

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS  
TUESDAY, NOVEMBER 14, 2017  
City Commission Room  
151 Martin Street, Birmingham, Michigan**

---

Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, November 14, 2017. Chairman Charles Lillie convened the meeting at 7:30 p.m.

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

**Absent:**

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

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

**T# 11-74-17**

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

Mr. Jones clarified his motion on Page 6. He noted the petitioner's situation was clearly self-created. His motion stated in the negative as to whether or not it was self-created. He should have specifically said that he agreed with Mr. Lyon that the petitioner's matter has been self-created.

**Motion by Mr. Morganroth**

**Seconded by Mr. Lyon to approve the Minutes of the BZA meeting of September 12, 2017 as clarified.**

**Motion carried, 7-0.**

VOICE VOTE

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

Nays: None

Absent: Miller

**APPROVAL OF THE MINUTES OF THE BZA MEETING OF OCTOBER 17, 2017**

**Motion by Mr. Judd**

**Seconded by Mr. Canvasser to approve the Minutes of the BZA meeting of October 17, 2017 as presented.**

**Motion carried, 7-0.**

VOICE VOTE

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

Nays: None

Absent: Miller

**T# 11-75-17**

**273 EUCLID  
Appeal 17-27**

The owners of the property known as 273 Euclid are requesting the following variances to allow for the construction of a new single-family home with a detached garage:

A. **Chapter 126, Article 2, Section 2.10 of the Zoning Ordinance** requires a maximum roof height of the house for R-3 of 28.00 ft. for this property. The proposed roof height is 32.56 ft.; therefore a variance of 4.56 ft. is requested.

B. **Chapter 126, Article 2, Section 2.10 of the Zoning Ordinance** requires maximum lot coverage of 30.00%. The proposed lot coverage is 31.70% (3,179 sq. ft.); therefore a variance of 1.70% (179 sq. ft.) is requested.

C. **Chapter 126, Article 2, Section 2.10 of the Zoning Ordinance** requires a minimum combined front and rear setback of 55.00 ft. for this property. The proposed combined setback is 54.70 ft.; therefore a variance of 0.30 ft. is requested.

**D. Chapter 126, Article 2, Section 2.10 of the Zoning Ordinance** requires a maximum roof height for the accessory building for R-3 of 14.5 ft. for this property. The proposed roof height is 18.25 ft.; therefore a variance of 3.75 ft. is requested.

**E. Chapter 126, Article 2, Section 2.10 of the Zoning Ordinance** requires a maximum eave height for the accessory building for R-3 of 12.0 ft. for this property. The proposed eave height is 13.98 ft.; therefore a variance of 1.98 ft. is requested.

This property is zoned R-4.

Mr. Morad explained the property is zoned R-4 and currently contains a duplex or two-family residence. The duplex is proposed to be demolished and replaced with a single-family home. A single-family home is permitted in an R-4 District following the R-3 single family development standards. Development in R-4 Districts requires site plan approval. The applicant was granted Preliminary Site Plan Approval on October 25, 2017.

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

Mr. Morad explained for the Chairman how the height restrictions are calculated. Measurements are taken from the lowest point where the house will be on the lot. In this case there is quite a bit of difference from the front to the rear of the lot. If the lot was level, a variance would not be needed. He noted for Mr. Morganroth that measuring from the existing rear grade, because of the walk-out they would not be able to build anything above a ranch based on the maximum height allowed from that grade point.

Mr. Brian Neeper, the architect, 630 N. Old Woodward Ave., noted this is a very challenging site. There is a ravine in the back that goes down about 7 ft. to the northwest corner. The rear of the house is about 5.5 ft. lower than the front. That means they are put into a 5.5 ft. hole to begin with their height calculation. He has tried to bring the height down by using gables and shed dormers to create the second floor space. All the neighboring properties are R-2, which has a 30 ft. height requirement. Based on the Ordinance they are required to be R-3 which puts them down to 28 ft. He has taken great care to try and meet the spirit of the Ordinance and keep the appearance low. He feels the home will blend in well with the neighborhood.

Mr. Hart noticed that the property to the north is a similar condition and is scaled similarly with the garage at the lower level.

There were no comments on this appeal from members of the audience at 7:50 p.m.

**Motion by Mr. Canvasser**

**Seconded by Mr. Jones in regard to Appeal 17-27 for the property located at 273 Euclid, he would move to approve the request for variances A, D, and E with B and C having been removed. He believes this problem was not self-created; it is due to the unique circumstances of the property which has a very drastic slope, and the necessity to measure from the lowest point of the grade.**

**Mr. Canvasser thinks that granting these three variances will do substantial justice to the petitioner as well as to the other property owners in the area. Based on the grade of the property he thinks strict compliance with the Ordinance would render conformity unnecessarily burdensome.**

**He would also note that he thinks the petitioner has tried to mitigate the requested variances as much as possible. If we had a level playing field, he would not be here requesting variances. For those reasons, Mr. Canvasser would move to approve variances A, D, and E. The motion is tied to the plans submitted.**

**Motion carried, 7-0.**

**ROLLCALL VOTE**

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

Nays: None

Absent: Miller

**T# 11-76-17**

**611 HUMPHREY**

**Appeal 17-30**

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

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

This property is zoned R-3.

Chairman Lillie explained there was an issue in advertising. The porch encroachment is further than advertised. However, the petitioner is willing to inset the porch roughly 2.5 in. so as not to require a larger variance.

Mr. Morad advised the existing house was constructed in 1925. The owners propose to replace and expand an existing front porch with a new one that extends the width of the front of the home.

Dr. Tracey Stulberg was present with her husband, Mr. David Stulberg. Dr. Stulberg said their porch is falling apart and they need a new one. They are willing to take care of the advertising problem by narrowing the porch in the front by 2.5 in. If they were to comply with the Zoning Ordinance the porch would have to start in the middle of their front door.

There were no public comments on this appeal at 7:55 p.m.

**Motion by Mr. Lyon**

**Seconded by Mr. Jones in regard to Appeal 17-30, 611 Humphrey, he would move to grant the appeal as advertised, subject to amended drawings for the 2.5 in. setback to comply with the advertised appeal.**

**He believes that strict compliance would be unduly burdensome due to the unique circumstances of this property. There is an existing, non-conforming porch. To actually comply with the Ordinance as indicated by the drawing and the applicant, the porch would have to start in the middle of the door.**

**He believes this is not a self-created issue, given the age of this house. He further believes that granting this variance gives substantial justice to both the homeowners and the surrounding neighbors. They are really not expanding any further than the already existing encroachment. Also they are bringing up to code modern design and build standards of the front porch. The motion is tied to the plans as amended.**

**Motion carried, 7-0.**

**ROLLCALL VOTE**

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

Nays: None

Absent: Miller

**T# 11-77-17**

**460 W. MAPLE RD.**

**Appeal 17-26**

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

**A. Chapter 126, Article 4, Section 4.03(B) of the Zoning Ordinance** requires that accessory buildings or structures shall be at least 3 ft. from any lot line. The applicant is proposing to construct a structure to allow for the installation of a ground mounted

mechanical unit 0.00 ft. from the eastern property line; therefore a variance of 3.00 ft. is requested.

This property is zoned R-6.

Mr. Baka advised that the property is a designated historic structure within the City of Birmingham. The request is to locate the unit right next to the garage where there is equipment already. Also, the neighbor has a large transformer there on their property. The proposed location of the ground mounted AC unit was reviewed by the Historic District Commission ("HDC") on October 18, 2017. They recommended that the BZA approve the variance based on the fact that something like a mechanical unit should be located as far as possible from the historic structure to eliminate the visual effect on the property.

Mr. Morganroth asked about a requirement for screening, and Mr. Baka replied if the unit is visible from the street they would have to screen it. Considering the transformer and landscaping, he did not believe it would be visible from the street.

Mr. Tim Shoemaker, Designer with Michael J. Dul & Associates, Inc., Landscape Architects, was present to represent Eric Charles Design Studio. He stated that due to the layout of the site there is very limited space and not a lot of options to put the unit. Therefore the thought was to put it next to similar equipment on the site. He described why the unit would be hard to see because of very limited viewpoints.

In response to Mr. Judd, Mr. Shoemaker indicated their hope is to finish the project in the spring or early summer. There was discussion that the AC unit is for the garage which has office space on the second floor.

No one in the audience wished to comment on this appeal at 8:05 p.m.

**Motion by Mr. Judd**

**Seconded by Mr. Jones in regard to Appeal 17-26, 460 W. Maple Rd., the petitioner again seeks a variance from this board, this time to place an AC unit with a variance of 3 ft. at 0.00 ft. from the eastern property line.**

**He feels that strict compliance with the setback restrictions would unreasonably prevent the owner from using the property for a permitted purpose and would render conformity with such restrictions unnecessarily burdensome.**

**To grant this variance would do substantial justice to the applicant and all the other surrounding property owners. The plight of the owner is due to the unique circumstances of the property and not to other conditions in the general area.**

**Is this self-created? You bet it is, but Mr. Judd feels they have mitigated somehow to justify this vote. Therefore he moves to approve and tie the motion to the plans as submitted.**

Mr. Jones commented that the nature of the HDC and the historical building is the driving force behind his support of this motion.

Mr. Lyon said he would also support with the stipulation that he believes the "not self-created" standard comes from the HDC and the historic nature of the building. There are certain limitations when remodeling historic property as imposed by the Secretary of the Interior along with the HDC.

**Motion carried, 7-0.**

ROLLCALL VOTE

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

Nays: None

Absent: Miller

**T# 11-78-17**

**415 W. MERRILL**

**Appeal 17-28**

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

**A. Chapter 126, Article 2, Section 2.06 of the Zoning Ordinance** requires a maximum lot coverage of 30% with 37.80% (1,827.95 sq. ft.) proposed; therefore a variance of 7.80% (377.20 sq. ft.) is requested.

**B. Chapter 126, Article 2, Section 2.06 of the Zoning Ordinance** requires a minimum of 40% open space with 36.60% (1,767.85 sq. ft.) proposed; therefore a variance of 3.40% (166.49 sq. ft.) is requested.

**C. Chapter 126, Article 4, Section 4.03 (J) of the Zoning Ordinance** requires that dormers on accessory structures are limited to 50.00% of the width of the roof per elevation. The roof width is 27.00 ft. and the proposed dormers on the east and west elevations are 85.00% (23.00 ft.); therefore a variance of 35.00% (9.50 ft.) is requested.

This property is zoned R-8.

Mr. Hart, as the architect on this project, announced he would recuse himself.

Mr. Baka advised that the current home was built in 1884 and is historically designated within the City of Birmingham. The Historic District Commission ("HDC") has approved the garage as well as some minor modifications to the home as consistent with the Secretary of Interior Standards for Historic Renovation. Because this property is located in the R-8 District it requires site plan review by the Planning Board which was granted with the condition that they obtain the required variances. The historic house is non-conforming.

Chairman Lillie noted that after doing the math on what the variance is over what is allowed he reached the following conclusions:

- Variance A requests a variance is 26% from what is authorized by Ordinance;
- Variance B requests a variance of 10% from what is authorized by Ordinance;
- Variance C requests a variance of 70.3% from what is authorized by Ordinance.

Mr. Morganroth inquired if there was any discussion about these dormers by the HDC. Mr. Baka replied that certain members of the HDC have a difference of opinion about what constitutes a dormer as related to how it is enforced. In this case, they felt these are gable ends and not dormers.

Chairman Lillie noticed that there is an interior stairway in the garage. They could have pull-down stairs instead. Mr. Baka explained the Ordinance allows an additional 75 sq. ft. of area for an interior staircase. Normally 575 sq. ft. is the maximum allowed with a staircase and this one is 546 sq. ft.

Mr. John VanBrook with VanBrook & Associates presented for Kevin Hart Architects. He pointed out the property is located on a corner lot at Merrill and Chester. The new design keeps the house in harmony with the neighborhood and is a huge improvement for the property. It is his interpretation that these projections are gables and not dormers.

With respect to Variance B, the open space requirement is 40%. The proposal will be an improvement of 6.6% over the existing situation of 30%, bringing it up to 36.6%, almost that 40% requirement. Variance A will result in a drastic improvement in that the impervious requirement is 30% and as existing it is 42% which is 12% over. With the proposal it is 25.6% which brings it under 4.4% of the required maximum of 30% which is a 16.4% improvement. So, he thinks these are very reasonable requests for the improvements to the property.

Responding to the Chairman, Mr. VanBrook explained the open space would be improved because right now there is a lot of existing pavement that will be reduced when the garage is built.



Mr. Morganroth asked if there would be a way for them to design the plan to meet the new designation for a dormer in order to eliminate Variance Request C. Mr. VanBrook thought anything different would take away from the aesthetics. If the roofline was simplified to go straight across head room for the stairs would be lost.

Answering the Chairman, who asked if the garage would be for storage why they can't have pull-down stairs, Mr. VanBrook explained the garage is within the allowable square footage and it is much nicer to have a staircase that doesn't have to be pulled down. Mr. Morganroth said they are focusing on lot coverage, not on whether or not the accessory structure meets the square footage allowance. Again, Mr. VanBrook said they would lose aesthetic value if they were to pull the gables out and simplify the roofline.

Members of the public were invited to comment at 8:25 p.m.

Ms. Suzanne White, 420 Townsend, just to the south, said their terraces face the garage. There is a proposed south facing window and it looks more like living quarters than storage. She has heard that someone will be living in the space.

**Motion by Mr. Lyon**

**Seconded by Mr. Jones in regard to Appeal 17-28, 415 W. Merrill, to approve as advertised. He believes that strict compliance with the Ordinance would be unduly burdensome, given the unique circumstances of this parcel and that it is a historic house with a relatively small lot, and there is no way really to attach a garage and still meet the Historic District requirements.**

**He believes there has been some mitigation here when we talk about what a two-car garage is. He believes that building a house with a pull-down stairway is a bit impractical for safety reasons at times. He will leave it to the City to enforce any habitation in the garage area.**

**Further he thinks that the design of the dormer as it is called is just a reverse gable, but it does follow the architecture of the existing historic building which is a requirement that he believes the HDC would put on them to have something that matches the architecture.**

**He does not believe this is self-created as this is a historic building. Also he thinks it does substantial justice to the homeowner and to the surrounding folks.**

**He would comment there was a concern on the rear facing window and being close to the lot line. They could potentially build a smaller garage without a variance and have that same condition. He doesn't think this exacerbates that at all. He would tie the motion to the plans as presented.**

Mr. Jones stated he always chafes when they have a Historic District situation because what he sees driving most of it is something that is totally different than what the BZA does. It is in fact the aesthetics that he sees running the show. That leaves this board with its hands tied. He agrees with Mr. Lyon and under these circumstances he thinks it is advisable to grant the variance.

Mr. Morganroth indicated his support for the motion. He agrees this doesn't appear to be a dormer and it is necessary to conform to the historical nature of matching the theme of the balance of the structure. However, he still thinks it is a difficult determination for this board and for the community to differentiate how it has been resolved what dormers are and are not. In addition, there has been mitigation because of the concrete reduction.

Chairman Lillie said he will oppose the motion, mainly on the issue of Requested Variance A, and the size of the garage.

**Motion carried,**

ROLLCALL VOTE

Yeas: Lyon, Jones, Canvasser, Judd, Morganroth

Nays: Lillie

Recused: Hart

Absent: Miller

The board took a short recess at 8:32 p.m.

**T# 11-79-17**

Chairman Lillie announced the board would hear the last two appeals together because they deal with the same property and the facts are basically pretty much the same. Tonight's decision will be evaluated on the documents that existed as of the Planning Board's September 13, 2017 hearing. The affidavits that were done afterwards cannot be considered because they are new information that wasn't in front of the Planning Board.

**34965 WOODWARD AVE.**

**Appeal 17-31**

Appeal No.17-32: The owners of the property known as 34977 Woodward Ave. are appealing the decision of the Planning Board to grant Preliminary Site Plan Approval for the property located at 34965 Woodward Ave.

**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.

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

Mr. Baka explained that the property is zoned B-4 and D-4 in the Downtown Overlay which allows for the construction of a five-story building with site plan approval from the Planning Board. The applicant was granted Preliminary Site Plan Approval for the construction of a five-story building on September 13, 2017. The constructed building did meet the development standards as outlined in Article 2 of the Zoning Ordinance.

Chairman Lillie advised that a letter from Timothy Currier, City Attorney, indicates it is his opinion is that the zero lot line construction is consistent with the Zoning Ordinance; the parking wasn't an issue; and there wasn't a problem with the Master Plan. The Chairman received clarification that the Ordinance allowing buildings to build up to the lot line was in existence at the time the Greenleaf Trust and Balmoral buildings were built and the Ordinance has not changed.

In response to the Chairman, Mr. Morad advised that when building up to the lot line the windows must be fire rated glass and the walls are fire rated for their clearance from the property line.

Mr. Baka explained for Mr. Lyon that the Overlay allows zero lot line construction. At the request of the Chairman he went through the procedure for getting a Preliminary Site Plan Approval. Once a Community Impact Statement has been accepted by the Planning Board, then the next step is to take action on the Preliminary Site Plan Review. These buildings are in the Parking Assessment District which means that all the properties within the area have been paying an assessment for the upkeep of the parking decks.

The impetus for the Overlay came from the 2016 Plan that was created in 1996. Within two or three years the Overlay was instituted which codified the concepts in the Plan. The Balmoral and Greenleaf Trust buildings complied with all of the development standards.

Mr. Alan M. Greene, Dykema Gossett PLLC, spoke on behalf of both the Balmoral Building and the Greenleaf Building. He objected to what was said that the only items the BZA should be considering are what was before the Planning Board. Now they have seen the Planning Board's decision they should be able to submit materials that indicate whatever the board said was wrong.

Chairman Lillie responded they are going on the basis of the Board of Zoning Appeals Handbook which specifically states that allowing testimony or evidence in addition to that previously submitted is inappropriate.

Mr. Greene made the following points:

- At great expense and working with the Planning Dept., both of the buildings' facades were not built directly to the property line. The Balmoral Building has 50 offset windows, not fire rated, facing north. The Greenleaf Trust Building has 47 windows, much of them recessed at least 15 ft. above the first story.
- The Alden Development proposal features plain, windowless, five-story colored block walls that are 1 ft. from the property line. That would destroy the two building owners' investment that they placed in their facades at the demand of the City.
- This proposal would prevent any reasonable maintenance of the existing buildings without trespassing on adjacent properties.
- Ordinance standards mandate that light and air shall not be blocked to adjacent buildings; also that the location, size, and structure cannot diminish the property values of your neighbor.
- They presented evidence to the Planning Board that there would be a material diminishment in value to their buildings. Alden Development put forth no evidence that there would not be.
- Ordinance standards also state that the design must be compatible with that of neighboring properties. What is not compatible is the five-story zero lot line design that prevents the buildings from being properly maintained.
- The character of the corridor is stand-alone important buildings. Further, this design is inconsistent with the Master Plan.
- As part of the CIS, the Alden Development Parking Study states there is no available parking to serve this project. The Planning Board said the building is in the Parking Assessment District and therefore not required to provide parking. Not having parking will help devalue their buildings even further.

Mr. Lyon noted that Mr. Greene alleged the City and/or Planning Board insisted on a four-facade structure for the two buildings. He asked if there is any evidence of that. Mr. Greene said there is written communication from the Planning Dept. that says they would never recommend that the Planning Board wouldn't approve any change that detracts from the architectural character of the building. Mr. Lyon noted they could have gone to the Planning Board against the recommendation of the Planning Dept. and asked for a revision of the site plan.

Mr. Lyon further noted that Mr. Greene's whole argument sounds like the first to build wins, in that if someone constructs a building with windows on the side, that should somehow limit the adjoining property owner from building to the lot line. Mr. Lyon stated he hasn't seen any evidence to the effect that the City didn't allow them to construct a

zero lot line structure. Mr. Greene responded that both of the owners worked in close cooperation with the City. They were intent on creating great projects. He added there are specific Ordinance requirements to deal with these kinds of issues but when do they apply. Those requirements were not addressed by Alden Development.

Mr. Greene said that with a little creativity and the willingness to do the same things that Balmoral and Greenleaf did with their buildings in terms of not having a plain facade, setting it back, and adding some windows, they could be looking at a nice facade. However, the original design of that building as put forth to the Planning Board was to maximize every square foot they could get under the Zoning Ordinance.

Mr. Jones pointed out they took a business risk because a potential tenant could say that they would not pay so much in order to be 3 ft. away from another window. Mr. Greene replied they expected to see a facade that would be aesthetically compatible with their front and back on Woodward Ave. and on Peabody.

With respect to the diminution of value for the Balmoral Building, Mr. Green advised they spent an extra half million dollars on the one facade to do the things that they thought the City wanted and that now have absolutely no value. They thought the adjacent building would have the same consistency, quality and character as theirs. All he can address is how they have analyzed what was presented with respect to the standards that apply. The plan that Alden Development brought forth with the five-story masonry wall built right to the property line doesn't meet the Ordinance standards.

Mr. Richard Rassel with Williams, Williams, Rattner & Plunkett Attorneys spoke to represent the Peabody LLC Group, owner of the property located between the Balmoral and Greenleaf Buildings. Their client is also Alden Development Group, the developer of the project. Mr. Rassel cited the following:

- Unfortunately what the board is hearing tonight is a request to insert itself in a business dispute. It is not this board's responsibility to get itself involved and neither was it the Planning Board's responsibility to get itself involved in a business dispute between very experienced real estate developers.
- At the September 13, 2017 Planning Board meeting, Board Member Brian Williams brought with him a seven page written opinion that he read into the record.
- For Catalyst (Greenleaf Trust) and Woodward-Brown (Balmoral) to suggest that the Planning Board did not have in front of it an analysis of the Zoning Ordinance as it relates to all of the relevant factors under Section 7.27 of the Zoning Ordinance as set forth in seven pages of written opinion from Mr. Williams is ludicrous.
- Mr. Currier, City Attorney, in a letter directed to the Planning Board, opined very clearly that a building constructed to a zero lot line on this site was not only foreseeable but is permitted by the Ordinance.

- The Planning Dept. wrote three memos opining that this project should be approved.
- Catalyst and Woodward-Brown built their buildings absolutely knowing that there could be zero lot line construction up to five stories on their lot lines. They made a business decision and now they are asking this board to save them from the risk that they took.
- Mr. Williams, who analyzed the Zoning Ordinance very carefully in a seven page written statement, concluded that the applicant's proposal meets the requirements of the Ordinance for Preliminary Site Plan Approval.
- The statement suggesting that the Planning Dept. or the Planning Board forced the applicant to build windows is absolutely belied by Mr. Williams' findings. They did it at their own volition.
- The BZA is being asked to flip the decisions of the City Attorney, the Planning Dept., and the Planning Board.

Mr. Lyon noted the 2016 Master Plan suggests a desire to have a gateway building at Woodward Ave. and Maple Rd. at the site of the Greenleaf Trust Building, and maybe one further south. It seemed to him that a gateway building has to be stand alone. The sketch in the 2016 Plan shows a stand-alone building and some small things on the Peabody site and then another building where the Balmoral Building is located. He wondered then if this is really in compliance with the 2016 Plan sketches and if there really is the wish to have a gateway building there.

Mr. Rassel replied that Mr. Currier wrote a letter to Ms. Ecker dated August 23rd, 2017 responding to Mr. Greene's assertion in that regard. Mr. Currier's indication was that the 2016 Plan is consistent with both the Zoning Ordinance and what is being proposed. Zero lot line construction has been used in many parts of Downtown. So, Mr. Rassel deferred to the City Attorney's conclusion along with that of Mr. Williams.

Answering Mr. Canvasser, Mr. Rassel said that in the Planning Board's opinion zero lot line construction in this instance is adequate because three sides of the buildings will be unobstructed as far as access to adequate light and air. This goes on all over in big cities and major downtowns where there is retail, offices and restaurants everywhere.

**Motion by Mr. Judd**

**Seconded by Mr. Lyon that in regard to Appeals 17-31 and 17-32, all relating to 34965 Woodward Ave., the board has sat through a very long and very interesting meeting.**

**He has remained silent during this meeting because at the outset Mr. Greene proposed a role for the Board of Zoning Appeals ("BZA") which he certainly has never considered, in which we would be something of a super board to step in and sort out the problems of the Planning Board (which he is sure they would absolutely adore). Thus people would come before this board, and we would have**

all kinds of individuals making presentations to us and eventually we would make a decision and do what is right. However, that is not our purpose. We are not the Planning Board and the Planning Board is not the Zoning Board. We are a legalistic board and in hearing all the questions being offered to Mr. Greene and to Mr. Rassel Mr. Judd began thinking they were going far afield. So, he is a minimalist on this particular case.

He too is very impressed with the presentation done by Mr. Williams. His consideration in this matter is whether the planning process was done according to proper procedures and standards. Also, was there any hint of an abuse of discretion on the part of the Planning Dept., the City Attorney, or the Planning Board. He does not see any.

In making this motion, Mr. Judd would refer to the presentation done by Mr. Williams, as follows:

1. Is the project consistent with the Master Plan: It is Mr. Williams' consideration and based upon the vote of the Planning Board that it certainly was. In fact a five-story building with the top floor residential is consistent with the Zoning Ordinance and is not inconsistent with the Master Plan.
2. Parking: Discussion is made of the Parking Assessment District. It is certainly a large feature of Mr. Greene's presentation that this is grossly unfair or inconsistent with the parking needs of the City. Mr. Judd does feel that this has been adequately addressed by Mr. Williams and the Planning Board once again in the second bullet. The fact that the City may not have built enough public parking does not change the fact that the property owner and its predecessors, like many others, have paid into the Parking Assessment District with the understanding that it will not have to have on-site parking for non-residential uses.
3. The plan violates Section 7.27.B (2), the light and air clause of the Zoning Ordinance: Once again this is one that certainly is a large consideration of the appellant. However, this is once again answered with a determination and we certainly spent some time discussing the significance of the word "adequate" and what it means. A little beyond our purview, but the consideration of Mr. Williams and the Planning Board is that each building has unimpeded light and air on three of their four facades. The Balmoral windows are set back 5 ft. on their north facade. The 5 ft. well provides adequate light and air. The important part is that the Ordinance does not guarantee no change in the amount of light and air; merely that the board assure that there is "adequate" light and air. It is the opinion of the board that there was, and his too.

**4. The Diminished Value Section:** This one was rather amorphous to Mr. Judd, but it is contained in the Ordinance and certainly was addressed to some extent by the Planning Board. On page 5, paragraph 2 of Mr. Williams' presentation it says that many property owners may object to any building being built next to them and argue that the development will diminish their property value. It neither is, nor should be, the job of the board to choose between the competing speculations about whether proposed construction will reduce or increase the value to a small degree. Most importantly they note that the construction of this proposed property was completely foreseeable. The Balmoral Building informationally knew that as well, since it is constructed with a blank wall on the northern most part of its facade. Pardon a little levity, but Mr. Judd kept thinking what was it the appellant was hoping for with this piece of property - a Dairy Queen, highly unlikely with the expense. So he agrees that it is completely foreseeable and he would agree with the Planning Board.

**5. The proposed building is not compatible with the adjacent properties:** We heard much about the compatibility at a previous meeting, regardless of whether the compatibility is determined within the framework of visual appearance or on a structural basis, such as alignment of floor levels, height and mass. The Zoning Ordinance itself, at Section 7.24. B as Mr. Jeffares of the Planning Board pointed out at the last meeting, discourages monotonous construction, so the objections that the building does not have masonry with punched windows is to him not persuasive.

**6. Construction will necessarily result in trespass:** Once again with a great deal of discussion on this particular point, apparently we are also advised that zero lot line construction is quite common throughout the State. It is certainly not uncommon in this City like it is something of a red herring. Mr. Koseck, a former member of this board, pointed out that it would be considered in the Final Site Plan Review.

In the motion by Mr. Williams which was unanimously passed by the Planning Board, seven points were considered, all of which we have discussed here. In review of the materials presented, in review of the presentations by the attorneys, Mr. Judd would move to affirm the decision of the Planning Board and deny the request by the appellant in this case.

Mr. Lyon indicated that he believes the board's purview is to find out if the Planning Board abused its discretion or erred in the application of the Zoning Ordinance. He agreed with Mr. Judd that they did not. There has been no gross error or gross misapplication. Absent the evidence that there was some City function forcing the facade and windows he can't find abuse of discretion by allowing this building to go up at a zero lot line clearance.



Mr. Jones said he sees no error, certainly not in the process before this board. He feels the Planning Board did what it needed to do and he sees no basis for the BZA to overturn their decision. Therefore, he will support the motion.

Mr. Hart confirmed that he also would support the motion. It is not appropriate for the BZA to step into the process that he thinks has been properly administered by the Planning Board. It is fairly obvious that the process and procedures were followed.

Mr. Morganroth said he supports the motion. Every issue that was brought before this board was addressed thoroughly and was properly approached, and the City Attorney supported each individual case.

Mr. Morganroth noted he too would support the motion even though he does not agree with everything stated by the Planning Board. However it is not this board's job to agree or disagree with the Planning Board. It is this board's job to make sure they made a reasonable decision that was based on the powers delegated to them and on due consideration. Therefore he thinks the BZA needs to defer to the Planning Board's decision.

Chairman Lillie stated he also would support the motion for the reasons previously stated.

**ROLLCALL VOTE ON APPEAL 17-31**

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

Nays: None

Absent: Miller

**Motion carried, 7-0.**

**ROLLCALL VOTE ON APPEAL 17-32**

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

Nays: None

Absent: Miller

**Motion carried, 7-0.**

**T# 11-80-17**

**CORRESPONDENCE** (none)

**T# 11-82-17**

**GENERAL BUSINESS**

The Chairman directed the board's attention to the April 3, 2004 letter from Mr. Tim Currier. It is relevant to discussion last month about who can advocate. "No elected or appointed official shall appear before a City board or commission as counsel or advocate for any party participating in any proceedings before such board or commission, whether he is being paid for this or not." So, board members should not be going before another board advocating anything and they should not be coming before us to advocate anything. Granted, Mr. Henke was trying to set the record straight but the record had already been set straight.

**T# 11-83-17**

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

**T# 11-84-17**

### **ADJOURNMENT**

No further business being evident, the board members passed a motion to adjourn at 10:45 p.m.

---

Bruce R. Johnson, Building Official