breakdown 20:25 brick 21:24 45:12 46:5 bring 21:5 40:5 50:16 51:3 brought 14:9 27:9 brown 32:7 bryan 2:24 40:3 48:9 50:20 bryans 49:25 bucks 28:22 build 37:9 building 2:18 4:10,13 6:18 8:13 9:5 10:16 10:23,25 11:3 11:5,19 12:1,3 12:6 13:24 14:16,19,21,23 14:23 15:7,15	16:22 17:19 18:21,23 21:8 21:9,15,17,22 21:23 22:12,13 22:14 23:17 24:17,21,22,24 25:4,5,7,8 26:21 27:7 28:13,25 29:10 29:24 30:5,7 30:11,13,25 32:7,8,10,15 32:17 33:22 34:7,8,12,15 35:2,3,19,22 35:25 36:2,4,5 36:8,12 37:6 38:4,21,25 39:3,4,21 41:19,21,23 44:19,20 45:1 46:3,6,9,16,20 46:23,23,24,25 47:5,9,19,20 47:20 48:15 buildings 6:18 6:21,24 7:6 10:13,14,17 11:17 15:5 17:15 22:8,9 22:17 23:14,22 23:23 24:9,10 29:23 32:12,14 33:7,22 34:2 35:24 37:10 43:2 45:5 built 23:14,16 24:7 32:20 33:1 35:7,8 36:8 bumps 17:24,25 business 5:25 22:7 31:5,7 busy 40:11 45:21 bza 50:9	C cad 20:18 caitlyn 52:6,18 calculate 20:21 call 10:6 17:9 21:23 22:5 called 26:12 canopies 19:13 20:11 21:14 cant 5:7 8:17 13:1 18:15 25:11,13 27:19 29:25 30:13 34:20 38:6 43:4 45:22 46:13 carole 51:4 carried 33:11 carry 36:20 case 5:21 21:16 38:7 42:6 43:3 43:10 48:13 catalyst 14:22 25:7 32:8 35:17,18,18 36:3 38:24,25 41:19 caught 45:17 cause 16:9 27:3 31:23 44:12 52:14 ceiling 14:11,15 center 25:8 28:20 36:5 central 22:7 certain 29:23 38:11 certainly 4:19 30:14 certainty 39:17 certificate 52:5 certify 52:6,11 52:13 cetera 4:10,14 21:24 22:16 chairman 2:5	24:1 51:15 chance 41:2 chances 31:8 change 28:10 47:6 49:10 changed 10:10 10:19 12:12 16:16 28:9 changes 10:1 16:12 34:9 charcoal 18:24 choose 47:8 chris 18:22 24:17 28:6 34:22 37:24 40:3 47:18 circuit 4:23,25 5:4 circulation 4:10 13:15 cis 6:9 city 1:11 3:5 4:24 5:2,8,10 5:23 7:5 8:24 14:4 16:16 23:4 30:17 42:24 45:4 47:8 49:22 50:9 52:7 civil 14:5,6 15:22 16:2 23:6 50:13 clad 19:10 claim 43:1 clarified 15:20 19:16 33:24 34:1 50:21 clarify 32:17 clarity 38:9 clear 14:2 18:13 19:19 20:2 24:6 28:8 36:13 38:19 46:14 clearest 28:8 clein 2:5 24:1 51:15	clients 20:15 41:22 47:7 close 11:18 15:15 39:2 closer 8:14 10:8 code 11:20 16:25 17:19 45:1 46:10 47:9 codes 38:10 coincidental 44:22 coincidentally 45:9 colleagues 49:20 color 8:1 9:1 18:24 19:1,4,9 colored 33:9 come 2:21,24 7:8 17:2 21:11 23:22 27:24 28:4 30:11 31:6 43:18 44:13 comes 10:24 24:24 26:20 comfortable 51:1 coming 6:15 19:6 comment 3:16 7:11 13:11 15:18 16:21 24:2 37:15 40:9 41:9,15 42:15 43:8,10 48:16 49:16 50:20 comments 4:17 7:2,9,11 8:25 11:16 15:1,17 16:20 20:21 37:23 40:5,8 41:11,15,17,19 43:25 49:14 51:3 commercial
--	---	---	--	---

Regular Meeting of the Planning Board
2/28/2018

Page 55

26:12,13,14,17 26:23 27:6,6,8 27:16 30:6 commission 1:11 5:10 9:22 37:12 52:21 communicatio... 43:14 community 4:7 6:11 43:15 compatible 33:23 complaint 4:23 4:24 5:1,6 40:10 42:18 complete 42:5 42:22 completely 30:24 34:16 complied 8:23 complies 7:24 44:21 45:16 comply 23:4 50:9 composite 19:10 computeraided 52:10 concern 14:4 34:2 40:10 concerned 15:3 16:8 concerns 6:15 12:1 15:25 32:12 33:1 39:10 concise 18:13 concluded 51:22 conclusion 41:23 condition 15:22 conditions 7:16 8:4 22:24 50:6 50:16 configuration 38:20 conflict 2:11 connected 30:6	consider 43:22 consideration 41:6 consistent 23:20 23:24,25 construct 35:24 36:13 39:19 constructability 37:9 constructed 11:20 32:13 34:3 37:21 construction 2:17 6:20 24:15 28:16,17 39:11 consultation 28:11 consulting 2:9 contain 21:20 continuous 26:5 controls 24:2 conversation 2:8 convince 45:21 copies 5:5,10 copy 3:6 42:19 corner 24:21 corners 24:20 correct 4:1,2 5:15 17:11,12 23:19 25:20 29:18,22 43:4 52:12 correctly 48:25 corridor 12:15 costs 46:12 couldnt 18:7 counsel 39:14 52:13 count 8:17 county 5:3 52:3 52:20 couple 12:20 20:10 23:25 40:7 46:8,12 courier 49:2,9 50:22	course 5:24 8:10 39:18 40:1 court 4:24,25 5:4,4 48:13 52:5 cover 40:21,21 covered 48:14 creative 26:16 credit 9:22 critic 33:21 critical 40:23 critique 33:20 csr8887 52:18 curious 17:21 curstory 40:13 custom 3:1 cut 14:14 <hr/> D d4 6:3 damaging 37:11 date 7:8 50:12 dated 3:5,8 day 31:4,5 40:11 days 41:13 deal 17:21 deals 4:9 december 6:6 decision 41:10 41:11,16 49:25 50:1 deck 10:10 31:4 deems 45:1 defined 26:15 delight 49:17 delivered 42:11 demise 47:16 demonstrating 7:22 22:25 50:7 denied 5:19 department 13:23 15:2,18 15:25 16:4,19 16:20,20,21,22 41:17,21,23 42:14 43:6	departments 7:25 8:24 15:2 23:4 50:10 design 2:6,14,17 4:12,13 5:23 17:3 21:7,10 22:16,19,23 33:21 37:18 50:4 designed 22:8 44:24 desired 42:24 detail 21:16,20 34:17 42:7 details 4:14 12:24 24:15,15 36:18,19 37:2 37:16,17 developers 30:14 development 7:14,15 32:9 dialogue 32:24 didnt 6:20 35:11 41:2,3,8,10 45:13 47:14 different 6:1 12:8,19 14:11 16:7 21:15 33:15 35:19 difficult 8:8,8 20:20 direct 24:11 directly 21:12 disagree 49:20 disagreeing 20:23 discuss 16:10 49:17 discussed 39:25 49:18 discussion 4:6 6:11 7:1,2 10:11,15 17:15 35:21 36:16 37:1 50:19 discussions	27:10 32:24 39:13 dispute 42:2 distance 14:7 distorted 46:15 46:18 district 10:14 22:7 27:11 documents 33:5 43:3 doesnt 17:14 doing 5:21 36:1 48:25 dont 3:12 8:14 9:13,23 13:5 17:8 18:12 25:18 27:21 28:6 30:3,25 31:19 34:24 35:21 36:24 38:19 42:10 43:21,22 44:6 44:18 47:24 50:10 door 17:2 19:18 31:14,25 47:5 double 12:15 downtown 10:8 13:4 21:10 drawing 15:21 15:22,24 34:21 39:6 drawings 6:20 14:6,6 drivethrough 15:9 duly 52:8 dykema 3:7 20:22 21:1,4 49:8 <hr/> E earlier 24:14 45:3 early 29:4 30:9 31:9 easier 35:24
--	--	---	---	---

Regular Meeting of the Planning Board
2/28/2018

Page 56

east 14:17 33:12 39:3 ecker 3:4,23 4:2 4:7,19 5:15 11:8 17:7,12 17:17,22 18:4 18:12,18 19:3 19:10 20:16 23:19 24:11 25:3,6,13,20 25:25 26:4,14 27:1,18,23 28:5 29:12,16 30:18,21 31:12 31:16,21 49:3 49:7 50:13 effect 43:1 effectively 24:24 effort 39:1,1 eight 17:23 either 4:23 6:14 6:18 10:18 12:8 15:7 23:14,23 34:16 47:19 52:14 elected 35:9 elevation 10:21 12:17,18 13:21 13:22 18:20 19:14 25:1 34:9 36:21 37:18 38:2,3 elevations 10:16 10:20 14:17,18 19:19 36:17,19 44:21 empty 6:7 encourage 45:8 endeavored 29:5 ended 36:1 ends 36:2 engineer 14:4 engineering 13:22 15:2,18 15:24 16:4,14 16:19 ensure 50:11	entire 12:4 35:14 36:20 entirely 18:13 entrance 9:9 10:5,5,10 22:6 entrances 9:8 10:8 entry 15:8 21:14 envisioned 22:6 equal 32:14 35:2 equipment 8:23 12:22 essentially 11:2 18:5 22:18 32:18 et 4:10,14 21:24 22:16 event 41:16 52:14 everybodys 3:24 42:13 exactly 29:4 example 23:20 27:16 exception 24:20 30:21 exclusively 30:22,23 exhibits 5:2,2,6 exit 16:24,25 17:1 expect 23:18 42:10 expense 29:21 46:18 expensive 46:18 expert 24:13 expires 52:21 explained 29:6 explorer 5:4 express 40:19 extends 11:3 <hr/> F <hr/> facade 18:24 22:2,2 25:9 28:25 33:25	35:7,8 38:4 facades 7:6 32:14,15 33:7 33:11,12,23 34:25 faces 24:21 facility 30:19 facing 21:13 36:22 fact 14:5 15:7 19:25 28:12 32:13 34:3 35:4 39:5 44:10 fairly 22:13 32:19 fall 26:16 far 5:11 8:3 28:16 favor 3:19 featured 22:17 february 1:10 2:2 3:5,8 52:7 feel 2:10 50:25 feet 11:1,7,11,16 12:4,4,11 13:18 14:3 15:11,19,20 17:23 19:24 23:25 25:10,22 27:11 28:15,17 28:22 31:25 32:18 34:25 35:1,8,10,10 35:11,20,22 36:4 38:13,14 38:14,17 46:17 47:25 fenestration 45:18 fifth 19:11 27:2 filed 4:23,25 fill 31:5 final 2:5,14,16 4:4,4,12 5:20 5:22 7:21 8:1 22:19,22 33:2	33:5 37:1,16 42:8 44:16 50:4,25 finally 16:4 36:15 find 18:15 finding 26:16 31:8 findings 23:5 fine 17:20 26:7 fire 16:20 38:10 38:20 44:25 firerated 11:19 36:3,6,9,23 38:16 46:10,12 47:3,4 firerating 47:11 firm 2:9 first 3:4 7:15 10:3 18:25 19:5,20,22,23 21:2,12,16 25:24,25 26:20 26:22 28:9,14 34:7,8,10,25 35:14 47:8 49:8 50:22 fits 14:21 five 7:19 8:19 11:8,9 14:3 15:19,20 18:10 24:22 25:22 28:15,19 32:18 34:25 35:1,10 35:10,22 36:4 38:13,14 41:13 fivefoot 24:25 fivestories 45:6 fivestory 2:18 7:15 9:5 23:23 46:24,25 fixtures 14:11 14:12,14,16,18 floor 7:15 10:3 11:21 12:13 18:6,25 19:6 19:11,20,22,23	21:12,16 24:24 25:24,25 26:11 26:20,22,23 27:2 29:11 34:7,8,14,16 34:25 35:13,14 floors 11:22 12:13 13:2 19:4,6 20:1,4,5 20:6,7,9 21:2 26:22 27:4,12 28:19 32:17 34:11 35:13 38:21 focus 4:4,6,13 folks 27:3 38:24 38:24 follow 50:24 following 22:24 50:5 foot 13:12 24:22 footage 42:23 footprinted 22:15 foregoing 52:7 foresee 8:14 forget 8:7 forgot 13:13 31:13 form 41:15 44:20 52:10 formal 3:3,10 formally 2:15 former 2:6 6:3 forth 39:14 forward 6:9 27:24 28:4 45:24 50:16 found 7:11 four 11:1,7,16 12:4,4,11 25:10 26:11 28:15,17 35:10 35:13 41:13 42:19 47:25 fourth 19:4 frame 2:7,15 6:4
---	---	--	--	--

6:6 framing 38:9 frankly 29:22 friday 40:25 42:15 front 2:10 4:3 8:13 21:3,16 43:10 45:10 fronts 21:12,19 full 11:10 42:22 further 7:1 23:9 28:2 32:3 40:4 50:19 52:13 future 48:23	34:2,12,13,15 34:19 37:8,9 37:20 38:5 39:2,17 40:5 41:4,5 42:4 44:2,14 46:19 47:6,14 48:4 good 29:3 46:19 48:9 50:10 gossett 3:7 govern 38:11 grade 19:24 grand 28:23 29:1 granite 18:20,23 gray 18:24 26:17 27:2,5 27:13 great 34:1 greater 20:4 35:20 greene 3:8 32:5 32:6 40:13,18 41:20 42:16 43:2,9,12,19 43:24 44:2 greenes 41:22 44:6 greenleaf 8:13 14:22 15:15 22:13 32:8 ground 17:23 guys 29:19 31:6 31:6 37:14 48:18	40:8 happening 33:6 happens 45:7 happy 22:19 havent 28:9 40:16 head 17:25 27:20 47:24 hear 2:19 heard 10:11 33:4,9 43:6 44:5 45:14 heavy 19:5 height 17:23 22:10,12 held 2:2 heres 19:15 41:21,22,23 46:11 high 15:8 21:23 23:14 33:15 highlight 45:23 historic 46:23 47:5 holes 24:5 hollowing 28:20 hope 51:21 hopefully 35:7 hoping 33:14 39:19,21 hour 49:8 house 23:22 howlett 3:5 hows 37:19	27:18,20 29:1 29:18,18,24 30:8,14 32:5,6 32:11 34:25 36:25 40:5,8 40:23 41:4,4 41:18 43:19,22 44:9,9,12 45:16,18,21 imagine 31:1 impact 4:7 6:11 impacts 37:6 important 33:13 36:1 40:19,20 49:22 imposing 39:11 inches 24:23 incorrect 43:7 increases 31:8 indentations 11:25 indicated 14:4 16:14 19:24 20:9 23:3 38:1 indicates 38:3 inexpensive 29:2 infamous 32:5 infill 8:8 information 6:13,17 33:17 inserts 45:12 inset 35:2 instance 26:21 intend 23:3 intending 33:20 interest 29:3 interested 52:14 interfacing 6:17 interior 16:23 16:25 interject 3:22 internet 5:3 interrupt 43:17 introduce 3:1 involved 7:3 isnt 31:15 32:1 37:7	issue 8:4 16:2 26:20 27:13 33:13 37:8 42:25 issues 13:22 16:9 27:5 35:16 37:9 40:15 item 2:5 ive 13:19 40:11 42:6 44:6 45:2 45:14,14 50:1
G gain 35:4 gap 24:25 25:19 garage 31:14,25 gateway 22:5,6 gavel 2:12 generally 4:9,12 getting 44:11 give 23:12 48:8 48:17 gives 42:14 glass 11:19 19:15,18 20:1 21:24 31:20 36:3,23 38:12 38:15,17 45:13 46:10,12 glazed 38:10,20 glazing 19:23 20:8,13,20,23 21:2,6 38:8 go 3:23 9:14,21 32:11 34:13 46:9 48:6 50:24 goes 27:1 going 3:23 4:6 5:22 14:20 15:12 18:21,22 21:21 26:18 30:9 32:10,11 32:16 33:10,14	H hadnt 40:21 half 9:19 11:9 35:11 49:8 hand 20:21 handicap 16:14 16:17 handled 5:25 happen 39:17 40:8,8 happened 4:18	I id 18:14 41:7 43:5 50:3 idea 46:19 identical 33:11 38:8 ill 9:2 20:11 34:5 42:19 46:21 im 14:19 17:13 17:21 18:21 22:19 23:12 24:13 25:17	J jana 2:19 3:4 4:16 5:14 17:5 23:8,11 25:2 26:10 28:3,4 29:6,10 40:14 41:18 42:24 49:1 50:21 janas 28:7 janelle 26:9 29:4 jeffares 11:6 17:5,8,13 18:9 18:17 23:11 29:9,13,19 31:3 46:1 47:16 48:2 49:1,5,12 50:18 51:19 job 24:4 49:24 judge 42:4,5,6 july 6:8,9	K keep 25:7 kind 23:18 25:3 27:2 36:10,16 36:21,23 37:16 38:10 39:14 40:13 kinds 39:15 45:4 knew 44:25 46:6 46:7 know 2:22 4:17 6:2 9:13 14:19

Regular Meeting of the Planning Board
2/28/2018

Page 58

15:4 16:16 17:8,14 19:22 20:14 23:19,21 27:13,17,21 28:20 29:23 30:3 31:12 32:11,19 33:20 36:11,24 37:19 38:2,10 39:7 39:17,18 40:14 43:14 44:12,14 44:22,23 45:2 45:6,21 46:9 47:7,10,11,12 47:13,13,25 48:21 50:2 koseck 3:17,22 4:3,15 44:9 46:21 47:4 51:7,8	20:13 leaves 40:3 left 36:5 legalities 45:17 letter 3:4,7 5:23 20:22 21:1,4 32:6 40:14 41:20,25 49:5 49:7,11 50:22 letters 3:1,2 level 17:9 20:3 levels 10:2 16:23 20:23 21:20 license 39:20 light 10:17 11:1 11:2 18:25 19:3,17,20 20:3 35:25 lighter 19:9 lighting 7:21 8:22 14:10,11 45:19 lights 7:19 8:19 16:1 limit 36:25 line 10:13,14,24 10:25 11:18,23 11:24 12:5 17:10 24:23,25 30:3 31:18 32:21 34:13 36:6 39:2 44:24 47:21 lines 23:17 listening 37:13 litigating 43:10 litigation 5:11 5:20,25 7:4 42:3 little 10:17 11:9 11:13 12:18 19:9 23:22 25:14 27:23 29:9 30:15 31:7 35:4 39:10 loading 7:23 8:5	8:6,9,10,12,15 8:17 13:14 15:3,5,6,9,13 15:14 23:1 31:24 50:8 lobby 9:7 10:9 located 6:4 location 9:10 23:1 50:7 locations 12:3 26:6 long 17:22 45:2 longe 19:2,8 24:19 25:5 28:6,6 29:15 29:22 30:8 31:9,15,19,23 37:25 39:12,25 47:22 51:16 longterm 39:22 look 6:22 25:21 25:23 33:14,14 34:24 35:6,8 42:4 43:12 46:14 looked 20:14 21:22 31:21 33:17 44:23 looking 5:8 28:16 36:10 45:18 looks 31:16,17 34:12,19 lose 35:3 lost 28:21,23 lot 6:11 7:2 10:11,13,14 14:11 23:17 28:7,9 32:9,25 47:20 48:17 49:21 louvered 12:25 louvers 19:12 lower 10:2 13:2	main 17:2 21:14 22:6 maintain 11:23 15:8 maintained 8:11 maintenance 39:22 major 49:17 mancini 52:6,18 mandated 42:24 43:1 45:2 maple 8:14 15:15 22:5,5 46:23 march 6:6 marked 15:14 martin 1:12 masonry 18:25 19:3 mass 22:10 massing 4:9 22:15 23:12,21 23:24 master 37:4 match 10:25 14:7,9 22:12 23:6 50:13 material 8:1 9:1 31:14 33:8,9 33:10,15 38:1 43:13 48:24 49:24 materials 3:10 4:14 18:18,22 18:23 21:22,23 22:1 28:25 33:24 36:19 37:18 38:4 40:10,12,25 41:12 42:7,10 42:13,19 43:5 43:12 44:7 45:19 matter 40:13 max 23:15 maximum 27:4 32:21	mdot 16:12,14 17:11 18:1,2,7 24:2 mean 23:19 28:7 29:22 33:21 44:15 46:12,17 47:6,19 48:20 means 34:15 41:4 52:10 mechanical 7:21 8:22 12:22 13:2 16:22 17:2 meet 9:23 13:12 13:18 14:13 19:21,25 20:9 21:1,1,6 37:3,4 meeting 1:9 3:11 28:14 42:12 51:22 52:8 meetings 7:8 37:13 43:16 members 3:6 mention 13:13 31:13 mentioned 10:4 13:16,20 15:2 15:17 19:13 24:14 met 13:5 21:24 22:3 38:23,24 metal 19:10,12 20:10 michigan 2:1 52:1,20 middle 48:21 mind 24:3 25:7 42:2 44:12,17 44:21 45:16,24 47:7,13 minimum 16:17 19:23 minutes 7:7,10 7:11 mirror 11:4,6 mixed 2:18 7:15 9:5
L labelled 33:8 laid 12:14 landscaping 13:3 45:20 landuse 49:20 large 16:8 late 3:3 40:11,25 42:15 45:22 law 40:9 lawsuit 44:13 48:21 lay 46:7 lazar 2:12,13 3:12,15,18 5:13 23:8 26:8 28:2 29:7 30:1 31:10 32:3 37:23 39:9,24 40:2 43:17,20 44:4 45:25 48:3,19 49:14 50:17,19 51:9 51:10,20 lead 44:8 leave 14:20				
		M m 2:3		

Regular Meeting of the Planning Board
2/28/2018

Page 59

modern 22:16	39:23 44:21	23:8 27:22	pages 3:9 40:17	pedestrian 7:19
moment 32:1	47:23	28:1,3 31:17	painted 33:18	8:19 10:7
month 46:22	northern 11:24	32:4 35:1 40:2	panels 18:24	13:19,21 20:10
months 39:18	notary 52:5,19	43:11,19 48:7	19:10	21:15,20 24:7
40:1	notes 16:4 52:12	49:12,15 51:3	paperwork	24:8 25:18
mora 14:23	notice 39:21	once 2:19 38:14	47:10	26:2
motion 3:1 4:22	number 3:2,8,25	46:18	paragraph 40:9	pending 5:12
7:14 41:5,12	9:17 16:17	ones 27:23 45:6	42:21,22,22	people 26:15
48:4 49:15	34:4	onestory 45:7	park 9:14 31:7	27:10 30:11
50:3,18 51:1,2	numbers 20:20	46:23	parked 16:9	35:6 36:10,11
move 3:9 11:22	numerous 32:13	online 5:6,7	parkers 31:5	44:10,11
17:1 34:24	43:15	oops 14:21	parking 9:13,15	percent 19:16
45:24		open 12:7,8	9:20,24 10:10	19:20,23 20:3
	O	16:23 31:17	13:5,12 16:5	20:5,7,8 21:25
N	oakland 5:3	opening 13:17	16:15,17,18,23	22:1,3 38:13
nature 33:10	object 37:2	openings 16:25	17:3 24:22	38:14,18
necessarily 8:15	objected 37:3	operate 39:9,20	29:11,17,20	percentage
30:10	objectionable	opportunity	30:5,10,12,19	21:22 38:12
need 3:13 9:18	36:12	40:12,17,22	37:7 49:18	period 41:6
9:19,22 12:24	objections 32:10	42:7,14,17	parks 31:3	permit 17:14,22
25:15 30:12	observe 44:3	48:17	part 3:3,10 4:22	24:17
negative 37:8	obtain 7:18,23	order 5:8	22:4 34:14	permits 17:14
negotiate 39:14	23:2 39:20	ordinance 9:20	partially 34:17	permitted 10:14
neighbor 12:2	50:8	17:14,20 18:9	34:20	15:16 20:8
32:23 34:24	obtained 8:20	18:13,15 19:16	participate 2:11	person 30:8
neighbors 11:13	obviously 2:22	21:17 23:15,16	parties 42:10	51:17
28:11 29:3,3	5:16,25 8:7	26:15 27:14	party 52:14	persuade 34:23
neither 52:13	10:12 11:16	37:5 46:10	pass 9:2 18:22	petitioners
never 24:3,5	12:16 21:8	ordinancewise	20:11 29:25	42:23
33:19 45:2,14	22:15 23:24	26:19	passes 29:23	phone 49:10
45:14	24:14 27:5	original 32:15	passing 18:21	photometric
new 2:17 14:1	30:12	40:24	patient 37:12	7:20 8:18
nice 33:22 35:7	occasions 3:25	overlay 13:4,17	patrons 21:21	14:12,13
35:8	occupancy	21:10	patterns 45:12	physically 24:19
night 41:3	27:25	owner 44:22	pay 5:5	pier 32:19 35:12
nine 7:17	occurring 15:13	47:5	peabody 2:15	place 12:22 31:2
nope 51:17	office 7:16 26:11	owners 6:14	6:3,5,23 7:19	33:19
normal 5:24	26:16,23 27:4	10:12	8:10,12,12,19	placed 16:8
north 7:5 10:16	27:7,8,11,12	ownership 32:7	9:7,8,10 10:6,9	placement 4:9
10:19 12:2,6	30:7		11:4 13:16,21	44:19,20
12:16 14:23	official 8:17	P	13:25 14:24	places 23:21
15:5 16:6	27:8	p 2:3 49:18	15:14 19:14	45:4
22:13 24:9	offstreet 7:23	package 49:8	21:19 22:2,24	plan 2:6,14,16
25:8 28:12	23:1 50:8	packet 48:10	31:4,8 35:12	4:1,4,5,9,12,21
29:10,16 33:6	oh 9:14	49:10	38:5 50:5	5:18,22 6:10
33:25 36:20,21	okay 3:12,18 6:2	page 40:14	peabodys 2:7	6:12 7:13,20
37:18 38:6	9:14 18:22	42:19	47:14	7:22 8:2,18 9:6

Regular Meeting of the Planning Board
2/28/2018

Page 60

9:11 10:18	30:4	20:18	public 2:23 16:5	21:18
12:21 14:7,12	postpone 41:6	project 2:10	16:18,19 21:14	really 13:3
14:13 15:24	42:11	18:11 44:24	30:10,11 32:4	32:12 33:13,16
16:2,3 17:6	postponed 6:13	projections	37:24 40:5	33:25 34:11
21:11 22:4,7	pot 24:4	17:22 18:13	51:2 52:5,19	35:7 40:12
22:19,23 32:10	potentially	proper 39:21	pull 7:7 8:16	46:13,14 48:9
33:2,5,16	10:15 34:15	properties 39:23	13:8 42:19	realm 6:1
36:13,18 37:1	practicing 40:9	property 6:2,14	punched 46:8	reason 18:14
37:3,4,16	preliminarily	10:12,24,24	push 44:14	20:17
40:24 41:8,14	2:25 10:23	11:15,18,23,24	put 18:8 45:1	reasons 37:2
41:20 42:8	preliminary 4:1	16:11,12 17:10	46:10,11,15,18	recall 44:18
44:16 50:4,13	4:8,11,21 5:18	18:4,5 24:23		recap 9:4
50:14,25	6:10,12 7:12	24:24 30:7	Q	receive 4:1
planner 30:17	9:11 10:18	32:21 34:7,13	quality 21:23	received 15:1
planning 1:9	28:10 32:9	36:6 37:10,11	32:15 33:15	recessed 25:10
5:18 41:10,17	33:16 41:8,14	39:2,11 44:24	question 11:5	35:11
42:14 43:6	prepared 41:11	48:1	17:6 18:3	recommend
52:8	48:8	proportion 21:9	24:12 33:24	22:21,21
plans 7:22 20:18	presentation	propose 39:1	34:18,21 36:15	recommendati...
22:21,25 23:6	2:20 33:5 45:3	proposed 6:17	46:11 47:17	50:24
23:7 34:1,5,6	presented 24:7	7:14 12:9,21	49:1	recommends
36:25 41:22	28:7 38:22	13:24 14:14,15	questions 2:22	22:8
50:6	45:10	14:18 15:23	22:20 23:9	record 3:4,10
planters 13:7	press 25:18	18:19 19:14,15	26:8 28:3 29:6	4:22 5:1 41:7
plantings 13:10	presumably	19:18 22:12	29:7 30:1	42:1,5 43:1,4
play 48:12,20	5:19 11:12	proposing 9:5,7	31:10 32:4,25	recorded 52:8
pleading 44:1	pretty 10:3,4	9:8,12 12:3,23	33:2,2 40:3	recused 51:15
pleadings 5:10	23:15,16 28:8	12:25 13:7,10	46:2	recusing 2:8
please 17:7 28:4	previous 44:22	13:18 14:10	quicker 39:10	redline 27:11
51:4	primarily 12:19	18:20	quickly 41:1	reduced 52:9
pleasure 49:19	13:25	protrusion	quite 9:3 31:21	reference 22:9
pllc 3:7	primary 10:7	17:10	R	referenced
pm 1:10	prior 2:19	prove 21:1 27:7	raised 13:23	41:25
point 2:20 4:25	private 30:18	43:3	20:22 36:16	referred 7:4
5:11 6:7 12:24	probably 26:18	provide 6:16	raises 42:17	reflect 15:23
13:6 26:2	30:8 47:6,10	7:17,19,22 8:1	reached 50:1	39:4
38:20 42:4	48:11	8:9 10:17 11:1	reacted 28:12,18	reflected 7:9
48:9 49:25	proceed 5:24	12:12 14:1	reaction 29:5	regard 13:11
pointed 41:24	44:8	15:11 20:12	read 40:12,17,20	34:22
police 16:21	proceedings	22:22 31:13	40:21 41:2,3	regarding 3:17
policy 16:16	4:22	provided 2:9	42:7,12,17	6:17
portion 51:22	proceeds 48:13	8:18,19,22 9:1	44:6,12 45:22	regardless 21:18
52:7	process 4:18	12:7,14 15:21	48:11,23 49:2	regards 4:11
position 44:17	24:17 35:9	20:24 35:25	50:23	13:2,19,23
49:11 50:3	50:25	providing 9:21	reading 14:5	14:10,19 16:2
positions 35:18	producing 39:16	9:24 10:20	realistically	16:5,22 17:3
possible 22:11	program 5:4	16:17 28:20		18:18 20:22

Regular Meeting of the Planning Board
2/28/2018

Page 61

21:7 22:18 regular 1:9 related 32:12 relates 34:7 relative 17:14 relief 11:13 remain 30:24 remember 28:13 37:12,14 42:3 remind 9:12 rentable 35:4 42:23 repeatedly 26:21 replicated 38:5 39:7 reporter 52:5 represented 20:15 30:9 34:10 request 2:16 5:19 7:25 43:23 44:5 requested 6:14 6:16 7:7 49:5 requesting 11:13 41:18 requests 8:24 required 9:18 9:25 11:15,19 12:10,11 14:3 15:8,12 19:22 30:22,23 requirement 13:3,13,19 19:21,25 20:10 requirements 9:24 13:6 14:14 20:14 21:2,6 23:4 37:4,5 50:9 requires 9:21 residential 7:16 9:7 10:9 26:24 30:5,23 36:9 36:11 respect 37:25	38:25 respond 37:24 41:18,21 42:15 44:2 responded 38:23 41:1 rest 16:7 44:8 restaurant 2:7 2:15 6:4,5 restrict 30:10 result 15:10 23:5 retail 7:15 26:10 26:19,22 27:10 27:10,11 reticent 40:16 reveals 45:13 revenue 28:23 revert 49:18 review 2:6,14,14 4:11 5:5,7,18 5:23 7:8,13 8:2 17:3 21:18 22:20,23 41:16 48:10 50:4,25 reviewed 14:13 24:16 ridiculous 43:23 right 18:22 23:13 25:14,17 25:19,21 29:16 29:25 32:16 36:5,8,10 39:24 40:3 46:20 47:19 48:22 49:13 rightofway 9:16 16:5,12 17:10 rights 18:1 risk 47:7 road 8:14 roads 24:3 robin 24:1 30:2 48:3 49:15,15 rollcall 51:4 roof 12:21 rooftop 12:21	19:11,12 room 1:11 17:2 rooms 16:23 root 28:22 roughly 28:17 28:22 row 6:24 rpr 52:18 rumors 47:16 run 20:19 24:5 30:18 <hr/> S safe 48:12,21 salmon 18:25 19:3 salutes 51:5,7,9 51:11,13,15,18 samples 8:1 9:1 sandstone 19:2 19:9 saroki 46:4 saw 12:20 31:18 39:7 46:21 saying 42:8,25 says 18:15 40:20 47:10 scale 21:15,21 scaled 20:11 scaling 4:10 schedule 39:16 41:2 scott 2:18 screen 12:23 screening 12:25 19:11,12 second 11:21 19:4 24:23 34:8,14,14,16 35:14 38:21 41:7 42:22 50:17,18 secondarily 38:8 section 9:2 sections 19:11 see 6:22 7:9 9:6 9:10 10:7,21	11:22 12:5,14 13:2 14:20,25 18:19 22:11 23:21 24:8 25:1,2,3,11,13 25:19,22 26:3 38:6 seeing 43:5 seen 11:17 28:24 sent 52:8 sentence 42:21 separately 38:23 separation 35:23 september 7:12 serious 35:15 served 5:9 services 2:9 16:19 set 4:12 11:15 12:3,11 13:9 25:22 31:21 32:18 35:19,20 35:21 36:4 setback 11:7,15 11:23 12:10,18 28:18 setbacks 43:2 sets 3:9 setting 10:15 share 22:9 sharing 22:10 sheet 7:20 sheets 8:22 shes 50:23 shop 2:7,16 6:4 6:6 45:9 46:3 show 6:20 12:21 43:3 showed 40:11 45:4 showing 12:5 14:21 21:5 shown 9:6 20:25 36:24 side 6:15,18,23 9:9 10:18 11:3	11:4,7,9,10,14 11:14 12:8,10 12:16 23:14,24 26:1 32:22 35:12,17 37:20 38:5 47:1,22 47:24 sides 10:13 38:6 38:6 39:3 sidewalk 13:24 15:19 17:24 21:13 signed 3:7 significant 17:19 34:4 significantly 35:19 similar 20:1,25 22:10,14 33:23 35:17 simple 23:20 simplify 44:10 simply 4:25 5:11 single 31:4 33:9 sit 32:23 site 2:6,14,16 4:1,4,5,8,11,21 5:18,22 6:3,5,7 6:10,10,12 7:13,21 8:2,8 8:21 9:6,6,11 10:18 13:20 14:7 15:10,24 15:24 16:2,3 17:6 22:19,22 23:7 32:10 33:2,5,16 36:18 37:1,16 40:24 41:8,14 41:20 42:8 44:16,23 45:9 50:4,14,25 sits 9:5 sitting 23:23 situation 36:7 size 19:8 22:25 49:17 50:7
--	--	---	--	--

Regular Meeting of the Planning Board
2/28/2018

Page 62

skies 24:3	spoken 50:23	study 4:7 6:12	46:3	theyre 9:4,6,7
sky 24:5	spot 31:8	stuff 45:20,22	tan 18:24	9:21 12:2,23
slightly 16:7	spots 35:19	subject 50:5	technical 21:18	12:25 13:4,7
20:6	square 28:22,22	submission	technique 28:17	13:10,17,18
small 26:13	42:23	40:22	tees 13:6	14:8,9 15:6
software 20:19	staff 7:18 8:20	submit 6:25	tell 23:13 26:12	16:8 17:23
somebody 29:24	48:17	7:20 20:17	34:20 47:7	18:10,20 19:22
31:3 44:13	stairways 17:1	43:7	ten 35:8 38:14	20:7,19 33:8
45:18 47:13	stairwell 32:19	submits 22:25	tenants 30:13	37:9
sorry 16:19	stairwells 16:24	50:6	terms 14:6 22:15	theyve 8:23 9:1
43:17,19 48:6	stand 50:2	submitted 5:16	33:8 38:9	12:7 15:21
sort 17:5,9,16	standards 21:10	22:21 23:7	49:20	20:9 25:10
38:11 39:4,6	37:6	40:13,18 41:13	terrace 12:5	thing 14:1 26:22
sorts 47:12	standpoint	42:20	39:4	28:8 29:2
south 7:5 10:16	17:19,20 47:9	substantial	thank 3:21 4:15	31:13 34:1
10:20,21,25	start 18:21 34:5	32:20	5:13 18:17	38:11 41:7
11:23 12:17	started 6:9 35:9	sufficient 37:7	23:8 26:7 28:1	42:9 44:15
14:24 15:5,8	state 11:19 52:1	suggested 8:9	28:4 32:2,5	48:5 49:2
22:14 24:10	statement 42:21	28:15,21 29:4	37:22 44:1,4	things 12:20
25:9 26:22	43:4,7	support 43:1	50:15 51:20	20:10 23:18
28:12 29:10,17	statements 7:4	44:18 51:1	thats 4:10,18,24	37:11,14 39:15
33:7,25 36:20	states 5:24	supporting 7:11	5:15 11:19	43:15 44:14
36:22 37:18	steel 12:25 19:18	supposed 15:6	12:7,10,12,19	46:12 47:12
38:6 39:23	stenographic	sure 14:8 15:22	13:9 14:16	48:24
44:21,23 47:22	52:12	17:13 24:19	15:14 17:17	think 3:3,6,9
southwest 24:21	stenographica...	29:1,18 30:14	18:3,14 19:5,6	10:6,11 11:8
space 9:19 10:3	52:9	33:22 43:22	19:8,15,18	16:1 17:19,20
13:10,15 16:15	stepping 39:3	44:12 48:14	22:3,18 23:24	18:12 19:4
17:18 24:9	steps 11:1 14:16	surface 13:5	25:15 26:2	24:11,13 26:17
27:25 32:20	25:4,5	38:18	27:7,13 33:10	27:16,18,19
49:22	stone 18:24	syntax 22:11	33:24 34:18,21	28:8,13,14,21
spaces 7:23 8:5	21:24	system 13:1	36:4,12 37:7	29:4 31:19
8:7,15,17 9:15	store 21:12	19:19 29:20	37:21 39:25	33:4,9 35:10
9:15,20 13:12	stories 9:12		40:9 42:2	36:16 38:12
16:6,18,18	street 1:12 7:17		44:25 45:17	40:18 41:1
23:1 29:14,17	8:10,19 13:3,6		47:5,20 48:16	42:3,24 44:7
30:22 50:8	13:25 14:25		50:2	44:15 45:3,8,8
spacing 15:25	15:3,6,7,14		theory 18:9	45:12,17 46:22
speaking 35:1	21:14 25:12,14		theres 5:11 9:2	46:25 47:8,14
spec 8:22	26:3,4,5 31:17		9:24 10:5,8,9	48:9,9,16,25
specific 24:15	31:22 35:12		14:15,17 17:9	49:19,20,21,23
specifically 8:13	streetscape 6:22		23:22,23 31:16	50:1 51:4
41:18 42:16	14:22		32:19 36:3,18	thinking 23:13
specification	structure 24:22		39:13 42:25	25:17
7:20	stuart 11:5		46:19 47:9,21	third 17:9 18:5
specified 36:25	23:10 45:25		theyll 24:16	19:4 38:21
spent 32:9	51:18		35:23	thought 31:18

Regular Meeting of the Planning Board
2/28/2018

Page 63

49:21	19:17,21 20:3	50:1	21:8	washtenaw 52:3
three 6:23 7:22	trash 31:24	unique 27:23	vicechairperson	52:20
23:1,5 26:6,11	tree 13:25	unit 9:19 26:13	2:13 3:12,15	wasnt 33:16
28:19 37:13	trees 7:18 8:21	26:24 27:1	3:18 5:13 23:8	41:11,14,15
38:13,16,17	13:4 16:1	30:23	26:8 28:2 29:7	way 10:23 11:20
40:14 44:11	trespassing	units 7:16,21	30:1 31:10	11:24 13:1
46:16 50:7,10	37:10	9:17,18 12:14	32:3 37:23	28:19 29:19,20
50:15	tried 34:23	36:9	39:9,24 40:2	31:17 34:11,13
threshold 39:15	trip 8:7	unknown 51:17	43:17,20 44:4	36:14 39:6
throw 44:13	trucks 8:16	unlimited 38:15	45:25 48:3,19	44:22 46:13
tim 49:1 50:21	true 46:13 52:11	unloading 31:24	49:14 50:17,19	wednesday 1:10
time 6:11,25 7:2	trust 8:13 14:22	unprotected	51:10,20	42:12
7:13 10:2,11	15:15 22:13	38:18	victor 46:4	week 42:14
12:9,20,23	32:8	update 23:6	view 14:24,25	weeks 41:6
18:16 28:9	try 27:25 39:5	50:13	40:19 44:15	42:11 43:8
32:9 41:16,17	trying 27:18	upper 11:22	visibility 46:6	48:10,16
44:16 45:10	36:25 44:9,9	12:13 19:6	visible 19:17,20	welcome 28:5
46:17 48:14	45:16	20:1,4,5,6,7,8	20:2	wells 13:25
50:21	tuesday 41:3	21:2 32:17	vote 3:13 41:4,5	went 15:10
times 8:11	42:11,13	urban 8:8	48:8 51:16	west 6:4 14:17
timing 40:24	two 3:1 6:18	usable 7:22 23:1	voted 44:17	33:12 39:3
tint 20:6	9:12 10:2 12:3	50:7		weve 14:12 27:9
tiny 25:20	15:4 16:6	use 2:18 7:15 8:9	W	28:12,18,21
today 4:3 14:1,4	21:19 23:3	8:16 9:5 11:18	waiver 7:18 8:20	29:2,5 32:24
20:22 21:3,5	26:11,22 27:3	13:7 18:4	walking 24:8	33:19 39:12
40:15	27:4,12 28:19	30:24	26:3	45:2 48:14
todays 23:5	28:24 29:11	users 30:6	walks 17:24,24	49:21,21,23,24
tonight 5:22	34:10 35:13	uses 4:11 26:16	wall 11:1 14:11	whats 4:5 10:10
24:8 39:7	36:2,19 39:2		14:18 25:22	12:12,19 15:23
40:16 41:5	41:6 42:11	V	26:3,4,5 38:12	16:13 19:17
48:8,15 50:2	43:2,7 44:10	validity 41:24	38:18 44:25	27:6 33:12
top 11:24 12:13	48:10,16 50:9	valuable 35:5	walls 21:13	39:17
26:5 27:19	typewritten	value 37:6	28:24 33:18	whippleboyce
28:23 47:24	52:10	variance 7:23	44:20 45:8	26:10,24 27:15
torn 6:5	typically 28:24	8:6 13:15 23:2	want 3:1,22 5:5	27:22 28:1
total 7:17 9:13		50:8	5:11 14:8	31:2 32:2 47:2
9:14 14:15	U	various 37:5	24:11 25:18	48:5,7,20
47:18	ultra 19:19,19	varsity 45:9	29:18 33:3	49:13 51:11,12
touch 24:10,16	20:2	46:3	38:19 40:18,20	white 10:22
24:16,20 25:9	unanimous	vary 46:5	40:20 41:3,9	19:19 20:2
track 23:13	44:18	vehicle 16:8	41:16,17,21	whos 29:24
traffic 8:11	unclear 33:6,7	vehicular 9:9	42:1,5,5,9,10	wide 13:17
transact 31:7	34:5,6	13:15	43:21 44:6,8	15:19,20
transcript 52:12	underground	veneer 18:25	48:22	width 13:23
transcription	9:13	19:3	wanted 6:22	williams 2:25
52:11	understand 42:6	verified 15:10	15:21 33:22	3:14,21 4:16
transmission	45:23 46:2	vertical 18:5	38:7	4:20 5:14

Regular Meeting of the Planning Board
2/28/2018

Page 64

20:13 24:4	writing 43:7	100 40:17 47:15	51 40:9
25:11,15 40:7	written 41:10	11 9:15,22	555 31:1
43:11,21,25	50:22	125 28:23	
44:5 51:13,14	wrong 30:8	13 29:18	6
willingness		13th 7:12	600 29:1
32:23	X	14 15:11	
window 18:10	x 23:14	14foot 15:8	7
19:18 46:18		15 9:20,25 30:21	7 1:10 2:3
47:21	Y	30:22,24 35:20	70 19:23 20:4
windows 11:2	yeah 2:25 24:13	38:12,17 47:17	78 20:3,5
11:12,17 12:16	40:7 45:11	52:21	8
12:17 19:15	48:6	151 1:12	8 19:24
28:20 32:14,22	year 28:23 39:18	17 14:15	80 19:16,20
34:4,16,19,20	years 29:23,25	18 29:25 39:18	800 28:21
35:3,6,13,15	47:15,15,17	180square 13:12	88 9:14,21,24
35:23 36:3,6,9	yesterday 21:5		
36:10,17,21,22	40:11 48:12	2	9
36:23 37:19,20	youd 30:4	2 20:6 28:21	9 11:11
38:1,18 45:1	youll 35:3,4,5	20 13:18 27:11	90 21:25 22:3
46:8,25 47:18	43:22	31:25	92 22:2
47:23	youre 5:8 28:5	2016 21:11 22:4	93 22:1
wise 23:21	30:7 34:15	2017 6:6,6	
wish 16:10	38:14 42:15	2018 1:10 2:2	
37:24	youve 11:17	3:5,8 52:8	
withdraw 43:8	40:14 41:24	2021 52:21	
withdrawing	43:6 44:5	215 22:23 50:5	
43:9	Z	23rd 6:25	
witness 17:18	zero 10:13,13	24 14:17	
18:3	11:14 38:16	25 38:14	
wont 42:12	46:16 48:2,2	25feet 13:17	
woodward 2:6	zerofoot 12:10	26th 6:9	
2:15 6:23 9:9	zone 6:3 7:24	27 3:5,8	
9:16,23 10:5	10:14 15:14	28 1:10 2:2 52:7	
13:21 14:24	16:7	3	
16:6,15 18:19	zoning 5:17 8:6	30 1:10 2:3	
19:14 21:17,19	9:20 13:14	34965 2:6,14	
22:1,23 26:1	17:20 18:14	22:23 50:4	
32:7 38:5 50:5	21:17,18 23:2	35 20:8	
word 8:8 49:18	26:15 37:5	4	
wording 50:10	42:20	45 28:22	
work 18:7 43:15	0	5	
49:21	1	5 22:1,2	
working 46:4	1 19:24	50 32:22 47:15	
works 51:21	10 9:18,19 11:10	500 29:1	
worth 48:10,14	29:17		
wouldnt 23:20			
48:13,22			

CASE DESCRIPTION

34965 Woodward (18-18)

Hearing date: May 8, 2018

Appeal No. 18-18: The owners of the property known as 34901 Woodward are appealing the decision of the Planning Board to grant final 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 final site plan approval for the construction of a 5 story building on February 28, 2018. Planning Board Minutes are included.

Matthew Baka

Matthew Baka
Senior Planner

34965 Woodward



**CITY OF BIRMINGHAM
PLANNING BOARD ACTION ITEMS
OF WEDNESDAY, FEBRUARY 28, 2018**

Item	Page
PUBLIC HEARING	
1. AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:	2
TO AMEND ARTICLE 7, SECTION 7.26, APPLICATION, TO AMEND THE SITE PLAN REVIEW SUBMITTAL REQUIREMENTS TO INCLUDE ADJACENT PROPERTY DETAILS	
TO AMEND ARTICLE 7, SECTION 7.34, SPECIAL LAND USE PERMIT REVIEW, TO AMEND THE SPECIAL LAND USE PERMIT REVIEW PROCESS TO INCLUDE SITE PLAN REVIEW SUBMITTAL REQUIREMENTS TO INCLUDE ADJACENT PROPERTY DETAILS	
Motion by Mr. Williams	
Seconded by Mr. Koseck to continue the public hearing to March 14, 2018 at 7:30 p.m.	3
Motion carried, 7-0.	
FINAL SITE PLAN AND DESIGN REVIEW	3
1. 525 Southfield Rd. (former Wellness Center)	
Final Site Plan and Design Review of request to demolish existing building and replace with eight-unit attached single-family residences	3
Motion by Ms. Whipple-Boyce	
Seconded by Mr. Jeffares to recommend APROVAL of the Final Site Plan and Design Review for 525 Southfield Rd. subject to the following conditions:	5
1. The applicant submit a specification sheet for the parking area screening wall for administrative approval to ensure that the screening is complementary to the building, uses proper materials, and meets the required dimensions;	
2. The applicant add one street tree to the Southfield Rd. or Watkins St. frontage, bringing the total number of street trees to 12, or obtain a waiver from the Staff Arborist;	
3. The applicant submit a revised photometric plan showing luminance levels no greater than 1.5 maintained foot candles at the northern property line;	
4. The applicant must submit specifications on the materials used in the construction of the building facade to complete the design review;	
5. The applicant must address the concerns of City Departments; and	
6. The Planning Board approves the use of cut-off fixtures as proposed.	

Item	Page
<p>Amended by Mr. Boyle and accepted:</p> <p>7. Regarding the open land to the south of the site, the land to be used for staging, that the land be restored per ordinance (until such time as the other development comes forward) with a landscape plan to be administratively approved. This condition would be maintained until, at a date yet to be determined, the owner brings a proposed development for that site.</p> <p>Motion carried, 7-0.</p>	5
<p>2. 34965 Woodward Ave. (former Peabody Restaurant and Frame Shop) Request for approval of a Final Site Plan and Design to allow for construction of a new five-story mixed-use building</p> <p>Motion by Mr. Boyle Seconded by Mr. Koseck to APPROVE the Final Site Plan and Design Review for 34965 Woodward Ave. and 215 Peabody St. subject to the following conditions:</p> <ol style="list-style-type: none"> 1. 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; 2. Comply with the requirements of City departments; and 3. The applicant update their civil plans to match the architectural site plans that were submitted. <p>Motion carried, 5-1.</p>	6 6 11
<p>3. 670 S. Old Woodward Ave. (Detroit Trading Co.) Final Site Plan and Design Review Request to replace existing entrance door with a garage door and sidelight and add a small 23 sq. ft. addition</p> <p>Motion by Mr. Boyle Seconded by Mr. Koseck to approve the Final Site Plan and Design Review for 670 S. Old Woodward Ave. with the following conditions as the proposed site plan meets the approval criteria set out in Article 7, section 7.27(B) of the Zoning Ordinance:</p> <ol style="list-style-type: none"> 1. The applicant will be required to provide the VLT% of the new door to verify compliance with this requirement; and 2. Address the concerns of City Departments. <p>Motion carried, 7-0.</p>	11 11 12

Item	Page
FINAL SITE PLAN REVIEW SPECIAL LAND USE PERMIT ("SLUP")	12
1. 1669 W. Maple Rd. (First Presbyterian Church) Request for approval of a Revised Final Site Plan and Design to permit a commercial catering business to operate in the existing church kitchen	13
Motion by Mr. Boyle Seconded by Mr. Williams to postpone 1669 W. Maple Rd. to March 14, 2018.	14
Motion carried, 7-0.	14

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, FEBRUARY 28, 2018
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on February 28, 2018. 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; Student Representatives Madison Dominato, Sam Fogel, Ellie McElroy

Also Present: Alternate Board Member Nasseem Ramin

Absent: Alternate Board Member Daniel Share

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

02-21-18

APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING OF JANUARY 24, 2018

Ms. Lazar made the following correction:
Page 4 - Last paragraph, replace "antrha" with "anthra."

Motion by Ms. Whipple-Boyce

Seconded by Mr. Williams to approve the Minutes of the Regular Planning Board Meeting of January 24, 2018 as amended.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

02-22-18

CHAIRPERSON'S COMMENTS

The Chairman announced that three new students have joined the board: Madison Dominato, Sam Fogel and Ellie McElroy.

02-23-18

APPROVAL OF THE AGENDA (no change)

02-24-18

PUBLIC HEARING

1. AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 7, SECTION 7.26, APPLICATION, TO AMEND THE SITE PLAN REVIEW SUBMITTAL REQUIREMENTS TO INCLUDE ADJACENT PROPERTY DETAILS

TO AMEND ARTICLE 7, SECTION 7.34, SPECIAL LAND USE PERMIT REVIEW, TO AMEND THE SPECIAL LAND USE PERMIT REVIEW PROCESS TO INCLUDE SITE PLAN REVIEW SUBMITTAL REQUIREMENTS TO INCLUDE ADJACENT PROPERTY DETAIL

The public hearing opened at 7:34 p.m.

Ms. Ecker recalled that on December 4, 2017, the City Commission reviewed and approved the Special Land Use Permit ("SLUP") and Final Site Plan & Design Review for 33353 Woodward Ave. to allow Tide Dry Cleaners to open a storefront. During this review, several questions were raised by Commissioners and neighbors regarding the layout and proximity of adjacent properties, and the potential impact of the drive-in dry cleaning facility on the surrounding property owners.

At the end of the meeting, Commissioner Nickita specifically requested that the Planning Board review the existing submittal requirements for site plan reviews and SLUP reviews, to determine if amendments should be made to add additional details of the subject site and/or adjacent sites to provide context for discussion. This direction to the Planning Board was provided by the City Manager.

Accordingly, on January 10, 2018, the Planning Board discussed the proposed draft ordinance language to consider amending the submittal requirements for site plan review and SLUP review to require all applicants to include details of adjacent properties on their site plans. The board approved a motion to set a public hearing date for the amendments that would require all property lines, buildings and structures within 200 ft. of a subject site to be marked on the site plan drawings submitted. A comment was made that an aerial photo should suffice in providing these details. On January 27, 2018 at the Long Range Planning meeting this issue was also discussed. A comment was made by Commissioner Nickita that he did not believe that an aerial photo would be sufficient to meet the provision of adjacent property details.

Mr. Jeffares stated he would still prefer to have the aerial photo, at least in addition. Ms. Ecker said they could add and then bring back to the board language that would also require applicants to provide an aerial photo.

At 7:40 p.m. no one from the public had comments.

Motion by Mr. Williams

Seconded by Mr. Koseck to continue the public hearing to March 14, 2018 at 7:30 p.m.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

The public hearing closed at 7:42 p.m.

02-25-18

FINAL SITE PLAN AND DESIGN REVIEW

1. 525 Southfield Rd. (former Wellness Center)

Final Site Plan and Design Review of request to demolish existing building and replace with eight-unit attached single-family residences

Mr. Baka reported that the subject site is a 0.829 acre parcel confined by Southfield Rd. to the west, Brown St. to the north, and Watkins St. to the east in the R-8 Zoning District. The existing parcel currently contains a wellness center and parking lot. The applicant is proposing to demolish the existing building and parking lot to construct eight new attached single-family residential units that are proposed to be erected side by side in a single building facing Brown St. Each residential unit has its own stairway and individual front door that leads directly into each unit. The applicant appeared before the Planning Board on September 27, 2017 for Preliminary Site Plan Review and was approved with five conditions.

The applicant has updated the plans to reflect the request for a landscaping and photometric plan, and added four additional parking spaces, but has failed to include specification sheets for all of the screenwalls. A rooftop plan is not needed, as all mechanicals are proposed to be located within the attic of each unit. The applicant has also revised the east and west sides of the building to show more interest, adding numerous windows, some decorative features, and a base constructed of a different material.

The applicant must add one street tree to the Southfield Rd. or Watkins St. frontage, bringing the total number of street trees to twelve, or obtain a waiver from the Staff Arborist.

The Building Official has determined that the enclosed outdoor terraces on the back of each unit comply with the open space requirement of 180 sq. ft./unit mandated in Article 4, section 4.34 OS-05 of the Zoning Ordinance.

Design Review

The applicant is proposing to create eight units, each with a different façade facing Brown St. The units are comprised of varied high quality building materials with different and tasteful colors. The materials used include brick, limestone, painted wood trim, stucco, copper flashing, and painted metal features. The applicant has not submitted specifications on where the material will be sourced from, or what the exact colors will be. The applicant must submit

specifications on the materials used for the construction of the building to complete the Design Review.

The applicant is proposing a total of 52 new light fixtures at various locations on the property.

Mr. Williams received confirmation from Mr. Baka that the entire site is zoned R-8, including the parcel to the south. Permitted uses on that vacant land to the south are R-8 and R-3 single-family. Anything that happens on that portion of the property would have to return for site plan review.

Mr. Chris Longe, Architect, came forward to represent the applicant. He stated they will meet all of the ordinance requirements. As a result of discussion last time, they have added four guest parking spaces on the west/southwest side of the driveway. A brick wall with limestone cap traces the whole perimeter of the townhome development.

Mr. Boyle asked what the land to the south would look like in four years. Mr. Longe replied that what has been left vacant is a 10,000 sq. ft. site. The intent is to propose a single-family home that will be contextual with the townhomes and with the neighborhood. He explained for Mr. Boyle that it will be a staging area during construction for the townhomes. He will be back before the board in the next couple of weeks with a house design for that parcel. Until the house is constructed the site will be stabilized with grass.

Chairman Clein opened discussion from the audience at 8 p.m.

Mr. Alan Kaplan, 600 W. Brown St., was concerned the construction workers would park in their lot in Piety Hill Place. His other concern was there are only four extra spaces for this project. Therefore, visitors will also park in their lot and he feels that more excess parking is needed.

Ms. Colleen LeGoff, 543 Watkins St., wanted the green space returned after staging is completed until a house is built.

Mr. Paul Gozolo, 550 Watkins St., received confirmation there will not be accessible parking along his street because Watkins St. has residential permit parking. He questioned why the development needs to open up onto Watkins St. rather than onto Southfield Rd. Regarding the lot to the south, he asked that "single-family" be written into the agreement if it is approved. Lastly, he noted there are large, hundred year-old trees on the lot and it will not remain the same as it is now.

Mr. Baka explained the parking provided exceeds ordinance requirements by four spaces.

Mr. Longe stated that it is not feasible to enter the development off of Southfield Rd. that close to the corner. Also, entering off of Brown St. destroys the composition.

It was discussed that cars could be parallel parked along the wall that surrounds the complex when there is a need. There is 25 ft. between the garages and the wall.

Chairman Clein noted for Mr. Gozolo that the Planning Board does not have legal authority to put contract zoning in place to mandate single-family residential use for the southern lot.

Mr. Jeffares remembered that the former use on this site was a pediatric office. They probably had more people in and out in one day than this complex will have in a month.

Mr. Williams announced he would look askance at any attached single-family development going in on the south parcel.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Jeffares to recommend APROVAL of the Final Site Plan and Design Review for 525 Southfield Rd. subject to the following conditions:

- 1. The applicant submit a specification sheet for the parking area screening wall for administrative approval to ensure that the screening is complementary to the building, uses proper materials, and meets the required dimensions;**
- 2. The applicant add one street tree to the Southfield Rd. or Watkins St. frontage, bringing the total number of street trees to 12, or obtain a waiver from the Staff Arborist;**
- 3. The applicant submit a revised photometric plan showing luminance levels no greater than 1.5 maintained foot candles at the northern property line;**
- 4. The applicant must submit specifications on the materials used in the construction of the building facade to complete the design review;**
- 5. The applicant must address the concerns of City Departments; and**
- 6. The Planning Board approves the use of cut-off fixtures as proposed.**

Amended by Mr. Boyle and accepted:

7. Regarding the open land to the south of the site, the land to be used for staging, that the land be restored per ordinance (until such time as the other development comes forward) with a landscape plan to be administratively approved. This condition would be maintained until, at a date yet to be determined, the owner brings a proposed development for that site.

Motion carried, 7-0.

The Chairman called for public comments on the motion at 8:12 p.m.

Mr. Gozolo showed the board a picture of one of the mature trees on the property.

Mr. Koseck thought this is a great project. It has quality design, it has variety, it anchors the corner, and he feels that it fits that street.

ROLLCALL VOTE

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

Nays: None

Absent: None

02-26-18

2. 34965 Woodward Ave. (former Peabody Restaurant and Frame Shop)

Request for approval of a Final Site Plan and Design to allow for construction of a new five-story mixed-use building

Chairman Clein announced he would recuse himself as in the past, since his firm provided some consultant services at the front end of the project. Vice-Chairperson Lazar took over the gavel.

Motion by Mr. Williams

Seconded by Ms. Whipple-Boyce to introduce two pieces of correspondence into the formal record:

- **E-mail to Jana Ecker from Beier Howlett, City Attorney, dated 02-27-18; and**
- **Letter to Jana Ecker from Dykema Gossett, signed by Alan M Greene and dated 02-27-18 with a number of attachments.**

Motion carried, 6-0.

VOICE VOTE

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

Nays: None

Recused: Clein

Absent: None

Mr. Williams pointed out that a complaint against the City has been filed in Circuit Court by Dykema Gossett and litigation is pending. Ms. Ecker added the applicant also submitted an administrative appeal to the Board of Zoning Appeals for the Planning Board's Preliminary Site Plan approval and that appeal was denied. Further, a letter from the City Attorney states the litigation in this case does not affect what the Planning Board is doing tonight and the board should proceed in the normal course of business.

Ms. Ecker recalled the applicant has submitted an application for Final Site Plan and Design Review to construct a five-story mixed-use building in the B4/D4 Zoning District. The 0.579 acre 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 Community Impact Statement ("CIS") and Preliminary Site Plan Application for 34965 Woodward Ave. At that time, the Planning Board decided to accept the CIS 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. 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.

On August 23, 2017 the Planning Board 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 13, 2017 and requested that staff provide the minutes from the previous Planning Board meetings when both 34901 Woodward Ave. and 34977 Woodward Ave. were reviewed. A thorough review of the minutes revealed no encouragement or requirements by the Planning Board or by staff to require the installation of windows on the property lines abutting the 34965 Woodward Ave. site. The only comments made by Staff regarding this issue were by the Building Dept. For the Catalyst Building. The Building Dept. 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.

On September 13, 2017, the Planning Board unanimously approved the Preliminary Site Plan with several conditions.

Thus far, the applicant has complied with the conditions of approval and gained a waiver from the Staff Arborist, verified that there will be five pedestrian lights on Peabody St., provided a photometric plan and luminary specification sheets, provided mechanical unit specification sheets and screen wall details, provided material and color samples, and complied with the requests of all City Departments. ***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.*** The applicant meets their parking requirement by providing 88 spaces when only 15 are required.

Ms. Ecker advised that what has primarily changed since the Preliminary Site Plan Review is that on the north and south elevations the applicant has brought the building out to the front property line to match the adjacent buildings, but it then steps back about 4 ft. to provide a light well for the windows. Basically there will be about 9 ft. between the windows in order to accommodate the neighbors' concerns. Because the building has a zero side setback, the applicant was not required to set the building back, but they did so to address the neighbors' concerns.

Mr. Koseck noticed there is a bay protrusion on the third level that encroaches into M-Dot air rights. Ms. Ecker verified that in order to construct the bay the applicant would have to get an agreement with M-Dot to use the air rights.

Design Review

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

- Granite for the base of the building in charcoal gray;
- Tan stone panels for the façade of the first floor;
- Masonry veneer in a light salmon color for the second, third and fourth floors;
- Metal composite panels to clad the fifth floor and sections of the rooftop screening;
- Steel window and door systems on all elevations (Ultra white, ultra clear glass with 80% VLT);
- Anodized aluminum channel accents, powder coated balcony rails with steel guardrail, and steel fin details;
- Decorative stainless steel metal grates for rooftop mechanical screening;
- Metal pedestrian scale canopies on the Peabody St. and Woodward Ave. elevations; and
- Cantilevered structural glass for the section on the third floor.

Mr. Chris Longe, Architect, passed along samples of the various materials to be used in the project, with the exception of the garage door material.

The proposed building will uphold the vision of the Maple Gateway and Downtown Birmingham 2016 Plan.

The proposed building meets 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 entry has a canopy and adds architectural interest and pedestrian scale details for patrons going in and out of the building.

Calculations have been submitted for the glazing requirements outlined in Article 3, Section 3.04 of the Zoning Ordinance that show that the minimum 70% glazing requirements have been met

on the first floor, and the maximum 35% glazing requirements on the upper floors have been met.

The applicant has submitted Visual Light Transmittance ("VLT") calculations showing ultra white, ultra clear glazing with 80% VLT. However, the applicant has also indicated that they propose to use clear glass with a 78% VLT. The applicant has advised that the 80% VLT glass will be used on the ground floor level as required, and the 78% VLT glass will be used on the upper levels, thus meeting this requirement as well.

Mr. Boyle inquired if a pedestrian walking along would see a space between the buildings to the north and south, or will they touch. Mr. Longe answered they will physically touch at the corners with the exception of the SW corner where the Balmoral Building is 5 ft. off their property line above the second floor. Their Alden Building comes to the property line. Therefore a pedestrian would see a continuous street wall.

Mr. Longe spoke to say the changes since Preliminary Site Plan Review were made after consultation with their neighbors to the north and to the south.

Mr. Jeffares noted the proposed Alden Building has taken more off the Parking System with the 88 spaces they have provided which is significantly more than their adjacent neighbors who provided 10 and 13 spots.

Discussion turned to whether parking in the Alden Building could be run as a private parking facility. Mr. Ecker affirmed that it could, with the exception of 15 spaces that are required for the residential units. Mr. Longe noted that a sample of the garage door material was not provided because there is no garage door.

Vice Chairperson Lazar invited comments from the public at 9 p.m.

Mr. Alan Greene spoke on behalf of the ownership of the Balmoral Bldg., Woodward Brown Associates; and the Greenleaf Trust Bldg., Catalyst Development. Mr. Greene listed questions:

- The Final Site Plan documents were very unclear about what was happening on the north and south facades abutting their buildings. He has now heard the material that will be on those facades will replicate what is on the east and west facades. The plans do not clarify what the materials are on the north and south facades.
- It is unclear from the plans how the first floor of the Alden Bldg. relates to the first and second floor of the Balmoral Bldg. Their architects say the Balmoral windows will be blocked or partially blocked. Regarding the Catalyst Bldg. it appears to be a situation where the Alden Bldg. is built right to the balconies of the residential units, and fire rated windows were added so that people look right into the Catalyst residential balconies.
- To summarize, the Final Site Plan does not provide details about the two elevations; what the materials are on the south and north; do they carry through the entire elevation; what kind of windows are on the north and south; are the windows facing the Balmoral Bldg. fire rated; and are they the kind of glass that was just shown.

Mr. Green went on to state they still object that the Plan does not meet the requirements of the Master Plan; it does not meet the requirements of the Zoning Ordinance on various standards; it impacts the value of their buildings; there is not sufficient parking available; and there are constructability issues about how the building will be constructed without trespassing on or damaging their property.

Mr. Longe responded with respect to the materials and the windows that they are indicated on the elevation drawing:

- The same materials that are on the Woodward Ave. and Peabody St. facades will be replicated on the north and south sides that cannot be seen.
- The glazing is identical to what has been shown in terms of its clarity and the framing. It does not have to be fire rated.
- The configuration of the building above the second and third floors was not something that they presented; it is something that they responded to at the Catalyst architect's request.
- Their counsel has had discussions with Mr. Greene about construction and imposing on the property of the adjacent buildings. They are at the threshold of producing a schedule of activities so it will be known what is going to happen throughout the course of construction. They are hoping to get a license to operate in and around the adjacent buildings with proper notice, and to produce a long-term maintenance agreement that benefits the properties to the north and south.

Mr. Williams stated he has not had an opportunity to read the materials submitted late yesterday by Mr. Greene and therefore is reticent to vote tonight, other than to postpone consideration for two weeks. Further, he requested that the Planning Dept. respond specifically as to the validity of the assertions about the site plan that the Balmoral and Catalyst Buildings have made in the Greene letter. He wants the Building Dept. to respond to what the plans say and what Mr. Greene's clients say and here is the conclusion of the Building Dept. as to the validity of those assertions. This dispute is in litigation and at some point a judge is going to look at this. He wants the judge to have the complete record and that in his own case he has had the opportunity to read all of the materials in detail before saying yes or no for Final Site Plan Approval.

Additionally, on page 4 of the materials that were submitted to the Board of Zoning Appeals by Mr. Greene, a statement is made that the petitioners gave up rentable square footage to create the buildings desired and mandated by the City. Ms. Ecker has addressed that issue by saying there is nothing in the record to support the claim that the City mandated the setbacks of the two buildings. He asked Mr. Greene to prove his case and submit the documents where he can make that statement. If he cannot, then correct the record.

Mr. Koseck stated that he does not have to read the materials. In his mind the placement and form of the building all comply with the ordinance. He is trying not to get caught up in all of the legalities and feels that is up to someone else. He has never heard anyone on this board say anything about zero lot lines except that the walls should not be boring. Therefore, he feels the board can move forward on this.

In response to Mr. Jeffares, Mr. Longe said there are zero windows blocked on either the Catalyst or Balmoral Buildings on the north or south side of his building.

Ms. Whipple-Boyce thought it may be worth the two weeks to thoroughly review the letter and attachments received from Mr. Greene that probably none of them has had the opportunity to read. That would ensure they have covered all of their bases. Ms. Ecker noted that she spoke to Mr. Currier who said absolutely nothing in the package changes his position that the board should move ahead in the normal course of business.

Motion by Mr. Boyle

Seconded by Mr. Koseck to APPROVE the Final Site Plan and Design Review for 34965 Woodward Ave. and 215 Peabody St. subject to the following conditions:

- 1. 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;**
- 2. Comply with the requirements of City departments; and**
- 3. The applicant update their civil plans to match the architectural site plans that were submitted.**

There were no comments from the public on the motion at 9:12 p.m.

Motion carried, 5-1.

ROLLCALL VOTE

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

Nays: Williams

Recused: Clein

Absent: None

02-27-18

Vice- Chairperson Lazar turned the gavel back over to Chairman Clein.

3. 670 S. Old Woodward Ave. (Detroit Trading Co.)

Final Site Plan and Design Review Request to replace existing entrance door with a garage door and sidelight and add a small 23 sq. ft. addition

Mr. Baka reported the subject location is a 17,250 sq. ft. parcel with an existing one- story commercial building. The property is located on the west side of S. Old Woodward Ave. between George St. and E. Frank St. in the Downtown Overlay District. At this time, the applicant is proposing to add 24 sq. ft. to the building to allow for the installation of a new main entrance in the northeast corner. Further, the applicant is proposing to expand the door opening in order to have sufficient space to move a car into the building that will be visible from the front of the building. It should be noted that an auto showroom is not a permitted use in this Zone District, but an auto sales agency is a permitted use.

Design Review

The applicant is proposing to add a new door and transom window in the approximate location of the existing door. The new entrance is proposed to be a double door with a 9 ft. x 8 ft. combined opening. The hardware is proposed to be white to match the existing hardware and trim on the building. In accordance with the requirements of the Downtown Birmingham Overlay District, all glass must be clear with VLT% of 80 or higher. Thus, the applicant will be required to provide the VLT percent of the new door to verify compliance with this requirement.

In response to Mr. Jeffares, Ms. Ecker verified the property was legal and conforming prior to the Personal Services definition being adopted in November. Now it is legal non-conforming. The nature of the business being carried on there is still the same.

Mr. Boyle thought this is a perfectly good use of the property and is exactly the type of retail display the City has been looking for in the downtown. Mr. Baka said a showroom commonly is defined as a place where products are displayed. This property is zoned B-2B which allows

auto sales agencies but does not allow auto showrooms. Those are two separate uses within the ordinance.

Mr. Roger Young, Young and Young Architects, represented Detroit Trading Co. He stated the car is strictly a display vehicle and while cars are for sale by order, the display car itself will not be for sale. The intent is to display one vehicle only. The door will swing outward for only a few moments, although they certainly can look at an in-swing door. However, that would be more cumbersome based on what occurs within the interior space. He asked to be allowed to work with the Building Dept. on that. As to the VLT of the glazing, it will be clear with low-E coating. Also, they will place the Knox box where the Fire Dept. deems is most appropriate.

Motion by Mr. Boyle

Seconded by Mr. Koseck to approve the Final Site Plan and Design Review for 670 S. Old Woodward Ave. with the following conditions as the proposed site plan meets the approval criteria set out in Article 7, section 7.27(B) of the Zoning Ordinance:

- 1. The applicant will be required to provide the VLT% of the new door to verify compliance with this requirement; and**
- 2. Address the concerns of City Departments.**

There was no discussion from the public at 9:47 p.m.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

Motion by Ms. Whipple-Boyce

Seconded by Mr. Boyle to suspend the rules to take the Final Site Plan and SLUP for 1669 W. Maple Rd. together.

Motion carried,

VOICE VOTE

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

Nays: None

Absent: None

02-28-18

FINAL SITE PLAN REVIEW

SPECIAL LAND USE PERMIT ("SLUP")

1. 1669 W. Maple Rd. (First Presbyterian Church)

Request for approval of a Revised Final Site Plan and Design to permit a commercial catering business to operate in the existing church kitchen

Ms. Ecker explained that First Presbyterian Church is located on the south side of W. Maple Rd. between Pleasant and Larchlea Dr. The church is proposing to lease the kitchen in the lower level of the church to Canape Cart for the purpose of producing meals to be served off site. As a result of this change, the petitioner will require an amendment to their existing SLUP. Prior to the consideration of a SLUP Amendment, the City Commission refers the Site Plan and Design Review to the Planning Board. Should Planning Board approval be granted, a public hearing will be held by the City Commission to consider whether or not to grant the proposed SLUP Amendment.

This parcel of land is zoned R-1, Single Family Residential District. Churches are a permitted use in the R-1 District, subject to Special Land Use regulations. The church originally received a SLUP on May 13, 1991.

Canape Cart is a catering service run by two individuals whose operation formerly resided in the Drayton Avenue Presbyterian Church in Ferndale, Michigan. The closing of that church has forced Canape Cart to seek a new kitchen to lease to prepare their food offerings. The First Presbyterian Church has an existing kitchen located in the basement level of the Church. No changes are proposed to either the kitchen layout, the interior or the exterior of the Church. No signage is proposed for Canape Cart.

The lease with the church states that Canape Cart may use the kitchen daily anytime between the hours of 8 a.m. to 7 p.m.; however, the church has first right to use the kitchen for church events. Canape Cart proposes to prepare food in the church kitchen to be delivered and served at other venues in Metro Detroit. No details have been provided at this time as to the number or size of vehicles to be used to transport food to offsite locations.

Design Review

The kitchen is located in the lower level of the church on the southeast side of the building, facing the rear parking lot. The existing building will not be altered in any way, nor any new signage placed upon the building or the grounds. The amendment to the SLUP is consistent with the Zoning Ordinance; compatible with adjacent uses of land; the natural environment; the capabilities of public services and facilities affected by the land use; consistent with the public health, safety and welfare of the City; and will not be injurious to the surrounding neighborhood.

Motion by Mr. Williams

Seconded by Ms. Whipple-Boyce that an e-mail from James Goss, Business Manager, First Presbyterian Church-Birmingham. dated February 26, 2018, be formally made a part of the record.

Motion carried, 7-0.

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

Nays: None

Absent: None

Chairman Clein noted the church is allowed in an R-1 Zone. However, the use they are trying to add is commercial. The ordinance only allows an accessory use that is customarily incidental to the Church. It was discussed that there are commercial enterprises in various churches around town. Consensus of the board members was that they are in generally in favor of the proposal, but they don't have the power to approve the SLUP Amendment. It was determined

that a formal interpretation from the Building Official and a recommendation from the City Attorney would be needed to clear up the matter.

Ms. Kathleen O'Neal, co-owner of Canape Cart Catering and Mr. James Goss, Business Manager of First Presbyterian Church, came forward to speak.

Mr. Jeffares wanted assurance there would never be refrigerated trucks running outside. He had the same concern about holding cooking classes. Also, Mr. Goss assured him there would never be alcohol on the site.

Ms. O'Neal explained they have rented the Presbyterian Church in Ferndale for 25 years but now the building is being sold. She went on to say that they would be responsible for catering events within the church. Mr. Williams replied that would be incidental if the kitchen were to be used for church purposes.

Motion by Mr. Boyle

Seconded by Mr. Williams to postpone 1669 W. Maple Rd. to March 14, 2018.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

02-29-18

MISCELLANEOUS BUSINESS AND COMMUNICATIONS

a. Communications (none)

b. Administrative Approval Requests

- 2400 E. Lincoln, The Sheridan at Birmingham - Replace louvers with glazing on west elevation.
- 559 W. Brown - Minor design alterations and changes to landscape plan.
- Mr. Baka explained that Toast wants to install a semi-permanent awning over the entire dining deck. All were in favor.
- Mr. Baka advised that Commonwealth wants to change their deck from diamond plated steel to wood. They would still have a diamond plated transition from the sidewalk. The planters would remain, however Commonwealth would be willing to give up the bamboo. The railing would still be slatted steel along the sides. There were no concerns.

c. Draft Agenda for the next Regular Planning Board Meeting of March 14, 2018

- Continuation of the public hearing on Site Plan Review Standards;
- Continuation of 1669 W. Maple Rd. SLUP;
- Continuation of the discussion on retail;
- Planning Board Action List

Draft Agenda for the Regular Planning Board Meeting of March 28, 2018

- 857 Redding (Preliminary Site Plan);

- Morrie Restaurant, 250 N. Old Woodward (SLUP and Final Site Plan);
- Hotel at 298 S. Old Woodward Ave. (Revised Final Site Plan & Design).

d. Other Business (none)

02-30-18

PLANNING DIVISION ACTION ITEMS

a. Staff report on previous requests (none)

Additional items from tonight's meeting

- Mr. Jeffares noted with respect to aerial photos that they should go 300 ft. out. Everyone agreed.

02-31-18

ADJOURNMENT

No further business being evident, the Chairman adjourned the meeting at 10:20 p.m.

Jana L. Ecker
Planning Director

April 5, 2018

Mr. Bruce R. Johnson, Building Official
City of Birmingham
151 Martin Street, P.O. Box 3001
Birmingham, MI 48012-3001

Re: Variance Request Before the BZA Involving 34965 Woodward

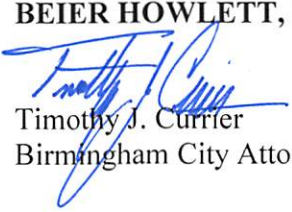
Dear Mr. Johnson:

Attached please find a copy of the February 27, 2018 letter I provided to the Planning Board regarding the litigation between *Catalyst Development and LLC Woodward Brown Associates, LLC and the Alden Development Group, now known as the Woodward Peabody Group*, in the Oakland County Circuit Court. Please be advised that the information I provided to the Planning Board in the attached letter has not changed. The status of the litigation has still resulted in no issuance of any Preliminary Injunctions or Restraining Orders. Therefore, the BZA can proceed in its normal course of action with respect to the requested variance that is coming before it.

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

Beier Howlett

ATTORNEYS AND COUNSELORS

TIMOTHY J. CURRIER

tcurrier@bhllaw.us.com

Telephone (248) 645-9400

Fax (248) 645-9344

February 27, 2018

VIA EMAIL: JECKER@BHAMGOV.ORG

Ms. Jana Ecker
City of Birmingham
151 Martin Street, P.O. Box 3001
Birmingham, MI 48012-3001

Re: Final Site Plan and Zoning Review for 34965 Woodward

Dear Ms. Ecker:

As you are aware, the above referenced site is the subject of litigation between Catalyst Development Co. 8, LLC, Woodward Brown Associates, LLC, and Alden Development Group, LLC, before the Oakland County Circuit Court. That having been said, please be aware that plaintiffs have not received nor have they sought any form of preliminary injunctive relief, such as a temporary restraining order or preliminary injunction. They have asked for an injunction in the body of their Complaint, but not as an immediate temporary remedy.

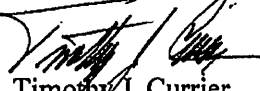
There is no impediment for the Planning Board to going forward and continue its final site plan and design review of the aforementioned project. I would recommend that the Planning Board proceed in its usual course in going through the final site plan and design review on this project as they would under any other circumstance.

I have included a copy of the Answer that the City has filed to the Complaint with this correspondence. As of this date I have not received any Answer from Alden Development to the Complaint. Should the circumstances change with respect to the litigation, I will advise you and the Planning Board as soon as possible.

Should 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/ck
Enclosure
cc: Joe Valentine, City Manager (w/encl.) (via email)

Application Date: 3-29-18Hearing Date: 5-8-18Received By: BAAppeal # 18-17

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: Peabody Owner LLC *		Phone #: n/a	
Owners address: 27777 Franklin Rd., Ste. 200		Email: n/a	
City: State: Southfield, MI		Zip code: 48034	
Contact person: n/a		Phone #: n/a	

* Applicant for Final Site Plan Approval: Alden Development Group LLC

Petitioner Information:

Petitioner name: Catalyst Development Co. 8, L.L.C.		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, 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'
-------------------------	-----------------	-----------------	-----------------	--------------------------

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: *Alden McNamee* Date: 3/28/2018

CITY OF BIRMINGHAM
Date: 3/29/2018 2:27:33
Ref: 001012
Receipt: 20596
Amount: \$60.00



Dykema Gossett PLLC
39577 Woodward Avenue
Suite 300
Bloomfield Hills, MI 48304
WWW.DYKEMA.COM
Tel: (248) 203-0700
Fax: (248) 203-0763
Alan M. Greene
Direct Dial: (248) 203-0757
Direct Fax: (855) 236-1206
Email: AGreene@dykema.com

March 28, 2018

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 Final Site Plan Approval

Dear Ms. Ecker:

As stated in detail in my correspondence dated February 27, 2018, and on the record at the Planning Board's February 28, 2018 meeting, the owners of the parcels adjacent to the above-referenced property remain opposed to the proposed development (the "Project") because, among other reasons, the Project's proposed site plan does not satisfy the requirements of the City's Zoning Ordinance and depicts a building that cannot be constructed or maintained without material damage to the existing Balmoral and Catalyst Buildings and without trespassing onto the Balmoral and Catalyst Properties. Moreover, the final site plan submitted by the applicant leaves significant questions unanswered concerning the number of windows on the adjacent buildings that will be entirely blocked by the Project and the type of materials to be used in constructing the Project's northern and southern facades.

Further, the Project is inconsistent with the City's Downtown Birmingham 2016 Master Plan and, as the City itself has acknowledged, there is simply no parking capacity – or any plan to create additional parking capacity – to accommodate the increased parking demands caused by the Project. Indeed, the record reflects that the Planning Board gave almost no consideration whatsoever to the Project's negative impact on the City's already-dire parking situation.¹

Accordingly, enclosed with this correspondence are two BZA Applications related to the Planning Board's grant of final site plan approval for the Project, as well as checks for the

¹ See, e.g., Planning Board Member Boyle's comments at the February 28, 2018 meeting ("My only comment would be that it is a delight to discuss a major boding [*sic*] of this size and not revert to the P word; we barely discussed parking and it's absolutely a pleasure...."). (Emphasis added).



Ms. Jana Ecker
March 28, 2018
Page 2

applicable filing fees and all required and supporting materials. Please contact me if you should have any questions related to the enclosed materials.

Sincerely,

DYKEMA GOSSETT PLLC

A handwritten signature in black ink, appearing to read "Alan M. Greene". The signature is fluid and cursive, with the first name "Alan" and last name "Greene" clearly distinguishable.

Alan M. Greene

Enclosures

**CITY OF BIRMINGHAM
PLANNING BOARD ACTION ITEMS
OF WEDNESDAY, FEBRUARY 28, 2018**

Item	Page
PUBLIC HEARING	
1. AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:	2
TO AMEND ARTICLE 7, SECTION 7.26, APPLICATION, TO AMEND THE SITE PLAN REVIEW SUBMITTAL REQUIREMENTS TO INCLUDE ADJACENT PROPERTY DETAILS	
TO AMEND ARTICLE 7, SECTION 7.34, SPECIAL LAND USE PERMIT REVIEW, TO AMEND THE SPECIAL LAND USE PERMIT REVIEW PROCESS TO INCLUDE SITE PLAN REVIEW SUBMITTAL REQUIREMENTS TO INCLUDE ADJACENT PROPERTY DETAILS	
Motion by Mr. Williams	
Seconded by Mr. Koseck to continue the public hearing to March 14, 2018 at 7:30 p.m.	3
Motion carried, 7-0.	
	3
FINAL SITE PLAN AND DESIGN REVIEW	
1. 525 Southfield Rd. (former Wellness Center)	
Final Site Plan and Design Review of request to demolish existing building and replace with eight-unit attached single-family residences	3
Motion by Ms. Whipple-Boyce	
Seconded by Mr. Jeffares to recommend APROVAL of the Final Site Plan and Design Review for 525 Southfield Rd. subject to the following conditions:	5
1. The applicant submit a specification sheet for the parking area screening wall for administrative approval to ensure that the screening is complementary to the building, uses proper materials, and meets the required dimensions;	
2. The applicant add one street tree to the Southfield Rd. or Watkins St. frontage, bringing the total number of street trees to 12, or obtain a waiver from the Staff Arborist;	
3. The applicant submit a revised photometric plan showing luminance levels no greater than 1.5 maintained foot candles at the northern property line;	
4. The applicant must submit specifications on the materials used in the construction of the building facade to complete the design review;	
5. The applicant must address the concerns of City Departments; and	
6. The Planning Board approves the use of cut-off fixtures as proposed.	

Item	Page
<p>Amended by Mr. Boyle and accepted:</p> <p>7. Regarding the open land to the south of the site, the land to be used for staging, that the land be restored per ordinance (until such time as the other development comes forward) with a landscape plan to be administratively approved. This condition would be maintained until, at a date yet to be determined, the owner brings a proposed development for that site.</p> <p>Motion carried, 7-0.</p>	5
<p>2. 34965 Woodward Ave. (former Peabody Restaurant and Frame Shop) Request for approval of a Final Site Plan and Design to allow for construction of a new five-story mixed-use building</p> <p>Motion by Mr. Boyle Seconded by Mr. Koseck to APPROVE the Final Site Plan and Design Review for 34965 Woodward Ave. and 215 Peabody St. subject to the following conditions:</p> <p>1. 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; 2. Comply with the requirements of City departments; and 3. The applicant update their civil plans to match the architectural site plans that were submitted.</p> <p>Motion carried, 5-1.</p>	6 6 11
<p>3. 670 S. Old Woodward Ave. (Detroit Trading Co.) Final Site Plan and Design Review Request to replace existing entrance door with a garage door and sidelight and add a small 23 sq. ft. addition</p> <p>Motion by Mr. Boyle Seconded by Mr. Koseck to approve the Final Site Plan and Design Review for 670 S. Old Woodward Ave. with the following conditions as the proposed site plan meets the approval criteria set out in Article 7, section 7.27(B) of the Zoning Ordinance:</p> <p>1. The applicant will be required to provide the VLT% of the new door to verify compliance with this requirement; and 2. Address the concerns of City Departments.</p> <p>Motion carried, 7-0.</p>	11 11 12

Item	Page
FINAL SITE PLAN REVIEW SPECIAL LAND USE PERMIT ("SLUP")	12
1. 1669 W. Maple Rd. (First Presbyterian Church) Request for approval of a Revised Final Site Plan and Design to permit a commercial catering business to operate in the existing church kitchen	13
Motion by Mr. Boyle Seconded by Mr. Williams to postpone 1669 W. Maple Rd. to March 14, 2018.	14
Motion carried, 7-0.	14

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, FEBRUARY 28, 2018
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on February 28, 2018. 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, Student Representatives Madison Dominato, Sam Fogel, Ellie McElroy

Also Present: Alternate Board Member Nasseem Ramin

Absent: Alternate Board Member Daniel Share

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

02-21-18

APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING OF JANUARY 24, 2018

Ms. Lazar made the following correction:
Page 4 - Last paragraph, replace "antrha" with "anthra."

Motion by Ms. Whipple-Boyce

Seconded by Mr. Williams to approve the Minutes of the Regular Planning Board Meeting of January 24, 2018 as amended.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

02-22-18

CHAIRPERSON'S COMMENTS

The Chairman announced that three new students have joined the board: Madison Dominato, Sam Fogel and Ellie McElroy.

02-23-18

APPROVAL OF THE AGENDA (no change)

02-24-18

PUBLIC HEARING

1. AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 7, SECTION 7.26, APPLICATION, TO AMEND THE SITE PLAN REVIEW SUBMITTAL REQUIREMENTS TO INCLUDE ADJACENT PROPERTY DETAILS

TO AMEND ARTICLE 7, SECTION 7.34, SPECIAL LAND USE PERMIT REVIEW, TO AMEND THE SPECIAL LAND USE PERMIT REVIEW PROCESS TO INCLUDE SITE PLAN REVIEW SUBMITTAL REQUIREMENTS TO INCLUDE ADJACENT PROPERTY DETAIL

The public hearing opened at 7:34 p.m.

Ms. Ecker recalled that on December 4, 2017, the City Commission reviewed and approved the Special Land Use Permit ("SLUP") and Final Site Plan & Design Review for 33353 Woodward Ave. to allow Tide Dry Cleaners to open a storefront. During this review, several questions were raised by Commissioners and neighbors regarding the layout and proximity of adjacent properties, and the potential impact of the drive-in dry cleaning facility on the surrounding property owners.

At the end of the meeting, Commissioner Nickita specifically requested that the Planning Board review the existing submittal requirements for site plan reviews and SLUP reviews, to determine if amendments should be made to add additional details of the subject site and/or adjacent sites to provide context for discussion. This direction to the Planning Board was provided by the City Manager.

Accordingly, on January 10, 2018, the Planning Board discussed the proposed draft ordinance language to consider amending the submittal requirements for site plan review and SLUP review to require all applicants to include details of adjacent properties on their site plans. The board approved a motion to set a public hearing date for the amendments that would require all property lines, buildings and structures within 200 ft. of a subject site to be marked on the site plan drawings submitted. A comment was made that an aerial photo should suffice in providing these details. On January 27, 2018 at the Long Range Planning meeting this issue was also discussed. A comment was made by Commissioner Nickita that he did not believe that an aerial photo would be sufficient to meet the provision of adjacent property details.

Mr. Jeffares stated he would still prefer to have the aerial photo, at least in addition. Ms. Ecker said they could add and then bring back to the board language that would also require applicants to provide an aerial photo.

At 7:40 p.m. no one from the public had comments.

Motion by Mr. Williams

Seconded by Mr. Koseck to continue the public hearing to March 14, 2018 at 7:30 p.m.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

The public hearing closed at 7:42 p.m.

02-25-18

FINAL SITE PLAN AND DESIGN REVIEW

1. 525 Southfield Rd. (former Wellness Center)

Final Site Plan and Design Review of request to demolish existing building and replace with eight-unit attached single-family residences

Mr. Baka reported that the subject site is a 0.829 acre parcel confined by Southfield Rd. to the west, Brown St. to the north, and Watkins St. to the east in the R-8 Zoning District. The existing parcel currently contains a wellness center and parking lot. The applicant is proposing to demolish the existing building and parking lot to construct eight new attached single-family residential units that are proposed to be erected side by side in a single building facing Brown St. Each residential unit has its own stairway and individual front door that leads directly into each unit. The applicant appeared before the Planning Board on September 27, 2017 for Preliminary Site Plan Review and was approved with five conditions.

The applicant has updated the plans to reflect the request for a landscaping and photometric plan, and added four additional parking spaces, but has failed to include specification sheets for all of the screenwalls. A rooftop plan is not needed, as all mechanicals are proposed to be located within the attic of each unit. The applicant has also revised the east and west sides of the building to show more interest, adding numerous windows, some decorative features, and a base constructed of a different material.

The applicant must add one street tree to the Southfield Rd. or Watkins St. frontage, bringing the total number of street trees to twelve, or obtain a waiver from the Staff Arborist.

The Building Official has determined that the enclosed outdoor terraces on the back of each unit comply with the open space requirement of 180 sq. ft./unit mandated in Article 4, section 4.34 OS-05 of the Zoning Ordinance.

Design Review

The applicant is proposing to create eight units, each with a different façade facing Brown St. The units are comprised of varied high quality building materials with different and tasteful colors. The materials used include brick, limestone, painted wood trim, stucco, copper flashing, and painted metal features. The applicant has not submitted specifications on where the material will be sourced from, or what the exact colors will be. The applicant must submit

specifications on the materials used for the construction of the building to complete the Design Review.

The applicant is proposing a total of 52 new light fixtures at various locations on the property.

Mr. Williams received confirmation from Mr. Baka that the entire site is zoned R-8, including the parcel to the south. Permitted uses on that vacant land to the south are R-8 and R-3 single-family. Anything that happens on that portion of the property would have to return for site plan review.

Mr. Chris Longe, Architect, came forward to represent the applicant. He stated they will meet all of the ordinance requirements. As a result of discussion last time, they have added four guest parking spaces on the west/southwest side of the driveway. A brick wall with limestone cap traces the whole perimeter of the townhome development.

Mr. Boyle asked what the land to the south would look like in four years. Mr. Longe replied that what has been left vacant is a 10,000 sq. ft. site. The intent is to propose a single-family home that will be contextual with the townhomes and with the neighborhood. He explained for Mr. Boyle that it will be a staging area during construction for the townhomes. He will be back before the board in the next couple of weeks with a house design for that parcel. Until the house is constructed the site will be stabilized with grass.

Chairman Clein opened discussion from the audience at 8 p.m.

Mr. Alan Kaplan, 600 W. Brown St., was concerned the construction workers would park in their lot in Piety Hill Place. His other concern was there are only four extra spaces for this project. Therefore, visitors will also park in their lot and he feels that more excess parking is needed.

Ms. Colleen LeGoff, 543 Watkins St., wanted the green space returned after staging is completed until a house is built.

Mr. Paul Gozolo, 550 Watkins St., received confirmation there will not be accessible parking along his street because Watkins St. has residential permit parking. He questioned why the development needs to open up onto Watkins St. rather than onto Southfield Rd. Regarding the lot to the south, he asked that "single-family" be written into the agreement if it is approved. Lastly, he noted there are large, hundred year-old trees on the lot and it will not remain the same as it is now.

Mr. Baka explained the parking provided exceeds ordinance requirements by four spaces.

Mr. Longe stated that it is not feasible to enter the development off of Southfield Rd. that close to the corner. Also, entering off of Brown St. destroys the composition.

It was discussed that cars could be parallel parked along the wall that surrounds the complex when there is a need. There is 25 ft. between the garages and the wall.

Chairman Clein noted for Mr. Gozolo that the Planning Board does not have legal authority to put contract zoning in place to mandate single-family residential use for the southern lot.

Mr. Jeffares remembered that the former use on this site was a pediatric office. They probably had more people in and out in one day than this complex will have in a month.

Mr. Williams announced he would look askance at any attached single-family development going in on the south parcel.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Jeffares to recommend APROVAL of the Final Site Plan and Design Review for 525 Southfield Rd. subject to the following conditions:

- 1. The applicant submit a specification sheet for the parking area screening wall for administrative approval to ensure that the screening is complementary to the building, uses proper materials, and meets the required dimensions;**
- 2. The applicant add one street tree to the Southfield Rd. or Watkins St. frontage, bringing the total number of street trees to 12, or obtain a waiver from the Staff Arborist;**
- 3. The applicant submit a revised photometric plan showing luminance levels no greater than 1.5 maintained foot candles at the northern property line;**
- 4. The applicant must submit specifications on the materials used in the construction of the building facade to complete the design review;**
- 5. The applicant must address the concerns of City Departments; and**
- 6. The Planning Board approves the use of cut-off fixtures as proposed.**

Amended by Mr. Boyle and accepted:

7. Regarding the open land to the south of the site, the land to be used for staging, that the land be restored per ordinance (until such time as the other development comes forward) with a landscape plan to be administratively approved. This condition would be maintained until, at a date yet to be determined, the owner brings a proposed development for that site.

Motion carried, 7-0.

The Chairman called for public comments on the motion at 8:12 p.m.

Mr. Gozolo showed the board a picture of one of the mature trees on the property.

Mr. Koseck thought this is a great project. It has quality design, it has variety, it anchors the corner, and he feels that it fits that street.

ROLLCALL VOTE

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

Nays: None

Absent: None

02-26-18

2. 34965 Woodward Ave. (former Peabody Restaurant and Frame Shop)

Request for approval of a Final Site Plan and Design to allow for construction of a new five-story mixed-use building

Chairman Clein announced he would recuse himself as in the past, since his firm provided some consultant services at the front end of the project. Vice-Chairperson Lazar took over the gavel.

Motion by Mr. Williams

Seconded by Ms. Whipple-Boyce to introduce two pieces of correspondence into the formal record:

- **E-mail to Jana Ecker from Beier Howlett, City Attorney, dated 02-27-18; and**
- **Letter to Jana Ecker from Dykema Gossett, signed by Alan M Greene and dated 02-27-18 with a number of attachments.**

Motion carried, 6-0.

VOICE VOTE

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

Nays: None

Recused: Clein

Absent: None

Mr. Williams pointed out that a complaint against the City has been filed in Circuit Court by Dykema Gossett and litigation is pending. Ms. Ecker added the applicant also submitted an administrative appeal to the Board of Zoning Appeals for the Planning Board's Preliminary Site Plan approval and that appeal was denied. Further, a letter from the City Attorney states the litigation in this case does not affect what the Planning Board is doing tonight and the board should proceed in the normal course of business.

Ms. Ecker recalled the applicant has submitted an application for Final Site Plan and Design Review to construct a five-story mixed-use building in the B4/D4 Zoning District. The 0.579 acre 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 Community Impact Statement ("CIS") and Preliminary Site Plan Application for 34965 Woodward Ave. At that time, the Planning Board decided to accept the CIS 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. 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.

On August 23, 2017 the Planning Board 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 13, 2017 and requested that staff provide the minutes from the previous Planning Board meetings when both 34901 Woodward Ave. and 34977 Woodward Ave. were reviewed. A thorough review of the minutes revealed no encouragement or requirements by the Planning Board or by staff to require the installation of windows on the property lines abutting the 34965 Woodward Ave. site. The only comments made by Staff regarding this issue were by the Building Dept. For the Catalyst Building. The Building Dept. 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.

On September 13, 2017, the Planning Board unanimously approved the Preliminary Site Plan with several conditions.

Thus far, the applicant has complied with the conditions of approval and gained a waiver from the Staff Arborist, verified that there will be five pedestrian lights on Peabody St., provided a photometric plan and luminary specification sheets, provided mechanical unit specification sheets and screen wall details, provided material and color samples, and complied with the requests of all City Departments. ***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.*** The applicant meets their parking requirement by providing 88 spaces when only 15 are required.

Ms. Ecker advised that what has primarily changed since the Preliminary Site Plan Review is that on the north and south elevations the applicant has brought the building out to the front property line to match the adjacent buildings, but it then steps back about 4 ft. to provide a light well for the windows. Basically there will be about 9 ft. between the windows in order to accommodate the neighbors' concerns. Because the building has a zero side setback, the applicant was not required to set the building back, but they did so to address the neighbors' concerns.

Mr. Koseck noticed there is a bay protrusion on the third level that encroaches into M-Dot air rights. Ms. Ecker verified that in order to construct the bay the applicant would have to get an agreement with M-Dot to use the air rights.

Design Review

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

- Granite for the base of the building in charcoal gray;
- Tan stone panels for the facade of the first floor;
- Masonry veneer in a light salmon color for the second, third and fourth floors;
- Metal composite panels to clad the fifth floor and sections of the rooftop screening;
- Steel window and door systems on all elevations (Ultra white, ultra clear glass with 80% VLT);
- Anodized aluminum channel accents, powder coated balcony rails with steel guardrail, and steel fin details;
- Decorative stainless steel metal grates for rooftop mechanical screening;
- Metal pedestrian scale canopies on the Peabody St. and Woodward Ave. elevations; and
- Cantilevered structural glass for the section on the third floor.

Mr. Chris Longe, Architect, passed along samples of the various materials to be used in the project, with the exception of the garage door material.

The proposed building will uphold the vision of the Maple Gateway and Downtown Birmingham 2016 Plan.

The proposed building meets 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 entry has a canopy and adds architectural interest and pedestrian scale details for patrons going in and out of the building.

Calculations have been submitted for the glazing requirements outlined in Article 3, Section 3.04 of the Zoning Ordinance that show that the minimum 70% glazing requirements have been met

on the first floor, and the maximum 35% glazing requirements on the upper floors have been met.

The applicant has submitted Visual Light Transmittance ("VLT") calculations showing ultra white, ultra clear glazing with 80% VLT. However, the applicant has also indicated that they propose to use clear glass with a 78% VLT. The applicant has advised that the 80% VLT glass will be used on the ground floor level as required, and the 78% VLT glass will be used on the upper levels, thus meeting this requirement as well.

Mr. Boyle inquired if a pedestrian walking along would see a space between the buildings to the north and south, or will they touch. Mr. Longe answered they will physically touch at the corners with the exception of the SW corner where the Balmoral Building is 5 ft. off their property line above the second floor. Their Alden Building comes to the property line. Therefore a pedestrian would see a continuous street wall.

Mr. Longe spoke to say the changes since Preliminary Site Plan Review were made after consultation with their neighbors to the north and to the south.

Mr. Jeffares noted the proposed Alden Building has taken more off the Parking System with the 88 spaces they have provided which is significantly more than their adjacent neighbors who provided 10 and 13 spots.

Discussion turned to whether parking in the Alden Building could be run as a private parking facility. Mr. Ecker affirmed that it could, with the exception of 15 spaces that are required for the residential units. Mr. Longe noted that a sample of the garage door material was not provided because there is no garage door.

Vice Chairperson Lazar invited comments from the public at 9 p.m.

Mr. Alan Greene spoke on behalf of the ownership of the Balmoral Bldg., Woodward Brown Associates; and the Greenleaf Trust Bldg., Catalyst Development. Mr. Greene listed questions:

- The Final Site Plan documents were very unclear about what was happening on the north and south facades abutting their buildings. He has now heard the material that will be on those facades will replicate what is on the east and west facades. The plans do not clarify what the materials are on the north and south facades.
- It is unclear from the plans how the first floor of the Alden Bldg. relates to the first and second floor of the Balmoral Bldg. Their architects say the Balmoral windows will be blocked or partially blocked. Regarding the Catalyst Bldg. it appears to be a situation where the Alden Bldg. is built right to the balconies of the residential units, and fire rated windows were added so that people look right into the Catalyst residential balconies.
- To summarize, the Final Site Plan does not provide details about the two elevations; what the materials are on the south and north; do they carry through the entire elevation; what kind of windows are on the north and south; are the windows facing the Balmoral Bldg. fire rated; and are they the kind of glass that was just shown.

Mr. Green went on to state they still object that the Plan does not meet the requirements of the Master Plan; it does not meet the requirements of the Zoning Ordinance on various standards; it impacts the value of their buildings; there is not sufficient parking available; and there are constructability issues about how the building will be constructed without trespassing on or damaging their property.

Mr. Longe responded with respect to the materials and the windows that they are indicated on the elevation drawing:

- The same materials that are on the Woodward Ave. and Peabody St. facades will be replicated on the north and south sides that cannot be seen.
- The glazing is identical to what has been shown in terms of its clarity and the framing. It does not have to be fire rated.
- The configuration of the building above the second and third floors was not something that they presented; it is something that they responded to at the Catalyst architect's request.
- Their counsel has had discussions with Mr. Greene about construction and imposing on the property of the adjacent buildings. They are at the threshold of producing a schedule of activities so it will be known what is going to happen throughout the course of construction. They are hoping to get a license to operate in and around the adjacent buildings with proper notice, and to produce a long-term maintenance agreement that benefits the properties to the north and south.

Mr. Williams stated he has not had an opportunity to read the materials submitted late yesterday by Mr. Greene and therefore is reticent to vote tonight, other than to postpone consideration for two weeks. Further, he requested that the Planning Dept. respond specifically as to the validity of the assertions about the site plan that the Balmoral and Catalyst Buildings have made in the Greene letter. He wants the Building Dept. to respond to what the plans say and what Mr. Greene's clients say and here is the conclusion of the Building Dept. as to the validity of those assertions. This dispute is in litigation and at some point a judge is going to look at this. He wants the judge to have the complete record and that in his own case he has had the opportunity to read all of the materials in detail before saying yes or no for Final Site Plan Approval.

Additionally, on page 4 of the materials that were submitted to the Board of Zoning Appeals by Mr. Greene, a statement is made that the petitioners gave up rentable square footage to create the buildings desired and mandated by the City. Ms. Ecker has addressed that issue by saying there is nothing in the record to support the claim that the City mandated the setbacks of the two buildings. He asked Mr. Greene to prove his case and submit the documents where he can make that statement. If he cannot, then correct the record.

Mr. Koseck stated that he does not have to read the materials. In his mind the placement and form of the building all comply with the ordinance. He is trying not to get caught up in all of the legalities and feels that is up to someone else. He has never heard anyone on this board say anything about zero lot lines except that the walls should not be boring. Therefore, he feels the board can move forward on this.

In response to Mr. Jeffares, Mr. Longe said there are zero windows blocked on either the Catalyst or Balmoral Buildings on the north or south side of his building.

Ms. Whipple-Boyce thought it may be worth the two weeks to thoroughly review the letter and attachments received from Mr. Greene that probably none of them has had the opportunity to read. That would ensure they have covered all of their bases. Ms. Ecker noted that she spoke to Mr. Currier who said absolutely nothing in the package changes his position that the board should move ahead in the normal course of business.

Motion by Mr. Boyle

Seconded by Mr. Koseck to APPROVE the Final Site Plan and Design Review for 34965 Woodward Ave. and 215 Peabody St. subject to the following conditions:

- 1. 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;**
- 2. Comply with the requirements of City departments; and**
- 3. The applicant update their civil plans to match the architectural site plans that were submitted.**

There were no comments from the public on the motion at 9:12 p.m.

Motion carried, 5-1.

ROLLCALL VOTE

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

Nays: Williams

Recused: Clein

Absent: None

02-27-18

Vice- Chairperson Lazar turned the gavel back over to Chairman Clein.

3. 670 S. Old Woodward Ave. (Detroit Trading Co.)

Final Site Plan and Design Review Request to replace existing entrance door with a garage door and sidelight and add a small 23 sq. ft. addition

Mr. Baka reported the subject location is a 17,250 sq. ft. parcel with an existing one- story commercial building. The property is located on the west side of S. Old Woodward Ave. between George St. and E. Frank St. in the Downtown Overlay District. At this time, the applicant is proposing to add 24 sq. ft. to the building to allow for the installation of a new main entrance in the northeast corner. Further, the applicant is proposing to expand the door opening in order to have sufficient space to move a car into the building that will be visible from the front of the building. It should be noted that an auto showroom is not a permitted use in this Zone District, but an auto sales agency is a permitted use.

Design Review

The applicant is proposing to add a new door and transom window in the approximate location of the existing door. The new entrance is proposed to be a double door with a 9 ft. x 8 ft. combined opening. The hardware is proposed to be white to match the existing hardware and trim on the building. In accordance with the requirements of the Downtown Birmingham Overlay District, all glass must be clear with VLT% of 80 or higher. Thus, the applicant will be required to provide the VLT percent of the new door to verify compliance with this requirement.

In response to Mr. Jeffares, Ms. Ecker verified the property was legal and conforming prior to the Personal Services definition being adopted in November. Now it is legal non-conforming. The nature of the business being carried on there is still the same.

Mr. Boyle thought this is a perfectly good use of the property and is exactly the type of retail display the City has been looking for in the downtown. Mr. Baka said a showroom commonly is defined as a place where products are displayed. This property is zoned B-2B which allows

auto sales agencies but does not allow auto showrooms. Those are two separate uses within the ordinance.

Mr. Roger Young, Young and Young Architects, represented Detroit Trading Co. He stated the car is strictly a display vehicle and while cars are for sale by order, the display car itself will not be for sale. The intent is to display one vehicle only. The door will swing outward for only a few moments, although they certainly can look at an in-swing door. However, that would be more cumbersome based on what occurs within the interior space. He asked to be allowed to work with the Building Dept. on that. As to the VLT of the glazing, it will be clear with low-E coating. Also, they will place the Knox box where the Fire Dept. deems is most appropriate.

Motion by Mr. Boyle

Seconded by Mr. Koseck to approve the Final Site Plan and Design Review for 670 S. Old Woodward Ave. with the following conditions as the proposed site plan meets the approval criteria set out in Article 7, section 7.27(B) of the Zoning Ordinance:

- 1. The applicant will be required to provide the VLT% of the new door to verify compliance with this requirement; and**
- 2. Address the concerns of City Departments.**

There was no discussion from the public at 9:47 p.m.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

Motion by Ms. Whipple-Boyce

Seconded by Mr. Boyle to suspend the rules to take the Final Site Plan and SLUP for 1669 W. Maple Rd. together.

Motion carried,

VOICE VOTE

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

Nays: None

Absent: None

02-28-18

FINAL SITE PLAN REVIEW

SPECIAL LAND USE PERMIT ("SLUP")

1. 1669 W. Maple Rd. (First Presbyterian Church)

Request for approval of a Revised Final Site Plan and Design to permit a commercial catering business to operate in the existing church kitchen

Ms. Ecker explained that First Presbyterian Church is located on the south side of W. Maple Rd. between Pleasant and Larchlea Dr. The church is proposing to lease the kitchen in the lower level of the church to Canape Cart for the purpose of producing meals to be served off site. As a result of this change, the petitioner will require an amendment to their existing SLUP. Prior to the consideration of a SLUP Amendment, the City Commission refers the Site Plan and Design Review to the Planning Board. Should Planning Board approval be granted, a public hearing will be held by the City Commission to consider whether or not to grant the proposed SLUP Amendment.

This parcel of land is zoned R-1, Single Family Residential District. Churches are a permitted use in the R-1 District, subject to Special Land Use regulations. The church originally received a SLUP on May 13, 1991.

Canape Cart is a catering service run by two individuals whose operation formerly resided in the Drayton Avenue Presbyterian Church in Ferndale, Michigan. The closing of that church has forced Canape Cart to seek a new kitchen to lease to prepare their food offerings. The First Presbyterian Church has an existing kitchen located in the basement level of the Church. No changes are proposed to either the kitchen layout, the interior or the exterior of the Church. No signage is proposed for Canape Cart.

The lease with the church states that Canape Cart may use the kitchen daily anytime between the hours of 8 a.m. to 7 p.m.; however, the church has first right to use the kitchen for church events. Canape Cart proposes to prepare food in the church kitchen to be delivered and served at other venues in Metro Detroit. No details have been provided at this time as to the number or size of vehicles to be used to transport food to offsite locations.

Design Review

The kitchen is located in the lower level of the church on the southeast side of the building, facing the rear parking lot. The existing building will not be altered in any way, nor any new signage placed upon the building or the grounds. The amendment to the SLUP is consistent with the Zoning Ordinance; compatible with adjacent uses of land; the natural environment; the capabilities of public services and facilities affected by the land use; consistent with the public health, safety and welfare of the City; and will not be injurious to the surrounding neighborhood.

Motion by Mr. Williams

Seconded by Ms. Whipple-Boyce that an e-mail from James Goss, Business Manager, First Presbyterian Church-Birmingham. dated February 26, 2018, be formally made a part of the record.

Motion carried, 7-0.

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

Nays: None

Absent: None

Chairman Clein noted the church is allowed in an R-1 Zone. However, the use they are trying to add is commercial. The ordinance only allows an accessory use that is customarily incidental to the Church. It was discussed that there are commercial enterprises in various churches around town. Consensus of the board members was that they are in generally in favor of the proposal, but they don't have the power to approve the SLUP Amendment. It was determined

that a formal interpretation from the Building Official and a recommendation from the City Attorney would be needed to clear up the matter.

Ms. Kathleen O'Neal, co-owner of Canape Cart Catering and Mr. James Goss, Business Manager of First Presbyterian Church, came forward to speak.

Mr. Jeffares wanted assurance there would never be refrigerated trucks running outside. He had the same concern about holding cooking classes. Also, Mr. Goss assured him there would never be alcohol on the site.

Ms. O'Neal explained they have rented the Presbyterian Church in Ferndale for 25 years but now the building is being sold. She went on to say that they would be responsible for catering events within the church. Mr. Williams replied that would be incidental if the kitchen were to be used for church purposes.

Motion by Mr. Boyle

Seconded by Mr. Williams to postpone 1669 W. Maple Rd. to March 14, 2018.

Motion carried, 7-0.

VOICE VOTE

Yeas: Boyle, Williams, Clein, Jeffares, Koseck, Lazar, Whipple-Boyle

Nays: None

Absent: None

02-29-18

MISCELLANEOUS BUSINESS AND COMMUNICATIONS

a. Communications (none)

b. Administrative Approval Requests

- 2400 E. Lincoln, The Sheridan at Birmingham - Replace louvers with glazing on west elevation.
- 559 W. Brown - Minor design alterations and changes to landscape plan.
- Mr. Baka explained that Toast wants to install a semi-permanent awning over the entire dining deck. All were in favor.
- Mr. Baka advised that Commonwealth wants to change their deck from diamond plated steel to wood. They would still have a diamond plated transition from the sidewalk. The planters would remain, however Commonwealth would be willing to give up the bamboo. The railing would still be slatted steel along the sides. There were no concerns.

c. Draft Agenda for the next Regular Planning Board Meeting of March 14, 2018

- Continuation of the public hearing on Site Plan Review Standards;
- Continuation of 1669 W. Maple Rd. SLUP;
- Continuation of the discussion on retail;
- Planning Board Action List

Draft Agenda for the Regular Planning Board Meeting of March 28, 2018

- 857 Redding (Preliminary Site Plan);

- Morrie Restaurant, 250 N. Old Woodward (SLUP and Final Site Plan);
- Hotel at 298 S. Old Woodward Ave. (Revised Final Site Plan & Design).

d. Other Business (none)

02-30-18

PLANNING DIVISION ACTION ITEMS

a. Staff report on previous requests (none)

Additional items from tonight's meeting

- Mr. Jeffares noted with respect to aerial photos that they should go 300 ft. out. Everyone agreed.

02-31-18

ADJOURNMENT

No further business being evident, the Chairman adjourned the meeting at 10:20 p.m.

Jana L. Ecker
Planning Director



Dykema Gossett PLLC
39577 Woodward Avenue
Suite 300
Bloomfield Hills, MI 48304
WWW.DYKEMA.COM
Tel: (248) 203-0700
Fax: (248) 203-0763
Alan M. Greene
Direct Dial: (248) 203-0757
Direct Fax: (855) 236-1206
Email: AGreene@dykema.com

February 27, 2018

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)—Opposition to Request for Final Site Plan Approval

Dear Ms. Ecker:

Enclosed in connection with the above matter is an original and 10 copies of my letter (with Exhibits 1 – 3 attached) in opposition to the pending request for final site plan approval on behalf of the ownership of the Balmoral and Catalyst Buildings.

Please distribute the enclosed materials to the Planning Board. Thank you for considering our comments and observations.

Sincerely,

DYKEMA GOSSETT PLLC



Alan M. Greene

Enclosures

Cc: Harvey Weiss
Patti Owens



Dykema Gossett PLLC
39577 Woodward Avenue
Suite 300
Bloomfield Hills, MI 48304
WWW.DYKEMA.COM
Tel: (248) 203-0700
Fax: (248) 203-0763
Alan M. Greene
Direct Dial: (248) 203-0757
Direct Fax: (855) 236-1206
Email: AGreene@dykema.com

February 27, 2018

Via Email and Hand Delivery

Ms. Jana Ecker
Planning Director
City of Birmingham
151 Martin Street
Birmingham, Michigan

Re: 34965 Woodward Ave. (Former Peabody's Restaurant)—Opposition to Request for Final Site Plan Approval

Dear Ms. Ecker:

As you know, I represent both Woodward Brown Associates, LLC, the developer and owner of the real property and mixed-use building located at 34901 - 34953 Woodward Avenue, Birmingham, MI 48009 (the "Balmoral Property" or "Balmoral Building"), and Catalyst Development Co. 8, L.L.C., the developer and owner of the real property and mixed-use building located at 34977 Woodward Avenue, Birmingham, MI 48009 (the "Catalyst Property" or "Catalyst Building"). Both Woodward Brown and Catalyst opposed the City Planning Board's grant of preliminary site plan approval for the proposed mixed-use development at 34965 Woodward (the "Project") because, among other reasons, the Project's proposed site plan: (1) did not satisfy the requirements for preliminary site plan approval under Section 7.27 of the City's Zoning Ordinance; (2) was inconsistent with the City's Downtown Birmingham 2016 Master Plan; and (3) depicted a building that could not be constructed or maintained without material damage to the existing Balmoral and Catalyst Buildings and without trespassing onto the Balmoral and Catalyst Properties. For these reasons, as well as those set forth below and in the enclosed appeal statement (with Attachments 1 – 12) which was submitted to the City BZA on October 11, 2017, and is incorporated in its entirety into this correspondence, Woodward Brown and Catalyst respectfully request that the Planning Board deny final site plan approval for the Project.

Analysis of Proposed Final Site Plan

While the applicant's proposed final site plan (the "Proposed Final Site Plan") reflects some aesthetic changes from the originally proposed plans (a 4' setback from the north and south property lines above the first floor in select locations), the changes are insufficient to bring the

site plan into compliance with the requirements of the Zoning Ordinance and the same deficiencies, issues and concerns identified during the preliminary site plan proceedings remain. In some instances, such as installing fire rated windows on the north property line facing directly into residential unit balconies of the Catalyst building, the revised drawings have exacerbated the previous concerns. Also, as reported by the City Engineer in his review, there is insufficient parking available to serve the development and no solution has been proposed or even explored. The detrimental harm to the Balmoral and Catalyst projects and their tenants caused by this issue alone is significant. Allowing the project to proceed in the face of this undisputed fact would violate the City's obligations under the Zoning Enabling Act to promote the public, health, safety and welfare. It would do just the opposite. Furthermore, the Proposed Final Site Plan introduces, at a minimum, the following new issues which, on their own, should lead the Planning Board to deny, or at least delay, final site plan approval for the Project:

1. ***The Proposed Final Site Plan's South Elevation is Misleading.***

The Proposed Final Site Plan omits the floor heights on the building elevation sheets, making a comparison with the Balmoral and Catalyst Buildings' floor elevations difficult. Specifically, Sheet DD.11 of the Proposed Final Site Plan is misleading because it only depicts the Project's windows (and omits the location of the Balmoral's windows), thus concealing the fact that, due to a substantial difference in floor heights, the Project's first floor wall (which is proposed to be built to within one foot of the property line) will be only seven (7) feet from the Balmoral Building's second floor windows. See enclosed rendering prepared by Thom Phillips of Hobbs & Black, demonstrating the discrepancy in floor heights between the Project and the Balmoral Building.

2. ***The Proposed Final Site Plan's East and West Elevations Fail to Meet the Zoning Ordinance Glazing Ratio Requirements.***

It is our understanding that the Zoning Ordinance requires no more than 35% glazing per facade above the first floor, and a minimum of 70% glazing for the first floor. However, the east and west elevations depicted at Sheet DD.10 of the Proposed Final Site Plan do not meet the Zoning Ordinance's glazing requirements and, instead, include the following deficient glazing ratios:

- *East Elevation:* 53% glazing on the first floor (i.e., 17% less than is required) and 50% glazing on floors 2-5 (i.e., 15% more than is permitted); and



Ms. Jana Ecker
February 27, 2018
Page 3

- *West Elevation*: 51% glazing on the first floor (i.e., 19% less than is required) and 52% glazing on floors 2-5 (i.e., 17% more than is permitted)¹
3. ***The Proposed Final Site Plan Lacks Significant Details Related to the Materials to be Used in the Project's Construction.***

The Proposed Final Site Plan is deficient and cannot be approved by the Planning Board unless and until the applicant amends the site plan to show the following crucial details: (1) demonstrate how the Project will be flashed and attached to the Catalyst Building; (2) demonstrate how the Project will manage drainage and water infiltration issues at the north and south property lines; (3) identify all proposed materials to be used in construction – various materials in the illustrated elevations are left unlabeled (*see, e.g.*, the locations on Sheet DD.12 where it appears that spandrel glass is proposed are left unlabeled). While these omitted details render it impossible to fully assess and evaluate the impact that the Project will have on the adjacent buildings, they also render the Proposed Final Site Plan incomplete as the City's Final Site Plan and Design Review Application Checklist requires both a "[l]ist of all materials to be used for the building, marked on the elevation drawings" and an "[i]temized list of all materials to be used, including size specifications, color, style, and the name of the manufacturer."

Conclusion

In conclusion, we appreciate the Planning Board's consideration of these comments and would respectfully request that the Planning Board either deny the Proposed Final Site Plan or table its consideration of same for further study and submission of a revised site plan that meets the requirements of the Zoning Ordinance and addresses the numerous deficiencies discussed herein.

I am enclosing multiple copies of this letter and would appreciate it if you would deliver copies to the members of the Planning Board.

Sincerely,

DYKEMA GOSSETT PLLC

Alan M. Greene

Cc: Harvey Weiss
Patti Owens

¹ See enclosed calculations prepared by Jason Novotny of TowerPinkster.

EXHIBIT 1

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 facade (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 facade 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 Deukins 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 facade 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 facades, 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.

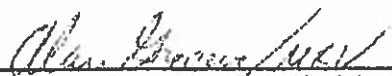
As the above-mentioned parking analysis makes clear, the situation is far worse today. The City is opening itself up to a buzz saw of litigation. The applicant will demand that the City make parking spaces available for its proposed future tenants—whether by taking it away from other businesses and projects 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

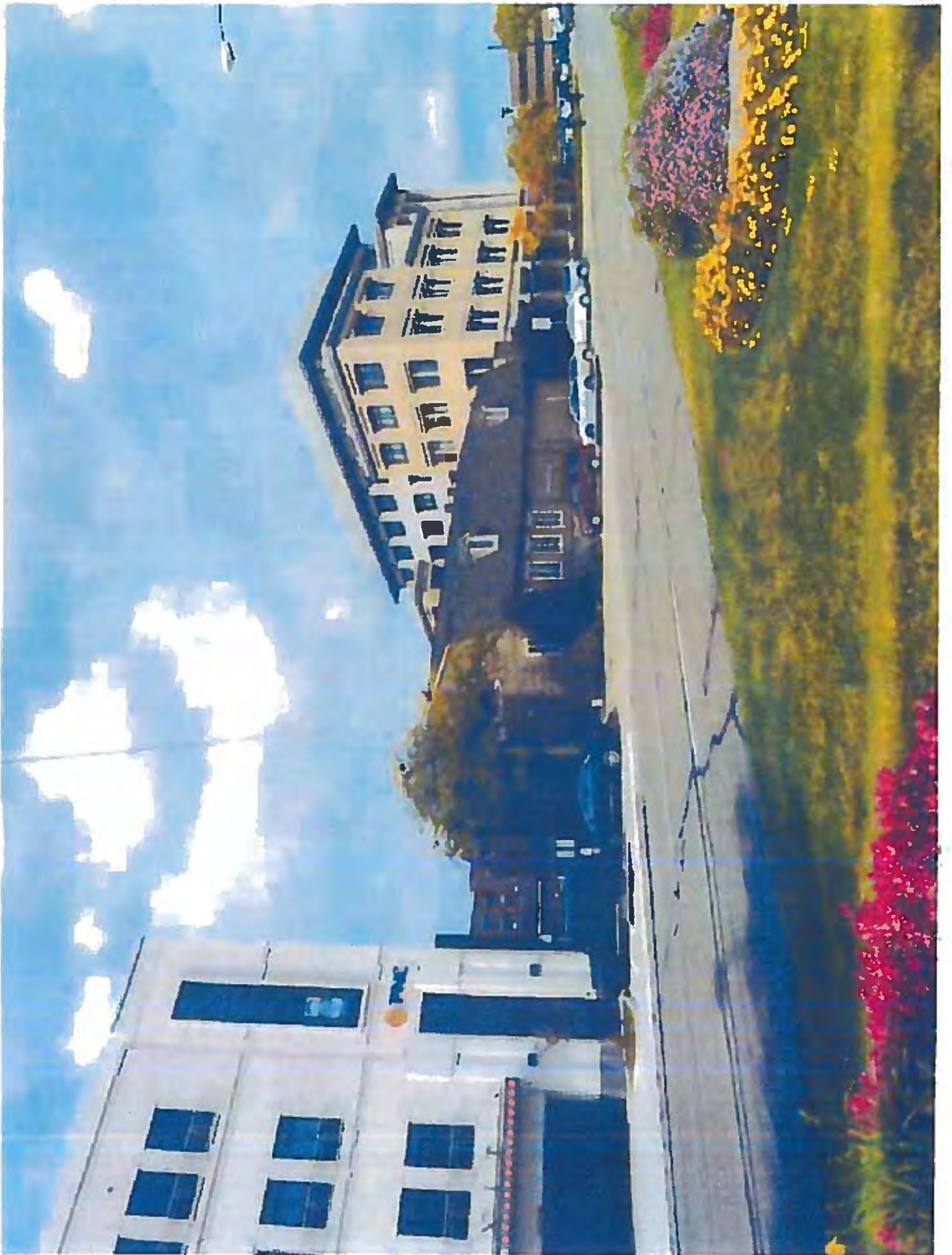
ATTACHMENT 1





ATTACHMENT 2





ATTACHMENT 3

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

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

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

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

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

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

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

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

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

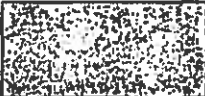
Please see the attached Zoning Compliance Summary Sheet for detailed zoning compliance information.

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.

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

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 planters 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

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

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

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.

ATTACHMENT 4

Site Plan Review

Article
07

- 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

Article
07

- 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

Article
03

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

Article
03

- 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 setback 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

Article
03

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

Article
03

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.
- F. 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.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.

Downtown Birmingham Overlay District

Article
03

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.

ATTACHMENT 5

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

ATTACHMENT 6

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
Page 2 of 5
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
Page 3 of 5
October 9, 2017

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>Promises:</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	\$11,500	\$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 =		(\$1,015,899)			
Rounded to :		<u>(\$1,000,000)</u>			

Ms. Patti Owens
Page 4 of 5
October 9, 2017

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	2,757	\$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

Ms. Patti Owens
Page 5 of 5
October 9, 2017

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

ATTACHMENT 7

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 facades, 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)
COUNTY OF Kalamazoo) SS.

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

11/1/20

ATTACHMENT 8

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 Malt 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



Passionate People Building and Revitalizing our World
Offices in Indiana, Michigan, and Ohio

www.sme-usa.com | Follow us on



For our Confidentiality and Electronic Communication Notices visit www.sme-usa.com/disclaimer.
If you cannot access the hyperlink, please email the sender.

 Please consider the environment before printing this email

ATTACHMENT 9



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 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 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 façades.

The design of the building also includes balcony projections from the third floor on both façades 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.

ATTACHMENT 10

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 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

ATTACHMENT 11

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 created. 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.

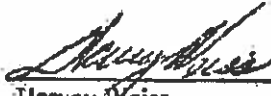
Parking Issues in Downtown Birmingham

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

ATTACHMENT 12



**SIGNATURE
ASSOCIATES**

One Towne Square, Suite 1200
Southfield, MI 48076

1 (248) 948 5000
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

EXHIBIT 2

PENTHOUSE ROOF

ROOF

5TH FLOOR

4TH FLOOR

3RD FLOOR

2ND FLOOR

1ST FLOOR ???

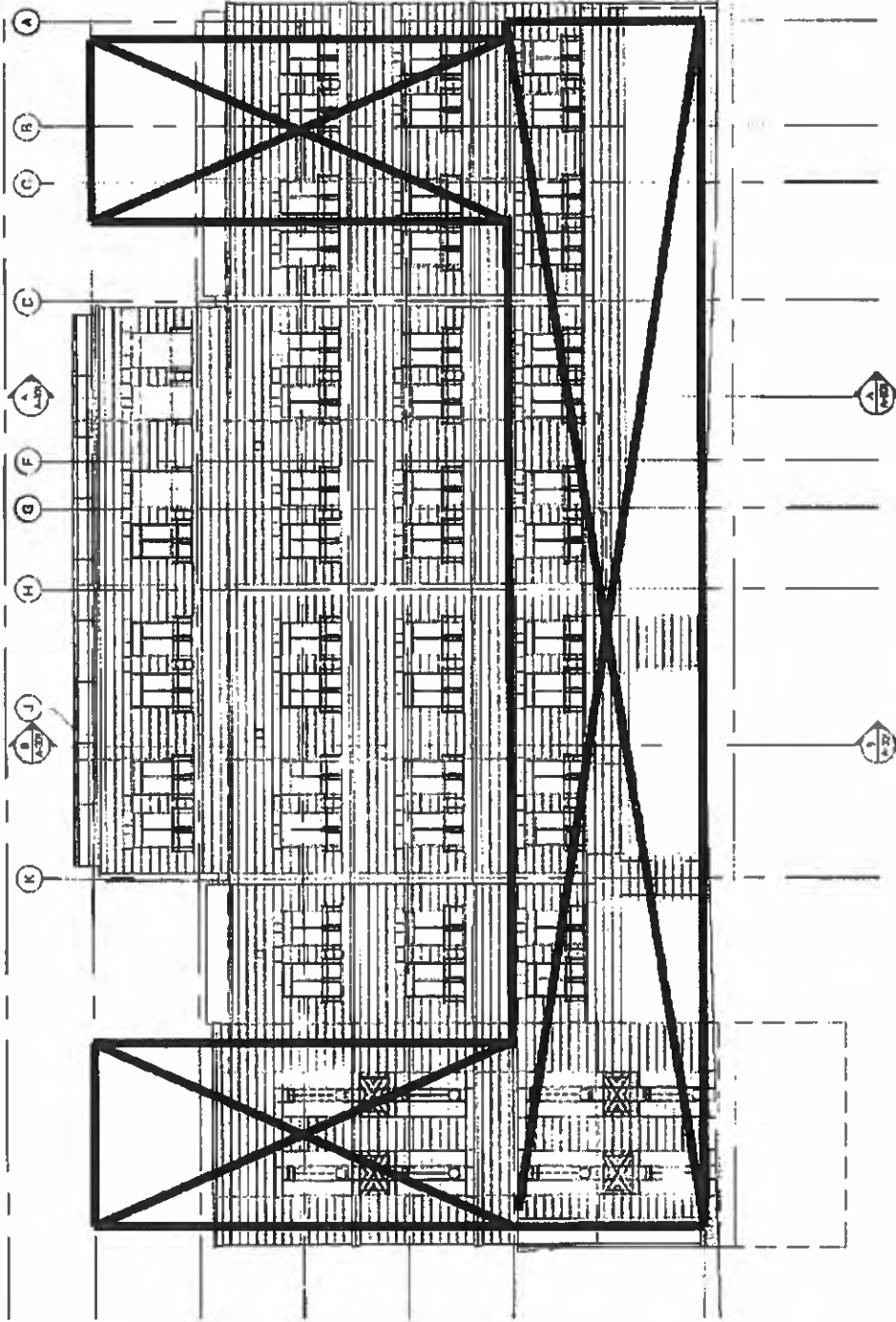


EXHIBIT 3

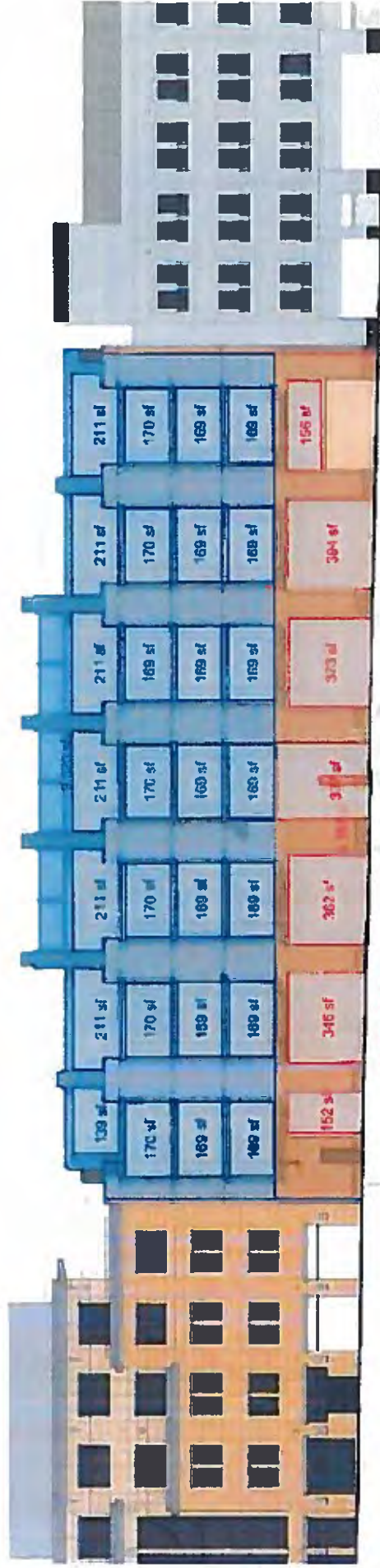


34965 Woodward Avenue + 215 Peabody Street
Birmingham, Michigan 48009



1ST LEVEL GLAZING = 71%
UPPER LEVEL GLAZING = 54%

1ST LEVEL GLAZING = 53%
UPPER LEVEL GLAZING = 50%



1ST LEVEL GLAZING = 70%
UPPER LEVEL GLAZING = 55%

1ST LEVEL GLAZING = 51%
UPPER LEVEL GLAZING = 52%

FRONT ELEVATIONS

CHRISTOPHER J LONGE AIA
ARCHITECTURE
INTERIORS
1000 17th Avenue South, Suite 200
Birmingham, AL 35203

SCALE 1" = 20'-0"

Regular Meeting of the Planning Board
2/28/2018

Page 1

1

2

3

4

5

6

7

8

9 REGULAR MEETING OF THE PLANNING BOARD

10 WEDNESDAY, FEBRUARY 28, 2018 at 7:30 PM

11 CITY COMMISSION ROOM

12 151 MARTIN STREET, BIRMINGHAM

13

14

15

16

17

18

19

20

21

22

23

24

25

Regular Meeting of the Planning Board
2/28/2018

Page 2

1 Birmingham, Michigan
2 Held on February 28, 2018
3 About 7:30 p.m.
4
5 CHAIRMAN CLEIN: The next item is the final
6 site plan and design review for 34965 Woodward, former
7 Peabody's Restaurant and Frame Shop. Before we begin,
8 will be recusing from this conversation as I have
9 throughout as my firm provided some consulting services
10 to the front end of the project and just feel it would
11 be a conflict to participate. I will then ask Mrs.
12 Lazar to take the gavel.
13 VICE-CHAIRPERSON LAZAR: We are here to
14 review the final site plan design review for 34965
15 Woodward, formally the Peabody Restaurant and Frame
16 Shop. This is the request for a final site plan and
17 design to allow for the construction of the new
18 five-story mixed use building. And as Scott had done
19 prior to we will hear from the applicant once Jana has
20 made her presentation at which point the board -- it
21 will come back to the board and the applicant will,
22 obviously, you know, have some questions perhaps to
23 answer and then we'll take it to the public and then it
24 will come back to the board. Bryan, you have something?
25 MR. WILLIAMS: Yeah, preliminarily as is now

Page 3

1 my custom, I want to motion to introduce two letters and
2 one of the letters has a number of attachments but they
3 came in late. I think they should be made a formal part
4 of the record. First is a letter to Jana Ecker from
5 Beier Howlett city attorney dated February 27, 2018;
6 copy of which I think all the board members have. The
7 other's a letter from Dykema Gossett PLLC signed by Alan
8 Greene dated February 27, 2018 with a number of
9 attachments and pages and I think I move that both sets
10 of materials be made a part of the formal record for the
11 meeting.
12 VICE-CHAIRPERSON LAZAR: Okay. We don't
13 need to vote on that I believe, do we?
14 MR. WILLIAMS: Yes, we do.
15 VICE-CHAIRPERSON LAZAR: We do? Did you
16 have comment, Bert, before we --
17 MR. KOSECK: Not regarding that.
18 VICE-CHAIRPERSON LAZAR: Okay. All in
19 favor?
20 ALL: Aye.
21 MR. WILLIAMS: Thank you.
22 MR. KOSECK: I just want to interject and
23 maybe Mrs. Ecker was going to go there anyways but for
24 my own benefit, everybody's benefit, can you -- so this
25 was before us on a number of occasions in the past; it

Page 4

1 did receive preliminary site plan approval, correct?
2 MS. ECKER: Correct.
3 MR. KOSECK: And today it's in front of us
4 for a final site plan approval, so the focus of final
5 site plan approval, so what's approved and where is
6 our -- the focus of our discussion going?
7 MS. ECKER: Well, the community impact study
8 has already been approved as has the preliminary site
9 plan. That generally deals with the placement massing,
10 scaling, et cetera of the building circulation that's
11 with regards to the site preliminary review of uses and
12 then the final set plan; and design is generally we
13 focus more on the design of the building, the
14 architectural details and materials, et cetera.
15 MR. KOSECK: Thank you.
16 MR. WILLIAMS: Jana, if you would during
17 your comments, and I know you will, take us through the
18 process that's happened since --
19 MS. ECKER: I most certainly will.
20 MR. WILLIAMS: -- we have approved this
21 preliminary site plan approval. I have not made a
22 motion to make a part of the record this proceedings
23 either the complaint that has been filed in the circuit
24 court or the answer of the city to the complaint that's
25 been filed in circuit court; I would simply point out

Page 5

1 for the the record that the complaint and all the
2 exhibits and the answer of the city and its exhibits are
3 available under -- on the Internet under Oakland County
4 Circuit Court under the court Explorer program. If you
5 want copies, you have to pay but you can review both the
6 complaint, the exhibits, and the answer online. I
7 believe -- actually, you can't review it online you have
8 to order it if you're looking at it. The city itself
9 has been served, has answered, and I believe that the
10 city commission also has the copies of the pleadings so
11 far. I simply want to point out there's litigation
12 pending.
13 VICE-CHAIRPERSON LAZAR: Thank you,
14 Mr. Williams. Jana?
15 MRS. ECKER: That's correct. And just to
16 add on to that, obviously, the applicant also submitted
17 an administrative appeal to the Board of Zoning Appeals
18 for the planning board's preliminary site plan review.
19 That request for appeal was denied and presumably they
20 may appeal the final; however, the litigation in this
21 case has not -- does not affect what we're doing here
22 tonight and we're going through with the final site plan
23 and design review. You have a letter from the city
24 attorney that states to proceed in the normal course of
25 business and the litigation is handled, obviously, in a

Regular Meeting of the Planning Board
2/28/2018

Page 6

1 different realm.
2 Okay. So this property we all know where it
3 is; it's zone B4/D4; it's the site of the former Peabody
4 Restaurant and Frame Shop that was located at the west
5 end of that site. The Peabody restaurant was torn down
6 in March of 2017; the frame shop in December 2017, so
7 basically it's an empty site at this point. This
8 applicant was before the board back in July. They
9 started July 26th; they came forward with a CIS and a
10 preliminary site plan approval for this site. At that
11 time there was a lot of discussion, the community impact
12 study was accepted. The preliminary site plan was
13 postponed. There was some additional information
14 requested. We did have the property owners on either
15 side coming and talking about their concerns; and the
16 board requested that the applicant provide additional
17 information regarding the interfacing of the proposed
18 building with the two buildings on either side.
19 Now I would like to say that that is not to
20 say they didn't have construction drawings to show how
21 those buildings may or may not be attached, but more or
22 less you wanted to see how the streetscape would look
23 from both the Peabody and Woodward side with the three
24 buildings in a row then. So that is what they did
25 submit; they came back on August 23rd, at that time

Page 7

1 there was further discussion again. Then there was a
2 lot of discussion; at that time there were some comments
3 made by one of the attorneys that is involved in the
4 litigation that was referred to about some statements
5 that the city made on behalf of the north and south
6 facades of the adjacent buildings, so the board
7 requested that we pull all the minutes from those
8 meetings, review them, and come back at a later date to
9 see if any comments were or were not reflected in the
10 minutes. So we did do that, we came back, there were no
11 comments found supporting that comment in the minutes
12 but it came back on September 13th for the preliminary
13 site plan review and at that time the board did make a
14 motion to approve it. The proposed development, it's
15 five-story mixed use development, first floor retail,
16 some office and some residential units. The conditions
17 of approval were that they provide nine total street
18 trees or obtain a waiver from the staff arborist that
19 they provide five pedestrian lights on Peabody, that
20 they submit a photometric plan and specification sheet
21 for all lighting and mechanical units by final site
22 plan; that they provide plans demonstrating three usable
23 off-street loading spaces or obtain a variance from the
24 zone of boarding appeals; that the applicant complies
25 with the request of all departments, and that the

Page 8

1 applicant provide material and color samples at final
2 site plan review.
3 So thus far the applicant has addressed
4 those conditions, all of them except for the issue of
5 the loading spaces, and they will be applying to the
6 board of zoning appeals for a variance for the loading
7 spaces. Obviously, it's a trip -- it's a -- I forget
8 the word. Difficult; it's a difficult urban infill site
9 to provide loading and they have suggested the use of
10 loading on Peabody Street and of course there are has to
11 be through traffic maintained at all times along
12 Peabody, so while there is some loading on Peabody,
13 specifically in front of the Greenleaf Trust building
14 closer to Maple Road, we don't foresee any additional
15 loading spaces necessarily being used; not to say that
16 some trucks may not pull over and use it anyways, but
17 you can't count them as official loading spaces. So
18 they have provided a photometric plan, they have
19 provided five pedestrian street lights on Peabody, they
20 have talked to the staff arborist and obtained a waiver
21 for the trees based on the site. And they have also
22 provided spec sheets on all the lighting and mechanical
23 equipment. They've -- they have complied with the
24 requests of city departments, although I do have -- I
25 will make additional comments on that when we get there

Page 9

1 and they've provided material and color samples, which
2 when we get to that section I'll pass around. There's
3 quite a few.
4 So just to recap, again, what they're
5 proposing is five-story mixed use building that sits on
6 the site; you can see the site plan shown here. They're
7 proposing a residential lobby off of Peabody. They're
8 proposing entrances off of Peabody and also off of the
9 Woodward side. The vehicular entrance is off of
10 Peabody, as you can see down in this location here. All
11 of this was approved at preliminary site plan. They are
12 also just to remind you proposing two stories of
13 underground parking for a total -- I don't know why
14 but -- oh, there we go, okay -- for a total of 88 park
15 spaces below and they also have 11 parking spaces in the
16 right-of-way along Woodward.
17 Now based on their number of units that they
18 have they are required to have 10 units and they need a
19 space and a half for each unit so they need to have 10
20 -- 15 parking spaces is what the zoning ordinance
21 requires. They're providing 88 and they could go to the
22 commission and get credit for the 11 should they need
23 them on Woodward, but they don't because they meet their
24 parking requirements in providing 88 when there's only
25 15 required.

Regular Meeting of the Planning Board
2/28/2018

Page 10

1 What they have done to make some changes
2 since the last time they were here, the two lower levels
3 are pretty much the same. The first floor of the space
4 is pretty much the same. As I mentioned there is an
5 entrance off of Woodward, there's an entrance with an
6 arcade as they call it off of Peabody, which I think
7 they see as being one of the primary pedestrian
8 entrances because it's closer to downtown. There's also
9 a residential lobby off of Peabody and then there's the
10 entrance to the parking deck. What's changed since last
11 time, I think you heard, there was a lot of discussion
12 obviously with the adjacent property owners and while
13 there are zero lot line buildings on both sides and zero
14 lot line buildings are permitted in this zone district,
15 there was some discussion about potentially setting back
16 the building on the north and south elevations to
17 provide a little bit more light and air to the buildings
18 on either side. So since the preliminary site plan what
19 the applicant has done is they have changed those north
20 and south elevations. They are now providing on the
21 south elevation here you can see this area here, this
22 white area, so this is basically an area where the
23 building used to preliminarily came all the way out to
24 the property line. Now it comes out to the property
25 line to match the building to the south, but it also

Page 11

1 then steps back four feet to provide a light wall
2 essentially for light and air to get into those windows.
3 And that extends all along this side of the building
4 except along Peabody here to mirror the other side of
5 the building. Stuart, you had a question?
6 MR. JEFFARES: Is that mirror, the same
7 setback four feet on the other side, too?
8 MS. ECKER: I think it's five on the other
9 side, five and a half or something. It's a little bit
10 more on the other side, but it's not the full 10. So
11 basically there would be about 9 feet between these
12 windows and that was presumably to accommodate the
13 neighbors who were requesting a little bit of relief
14 along that side, even though there is a zero side
15 setback on this property. You are not required to set
16 it in four feet. Now, obviously, the comments that
17 you've seen on other buildings when there are windows
18 that close to the property line they have to use
19 fire-rated glass, that's required by the state building
20 code; so but they can be constructed that way.
21 So this is all on the second floor. As you
22 move up to the upper floors you can also see they
23 maintain that setback on that south property line all
24 the way up to the top. On the northern property line,
25 again, they have also added some indentations to the

Page 12

1 building to accommodate some of the concerns of the
2 adjacent neighbor to the north. Again, they're
3 proposing to set back the building in two locations,
4 four feet here and four feet here along this entire
5 line. You can see this is showing here as a terrace
6 below for the building to the north, so they have
7 basically where that's already open air they've provided
8 open air on either side of that. So this is different
9 from what they proposed last time. Again, this is a
10 zero-foot side setback that's required; they are not
11 required to set it in four feet but they did. They did
12 provide that. So that's what's changed on some of the
13 upper floors and then the top floor, again, has the
14 units provided up here and you can see that it's laid
15 out with a double corridor and then there are some
16 windows obviously on this side here on the north
17 elevation and, again, there are windows on the south
18 elevation where it's setback a little bit.
19 So that's what's primarily different from
20 the last time that you saw this. Couple of other things
21 we now have a roof plan to show the proposed rooftop
22 mechanical equipment. It's in the same place as last
23 time and now they're proposing screen angles because we
24 need all those details at this point. This is the
25 screening here and they're proposing a steel louvered

Page 13

1 system that will be angled in such a way that you can't
2 see that mechanical from the lower floors. With regards
3 to landscaping requirement it's really only the street
4 trees because they're in a downtown overlay and they
5 don't have any surface parking, so they have met all
6 their requirements for street trees. They do point out
7 they're also proposing to use some planters in and along
8 the arcade. Just pull it up here. So this being the
9 arcade and some of this area that's set back here and
10 they're proposing plantings in that space as well.
11 Just one other comment with regard to
12 parking all of the spaces do meet the 180-square foot
13 requirement I just forgot to mention that. They are
14 applying to the board of zoning appeals for the loading
15 space variance. The vehicular circulation as I already
16 mentioned is from the back off of Peabody. In the
17 overlay they're allowed to have an opening 25-feet wide
18 or less and they're proposing 20 feet so they meet that
19 requirement. With regards to pedestrian access, I've
20 already mentioned the — you can access the site as a
21 pedestrian from both the Woodward elevation and Peabody
22 elevation. One of the issues that the engineering
23 department raised was with regards to the width of the
24 sidewalk that was proposed between the building and the
25 tree wells primarily on Peabody Street. They did

Regular Meeting of the Planning Board
2/28/2018

Page 14

1 provide a new blow up today. It's the same thing it's
2 just a blow up so that it's very clear that they do have
3 the required five feet in that area. I did talk to the
4 city engineer today and they indicated that that concern
5 came from the fact that they were reading the civil
6 drawings and in terms of the civil drawings for that
7 distance does not match the architectural site plan, so
8 we do want to make sure that we get that so they're
9 brought up so they're together and they both match.

10 With regards to lighting, they are proposing
11 a lot of different lighting ceiling fixtures and wall
12 fixtures. They do have a photometric plan; we've
13 reviewed the photometric plan. They meet all of the
14 requirements. The fixtures that are proposed are cut
15 off where proposed. There's a total of 17 ceiling
16 fixtures and that's in the area where the building steps
17 back on the east and west elevations and then there's 24
18 wall fixtures proposed for the elevations of the
19 building. So with regards to, you know what, I'm just
20 going to leave that up here a bit. So you can see again
21 this is -- oops -- showing the building as it fits into
22 the streetscape with the Greenleaf Trust, Catalyst
23 building at the north and the Bell Mora building at the
24 south, so this is the Woodward view; this is the Peabody
25 Street view, just so you can see it there.

Page 15

1 So other comments that were received from
2 departments, I mentioned the engineering department was
3 concerned about the loading on the street. The
4 applicant had said, well, you know the other two
5 buildings to the north and south both have loading on
6 the street; well, they're not supposed to have loading
7 on the street either; and in fact the building to the
8 south was required to maintain a 14-foot high entry to
9 their drivethrough so it could be used as loading and as
10 a result of this we went out to the site and verified
11 that they did not provide the 14 feet as they were
12 required, so they are going to have to address that as
13 well, because the loading should not be occurring on the
14 street except in the loading zone that's marked Peabody
15 close to Maple next to the Greenleaf Trust building
16 where it is permitted.

17 Some of the other comments as I mentioned
18 from the engineering department they had the comment
19 about the sidewalk not being five feet wide. The
20 applicant has clarified that yes it is five feet wide
21 and they've provided that drawing. We wanted to add a
22 condition that they make sure that the civil drawing is
23 amended to reflect what's proposed in the architectural
24 site drawing or site plan. Also, the engineering
25 department had some concerns about the spacing of the

Page 16

1 lights and trees. Again, I think maybe that was a bit
2 of an issue with regards to the civil site plan and the
3 architectural site plan as well.

4 Finally, the engineering department notes
5 with regards to the public right-of-way parking on
6 Woodward that two of the spaces at the north end of that
7 zone are angled slightly different from the rest and
8 they're concerned that if a large vehicle is placed in
9 that -- or is parked in that area it might cause issues.
10 You might wish to have the applicant discuss this;
11 however, this is not their property; it's not our
12 property; it's MDOT right-of-way, so any changes that
13 they make to what's there now would have to be approved
14 by MDOT. Engineering also indicated that a handicap
15 space must be added to the parking area along Woodward
16 because as you know city policy has changed and we're
17 now providing a minimum number of handicap parking
18 spaces for every so many public parking spaces. The
19 engineering department -- sorry, the public services
20 department had no comments nor did the fire department
21 or the police department. The only comment from the
22 building department was with regards to the mechanical
23 rooms and the parking levels. They open to the interior
24 exit stairwells and they are not allowed to do that
25 under the code. The only openings to interior exit

Page 17

1 stairways are those for exit access so they have to move
2 that door; have the mechanical room come off of the main
3 parking area. So with regards to design review, let me
4 just...

5 MR. JEFFARES: Jana, can I ask -- it's sort
6 of a site plan question?

7 MS. ECKER: Yes, please.

8 MR. JEFFARES: I don't even know what to
9 call it on the third level there's sort of a bay
10 protrusion. So the property line is the right-of-way of
11 MDOT, correct?

12 MS. ECKER: Correct.

13 MR. JEFFARES: And I'm not sure what our
14 ordinance permits or doesn't permit relative to I know
15 we had some discussion about some other buildings that
16 have sort of --

17 MS. ECKER: That's on our --

18 THE WITNESS: -- space, but this is
19 significant, so I think from a building code standpoint,
20 I think it's fine. From a zoning ordinance standpoint,
21 I'm curious how we deal with something that...

22 MS. ECKER: We do permit projections as long
23 as they're at least eight feet in height off the ground
24 so nobody walks and bumps -- walks along the sidewalk
25 and bumps their head. However, because they would be

Regular Meeting of the Planning Board
2/28/2018

Page 18

1 using the the air rights of MDOT they would have to have
2 an agreement with MDOT --

3 THE WITNESS: That's my question.

4 MS. ECKER: -- to use their property
5 essentially, which is the vertical property at the third
6 floor there. So that might be something that they would
7 have to work out with MDOT. If they couldn't, then they
8 would not be able to put that there.

9 MR. JEFFARES: Our ordinance in theory would
10 allow if they're five window assemblies that each one
11 could project out?

12 MS. ECKER: Well, I don't think our
13 ordinance is entirely clear and concise on projections
14 and that's the only reason why I'd bother the zoning
15 ordinance. I can't find anything in there that says you
16 could not do this at this time.

17 MR. JEFFARES: Thank you.

18 MS. ECKER: So with regards to the materials
19 that are proposed, you can see this is the Woodward
20 elevation. They're proposing granite for the base of
21 the building. I'm going to start passing around some
22 materials. Okay. All right. Chris is going pass out
23 materials. Granite for the base of the building in a
24 charcoal gray color. Tan stone panels for the facade of
25 the first floor. Masonry veneer in a light salmon

Page 19

1 color.

2 MR. LONGE: Sandstone.

3 MS. ECKER: Masonry veneer in a light salmon
4 color for second, and third, and fourth floors. I think
5 you had that. It's heavy, yes. So that's for the first
6 floor. This is for the upper floors that's coming
7 around.

8 MR. LONGE: That's the size, this is the
9 color. A little bit lighter than sandstone.

10 MS. ECKER: Metal composite panels to clad
11 the fifth floor and sections of the rooftop screening.
12 The rooftop screening itself is the louvers metal as I
13 mentioned, as well as some of the awnings and canopies
14 that are proposed on the Peabody and Woodward elevation.
15 The glass that's proposed for the windows, now here's an
16 area where we clarified our ordinance, 80 percent
17 visible light transmission is what's allowed. This is
18 the glass that's proposed. It's a steel window and door
19 system on all elevations, ultra white, ultra clear on
20 the first floor with 80 percent visible light
21 transmission, so it does meet the requirement. Also as
22 you know on the first floor they're required to have at
23 least a minimum of 70 percent glazing on the first floor
24 from 1 to 8 feet above grade. The applicant indicated
25 that they do in fact meet that requirement.

Page 20

1 On the upper floors it's a similar glass,
2 it's the same ultra white, clear but its has visible
3 light transmission level of 78 percent, which is allowed
4 on upper floors. So it has to be greater than 70
5 percent on the upper floors so they have 78. It's
6 slightly more tint on the upper floors but only by 2
7 percent. On the upper floors, again, they're only
8 permitted to have up to 35 percent glazing on the upper
9 floors and they've indicated that they do meet that
10 requirement. Couple of other things. Metal pedestrian
11 scaled canopies. Here I'll pass this around. To
12 provide architect --

13 MR. WILLIAMS: Before you leave the glazing
14 requirements, have we looked at that? I know you said
15 they represented the clients?

16 MS. ECKER: I did say that because the
17 reason -- what we do there is we have when they submit
18 the plans they do it through their CAD program or
19 whatever software they're using so they can run the
20 numbers on the glazing. It's very difficult for us to
21 hand calculate that, so because of the comments that
22 were raised in the Dykema letter today with regards to
23 basically disagreeing with the -- or the glazing levels
24 that were provided by the applicant, I did ask them to
25 do a similar breakdown as to what was shown in the

Page 21

1 Dykema letter to prove that they meet or do not meet the
2 glazing requirements on the first and upper floors,
3 which is what you have in front of you today.

4 And, again, the Dykema letter just came in
5 yesterday so I did just ask them to bring today showing
6 that they do meet the glazing requirements.

7 So with regards to the design of the
8 building, obviously, you have to have a vertical
9 proportion on the building. These are all some of the
10 design standards that are in the downtown overlay and
11 they all come from the 2016 plan. You have to have
12 first floor store fronts directly accessible to the
13 sidewalk, which they have. No blank walls facing a
14 public street and the main entry has canopies on
15 different areas along this building and pedestrian scale
16 detail on the first floor. Now this case the front of
17 the building under the zoning ordinance is Woodward but
18 realistically regardless of the technical zoning review
19 it has two fronts, one on Peabody and one on Woodward;
20 both of them contain levels of detail at the pedestrian
21 scale for patrons that are going in and out of the
22 building. We also looked at the percentage of materials
23 that are what we call high quality building materials,
24 brick, stone, glass, et cetera and they have met that.
25 They have to have at least 90 percent of those

Regular Meeting of the Planning Board
2/28/2018

Page 22

1 materials; they do have 93.5 percent on the Woodward
2 facade and 92.5 on the Peabody facade, both of which are
3 above the 90 percent. So that's met as well.

4 In addition in the 2016 plan, this is part
5 of what we call the Maple gateway block and the Maple
6 gateway was envisioned as the main entrance to
7 Birmingham central business district. And the plan
8 recommends that buildings should be designed with
9 reference to the other share with -- to other buildings
10 sharing in similar height, mass, and as much
11 architectural syntax as possible. As you can see this
12 proposed building here does match the height of the
13 Greenleaf Trust building to the north. It's fairly
14 similar to the Balmoral building to the south; it's
15 obviously the same in terms of its footprinted massing,
16 et cetera. Also has a modern architectural design which
17 is featured in the abutting buildings.

18 So that's essentially it with regards to the
19 final site plan and design. I'm happy to answer any
20 other questions you have. Based on a review of the
21 plans submitted, we would recommend that you recommend
22 approval; that you provide approval for the final site
23 plan and design review for 34965 Woodward and 215
24 Peabody with the following conditions: One, the
25 applicant submits plans demonstrating the size and

Page 24

1 CHAIRMAN CLEIN: Robin?

2 MR. BOYLE: Just comment that MDOT controls
3 the skies, never mind the roads but we'll --

4 MR. WILLIAMS: They do a better job with pot
5 holes in the sky. Never run into one.

6 MR. BOYLE: Just to be clear when a
7 pedestrian were this to be built as presented to us
8 tonight, a pedestrian walking along would they see a
9 space between the buildings to the north and the
10 buildings to the south or will they touch?

11 MS. ECKER: I think that you want to direct
12 that question to the applicant's architect because
13 that -- yeah, I'm not the expert on that. So I think we
14 should ask them and, obviously, as I mentioned earlier
15 all of those details, specific construction details, and
16 how they'll touch, if they touch will be reviewed during
17 the building permit process but Chris can you answer
18 that?

19 MR. LONGE: Sure. They both physically
20 touch at the corners with the exception of would be the
21 southwest corner where the Balmoral building as it faces
22 the parking structure, their building is five foot some
23 inches off of their property line above the second
24 floor, so our building comes to effectively our property
25 line but there will be a five-foot gap there, which you

Page 23

1 location of three usable off-street loading spaces or
2 obtain a variance from the board of zoning appeal, which
3 they indicated they do intend to do. Two, that they
4 comply with the requirements of city departments; and I
5 would also add in three as a result of today's findings
6 that the applicant update their civil plans to match the
7 architectural site plans that were submitted.

8 VICE-CHAIRPERSON LAZAR: Okay, Jana, thank
9 you very much. Are there further questions from the
10 board? Stuart?

11 MR. JEFFARES: Jana, when you talk about
12 massing is that -- just let me give you what I'm
13 thinking and tell me if this is on the right track. The
14 buildings on either side were built X high up to the
15 pretty much the max that the ordinance allowed and they
16 were built out as much as pretty much as the ordinance
17 allowed out to the lot lines and so this building we
18 would expect to do the same kind of things?

19 MS. ECKER: Correct. You know, I mean, a
20 simple example of something that wouldn't be consistent
21 massing wise, you know those places where you see the
22 buildings have come in and there's a little house
23 sitting here and there's five-story buildings on either
24 side. Obviously, that's not consistent massing. This
25 is consistent within a couple of feet.

Page 25

1 can actually see in the elevation.

2 MR. BOYLE: Miss -- can we see that, Jana?

3 MS. ECKER: Well, you can kind of see it
4 here, because their building steps back.

5 MR. LONGE: Balmoral's building steps back.

6 MS. ECKER: Balmoral's, yes. And, again,
7 keep in mind for the Catalyst building and the Balmoral
8 building there will be areas in the center of the north
9 and south facade that will not touch because those are
10 those areas where they've recessed at four feet now.

11 MR. WILLIAMS: But you can't see those from
12 the street?

13 MS. ECKER: You can't see those from the
14 street, right. Except for in this little area here.

15 MR. WILLIAMS: That's where we need the
16 aerial.

17 MR. BOYLE: But I'm right in thinking -- I
18 don't want to press this, but the pedestrian would not
19 see a gap; am I right?

20 MS. ECKER: Correct. Except for this tiny
21 area right here where they'd be able to look down there
22 and see some of where the wall is set back five feet on
23 the Balmoral because they could look.

24 MR. BOYLE: But not on the first floor?

25 MS. ECKER: Not on the first floor. They'd

Regular Meeting of the Planning Board
2/28/2018

Page 26

1 both be on the other side of Woodward.
2 MR. BOYLE: That's my point. The pedestrian
3 walking along would see a street wall?
4 MS. ECKER: A street wall, yes. And a
5 continuous street wall from top to bottom at the other
6 three locations.
7 MR. BOYLE: Fine. Thank you.
8 VICE-CHAIRPERSON LAZAR: Other questions
9 from the board? Janelle?
10 MS. WHIPPLE-BOYCE: Jana, so one is retail,
11 floor one. Two and three are office. Four is something
12 called commercial, what is that can you tell us about
13 commercial with the one small unit on the end?
14 MS. ECKER: Commercial basically it's
15 defined in the zoning ordinance people have become very
16 creative at finding uses that do not fall under office
17 but are commercial. It's a very gray area and I think
18 it's something that we're probably going to be
19 addressing ordinance-wise as we talk about retail on the
20 first floor because this is an issue that comes up
21 repeatedly. The Balmoral building, for instance, to the
22 south has the same thing first floor retail, two floors
23 of office, one floor of commercial.
24 MS. WHIPPLE-BOYCE: With a residential unit
25 as well?

Page 27

1 MS. ECKER: Well, if the unit goes up to the
2 fifth floor, yes. So it is kind of one of those gray
3 areas that folks have got the two 'cause you can only
4 have a maximum of two floors of office and there are
5 some issues with that, obviously, not only with the gray
6 area on what's commercial; is it commercial but not
7 office; that's what they have to prove to the building
8 official. If it's commercial but not office. And then
9 the other area that we've brought this up during the
10 retail discussions is when people do the retail in the
11 redline retail district 20 feet, then they have office
12 in the back but they already have two floors of office;
13 you know, that's an issue there. So it is a gray area
14 in our ordinance.
15 MS. WHIPPLE-BOYCE: Can I just ask one more?
16 What would be an example of commercial? Can you think
17 of any that you know of?
18 MS. ECKER: I'm trying to think what some of
19 them that are out there and I can't think off the top of
20 my head what they are. I'm assuming that -- well, I
21 don't know.
22 MS. WHIPPLE-BOYCE: Okay.
23 MS. ECKER: And each one's a little unique
24 and makes their own argument when they come forward to
25 try to get occupancy for that space.

Page 28

1 MS. WHIPPLE-BOYCE: Okay, thank you.
2 VICE-CHAIRPERSON LAZAR: Any further
3 questions for Jana? Okay. Would the applicant like to
4 come forward please? Thank you, Jana.
5 MS. ECKER: You're welcome.
6 MR. LONGE: Chris Longe again. I don't have
7 a whole lot to add to what Jana's presented. I mean,
8 it's pretty clear and I think the clearest thing is that
9 we haven't changed a lot from the first time we were
10 here preliminary. Any change that we have made has been
11 made with some consultation with our neighbors to the
12 north and to the south and, in fact, we've reacted to
13 them with our building. I think you might even remember
14 I think the first meeting the Balmoral architect
15 suggested that four to five feet would be what they were
16 looking for, so that became as far as construction, too,
17 with our construction technique is roughly four feet the
18 setback, so we have reacted to that. We've taken the
19 floors from two and three all the way up to five, you
20 know, hollowing out the center area, providing windows
21 as I think even Bert suggested. Now we've lost 2,800
22 square feet which at 45 bucks a square foot is roughly
23 125 grand a year lost revenue and on top of that we got
24 two walls that would typically not be seen that are now
25 the same materials that the facade of the building is,

Page 29

1 which is another I'm sure 500, 600 grand. So it's not
2 an inexpensive thing that we've done to accommodate our
3 neighbors in the interest of being good neighbors. And
4 it's exactly as I think Janelle suggested early on and
5 we've endeavored to that, so this is our reaction to it
6 and Jana explained it very well. Answer questions.
7 VICE-CHAIRPERSON LAZAR: Questions from the
8 board?
9 MR. JEFFARES: This might be a little bit
10 more for Jana, but the building to the north and south
11 do they have one floor of parking or two?
12 MS. ECKER: Just one. They each have one.
13 MR. JEFFARES: So it's got to be much less
14 spaces then?
15 MR. LONGE: It is.
16 MS. ECKER: Right. The one to the north I
17 believe is 10 parking spaces and the one to the south I
18 want to say like 13, but I'm sure if I'm correct.
19 MR. JEFFARES: So you guys are taking way
20 much -- way more off of the parking system at your
21 expense?
22 MR. LONGE: Correct. Well, frankly, I mean
23 certain buildings took up passes years ago, you know,
24 that for somebody who's been in this building where I'm
25 at right now for 18 years I can't get a pass, so.

Regular Meeting of the Planning Board
2/28/2018

Page 30

1 VICE-CHAIRPERSON LAZAR: Any other questions
2 for the applicant? Robin?
3 MR. BOYLE: On the same line I don't know
4 whether you'd talked to this but could it be possible
5 that parking your building could become residential for
6 being connected to the users of the commercial and
7 office property that you're building?
8 MR. LONGE: I'm probably the wrong person to
9 ask that but as we represented early on we're not going
10 to restrict parking necessarily to the public because
11 it's a public building; people come in for appointments
12 and, obviously, the need for the parking for those who
13 are tenants in the building, but I can't answer that;
14 the developers here I'm certainly sure he could address
15 it a little bit.
16 MR. BOYLE: Well, maybe we can address the
17 city planner on that?
18 MS. ECKER: Could it be run as a private
19 parking facility?
20 MR. BOYLE: Yes.
21 MS. ECKER: Yes, with the exception of 15
22 spaces because 15 are required exclusively -- not
23 exclusively -- are required for the residential unit, so
24 15 of them would have to remain completely for the use
25 of the building and, yes, they could do that. I don't

Page 31

1 Imagine that they are but the 555 does that.
2 MS. WHIPPLE-BOYCE: Birmingham place.
3 MR. JEFFARES: As somebody who parks in that
4 Peabody deck every single day, I would much rather have
5 it be for the all day business parkers, fill them up
6 with those guys, and the guys who come in and out to
7 transact a little bit of business, let them park in
8 Peabody; just increases my chances of finding a spot.
9 MR. LONGE: Got to be there early.
10 VICE-CHAIRPERSON LAZAR: Any other questions
11 for the applicant?
12 MS. ECKER: You know, and can I just add one
13 thing? I forgot to mention that they did not provide
14 their garage door material.
15 MR. LONGE: Because there isn't one.
16 MS. ECKER: Well, it looks like there's one
17 way back in; no? Okay. So it looks open at the street
18 and then I thought I saw a line there.
19 MR. LONGE: I don't think we have one. If
20 we did have one, it would be glass.
21 MS. ECKER: It looked like it was set quite
22 a bit from the street.
23 MR. LONGE: 'Cause we're using that for
24 loading and unloading of trash and such, so. If there
25 was a garage door, it would be easily 20 feet back. But

Page 32

1 there isn't one at the moment.
2 MS. WHIPPLE-BOYCE: Thank you.
3 VICE-CHAIRPERSON LAZAR: Any further
4 questions? Okay. Take it to the public.
5 MR. GREENE: Thank you. I'm the infamous
6 Alan Greene from the letter. I'm here on behalf of the
7 ownership of the Balmoral building, Woodward Brown
8 Associates and the Greenleaf Trust Building, Catalyst
9 Development. We spent a lot of time in the preliminary
10 site plan going over our objections to the building.
11 I'm not going to go through all that again. You know,
12 our basic concern's really related to how the buildings
13 would be constructed, the fact that we had numerous
14 windows on our buildings and facades that were of equal
15 quality from our other facades and the original building
16 was going to be abutting right up against that. Just to
17 clarify the Balmoral building all of the upper floors
18 are set back five feet essentially except for the one
19 stairwell pier. So, you know, there's a fairly
20 substantial amount of space that was not built to the
21 maximum or to the property line and we have -- what did
22 I say -- 50 windows on that side. I do appreciate
23 the -- our neighbor and their willingness to sit down
24 with us. We did have dialogue; we've had discussions
25 but we had a lot of questions, too, and we still have

Page 33

1 concerns about what is being built. And I mostly have
2 questions, because these are final site plan questions I
3 want to ask.
4 I think I heard one answer just to the
5 presentation is that the final site plan documents were
6 very unclear about what was happening on the north and
7 south facades abutting our buildings. It's unclear,
8 they're not labelled in terms of material. It's a
9 single colored material and I think I just heard that
10 the nature of the material that's going to be on those
11 facades will be identical or the same or carried through
12 from what's on the east and west facades. So that was a
13 really important issue for us because whatever we're
14 going to look at, we were hoping to look at whatever
15 high quality material would be used, which was different
16 because in the preliminary site plan there really wasn't
17 much information on that and it looked like they were
18 just painted block walls.
19 So, again, it was not our place; we've never
20 been here intending to, you know, be a critique -- be a
21 critic of the architectural design; I mean, the
22 building's a nice building. But we wanted to make sure
23 that the facades were compatible and similar, so if
24 that's clarified my question is what are the materials
25 on the north and south facade, because it's not really

Regular Meeting of the Planning Board
2/28/2018

Page 34

1 clarified in the plans? The other thing of great
2 concern still is how are these buildings going to be
3 constructed and the fact that there still are a
4 significant number of windows that are blocked. It is
5 unclear to us from the plans -- I'll start with the
6 Balmoral now -- it's unclear to us from the plans how
7 the first floor property of the Alden building relates
8 to the first and second floor of the Balmoral building.
9 It appears that because of elevation changes, although
10 it seems to be represented there that the two first
11 floors would abut each other the whole way, it really
12 looks like it's going to be that the Alden building is
13 going to go all the way to the property line also on the
14 second or part of the second floor the Balmoral
15 building, which means you're going to have potentially
16 either windows of the second floor completely blocked or
17 partially blocked. It would be a very bizarre detail
18 and so that's a question that we have. Our architects
19 say that it looks like it's going to block those windows
20 or partially block those windows, but we can't tell from
21 the drawing, so that's another question we would have of
22 Chris in that regard.

23 Also, what we had tried to persuade our
24 neighbor to do is, look, why don't you just move back
25 your facades above the first floor five feet away -- I'm

Page 35

1 still speaking of Balmoral, okay -- five feet away from
2 the Balmoral so each building is inset an equal amount.
3 You can get windows on the building. Yes, you'll lose a
4 little bit of rentable area but you'll gain the fact
5 that you'll have more valuable area because there are
6 windows there and your people will be able to look at a
7 really nice facade that we built and hopefully we'll be
8 able to look at a nice facade that you built ten feet
9 away, so they started that process; they elected to do
10 it four feet rather than five feet. I think we're five
11 and a half feet recessed, but they didn't do it on the
12 Peabody Street side by the pier there, which blocks
13 about two windows per floor, four floors up, and then it
14 also appears that the entire first -- second floor of
15 our windows would be blocked. So those are serious
16 issues for us.

17 On the Catalyst side we had a similar --
18 there were other positions that Catalyst had. Catalyst
19 building is set back in different spots significantly
20 greater, like those balconies are set back 15 feet and,
21 again, there was a discussion about why don't you set
22 back your building five feet across the back you can
23 have windows and they'll be some separation of the
24 buildings and it will be easier to construct and there
25 will be light and air provided for that building. What

Page 36

1 they ended up doing is in the least important area,
2 which are the two ends of the building where the --
3 where there's fire-rated glass windows on the Catalyst
4 building, that's where they set it back five feet but in
5 the center of the building they left it right to the
6 property line and then added fire-rated windows, so it
7 appears to be a situation where you got the -- their
8 building built right to the balconies of these
9 residential units now with fire-rated windows or
10 whatever kind of windows are there; people looking right
11 into the residential, you know, balconies or people in
12 the other building. So that's also objectionable; we're
13 not clear how they even plan to construct it in that
14 way.

15 And then, finally, I have one other question
16 I think it was raised in the discussion about what kind
17 of windows are on those elevations. It is not, again,
18 the site plan has none of those details. There's no
19 details about the two elevations; what the materials are
20 on the south and north; do they carry through the entire
21 elevation; what kind of windows are on the north and
22 south; are the windows facing the Balmoral with these
23 fire-rated windows; are they the kind of glass that was
24 just shown to you? We don't know that because it's not
25 specified on the plans. So, again, I'm trying to limit

Page 37

1 my discussion here to some of the final site plan
2 details. We still object for all the many reasons that
3 we objected before that the plan does not meet the
4 requirements of the master plan; does not meet the
5 requirements of your zoning ordinance on various
6 standards; that it impacts the value of our building;
7 there isn't sufficient parking available and that's
8 going to be a negative issue; that there are
9 constructability issues, how they're going to build the
10 buildings without trespassing on our property or
11 damaging our property. All those things. But I
12 remember this commission you were very patient in
13 listening to us for three meetings and my architects but
14 I still remember one of the things that you guys said or
15 several of you comment is we'll get more of these
16 details during final site plan and those are the kind of
17 details that we're asking about here. What is the
18 design and materials on the north and south elevation;
19 what are the windows; how's -- you know, how are they
20 going to block what windows on our side and how will
21 they be attached or constructed? That's all I have to
22 say. Thank you.

23 VICE-CHAIRPERSON LAZAR: Any other comments
24 from the public? Chris do you wish to respond?

25 MR. LONGE: I do. With respect to the

Regular Meeting of the Planning Board
2/28/2018

Page 38

1 material and the windows they are indicated on the
2 elevation. You know, we have a one blow up of the
3 elevation that indicates what is what. The same
4 materials that are on the facade of the building both
5 the Woodward and Peabody side are going to be replicated
6 on the north and south sides, the sides you can't see.
7 So I wanted to assure Alan that is the case.
8 Secondarily, the glazing is identical in
9 terms of it's clarity and the framing. It does not have
10 to be fire glazed. There are, you know, codes that kind
11 of govern that sort of thing; we're allowed a certain
12 percentage of glass to wall area. I think it's 15
13 percent for anything between three and five feet and
14 five feet to ten feet is 25 percent and once you're
15 beyond that, it can be unlimited amount of glass. When
16 you are between zero and three it has to be fire-rated
17 glass. So we're beyond three feet so we can have 15
18 percent of our wall surface with unprotected windows, so
19 I want to make that clear as well they don't have to be
20 fire glazed. And one more point, the configuration of
21 the building above the second and third floors were not
22 something that we presented. It was something that we
23 responded to. The architect we met separately with the
24 Balmoral folks and we met again with the Catalyst folks.
25 And with respect to the Catalyst Building I did actually

Page 39

1 take the effort -- make the effort to propose something,
2 which was going close to the property line at the two
3 east and west sides of their building and then stepping
4 our building back to sort of reflect their terrace and,
5 In fact, their architect said, well, how about you try
6 it this way. So I took that drawing and we sort of
7 replicated in what you saw tonight, so, you know, it's
8 for --
9 VICE-CHAIRPERSON LAZAR: Can you operate a
10 little bit quicker on the actual concerns about
11 construction and imposing on their property?
12 MR. LONGE: Well, we've actually had
13 discussions about that; there's actually been some back
14 and forth with our counsel and Alan to kind of negotiate
15 those kinds of things. We're actually at the threshold
16 of producing a schedule of activities, so that they have
17 certainty what -- they know what's going to happen, you
18 know, throughout the course of a year or 18 months or
19 whatever it takes to construct. We were hoping to
20 obtain a license to actually operate in and around their
21 building with proper notice and we're hoping to have a
22 long-term maintenance agreement that benefits both
23 properties to north and south of us.
24 VICE-CHAIRPERSON LAZAR: All right.
25 MR. LONGE: That's all been discussed over

Page 40

1 the course of past several months.
2 VICE-CHAIRPERSON LAZAR: Okay. Any
3 questions of Chris before he leaves? All right. Bryan,
4 do you have something to say. Are there any further
5 comments from the public? I'm going to bring it back to
6 the board.
7 MR. WILLIAMS: Well, yeah, I have a couple
8 of comments. I happen -- not happened -- happen, I'm
9 still practicing law. That's a comment on paragraph 51
10 of the complaint. The concern I have is these materials
11 showed up late yesterday; I've been busy all day; I
12 really have not had an opportunity to read the materials
13 submitted by Mr. Greene kind of in a cursory matter;
14 it's a three page letter and, Jana, I know you've
15 addressed at least one of the issues today. But I am
16 reticent to approve tonight where I haven't had an
17 opportunity to read 100 pages or whatever this is that
18 Mr. Greene has submitted and I want -- I think it's
19 important, at least I will express my view, it's
20 important that I want to read what he says and I want to
21 read it from cover to cover and I hadn't have the
22 opportunity because of the submission.
23 Now I'm not being critical of anybody
24 because under our timing the original site plan
25 materials weren't available until late Friday, and so I

Page 41

1 think they responded as quickly as they could. It's
2 just under my schedule I didn't have a chance read it; I
3 didn't get it until Tuesday night. So I want to read
4 it, which means I'm not going to vote yes and I'm not
5 going to vote no on any motion tonight other than to
6 postpone consideration for a period of two weeks.
7 The second thing I'd like for the record
8 because we didn't have it at preliminary site plan
9 approval and I also want to make a comment that the
10 planning board didn't adopt my written decision; it
11 wasn't a decision it was comments I prepared in advance
12 and the motion was made on the basis of materials that
13 had been submitted four and five days before the
14 preliminary site plan; it wasn't on the basis of my
15 comments. So my comment wasn't in the form of a
16 decision in any event, but I want the time to review his
17 comments. I also want the planning department this time
18 to -- I'm requesting that Jana respond specifically to
19 the comments that the Balmoral and the Catalyst Building
20 has made in the Greene letter about the site plan and I
21 want the building department to respond to here's what
22 the plans say; here's what the -- Mr. Greene's clients
23 say; here's the conclusion of the building department as
24 to validity of those assertions. You've already pointed
25 out one, at least one as referenced in the letter, but I

Regular Meeting of the Planning Board
2/28/2018

Page 42

1 want something for the record.
2 Let's bear in mind this is a dispute that's
3 in litigation and I think we have to remember that and
4 at some point a judge is going to look at this and I
5 want the judge to have the complete record. I want the
6 judge to understand in my own case that I've had the
7 opportunity to read all of the materials in detail
8 before saying yes or no to any final site plan approval.
9 I want to say one other thing that I would
10 expect the parties and that is I don't want materials if
11 we postpone this two weeks delivered on Tuesday before a
12 Wednesday meeting. If they are, I won't read them. And
13 so if everybody's materials aren't in by Tuesday of next
14 week, which gives the planning department an opportunity
15 to respond by Friday, you're too late. One comment I
16 would like Mr. Greene to address specifically he
17 raises -- and I did have an opportunity to read this
18 because it was in the -- attached to the complaint. And
19 I'll pull up a copy now. On page four of the materials
20 that were submitted to the Board of Zoning Appeals a
21 statement is made at the last sentence of paragraph --
22 second complete paragraph, full paragraph, the
23 petitioner's here gave up rentable square footage
24 desired and mandated by the city. I think Jana has
25 addressed that issue by saying there's nothing in the

Page 43

1 record to support the claim that we mandated in effect
2 the setbacks of the other two buildings. Mr. Greene,
3 prove your case. Show me the documents where you can
4 make this statement. If you can't, correct the record.
5 If you can, I'd appreciate seeing the materials, because
6 basically you've heard the planning department say that
7 the statement is incorrect; submit it in writing in two
8 weeks or withdraw your comment now.
9 MR. GREENE: I am not withdrawing my
10 comment; I am not litigating my case in front of you.
11 MR. WILLIAMS: Okay.
12 MR. GREENE: If you look at the materials
13 though, there are affidavits in that material that talk
14 about the communications and if I could -- you know how
15 things work in this community. There were numerous
16 meetings --
17 VICE-CHAIRPERSON LAZAR: Sorry to interrupt,
18 but it did come back to the board.
19 MR. GREENE: Okay, I'm sorry.
20 VICE-CHAIRPERSON LAZAR: It's alright.
21 MR. WILLIAMS: If you don't want to say
22 anything, don't say anything. I'm sure you'll consider
23 my request to be ridiculous which is one of the --
24 MR. GREENE: No.
25 MR. WILLIAMS: -- comments you made in the

Page 44

1 pleading. Thank you.
2 MR. GREENE: I was going to respond but I
3 have to observe.
4 VICE-CHAIRPERSON LAZAR: Thank you.
5 MR. WILLIAMS: You've heard my request. I
6 don't want to act on this until I've read Mr. Greene's
7 materials. I think it's appropriate that I do so. I
8 lead to the rest of you how you want to proceed.
9 MR. KOSECK: And I'm trying -- I'm trying to
10 simplify this, so for me the fact that two people aren't
11 getting along or three people or whatever it is, you
12 know, in my mind I'm not sure I have to read that 'cause
13 anybody can come up here and throw a lawsuit at somebody
14 and, you know, we're going to back off and push things
15 off. I mean, as I view this thing, as I think I said
16 the last time, we're here for final site plan approval,
17 so the position in my mind -- because we voted for it; I
18 don't recall if it got unanimous support or not -- but
19 it got approved, so the placement of this building, the
20 form of the building, the placement of the walls in the
21 north and south elevations in my mind it all complies in
22 a, you know, coincidental way for a previous owner of
23 the site to the south, you know, I looked at that
24 project and I designed it to the property line and I
25 knew it was a fire wall, because that's what the

Page 45

1 building code deems and if you put windows on it, it's,
2 you know, as long as I've been here we've never mandated
3 it. I think there was a presentation earlier that
4 showed all kinds of places in our city that have
5 buildings adjacent to one another where some are, you
6 know, one might be five-stories the other one's
7 one-story next to it. That happens where we have blank
8 walls. Yes, I think we encourage it and I think
9 coincidentally the Varsity Shop site may have been in
10 front of us maybe the same time this has been presented.
11 Yeah, let's just not make it boring and through that I
12 think there maybe some brick patterns or inserts or
13 reveals or something. We didn't say it has to be glass.
14 I've never said it; I've never heard anybody say that on
15 this board.
16 So in my mind this complies; I'm trying to
17 not get caught up all the legalities. I think that's up
18 to somebody else. I'm looking at the fenestration, the
19 materials, the lighting, the archscaping, the
20 landscaping, all the other stuff. So maybe someone can
21 convince me that, you know -- and as you I'm busy, too,
22 and I get this stuff late and I can't read through all
23 of it and maybe understand and highlight it but in my
24 mind we can move forward on this.
25 VICE-CHAIRPERSON LAZAR: Stuart.

Regular Meeting of the Planning Board
2/28/2018

Page 46

1 MR. JEFFARES: Actually I have some
2 questions for Bert, just so I understand this. So the
3 building you were talking about Varsity Shop that was
4 Victor Saroki who was working on that and he actually
5 came back; we asked him to maybe vary the brick because
6 we knew there was visibility of a building that could
7 lay up next to it. He knew that. He came back with and
8 actually punched in a couple of windows but he said I
9 know a building can go up next to it because of the
10 code, the ordinance, and he put fire-rated glass. So
11 here's my question for you is why would you put in -- I
12 mean, he said a couple of things, fire-rated glass costs
13 way more; is that true? And you can't really -- it's
14 not very clear when you look through it, so it's really
15 distorted, so why would you put that up unless you
16 anticipated a building would be within zero to three
17 feet? I mean, is there any time you would take that
18 expense to put in a distorted expensive window and once
19 you had a good idea there's going to -- there could be a
20 building right there?
21 MR. KOSECK: And I'll answer it. We saw
22 something else I think a month ago when there was a
23 historic building, a one-story building here on Maple
24 and a five-story building maybe next to it. So that has
25 I think the five-story building has windows on the

Page 47

1 side --
2 MS. WHIPPLE-BOYCE: It does and it's
3 fire-rated.
4 MR. KOSECK: It's fire-rated. So maybe that
5 owner said, well, that's a historic building next door.
6 I mean, it's probably not going to change maybe and took
7 the risk. But in my mind, you know, I tell my clients
8 if you choose to do it, first I think the city has to
9 accept it from a building code standpoint and there's
10 probably some paperwork that says, you know, that if
11 that, you know, that you have to do fire-rating and
12 other sorts of things and then you do it and, you know,
13 somebody else and, you know, in my mind, you know, I
14 didn't think Peabody's was going to be there for another
15 50 years or 100 years, so.
16 MR. JEFFARES: The rumors of its demise were
17 for the last 15 years. I have one another question and
18 this is for Chris: How many total windows are blocked
19 on either building there? I mean, where it's right up
20 to the building -- your building that's up to the lot
21 line and there's a window there?
22 MR. LONGE: On the south side abutting
23 Balmoral there are no windows blocked. On the north
24 side, I don't have it off the top of my head, but --
25 there are -- you know, because we're four feet off the

Page 48

1 property.
2 MR. JEFFARES: So it's zero and zero?
3 VICE-CHAIRPERSON LAZAR: Robin.
4 MR. BOYLE: I was going to make a motion.
5 MS. WHIPPLE-BOYCE: May I say one thing?
6 MR. BOYLE: Yeah, go ahead, sorry.
7 MS. WHIPPLE-BOYCE: It's okay. So I came
8 here tonight prepared to approve this or give a yes vote
9 and I think Bryan makes a really good point and I think
10 it maybe worth the two weeks for a review of this packet
11 that probably most -- none of us read because we just
12 got it yesterday. And just to play it safe just to as
13 this proceeds and we'll be a court case and why wouldn't
14 it be worth our time to make sure that we've covered all
15 of our bases before we approve this building tonight?
16 That's my comment. I think two weeks is not asking a
17 lot to give us all an opportunity and maybe staff has
18 made it through all of this. Have you guys?
19 VICE-CHAIRPERSON LAZAR: We did.
20 MS. WHIPPLE-BOYCE: I mean, just to play it
21 safe, you know. We're in the middle of a lawsuit,
22 right, so why wouldn't we want to do that, so that we
23 can not be accused in the future of not having read all
24 of this material and not having done all of the things
25 that we think we're doing correctly.

Page 49

1 MR. JEFFARES: Question for Jana, did Tim
2 Courier read through the whole thing?
3 MS. ECKER: Yes, he did. And I talked to
4 him this afternoon.
5 MR. JEFFARES: So his letter was requested
6 after that?
7 MS. ECKER: No, his letter actually came
8 first by about a half an hour before the Dykema package
9 came but I did talk to Mr. Courier this afternoon on the
10 phone and I said does anything in this packet change
11 your position in the letter; he said absolutely not.
12 MR. JEFFARES: Okay.
13 MS. WHIPPLE-BOYCE: All right.
14 VICE-CHAIRPERSON LAZAR: Any other comments
15 before Robin makes a motion? Okay, Robin.
16 MR. BOYLE: My only comment would be that it
17 is a delight to discuss a major boding of this size and
18 not revert to the P word; we barely discussed parking
19 and it's absolutely a pleasure to be able to think in
20 land-use terms. I disagree with my colleagues I think
21 we've done a lot of work on this. I think we've thought
22 about this. It is a very important space in our city
23 and I think it behooves us if we believe that we've done
24 our job and we've gone through the material that we
25 actually make a decision. I appreciate Bryan's point; I

Regular Meeting of the Planning Board
2/28/2018

Page 50

1 understand it but I think I've reached a decision that,
2 you know, it may not stand tonight, but that's my
3 position, so accordingly I'd like to make a motion to
4 approve the final site plan and design review for 34965
5 Woodward Avenue and 215 Peabody subject to the following
6 conditions: One, the applicant submits plans
7 demonstrating the size and location of three usable
8 off-street loading spaces or obtain a variance from the
9 BZA; and two, comply with the requirements of the city
10 departments; and three, but I don't have good wording
11 for it, ensure that the applicant is using the up to
12 date...

13 MS. ECKER: Update the civil plan to match
14 the architectural site plan.

15 MR. BOYLE: Thank you. These are the three
16 conditions that I would bring forward.

17 VICE-CHAIRPERSON LAZAR: Is there a second?

18 MR. JEFFARES: Second motion.

19 VICE-CHAIRPERSON LAZAR: Further discussion?

20 I just would like to make a comment; I agree with Bryan
21 but at the same time since Jana has clarified that Tim
22 Courier will even though he had written the first letter
23 that we read before, but she's since spoken to him and
24 his recommendation was to go ahead and follow through
25 the process of a final site plan review, so I feel

Page 52

1 STATE OF MICHIGAN)

2)

3 COUNTY OF WASHTENAW)

4

5 CERTIFICATE OF NOTARY PUBLIC AND COURT REPORTER

6 I, Caitlyn Mancini, do hereby certify that the
7 foregoing portion of the City of Birmingham February 28,
8 2018 Planning Board meeting sent to me was duly recorded
9 by me stenographically and by me later reduced to
10 typewritten form by means of computer-aided
11 transcription; and I certify that this is a true and
12 correct transcript of my stenographic notes so taken.

13 I further certify that I am neither of counsel to
14 either party nor interested in the event of this cause.

15

16

17

18 Caitlyn Mancini, RPR, CSR-8887

19 Notary Public,

20 Washtenaw County, Michigan

21 My Commission expires: August 15, 2021

22

23

24

25



Page 51

1 comfortable with that, so I will support the motion. So
2 in the meantime we'll take the motion back to the public
3 any comments? Any? Okay. Bring it back to the board.
4 I think we will do a rollcall on this please, Carole.

5 MS. SALUTES: Mr. Boyle?

6 MR. BOYLE: Yes.

7 MS. SALUTES: Mr. Koseck?

8 MR. KOSECK: Yes.

9 MS. SALUTES: Ms. Lazar?

10 VICE-CHAIRPERSON LAZAR: Yes.

11 MS. SALUTES: Ms. Whipple-Boyce?

12 MS. WHIPPLE-BOYCE: Yes.

13 MS. SALUTES: MR. Williams?

14 MR. WILLIAMS: No.

15 MS. SALUTES: And Chairman Clein is recused.

16 MR. LONGE: Can I vote?

17 UNKNOWN PERSON: Nope.

18 MS. SALUTES: Stuart?

19 MR. JEFFARES: Yes.

20 VICE-CHAIRPERSON LAZAR: Thank you very

21 much. Hope it works out well.

22 (Portion of meeting concluded.)

23

24

25

Regular Meeting of the Planning Board
2/28/2018

Page 53

A				
able 18:8 25:21 35:6,8 49:19	ago 29:23 46:22	20:24 22:25	areas 21:15 25:8	26:21 28:14
absolutely 49:11 49:19	agree 50:20	23:6 28:3 30:2	25:10 27:3	32:7,17 34:6,8
abut 34:11	agreement 18:2 39:22	31:11 50:6,11	arent 42:13	34:14 35:1,2
abutting 22:17 32:16 33:7 47:22	ahead 48:6 50:24	applicants 24:12	44:10	36:22 38:24
accept 47:9	air 10:17 11:2 12:7,8 18:1	applying 8:5 13:14	argument 27:24	41:19 47:23
accepted 6:12	35:25	appointments 30:11	asked 46:5	balmorals 25:5 25:6
access 13:19,20 17:1	alan 3:7 32:6 38:7 39:14	appreciate 32:22 43:5 49:25	asking 37:17 48:16	barely 49:18
accessible 21:12	alden 34:7,12	appropriate 44:7	assemblies 18:10	base 18:20,23
accommodate 11:12 12:1 29:2	allow 2:17 18:10	approval 4:1,4,5 4:21 6:10 7:17 22:22,22 41:9 42:8 44:16	assertions 41:24	based 8:21 9:17 22:20
accused 48:23	allowed 13:17 16:24 19:17	42:8 44:16	associates 32:8	bases 48:15
act 44:6	20:3 23:15,17 38:11	approve 7:14 40:16 48:8,15 50:4	assuming 27:20	basic 32:12
activities 39:16	alright 43:20	approved 4:5,8 4:20 9:11 16:13 44:19	assure 38:7	basically 6:7 10:22 11:11 12:7 20:23 26:14 43:6
actual 39:10	amended 15:23	arborist 7:18 8:20	attached 6:21 37:21 42:18	basis 41:12,14
add 5:16 15:21 23:5 28:7 31:12	amount 32:20 35:2 38:15	arcade 10:6 13:8 13:9	attachments 3:2 3:9	bay 17:9
added 11:25 16:15 36:6	angled 13:1 16:7	architect 20:12 24:12 28:14 38:23 39:5	attorney 3:5 5:24	bear 42:2
addition 22:4	angles 12:23	architects 34:18 37:13	attorneys 7:3	behalf 7:5 32:6
additional 6:13 6:16 8:14,25	answer 2:23 4:24 5:2,6 22:19 24:17 29:6 30:13 33:4 46:21	architectural 4:14 14:7 15:23 16:3 22:11,16 23:7 33:21 50:14	august 6:25 52:21	behooves 49:23
address 15:12 30:14,16 42:16	answered 5:9	arborist 7:18 8:20	available 5:3 37:7 40:25	beier 3:5
addressed 8:3 40:15 42:25	anticipated 46:16	arcade 10:6 13:8 13:9	avenue 50:5	believe 3:13 5:7 5:9 29:17 49:23
addressing 26:19	anybody 40:23 44:13 45:14	architect 20:12 24:12 28:14 38:23 39:5	awnings 19:13	bell 14:23
adjacent 7:6 10:12 12:2 45:5	anyways 3:23 8:16	architects 34:18 37:13	aye 3:20	benefit 3:24,24
administrative 5:17	appeal 5:17,19 5:20 23:2	architectural 4:14 14:7 15:23 16:3 22:11,16 23:7 33:21 50:14		benefits 39:22
adopt 41:10	appeals 5:17 7:24 8:6 13:14 42:20	archscaping 45:19		bert 3:16 28:21 46:2
advance 41:11	appears 34:9 35:14 36:7	area 10:21,22,22 13:9 14:3,16 16:9,15 17:3 19:16 25:14,21 26:17 27:6,9 27:13 28:20 35:4,5 36:1 38:12		better 24:4
aerial 25:16	applicant 2:19 2:21 5:16 6:8 6:16 7:24 8:1,3 10:19 15:4,20 16:10 19:24			beyond 38:15,17
affect 5:21				birmingham 1:12 2:1 22:7 31:2 52:7
affidavits 43:13				bit 10:17 11:9,13 12:18 14:20 16:1 19:9 29:9 30:15 31:7,22 35:4 39:10
afternoon 49:4,9				bizarre 34:17
				blank 21:13 45:7
				block 22:5 33:18 34:19,20 37:20
				blocked 34:4,16

Regular Meeting of the Planning Board
2/28/2018

Page 54

34:17 35:15 47:18,23 blocks 35:12 blow 14:1,2 38:2 board 1:9 2:20 2:21,24 3:6 5:17 6:8,16 7:6 7:13 8:6 13:14 23:2,10 26:9 29:8 40:6 41:10 42:20 43:18 45:15 51:3 52:8 boarding 7:24 boards 5:18 boding 49:17 boring 45:11 bother 18:14 bottom 26:5 boyle 24:2,6 25:2,17,24 26:2,7 30:3,16 30:20 48:4,6 49:16 50:15 51:5,6 breakdown 20:25 brick 21:24 45:12 46:5 bring 21:5 40:5 50:16 51:3 brought 14:9 27:9 brown 32:7 bryan 2:24 40:3 48:9 50:20 bryans 49:25 bucks 28:22 build 37:9 building 2:18 4:10,13 6:18 8:13 9:5 10:16 10:23,25 11:3 11:5,19 12:1,3 12:6 13:24 14:16,19,21,23 14:23 15:7,15	16:22 17:19 18:21,23 21:8 21:9,15,17,22 21:23 22:12,13 22:14 23:17 24:17,21,22,24 25:4,5,7,8 26:21 27:7 28:13,25 29:10 29:24 30:5,7 30:11,13,25 32:7,8,10,15 32:17 33:22 34:7,8,12,15 35:2,3,19,22 35:25 36:2,4,5 36:8,12 37:6 38:4,21,25 39:3,4,21 41:19,21,23 44:19,20 45:1 46:3,6,9,16,20 46:23,23,24,25 47:5,9,19,20 47:20 48:15 buildings 6:18 6:21,24 7:6 10:13,14,17 11:17 15:5 17:15 22:8,9 22:17 23:14,22 23:23 24:9,10 29:23 32:12,14 33:7,22 34:2 35:24 37:10 43:2 45:5 built 23:14,16 24:7 32:20 33:1 35:7,8 36:8 bumps 17:24,25 business 5:25 22:7 31:5,7 busy 40:11 45:21 bza 50:9	C cad 20:18 caitlyn 52:6,18 calculate 20:21 call 10:6 17:9 21:23 22:5 called 26:12 canopies 19:13 20:11 21:14 cant 5:7 8:17 13:1 18:15 25:11,13 27:19 29:25 30:13 34:20 38:6 43:4 45:22 46:13 carole 51:4 carried 33:11 carry 36:20 case 5:21 21:16 38:7 42:6 43:3 43:10 48:13 catalyst 14:22 25:7 32:8 35:17,18,18 36:3 38:24,25 41:19 caught 45:17 cause 16:9 27:3 31:23 44:12 52:14 ceiling 14:11,15 center 25:8 28:20 36:5 central 22:7 certain 29:23 38:11 certainly 4:19 30:14 certainty 39:17 certificate 52:5 certify 52:6,11 52:13 cetera 4:10,14 21:24 22:16 chairman 2:5	24:1 51:15 chance 41:2 chances 31:8 change 28:10 47:6 49:10 changed 10:10 10:19 12:12 16:16 28:9 changes 10:1 16:12 34:9 charcoal 18:24 choose 47:8 chris 18:22 24:17 28:6 34:22 37:24 40:3 47:18 circuit 4:23,25 5:4 circulation 4:10 13:15 cis 6:9 city 1:11 3:5 4:24 5:2,8,10 5:23 7:5 8:24 14:4 16:16 23:4 30:17 42:24 45:4 47:8 49:22 50:9 52:7 civil 14:5,6 15:22 16:2 23:6 50:13 clad 19:10 claim 43:1 clarified 15:20 19:16 33:24 34:1 50:21 clarify 32:17 clarity 38:9 clear 14:2 18:13 19:19 20:2 24:6 28:8 36:13 38:19 46:14 clearest 28:8 clein 2:5 24:1 51:15	clients 20:15 41:22 47:7 close 11:18 15:15 39:2 closer 8:14 10:8 code 11:20 16:25 17:19 45:1 46:10 47:9 codes 38:10 coincidental 44:22 coincidentally 45:9 colleagues 49:20 color 8:1 9:1 18:24 19:1,4,9 colored 33:9 come 2:21,24 7:8 17:2 21:11 23:22 27:24 28:4 30:11 31:6 43:18 44:13 comes 10:24 24:24 26:20 comfortable 51:1 coming 6:15 19:6 comment 3:16 7:11 13:11 15:18 16:21 24:2 37:15 40:9 41:9,15 42:15 43:8,10 48:16 49:16 50:20 comments 4:17 7:2,9,11 8:25 11:16 15:1,17 16:20 20:21 37:23 40:5,8 41:11,15,17,19 43:25 49:14 51:3 commercial
--	---	--	--	---

Regular Meeting of the Planning Board
2/28/2018

Page 55

26:12,13,14,17 26:23 27:6,6,8 27:16 30:6 commission 1:11 5:10 9:22 37:12 52:21 communicatio... 43:14 community 4:7 6:11 43:15 compatible 33:23 complaint 4:23 4:24 5:1,6 40:10 42:18 complete 42:5 42:22 completely 30:24 34:16 complied 8:23 complies 7:24 44:21 45:16 comply 23:4 50:9 composite 19:10 computeraided 52:10 concern 14:4 34:2 40:10 concerned 15:3 16:8 concerns 6:15 12:1 15:25 32:12 33:1 39:10 concise 18:13 concluded 51:22 conclusion 41:23 condition 15:22 conditions 7:16 8:4 22:24 50:6 50:16 configuration 38:20 conflict 2:11 connected 30:6	consider 43:22 consideration 41:6 consistent 23:20 23:24,25 construct 35:24 36:13 39:19 constructability 37:9 constructed 11:20 32:13 34:3 37:21 construction 2:17 6:20 24:15 28:16,17 39:11 consultation 28:11 consulting 2:9 contain 21:20 continuous 26:5 controls 24:2 conversation 2:8 convince 45:21 copies 5:5,10 copy 3:6 42:19 corner 24:21 corners 24:20 correct 4:1,2 5:15 17:11,12 23:19 25:20 29:18,22 43:4 52:12 correctly 48:25 corridor 12:15 costs 46:12 couldnt 18:7 counsel 39:14 52:13 count 8:17 county 5:3 52:3 52:20 couple 12:20 20:10 23:25 40:7 46:8,12 courier 49:2,9 50:22	course 5:24 8:10 39:18 40:1 court 4:24,25 5:4,4 48:13 52:5 cover 40:21,21 covered 48:14 creative 26:16 credit 9:22 critic 33:21 critical 40:23 critique 33:20 csr8887 52:18 curious 17:21 cursory 40:13 custom 3:1 cut 14:14 <hr/> D d4 6:3 damaging 37:11 date 7:8 50:12 dated 3:5,8 day 31:4,5 40:11 days 41:13 deal 17:21 deals 4:9 december 6:6 decision 41:10 41:11,16 49:25 50:1 deck 10:10 31:4 deems 45:1 defined 26:15 delight 49:17 delivered 42:11 demise 47:16 demonstrating 7:22 22:25 50:7 denied 5:19 department 13:23 15:2,18 15:25 16:4,19 16:20,20,21,22 41:17,21,23 42:14 43:6	departments 7:25 8:24 15:2 23:4 50:10 design 2:6,14,17 4:12,13 5:23 17:3 21:7,10 22:16,19,23 33:21 37:18 50:4 designed 22:8 44:24 desired 42:24 detail 21:16,20 34:17 42:7 details 4:14 12:24 24:15,15 36:18,19 37:2 37:16,17 developers 30:14 development 7:14,15 32:9 dialogue 32:24 didnt 6:20 35:11 41:2,3,8,10 45:13 47:14 different 6:1 12:8,19 14:11 16:7 21:15 33:15 35:19 difficult 8:8,8 20:20 direct 24:11 directly 21:12 disagree 49:20 disagreeing 20:23 discuss 16:10 49:17 discussed 39:25 49:18 discussion 4:6 6:11 7:1,2 10:11,15 17:15 35:21 36:16 37:1 50:19 discussions	27:10 32:24 39:13 dispute 42:2 distance 14:7 distorted 46:15 46:18 district 10:14 22:7 27:11 documents 33:5 43:3 doesnt 17:14 doing 5:21 36:1 48:25 dont 3:12 8:14 9:13,23 13:5 17:8 18:12 25:18 27:21 28:6 30:3,25 31:19 34:24 35:21 36:24 38:19 42:10 43:21,22 44:6 44:18 47:24 50:10 door 17:2 19:18 31:14,25 47:5 double 12:15 downtown 10:8 13:4 21:10 drawing 15:21 15:22,24 34:21 39:6 drawings 6:20 14:6,6 drivethrough 15:9 duly 52:8 dykema 3:7 20:22 21:1,4 49:8 <hr/> E earlier 24:14 45:3 early 29:4 30:9 31:9 easier 35:24
---	--	--	---	---

Regular Meeting of the Planning Board
2/28/2018

Page 56

east 14:17 33:12 39:3 ecker 3:4,23 4:2 4:7,19 5:15 11:8 17:7,12 17:17,22 18:4 18:12,18 19:3 19:10 20:16 23:19 24:11 25:3,6,13,20 25:25 26:4,14 27:1,18,23 28:5 29:12,16 30:18,21 31:12 31:16,21 49:3 49:7 50:13 effect 43:1 effectively 24:24 effort 39:1,1 eight 17:23 either 4:23 6:14 6:18 10:18 12:8 15:7 23:14,23 34:16 47:19 52:14 elected 35:9 elevation 10:21 12:17,18 13:21 13:22 18:20 19:14 25:1 34:9 36:21 37:18 38:2,3 elevations 10:16 10:20 14:17,18 19:19 36:17,19 44:21 empty 6:7 encourage 45:8 endeavored 29:5 ended 36:1 ends 36:2 engineer 14:4 engineering 13:22 15:2,18 15:24 16:4,14 16:19 ensure 50:11	entire 12:4 35:14 36:20 entirely 18:13 entrance 9:9 10:5,5,10 22:6 entrances 9:8 10:8 entry 15:8 21:14 envisioned 22:6 equal 32:14 35:2 equipment 8:23 12:22 essentially 11:2 18:5 22:18 32:18 et 4:10,14 21:24 22:16 event 41:16 52:14 everybodys 3:24 42:13 exactly 29:4 example 23:20 27:16 exception 24:20 30:21 exclusively 30:22,23 exhibits 5:2,2,6 exit 16:24,25 17:1 expect 23:18 42:10 expense 29:21 46:18 expensive 46:18 expert 24:13 expires 52:21 explained 29:6 explorer 5:4 express 40:19 extends 11:3 <hr/> F <hr/> facade 18:24 22:2,2 25:9 28:25 33:25	35:7,8 38:4 facades 7:6 32:14,15 33:7 33:11,12,23 34:25 faces 24:21 facility 30:19 facing 21:13 36:22 fact 14:5 15:7 19:25 28:12 32:13 34:3 35:4 39:5 44:10 fairly 22:13 32:19 fall 26:16 far 5:11 8:3 28:16 favor 3:19 featured 22:17 february 1:10 2:2 3:5,8 52:7 feel 2:10 50:25 feet 11:1,7,11,16 12:4,4,11 13:18 14:3 15:11,19,20 17:23 19:24 23:25 25:10,22 27:11 28:15,17 28:22 31:25 32:18 34:25 35:1,8,10,10 35:11,20,22 36:4 38:13,14 38:14,17 46:17 47:25 fenestration 45:18 fifth 19:11 27:2 filed 4:23,25 fill 31:5 final 2:5,14,16 4:4,4,12 5:20 5:22 7:21 8:1 22:19,22 33:2	33:5 37:1,16 42:8 44:16 50:4,25 finally 16:4 36:15 find 18:15 finding 26:16 31:8 findings 23:5 fine 17:20 26:7 fire 16:20 38:10 38:20 44:25 firerated 11:19 36:3,6,9,23 38:16 46:10,12 47:3,4 firerating 47:11 firm 2:9 first 3:4 7:15 10:3 18:25 19:5,20,22,23 21:2,12,16 25:24,25 26:20 26:22 28:9,14 34:7,8,10,25 35:14 47:8 49:8 50:22 fits 14:21 five 7:19 8:19 11:8,9 14:3 15:19,20 18:10 24:22 25:22 28:15,19 32:18 34:25 35:1,10 35:10,22 36:4 38:13,14 41:13 fivefoot 24:25 fivestories 45:6 fivestory 2:18 7:15 9:5 23:23 46:24,25 fixtures 14:11 14:12,14,16,18 floor 7:15 10:3 11:21 12:13 18:6,25 19:6 19:11,20,22,23	21:12,16 24:24 25:24,25 26:11 26:20,22,23 27:2 29:11 34:7,8,14,16 34:25 35:13,14 floors 11:22 12:13 13:2 19:4,6 20:1,4,5 20:6,7,9 21:2 26:22 27:4,12 28:19 32:17 34:11 35:13 38:21 focus 4:4,6,13 folks 27:3 38:24 38:24 follow 50:24 following 22:24 50:5 foot 13:12 24:22 footage 42:23 footprinted 22:15 foregoing 52:7 foresee 8:14 forget 8:7 forgot 13:13 31:13 form 41:15 44:20 52:10 formal 3:3,10 formally 2:15 former 2:6 6:3 forth 39:14 forward 6:9 27:24 28:4 45:24 50:16 found 7:11 four 11:1,7,16 12:4,4,11 25:10 26:11 28:15,17 35:10 35:13 41:13 42:19 47:25 fourth 19:4 frame 2:7,15 6:4
---	---	--	--	--

Regular Meeting of the Planning Board
2/28/2018

Page 57

6:6 framing 38:9 frankly 29:22 friday 40:25 42:15 front 2:10 4:3 8:13 21:3,16 43:10 45:10 fronts 21:12,19 full 11:10 42:22 further 7:1 23:9 28:2 32:3 40:4 50:19 52:13 future 48:23	34:2,12,13,15 34:19 37:8,9 37:20 38:5 39:2,17 40:5 41:4,5 42:4 44:2,14 46:19 47:6,14 48:4 good 29:3 46:19 48:9 50:10 gossett 3:7 govern 38:11 grade 19:24 grand 28:23 29:1 granite 18:20,23 gray 18:24 26:17 27:2,5 27:13 great 34:1 greater 20:4 35:20 greene 3:8 32:5 32:6 40:13,18 41:20 42:16 43:2,9,12,19 43:24 44:2 greenes 41:22 44:6 greenleaf 8:13 14:22 15:15 22:13 32:8 ground 17:23 guys 29:19 31:6 31:6 37:14 48:18	40:8 happening 33:6 happens 45:7 happy 22:19 havent 28:9 40:16 head 17:25 27:20 47:24 hear 2:19 heard 10:11 33:4,9 43:6 44:5 45:14 heavy 19:5 height 17:23 22:10,12 held 2:2 heres 19:15 41:21,22,23 46:11 high 15:8 21:23 23:14 33:15 highlight 45:23 historic 46:23 47:5 holes 24:5 hollowing 28:20 hope 51:21 hopefully 35:7 hoping 33:14 39:19,21 hour 49:8 house 23:22 howlett 3:5 hows 37:19	27:18,20 29:1 29:18,18,24 30:8,14 32:5,6 32:11 34:25 36:25 40:5,8 40:23 41:4,4 41:18 43:19,22 44:9,9,12 45:16,18,21 imagine 31:1 impact 4:7 6:11 impacts 37:6 important 33:13 36:1 40:19,20 49:22 imposing 39:11 inches 24:23 incorrect 43:7 increases 31:8 indentations 11:25 indicated 14:4 16:14 19:24 20:9 23:3 38:1 indicates 38:3 inexpensive 29:2 infamous 32:5 infill 8:8 information 6:13,17 33:17 inserts 45:12 inset 35:2 instance 26:21 intend 23:3 intending 33:20 interest 29:3 interested 52:14 interfacing 6:17 interior 16:23 16:25 interject 3:22 internet 5:3 interrupt 43:17 introduce 3:1 involved 7:3 isnt 31:15 32:1 37:7	issue 8:4 16:2 26:20 27:13 33:13 37:8 42:25 issues 13:22 16:9 27:5 35:16 37:9 40:15 item 2:5 ive 13:19 40:11 42:6 44:6 45:2 45:14,14 50:1
G gain 35:4 gap 24:25 25:19 garage 31:14,25 gateway 22:5,6 gavel 2:12 generally 4:9,12 getting 44:11 give 23:12 48:8 48:17 gives 42:14 glass 11:19 19:15,18 20:1 21:24 31:20 36:3,23 38:12 38:15,17 45:13 46:10,12 glazed 38:10,20 glazing 19:23 20:8,13,20,23 21:2,6 38:8 go 3:23 9:14,21 32:11 34:13 46:9 48:6 50:24 goes 27:1 going 3:23 4:6 5:22 14:20 15:12 18:21,22 21:21 26:18 30:9 32:10,11 32:16 33:10,14	H hadnt 40:21 half 9:19 11:9 35:11 49:8 hand 20:21 handicap 16:14 16:17 handled 5:25 happen 39:17 40:8,8 happened 4:18	I id 18:14 41:7 43:5 50:3 idea 46:19 identical 33:11 38:8 ill 9:2 20:11 34:5 42:19 46:21 im 14:19 17:13 17:21 18:21 22:19 23:12 24:13 25:17	36:1 40:19,20 49:22 imposing 39:11 inches 24:23 incorrect 43:7 increases 31:8 indentations 11:25 indicated 14:4 16:14 19:24 20:9 23:3 38:1 indicates 38:3 inexpensive 29:2 infamous 32:5 infill 8:8 information 6:13,17 33:17 inserts 45:12 inset 35:2 instance 26:21 intend 23:3 intending 33:20 interest 29:3 interested 52:14 interfacing 6:17 interior 16:23 16:25 interject 3:22 internet 5:3 interrupt 43:17 introduce 3:1 involved 7:3 isnt 31:15 32:1 37:7	J jana 2:19 3:4 4:16 5:14 17:5 23:8,11 25:2 26:10 28:3,4 29:6,10 40:14 41:18 42:24 49:1 50:21 janas 28:7 janelle 26:9 29:4 jeffares 11:6 17:5,8,13 18:9 18:17 23:11 29:9,13,19 31:3 46:1 47:16 48:2 49:1,5,12 50:18 51:19 job 24:4 49:24 judge 42:4,5,6 july 6:8,9
				K keep 25:7 kind 23:18 25:3 27:2 36:10,16 36:21,23 37:16 38:10 39:14 40:13 kinds 39:15 45:4 knew 44:25 46:6 46:7 know 2:22 4:17 6:2 9:13 14:19

Regular Meeting of the Planning Board
2/28/2018

Page 58

15:4 16:16 17:8,14 19:22 20:14 23:19,21 27:13,17,21 28:20 29:23 30:3 31:12 32:11,19 33:20 36:11,24 37:19 38:2,10 39:7 39:17,18 40:14 43:14 44:12,14 44:22,23 45:2 45:6,21 46:9 47:7,10,11,12 47:13,13,25 48:21 50:2 koseck 3:17,22 4:3,15 44:9 46:21 47:4 51:7,8	20:13 leaves 40:3 left 36:5 legalities 45:17 letter 3:4,7 5:23 20:22 21:1,4 32:6 40:14 41:20,25 49:5 49:7,11 50:22 letters 3:1,2 level 17:9 20:3 levels 10:2 16:23 20:23 21:20 license 39:20 light 10:17 11:1 11:2 18:25 19:3,17,20 20:3 35:25 lighter 19:9 lighting 7:21 8:22 14:10,11 45:19 lights 7:19 8:19 16:1 limit 36:25 line 10:13,14,24 10:25 11:18,23 11:24 12:5 17:10 24:23,25 30:3 31:18 32:21 34:13 36:6 39:2 44:24 47:21 lines 23:17 listening 37:13 litigating 43:10 litigation 5:11 5:20,25 7:4 42:3 little 10:17 11:9 11:13 12:18 19:9 23:22 25:14 27:23 29:9 30:15 31:7 35:4 39:10 loading 7:23 8:5	8:6,9,10,12,15 8:17 13:14 15:3,5,6,9,13 15:14 23:1 31:24 50:8 lobby 9:7 10:9 located 6:4 location 9:10 23:1 50:7 locations 12:3 26:6 long 17:22 45:2 longe 19:2,8 24:19 25:5 28:6,6 29:15 29:22 30:8 31:9,15,19,23 37:25 39:12,25 47:22 51:16 longterm 39:22 look 6:22 25:21 25:23 33:14,14 34:24 35:6,8 42:4 43:12 46:14 looked 20:14 21:22 31:21 33:17 44:23 looking 5:8 28:16 36:10 45:18 looks 31:16,17 34:12,19 lose 35:3 lost 28:21,23 lot 6:11 7:2 10:11,13,14 14:11 23:17 28:7,9 32:9,25 47:20 48:17 49:21 louvered 12:25 louvers 19:12 lower 10:2 13:2	main 17:2 21:14 22:6 maintain 11:23 15:8 maintained 8:11 maintenance 39:22 major 49:17 mancini 52:6,18 mandated 42:24 43:1 45:2 maple 8:14 15:15 22:5,5 46:23 march 6:6 marked 15:14 martin 1:12 masonry 18:25 19:3 mass 22:10 massing 4:9 22:15 23:12,21 23:24 master 37:4 match 10:25 14:7,9 22:12 23:6 50:13 material 8:1 9:1 31:14 33:8,9 33:10,15 38:1 43:13 48:24 49:24 materials 3:10 4:14 18:18,22 18:23 21:22,23 22:1 28:25 33:24 36:19 37:18 38:4 40:10,12,25 41:12 42:7,10 42:13,19 43:5 43:12 44:7 45:19 matter 40:13 max 23:15 maximum 27:4 32:21	mdot 16:12,14 17:11 18:1,2,7 24:2 mean 23:19 28:7 29:22 33:21 44:15 46:12,17 47:6,19 48:20 means 34:15 41:4 52:10 mechanical 7:21 8:22 12:22 13:2 16:22 17:2 meet 9:23 13:12 13:18 14:13 19:21,25 20:9 21:1,1,6 37:3,4 meeting 1:9 3:11 28:14 42:12 51:22 52:8 meetings 7:8 37:13 43:16 members 3:6 mention 13:13 31:13 mentioned 10:4 13:16,20 15:2 15:17 19:13 24:14 met 13:5 21:24 22:3 38:23,24 metal 19:10,12 20:10 michigan 2:1 52:1,20 middle 48:21 mind 24:3 25:7 42:2 44:12,17 44:21 45:16,24 47:7,13 minimum 16:17 19:23 minutes 7:7,10 7:11 mirror 11:4,6 mixed 2:18 7:15 9:5
L labelled 33:8 laid 12:14 landscaping 13:3 45:20 landuse 49:20 large 16:8 late 3:3 40:11,25 42:15 45:22 law 40:9 lawsuit 44:13 48:21 lay 46:7 lazar 2:12,13 3:12,15,18 5:13 23:8 26:8 28:2 29:7 30:1 31:10 32:3 37:23 39:9,24 40:2 43:17,20 44:4 45:25 48:3,19 49:14 50:17,19 51:9 51:10,20 lead 44:8 leave 14:20				
			M m 2:3	

Regular Meeting of the Planning Board
2/28/2018

Page 59

modern 22:16	39:23 44:21	23:8 27:22	pages 3:9 40:17	pedestrian 7:19
moment 32:1	47:23	28:1,3 31:17	painted 33:18	8:19 10:7
month 46:22	northern 11:24	32:4 35:1 40:2	panels 18:24	13:19,21 20:10
months 39:18	notary 52:5,19	43:11,19 48:7	19:10	21:15,20 24:7
40:1	notes 16:4 52:12	49:12,15 51:3	paperwork	24:8 25:18
mora 14:23	notice 39:21	once 2:19 38:14	47:10	26:2
motion 3:1 4:22	number 3:2,8,25	46:18	paragraph 40:9	pending 5:12
7:14 41:5,12	9:17 16:17	ones 27:23 45:6	42:21,22,22	people 26:15
48:4 49:15	34:4	onestory 45:7	park 9:14 31:7	27:10 30:11
50:3,18 51:1,2	numbers 20:20	46:23	parked 16:9	35:6 36:10,11
move 3:9 11:22	numerous 32:13	online 5:6,7	parkers 31:5	44:10,11
17:1 34:24	43:15	oops 14:21	parking 9:13,15	percent 19:16
45:24		open 12:7,8	9:20,24 10:10	19:20,23 20:3
	O	16:23 31:17	13:5,12 16:5	20:5,7,8 21:25
N	oakland 5:3	opening 13:17	16:15,17,18,23	22:1,3 38:13
nature 33:10	object 37:2	openings 16:25	17:3 24:22	38:14,18
necessarily 8:15	objected 37:3	operate 39:9,20	29:11,17,20	percentage
30:10	objectionable	opportunity	30:5,10,12,19	21:22 38:12
need 3:13 9:18	36:12	40:12,17,22	37:7 49:18	period 41:6
9:19,22 12:24	objections 32:10	42:7,14,17	parks 31:3	permit 17:14,22
25:15 30:12	observe 44:3	48:17	part 3:3,10 4:22	24:17
negative 37:8	obtain 7:18,23	order 5:8	22:4 34:14	permits 17:14
negotiate 39:14	23:2 39:20	ordinance 9:20	partially 34:17	permitted 10:14
neighbor 12:2	50:8	17:14,20 18:9	34:20	15:16 20:8
32:23 34:24	obtained 8:20	18:13,15 19:16	participate 2:11	person 30:8
neighbors 11:13	obviously 2:22	21:17 23:15,16	parties 42:10	51:17
28:11 29:3,3	5:16,25 8:7	26:15 27:14	party 52:14	persuade 34:23
neither 52:13	10:12 11:16	37:5 46:10	pass 9:2 18:22	petitioners
never 24:3,5	12:16 21:8	ordinancewise	20:11 29:25	42:23
33:19 45:2,14	22:15 23:24	26:19	passes 29:23	phone 49:10
45:14	24:14 27:5	original 32:15	passing 18:21	photometric
new 2:17 14:1	30:12	40:24	patient 37:12	7:20 8:18
nice 33:22 35:7	occasions 3:25	overlay 13:4,17	patrons 21:21	14:12,13
35:8	occupancy	21:10	patterns 45:12	physically 24:19
night 41:3	27:25	owner 44:22	pay 5:5	pier 32:19 35:12
nine 7:17	occurring 15:13	47:5	peabody 2:15	place 12:22 31:2
nope 51:17	office 7:16 26:11	owners 6:14	6:3,5,23 7:19	33:19
normal 5:24	26:16,23 27:4	10:12	8:10,12,12,19	placed 16:8
north 7:5 10:16	27:7,8,11,12	ownership 32:7	9:7,8,10 10:6,9	placement 4:9
10:19 12:2,6	30:7		11:4 13:16,21	44:19,20
12:16 14:23	official 8:17	P	13:25 14:24	places 23:21
15:5 16:6	27:8	p 2:3 49:18	15:14 19:14	45:4
22:13 24:9	offstreet 7:23	package 49:8	21:19 22:2,24	plan 2:6,14,16
25:8 28:12	23:1 50:8	packet 48:10	31:4,8 35:12	4:1,4,5,9,12,21
29:10,16 33:6	oh 9:14	49:10	38:5 50:5	5:18,22 6:10
33:25 36:20,21	okay 3:12,18 6:2	page 40:14	peabodys 2:7	6:12 7:13,20
37:18 38:6	9:14 18:22	42:19	47:14	7:22 8:2,18 9:6

Regular Meeting of the Planning Board
2/28/2018

Page 60

9:11 10:18 12:21 14:7,12 14:13 15:24 16:2,3 17:6 21:11 22:4,7 22:19,23 32:10 33:2,5,16 36:13,18 37:1 37:3,4,16 40:24 41:8,14 41:20 42:8 44:16 50:4,13 50:14,25 planner 30:17 planning 1:9 5:18 41:10,17 42:14 43:6 52:8 plans 7:22 20:18 22:21,25 23:6 23:7 34:1,5,6 36:25 41:22 50:6 planters 13:7 plantings 13:10 play 48:12,20 pleading 44:1 pleadings 5:10 please 17:7 28:4 51:4 pleasure 49:19 plle 3:7 pm 1:10 point 2:20 4:25 5:11 6:7 12:24 13:6 26:2 38:20 42:4 48:9 49:25 pointed 41:24 police 16:21 policy 16:16 portion 51:22 52:7 position 44:17 49:11 50:3 positions 35:18 possible 22:11	30:4 postpone 41:6 42:11 postponed 6:13 pot 24:4 potentially 10:15 34:15 practicing 40:9 preliminarily 2:25 10:23 preliminary 4:1 4:8,11,21 5:18 6:10,12 7:12 9:11 10:18 28:10 32:9 33:16 41:8,14 prepared 41:11 48:8 presentation 2:20 33:5 45:3 presented 24:7 28:7 38:22 45:10 press 25:18 presumably 5:19 11:12 pretty 10:3,4 23:15,16 28:8 previous 44:22 primarily 12:19 13:25 primary 10:7 prior 2:19 private 30:18 probably 26:18 30:8 47:6,10 48:11 proceed 5:24 44:8 proceedings 4:22 proceeds 48:13 process 4:18 24:17 35:9 50:25 producing 39:16 program 5:4	20:18 project 2:10 18:11 44:24 projections 17:22 18:13 proper 39:21 properties 39:23 property 6:2,14 10:12,24,24 11:15,18,23,24 16:11,12 17:10 18:4,5 24:23 24:24 30:7 32:21 34:7,13 36:6 37:10,11 39:2,11 44:24 48:1 proportion 21:9 propose 39:1 proposed 6:17 7:14 12:9,21 13:24 14:14,15 14:18 15:23 18:19 19:14,15 19:18 22:12 proposing 9:5,7 9:8,12 12:3,23 12:25 13:7,10 13:18 14:10 18:20 protrusion 17:10 prove 21:1 27:7 43:3 provide 6:16 7:17,19,22 8:1 8:9 10:17 11:1 12:12 14:1 15:11 20:12 22:22 31:13 provided 2:9 8:18,19,22 9:1 12:7,14 15:21 20:24 35:25 providing 9:21 9:24 10:20 16:17 28:20	public 2:23 16:5 16:18,19 21:14 30:10,11 32:4 37:24 40:5 51:2 52:5,19 pull 7:7 8:16 13:8 42:19 punched 46:8 push 44:14 put 18:8 45:1 46:10,11,15,18 <hr/> Q quality 21:23 32:15 33:15 question 11:5 17:6 18:3 24:12 33:24 34:18,21 36:15 46:11 47:17 49:1 questions 2:22 22:20 23:9 26:8 28:3 29:6 29:7 30:1 31:10 32:4,25 33:2,2 40:3 46:2 quicker 39:10 quickly 41:1 quite 9:3 31:21 <hr/> R raised 13:23 20:22 36:16 raises 42:17 reached 50:1 reacted 28:12,18 reaction 29:5 read 40:12,17,20 40:21 41:2,3 42:7,12,17 44:6,12 45:22 48:11,23 49:2 50:23 reading 14:5 realistically	21:18 really 13:3 32:12 33:13,16 33:25 34:11 35:7 40:12 46:13,14 48:9 realm 6:1 reason 18:14 20:17 reasons 37:2 recall 44:18 recap 9:4 receive 4:1 received 15:1 recessed 25:10 35:11 recommend 22:21,21 recommendati... 50:24 recommends 22:8 record 3:4,10 4:22 5:1 41:7 42:1,5 43:1,4 recorded 52:8 recused 51:15 recusing 2:8 redline 27:11 reduced 52:9 reference 22:9 referenced 41:25 referred 7:4 reflect 15:23 39:4 reflected 7:9 regard 13:11 34:22 regarding 3:17 6:17 regardless 21:18 regards 4:11 13:2,19,23 14:10,19 16:2 16:5,22 17:3 18:18 20:22
---	--	--	--	---

Regular Meeting of the Planning Board
2/28/2018

Page 61

21:7 22:18 regular 1:9 related 32:12 relates 34:7 relative 17:14 relief 11:13 remain 30:24 remember 28:13 37:12,14 42:3 remind 9:12 rentable 35:4 42:23 repeatedly 26:21 replicated 38:5 39:7 reporter 52:5 represented 20:15 30:9 34:10 request 2:16 5:19 7:25 43:23 44:5 requested 6:14 6:16 7:7 49:5 requesting 11:13 41:18 requests 8:24 required 9:18 9:25 11:15,19 12:10,11 14:3 15:8,12 19:22 30:22,23 requirement 13:3,13,19 19:21,25 20:10 requirements 9:24 13:6 14:14 20:14 21:2,6 23:4 37:4,5 50:9 requires 9:21 residential 7:16 9:7 10:9 26:24 30:5,23 36:9 36:11 respect 37:25	38:25 respond 37:24 41:18,21 42:15 44:2 responded 38:23 41:1 rest 16:7 44:8 restaurant 2:7 2:15 6:4,5 restrict 30:10 result 15:10 23:5 retail 7:15 26:10 26:19,22 27:10 27:10,11 reticent 40:16 reveals 45:13 revenue 28:23 revert 49:18 review 2:6,14,14 4:11 5:5,7,18 5:23 7:8,13 8:2 17:3 21:18 22:20,23 41:16 48:10 50:4,25 reviewed 14:13 24:16 ridiculous 43:23 right 18:22 23:13 25:14,17 25:19,21 29:16 29:25 32:16 36:5,8,10 39:24 40:3 46:20 47:19 48:22 49:13 rightofway 9:16 16:5,12 17:10 rights 18:1 risk 47:7 road 8:14 roads 24:3 robin 24:1 30:2 48:3 49:15,15 rollcall 51:4 roof 12:21 rooftop 12:21	19:11,12 room 1:11 17:2 rooms 16:23 root 28:22 roughly 28:17 28:22 row 6:24 rpr 52:18 rumors 47:16 run 20:19 24:5 30:18 <hr/> S <hr/> safe 48:12,21 salmon 18:25 19:3 salutes 51:5,7,9 51:11,13,15,18 samples 8:1 9:1 sandstone 19:2 19:9 saroki 46:4 saw 12:20 31:18 39:7 46:21 saying 42:8,25 says 18:15 40:20 47:10 scale 21:15,21 scaled 20:11 scaling 4:10 schedule 39:16 41:2 scott 2:18 screen 12:23 screening 12:25 19:11,12 second 11:21 19:4 24:23 34:8,14,14,16 35:14 38:21 41:7 42:22 50:17,18 secondarily 38:8 section 9:2 sections 19:11 see 6:22 7:9 9:6 9:10 10:7,21	11:22 12:5,14 13:2 14:20,25 18:19 22:11 23:21 24:8 25:1,2,3,11,13 25:19,22 26:3 38:6 seeing 43:5 seen 11:17 28:24 sent 52:8 sentence 42:21 separately 38:23 separation 35:23 september 7:12 serious 35:15 served 5:9 services 2:9 16:19 set 4:12 11:15 12:3,11 13:9 25:22 31:21 32:18 35:19,20 35:21 36:4 setback 11:7,15 11:23 12:10,18 28:18 setbacks 43:2 sets 3:9 setting 10:15 share 22:9 sharing 22:10 sheet 7:20 sheets 8:22 shes 50:23 shop 2:7,16 6:4 6:6 45:9 46:3 show 6:20 12:21 43:3 showed 40:11 45:4 showing 12:5 14:21 21:5 shown 9:6 20:25 36:24 side 6:15,18,23 9:9 10:18 11:3	11:4,7,9,10,14 11:14 12:8,10 12:16 23:14,24 26:1 32:22 35:12,17 37:20 38:5 47:1,22 47:24 sides 10:13 38:6 38:6 39:3 sidewalk 13:24 15:19 17:24 21:13 signed 3:7 significant 17:19 34:4 significantly 35:19 similar 20:1,25 22:10,14 33:23 35:17 simple 23:20 simplify 44:10 simply 4:25 5:11 single 31:4 33:9 sit 32:23 site 2:6,14,16 4:1,4,5,8,11,21 5:18,22 6:3,5,7 6:10,10,12 7:13,21 8:2,8 8:21 9:6,6,11 10:18 13:20 14:7 15:10,24 15:24 16:2,3 17:6 22:19,22 23:7 32:10 33:2,5,16 36:18 37:1,16 40:24 41:8,14 41:20 42:8 44:16,23 45:9 50:4,14,25 sits 9:5 sitting 23:23 situation 36:7 size 19:8 22:25 49:17 50:7
---	--	--	--	--

2/28/2018

Page 62

skies 24:3	spoken 50:23	study 4:7 6:12	46:3	theyre 9:4,6,7
sky 24:5	spot 31:8	stuff 45:20,22	tan 18:24	9:21 12:2,23
slightly 16:7	spots 35:19	subject 50:5	technical 21:18	12:25 13:4,7
20:6	square 28:22,22	submission	technique 28:17	13:10,17,18
small 26:13	42:23	40:22	tees 13:6	14:8,9 15:6
software 20:19	staff 7:18 8:20	submit 6:25	tell 23:13 26:12	16:8 17:23
somebody 29:24	48:17	7:20 20:17	34:20 47:7	18:10,20 19:22
31:3 44:13	stairways 17:1	43:7	ten 35:8 38:14	20:7,19 33:8
45:18 47:13	stairwell 32:19	submits 22:25	tenants 30:13	37:9
sorry 16:19	stairwells 16:24	50:6	terms 14:6 22:15	theyve 8:23 9:1
43:17,19 48:6	stand 50:2	submitted 5:16	33:8 38:9	12:7 15:21
sort 17:5,9,16	standards 21:10	22:21 23:7	49:20	20:9 25:10
38:11 39:4,6	37:6	40:13,18 41:13	terrace 12:5	thing 14:1 26:22
sorts 47:12	standpoint	42:20	39:4	28:8 29:2
south 7:5 10:16	17:19,20 47:9	substantial	thank 3:21 4:15	31:13 34:1
10:20,21,25	start 18:21 34:5	32:20	5:13 18:17	38:11 41:7
11:23 12:17	started 6:9 35:9	sufficient 37:7	23:8 26:7 28:1	42:9 44:15
14:24 15:5,8	state 11:19 52:1	suggested 8:9	28:4 32:2,5	48:5 49:2
22:14 24:10	statement 42:21	28:15,21 29:4	37:22 44:1,4	things 12:20
25:9 26:22	43:4,7	support 43:1	50:15 51:20	20:10 23:18
28:12 29:10,17	statements 7:4	44:18 51:1	thats 4:10,18,24	37:11,14 39:15
33:7,25 36:20	states 5:24	supporting 7:11	5:15 11:19	43:15 44:14
36:22 37:18	steel 12:25 19:18	supposed 15:6	12:7,10,12,19	46:12 47:12
38:6 39:23	stenographic	sure 14:8 15:22	13:9 14:16	48:24
44:21,23 47:22	52:12	17:13 24:19	15:14 17:17	think 3:3,6,9
southwest 24:21	stenographica...	29:1,18 30:14	18:3,14 19:5,6	10:6,11 11:8
space 9:19 10:3	52:9	33:22 43:22	19:8,15,18	16:1 17:19,20
13:10,15 16:15	stepping 39:3	44:12 48:14	22:3,18 23:24	18:12 19:4
17:18 24:9	steps 11:1 14:16	surface 13:5	25:15 26:2	24:11,13 26:17
27:25 32:20	25:4,5	38:18	27:7,13 33:10	27:16,18,19
49:22	stone 18:24	syntax 22:11	33:24 34:18,21	28:8,13,14,21
spaces 7:23 8:5	21:24	system 13:1	36:4,12 37:7	29:4 31:19
8:7,15,17 9:15	store 21:12	19:19 29:20	37:21 39:25	33:4,9 35:10
9:15,20 13:12	stories 9:12	T	40:9 42:2	36:16 38:12
16:6,18,18	street 1:12 7:17	take 2:12,23	44:25 45:17	40:18 41:1
23:1 29:14,17	8:10,19 13:3,6	4:17 32:4 39:1	47:5,20 48:16	42:3,24 44:7
30:22 50:8	13:25 14:25	46:17 51:2	50:2	44:15 45:3,8,8
spacing 15:25	15:3,6,7,14	taken 28:18	theory 18:9	45:12,17 46:22
speaking 35:1	21:14 25:12,14	52:12	theres 5:11 9:2	46:25 47:8,14
spec 8:22	26:3,4,5 31:17	takes 39:19	9:24 10:5,8,9	48:9,9,16,25
specific 24:15	31:22 35:12	talk 14:3 23:11	14:15,17 17:9	49:19,20,21,23
specifically 8:13	streetscape 6:22	26:19 43:13	23:22,23 31:16	50:1 51:4
41:18 42:16	14:22	49:9	32:19 36:3,18	thinking 23:13
specification	structure 24:22	talked 8:20 30:4	39:13 42:25	25:17
7:20	stuart 11:5	49:3	46:19 47:9,21	third 17:9 18:5
specified 36:25	23:10 45:25	49:3	theyll 24:16	19:4 38:21
spent 32:9	51:18	talking 6:15	35:23	thought 31:18

Regular Meeting of the Planning Board
2/28/2018

Page 63

49:21 three 6:23 7:22 23:1,5 26:6,11 28:19 37:13 38:13,16,17 40:14 44:11 46:16 50:7,10 50:15 threshold 39:15 throw 44:13 tim 49:1 50:21 time 6:11,25 7:2 7:13 10:2,11 12:9,20,23 18:16 28:9 32:9 41:16,17 44:16 45:10 46:17 48:14 50:21 times 8:11 timing 40:24 tint 20:6 tiny 25:20 today 4:3 14:1,4 20:22 21:3,5 40:15 todays 23:5 tonight 5:22 24:8 39:7 40:16 41:5 48:8,15 50:2 top 11:24 12:13 26:5 27:19 28:23 47:24 torn 6:5 total 7:17 9:13 9:14 14:15 47:18 touch 24:10,16 24:16,20 25:9 track 23:13 traffic 8:11 transact 31:7 transcript 52:12 transcription 52:11 transmission	19:17,21 20:3 trash 31:24 tree 13:25 trees 7:18 8:21 13:4 16:1 trespassing 37:10 tried 34:23 trip 8:7 trucks 8:16 true 46:13 52:11 trust 8:13 14:22 15:15 22:13 32:8 try 27:25 39:5 trying 27:18 36:25 44:9,9 45:16 tuesday 41:3 42:11,13 two 3:1 6:18 9:12 10:2 12:3 15:4 16:6 21:19 23:3 26:11,22 27:3 27:4,12 28:19 28:24 29:11 34:10 35:13 36:2,19 39:2 41:6 42:11 43:2,7 44:10 48:10,16 50:9 typewritten 52:10 typically 28:24	50:1 unique 27:23 unit 9:19 26:13 26:24 27:1 30:23 units 7:16,21 9:17,18 12:14 36:9 unknown 51:17 unlimited 38:15 unloading 31:24 unprotected 38:18 update 23:6 50:13 upper 11:22 12:13 19:6 20:1,4,5,6,7,8 21:2 32:17 urban 8:8 usable 7:22 23:1 50:7 use 2:18 7:15 8:9 8:16 9:5 11:18 13:7 18:4 30:24 users 30:6 uses 4:11 26:16	21:8 vicechairperson 2:13 3:12,15 3:18 5:13 23:8 26:8 28:2 29:7 30:1 31:10 32:3 37:23 39:9,24 40:2 43:17,20 44:4 45:25 48:3,19 49:14 50:17,19 51:10,20 victor 46:4 view 14:24,25 40:19 44:15 visibility 46:6 visible 19:17,20 20:2 vote 3:13 41:4,5 48:8 51:16 voted 44:17	washtenaw 52:3 52:20 wasnt 33:16 41:11,14,15 way 10:23 11:20 11:24 13:1 28:19 29:19,20 31:17 34:11,13 36:14 39:6 44:22 46:13 wednesday 1:10 42:12 week 42:14 weeks 41:6 42:11 43:8 48:10,16 welcome 28:5 wells 13:25 went 15:10 west 6:4 14:17 33:12 39:3 weve 14:12 27:9 28:12,18,21 29:2,5 32:24 33:19 39:12 45:2 48:14 49:21,21,23,24 whats 4:5 10:10 12:12,19 15:23 16:13 19:17 27:6 33:12 39:17 whippleboyce 26:10,24 27:15 27:22 28:1 31:2 32:2 47:2 48:5,7,20 49:13 51:11,12 white 10:22 19:19 20:2 whos 29:24 wide 13:17 15:19,20 width 13:23 williams 2:25 3:14,21 4:16 4:20 5:14
--	---	---	--	--

Regular Meeting of the Planning Board
2/28/2018

Page 64

20:13 24:4	writing 43:7	100 40:17 47:15	51 40:9
25:11,15 40:7	written 41:10	11 9:15,22	555 31:1
43:11,21,25	50:22	125 28:23	
44:5 51:13,14	wrong 30:8	13 29:18	6
willingness		13th 7:12	600 29:1
32:23	X	14 15:11	
window 18:10	x 23:14	14foot 15:8	7
19:18 46:18		15 9:20,25 30:21	7 1:10 2:3
47:21	Y	30:22,24 35:20	70 19:23 20:4
windows 11:2	yeah 2:25 24:13	38:12,17 47:17	78 20:3,5
11:12,17 12:16	40:7 45:11	52:21	8
12:17 19:15	48:6	151 1:12	8 19:24
28:20 32:14,22	year 28:23 39:18	17 14:15	80 19:16,20
34:4,16,19,20	years 29:23,25	18 29:25 39:18	800 28:21
35:3,6,13,15	47:15,15,17	180square 13:12	88 9:14,21,24
35:23 36:3,6,9	yesterday 21:5		
36:10,17,21,22	40:11 48:12	2	9
36:23 37:19,20	youd 30:4	2 20:6 28:21	9 11:11
38:1,18 45:1	youll 35:3,4,5	20 13:18 27:11	90 21:25 22:3
46:8,25 47:18	43:22	31:25	92 22:2
47:23	youre 5:8 28:5	2016 21:11 22:4	93 22:1
wise 23:21	30:7 34:15	2017 6:6,6	
wish 16:10	38:14 42:15	2018 1:10 2:2	
37:24	youve 11:17	3:5,8 52:8	
withdraw 43:8	40:14 41:24	2021 52:21	
withdrawing	43:6 44:5	215 22:23 50:5	
43:9	Z	23rd 6:25	
witness 17:18	zero 10:13,13	24 14:17	
18:3	11:14 38:16	25 38:14	
wont 42:12	46:16 48:2,2	25feet 13:17	
woodward 2:6	zerofoot 12:10	26th 6:9	
2:15 6:23 9:9	zone 6:3 7:24	27 3:5,8	
9:16,23 10:5	10:14 15:14	28 1:10 2:2 52:7	
13:21 14:24	16:7	3	
16:6,15 18:19	zoning 5:17 8:6	30 1:10 2:3	
19:14 21:17,19	9:20 13:14	34965 2:6,14	
22:1,23 26:1	17:20 18:14	22:23 50:4	
32:7 38:5 50:5	21:17,18 23:2	35 20:8	
word 8:8 49:18	26:15 37:5		
wording 50:10	42:20	4	
work 18:7 43:15		45 28:22	
49:21	0		
working 46:4		5	
works 51:21	1	5 22:1,2	
worth 48:10,14	1 19:24	50 32:22 47:15	
wouldnt 23:20	10 9:18,19 11:10	500 29:1	
48:13,22	29:17		

CASE DESCRIPTION

425 Harmon (18-19)

Hearing date: May 8, 2018

The owner(s) of the property known as 425 Harmon request the following variance(s) to construct construct patios in the required rear and side yard:

- A. Chapter 126, Article 4, Section 4.03 (B)** of the Zoning Ordinance allows structures to occupy a portion of the rear open space. They shall be at least 3.00 feet from any lot line. The proposed structure is to be located 2.25 feet from the side lot line; therefore a variance of 0.75 feet is being requested.
- B. Chapter 126, Article 4, Section 4.03 (C)** of the Zoning Ordinance requires structures on corner lots where a rear open space abuts a front of side open space. Structures on a corner lot shall have a minimum setback of 5.00 feet from the rear lot line. The proposed structure is to be located 2.62 feet from the rear lot line; therefore a variance of 2.38 feet is being requested.
- C. Chapter 126, Article 4, Section 4.30 C (3)** of the Zoning Ordinance requires that patios may not project into a required side open space. A proposed patio is projecting into the east required side open space 16.75 feet; therefore, a variance of 16.75 feet is requested.
- D. Chapter 126, Article 4, Section 4.03 (A)** of the Zoning Ordinance does not allow structures to be erected in the required front and side open space. A variance to construct a proposed retaining wall in the street facing side yard is being requested.
- E. Chapter 126, Article 4, Section 4.03 (A)** of the Zoning Ordinance does not allow structures to be erected in the required front side open space. A variance to construct proposed retaining walls/steps in the street facing side yard is being requested.

Staff Notes: The applicant is proposing to construct retaining walls in the rear and side yard open space to allow the installation of patios in both areas. This is a corner lot with a street facing side yard. This property has an existing stone retaining wall that is located in the ROW, which is proposed to be moved back onto the property in the rear yard in this proposal.

This property is zoned R2.

425 HARMON



Application Date: 3-16-18Hearing Date: 5-8-18Received By: BWAppeal # 18-19

Board of Zoning Appeals Application

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

Property Information:

Street address: 425 Harmon Street	Sidwell Number: 19-25-376-074
Owners name: Daniel Lievois, Maxine Lievois	Phone # : 248-816-3850
Owners address: 425 Harmon Street	Email: maxine.lievois@fnf.com
City: State: Birmingham, MI	Zip code: 48009
Contact person: Maxine Lievois	Phone #: 248-816-3850

Petitioner Information:

Petitioner name: Maxine Lievois	Phone #: 248-816-3850
Petitioner address: 425 Harmon Street	Email: maxine.lievois@fnf.com
City: Birmingham	State: MI
	Zip Code: 48009

Required Attachments:

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

General Information:

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

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

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

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

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

Signature of Owner: Maxine Lievois

Date: 3/15/2018

Called to pickup sign 4-9-18.
Maxine BW

CITY OF BIRMINGHAM
Date 04/09/2018 9:38 AM
Re 00047280
Rec'd 421663
Amount \$360.00



March 15, 2018

City of Birmingham
Board of Zoning Appeals

Dear Board of Zoning Appeals Officials,

We are submitting a request for your approval of a proposed landscape project for an existing home located at 425 Harmon Street Birmingham, Michigan. The proposed landscape elements below have been both designed and engineered to enhance the aesthetic quality of the home and property and will not in any way adversely affect the health, safety or welfare of the community.

A) Rear yard request

Retaining wall replacement- We are requesting to remove, relocate and replace an old existing stone retaining wall. The existing stone wall currently extends several feet over the property line and into the road right away. According to the Birmingham Building Department, it is located in the rear yard. The proposed replacement wall will be made of Corten steel and be no greater than 3' in height and placed within the property.

Patio replacement- We are requesting approval to remove an old brick paver patio and replace it with a new exposed aggregate concrete patio of comparable size. According to meetings with the Building Department, the existing and proposed patio is located in the rear yard (side facing south) and encroaches the setback.

B) Side yard request

Patio replacement- We are requesting approval to remove an existing brick paver walk/patio and replace it with a new exposed aggregate concrete patio of comparable size. Per our meetings with the Building Department the patio extends into the side yard (side facing Bonnie Brier) and encroaches the side yard setback.

Decorative border- Finally, we are requesting to install an attractive landscape border/steps constructed of exposed aggregate concrete. This decorative landscape border is approximately 31' long, 2' wide and 12" tall and will be located in the (side yard facing Bonnie Brier). The top of the proposed border will match existing grade within an inch providing and maintaining a 2% slope in the lawn away from the home. The finish grade on the street side of the border will also hold a minimum of 2% slope in the street lawn for positive drainage. The plans have been reviewed and engineered by Kieft engineering. This landscape feature will not cause any drainage issues on the property or the adjacent properties.



There is a practical hardship with the existing home and Lot configuration as its interpreted by the current ordinance. This hardship is genuine and is not self-created. The homes current footprint and positioning is exactly as it was over 20 years ago with the current owners (Dan and Maxine Lievois) purchased it. Because this home is located on a Corner Lot and was built many years ago when the zoning ordinances were different, our existing and proposed items are in non-conformity. The client wishes to have a ground level patio to sit on, have a cup of coffee, eat dinner and enjoy the beauty of the outdoors with family and friends. The proposed landscaping is designed to make the patio environments private, secluded and practically hidden from both streets. It is noteworthy to mention that any passerby would clearly view the Bonnie Brier side of the home as the front of the home by virtue of the adjacent homes along Bonnie Brier street, location of the front walk, front door and the garage doors. All of these proposed features are located and detailed in the landscape plan set and meet the Lot coverage calculations per the ordinance.

We feel the proposed project makes a significant improvement to the property and Birmingham community.

Please feel free to contact us with any questions.

Thank You,



Patrick Zaremba

Zaremba & Company

Office: 248 922 3300

Fax: 248 922 3303

www.zarembaandco.com

Kathy Wilson
433 Bonnie Brier
Birmingham, MI 48009
248-321-8700

April 30, 2018

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

Re: 425 Harmon
Notice of Public Hearing
Tuesday May 8, 2018 7:30

Dear Board of Appeals:

My name is Kathy Wilson and I live at 433 Bonnie Brier. I am in total support of allowing the Lievois a variance to construct patio per plans submitted to the City of Birmingham.

If you need anything further, please let me know

Thank You

A handwritten signature in black ink that reads "Kathy Wilson". The signature is written in a cursive, flowing style.

Kathy Wilson

BUS. 248-646-6203

CASE DESCRIPTION

1185 Willow (18-20)

Hearing date: May 8, 2018

The owner(s) of the property known as 1185 Willow request the following variance to construct and addition on an existing non-conforming home:

- A. **Chapter 126, Article 4, Section 4.74 (C)** of the Zoning Ordinance requires the minimum distance between structures on adjacent lots of 25% of the total lot width. The required distance between is 20.00 feet. The proposed is 18.70 feet; therefore, a variance of 1.30 feet is requested.

Staff Notes: The existing home is non-conforming. The applicant is proposing an addition to each side of the home. The addition on the south side is proposed to extend from the existing wall line of the existing home.

This property is zoned R1.

Jeff Zielke
Plan Examiner

1185 WILLOW



Application Date: 4-9-18



Hearing Date: 5-8-18

Received By: BM.

Appeal # 18-20

Board of Zoning Appeals Application

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

Property Information:

Street address: <u>1185 WILLOW</u>	Sidwell Number: <u>19-26-229-017</u>
Owners name: <u>LARRY & MARIA SUAREZ</u>	Phone #: <u>313-530-4740</u>
Owners address: <u>1185 WILLOW</u>	Email: <u>LL SUAREZ 2010 C 6MAIL.COM</u>
City: State: <u>BIRMINGHAM, MI.</u>	Zip code: <u>48009</u>
Contact person: <u>LARRY SUAREZ</u>	Phone #: <u>313-530-4740</u>

Petitioner Information:

Petitioner name: <u>JOSEPH MOSEY ARCHITECTURE</u>	Phone #: <u>248-515-4477</u>
Petitioner address: <u>108 CENTER ST., RD SUITE 205</u>	Email: <u>JOSEPH C JMA-ARCHITECTURE.COM</u>
City: <u>NORTHVILLE</u> State: <u>MI</u>	Zip Code: <u>48167</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: Larry Suarez Date: _____

HAS SEEN
Birmingham Board

CITY OF BIRMINGHAM
Date 04/09/2018 3:11:43 PM
Ref: 047302
Recd: 421951
Amount: \$360.00



JOSEPH MOSEY
ARCHITECTURE, INC.

REQUEST FOR DIMENSIONAL VARIANCE CLARIFICATION

DATE: April 9, 2018

PROJECT: Suarez Residence

SUBJECT: 1185 Willow

To: Zoning Board of Appeals
City of Birmingham
250 Martin Street
Birmingham, MI 48009

Dear Members of the Board:

The purpose of this letter is to respectfully request a dimensional variance from this board to the Zoning Ordinance requirements.

Project background: The Suarez family has lived in there home on 1185 Willow for many years and very much enjoy their neighborhood and the surrounding community. Recently they have decided to improve their property and bring it more in line with todays standards so it works better for them. The improvements include adding space for a new larger Kitchen with a Mud Hall/Laundry allowing a direct connection to the Garage, a new Master Bathroom and additional space in the Dining Room. The current home has underperforming spaces that were designed with different standards than those acceptable for today's lifestyle and also re-sale values and values of neighboring properties.

Today we are asking the board to approve a 1.3' variance to the required distance between buildings regulation that was added to the ordinance after the completion of this house. This regulation has rendered this property non-conforming on the south side. When constructed, the residence met the required side yard setbacks and still meets the required side yard setbacks of the current ordinance. The existing layout of the rooms locates the Dining Room on the south side rear of the residence. In order to add space to the Dining Room, we need to extend the room toward the rear. We cannot extend the space forward as this would encroach in to the existing Living Room with its centered original masonry fireplace.

The proposed variance of 1.3' would allow us to simply extend a one-story addition to the rear in line with the existing side building line and would not increase the non-conformity nor encroach on any established setbacks. The current South side building façade is 2 stories plus a gable roof. The proposed addition, as mentioned, would only be one story with a low shed roof. If the additional space was to be built with the current distance between buildings restriction, the already narrow space would have a 1.3' jog in the wall reducing the width of the room and making it non-functional for a Dining Room of today's standards.

The petitioners at 1185 Willow respectfully request that you approve the requested variance of 1.3' as proposed to simply extend the existing rear building wall back in line with the existing structure. We feel the strict adherence to the regulated distance between buildings is overly burdensome and unnecessary in this specific instance and will create a condition that is incorrect architecturally.

Please feel free to contact me with and questions.

Variance Chart:

Required:	Existing:	Proposed:	Requested:
20'	18.7'	18.7'	1.3'

Sincerely,

Joseph M. Mosey, RA
Joseph Mosey Architecture, Inc.
248-515-4477

CC: Larry Suarez, Maria Suarez