

AMENDED
BIRMINGHAM CITY COMMISSION AGENDA
JULY 13, 2020
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.
VIRTUAL MEETING

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Pierre Boutros, Mayor

II. ROLL CALL

Alexandria Bingham, City Clerk Designee

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

ANNOUNCEMENTS:

- All city offices remain closed to the public. All departments are accessible via phone and email. Payments may be dropped off using the convenient drop box, located behind City Hall and accessible via the Police Department parking lot off Henrietta Street.
- We encourage everyone to sign up for our email distribution system to receive the latest information from the City. You can do this by going to our website and clicking on the box in the lower right corner of your screen to sign up.
- The Baldwin Library is now open to the public again. Building capacity is limited, and people are asked to limit their stays to 45 minutes. Public computer use is restricted to 30 minutes. Masks and social distancing are required. The Library is open its regular schedule, seven days a week, and is also offering Curbside Pickup service to patrons during the following hours: Mondays through Thursdays, 11:00 a.m. to 7:00 p.m.; Fridays and Saturdays, 9:30 a.m. to 5:30 p.m. and Sundays, 1:00 p.m. to 4:00 p.m. Find more details about Curbside Pickup and the Library's reopening plan at www.baldwinlib.org/reopening.
- Absent Voter ballots for the August 4, 2020 Primary election are available now from the Clerk's office for all registered voters. Download the application found in the Voting section of the Clerk's Office page at www.bhamgov.org/. You can return your application for an absent voter ballot to the Clerk's office by email, fax, or by dropping it off in the city's drop box located behind City Hall in the Police Department parking lot. Ballots can be returned by drop box or mail, return postage is 55 cents. Finally, if you are interested in working as an Election Inspector in Birmingham in the upcoming elections, please contact our office at elections@bhamgov.org or 248-530-1880.
- As part of the City's COVID-19 operational incentives, the City has expanded online service offerings so that most City forms and payments may be submitted online. View a complete list of payments and forms that may be submitted online at www.bhamgov.org/formsandpayments.
- The City Commission would like to thank Darlene Gehringer and Kevin Desmond for their years of service to the city serving as members of the Greenwood Cemetery Advisory Board.

- The City would like to congratulate Bonnie Menthon on her recent retirement and thank her for the 39 years of service that she provided to the residents of Birmingham.
- Mayor Pro-Tem Longe's Birthday.

APPOINTMENTS:

- A. Retirement Board
1. Chris Conti

To concur with the Mayor's recommendation to appoint _____ to the Retirement Board, as the resident member who is not eligible to participate in the retirement system, to serve a three-year term to expire July 1, 2023.

- B. Museum Board
1. Dan Haugen
2. Marty Logue
3. Caitlin Rosso

To appoint _____ to the Museum Board as a regular member to serve a three-year term to expire July 5, 2022.

To appoint _____ to the Museum Board as a regular member to serve a three-year term to expire July 5, 2022.

To appoint _____ to the Museum Board as a regular member to serve a three-year term to expire July 5, 2022.

- C. Cable Board
1. Donovan Shand

To appoint _____ to the Cablecasting Board as a regular member to serve a three-year term expiring March 30, 2023.

- D. Storm Water Utilities Appeal Board
1. Robert Lavoie

To appoint _____ to the Storm Water Utilities Appeal Board as a regular member to serve a three-year term to expire January 31, 2023.

- E. Ethics Board
1. Sophie Fierro-Share

To appoint _____ as a regular member to the Board of Ethics to serve a three-year term to expire June 30, 2023.

IV. CONSENT AGENDA

All items listed on the consent agenda are considered to be routine and will be enacted by one motion and approved by a roll call vote. There will be no separate discussion of the items unless a commissioner or citizen so requests, in which event the item will be removed from the general order of business and considered under the last item of new business.

- A. Resolution approving the City Commission Joint Commission/Planning Board meeting minutes of June 15, 2020.

- B. Resolution approving the City Commission regular meeting minutes of June 22, 2020.
- C. Resolution approving the warrant list, including Automated Clearing House payments, dated June 24, 2020 in the amount of \$559,055.75.
- D. Resolution approving the warrant list, including Automated Clearing House payments, dated July 1, 2020 in the amount of \$944,763.43.
- E. Resolution approving the warrant list, including Automated Clearing House payments, dated July 8, 2020 in the amount of \$276,057.39.
- F. Resolution extending the term of the Ad Hoc Unimproved Street Study Committee through December of 2020.
- G. Resolution extending the term of the Ad Hoc Joint Senior Service Committee through December 31, 2020.
- H. Resolution approving the purchase of 36A Hot asphalt mix at \$76.50/ton (2020-2021) and \$76.50/ton (2021-2022) and UPM cold patch (delivered) at \$123.00/ton (2020-2021) and \$123.00/ton (2021-2022) from Cadillac Asphalt LLC for a two year period for the fiscal years 2020-2022 to be charged to accounts #202-449.003-729.0000, #203-449.003-729.0000, #590-536.002- 729.0000 and #591-537.005-729.0000.
- I. Resolution approving the fertilizer/chemical purchases for Lincoln Hills and Springdale Golf Courses from Harrell's for \$22,000, Target Specialty Products for \$22,000, and Great Lakes Turf for \$8,000. The total purchase from all vendors will not exceed a total of \$52,000. Funds to be charged to account #s 584/597-753.001-729.0000.
- J. Resolution setting Monday, August 10, 2020 at 7:30 PM for a public hearing as prescribed in Section 50-42 of the Birmingham City Code for the property located at 1365 Chapin; and to notify the owner and other interested parties of the same.
- K. Resolution approving the agreement for Election Services between Oakland County and the City of Birmingham and further; authorizing Alexandria Bingham, the City Clerk Designee, to sign the agreement on behalf of the City of Birmingham.
- L. Resolution approving the appointment of election inspectors, absentee voter counting board inspectors, receiving board inspectors and other election officials as recommended by the City Clerk for the August 4, 2020 State Primary Election pursuant to MCL 168.674(1) and to grant the City Clerk authority to make emergency appointments of qualified candidates should circumstances warrant to maintain adequate staffing in the various precincts, counting boards and receiving boards.
- M. Resolution confirming the City Manager's authorization for the emergency expenditure regarding the replacement of the two (2) lead water services within the Maple Road project area in the amount not to exceed \$12,438.00 to be paid to D'Angelo Brothers Inc. from the Water Fund account #591-537.004-981.0100, pursuant to Sec. 2-286 of the City Code.

- N. Resolution approving the contract with Angelo Iafrate Construction Company for the installation of the Mast Arms for the Maple Road project in the amount of \$81,072.00, to be charged to the Major Street Fund (Traffic Control) 202-303.001-977.0100.

V. UNFINISHED BUSINESS

- A. Resolution to consider amending the location for public comment on the agenda.

VI. NEW BUSINESS

- A. Resolution postponing the public hearing for the Special Land Use Permit Amendment and Final Site Plan and Design Review for 1800 W Maple – Lutheran Church of the Redeemer to expand the sanctuary and narthex and make related improvements to July 20, 2020 to ensure proper noticing of all affected properties.
- B. Resolution postponing the public hearing of the rezoning of 469 – 479 S. Old Woodward to July 20, 2020 to ensure proper noticing of all affected properties.
- C. Resolution directing staff to make revisions to the draft RFP for Architectural & Design Services for Public Property North of Willits and West of N. Old Woodward as discussed at the July 13, 2020 meeting and bring it back to the City Commission for further review and comment;
OR
Resolution approving the draft RFP for Architectural & Design Services for Public Property North of Willits and West of N. Old Woodward and direct staff to prepare an outline for an ad hoc committee to review and provide comments on the draft RFP.
- D. Resolution to set the date of July 20, 2020 to consider approval of a local ballot proposal to be presented at the November general election for a parks and recreation bond in support of the Parks and Recreation Master Plan.
- E. Resolution to meet in closed session to discuss an Attorney/Client communication pursuant to Section 8(h) of the Open Meetings Act.

(A roll call vote is required and the vote must be approved by a 2/3 majority of the commission. The commission will adjourn to closed session after all other business has been addressed in open session and reconvene to open session, after the closed session, for purposes of taking formal action resulting from the closed session and for purposes of adjourning the meeting.)

VII. REMOVED FROM CONSENT AGENDA

VIII. COMMUNICATIONS

- A. Communication from Coco Siewert
B. Letter from Mr. Wolf
C. **Letter from Ms. Bongiorno**

IX. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA

X. REPORTS

- A. Commissioner Reports
 - 1. Notice of intent to appoint to APC
- B. Commissioner Comments
- C. Advisory Boards, Committees, Commissions' Reports and Agendas
- D. Legislation
- E. City Staff
 - 1. Letter from Tim Currier in regards to making motions during Commissioner Comments.

INFORMATION ONLY

XI. ADJOURN

PLEASE NOTE: Due to building security, public entrance during non-business hours is through the Police Department – Pierce St. entrance only.

NOTICE: Individuals requiring accommodations, such as mobility, visual, hearing, interpreter or other assistance, for effective participation in this meeting should contact the City Clerk's Office at (248) 530-1880 (voice), or (248) 644-5115 (TDD) at least one day in advance to request mobility, visual, hearing or other assistance.

Las personas que requieren alojamiento, tales como servicios de interpretación, la participación efectiva en esta reunión deben ponerse en contacto con la Oficina del Secretario Municipal al [\(248\) 530-1880](tel:248-530-1880) por lo menos el día antes de la reunión pública. (Title VI of the Civil Rights Act of 1964).



cheryl arft <carft@bhamgov.org>

RE: Committee/Board appointments2 messages

A. J. Desmond & Sons, Kevin Desmond <KDesmond@ajdesmond.com>

Wed, Jun 17, 2020 at 1:57 PM

To: cheryl arft <carft@bhamgov.org>

Hi Cheryl,

Thanks for sending me that information. However, I don't think I am going to apply for another term.

Thanks,

Kevin

Kevin Desmond

A.J. Desmond & Sons

248-362-2500

AJDesmond.com**From:** cheryl arft [mailto:carft@bhamgov.org]**Sent:** Tuesday, June 16, 2020 10:43 AM**Subject:** Committee/Board appointments

Your term of office expires soon. I have attached the forms we need completed by you in order to schedule an

ANNOUNCEMENT

interview for you with the City Commission at the July 13th meeting at 7:30 PM. Please complete them if you intend to continue serving.

Also please let me know if you are able to attend the meeting. It is possible that we will be holding live meetings again at that time, rather than virtual. I will let you know what our status is.

Thank you!

Cheryl Arft

Acting City Clerk

City of Birmingham

151 Martin Street

Birmingham, MI 48009

248-530-1880

248-530-1080 (fax)

carft@bhamgov.org

cheryl arft <carft@bhamgov.org>

Tue, Jun 23, 2020 at 7:55 AM

Draft To: Alex Bingham <abingham@bhamgov.org>, Tiffany Gunter <tgunter@bhamgov.org>

Cheryl Arft

Acting City Clerk

City of Birmingham

151 Martin Street

Birmingham, MI 48009

248-530-1880
248-530-1080 (fax)

carft@bhamgov.org

[Quoted text hidden]



cheryl arft <carft@bhamgov.org>

GCAB position renewal

1 message

DARLENE GEHRINGER <maplepro@comcast.net>

Tue, Jun 30, 2020 at 10:59 AM

To: Alex Bingham <abingham@bhamgov.org>, cheryl arft <carft@bhamgov.org>, Tiffany Gunter <tgunter@bhamgov.org>

Good morning all.

Please be advised that I will not be renewing my position on the Greenwood Cemetery Advisory Board.

It has been an honor and pleasure to serve the City and its residents.

I wish Board members the best in future endeavors and have enjoyed working with them and getting to know each individual.

Best regards,
Darlene Gehringer

ANNOUNCEMENT



NOTICE OF INTENTION TO APPOINT TO RETIREMENT BOARD

At the regular meeting of Monday, June 8, 2020, the Birmingham City Commission intends to appoint one member to serve a three-year term to expire July 1, 2023.

The retirement board shall consist of seven voting trustees as follows:

- (1) The mayor.
- (2) A city commissioner to be selected by the city commission and to serve at the pleasure of the city commission.
- (3) The city manager.
- (4) A citizen, who is an elector of the city, and who is not eligible to participate in the retirement system as a member or retired member, to be appointed by the mayor by and with the consent of the city commission.
- (5) A police member to be elected by the police members.
- (6) A fire member to be elected by the fire members.
- (7) A general member to be elected by the general members.

In addition, there shall be one nonvoting ex officio retired member/beneficiary member to be elected by the retired members and beneficiaries currently receiving benefits from the system.

RETIREMENT BOARD DUTIES

The retirement board consists of seven members who serve three-year terms without compensation. The retirement board shall hold meetings regularly, at least one in each quarter year. The retirement board shall have the power to administer, manage, and properly operate the retirement system, and to make effective the applicable provisions of the City Code.

Interested citizens may submit an application available at the city clerk's office or online at www.bhamgov.org/boardopportunities. Applications must be submitted to the city clerk's office on or before noon on Wednesday, June 3, 2020. These applications will appear in the public agenda for the regular meeting at which time the City Commission will discuss recommendations, and may make nominations and vote on the appointments.

Applicant(s) Presented For City Commission Consideration:

Applicant Name	Criteria/Qualifications Elector of the city who is not eligible to participate in the retirement system as a member or retired member, to be appointed by the mayor by and with the consent of the city commission.
Christopher Conti	Resident

NOTE: All members of boards and commissions are subject to the provisions of City of Birmingham City Code Chapter 2, Article IX, Ethics and the filing of the Affidavit and Disclosure Statement.

SUGGESTED ACTION:

To concur with the Mayor's recommendation to appoint _____ to the Retirement Board, as the resident member who is not eligible to participate in the retirement system, to serve a three-year term to expire July 1, 2023.

RETIREMENT BOARD

Chapter 2 – Section 2-207 – Eight members for three-year terms:

Mayor, city commissioner, city manager, citizen who is elector and is not eligible to participate in the retirement system, police member, fire member, general city member and non-voting retiree/beneficiary member.

Last Name	First Name	Home Business Fax E-Mail	Appointed	Term Expires
Albrecht 151 Martin	Michael	(248) 530-1870	7/16/2007 Police Member - Elected by Police Dept	7/1/2019
Bartalino 572 S. Adams	Matthew	(248) 530-1900 <i>mbartalino@bhamgov.org</i>	8/3/2015 Fire Dept. Member - Elected by Fire Dept.	7/1/2021
Boutros 285 Hawthorne	Pierre	(248) 361-6868 <i>pboutros@bhamgov.org</i>	11/11/2019 Mayor	11/1/2020
Conti 759 Greenwood	Christopher	248-594-1568 (313) 418-1673 <i>conti8@comcast.net</i>	9/26/2005 Citizen Member - Appointed by the Commission	7/1/2020
Johnson 151 Martin	Bruce	(248) 530-1842 <i>bjohnson@bhamgov.org</i>	2/28/2020 General Member	7/1/2020

Last Name	First Name	Home Business Fax E-Mail	Appointed	Term Expires
Kauffman 1613 Edgewood	Pete		8/12/2004 Non voting Retiree member - elected by retirees	7/1/2019
Longe 1253 Yosemite	Therese	(248) 310-2535 <i>tlonge@bhamgov.org</i>	11/11/2019 Mayor Pro Tem	11/1/2020
Valentine	Joseph		City Manager	2/22/2222

CITY BOARD/COMMITTEE ATTENDANCE RECORD

Name of Board: Retirement Board

Year: 2020

Members Required for Quorum: 5

MEMBER NAME	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	SPEC MTG	SPEC MTG	Total Mtgs. Att.	Total Absent	Percent Attended Available
REGULAR MEMBERS																	
Bruce Johnson			P			p									2	0	100%
Matthew Bartalino			P			P									2	0	100%
Pierre Boutros			P			P									2	0	100%
Christopher Conti			P			P									2	0	100%
Pete Kauffman			P			A									1	1	50%
Joseph Valentine			P			P									2	0	100%
Jeff Whipple			P			A									1	1	50%
Therese Longe			P			P									2	0	100%
															0	0	#DIV/0!
ALTERNATES																	
															0	0	#DIV/0!
Member 2															0	0	#DIV/0!
Reserved															0	0	#DIV/0!
Reserved															0	0	#DIV/0!
Present or Available	0	0	8	0	0	6	0	0	0	0	0	0	0	0	0	0	

KEY:

- A = Member absent
- P = Member present or available
- CP = Member available, but meeting canceled for lack of quorum
- CA = Member not available and meeting was canceled for lack of quorum
- NA = Member not appointed at that time
- NM = No meeting scheduled that month
- CM = Meeting canceled for lack of business items

Department Head Signature

CITY BOARD/COMMITTEE ATTENDANCE RECORD

Name of Board: Retirement Board

Year: 2019

Members Required for Quorum: 5

MEMBER NAME	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	SPEC MTG	SPEC MTG	Total Mtgs. Att.	Total Absent	Percent Attended Available
REGULAR MEMBERS																	
Michael Albrecht			P				NA					NA			1	0	100%
Matthew Bartalino			P				P					P			3	0	100%
Patty Bordman			A				P					NA			1	1	50%
Pierre Boutros			A				P					A			1	2	33%
Christopher Conti			P				A					P			2	1	67%
Pete Kauffman			P				NA					P			2	0	100%
Paul O'Meara			P				P					P			3	0	100%
Joseph Valentine			P				P					P			3	0	100%
Jeff Whipple			NA				NA					P			1	0	100%
ALTERNATES																	
Therese Longe			NA				NA					P			1	0	100%
Member 2															0	0	#DIV/0!
Reserved															0	0	#DIV/0!
Reserved															0	0	#DIV/0!
Present or Available	0	0	6	0	0	0	5	0	0	0	0	7	0	0			

KEY:
A = Member absent
P = Member present or available
CP = Member available, but meeting canceled for lack of quorum
CA = Member not available and meeting was canceled for lack of quorum
NA = Member not appointed at that time
NM = No meeting scheduled that month
CM = Meeting canceled for lack of business items

Department Head Signature

CITY BOARD/COMMITTEE ATTENDANCE RECORD

Name of Board: Retirement Board
Members Required for Quorum: 5

Year: 2018

MEMBER NAME	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	SPEC MTG	SPEC MTG	Total Mtgs. Att.	Total Absent	Percent Attended Available
REGULAR MEMBERS																	
Michael Albrecht			P			P			P			P			4	0	100%
Matthew Bartalino			P			P			P			P			4	0	100%
Patty Bordman			A			P			P			A			2	2	50%
Christopher Conti			P			P			P			P			4	0	100%
Andrew Harris			P			A			A			NA			1	2	33%
Pete Kauffman			P			P			P			P			4	0	100%
Paul O'Meara			P			P			P			P			4	0	100%
Joseph Valentine			P			P			P			P			4	0	100%
Pierre Boutros			NA			NA			NA			P			1	0	100%
ALTERNATES																	
Member 1															0	0	#DIV/0!
Member 2															0	0	#DIV/0!
Reserved															0	0	#DIV/0!
Reserved															0	0	#DIV/0!
Present or Available	0	0	7	0	0	7	0	0	7	0	0	7	0	0			

KEY: **A** = Member absent
 P = Member present or available
 CP = Member available, but meeting canceled for lack of quorum
 CA = Member not available and meeting was canceled for lack of quorum
 NA = Member not appointed at that time
 NM = No meeting scheduled that month
 CM = Meeting canceled for lack of business items



 Department Head Signature



OFFICE USE ONLY
Meets Requirements? ☒ Yes ☐ No
Will Attend / Unable to Attend

APPLICATION FOR CITY BOARD OR COMMITTEE

Thank you for your interest in serving on a Board or Committee. The purpose of this form is to provide the City Commission with basic information about applicants considered for appointment. NOTE: Completed applications are included in the City Commission agenda packets. The information included on this form is open to the public. All Board and Committee members are subject to the provisions of the Ethics Ordinance (Chapter 2, Article IX of the City Code).

Information on various Boards and Committees and a list of current openings can be found on the City website at www.bhamgov.org/boardopportunities.

(Please print clearly)

Board/Committee of Interest Retirement Investment Committee & Retiree Health Care Investment Committee
Specific Category/Vacancy on Board Committee Reapplication (see back of this form for information)

Name Christopher Conti

Phone 313-418-1673

Residential Address 759 Greenwood

Email * CONTI8@comcast.net

Residential City, Zip Birmingham, MI 48009

Length of Residence 20+ Years

Business Address One American Road

Occupation AUTOMOTIVE

Business City, Zip Dearborn, MI 48126

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied

Having spent the majority of my professional career in corporate treasury/finance, I have vast knowledge of the capital markets and corporate retirement plans. Over the years, my finance skills and ability to work well with others have proven a good fit for this committee/board.

List your related employment experience

Ford Motor Company - Numerous treasury, corporate finance, and strategy roles.

List your related community activities

Served as a trustee for the Birmingham Public Schools from 2008-2017

List your related educational experience

Bachelor's Degree / MBA

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain: No

Do you currently have a relative serving on the board/committee to which you have applied? No

Are you an elector (registered voter) in the City of Birmingham?

Yes
Christopher C. Conti
6-30-2020

Signature of Applicant

Date

Return the completed and signed application form to: City of Birmingham, City Clerk's Office, 151 Martin, Birmingham, MI 48009 or by email to carft@bhamgov.org or by fax to 248.530.1080.

Updated 12/02/19

*By providing your email to the City, you agree to receive news & notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.



NOTICE OF INTENTION TO APPOINT TO THE MUSEUM BOARD

At the regular meeting of Monday, July 13, 2020, the Birmingham City Commission intends to appoint three regular members to the Museum Board to serve three-year terms to expire July 5, 2022.

Interested parties may submit an application available at the City Clerk's office on or before noon on Wednesday, July 8, 2020. These applications will appear in the public agenda for the regular meeting at which time the commission will discuss recommendations, and may make nominations and vote on appointments.

Board Duties

The Museum Board is charged with collecting, arranging, cataloguing and preserving historical material. The Board may locate and erect plaques or markers at historic sites, buildings or properties in the City of Birmingham with the consent of the owner or owners of any such property and subject to the approval of the City Commission with respect to properties that, in the opinion of the Board, have historic significance. Further, the Board shall have the power to develop, operate and maintain the Allen House as a museum and to exercise authority, control and management over the Hunter House and John West Hunter Memorial Park.

NOTE: All members of boards and commissions are subject to the provisions of City of Birmingham City Code Chapter 2, Article IX, Ethics and the filing of the Affidavit and Disclosure Statement.

Applicant(s) Presented For City Commission Consideration:

Applicant Name	Criteria/Qualifications
	<ul style="list-style-type: none">Shall be qualified electors of the City and members of the Birmingham Historical Society
Dan Haugen 1694 E. Melton	Resident
Marty Logue 2010 Buckingham	Resident
Caitlin Rosso 1962 Sheffield	Resident

SUGGESTED ACTION:

To appoint_____ to the Museum Board as a regular member to serve a three-year term to expire July 5, 2022.

To appoint_____ to the Museum Board as a regular member to serve a three-year term to expire July 5, 2022.

To appoint_____ to the Museum Board as a regular member to serve a three-year term to expire July 5, 2022.



MUSEUM BOARD

Chapter 62 - Section 62-26

Terms - Three years - expiring first Monday in July

Seven Members: Six are electors and appointed by city commission
One is owner of a business and appointed by the city manager

The Museum Board is charged with collecting, arranging, cataloguing and preserving historical material. The board may locate and erect plaques or markers at historic sites, buildings or properties in the City of Birmingham with the consent of the owner or owners of any such property and subject to the approval of the city commission with respect to properties that, in the opinion of the board, have historic significance. Further, the board shall have the power to develop, operate and maintain the Allen House as a museum and to exercise authority, control and management over the Hunter House and John West Hunter Memorial Park.

Last Name	First Name	Home Business E-Mail	Appointed	Term Expires
Dixon	Russell	(248) 642-2314	11/24/2003	7/5/2021
1460 Bennaville		<i>russwdixon@aol.com</i>	Historical Society Member	
Haugen	Dan	(248) 459-0589	6/3/2019	7/5/2020
1694 E. Melton Rd.		<i>Daniel.L.Haugen@gmail.com</i>	Resident	
Hughes	Patrick J.	(248) 417-0470	9/23/2019	7/5/2022
915 Kennesaw		<i>phughes@brickstory.com</i>	Business owner member	
Keefer	Judith	(248) 249-0996	7/11/2016	7/5/2022
505 E. Lincoln, #4		<i>jlwk2014@gmail.com</i>	Retired	

BIRMINGHAM HISTORICAL MUSEUM & PARK, 556 West Maple, Birmingham, MI 48009
phone: 248.530.1928 fax: 248.530.1685 www.bhamgov.org/museum
Leslie Pielack, Museum Director: lpielack@ci.birmingham.mi.us

Last Name	First Name	Home Business E-Mail	Appointed	Term Expires
Krizanic 2450 Northlawn Blvd	Tina	(248) 644-2124 <i>tkrizanic8@gmail.com</i>	1/26/2015 Historical Society Member	7/5/2021
Logue 2010 Buckingham	Marty	(248) 649-4921 <i>gtfieros@comcast.net</i>	9/26/2011 Historical Society Member	7/5/2020
Rosso 355 Columbia	Caitlin	(248) 229-4227 <i>caitlinrosso@maxbroock.com</i>	9/21/2015 Historical Society Member	7/5/2020

BIRMINGHAM HISTORICAL MUSEUM & PARK, 556 West Maple, Birmingham, MI 48009
 phone: 248.530.1928 fax: 248.530.1685 www.bhamgov.org/museum
 Leslie Pielack, Museum Director: lpielack@ci.birmingham.mi.us

CITY BOARD/COMMITTEE ATTENDANCE RECORD

Name of Board: Museum Board

Year: 2020

Members Required for Quorum: 4

MEMBER NAME	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	SPEC MTG	SPEC MTG	Total Mtgs. Att.	Total Absen t	Percent Attend ed
REGULAR MEMBERS																	
Dixon, Russ	P	A	P	NM	NM	P									3	1	75%
Keefer, Judith	P	A	P	NM	NM	A									2	2	50%
Krizanic, Tina	P	P	A	NM	NM	P									3	1	75%
Logue, Marty	P	P	P	NM	NM	P									4	0	100%
Rosso, Caitlin	P	P	P	NM	NM	P									4	0	100%
Haugen, Dan	A	P	P	NM	NM	P									3	1	75%
Hughes, Pat	P	P	P	NM	NM	P											
Present or Available	6	5	6	0	0	6	0	0	0	0	0	0	0	0			

KEY: **A** = Member absent
 P = Member present or available
 CP = Member available, but meeting canceled for lack of quorum
 CA = Member not available and meeting was canceled for lack of quorum
 NA = Member not appointed at that time
 NM = No meeting scheduled that month
 CM = Meeting canceled for lack of business items

CITY BOARD/COMMITTEE ATTENDANCE RECORD

Name of Board: Museum Board

Year: 2019

Members Required for Quorum: 4

MEMBER NAME	JAN	JAN SPEC 1/17	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	SPEC MTG	SPEC MTG	Total Mtgs. Att.	Total Absent	Percent Attended Available
REGULAR MEMBERS																		
Dixon, Russ	P	P	P	P	A	P	A	P	P	A	P	P	P			10	3	77%
Keefer, Judith	A	A	A	P	A	P	P	A	P	P	P	P	P			8	5	62%
Krizanic, Tina	P	P	P	P	P	P	P	P	A	P	P	P	P			12	1	92%
Logue, Marty	A	P	P	P	P	P	P	P	P	P	P	P	P			12	1	92%
Rosso, Caitlin	A	P	A	P	P	P	P	P	A	A	A	A	P			7	6	54%
Eaton, Lori	P	P	A	P	P	NA	NA	NA	NA	NA	NA	NA	NA			4	1	80%
Cunningham, James	P	P	P	P	A	P	P	P	NA	NA	NA	NA	NA			7	1	88%
Haugen, Dan	NA	NA	NA	NA	NA	NA	P	P	P	P	P	P	A			6	1	86%
Hughes, Pat	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	P	P	P					
Present or Available	4	6	4	7	4	6	6	6	4	4	6	6	6	0	0			

KEY: A = Member absent
 P = Member present or available
 CP = Member available, but meeting canceled for lack of quorum
 CA = Member not available and meeting was canceled for lack of quorum
 NA = Member not appointed at that time
 NM = No meeting scheduled that month
 CM = Meeting canceled for lack of business items

CITY BOARD/COMMITTEE ATTENDANCE RECORD

Board/Committee: **Museum Board**

Year: **2018**

MEMBER NAME	1/4	1/16 Spec. Mtg.	2/1	2/15 Spec. Mtg.	2/20 Spec. Mtg.	3/1	3/15	4/5	5/3	6/7	7/19	8/2	9/6	9/20 Spec Mtg	10/18
REGULAR MEMBERS															
Cunningham, James	P	A	P	P	A	NM	A	P	P	P	P	A	P	A	P
Dixon, Russ	P	P	A	A	A	NM	P	P	P	P	P	P	P	P	P
Eaton, Lori	P	P	P	P	P	NM	A	P	P	P	P	A	P	P	P
Keefer, Judith	A	P	P	P	P	NM	A	P	P	P	P	P	A	P	P
Krizanic, Tina	A	P	P	P	P	NM	P	P	P	A	P	A	P	P	P
Logue, Marty	P	P	P	P	P	NM	P	P	P	A	P	P	P	P	P
Rosso, Caitlin	P	P	A	P	P	NM	P	A	A	P	P	P	P	P	A
ALTERNATES															
Museum Board does not have alternate members.															
Members in attendance	4	6	4	5	5		4	5	5	5	7	4	6		6

KEY: A = Absent

P = Present

NM = No Meeting

na = not appointed at that time

Department Head Signat

11/1	12/6		Total Absent	Percent Attend
A	A	#VALUE!	7	42
P	P	#VALUE!	3	82
P	P	#VALUE!	2	88
P	A	#VALUE!	4	76
P	P	#VALUE!	3	82
P	P	#VALUE!	1	94
P	P	#VALUE!	4	76
		#DIV/0!		
		#DIV/0!		
6	5			

ure



OFFICE USE ONLY
Meets Requirements? ☒ Yes ☐ No
☒ Will Attend / ☐ Unable to Attend

APPLICATION FOR CITY BOARD OR COMMITTEE

Thank you for your interest in serving on a Board or Committee. The purpose of this form is to provide the City Commission with basic information about applicants considered for appointment. NOTE: Completed applications are included in the City Commission agenda packets. The information included on this form is open to the public. All Board and Committee members are subject to the provisions of the Ethics Ordinance (Chapter 2, Article IX of the City Code).

Information on various Boards and Committees and a list of current openings can be found on the City website at www.bhamgov.org/boardopportunities.

(Please print clearly)

Board/Committee of Interest Birmingham Museum Board

Specific Category/Vacancy on Board Reinstatement (see back of this form for information)

Name Dan Haugen

Phone 2484590589

Residential Address 1694 E Melton Rd

Email * Daniel.L.Haugen@gmail.com

Residential City, Zip Birmingham, 48009

Length of Residence 4 years

Business Address 24777 DENSO Dr

Occupation Electrical Engineer

Business City, Zip Southfield, 48033

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied I've served on the board for a year already and would like to continue

List your related employment experience 1 year service on BMB already

List your related community activities _____

List your related educational experience _____

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain: _____

N/A

Do you currently have a relative serving on the board/committee to which you have applied? N/A

Are you an elector (registered voter) in the City of Birmingham? Yes


Signature of Applicant

7/1/20
Date

Return the completed and signed application form to: City of Birmingham, City Clerk's Office, 151 Martin, Birmingham, MI 48009 or by email to carft@bhamgov.org or by fax to 248.530.1080.

Updated 12/02/19

**By providing your email to the City, you agree to receive news & notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.*



OFFICE USE ONLY	
Meets Requirements?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<input checked="" type="checkbox"/> Will Attend	<input type="checkbox"/> Unable to Attend

APPLICATION FOR CITY BOARD OR COMMITTEE

Thank you for your interest in serving on a Board or Committee. The purpose of this form is to provide the City Commission with basic information about applicants considered for appointment. NOTE: Completed applications are included in the City Commission agenda packets. The information included on this form is open to the public. All Board and Committee members are subject to the provisions of the Ethics Ordinance (Chapter 2, Article IX of the City Code).

Information on various Boards and Committees and a list of current openings can be found on the City website at www.bhamgov.org/boardopportunities.

(Please print clearly)

Board/Committee of Interest _____

Specific Category/Vacancy on Board _____ (see back of this form for information)

Name _____

Phone _____

Residential Address _____

Email * _____

Residential City, Zip _____

Length of Residence _____

Business Address _____

Occupation _____

Business City, Zip _____

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied _____

List your related employment experience _____

List your related community activities _____

List your related educational experience _____

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain: _____

Do you currently have a relative serving on the board/committee to which you have applied? _____

Are you an elector (registered voter) in the City of Birmingham? _____

M. L. Guo
Signature of Applicant

Date

Return the completed and signed application form to: City of Birmingham, City Clerk's Office, 151 Martin, Birmingham, MI 48009 or by email to carft@bhamgov.org or by fax to 248.530.1080.

Updated 12/02/19

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OFFICE USE ONLY	
Meets Requirements?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<input checked="" type="checkbox"/> Will Attend / <input type="checkbox"/> Unable to Attend	

APPLICATION FOR CITY BOARD OR COMMITTEE

Thank you for your interest in serving on a Board or Committee. The purpose of this form is to provide the City Commission with basic information about applicants considered for appointment. NOTE: Completed applications are included in the City Commission agenda packets. The information included on this form is open to the public. All Board and Committee members are subject to the provisions of the Ethics Ordinance (Chapter 2, Article IX of the City Code).

Information on various Boards and Committees and a list of current openings can be found on the City website at www.bhamgov.org/boardopportunities.

(Please print clearly)

Board/Committee of Interest Museum Board

Specific Category/Vacancy on Board Resident (see back of this form for information)

Name Caitlin Rosso Phone 2482294227

Residential Address 1962 Sheffield Rd Email * caitlinrosso@hotmail.com

Residential City, Zip Birmingham, MI 48009 Length of Residence Lifetime

Business Address 275 S Old Woodward Ave Occupation Real Estate Broker

Business City, Zip Birmingham MI 48009

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied _____

As a lifelong resident of Birmingham I am committed to the preservation of its history. I have also served on the museum board for

approx 4+ years.

List your related employment experience Birmingham Museum Intern 2013

List your related community activities _____

Active on the Museum Board, Birmingham Resident

List your related educational experience Graduated with a minor in museum studies from CMU.

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain: No

Do you currently have a relative serving on the board/committee to which you have applied? No

Are you an elector (registered voter) in the City of Birmingham? Yes

Signature of Applicant Caitlin Rosso Date 7/6/20

Return the completed and signed application form to: City of Birmingham, City Clerk's Office, 151 Martin, Birmingham, MI 48009 or by email to carft@bhamgov.org or by fax to 248.530.1080.

Updated 12/02/19

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NOTICE OF INTENTION TO APPOINT TO THE CABLECASTING BOARD

At the regular meeting of Monday, March 9, 2020 the Birmingham City Commission intends to appoint three members to the Cablecasting Board to serve three-year terms expiring March 30, 2023, one regular member to serve the remainder of a three-year term expiring March 30, 2022, one regular member to serve the remainder of a three-year term expiring March 30, 2021, and one alternate member to serve a three-year term expiring March 30, 2022. Applicants must be residents of the City of Birmingham.

Interested citizens may submit an application available at the City Clerk's office or online at www.bhamgov.org/boardopportunities. Applications must be submitted to the City Clerk's office on or before noon on Wednesday, March 4, 2020. These applications will appear in the public agenda for the regular meeting at which time the City Commission will discuss recommendations, and may make nominations and vote on the appointments.

Duties of the Cablecasting Board

- 1) Advise the municipalities on matters relating to cable communications;
- 2) Monitor the franchisee's compliance with the franchise agreement and the cable communications ordinance;
- 3) Conduct performance reviews as outlined in Chapter 30, Article VII of the city code;
- 4) Act as liaison between the franchisee and the public; hear complaints from the public and seek their resolution from the franchisee;
- 5) Advise the various municipalities on rate adjustments and services according to the procedure outlined in Chapter 30; Article VI
- 6) Advise the municipalities on renewal, extension or termination of a franchise;
- 7) Appropriate those moneys deposited in an account in the name of the cablecasting board by the member communities;
- 8) Oversee the operation of the education, governmental and public access channels;
- 9) Apprise the municipalities of new developments in cable communications technology;
- 10) Hear and decide all matters or requests by the operator (Comcast Cablevision);
- 11) Hear and make recommendations to the municipalities of any request of the operator for modification of the franchise requirement as to channel capacity and addressable converters or maintenance of the security fund;
- 12) Hear and decide all matters in the franchise agreement which would require the operator to expend moneys up to fifty thousand dollars;
- 13) Enter into contracts as authorized by resolutions of the member municipalities;
- 14) Administer contracts entered into by the board and terminate such contracts.

Applicant(s) Presented For City Commission Consideration:

Applicant Name	Criteria/Qualifications
	Must be a resident of Birmingham
Donovan Shand	Resident

NOTE: All members of boards and commissions are subject to the provisions of City of Birmingham City Code Chapter 2, Article IX, Ethics and the filing of the Affidavit and Disclosure Statement.

SUGGESTED ACTION:

To appoint _____ to the Cablecasting Board as a regular member to serve a three-year term expiring March 30, 2023.



CABLECASTING BOARD

Chapter 30 - Section 30-226 - Birmingham City Code
Meeting Schedule: 3rd Wednesday of the month - 7:45 A. M

The Board shall consist of 12 members, which includes 7 members who are residents of the City of Birmingham. Each member community shall also appoint one alternative representative. (30-226)

Last Name	First Name	Home Business E-Mail	Appointed	Term Expires
Abraham 898 Arlington	George	(248) 642-1257 <i>georgeabrahamjr@outlook.com</i>	5/14/2018 Birmingham resident	3/30/2021
Eick 559 Greenwood	R. David	(248) 231-8067 <i>eickhouse@comcast.net</i>	12/14/2015 Birmingham resident	3/30/2021
Fenberg 908 Chesterfield	Michael	(248) 310-7373 <i>michael.fenberg@bakertilly.com</i>	3/13/2017 Birmingham resident	3/30/2023
McLain 425 N Eton, #302	Elaine	(248) 225-9903 <i>ekmclain@gmail.com</i>	1/9/2006 Birmingham resident	3/30/2023
Shand 1645 Buckingham Ave.	Donovan	(248) 330-0747 <i>dgshand@gmail.com</i>	12/4/2017 Birmingham resident	3/30/2020

For Cable Inquires:

Cathy White 248-336-9445
P.O. Box 165, Birmingham, MI 48012

Last Name	First Name	Home Business E-Mail	Appointed	Term Expires
VACANT				3/30/2022
			Birmingham resident	
VACANT				3/30/2021
			Birmingham resident	
VACANT				3/30/2022
			ALTERNATE	

For Cable Inquires:

Cathy White 248-336-9445
P.O. Box 165, Birmingham, MI 48012



cheryl arft <carft@bhamgov.org>

Re: Cable Board Attendance Records

1 message

execdir@birminghamareacableboard.org

Fri, Mar 6, 2020 at

<execdir@birminghamareacableboard.org>

10:33 AM

Reply-To: execdir@birminghamareacableboard.org

To: cheryl arft <carft@bhamgov.org>

Cc: Elaine McLain <ekmclain@gmail.com>, "R. David Eick" <eickhouse@comcast.net>, Donovan Shand <dgshand@gmail.com>, Michael Fenberg <michael.fenberg@bakertilly.com>

Hi Cheryl: The total absences for each of the Birmingham Cable Board members is listed below.

2017: Michael Fenberg was absent once (November meeting).

2018: Michael Fenberg was absent 4 times (Feb, May, Sept, Oct)
Donovan Shand was absent 4 times (April, Aug, Sept and Dec)
David Eick was absent once (Feb)

2019: Michael Fenberg was absent twice (May, Dec)
Donovan Shand was absent 9 times (Jan, March, May, June, Aug, Sept, Oct, Nov and Dec)
George Abraham was absent once (Sept)

2020: Michael Fenberg was absent once (Feb)
Donovan Shand was absent once (Jan)
David Eick was absent once (Feb)

TOTAL ABSENCES: Michael Fenberg-8
Donovan Shand- 14
David Eick-2
Elaine McLain- 0

Cathy White
Executive Director of BACB
P.O.Box 165
Birmingham, MI 48012
248-336-9445

From: cheryl arft <carft@bhamgov.org>**Sent:** 3/6/20 8:44 AM**To:** execdir@birminghamareacableboard.org**Subject:** Re: Cable Board Attendance Records**Yes, it does. Thank you Cathy!**

Cheryl Arft
Acting City Clerk
[City of Birmingham](#)
[151 Martin Street](#)
Birmingham, MI 48009

248-530-1880

248-530-1080 (fax)

carft@bhamgov.org

On Fri, Mar 6, 2020 at 8:36 AM execdir@birminghamareacableboard.org <execdir@birminghamareacableboard.org> wrote:

Hi Cheryl: Per your request, I will check these records for you and send you the information sometime today. Hope this helps.

Cathy White
Executive Director of BACB
P.O.Box 165
Birmingham, MI 48012
248-336-9445



OFFICE USE ONLY	
Meets Requirements?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Will Attend /	Unable to Attend

APPLICATION FOR CITY BOARD OR COMMITTEE

Thank you for your interest in serving on a Board or Committee. The purpose of this form is to provide the City Commission with basic information about applicants considered for appointment. NOTE: Completed applications are included in the City Commission agenda packets. The information included on this form is open to the public. All Board and Committee members are subject to the provisions of the Ethics Ordinance (Chapter 2, Article IX of the City Code).

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(Please print clearly)

Board/Committee of Interest Birmingham Area Cable Board

Specific Category/Vacancy on Board Member (see back of this form for information)

Name Donovan Shand

Phone 248-330-0747

Residential Address 1645 Buckingham

Email dgshand@gmail.com

Residential City, Zip Birmingham MI 48009

Length of Residence 11 years

Business Address _____

Occupation Banking

Business City, Zip _____

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied _____
Current member of BACB seeking reappointment - initial appointment December 2017

List your related employment experience 5 years experience in cable TV industry (1984-89)

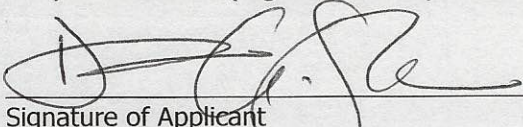
List your related community activities Current member of BACB, attended Birmingham Citizens Academy

List your related educational experience BA in Telecommunications, MBA

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain: N/A

Do you currently have a relative serving on the board/committee to which you have applied? No

Are you an elector (registered voter) in the City of Birmingham? Yes


Signature of Applicant

6/22/2020
Date



**NOTICE OF INTENTION TO APPOINT
STORM WATER UTILITY APPEALS BOARD**

At the regular meeting of Monday, January 13, 2020, the Birmingham City Commission intends to appoint 3 regular members to serve three-year terms to expire January 31, 2023 and 2 alternate board members to serve the remainder of three-year terms to expire January 31, 2022. Members and alternates shall serve at the will of the commission. Members and alternates shall hold office until their successors are appointed. The City Commission shall fill a vacancy by an appointment only.

2 of the 3 regular members appointed shall be licensed professional engineers not employed by the local unit of government. 1 of the 2 alternate members shall also be a licensed professional engineer not employed by the city. The board members shall serve without compensation. Members are not required to be city residents.

The Appeals Board shall be responsible for hearing disputes to a fee or bill that a property owner or resident of the city shall receive pursuant to the Storm Water Utility ordinance (Section 114-402(c)). The board members shall schedule periodic meetings for appeals as needed.

Interested citizens may submit a form available from the City Clerk's office on or before noon on Wednesday, January 18, 2017. These applications will appear in the public agenda for the regular meeting at which time the commission will discuss recommendations, and may make nominations and vote on the appointments.

All members of boards and commissions are subject to the provisions of City of Birmingham City Code Chapter 2, Article IX, Ethics and the filing of the Affidavit and Disclosure Statement.

Applicant(s) Presented For City Commission Consideration:

Applicant Name	Criteria/Qualifications Two of the regular members shall be licensed professional engineers not employed by the local unit of government, and have legal, administrative or other desirable qualifications that will aid him or her in the performance of the duties of the board members. One of the alternate members shall be a licensed professional engineer not employed by the local unit of government, and have legal, administrative or other desirable qualifications that will aid him or her in the performance of the duties of the board members.
Robert Lavoie	

NOTE: All members of boards and commissions are subject to the provisions of City of Birmingham City Code Chapter 2, Article IX, Ethics and the filing of the Affidavit and Disclosure Statement.

SUGGESTED RESOLUTION:

To appoint_____ to the Storm Water Utilities Appeal Board as a regular member to serve a three-year term to expire January 31, 2023.

STORM WATER UTILITY APPEALS BOARD

Resolution No. 12-360-16 – December 5, 2016. City Code Chap. 114, Art VI, Sec 114-402(e)
Members shall be comprised as follows: 2 of 3 regular members shall be licensed professional engineers not employed by the City of Birmingham.

At least 1 of the 2 alternate members shall be a licensed professional engineer not employed by the City of Birmingham. The board members shall serve without compensation.

Board responsibilities:

To hear disputes to a fee or bill that a property owner or resident of the city shall receive pursuant to the Storm Water Utility ordinance (Section 114-402(c)). The board members shall schedule periodic meetings for appeals as needed.

Last Name	First Name	Home Business Fax	E-Mail	Appointed	Term Expires
Keener	Laura			4/13/2017	1/31/2020
286 W. Brown				Regular-Licensed Professional	Engineer
Birmingham	48009		<i>laurakeener@outlook.com</i>		
Lavoie	Robert	(248) 635-6472		4/13/2017	1/31/2020
555 Lakeview Ave.				Regular-Licensed Professional	Engineer
Birmingham	48009		<i>dlavoie@aol.com</i>		
Partridge	A. James	(248) 670-0826		3/27/2017	1/31/2023
3916 Cottontail Ln.				Regular-Licensed Professional	Engineer
Bloomfield Hills	48301		<i>jim@jpconsulting-llc.com</i>		

Last Name	First Name	Home Business Fax	Appointed	Term Expires
Home Address		E-Mail		

VACANT

1/31/2022

Alternate-Licensed Professional
Engineer

VACANT

1/31/2022

Alternate

CITY BOARD ATTENDANCE RECORD 2017-2019**Storm Water Utility Appeals Board****Members Required for Quorum: 2**

MEMBER NAME	May 16, 2017	May 23, 2017	Nov. 1, 2018	Total	Total	Percent
				Attended	Absent	Attended
Laura Keener	P	P	P	3	0	100%
Robert Lavoie	P	P	P	3	0	100%
James Partridge	P	P	P	3	0	100%
Total Present	3	3	3			

Per Assistant City Engineer Fletcher, there have been no meetings of the board in 2020.



Department Head

APPLICATION FOR CITY BOARD OR COMMITTEE

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Information on various Boards and Committees and a list of current openings can be found on the City website at www.bhamgov.org/boardopportunities.

(Please print clearly)

Board/Committee of Interest Stormwater Utilities Appeal BoardSpecific Category/Vacancy on Board Licensed P.E. Resident (see back of this form for information)Name Robert D. Lavoie Phone 248 635 6472Residential Address 555 Lakeview Ave. Email rdlavoie@aol.comResidential City, Zip Birmingham Length of Residence 5 yearsBusiness Address N/A Occupation Retired EngineerBusiness City, Zip N/AReason for Interest: Explain how your background and skills will enhance the board to which you have applied
As a licensed civil engineer, I practiced stormwater design and served as City Engineer for several cities.List your related employment experience President of Nowak & Fraus Engineers
until 12/31/2014List your related community activities Participate in Church and Country Club
Charitable ActivitiesList your related educational experience BS Degree at MNU in 1979 and
MS Degree at Wayne State in 1985

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain: NO

Do you currently have a relative serving on the board/committee to which you have applied? NoAre you an elector (registered voter) in the City of Birmingham? NoSignature of Applicant [Signature] Date 12/11/2019



NOTICE OF INTENTION TO APPOINT TO THE BOARD OF ETHICS

At the regular meeting of Monday, June 8, 2020, the Birmingham City Commission intends to appoint one regular member to the Board of Ethics to serve a three-year term to expire June 30, 2022.

Board members are to serve as an advisory body for the purposes of interpreting the Code of Ethics. The board consists of three members who serve without compensation. The members shall be residents and have legal, administrative or other desirable qualifications.

Interested citizens may submit an application available at the City Clerk's office or online at www.bhamgov.org/boardopportunities. Applications must be submitted to the City Clerk's office on or before noon on Wednesday, June 3, 2020. These documents will appear in the public agenda for the regular meeting at which time the City Commission will discuss recommendations, and may make nominations and vote on appointments.

Applicant(s) Presented For City Commission Consideration:

Applicant Name	Criteria/Qualifications
	Applicants shall be residents and have legal, administrative or other desirable qualifications.
Sophie Fierro-Share	Psychotherapist

NOTE: All members of boards and commissions are subject to the provisions of City of Birmingham City Code Chapter 2, Article IX, Ethics and the filing of the Affidavit and Disclosure Statement.

SUGGESTED ACTION:

To appoint _____ as a regular member to the Board of Ethics to serve a three-year term to expire June 30, 2023.



BOARD OF ETHICS

Ordinance 1805 (Birmingham Code of Ordinances Sec. 2-320 through 2-326)

The board shall serve as an advisory body for purposes of interpreting the Code of Ethics.

The board consists of three members who serve without compensation. The members shall be residents and have legal, administrative, or other desirable qualifications.

Last Name	First Name	Home Business E-Mail	Appointed	Term Expires
Fierro-Share 1040 Gordon Lane	Sophie	(248) 642-7340 <i>Sfierro-share1@comcast.net</i>	7/14/2003	6/30/2020
Robb 1533 Pleasant Ct	James	(248) 647-2632 <i>robbJ@cooley.edu</i>	8/11/2003	6/30/2022
Schrot 1878 Fairway	John	(248) 646-6513 <i>jschrot@berrymoorman.com</i>	7/14/2003	6/30/2021

CITY BOARD/COMMITTEE ATTENDANCE RECORD

Name of Board: Board of Ethics **Year:** 2020

Members Required for Quorum: 2

[illegible]

KEY: A = Member absent
 P = Member present or available
 CP = Member available, but meeting canceled for lack of quorum
 CA = Member not available and meeting was canceled for lack of quorum
 NA = Member not appointed at that time
 NM = No meeting scheduled that month
 CM = Meeting canceled for lack of business items

CITY BOARD/COMMITTEE ATTENDANCE RECORD

Name of Board: Board of Ethics **Year:** 2019

Members Required for Quorum: 2

MEMBER NAME	1/23	6/12	6/19				Total Mtgs. Att.	Total Absent	Percent Attended Available
REGULAR MEMBERS									
Sophie Fierro-Share	P	P	P				3	0	100%
James Robb	P	P	P				3	0	100%
John Schrot	P	P	P				3	0	100%
Reserved									
Reserved									
Present or Available	3	3	3	0	0	0			

KEY: A = Member absent
 P = Member present or available
 CP = Member available, but meeting canceled for lack of quorum
 CA = Member not available and meeting was canceled for lack of quorum
 NA = Member not appointed at that time
 NM = No meeting scheduled that month
 CM = Meeting canceled for lack of business items

CITY BOARD/COMMITTEE ATTENDANCE RECORD

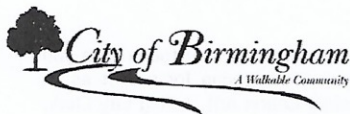
Name of Board: Board of Ethics

Year: 2018

Members Required for Quorum: **2**

MEMBER NAME	6/19	10/2	10/11				Total Mtgs. Att.	Total Absent	Percent Attended Available
REGULAR MEMBERS									
Sophie Fierro-Share	P	P	P				3	0	100%
James Robb	P	P	P				3	0	100%
John Schrot	P	P	P				3	0	100%
Reserved									
Reserved									
Present or Available	3	3	3	0	0	0			

KEY: A = Member absent
 P = Member present or available
 CP = Member available, but meeting canceled for lack of quorum
 CA = Member not available and meeting was canceled for lack of quorum
 NA = Member not appointed at that time
 NM = No meeting scheduled that month
 CM = Meeting canceled for lack of business items



OFFICE USE ONLY	
Meets Requirements?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Will Attend	<input checked="" type="checkbox"/> Will Attend <input type="checkbox"/> Unable to Attend

APPLICATION FOR CITY BOARD OR COMMITTEE

Thank you for your interest in serving on a Board or Committee. The purpose of this form is to provide the City Commission with basic information about applicants considered for appointment. NOTE: Completed applications are included in the City Commission agenda packets. The information included on this form is open to the public. All Board and Committee members are subject to the provisions of the Ethics Ordinance (Chapter 2, Article IX of the City Code).

Information on various Boards and Committees and a list of current openings can be found on the City website at www.bhamgov.org/boardopportunities.

(Please print clearly)

Board/Committee of Interest Ethics Committee of Birmingham
Specific Category/Vacancy on Board Regular member (see back of this form for information)

Name Sophie Fierro-Share Phone 248-514-5409

Residential Address 104D GORDON LANE Email sfierro-share@comcast.net

Residential City, Zip BIRMINGHAM, 48009 Length of Residence 35⁺ years +

Business Address (NA) Occupation Retired - Psychotherapist

Business City, Zip (NA)

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied _____

I have served on the Ethics Board since its inception. I believe I have contributed to the Board's success.

List your related employment experience social worker - listening, asking of useful questions, fairness, non-judgment approach to issues.

List your related community activities none

List your related educational experience BA Social Education, MSW, CSW Certificate in Bilingual Education

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain: _____

NONE

Do you currently have a relative serving on the board/committee to which you have applied? NO

Are you an elector (registered voter) in the City of Birmingham? Yes

Signature of Applicant Sophie Fierro-Share Date 07-09-2020

Return the completed and signed application form to: City of Birmingham, City Clerk's Office, 151 Martin, Birmingham, MI 48009 or by email to carlt@bhamgov.org or by fax to 248.530.1080. Updated 12/02/19

*By providing your email to the City, you agree to receive news & notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.

**BIRMINGHAM CITY COMMISSION /
PLANNING BOARD JOINT WORKSHOP SESSION
JUNE 15, 2020
HELD REMOTELY VIA ZOOM AND TELEPHONE ACCESS
7:30 P.M.**

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Pierre Boutros called the meeting to order at 7:31 p.m.

II. ROLL CALL

Commission

ROLL CALL:

Present:

Mayor Boutros
Mayor Pro Tem Longe
Commissioner Baller
Commissioner Host
Commissioner Hoff
Commissioner Nickita
Commissioner Sherman

Planning Board

ROLL CALL:

Present:

Chairman Scott Clein
Robin Boyle
Stuart Jeffares
Daniel Share
Janelle Whipple-Boyce
J. Bryan Williams
Nasseem Ramin, alternate

Absent:

Bert Koseck
Jason Emerine, alternate
Rachel Hester, student representative
June Lee, student representative

Master Planning Team:

Matt Lambert, DPZ
Sarah Traxler, McKenna

Administration: City Attorney Tim Currier, City Manager Valentine, Clerk Designee Alexandria Bingham, Planning Director Ecker, Building Official Johnson

III. ITEMS FOR DISCUSSION

Mayor Boutros explained the purpose of the joint workshop session and the meeting procedures that would be followed.

A. Master Plan Draft Review Process

Planning Director Ecker introduced the item, the reasons for holding the workshop session virtually, and Matt Lambert and Sarah Traxler, both members of the master planning team. She explained that Ms. Traxler would be providing an overview of where the City is in its master planning process.

Ms. Traxler reviewed the documents regarding the master planning process that were provided in the evening's agenda packet.

At Mayor Boutros' request, Planning Director Ecker reviewed the 11 master plan themes as outlined in the evening's agenda packet.

Mayor Boutros then invited comment from Chairman Clein and from the Planning Board (Board) members.

Chairman Clein explained that while the first public input session regarding the master plan draft went relatively smoothly, the second input session became more mired in the details than seemed to be useful. After some discussion between the Board and the master planning team, the master planning team came up with the proposed themes, review and adoption process that Ms. Traxler described. Chairman Clein continued that:

- The Board was seeking feedback from the Commission regarding the themes and the review and adoption process, with the end goal of having themes and a review process of which the Commission approves. He was respectfully requesting the Commission's public support for the public input process, and any Commission feedback that should arise regarding the public input process, or the master plan in general, along the way.
- Board meetings via Zoom have seen an increase in public engagement relative to in-person meetings. The largest Board meeting held via Zoom thus far had approximately 60 members of the public and there was ample public input during that meeting. Many of the individuals who joined that meeting were not obligated to be there in regards to another topic being heard and had not previously joined Board meetings. At least some of the public input increased as a result of the public's likely preference for being able to attend a meeting virtually. If Governor Whitmer allowed for the continuance of virtual meetings he was confident that the Board could effectively engage the public in these discussions via that medium.
- The themes laid out in the evening's agenda packet align with the original intent of the master planning process, which was a high-level focus on the neighborhoods. The process proposes many different means of reaching many different audiences within the City.
- The themes arose from the rather exhaustive process of public engagement that has occurred thus far regarding the plan. They were summarized by the master planning team and reviewed by Board members. The Board is ready to refine the themes further in tandem with public discussion. Not all of the themes may remain as the process continues.

Mr. Lambert stated that there would be no issues for DPZ if the City extends out its master planning process. He said they would be available to complete all aspects of the process as laid out in the first contract, and that if additional meetings need to be added that would be possible at whatever pace the City sees fit.

Commissioner Baller stated:

- His support for continued meetings via Zoom and expressed hope that Governor Whitmer would authorize them past June 30, 2020.
- The phrases 'broad support' and 'extensive interest' were used to describe different aspects of the plan's proposals. Commissioner Baller encouraged the master planning team and City staff to be sure the data proving those claims was made widely available for public review. He was confident in the existence of the data, but that it would benefit the entire master planning process for there to be transparency regarding how those conclusions were reached.
- A good plan both remains at a generally high level and goes into further detail when appropriate, such as the discussions included in the first draft regarding S. Woodward, the intersection of Woodward and Lincoln, the intersection of Woodward and Maple, recommendations for neighborhood parking, and some downtown considerations. He was perfectly happy seeing a mix of high level and detail, and hoped that the useful detail would not be entirely removed in the pursuit of too high level a plan.
- He appreciated the Board's work on the plan thus far and looked forward to seeing more.

In reply to Commissioner Baller, Chairman Clein stated that the review and adoption process laid out has broad support among Board members. He said that the process was discussed at the Board level and did undergo changes based on Board member comments. Two changes he described as examples were using Nextdoor as a tool for soliciting public feedback and avoiding relying too heavily on neighborhood associations for the spread of information about the process. He also said that since the Board members were present at the current meeting they were more than welcome to offer any comments or additional insight.

Mr. Williams said he thought it would be helpful for another Board member to comment on the process. He commended the consultants, staff, and his fellow Board members on collaboratively creating a plan that would take the City through to the end of the master plan process. Mr. Williams said the only topic that yielded any debate at the Board level was how best to reach out to the neighborhoods during the process. He said that in response to that discussion at the Board level the master planning team and staff came up with a plethora of options for reaching out to residents. Mr. Williams stated that if the City is to receive neighborhood buy-in for the plan the City and the master planning team must make every effort to reach out to the residents.

Mr. Williams stated that he personally felt that public input following draft two would be essential.

In reply to Commissioner Hoff, Mr. Lambert said the City's five subdistricts were central, northeast, northwest, southeast and southwest. He explained that the plan proposes 12 neighborhoods plus the mixed use districts.

Ms. Traxler further elaborated that the specific map for those divisions is available as part of the City's master plan documentation.

In reply to Commissioner Hoff, Mr. Lambert continued that the master planning team proposes to meet with residents from each of the five subdistricts, and to further solicit more

neighborhood-oriented feedback via all other available methods for communication with residents.

Mayor Pro Tem Longe expressed appreciation for the work done on the process thus far, and stated that she viewed the proposed process as appropriate. She said she watched the second public input meeting and understood the Board's concern that the conversation became too granular to be useful to the overall goals of the master planning process. She said she would support a venue for residents to express their more individualized concerns outside of the general public input discussions hosted by the Board. Mayor Pro Tem Longe endorsed both the proposed themes and the master planning team's willingness to state that the themes are not yet final and will be subject to updating.

Commissioner Host said he appreciated the slower timetable being proposed, stating that in light of the Covid-19 pandemic the master planning process was not likely currently at the forefront of many residents' minds. Commissioner Host also asked about the master plan discussion of affordable housing.

In reply to Commissioner Host, Chairman Clein emphasized that the Board is not seeking to increase affordable housing in its legal sense. He explained that, rather, the Board and master planning team are advising discussion of housing that is just a bit more economically attainable than the housing otherwise available in the City.

In reply to Commissioner Host, Mr. Lambert stated that the topic of attainable housing came up in every roundtable discussion with residents barring one. He said the one meeting in which it was not addressed directly was still concerned with schools and the need to retain families with school age children, which ties into the issue of the costs of living in Birmingham. Most of the conversations regarding attainable housing stemmed from older adults who would be looking to downsize in the future and wanted reasonably-priced housing available that would allow them to remain in Birmingham.

Commissioner Sherman stated that it had been the goal of the master plan from the outset to be a plan for future generations and not necessarily as much a plan for the 55+ age group. In light of that, he asked the master planning team about their success in getting input from younger residents.

In reply to Commissioner Sherman, Mr. Lambert confirmed that aside from the under-25 age bracket all other age brackets were relatively equally represented in the survey responses. He stated that the master planning team had its majority of face-to-face interaction with younger residents and families during their drop-in clinics. He said that there might be expanded opportunity to solicit feedback from younger residents in light of the expansion of virtual discussions.

Commissioner Nickita emphasized the importance of maintaining a clear implementation process for the plan with steps for the short-, medium- and long-term. He advised all present to keep that in mind as the master planning process moves forward, stating that implementation processes are the only way that previous City plans have had their goals realized.

Seeing no further Board or Commissioner comment, Mayor Boutros invited public comment.

In reply to Jim Arpin, Chairman Clein explained that, to his understanding, the D5 area study completed by DPZ was a sub-area study, commissioned separately by the City to gain insight into D5 zoning, and not part of the master plan.

Mr. Lambert confirmed Chairman Clein's statement that the D5 area study was performed separately from the master planning process. He added that some of the recommendations from the D5 area study do relate to some recommendations in the master plan draft regarding proposed efforts to reduce discrepancies in zoning ordinances in the City.

David Bloom said he appreciated the City's previous master plan for its strict delineation between the City center and the surrounding neighborhoods. He shared concern about the proposals in the current master plan draft that encourage the development of neighborhood seams with increased housing density and destinations. Mr. Bloom said that while he was supportive of more housing density, he thought the ideal location for it would be the Triangle District and not already established residential neighborhoods. He also expressed concern that denser housing adjacent to single family homes would destroy the single family home property values. Mr. Bloom asked if Birmingham residents in actuality were calling for these changes, or whether these changes were being pushed through at the behest of developers. Mr. Bloom said the area around Bates St. extension should also be considered as part of the master plan.

In reply to Mr. Bloom, Mr. Lambert stated that the master planning team has not been in dialogue with any developers regarding any aspect of the process. He explained there were two drivers for the proposals Mr. Bloom referenced. The first is the aforementioned desire on the part of many senior residents to have attainable housing available should they choose to downsize in the future and remain in Birmingham. The second is that planning in previous decades was concerned about potential blight brought on by multi-family homes because those buildings were often not well-regulated and maintained. Mr. Lambert explained that the thinking in the planning world has evolved in recent years to understand that smaller-scale, well-maintained multi-family homes, strategically placed, adds to the well-being of communities.

Paul Reagan said in his perspective that the master planning team came into the community with themes they wanted to advance rather than themes that arose organically from Birmingham residents. Mr. Reagan continued that Birmingham in the past has attracted its residents largely on the basis of safety and exclusivity, and not housing density or affordability. He opined that the safety and exclusivity Birmingham residents seek is mutually exclusive with the proposal to add more apartment living, whether in the Triangle District or along neighborhood seams. He warned the Commission and the Board that there would be a lot of resident pushback regarding those proposals.

Mr. Reagan said the master plan was also notably missing proposals for the integration of east and west Birmingham and any commentary on unimproved roads and sewers. For the east-west integration he recommended that could be done by installing elevated walkways over Woodward.

In reply to Mr. Reagan, Mr. Lambert said he very much appreciated the feedback that integrating the east and west sides of the City should be one of the themes of the master plan. He said the plan draft did pay some attention to topic, but that he looked forward to further

discussing whether more should be done. Mr. Lambert added that the planning ideas that initially would have influenced Birmingham's development are more similar to the ones being advanced today. He explained that in the intervening time some planning practices came into vogue that introduced policies which were actually destructive to aspects of what makes Birmingham so desirable and liveable. He noted that most Birmingham residents surveyed are very happy with the City, and that only small improvements need to be made. He said the proposals in the master plan draft move towards implementing those.

Mayor Boutros thanked the public for their comments and thanked the DPZ team for their work thus far on the project. He identified consensus among the Commissioners that the master planning process could move forward with the proposed themes, and could move forward with soliciting further public feedback through Zoom as long as it remains authorized by Governor Whitmer.

In reply to Commissioner Baller, Chairman Clein confirmed that the Board received the information and guidance it sought from the Commission. He thanked the Commission for their input and perspective.

B. Lot Combination Review Process

Mayor Boutros recused himself from the discussion at 8:53 p.m.

Mayor Pro Tem Longe initiated discussion of the item at 8:53 p.m.

Planning Director Ecker provided an overview of the item.

Commissioner Baller said that while he was supportive of this discussion occurring, he thought this was not the correct time to be having the discussion. He suggested it would have been more appropriate to complete review of the lot combination request that had already been submitted to the Commission, and then to proceed subsequently with the review of the process. He said it also would have been more appropriate to have allowed the Board time to convene, discuss the issue amongst themselves, and send along voted-on guidance to the Commission. He said he would also like it to be more clear in the lot combination review process that a number of parts of the review are up to the Commission's subjective understanding, specifically citing items one, four and six in Chapter 102, 83(6) as places where that subjective understanding is sought.

After Commission discussion, Chairman Clein addressed Commissioner comments, stating:

- Front setbacks would not change in a lot combination or split since those are already determined by the relationship to other homes on a street.
- Without policing specific design decisions, the Commission can still consider the rhythm, spacing, street wall and other aspects of a street or neighborhood that would be affected by potentially approving a lot combination or split. They can then consider whether those changes might be beneficial to the development of that street and neighborhood.
- Neighborhoods in Birmingham are too varied to be able to provide more specific criteria for lot combination or split appropriateness beyond the criteria already set forth. Acknowledging that, the Commission seems to be on the right path in regards to making

these determinations based on what they perceive to be the best interests of the community.

- Since site plans are not submitted as part of a proposed lot combination or split, the Commission should consider any building configurations that would be allowed under ordinances if the combination or split were approved, and should use that to help guide their decision.

In reply to a question from Commissioner Host, City Attorney Currier stated that lot combinations and splits are legal, and that it is up to the discretion of the Commission whether to allow them.

Mayor Pro Tem Longe asked if any other Board members wanted to weigh in on the discussion.

Mr. Williams said the Board could review the topic in the study session if that would be the desire of the Commission. He said that the matter could also be considered in conjunction with the master plan discussions as they move forward, since the issues are related. Mr. Williams said the Board had thought the room for Commissioner discretion provided in the process would be beneficial since there are so many conditions to consider during a review. He said that if that was not the Commission's consensus that the Board could further attempt to provide more objective criteria on which the Commission could base its decisions.

Mr. Share said that the key issue was a philosophical one, in that the Commission had decide whether they wanted their discretion to be further limited. He gave one example that providing more specific criteria could allow applicants to propose changes that are within the letter of the ordinance but not the spirit, and that the Commission would not be able to deny those changes in such a case. He said that while he agreed with Mr. Williams that the Board could study the issue, he suggested that the Commission consider the possible consequences of reducing their discretion given the variability present in these matters.

Ms. Whipple-Boyce said that in an effort to refresh her memory on the topic, she went back to find minutes of the discussions of this ordinance. She continued that:

- This item seemed to have been initially discussed at a joint PB-CC meeting on June 20, 2016. At the time there was consensus among both the Board members and the Commission that some restrictions should be added to the lot combination process.
- The next time this ordinance was discussed was July 18, 2016, where the Commission reviewed and approved language for the ordinance.
- While it was possible that she missed a meeting in which the issue was discussed, she tends to be at most Board meetings and found no record either on agendas or minutes that the Board ever reviewed the item. There was no indication that the language submitted to the Commission was vetted or voted on by the Board.
- The minutes of the July 18, 2016 Commission meeting indicated that the Commission intended the ordinance change to stop abuses of the lot combination process from continuing on the part of developers with the understanding that the ordinance would be reviewed again as part of the master planning process.
- Language set forth in item one contradict points in items two, three, and four. She would have raised that issue at the time if she had been present for a discussion of the language. Given the contradictions in the ordinance language, she could understand why it was proving confusing for the Commission to act on it.

- Themes four, five and six in the master plan all relate to lot combination considerations.
- The master planning process will provide the groundwork for the Board to later create a clearer ordinance regarding lot combinations.
- If the improvements to the ordinance are significant enough at a later date, it is possible that these reviews could return to being administratively approved instead of being performed by the Commission.
- She was fully supportive of re-looking at this ordinance, but did not think it would be appropriate to propose new language until the master plan is more fully developed.
- In the meantime, the Commission should review lot combination applications according to the ordinance language that is currently set forth.

Mr. Jeffares concurred with Ms. Whipple-Boyce that the current master planning process, with its neighborhood focus, will allow the Board to better formulate language for this ordinance in the future. He said he has seen lot combinations that benefit neighborhood character, citing the ability to replace a garage-front home with a home more in line with Birmingham's current zoning as an example.

Mr. Boyle said that if Commission consensus is that they would like more clarity from the Board then the item should be returned to the Board for study.

Commissioner Sherman said that Chairman Clein provided the most actionable guidance in terms of what the Commission's considerations should be for a lot combination request. He said that while he heard agreement among the Board members that the ordinance should be returned to them for further study, he said that in his mind the Commission was only seeking guidance as to how they should render decisions based on the current ordinance.

Commissioner Hoff said she was appreciative of the Board members' comments. She said she was heartened to know that this ordinance would tie into master planning considerations as well. She said that she was of the mind to request the Board to review the ordinance language per their offer.

In reply to Commissioner Hoff, City Attorney Currier stated that lot combination moratoriums are difficult to maintain, so it would be unlikely that the City could avoid lot combination requests until the ordinance language is sufficiently clarified. He stated that it is City policy to apply the rules in force on the date of a given application, so the current lot combination request before them should be reviewed under the current ordinance.

Seeing no further Board or Commission comments, Mayor Pro Tem Longe invited public comment.

Mr. Bloom said that while he has often spoken against lot combinations, one of the factors worth considering should be whether the requesting party is a current resident. He said he would be more amenable to current residents being granted these requests because of their investment in the community. He also suggested that if a resident owns two lots and proposes a lot combination, the lot without the combination could be split by the City at the time of its sale to re-balance the number of lots the City has.

Hany Boutros stated:

- That public comment should occur at the beginning of Commission meetings, explaining that it is prohibitive for members of the public to wait until the end of the sometimes very long meetings to voice their opinions.
- From his perspective, the discussion proved that for the most part the Commission should not be involved in determining lot combinations since many Commissioners said they were unsure what to base their decisions on.
- A lot of the criteria suggested ultimately amount to aesthetic opinions or preferences for sizes of houses. The City should be allowed to limit the size of houses built on lot combinations if it wants, but should not reply on vague descriptions such as character.
- He agreed with Ms. Whipple-Boyce that the Board should review the ordinance and come up with clear criteria and that then those applications should be administratively reviewed.
- The Commission should hold a public hearing for an application only if it does not meet the criteria, in order to give the applicant a chance to advocate for approval.
- He was unsure the City would continue to be attainable for families if they are expected to have homes on 40-foot lots.
- Birmingham has no consistent character among its houses from one street to the next, and describing it as if it does is misleading.

Seeing no further comment from the public or Commission, Mayor Pro Tem Longe concluded discussion of the item.

C. Economic Stimulus Program

Mayor Boutros resumed leadership of the meeting at 9:49 p.m.

City Manager Valentine introduced the item and Planning Director Ecker provided an overview of the item.

In reply to Commissioner Baller, Planning Director Ecker said:

- A slight reduction in site plan applications occurred, but that had likely owed to the temporary construction stoppage across the state.
- Owing to the Covid-19 pandemic, the City believes it possible that site plan applications could drop off in the future.
- The goal in offering these incentives was to both buffer the City against potential economic fallout in the coming months and to make the City competitive in terms of attracting new investments.
- These proposals were being recommended by the City administration and not the Board.
- The cost to the City for offering these incentives depends on the types of incentives. Some of the incentives would result in no costs to the City, such as offering parking passes at public decks or allowing for economic development licenses for investments of over \$10 million.
- The costs for a commercial rehabilitation district would depend on the size of the development, the according increase in taxes as a result of the new construction, and for how long the Commission would be willing to abate those taxes.

Mr. Boyle said that he applauded the effort on the part of the City administration. Acknowledging that there will be an economic recession, the extent of which is not yet known,

he said it made sense for the City to position itself to mitigate the effects of the recession as much as possible in the short-, medium- and long-term. He cited the City's granting of extra outdoor seating to restaurants as one short-term response that is already being implemented. He said a medium-term response could be in-line with many of the administration's proposals for incentivizing and maintaining development in the City. As part of that medium-term response he recommended making the data available that demonstrate the wisdom and necessity of those actions. Finally, the long-term plans could be the possible commercial rehabilitation district, similar to the Corridor Improvement Authority.

Mr. Boyle said discussion of the situation and its potential remedies would be prudent in the very near future. He said he was less convinced that given the late hour, and the fact that no decisions are made at joint meetings, that the conversation should be continued presently. He said the Board could review the matter first or that it could go directly to the Commission.

Mayor Pro Tem Longe said:

- She would be concerned about implementation of the Commercial Rehabilitation Act (Act) from an equity standpoint.
- There would likely be many areas in the City that would benefit from the investment and that choosing one area could seem unfair.
- She did not know where the 50,000 sq. ft. minimum came from since it is not mentioned in the text of the Act.
- This proposal could end up favoring new businesses over Birmingham's current ones in terms of benefits, especially if the new businesses are competitive with the already extant ones.
- Economic incentives are often very useful to bring investment to areas in more dire economic conditions than the ones Birmingham finds itself in.

In reply to Mayor Pro Tem Longe, Planning Director Ecker stated that to her knowledge no businesses have submitted applications for the Act thus far.

Commissioner Host said he was unpersuaded that these proposals would not cost the taxpayers of Birmingham. He said that he would not want to consider their implementation until the City is facing more dire straits. Commissioner Host said that if the City wanted to provide an economic stimulus, it should lower the residents' taxes before considering anything else.

Commissioner Nickita said it should be clarified that the City already offers incentive programs, for instance through its bistro and economic development licenses. He explained that those do not fund developers, but rather encourage the kind of development the City wants long-term. He cited Triple Nickel restaurant as one example that came about through these incentives, which both gave residents another restaurant to enjoy and expanded the City's tax base. He encouraged the exploration of these ideas to maintain a healthy amount tax revenue, to provide jobs, to provide anchors for other future developments, and to help the City reach its development goals.

Chairman Clein said he was hearing a lot of discussion about implementation strategies for encouraging business and development in Birmingham. He said that the first and most fundamental question should be whether Birmingham residents have an interest in incentivizing business and development.

Commissioner Baller said first that he was perplexed by the joint meeting structure, since ostensibly no action is taken but the Board and administration still come away with what they perceive to be the Commission's recommendation. He said the purposes of the Commission would be better served if there were official votes on these directions so that it is more clear what is being requested. He continued that he would be supportive of the City understanding how it could implement any of these strategies, while being less sure that they needed immediate implementation. He said the question of when to use the strategies would be a worthwhile one.

Commissioner Sherman stated that over the last number of years Birmingham has chosen not to offer financial incentives to bring new business into the community. He said that, absent a compelling reason, he was unclear as to why Birmingham would change that practice now. He noted that when offering tax abatements for some new properties those tax dollars will still need to be made up by the City in other places. He said he would approach these kinds of strategies very cautiously before moving forward.

Mayor Pro Tem Longe said Chairman Clein was correct that the City must determine whether offering these incentives would be supported by the residents. She said it was also difficult to discuss whether any of these strategies might be appropriate without having a clearer sense of where the administration proposes to implement them. She said she could see some of them being useful in the Rail District, for instance, but that she did not see them as being necessary for the downtown.

City Manager Valentine responded to Commissioner Baller's comments. He explained that after the joint workshops the Board's action list is brought to the Commission for review. He said that the Commission then has the ability to amend the Board's action list according to the priorities determined at the workshop discussion.

Mr. Jeffares agreed with Chairman Clein and Mayor Pro Tem Longe, saying that the City must first determine whether these more advanced incentives are necessary given the City's current economic conditions before deciding how to implement them.

Mr. Williams agreed with previous comments, saying he would be supportive of the Board studying the incentives. He explained that better understanding the options does not obligate the City to implement them. He said the Board would need more data for its consideration, and recommendations from the Commission and the administration regarding where in the City these solutions might be implemented. Mr. Williams said he was unswayed by the supposition that because the City has not used these particular strategies before they should not be considered for the future. He noted that there were some Commissioners against bistros when they were proposed about 12 years ago because they had not been used before, and that the bistro program has turned out to be very successful.

Commissioner Hoff shared support for the topic being studied with the understanding that study does not obligate any particular actions.

Commissioner Host thanked the Board for their efforts to interpret and understand the Commission's direction during the meeting.

Seeing no further Board or Commission comment, Mayor Boutros invited public comment.

Mr. Reagan implored the Commission and the Board to not implement any commercial financial incentives at the cost of the residents of Birmingham. He said there was a letter included in the March 22, 2020 Commission agenda packet written to RH, a commercial entity, trying to entice them to create a location in the City through the use of financial incentives. Mr. Reagan said he found no evidence that the Commission as a whole had reviewed or endorsed that letter. He ventured that Birmingham residents had strongly voted against exorbitant commercial incentives when they voted down the proposed Bates St. project in 2019. He continued that at the Commission's first meeting in June 2020, Commissioner Host had requested City Manager Valentine to find a way to increase funding to the senior center. Mr. Reagan recalled that Commissioner Host brought his request for funding down to \$1, and Mr. Reagan said that City Manager Valentine demurred regarding the request. Mr. Reagan said that residents will remain unhappy with City administration and the Commission as long as commercial projects are favored financially over the residents' needs.

Mr. Bloom largely concurred with Mr. Reagan. He said he agreed with the statements that it would be prudent to study and better understand the proposed strategies. He continued, though, that the City administration and the Commission lost a lot of trust on the part of the residents in 2019 as a result of attempting to use some of these tools in ways the residents did not support. He said he would proceed with these discussions with the utmost caution in terms of the likely ramifications for residents. Mr. Bloom noted that, for instance, while giving away parking passes to developers might not immediately cost the City money, it would increase the strain on an already-strained parking system. In turn, that would necessitate raising funds from residents to create other parking options sooner than might have otherwise been necessary.

Mayor Boutros thanked the public for their comments. He said he understood the general consensus from the Commission to be that they would like more information on how these various incentives would work, and would like the Board to study it, without any obligation to implement the incentives.

Mayor Boutros thanked the Board, Commission, Staff, and public for their participation.

IV. PUBLIC COMMENT

Occurred during the discussion of each item.

V. ADJOURN

Seeing no further comment, Mayor Boutros adjourned the meeting at 10:44 p.m.

NOTICE: Individuals requiring accommodations, such as mobility, visual, hearing, interpreter or other assistance, for effective participation in this meeting should contact the City Clerk's Office at (248) 530-1880 (voice), or (248) 644-5115 (TDD) at least one day in advance to request mobility, visual, hearing or other assistance.

Las personas que requieren alojamiento, tales como servicios de interpretación, la participación efectiva en esta reunión deben ponerse en contacto con la Oficina del Secretario Municipal al [\(248\) 530-1880](tel:(248)530-1880) por lo menos el día antes de la reunión pública. (Title VI of the Civil Rights Act of 1964).

BIRMINGHAM CITY COMMISSION MEETING MINUTES
JUNE 22 2020
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.
VIRTUAL MEETING

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Pierre Boutros, Mayor, called the meeting to order at 7:30 p.m.

II. ROLL CALL

Alexandria Bingham, City Clerk Designee, called the roll.

PRESENT: Mayor Boutros
Mayor Pro-Tem Longe
Commissioner Baller
Commissioner Hoff
Commissioner Host
Commissioner Nickita
Commissioner Sherman

ABSENT: None

Administration: City Manager Valentine, Attorney Kucharek, Finance Director Gerber, Planning Director Ecker, DPS Director Wood, City Planner Dupuis, Assistant City Engineer Fletcher, Building Official Johnson, HR Manager Meyers, IT Manager Brunk, Management Intern Fairbairn, Police Chief Clemence, City Clerk Designee Bingham

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

ANNOUNCEMENTS:

- All City offices remain closed to the public. All departments are accessible via phone and email. Payments may be dropped off using the convenient drop box, located behind City Hall and accessible via the Police Department parking lot off Henrietta Street.
- The Library is currently offering Curbside Pickup service to patrons on Mondays through Thursdays from 11:00 a.m. to 7:00 p.m. and on Fridays and Saturdays from 9:30 a.m. to 5:30 p.m. On Monday, July 6, 2020 the Library will begin allowing the public will to enter the building for limited visits. Masks and social distancing will be required. Regular Library hours will resume. Find more details about Curbside Pickup and the Library's reopening plan at www.baldwinlib.org/reopening.
- The City will maintain the hotline to provide residents with information about City and County COVID-19 resources through the end of the month. Elderly, quarantined and immuno-compromised individuals are encouraged to use the hotline to request assistance with essential functions, and obtaining necessary supplies Call 248-530-1805, Monday through Friday from 8 a.m. – 5 p.m.

- We encourage everyone to sign up for our email distribution system to receive the latest information from the City. You can do this by going to our website and clicking on the box in the lower right corner of your screen to sign up.
- The Clerk's Office reminds all voters that wish to vote absentee for the upcoming elections to complete and return their absentee voter ballot applications. All voters that have already turned in an application to request an absentee ballot will receive their ballot by mail shortly after June 25th. Finally, if you are interested in working as an Election Inspector in Birmingham in the upcoming elections, please contact our office at elections@bhamgov.org or 248-530-1880. Please return any election documents by mail or use the convenient drop box located behind City Hall, do not hesitate to contact us with any questions.
- Birmingham Police Department Announcements from Chief Clemence.
 - Members of the Birmingham Police Department are in agreement with the City's proclamation of June 5, 2020 in response to the death of George Floyd.
 - All officers were appalled by the action and inactions of the officers involved in the case; it was a dark day for the nation and a darker day for the law enforcement community.
 - There is a movement to oversee the Police Department as well as social reform in general.
 - The President of the United States signed an executive order asking for police reform and both houses are working on reform.
 - Governor Gretchen Whitmer, Attorney General Dana Nessel, and State Legislatures have initiated reforms for police.
 - Chief Clemence went on to say that as the Chief, he will embrace anything that improves the profession of law enforcement and will support meaningful change that will insure fairness, respect, dignity, security, and justice for all people. When reforms are passed down from the Federal and State level, he guaranteed that the Birmingham Police Department would meet or exceed the recommendations.
 - In the fall of 2019 the department initiated a program to reform policies and procedures in conjunction with the State's Chief of Police Accreditation program. Currently only 4% of the State's police departments are accredited and 6% including Birmingham are in the process of accreditation.
 - The City of Birmingham's Police Department has a policy prohibiting the use of chokeholds unless it is a last resort for the officer to defend human life.
 - The department also has a duty to intervene policy requiring all officers to intervene when another officer engages in misconduct or uses undue force.
 - The City of Birmingham has a policy requiring all officers to receive annual use of force and de-escalation training that is scenario based.
 - In addition, the department has a policy against bias-free policing, using a diversity and inclusion specialist for annual training.
 - Finally, the department have studied the use of body cameras and are seeking approval later in the agenda to implement the program for public transparency and officer safety.
- Management Intern Fairbairn and Building Official Johnson announced and demonstrated a new program offering online forms, payments, and permit applications accessible through the City's home page and www.bhamgov.org/formsandpayments.
- Virtual meetings will continue through the July 31st in accordance with the Governor's Executive Order 2020-129.

APPOINTMENTS:

The City Commission interviewed the following to serve on the Architectural Review Committee:

1. Michael Poris
2. David Larson

Commissioner Hoff asked Mr. Poris what the acronym SCI-Arc represented on his application.

Mr. Poris replied that it is the Southern California Institute of Architecture, one of the top ten schools of the world; he attended graduate school there and served on the Board of Trustees for ten years.

06-095-20 APPOINTMENT OF MICHAEL PORIS TO THE ARCHITECTURAL REVIEW COMMITTEE

NOMINATION: Nomination by Mayor Pro-Tem Longe:
To appoint Michael Poris to the Architectural Board of Review as a regular member to serve a three year term to expire April 11, 2023.

ROLL CALL VOTE: Yeas, Mayor Pro-Tem Longe
Commissioner Baller
Commissioner Hoff
Commissioner Host
Commissioner Nickita
Commissioner Sherman
Mayor Boutros
Nays, None

06-096-20 APPOINTMENT OF DAVID LARSEN TO THE ARCHITECTURAL REVIEW COMMITTEE

NOMINATION: Nomination by Commissioner Host:
To appoint David Larson to the Architectural Review Committee as a regular member to serve a three-year term to expire April 11, 2022.

ROLL CALL VOTE: Yeas, Commissioner Host
Commissioner Hoff
Commissioner Nickita
Commissioner Sherman
Mayor Pro-Tem Longe
Commissioner Baller
Mayor Boutros
Nays, None

06-097-20 APPOINTMENT OF ELAINE MCLAIN TO THE CABLECASTING BOARD

The City Commission interviewed current member Elaine McLain to serve an additional term as a regular member of the Cable Board.

Commissioner Hoff, in reference to Ms. McLain's board affiliations as stated on her application, asked what NATOA represents.

Ms. McLain expressed that she is a board member of the National Association of Telecommunications Officers and Advisors and a member of the state chapter.

NOMINATION: Nomination by Commissioner Hoff:
To appoint Elaine McLain to the Cablecasting Board as a regular member to serve a three-year term expiring March 30, 2023.

ROLL CALL VOTE: Yeas, Commissioner Hoff
Commissioner Host
Commissioner Nickita
Commissioner Sherman
Mayor Pro-Tem Longe
Commissioner Baller
Mayor Boutros
Nays, None

Commissioner Hoff noted that there are three positions open on the Cablecasting Board and encouraged anyone interested in serving to apply.

06-098-20 APPOINTMENT OF ANDREW HAIG TO THE MULTI-MODAL TRANSPORTATION BOARD

The Commission interviewed alternate member Andrew Haig for appointment to the Multi-Modal Transportation Board as a regular member.

NOMINATION: Nomination by Commissioner Host:
To appoint Andrew Haig as a regular member to the Multi-Modal Transportation Board to serve a three-year term to expire March 24, 2022.

ROLL CALL VOTE: Yeas, Commissioner Host
Commissioner Nickita
Commissioner Sherman
Mayor Pro-Tem Longe
Commissioner Baller
Commissioner Hoff
Mayor Boutros
Nays, None

Mayor Boutros thanked the appointees for their interest and noted that the swearing in of the new appointees will be done individually and safely at the City Clerk's office by appointment.

IV. CONSENT AGENDA

All items listed on the consent agenda are considered to be routine and will be enacted by one motion and approved by a roll call vote. There will be no separate discussion of the items unless a commissioner or citizen so requests, in which event the item will be removed from the general order of business and considered under the last item of new business.

06-099-20 APPROVAL OF CONSENT AGENDA

The following items were removed from the Consent Agenda:

Commissioner Host: Item A – Resolution to approve the City Commission Budget Hearing minutes of June 6, 2020.
Item B - Resolution approving the City Commission regular meeting minutes of June 8, 2020.

Commissioner Hoff:

Item J – Resolution for Van Dyke Horn Agreement Amendment.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Nickita:
To approve the Consent Agenda excluding Item A, B, and J.

ROLL CALL VOTE: Ayes, Commissioner Sherman
Commissioner Nickita
Mayor Pro Tem Longe
Commissioner Baller
Commissioner Hoff
Commissioner Host
Mayor Boutros
Nays, None

- C. Resolution approving the warrant list, including Automated Clearing House payments, dated June 10, 2020 in the amount of \$1,540,326.70.
- D. Resolution approving the warrant list, including Automated Clearing House payments, dated June 17, 2020 in the amount of \$253, 316.69.
- E. Resolution to confirm the City Manager's authorization for the emergency expenditure related to the purchase of hand sanitizer from Grainger for a total cost of \$6,186.63 to be charged to City Property Operating Supplies COVID account # 101-441.003-729.0000, pursuant to Sec. 2-286 of the City Code.
- F. Resolution to approve the purchase of uniforms with Contractors Clothing Company for the total amount not to exceed \$9,000 for fiscal year 2020-2021. Funds are available for this in the Public Services - Uniform Allowance account # 101-441.002-743.0000.
- G. Resolution to appoint City Manager Joseph A. Valentine as Representative and DPS Director Lauren Wood as Alternate Representative of the City of Birmingham on the SOCRRA Board of Trustees for the fiscal year starting July 1, 2020.
- H. Resolution to appoint Assistant City Engineer Austin Fletcher as Representative and City Manager Joe Valentine as Alternate Representative of the City of Birmingham on the SOCWA Board of Trustees for the fiscal year starting July 1, 2020.
- I. Resolution to approve a 24-month service agreement renewal with Logicalis, Inc. effective July 1, 2020 for City Information Technology services. Further, to direct the City Manager to sign the renewal agreement on behalf of the City.

06-100-20 (ITEM A) CITY COMMISSION BUDGET HEARING MINUTES OF JUNE 6, 2020

Commissioner Host pointed out page 5, paragraph 3, and second line should read maintainable, as parts are not readily available.

MOTION: Motion by Commissioner Host, seconded by Mayor Pro-Tem Longe:
To approve the City Commission Budget Hearing minutes of June 6, 2020 as amended.

ROLL CALL: Ayes, Commissioner Host
Mayor Pro-Tem Longe
Commissioner Baller
Commissioner Hoff
Commissioner Nickita
Commissioner Sherman
Mayor Boutros
Nays, None

06-101-20 (ITEM B) CITY COMMISSION REGULAR MEETING MINUTES OF JUNE 8, 2020

Commissioner Host suggested the following amendments to the minutes:

- Page 8, second to last paragraph, refers to a combination request in November. It should read October 29, 2019.
- Page 15, under Commissioner Comments, Item A, point #1 should read Touchwood.
- Page 15, Item D, the line to track annual spending on commercial and residential Birmingham.

Commissioner Hoff pointed out that Touchwood should be replaced by the Joint Senior Services Committee will be meeting.

Commissioner Sherman, Page 8, last word should be dissented.

MOTION: Motion by Commissioner Host, seconded by Commissioner Sherman:
To approve the City Commission Regular Meeting minutes of June 8, 2020 as amended.

ROLL CALL: Ayes, Commissioner Host
Commissioner Sherman
Commissioner Baller
Commissioner Hoff
Commissioner Nickita
Mayor Pro-Tem Longe
Mayor Boutros
Nays, None

06-102-20 (ITEM J) AMENDMENT TO VAN DYKE HORN AGREEMENT

Commissioner Hoff pointed out that this is the contractor for City communications. While she complemented City Manager Valentine and the consultant for the coverage of Birmingham over the last couple of months, she asked why the change in contract price and who directs and provides information to the consultant.

City Manager Valentine expressed that the scope of the contract services are more limited than previously. The consultant did an outstanding job in providing those services in the absence of an in-house person, but it was decided that an in-house communications director would be more beneficial and have the consultant in a supporting role; thus decreasing the cost of the contract. He further explained that there is a \$4,000 retainer for approximately 39 hours per month for the social media platform and a wage for additional projects that may be assigned to them for special projects that may come up.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Sherman:
To approved the First Amendment to Agreement for Professional Communication Services with Van Dyke Horn in an amount not to exceed \$4,000 to be charged to account #101-170-000-811.00 and further directing the Mayor and City Clerk to sign the agreement on behalf of the City.

Public Comment

David Bloom, resident, expressed concern about the person leading communications and their ability to provide information and not propaganda.

ROLL CALL: Ayes, Commissioner Hoff
 Commissioner Sherman
 Commissioner Host
 Commissioner Nickita
 Mayor Pro-Tem Longe
 Commissioner Baller
 Mayor Boutros
 Nays, None

V. UNFINISHED BUSINESS

06-103-20 PROPOSED LOT COMBINATION OF 211 AND 227 W. FRANK STREET
--

Mayor Boutros recused himself from this item due to personal interest in the property and turned the meeting over to Mayor Pro-Tem Longe to preside.

Mayor Pro-Tem Longe continued the public hearing from June 8, 2020.

Planning Director Ecker presented the item that included the elements that Commissioners would consider in reviewing lot combinations.

- Size of existing lots in the neighborhood.
- Size of proposed building footprint.
- Pattern, placement, and orientation of the building footprint.
- If the proposal is consistent with the street rhythm and character of the neighborhood
- Configuration of the building footprint relative to the abutting lot.
- Impact to the neighbors.

Commissioner Nickita expressed appreciation for the considerations that staff gave to the proposed lot combination, such as building footprint, rhythm of the street, setback, etc. which are all defined in the current ordinance. However, moving forward there should be some depth to the details and clarifications presented to the Commission; specifically the orientation of the entrance to the property would be helpful in the decision making process.

Public Comment

Matthew Wilde, resident, asked if lot combinations effect the total number of households represented in the Birmingham Public Schools central funding; and how the number is calculated.

Planning Director Ecker explained that combining two single-family lots generally creates one single-family home, and it would affect the total number of households represented in the City.

Commissioner Sherman expressed that he found the information gathered from the Planning Board helpful in clarifying Section 102-83, Sub 6 in terms of what should be considered in the Commissioners determination as it applies to the use of discretion. He went on to reiterate that he looks at how a proposed combination would look and feel in the neighborhood, and it was examined at the Planning Board meeting. In this instance, the proposal raised additional issues specifically, how the building fronts line up. The proposed combination allows for the front and side setbacks to match property along Henrietta and Frank streets, without the combination there is not a match along both streets. He went on to say the buildable area on the second lot appears to be approximately 1,000 sq. ft. and addresses any footprint and height issues that may arise. Finally, after discussions with the Planning Board, he is in support of the suggested resolution.

Mayor Pro-Tem Longe closed the public hearing at 8:50 p.m.

MOTION: Motion by Commissioner Nickita, seconded by Commissioner Baller:
To approve the proposed lot combination of 211 Frank Street, Parcel # 19-36-184-020 and 227 W. Frank Street, Parcel # 19-36-184-019.

Commissioner Hoff read the Commissioners comments made at the April 20, 2020 public hearing for the Bates Street lot combination:

- Commissioner Nickita expressed that the current lot combination ordinance needs a thoughtful amendment to strengthen the City's position in deciding future lot combinations.
- Commissioner Hoff agreed with Commissioner Nickita that an ordinance revision is needed so that consistent standards are in place moving forward.
- Commissioner Baller expressed support in revising the ordinance governing lot combinations.
- Mayor Pro-Tem Longe prefers to revise the ordinance to allow a property owner to have accessory uses on a lot without forcing a lot combination.
- Commissioner Host agreed with the other Commissioners that the ordinance is a problem.
- Commissioner Sherman stated that it is now evident that there is still work that needs to be done to the ordinance.

Based on the comments, she felt there was a consensus among the Commissioners that the ordinance needed revision. Due to the timing of this particular request and it meets all the requirements set forth in the existing ordinance, and the application was filed prior to the April 20, 2020 discussion, she reluctantly supports the suggested resolution. She expressed that an ordinance revision was almost unanimous and hopes that it could be conveyed to the Planning Board.

ROLL CALL VOTE:	Ayes,	Commissioner Nickita Commissioner Baller Commissioner Host Commissioner Sherman Mayor Pro-Tem Longe Commissioner Hoff
	Nays, Recusals,	None Mayor Boutros

Mayor Pro-Tem Longe turned the meeting over to Mayor Boutros to preside.

VI. NEW BUSINESS

06-104-20 LAKEVIEW AVENUE PAVING PROJECT

Assistant City Engineer Fletcher presented this item.

Commissioner Hoff asked if the quotes include the cost to remove lead water services from ten properties; and would those homeowners be able to have sewer laterals replaced at their own cost.

Assistant City Engineer Fletcher affirmed that the removal of lead water services and replacement of sewer laterals in the City's right-of-way are included.

Mayor Boutros clarified that there are two bids in front of the Commission to approve the use of concrete or asphalt in the paving project on Lakeview Avenue. He also expressed that the Commission have received all of the residents' communications supporting the use of asphalt.

Commissioner Baller expressed that he supports the asphalt option and would like to move forward with this resolution.

Commissioner Sherman, from the position of serving on the Ad-Hoc Street Improvement Committee, reminded everyone that the committee is still reviewing the best options to implement for City policy. Currently, the City policy is concrete. In this case the residents would prefer asphalt and there is an apparent savings over concrete to the residents but there is an increase in maintenance cost to the City. Due to the number of existing asphalt streets, maintenance cost should not be considered for the bid before the Commission.

MOTION: Motion by Commissioner Sherman, seconded by Mayor Pro-Tem Longe: To award the Lakeview Avenue Paving Project, Contract #2-20 (P), to DiPonio Contracting, Inc., **ALTERNATE #2 (Asphalt)** in the amount of \$1,135,660.00, to be charged to the following accounts contingent upon execution of the agreement and meeting all insurance requirements:

<u>Fund</u>	<u>Account Number</u>	<u>Costs</u>
Sewer Fund	590-536.001-981.0100	\$413,273.33
Water Fund	591-537.004-981.0100	\$306,913.33
Local Streets Fund	203-449.001-981.0100	<u>\$415,473.33</u>
TOTAL		\$1,135,660.00

Commissioner Hoff pointed out that one of the residents on Lakeview Avenue asked why the surface on Baldwin that is asphalt, degraded and with construction projects planned on Lakeview would the heavy equipment effect the new pavement.

Assistant City Engineer Fletcher explained that there are many reasons why asphalt deteriorates. He further affirmed that the asphalt planned for Lakeview would uphold the construction traffic. He also pointed out that in new construction a hole would be cut in the road to connect the water and sewer. With the asphalt option, the patch would be visible, that is not the case with concrete.

Assistant City Engineer Fletcher addressed the deterioration on Baldwin by stating that the road would have to be examined to determine the specific cause.

Commissioner Hoff commented that many residents have put parking spaces in front of their homes would the practice of adding parking areas be available with the improved streets.

Assistant City Engineer Fletcher expressed that the road improvement includes the addition of curbs and the ability to park on both sides of the street, eliminating the need to create additional parking areas.

Commissioner Baller asked what curb design would be used for this project, and how wide is the tree strip.

Assistant City Engineer Fletcher described the design as a straight-faced curb with a tree strip of approximately 12 ft. wide.

City Manager Valentine explained that there is an inventory of trees that are planted in the right-of-ways throughout the City and DPS determines the placement.

Commissioner Baller expressed his pleasure in hearing Christine McKenna speak about the importance of design and esthetics incorporated with engineering.

Commissioner Nickita commented on this part of the process. He expressed that this is just a small piece in the bigger picture of identifying how to move forward with unimproved roads and does not set a precedent for how the City addresses the projects going forward. A policy is still forth coming. While esthetics are important, long term maintenance cost must be considered to keep the City fiscally responsible.

Mayor Boutros expressed his appreciation for the unity of the neighbors in working on this project. He also assured everyone that the Ad-Hoc Unimproved Streets Committee will begin working on a recommendation soon and apologized for the delay caused by the current pandemic.

ROLL CALL VOTE: Ayes, Commissioner Sherman
 Mayor Pro-Tem Longe
 Commissioner Nickita
 Commissioner Baller
 Commissioner Hoff
 Commissioner Host
 Mayor Boutros
 None.

Nays,

06-105-20 REVISED REVIEW PROCESS FOR THE 2040 MASTER PLAN

Planning Director Ecker presented this item.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Hoff:
To approve the Revised Review Process dated June 5, 2020 as endorsed by the Planning Board on June 10, 2020.

Commissioner Hoff asked for clarification on the time-line presented.

Planning Director Ecker expressed that the community meetings will begin in July of 2020 virtually. The Planning Board would discuss this at their next meeting and select a date to move forward.

DLZ replied that the packets would be launched at the next Planning Board meeting and distributed to the public as soon as possible.

ROLL CALL VOTE: Ayes, Commissioner Sherman
 Commissioner Hoff
 Mayor Pro-Tem Longe
 Commissioner Baller
 Commissioner Host
 Commissioner Nickita
 Mayor Boutros
 None
 Nays,

06-106-20 REVISED PLANNING BOARD ACTION LIST

Planning Director Ecker presented this item.

Commissioner Hoff suggested that the lot combination process be moved up in priority before other applications are submitted. She further asked where in the themes of the Master Plan is the definition of retail.

Planning Director Ecker suggested theme number 9 and 10 for the definition of retail.

Sarah agreed with Planning Director Ecker's suggestion. She also explained that the themes listed are draft themes from feedback suggesting that there is a need to bridge the east and west sides of Woodward. Moving through the revision process, themes would become more defined.

Commissioner Baller is not comfortable with the process for the action list and suggested that the list be reviewed and prioritized in a workshop with the Planning Board.

Commissioner Nickita clarified that the Planning Board has been dealing with the listed issues for some time and it is a collaborative effort that now needs approval by the City Commission.

Commissioner Host agreed with Commissioner Baller in that there should be a workshop to address the Planning Board action list.

Mayor Pro-Tem Longe is comfortable pending this item for input from the Planning Board.

Mayor Boutros, while not part of the lot combination discussion, expressed that he did not see support from the Planning Board for the ordinance review and is in support of pending the action.

Commissioner Sherman recalled the discussion, at the Planning Board joint meeting, supporting an ordinance review.

Commissioner Hoff explained to Mayor Boutros that while he was recused and out of the room, she read comments from the remaining Commissioners supporting a review of the lot combination ordinance. She reiterated that the Planning Board should review the process in a timely manner before the Commission is faced with another application.

Mayor Boutros expressed that the Bates Street lot combination was unique and different from the discussion now. He is in support of pending the action.

Commissioner Baller reiterated that this is a to-do list and prioritizing the list should be hashed out in a workshop.

Commissioner Nickita admitted being part of creating the list for approximately 20 years. He explained that it is a list carried over from projects, approvals, and discussions throughout the Commission and Planning Board activities. He went on to say the list is dynamic, complicated, and addressed by staff, as time is available. Commissioner Nickita further noted that it had been reviewed and qualified by the Planning Board in March.

Planning Director Ecker affirmed that the Planning Board studied the list in March, made recommendations for the order of priority, and that it is a cooperative effort.

Mayor Boutros wanted to table this issue due to the public comment tonight on the effects of lot combinations on the public school funding process. He suggested that there are studies that need to be done to evaluate the number of children in the existing homes, if any, and then measure the impact. He reiterated that the Commission is in place to serve the public who are the residents of Birmingham with changing familial needs and recommended more discussion.

Mayor Pro-Tem Longe requested clarification because she does not see the action list as an agenda item at the March 11, 2020 meeting; and added that her preference is to send it back to the Planning Board.

Planning Director Ecker expressed that she thought the Planning Board considered it on March 11, 2020; but would verify the date because it might have been at the February meeting. She further expressed that lot combinations would not have priority for the Planning Board due to the planned Master Plan activities.

Commissioner Hoff added that the City Commission traditionally has input on prioritizing the to-do list. She also firmly stated that speaking for one of the six Commissioners in agreement with an ordinance review based on discussions at the joint meeting on June 15, 2020; she is a proponent for having it on the to-do list for the Planning Board.

Commissioner Sherman reiterated that the list customarily comes back to the Commission after discussions with the Planning Board; if it satisfies the Commissioners he suggested asking staff to take it back to the Planning Board to confirm that they are comfortable with the to-do list and the order and bring it back for review by the City Commission.

Commissioner Nickita concurs with Commissioners Sherman to move this forward, agreed with Commissioner Hoff's comments, and added that the ordinance is concerning and needs review. He further pointed out that other Commissioners have agreed that there is a gap and at the joint meeting, there was agreement among the Planning Board that the ordinance could be stronger, and believes that returning the list would be repetitive.

Public Comment

David Bloom, resident, expressed that he likes the idea of moving the lot combination ordinance forward. He is concerned about the Master Plan themes, specifically 6 and 7 which deal with new urbanism that the residents of Birmingham do not want.

Hany Boutros, 711 Bates, commended Commissioner Hoff for her hard work and consistent research. He asked why she changed her position on lot combinations since the last request was before the Commission.

Commission Sherman interrupted with a point of order, and stated under the rules of procedure the public are not allowed to address Commissioners, staff, or other members of the public in an unruly manner.

Mayor Boutros clarified that there was no attack, just a question asked.

Hany Boutros, resident, apologized and reiterated his commendation for Commissioner Hoff's work. He went on to pose his question again.

Commissioner Hoff expressed that the question was not asked with good will and therefore not beneficial to the discussion; she stood behind her vote and suggested that the Commission move forward with the meeting.

Hany Boutros argued that he did ask in good will and expressed that lot combinations should be an administrative process.

No action was taken to approve the Revised 2020-2021 Planning Board Action List by adding a review of the lot combination ordinance and to consider the development of economic stimulus programs to be incorporated into the Planning Board's schedule after the in progress items are completed.

06-107-20 DAXTON HOTEL STREETSCAPE

Assistant Planning Director Dupuis presented this item.

Gail McGregor, Daxton Hotel, explained that the organization is asking for a minor modification of the streetscape. There is a light pole planned for the entrance of the hotel that would impede the walkway; and removing the light pole would not affect the lighting designed for that area.

Commissioner Hoff asked if there would be parking in front of the hotel on Old Woodward and how would the removal of the light pole affect the corner of S. Old Woodward and Brown St.

Assistant Planning Director Dupuis explained that there are parking spaces that would be shared with the valet parking stand and he affirmed that currently there are no streetlights on the affected corner. He added that the applicants have suggestions for alternative lighting.

Ms. McGregor explained there are foot-candles and a well-lit canopy over the entrance planned for the area that would enhance the current streetscape and provide sufficient lighting.

Commissioner Nickita asked for clarification on the digital packet in reference to pedestrian light in terms of the applicant's preference; there appears to be two options.

The applicant is asking for removal of the light post. Studies have suggested that there would not be a need for a light post in an alternative location. There are two options at the request of the Planning Department.

Commissioner Baller asked for clarification on the request to remove a light post that has not been installed; and why staff is not taking a position on the request.

City Manager Valentine expressed that there is an approved site-plan by the City Commission; and staff are not authorized to make changes to an existing approved plan.

Mayor Boutros attempted to clear the air by asking if there was any opposition to removing the pole from the site plan. He further asked if extra lighting would be needed to replace the planned lighting, and if so, would underground flush lighting be considered.

Planning Director Ecker commented that there are pros and cons to the removal of the light. Based on the photo metrics, the applicants request would work; there would be enough light for safety and security. The con is the design esthetic expected as you view the streetscape; symmetry would be interrupted.

Mr. Charlie Stetson, Booth Hansen Architects, clarified that the request is to remove an awkward light pole from the entrance to the hotel. He went on to assure that the planned lighting for the area would be sufficient.

Commissioner Nickita acknowledged that the hotel is on a challenging corner; the entry canopy and lighting would be a focal point at the end of the streetscape and would not need a pedestrian light post at that location to complete the esthetics. Commissioner Nickita continued with the Commission being cognoscente of setting a precedent and asked Planning Director Ecker to explain the distinction of this scenario.

Planning Director Ecker advised that there have been request in the past; interruption of symmetry is not desired unless needed. In this case, the canopy of this large, new building provides relief for pedestrian lighting, provides coverage for people standing, and finally, the sidewalk would be too cluttered with the light post, and would disrupt the grand architecture.

MOTION: Motion by Commissioner Baller, seconded by Commissioner Host:
To approve a revised streetscape plan for the Daxton Hotel at 298 S. Old Woodward to include 3 pedestrian scale streetlights along S. Old Woodward.

Commissioner Nickita asked if moving the motion as stated would require a light to be put atop of the traffic light or would it eliminate that option until it is determined necessary.

Planning Director Ecker affirmed that the light post would be removed and there would be no light installed at the intersection.

ROLL CALL VOTE: Ayes,

Commissioner Baller
Commissioner Host
Mayor Pro-Tem Longe
Commissioner Hoff
Commissioner Nickita
Commissioner Sherman
Mayor Boutros
None

Nays,

06-108-20**PURCHASE OF BODY WORN CAMERAS**

Chief Clemence presented this item based on a suggestion from Karen Healy, a 15-year-old student from Seaholm High School. After discussions with the Chief, Miss Healy created a petition and acquired over 1,000 signatures from community members in support of Birmingham police officers wearing body cameras. Chief Clemence commended her for her efforts and concern about the community.

Commissioner Hoff asked if the proposed account is funded enough to support this purchase; or would it be more appropriate to use the drug forfeiture fund.

Chief Clemence affirmed that there is enough in the proposed fund, and there is a plan to use the drug forfeiture fund on a camera system for the City in the 2020-2021 budget year.

Commissioner Sherman clarified that there were excess funds in the current year budget so the Chief is asking to use the funds for this purchase.

Commissioner Nickita acknowledged that the use of body cameras have been studied by the City that revealed legal concerns, privacy issues, and civil rights issues prohibiting the adaptation of this practice. Being aware of cameras inside the vehicles and recorded audio on body for several years, He further asked would the body cameras just enhance and complete the current systems. Finally, he asked if there would be any change in the vehicle configuration.

Chief Clemence explained that laws have changed eliminating early concerns with the use of this type of technology and affirmed that the addition of body cameras would complete the existing system. He also expressed that this purchase would create a two prong system that provides redundancy if one of the systems were to fail.

Commissioner Host wanted Chief Clemence to know that his proactivity and leadership demonstrates that he is a great guardian of the community.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Nickita: To approve the purchase of (40) VISTA HD body worn camera systems from WatchGuard Video via Oakland County Cooperative Purchasing contract # 004898; further charging this expenditure in the amount of \$60,463.00 to the General Fund capital outlay machinery and equipment account # 101-301.002-971.0100.

Mayor Pro-Tem Longe thanked Chief Clemence for his swift action on this issue, applauded the comments, and looks forward to continued dialogue about other suggestions.

Public Comment

Karen Healy, Seaholm student, expressed that her petition to require the Birmingham Police Department to wear body cameras was supported by over 1,600 signatures. She thanked the City Commission, City Manager, and the Police Chief for taking this issue seriously.

Mayor Boutros complimented Ms. Healy on taking up a cause that she is passionate about and recognized her good work.

Natasha Pelky, former Seaholm student, thanked everyone for supporting the petition. She pointed out that statistics show a 60% reduction in police force when body cameras are worn, and supports the suggested resolution.

ROLL CALL VOTE: Ayes, Commissioner Sherman
 Commissioner Nickita
 Commissioner Baller
 Commissioner Hoff
 Commissioner Host
 Mayor Pro-Tem Longe
 Mayor Boutros
 Nays, None

06-109-20 BIAS AWARENESS AND SENSITIVITY TRAINING FOR CITY EMPLOYEES

Mayor Boutros excused himself temporarily from the room and turned the meeting over to Mayor Pro-Tem Longe to officiate.

Chief Clemence presented this item explaining that the police department goes through annual training on different topics; the department chose diversity and inclusion for 2020 and included other City employees.

Commissioner Hoff agreed that this training is timely and commended the Chief for selecting the topic. She also pointed out that the person presenting the training has credentials that are over 10 years old; and asked how they would insure that her methods are up-to-date and appropriate for the current environment.

Chief Clemence explained that Human Resource Manager Myers recommended her based on a training session that he attended last year; he felt that her curriculum was spot on for today's environment.

Mayor Pro-Tem turned the meeting back over to Mayor Boutros.

Commissioner Sherman expressed that the timing is in-line with where we are as a community right now and supports the resolution.

MOTION: Motion by Commissioner Sherman, seconded by Mayor Pro-Tem Longe:
To approve the proposal from SASHE, LLC to provide bias awareness and sensitivity training to the police department and other City employees in an amount not to exceed \$14,700.00 to be charged to the respective departmental budgets.

ROLL CALL VOTE: Ayes, Commissioner Hoff
 Mayor Pro-Tem Longe
 Commissioner Host
 Commissioner Nickita
 Commissioner Sherman
 Commissioner Baller
 Mayor Boutros
 Nays, None

**06-110-20 FOURTH QUARTER APPROPRIATIONS AND BUDGET
AMENDMENTS**

Finance Director Gerber presented this item.

MOTION: Motion by Commissioner Sherman, seconded by Mayor Pro-Tem Longe:
To approve the fourth quarter appropriations and amendments to the fiscal year budget of 2019-2020.

ROLL CALL VOTE: Ayes, Commissioner Sherman
 Commissioner Hoff
 Commissioner Host
 Commissioner Nickita
 Mayor Pro-Tem Longe
 Commissioner Baller
 Mayor Boutros
 Nays, None

VII. REMOVED FROM CONSENT AGENDA

VIII. COMMUNICATIONS

IX. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA

David Potts, 530 Lakeview, stated that he and his wife retired circuit court judge Wendy Potts have lived in Birmingham for 28 years. He wanted to comment on national concerns that effect all residents in Birmingham. He asked is America a systemic racist society. He went on to ask if people are so partisan that they are willing to put police agencies and other institutions across the country at risk, as a result of the death of George Floyd. He also suggested that before holding him in high esteem, the speakers at his funeral promised vengeance and violence. Mr. Potts pointed out that on the left, the Governor of Virginia promised the removal of all statues of confederate generals. CNN suggested that monuments of Washington and Jefferson are insidious replicas of slave owners; Washington being the father of this country and Jefferson was the author of one of the most important American documents. He went on to say that everyone should be concerned about the movement supported by the left and right and that anarchist nationwide, including Detroit Mayor Duggan, are removing monuments across the nation. While he noted that Black Lives Matter, he went on to say that all lives matter. He continued with, Fox journalist Carlson who was in support and criticism of the Black Lives Matter movement lost sponsors. Mr. Potts expressed that there is space in the room for debate on the fate of iconic structures and sees the country running the risk of targeting and ignoring institutions, and debasing police based on the misconduct of one officer and the complicit behavior of the other officers implicated in the murder of George Floyd.

David Bloom, resident, expressed that earlier in the meeting Item B was pulled from consent without the public having an opportunity to comment. He went on to say that his comments were not articulated fully in the minutes and repeated his comments as follows: The budget contains \$.5M in legal services going to Mr. Currier and his firm; last year Mr. Currier with faulty legal advice took away civil rights of residents of Birmingham. He does not think that the residents deserve to spend \$.5M on an attorney giving that type of legal advice and should not continue to retain City Attorney Currier. He further pointed out that it is ridiculous that it has been three hours and 40 minutes since the meeting began and the public is just getting the opportunity to

comment on issues not on the agenda. He also stated that he is concerned about how the City is being governed. Rights were taken away last summer, questionable propaganda sent to residents about the NOW parking deck, contract for City Manager Valentine, two Commissioners suggested that there was data used to support the decision for the City Manager's contract and no such data has been produced. In his opinion, the residents of Birmingham have lost control of City Government to two or three Commissioners and staff that are preventing three new Commissioner from doing the job that they were elected to do.

X. REPORTS

A. Commissioner Reports

B. Commissioner Comments

- Commissioner Sherman expressed that he wanted to address an issue that he thought would be appropriate for discussion when the Commission is able to hold the meetings in person again. He went on to talk about the trial period for public comment being held at the top of the agenda, and explained that the intent was to discuss the results of the trial at the next in-person meeting. Because it is not known when in-person meetings would resume, he suggested that this issue be brought to the second meeting in July for discussion. Commissioner Sherman also expressed his concern about decorum; specifically some of the comments made by Commissioners or the public that are personal attacks in trying to fight a battle that occurred before some of the present Commissioners were elected. He went on to speak about a comment made at the last meeting referring to the nice lady that works with Mr. Currier. He specified that the nice lady is an attorney and deserves the same respect that would be given to a male in the same profession. He reiterated that personal attacks are not allowed and the Commission has to work together and have the responsibility of setting the tone. Rules of decorum for dealing with the public are in place and he asked that the mayor enforce those rules, in particular unruly and inappropriate comments that are combative in nature. The behavior is not productive and only serve to prolong the meetings.
- Commissioner Baller expressed his frustration with getting items on the agenda. He spoke with a local parliamentarian that advised him to make a motion to put the item on the agenda and take a vote. During his research, he found that section 41 of Roberts Rules of Order defines the order of the day as a particular subject, question, or item of business that set in advance to be taken up at a given meeting. Orders of the day are in two categories general and special. It goes on to say that an item of business can be made the order of the day by making a question that is not pending the general order for a future time by a majority vote; this confirmed the advice given by the local parliamentarian. He referred to Commissioner Sherman's suggestion and pointed out that he did not put it into a motion. He also referred to a discussion initiated by himself on January 27 as to whether DPZ or another firm should help the City with a Plan B to move forward with the property at N. Bates Street. Even though the bond issue failed last November, a number of community members feel that further planning for that site is appropriate. The minutes from that meeting reflect that City Manager Valentine offered to get a proposal from DPZ, and in March the City Manager expressed in the Inside City Hall video that on March 23, 2020, the City Commission would review a proposal for evaluating the Bates Street property. The meeting was cancelled due to the pandemic and has not been brought to the Commission for review.

06-111-20**NORTH OLD WOODWARD (NOW) PROJECT**

MOTION: Motion by Commissioner Baller, seconded by Mayor Pro-Tem Longe:

To add a presentation by the City Manager of the draft proposal for planning of the NOW property for Commission review on the City Commission Meeting Agenda of July 13, 2020.

Commissioner Host commented that this should be included in the 2040 Plan, but was not mentioned. He is in support of starting the discussion in an effort to make progress.

Commissioner Hoff suggested that the first order would be to ask City Manager Valentine if it is possible to add this to the July 13, 2020 agenda in terms of having the appropriate information ready for presentation.

City Manager Valentine affirmed that the document has been prepared since March and can be on the agenda at the next meeting. He further added that the COVID19 pandemic changed priorities and only immediate issues have been on the agendas per the Governors executive orders.

Commissioner Sherman explained that the agenda is full for July 13 due to scheduled public hearings and that is why he asked for the second meeting in July.

Mayor Boutros confirmed that the July 13 agenda is full and asked if Commissioner Baller would like to consider amending his motion for the July 20, 2020 agenda.

Commissioner Baller declined, but agreed to table the discussion at the July 13 meeting if time would not permit for the discussion.

Commissioner Nickita asked the legal team for an opinion on whether the motion at this time aligns with the Commissions previous actions.

Attorney Kacharek expressed that she had not been able to examine the citation from Roberts Rules of Order as presented by Commissioner Baller, but explained that Roberts Rules are a compilation of guidelines for boards and commissions to use in conducting meetings. She went further to say it is not enacted by law, constitution, charter, ordinance, or statute. If a particular board or commission finds that parts of Roberts Rules does not fit with their philosophy, it is not required to follow that part. She went on to clarify that just because it says that you can do something, it does not mean that you must do it.

Mayor Pro-Tem Longe, as a new Commissioner, studied the rules of procedure for the City Commission. She found under Conduct of Business the following: Commission meetings shall be governed by the rules obtained in the most recent edition of Roberts Rules of Order in all instances where applicable, and not inconsistent with statutes of the State of Michigan or the Charter adopted by the City of Birmingham.

Attorney Kucharek expressed that she would need to review the rules of procedure.

Mayor Boutros suggested that there is no difference between taking a vote and agreeing collectively to have the discussion. He went on to say the focus should be on the date since City Manager Valentine stated that he is ready to proceed at the next meeting.

Attorney Kucharek clarified that there is a difference between a motion and vote and a collective agreement. She suggested that he keep in mind that the Commission speaks as a collective body through motions and votes.

Commissioner Baller raised a hypothetical question to his advisor, as to whether a motion could be made at a meeting for something not on the agenda. While she told him that he could, she also advised that he should not because it is not practiced by anyone due to noticing the public as outlined in the Public Meetings Act.

Commissioner Hoff, concerning Commissioner Nickita's question, expressed that she did not recall this being done during Commissioner Comment in the past, and had no opposition to Commissioner Baller's request and motion. She is concerned about the date in his motion because there are several public hearings scheduled making for a heavy agenda. She suggested it be on an agenda when the Commission is sure that it could be done in a timely meeting.

Commissioner Baller asked that the City Manager provide the material prior to the next meeting because he wants to see the proposal. He went on to comment about the timeliness of the agenda packet and does not understand why the Commission does not have the proposal since it has been prepared.

Mayor Boutros clarified that the next meetings are seven days apart and concurs with Commissioner Hoff about the date.

City Manager Valentine could provide the document but the Commission would not have the benefit of a report that would normally accompany the documents submitted for review.

Commissioner Baller amended his motion for the City Commission Meeting Agenda dated July 20, 2020. Mayor Pro-Tem Longe agreed.

Commissioner Nickita expressed concern with creating motions during Commissioner Comment. It is not part of the procedure for a reason. This Commission has practiced presenting a point, exchanging dialog, and collectively agreeing to have it on a future agenda. He is not comfortable with putting ideas in an agenda format due to the assumption that it would be raised to and considered at the same level of a planned agenda item.

Commissioner Sherman reiterated his previous comment and the problems surrounding Commissioner Comment. Comments are made that lead to direction to staff to act and bring something back to the Commission. It has not been past

practice to raise motions during the comment section simply because of the reasons stated by Commissioner Nickita. The practices until now have been collegial. He went on to advise Commissioners that the best way to get items on the agenda is to follow the procedures that are already in place.

Commissioner Host complimented Commissioner Hoff for keeping an open mind and supporting this item for the July 20, 2020 agenda.

Commissioner Hoff shared a thought: The goals were to have a discussion and get the presentation and report. She continued to share that the issue was discussed, the Commission wants more information, the City Manager is prepared to present it, so she suggested that the Commissioners accept the discussion as opposed to formalizing a motion and agree to hear it on July 20, 2020.

Commissioner Host commented that the easiest thing to do would be to vote on the resolution. He further stated that it is important to the people of Birmingham to get their issues on the agenda.

Commissioner Nickita expressed that he cannot support a motion that was not presented in the proper manner. He suggested that Commissioner Baller withdraw the motion and ask for a straw poll.

Commissioner Baller has no interest in withdrawing the motion.

Public Comment

David Bloom expressed his appreciation for this discussion and looks forward to doing more and getting more items on the agenda. He went on to say there have been issues in the past and this might be a good way forward.

ROLL CALL VOTE:	Ayes,	Commissioner Baller Mayor Pro-Tem Longe Commissioner Hoff Commissioner Host Mayor Boutros
	Nays,	Commissioner Nickita Commissioner Sherman

- Commissioner Host complimented City Manager Valentine and staff on how the recent crisis have been handled. He appreciates the police chief, fire chief, and other staff for keeping the community safe. He thanked Commissioner Sherman for his comments to begin discussions on the placement of public comment on the agenda moving forward. He requested a legal opinion about public comment.

06-112-20 PLACEMENT OF PUBLIC COMMENT ON MEETING AGENDAS

MOTION: Motion by Commissioner Host, seconded by Commissioner Baller: To discuss at the July 13, 2020 City Commission Meeting, the timing of public comment with a legal opinion as to whether public comments can be postponed to a later time in that meeting with the resolutions prepared by staff giving several

options for entertaining some or all of the public comments at the beginning of the City Commission Meetings on July 13, 2020.

Commissioner Hoff commented that this motion is exactly what Commissioner Sherman suggested for the second meeting in July. She expressed that everyone could have just agreed at that point to have a discussion at the second meeting in July. She went on to say that this stance is deliberate and not cohesive. She further objected to convening until midnight and not being productive.

Commissioner Nickita asked why there is a motion when Commissioner Sherman identified a date to bring it back and there was agreement.

Commissioner Sherman expressed that this is Commissioner Host making a political stance because the point was expressed in a previous comment. This is misuse of the public's and Commissions time. He again advised the new Commissioners to watch how things are done, learn the processes that work, and then try to change what does not work. The current process does work and things are accomplished. He asked if the City Manager had sufficient direction on this topic.

City Manager Valentine affirmed that there was sufficient interest to bring the item back for discussion on July 20, 2020.

Commissioner Baller clarified that the motion is to have it on the July 13, 2020 agenda and called for a vote.

Commissioner Nickita, again, noted that it has been decided that the July 13, 2020 agenda is heavy, therefore the July 20, 2020 and is the logical time to do it.

Mayor Boutros asked for clarification on the discussion. He heard that the discussion about public comment was posed for when the City Commission returns to normal business and live meetings.

Commissioner Sherman clarified that, based on the assumption of being back to normal business August 1; it was to bring it back on the last meeting in July in preparation for implementing the new process at the first live meeting.

Commissioner Host agrees with Commissioner Sherman that this should be on the agenda. He is willing to wait until the 20th but feels it is better to do it as soon as possible. The public's time is more important than the Commissioners time and ridiculous that they have to wait to make their comments.

Commissioner Baller read the Zoom transcript of Commissioner Sherman's comments and argued that he was suggesting that the test results would be discussed and is not the same as Commissioner Host's comment. He further argued that there was not a consensus for Commissioner Sherman's suggestion.

Mayor Boutros asked that the Commission work as a team and pointed out that they have a high standard in Birmingham and should respect and keep the standard. He went on to say that trust and respect is needed to work collectively.

He also pointed out that Commissioner Comments have become a new meeting and he hopes that everyone could relieve their frustrations and display a strong team with strong leadership.

Public Comment

Hany Boutros, 711 Bates, expressed his thanks to Commissioner Host for being an advocate of the public and his persistence on this issue.

Commissioner Nickita expressed that he supports the discussion of his issue to determine how to move forward. He also said that he is not supportive of creating motions in Commissioner Comments without a proper dialogue about what it means to make a motion and open it to an agenda item that is noticed. He cannot support this unprecedented motion at this time.

Commissioner Sherman agreed with Commissioner Nickita and reiterated that this motion is not proper and he cannot support it.

ROLL CALL VOTE:	Ayes,	Commissioner Host
		Commissioner Baller
		Mayor Pro-Tem Longe
		Mayor Boutros
	Nays,	Commissioner Sherman
		Commissioner Hoff
		Commissioner Nickita

- Mayor Pro-Tem Longe asked the status of the Parks and Recreation Bond, and if it is still feasible for the November ballot.
- City Manager Valentine pointed out that this topic was discussed in January at the Long Range Planning Meeting with the intent of bringing this issue to the Commission in the spring. However, in light of the pandemic, this item was tabled. It should be noted that new economic considerations arose out of the pandemic as well. If it is the Commission's desire the item could be brought back in July for language approval, keeping in mind that the City is still in a COVID19 environment with emergency declarations that requires the City to assess how to move forward frequently. He reiterated that there was a progressive approach to the problem without a clear path to progression.
- Commissioner Hoff expressed that it takes more than one meeting to approve a multi-million dollar bond proposal.
- Mayor Pro-Tem Longe would normally agree but in this case it has been in front of the Commission and it should not be an issue.
- Commissioner Nickita would like to review the proposal and then decide on a path.

- C. Advisory Boards, Committees, Commissions' Reports and Agendas
- D. Legislation
- E. City Staff

INFORMATION ONLY

XI. ADJOURN

Mayor Boutros adjourned the meeting at 12:17 a.m. on June 23, 2020.

City of Birmingham
Warrant List Dated 06/24/2020

Meeting of 07/13/2020

Check Number	Early Release	Vendor #	Vendor	Amount
<u>PAPER CHECK</u>				
273888	*	002670	MIKE ALBRECHT	135.63
273890		008304	AMERINET	1,100.00
273891		002484	APPLIED CONCEPTS INC	2,495.00
273892		007033	APPLIED IMAGING	5,670.82
273893		000500	ARTECH PRINTING INC	50.00
273894	*	006759	AT&T	295.98
273895	*	006759	AT&T	78.99
273896	*	006759	AT&T	159.38
273897	*	006759	AT&T	174.38
273898	*	006759	AT&T	93.99
273899		007636	B&H PHOTO-VIDEO	1,596.00
273900		006316	BAHL & GAYNOR, INC	6,467.23
273903	*	003012	BATTERIES PLUS	57.60
273904	*	001086	TERESA KLOBUCAR-PETTY CASH	539.05
273905		002982	BLOOMFIELD TWP FIRE DEPT	1,952.13
273906		MISC	BLOOMINGDALE CONSTRUCTION COMPANY I	2,000.00
273907		MISC	BLUMKE INSTALLATIONS	100.00
273908		003526	BOUND TREE MEDICAL, LLC	895.41
273909		MISC	BSR CUSTOM CARPENTRY	193.75
273910	*	006177	BULLSEYE TELECOM INC	125.43
273911		MISC	C & G CEMENT CEMENT CONTRACTORS INC	100.00
273912	*	003907	CADILLAC ASPHALT, LLC	145.55
273913		008082	CAMFIL USA INC	534.57
273914	*	007933	CARDNO, INC.	4,322.50
273915		005238	CBTS	160.31
273916	*	000444	CDW GOVERNMENT INC	1,401.86
273917		000605	CINTAS CORPORATION	13.89
273917	*	000605	CINTAS CORPORATION	184.06
273918	*	008006	CLEAR RATE COMMUNICATIONS, INC	1,384.47
273919		009187	CLEARVIEW CAPTIONING LLC	2,060.00
273920		000621	COMSOURCE INC	35.00
273921	*	000627	CONSUMERS ENERGY	1,348.43
273922	*	002668	CONTRACTORS CLOTHING CO	583.19
273923	*	008582	CORE & MAIN LP	1,664.35
273924		009195	CROWN CASTLE FIBER LLC	1,057.84
273925		MISC	DANIEL JOSEPH LYNCH	1,400.00
273926		008005	DE LAGE LANDEN FINANCIAL SVCS INC	182.44
273927	*	000233	DEAN SELLERS	7,235.38
273929	*	004198	DETROIT HITCH CO	64.55
273930	*	006700	DRV CONTRACTORS, LLC	134,943.75
273931	*	000180	DTE ENERGY	4,694.99
273932	*	000179	DTE ENERGY	28.58

City of Birmingham
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Check Number	Early Release	Vendor #	Vendor	Amount
273933		005711	DTE ENERGY COMPANY	100.00
273934	*	007505	EAGLE LANDSCAPING & SUPPLY	790.92
273936	*	009100	ENZO WATER SERVICE	517.12
273937	*	001495	ETNA SUPPLY	3,000.00
273938		MISC	EVERDRY	200.00
273939		MISC	FAULK & FOSTER REAL ESTATE, INC	100.00
273940		000936	FEDEX	116.51
273941		000213	FIRE DEFENSE EQUIP CO INC	70.00
273942	*	007172	GARY KNUREK INC	405.76
273943		006384	GEOGRAPHIC INFORMATION SERVICES, IN	177.92
273944		007099	GRANICUS, INC.	2,088.13
273945	*	008007	GREAT LAKES WATER AUTHORITY	7,626.97
273946	*	001531	GUNNERS METER & PARTS INC	1,268.00
273947		MISC	HM HOMES LLC	11,900.00
273948	*	006521	INTERSTATE BILLING SERVICE INC	427.80
273949		MISC	JEANINE SOVA	600.00
273950		008564	JERRY'S TIRE INC	835.84
273951		000155	JOHNSON CONTROLS SECURITY SOLUTIONS	350.76
273951	*	000155	JOHNSON CONTROLS SECURITY SOLUTIONS	477.04
273952		005291	KAESER & BLAIR INC	6,552.17
273953		004085	KONE INC	13,273.89
273954	*	004362	LEATHERS & ASSOCIATES INC	40.89
273955		MISC	LIVE WELL CUSTOM HOMES LLC	5,900.00
273956		001417	MAJIK GRAPHICS INC	685.00
273957		MISC	MAPLE ELM DEVELOPMENT COMPANY II L	100.00
273958	*	002648	MARC DUTTON IRRIGATION INC	490.00
273959		004687	MICHIGAN DEPT. OF TRANSPORATION	1,113.63
273960	*	001253	MICHIGAN MUNICIPAL RISK	4,091.00
273962	*	000230	MIKE SAVOIE CHEVROLET INC	52.56
273963		001169	MJ AWARDS	155.05
273964		008319	MKSK INC	612.45
273965		MISC	NIATSIKAS, KIRIAKOS	200.00
273967	*	000481	OFFICE DEPOT INC	531.72
273968	*	006625	PACIFIC TELEMAGEMENT SERVICES	78.00
273969		008028	PK SAFETY SUPPLY	819.00
273970	*	000801	POSTMASTER	1,988.50
273971		MISC	SHERRY HOVE	101.09
273972		008815	SHI INTERNATIONAL CORP.	809.00
273973		009009	SIGNATURE CLEANING LLC	4,899.00
273973	*	009009	SIGNATURE CLEANING LLC	1,505.00
273974		MISC	SINKO DEVELOPMENT	200.00
273975	*	008073	SITEONE LANDSCAPE SUPPLY, INC	64.86
273976		007907	SP+ CORPORATION	5,247.07

City of Birmingham
Warrant List Dated 06/24/2020

Meeting of 07/13/2020

Check Number	Early Release	Vendor #	Vendor	Amount
273977		007907	SP+ CORPORATION	7,163.72
273978		001104	STATE OF MICHIGAN	33,743.87
273979	*	007010	STATE OF MICHIGAN	10,245.00
273980		MISC	STAY DRY BASEMENT WATERPROOFING INC	100.00
273981		MISC	TALL TIMBER TRAIL BULDING LLC	2,500.00
273982		MISC	TERISE PADILLA	212.45
273984	*	005481	TRI-COUNTY INTL TRUCKS, INC.	208.23
273985		009081	TYLER TECHNOLOGIES INC	2,334.00
273986	*	005806	ULINE	620.56
273987		009177	VANDYKE HORN PUBLIC RELATIONS LLC	7,000.00
273988		000931	VARSITY SHOP	134.40
273989	*	000158	VERIZON WIRELESS	90.12
273990	*	000158	VERIZON WIRELESS	50.90
273991		MISC	WALLSIDE INC	1,000.00
273992	*	000299	WEINGARTZ SUPPLY	79.82
273993	*	002171	WEISSMAN'S COSTUMES	42.62
273995	*	005794	WINDSTREAM	859.87
273996		007620	WJE-WISS, JANNEY, ELSTNER ASSOC.INC	27,526.90
273997	*	008391	XEROX CORPORATION	36.42
SUBTOTAL PAPER CHECK				\$362,238.01
<u>EFT TRANSFER</u>				
" "		008732	AMAZON.COM, INC	1,052.07
" "		008730	FACEBOOK HEADQUARTERS	108.85
" "		MISC	FLOORMAT.COM	329.28
" "		MISC	GEORGIA STEEL & CHEMICAL CO	324.00
" "		000377	MICHIGAN MUNICIPAL LEAGUE	(500.00)
" "		MISC	OC TEES INC	1,245.00
" "		MISC	PUFFY MATTRESS	670.00
" "		002809	STATE OF MICHIGAN	225.00
" "		007051	STATE OF MICHIGAN	600.00
SUBTOTAL EFT TRANSFER				\$4,054.20
<u>ACH TRANSACTION</u>				
2524	*	008847	ABS- AUTOMATED BENEFIT SVCS, INC	49,467.94
2525	*	002284	ABEL ELECTRONICS INC	370.88
2527	*	001357	ART/DESIGN GROUP LTD	724.00
2528	*	000518	BELL EQUIPMENT COMPANY	898.76
2529	*	007345	BEVERLY HILLS ACE	137.61
2530	*	006683	BIRMINGHAM LAWN MAINTENANCE	21,222.00
2531	*	000542	BLUE WATER INDUSTRIAL PRODUCTS INC	105.50
2532	*	001077	DUNCAN PARKING TECH INC	777.00
2533	*	000243	GRAINGER	6,186.52
2535	*	002407	J & B MEDICAL SUPPLY	609.65

City of Birmingham
Warrant List Dated 06/24/2020

Meeting of 07/13/2020

Check Number	Early Release	Vendor #	Vendor	Amount
2536	*	000261	J.H. HART URBAN FORESTRY	23,799.01
2537	*	002576	JAX KAR WASH	61.00
2538	*	003458	JOE'S AUTO PARTS, INC.	1,052.21
2539	*	005876	KROPF MECHANICAL SERVICE COMPANY	2,428.00
2540	*	005550	LEE & ASSOCIATES CO., INC.	1,464.66
2541	*	000462	MOTOR CITY INDUSTRIAL	33.21
2542	*	007856	NEXT	3,500.00
2543		000897	PRINTING SYSTEMS INC	1,262.51
2544	*	000478	ROAD COMM FOR OAKLAND CO	11,070.08
2545	*	003785	SIGNS-N-DESIGNS INC	1,615.00
2546	*	000254	SOCRRA	65,978.00
SUBTOTAL ACH TRANSACTION				\$192,763.54
GRAND TOTAL				\$559,055.75

All bills, invoices and other evidences of claim have been audited and approved for payment.



Mark Gerber
Finance Director/ Treasurer

*-Indicates checks released in advance and prior to commission approval in order to avoid penalty or to meet contractual agreement/obligation.

City of Birmingham
Warrant List Dated 07/01/2020

Meeting of 07/13/2020

Check Number	Early Release	Vendor #	Vendor	Amount
<u>PAPER CHECK</u>				
273998		MISC	1035 CHESTNUT LLC	100.00
273999	*	000855	48TH DISTRICT COURT	327,851.79
274000	*	000855	48TH DISTRICT COURT	100.00
274001	*	000855	48TH DISTRICT COURT	100.00
274002	*	006965	7UP DETROIT	205.10
274003		005686	ADVANCED MARKETING PARTNERS INC	1,284.16
274004	*	000394	AERO FILTER INC	165.00
274005		000500	ARTECH PRINTING INC	205.00
274006	*	006759	AT&T	174.38
274007	*	007216	AT&T	96.59
274009		MISC	BANGERT, KHENSA M	100.00
274010		000522	BIG BEAVER PLUMBING, HEATING INC.	175.00
274011		MISC	BLUMKE INSTALLATIONS	100.00
274012	*	000546	KAREN D. BOTA	1,780.00
274013		003526	BOUND TREE MEDICAL, LLC	980.25
274014	*	006953	JACQUELYN BRITO	41.69
274015		MISC	BRYDEN DEVELOPMENT CORPORATION	500.00
274016		007313	CABINET ONE, INC.	10,100.00
274016	*	007313	CABINET ONE, INC.	4,070.00
274017	*	003907	CADILLAC ASPHALT, LLC	1,830.50
274018		009078	CANON SOLUTIONS AMERICA INC	204.19
274020	*	000444	CDW GOVERNMENT INC	2,276.63
274021	*	007710	CINTAS CORP	257.14
274022		000605	CINTAS CORPORATION	13.89
274022	*	000605	CINTAS CORPORATION	184.06
274023		009187	CLEARVIEW CAPTIONING LLC	1,557.50
274024	*	008955	COMCAST	159.76
274025	*	007774	COMCAST BUSINESS	1,233.96
274026	*	000627	CONSUMERS ENERGY	249.02
274027	*	002668	CONTRACTORS CLOTHING CO	595.75
274028	*	001367	CONTRACTORS CONNECTION INC	277.00
274029	*	008582	CORE & MAIN LP	975.44
274030		006971	CYCLESAFE	4,111.00
274031		MISC	DANIEL JOSEPH LYNCH	1,400.00
274032	*	000233	DEAN SELLERS	164.06
274033		000177	DELWOOD SUPPLY	110.15
274034	*	000179	DTE ENERGY	45.98
274035	*	000179	DTE ENERGY	2,206.81
274036	*	000179	DTE ENERGY	51.80
274037	*	000179	DTE ENERGY	295.51
274038	*	000179	DTE ENERGY	6,561.91
274039	*	000179	DTE ENERGY	1,224.30

City of Birmingham
Warrant List Dated 07/01/2020

Meeting of 07/13/2020

Check Number	Early Release	Vendor #	Vendor	Amount
274040	*	000179	DTE ENERGY	4,347.35
274041	*	000179	DTE ENERGY	3,004.66
274042	*	000179	DTE ENERGY	35.97
274043	*	000179	DTE ENERGY	1,207.73
274044	*	000179	DTE ENERGY	34.32
274045	*	000179	DTE ENERGY	14.59
274046	*	000179	DTE ENERGY	15.90
274047	*	000179	DTE ENERGY	366.82
274048	*	000179	DTE ENERGY	224.00
274049	*	000179	DTE ENERGY	734.72
274050		001063	EASTMAN FIRE PROTECTION INC	882.74
274051		MISC	EVER-DRY OF SOUTHEASTERN MI	200.00
274052	*	MISC	EVERDRY OF SOUTHFIELD MI	200.00
274053	*	006689	F.D.M. CONTRACTING INC.	36,431.63
274054		004574	FAIR-WAY TILE & CARPET, INC.	3,600.00
274055	*	009196	FIT PRO SERVICES	120.00
274056		001056	GALLS, LLC	81.69
274057		000223	GASOW VETERINARY	536.00
274058	*	004604	GORDON FOOD	1,083.70
274060		000249	GUARDIAN ALARM	246.80
274061	*	001531	GUNNERS METER & PARTS INC	2,750.00
274062		001447	HALT FIRE INC	2,549.03
274063	*	001956	HOME DEPOT CREDIT SERVICES	3,727.20
274066	*	008564	JERRY'S TIRE INC	986.53
274067		MISC	JIMAX, LLC	300.00
274068		MISC	JOE PIZIK ELECTRIC, INC.	180.00
274069		004088	KGM DISTRIBUTORS INC	586.00
274070		MISC	KNIGHTSBRIDGE DEVELOPMENT LLC	1,000.00
274071		MISC	KNIGHTSBRIDGE DEVELOPMENT LLC	1,400.00
274072	*	000362	KROGER COMPANY	39.92
274074		MISC	LETO BUILDING COMPANY	100.00
274076		MISC	LMB PROPERTIES LLC	2,500.00
274077	*	008158	LOGICALIS INC	19,400.00
274078		MISC	LYNCH CUSTOM HOMES	5,000.00
274079		MISC	MAJESTIC HOME SOLUTIONS LLC	300.00
274080		000972	MCKESSON MEDICAL-SURGICAL	74.31
274081		000369	MCFI	747.24
274082	*	009085	MGSE SECURITY LLC	1,790.00
274083		007833	MICHIGAN ASSOCIATION OF PLANNING	675.00
274084	*	001387	MICHIGAN MUNICIPAL LEAGUE	285,650.00
274085	*	001715	MICHIGAN NOTARY SERVICE	62.85
274086	*	007394	MICHIGAN URBAN SEARCH & RESCUE	760.00
274089	*	MISC	NORA CECIL	200.00

City of Birmingham
Warrant List Dated 07/01/2020

Meeting of 07/13/2020

Check Number	Early Release	Vendor #	Vendor	Amount
274090		MISC	NOVA CONSULTANTS, INC	200.00
274091	*	003461	OBSERVER & ECCENTRIC	933.96
274092	*	004370	OCCUPATIONAL HEALTH CENTERS	403.00
274093	*	000481	OFFICE DEPOT INC	2,751.35
274094		008669	OHM ADVISORS INC	66,748.50
274095		MISC	PEARCE, HARRY	2,500.00
274096	*	008342	RAIN MASTER CONTROL SYSTEMS	29.85
274097		001197	RAVEN GOLF BALL CO	556.50
274099	*	MISC	SASSIN MANAGEMENT SERVICES LLC	26,250.00
274100		006850	SHELBY AUTO TRIM, INC.	375.00
274101		008815	SHI INTERNATIONAL CORP.	1,644.00
274102		MISC	SIGNS & ENGRAVING INC	200.00
274103		000260	SPARTAN DISTRIBUTORS INC	956.78
274103	*	000260	SPARTAN DISTRIBUTORS INC	67.50
274104		004544	STRYKER SALES CORPORATION	158.38
274105		MISC	TIMOTHY CHAK	100.00
274106		MISC	TITTLE BROTHERS CONSTRUCTION LLC	100.00
274107	*	008371	TREDROC TIRE SERVICES	379.00
274108		005806	ULINE	1,722.18
274109		007226	VALLEY CITY LINEN	121.40
274110	*	000158	VERIZON WIRELESS	984.17
274111	*	000158	VERIZON WIRELESS	808.30
274112	*	000158	VERIZON WIRELESS	126.60
274113	*	006491	VILLAGE AUTOMOTIVE	981.80
274114		MISC	WALLSIDE INC	1,000.00
274115	*	004497	WATERFORD REGIONAL FIRE DEPT.	143.84
274116	*	001490	WEST SHORE FIRE INC	2,838.94
274117		008408	WISS, JANNEY, ELSTNER ASSOC. INC	8,169.90
274118		009128	WITMER PUBLIC SAFETY GROUP INC	174.31

SUBTOTAL PAPER CHECK

\$879,687.28

ACH TRANSACTION

2547	*	008847	ABS- AUTOMATED BENEFIT SVCS, INC	11,792.35
2548		008667	APOLLO FIRE APPRATUS REPAIR INC	746.47
2549	*	001357	ART/DESIGN GROUP LTD	3,530.40
2550	*	007345	BEVERLY HILLS ACE	58.82
2551	*	006683	BIRMINGHAM LAWN MAINTENANCE	1,311.00
2552		007875	CANFIELD EQUIPMENT SERVICE INC.	360.00
2553	*	000565	DORNBOS SIGN & SAFETY INC	2,108.05
2554	*	000995	EQUATURE	3,552.61
2555	*	000207	EZELL SUPPLY CORPORATION	687.75
2556		000331	HUBBELL ROTH & CLARK INC	3,275.00
2557	*	008851	INSIGHT INVESTMENT	4,807.58
2558	*	002407	J & B MEDICAL SUPPLY	397.80

City of Birmingham
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Meeting of 07/13/2020

Check Number	Early Release	Vendor #	Vendor	Amount
2559	*	000261	J.H. HART URBAN FORESTRY	1,015.00
2560	*	000891	KELLER THOMA	2,145.18
2562		001864	NOWAK & FRAUS ENGINEERS	23,243.98
2563	*	006359	NYE UNIFORM COMPANY	289.50
2564	*	002767	OSCAR W. LARSON CO.	978.41
2565	*	003785	SIGNS-N-DESIGNS INC	2,992.50
2566	*	007278	WHITLOCK BUSINESS SYSTEMS, INC.	1,783.75
SUBTOTAL ACH TRANSACTION				\$65,076.15
GRAND TOTAL				\$944,763.43

All bills, invoices and other evidences of claim have been audited and approved for payment.



Mark Gerber
Finance Director/ Treasurer

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City of Birmingham

Warrant List Dated 07/08/2020

Meeting of 07/13/2020

Check Number	Early Release	Vendor #	Vendor	Amount
<u>PAPER CHECK</u>				
274119	*	006965	7UP DETROIT	543.25
274120		008106	ACUSHNET COMPANY	3,303.96
274121		009088	ALADTEC INC	2,995.00
274123		MISC	APS RESIDENTIAL SERVICES	100.00
274124	*	006759	AT&T	244.93
274125	*	006759	AT&T	1,881.22
274130		001122	BOB BARKER CO INC	907.98
274131		MISC	BASTIAN, LISA	500.00
274132		008036	BERMUDA SANDS	1,505.83
274133		003692	BEST TECHNOLOGY SYS INC	5,267.75
274134		000524	BIRMINGHAM LOCKSMITH	42.50
274135		003526	BOUND TREE MEDICAL, LLC	76.51
274136		MISC	BRICKWORKS PROPERTY RESTORATION	200.00
274137	*	003907	CADILLAC ASPHALT, LLC	216.55
274138	*	MISC	CARMEN HOCKNEY	155.00
274141		MISC	CHRISTOPHER THOMAS CONSTRUCTION LLC	200.00
274142	*	000605	CINTAS CORPORATION	184.06
274143		009187	CLEARVIEW CAPTIONING LLC	2,587.50
274144	*	007496	GRAND TRUNK WESTERN	4,078.93
274145	*	008955	COMCAST	444.33
274146		MISC	CONCRAFT INC	200.00
274147	*	002668	CONTRACTORS CLOTHING CO	240.01
274148		008512	COOL THREADS EMBROIDERY	409.96
274149		008582	CORE & MAIN LP	366.96
274152	*	000233	DEAN SELLERS	956.86
274154	*	000180	DTE ENERGY	38,452.36
274156	*	000179	DTE ENERGY	20.89
274157	*	000179	DTE ENERGY	453.49
274158	*	000179	DTE ENERGY	618.69
274159	*	000179	DTE ENERGY	1,476.18
274160	*	000179	DTE ENERGY	57.00
274161	*	000179	DTE ENERGY	110.27
274162	*	000179	DTE ENERGY	1,530.34
274163	*	000179	DTE ENERGY	203.80
274164	*	004671	ELDER FORD	156.09
274165	*	003158	EXERCISE WAREHOUSE INC	3,279.00
274166		008666	F J LAFONTAINE & SONS	5,837.00
274167		MISC	FOREST, ANTHONY B	200.00
274168		MISC	FOUNDATION SYSTEMS OF MICHIGAN INC.	400.00
274169	*	007172	GARY KNUREK INC	26.00
274170		MISC	GJONAJ, ROBERT	10,000.00
274171	*	004604	GORDON FOOD	737.45

City of Birmingham
Warrant List Dated 07/08/2020

Meeting of 07/13/2020

Check Number	Early Release	Vendor #	Vendor	Amount
274174		007342	H2A ARCHITECTS, INC.	1,230.00
274175		006346	HARRELL'S LLC	257.04
274176		MISC	HOLSBEKE CONSTRUCTION, INC.	100.00
274177		009029	HORIZON COMMUNICATIONS CO. INC	1,547.97
274178	*	000948	HYDROCORP	1,315.00
274179		001820	IIMC	110.00
274180	*	003823	JAY'S SEPTIC TANK SERVICE	830.00
274181		MISC	JOSEPH SIMON	49.42
274182		MISC	LINDA LULGJURAJ	1,400.00
274183		004855	MAMC	66.00
274184		009200	MICHAEL MORRISON	1,400.00
274189		003075	NORTH END ELECTRIC	300.00
274190		001686	OAKLAND CO CLERKS ASSOC	25.00
274191	*	000481	OFFICE DEPOT INC	393.38
274192	*	001753	PEPSI COLA	399.56
274193	*	003126	PHOENIX STONE CO.	2,202.40
274194		001341	PIFER GOLF CARS INC	5,850.00
274195	*	000801	POSTMASTER	500.00
274196		009154	POWERDMS INC	6,418.93
274197		006729	QUENCH USA INC	363.60
274198		004137	R & R FIRE TRUCK REPAIR INC	2,260.00
274198	*	004137	R & R FIRE TRUCK REPAIR INC	296.98
274199		MISC	RANCILIO CONSTRUCTION SERVICES INC	300.00
274200		MISC	RCI ROOFING AND SHEET METAL	300.00
274201		007305	REFRIGERATION SERVICE PLUS	325.00
274202	*	005344	RESERVE ACCOUNT	8,000.00
274203		006931	RESTAURANT EQUIPPERS	2,304.64
274204		002566	REYNOLDS WATER	98.50
274205	*	000218	ROYAL OAK P.D.Q. LLC	42.83
274206		MISC	ROYAL WINDOW AND DOOR	200.00
274207		006850	SHELBY AUTO TRIM, INC.	850.00
274208	*	008073	SITEONE LANDSCAPE SUPPLY, INC	1,193.27
274209		000260	SPARTAN DISTRIBUTORS INC	1,042.83
274210	*	009197	STAPLES	2,543.89
274211		009201	STEPHEN SHUKWIT	750.00
274212		MISC	SWARTZ BUILDERS CO	300.00
274214	*	008748	TECHSEVEN COMPANY	100.00
274215		MISC	TEMPLETON BUILDING COMPANY	200.00
274216		000272	TENNANT SALES & SVC CO	449.62
274217		MISC	THOMAS SEBOLD & ASSOCIATES, IN	900.00
274218		MISC	TRESNAK CONSTRUCTION INC	200.00
274219	*	009198	TROY LASE & FAB LLC	1,825.00
274221		007226	VALLEY CITY LINEN	71.70

City of Birmingham
Warrant List Dated 07/08/2020

Meeting of 07/13/2020

Check Number	Early Release	Vendor #	Vendor	Amount
274222		009177	VANDYKE HORN PUBLIC RELATIONS LLC	7,000.00
274224	*	000158	VERIZON WIRELESS	152.70
274226	*	006491	VILLAGE AUTOMOTIVE	114.70
274227		009076	JOHN P. WATERMAN	970.05
274228	*	000299	WEINGARTZ SUPPLY	390.15
274229		001490	WEST SHORE FIRE INC	6,284.91
274230		MISC	WITT, IRINA	100.00
SUBTOTAL PAPER CHECK				\$155,492.72
<u>ACH TRANSACTION</u>				
2567	*	008847	ABS- AUTOMATED BENEFIT SVCS, INC	24,220.22
2568	*	002284	ABEL ELECTRONICS INC	1,151.00
2569		007013	AHEAD USA LLC	223.09
2571	*	000517	BEIER HOWLETT P.C.	54,457.00
2572	*	000518	BELL EQUIPMENT COMPANY	943.36
2573	*	007345	BEVERLY HILLS ACE	8.98
2574	*	006683	BIRMINGHAM LAWN MAINTENANCE	176.00
2575	*	007624	BIRMINGHAM OIL CHANGE CENTER, LLC	172.35
2576	*	008044	CLUB PROPHET	833.00
2577	*	000565	DORNBOS SIGN & SAFETY INC	1,925.24
2578	*	000995	EQUATURE	3,500.00
2579	*	000207	EZELL SUPPLY CORPORATION	492.34
2580		006181	FIRST CHOICE COFFEE SERV	178.95
2581	*	002407	J & B MEDICAL SUPPLY	198.90
2582	*	000261	J.H. HART URBAN FORESTRY	11,467.01
2583	*	003458	JOE'S AUTO PARTS, INC.	103.82
2586		006812	MUNICIPAL ADVISORY COUNCIL OF MI	100.00
2587		001089	MUNICODE	924.00
2588		001864	NOWAK & FRAUS ENGINEERS	17,591.00
2589	*	006853	PAUL C SCOTT PLUMBING INC	442.50
2590	*	002037	TOTAL ARMORED CAR SERVICE, INC.	736.27
2591	*	004887	TRUCK & TRAILER SPECIALTIES INC	719.64
SUBTOTAL ACH TRANSACTION				\$120,564.67

City of Birmingham
Warrant List Dated 07/08/2020

Meeting of 07/13/2020

Check Number	Early Release	Vendor #	Vendor	Amount
GRAND TOTAL				\$276,057.39

All bills, invoices and other evidences of claim have been audited and approved for payment.



Mark Gerber
Finance Director/ Treasurer

*-Indicates checks released in advance and prior to commission approval in order to avoid penalty or to meet contractual agreement/obligation.

DATE: July 13, 2020

TO: City Commission

FROM: Joseph A. Valentine, City Manager

SUBJECT: Ad Hoc Unimproved Street Study Committee

INTRODUCTION:

The Ad Hoc Unimproved Street Study Committee (AHUSSC) was established by resolution in September of 2017 to develop and recommend a long-term plan for addressing the City's unimproved roads. In accordance with the establishing resolution the term of the committee was set as December 31, 2018. This term was subsequently extended through December 31, 2019 to allow the committee to continue its work to develop a common understanding of the history of unimproved roads in the City, the City Charter and ordinance as it relates to unimproved streets, special assessment districts, pavement types and their associated life cycles, the cape seal program, and road funding fundamentals. As the committee is still working on their task, an extension to the term is necessary.

BACKGROUND:

In January 2020, a first draft policy recommendation was shared with the committee for review and revision. The committee has met twice to talk through the draft and staff is currently drafting the agreed upon revisions. Once the initial draft is complete, the committee will host community engagement sessions to gather feedback on the draft. At the close of the public engagement period, the committee will make final revisions to the draft policy that will be presented to the Commission for adoption.

LEGAL REVIEW:

No legal review is required.

FISCAL IMPACT:

There is no fiscal impact associated with an extension to the committee's term.

SUMMARY

Staff recommends extending their term through the end of December 2020. It is expected the committee will finish sooner and the committee is not inclined to drag out their review, but it is beneficial to allow for additional time, if needed, to account for additional reviews and public input that may be necessary as the committee works to complete their purpose. The existing resolution has been amended with the sole change of amending the term of the committee to 2020.

ATTACHMENTS:

- A copy of the revised resolution is attached.

SUGGESTED ACTION:

To adopt a resolution extending the term of the Ad Hoc Unimproved Street Study Committee through December of 2020.

RESOLUTION CREATING AN AD HOC UNIMPROVED STREET STUDY COMMITTEE TO CONDUCT A CITY-WIDE STUDY OF UNIMPROVED ROADS AND PROVIDE A RECOMMENDTION TO THE CITY COMMISSION OUTLINING A LONG TERM PLAN FOR THESE ROADS.

WHEREAS, the City of Birmingham has roughly 90 miles of public roads throughout its jurisdiction; and

WHEREAS, included in the roughly 90 miles of public roads, the City of Birmingham has roughly 26 miles of unimproved roads, which receive a cape seal treatment; and

WHEREAS, unimproved roads require more frequent maintenance than improved roads and have been an increasing concern for residents living on them; and

WHEREAS, the City of Birmingham is desirous of conducting a city-wide study of its unimproved roads to develop a long term solution that considers such issues as road durability, maintenance cycles, drainage, Rights-of Way usage, traffic speeds, parking and costs; and

WHEREAS, the City Commission wishes to establish an Ad Hoc Unimproved Street Study Committee to review the City's unimproved street maintenance program and provide a long term plan to address these roads.

NOW THEREFORE BE IT RESOLVED that an Ad Hoc Unimproved Street Study Committee is hereby established to develop and recommend a long term plan for addressing the City's unimproved roads in accordance with the following:

1. The Committee will be Ad Hoc. The term of the Committee shall continue through December 31, 2020 and the Committee will cease functioning unless otherwise directed by the Commission at that time.
2. The City Commission hereby appoints a seven (7) member Ad Hoc Committee to be comprised of the following members.
 - a) Two members of the City Commission.
 - b) Three members comprised of residents living on an unimproved street.
 - c) One member comprised of a resident living on an improved street.
 - d) One member with a background in road design and maintenance.

The City Commission also hereby appoints the City Manager as an ex officio member of the committee and the City Manager may designate additional staff members and consultants to assist the committee in providing information and assistance as required.

3. The scope of the Committee shall be to develop a long term plan on how to best proceed in addressing unimproved roads in the City in accordance with the following:
 - a. Review the history and evolution of the road system in the City.

- b. Review and evaluate the types of roads in the City while considering road durability, maintenance cycles, drainage, Rights-of-Way usage, traffic speeds and parking.
 - c. Review the policies and procedures attributed to each type of road construction and maintenance method used by the City.
 - d. Review conditions where small sections of unimproved roads exist within a predominately improved block and provide recommendations.
 - e. Review conditions where large areas of unimproved roads exist within a neighborhood and provide recommendations.
 - f. Review and evaluate cost and budget implications of any proposed recommendations and include strategic funding alternatives.
 - g. Compile the Committee's findings and recommendations into a report to be presented at the end of the Committee's term.
4. The Committee may request professional services as may be required in the analysis of road design, maintenance and cost considerations.
5. The Committee is not authorized to expend funds or enter into agreements. All recommendations made by the Committee shall be in the form of a report to the City Commission.

All meetings of the Committee shall be open to the public. Agenda and minutes for all meetings shall be prepared.

DATE: July 13, 2020

TO: City Commission

FROM: Joseph A. Valentine, City Manager

SUBJECT: Ad Hoc Joint Senior Services Committee

INTRODUCTION:

The Ad Hoc Joint Senior Services Committee (AHJSSC) was established by resolution in June of 2018 to develop and recommend a long-term plan for addressing the City's unimproved roads. In accordance with the establishing resolution the term of the committee was set as March 30, 2019. This term was subsequently extended through March 2020 to allow the committee to continue working on their task. They are currently reviewing a draft interlocal agreement and continue working to finalized the draft. In order to complete their scope, an extension to the term is necessary.

BACKGROUND:

The AHJSSC is a committee comprised of representatives from the communities of Beverly Hills, Franklin, Birmingham and the Birmingham Public Schools to conduct a long-term study and evaluation of the necessary funding and governance model to effectively provide adequate senior services to participating community residents. Their first meeting was held in October, 2018. Currently, the committee is finalizing their review of a draft Interlocal Agreement. Upon completion of the draft, each of the communities will have the opportunity to provide feedback on the draft. The final ILA will require approval from all of the participating communities before becoming effective. This process could take a few months to finalize.

LEGAL REVIEW:

No legal review is required.

FISCAL IMPACT:

There is no fiscal impact associated with an extension to the committee's term.

SUMMARY

Staff recommends extending their term through the end of the year to provide sufficient time to complete their scope. The additional time is needed to account for additional evaluation that may be necessary as the committee works to complete their purpose. The existing resolution has been amended with the sole change of amending the term of the committee to December 31, 2020.

ATTACHMENTS:

- A copy of the revised resolution is attached.

SUGGESTED ACTION:

To adopt a resolution extending the term of the Ad Hoc Joint Senior Service Committee through December 31, 2020.

Resolution 06-189-18

RESOLUTION CREATING AN AD HOC JOINT SENIOR SERVICES COMMITTEE TO CONDUCT A LONG TERM STUDY AND EVALUATION OF THE NECESSARY FUNDING AND GOVERNANCE MODEL TO EFFECTIVELY PROVIDE ADEQUATE SENIOR SERVICES TO PARTICIPATING COMMUNITY RESIDENTS.

Whereas, the senior population aged 65 and older in Birmingham, Beverly Hills, Bingham Farms and Franklin is projected to be the largest growing population segment over the next several decades and these communities wish to prepare for the service needs of this growing demographic, and

Whereas, the communities of Birmingham, Beverly Hills, Bingham Farms, Franklin and Southfield Township along with the Birmingham Public Schools (herein referred to as Governing Body) had previously established a Joint Senior Services Committee in 2012 to present recommendations for improved senior services, and

Whereas, the Joint Senior Services committee presented their final recommendations to the municipalities in 2013, which was comprised of a two phased approach to address near term (Phase 1) and longer term (Phase 2) initiatives, and

Whereas, Phase 1 involved increased services and hours based on increased funding requests to the member communities, and

Whereas, Phase 2 involved a longer term focus centered on a dedicated funding source to address further increasing service demands and facility needs, and

Whereas, additional study and analysis is necessary to advance recommendations for Phase 2 as the current senior services funding and governance model in these communities may be insufficient to meet the increasing demand for senior services, and

Whereas, the governing bodies of the Birmingham Public Schools, City of Birmingham, Village of Beverly Hills, Village of Bingham Farms, Village of Franklin and Southfield Township wish to explore ways to meet the increasing demand for senior services.

NOW THEREFORE BE IT RESOLVED that an Ad Hoc Joint Senior Services Committee is hereby established to develop and recommend a long term plan for addressing the increasing demand for senior services in accordance with the following:

1. The Committee will be Ad Hoc. The term of the Committee shall continue until December 31, 2020 and the Committee will cease functioning unless otherwise directed by their respective Governing Body at that time.
2. The Governing Body hereby appoints representatives to the Ad Hoc Joint Senior Services Committee to be comprised of the following members.
 - a) One elected official from each respective Governing Body.
 - b) One resident member from each respective municipality appointed by each municipality.
 - c) One ex-officio member from each school and municipal administration.

3. All meetings of the Committee shall be open to the public. Agenda and minutes for all meetings shall be prepared.
4. The scope of the Committee shall be to develop a long term plan on how to best proceed in addressing the increasing demand for senior services in accordance with the following:
 - a. Review the Joint Senior Services Committee Final Recommendation to the Municipalities Report from June 2013.
 - b. Evaluate current service demands and projected trends for senior demographics and future service demands.
 - c. Analyze current funding sources and operational structure of the current contracted senior service model.
 - d. Compare and contrast current senior services funding and governance models in the participating communities to other area communities and best practices.
 - e. Review and evaluate cost and budget implications of any proposed recommendations and include strategic funding alternatives.
 - f. Compile the Committee's findings and recommendations into a report to be presented at the end of the Committee's term.
5. The Committee is not authorized to expend funds or enter into agreements. All recommendations made by the Committee shall be in the form of a report to the Governing Body.

BE IT FURTHER RESOLVED, the _____ hereby appoints
_____ as an elected official to the Ad Hoc Committee,
_____ as the resident member of the committee, and
_____ as an ex-officio administration official to the committee.



MEMORANDUM

Department of Public Services

DATE: June 19, 2020

TO: Joseph A. Valentine, City Manager

FROM: Lauren A. Wood, Director of Public Services

SUBJECT: Bituminous Paving Materials Bid Award

INTRODUCTION:

The Department of Public Services (DPS) publicly opened bids titled "Bituminous Paving Materials", Tuesday, June 16, 2020. Bid specifications were advertised with the Michigan Intergovernmental Trade Network (MITN). The asphalt materials specified were 36A hot asphalt mix used for permanent street repairs, and UPM cold patch which is used for temporary street repairs. There were two bidders, Cadillac Asphalt LLC, and Ajax Materials Corporation. These prices are for a two-year period July 1, 2020 - June 30, 2022. The bids are broken down as follows:

Material	Cadillac Asphalt LLC 20-21	Cadillac Asphalt LLC 21-22	Ajax Materials Corporation 20-21	Ajax Materials Corporation for 21-22
36A Hot Mix	\$76.50/Ton	\$76.50/Ton	\$74.00/Ton	\$74.00 Ton
UPM Cold Patch (Delivered)	\$123.00/Ton	\$123.00/Ton	\$115.00/Ton (50-Ton min.)	\$115.00/ Ton (50-Ton min.)
UPM Cold Patch (Picked Up)	\$115.00/Ton	\$115.00/Ton	\$110.00/Ton	\$110.00/ Ton

BACKGROUND:

The Department of Public Services uses 36A hot asphalt mix along with UPM cold patch for both permanent and temporary asphalt repairs throughout the City. Our City crews use these products for pothole patching and pavement repairs to streets, alleys, parking lots, and sewer and water trenches. We purchased both of these materials from Cadillac Asphalt the last five years.

The Department of Public Services uses the various mixes referenced above for both permanent and temporary asphalt repairs throughout the City. Our City crews use this product for pothole patching and pavement repairs to streets, alleys, parking lots, and sewer and water trenches. Typically, the purchases of asphalt paving materials cost approximately \$80,000.00 annually.

LEGAL REVIEW:

This item does not require legal review. In addition, there is no agreement requirement as part of this purchase.

FISCAL IMPACT:

The pricing during the past year for the hot mix was \$76.50/ton and the UPM cold patch (delivered) was \$123.00/ton. We purchased both of these materials from Cadillac Asphalt the past two years. The current bid from Cadillac Asphalt shows no price increase and keeps the same price through fiscal year 2022. Typically, the purchases of asphalt paving materials cost approximately \$80,000.00 annually. This material purchase amount is spread across the Major and Local Streets, Sewer and Water funds.

PUBLIC COMMUNICATION:

Does not apply in this case.

SUMMARY:

The price difference between the low bid and Cadillac Asphalt for the 36A Hot Mix amounts to approximately \$1,500 per year, assuming the purchase of 605 tons per year. Given this fact, in order to be most efficient and effective with this purchase, consideration was given to the proximity of the manufacturing plants for pick-up of the 36A Hot Mix.

Cadillac Asphalt in Troy has a closer location than Ajax Materials in Rochester Hills; therefore making Cadillac Asphalt the most economical choice taking into account staff pay rates and windshield time to drive to and from the farther pick-up location for this material. Often multiple trips are made on a given day to the plant to pick-up material and DPS uses hot mix five days a week. The additional cost to purchase from the high bidder for the hot mix is less than the extra cost in travel time and productivity to acquire the material. In addition to the above, we do not meet the minimum order requirement for cold patch to award it to Ajax Materials.

Therefore, we recommend purchasing all materials from Cadillac Asphalt LLC.

ATTACHMENTS:

No attachments exist.

SUGGESTED RESOLUTION:

To approve the purchase of 36A Hot asphalt mix at \$76.50/ton (2020-2021) and \$76.50/ton (2021-2022) and UPM cold patch (delivered) at \$123.00/ton (2020-2021) and \$123.00/ton (2021-2022) from Cadillac Asphalt LLC for a two year period for the fiscal years 2020-2022 to be charged to accounts #202-449.003-729.0000, #203-449.003-729.0000, #590-536.002-729.0000 and #591-537.005-729.0000.



MEMORANDUM

Department of Public Services

DATE: June 24 2020

TO: Joseph A. Valentine, City Manager

FROM: Lauren A. Wood, Director of Public Services

SUBJECT: Golf Course Fertilizer/Turf Chemicals

INTRODUCTION:

On Tuesday, June 16, 2020, the Department of Public Services publicly opened bids entitled "Turf Chemicals". This bid includes fertilizers and turf chemicals used at the municipal golf courses to maintain and beautify the turf. The request for proposal (RFP) was entered into the Michigan Inter-governmental Trade Network (MITN) purchasing system.

BACKGROUND:

The pricing for these products are the same from the various vendors. This is based on agency pricing which the product manufacturer determines. Therefore, the price is identical from the bidders. Some of the bidders do not make all of the products available to the City of Birmingham as part of their bid. The City selects the vendors for which to purchase its products based on our experience with the vendor, customer service, availability of the product, including the quality of the performance by the vendor.

The golf courses adhere to Integrated Pest Management (IPM) practices. IPM is the use of all appropriate and economical strategies to manage pests and their damage to acceptable levels with the least disruption to the environment. We use organic fertilizers whenever possible.

After review of the four bid tabulations from the companies meeting specifications, the Department of Public Services recommends purchases from these three companies.

<u>Company</u>	<u>City</u>	<u>7/1/2020-6/30/2021</u>	<u>Bid Amount</u>
Harrell's	Howell, MI	\$22,000	\$22,000
Target Specialty Products	White Lake, MI	\$22,000	\$22,000
Great Lakes Turf	Byron Center, MI	\$8,000	\$8,000
Total			\$52,000

LEGAL REVIEW:

No legal review is required for this item.

FISCAL IMPACT:

The Chemical/Fertilizers listing are for the 2020 season and funds are available in the operating supplies account for each golf course, accounts #s 584/597-753.001-729.0000. Based on the actual need and requested orders for the golf courses during the season, the total purchases may fluctuate but will not exceed a total of \$52,000.

PUBLIC COMMUNICATION:

At the golf courses, we place signs in visible locations stating what was applied, where it was applied and the golf course contact information should anyone have any questions.

SUMMARY:

You will notice on the attached list of Golf Course Chemicals and Fertilizers that Roundup Pro or Glyphosate has been eliminated from the bid list and usage list by Bryan Grill our Golf Course Superintendent.

The type of products needed and for what treatments are based on a variety of variables. The Grounds Superintendent determines the quantities and type of product needed during the golf season. Our needs are based on the weather, turf condition and the potential treatment of pests. Last year we used these same three companies for the product purchases for a total amount not to exceed \$52,000.

The Department of Public Services recommends approval of the fertilizer/chemical purchases for the Birmingham Golf Courses with the three selected vendors; Harrell's, Target Specialty Products, and Great Lakes Turf in an amount not to exceed \$52,000 for the 2020-2021 fiscal year.

ATTACHMENTS:

- Golf Course Chemicals and Fertilizers Product Bid List

SUGGESTED RESOLUTION:

To approve the fertilizer/chemical purchases for Lincoln Hills and Springdale Golf Courses from Harrell's for \$22,000, Target Specialty Products for \$22,000, and Great Lakes Turf for \$8,000. The total purchase from all vendors will not exceed a total of \$52,000. Funds to be charged to account #s 584/597-753.001-729.0000.

Golf Course Chemicals and Fertilizers

Product (Common)	Chem. Name	Signal Word	Classification	Use (Area)	Frequency	Target Pest	Comments
Merit	Imidacloprid	Warning	Insecticide	All turf	As needed	Grubs, Insects	
Acelepryn	Chlorantraniliprole	Warning	Insecticide	All turf	As needed	Grubs, Insects	
Dylox	Trichlorfon	Warning	Insecticide	Tees, Rough	As needed	Grubs, Insects	
Briskway	Azoxystrobin	Warning	Fungicide	Greens	2-3X/year	Various Fungi	
Headway	Propiconazole	Warning	Fungicide	Greens	2-3X/year	Various Fungi	
Affirm	PolyoxinD zinc salt	Caution	Fungicide	Greens	1X/year	Patch Diseases	
Emerald	Boscalid	Warning	Fungicide	Tees, Fairways	1X/year	Dollar Spot	
Concert	Propiconazole+ Chlorothalonil	Danger	Fungicide	Tees, Fairways, Greens	3-4X/year	Various Fungi	
Clearys 26/36	Thiophanate Methyl	Warning	Fungicide	All turf	2-3X/year	Various Fungi	
Secure	Fluazinam	Warning	Fungicide	Greens	1-2X/year	Various Fungi	
Instrata	Fludioxonil, Propiconazole, Chlorothalonil	Warning	Fungicide	Greens, Tees, Fairways	1X/year	Various Fungi	
Daconil Action	Chlorothalonil	Warning	Fungicide	ays	4-5X/year	Various Fungi	
Xzemplar	Fluxapyroxad	Caution	Fungicide	Greens	2-3X/year	Various Fungi	
Velista	Penthiopyrad	Caution	Fungicide	Greens	2-3X/year	Various Fungi	
Tank Defoamer		Caution	Tank Additive				
Sync	Methylacetic acid	Danger	Tank Additive				
25-0-10	Urea Nitrogen, K2O	Warning	Fertilizer	Rough	1-2X/year		
33-0-12	Urea Nitrogen, K2O	Warning	Fertilizer	Tees, Fairways	1X/year		
22-0-11	Urea Nitrogen, K2O		Fertilizer	Rough, Fairways	1X/year		
40-0-0	Urea Nitrogen		Fertilizer	Rough			
14-7-14			Fertilizer	Greens			
Millennium Ultra	2,4D, Dicamba, Monoethanoleamine	Danger	Herbicide	Rough	2-3X/year	Broadleaf weeds	
Confront	Triclopyr, Clopyralid	Danger	Herbicide	Rough	As needed	Broadleaf weeds	
Primo Maxx	Trinexapac	Warning	Growth Regulator	Greens	As needed		
Proxy	Ethephon	Danger	Growth Regulator	Greens	As needed		
TriCure	Surfactant	Warning	Wetting Agent	All turf	As needed		
PK Fight	Potash (K2O)	Warning	Fertilizer	Greens	Every 2 weeks		
Astron	Ca, Mg, B, Cu, Fe, Zn	Danger	Fertilizer	Greens	Every 2 weeks		
Knife Plus	N, S, Cu, Fe, Mn, Mo, Zn	Danger	Fertilizer	Greens	Every 2 weeks		
Power 23-0-0	N	Warning	Fertilizer	Greens	Every 2 weeks		
Power 0-22-28	P2O5, K2O	Warning	Fertilizer	Greens	Every 2 weeks		
Bentgrass seed							
Annual Ryegrass seed							
Aquasphere							

Agency pricing

DATE: July 8, 2020

TO: Joseph A. Valentine, City Manager

FROM: Bruce R. Johnson, Building Official

SUBJECT: 1365 Chapin, Condemned Structures

INTRODUCTION:

This report is to advise the City Commission of the dangerous and unsafe condition of the structures at the subject property and to schedule a public hearing before the City Commission to cause the owner of this property to demolish the structures within a reasonable timeframe. Chapter 50 Environment, Division 2 Dangerous Structures, Section 50-42 of the Birmingham City Code authorizes the public hearing. A copy of Section 50-42 is attached for reference.

BACKGROUND:

The following paragraphs will describe the events that caused the dangerous and unsafe conditions, and will outline the circumstances that now make a public hearing regarding this property necessary.

A natural gas explosion in the home occurred on May 25, 2020 causing severe structural damage to the house. The extent of the damage prevented safe access for fire investigators to conduct the fire investigation without dismantling the structure. This left the former home in a pile of rubble. In addition, the remains of the home and the detached garage on the property are contaminated with an excessive amount of cat feces and urine to a point where the odor can be detected several houses away.

The Building Department condemned the structures on June 3, 2020 after the fire investigation was complete. The property owner was notified of the condemnation and ordered to demolish the structures and restore the property by July 1, 2020. In addition, the owner was instructed to secure the property by installing a six-foot chain link temporary fence to prevent entry. The property owner did install the protective fencing, but failed to demolish the structures by the deadline and the dangerous and unsanitary conditions at the property continue to worsen. The department is receiving many complaints from residents concerning the dangerous, unsafe and unsanitary conditions at this property.

The department has been in communication with the owner and their insurance representatives and we have been informed that they are hiring a contractor to complete the demolition of the structures. However, scheduling a public hearing is necessary to abate the dangerous and unsafe conditions in the event that the owner does not cause that to happen.

LEGAL REVIEW:

Not applicable at this time.

FISCAL IMPACT:

Not applicable.

PUBLIC COMMUNICATIONS:

Not applicable at this time. The public hearing will be properly noticed.

SUMMARY

The Building Department recommends that the City Commission schedule a public hearing to order the demolition of the dangerous, unsafe and unsanitary conditions of the remaining portions of the house and detached garage.

ATTACHMENTS:

- Section 50-42 of the City Code
- Notice of Condemnation

SUGGESTED RESOLUTION:

To schedule a public hearing as prescribed in Section 50-42 of the Birmingham City Code for August 10, 2020, for the property located at 1365 Chapin; and to notify the owner and other interested parties of the same.

DIVISION 2. - DANGEROUS STRUCTURES

Sec. 50-41. - Prohibited.

No person shall maintain any structure which is unsafe or which is a menace to the health, morals or safety of the public.

(Code 1963, § 9.2)

Sec. 50-42. - Notice and hearing.

The city commission may, after notice to the owner and after holding a public hearing thereon, condemn a dangerous structure by giving notice to the owner of the land upon which such structure is located, specifying in what respects the structure is a public nuisance and requiring the owner to alter, repair, tear down or remove the same within such reasonable time, not exceeding 60 days, as may be necessary to do or have done the work required by the notice. The notice may also provide a reasonable time within which such work shall be commenced.

(Code 1963, § 9.3)

Sec. 50-43. - Abatement.

If, at the expiration of any time limit in the notice required by section 50-42, the owner has not complied with the requirement thereof, the city manager shall carry out the requirement of the notice. The cost of such abatement shall be charged against the premises, and the owner thereof in accordance with section 1-14.

(Code 1963, § 9.4; Ord. No. 1894, 9-11-06)

Sec. 50-44. - Emergency abatement.

The city manager may abate any public nuisance under the division, if the public safety requires immediate action, without preliminary order of the city commission. Thereafter the cost of abating such nuisance shall be charged against the premises and the owner thereof in accordance with section 1-14.

(Code 1963, § 9.5; Ord. No. 1894, 9-11-06)

Secs. 50-45—50-55. - Reserved.



June 3, 2020

Diane M. Pitone
1365 Chapin
Birmingham, MI. 48009

RE: 1365 Chapin
Birmingham, MI.
(Condemnation Notice)

Dear Ms. Pitone:

This letter is to inform you that the City of Birmingham has condemned the property referenced above in accordance with Section 108.1.5- Dangerous Structure or Premises- of the 2015 International Property Maintenance Code (IPMC). The house and the garage require demolition. Condemnation notices have been posted on the house and the garage.

The structures have been condemned for violations including, but not limited to the following:

1. The explosion on 5/25/20 and subsequent fire have destroyed the home beyond use. (Section 108.1.5(3)(6)(7)(8)(9)(11).) 2015 IPMC.
2. The garage is contaminated with feces and urine. There are signs of animal infestation. The structure is not safe to occupy. (Section 108.1.5 (6)(7)(11).) 2015 IPMC.

Due to the dangerous condition of the property, it is imperative that a 6 foot chain link temporary fence be installed to protect unwanted entry to the site. This fence must be installed by June 6, 2020. If the fence is not installed by the June 6, 2020, per Section 109.2 –Temporary Safeguards- of the 2015 (IPMC), the City of Birmingham will cause the fence to be installed. The Legal counsel of the city will institute action for the recovery of the cost of the fencing per Section 109.5- Cost of Emergency Repairs- of the 2015 (IPMC)

This letter also serves as notice requiring you to demolish the structures, remove all debris and restore the property to an approved grade by July 1 2020. A written response must be provided by June 10, 2020 that indicates your intentions and timeline. In accordance with the Birmingham City Code, You may appeal the condemnation order to the Housing Board of Appeals. Applications are available through our office. Any appeal application must be received by June 23, 2020.

In accordance with Section 106.3, - Prosecution of violation- of the 2015 (IPMC), failure to comply with this order and notice of violation is considered a misdemeanor and a court appearance ticket will be issued. Any action taken will be charged against the real estate upon which the structure is located and shall be a lien upon said real estate.

If a response is not received by June 10, 2020, we will issue a court appearance ticket for the violations detailed above. If you have any questions regarding this matter, I can be contacted at (248)530-1853.

Regards,

A handwritten signature in black ink, appearing to read "Michael Morad", written in a cursive style.

Michael Morad
Assistant Building Official

CC: Joseph A. Valentine, City Manager
Bruce R. Johnson, Building official
Tim Currier, Esq., City Attorney
Mary Kucharek, Esq., Prosecutor
Joel Campbell, Fire Marshal
Stuart A. Sklar, Esq., Owner Attorney
Julie Ross, State Auto Insurance Companies

DATE: June 29, 2020

TO: Joseph A. Valentine, City Manager

FROM: Alexandria Bingham, City Clerk Designee

SUBJECT: Election Services Agreement with Oakland County

INTRODUCTION:

Due to the COVID-19 pandemic and the Secretary of State's decision to mail out absentee ballot applications to every registered voter, projections on sent and received absentee ballots for the August State Primary and the General Election in November will most likely exceed 7, 000 ballots, which is more than double what was processed in the March 2020 Presidential Primary. Even with expanding our absentee counting board and making our routines and procedures for processing ballots as efficient as possible processing that many ballots in an election day will be beyond strenuous. House Bill 5141 passed on June 23, 2020 allows the City of Birmingham to enter an agreement with Oakland County that would allow the County to use their resources which includes high speed tabulators to process the bulk of the City of Birmingham's absentee ballots in the most efficient way on Election Day.

BACKGROUND:

With this agreement the county would pick up the bulk of our absentee ballots, any ballots that were checked in before 4 p.m. the Monday before the election, to be processed by the county on Election Day. Any absentee ballots received after the scheduled pickup from the county would be processed by the City of Birmingham with a small team of highly trained election inspectors. These inspectors would take the later arriving ballots to their designated precincts for tabulation in small batches with matching reports to be added to the poll book under the list of voters. Processing absentee ballots in the live precinct in this manner is a common and efficient practice that was most often used in smaller elections with a low absentee voting turnout. Having assistance from the county in this manner would require the City of Birmingham to provide one inspector to the County that the County will be responsible for compensating as well as absolve our regular absentee counting board. Absolving our current absentee counting board will help the city with the current deficit of inspectors that are willing to work on Election Day. This agreement also allows us to choose to go back to our regular absentee counting board method for future elections if we see fit with a written notice 84 days prior to the anticipated election.

LEGAL REVIEW:

City Attorney Tim Carrier has reviewed the contract and additional documents included.

FISCAL IMPACT:

The agreement for election services with Oakland County will reduce some of the financial burden on the Elections budget. The county will be using their equipment and workforce to process the bulk of absentee ballots submitted by Birmingham voters. We will be able to reallocate and retrain absentee counting board members to work in the live precincts and not need as many people, resources and equipment by absolving our large absentee counting board.

SUMMARY

Approving the agreement for election services with Oakland County will put the burden of tabulating the majority of Birmingham Voter's absentee ballots on the Elections Division of Oakland County. Proposal 18-3 which allows no reason absentee voting for all voters in conjunction with the COVID-19 pandemic has brought even more interest and demand on absentee voting. Being that HB 5141 has passed, the City of Birmingham and Oakland County now has the opportunity to restructure and reallocate our resources and procedures to become more efficient with processing higher volumes of absentee ballots. This agreement is necessary in order to have all of our absentee ballots tabulated on Election Day with our results reported to the county and state in a timely and accurate manner.

ATTACHMENTS:

- Resolution with Oakland County Authorizing Election Services
- Agreement for Election Services with Oakland County
- House Bill 5141

SUGGESTED RESOLUTION:

To approve the agreement for Election Services between Oakland County and the City of Birmingham and further; to authorize Alexandria Bingham, the City Clerk Designee, to sign the agreement on behalf of the City of Birmingham.

**RESOLUTION OF THE CITY OF BIRMINGHAM AUTHORIZING ELECTION SERVICES BETWEEN OAKLAND
COUNTY ELECTIONS DIVISION AND THE CITY OF BIRMINGHAM FOR MUNICIPAL ABSENTEE VOTER
BALLOT COUNTING**

WHEREAS, Proposal 3 of 2018, approved by the voters with 67% of the vote, included adding “no-reason absentee voting” and “same day registration” to the Michigan Constitution; and

WHEREAS, in the 2020 Michigan Presidential Primary election, nearly 1 million voters requested an absentee ballot, a 97% increase from the number of absentee ballots cast in 2016 Presidential Primary; and

WHEREAS, concerns from the COVID-19 virus pandemic combined with “no-reason absentee voting”, resulted in nearly 99.9% of Michigan voters casting absentee ballots during the May election; and

WHEREAS, more than 18,000 voters in the City of Birmingham received absentee ballot applications from combined efforts from the Secretary of State and the City Clerk’s Office for the August 4, 2020 Primary election and the November 3, 2020 Presidential Election; and

WHEREAS, the large increase in absentee ballots being issued and received, combined with same day registration will present challenges for the City of Birmingham to be able to adequately staff the Clerk’s office on Election Day, support the nine operating live precincts, and an absentee counting board which will have the burden processing record volumes of absentee ballots for the city of Birmingham within a regular 15 hour election work day; and

WHEREAS, HB 5141 provides for agreements between municipalities and the county clerk for the management of absentee voter counting boards; and

WHEREAS, increased absentee balloting also provides opportunities to reallocate election resources to create greater efficiency, accuracy, improve training and achieve savings through cooperative agreements among municipalities. These agreements would provide for consolidated administration and management of absentee voter counting boards; and

WHEREAS, the county clerk seeks to support our city and township clerks by entering into mutually agreed upon absentee counting services agreements at no cost to the municipalities; and

NOW THEREFORE BE IT RESOLVED, that the Birmingham City Commission hereby approves the Agreement for Election Services between Oakland County and the City of Birmingham for Municipal Absentee Voter Ballot Counting.

CERTIFICATION

I, Alexandria Bingham, City Clerk Designee, of the City of Birmingham, Michigan, do hereby certify that the foregoing is a true and correct copy of the resolution adopted by the Birmingham City Commission at its regular meeting held on June 8, 2020.

Alexandria Bingham, City Clerk Designee

**AGREEMENT FOR ELECTION SERVICES BETWEEN
OAKLAND COUNTY AND
THE CITY OF BIRMINGHAM**

This Agreement for Election Services Agreement (the "Agreement") is made between Oakland County, a Municipal and Constitutional Corporation, 1200 North Telegraph Road, Pontiac, Michigan 48341 ("County"), and the CITY OF BIRMINGHAM ("Public Body") 151 Martin Street, Birmingham MI, 40012. In this Agreement, the County shall be represented by the Oakland County Clerk, in her official capacity as a Michigan Constitutional Officer. County and Public Body may be referred to individually as a "Party" and jointly as "Parties".

PURPOSE OF AGREEMENT. County and Public Body enter into this Agreement pursuant to the Michigan Election Law, 1954 Public Act 116, MCL 168.764 *et seq.*, for the purpose of County providing Ballot Counting Services for Public Body.

In consideration of the mutual promises, obligations, representations, and assurances in this Agreement, the Parties agree to the following:

1. **DEFINITIONS.** The following words and expressions used throughout this Agreement, whether used in the singular or plural, shall be defined, read, and interpreted as follows:
 - 1.1. **Act** means the Michigan Election Law, 1954 Public Act 116, MCL 168.764 *et seq.*
 - 1.1. **Agreement** means the terms and conditions of this Agreement and any other mutually agreed to written and executed modification, amendment, Exhibit and attachment to this Agreement.
 - 1.2. **Claims** mean any alleged losses, claims, complaints, demands for relief or damages, lawsuits, causes of action, proceedings, judgments, deficiencies, liabilities, penalties, litigation, costs, and expenses, including, but not limited to, reimbursement for reasonable attorney fees, witness fees, court costs, investigation expenses, litigation expenses, amounts paid in settlement, and/or other amounts or liabilities of any kind which are incurred by or asserted against County or Public Body, or for which County or Public Body may become legally and/or contractually obligated to pay or defend against, whether direct, indirect or consequential, whether based upon any alleged violation of the federal or the state constitution, any federal or state statute, rule, regulation, or any alleged violation of federal or state common law, whether any such claims are brought in law or equity, tort, contract, or otherwise, and/or whether commenced or threatened.
 - 1.3. **Confidential Information** means all information and data that County is required or permitted by law to keep confidential, including records of County's security measures, security plans, security codes and combinations, passwords, keys, and security procedures, to the extent that the records relate to ongoing security of County as well as records or information to protect the security or safety of persons or property, whether public or private, including, but not limited to, building, public works, and public water supply designs relating to ongoing security measures, capabilities and plans for responding to violations of the Michigan Anti-terrorism Act, emergency response plans, risk planning documents, threat assessments and domestic preparedness strategies.
 - 1.4. **County** means Oakland County, a Municipal and Constitutional Corporation, including, but not limited to, all of its departments, divisions, the County Board of Commissioners,

elected and appointed officials, directors, board members, council members, commissioners, authorities, committees, employees, agents, volunteers, and/or any such persons' successors.

- 1.5. **Day** means any calendar day beginning at 12:00 a.m. and ending at 11:59 p.m.
- 1.6. **Election Services** means the following individual Election Services provided by County's Clerk's Elections Division, if applicable:
 - 1.6.1. **Absentee Ballot Counting** means processing, including, but not limited to, opening, tabulating and reporting absentee ballots and related results.
- 1.7. **Exhibits** mean the following descriptions of Election Services which are governed by this Agreement only if they are attached to this Agreement and incorporated in this Agreement under Section 2 or added at a later date by a formal amendment to this Agreement:
☐ Exhibit I: Absentee Ballot Counting Services
- 1.8. **Local Clerk** means the local elected or appointed Clerk for Public Body or their designee.
- 1.8. **Public Body** means the City of Birmingham which is an entity created by state or local authority or which is primarily funded by or through state or local authority, including, but not limited to, its council, Board, departments, divisions, elected and appointed officials, directors, board members, council members, commissioners, authorities, committees, employees, agents, subcontractors, attorneys, volunteers, and/or any such persons' successors. For purposes of this Agreement, Public Body includes any Michigan court, when acting in concert with its funding unit, to obtain Election Services.
- 1.9. **Public Body Employee** means any employees, officers, directors, members, managers, trustees, volunteers, attorneys, representatives of Public Body, licensees, concessionaires, contractors, subcontractors, independent contractors, agents, and/or any such persons' successors or predecessors (whether such persons act or acted in their personal, representative or official capacities), and/or any persons acting by, through, under, or in concert with any of the above who use or have access to the Election Services provided under this Agreement. "Public Body Employee" shall also include any person who was a Public Body Employee at any time during the term of this Agreement but, for any reason, is no longer employed, appointed, or elected in that capacity.
- 1.10. **Points of Contact** mean the individuals designated by Public Body and identified to County to act as primary and secondary contacts for communication and other purposes as described herein.

2. COUNTY RESPONSIBILITIES.

- 2.1. County, through its County Clerk Elections Division, will provide the Election Services described in Exhibit I which is attached and incorporated into this Agreement. County is not obligated or required to provide any additional services that are not specified in this Agreement.
- 2.2. County, through its Board of Election Commissioners and authorized representatives, shall take the necessary and appropriate actions to comply with Section 764d(8) of the Act in the appointment of election inspectors to a County absent voter counting board and all other provisions under the Act governing such board.

- 2.3. County may access, use, and disclose transaction information and any content to comply with the law such as a subpoena, court order or Freedom of Information Act request. County shall first refer all such requests for information to Public Body's Points of Contact for their response within the required time frame. County shall provide assistance for the response if requested by Public Body's Points of Contact, and if able to access the requested information. County shall not distribute Public Body's data to other entities for reasons other than when it is required by law.

3. PUBLIC BODY RESPONSIBILITIES.

- 3.1. Public Body shall comply with all terms and conditions in this Agreement, including Exhibit I to this Agreement, and the Act.
- 3.2. Public Body shall deliver the Agreement executed by its authorized representative(s) to County within the time-frame set forth in Section 764d(5) of the Act and, upon County's execution of the Agreement, the Agreement shall be deemed to be filed by Public Body with County in compliance with Section 764d(5) of the Act.
- 3.3. For each Election Service covered by an Exhibit to this Agreement, Public Body shall designate two representatives to act as a primary and secondary Points of Contact with County. The Points of Contact responsibilities shall include:
 - 3.3.1. Direct coordination and interaction with County staff.
 - 3.3.2. Communication with the general public when appropriate.
- 3.4. Public Body shall respond to and be responsible for Freedom of Information Act requests relating to Public Body's records, data, or other information.
- 3.5. Third-party product or service providers may require County to pass through to Public Body certain terms and conditions contained in license agreements, service agreements, acceptable use policies and similar terms of service or usage, in order to provide Election Services to Public Body. Public Body agrees to comply with these terms and conditions. Public Body must follow the termination provisions of this Agreement if it determines that it cannot comply with any of the terms and conditions.

4. DURATION OF INTERLOCAL AGREEMENT.

- 4.1. This Agreement and any amendments shall be effective when executed by both Parties with resolutions passed by the governing bodies of each Party or other written notice evidencing such Party's governing body's approval, except as otherwise specified below. The approval and terms of this Agreement and any amendments, except as specified below, shall be entered in the official minutes of the governing bodies of each Party. An executed copy of this Agreement and any amendments shall be filed by the County Clerk with the Secretary of State. If Public Body is a court, a signature from the Chief Judge of the court shall evidence approval by Public Body, providing a resolution and minutes do not apply. If Public Body is the State of Michigan, approval and signature shall be as provided by law.
- 4.2. Notwithstanding Section 4.1, the Chairperson of the Oakland County Board of Commissioners is authorized to sign amendments to the Agreement to add Exhibits that were previously approved by the Board of Commissioners. An amendment signed by the Board Chairperson under this Section must be sent to the Elections Division in the County Clerk's Office to be filed with the Agreement once it is signed by both Parties.
- 4.3. Unless extended by an amendment, this Agreement shall remain in effect until cancelled or terminated by any of the Parties pursuant to the terms of the Agreement.

5. **PAYMENTS.**

- 5.1. Election Services shall be provided to Public Body at the rates and for the charges specified in the Exhibits, if applicable.
- 5.2. If County is legally obligated for any reason, e.g. subpoena, court order, or Freedom of Information Request, to search for, identify, produce or testify regarding Public Body's records, data, or information that is stored by County relating to Election Services that Public Body receives under this Agreement, then Public Body shall reimburse County for all reasonable costs County incurs in searching for, identifying, producing or testifying regarding such records, data, or information. County may waive this requirement in its sole discretion.
- 5.3. County shall provide Public Body with an invoice/explanation of County's costs for Election Services provided herein and/or a statement describing any amounts owed to County. Public Body shall pay the full amount shown on any such invoice within sixty (60) calendar days after the date shown on any such invoice. Payment shall be sent along with a copy of the invoice to: Oakland County Treasurer – Cash Acctg, Bldg 12 E, 1200 N. Telegraph Road, Pontiac, MI 48341.
- 5.4. If Public Body, for any reason, fails to pay County any monies when and as due under this Agreement, Public Body agrees that unless expressly prohibited by law, County or the Oakland County Treasurer, at their sole option, shall be entitled to set off from any other Public Body funds that are in County's possession for any reason, including but not limited to, the Oakland County Delinquent Tax Revolving Fund ("DTRF"), if applicable. Any setoff or retention of funds by County shall be deemed a voluntary assignment of the amount by Public Body to County. Public Body waives any Claims against County or its Officials for any acts related specifically to County's offsetting or retaining of such amounts. This paragraph shall not limit Public Body's legal right to dispute whether the underlying amount retained by County was actually due and owing under this Agreement.
- 5.5. If County chooses not to exercise its right to setoff or if any setoff is insufficient to fully pay County any amounts due and owing County under this Agreement, County shall have the right to charge up to the then-maximum legal interest on any unpaid amount. Interest charges shall be in addition to any other amounts due to County under this Agreement. Interest charges shall be calculated using the daily unpaid balance method and accumulate until all outstanding amounts and accumulated interest are fully paid.
- 5.6. Nothing in this Section shall operate to limit County's right to pursue or exercise any other legal rights or remedies under this Agreement or at law against Public Body to secure payment of amounts due to County under this Agreement. The remedies in this Section shall be available to County on an ongoing and successive basis if Public Body becomes delinquent in its payment. Notwithstanding any other term and condition in this Agreement, if County pursues any legal action in any court to secure its payment under this Agreement, Public Body agrees to pay all costs and expenses, including attorney fees and court costs, incurred by County in the collection of any amount owed by Public Body.
- 5.7. Either Party's decision to terminate and/or cancel this Agreement, or any one or more of the individual Election Services identified herein, shall not relieve Public Body of any payment obligation for any Election Services rendered prior to the effective date of any termination or cancellation of this Agreement. The provisions of this Section shall survive the termination, cancellation, and/or expiration of this Agreement.

6. **ASSURANCES.**

- 6.1. **Responsibility for Claims.** Each Party shall be responsible for any Claims made against that Party by a third party, and for the acts of its employees arising under or related to this Agreement.
- 6.2. **Responsibility for Attorney Fees and Costs.** Except as provided for in Section 5.6, in any Claim that may arise from the performance of this Agreement, each Party shall seek its own legal representation and bear the costs associated with such representation, including judgments and attorney fees.
- 6.3. **No Indemnification.** Except as otherwise provided for in this Agreement, neither Party shall have any right under this Agreement or under any other legal principle to be indemnified or reimbursed by the other Party or any of its agents in connection with any Claim.
- 6.4. **Costs, Fines, and Fees for Noncompliance.** Public Body shall be solely responsible for all costs, fines and fees associated with any misuse of the Election Services and/or for noncompliance with this Agreement by Public Body Employees.
- 6.5. **Reservation of Rights.** This Agreement does not, and is not intended to, impair, divest, delegate or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty, or immunity of the Parties. Nothing in this Agreement shall be construed as a waiver of governmental immunity for either Party.
- 6.6. **Authorization and Completion of Agreement.** The Parties have taken all actions and secured all approvals necessary to authorize and complete this Agreement. The persons signing this Agreement on behalf of each Party have legal authority to sign this Agreement and bind the Parties to the terms and conditions contained herein.
- 6.7. **Compliance with Laws.** Each Party shall comply with all federal, state, and local ordinances, regulations, administrative rules, and requirements applicable to its activities performed under this Agreement.

7. **USE OF CONFIDENTIAL INFORMATION**

- 7.1. The Parties shall not reproduce, provide, disclose, or give access to Confidential Information to County or to a Public Body Employee not having a legitimate need to know the Confidential Information, or to any third-party. County and Public Body Employees shall only use the Confidential Information for performance of this Agreement. Notwithstanding the foregoing, the Parties may disclose the Confidential Information if required by law, statute, or other legal process provided that the Party required to disclose the information: (i) provides prompt written notice of the impending disclosure to the other Party, (ii) provides reasonable assistance in opposing or limiting the disclosure, and (iii) makes only such disclosure as is compelled or required. This Agreement imposes no obligation upon the Parties with respect to any Confidential Information when it can be established by legally sufficient evidence that the Confidential Information: (i) was in possession of or was known by prior to its receipt from the other Party, without any obligation to maintain its confidentiality; or (ii) was obtained from a third party having the right to disclose it, without an obligation to keep such information confidential.
- 7.2. Within five (5) business days after receiving a written request from the other Party, or upon termination of this Agreement, the receiving Party shall return or destroy all of the disclosing Party's Confidential Information.

8. **DISCLAIMER OF WARRANTIES.**

- 8.1. THE ELECTION SERVICES, INCLUDING ANY GOODS, PARTS, SUPPLIES, EQUIPMENT, OR OTHER ITEMS THAT ARE PROVIDED TO PUBLIC BODY AS PART OF THE ELECTION SERVICES, ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS "WITH ALL FAULTS."
- 8.2. COUNTY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON- INFRINGEMENT.
- 8.3. COUNTY MAKES NO WARRANTY THAT: (I) THE ELECTION SERVICES WILL MEET PUBLIC BODY'S REQUIREMENTS; OR (II) THE ELECTION SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE.

9. **LIMITATION OF LIABILITY.**

- 9.1. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON, FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, AND/OR PUNITIVE DAMAGES ARISING OUT OF THIS AGREEMENT, REGARDLESS OF WHETHER THE OTHER PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.
- 9.2. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN AND TO THE EXTENT PERMITTED BY LAW, THE TOTAL LIABILITY OF COUNTY UNDER THIS AGREEMENT (WHETHER BY REASON OF BREACH OF CONTRACT, TORT, OR OTHERWISE) SHALL NOT EXCEED THE AMOUNT PAID BY PUBLIC BODY TO COUNTY WITH RESPECT TO THE PARTICULAR ELECTION SERVICE GIVING RISE TO SUCH LIABILITY.

10. **DISPUTE RESOLUTION.** All disputes relating to the execution, interpretation, performance, or nonperformance of this Agreement involving or affecting the Parties may first be submitted to County's Director of Elections and Public Body's Agreement Administrator for possible resolution. County's Clerk and Public Body's Agreement Administrator may promptly meet and confer in an effort to resolve such dispute. If they cannot resolve the dispute in five (5) business days, the dispute may be submitted to the signatories of this Agreement or their successors in office. The signatories of this Agreement may meet promptly and confer in an effort to resolve such dispute.

11. **TERMINATION OR CANCELLATION OF AGREEMENT.**

- 11.1. Either Party may terminate or cancel this entire Agreement or any one of the Election Services described in the attached Exhibit(s), upon eighty-four (84) days written notice, or such other notice period as otherwise required by the Act, to the clerk of the other Party if either Party decided, in its sole discretion, to terminate this Agreement or one of the Exhibit(s), for any reason including convenience. Each Party shall also comply with the requirements under the Act for filing the notice of termination, in which case, Public Body's timely delivery of a notice of termination to County shall be deemed to comply with its filing requirement.
- 11.2. Early termination fees may apply to Public Body if provided for in the Exhibit(s).
- 11.3. The effective date of termination and/or cancellation shall be clearly stated in the written notice. Either the County Executive or the Board of Commissioners is authorized to terminate this Agreement for County under this provision. A termination of one or more of the Exhibits which does not constitute a termination of the entire Agreement may be accepted on behalf of County by its County Clerk.

12. **SUSPENSION OF SERVICES.** County, through its County Clerk, may immediately suspend Election Services for any of the following reasons: (i) requests by law enforcement or other governmental agencies; (ii) engagement by Public Body in fraudulent or illegal activities relating to the Election Services provided herein; (iii) breach of the terms and conditions of this Agreement; or (iv) unexpected technical or security issues. The right to suspend Election Services is in addition to the right to terminate or cancel this Agreement according to the provisions in Section 11. County shall not incur any penalty, expense or liability if Election Services are suspended under this Section.
13. **DELEGATION OR ASSIGNMENT.** Neither Party shall delegate or assign any obligations or rights under this Agreement without the prior written consent of the other Party.
14. **NO EMPLOYEE-EMPLOYER RELATIONSHIP.** Nothing in this Agreement shall be construed as creating an employee-employer relationship between County and Public Body. At all times and for all purposes under this Agreement, the Parties' relationship to each other is that of an independent contractor. Each Party will be solely responsible for the acts of its own employees, agents, and servants during the term of this Agreement. No liability, right or benefits arising out of an employer/employee relationship, either express or implied, shall arise or accrue to either Party as a result of this Agreement.
15. **NO THIRD-PARTY BENEFICIARIES.** Except as provided for the benefit of the Parties, this Agreement does not and is not intended to create any obligation, duty, promise, contractual right or benefit, right to indemnification, right to subrogation, and/or any other right in favor of any other person or entity.
16. **NO IMPLIED WAIVER.** Absent a written waiver, no act, failure, or delay by a Party to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No waiver of any term, condition, or provision of this Agreement, whether by conduct or otherwise, in one or more instances shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Agreement. No waiver by either Party shall subsequently affect its right to require strict performance of this Agreement.
17. **SEVERABILITY.** If a court of competent jurisdiction finds a term or condition of this Agreement to be illegal or invalid, then the term or condition shall be deemed severed from this Agreement. All other terms, conditions, and provisions of this Agreement shall remain in full force.
18. **PRECEDENCE OF DOCUMENTS.** In the event of a conflict between the terms and conditions of any of the documents that comprise this Agreement, the terms in the Agreement shall prevail and take precedence over any allegedly conflicting terms and conditions in the Exhibits or other documents that comprise this Agreement.
19. **CAPTIONS.** The section and subsection numbers, captions, and any index to such sections and subsections contained in this Agreement are intended for the convenience of the reader and are not intended to have any substantive meaning. The numbers, captions, and indexes shall not be interpreted or be considered as part of this Agreement. Any use of the singular or plural, any reference to gender, and any use of the nominative, objective or possessive case in this Agreement shall be deemed the appropriate plurality, gender or possession as the context requires.
20. **FORCE MAJEURE.** Notwithstanding any other term or provision of this Agreement, neither Party shall be liable to the other for any failure of performance hereunder if such failure is due to any cause beyond the reasonable control of that Party and that Party cannot reasonably accommodate or mitigate the effects of any such cause. Such cause shall include, without limitation, acts of God, fire, explosion, vandalism, national emergencies, insurrections, riots, wars, strikes, lockouts, work

stoppages, other labor difficulties, or any law, order, regulation, direction, action, or request of the United States government or of any other government. Reasonable notice shall be given to the affected Party of any such event.

21. **NOTICES.** Except as otherwise provided in the Exhibits, notices given under this Agreement shall be in writing and shall be personally delivered, sent by express delivery service, certified mail, or first class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (i) the date of actual receipt; (ii) the next business day when notice is sent express delivery service or personal delivery; or (iii) three days after mailing first class or certified U.S. mail.
 - 21.1. If Notice is sent to County, it shall be addressed and sent to: Oakland County Clerk, Election's Division, 1200 N. Telegraph Road, Bldg. 16 East, Pontiac, MI 48341, and the Chairperson of the Oakland County Board of Commissioners, 1200 North Telegraph Road, Pontiac, Michigan 48341.
 - 21.2. If Notice is sent to Public Body, it shall be addressed to: 151 Martin Street, P.O. Box 3001, Birmingham MI, 48012.
 - 21.3. Either Party may change the individual to whom Notice is sent and/or the mailing address by notifying the other Party in writing of the change.
22. **GOVERNING LAW/CONSENT TO JURISDICTION AND VENUE.** This Agreement shall be governed, interpreted, and enforced by the laws of the State of Michigan. Except as otherwise required by law or court rule, any action brought to enforce, interpret, or decide any Claim arising under or related to this Agreement shall be brought in the 6th Judicial Circuit Court of the State of Michigan, the 50th District Court of the State of Michigan, or the United States District Court for the Eastern District of Michigan, Southern Division, as dictated by the applicable jurisdiction of the court. Except as otherwise required by law or court rule, venue is proper in the courts set forth above.
23. **SURVIVAL OF TERMS.** The following terms and conditions shall survive and continue in full force beyond the termination, cancellation, or expiration of this Agreement (or any part thereof) until the terms and conditions are fully satisfied or expire by their nature: Definitions (Section 1); Assurances (Section 6); Payments (Section 5); Use of Confidential Information (Section 7); Disclaimer of Warranties (Section 8); Limitation of Liability (Section 9); Dispute Resolution (Section 10); No Employee-Employer Relationship (Section 14); No Third-Party Beneficiaries (Section 15); No Implied Waiver (Section 16); Severability (Section 17); Precedence of Documents (Section 18); Force Majeure (Section 20); Governing Law/Consent to Jurisdiction and Venue (Section 22); Survival of Terms (Section 23); Entire Agreement (Section 24).
24. **ENTIRE AGREEMENT.**
 - 24.1. This Agreement represents the entire agreement and understanding between the Parties regarding the specific Election Services described in the attached Exhibit(s). With regard to those Election Services, this Agreement supersedes all other oral or written agreements between the Parties.
 - 24.2. The language of this Agreement shall be construed as a whole according to its fair meaning, and not construed strictly for or against any Party.

IN WITNESS WHEREOF, Alexandria Bingham, City Clerk Designee, hereby acknowledges that he/she has been authorized by a resolution of the City of Birmingham, a certified copy of which is attached, to execute this Agreement on behalf of Public Body and hereby accepts and binds Public Body to the terms and conditions of this Agreement.

EXECUTED: _____ DATE: _____
Alexandria Bingham, City Clerk Designee, City of Birmingham

WITNESSED: _____ DATE: _____
[insert name, title]

AGREEMENT
ADMINISTRATOR: _____ DATE: _____
(IF APPLICABLE)

IN WITNESS WHEREOF, David T. Woodward, Chairperson, Oakland County Board of Commissioners, hereby acknowledges that he has been authorized by a resolution of the Oakland County Board of Commissioners, a certified copy of which is attached, to execute this Agreement on behalf of Oakland County, and hereby accepts and binds Oakland County to the terms and conditions of this Agreement.

EXECUTED: _____ DATE: _____
David T. Woodward, Chairperson
Oakland County Board of Commissioners

WITNESSED: _____ DATE: _____
[insert name, title]

IN WITNESS WHEREOF, Lisa Brown, in her official capacity as the Oakland County Clerk, a Michigan Constitutional Office, hereby concurs and accepts the terms and conditions of this Agreement.

EXECUTED: _____ DATE: _____
Lisa Brown, Clerk/Register of Deeds,
County of Oakland

WITNESSED: _____ DATE: _____

EXHIBIT I

ABSENT VOTER BALLOT COUNTING SERVICES

1. COUNTY RESPONSIBILITIES.

- 1.1. County, through its Board of Election Commissioners, shall, subject to Public Body's performance of its duties and obligations under this Agreement and the Act, render absent voter ballot counting services in compliance with the Act for absent voter ballots received by the clerk for Public Body prior to 4:00 p.m. on the day before an election. For clarification, County is not providing Election Services for absent voter ballots received by the clerk for Public Body after 4:00 p.m. on the day before an election; pursuant to Section 764d(10) of the Act, Public Body must deliver such ballots to the voting precinct of the elector on election day to be processed and counted.
- 1.2. Unless otherwise agreed upon in writing by the Parties, County shall cause absent voter ballots, including, the ballot return envelopes, secrecy sleeves, and ballots (collectively the "Ballots"), received by the clerk for Public Body prior to 4:00 p.m. on the day before an election to be picked up from the clerk by 6:00 p.m. that day by an authorized representative of County.
- 1.3. Upon completing the process for counting the ballots, County shall place the ballots in ballot containers either provided by Public Body that comply with the requirements described below or provided by County, as determined in County's sole discretion, and seal the ballot containers in compliance with all applicable laws. County shall notify Public Body of its decision to require Public Body to provide ballot containers or to provide ballot containers at least sixty (60) days prior to each election for which County is providing Election Services to Public Body under this Agreement.
- 1.4. County shall retain the sealed ballot containers containing the Ballots for thirty (30) days after the day of the election for which the Ballots were submitted. County shall make arrangements with Public Body for an authorized representative(s) of Public Body to, after the expiration of the thirty (30) day period, pick-up from County the Ballots, mail trails, ballot envelopes, ballot boxes provided by Public Body, qualified voter list, and any other items related to the Ballots transferred by Public Body to County.

2. PUBLIC BODY RESPONSIBILITIES.

- 2.1. Public Body shall perform its duties and obligations under this Agreement and the Act and take any other action necessary or appropriate to assist, and cooperate with, County in rendering the absent voter ballot counting services under this Agreement.
- 2.2. Public Body shall, by 4:30 on the day before an election, have available for transfer to County immediately upon arrival of County's representative, the Ballots received by the clerk for Public Body prior to 4:00 p.m. on that day properly organized in mailing trays, ballot containers, unless provided by County pursuant to this Agreement, in good condition and compliant with the required and appropriate sealing procedures, and a reconciled voter list from the qualified voter file that matches the number of Ballots being transferred to County.
- 2.3. Public Body shall, during any period County is actively rendering Election Services, provide to County access to Public Body's electronic qualified voter file for the sole purpose of County reconciling such list with the number of Ballot envelopes received by County and to make any necessary corrections to the list to reflect the number of Ballot envelopes received.

- 2.4. Public Body shall make arrangements with County to, no later than three (3) business days after the expiration of the thirty (30) day period described in Section 1.4, cause authorized representative(s) in number necessary to pick-up from County premises the Ballots, mail trays, ballot envelopes, ballot boxes provided by Public Body, qualified voter lists, and any other items related to the Ballots transferred by Public Body to County. At such time and on County premises, if County provided ballot boxes to seal the Ballots in providing the Election Services, Public Body shall bring ballot boxes for its authorized representatives to transfer into the Ballots from the County provided ballot boxes. If Public Body does not pick-up such items as required in this Section, at County's election exercised in its sole discretion, Public Body shall, within thirty (30) days of receiving an invoice from County, pay to County \$100_____for each day beyond the three (3) period set forth above that County remains in possession of such items and/or County may have its authorized representatives deliver such items to Public Body on such date and at such time during Public Body's clerk's regularly scheduled office hours County determines, in which case Public Body shall be deemed to have accepted possession of all such items.
- 2.5. Upon the earlier to occur of the expiration of the three (3) period set forth in Section 2.4 and the transfer of items to Public Body under Sections 1.4 and 2.5, above, Public Body shall be deemed to be responsible for all such items.

3. **PAYMENT: EXPENSES AND FEES.**

- 3.1. Except as otherwise provided in Section 5 of this Agreement, until such time as County notifies Public Body otherwise, County shall provide the Election Services to Public Body for each election at no cost to Public Body.
- 3.2. At such time County determines it will require the payment of a fee and/or reimbursement for costs and expenses by Public Body for County's Election Services for an upcoming election(s), County shall provide written notice to Public Body in advance of such election(s) with sufficient time for Public Body to terminate this Agreement in accordance with its terms setting forth in detail such fees, costs, and expenses and Public Body shall pay such amounts in accordance with the terms of this Agreement for Election Services rendered by County.

Act No. 95
Public Acts of 2020
Approved by the Governor
June 23, 2020
Filed with the Secretary of State
June 23, 2020
EFFECTIVE DATE: June 23, 2020

STATE OF MICHIGAN
100TH LEGISLATURE
REGULAR SESSION OF 2020

Introduced by Rep. Calley

ENROLLED HOUSE BILL No. 5141

AN ACT to amend 1954 PA 116, entitled “An act to reorganize, consolidate, and add to the election laws; to provide for election officials and prescribe their powers and duties; to prescribe the powers and duties of certain state departments, state agencies, and state and local officials and employees; to provide for the nomination and election of candidates for public office; to provide for the resignation, removal, and recall of certain public officers; to provide for the filling of vacancies in public office; to provide for and regulate primaries and elections; to provide for the purity of elections; to guard against the abuse of the elective franchise; to define violations of this act; to provide appropriations; to prescribe penalties and provide remedies; and to repeal certain acts and all other acts inconsistent with this act,” by amending sections 765 and 765a (MCL 168.765 and 168.765a), section 765 as amended by 2018 PA 603 and section 765a as added by 2018 PA 123, and by adding section 764d.

The People of the State of Michigan enact:

Sec. 764d. (1) Notwithstanding any provision of law to the contrary and subject to subsections (2) and (12), not less than 75 days before the day of an election, the clerk of a city or township may do any of the following:

(a) Enter into an agreement with the clerk of another city or township, or with the clerks of more than 1 city or township, located in the same county as that city or township to establish a combined absent voter counting board to count the absent voter ballots for each participating city or township.

(b) Enter into an agreement with the clerk of another city or township located in the same county that authorizes the clerk of 1 participating city or township to process and count the absent voter ballots for both participating entities by utilizing the absent voter counting board of that participating city or township.

(c) Enter into an agreement with the clerk of the county in which that city or township is located to establish an absent voter counting board to count the absent voter ballots for that city or township. If a city or township has boundaries located in more than 1 county, the clerk of the city or township shall only enter into an agreement under this subdivision with the county clerk of the county in which the majority of the electors of the city or township reside.

(2) Except as otherwise provided in this subsection, an absent voter counting board established under subsection (1) must not be used for the first time at a general November election. For the November 3, 2020 general November election, an absent voter counting board may be established under subsection (1) and used for the first time if either of the following occurs:

(a) An agreement is entered into under subsection (1)(a) or (b) and at least 1 of the clerks participating in the agreement has previously operated an absent voter counting board.

(b) An agreement is entered into under subsection (1)(c).

(3) An agreement entered into under subsection (1)(b) or (c) must comply with the established approval procedures of the governing body of each county, city, or township involved, or if established approval procedures do not exist, the agreement must be approved by resolution of the governing body of that county, city, or township.

- (4) The bureau of elections shall do both of the following:
- (a) Develop model language to be used by county, city, and township clerks for agreements entered into under subsection (1).
 - (b) Develop procedures to implement this section.
- (5) Except as otherwise provided in this subsection, if the clerk of a city or township enters into an agreement under subsection (1), the clerk of that city or township shall file the agreement with the county clerk of the county in which that city or township is located no later than 74 days before the election at which the agreement applies. For an election occurring before January 1, 2021, the clerk of a city or township who enters into an agreement under subsection (1) is not required to file the agreement with the county clerk if all of the following apply:
- (a) The electronic voting system used by the county can be programmed to accommodate an absent voter counting board formed under subsection (1).
 - (b) The county clerk agrees that the electronic voting system used by the county can be altered after completion of the ballot programming.
 - (c) The appropriate board of election commissioners publicly tests the electronic tabulating equipment as required under section 798.
- (6) If the clerk of a city or township enters into an agreement under subsection (1) and that agreement covers more than 1 election, the agreement must allow any participating clerk to terminate the agreement by giving 84 days' written notice to each of the other participating clerks. If the clerk terminating the agreement is a city or township clerk, the clerk must also file the notice of termination with the county clerk of the county in which that city or township is located no later than 2 business days after the date of termination. If the clerk terminating the agreement is a county clerk, the clerk must also file the notice of termination with the bureau of elections no later than 2 business days after the date of termination.
- (7) For a combined absent voter counting board established under subsection (1)(a), all of the following apply:
- (a) The board of election commissioners of each participating city or township must appoint at least 1 election inspector to that combined absent voter counting board not less than 21 days or more than 40 days before the election at which those election inspectors are to be used. Sections 673a and 674 apply to the appointment of election inspectors to a combined absent voter counting board.
 - (b) The agreement entered into under subsection (1)(a) must designate the place for the combined absent voter counting board to count the absent voter ballots. Section 662 applies to the designation and prescribing of the combined absent voter ballot counting place in which the combined absent voter counting board performs its duties.
 - (c) The agreement entered into under subsection (1)(a) must establish the time at which the election inspectors of the combined absent voter counting board report for duty.
- (8) For an absent voter counting board established under subsection (1)(c), all of the following apply:
- (a) The board of election commissioners of the city or township entering into an agreement under subsection (1)(c) shall appoint at least 1 election inspector to the absent voter counting board and the county board of election commissioners of that county shall appoint at least 1 election inspector to the absent voter counting board not less than 21 days or more than 40 days before the election at which those election inspectors are to be used. Sections 673a and 674 apply to the appointment of election inspectors to the absent voter counting board.
 - (b) In consultation with the parties to an agreement under subsection (1)(c), the county board of election commissioners shall designate the place for the absent voter counting board to count the absent voter ballots. Section 662 applies to the designation and prescribing of the absent voter ballot counting place in which the absent voter counting board performs its duties.
 - (c) In consultation with the parties to an agreement under subsection (1)(c), the county board of election commissioners shall establish the time at which the election inspectors of the absent voter counting board report for duty.
- (9) The election inspectors appointed to an absent voter counting board established under subsection (1) shall comply with section 733(2) regarding election challengers.
- (10) If the clerk of a city or township enters into an agreement under subsection (1), any absent voter ballot received by that city or township clerk after 4 p.m. on the day before an election must not be delivered to the absent voter counting board but must instead be delivered to the voting precinct of the elector on election day to be processed and counted.
- (11) The provisions of section 765a(8) to (13) apply to an absent voter counting board established under subsection (1).
- (12) For an election occurring before January 1, 2021, the clerk of a city or township may enter into an agreement under subsection (1) not less than 23 days before the day of the election if all of the following apply:
- (a) The electronic voting system used by the county can be programmed to accommodate an absent voter counting board formed under subsection (1).

(b) The county clerk agrees that the electronic voting system used by the county can be altered after completion of the ballot programming.

(c) The appropriate board of election commissioners publicly tests the electronic tabulating equipment as required under section 798.

(13) This section does not abrogate the duties or responsibilities of a city or township clerk for conducting elections under this act. In addition, this section does not provide any additional duties or responsibilities for the secretary of state for conducting elections under this act.

Sec. 765. (1) A clerk who receives an absent voter ballot return envelope containing the marked ballots of an absent voter shall not open that envelope before delivering the envelope to the board of election inspectors as provided in this section. The city or township clerk shall safely keep in his or her office until election day any absent voter ballot return envelopes received by the clerk before election day containing the marked ballots of an absent voter.

(2) Before the opening of the polls on election day or as soon after the opening of the polls as possible, the clerk shall deliver the absent voter ballot return envelopes to the chairperson or other member of the board of election inspectors in the absent voter's precinct, together with the signed absent voter ballot applications received by the clerk from any voters of that precinct and the clerk's list or record kept relative to those absent voters. However, if higher numbered ballots are used under section 717, the clerk shall retain the applications and lists in his or her office and shall keep the applications and lists open to public inspection at all reasonable hours. Absent voter ballots must not be tabulated before the opening of the polls on election day.

(3) The city or township clerk, or authorized designee of the clerk, shall call for and receive absent voter ballots from the post office at which the city or township clerk regularly receives mail addressed to the city or township clerk on election day. Any envelopes containing absent voter ballots that are received from the post office or from voters who voted by absentee ballot in person in the clerk's office on election day must be delivered to the board of election inspectors or, except as otherwise provided in section 764d, the absent voter counting boards to be tabulated.

(4) If a marked absent voter ballot is received by the clerk after the close of the polls, the clerk shall plainly mark the envelope with the time and date of receipt and shall file the envelope in his or her office.

(5) On or before 8 a.m. on election day, the clerk shall post in the clerk's office or otherwise make public the number of absent voter ballots the clerk distributed to absent voters and the number of absent voter ballot return envelopes containing the marked ballots of absent voters received by the clerk before election day and to be delivered to the board of election inspectors or the absent voter counting boards under this act. On or before 9 p.m. on election day, the clerk shall post in the clerk's office or otherwise make public the number of absent voter ballot return envelopes containing the marked ballots of absent voters received by the clerk on election day and delivered to the board of election inspectors, under subsection (3), along with the total number of absent voter ballot return envelopes containing the marked ballots of absent voters received by the clerk both before and on election day and delivered to the board of election inspectors or the absent voter counting boards under this act. As soon as possible after all precincts in the city or township are processed, the clerk shall post in the clerk's office or otherwise make public the number of absent voter ballot return envelopes containing the marked ballots of absent voters received by the election inspectors at the precincts on election day, along with the total number of absent voter ballot return envelopes containing the marked ballots of absent voters received in the city or township for that election. This subsection applies only to elections in which a federal or state office appears on the ballot.

Sec. 765a. (1) Subject to section 764d, if a city or township decides to use absent voter counting boards, the board of election commissioners of that city or township shall establish an absent voter counting board for each election day precinct in that city or township. The ballot form of an absent voter counting board must correspond to the ballot form of the election day precinct for which it is established. After the polls close on election day, the county, city, or township clerk responsible for producing the accumulation report of the election results submitted by the boards of precinct election inspectors shall format the accumulation report to clearly indicate all of the following:

(a) The election day precinct returns.

(b) The corresponding absent voter counting board returns.

(c) A total of each election day precinct return and each corresponding absent voter counting board return.

(2) Subject to section 764d, the board of election commissioners shall establish the absent voter counting boards. Subject to section 764d, the board of election commissioners shall appoint the election inspectors to those absent voter counting boards not less than 21 days or more than 40 days before the election at which they are to be used. Sections 673a and 674 apply to the appointment of election inspectors to absent voter counting boards

under this section. The board of election commissioners shall determine the number of ballots that may be expeditiously counted by an absent voter counting board in a reasonable period of time, taking into consideration the size and complexity of the ballot to be counted pursuant to the guidelines of the secretary of state. Combined ballots must be regarded as the number of ballots as there are sections to the ballot.

(3) If more than 1 absent voter counting board is to be used, the city or township clerk shall determine the number of electronic voting systems or the number of ballot boxes and the number of election inspectors to be used in each of the absent voter counting boards and to which absent voter counting board the absent voter ballots for each precinct are assigned for counting.

(4) In a city or township that uses absent voter counting boards under this section, absent voter ballots must be counted in the manner provided in this section and, except as otherwise provided in section 764d, absent voter ballots must not be delivered to the polling places. Subject to section 764d, the board of election commissioners shall provide a place for each absent voter counting board to count the absent voter ballots. Section 662 applies to the designation and prescribing of the absent voter counting place or places in which the absent voter counting board performs its duties under this section, except the location may be in a different jurisdiction if the county provides a tabulator for use at a central absent voter counting board location in that county. The places must be designated as absent voter counting places. Except as otherwise provided in this section, laws relating to paper ballot precincts, including laws relating to the appointment of election inspectors, apply to absent voter counting places. The provisions of this section relating to placing of absent voter ballots on electronic voting systems apply. More than 1 absent voter counting board may be located in 1 building.

(5) The clerk of a city or township that uses absent voter counting boards shall supply each absent voter counting board with supplies necessary to carry out its duties under this act. The supplies must be furnished to the city or township clerk in the same manner and by the same persons or agencies as for other precincts.

(6) Subject to section 764d, absent voter ballots received by the clerk before election day must be delivered to the absent voter counting board by the clerk or the clerk's authorized assistant at the time the election inspectors of the absent voter counting boards report for duty, which time must be established by the board of election commissioners. Except as otherwise provided in section 764d, absent voter ballots received by the clerk before the time set for the closing of the polls on election day must be delivered to the absent voter counting boards. Absent voter ballots must be delivered to the absent voter counting boards or combined absent voter counting boards in the sealed absent voter ballot return envelopes in which they were returned to the clerk. Written or stamped on each of the return envelopes must be the time and the date that the envelope was received by the clerk and a statement by the clerk that the signatures of the absent voters on the envelopes have been checked and found to agree with the signatures of the voters on the registration cards or the digitized signatures of voters contained in the qualified voter file as provided under section 766. If a signature on the registration card or a digitized signature contained in the qualified voter file and on the absent voter ballot return envelope does not agree as provided under section 766, if the absent voter failed to sign the envelope, or if the statement of the absent voter is not properly executed, the clerk shall mark the envelope "rejected" and the reason for the rejection and shall place his or her name under the notation. An envelope marked "rejected" must not be delivered to the absent voter counting board or combined absent voter counting board but must be preserved by the clerk until other ballots are destroyed in the manner provided in this act. The clerk shall also comply with section 765(5).

(7) This chapter does not prohibit an absent voter from voting in person within the voter's precinct at an election, notwithstanding that the voter may have applied for an absent voter ballot and the ballot may have been mailed or otherwise delivered to the voter. The voter, the election inspectors, and other election officials shall proceed in the manner prescribed in section 769. The clerk shall preserve the canceled ballots for 2 years.

(8) The absent voter counting boards and combined absent voter counting boards shall process the ballots and returns in as nearly as possible the same manner as ballots are processed in paper ballot precincts. The poll book may be combined with the absent voter list or record required by section 760, and the applications for absent voter ballots may be used as the poll list. The processing and tallying of absent voter ballots may commence at 7 a.m. on the day of the election.

(9) An election inspector, challenger, or any other person in attendance at an absent voter counting place or combined absent voter counting place at any time after the processing of ballots has begun shall take and sign the following oath that may be administered by the chairperson or a member of the absent voter counting board or combined absent voter counting board:

"I (name of person taking oath) do solemnly swear (or affirm) that I shall not communicate in any way any information relative to the processing or tallying of votes that may come to me while in this counting place until after the polls are closed."

(10) The oaths administered under subsection (9) must be placed in an envelope provided for the purpose and sealed with the red state seal. Following the election, the oaths must be delivered to the city or township clerk. Except as otherwise provided in subsection (12), a person in attendance at the absent voter counting place or

combined absent voter counting place shall not leave the counting place after the tallying has begun until the polls close. A person who causes the polls to be closed or who discloses an election result or in any manner characterizes how any ballot being counted has been voted in a voting precinct before the time the polls can be legally closed on election day is guilty of a felony.

(11) Voted absent voter ballots must be placed in an approved ballot container, and the ballot container must be sealed in the manner provided by this act for paper ballot precincts. The seal numbers must be recorded on the statement sheet and in the poll book.

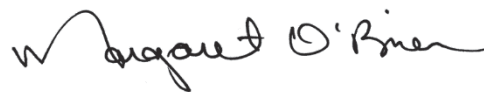
(12) Subject to this subsection, a local election official who has established an absent voter counting board or combined absent voter counting board, the deputy or employee of that local election official, an employee of the state bureau of elections, a county clerk, an employee of a county clerk, or a representative of a voting equipment company may enter and leave an absent voter counting board or combined absent voter counting board after the tally has begun but before the polls close. A person described in this subsection may enter an absent voter counting board or combined absent voter counting board only for the purpose of responding to an inquiry from an election inspector or a challenger or providing instructions on the operation of the counting board. Before entering an absent voter counting board or combined absent voter counting board, a person described in this subsection must take and sign the oath prescribed in subsection (9). The chairperson of the absent voter counting board or combined absent voter counting board shall record in the poll book the name of a person described in this subsection who enters the absent voter counting board or combined absent voter counting board. A person described in this subsection who enters an absent voter counting board or combined absent voter counting board and who discloses an election result or in any manner characterizes how any ballot being counted has been voted in a precinct before the time the polls can be legally closed on election day is guilty of a felony. As used in this subsection, "local election official" means a county, city, or township clerk.

(13) The secretary of state shall develop instructions consistent with this act for the conduct of absent voter counting boards or combined absent voter counting boards. The secretary of state shall distribute the instructions developed under this subsection to county, city, and township clerks 40 days or more before a general election in which absent voter counting boards or combined absent voter counting boards will be used. A county, city, or township clerk shall make the instructions developed under this subsection available to the public and shall distribute the instructions to each challenger in attendance at an absent voter counting board or combined absent voter counting board. The instructions developed under this subsection are binding upon the operation of an absent voter counting board or combined absent voter counting board used in an election conducted by a county, city, or township.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor



MEMORANDUM

City Clerk's Office

DATE: June 16, 2020

TO: Joseph A. Valentine, City Manager

FROM: Cheryl Arft, Acting City Clerk
Alexandria Bingham, City Clerk Designee

SUBJECT: Appointment of Election Inspectors

As the official Election Commission for the City of Birmingham, election law requires the City Commission to appoint at least three election inspectors and at least one election inspector from each major political party for each precinct. Under MCL 168.16 only the Republican and Democratic parties qualify as a "major party".

The deadline to appoint election inspectors for the August 4, 2020 State Primary Election is July 14, 2020. Attached is a list of inspectors that have been assigned to serve for the August 4, 2020 State Primary Election. To ensure that a sufficient number of Election Inspectors have been appointed, the Clerk's Office was designated by the City Commission to act in its behalf by resolution dated May 11, 2020 in order to appoint additional Election Inspectors as needed.

SUGGESTED RESOLUTION:

To approve the appointment of election inspectors, absentee voter counting board inspectors, receiving board inspectors and other election officials as recommended by the City Clerk for the August 4, 2020 State Primary Election pursuant to MCL 168.674(1) and to grant the City Clerk authority to make emergency appointments of qualified candidates should circumstances warrant to maintain adequate staffing in the various precincts, counting boards and receiving boards.

MOTION: Motion by Mayor Pro-Tem Longe, seconded by Commissioner Hoff:
To approve the Consent Agenda with the exception of Items A and J, and noting the recusal for Item I.

ROLL CALL VOTE: Ayes, Mayor Pro Tem Longe
 Commissioner Hoff
 Commissioner Baller
 Commissioner Host
 Commissioner Nickita
 Commissioner Sherman
 Mayor Boutros
 Nays, None

- B. Resolution approving the warrant list, including Automated Clearing House payments, dated April 22, 2020 in the amount of \$714,607.65.
- C. Resolution approving the warrant list, including Automated Clearing House payments, dated April 29, 2020 in the amount of \$231,390.32.
- D. Resolution approving the warrant list, including Automated Clearing House payments, dated May 6, 2020 in the amount of \$197,952.80.
- E. Resolution delegating the Birmingham City Clerk and her authorized assistants, those being the members of her staff, the following duties of the election commission for the August 4, 2020 and November 3, 2020 elections:
 - Preparing meeting materials for the election commission, including ballot proofs for approval and a listing of election inspectors for appointment;
 - Contracting for the preparation, printing and delivery of ballots;
 - Providing candidates and the Secretary of State with proof copies of ballots;
 - Providing election supplies and ballot containers; and
 - Preliminary logic and accuracy testing.
- F. Resolution designating Finance Director Mark Gerber, Assistant Finance Director Kim Wickenheiser, DPS Director Lauren Wood, Building Official Bruce Johnson, Assistant Building Official Mike Morad, Birmingham Museum Director Leslie Pielack, and Police Commander Scott Grewe as representatives for Election Commission members Mayor Pierre Boutros, Mayor Pro Tem Therese Longe, and Commissioners Clinton Baller, Rackeline Hoff, Brad Host, Mark Nickita and Stuart Sherman for the purpose of conducting the Public Accuracy Tests of the electronic tabulating equipment which will be used to count votes cast at the August 4, 2020 and November 3, 2020 elections.
- G. Resolution opting into Oakland County's Urban County Community Development Block Grant (CDBG) programs for the years 2021, 2022 and 2023. Furthermore, resolving to remain in Oakland County's Urban County Community Development programs, which shall be automatically renewed in successive three-year qualification periods of time, or until such time that it is in the best interest of the City to terminate the Cooperative Agreement.



MEMORANDUM

Clerk's Office

DATE: May 11, 2020

TO: Joseph A. Valentine, City Manager

FROM: Cheryl Arft, Acting City Clerk
Alexandria Bingham, Clerk Designee

SUBJECT: Election Commission Delegation of Duties for August 4, 2020 and November 3, 2020 Elections to City Clerk and Authorized Assistants

INTRODUCTION:

The City Commission, per the Birmingham City Charter, functions as the City's Election Commission. Pursuant to State law, the Election Commission is responsible for conducting certain election duties. The law allows the Election Commission to delegate certain of those duties to the City Clerk and her authorized assistants.

BACKGROUND:

The Birmingham City Charter names the City Commission as the Election Commission:

Chapter IV. – Registrations, Nominations and Elections

Section 22. - [Election commission.]

The city commission shall constitute the election commission for the city and shall perform all of the duties required of the city election commissions by the general laws of the state. It shall appoint the inspectors of election and fix their compensation.

The Election Officials' Manual of the Michigan Bureau of Elections (BOE) cites the duties of a city election commission and draws distinctions between those which must be conducted by the election commission and those which may be delegated to the City Clerk and her authorized assistants. The BOE recommends that the election commission document the delegation of its duties.

LEGAL REVIEW:

n/a

FISCAL IMPACT:

n/a

SUMMARY

It is recommended that the Birmingham City Commission, acting as the Election Commission, delegate to the City Clerk and her authorized assistants certain election duties as allowed by the Michigan BOE and State law.

ATTACHMENTS:

Excerpt from the Election Officials' Manual of the Michigan Bureau of Elections listing duties that may be delegated.

SUGGESTED RESOLUTION:

To delegate to the Birmingham City Clerk and her authorized assistants, those being the members of her staff, the following duties of the election commission for the August 4, 2020 and November 3, 2020 elections:

- Preparing meeting materials for the election commission, including ballot proofs for approval and a listing of election inspectors for appointment;
- Contracting for the preparation, printing and delivery of ballots;
- Providing candidates and the Secretary of State with proof copies of ballots;
- Providing election supplies and ballot containers; and
- Preliminary logic and accuracy testing.

CITY AND TOWNSHIP ELECTION COMMISSIONS:

City	Township	Charter Township
<ul style="list-style-type: none">• Clerk• Attorney• Assessor	<ul style="list-style-type: none">• Clerk• Supervisor• Treasurer	<ul style="list-style-type: none">• Clerk• Two Trustees Appointed by the Township Board

Note: The chart above outlines the composition of the local election commissions based on your jurisdiction's form of government. The only exception to the composition of the local election commission must be provided by a city charter.

City and Township Election Commission members are responsible for the following:

- Establishing precincts, including temporary precinct consolidations for non-State/ Federal elections;
- Establishing Absent Voter Counting Boards (AVCBs);
- Assessing voting equipment needs;
- Performing logic and accuracy testing for voting equipment. **NOTE:** Even if the county performs the programming for the local jurisdictions, it is still the responsibility of the local election commission to conduct pre-election logic and accuracy testing for their voting equipment prior to each election. Preliminary testing may be delegated to the local clerk; however, public accuracy testing must be conducted by the election commission or each members' designated representative.
- Authorizing the printing and provision of ballots for use in city, township, village and certain school district elections;
- Providing election supplies (including forms and ballot containers);
- Appointing precinct inspectors prior to each election, including AVCB members, Receiving Board members, precinct chairpersons and alternates; note that certified election inspectors must be appointed at least 21 days prior to the election and no more than 40 days prior to each election;
- Notifying major political parties of the appointment of election inspectors in federal and state elections; and
- Carrying out other election related duties for their respective jurisdictions.

Election Commission Responsibilities that should be handled via an Open Meeting by Election

Commission Members:

- Approving of ballots
- Appointing precinct inspectors
- Public Accuracy Test
- Precinct Changes / Consolidations
- Adoption of resolution outlining delegated duties

Election Commission Duties that may be delegated to the Local Clerk or authorized assistant

(note: Delegated duties should be documented via resolution):

- Preparing meeting materials for the Election Commission (ballots proof for approval, list of election inspectors for appointment, etc.)
- Preparing, printing and delivering ballots
- Providing candidates and the Secretary of State with proof copies of ballots
- Providing notice to voters in the case of precinct changes/consolidations
- Providing election supplies and ballot containers
- Preliminary logic and accuracy testing
- Notifying major political parties of certified precinct Inspector appointments (federal and state elections only)

SCHOOL ELECTION COORDINATING COMMITTEE: Every school district has a School Election Coordinating Committee responsible for determining the details of how special school elections will be administered. The School Election Coordinating Committee is composed of a school election coordinator, the secretary of the school board and the clerks of all jurisdictions covered by the school district. For a school district wholly contained within a single jurisdiction, that clerk is the school election coordinator. In a school district that crosses jurisdiction lines the county clerk is the coordinator.

TYPES OF ELECTIONS

There are several types of elections conducted in Michigan. The following is an overview of the various types.

CHAPTER 9 ELECTION BALLOTS

TABLE CONTENTS

Ballot Proofing and Michigan Ballot Production Standards	1
Candidate Name Rotations	3
Office Order	4
Partisan Ballot	5
Nonpartisan Ballot	6

BALLOT PROOFING AND MICHIGAN BALLOT PRODUCTION STANDARDS: All ballots

must be prepared in conformance with Michigan's Ballots Production Standards. Adherence to the standards is compulsory for all election officials and vendors. A copy of the standards can be found on the Bureau of Elections website at www.michigan.gov/elections; under "Information for Election Administrators".

Election ballots must always be carefully proofed to ensure that 1) they conform to all required legal and technical standards and 2) they are free of errors and omissions. The importance of ballot proofing cannot be over emphasized!

County Election Commission's Responsibilities: Ballots prepared for use at federal, state and countywide elections and certain school district elections are printed by the authority of the County Election Commission.

Local Election Commission's Responsibilities: Ballots prepared for use at city, township, village and certain school district elections are printed by the authority of the City, Township or County Election Commission.

Before the ballots are printed, the printer returns copies of the ballots to the appropriate Election Commission. The Commission is responsible for checking the various proof ballots to make sure that they are free of errors and omissions. A comprehensive check should include a careful review of the following:

- Ensure all office, candidates, and proposals are included
- Verify proper splits within a precinct
- Ballot heading including: 1) OFFICIAL BALLOT 2) election type 3) election date 4) county name, state 5) jurisdiction name and 6) precinct number
- Section headers – e.g.: PARTISAN SECTION, NONPARTISAN SECTION and PROPOSAL SECTION
- Office and proposal divisions – e.g.: STATE, COUNTY, CITY, TOWNSHIP
- Office titles – e.g.: CLERK, TREASURER, TRUSTEE
- Number to be elected – e.g.: Vote for not more than 1
- Placement of candidate names; form and spelling of candidate names; candidate name rotations; placement of special ballot designations
- Presentation and wording of ballot proposals

Proofing ballots is a tedious and time-consuming task – but the problems and embarrassment a complete proofing job can save on Election Day makes the task well worth the effort. If the Commission delegates ballot proofing to members of the clerk's staff, the task should be assigned to those in the office with the best eye for detail.

Responsibilities of Candidates and Department of State: Immediately after the proof ballots are delivered to the Election Commission, they forward the proofs to the Department of State's Bureau of Elections in Lansing for approval. The Commission also sends each candidate a proof ballot which lists the candidate's name.

- After sending proof ballots prepared for a state election, the county clerk must sign an affidavit that attests that proof ballots were mailed as required. The affidavit must list the candidates to whom the ballots were mailed, the addresses to which the ballots were mailed, and the dates on which the ballots were mailed.
- The Department of State's Bureau of Elections inspects the form of the proof ballots received from each Election Commission. (The Bureau of Elections does *not* check candidate name spellings or that all required offices are on the ballot.) If the ballots are in the proper form, the Bureau of Elections grants its approval of the ballots; if the ballots are not in the proper form, the Bureau of Elections

1	LAST NAME	FIRST NAME	PARTY
2	Barnes	Jean	Republican
3	Barnes	Webb	Republican
4	Boyce	Rex	Student
5	Chandler	Alicia	Democrat
6	Cin	Pamela	Republican
7	Collins	Barb	Democrat
8	Connery	Thomas	Republican
9	Corcoran	Gail	Republican
10	Crowe	Michael	Democrat
11	Cwikiel-Glavin	Annie	Democrat
12	Davison	Mark A.	Republican
13	Davison	Mary Ann	Republican
14	Denham	Jordyn	Student
15	Doyle	Judy	Democrat
16	Franco	Lucetta	Democrat
17	Franco	Kathleen	Democrat
18	Friedman	Alison	Democrat
19	Gaines	Kathryn (Katy)	Republican
20	George	Kristin	Republican
21	Gonzalez	Maria	Democrat
22	Goodwin	Allison	Democrat
23	Gorge	Matthew	Democrat
24	Hansen	Kristi	Democrat
25	Hargrave	Margaret	Democrat
26	Haugen	Daniel	Republican
27	Hoff	Rackeline	Democrat
28	Hoff	Lindsey	Democrat
29	Hueni	Jennifer P.	Democrat
30	Johnson	William	Republican
31	Keefer	Judith	Democrat
32	Keener	Laura	Republican
33	Kline	Laura	Republican
34	Klobucar	Teresa	Democrat
35	Kubitsky	Mary Ann	Democrat
36	Larson	Ann	Republican
37	Lindstrom	Alexander	Natural Law
38	Lucik	Sharon	Democrat
39	Lundal	Susan	Democrat
40	Martin	Taneka M.	Democrat
41	Martis	Pamela	Republican
42	McElroy	Debra	Republican
43	McGillivray	Michael J.	Green
44	McKendrick	Maria	Working Class
45	Meredith	Marie	Republican

< William Johnson is the qualified election inspector being sent to Oakland County per the Election Services Agreement.

46	Millman	Jodi	Republican
47	Mio	Leslie	Democrat
48	Moyer	Martha	Democrat
49	O'Connor	Susan	Democrat
50	O'Connor	Thomas	Democrat
51	Otis	Charles F.	Democrat
52	Pieprzyk	Stanley	Republican
53	Pinson	Janice	Republican
54	Rafferty	Kathleen	Democrat
55	Reese	Oberia	Democrat
56	Rogers	Curtis	Student
57	Rogowski	Anthony	Republican
58	Romanelli	Constance	Democrat
59	Rosenberg	Harvey	Republican
60	Roush	Jennifer	Republican
61	Roush-Logue	Martha	Republican
62	Ruseckas	Peter V.	Democrat
63	Schecter	Nathan	student
64	Schreiner	Laura	Republican
65	Shapiro	Shira	Democrat
66	Shaw	Cynthia	Democrat
67	Snyder	Skye	Student
68	Stoessel	Robert	Republican
69	Stoessel	Mary Lee	Republican
70	Tate	Taneka	Democrat
71	Trimble	Sofia	Democrat
72	Von Storch	Gisela	Republican
73	White	Heidi	Democrat
74	Wilson	Scott	Republican
75	Woodworth	Cheryl	Republican
76	Wu Wilson	Shirley	UST
77	Zane	Heather	Democrat

DATE: July 9, 2020

TO: Joseph A. Valentine, City Manager

FROM: Austin W. Fletcher, Assistant City Engineer

SUBJECT: Emergency Lead Water Service Replacement – Maple Road

INTRODUCTION:

During the construction of the Maple Road project, two (2) lead water services were discovered 361 E. Maple and 378 E. Maple. Per the State mandate, the City must replace all lead water services at the City's expense and no partial replacements are allowed. In order to keep the Maple Road project on schedule, emergency replacement was necessary. The Engineering Department reached out to D'Angelo Brothers for assistance. They were able to mobilize in short order and perform the work in the timeframe allotted thus allowing the Maple Road project to remain on schedule. It should be noted that even though this was an emergency situation, D'Angelo Brothers pricing was in line with the costs for the other lead service replacements performed along Maple Road earlier this year.

BACKGROUND:

N/A

LEGAL REVIEW:

N/A

FISCAL IMPACT:

The cost to replace the two (2) lead water services is \$12,438.00, to be charged to the Water Fund Account #591-537.004-981.0100.

PUBLIC COMMUNICATIONS:

The two (2) effected property owners were notified and signed temporary access agreements were obtained from the property owners to allow the work to be performed.

SUMMARY

The Engineering Department requests City Commission confirmation of the City Manager's authorization to proceed with the emergency lead water service replacements on Maple Road.

ATTACHMENTS:

- D'Angelo Brothers, Inc. Invoice, dated June 21, 2020 (one page)

SUGGESTED RESOLUTION:

To confirm the City Manager's authorization for the emergency expenditure regarding the replacement of two (2) the lead water services within the Maple Road project area in the amount not to exceed \$12,438.00 to be paid to D'Angelo Brothers Inc. from the Water Fund account #591-537.004-981.0100, pursuant to Sec. 2-286 of the City Code.



PO Box 531330
Livonia, MI 48153

INVOICE 6650-Birmingham

06/21/20

TO: City of Birmingham
Austin Fletcher

Downtown Lead Water Service

DESCRIPTION OF WORK COMPLETED 6/18	Qty.	Unit	Hrs.	Rate	Total Per Line
378 E. Maple					
1" K Copper Private Water Service	1	EA	-	\$ 2,680.00	\$ 2,680.00
Private Service Line Connection	1	EA	-	\$ 485.00	\$ 485.00
Building Flush	1	EA	-	\$ 225.00	\$ 225.00
Intial Introduction Meeting & Work Plan	1	EA	-	\$ 160.00	\$ 160.00
Total					\$ 3,550.00
361 E. Maple					
Sawcut Wood Floor					
Haul off Debris					
Sawcut Concrete Floor (to be assumed 6" or less)					
Place protection on flooring & walls					
Excavate on outside of building. Install 2" Copper from curb stop to 18" inside of building. Transfer from 2" Copper - Lead Service Line					
Fill excavation with onsite spoils					
Pour thin 1"-2" Concrete Floor back					
Total					\$ 8,888.00
Overall Total					\$ 12,438.00

Thank you; Vince D'Angelo (248) 515-1942

DATE: July 9, 2020

TO: Joseph A. Valentine, City Manager

FROM: Austin W. Fletcher, Assistant City Engineer

SUBJECT: Mast Arm Installation Contract – Maple Road

INTRODUCTION:

The Maple Road contract with MDOT included the 6-bolt mast arms, which do not match the surrounding mast arms in the downtown. This contract will allow the City to install the 4-bolt mast arms outside of the MDOT contract.

BACKGROUND:

As you may be aware, the original contract with MDOT included 6-bolt mast arms (MDOT's Standard). However, the existing mast arms within the downtown area are 4-bolt (considerably smaller). At the time of bid and award, the City requested that MDOT allow us to switch to 4-bolt mast arms to match the existing mast arms within downtown and were previously ordered by the City due to the long lead time. After numerous discussions with MDOT, the City was successful in allowing the 4-bolt mast arms to be used for the Maple Road project provided that they are not included in the MDOT project. Therefore, the City would have to contract this portion of the work out separately.

The Engineering Department reached out to Angelo Iafrate and Rauhorn (the subcontractor that was to perform the work under the MDOT contract) for a possible solution. All parties reached an agreement to have Rauhorn perform the work in conjunction with the Maple Road project and at the same costs as the original MDOT contract. Also, that Angelo Iafrate and the City would agree to a separate contract to cover the costs for this work, therefore keeping it out of the MDOT contract. This will allow the project to remain on schedule and add no additional costs to the project, as the cost are the same under both scenarios (MDOT or separate).

LEGAL REVIEW:

The City's Attorney's office wrote the contract included in this report. Angelo Iafrate Construction Company has signed the contract without any request for changes.

FISCAL IMPACT:

There is no fiscal impact as the associated costs for this contract was already accounted for in the Maple Road Contract. The Maple Road contract will be reduced by \$81,072.00, the same amount as this contract.

PUBLIC COMMUNICATIONS:

N/A

SUMMARY

It is recommended that the contract to Angelo Iafrate Construction Company be approved for the installation of the Mast Arms for the Maple Road project.

ATTACHMENTS:

- Contract between the City of Birmingham and Angelo Iafrate Construction Co. – (twenty-nine pages)

SUGGESTED RESOLUTION:

To approve the contract with Angelo Iafrate Construction Company for the installation of the Mast Arms for the Maple Road project in the amount of \$81,072.00, to be charged to the Major Street Fund (Traffic Control) 202-303.001-977.0100.

**CITY OF BIRMINGHAM
ANGELO IAFRATE CONSTRUCTION COMPANY
CONSTRUCTION CONTRACT**

THIS AGREEMENT, made and entered into this ____ day of _____, 2020 by and between the **CITY OF BIRMINGHAM**, a Municipal Corporation located at 151 Martin Street, Birmingham, Michigan, hereinafter referred to as the CITY, and **ANGELO IAFRATE CONSTRUCTION COMPANY**, located at 26300 Sherwood, Warren, MI, 48091, hereinafter referred to as the CONTRACTOR.

WITNESSETH:

WHEREAS, the CITY would like to engage the CONTRACTOR to perform construction services; and,

WHEREAS, the CONTRACTOR is willing to render such services desired by the CITY for the considerations hereinafter expressed.

NOW, THEREFORE, for and in consideration of the mutual undertakings of the parties hereto, all as hereinafter set forth, it is agreed by and between the parties as follows:

1. The CONTRACTOR shall perform services for the CITY, including, but not limited to, installations of mast arm poles in conjunction with MDOT Project #63000-132771 as described in Exhibit A. All the remaining terms and conditions of the MDOT Contract 63000-132771, which is attached hereto as Exhibit B shall apply to the CONTRACTOR and the CITY in all respects, except as modified or supplemented herein.

The CONTRACTOR will provide additional services only when requested to do so by the City Engineer.

2. The CONTRACTOR shall perform all work under the direction of the City Engineer or a designated representative.

3. The CITY agrees to pay the CONTRACTOR Eighty-one Thousand Seventy-two and 00/100 Dollars (\$81,072.00) for the construction services described herein within thirty (30) days of the work being completed. The amount paid shall be deducted from the MDOT Contract #63000-132771.

4. If the CONTRACTOR fails to perform its obligations hereunder, the CITY may take any and all remedial actions permitted by law.

5. The CONTRACTOR shall hire personnel of good character and fitness to perform the duties under this Agreement.

6. The CONTRACTOR agrees that neither it nor its subcontractors will discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight or marital status. The CONTRACTOR shall inform the CITY of all claims or suits asserted against it by the CONTRACTOR'S employees who work pursuant to this Agreement. The CONTRACTOR shall provide the CITY with periodic status reports concerning all such claims or suits, at intervals established by the CITY.

7. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled in accordance with the MDOT specifications for Project 3000-132771.

8. To the fullest extent permitted by law, the CONTRACTOR and entity or person for whom the CONTRACTOR is legally liable, agrees to be responsible for any liability, defend, pay on behalf of, and hold harmless the City of Birmingham, its elected and appointed officials, all employees and volunteers and others working on their behalf against any and all claims, demands, suits, or loss, including all costs and reasonable attorney fees connected therewith, for any damages which may be asserted, claimed or recovered against or from the CITY, its elected and appointed officials, employees, volunteers or others working on their behalf, by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arise out the acts, errors or omissions of the CONTRACTOR including its employees and agents, in the performance of this Agreement. Such responsibility shall not be construed as liability for damage caused by or resulting from the sole act or omission of its elected or appointed officials, employees, volunteers or others working on behalf of the CITY.

The CITY agrees that the contractors shall be solely responsible for job site safety and all contractors shall be required in the CITY'S contract with such contractors to indemnify the CONTRACTOR for any liability incurred by the CONTRACTOR as a result of the contractor's negligent acts or omissions. However, such indemnification shall not extend to liability resulting from the negligence of the CONTRACTOR.

9. The CONTRACTOR shall not commence work under this contract until it has, at its sole expense, obtained the insurance required under this paragraph. All certificates of insurance shall be with insurance carriers licensed and admitted to do business in the State of Michigan. All coverages shall be with insurance carriers acceptable to the City of Birmingham. The CONTRACTOR shall maintain during the life of this agreement the types of insurance coverage and minimum limits as set forth in MDOT Contract 63000-132771, attached herein and incorporated by reference as Exhibit B, together with the following provisions:

- A. Cancellation Notice: Workers' Compensation Insurance, Commercial General Liability Insurance and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following: "Thirty (30) days Advance Written Notice of Cancellation or Non-Renewal shall be sent to: Director of Finance, City of Birmingham, P.O. Box 3001, 151 Martin Street, Birmingham, Michigan 48012.

B. Proof of Insurance Coverage: CONTRACTOR shall provide the CITY at the time the Agreement is returned for execution, Certificates of Insurance and/or policies, acceptable to the CITY, as listed below.

- 1) Two (2) copies of Certificate of Insurance for Workers' Compensation Insurance;
- 2) Two (2) copies of Certificate of Insurance for Commercial General Liability Insurance;
- 3) Two (2) copies of Certificate of Insurance for Vehicle Liability Insurance;
- 4) Two (2) copies of Certificate of Insurance for Professional Liability Insurance.

C. Coverage Expiration: If any of the above coverages expire during the term of this Agreement, CONTRACTOR shall deliver renewal certificates and/or policies to the CITY at least (10) days prior to the expiration date.

10. If, after the effective date of this Agreement, any official of the CITY, or spouse, child, parent or in-law of such official or employee shall become directly or indirectly interested in this Agreement or the affairs of CONTRACTOR, the CITY shall have the right to terminate this Agreement without further liability to CONTRACTOR if the disqualification has not been removed within thirty (30) days after the CITY has given CONTRACTOR notice of the disqualifying interest. Ownership of less than one percent (1%) of the stock or other equity interest in a corporation or partnership shall not be a disqualifying interest. Employment shall be a disqualifying interest.

11. The CONTRACTOR and the CITY agree that the CONTRACTOR is acting as an independent contractor with respect to the CONTRACTOR'S role in providing services to the CITY pursuant to this Agreement, and as such, shall be liable for its own actions and neither the CONTRACTOR nor its employees shall be construed as employees of the CITY. Nothing contained in this Agreement shall be construed to imply a joint venture or partnership and neither party, by virtue of this Agreement, shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party, except as specifically outlined herein. Neither the CITY nor the CONTRACTOR shall be considered or construed to be the agent of the other, nor shall either have the right to bind the other in any manner whatsoever, except as specifically provided in this Agreement, and this Agreement shall not be construed as a contract of agency. The CONTRACTOR shall not be considered entitled or eligible to participate in any benefits or privileges given or extended by the CITY, or be deemed an employee of the CITY for purposes of federal or state withholding taxes, FICA taxes, unemployment, workers' compensation or any other employer contributions on behalf of the CITY.

12. The CONTRACTOR agrees that all permits and approvals as may be required from the CITY in accordance with the provisions of applicable laws and ordinances of the CITY, State of Michigan or federal agencies shall be provided as set forth in MDOT Contract 63000-132771.

13. This Agreement shall be binding upon and apply and inure to the benefit of the parties hereto and their respective successors or assigns. The covenants, conditions, and the agreements herein contained are hereby declared binding on the CITY and CONTRACTOR. It is further agreed that there shall be no change, modification, or alteration hereof, except in writing, signed by both of the parties hereto. Neither party shall assign any of the rights under this Agreement without prior approval, in writing, of the other. Any attempt at assignment without prior written consent shall be void and of no effect.

14. The CITY shall be the owner of all the drawings, specifications or other documents prepared by the CONTRACTOR. Any modifications made to the drawings by the CITY shall be clearly marked as such on the modified document. The CITY may not use these documents for any purpose other than pursuant to the activities provided for in this Agreement.

15. Notices shall be given to:

- a. City of Birmingham
151 Martin Street
P.O. Box 3001
Birmingham, MI 48012-3001
Attention: Ms. Cheryl Arft

With copies to:

Timothy J. Currier, City Attorney
Beier Howlett, P.C.
3001 W. Big Beaver Rd., Ste. #200
Troy, MI 48084

- b. Angelo Iafrate Construction Company
26300 Sherwood
Warren, MI 48091
Attention: Mike Definis, Vice President

17. The CONTRACTOR acknowledges that in performing services pursuant to this Agreement, certain confidential and/or proprietary information (including, but not limited to, internal organization, methodology, personnel and financial information, etc.) may become involved. The CONTRACTOR recognizes that unauthorized exposure of such confidential or proprietary information could irreparably damage the CITY. Therefore, the CONTRACTOR agrees to use reasonable care to safeguard the confidential and proprietary information and to prevent the unauthorized use or disclosure thereof. The CONTRACTOR shall inform its employees of the confidential or proprietary nature of such information and shall limit access thereto to employees rendering services pursuant to this Agreement. The CONTRACTOR further

agrees to use such confidential or proprietary information only for the purpose of performing services pursuant to this Agreement.

18. This Agreement shall be governed by and performed, interpreted and enforced in accordance with the laws of the State of Michigan. The CONTRACTOR agrees to perform all services provided for in this Agreement in accordance with and in full compliance with all local, state and federal laws and regulations.

19. If any provision of this Agreement is declared invalid, illegal or unenforceable, such provision shall be severed from this Agreement and all other provisions shall remain in full force and effect.

FAIR PROCUREMENT OPPORTUNITY: Procurement for the City of Birmingham will be handled in a manner providing fair opportunity for all businesses. This will be accomplished without abrogation or sacrifice of quality and as determined to be in the best interest of the City of Birmingham.


IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

CITY OF BIRMINGHAM


By: _____
Pierre Boutros, Mayor

By: _____
Alexandria D. Bingham, Clerk

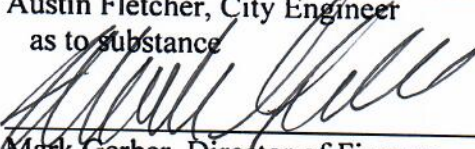
ANGELO IAFRATE CONSTRUCTION
COMPANY

By:  _____
Mike Definis, Vice President


APPROVAL (Sec 2-289 City Code)




Austin Fletcher, City Engineer
as to substance



Mark Gerber, Director of Finance
as to financial obligation



Joseph A. Valentine, City Manager
as to substance



Timothy J. Currier, City Attorney
as to form

EXHIBIT A

May 15, 2020

City of Birmingham
151 Martin Street
Birmingham, MI 48012

Attn: Austin Fletcher

63000-132771
Maple Road - Birmingham Direct Items
Oakland County

Mr. Fletcher,
Per the direction of the Michigan Department of Transportation, and your subsequent request, Rauhorn Electric, Inc., is pleased to provide you with the quote below.



Sort Code	Pay Item	Description	Quantity	Unit	Price	Extension
790.00	8100550	36" RCOC Mast Arm Pole Fdn, 4 Bolt	120.000	L.F.	425.00	51,000.00
850.00	8107050	_ Mast Arm Pole, Cat III, City Furn	8.000	EACH	644.00	5,152.00
860.00	8107050 {2}	_ Mast Arm, 20 foot, Cat III, City Furn	1.000	EACH	798.00	798.00
870.00	8107050 {3}	_ Mast Arm, 25 Foot, Cat III, City Furn	1.000	EACH	798.00	798.00
880.00	8107050 {4}	_ Mast Arm, 30 foot, Cat III, City Furn	4.000	EACH	798.00	3,192.00
890.00	8107050 {5}	_ Mast Arm, 30 Foot, Cat III, City Furn	1.000	EACH	798.00	798.00
900.00	8107050 {6}	_ Mast Arm, 35 foot, Cat III, City Furn	1.000	EACH	742.00	742.00
910.00	8107050 {7}	_ Mast Arm, 35 Foot, Cat III, City Furn	2.000	EACH	742.00	1,484.00
920.00	8107050 {8}	_ Mast Arm, 40 foot, Cat III, City Furn	1.000	EACH	872.00	872.00
930.00	8107050 {9}	_ Mast Arm, 45 foot, Cat III, City Furn	1.000	EACH	912.00	912.00
940.00	8107050 {10}	_ Mast Arm, 50 foot, Cat III, City Furn	1.000	EACH	1,064.00	1,064.00
2760.00	8200480	36" Casing	92.000	L.F.	155.00	14,260.00
Quote Total:						81,072.00

Clarifications:

- Work is to be performed in conjunction to the referenced MDOT project # above.
- All permits for this work are covered under the referenced MDOT project.
- Foundations and Casings will be 36" OD per RCOC standards to match City furnished mast arms.
- Proposal **does not include sales and/or use tax** on owner furnished equipment.

If you have any questions or require any additional information, please do not hesitate to contact Todd Spina at (586) 405-6532 or via email at tspina@rauhornelec.com

EXHIBIT B

INSURANCE REQUIREMENTS

Contract ID	Letting Date	Item Number	Contract Amount
63000-132771	02/07/2020	2002 039	\$6,581,732.82

Additional Insured: Michigan Department of Transportation, city of Birmingham, Oakland County and the Road Commission for Oakland County

For insurance approval, the submitted insurance must meet the limits specified in Section 107.10 of the 2012 Standards and Specifications for Construction (Spec Book). The purpose of this document is to provide summary information, not to replace what is shown in the Spec Book or other contract documents.

All submittals must indicate the Contract ID in the Description of Operations when using the ACORD form.

* An Electronic Copy of CERTIFICATE OF LIABILITY INSURANCE (COI) which exhibits the following:

- Commercial General Liability limits of \$1,000,000 Each Occurrence and \$2,000,000 General Aggregate*
- Automobile Liability, Any Auto, \$2,000,000 Combined Single Limit
- Worker's Compensation - \$500,000 minimum Employers Liability limit*
- Endorsement of ISO Form CG 2010 Additional Insured (or equivalent) must be exhibited
- Exhibit the contract ID number from above on the Certificate of Insurance.
- In addition to the above insurance requirements, the following agencies must be added as additional insureds:
Michigan Department of Transportation, city of Birmingham, Oakland County and the Road Commission for Oakland County

*Contractor may increase their limits with an umbrella policy to meet the requirements of subsection 107.10.C1 and 107.10.C2 by:

ONE OF THE FOLLOWING:

Either:

An Electronic Copy of an OWNERS PROTECTIVE POLICY (OWNERS AND CONTRACTORS PROTECTIVE - OCP) exhibiting the proper limits and language to meet the terms outlined in 107.10

Owners Protective Policy (OCP) must exhibit the following:

- Limits of Bodily Injury and Property Damage Liability with a minimum \$1,000,000 Each Occurrence/\$1,000,000 Aggregate
- Named Insured on the OWNERS PROTECTIVE POLICY must exhibit: **Michigan Department of Transportation, and as designated in proposal**

Or:

An Electronic Certificate of Insurance exhibiting the following:

- . Umbrella Liability - \$2,000,000 minimum
- . Per project aggregate endorsement
- . A certificate must exhibit on the general liability as an additional insured: Michigan Department of Transportation and: **city of Birmingham, Oakland County and the Road Commission for Oakland County**

Please submit one copy to:

MDOT-awards@michigan.gov



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF TRANSPORTATION
LANSING

PAUL C. AJEGBA
DIRECTOR

March 27, 2020

Angelo lafrate Construction Company
26300 Sherwood Ave
Warren, MI 48091-4168

Re: Letting Date: **02/07/2020**

Item: **2002 039**

Contract ID: **63000-132771**

Enclosed are the proposed contract and bonds covering work to be performed on the Michigan Department of Transportation project for which you are the selected bidder. Unless this is an expedited contract, you are requested to sign and return two copies to the Contract Services Division within twenty- eight (28), days in accordance with Subsection 102.15 of the 2012 STANDARD SPECIFICATIONS FOR CONSTRUCTION. Failure to do so may result in the loss of the project and your proposal guarantee. Should this contract be awarded to you, a copy will be returned to you after being signed by the Department.

The supplying of these contract and bond forms does not constitute an award of the contract, and you are hereby advised NOT TO START WORK until officially authorized to do so by letter from the Contract Services Division. A contract is not awarded until it has been signed by all parties, including the Michigan Department of Transportation. Any monies expended in preparation for this project prior to the actual award of this project will be at the risk of your firm and will create no liabilities for the Michigan Department of Transportation, the State Transportation Commission, or the State of Michigan in the event that your firm is not awarded the contract for this project.

The contract will not be awarded until all applicable contract documents have been received and approved and the contract has been signed by the Department. Be sure your bonding agent puts the "bond number" on all required bonds and attaches a current power of attorney form. Failure to do so may result in a delay in awarding the contract.

To check the award status of contracts on the Construction Contract Inquiry website, go to <http://mdotcf.state.mi.us/public/trnsport/>

MICHIGAN DEPARTMENT OF TRANSPORTATION

In accordance with Act 17 of 1925 and Act 286 of 1964

CONTRACT

CONTRACT ID: **63000-132771**

ITEM NO: **2002 039**

0.47 mi of road reconstruction, concrete pavement, curb, gutter and sidewalk, traffic signal upgrades and pavement markings on West Maple Road from Southfield Road to Woodward Avenue and Southfield Road at Maple Road in the city of Birmingham, Oakland County. This is a Local Agency project.

STU 63000-132771A

Federal Project No.: **20A0241**

Federal Item No.: **N/A**

HSIP 63000-203421A

Federal Project No.: **20A0201**

Federal Item No.: **N/A**

MICHIGAN DEPARTMENT OF TRANSPORTATION

CONTRACT ID: 63000-132771

Effective on the date signed below by the Director of the Michigan Department of Transportation (MDOT) and

Angelo lafrate Construction Company, a Michigan Corporation

26300 Sherwood Ave , Warren, MI 48091-4168

(Contractor) agrees as follows:

The Contractor agrees to provide the labor and supervision machinery, tools, apparatus and other means of construction; do all the work; furnish all the materials except as herein otherwise specified; and to take any steps as may be needed to complete, in strict accordance with the plans, applicable MDOT standard specification for construction and proposal therefore, and to the satisfaction of MDOT, the work in this contract, in consideration for the payments to be made to the Contractor under this contract. This document, including attached Form FHWA-1273, the plans, specifications and proposal and all addenda, are part of this contract. MDOT agrees to make payments to the Contractor in accordance with the terms of this contract.

MDOT agrees to pay the Contractor, in accordance with this contract, for such extra work as may be ordered by MDOT or its authorized representative, prices for which are not included in the bid prices, on the basis agreed upon before such extra work is begun. Authorization and payment for unforeseen contingencies shall be as provided by the Resolution of the State Administrative Board relating to Department of Transportation construction and maintenance contracts in effect when bids were received for this project and that is attached to this contract.

It is further agreed that time is of the essence of this contract, and that the work shall be so conducted and supervised by the Contractor as to ensure its completion in accordance with the terms of this contract and the approved progress schedule. The Contractor's approved progress schedule governs the work to be performed by the Contractor, but it is not binding on MDOT. The Contractor's progress schedule does not alter or increase the obligations of MDOT as they exist under the other provisions of this contract.

The Contractor agrees that MDOT may offset contract overpayments made under this contract, or amounts otherwise due from the Contractor, against any other current or future construction and/or maintenance contracts between MDOT and the Contractor.

Neither the contractor nor his subcontractors shall discriminate against any employee or applicant for employment to be employed in the performance of this contract, with respect to his hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment because of his age, except where based on a bona fide occupational qualification, or his race, color, religion, national origin, sex, height, weight, or marital status; and they will require a similar covenant on the part of any Contractor or subcontractor employed in the performance of this contract. The parties further agree that they will comply with the Civil Rights Act of 1964, being P.L. 88-352, 78 Stat. 241 as amended, being Title 42 U.S.C. Sections 1971, 1975a-1975d, and 2000a-2000h-6 and the Regulations of the United States Department of Transportation (49 C.F.R. Part 21) issued pursuant to said Act and will require a similar covenant on the part of any Contractor or subcontractor employed in the performance of this contract.

The Contractor shall comply with 23 CFR §633 et. seq. which requires the contractor to insert Form FHWA-1273 in each subcontract except as excluded by law or regulation. The Contractor shall also require the inclusion of Form FHWA-1273 in any lower tier subcontract.

The Contractor shall require any subcontractors to irrevocably assign their rights to pursue any claims for relief or causes of action for damages sustained by the State of Michigan or MDOT, with regard to claims based on goods or services that were used to meet the Contractor's obligation to MDOT under this contract, due to any violation of 15 USC §§ 1-15 or 1984 PA 274, MCL 445.771-.788, excluding § 4a, to the State of Michigan or MDOT as a third-party beneficiary.

With regard to claims based on goods or services that were used to meet the Contractor's obligation to MDOT under this contract, the Contractor hereby irrevocably assigns its rights to pursue any claims for relief or causes of action for damages sustained by the State of Michigan or MDOT, due to any violation of 15 USC §§ 1-15 or 1984 PA 274, MCL 445.771-.788, excluding § 4a, to the State of Michigan or MDOT.

The Contractor shall notify MDOT if it becomes aware that an antitrust violation, with regard to claims based on goods or services that were used to meet the Contractor's obligation to MDOT under this contract, may have occurred, or is threatened to occur. The Contractor shall also notify MDOT if it becomes aware of any person's intent to commence, or commencement of, an antitrust action with regard to claims based on goods or services that were used to meet the Contractor's obligation to MDOT under this contract.

This agreement embodies the entire agreement between MDOT and the Contractor and may not be altered by any oral agreement made on, before, or after the effective date of this contract.

MICHIGAN DEPARTMENT OF TRANSPORTATION

Angelo lafrate Construction Company

By: _____

By: _____

Paul C. Ajegba , DIRECTOR
MICHIGAN DEPARTMENT OF TRANSPORTATION

Date: _____

ITEM NO: 2002 039

This Contract shall not be binding until fully executed by both the Contractor and the Michigan Department of Transportation.

This information required by Act 17,
P.A. of 1925, Act 286, P.A. of
1964, in order to obtain surety
guarantee.

1303 (07/15)

MICHIGAN DEPARTMENT OF TRANSPORTATION
In accordance with Act 17 of 1925 and Act 286 of 1964

BONDS

Letting Date: **2/7/20**

Item: **2002 039**

63000-132771

Bond No. _____

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, That We, **Angelo lafrate Construction Company, a Michigan Corporation** as principal, and _____ as surety, are held and firmly bound unto the State of Michigan, Michigan Department of Transportation, in the penal sum of

Six Million Five Hundred Eighty One Thousand Seven Hundred Thirty Three Dollars and No Cents

lawful money of the United States, to be paid to the said State of Michigan, Michigan Department of Transportation, or to its certain attorney or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this _____ day of _____, A.D. 20 _____

The condition of this obligation is such that if the above named principal shall and will, well and faithfully, and fully, do, execute and perform the contract to which this bond is attached, according to the terms and conditions thereof, including extensions of time, (notice of which is hereby waived by the surety), then this obligation is to be void, otherwise to remain in full force and effect.

Angelo lafrate Construction Company

Principal

By _____

By _____

By _____

Surety

By _____

NOTE If the principal is a co-partnership, each member must sign these bonds. If the principal is a corporation, evidence of the authority of the officer signing must be attached or be on file with the Michigan Department of Transportation. The Surety Company shall attach a valid Power of Attorney of person or persons executing bond for the company.

Commission Received by: _____

63000-132771

Bond No. _____

LIEN BOND

KNOW ALL MEN BY THESE PRESENTS, That We, **Angelo lafrate Construction Company, a Michigan Corporation** as principal, and _____ as surety, are held and firmly bound unto the State of Michigan, Michigan Department of Transportation, in the sum of

Six Million Five Hundred Eighty One Thousand Seven Hundred Thirty Three Dollars and No Cents

lawful money of the United States, to be paid to the said State of Michigan, Michigan Department of Transportation, or, to its assigns, or to any person, firm or corporation who may furnish labor, materials, supplies for equipment, for camp or construction, and equipment on a rental basis, on account of and actually used in the performance of the contract hereinafter mentioned, to which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, and each and every one of them firmly by these presents.

Sealed with our seals and dated this _____ day of _____, A.D. 20_____

The condition of this obligation is such that if there shall be paid, as the same may become due and payable, all indebtedness which may arise from said principal to a sub-contractor or to any person, firm or corporation on account of any labor, material, supplies for equipment, for camp or construction, and rental of equipment, furnished and actually used in the performance of the contract to which this bond is attached, including extensions of time, (notice of which is hereby waived by the surety), then this obligation is to be void, otherwise to remain in full force and effect.

Angelo lafrate Construction Company

Principal

By _____

By _____

By _____

Surety

By _____

63000-132771

Bond No. _____

ENDORSEMENT

The provisions of the foregoing lien bond shall also apply to indebtedness described therein in the case of a subcontractor in which notice of reliance on the security of the bond is not furnished within the 60-day period provided in 1905 PA 187, § 2, MCLA 570.102; MSA 26.322 provided such notice is furnished within 60 days after notice of payment of the final estimate or the post final estimate having been made by the State of Michigan, Michigan Department of Transportation, or in the case of a supplier to the contractor or a subcontractor, within 120 days after the materials are last furnished. Nothing in this endorsement shall be considered so as to limit or narrow the coverage provided for in said lien bond, but is in addition thereto, and not in lieu thereof.

Angelo lafrate Construction Company

Principal

By _____

By _____

By _____

Surety

By _____

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more - as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification - First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

DATE: July 1, 2020

TO: Joseph A. Valentine, City Manager

FROM: Melissa Fairbairn, Management Intern

SUBJECT: Public Comment at Commission Meetings

INTRODUCTION

Public comment is an important part of public meetings. Public meetings are meetings of the public body to conduct its business. During these meetings, the public has the opportunity to comment on agenda and non-agenda items. The City of Birmingham currently places the public comment section at the end of the agenda for commission meetings and allows the public to comment on each agenda item as they occur. A review of other Michigan cities found that they hold public comment period at various points in their meetings depending on each community's dynamic.

BACKGROUND

At the January 13, 2020 meeting, the City Commission voted to move the public comment section to before the consent agenda for a three (3) month trial period. That trial period concluded in April 2020. At the June 22, 2020 meeting, City Commissioners asked to revisit the placement of public comment on the agenda. Enclosed are the materials presented to the Commission on January 13, 2020.

RESEARCH

Along with the research presented in the January 2020 memo, City Attorney Currier outlined recommendations regarding public comment in the attached letter. His findings reiterate those of the January memo. City Attorney Currier advises that the placement of public comment on the agenda may be determined by the public body. The public body may impose a time limit for individual speakers but may not enforce a time limit for the public comment period that completely denies some citizens the right to speak.

City Attorney Currier also advises that public comment should not be split or bifurcated into two sections on the agenda "as this could be burdensome to one's right to participate over another's."

LEGAL REVIEW

The City Attorney has reviewed the suggestions and has no concerns.

FISCAL IMPACT

There is no fiscal impact associated with this policy.

SUMMARY

Public comment is an important facet of public meetings. Residents and other stakeholders are able to use public comment times to voice concerns or praise of their city. Cities place their public

comment section on their agenda based upon the needs and dynamics of their communities. The commission may consider:

- Setting time limits for individual comments. Generally, the City of Birmingham does not limit an individual's amount of speaking time during public comment.
- Managing the public's expectations. The City of Birmingham does not currently have guidelines for public comment stated in meeting agendas. Including the guidelines on the agenda sets the public's expectations as to how the process will occur. In review of best practices and other communications the following language has been prepared:
The City of Birmingham welcomes public comment limited to three (3) minutes per speaker, on items that do not appear in the printed agenda in order to allow for an efficient meeting. The Commission will not participate in a question and answer session and will take no action on any item not appearing on the posted agenda. The public can also speak to agenda items as they occur when the presiding officer opens the floor to the public. When recognized by the presiding officer, please step to the microphone, state your name for the record, and direct all comments or questions to the presiding officer.
- Requesting residents to submit a public participation form that includes their name, address, and summary of their subject prior to speaking. The City of Farmington Hills and the City of Clarkston currently use these forms referred to as blue cards to facilitate public comment at their council meetings.
- Scheduling comment to promote participation. The City of Birmingham currently allows the public to address each business item and to comment during the "Meeting Open to the Public for Items Not on the Printed Agenda" agenda item. Several suggested resolutions have been provided for the Commission's consideration.

Based upon the research into parliamentary best practices, the Michigan Open Meetings Act, and the policies of the surrounding communities, Staff offers the following suggested actions for consideration.

ATTACHMENTS

- Memo to City Commission January 2020
- Letter Re: Public Comment During Commission Meetings – July 1, 2020

SUGGESTED ACTIONS FOR CONSIDERATION

1. To maintain the public comment section following communications on the agenda.
or
2. To maintain the public comment section following communications on the agenda and to include the suggested guidelines for public comment.
or
3. To maintain the public comment section following communications on the agenda and request speakers to submit a public participation form.
or
4. To revise the public comment section of the commission agenda to move public comment prior to the consent agenda.
or
5. To revise the public comment section of the commission agenda to move public comment prior to the consent agenda for a six (6) month trial period.
or
6. To revise the public comment section of the commission agenda to move public comment prior to the consent agenda for a six (6) month trial period and to include the suggested guidelines for public comment.

or

7. To revise the public comment section of the commission agenda to move public comment prior to the consent agenda for a six (6) month trial period and request speakers to submit a public participation form.

or

8. To revise the public comment section of the commission agenda to move public comment prior to the consent agenda and to include the suggested guidelines for public comment.

or

9. To revise the public comment section of the commission agenda to move public comment prior to the consent agenda and request speakers to submit a public participation form.

or

10. To revise the public comment section of the agenda to move public comment as item ____ on the agenda.



MEMORANDUM

Human Resources Dept.

DATE: January 6, 2020
TO: Joseph A. Valentine, City Manager
FROM: Melissa Fairbairn, Management Intern
SUBJECT: Public Comment at Commission Meetings

INTRODUCTION

Public comment is an important part of public meetings. Public meetings are meetings of the public body to conduct its business. During these meetings, the public has the opportunity to comment on agenda and non-agenda items. The City of Birmingham currently places the public comment section at the end of the agenda for commission meetings and allows the public to comment on each agenda item as they occur. A review of other Michigan cities found that they hold public comment period various points in their meetings depending on each community's dynamic.

BACKGROUND

At the December 9, 2019 meeting, the Commission asked for research regarding the placement of open public comment on the agenda considering pros and cons and best practices.

RESEARCH

Research was conducted by evaluations of Birmingham's Rules of Procedure, the Michigan Open Meetings Act, other communities' practices, best practices, and pros and cons.

The City of Birmingham's Rules of Procedure for citizen participation state:

"During any City Commission meeting, any person may question or comment upon any specific agenda item at the time the City Commission considers that item.

The public shall also be invited to make comments on any item not on the meeting agenda under the agenda item, "Meeting Open to the Public for Items Not on the Printed Agenda."

No person shall address the City Commission without first having been recognized by the presiding officer. Once recognized, the member of the public shall go to one of the available microphones, and state his or her name and community of residence before speaking.

Speakers may be requested to limit their comments so as to provide opportunities for comments from all interested persons. In particular, no member of the public shall normally be permitted to speak a second time on the same issue until all others wishing to make a presentation on the subject have had an opportunity to do so.

If any person becomes loud or unruly, the presiding office may rule that person out of order and may forfeit that person's opportunity to speak further. A person may also be expelled from the meeting for breach of the peace."

The State of Michigan's Open Meetings Act Handbook (2019) states:

"Timing of public comment—a public body has discretion under the OMA when to schedule public comment during the meeting. Thus, scheduling public comment at the beginning or the end of the meeting agenda does not violate OMA. The public has no right to address the commission during its deliberations on a particular matter."

The State of Michigan's Open Meetings Act Handbook also lays out the state laws regarding public hearings. Per the State of Michigan regarding public hearings, municipalities:

- may choose the timing of open comment during public meetings
- may **not** limit the total time allowed for public comment
- may limit the amount of time given each individual speaker
- may encourage groups to choose an individual to address the public body

After reviewing commission and council meeting agendas from 31 cities in Oakland County and 15 other Michigan cities, it was found that there is no consensus as to the placement of public comment. Each community placed public comment sessions at different points in their agendas based upon their unique political dynamics and cultures.

Seventeen cities hold public comment periods in the middle of meetings. The public comment portion of these meetings followed the consent agenda but preceded new business and presentations.

Fourteen cities place public comment at the beginning of meetings. These cities open for public comment following introductory items such as roll call and the approval of minutes but prior to addressing the consent agenda.

Ten cities, including Birmingham, place public comment at the end of their meetings.

Five cities, Grand Rapids, Grosse Pointe Shores, Lansing, South Lyon and Troy, offer two public comment times: one to comment upon any agenda item and one for open comments. These cities only allow public comment to take place during the two comment periods rather than during business discussions. While this commenting structure is uncommon for the reviewed cities, it is legal under the State of Michigan Open Meetings Act which states "The public has no right to address the commission during its deliberation on a particular manner."

Per the State of Michigan's Open Meetings Act, municipalities may not limit the total time allotted to public comment because that may eliminate an individual's ability to address the commission. The State does allow commissions to set rules that limit the amount of time that a person has to speak. In Oakland County, twelve cities limit an individual to three minutes to address their public body, while three cities (Farmington Hills, Northville, and Wixom) limit individuals to five minutes. Six of the other reviewed cities also limit comment to three minutes. A visible timer may be used to help speakers monitor their remaining time.

Placement of Public Comment on Meeting Agendas

Oakland County Cities				
City	Beginning	Middle	End	Time Limit (Minutes)
Auburn Hills	✓			0
Berkley	✓			0
Birmingham			✓	0
Bloomfield Hills		✓		3
Village of Clarkston	✓			3
Clawson			✓	0
Farmington	✓			0
Farmington Hills		✓		5
Fenton			✓	0
Ferndale		✓		3
Hazel Park	✓			0
Huntington Woods		✓		0
Keego Harbor	✓			3
Lake Angelus			✓	0
Lathrup Village		✓		0
Madison Heights		✓		3
Northville	✓			5
Novi		✓		3
Oak Park			✓	3
Orchard Lake		✓		3
Pleasant Ridge	✓			0
Pontiac			✓	0
Rochester	✓			0
Rochester Hills		✓		3
Royal Oak	✓			0
South Lyon		✓	✓	0
Southfield		✓		3
Sylvan Lake		✓		3
Troy		✓	✓	3
Walled Lake		✓		0
Wixom		✓		
Sampling of Other Communities				
Ann Arbor	✓			3
Brighton			✓	0
Detroit		✓		0
East Grand Rapids	✓			0
East Lansing	✓			0
Grand Rapids	✓	✓		0
Grosse Pointe		✓		3

Grosse Pointe Farms			✓	0
Grosse Pointe Shores	✓	✓		0
Grosse Pointe Woods			✓	0
Lansing	✓		✓	3
Plymouth	✓			3
Sterling Heights		✓		0
Traverse City			✓	3
Warren		✓		3

BEST PRACTICES

The purpose of commission meetings is for the public body to conduct business. The public is encouraged to offer input during the commenting period but the government body has responsibility for decision making about business. Ann Macfarlane, Professional Registered Parliamentarian and owner of consulting group Jurassic Parliament, has authored best practices for public meetings (See attached). She recommends that commissioners actively listen to public comment and show interest through their body language. Commenters should be thanked for their input but commissioners should not engage in back-and-forth discussions with commenters. This allows for the meeting to move quickly and focuses the commission on its business agenda.

Ann Macfarlane, PRP, recommends making the rules and guidelines for public comment very clear. These guidelines can include time limits, name and address policies, and expectations for civil conduct while speaking. Five Oakland County cities (Keego Harbor, Novi, Oak Park, Orchard Lake, and Wixom) include their rules for public comment on each agenda. Ann Arbor, Lansing, Grosse Pointe, Plymouth, and Sterling Heights also include guidelines in their agendas. Public comment is limited in each of these cities and is clearly stated in their agendas. Adding such language to the public comment section should be included as a best practice.

The following are examples of guidelines set forth in other cities' agendas:

Keego Harbor

Keego Harbor City Council welcomes public comment limited to three (3) minutes, on items that do not appear on the printed agenda. In accordance with its Meeting Conduct Rules, the Council will take no action on or discuss any item not appearing on the posted agenda. Exceptions may be made at the discretion of the chair. The public can speak to agenda items as they occur when the presiding officer opens the floor to the public. When recognized by the presiding officer, please step to the microphone, state your name for the record, and direct all comments or questions to the presiding officer.

Novi

AUDIENCE COMMENT – In order to hear all citizen comments at a reasonable hour, the City Council requests that speakers respect the three-minute time limit. This is not a question-answer session. However, it is an opportunity to voice your thoughts with City Council. Speakers wishing to display visual materials through the City's audiovisual system must provide the materials to the City Clerk's Office no later than 12:00 P.M. the day of the meeting. The materials cannot be changed before the meeting.

Oak Park

Each speaker's remarks are a matter of public record: the speaker alone, is responsible for his or her comments and the City of Oak Park does not, by permitting such remarks, support, endorse, or accept the content, thereof, as being true or accurate. "Any person while being heard at a City Council Meeting may be called to order by the Chair, or any Council Member for failure to be germane to the business of the

City, vulgarity, or personal attacks on persons or institutions." There is a three minute time limit per speaker.

Orchard Lake

Any citizen wishing to provide comment on an agenda item shall address the Chair and be recognized. That person shall give his name and shall state whether or not he is a resident in the City of Orchard Lake Village. The speaker shall be asked for his address. The speaker shall approach the podium and provide comment. The chair or any member of Council may ask the speaker a question for clarification. The Mayor shall recognize any individual wishing to speak in the matter and shall limit such discussion to three (3) minutes per speaker per agenda item unless the Council shall agree by majority vote to waive such limit. Any person speaking in this manner shall not be interrupted during the time allotted to such person to speak. Any speaker shall be allowed to provide one comment per agenda item unless Council agrees by unanimous vote to waive such restriction.

Sterling Heights

This item shall be taken up at 9:30 p.m. if the business portion of the agenda has not been concluded. In accordance with the Sterling Heights Governing Body Rules of Procedure, under this agenda item, citizens are permitted to address the City Council on issues not on the agenda. Citizens are afforded a reasonable opportunity to be heard. Generally, no response shall be made to any communication from a citizen until all citizens have been permitted to speak. You may be called to order by the Chair or a Council member if you:

- Attempt to engage the Council or any member in debate*
- Fail to address the Council on matters germane to City business*
- Use vulgarity*
- Make personal attacks on persons or institutions*
- Disrupt the public meeting If you are called to order, you will be required to take your seat until the Council determines whether you will be permitted to continue. These rules are in place and will be followed to ensure order and civility.*

Wixom

Call to the Public:

- The public shall address the Council during the "Call to the Public" which shall be included on the agenda immediately after Correspondence and again immediately after New Business. The first Call to the Public immediately after Correspondence shall be limited to agenda items only.*
- A person shall not address the Council in excess of five minutes unless the time is extended by a majority vote of the Council present.*
- Persons wishing to address the Council shall identify themselves and their place of residence and shall state their reason for addressing the Council.*
- All comments by the public shall be made directly to the Council.*

PROS AND CONS

- Place public comment period earlier in the agenda on trial basis.
 - Pro: Opening public comment early in commission meetings would not require the public to stay until the end of the meeting.
 - Con: Moving the public commenting period may delay the commission from attending to business items on the agenda.
- Maintain public comment at the end of the agenda.
 - Pro: Maintaining open public comment at the end of public meetings allows the commission to address city business early in meetings.
 - Con: Residents may choose to not voice their comments due to the long wait time prior to having an opportunity to comment.

LEGAL REVIEW

The City Attorney has reviewed the suggestions and has no concerns.

FISCAL IMPACT

There is no fiscal impact associated with this policy.

SUMMARY

Public comment is an important facet of public meetings. Residents and other stakeholders are able to use public comment times to voice concerns or praise of their city. The following are parliamentary best practices as referenced to in the attachments that the commission may consider:

- Set time limits for individual comments. Generally, the City of Birmingham does not limit an individual's amount of speaking time during public comment. However, the City may place a limit on individual speaking times when addressing agenda items where significant discussion may prolong the business meeting and affect subsequent business.
- Listen to public comments thoughtfully but do not engage. Public meetings are business meetings to address agenda items. They are not question and answer sessions.
- Manage the public's expectations. The City of Birmingham does not currently have guidelines for public comment stated in meeting agendas. Including the guidelines on the agenda sets the public's expectations as to how the process will occur. In review of best practices and other communications the following language has been prepared:
The City of Birmingham welcomes public comment limited to three (3) minutes per speaker, on items that do not appear in the printed agenda in order to allow for an efficient meeting. The Commission will not participate in a question and answer session and will take no action on any item not appearing on the posted agenda. The public can also speak to agenda items as they occur when the presiding officer opens the floor to the public. When recognized by the presiding officer, please step to the microphone, state your name for the record, and direct all comments or questions to the presiding officer.
- Schedule comment to promote participation. The City of Birmingham currently allows the public to address each business item and to comment during the "Meeting Open to the Public for Items Not on the Printed Agenda" agenda item. Three suggested resolutions have been provided for the Commission's consideration.

Based upon the research into parliamentary best practices, the Michigan Open Meetings Act, and the policies of the surrounding communities, Staff offers the following suggested actions for consideration.

ATTACHMENTS

- Excerpts from the Michigan Open Meeting Act Handbook
- "Guidelines for Public Comment in Local Government" by Ann Macfarlane
- "Don't get into Back-and-Forth Exchanges during Public Comment" by Ann Macfarlane
- "Don't Include Detailed Public Comment in Meeting Minutes" by Ann Macfarlane

SUGGESTED RESOLUTION

1. To revise the public comment section of the commission agenda to move public comment prior to the consent agenda for a six (6) month trial period and to include the suggested guidelines for public comment.
or
2. To revise the public comment section of the commission agenda to move public comment prior to the consent agenda and to include the suggested guidelines for public comment.
or

3. To maintain the public comment section at the current location on the agenda and to include the suggested guidelines for public comment.

OPEN MEETINGS ACT HANDBOOK



Attorney General Dana Nessel

Additional copies available at mi.gov/foia-oma

PUBLIC ATTENDING OPEN MEETINGS

Excluding individuals – no one may be excluded from a meeting otherwise open to the public except for a [breach of the peace](#) actually committed at the meeting.⁶⁵

Identifying public attendees – no one may be required to register or otherwise provide his or her name or other information or otherwise to fulfill a [condition](#) precedent to attend a public meeting.⁶⁶

Building security at the meeting site may cause issues. Members of the public might object, based on the [OMA](#), to signing in to gain access to the building where a public meeting is being held.⁶⁷ We, therefore, recommend that public bodies meet in facilities or areas not subject to public access restrictions.

If the public body wishes the members of the public to identify themselves at the meeting, we suggest the board chair announce something like this:

The Board would appreciate having the members of the public attending the meeting today identify themselves and mention if they would like the opportunity to speak during the public comment period. However, you do not need to give your name to attend this meeting. When the time comes to introduce yourself and you do not want to do so, just say pass.

Since speaking at the meeting is a step beyond "attending" the public meeting and the OMA provides that a person may address the public body "under rules established and recorded by the public body," the board may establish a [rule](#) requiring individuals to identify themselves if they wish to speak at a meeting.⁶⁸

Limiting public comment – a public body may adopt a [rule](#) imposing individual time limits for members of the public addressing the public body.⁶⁹ In order to carry out its responsibilities, the board can also consider establishing rules allowing the chairperson to encourage groups to designate one or more individuals to speak on their behalf to avoid cumulative comments. But a [rule](#) limiting the period of public comment may not be applied in a manner that denies a person the right to address the public body, such as by limiting all public comment to a half-hour period.⁷⁰

⁶⁵ MCL 15.263(6).

⁶⁶ MCL 15.263(4).

⁶⁷ In addition, "[a]ll meetings of a public body . . . shall be held in a place available to the general public." MCL 15.263(1).

⁶⁸ MCL 15.263(5). OAG, 1977-1978, No 5183, at p 34.

⁶⁹ OAG, 1977-1978, No 5332, p 536 (July 13, 1978). The rule must be duly adopted and recorded. OAG, 1977-1978, No 5183, at p 34.

⁷⁰ OAG No 5332 at p 538.

Meeting location – the [OMA](#) only requires that a meeting be held "in a place available to the general public;" it does not dictate that the meeting be held within the geographical limits of the public body's jurisdiction.⁷¹ However, if a meeting is held so far from the public which it serves that it would be difficult or inconvenient for its citizens to attend, the meeting may not be considered as being held at a place available to the general public. Whenever possible, the meeting should be held within the public body's geographical boundaries.

Timing of public comment – a public body has discretion under the OMA when to schedule [public comment](#) during the meeting.⁷² Thus, scheduling public comment at the beginning⁷³ or the [end](#)⁷⁴ of the meeting agenda does not violate the OMA. The public has no right to address the [commission](#) during its deliberations on a particular matter.⁷⁵

Taping and broadcasting – the [right](#) to attend a public meeting includes the right to tape-record, videotape, broadcast live on radio, and telecast live on television the proceedings of a public body at the public meeting.⁷⁶ A board may establish reasonable [regulations](#) governing the televising or filming by the electronic media of a hearing open to the public in order to minimize any disruption to the hearing, but it may not prohibit such coverage.⁷⁷ And the exercise of the [right](#) to tape-record, videotape, and broadcast public meetings may not be dependent upon the prior approval of the public body.⁷⁸

⁷¹ OAG, 1979-1980, No 5560, p 386 (September 13, 1979). Of course, local charter provisions or ordinances may impose geographical limits on public body meetings.

⁷² MCL 15.263(5).

⁷³ *Lysogorski v. Bridgeport Charter Twp*, 256 Mich App at 302.

⁷⁴ OAG, 1979-1980, No 5716, p 812 (June 4, 1980).

⁷⁵ OAG, 1977-1978, No 5310, p 465, 468 (June 7, 1978).

⁷⁶ MCL 15.263(1).

⁷⁷ OAG, 1987-1988, No 6499, p 280 (February 24, 1988).

⁷⁸ MCL 15.263(1).



Mastering meetings using Robert's Rules

Don't get into back-and-forth exchanges during public comment

By [Ann Macfarlane](#) | March 6, 2018 | 6



When city councils, school boards or other public bodies hold their meetings, it is usual to reserve a time in the meeting for members of the public to speak to their elected officials. One common name for this is the public comment period. We strongly recommend that elected officials should not get into back-and-forth exchanges with members of the public during the public comment period.

Whose meeting is it anyway?

In most states of the union, members of the public are authorized by state law to attend local government meetings. These laws may be called “sunshine acts” or “open public meeting acts.” States usually allow members of the public to address their elected officials on matters of concern during the meetings. But though the local government meetings are HELD IN PUBLIC, they are not MEETINGS OF THE PUBLIC. The meetings belong to the local government body that is meeting.

What is the purpose of the public comment period?

The purpose of the public comment period is for members of the public to inform the governing body of their views. This is an important function and it is critical for the

elected officials to listen with care to the public, and to consider what they hear in their deliberations. It is also critical for the elected officials to convey to the public that they care! Don't follow the example of a certain county in my home state of Washington, where the elected officials wander out to get coffee or check their cell phones while the public is speaking.

Why the public comment period is not a chance to dialogue

While listening with attention is critical, we believe that it is best not to enter into dialogue with the public during the meeting. It is highly challenging to give accurate responses on critical and complex issues on the spot. We have seen too many instances where the discussion degenerates into a back-and-forth exchange that ends up creating more heat than light. To use a slang expression, sometimes the meeting goes "down the tubes" and never really recovers. This can lead to a fraught atmosphere at future meetings, public outrage, and a general loss of confidence in the board or council.

What should you say?

In general, it is best not to respond at all to public comment. However, the chair may provide brief factual information, if appropriate. This must not degenerate into lecturing or criticism.

The best approach is for the chair to say, "Thank you for your comment" to each speaker. Keep a warm and pleasant expression if the speaker was complimentary, or a neutral face if not, and then move on to the next speaker. Don't play favorites with the public, and do your best to treat all speakers the same. Be sure to observe any time limits consistently.

How can you appear interested and concerned if you can't answer?

It isn't easy, but the chair and the members of the public body convey interest and concern by their body language. Ideally they should listen to each person speaking as if there were no one else in the room.

Structuring the public comment period

You can also take structural steps to let the public know how much you care. We recommend:

- Announcing the policy at the beginning of each meeting, so people know they won't be getting answers to their questions or concerns during the public comment period.

- Providing a handout on the policy, including an invitation to submit comments in writing and other ways to make your views known.
- Having a staff person available so people with specific concerns can convey them, to be addressed after the meeting by the appropriate party.
- Establishing other channels to connect with your public, such as community forums, personal discussions, “coffee with the mayor,” a form on your website, surveys, etc.

Guidelines for Public Comment in Local Government



The public comment period is an essential part of local government meetings. These are our guidelines for public comment periods in local government. They refer to ordinary business and work or study meetings of councils, boards and committees. Public hearings and quasi-judicial hearings are governed by different rules.

It is important for elected officials and for the public to be very clear about the purpose of the public comment period. This is an opportunity for members of the public to inform the governing body about their views. The meeting itself belongs to the governing body. The public does not PARTICIPATE in the decision-making. Instead, it PROVIDES INPUT to the governing body, which takes the input into consideration in making its decisions.

A governmental body must craft its requirements with care in order to to preserve the free speech rights of its citizens. If questions arise about the public comment period, consult your attorney. State law and regulations and your specific bylaws or rules of procedure have higher standing than Robert's Rules of Order, other parliamentary authorities, or these guidelines.

➡ over



► **TIME CONSIDERATIONS**

1. Establish specific periods for public comment during your meetings, in a way that is consistent with your community's expectations and customs.
2. Set a length of time by which each period will conclude, unless the council votes to extend it.
3. Set a time limit for each individual to speak.
4. Speakers may not give their time to other people.

► **WRITTEN GUIDELINES**

5. Provide printed copies of the guidelines and expectations.
6. Review the guidelines at the beginning of each comment period if necessary, and explain that this is the time for citizens and residents to express their views in order to inform the council. Explain that the council will not engage in dialogue with the public during this time.
7. The council has the right to set limits on what subjects may be addressed, how long public comment will be, and how many times people may speak. All such limits must be viewpoint neutral: they must not favor one point of view over another.

► **DURING PUBLIC COMMENT**

8. Check your state law as to whether you may require speakers to give their name and address.
9. Require all speakers to address their remarks to the chair.
10. Require all speakers to keep to the time limits. It is important to be consistent for the appearance of fairness. Some jurisdictions provide a visible public timer, so the speaker knows how much time is available.
11. The chair should thank each speaker, whether positive or negative.
12. In general, it is best not to respond at all to public comment. However, the chair may provide brief factual information, if appropriate. This must not degenerate into lecturing or criticism.
13. The chair must not under any circumstances enter into back-and-forth exchanges with the public. See our blog entry below for more information.
14. We recommend using surnames to address speakers. If you use first names for some speakers, use them for all.
15. Councilmembers refrain from speaking during this portion of the meeting.
16. Have staff ready to note input or questions from the public and to provide responses at a later date. Do not call on staff to give public answers on the spot.

► **BEHAVIORAL EXPECTATIONS**

17. Model courtesy and respect and encourage members of the public to do the same.
18. The public has the right to make critical and harsh remarks. Courts have consistently found that public bodies may not require members of the public to follow the rules of decorum that apply to council members themselves. (See our blog entry below for more information on decorum rules.)
19. Members of the public do not have the right to disrupt the meeting. However, mere words most likely do not constitute a disruption in themselves. All concerned should become familiar with case law on this point, and be able to determine when conduct becomes truly disruptive.
20. The council may prohibit demonstrations (booing, hissing, clapping). These can be chilling to discourse and inhibit free speech, both on the part of the elected officials and of the public.

21. Consult with your attorney and develop an action plan for steps to take in case of disruption. The League of California Cities has excellent material available on their website. In cases of serious disruption, state law may allow you to adjourn the meeting to a different location.
22. Be very cautious about ordering a disruptive member of the public to leave the meeting. It may be advisable to give three warnings to cease from the disruptive behavior before taking any action. Consult with your attorney before doing this.

► **RESPONSIVENESS TO THE PUBLIC**

23. The body language and manner of the chair and other elected officials are critical to running successful public comment sessions. Councilmembers should listen to each person speaking as if there were no one else in the room.
24. Councilmembers should keep an interested expression on their faces and refrain from checking electronic devices, whispering to each other, or otherwise demonstrating lack of interest in what the public is saying.
25. It is helpful to see oneself on video in order to gauge the impression given to the public. We recommend a facial expression that projects warmth and genuine interest. If a speaker is highly negative, it is appropriate to keep a neutral, serious expression. Do not frown, grimace, sigh, or roll your eyes.
26. It is vital for elected officials to be responsive to their public, and to appear responsive. Given the limitations on the public comment period, we recommend establishing other channels to connect with your public, such as community forums, personal discussions, “coffee with the mayor,” a form on your website, surveys, etc.

► **OTHER CONSIDERATIONS**

27. The council has the right to invite anyone to speak whom it wishes to hear from at other times than the public comment period. This is done by unanimous consent or a majority vote.
28. Provide clearly marked paper inviting individuals who are not heard during the public comment period due to time constraints to provide written comment for the council.
29. We recommend that detailed public comment should not be included in the minutes. It is sufficient to say, “Public comment was given.” See our blog entry below for more information.

► **SAMPLE POLICY**

- Now is the time to hear from our public. We welcome your comments which are very important to us. Note that all comments are limited to three minutes.
- As a reminder, please go to the podium to comment. It is helpful for the council if you would give us your name. Please address your remarks to the chair.
- Note that we will not be entering into dialogue at this time. The purpose of this agenda item is for YOU, the public, to inform US, the council, about your views.
- If members of the public have factual questions, staff will be glad to address them. Please speak with the executive assistant who is seated next to the dais.

More information:

- [Don't get into back-and-forth exchanges during public comment](#)
- [Don't include detailed public comment in meeting minutes](#)
- [Citizen's Guide to Effective Conduct of Public Meetings](#)
- [Inappropriate remarks on local government councils](#)

Do you have feedback on these guidelines for us? We are always eager to improve our publications. Visit our website at www.jurassicparliament.com/category/effective-local-government for much more information on local government issues. Contact us at info@jurassicparliament.com or 206-542-8422 with your suggestions. We look forward to hearing from you!

Guidelines for Public Comment in Local Government

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Don't include detailed public comment in meeting minutes

By [Ann Macfarlane](#) | March 21, 2018 | [6](#)

When city councils, school boards or other public bodies hold their meetings, it is usual to reserve a time in the meeting for members of the public to speak to their elected officials. One common name for this is the public comment period.



(c) Can Stock Photo

We recommend that detailed public comment should not be included in the body's minutes. For background, read our suggestions about [how to conduct the public comment period](#).

What is the purpose of meeting minutes?

According to Robert's Rules of Order, and the common understanding of parliamentary procedure, minutes are a record of the decisions made by the body. They are supposed

to include “what is done,” and not “what is said.” Personal comments and observations made by elected officials should not be included in the minutes.

What is the purpose of the public comment period?

The purpose of the public comment period is for members of the public to inform the body of their views. This is an important function and it is critical for the elected officials to listen with care to the public, and to consider what they hear in their deliberations. Just as with the elected officials themselves, however, there is no need to make a permanent written record of the public’s observations.

Public hearings are different from the public comment period

Note that public hearings, formal structured events required by law for certain kinds of local government decisions, are different from the public comment period. It is characteristically a requirement that testimony provided at a public hearing should be recorded. This article is not about public hearings.

How should you record public comment?

Here are some different ways to record public comment:

- Public comment was given.
- Public comment was given by Resident Smith and Resident Valdez.
- Public comment was given. Residents expressed their appreciation for the work done by the board, expressed concern about the headquarters building, and asked the board to consider employee welfare in the current negotiations.
- Public comment was given as follows:
 - Resident Green said the board was doing a great job.
 - Resident Khan expressed concern about the cost of the new building.
 - Resident Robinson asked the board to consider employee welfare in the current negotiations.

Don’t record detailed public comment like this

- Resident Jones said that she was very concerned about her latest water bill. She only uses water for basic functions of cooking and cleaning, and a person ought to be able to do that without paying \$40/month. She didn’t understand why the board had decided to raise the rates when the district was clearly doing very well financially. After all, commissioners had found the money to attend the state-wide conference last month, and what was the point of all that gallivanting about

anyway? Surely in these days of online learning, people can get what they need for training over the Internet...and so on...

Avoid these pitfalls of recording detailed public comment

Recently we've seen instances where detailed public comment in the minutes led to problems. During public comment, a resident objected to the way his comments at the previous meeting had been recorded. The body postponed approval of the minutes in order to redraft the comments to the resident's satisfaction. This was a waste of public time and money.

In another instance, the secretary was asked to include a notation in the minutes correcting a statement, made by a resident during the public comment period, which was considered to be erroneous. This violates the purpose of minutes, which is to create a record of the meeting itself.

In yet another instance, the resident himself recognized that his remarks sounded foolish in the detailed record, and agreed that a change in practice was desirable.

July 1, 2020

Mr. Joseph A. Valentine, City Manager
City of Birmingham
151 Martin Street, P.O. Box 3001
Birmingham, MI 48012-3001

Re: Public Comment During Commission Meetings

Dear Mr. Valentine:

During the Commission meeting of June 22, 2020, a question was raised as to times for public comment during a meeting and what rules govern those situations. In this regard, the Open Meetings Act provides at 15.263 Sec. 3(1-6) as follows:

“15.263 Meetings, decisions, and deliberations of public body; requirements; attending or addressing meeting of public body; tape-recording, videotaping, broadcasting, and telecasting proceedings; rules; exclusion from meeting; exemptions.

Sec. 3.

(1) All meetings of a public body shall be open to the public and shall be held in a place available to the general public. All persons shall be permitted to attend any meeting except as otherwise provided in this act. The right of a person to attend a meeting of a public body includes the right to tape-record, to videotape, to broadcast live on radio, and to telecast live on television the proceedings of a public body at a public meeting. The exercise of this right does not depend on the prior approval of the public body. However, a public body may establish reasonable rules and regulations in order to minimize the possibility of disrupting the meeting.

(2) All decisions of a public body shall be made at a meeting open to the public. For purposes of any meeting subject to this subsection, except a meeting of any state legislative body, the public body shall establish the following procedures to accommodate the absence of any member of the public body due to military duty:

(a) Procedures by which the absent member may participate in, and vote on, business before the public body, including, if feasible, procedures that ensure 2-way communication.

(b) Procedures by which the public is provided notice of the absence of the member and information about how to contact that member sufficiently in advance of a meeting of the public body to provide input on any business that will come before the public body.

(3) All deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public except as provided in this section and sections 7 and 8.

(4) A person shall not be required as a condition of attendance at a meeting of a public body to register or otherwise provide his or her name or other information or otherwise to fulfill a condition precedent to attendance.

(5) A person shall be permitted to address a meeting of a public body under rules established and recorded by the public body. The legislature or a house of the legislature may provide by rule that the right to address may be limited to prescribed times at hearings and committee meetings only.

(6) A person shall not be excluded from a meeting otherwise open to the public except for a breach of the peace actually committed at the meeting.”

The Open Meetings Act only provides that public comment is permitted during the meeting. It does not proscribe a place in the agenda for public participation to occur. The Open Meetings Act under Sec. 5 cited above also prescribes the legislative body can establish rules as to how the legislative body is to be addressed and may limit the comments to prescribe times during the meetings.

For a better understanding, the Open Meetings Act is analyzed by the Michigan Association of School Boards in its 11th Edition of the Open Meetings Guide, which I will paraphrase hereafter, and make it specific to Birmingham as opposed to school districts. The aforestated guide as it would apply to Birmingham states as follows:

Public Participation at Open Meetings

As a general rule, every commission must allow members of the public to attend all open meetings. Individuals also must be permitted to address the commission during the open meeting.

Attendance. Any person ---regardless of age, residency, or affiliation---must be permitted to attend an open meeting.

A person cannot be excluded from a public meeting for failing to stand for the Pledge of Allegiance. Although individuals may be excluded for a breach of peace, not standing for the pledge cannot be considered disorderly conduct. 1979 OAG 5614.

While the Commission may adopt rules governing the conduct of its meetings, including rules for public participation for people who wish to address the Commission, the rules cannot place conditions on the right of a person to attend the meeting. 1977 OAG 5183.

Addressing the Commission. Every person attending an open meeting of the Commission is entitled to address the Commission during the public participation portion of the meeting, as long as the person complies with reasonable rules adopted by the Commission. However, it is not entirely clear as to whether a Commissioner has the right to address his or her own Commission during public participation. The Court of Appeals hasn't decided the issue, but commented that it has "significant reservations" as to whether Section 3 of the OMA entitles a commissioner to address the Commission during the public comment segment of a meeting. See, *Kim A. Higgs v Kimberly Houston-Philpot* and Delta College Board of Trustees, unpublished, No. 302767 (2012).

Rules for Public Participation. A commission may establish public participation rules that assist in balancing the commission's interest in conducting a meeting in an orderly manner with individuals' rights under the First Amendment. The rules must be reasonable, flexible, and written in a way that encourages public participation. To be enforceable, the rules must be adopted by the Commission and recorded in the minutes. 1977 OAG 5183. The rules also should be printed and available at every open meeting, so that people attending the meeting and those desiring to address the Commission are informed about their responsibilities and the Commission's procedures.

Rules, Permissible Components. Rules establishing conditions for public participation may include any of the following:

- **Time for Public Participation.** Rules may designate the place or time on the agenda when public participation may occur. A public body may determine through reasonable rules whether members of the Commission have public comment at the beginning of its meetings and a citizen arrives after the designated time, the Commission has the right to enforce its rule limiting public comment to the prescribed time and deny the late-arriving

citizen the opportunity to address the Commission. *Lysogorski v Charter township of Bridgeport*, 256 Mich App 297 (2003).

- **Length of Comment.** Rules may limit the length of time to be set aside for public participation and may impose a time limit for individual speakers. However, if the time period set for public participation is exhausted and there are people still desiring to address the public body, the time limits cannot be enforced in such a way that some citizens are completely denied the right to speak. 1978 OAG 5232.
- **Identification of Speaker.** Rules may request that individuals identify themselves and to make it known ahead of time that they wish to address the meeting. To facilitate an orderly open meeting, it is reasonable to request that a person identify him or herself and give advance notice that he or she wishes to speak. 1977 OAG 5183.
- **Designation of Spokesperson.** Rules may facilitate and encourage the designation of a spokesperson or representatives selected by the group to speak for a large number of people having the same viewpoint on a particular topic. 1978 OAG 5332.
- **Recording Equipment.** Rules may include reasonable limitations on the use of recording and broadcasting equipment, but the rules cannot prohibit such coverage. The right of a person need not obtain prior approval from a commission to tape-record, videotape, broadcast, or telecast an open meeting. However, a commission may establish reasonable regulations to minimize the possibility of disrupting the meeting. 1988 OAG 6499.
- **Personal Attacks.** Under most circumstances, rules cannot restrict the content of a person's public speech. However, comment that constitutes a "personal attack" on an employee or commissioner totally unrelated to his or her duties may be prohibited. If the phrase "personal attack" refers to the manner in which an employee or commissioner carries out his or her duties, the rule is invalid. If the phrase refers to conduct totally unrelated to the manner in which the commissioner performs his or her duties, the rule is valid. 1978 OAG 5332.

As the foregoing describes, the Rules of Participation as set forth in the Open Meetings Act Guide for the MASB, public comment can be heard anytime during the meeting. The time for participation can be set as well as the length of comments. However, the Commission cannot place a time limit on the totality of comments. For example, you cannot say there will

Beier Howlett

Mr. Joseph A. Valentine, City Manager
July 1, 2020
Page 5

be 20 minutes set aside for public comments. However, you can state all speakers are limited to 2 minutes. The public cannot be cut short, nor should public comment be split or bifurcated, that is, same at one point during the meeting, and others at a later time, as this could be burdensome to one's right to participate over another's.

I hope the foregoing is of assistance to you.

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

DATE: July 1st, 2020

TO: Joseph A. Valentine, City Manager

FROM: Brooks Cowan, City Planner

APPROVED: Jana Ecker, Planning Director

SUBJECT: Public Hearing for SLUP & Final Site Plan & Design Review –1800 W. Maple – Lutheran Church of the Redeemer

INTRODUCTION:

The applicant, Lutheran Church of the Redeemer, is seeking a Special Land Use Permit (SLUP) Amendment & Final Site Plan and Design Review.

BACKGROUND:

On April 22nd, 2020, the applicant appeared before the Planning Board for a SLUP Amendment & Final Site Plan and Design Review. The applicant discussed the proposed changes to the church which include expanding the sanctuary to provide more room for seating, increasing the size of the narthex at the entry, and moving the columbarium to accommodate for this expansion. It was also indicated that the steeple and spire would be replaced with a new one. The expansion of the sanctuary will match the existing materials on the building. Pedestrian access from the right-of-way was discussed and the Planning Board requested that a pedestrian walkway be added to the plans to connect the entrance to the sidewalk. The Planning Board motioned to approve the SLUP Amendment & Final Site Plan & Design Review.

LEGAL REVIEW:

The City Attorney has reviewed the documentation and has no concerns.

FISCAL IMPACT:

There are no fiscal impacts based on the approval of the SLUP Amendment and Final Site Plan and Design Review for Lutheran Church of the Redeemer.

PUBLIC COMMUNICATIONS:

As required for combined SLUP Amendments and Final Site Plan and Design applications, a legal ad was placed in a newspaper of local circulation to advertise the SLUP request at 1800 W. Maple in advance of the April 22nd, 2020 Planning Board meeting. In addition, postcard notices were mailed to all property owners and occupants within 300 feet of the subject property, in advance of the April 22nd, 2020 Planning Board meeting. The applicant also placed a notification sign on the property which is visible from the sidewalk and street as required.

SUMMARY:

The applicant is seeking approval for a Special Land Use Permit (SLUP) Amendment and Final Site Plan & Design Review to expand the sanctuary of the church. However, it was recently discovered that while a legal notice was placed in a newspaper as required, individual notices to all owners and tenants of property within 300' of 1800 W. Maple were not sent out in time. All required notices have now been mailed a minimum of 15 days prior to a public hearing on the SLUP Amendment if the City Commission postpones the public hearing to July 20, 2020.

ATTACHMENTS:

- SLUP Resolution
- Updated (latest revised) Plans for City Commission
- Planning Board Staff Report
- Planning Board Site Plans & Material Specification Sheets
- Planning Board minutes
- Special Land Use Permit Application
- Video Description from Church regarding necessary expansion
 - <https://vimeo.com/355740470>

SUGGESTED RESOLUTION:

To postpone the public hearing for the Special Land Use Permit Amendment and Final Site Plan and Design Review for 1800 W Maple – Lutheran Church of the Redeemer to expand the sanctuary and narthex and make related improvements to July 20, 2020 to ensure proper noticing of all affected properties.

**LUTHERAN CHURCH OF THE REDEEMER
SPECIAL LAND USE PERMIT AMENDMENT
2020**

- WHEREAS, Lutheran Church of the Redeemer originally applied for and received on May 13, 1991 a Special Land Use Permit for site improvements at 1800 W. Maple, such application having been filed pursuant to Article 7, section 7.34 of Chapter 126, Zoning, of the City Code;
- WHEREAS, The land for which the Special Land Use Permit Amendment is sought is located on the north side of W. Maple, between Chesterfield and N. Glenhurst.
- WHEREAS, The land is zoned R-1, Single Family Residential, which permits a Church and a school with a Special Land Use Permit;
- WHEREAS, Article 7, section 7.34 of Chapter 126, Zoning, of the City Code requires a Special Land Use Permit to be reviewed by the Birmingham City Commission at such time that any change takes place in the building, or the use of the property is altered;
- WHEREAS, The Planning Board reviewed a proposed Special Land Use Permit Amendment on April 22nd, 2020 to expand the sanctuary. The Planning Board recommended that the Special Land Use Permit Amendment be approved.
- WHEREAS, The Birmingham City Commission has reviewed the Lutheran Church of the Redeemer Special Land Use Permit Amendment application as well as the standards for such review, as set forth in Article 7, section 7.34, Chapter 126, Zoning, of the City Code; and
- NOW, THEREFORE, BE IT RESOLVED, That the Birmingham City Commission finds the standards set forth in the City Code have been met and the Lutheran Church of the Redeemer application for a Special Land Use Permit Amendment authorizing the proposed changed to expand the sanctuary space; and
- BE IT FURTHER RESOLVED, that all conditions of the previously approved Special Land Use Permit and subsequent amendments shall be continued as part of this Special Land Use Permit Amendment and are incorporated as herein by reference; and
- BE IT FURTHER RESOLVED, that the Lutheran Church of the Redeemer and its heirs, successors and assigns shall be bound by all ordinances of the City of Birmingham in effect at the time of the issuance of this permit, and as they may subsequently be amended. Failure of the Lutheran Church of the Redeemer to comply with all the ordinances of the city may result in the Commission revoking this Special Land Use Permit.

I, Alex Bingham, City Clerk of the City of Birmingham, Michigan, do hereby certify that the foregoing is a true and correct copy of the resolution by the Birmingham City Commission at its regular meeting held on July 13th, 2020.

Alex Bingham, Acting City Clerk

SITE PLAN APPROVAL PACKAGE

1800 W. MAPLE ROAD
BIRMINGHAM, MICHIGAN

PROJECT NO. 15165



LOCATION MAP

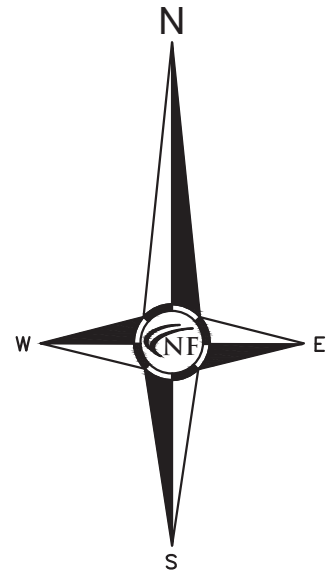
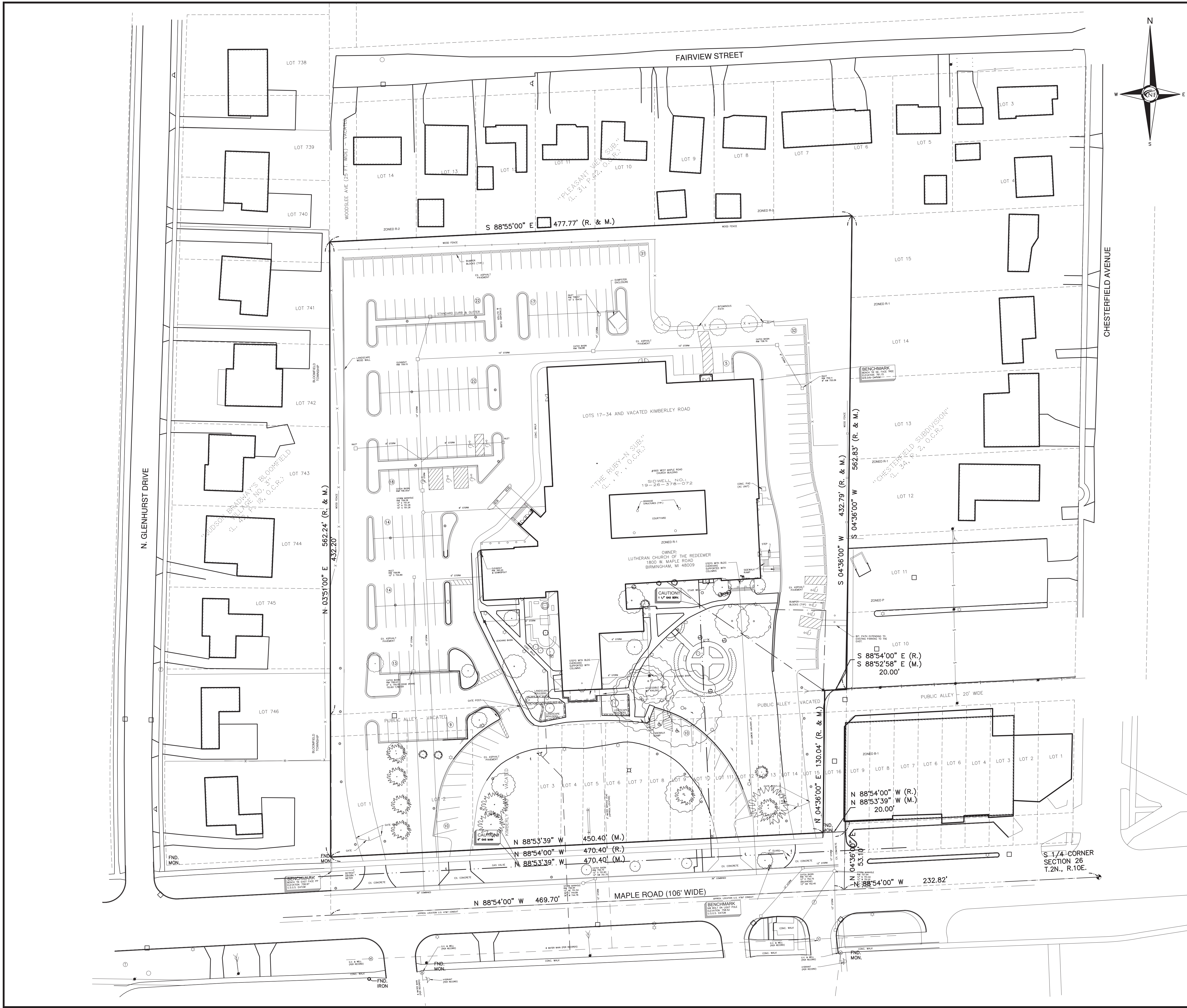
NO SCALE



02/12/20 SPA PACKAGE

05/18/20 REVISED SPA SUBMITTAL

INDEX OF DRAWINGS:	
C1	OVERALL BOUNDARY SURVEY
C2	LIMITED TOPOGRAPHIC AND TREE SURVEY
C3	SITE PLAN
C4	NOTES AND DETAILS
L1	TREE PRESERVATION PLAN
L2	LANDSCAPE PLAN
AS-101	ARCHITECTURAL SITE PLAN
AS-102	NEW SITE COMPONENTS
A-002	SITE PHOTOS & AERIAL PLAN
A-301	LOWER LEVEL FLOOR PLAN
A-302	MAIN LEVEL FLOOR PLAN
A-303	UPPER NAVE FLOOR PLAN
A-501	ROOF PLAN
A-601	EXTERIOR ELEVATIONS - COLOR
1 OF 1	PHOTOMETRIC SITE PLAN

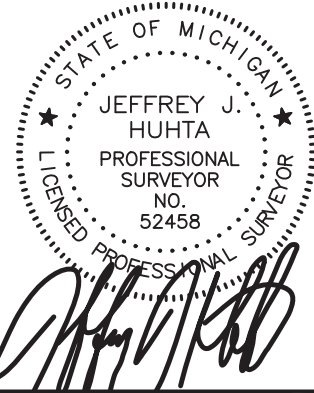


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SEAL



PROJECT

Lutheran Church
of the Redeemer
Building Expansion

CLIENT

Lutheran Church of the
Redeemer
1800 West Maple Road
Birmingham, Michigan

Contact

Steve Scheidt
Ph.: (248) 358-0800
Fax: (248) 358-2180

PROJECT LOCATION

Part of the SW ¼
of Section 26
T. 2 North, R. 10 East
City of Birmingham,
Oakland County, Michigan

SHEET

Overall Boundary Survey



Know what's below
Call before you dig.

DATE ISSUED/REVISED

2019-12-09 ISSUED FOR OWNER REVIEW

2019-12-11 ISSUED FOR SITE PLAN REVIEW

2020-02-04 REVISED PER OWNER

2020-03-11 REVISED PER OWNER

2020-05-15 REVISED PER OWNER

2020-05-18 REVISED SPA SUBMITTAL

DRAWN BY:

C. Ellison

DESIGNED BY:

APPROVED BY:

J. Huhta

DATE:

November 18, 2019

SCALE: 1" = 40'

40 20 0 20 40 60

NFE JOB NO.

D366-06

SHEET NO.

C1

LEGAL DESCRIPTION

LOTS 1 THROUGH 15 INCLUSIVE TOGETHER WITH ALL OF ADJACENT VACATED PUBLIC ALLEY, AND LOTS 17 THROUGH 34 INCLUSIVE OF "THE RUBY-N" SUBDIVISION, ALSO ALL OF VACATED KIMBERLY STREET, ALL BEING A PART OF SOUTHWEST 1/4 OF SECTION 26, TOWN 2 NORTH, RANGE 10 EAST, CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN, AS RECORDED IN L. 777, PG. 777, BEING MORE PARTICULARLY DESCRIBED AS:

COMMENCING AT THE S 1/4 CORNER OF SAID SECTION 26; THENCE N.88°54'00"W. ALONG THE SOUTHERLY LINE OF SAID SECTION 26, 232.82 FEET, THENCE N.04°36'00"E, 53.10 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF MAPLE ROAD (106 FEET WIDE); THENCE N.88°53'39"W. AS MEASURED (N.88°54'00"W. AS RECORDED) ALONG SAID NORTHERLY RIGHT-OF-WAY LINE OF MAPLE ROAD, 20.00 FEET TO THE POINT OF BEGINNING; THENCE N.04°36'00"E. ALONG THE COMMON LOT LINE OF SAID LOTS 15 AND 16, 130.04 FEET TO A POINT ON THE NORTHERLY LINE OF SAID VACATED PUBLIC ALLEY, THENCE S.88°52'58"E. AS MEASURED (S.88°54'00"E. AS RECORDED) ALONG SAID NORTHERLY LINE OF PUBLIC ALLEY, 20.00 FEET TO A POINT ON THE EASTERLY LINE OF SAID "THE RUBY-N" SUBDIVISION; THENCE N.04°36'00"E. ALONG SAID EASTERLY LINE OF "THE RUBY-N" SUBDIVISION, 432.79 FEET TO THE NE CORNER OF SAID SUBDIVISION; THENCE N.88°55'00"W. ALONG THE NORTHERLY LINE OF SAID SUBDIVISION, 477.77 FEET TO THE NW CORNER OF SAID SUBDIVISION; THENCE S.03°51'00"W. ALONG THE WESTERLY LINE OF SAID SUBDIVISION TO A POINT ON SAID NORTHERLY RIGHT-OF-WAY LINE OF MAPLE ROAD; THENCE S.88°53'39"E. AS MEASURED (S.88°54'00"E. AS RECORDED) ALONG SAID NORTHERLY RIGHT-OF-WAY LINE OF MAPLE ROAD, 450.40 FEET TO THE POINT OF BEGINNING.

CONTAINING: 263,686 SQ. FT. OR 6.053 ACRES OF GROSS AREA (260,533 SQ. FT. OR 5.981 ACRES NET OF PROPOSED RIGHT-OF-WAY) OF LAND, MORE OR LESS, ALSO BEING SUBJECT TO ANY EASEMENTS, RESTRICTIONS OR CONDITIONS OF RECORD.

TAX ITEM NO. 19-28-378-072

MISS DIG / COMCAST DISCLAIMER NOTE

THE LOCATION OF THE AERIAL LINES SHOWN ON THE RECORDS PROVIDED BY COMCAST COULD NOT BE ACCURATELY PLOTTED DUE TO A LACK OF DIMENSIONS AND/OR SCALE. CLIENT SHALL CONTACT (NAME OF THE UTILITY COMPANY) TO DETERMINE THE LOCATION OF THE UNDERGROUND UTILITY.

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THIS PROPERTY IS LOCATED IN ZONE "X" (AREAS DETERMINED TO BE OUTSIDE OF THE 0.2% ANNUAL CHANCE FLOOD PLAIN) AS INDICATED BY FLOOD INSURANCE RATE MAP (FIRM), PANEL NO. 26125C0536F, CITY OF BIRMINGHAM, OAKLAND COUNTY, STATE OF MICHIGAN, AS PREPARED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA), EFFECTIVE DATE SEPTEMBER 29, 2006.

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A MISS DIG TICKET NUMBER B92970990-008, PURSUANT TO MICHIGAN PUBLIC ACT 174 WAS ENTERED FOR THE SURVEYED PROPERTY, DUE TO THE EXTENDED REPORTING PERIOD FOR UNDERGROUND FACILITY OWNERS TO PROVIDE THEIR RECORDS, THE SURVEY MAY NOT REFLECT ALL THE UTILITIES AT THE TIME THE SURVEY WAS ISSUED ON 2019-11-18. THE SURVEY ONLY REFLECTS THOSE UTILITIES WHICH COULD BE OBSERVED BY THE SURVEYOR IN THE FIELD OR AS DERIVED BY THE UTILITY COMPANY RECORDS FURNISH PRIOR TO THE DATE THIS SURVEY WAS ISSUED. THE CLIENT AND/OR THEIR AUTHORIZED AGENT SHALL VERIFY WITH THE FACILITY OWNERS AND/OR THEIR AUTHORIZED AGENTS, THE COMPLETENESS AND EXACTNESS OF THE UTILITIES LOCATION.

TOPOGRAPHIC SURVEY NOTES

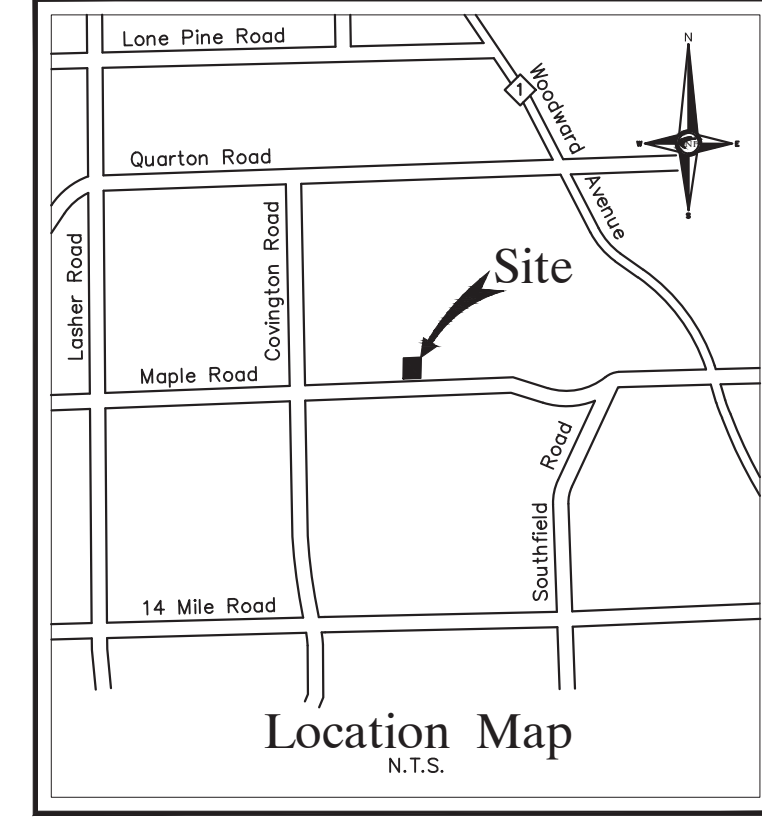
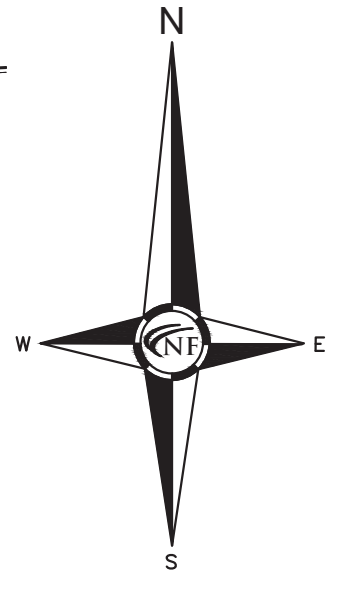
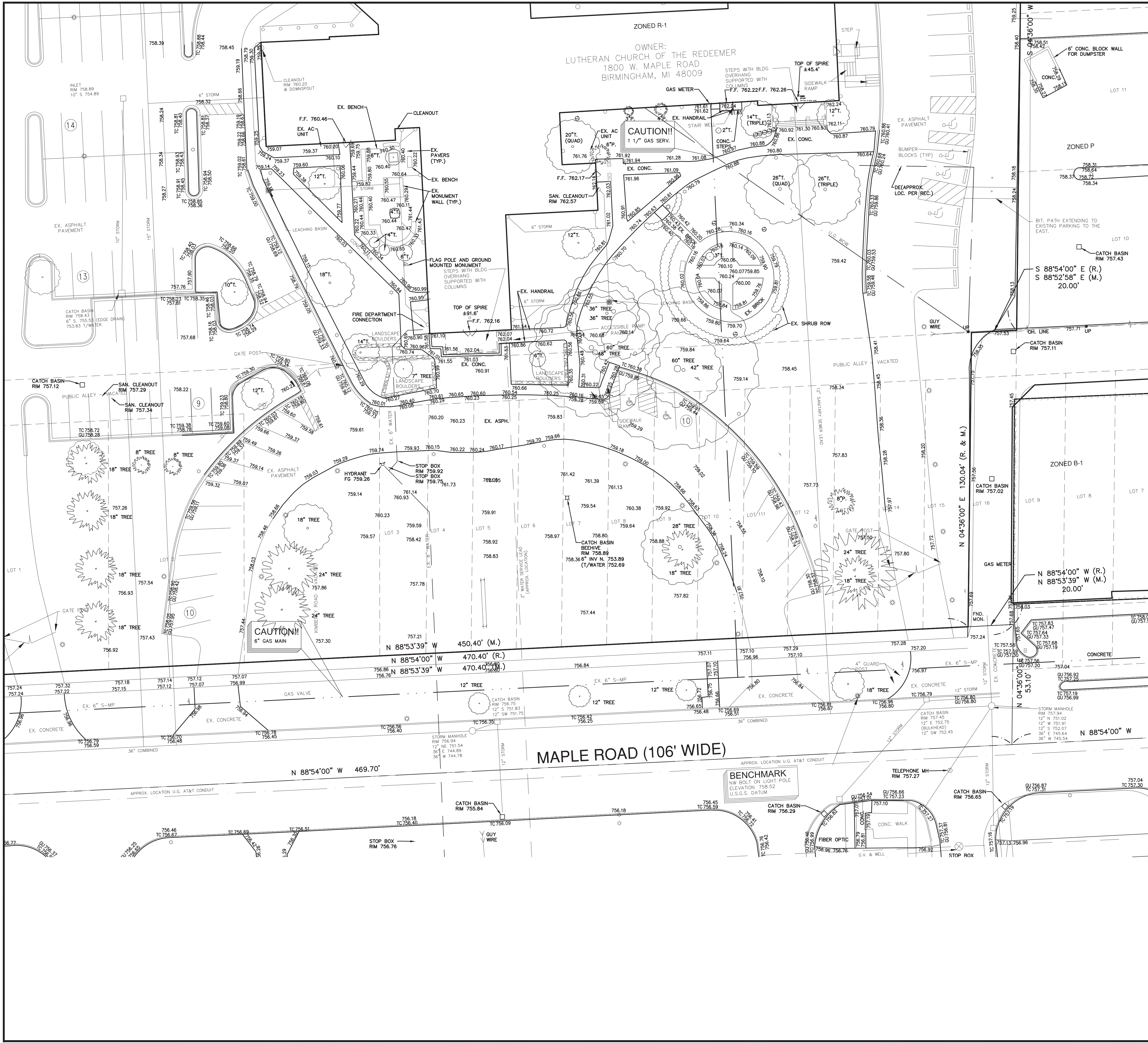
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LEGEND

MANHOLE	EXISTING SANITARY SEWER
HYDRANT	EXISTING SAN. CLEAN OUT
MANHOLE	EXISTING WATER MAIN
MANHOLE	EXISTING STORM SEWER
UTILITY POLE	EX. R.Y. CATCH BASIN
GUY POLE	EXISTING BURIED CABLES
GUY WIRE	OVERHEAD LINES
LIGHT POLE	LIGHT POLE
SIGN	SIGN
EXISTING GAS MAIN	EXISTING GAS MAIN



50

NF

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SEAL

STATE OF MICHIGAN

JEFFREY J. HUHTA

PROFESSIONAL SURVEYOR

NO. 52458

EXPIRATION DATE 12/31/2024

PROJECT
Lutheran Church
of the Redeemer
Building Expansion

CLIENT
Lutheran Church of the
Redeemer
1800 West Maple Road
Birmingham, Michigan

Contact
Steve Scheidt
Ph.: (248) 358-0800
Fax: (248) 358-2180

PROJECT LOCATION
Part of the SW ¼
of Section 26
T. 2 North, R. 10 East
City of Birmingham,
Oakland County, Michigan

SHEET
Limited Topographic, and
Tree Survey

811

Know what's below
Call before you dig.

DATE	ISSUED/REVISED
2019-12-09	ISSUED FOR OWNER REVIEW
2019-12-11	ISSUED FOR SITE PLAN REVIEW
2020-02-04	REVISED PER OWNER
2020-03-11	REVISED PER OWNER
2020-05-15	REVISED PER OWNER
2020-05-18	REVISED SPA SUBMITTAL

DRAWN BY:
C. Ellison
DESIGNED BY:

APPROVED BY:
J. Huhta
DATE:
November 18, 2019

SCALE: 1" = 20'
20 10 0 10 20 30
NFE JOB NO. SHEET NO.
D366-06 C2

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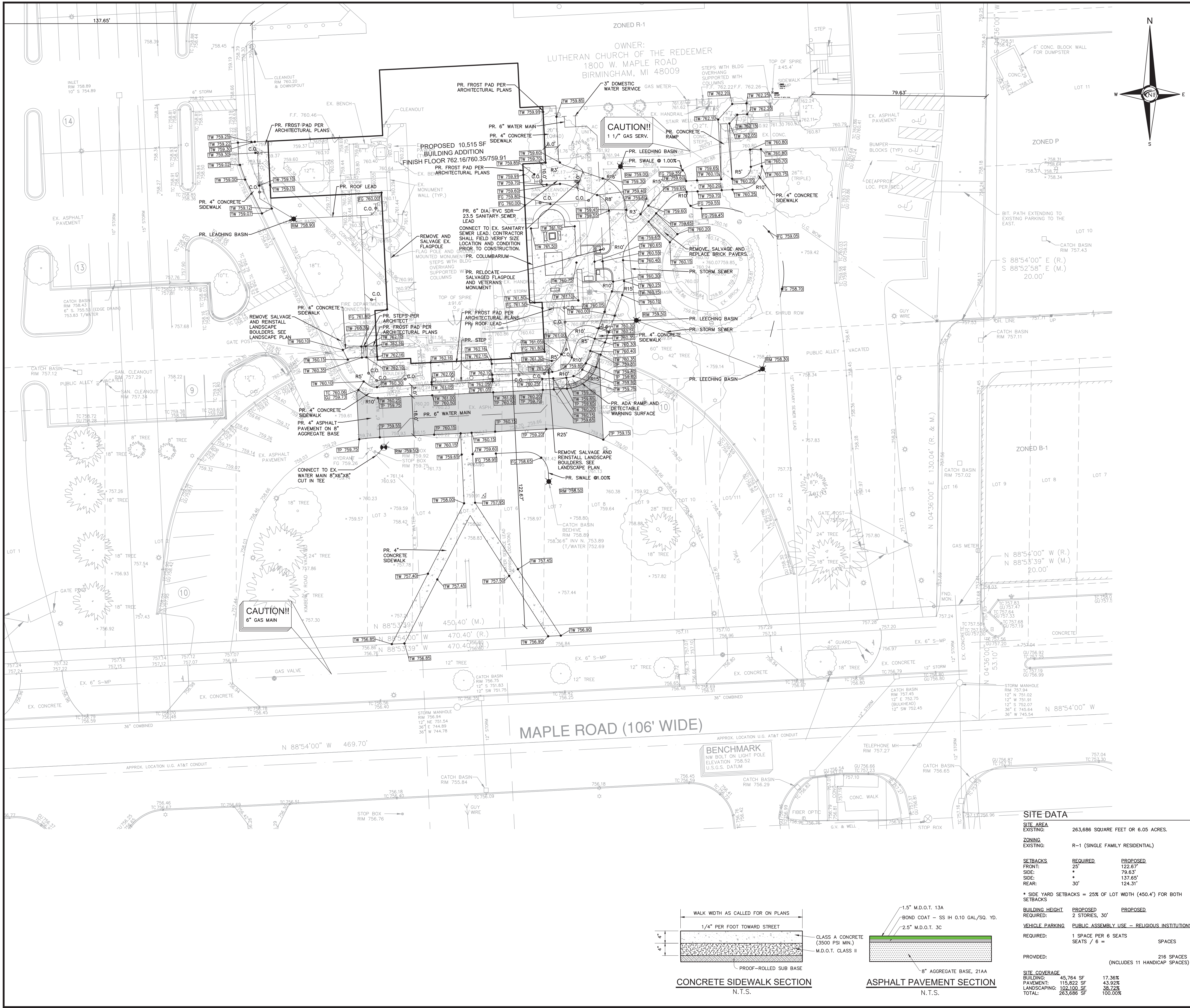
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OVERHEAD LINES
LIGHT POLE
SIGN
EXISTING GAS MAIN



Location Map
N.T.S.

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SEAL

STATE OF MICHIGAN

JASON R. LONGHURST

ENGINEER NO. 54075

PAID

PROJECT
Lutheran Church of the Redeemer
Building Expansion

CLIENT
Lutheran Church of the Redeemer
1800 West Maple Road
Birmingham, Michigan

Contact
Steve Scheidt
Ph.: (248) 358-0800
Fax: (248) 358-2180

PROJECT LOCATION
Part of the SW ¼
of Section 26
T. 2 North, R. 10 East
City of Birmingham,
Oakland County, Michigan

SHEET
Site Plan

GENERAL PAVING NOTES

PAVEMENT SHALL BE OF THE TYPE, THICKNESS AND CROSS SECTION AS INDICATED ON THE PLANS AND AS FOLLOWS:

CONCRETE: PORTLAND CEMENT TYPE IA (AIR-ENTRAINED) WITH A MINIMUM CEMENT CONTENT OF SIX SACKS PER CUBIC YARD, MINIMUM 28 DAY COMPRESSIVE STRENGTH OF 3,500 PSI AND A SLUMP OF 1 1/2 TO 3 INCHES.

ASPHALT: BASE COURSE - MDOT BITUMINOUS MIXTURE NO. 3C SURFACE COURSE - MDOT BITUMINOUS MIXTURE NO. 13A ASPHALT CEMENT PENETRATION GRADE 85-100, BOND COAT - MDOT SS-1H EMULSION AT 0.10 GALLON PER SQUARE YARD, MAXIMUM 2 INCH LIFT.

PAVEMENT BASE SHALL BE COMPACTED TO 95% OF THE MAXIMUM DENSITY (MODIFIED PROCTOR) PRIOR TO PLACEMENT OF PROPOSED PAVEMENT. EXISTING SUB-BASE SHALL BE PROOF-ROLLED IN THE PRESENCE OF THE ENGINEER TO DETERMINE STABILITY.

ALL CONCRETE PAVEMENT, DRIVEWAYS, CURB & GUTTER, ETC., SHALL BE SPRAY CURED WITH WHITE MEMBRANE CURING COMPOUND IMMEDIATELY FOLLOWING FINISHING OPERATION.

ALL CONCRETE PAVEMENT JOINTS SHALL BE FILLED WITH HOT POURED RUBBERIZED ASPHALT JOINT SEALING COMPOUND IMMEDIATELY AFTER SAWCUT OPERATION. FEDERAL SPECIFICATION SS-S164.

ALL WORKMANSHIP AND MATERIALS SHALL BE IN ACCORDANCE WITH THE CURRENT STANDARDS AND SPECIFICATIONS OF THE MUNICIPALITY AND THE MICHIGAN DEPARTMENT OF TRANSPORTATION STANDARD SPECIFICATIONS FOR CONSTRUCTION, CURRENT EDITION.

ALL TOP OF CURB ELEVATIONS, AS SHOWN ON THE PLANS, ARE CALCULATED FOR A 6" CONCRETE CURB UNLESS OTHERWISE NOTED.

ALL SIDEWALK RAMPS, CONFORMING TO PUBLIC ACT NO. 8, 1993, SHALL BE INSTALLED AS INDICATED ON THE PLANS.

CONSTRUCTION OF A NEW OR RECONSTRUCTED DRIVE APPROACH CONNECTING TO AN EXISTING STATE OR COUNTY ROADWAY SHALL BE ALLOWED ONLY AFTER AN APPROVED PERMIT HAS BEEN SECURED FROM THE AGENCY HAVING JURISDICTION OVER SAID ROADWAY.

FOR ANY WORK WITHIN THE PUBLIC RIGHT-OF-WAY, THE CONTRACTOR SHALL PAY FOR AND SECURE ALL NECESSARY PERMITS AND LICENSES AND ARRANGE FOR ALL INSPECTION.

EXISTING TOPSOIL, VEGETATION AND ORGANIC MATERIALS SHALL BE STRIPPED AND REMOVED FROM PROPOSED PAVEMENT AREA PRIOR TO PLACEMENT OF BASE MATERIALS.

EXPANSION JOINTS SHOULD BE INSTALLED AT THE END OF ALL INTERSECTION RADII.

SIDEWALK RAMPS, CONFORMING TO PUBLIC ACT NO. 8, 1993, SHALL BE INSTALLED AS SHOWN AT ALL STREET INTERSECTIONS AND AT ALL BARRIER FREE PARKING AREAS AS INDICATED ON THE PLANS.

ALL PAVEMENT AREAS SHALL BE PROOF-ROLLED UNDER THE SUPERVISION OF A GEOTECHNICAL ENGINEER PRIOR TO THE PLACEMENT OF BASE MATERIALS AND PAVING MATERIALS.

FILL AREAS SHALL BE MACHINE COMPACTED IN UNIFORM LIFTS NOT EXCEEDING 9 INCHES THICK TO 98% OF THE MAXIMUM DENSITY (MODIFIED PROCTOR) PRIOR TO PLACEMENT OF PROPOSED PAVEMENT.

PAVING LEGEND

PROPOSED CONCRETE PAVEMENT

PROPOSED ASPHALT PAVEMENT

LEGEND

MANHOLE

HYDRANT

MANHOLE

UTILITY POLE

C.O.

HYDRANT

INLET

EXISTING SANITARY SEWER

SAN. CLEAN OUT

EXISTING WATERMAIN

EXISTING STORM SEWER

EX. R. Y. CATCH BASIN

EXISTING BURIED CABLES

OVERHEAD LINES

LIGHT POLE

SIGN

EXISTING GAS MAIN

PR. SANITARY SEWER

PR. WATER MAIN

PR. STORM SEWER

PR. R. Y. CATCH BASIN

PROPOSED LIGHT POLE

PR. TOP OF CURB ELEVATION

PR. GUTTER ELEVATION

PR. TOP OF WALK ELEVATION

PR. TOP OF PWMT. ELEVATION

FINISH GRADE ELEVATION

TC 600.00

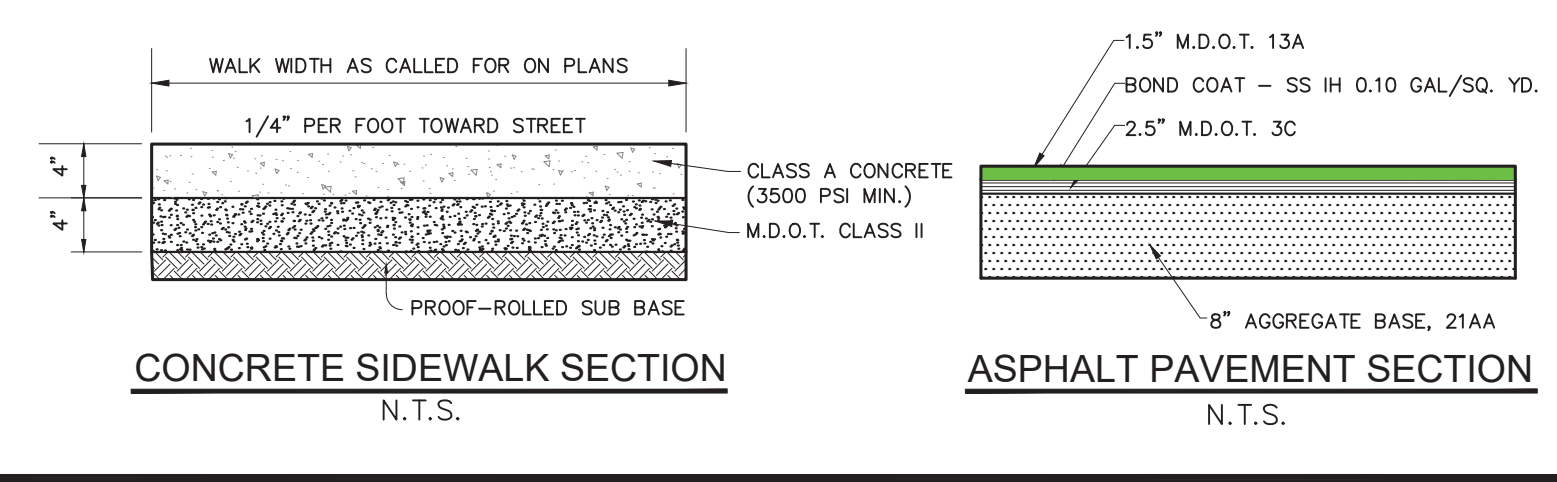
GU 600.00

TW 600.00

TP 600.00

FG 600.00

SITE DATA			
SITE AREA		263,686 SQUARE FEET OR 6.05 ACRES.	
EXISTING:		R-1 (SINGLE FAMILY RESIDENTIAL)	
ZONING		EXISTING:	
SETBACKS		REQUIRED:	PROPOSED:
FRONT:		25'	122.67'
SIDE:		•	78.63'
REAR:		30'	137.65'
• SIDE YARD SETBACKS = 25% OF LOT WIDTH (450.4') FOR BOTH SETBACKS		30'	124.31'
BUILDING HEIGHT		PROPOSED:	PROPOSED:
REQUIRED:		2 STORIES, 30'	
VEHICLE PARKING		PUBLIC ASSEMBLY USE - RELIGIOUS INSTITUTIONS	
REQUIRED:		1 SPACE PER 6 SEATS	SPACES
SEATS / 6 =			
PROVIDED:		216 SPACES	
		(INCLUDES 11 HANDICAP SPACES)	
SITE COVERAGE		45,764 SF	17.36%
BUILDING:		115,822 SF	43.92%
PAVEMENT:		102,100 SF	38.72%
LANDSCAPING:		263,686 SF	100.00%
TOTAL:			



811

Know what's below
Call before you dig.

DATE

ISSUED/REVISED

2019-12-09 ISSUED FOR OWNER REVIEW

2019-12-11 ISSUED FOR SITE PLAN REVIEW

2020-02-04 REVISED PER OWNER

2020-03-11 REVISED PER OWNER

2020-05-15 REVISED PER OWNER

2020-05-18 REVISED SPA SUBMITTAL

DRAWN BY:

T. Wood

DESIGNED BY:

T. Wood

APPROVED BY:

J. Longhurst

DATE:

December 9, 2019

SCALE: 1" = 20'

20 10 0 10 20 30

NFE JOB NO.

SHEET NO.

D366-06

C3

Lutheran Church
of the Redeemer
Building Expansion

Lutheran Church of the Redeemer
1800 West Maple Road
Birmingham, Michigan

Contact
Steve Scheidt
Ph.: (248) 358-0800
Fax: (248) 358-2180

Part of the SW $\frac{1}{4}$
of Section 26
T. 2 North, R. 10 East
City of Birmingham,
Oakland County, Mich

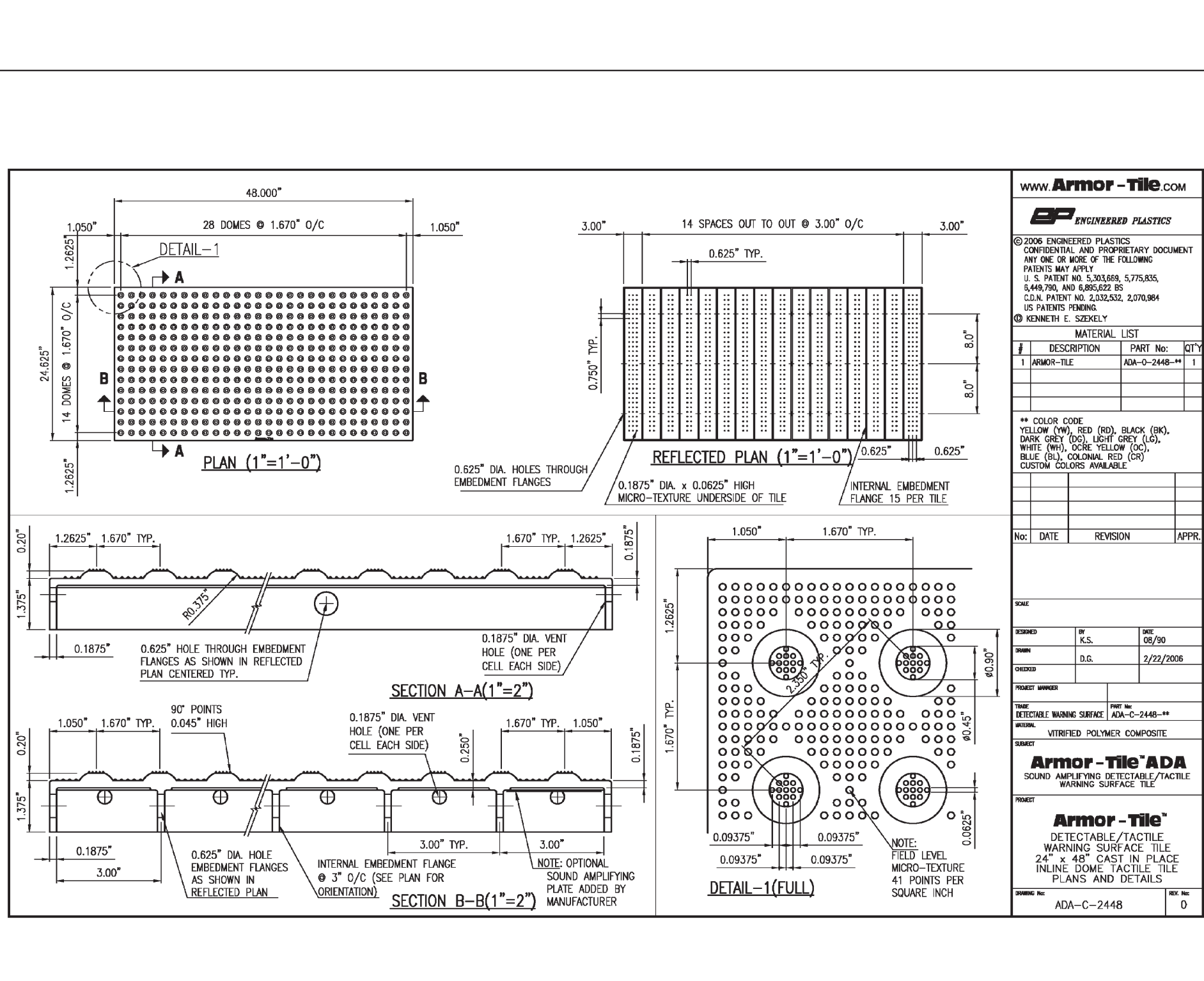
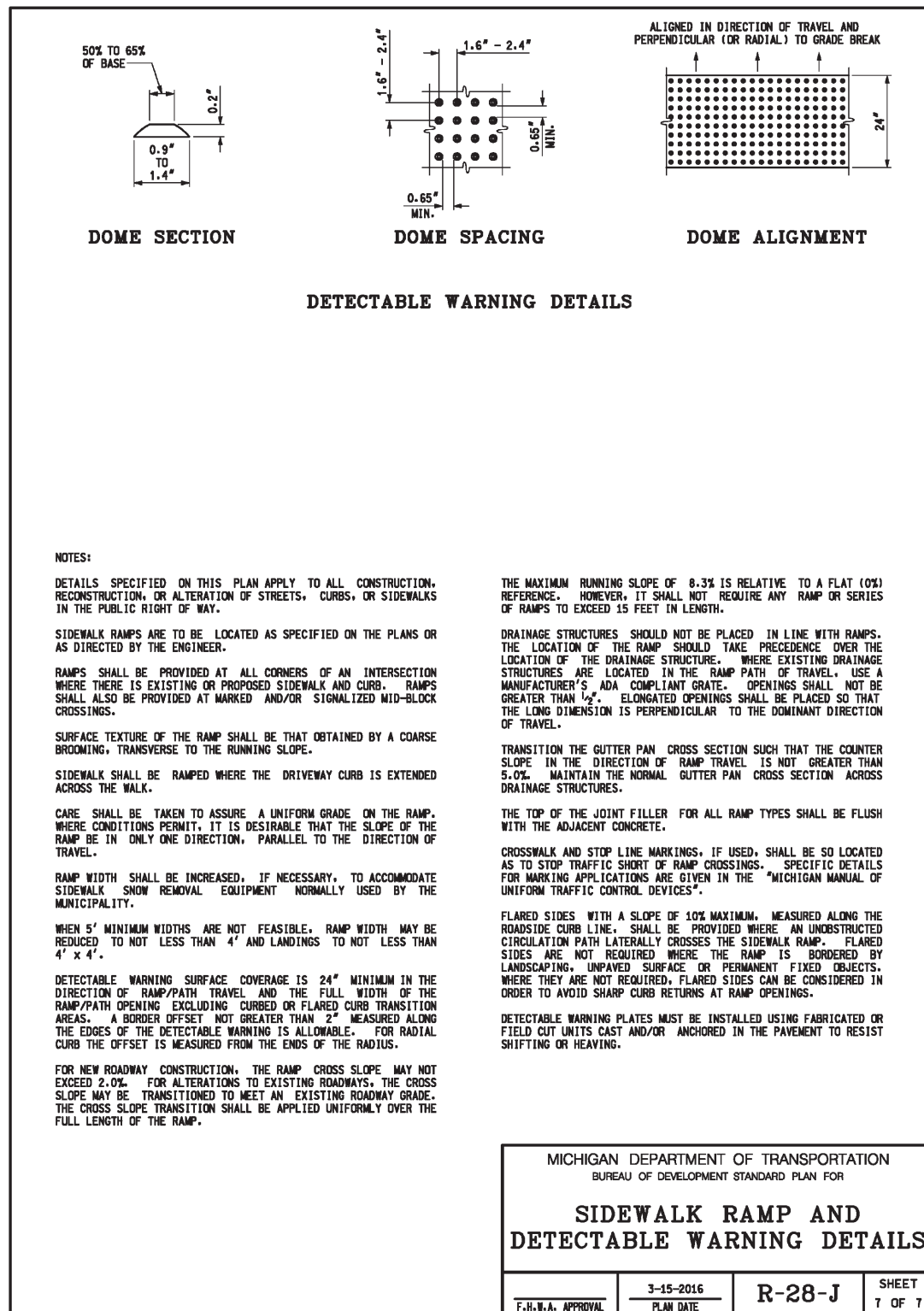
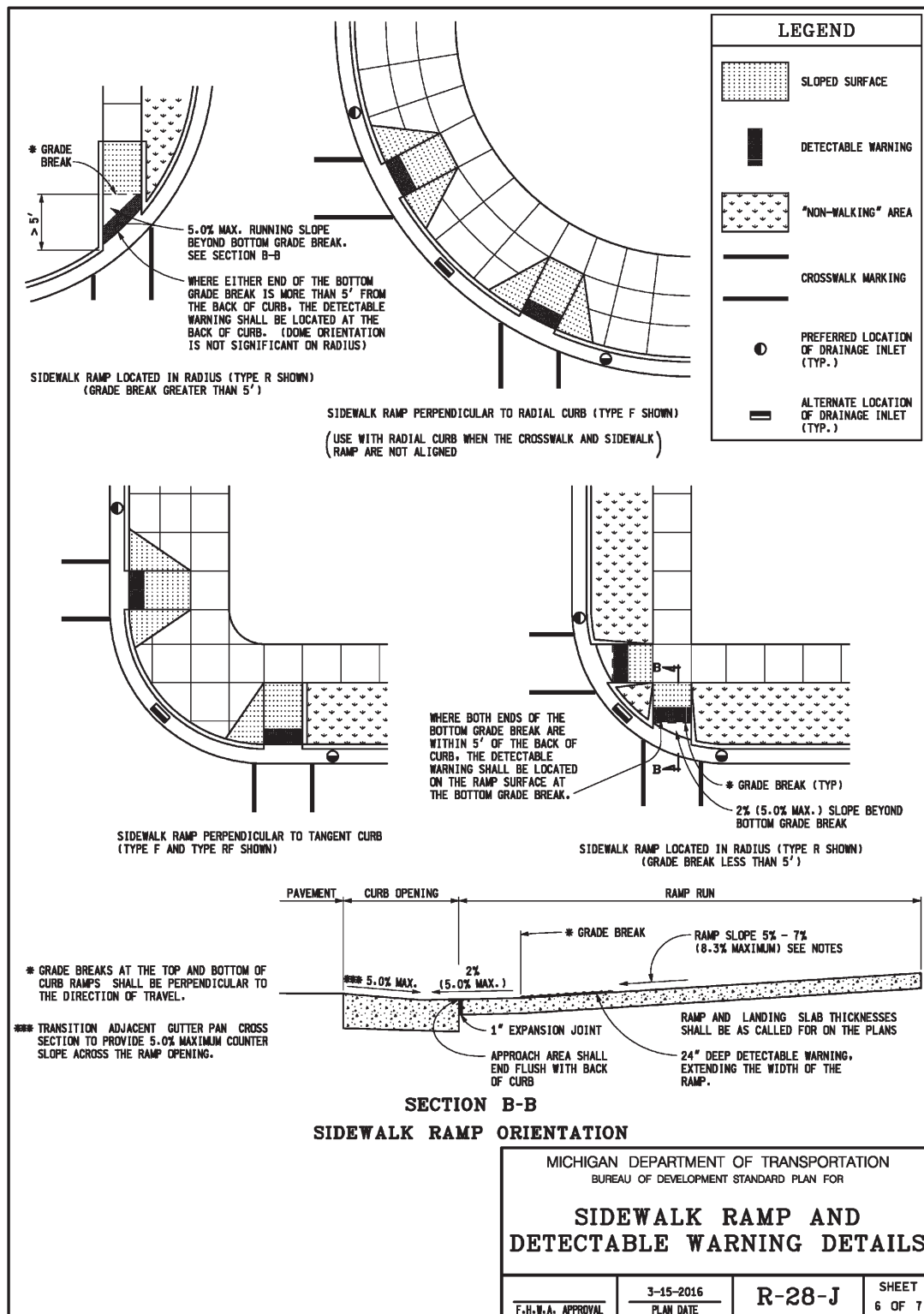
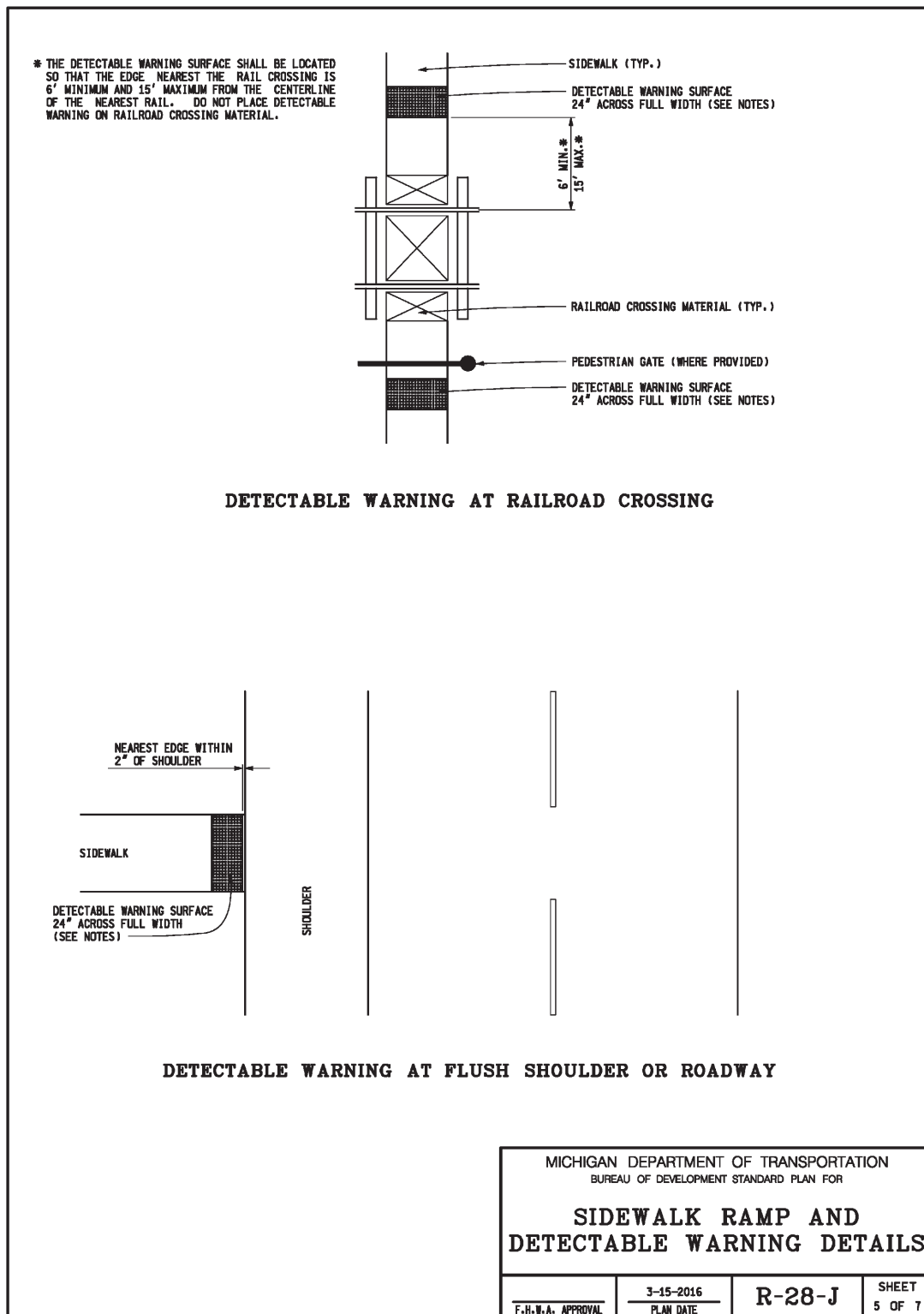
SHEET
Notes and Details

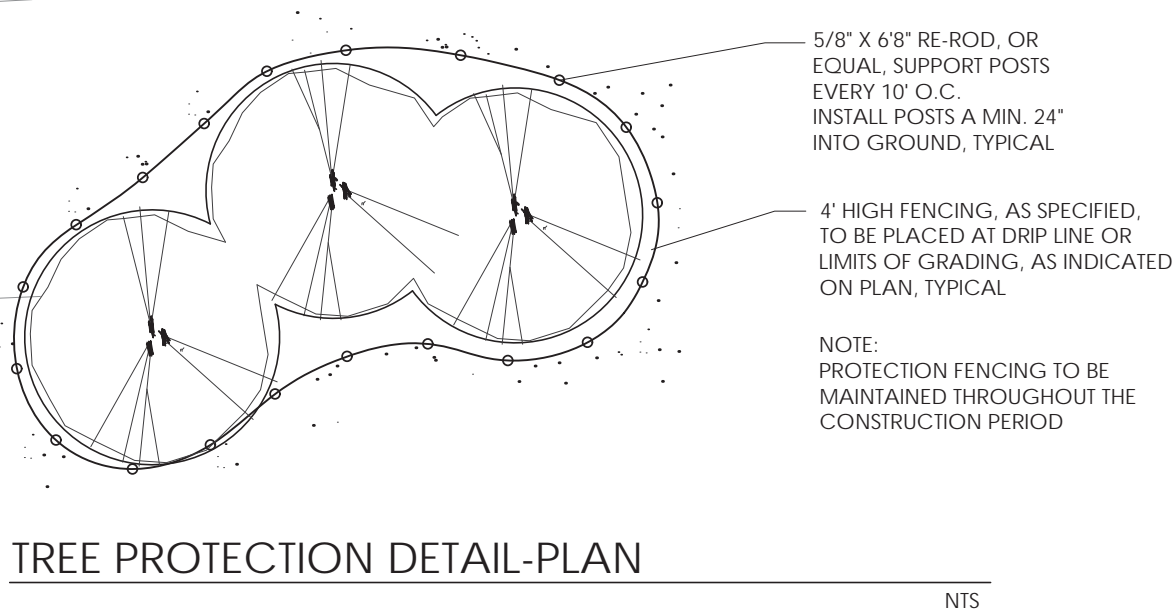
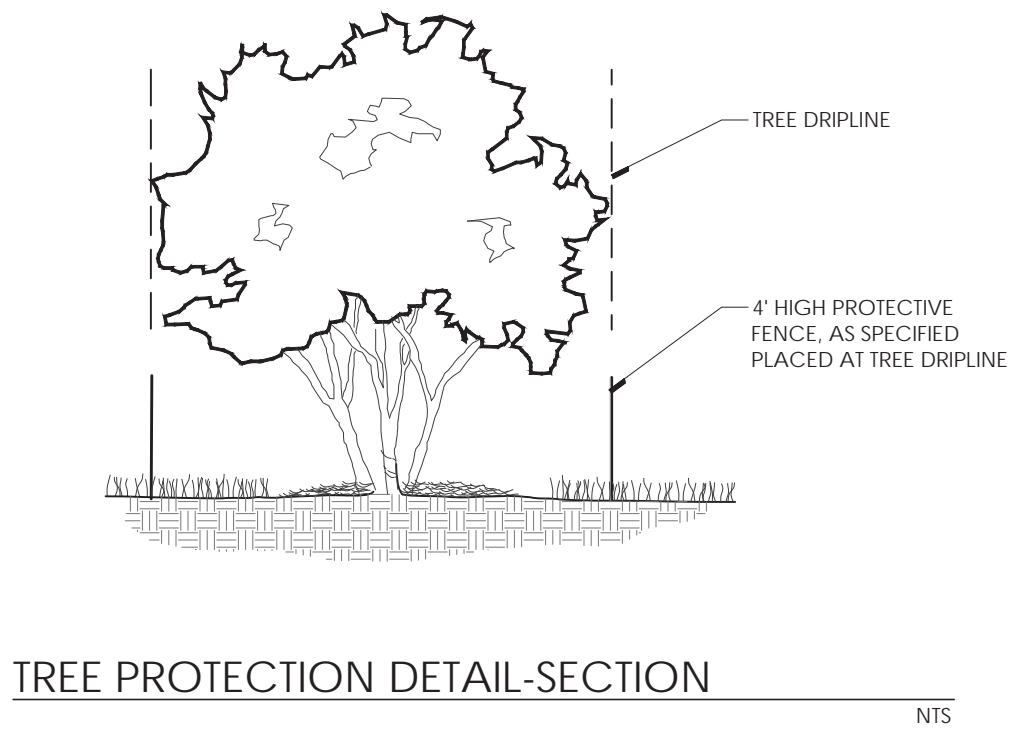
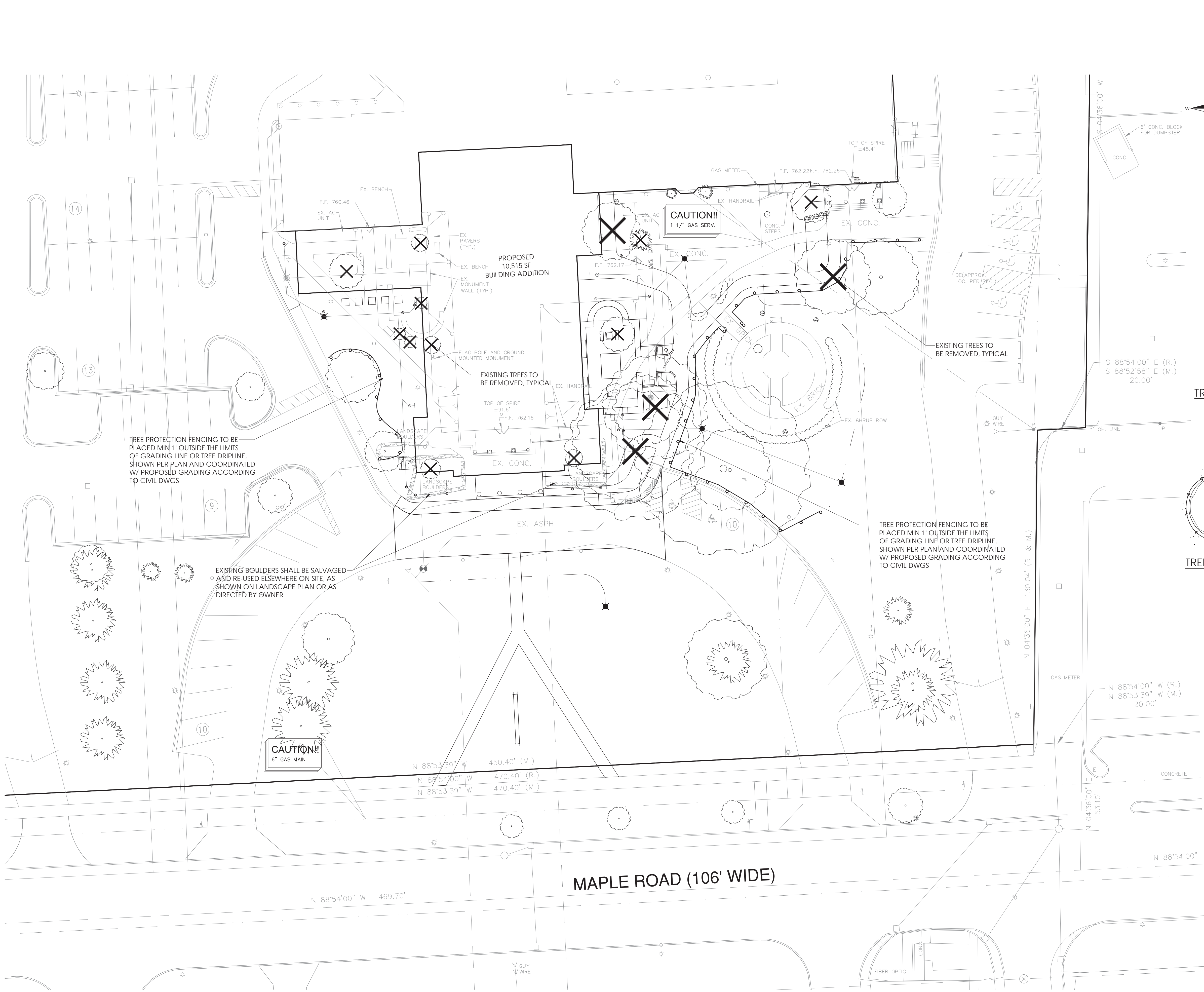
Know what's **below**
Call before you dig.

DATE	ISSUED/REVISED
2019-12-09	ISSUED FOR OWNER REVIEW
2019-12-11	ISSUED FOR SITE PLAN REVIEW
2020-02-04	REVISED PER OWNER
2020-03-11	REVISED PER OWNER
2020-05-15	REVISED PER OWNER
2020-05-18	REVISED SPA SUBMITTAL

SCALE: N.T.S.

SHEET NO.
C4





GENERAL TREE PROTECTION NOTES

1. APPROVED TREE PROTECTION SHALL BE ERECTED PRIOR TO THE START OF CONSTRUCTION ACTIVITIES, AND SHALL REMAIN IN PLACE UNTIL THE CONSTRUCTION IS COMPLETE.
2. ALL UNDERSTORY VEGETATION WITHIN THE LIMITS OF PROTECTIVE FENCING SHALL BE PRESERVED.
3. NO PERSON MAY CONDUCT ANY ACTIVITY WITHIN THE DRIP LINE OF ANY TREE DESIGNATED TO REMAIN, INCLUDING BUT NOT LIMITED TO, PLACING SOLVENTS, BUILDING MATERIALS, CONSTRUCTION EQUIPMENT, OR SOIL DEPOSITS WITHIN THE DRIP LINE.
4. WHERE GROUPINGS OF TREES ARE TO REMAIN, TREE FENCING SHALL BE PLACED AT THE LIMITS OF GRADING LINE.
5. DURING CONSTRUCTION, NO PERSON SHALL ATTACH ANY DEVICE OR WIRE TO ANY TREE, SCHEDULED TO REMAIN.
6. ALL UTILITY SERVICE REQUESTS MUST INCLUDE NOTIFICATION TO THE INSTALLER THAT PROTECTED TREES MUST BE AVOIDED. ALL TRENCHING SHALL OCCUR OUTSIDE OF THE PROTECTIVE FENCING.
7. SWALES SHALL BE ROUTED TO AVOID THE AREA WITHIN THE DRIP LINES OF PROTECTED TREES.
8. TREES LOCATED ON ADJACENT PROPERTIES THAT MAY BE AFFECTED BY CONSTRUCTION ACTIVITIES MUST BE PROTECTED.
9. ROOT ZONES OF PROTECTED TREES SHOULD BE SURROUNDED WITH RIGIDLY STAKED FENCING.
10. THE PARKING OF IDLE AND RUNNING EQUIPMENT SHALL BE PROHIBITED UNDER THE DRIP LINE OF PROTECTED TREES.
11. THE STRIPPING OF TOPSOIL FROM AROUND PROTECTED TREES SHALL BE PROHIBITED.
12. ALL TREES TO BE REMOVED SHALL BE CUT AWAY FROM TREES TO REMAIN.
13. THE GRUBBING OF UNDERSTORY VEGETATION WITHIN CONSTRUCTION AREAS SHOULD BE CLEARED BY CUTTING VEGETATION AT THE GROUND WITH A CHAIN SAW OR MINIMALLY WITH A HYDRO-AXE.
14. THE CONTRACTOR IS RESPONSIBLE FOR THE REPLACEMENT PER ORDINANCE GUIDELINES, FOR THE DAMAGE OR REMOVAL OF ANY TREE DESIGNATED TO REMAIN.
15. TREES TO BE REMOVED SHALL BE FIELD VERIFIED, EVALUATED AND FLAGGED FOR REMOVAL, BY THE LANDSCAPE ARCHITECT OR FORESTER, ONLY AS DIRECTED BY THE OWNER OR OWNERS REPRESENTATIVE.

LEGEND:

- TREES TO BE REMOVED
- TREES TO REMAIN
- TREE PROTECTION FENCING



NOWAK & FRAUS ENGINEERS

CIVIL ENGINEERS
LAND SURVEYORS
LAND PLANNERS

NOWAK & FRAUS ENGINEERS
46777 WOODWARD AVE.
PONTIAC, MI 48342-5032
TEL. (248) 332-7931
FAX. (248) 332-8257
WWW.NOWAKFRAUS.COM

SEAL



PROJECT

Lutheran Church of the Redeemer Building Expansion

CLIENT

Lutheran Church of the Redeemer
1800 West Maple Road
Birmingham, Michigan

Contact

Steve Scheidt
Ph.: (248) 358-0800
Fax: (248) 358-2180

PROJECT LOCATION

Part of the SW 1/4 of Section 26
T. 2 North, R. 10 East
City of Birmingham,
Oakland County, Michigan

SHEET

Tree Preservation Plan



REVISIONS

12/09/19	ISSUED FOR OWNER REVIEW
12/11/19	ISSUED FOR SITE PLAN REVIEW
02/04/20	REVISED PER OWNER
05/15/20	REVISED PER OWNER
05/18/20	REVISED PER OWNER

DRAWN BY:

G. Ostrowski

DESIGNED BY:

G. Ostrowski

APPROVED BY:

G. Ostrowski

DATE:

12-04-2019

SCALE: 1" = 20'

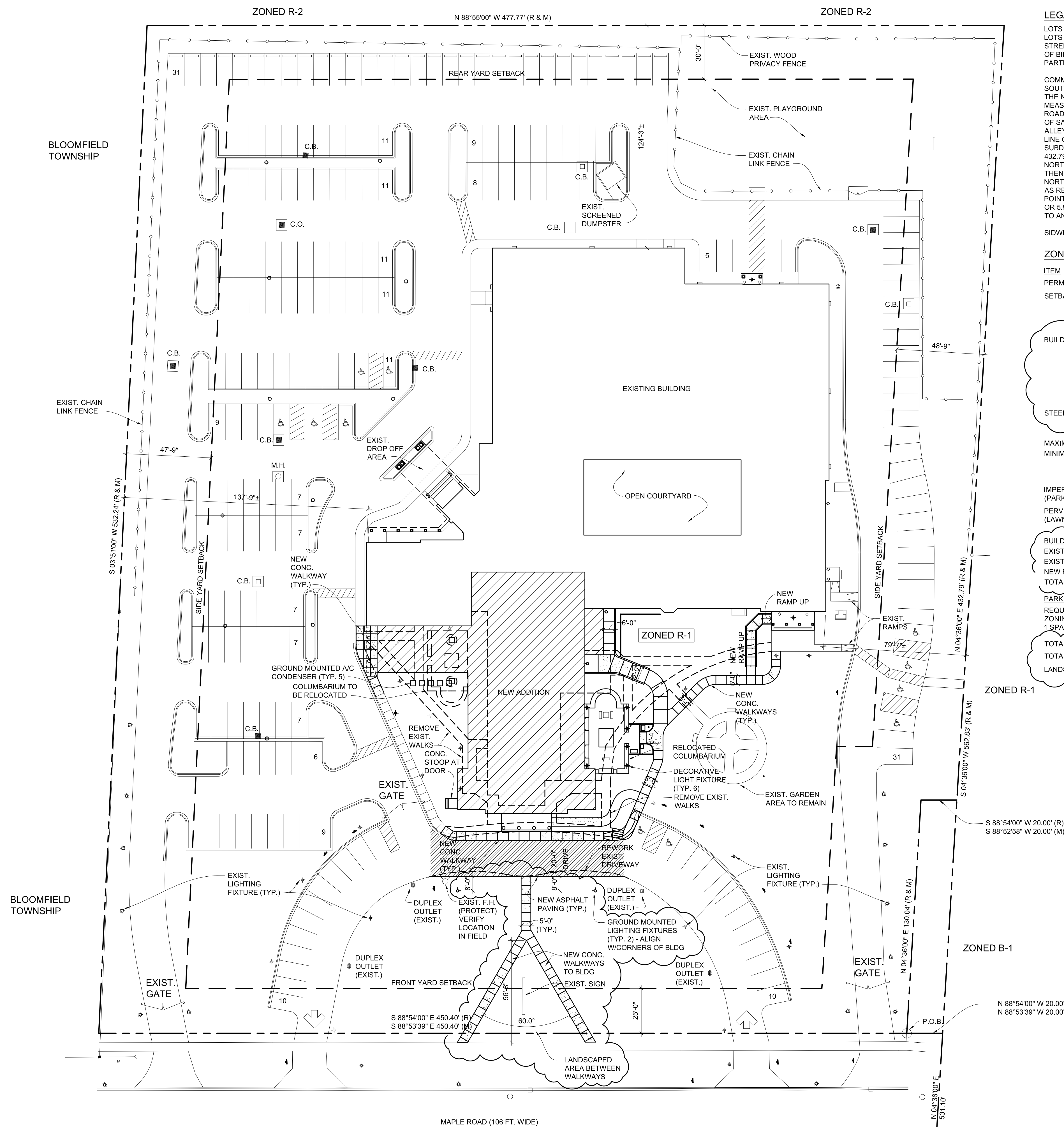
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NFE JOB NO.

D366-05

SHEET NO.

L1



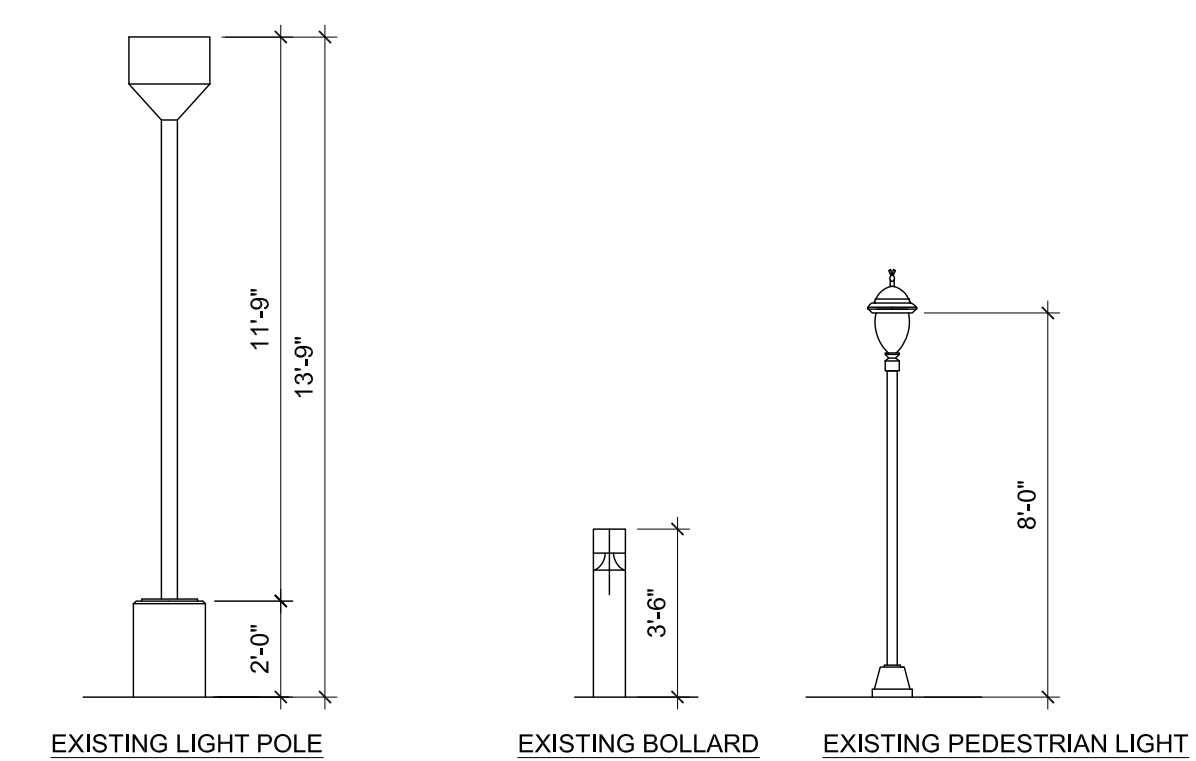
LEGAL DESCRIPTION

LOTS 1 THROUGH 15 INCLUSIVE TOGETHER WITH ALL OF ADJACENT VACATED PUBLIC ALLEY, AND LOTS 17 THROUGH 34 INCLUSIVE OF "THE RUBY-N" SUBDIVISION, ALSO ALL OF VACATED KIMBERLY STREET, ALL BEING PART OF SOUTHWEST 1/4 OF SECTION 26, TOWN 2 NORTH, RANGE 10 EAST, CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN, AS RECORDED IN LIBER ???, PAGE ???, BEING MORE PARTICULARLY DESCRIBED AS:

SIDWELL NO. 19-26-378-072

ZONING REQUIREMENTS

ITEM	REQUIRED	PROPOSED
PERMITTED LAND USE:	R-1 RESIDENTIAL	CHURCH (SPECIAL LAND USE)
SETBACKS: FRONT SIDE	25'-0" 47'-8" (ONE SIDE) 119'-5" (TOTAL)	122'-4" 79'-7" (EXIST.) 217'-4" (EXIST.) 124'-3" (EXIST.)
REAR	30'-0"	
BUILDING HEIGHT	MAX: 30'-0" (MIDPOINT OF SLOPED ROOF), 2 STORIES EXISTING: 24'-0" APPROXIMATELY (MIDPOINT OF SLOPED SANCTUARY ROOF)	NEW: 27'-0" (MIDPOINT OF SLOPED SANCTUARY ROOF), 2 STORIES
STEEPLE HEIGHT:	EXISTING: 91'-7"	NEW: 85'-10"
MAXIMUM LOT COVERAGE	30% (79,106 SQ. FT.)	18% (49,140 SQ. FT.)
MINIMUM OPEN SPACE	40% (MIN. 65% UNPAVED AT FRONT OPEN SPACE)	105,480 S.F. / 263,686 S.F. = 40%
IMPERVIOUS SITE AREA (PARKING, SIDEWALKS, BUILDING)	158,206 SQ. FT.	
PERVIOUS SITE AREA (LAWN & LANDSCAPED AREAS, PARKING ISLANDS)	105,480 SQ. FT.	
BUILDING AREAS:		
EXISTING BUILDING (CURRENT, TOTAL)	41,619 SQ. FT.	
EXISTING BUILDING (DEMOLITION)	6,558 SQ. FT.	
NEW BUILDING ADDITION	10,671 SQ. FT.	
TOTAL WITH ADDITION	45,732 SQ. FT.	
PARKING		
REQUIRED PARKING (CHURCHES)	440 SEATS (MAIN LEVEL) + 74 SEATS (BALCONY) = 514, 514 / 6 SEATS = 86 SPACES	218 SPACES (INCLUDING 11 BARRIER-FREE SPACES)
ZONING ORD. SECTION 4, TABLE 'A' = 1 SPACE PER 6 FIXED SEATS		
TOTAL AREA - PARKING LOT:	80,456 SQ. FT.	
TOTAL AREA - INTERNAL LANDSCAPING:	7,026 SQ. FT.	
LANDSCAPE RATIO:	5% (MINIMUM)	7,026 / 80,456 SQ. FT. = 0.087 (8.7



2 SITE LIGHTING DETAILS

ISSUED:

11/15/19	DD PACKAGE
02/12/20	SPA PACKAGE
04/30/20	SPA COMMENTS
05/18/20	REVISED SPA SUBMITTAL

merritt
cieslak
design_[plc]

ARCHITECTURE PLANNING

33610 Grand River
Farmington, Michigan 48335
248-374-0001
www.mcdarchitects.com

LUTHERAN
CHURCH OF
THE REDEEMER

MAPLE ROAD
BIRMINGHAM, MICHIGAN

ARCHITECTURAL
SITE PLAN

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Project No.	Sheet No.
15165	AS-101

24ACC6
Performance™ 16 Air Conditioner
with Puron® Refrigerant
1 – 1/2 to 5 Tons


turn to the experts

Product Data



INDUSTRY LEADING FEATURES / BENEFITS

Efficiency

- 14 – 16.5 SEER / 11.5 – 13.5 EER
- Microtube Technology™ refrigeration system
- Indoor air quality accessories available

Sound

- Sound level as low as 72 dBA
- Compressor sound blanket standard

Comfort

- System supports Edge® Thermostat™ or standard thermostat controls

Reliability

- Puron® refrigerant – environmentally sound, won't deplete the ozone layer and low lifetime service cost.
- Scroll compressor
- Internal pressure relief valve
- Internal thermal overload
- Filter drier
- High and low pressure switches
- Balanced refrigeration system for maximum reliability

Durability

WeatherArmor™ protection package:

- Solid, durable sheet metal construction
- Louvered coil guard
- Baked-on, complete outer coverage, powder paint

Applications

- Long-line – up to 250 feet (76.20 m) total equivalent length, up to 200 feet (60.96 m) condenser above evaporator, or up to 80 ft. (24.38 m) evaporator above condenser (See Longline Guide for more information.)
- Low ambient (down to -20°F/-28.9°C) with accessory kit


Carrier's Air Conditioners with Puron® refrigerant provide a collection of features unmatched by any other family of equipment. The 24ACC has been designed utilizing Carrier's Puron refrigerant. The environmentally sound refrigerant allows you to make a responsible decision in the protection of the earth's ozone layer.

This product has been designed and manufactured to meet Energy Star® criteria for energy efficiency when matched with appropriate coil components. Refer to the combination ratings in the Product Data for system combinations that meet Energy Star® guidelines.




NOTE: Ratings contained in this document are subject to change at any time. Always refer to the AHRI directory (www.ahridirectory.org) for the most up-to-date ratings information.

GROUND-MOUNTED A/C CONDENSERS

TYPICAL FOR 5 UNITS. SIZE: 35" X 35" X 46" HIGH
LOCATION: SOUTH OF NEW WEST WING BUILDING ADDITION.


 **gotham** | E V O
Multiple Layers of Light


Luminaire Type: _____
Catalog Number: _____

General Illumination Round Downlight

6"


250 - 8,000 lumens


10,000 - 17,500 lumens

Feature Set

- Bounding Ray™ optical design
- Unitized optics mechanically attach the light engine to the lower reflector for complete optical alignment.
- 45° cutoff to source and source image
- Fully serviceable and upgradeable lensed LED light engine
- 70% lumen maintenance at 60,000 hours
- 2.5 SDCM, 85 CRI typical, 90+ CRI optional
- Fixtures are wet location, covered ceiling
- Available with 10% dimming, 1% dimming, or dim to dark
- Balming distribution with feathered edges provides even illumination on horizontal and vertical surfaces
- ENERGY STAR® certified product

Distribution

very narrow
0.5 SMI

narrow
0.7 SMI

medium
0.9 SMI


medium wide
1.0 SMI


wide
1.2 SMI


Superior Performance

Horizontal Lumens	250	500	750	1000	1500	2000	2500	3000	3500	4000	4500	5000	6000	8000	10,000	12,000	15,000	17,500
Delivered Lumens	297	539	776	994	1471	2006	2537	3077	3542	4027	4533	5256	6371	8247	10637	12332	15776	17803
Wattage	3.4	6.2	8.2	9.6	14.7	19.7	24.7	29.5	33.8	39.0	47.3	48.7	57.6	74.9	97.1	115.0	150.9	175.3
Lumens per Watt	87.4	83.7	94.6	103.5	100.1	101.8	102.7	104.3	104.8	103.3	95.8	107.9	110.6	110.1	109.5	107.2	104.5	101.5

Coordinated Apertures | Multiple Layers of Light


General Illumination Layer | EVO


High Center Beam Layer | Incho


EVO + Incho — Multiple Layers of Light

Downlight

Open Wellhead

Lensed Wellhead

Cylinder

Downlight

Adjustable

Lensed Wellhead

Cylinder

Core

MR

Surgical Table

Patient Room

Dynamic

Food Service

Nursing

Clean Room

Shower

Healthcare

Special Applications


EVO® OPEN
page 1 of 3

GOTHAM ARCHITECTURAL DOWNLIGHTING | 1400 Luster Road, Cooper, VA 20612 | P 800-705-SEER (7378) | gothamlighting.com
© 2014-2019 Acuity Brands Lighting Inc. All Rights Reserved. Rev. 11/16/19 Specifications subject to change without notice.

BUILDING ILLUMINATION AT ENTRANCES

NEW LIGHTING FIXTURE TYPE 'A'
LOCATIONS: SEE PHOTOMETRIC PLAN

LT30 Luminaires



LT30 D

SPECIFICATIONS

DESCRIPTION

The octagonal shaped luminaire shall consist of a luminaire base with an integral ballast housing, an eight-sided lens frame, eight lens panels, an octagonal shaped hinged roof, and a spiked finial.

DIMENSIONS

Fixture dimensions shall be as detailed on back page.

MATERIALS

The luminaire base, ballast housing, frame assembly, roof, and finial shall be heavy wall, copper free, cast aluminum produced from certified ASTM 356.1 ingot per ASTM B-179-95A or ASTM B26-95, formed true to the pattern with complete detail. Lens panels shall be smooth, textured, or prismatic. Lenses are available in clear polycarbonate or clear acrylic. Internal reflectors shall be borosilicate glass and reflectors shall be polished aluminum. All hardware shall be stainless steel. All exterior hardware shall be tamper resistant.

INSTALLATION

The luminaire shall mount on a 3" O.D. x 3" tenon with six 1/4" dia. socket set screws. The ballast and socket assembly shall be furnished with a quick disconnect plug and mount on a removable ballast plate. The ballast plate shall be removed by loosening a thumb screw.

FINISH

For finish specifications and color options see "Finish" section in catalog.

LIGHT SOURCE

Luminaires shall be furnished with an H.I.D. ballast and socket assembly. Luminaire shall be UL listed and labeled as suitable for wet locations. Sockets shall be glazed porcelain, mogul or medium base, with a copper alloy nickel plated screw shell and center contact. Ballast shall be core and coil, high power factor, regulating type.

CERTIFICATION

Upon request, manufacturer shall certify the use of 356.1 ingot alloy. Upon request, manufacturer shall supply UL file# and listing information.

ANTIQUE
Street Lamps
20118 W. Rundberg Ln., Austin, TX 78758
Ph (512) 977-8444 • Fax (512) 977-9522

DECORATIVE SITE LIGHTING

NEW LIGHTING FIXTURE TYPE 'SD'
LOCATIONS: SEE PHOTOMETRIC PLAN

NOTE:

REFER TO SHEET AS-101 FOR DESCRIPTION OF EXISTING SITE LIGHTING FIXTURES TO REMAIN.

REFER TO SITE PHOTOMETRIC SHEET FOR LOCATIONS AND ADDITIONAL DESRIPTIONS OF SITE LIGHTING FIXTURES.

ISSUED:
02/12/20 SPA PACKAGE
05/18/20 REVISED SPA SUBMITTAL

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cieslak
design

b | c |

ARCHITECTURE | PLANNING

33610 Grand River
Farmington, Michigan 48335
248-374-0001
www.mcdarchitects.com

LUTHERAN CHURCH OF THE REDEEMER

MAPLE ROAD
BIRMINGHAM, MICHIGAN

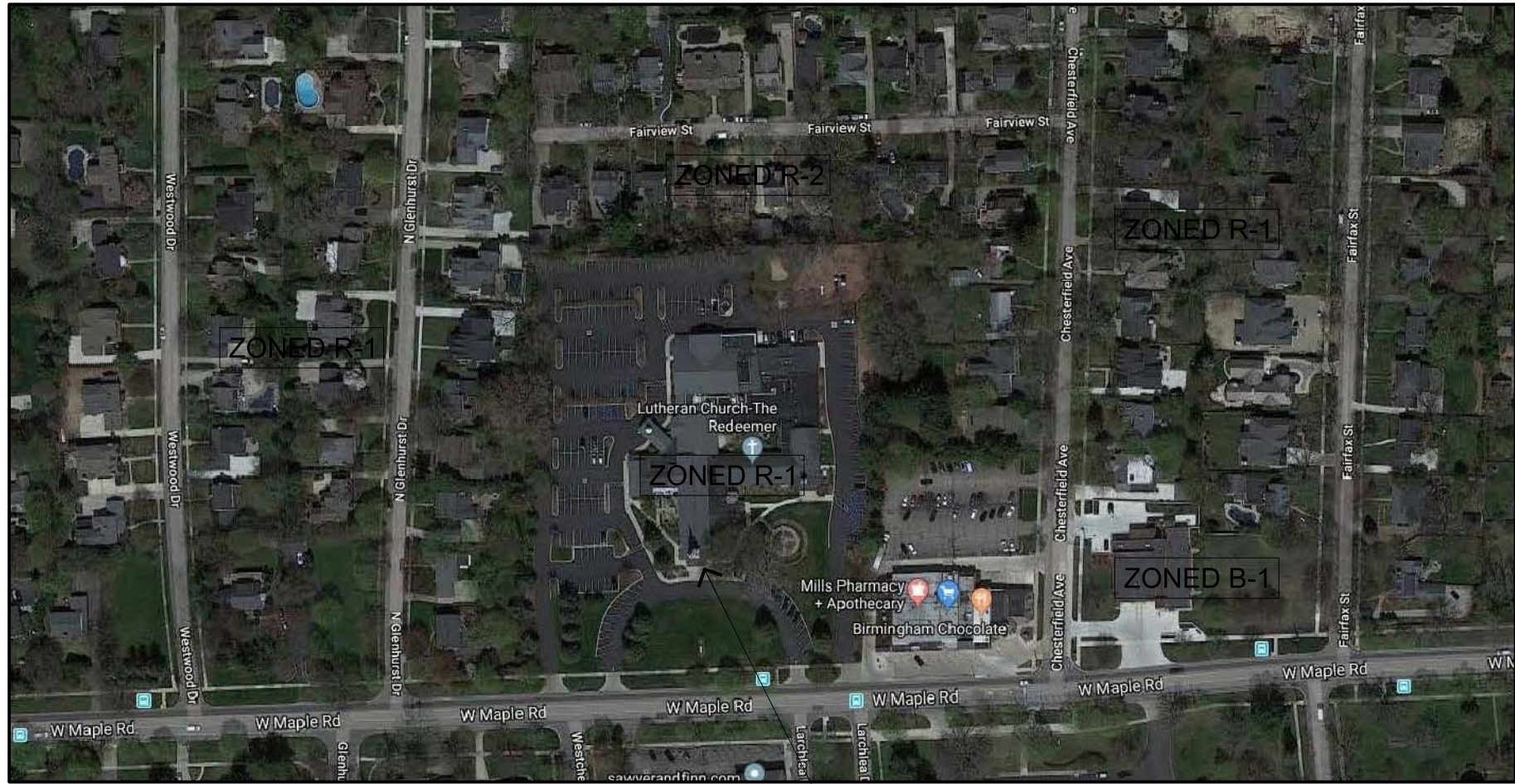
NEW SITE COMPONENTS

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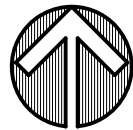
Project No.	Sheet No.
15165	AS-102



FRONT OF SANCTUARY



AERIAL SITE PLAN



FRONT OF SANCTUARY



WEST WING AND COLUMBARIUM



WEST ENTRANCE



WEST PARKING LOT



EAST WING



EAST PARKING LOT



EAST WING AND GARDEN

ISSUED:
02/12/20 SPA PACKAGE
05/18/20 REVISED SPA SUBMITTAL

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SITE PHOTOS &
AERIAL PLAN

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Project No.	Sheet No.
15165	A-002

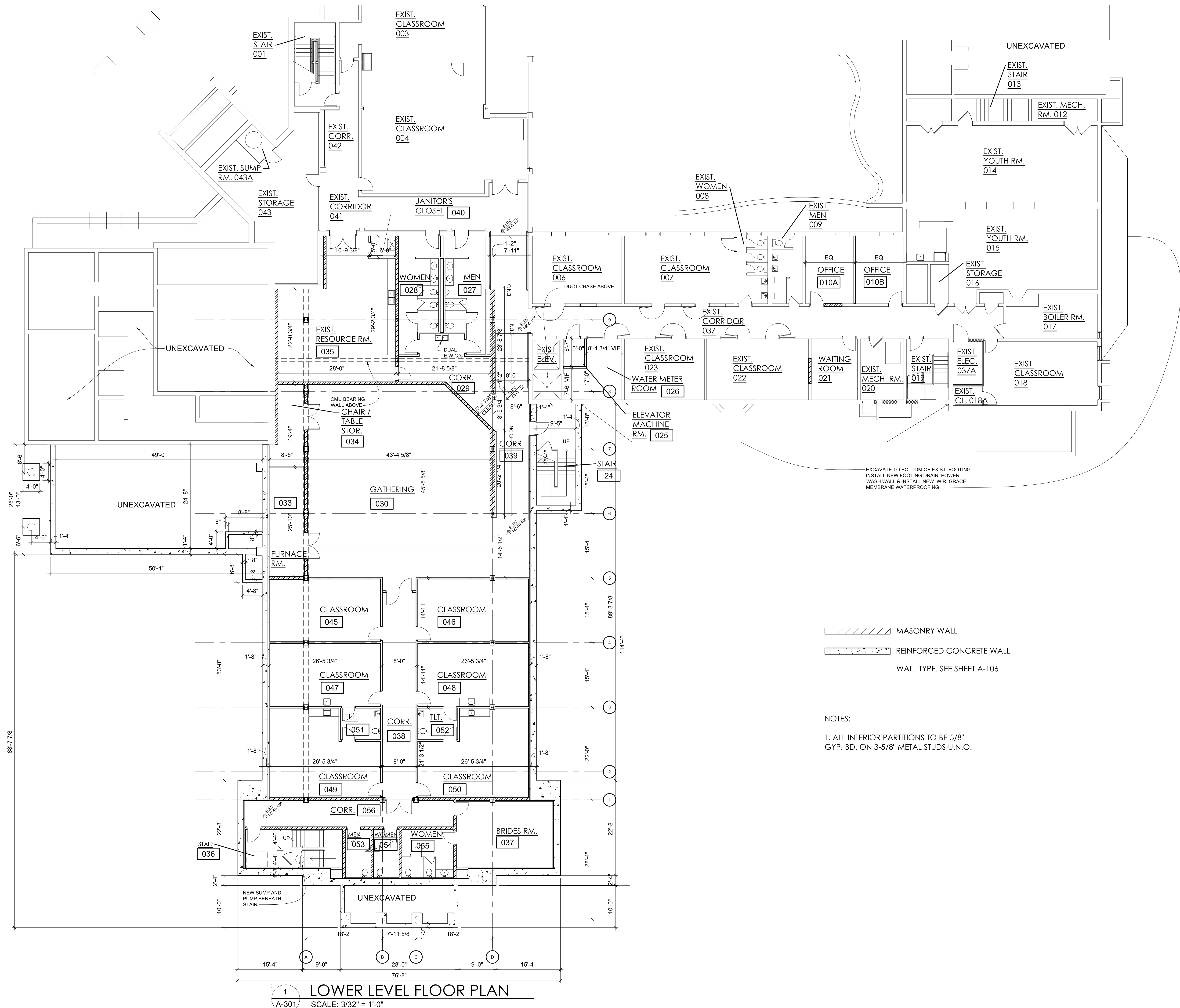
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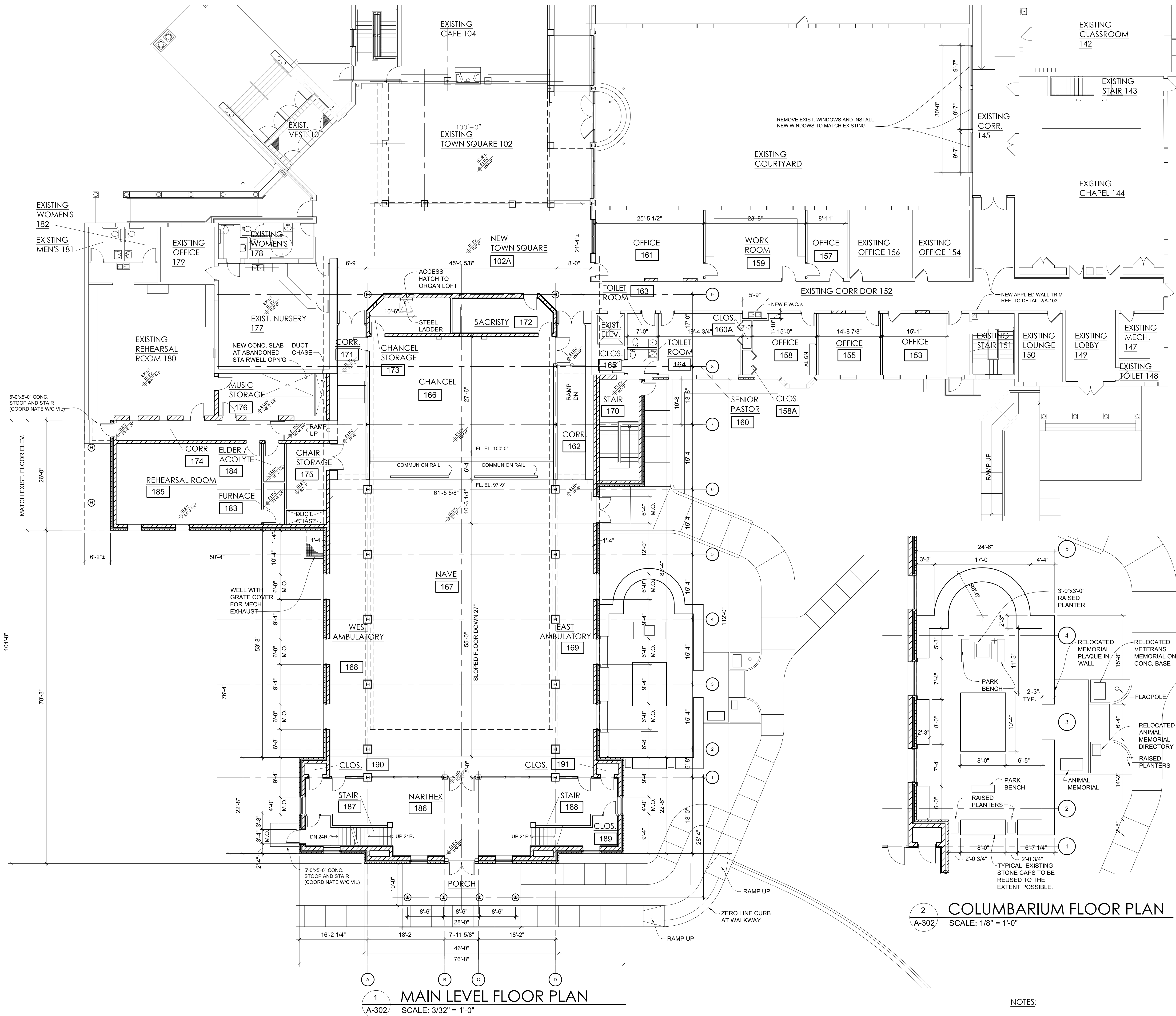
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MAPLE ROAD
BIRMINGHAM, MICHIGAN

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Project No.	Sheet No.
15165	A-301





ISSUED:
04/01/19 PARTIAL D.D.
11/15/19 DD PACKAGE
02/12/20 SPA PACKAGE
05/18/20 REVISED SPA SUBMITTAL

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ARCHITECTURE PLANNING

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Farmington, Michigan 48335
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CHURCH OF
THE REDEEMER

MAPLE ROAD
BIRMINGHAM, MICHIGAN

MAIN LEVEL
FLOOR PLAN

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Project No. 15165
Sheet No. A-302

NOTES:

1. ALL INTERIOR PARTITIONS TO BE 5/8"
GY.P. BD. ON 3-5/8" METAL STUDS U.N.O.

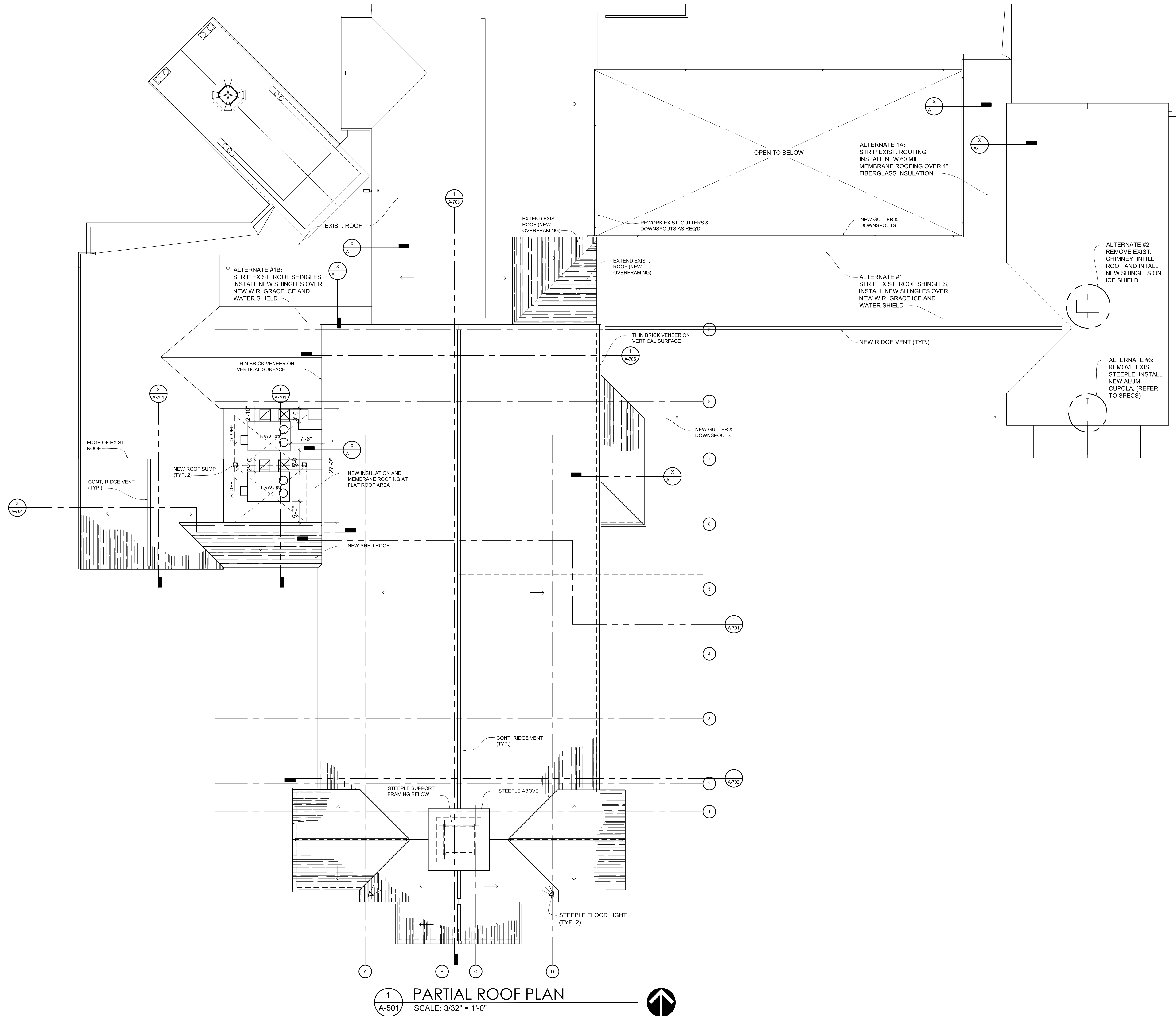
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LUTHERAN
CHURCH OF
THE REDEEMER
MAPLE ROAD
BIRMINGHAM, MICHIGAN

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Project No.	Sheet No.
15165	A-303





1
A-501 PARTIAL ROOF PLAN
SCALE: 3/32" = 1'-0"



ISSUED:
04/01/19 PARTIAL D.D.
11/15/19 DD PACKAGE
02/12/20 SPA PACKAGE
05/18/20 REVISED SPA SUBMITTAL

merritt
cieslak
design

ARCHITECTURE | PLANNING

33610 Grand River
Farmington, Michigan 48335
248-374-0001
www.mcdarchitects.com

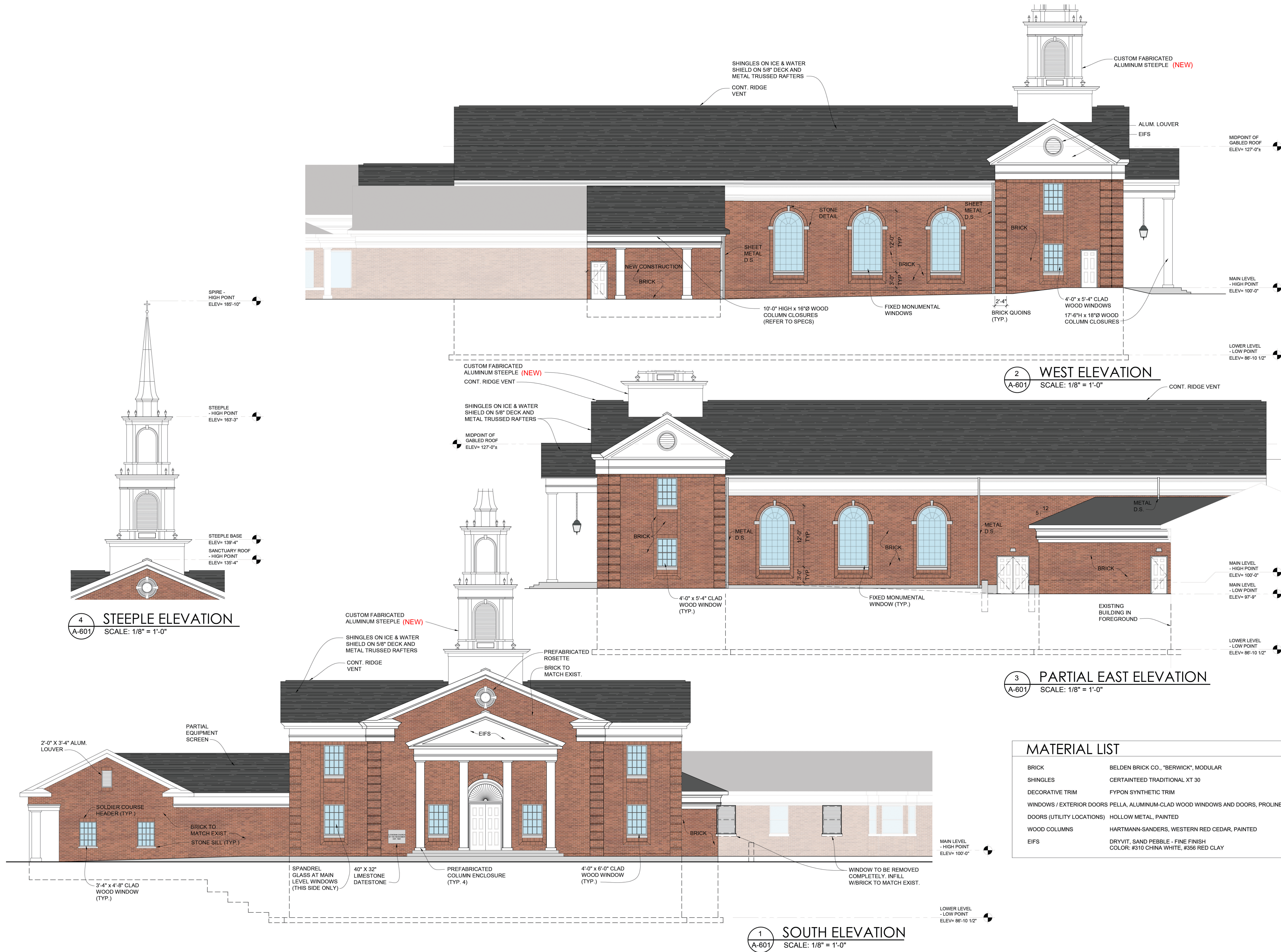
LUTHERAN
CHURCH OF
THE REDEEMER

MAPLE ROAD
BIRMINGHAM, MICHIGAN

ROOF PLAN

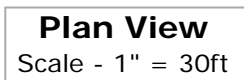
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Project No.	Sheet No.
15165	A-501



MATERIAL LIST

BRICK	BELDEN BRICK CO., "BERWICK", MODULAR
SHINGLES	CERTAINTED TRADITIONAL XT 30
DECORATIVE TRIM	FYPON SYNTHETIC TRIM
WINDOWS / EXTERIOR DOORS	PELLA, ALUMINUM-CLAD WOOD WINDOWS AND DOORS, PROLINE
DOORS (UTILITY LOCATIONS)	HOLLOW METAL, PAINTED
WOOD COLUMNS	HARTMANN-SANDERS, WESTERN RED CEDAR, PAINTED
EIFS	DRYVIT, SAND PEBBLE - FINE FINISH COLOR: #310 CHINA WHITE, #356 RED CLAY



Schedule									
Symbol	Label	Quantity	Manufacturer	Catalog Number	Description	Lamp	Lumens Per Lamp	Light Loss Factor	Wattage
	SA	11	LITHONIA LIGHTING	KKS 150S RSS	POST-TOP TYPE V-SHORT,CUTOFF - SQUARE HOUSING	ONE 150-WATT CLEAR ET-23.5 HIGH PRESSURE SODIUM, HORIZONTAL POSITION.	16000	0.65	189
	BO	12	Lithonia Lighting	KBR6 70S R5	6 IN ROUND BOLLARD	ONE 100-WATT CLEAR E-17 HIGH PRESSURE SODIUM, VERTICAL BASE-DOWN POSITION.	6300	0.65	94
	SB	17	Antique Street Lamps	LT30 40W GR3 ACT	8-SIDED LANTERN WITH TEXTURED PANELS AND TYPE III REFRACTOR.	THREE 40W CANDLABRA BASE LAMPS, VERTICAL BASE-DOWN	1800	0.81	150
	PE	2	Antique Street Lamps	LT30 40W GR3 ACT	DECORATIVE PENDANT WITH TEXTURED PANELS	THREE 40W CANDLABRA BASE LAMPS, VERTICAL BASE-DOWN	1800	0.81	120
	SC	8	Antique Street Lamps	LT30 40W GR3 ACT	SCONCE WITH TEXTURED PANELS	THREE 40W CANDLABRA BASE LAMPS, VERTICAL BASE-DOWN	1800	0.81	120
	SC1	3	Antique Street Lamps	LT30 100W A19 ACT	SCONCE WITH TEXTURED PANELS	ONE 100W A19 MEDIUM BASE LAMPS, VERTICAL BASE-DOWN	1730	0.81	120
	B	8	Lithonia Lighting	WST 100S FT	ARCHITECTURAL SCONCE WITH FORWARD THROW DISTRIBUTION WITH CLEAR, FLAT GLASS LENS. CLEAR LAMP, MEETS THE "NIGHTTIME FRIENDLY" CRITERIA	ONE 100-WATT CLEAR ED-17 HIGH PRESSURE SODIUM, HORIZONTAL POSITION.	9000	0.65	135
	C	7	Gotham Architectural Lighting	LGF 42TRT BRW FFL	8" HORIZONTAL RECESSED DOWNLIGHT, 42W TRIPLE TUBE COMPACT FLUORESCENT LAMP, WHITE PAINTED REFLECTOR, WITH FLAT FRESNEL LENS (FFL)	ONE 42-WATT COMPACT FLUORESCENT TRIPLE TUBE, HORIZONTAL POS.	3200	0.81	48
	SD_NEW	6	Antique Street Lamps	LT30 40W GR3 ACT	8-SIDED LANTERN WITH TEXTURED PANELS AND TYPE III REFRACTOR.	THREE 40W CANDLABRA BASE LAMPS, VERTICAL BASE-DOWN	1800	0.81	150
	A_NEW	4	Gotham Architectural Lighting	EVO 35/15 6AR WD LS	3500K, 1500LM, CRI80, 6IN CLEAR, WIDE DIST, SPECULAR	LED	1622	0.85	18.5



MEMORANDUM

Planning Division

DATE: April 22, 2020

TO: Planning Board Members

FROM: Brooks Cowan, City Planner

APPROVED: Jana Ecker, Planning Director

SUBJECT: 1800 W. Maple Final Site Plan and Design Review and SLUP Amendment

The subject property is located on the north side of W. Maple Road between N. Glenhurst and Chesterfield Avenue. The applicant is proposing an addition to the church to accommodate a larger sanctuary space. Religious Institutions such as Lutheran Church of the Redeemer may operate in an R-1 Zone with a Special Land Use Permit, which the applicant received in 1991.

The applicant is renovating 11,243 square feet of the church while creating an additional 3,791 square feet of usable space which is an 8.3% increase, therefore does not need a CIS. The changes and additions are for expanding the sanctuary space including the narthex, nave, ambulatory room, chance and the balcony. The renovations also expand office capacity and an additional waiting room.

Exterior changes include an enhanced front gable and pediment along with sidewalk improvements, barrier free ramps, landscaping and the relocation of a columbarium. At this time, the applicant is seeking the Planning Board's recommendation for approval of the Final Site Plan and a Special Land Use Permit Amendment to the City Commission.

1.0 Land Use and Zoning

- 1.1 Existing Land Use -The site is zoned R-1, Single Family Residential. The current occupant is a religious institution operating with a SLUP.
- 1.2 Existing Zoning - Currently zoned R-1, Single Family Residential, the existing use is a permitted use with a Special Land Use Permit.
- 1.3 2016 Regulating Plan - The subject site is not located within the Downtown Birmingham Overlay District.
- 1.4 Summary of 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	Single Family Residential	Single Family Residential	Commercial	Single Family Residential
Existing Zoning District	R-2 Single Family Residential	P – Parking O1 – Office R-1 Single Family Residential	P – Parking O1 – Office R-1 Single Family Residential	(Bloomfield Township)

2.0 Setback and Height Requirements

The proposed project appears to meet all of the bulk, area, height and placement requirements. The church steeple and spire is grandfathered in for the height limits. Please see attached zoning summary sheet for further details.

3.0 Screening and Landscaping

- 3.1 Dumpster Screening – No changes proposed. The dumpster is currently enclosed with a 6' masonry screen wall to match the existing church, and a 6' high pressure treated wooden gate.
- 3.2 Parking Facility Screening – Article 05, Section 4.54 (B)(7) of the Zoning Ordinance require all parking facilities that immediately adjoin the rear or side lot line of property zoned to a residential classification be screened with a 6' high masonry wall. Currently, the majority of the parking area is screened along the north, east and west property lines with 6' wooden privacy fencing and various types of vegetation.

On May 14th, 1991, A variance was granted from the Board of Zoning Appeals to permit a 6 foot wooden fence to be used as parking lot screening along the west, north and east property lines. On April 12, 2005, The Board of Zoning Appeals granted a variance to eliminate screening requirements on the first 240 feet of the west property line and to use existing vegetative screening in lieu of a fence. Minutes from both BZA meetings are provided below.

In accordance with section 4.54 (D)(3) of the Zoning Ordinance, screening is not required along the east property line where the proposed parking facility abuts the parking area for the commercial strip plaza next door to the subject site.

Section 4.54 (C)(3)(a) of the Zoning Ordinance requires that the front or side of any parking facility that abuts a street be screened with a 32" high masonry wall placed along the front setback line. Article 04, Section 4.54(D)(1) of the Zoning Ordinance further states that when screening is placed along a front setback line, the resulting

front yard shall be void of all parking and storage and must be landscaped. **The applicant appeared before the Board of Zoning Appeals on April 12, 2005 at which time they received variances for the 32" masonry screen walls along the front setback line to screen the parking areas in front of the church and to allow the front 2 parking spaces (4 total) on either side of the curved driveway to extend into the 25' front yard.**

- 3.3 Mechanical Screening – Five ground mounted condensers are proposed on the west side of the building facing Maple Road. The mechanical units 36" x 36" and are screened by Emerald Green Arborvitae 5 feet in height. There are two rooftop mechanical units on the western side of the new renovation. The mechanical units are obscured by the slope of the roof.
- 3.4 Landscaping - The applicant is proposing to remove 14 trees to accommodate for the expansion of the building. New additions will be surrounded by a landscaping bed with 78 Winter Gem Boxwoods, 54 Green Mound Alpine Currants and 21 Emerald Arbor Vitae. The front entrance and side courtyard will also have enhanced landscaping with 15 Karl Foester Reed Grass perennials, 12 Risky Business Hostas and 23 Creeping Lilyturf plants.

11 new trees will be planted on the eastern side of the building. 5 Skyline Honey Locusts will be planted along the eastern parking lot entrance, while 3 Eastern Hemlocks, 2 Pink Flair Flowering Cherry trees and 1 Marilee Crabapple tree will be planted along the eastern side of the church.

Although the subject property is zoned R-1 and is not subject to parking lot landscaping requirements, that applicant currently has 7,026 square feet of landscaping in their 80,465 square foot parking lot which is an 8.7% coverage rate.

4.0 Parking, Loading, Access, and Circulation

- 4.1 Parking – Article 04, Section 4.46 of the Zoning Ordinance requires one (1) space for every six fixed seats in a church. The church has 514 fixed seats, therefore 86 parking spaces are required on site. No changes to the parking lot are proposed. The applicant has 218 spaces on site, 11 of which are barrier free. All of the proposed parking spaces meet the 180 square feet size requirement.

Article 04, section 4.53(C)(3) of the Zoning Ordinance states that when screening is required along a front setback line, screenwall shall be placed along the setback line. **The applicant appeared before the Board of Zoning Appeals on April 12, 2005 at which time they received variances for the 32" masonry screen walls along the front setback line to screen the parking areas in front of the church and to allow the front 2 parking spaces on either side of the curved driveway to extend into the 25' front yard.**

- 4.2 Loading – No changes

- 4.3 Access & Circulation – The front entrance circle drive is being narrowed to a 20 foot width to accommodate the new walkway along the expanded front entrance. A new walkway surrounding the front and side of the building is proposed to connect to ADA accessible ramps on the east and west side of the nave and chancel.

The property has four curb cuts, two of which provide access to the rear parking lot, the other two providing ingress and egress to the front circle drive. **It is of note that the proposed walkway improvements connect to the front circle drive as well as the side and rear parking lots, but there is no walkway connecting to the entrance at the public sidewalk.**

5.0 Lighting

The applicant is proposing 10 new lights to be installed along the new walkway and columbarium. Six of the lights are proposed to be 150 watt 8-sided lanterns with textured panels and cadalabra vertical base-down lamps made by Antique Street Lamps. Four new Gotham 6-inch specular lights are also proposed; two above the front entrance and two above the side entrance on the west.

As this property is zoned R-1, the Lighting Standards of Section 4.21 of the Zoning Ordinance are not applicable, although the Planning Board may wish to require conditions for SLUP approval. The applicant has provided a photometric plan and lighting specs for their expansive property and parking lot.

The foot-candle ratio is 12.3:1 for circulation areas which satisfies the Zoning Ordinance's requirement of 20:1 or less. The existing light poles are all below 13' and are full cutoff luminaires, therefore satisfying the ordinance requirements.

6.0 Departmental Reports

- 6.1 Engineering Division – Engineering Department has no comments at this time.
- 6.2 Department of Public Services – No concerns were reported at this time.
- 6.3 Fire Department - No concerns were reported at this time.
- 6.4 Police Department - Comments to be provided by April 22nd, 2020.
- 6.5 Building Department – No concerns were reported at this time.

7.0 Design Review

The proposed sanctuary space is meant to be more accommodating for larger events. The expanded narthex provides more gathering space before and after services while the expansion of the east and west ambulatory and balcony provides greater seating capacity.

The new exterior will mainly be composed of "Berwick" modular brick from Belden Brick Co to match the existing brick. The expanded entrance will have four columns made of western red cedar wood that will be painted white. These columns are attached to a white pediment on a gabled roof. The plans indicate sand pebble - fine finish EIFS material on the front of the pediment as well as the east and west exteriors of the expanded Narthex. The sand pebble fine finish EIFS is meant to match the material above the town hall entrance on the west side of the building. The front façade is proposed to have spandrel glass with aluminum-clad wood, stone sills and soldier course headers. The sanctuary is complimented by a 50 foot steeple and spire that is grandfathered in for the height limits. The east and west sides of the sanctuary will have monument windows surrounded by stone detail and soldier course brick. Two windows are proposed to be removed and infilled with brick to accommodate the relocation of offices to the area connecting the sanctuary to the chapel. The roof edges will have a decorative white synthetic trim. A new rehearsal room will be constructed on the west side of the building that is complemented by two columns and an entryway to the side of the parking lot.

The columbarium will be moved from the west side of the chapel to the east side. The project architect has indicated the Church is contracting with a cemetery operator to assist with the relocation of the remains. The columbarium remains will be accompanied by various planters and benches. The entryways for the sanctuary, chapel, columbarium, and rehearsal room will be enhanced by a new walkway surrounded by new landscaping and additional antique lamps.

8.0 Approval Criteria for Final Site Plan

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 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 Approval Criteria for Special Land Use Permits

Article 07, section 7.34 of the Zoning Ordinance specifies the procedures and approval criteria for Special Land Use Permits. Use approval, site plan approval, and design review are the responsibilities of the City Commission. This section reads, in part:

Prior to its consideration of a special land use application (SLUP) for an initial permit or an amendment to a permit, the City Commission shall refer the site plan and the design to the Planning Board for its review and recommendation. After receiving the recommendation, the City Commission shall review the site plan and design of the buildings and uses proposed for the site described in the application of amendment.

The City Commission's approval of any special land use application or amendment pursuant to this section shall constitute approval of the site plan and design.

10.0 Recommendation

Based upon review of the Final Site Plan submitted, the Planning Division recommends that the Planning Board recommend approval to the City Commission for the Final Site Plan and Special Land Use Permit Amendment for 1800 W. Maple.

10.0 Sample Motion Language

Motion to recommend approval to the City Commission for the Final Site Plan for 1800 W. Maple.

AND

Motion to recommend approval to the City Commission for the Special Land Use Permit Amendment.

OR

Motion to recommend denial to the City Commission for the Special Land Use Permit Amendment and the Final Site Plan for 1800 W. Maple.

OR

Motion to postpone action on the requested Special Land Use Permit Amendment and the Final Site Plan for 1800 W. Maple, pending receipt of the following:

- 1) _____
- 2) _____
- 3) _____.

**SUMMARY SHEET
FINAL SITE PLAN AND DESIGN REVIEW
1800 W. Maple – Lutheran Church of the Redeemer
April 22, 2020**

Zoning: R-1, Single Family Residential

Adjacent Zoning:

	North	South	East	West
Existing Land Use	Single Family Residential	Single Family Residential	Commercial	Single Family Residential
Existing Zoning District	R-1 Single Family Residential	R-1 Single Family Residential	B-1, Neighborhood Business	R-1 Single Family Residential

Land Area: existing: 263,686 square feet or 6.053 acres

Minimum Lot Area: required: 9,000 square feet

Front Setback: required: 25 feet
proposed: 122.67 feet

Side Setback: required: 45 feet minimum per side, 112 feet total
proposed: 79.63 feet on the west side; 137.65 on the east side, 217.3 feet total

Rear Setback: required: 30 feet
proposed: 124.3 feet

Lot Coverage: permitted: 30% or 79,105 square feet
proposed: 19% or 49,140 square feet

Minimum Open Space: required: 40% or 105,474 square feet
proposed: 40% or 105,480 square feet

Max. Height: permitted: 30 feet to the midpoint, 2 stories
existing: 27 feet to the midpoint,
(Steeple and Spire are grandfathered in)

Loading: required: N/A
proposed: N/A

The applicant received a variance for the loading space requirement from the Board of Zoning Appeals on April 12, 2005.

Parking: required: 1 space / 6 fixed seats = 86 (514 fixed seats)
proposed: 218, including 11 barrier free spaces

The applicant received a variance from the Board of Zoning Appeals to allow 4 parking spaces within the 25 foot front setback on April 12, 2005.

Parking Lot Screening: required: 6 feet high masonry screen wall around all parking facilities that adjoin the side or rear lot line of residential areas. 32" high masonry screen wall around all parking facilities that abut a street.
proposed: 6 foot wood fence and vegetation

A variance was granted from the Board of Zoning Appeals on May 14, 1991 to permit the wood fence to be used as parking lot screening along the west, north and east property line. An additional variance was received from the BZA on April 12, 2005 to allow the western property line to be screened with vegetation, and to omit screening requirements along the front setback on W Maple.

Landscaping: required: N/A
Proposed: 8.7% parking lot landscaping coverage

Dumpster Screening: required: 6-foot high masonry screen wall with wooden doors
proposed: Existing

OLD PLANS REVIEWED BY THE PLANNING BOARD

SITE PLAN APPROVAL PACKAGE

LUTHERAN CHURCH
OF THE
REDEEMER

1800 W. MAPLE ROAD
BIRMINGHAM, MICHIGAN

PROJECT NO. 15165



LOCATION MAP

NO SCALE



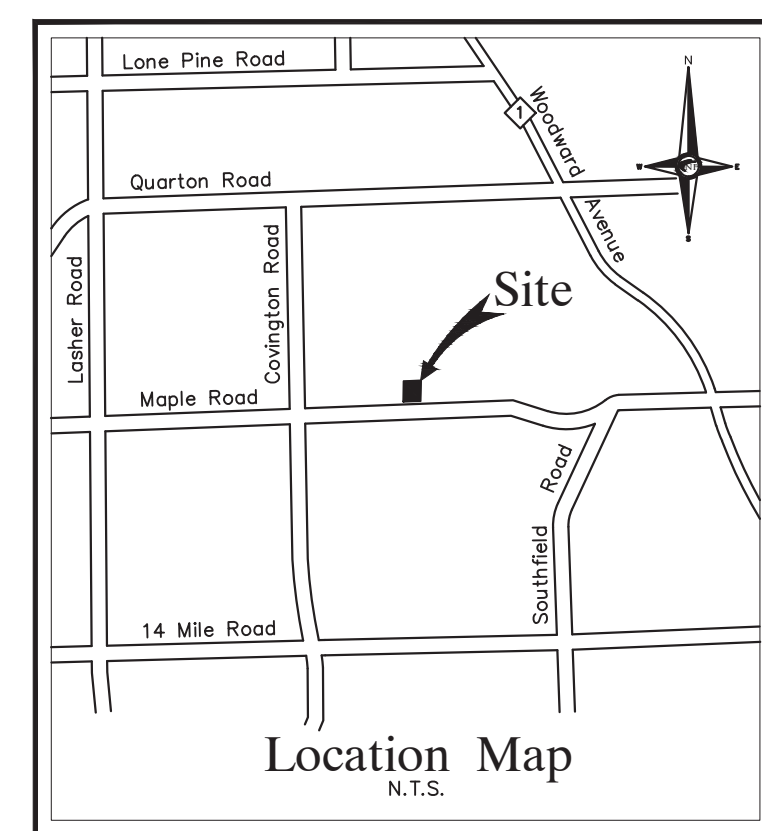
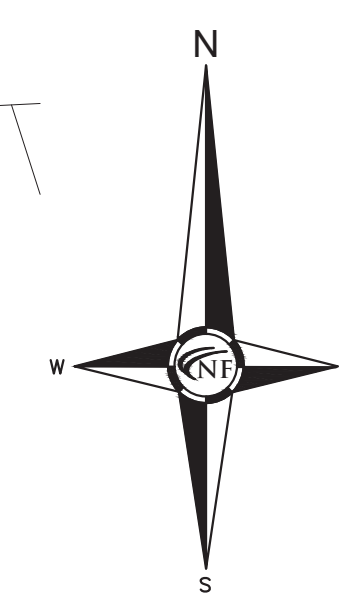
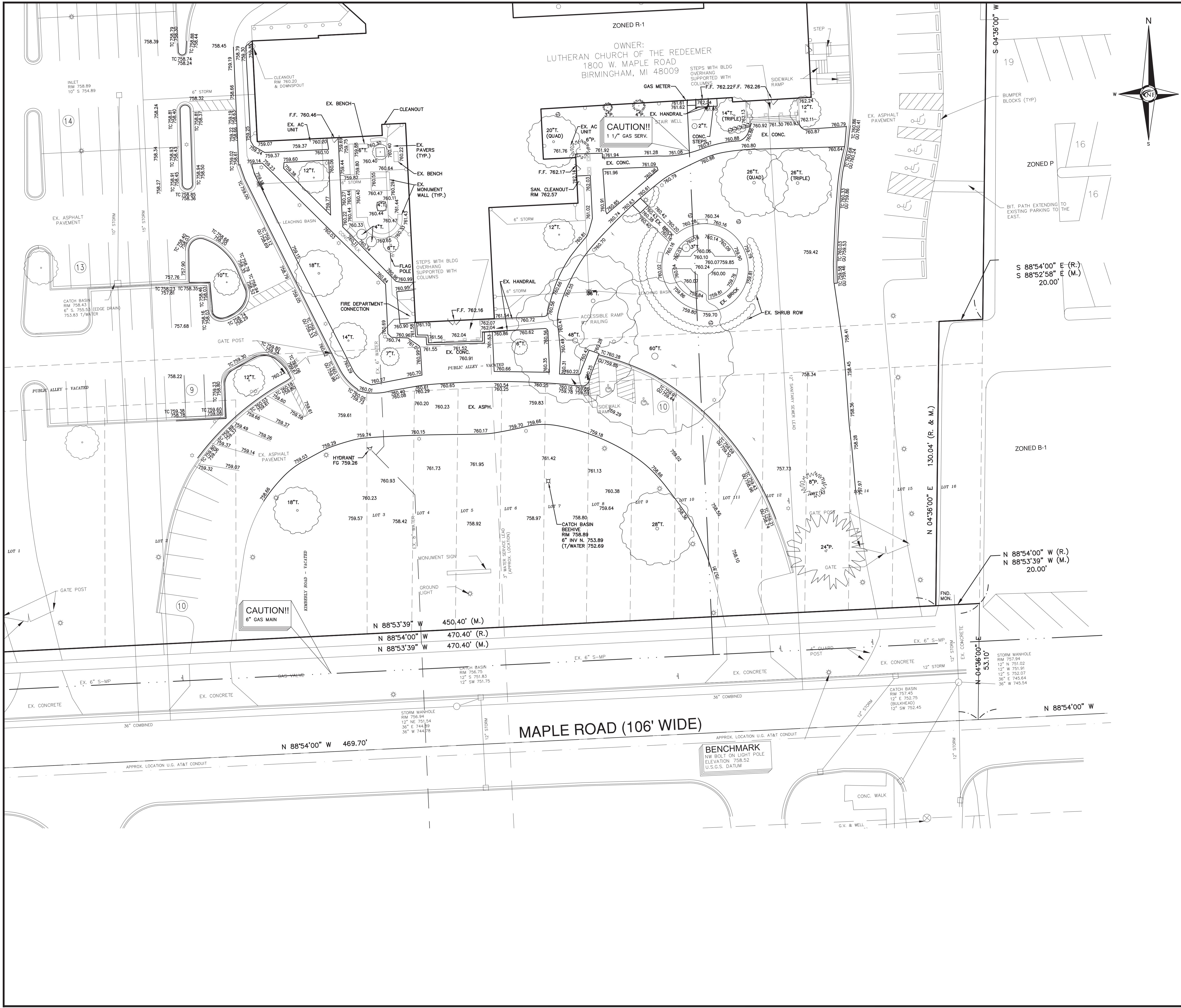
INDEX OF DRAWINGS:

C1	OVERALL BOUNDARY SURVEY
C2	LIMITED TOPOGRAPHIC AND TREE SURVEY
C3	SITE PLAN
C4	NOTES AND DETAILS
L1	TREE PRESERVATION PLAN
L2	LANDSCAPE PLAN
AS-101	ARCHITECTURAL SITE PLAN
AS-102	NEW SITE COMPONENTS
A-002	SITE PHOTOS & AERIAL PLAN
A-301	LOWER LEVEL FLOOR PLAN
A-302	MAIN LEVEL FLOOR PLAN
A-303	UPPER NAVE FLOOR PLAN
A-501	ROOF PLAN
A-601	EXTERIOR ELEVATIONS - COLOR
1 OF 1	PHOTOMETRIC SITE PLAN



ARCHITECTURE | PLANNING

02/12/20 SPA PACKAGE

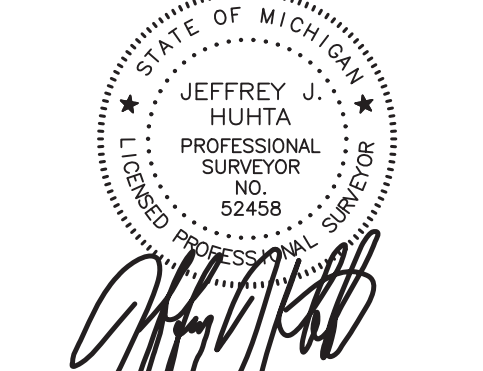


**NOWAK & FRAUS
ENGINEERS**

**CIVIL ENGINEERS
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LAND PLANNERS**

NOWAK & FRAUS ENGINEERS
46777 WOODWARD AVE.
PONTIAC, MI 48342-5032
TEL (248) 332-7931
FAX (248) 332-8257
WWW.NOWAKFRAUS.COM

SEAL



PROJECT

Lutheran Church
of the Redeemer
Building Expansion

CLIENT

Lutheran Church of the
Redeemer
1800 West Maple Road
Birmingham, Michigan

Contact

Steve Scheidt
Ph.: (248) 358-0800
Fax: (248) 358-2180

PROJECT LOCATION

Part of the SW ¼
of Section 26
T. 2 North, R. 10 East
City of Birmingham,
Oakland County, Michigan

SHEET

Limited Topographic, and
Tree Survey



DATE ISSUED/REVISED

2019-12-09 ISSUED FOR OWNER REVIEW
2019-12-11 ISSUED FOR SITE PLAN REVIEW
2019-12-30 REVISED PER OWNER

DRAWN BY:

C. Ellison

DESIGNED BY:

APPROVED BY:

J. Huhta

DATE:

November 18, 2019

SCALE: 1" = 20'

20 10 0 10 20 30

NFE JOB NO. SHEET NO.

D366-06 C2

LEGAL DESCRIPTION

LOTS 1 THROUGH 15 INCLUSIVE TOGETHER WITH ALL OF ADJACENT VACATED PUBLIC ALLEY, AND LOTS 17 THROUGH 34 INCLUSIVE OF "THE RUBY-N" SUBDIVISION, ALSO ALL OF VACATED KIMBERLY STREET, ALL BEING A PART OF SOUTHWEST 1/4 OF SECTION 26, TOWN 2 NORTH, RANGE 10 EAST, CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN, AS RECORDED IN L. ???, PG. ???, BEING MORE PARTICULARLY DESCRIBED AS:

COMMENCING AT THE S 1/4 CORNER OF SAID SECTION 26; THENCE N.0°54'00"W. ALONG THE SOUTHERLY LINE OF SAID SECTION 26, 232.82 FEET; THENCE N.04°36'00"E, 53.10 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF MAPLE ROAD (106 FEET WIDE); THENCE N.88°53'39"W. AS MEASURED (N.88°54'00"W. AS RECORDED) ALONG SAID NORTHERLY RIGHT-OF-WAY LINE OF SAID MAPLE ROAD, 20.00 FEET TO THE POINT OF BEGINNING; THENCE N.04°36'00"E. ALONG THE COMMON LOT LINE OF SAID LOTS 15 AND 16, 130.04 FEET TO A POINT ON THE NORTHERLY LINE OF SAID VACATED PUBLIC ALLEY; THENCE S.88°52'58"E. AS MEASURED (S.88°54'00"E. AS RECORDED) ALONG SAID NORTHERLY LINE OF PUBLIC ALLEY, 20.00 FEET TO A POINT ON THE EASTERLY LINE OF SAID "THE RUBY-N" SUBDIVISION; THENCE N.04°36'00"E. ALONG SAID EASTERLY LINE OF "THE RUBY-N" SUBDIVISION, 432.79 FEET TO THE NE CORNER OF SAID SUBDIVISION; THENCE N.88°55'00"W. ALONG THE NORTHERLY LINE OF SAID SUBDIVISION, 477.77 FEET TO THE NW CORNER OF SAID SUBDIVISION; THENCE S.03°51'00"W. ALONG THE WESTERLY LINE OF SAID SUBDIVISION TO A POINT ON SAID NORTHERLY RIGHT-OF-WAY LINE OF MAPLE ROAD; THENCE S.88°53'39"E. AS MEASURED (S.88°54'00"E. AS RECORDED) ALONG SAID NORTHERLY RIGHT-OF-WAY LINE OF MAPLE ROAD, 450.40 FEET TO THE POINT OF BEGINNING.

CONTAINING 263,686 SQ. FT. OR 6.053 ACRES OF GROSS AREA (260,533 SQ. FT. OR 5.981 ACRES NET OF PROPOSED RIGHT-OF-WAY) OF LAND, MORE OR LESS, ALSO BEING SUBJECT TO ANY EASEMENTS, RESTRICTIONS OR CONDITIONS OF RECORD.

TAX ITEM NO. 19-26-378-072

MISS DIG / COMCAST DISCLAIMER NOTE

THE LOCATION OF THE AERIAL LINES SHOWN ON THE RECORDS PROVIDED BY COMCAST COULD NOT BE ACCURATELY PLOTTED DUE TO A LACK OF DIMENSIONS AND/OR SCALE. CLIENT SHALL CONTACT (NAME OF THE UTILITY COMPANY) TO DETERMINE THE LOCATION OF THE UNDERGROUND UTILITY.

MISS DIG / AT&T DISCLAIMER NOTE

THE LOCATION OF THE AERIAL LINES SHOWN ON THE RECORDS PROVIDED BY AT&T COULD NOT BE ACCURATELY PLOTTED DUE TO A LACK OF DIMENSIONS AND/OR SCALE. CLIENT SHALL CONTACT (NAME OF THE UTILITY COMPANY) TO DETERMINE THE LOCATION OF THE UNDERGROUND UTILITY.

FLOOD HAZARD NOTE

THIS PROPERTY IS LOCATED IN ZONE "X" (AREAS DETERMINED TO BE OUTSIDE OF THE 0.2% ANNUAL CHANCE FLOOD PLAIN) AS INDICATED BY FLOOD INSURANCE RATE MAP (FIRM), PANEL NO. 26125C0536F, CITY OF BIRMINGHAM, OAKLAND COUNTY, STATE OF MICHIGAN, AS PREPARED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA), EFFECTIVE DATE SEPTEMBER 29, 2006.

MISS DIG / UTILITY DISCLAIMER NOTE

A MISS DIG TICKET NUMBER B92970990-00B, PURSUANT TO MICHIGAN PUBLIC ACT 174 WAS ENTERED FOR THE SURVEYED PROPERTY, DUE TO THE EXTENDED REPORTING PERIOD FOR UNDERGROUND FACILITY OWNERS TO PROVIDE THEIR RECORDS, THE SURVEY MAY NOT REFLECT ALL THE UTILITIES AT THE TIME THE SURVEY WAS ISSUED ON 2019-11-18. THE SURVEY ONLY REFLECTS THOSE UTILITIES WHICH COULD BE OBSERVED BY THE SURVEYOR IN THE FIELD OR AS DERIVED BY THE UTILITY COMPANY RECORDS FURNISH PRIOR TO THE DATE THIS SURVEY WAS ISSUED. THE CLIENT AND/OR THEIR AUTHORIZED AGENT SHALL VERIFY WITH THE FACILITY OWNERS AND/OR THEIR AUTHORIZED AGENTS, THE COMPLETENESS AND EXACTNESS OF THE UTILITIES LOCATION.

TOPOGRAPHIC SURVEY NOTES

ALL ELEVATIONS ARE EXISTING ELEVATIONS, UNLESS OTHERWISE NOTED.

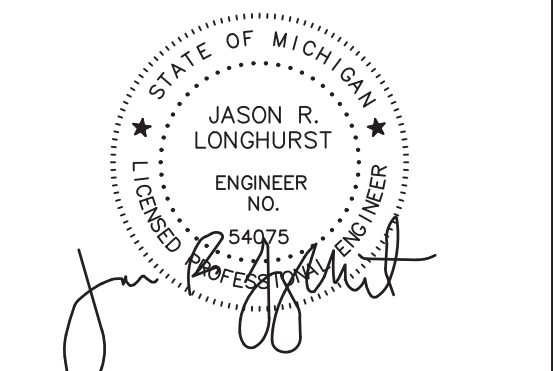
UTILITY LOCATIONS WERE OBTAINED FROM MUNICIPAL OFFICIALS AND RECORDS OF UTILITY COMPANIES, AND NO GUARANTEE CAN BE MADE TO THE COMPLETENESS, OR EXACTNESS OF LOCATION.

THIS SURVEY MAY NOT SHOW ALL EASEMENTS OF RECORD UNLESS AN UPDATED TITLE POLICY IS FURNISHED TO THE SURVEYOR BY THE OWNER.

LEGEND		
	MANHOLE	EXISTING SANITARY SEWER
	HYDRANT	EXISTING SAN. CLEAN OUT
	GATE VALVE	EXISTING WATER MAIN
	MANHOLE	EXISTING STORM SEWER
	CATCH BASIN	EX. R.Y. CATCH BASIN
	UTILITY POLE	EXISTING BURIED CABLES
	GUY POLE	OVERHEAD LINES
	GUY WIRE	LIGHT POLE
	SIGN	EXISTING GAS MAIN



SEAL



PROJECT
Lutheran Church
of the Redeemer
Building Expansion

CLIENT
Lutheran Church of the
Redeemer
1800 West Maple Road
Birmingham, Michigan

Contact
Steve Scheidt
Ph.: (248) 358-0800
Fax: (248) 358-2180

PROJECT LOCATION
Part of the SW $\frac{1}{4}$
of Section 26
T. 2 North, R. 10 East
City of Birmingham,
Oakland County, Michigan

SHEET
Site Plan



DATE	ISSUED/REVISED
2019-12-09	ISSUED FOR OWNER REVIEW
2019-12-11	ISSUED FOR SITE PLAN REVIEW
2019-12-30	REVISED PER OWNER

DRAWN BY:
T. Wood

DESIGNED BY:
T. Wood

APPROVED BY:
J. Longhurst

DATE:
December 9, 2019

SCALE: 1" = 20'

20 10 0 10 20 30

NFE JOB NO. SHEET NO.

D366-06 **C3**

GENERAL PAVING NOTES

PAVEMENT SHALL BE OF THE TYPE, THICKNESS AND CROSS SECTION AS INDICATED ON THE PLANS AND AS FOLLOWS:

CONCRETE: PORTLAND CEMENT TYPE I/A (AIR-ENCRASSED) WITH A MINIMUM CEMENT CONTENT OF 130 SACKS PER CUBIC YARD, MINIMUM 28 DAY COMPRESSIVE STRENGTH OF 3,500 PSI AND A SLOMP OF 1 1/2 TO 3 INCHES.

ASPHALT: BASE COURSE — MOD BITUMINOUS MIXTURE NO. 3C SURFACE COURSE — MOD BITUMINOUS MIXTURE NO. 13A

ASPHALT CEMENT PENETRATION GRADE 85—100, BOND COAT — MOD HOT SS-H, FILLER — 100 TO 150 GALLON PER SQUARE YARD, MAXIMUM 2 INCH LIFT.

PAVEMENT BASE SHALL BE COMPACTED TO 95% OF THE MAXIMUM DENSITY (MODIFIED PROCTOR) PRIOR TO PLACEMENT OF PROPOSED PAVEMENT. EXISTING SUB-BASE SHALL BE PROOF-ROLLED IN THE PRESENCE OF A GEOTECHNICAL ENGINEER.

ALL CONCRETE PAVEMENT, DRIVEWAYS, CURB & GUTTER, ETC., SHALL BE SPRAY CURED WITH WHITE MEMBRANE CURING COMPOUND IMMEDIATELY FOLLOWING FINISHING OPERATION.

ALL CONCRETE PAVEMENT JOINTS SHALL BE FILLED WITH HOT POLY RUBBERIZED ASPHALT JOINT SEALING COMPOUND IMMEDIATELY AFTER FINISHING OPERATION.

ALL WORKMANSHIP AND MATERIALS SHALL BE IN ACCORDANCE WITH THE CURRENT STANDARDS AND SPECIFICATIONS OF THE MUNICIPALITY AND THE MICHIGAN DEPARTMENT OF TRANSPORTATION STANDARD SPECIFICATIONS FOR CONSTRUCTION, CURRENT EDITION.

ALL TOP OF CURB ELEVATIONS, AS SHOWN ON THE PLANS, ARE CALCULATED FOR A 2% DRAINAGE SLOPE UNLESS OTHERWISE NOTED.

ALL SIDEWALK RAMPS, CONFORMING TO PUBLIC ACT NO. 8, 1973, SHALL BE INSTALLED AS INDICATED ON THE PLANS.

CONSTRUCTION OF A NEW OR RECONSTRUCTED DRIVE APPROACH CONNECTING TO AN EXISTING STATE OR COUNTY ROADWAY SHALL BE ALLOWED ONLY AFTER AN APPROVED PERMIT HAS BEEN SECURED FROM THE AGENT OF EACH JURISDICTION OVER SAID ROADWAY.

FOR ANY WORK WITHIN THE PUBLIC RIGHT-OF-WAY, THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND LICENSES AND ARRANGE FOR ALL INSPECTION.

EXISTING TOPSOIL, VEGETATION AND ORGANIC MATERIALS SHALL BE STRIPPED AND REMOVED FROM PROPOSED PAVEMENT AREA PRIOR TO PLACEMENT OF BASE MATERIALS.

EXPANSION JOINTS SHOULD BE INSTALLED AT THE ENDS OF ALL INTERSECTION PAVEMENT LAYOUTS.

SIDEWALK RAMPS, CONFORMING TO PUBLIC ACT NO. 8, 1973, SHALL BE INSTALLED AS SHOWN AT ALL STREET INTERSECTIONS AND AT ALL BARRIER FREE PARKING AREAS INDICATED ON THE PLANS.

ALL PAVEMENT AREAS SHALL BE PROOF-ROLLED UNDER THE SUPERVISION OF A GEOTECHNICAL ENGINEER PRIOR TO THE PLACEMENT OF BASE MATERIALS AND FINISHING.

TOP SOIL SHALL BE MACHINE COMPACTED IN UNIFORM LIFTS NOT EXCEEDING 9 INCHES THICK TO 95% OF THE MAXIMUM DENSITY (MODIFIED PROCTOR) PRIOR TO PLACEMENT OF PROPOSED PAVEMENT.

PAVING LEGEND

PROPOSED CONCRETE PAVEMENT

PROPOSED ASPHALT PAVEMENT

LEGEND

	<p>EXISTING SANITARY SEWER</p>
	<p>SAN. CLEAN OUT</p>
	<p>EXISTING WATERMAIN</p>
	<p>EXISTING STORM SEWER</p>
	<p>EX. R. Y. CATCH BASIN</p>
	<p>EXISTING BURIED CABLES</p>
	<p>OVERHEAD LINES</p>
	<p>LIGHT POLE</p>
	<p>SIGN</p>
	<p>EXISTING GAS MAIN</p>
	<p>PR. SANITARY SEWER</p>
	<p>PR. WATER MAIN</p>
	<p>PR. STORM SEWER</p>
	<p>PR. R. Y. CATCH BASIN</p>
	<p>PROPOSED LIGHT POLE</p>
	<p>PR. TOP OF CURB ELEVATION</p>
	<p>PR. GUTTER ELEVATION</p>
	<p>PR. TOP OF WALK ELEVATION</p>
	<p>PR. TOP OF P.M.T. ELEVATION</p>
	<p>FINISH GRADE ELEVATION</p>

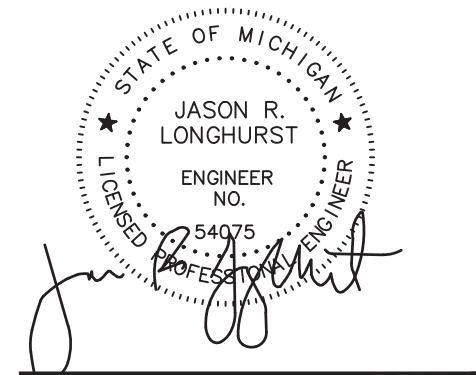
SITE DATA		
<u>SITE AREA</u>		
EXISTING:	263,686 SQUARE FEET OR 6.05 ACRES.	
<u>ZONING</u>		
EXISTING:	R-1 (SINGLE FAMILY RESIDENTIAL)	
<u>SETBACKS</u>	<u>REQUIRED</u>	<u>PROPOSED</u>
FRONT:	25'	122.67'
REAR:	*	79.63'
SIDE:	*	137.65'
SEAL:	30'	124.31'
* SIDE YARD SETBACKS = 25% OF LOT WIDTH (450.4') FOR BOTH SETBACKS		
<u>BUILDING HEIGHT</u>	<u>PROPOSED</u>	<u>PROPOSED</u>
REQUIRED:	2 STORIES, 30'	
<u>VEHICLE PARKING</u>	<u>PUBLIC ASSEMBLY USE - RELIGIOUS INSTITUTION</u>	
REQUIRED:	1 SPACE PER 6 SEATS	
	SEATS / 6 =	SPACES
 PROVIDED:	216 SPACES (INCLUDES 11 HANDICAP SPACES)	
<u>SITE COVERAGE</u>		
BUILDING	45,764 SF	17.36%
PAVEMENT:	115,822 SF	43.92%
LANDSCAPING:	102,100 SF	38.72%
TOTAL:	263,686 SF	100.00%

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46777 WOODWARD AVE.
PONTIAC, MI 48342-5032
TEL. (248) 332-7931
FAX. (248) 332-8257
WWW.NOWAKFRAUS.COM

SEAL



PROJECT

Lutheran Church
of the Redeemer
Building Expansion

CLIENT

Lutheran Church of the Redeemer
1800 West Maple Road
Birmingham, Michigan

Contact
Steve Scheidt
Ph.: (248) 358-0800
Fax: (248) 358-2180

PROJECT LOCATION

Part of the SW $\frac{1}{4}$
of Section 26
T. 2 North, R. 10 East
City of Birmingham,
Oakland County, Michigan

SHEET
Notes and Details

Know what's **below**
Call before you dig.

DATE	ISSUED/REVISED
2019-12-09	ISSUED FOR OWNER REVIEW
2019-12-11	ISSUED FOR SITE PLAN REVIEW
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DRAWN BY:
T. Wood

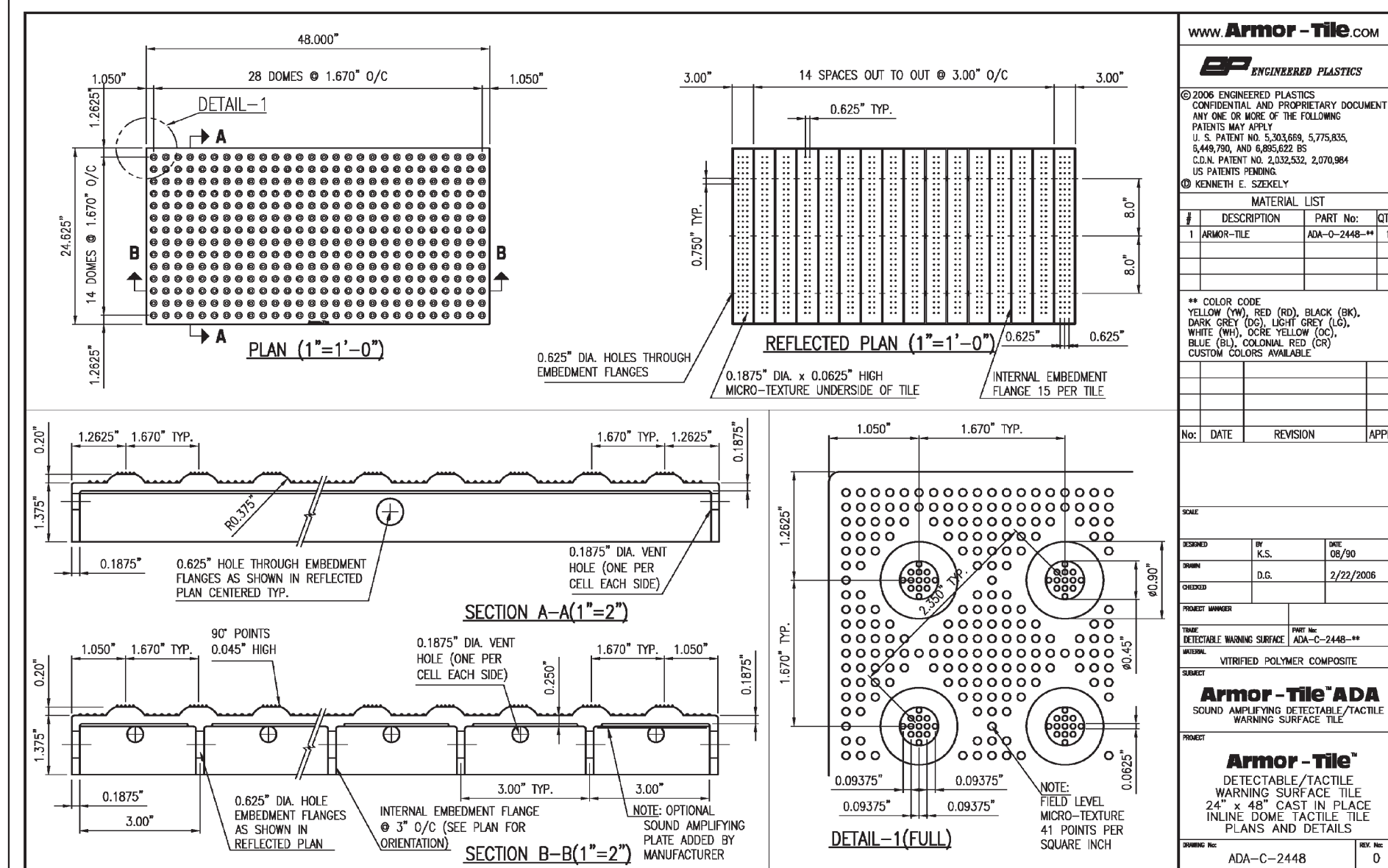
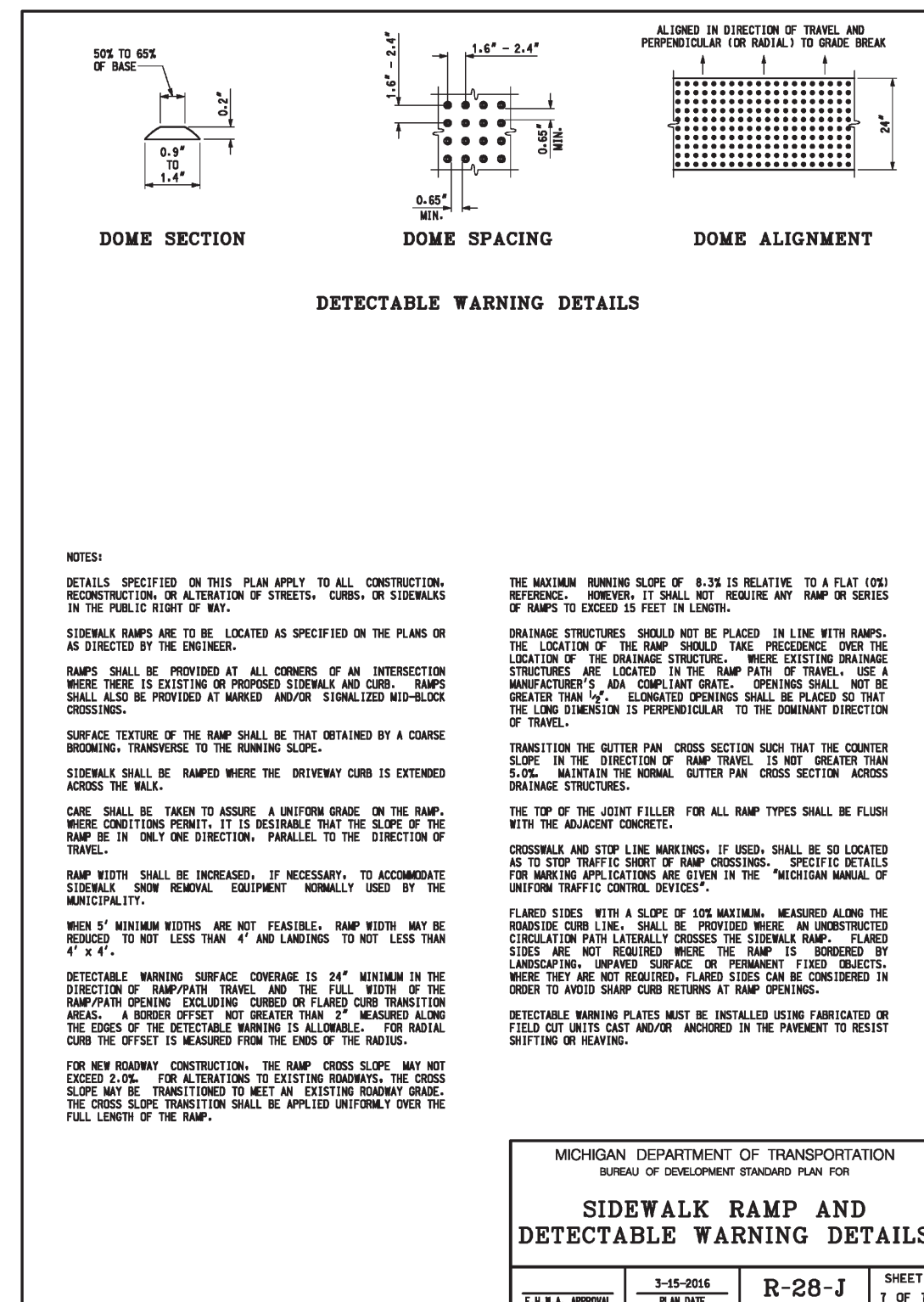
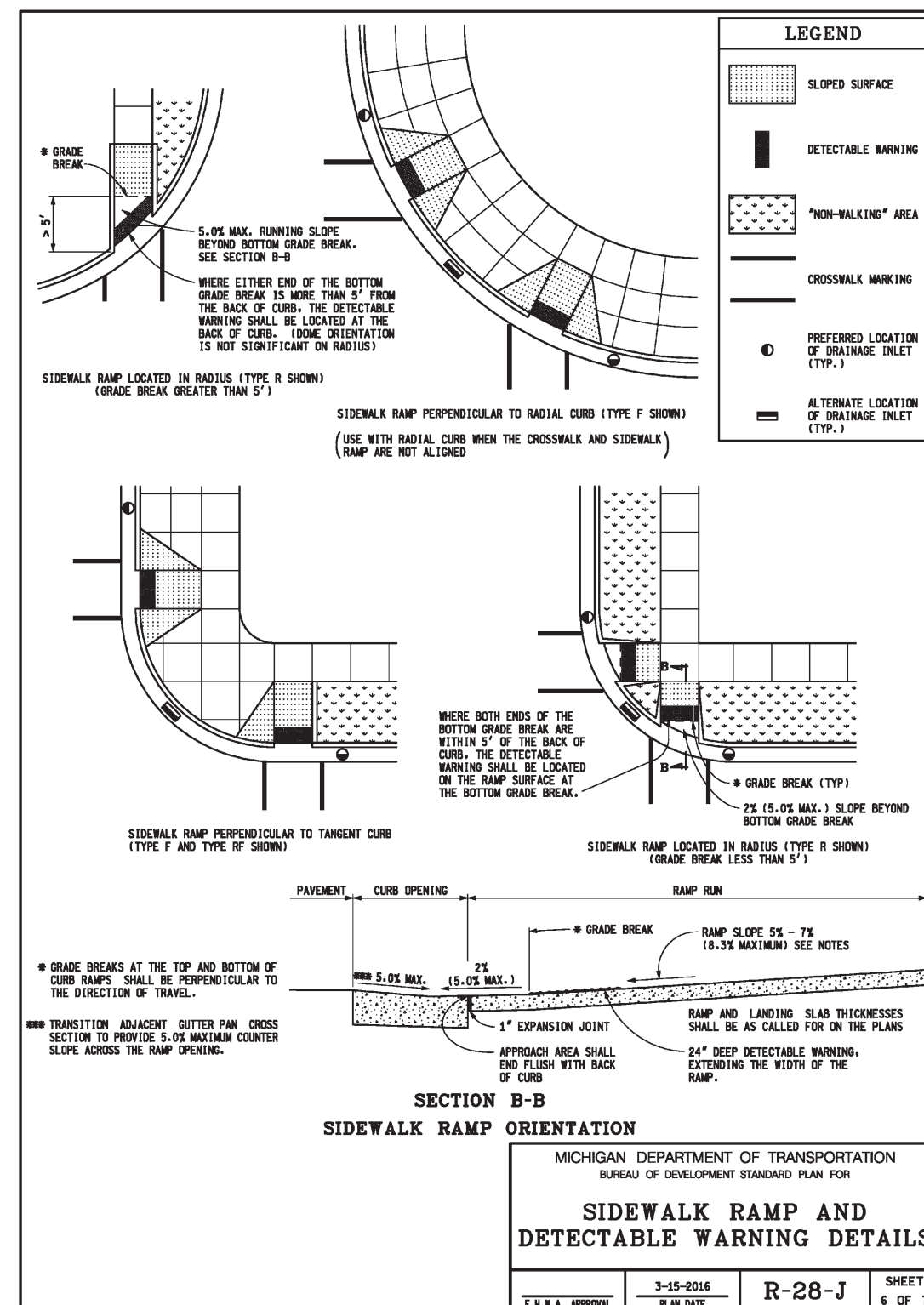
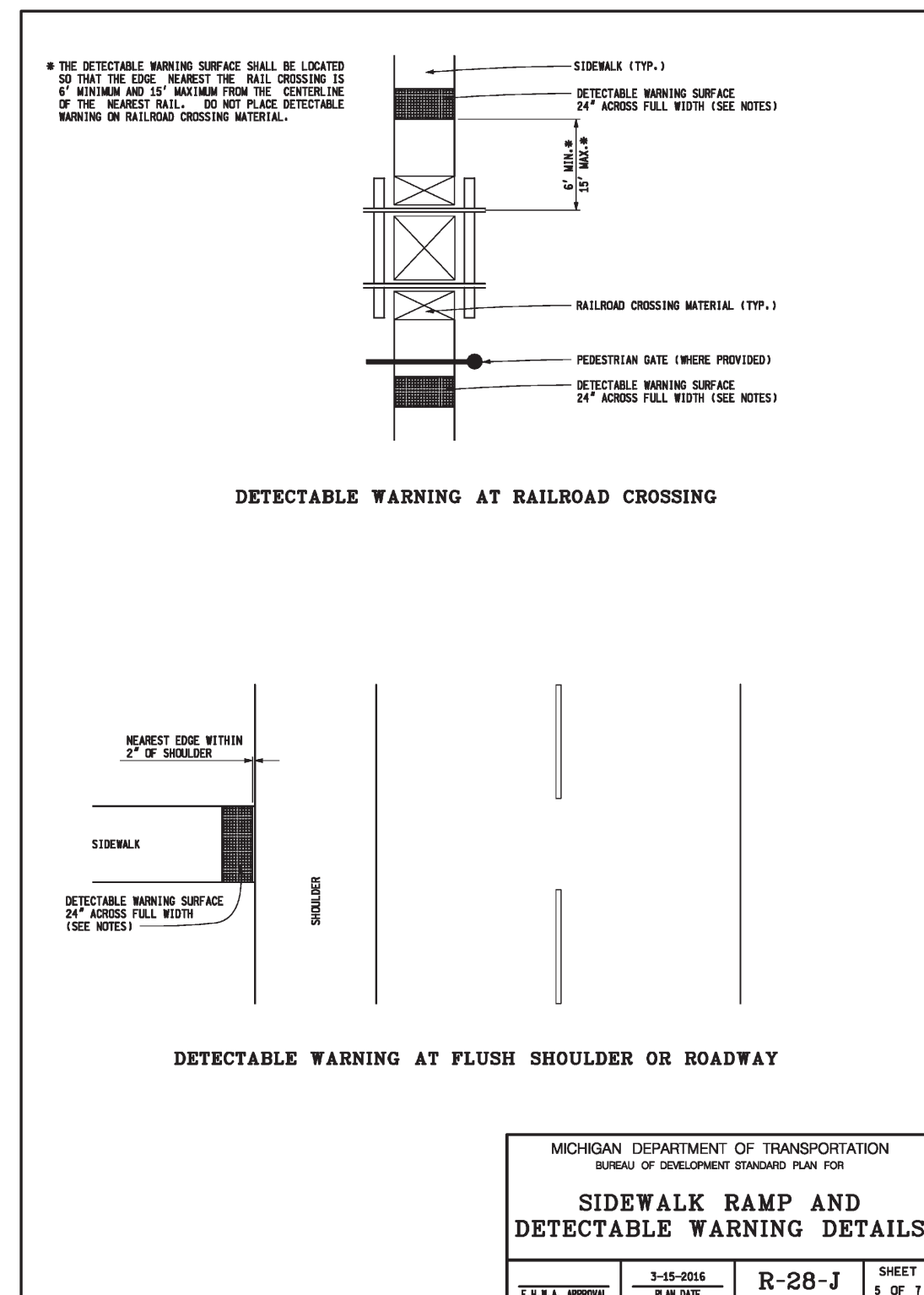
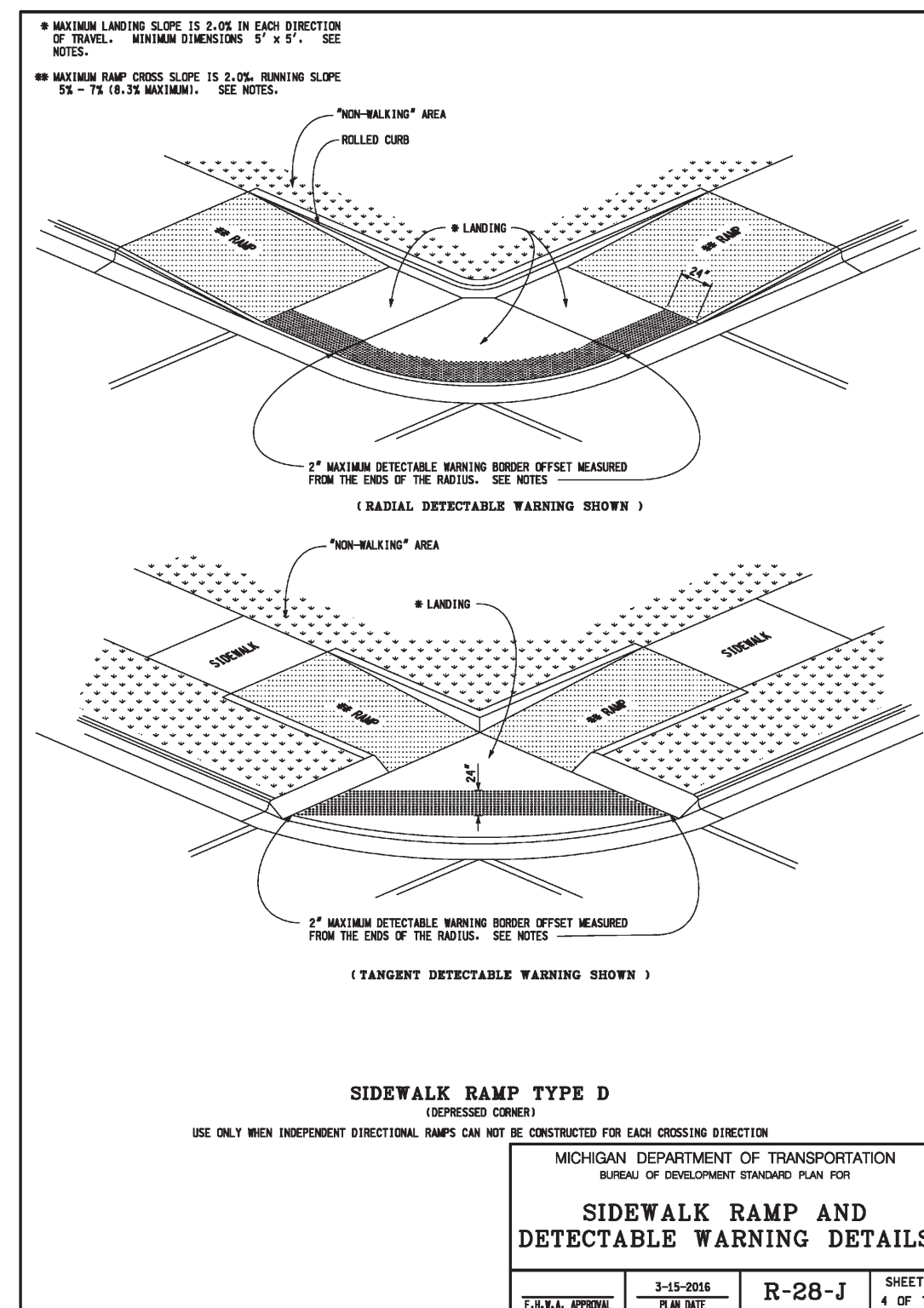
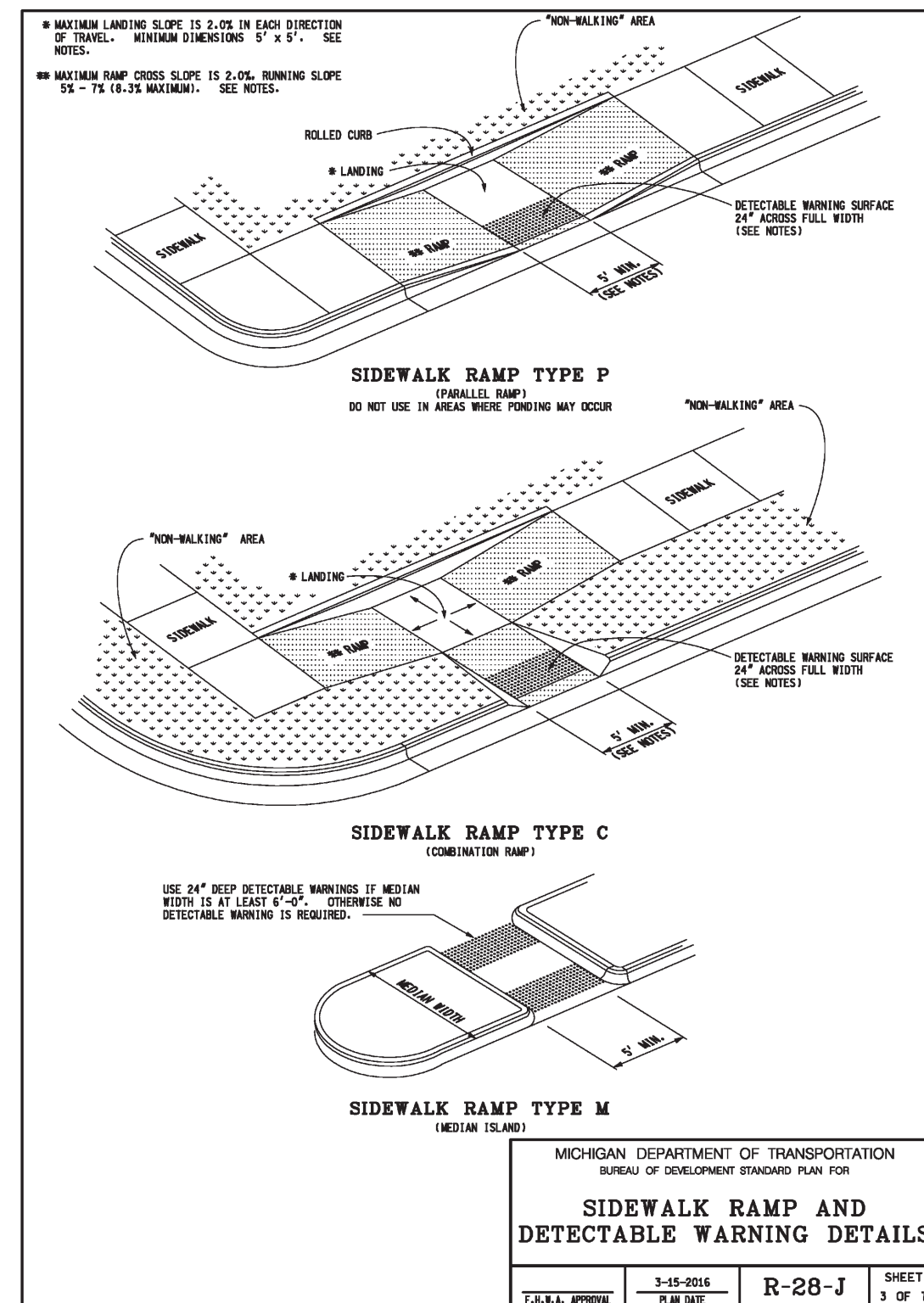
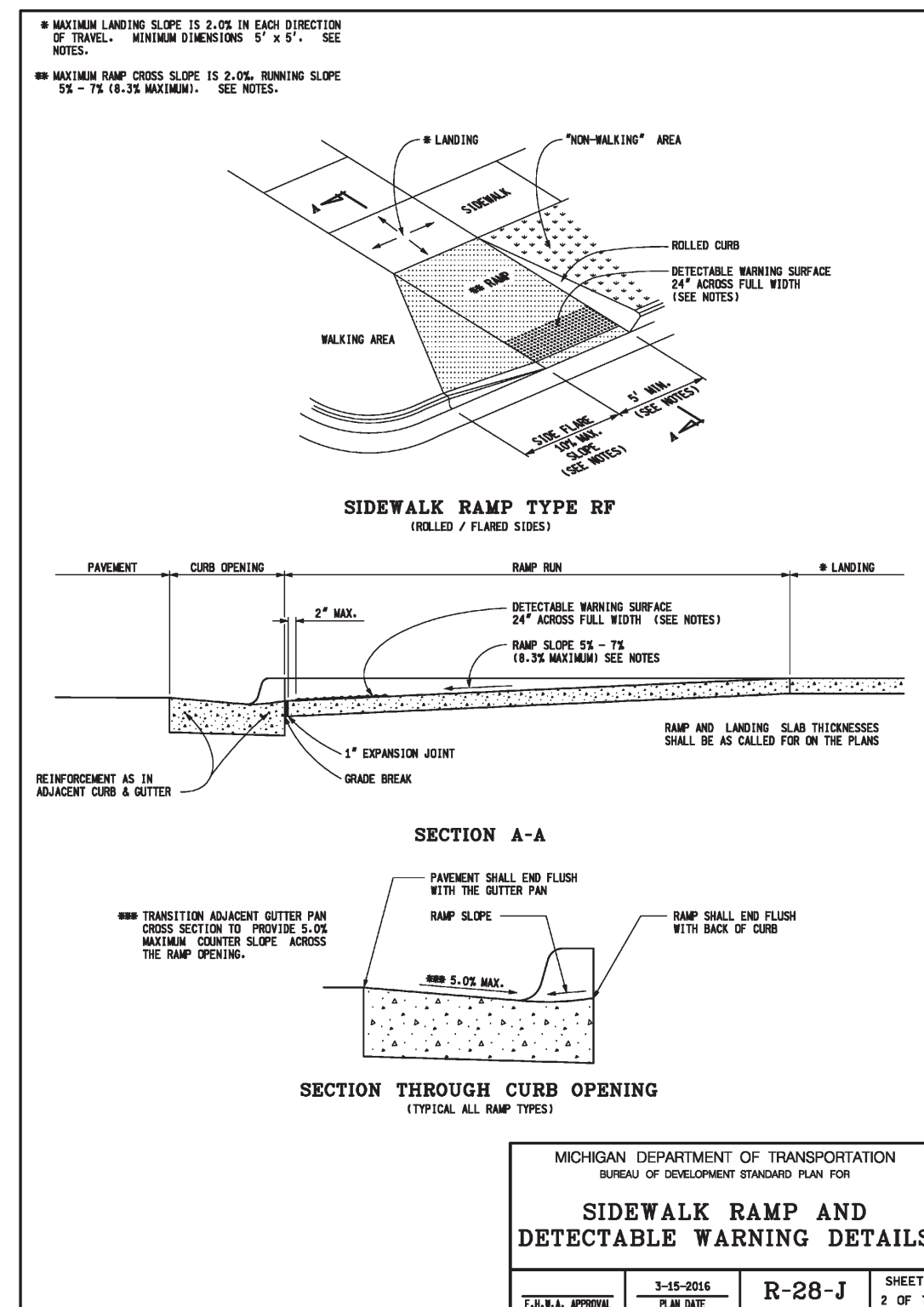
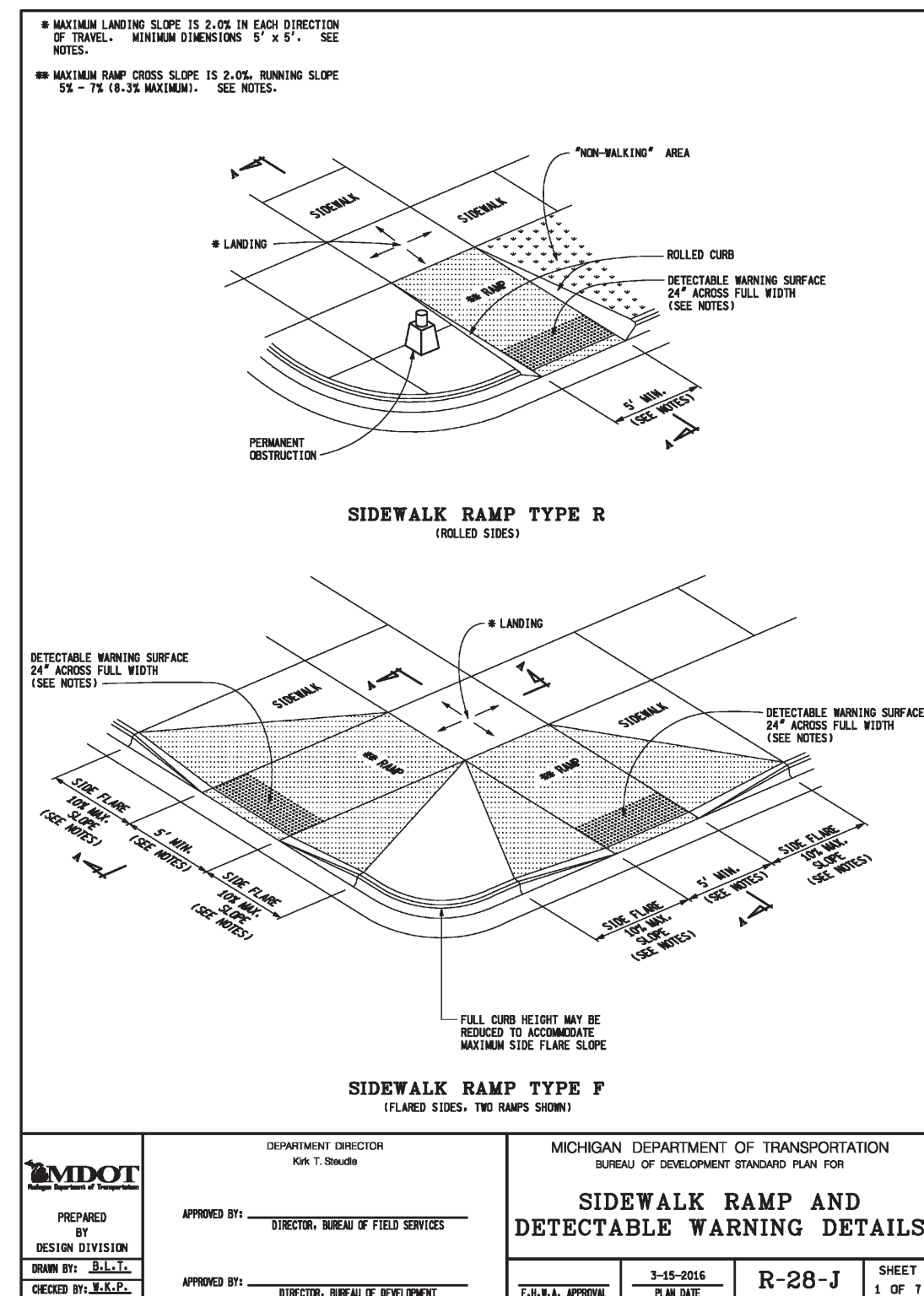
DESIGNED BY:
T. Wood

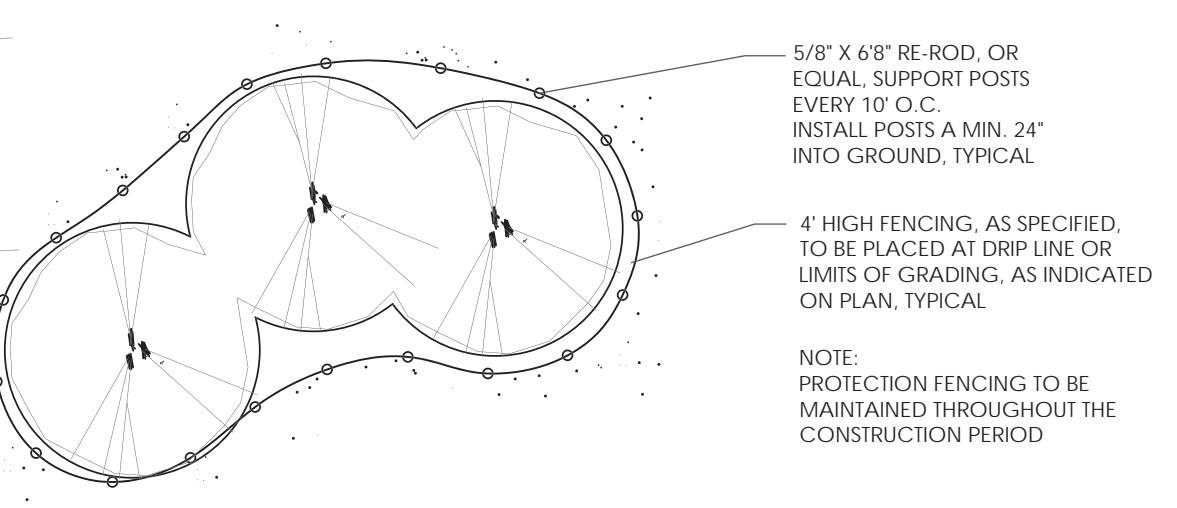
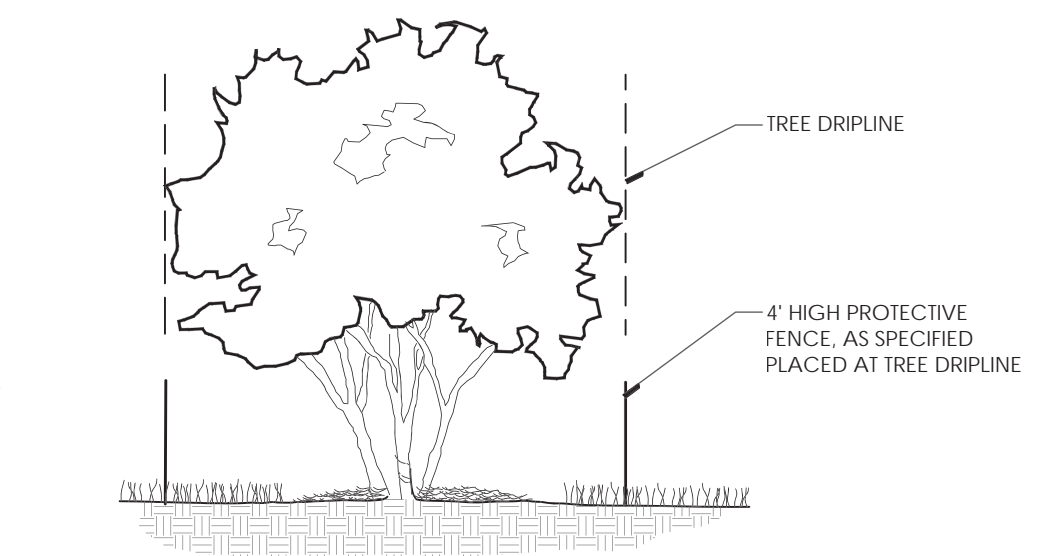
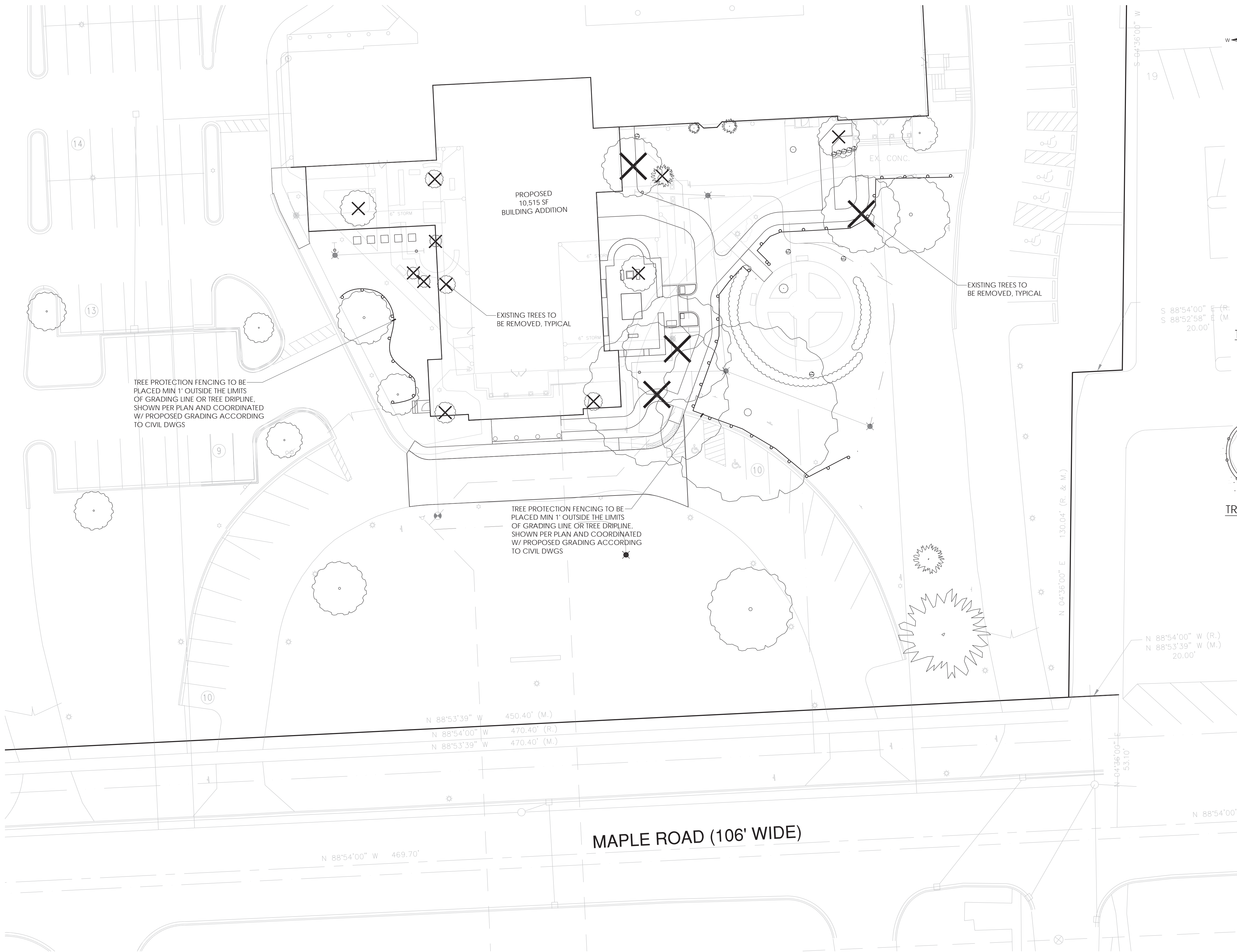
APPROVED BY:
J. Longhurst

DATE:
December 9, 2019

SCALE: N.T.S.

NFE JOB NO. **D366-06** SHEET NO. **C4**





GENERAL TREE PROTECTION NOTES

1. APPROVED TREE PROTECTION SHALL BE ERRECTED PRIOR TO THE START OF CONSTRUCTION ACTIVITIES, AND SHALL REMAIN IN PLACE UNTIL THE IN PLACE UNTIL CONSTRUCTION IS COMPLETE.
2. ALL UNDERSTORY VEGETATION WITHIN THE LIMITS OF PROTECTIVE FENCING SHALL BE PRESERVED.
3. NO PERSON MAY CONDUCT ANY ACTIVITY WITHIN THE DRIP LINE OF ANY TREE DESIGNATED TO REMAIN, INCLUDING BUT NOT LIMITED TO, PLACING SOLVENTS, BUILDING MATERIALS, CONSTRUCTION EQUIPMENT, OR SOIL DEPOSITS WITHIN THE DRIP LINE.
4. WHERE GROUPINGS OF TREES ARE TO REMAIN, TREE FENCING SHALL BE PLACED AT THE LIMITS OF GRADING LINE.
5. DURING CONSTRUCTION, NO PERSON SHALL ATTACH ANY DEVICE OR WIRE TO ANY TREE, SCHEDULED TO REMAIN.
6. ALL UTILITY SERVICE REQUESTS MUST INCLUDE NOTIFICATION TO THE INSTALLER THAT PROTECTED TREES MUST BE AVOIDED. ALL TRENCHING SHALL OCCUR OUTSIDE OF THE PROTECTIVE FENCING.
7. SWALES SHALL BE ROUTED TO AVOID THE AREA WITHIN THE DRIP LINES OF PROTECTED TREES.
8. TREES LOCATED ON ADJACENT PROPERTIES THAT MAY BE AFFECTED BY CONSTRUCTION ACTIVITIES MUST BE PROTECTED.
9. ROOT ZONES OF PROTECTED TREES SHOULD BE SURROUNDED WITH RIGIDLY STAKED FENCING.
10. THE PARKING OF IDLE AND RUNNING EQUIPMENT SHALL BE PROHIBITED UNDER THE DRIP LINE OF PROTECTED TREES.
11. THE STRIPPING OF TOPSOIL FROM AROUND PROTECTED TREES SHALL BE PROHIBITED.
12. ALL TREES TO BE REMOVED SHALL BE CUT AWAY FROM TREES TO REMAIN.
13. THE GRUBBING OF UNDERSTORY VEGETATION WITHIN CONSTRUCTION AREAS SHOULD BE CLEARED BY CUTTING VEGETATION AT THE GROUND WITH A CHAIN SAW OR MINIMALLY WITH A HYDRO-AXE.
14. THE CONTRACTOR IS RESPONSIBLE FOR THE REPLACEMENT PER ORDINANCE GUIDELINES, FOR THE DAMAGE OR REMOVAL OF ANY TREE DESIGNATED TO REMAIN.
15. TREES TO BE REMOVED SHALL BE FIELD VERIFIED, EVALUATED AND FLAGGED FOR REMOVAL, BY THE LANDSCAPE ARCHITECT OR FORESTER, ONLY AS DIRECTED BY THE OWNER OR OWNERS REPRESENTATIVE.

LEGEND:

- TREES TO BE REMOVED
- TREES TO REMAIN
- TREE PROTECTION FENCING

50

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CLIENT

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1800 West Maple Road

Birmingham, Michigan

Contact

Steve Scheidt

Ph.: (248) 358-0800

Fax: (248) 358-2180

PROJECT LOCATION

Part of the SW ¼ of Section 26

T. 2 North, R. 10 East

City of Birmingham,

Oakland County, Michigan

SHEET

Tree Preservation Plan

811

Know what's below

Call before you dig.

REVISIONS

12/09/19 ISSUED FOR OWNER REVIEW

12/11/19 ISSUED FOR SITE PLAN REVIEW

12/30/19 REVISED PER OWNER

DRAWN BY:

G. Ostrowski

DESIGNED BY:

G. Ostrowski

APPROVED BY:

G. Ostrowski

DATE:

12-04-2019

SCALE: 1" = 20'

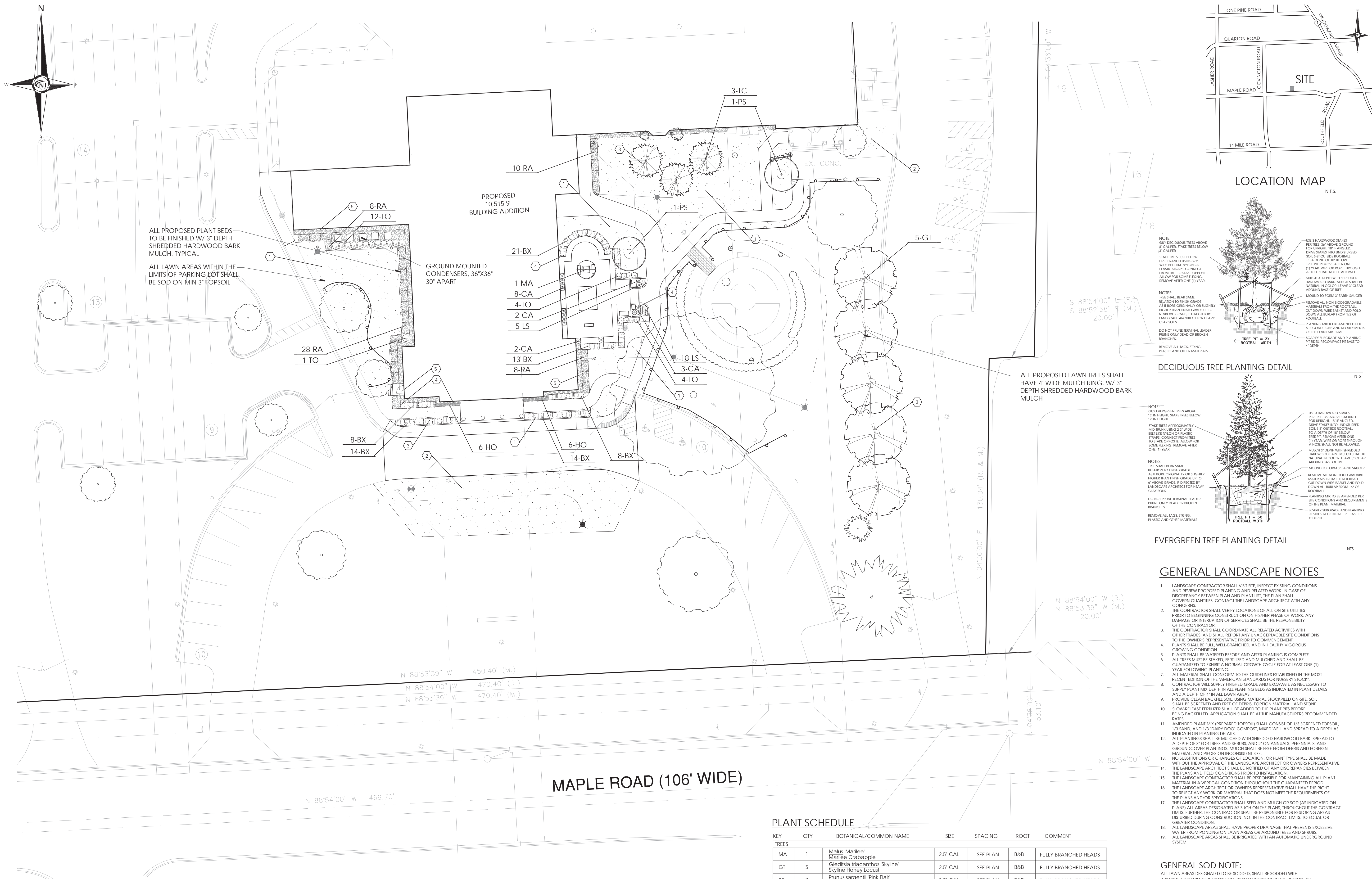
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NFE JOB NO.

D366-05

SHEET NO.

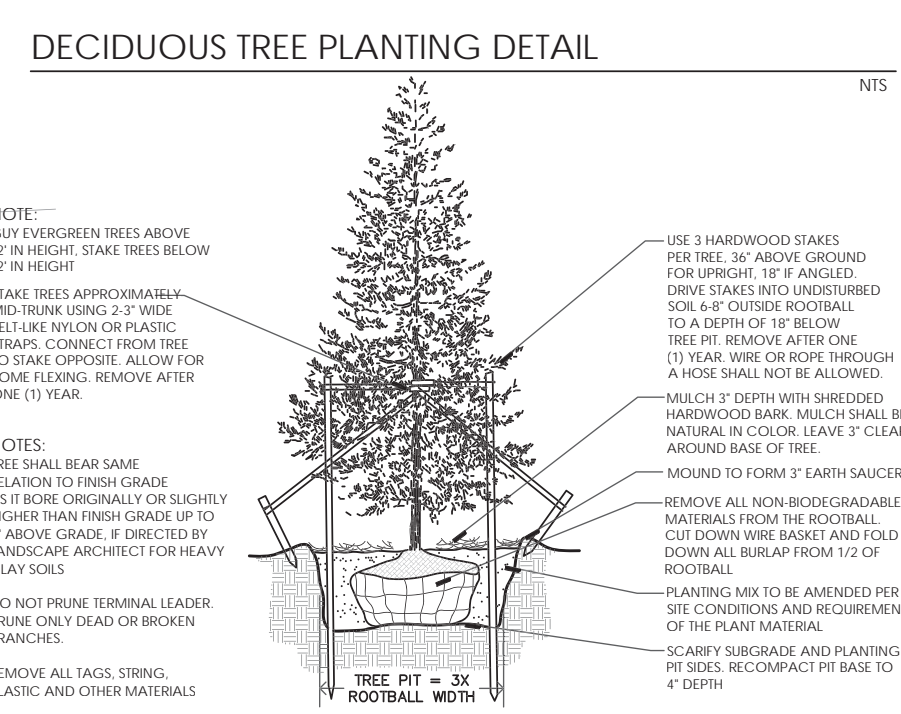
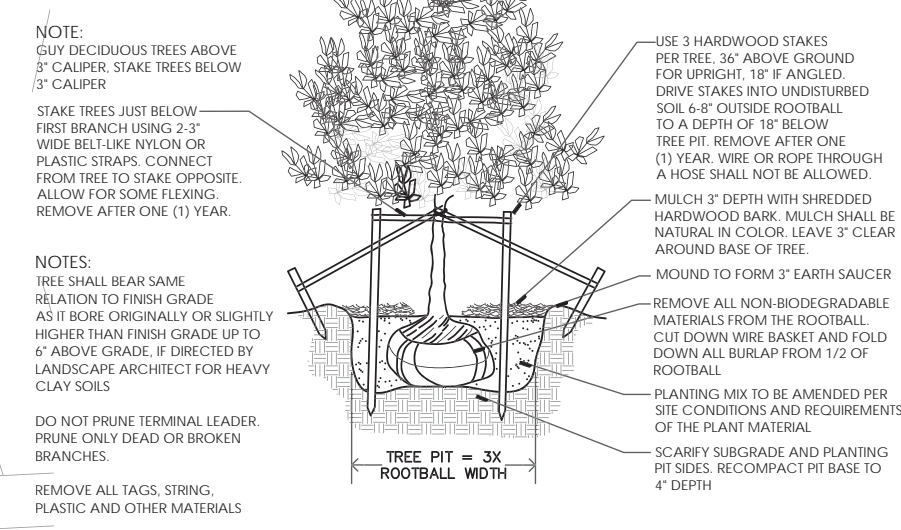
L1



ALL PROPOSED PLANT BEDS TO BE FINISHED W/ 3" DEPTH SHREDDED HARDWOOD BARK MULCH, TYPICAL

ALL LAWN AREAS WITHIN THE LIMITS OF PARKING LOT SHALL BE SOD ON MIN 3" TOPSOIL

GROUND MOUNTED CONDENSERS, 36"x36" 30" APART



GENERAL LANDSCAPE NOTES

- LANDSCAPE CONTRACTOR SHALL VISIT SITE, INSPECT EXISTING CONDITIONS AND REVIEW PROPOSED PLANTING AND RELATED WORK. IN CASE OF DISCREPANCY BETWEEN PLAN AND PLANT LIST, THE PLAN SHALL GOVERN QUANTITIES. CONTACT THE LANDSCAPE ARCHITECT WITH ANY CONCERNS.
- THE CONTRACTOR SHALL VERIFY LOCATIONS OF ALL ON-SITE UTILITIES PRIOR TO BEGINNING CONSTRUCTION OR OTHER PHASE OF WORK. ANY DAMAGE OR INTERFERENCE OF SERVICES SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR.
- THE CONTRACTOR SHALL COORDINATE ALL RELATED ACTIVITIES WITH OTHER TRADES, AND SHALL REPORT ANY UNACCEPTABLE SITE CONDITIONS TO THE OWNER'S REPRESENTATIVE PRIOR TO COMMENCEMENT.
- PLANTS SHALL BE FULL, WELL-BRANCHED, AND IN HEALTHY VIGOROUS GROWING CONDITION.
- PLANTS SHALL BE WATERED BEFORE AND AFTER PLANTING IS COMPLETE.
- ALL TREES MUST BE STAKED, FERTILIZED AND MULCHED AND SHALL BE GUARANTEED TO EXHIBIT A NORMAL GROWTH CYCLE FOR AT LEAST ONE (1) YEAR FOLLOWING PLANTING.
- ALL MATERIAL SHALL CONFORM TO THE GUIDELINES ESTABLISHED IN THE MOST RECENT EDITION OF THE "AMERICAN STANDARDS FOR NURSERY STOCK".
- CONTRACTOR WILL SUPPLY FINISHED GRADE AND EXCAVATE AS NECESSARY TO SUPPLY PLANT MIX DEPTH IN ALL PLANTING BEDS AS INDICATED IN PLANT DETAILS AND A DEPTH OF 4" IN ALL LAWN AREAS.
- PROVIDE CLEAN BACKFILL SOIL, USING MATERIAL STOCKPILED ON SITE. SOIL SHALL BE SCREENED AND FREE OF DEBRIS, FOREIGN MATERIAL, AND STONE.
- SLOW RELEASE FERTILIZER SHALL BE ADDED TO THE PLANT PIT BEFORE BEING BACKFILLED. APPLICATION SHALL BE AT THE MANUFACTURER'S RECOMMENDED RATES.
- AMENDED PLANT MIX (PREPARED TOPSOIL) SHALL CONSIST OF 1/3 SCREENED TOPSOIL, 1/3 SAND, AND 1/3 "DAIRY DOO" COMPOST, MIXED WELL AND SPREAD TO A DEPTH AS INDICATED IN PLANTING DETAILS.
- ALL PLANTINGS SHALL BE MULCHED WITH SHREDDED HARDWOOD BARK, SPREAD TO A DEPTH OF 3" FOR TREES AND SHRUBS, AND 2" ON ANNUALS, PERENNIALS, AND GROUNDCOVER PLANTINGS. MULCH SHALL BE FREE FROM DEBRIS AND FOREIGN MATERIAL, AND PIECES ON INCONSISTENT SIZE.
- NO SUBSTITUTIONS OR CHANGES OF LOCATION OR PLANT TYPE SHALL BE MADE WITHOUT THE APPROVAL OF THE LANDSCAPE ARCHITECT OR OWNER'S REPRESENTATIVE.
- THE LANDSCAPE ARCHITECT SHALL BE NOTIFIED OF ANY DISCREPANCIES BETWEEN THE PLANS AND FIELD CONDITIONS PRIOR TO INSTALLATION.
- THE LANDSCAPE CONTRACTOR SHALL BE RESPONSIBLE FOR MAINTAINING ALL PLANT MATERIAL IN A VERTICAL CONDITION THROUGHOUT THE GUARANTEED PERIOD.
- THE LANDSCAPE ARCHITECT OR OWNER'S REPRESENTATIVE SHALL HAVE THE RIGHT TO RECTIFY ANY WORK OR MATERIAL THAT DOES NOT MEET THE REQUIREMENTS OF THE PLANS AND/OR SPECIFICATIONS.
- THE LANDSCAPE CONTRACTOR SHALL SEED AND MULCH OR SOD (AS INDICATED ON PLANS) ALL AREAS DESIGNATED AS SUCH ON THE PLANS, THROUGHOUT THE CONTRACT LIMITS. FURTHER, THE CONTRACTOR SHALL BE RESPONSIBLE FOR RESTORING AREAS DESTROYED DURING CONSTRUCTION, NOT IN THE CONTRACT LIMITS, TO EQUAL OR GREATER CONDITION.
- ALL LANDSCAPE AREAS SHALL HAVE PROPER DRAINAGE THAT PREVENTS EXCESSIVE WATER FROM PONDING ON LAWN AREAS OR AROUND TREES AND SHRUBS.
- ALL LANDSCAPE AREAS SHALL BE IRRIGATED WITH AN AUTOMATIC UNDERGROUND SYSTEM.

GENERAL SOD NOTE:

ALL LAWN AREAS DESIGNATED TO BE SODDED, SHALL BE SODDED WITH A BLENDED DURABLE BLUEGRASS SOD, TYPICALLY GROWN IN THE REGION. ALL TURF SHALL BE PLACED ON A MINIMUM 3" PREPARED TOPSOIL, AND WATERED DAILY UNTIL ESTABLISHMENT. IN AREAS SUBJECT TO EROSION, SODDED LAWN SHALL BE STABILIZED WHERE NECESSARY, AND LAID PERPENDICULAR TO SLOPES. SOD INSTALLATION SHALL OCCUR ONLY:

SPRING: APRIL TO JUNE1
FALL: AUGUST 15 TO OCTOBER 15

GENERAL SEED NOTE:

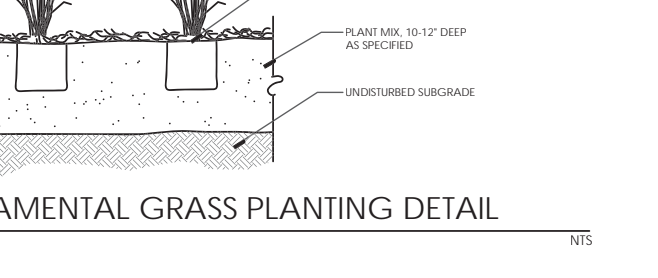
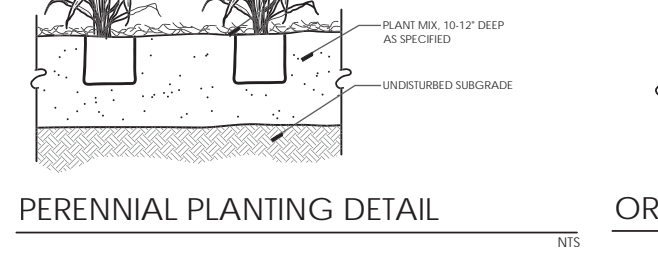
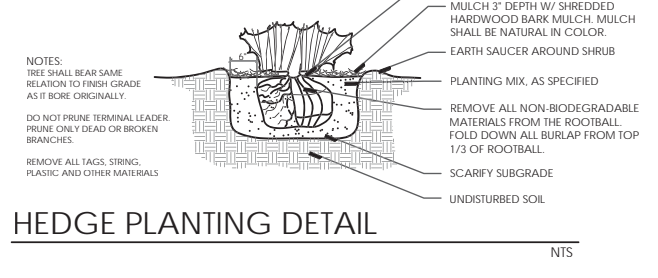
ALL LAWN AREAS DESIGNATED TO BE SEED, SHALL BE HYDRO-SEED WITH SPECIFIED BLENDS, AND STABILIZED WITH WOOD CELLULOSE FIBER MULCH (2,000 LBS PER ACRE). IN AREAS SUBJECT TO EROSION, SEEDING LAWN SHALL BE FURTHER STABILIZED WHERE NECESSARY WITH BIODEGRADABLE EROSION BLANKET AND STAKED UNTIL ESTABLISHED. ALL SEED SHALL BE APPLIED OVER A MINIMUM 3" PREPARED TOPSOIL, AND SHALL BE KEPT MOIST AND WATERED DAILY UNTIL ESTABLISHED.

SEEDING INSTALLATION SHALL OCCUR ONLY:

SPRING: APRIL TO JUNE1
FALL: AUGUST 15 TO OCTOBER 15

GROUND COVER KEY

- TYPICAL SOD LAWN AREAS, SOWN ON 3" TOPSOIL
- RESTORE EXISTING LAWN AREAS W/ HYDROSEED AND MULCH
- 4" DIA SPADE CUT EDGE W/ 3" SHREDDED BARK MULCH
- 3" DEPTH DOUBLE SHREDDED HARDWOOD BARK MULCH
- 3/4" - 1 1/2" STONE MULCH, 3-4" DEPTH ON WEED BARRIER



50

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PROJECT LOCATION

Part of the SW 1/4 of Section 26

T. 2 North, R. 10 East

City of Birmingham,

Oakland County, Michigan

SHEET

Landscape Plan

811

Know what's below

Call before you dig.

REVISIONS

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12/11/19 ISSUED FOR SITE PLAN REVIEW

12/30/19 REVISED PER OWNER

DRAWN BY:

G. Ostrowski

DESIGNED BY:

G. Ostrowski

APPROVED BY:

G. Ostrowski

DATE:

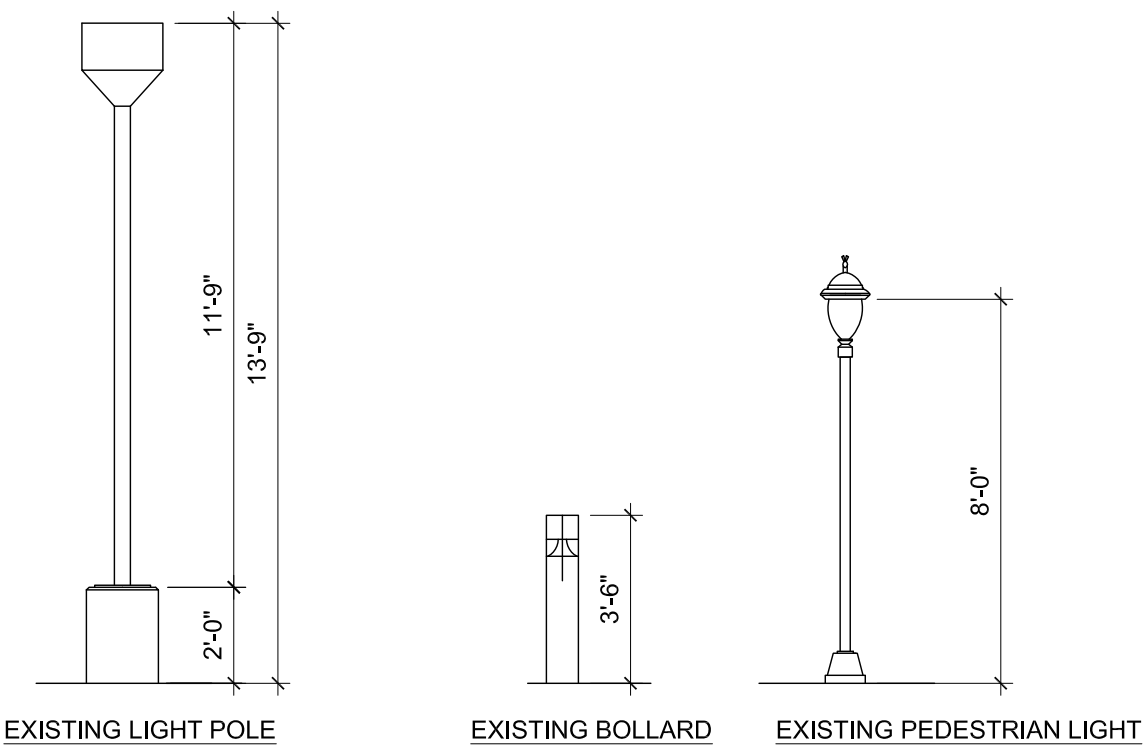
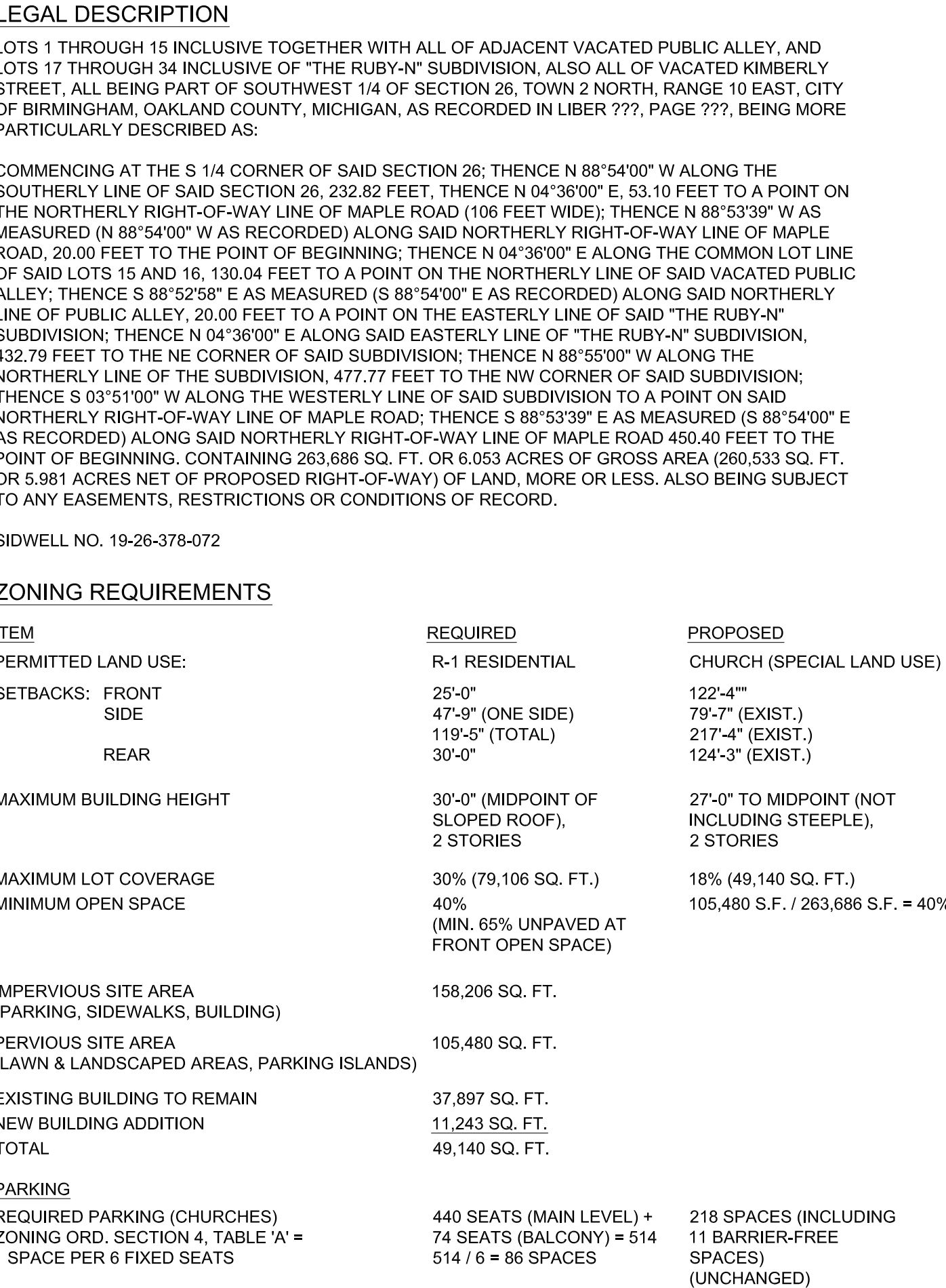
12-04-2019

SCALE: 1" = 20'

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NFE JOB NO. D366-05

SHEET NO. I2



2 SITE LIGHTING DETAILS

AS-101 SCALE: NONE

ISSUED:
11/15/19 DD PACKAGE
02/12/20 SPA PACKAGE

merritt
cieslak
design [p l c]

ARCHITECTURE | PLANNING

33610 Grand River
Farmington, Michigan 48335
248-374-0001
www.mcdarchitects.com

LUTHERAN
CHURCH OF
THE REDEEMER

MAPLE ROAD
BIRMINGHAM, MICHIGAN

ARCHITECTURAL SITE PLAN

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Project No.

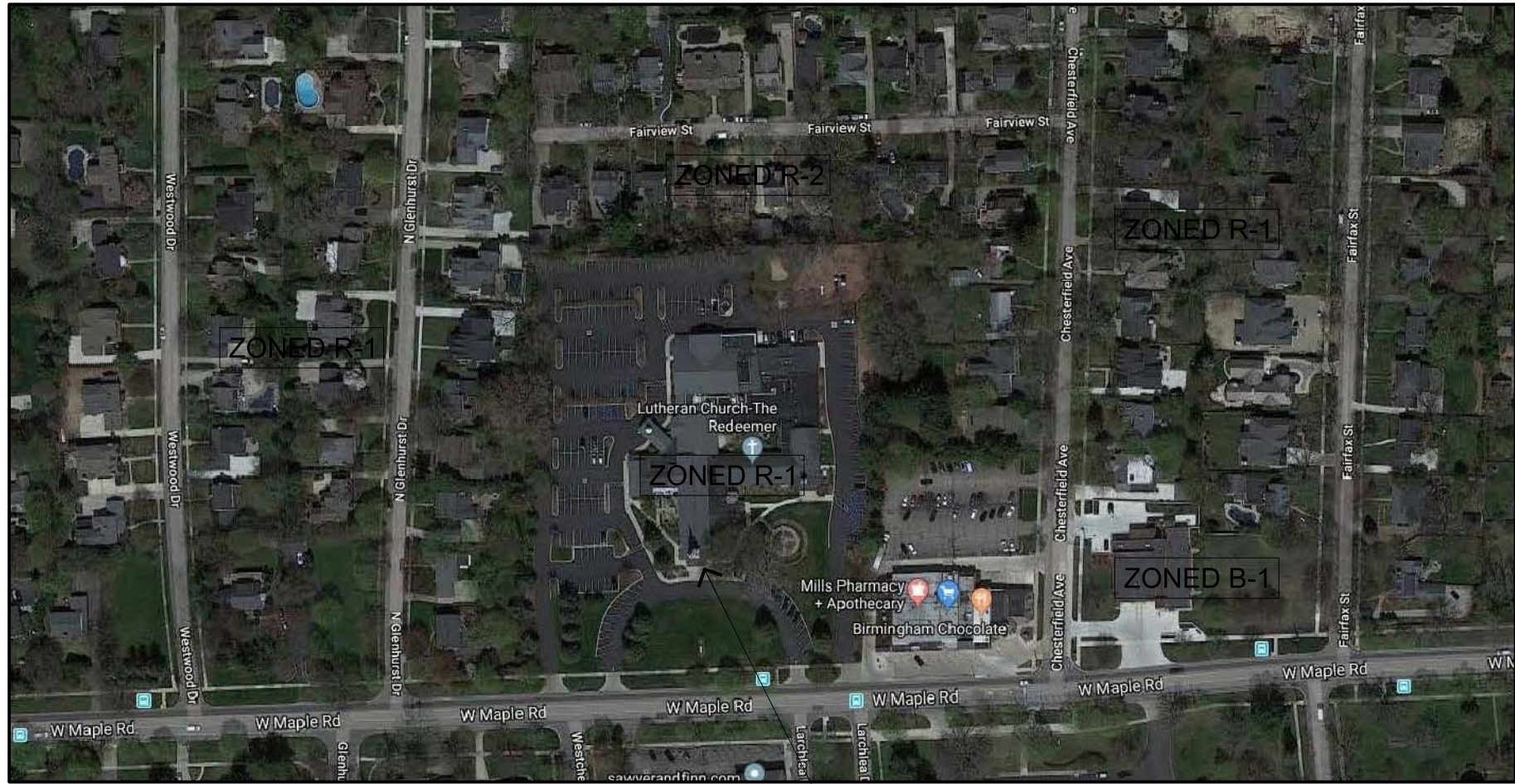
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AS-101

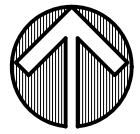


FRONT OF SANCTUARY



EXISTING LUTHERAN CHURCH
OF THE REDEEMER STRUCTURE

AERIAL SITE PLAN



FRONT OF SANCTUARY



WEST WING AND COLUMBARIUM



WEST ENTRANCE



WEST PARKING LOT



EAST WING



EAST PARKING LOT



EAST WING AND GARDEN

ISSUED:
02/12/20 SPA PACKAGE

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Farmington, Michigan 48335
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LUTHERAN
CHURCH OF
THE REDEEMER

MAPLE ROAD
BIRMINGHAM, MICHIGAN

SITE PHOTOS &
AERIAL PLAN

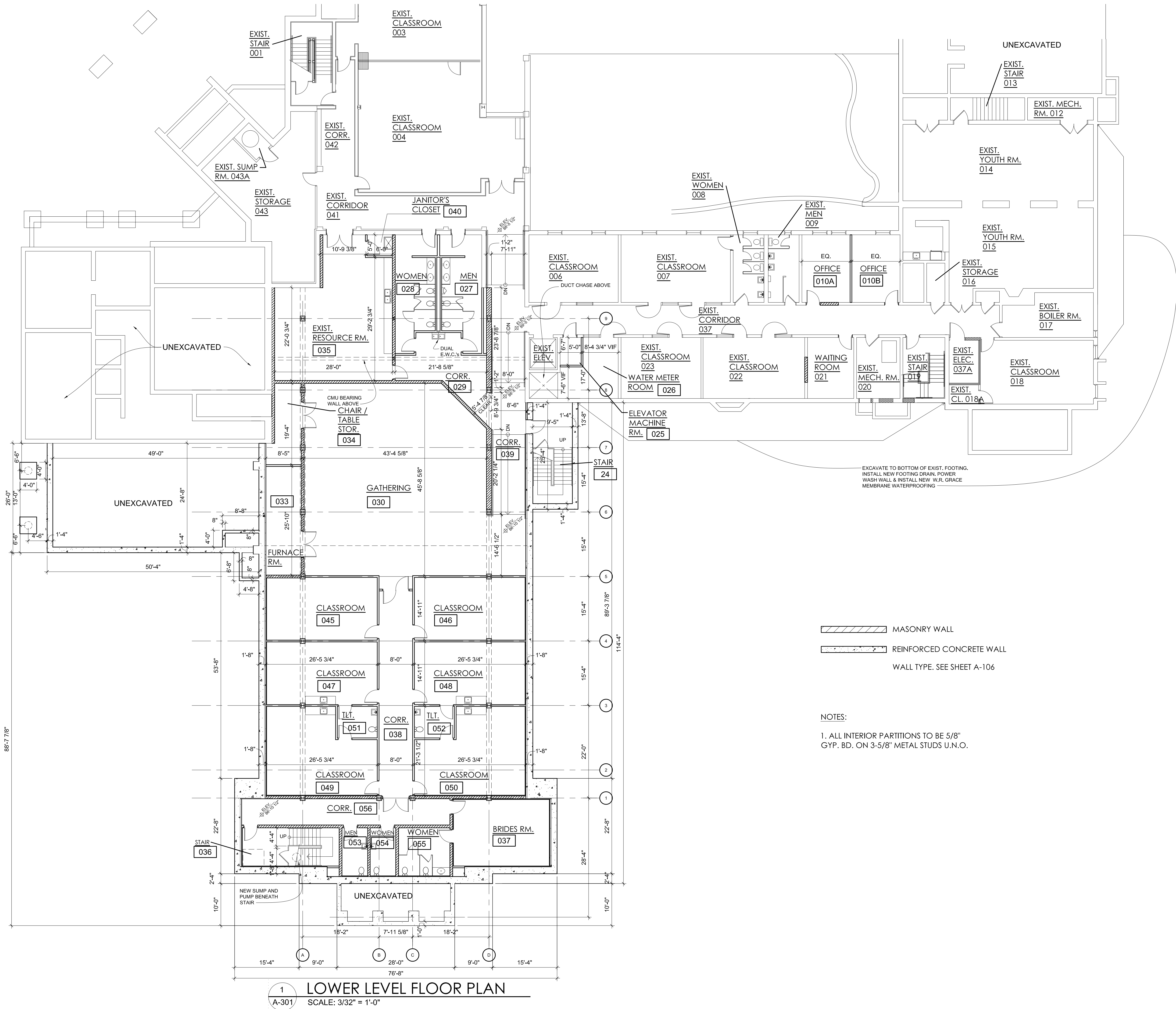
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Sheet No.

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A-002



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11/15/19 DD PACKAGE
02/12/20 SPA PACKAGE



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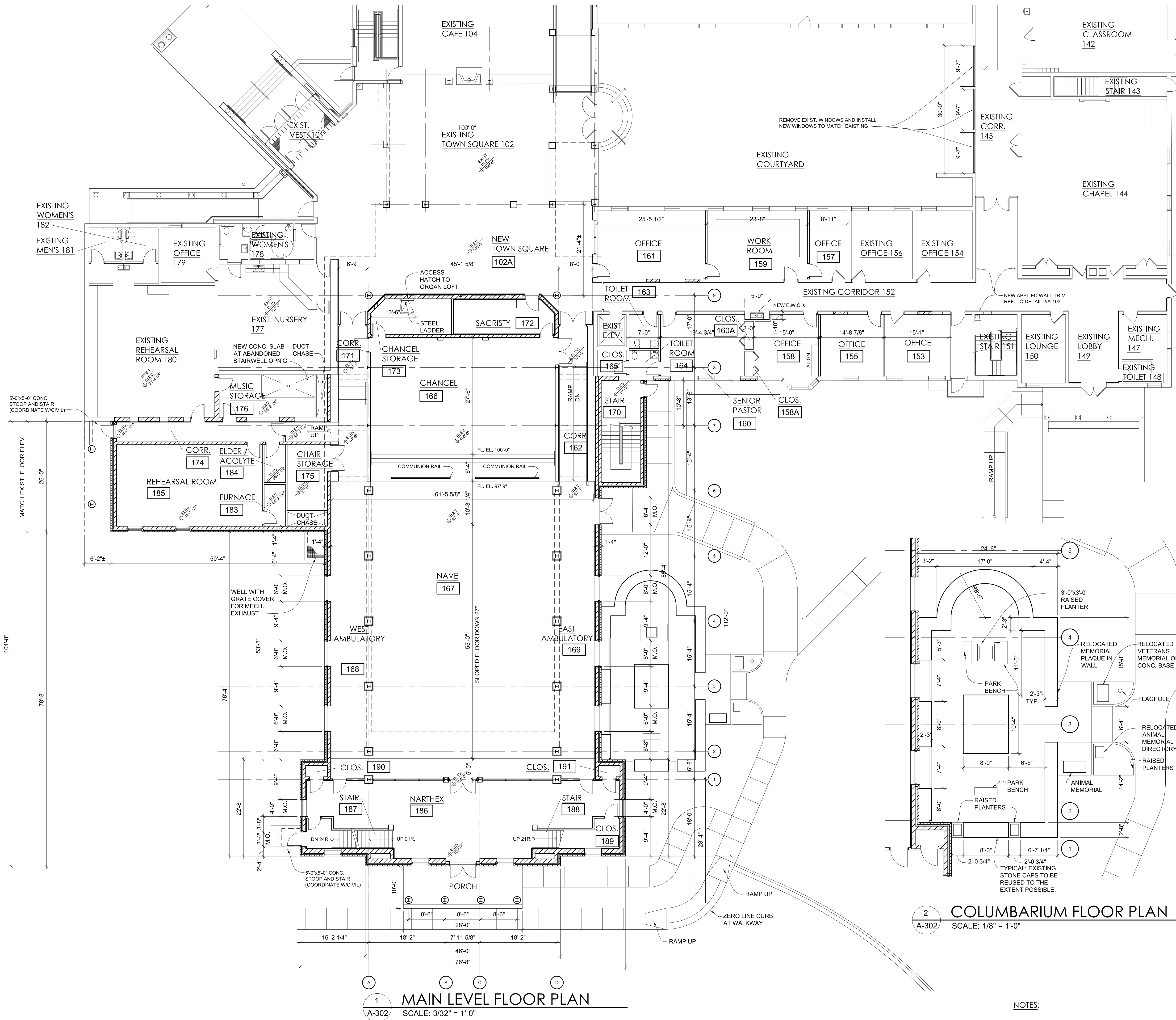
LUTHERAN CHURCH OF THE REDEEMER

MAPLE ROAD
BIRMINGHAM, MICHIGAN

LOWER LEVEL FLOOR PLAN

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15165	A-301



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11/15/19 DD PACKAGE
02/12/20 SPA PACKAGE

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MAPLE ROAD
BIRMINGHAM, MICHIGAN

MAIN LEVEL
FLOOR PLAN

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Project No. 15165
Sheet No. A-302

NOTES:

1. ALL INTERIOR PARTITIONS TO BE 5/8"
GY.P. BD. ON 3-5/8" METAL STUDS U.N.O.

[illegible]

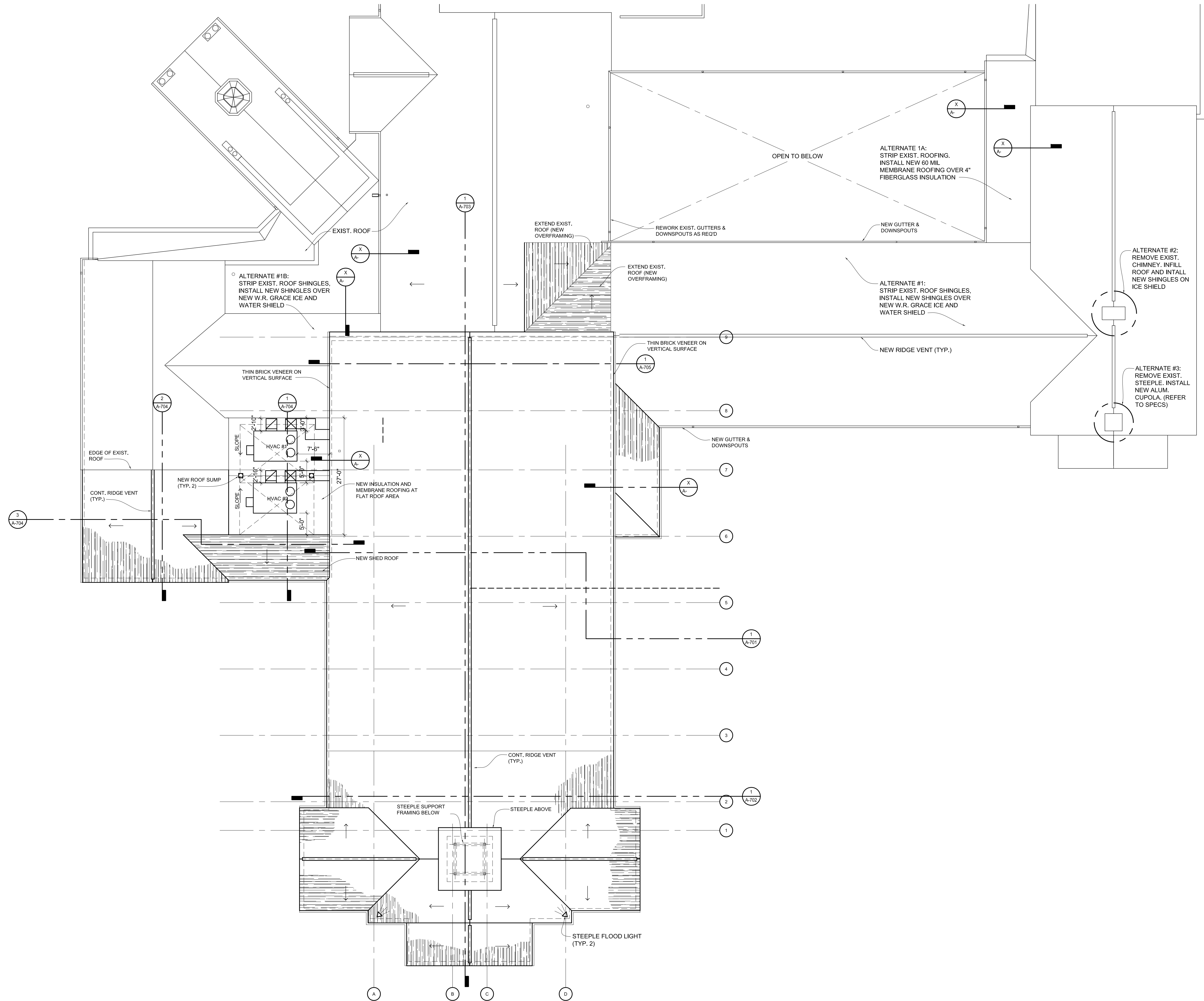
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Project No.	Sheet No.
15165	A-303





1
A-501

PARTIAL ROOF PLAN
SCALE: 3/32" = 1'-0"



ISSUED:
04/01/19 PARTIAL D.D.
11/15/19 DD PACKAGE
02/12/20 SPA PACKAGE

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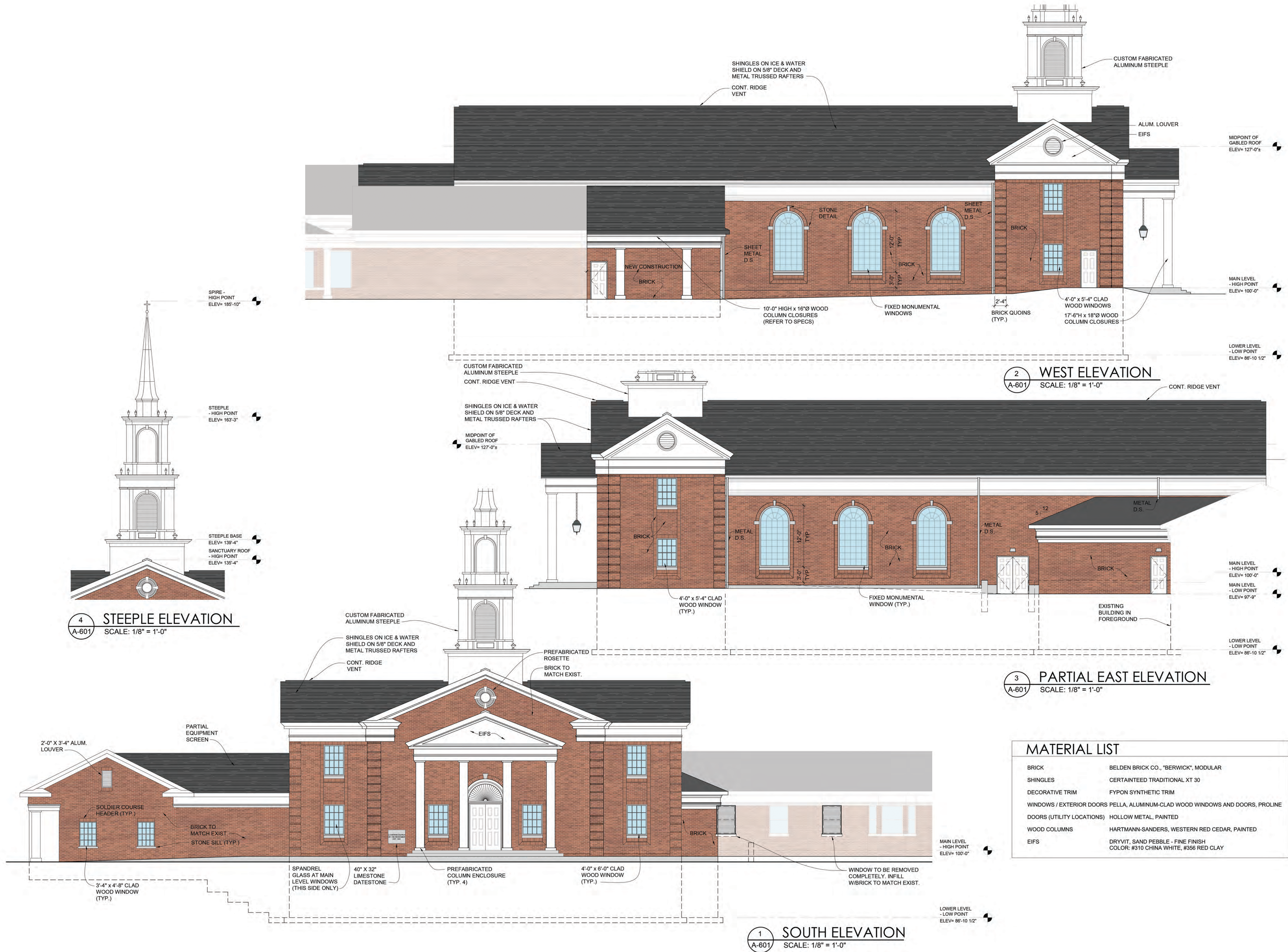
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ROOF PLAN

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Project No.	Sheet No.
15165	A-501



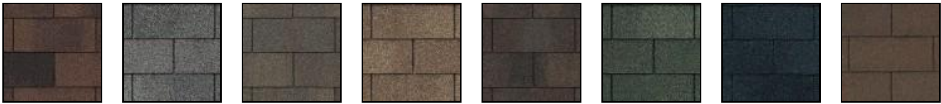
MATERIAL LIST

BRICK	BELDEN BRICK CO., "BERWICK", MODULAR
SHINGLES	CERTAINTED TRADITIONAL XT 30
DECORATIVE TRIM	FYPON SYNTHETIC TRIM
WINDOWS / EXTERIOR DOORS	PELLA, ALUMINUM-CLAD WOOD WINDOWS AND DOORS, PROLINE
DOORS (UTILITY LOCATIONS)	HOLLOW METAL, PAINTED
WOOD COLUMNS	HARTMANN-SANDERS, WESTERN RED CEDAR, PAINTED
EIFS	DRYVIT, SAND PEBBLE - FINE FINISH COLOR: #310 CHINA WHITE, #356 RED CLAY



Schedule									
Symbol	Label	Quantity	Manufacturer	Catalog Number	Description	Lamp	Lumens Per Lamp	Light Loss Factor	Wattage
	SA	11	LITHONIA LIGHTING	KKS 150S RSS	POST-TOP TYPE V-SHORT,CUTOFF - SQUARE HOUSING	ONE 150-WATT CLEAR ET-23.5 HIGH PRESSURE SODIUM, HORIZONTAL POSITION.	16000	0.65	189
	BO	12	Lithonia Lighting	KBR6 70S R5	6 IN ROUND BOLLARD	ONE 100-WATT CLEAR E-17 HIGH PRESSURE SODIUM, VERTICAL BASE-DOWN POSITION.	6300	0.65	94
	SB	17	Antique Street Lamps	LT30 40W GR3 ACT	8-SIDED LANTERN WITH TEXTURED PANELS AND TYPE III REFRACTOR.	THREE 40W CANDLABRA BASE LAMPS, VERTICAL BASE-DOWN	1800	0.81	150
	PE	2	Antique Street Lamps	LT30 40W GR3 ACT	DECORATIVE PENDANT WITH TEXTURED PANELS	THREE 40W CANDLABRA BASE LAMPS, VERTICAL BASE-DOWN	1800	0.81	120
	SC	8	Antique Street Lamps	LT30 40W GR3 ACT	SCONCE WITH TEXTURED PANELS	THREE 40W CANDLABRA BASE LAMPS, VERTICAL BASE-DOWN	1800	0.81	120
	SC1	3	Antique Street Lamps	LT30 100W A19 ACT	SCONCE WITH TEXTURED PANELS	ONE 100W A19 MEDIUM BASE LAMPS, VERTICAL BASE-DOWN	1730	0.81	120
	B	8	Lithonia Lighting	WST 100S FT	ARCHITECTURAL SCONCE WITH FORWARD THROW DISTRIBUTION WITH CLEAR, FLAT GLASS LENS. CLEAR LAMP, MEETS THE "NIGHTTIME FRIENDLY" CRITERIA	ONE 100-WATT CLEAR ED-17 HIGH PRESSURE SODIUM, HORIZONTAL POSITION.	9000	0.65	135
	C	7	Gotham Architectural Lighting	LGF 42TRT 8RW FFL	8" HORIZONTAL RECESSED DOWNLIGHT, 42W TRIPLE TUBE COMPACT FLUORESCENT LAMP, WHITE PAINTED REFLECTOR, WITH FLAT FRESNEL LENS (FFL)	ONE 42-WATT COMPACT FLUORESCENT TRIPLE TUBE, HORIZONTAL POS.	3200	0.81	48
	SD_NEW	6	Antique Street Lamps	LT30 40W GR3 ACT	8-SIDED LANTERN WITH TEXTURED PANELS AND TYPE III REFRACTOR.	THREE 40W CANDLABRA BASE LAMPS, VERTICAL BASE-DOWN	1800	0.81	150
	A_NEW	4	Gotham Architectural Lighting	EVO 35/15 6AR WD LS	3500K, 1500LM, CRI80, 6IN CLEAR, WIDE DIST, SPECULAR	LED	1622	0.85	18.5





Shingle color to match existing shingles on church

XT™ 30 IR

[OVERVIEW](#) [TECHNICAL INFO](#) [INSTALLATION](#) [W](#)

When it comes to weathering the elements, XT 30 IR offers a level of impact resistance that leads the strip shingle class that provides a level of protection that's far from every day. This easy-to-install shingle is built on an extra-strength fiberglass base, and coated with high-grade mineral granules embedded in protective, water-resistant asphalt.

- Durable, beautifully color-blended line of shingles.
- Manufactured with self-sealing adhesive strips.

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Due to variation in computer monitors and printers, the color samples seen on your computer screen may not exactly match the corresponding color. To verify actual product color, ask to see the actual product, available through a CertainTeed contractor or distributor.

PRODUCT OVERVIEW

- [Impact Resistant Shingles Brochure - West](#)
- [Roofing Products Guide - Southeast/South Atlantic/Mid-Atlantic](#)
- [Roofing Products Guide - Denver/Salt Lake](#)
- [Roofing Products Guide - South Central](#)
- [\(More Info\)](#)

TECHNICAL SPECS

- [Data Sheet - XT30 IR](#)
- [3-Part Spec - XT30 IR](#)
- [SDS - Asphalt Shingle - AR](#)
- [Miami-Dade NOA - XT30 IR](#)
- [\(More Info\)](#)

INSTALLATION

- [XT30IR Installation Instructions](#)
- [\(More Info\)](#)

WARRANTY

- [Asphalt Shingle Limited Warranty](#)
- [SureStart Warranty Brochure](#)
- [\(More Info\)](#)



Sweets ProductTAG

TECHNICAL INFORMATION

- Impact resistant: UL 2218 Class 4 rating
- Fiberglass-based construction
- UL Class A fire resistance
- UL certified to meet ASTM D3462
- Conforms to CSA standard A123.5
- Miami-Dade Product Control Acceptance: Please see the Notice of Acceptance (NOA) to determine

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Color at Your Fingertips-48 Most Popular Colors

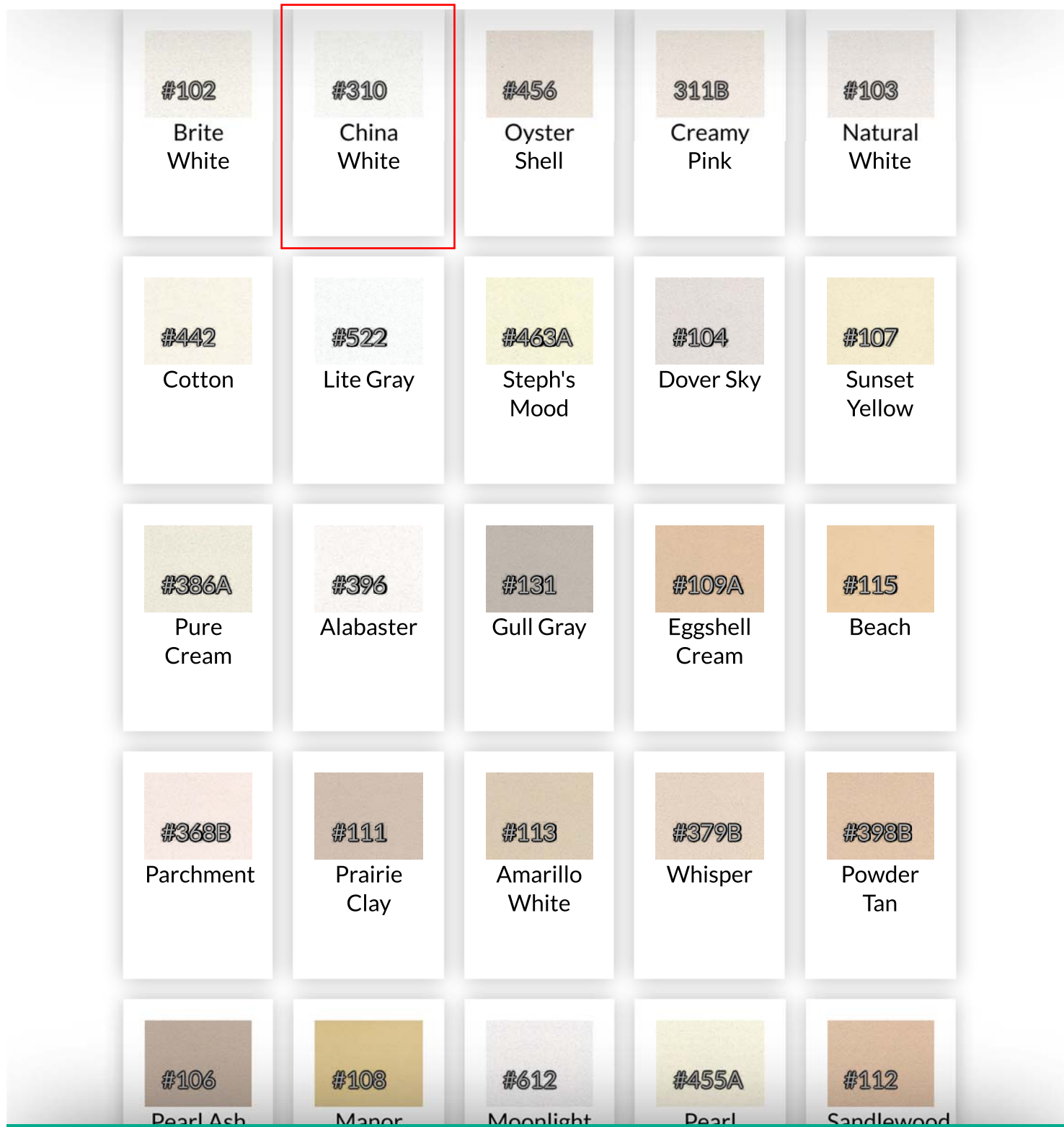
Before Making A Final Color Selection

Please note that the on-screen colors may not precisely match actual colors due to variance in monitor calibrations. It is the intent and purpose of this web-based color chart to provide a basic representation of Dryvit Systems finish colors and is offered as a sales aid only to select a range of colors for final selection. **This web-based color chart shall not be used for final color selection as color differences may occur from one computer to another.** Actual color selection should be made from 8" x 10" samples of each finish type, texture and color to be used on the project. Samples shall

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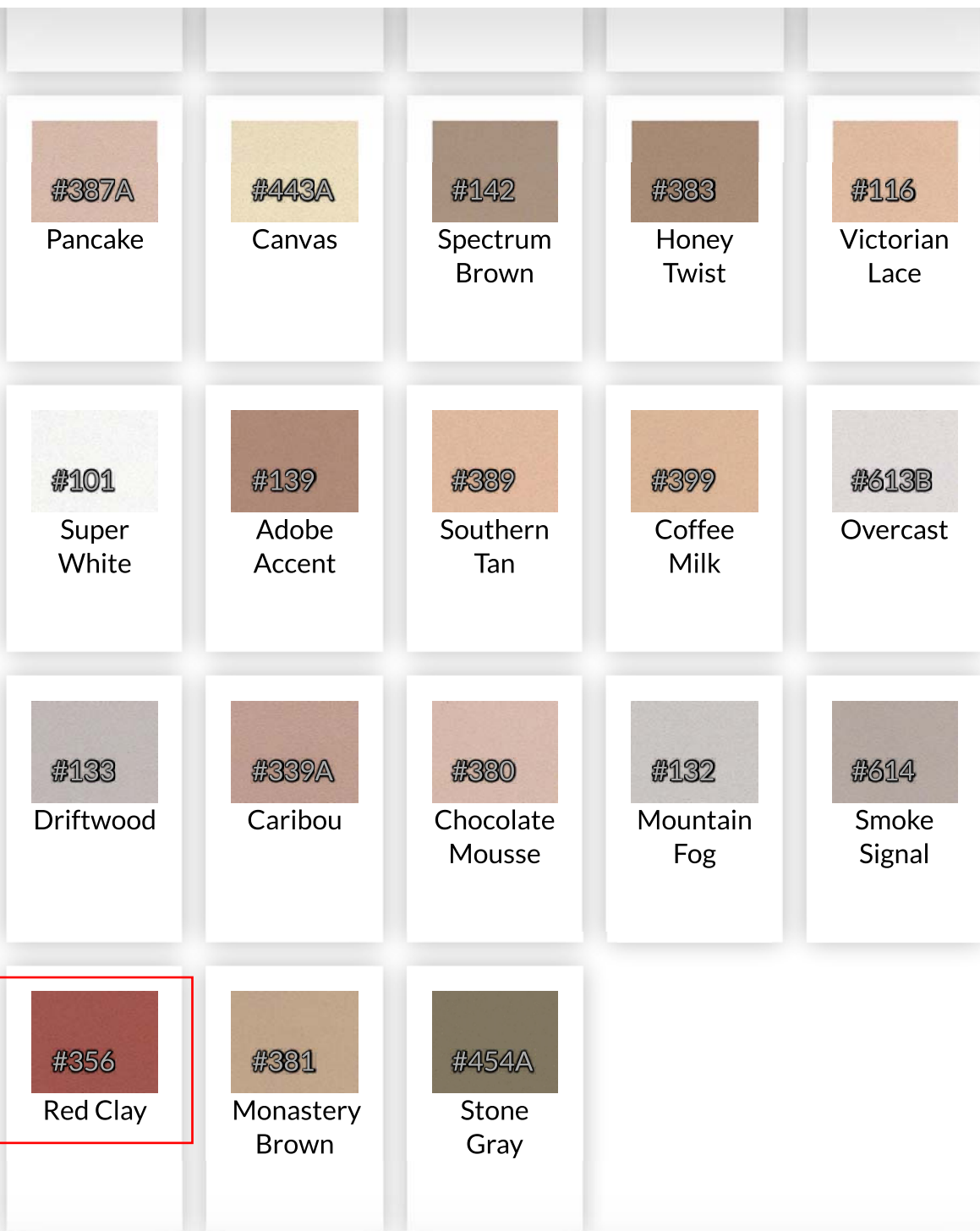
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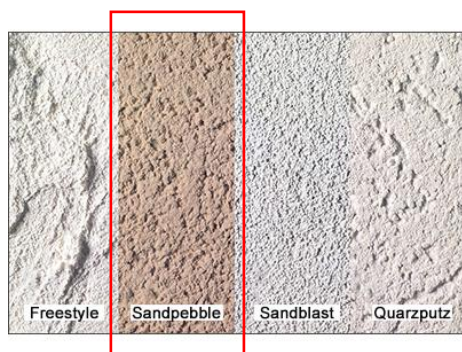
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"Original" Aggregate Textured 100% Acrylic-Based Dirt Pickup Resistance Finishes



Links

[Color Chart CAYF - 48 Most](#)[Popular Colors](#)[Color Chart CAYF - 288](#)[Standard Colors](#)[Data Sheet](#)[NTX Data Sheet](#)[Safety Data Sheet - DPR](#)[Finishes](#)[Finishes/Coatings Warranty](#)[Interior Specifications - DS174](#)[PDF](#)[Interior Specifications - DS174](#)[DOC](#)[Textures Up Close](#)[JEST MORE
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Quarzputz®, Sandblast®, Freestyle®, Sandpebble®, and Sandpebble® Fine finishes are premixed 100% acrylic-based coatings which are offered in standard colors as

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Hartmann-Sanders™ Architectural Wood Columns are based upon the timeless orders of Classical Architecture. From the design of the capital to the proportions and shape of the column shaft, we follow the standards of classic column design. With over 100 years of experience manufacturing columns, Hartmann-Sanders™ offers the largest selection of authentic Architectural Wood Columns in the industry. We recommend solid stave or finger-joint western red cedar or clear all heart redwood for exterior applications. It is naturally weather resistant and immune to decay and infestation. Pine or polar may be used for interior columns that are to be painted. We also offer a large selection of stain-grade columns. Oak, cherry, maple, mahogany and poplar are the most common species used for stain-grade, however other wood species are available upon request. An interior asphaltum coating is applied on all columns to be used for exterior use. Columns that are to be painted are primed with three coats of an oil-based primer after they are turned. Each coat of primer is hand sanded to give an excellent surface for your final topcoats.

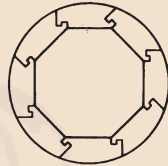
Columns may serve as a structural member or as a decorative accent. Columns which are to be installed around a structural support for decorative purposes will be manufactured in halves and provided with a spline joint for aligning the halves. For load bearing capacities, please contact our Architectural Specialists.

A large selection of capitals and base/plinths are available and manufactured of a high-density polyurethane, fiberglass or wood. Numerous styles of Decorative Capitals are also available to complement any design.



Stave Construction:

Our Wood Column shafts are formed of nominal 4" wide staves. The thickness of the stave depends on the height and diameter of the column shaft. Each stave is connected to the next with our patented Koll's Lock-Joint, and is tapered to achieve uniform thickness throughout the shaft length. Tongue and Groove stave construction is also available and carries the same warranty as the Koll's Lock-Joint. The staves are glued with the highest Type 1 water-resistant glue, interlocked, and kept under pressure for a minimum of eighteen hours.



Koll's Lock-Joint

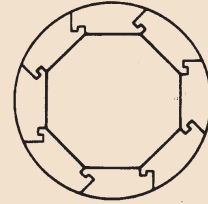
Stave Thickness:

Our experience in the construction of columns has indicated that the thickness of the stock used is important and must provide enough material for proper architectural detail and strength. The nominal thickness of stock used is shown below in the table.

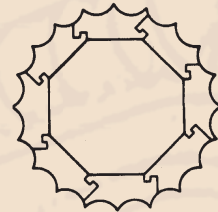


Column shafts may be plain or fluted, with the flutes being either Doric or Ionic design. The following illustrations show each design.

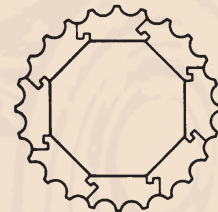
PLAIN



DORIC: Section showing the standard 20 Doric Flutes on designs 215 and 195



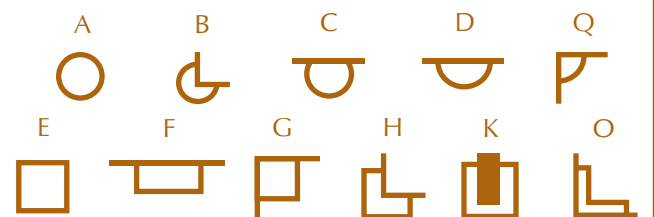
IONIC: Section showing the standard 24 Ionic Flutes on all other fluted column designs.



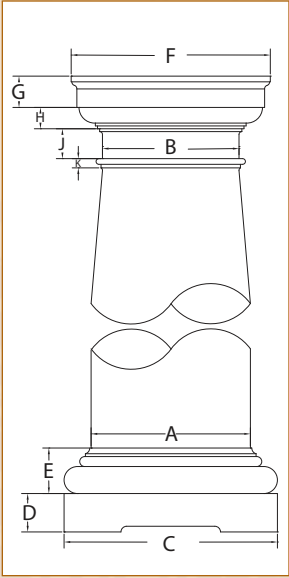
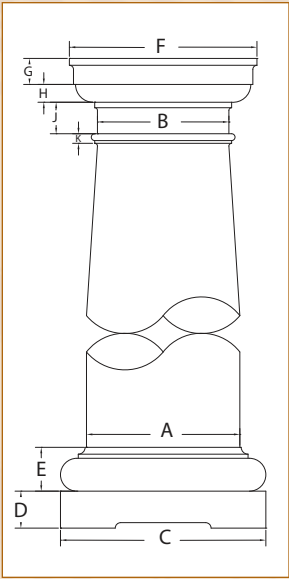
Stave Thickness

Column Size Plain	Plain Stave Thickness	Column Size Fluted	Fluted Stave Thickness
Up to 10" and 10' tall	1½"	6" to 10"	1½"
11" to 20"	2"	11" to 18"	2"
21" to 26"	3"	19" to 24"	3"
27" and up	4"	25" and up	4"

Plan Types for Split Architectural Wood Columns



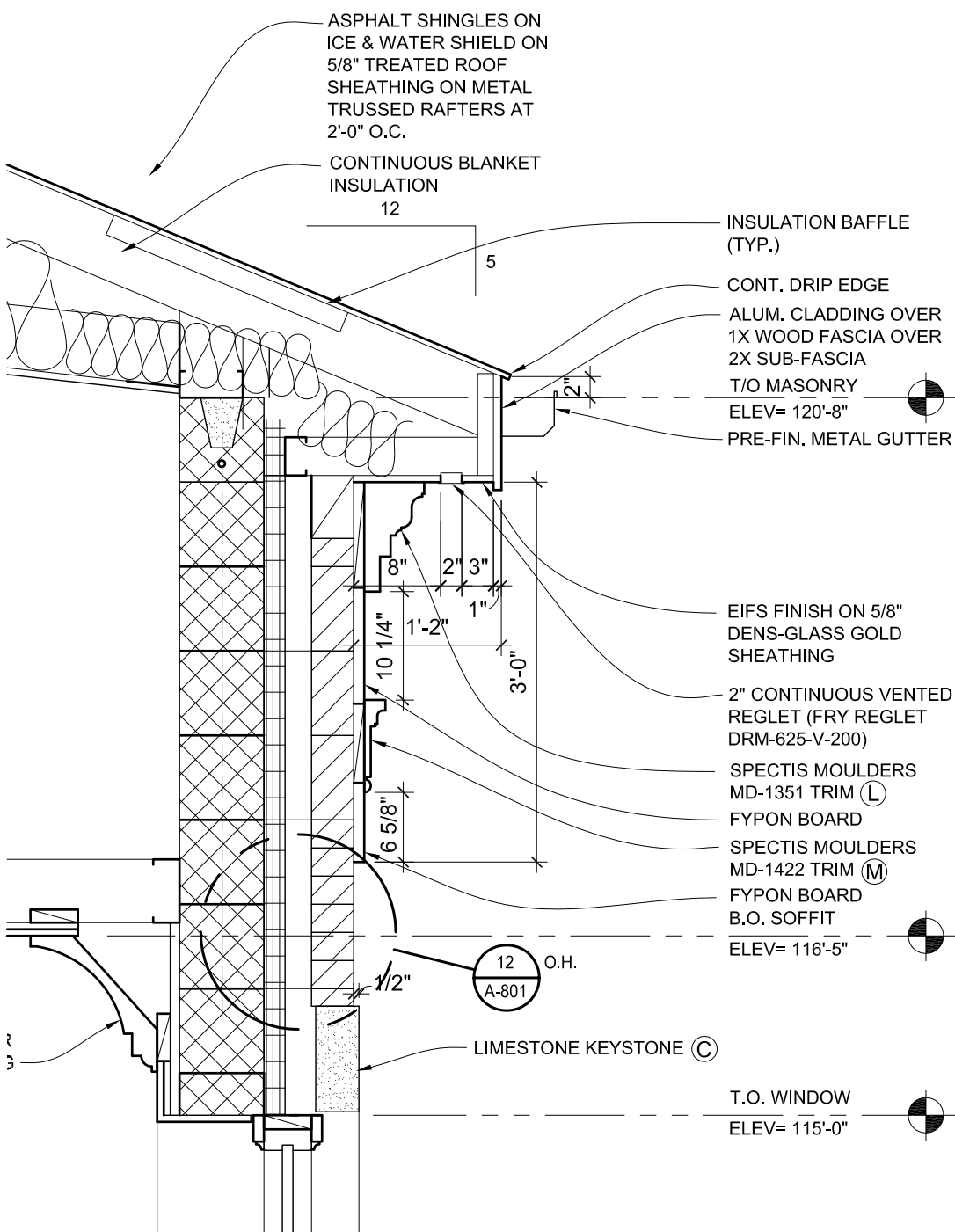
Measurements in inches unless otherwise noted. There may be a variance of up to 1/8" in all dimensions.



Tuscan Cap & Base Plinth Column Design #200 plain; #205 fluted										
Column Size	Bottom Shaft Diameter	Top Shaft Diameter	Plinth		Base Mold	Cap Square		Cap Round		
			Width	Height		Width	Height	H	J	K
6"	6	5	8 1/2	1 1/2	1 3/4	7 1/2	1 1/16	11/16	1 3/8	11/16
8"	8	6 1/2	10 3/4	1 7/8	2 3/8	9 3/8	1 3/8	1	1 5/8	11/16
10"	10	8 1/2	13 3/8	2 3/8	2 7/8	12 1/8	1 3/4	1 1/4	2 3/16	3/4
12"	12	10	16 1/8	2 3/4	3 1/4	14 3/8	2	1 3/8	2 3/16	3/4
14"	14	12	18 3/4	3 3/8	4	17 1/2	2 3/8	1 5/8	2 5/8	1
16"	16	13 1/2	21 1/2	3 7/8	4 1/2	19 1/4	2 3/4	1 7/8	2 5/8	1
18"	18	15	24 1/4	4 1/4	5 5/8	21 1/2	3	2 1/8	3 7/16	1 5/16
20"	20	17	27	4 3/4	6	24 1/4	3 3/8	2 1/4	3 3/4	1 3/8
22"	22	18 1/2	29 3/4	5 1/4	6 7/8	26 1/2	3 3/4	2 1/2	4	1 3/8
24"	24	20	32 1/2	5 3/4	7 1/2	28 3/4	4 1/8	2 3/4	3 7/8	1 1/2
26"	26	22	35	6 1/4	8 3/8	31 1/2	4 3/8	3	3 7/8	1 3/4
28"	28	23 1/2	38	6 3/4	8 3/4	33 3/8	4 3/4	3 1/4	3 1/2	1 7/8
30"	30	25	40 1/2	7 1/4	9 1/4	35 3/4	5 1/8	3 1/2	4 3/4	1 7/8
32"	32	27	43 3/8	7 3/4	10	37 5/8	5 1/2	3 3/4	5	2
34"	34	28 1/2	46	8 1/4	10 7/8	41	5 3/4	3 7/8	5 3/4	2 1/4
36"	36	30	48 3/4	8 3/4	11 3/8	42 3/4	6 1/4	4 1/4	5 3/4	2 1/4

Roman Doric Cap & Base/Plinth Column Design #210 plain; #215 fluted										
Column Size	Bottom Shaft Diameter	Top Shaft Diameter	Width	Height	Base Mold	Cap Square	Height	Cap Round		
								H	J	K
6"	6	5	8 1/2	1 1/2	1 3/4	8	1 1/8	7/8	1 5/8	11/16
8"	8	6 1/2	10 3/4	1 7/8	2 3/8	9 3/4	1 1/2	1 1/8	1 5/8	11/16
10"	10	8 1/2	13 3/8	2 3/8	3	12 1/2	1 3/4	1 3/8	2 3/16	3/4
12"	12	10	16 1/8	2 3/4	3 7/16	14 3/4	2 3/8	1 5/8	2 3/16	3/4
14"	14	12	18 3/4	3 3/8	4	17 1/2	2 3/4	2	2 5/8	1
16"	16	13 1/2	21 1/2	3 7/8	4 7/8	19 7/8	3 1/8	2 1/4	2 5/8	1
18"	18	15	24 1/4	4 1/4	5 5/8	22 1/4	3 1/2	2 1/2	3 5/16	1 5/16
20"	20	17	27	4 3/4	6 1/4	25	4	2 3/4	3 3/4	1 3/8
22"	22	18 1/2	29 3/4	5 1/4	6 3/4	27 3/8	4 3/8	3	4	1 3/8
24"	24	20	32 1/2	5 3/4	7 1/2	29 3/4	4 1/2	3 1/4	3 7/8	1 1/2
26"	26	22	35	6 1/4	8 1/8	32 1/2	5 1/8	3 1/2	3 5/8	1 3/4
28"	28	23 1/2	38	6 3/4	8 3/8	34 5/8	5 1/2	3 7/8	3 1/2	1 7/8
30"	30	25	40 1/2	7 1/4	9 3/8	37	5 7/8	4 1/8	4 3/4	1 7/8
32"	32	27	43 3/8	7 3/4	10	39 1/4	6 1/4	4 1/4	5	2
34"	34	28 1/2	46	8 1/4	10 3/4	42 1/8	6 3/8	4 5/8	5 3/4	2 1/4
36"	36	30	48 3/4	8 3/4	11 1/4	44 1/8	7	5	5 3/4	2 1/4





ASPHALT SHINGLES ON
ICE & WATER SHIELD ON
5/8" TREATED ROOF
SHEATHING ON METAL
TRUSSED RAFTERS AT
2'-0" O.C.

CONTINUOUS BLANKET
INSULATION
12

INSULATION BAFFLE
(TYP.)
5

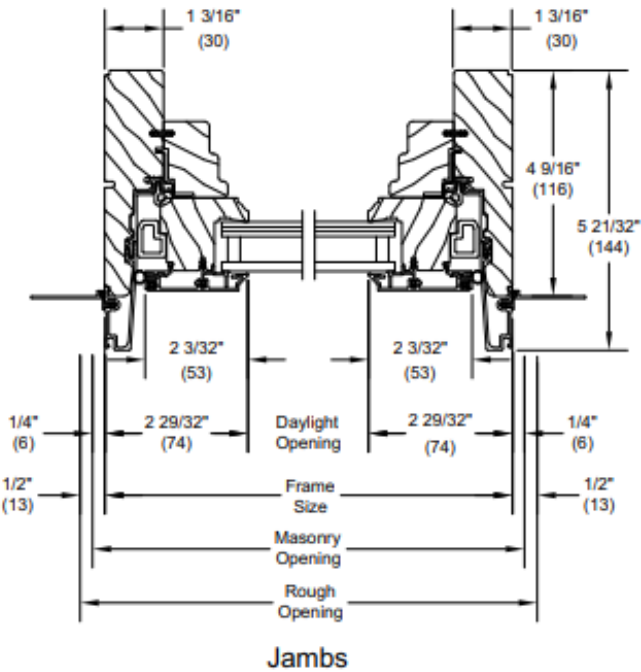
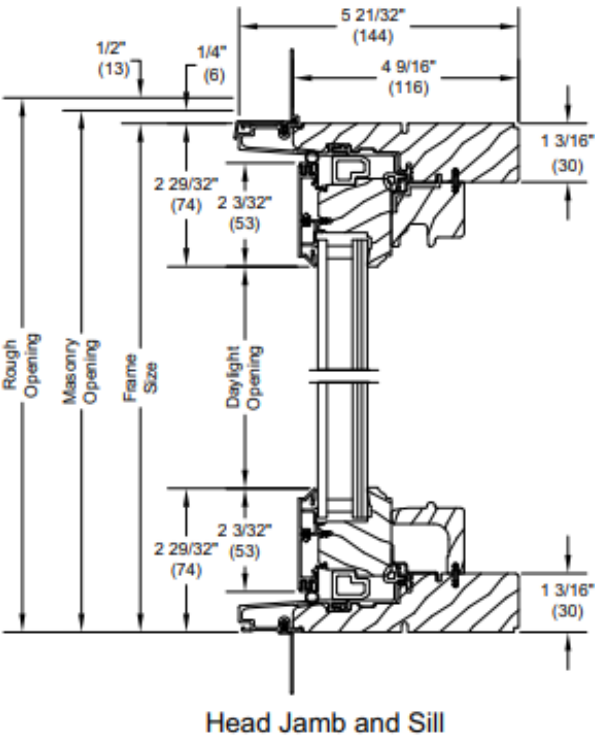
CONT. DRIP EDGE
ALUM. CLADDING OVER
1X WOOD FASCIA OVER
2X SUB-FASCIA
T/O MASONRY
ELEV= 120'-8"
PRE-FIN. METAL GUTTER

EIFS FINISH ON 5/8"
DENS-GLASS GOLD
SHEATHING
2" CONTINUOUS VENTED
REGLET (FRY REGLET
DRM-625-V-200)
SPECTIS MOULDERS
MD-1351 TRIM (L)
FYPON BOARD
SPECTIS MOULDERS
MD-1422 TRIM (M)
FYPON BOARD
B.O. SOFFIT
ELEV= 116'-5"

12 O.H.
A-801
LIMESTONE KEYSTONE (C)

T.O. WINDOW
ELEV= 115'-0"

Stationary/Picture





PELLA®

ProLine 450 Series

WOOD WINDOWS AND PATIO DOORS
AT A COMPETITIVE PRICE



Beauty of wood.



Our most popular features start here.

Choose from Pella's most requested styles, and add character to your home with the right sizes, colors and grille patterns.

EnduraGuard® wood protection offers advanced protection against the effects of moisture, decay, stains from mold and mildew – as well as termite damage. This proven immersion-treatment method will help ensure that Pella® wood windows and patio doors look and perform beautifully for years.



Pella EnduraGuard wood protection.



Pella's casement window after 7 months of exposure to moisture.*



Competitor's pressure-treated wood.



Stain mold present after 7 months of field-testing a competitor's pressure-treated wood.*

* For testing purposes, the seal between the bottom rail and the glass was compromised in both casement units tested.

Factory-prefinished pine interiors. Pella wood products can arrive factory-prefinished in your choice of eight beautiful stain colors, as well as primed, or with White, Bright White or Linen White paint. You get a professional, high-quality finish – eliminating drips, runs and harmful odors.

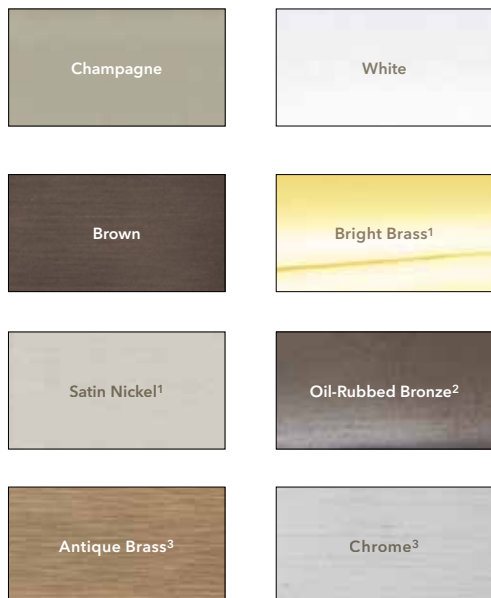
EnduraGuard®
Wood Protection



Features and options.

HARDWARE FINISHES

Choose from today's most popular decorative finishes to coordinate with other finishes in your home.



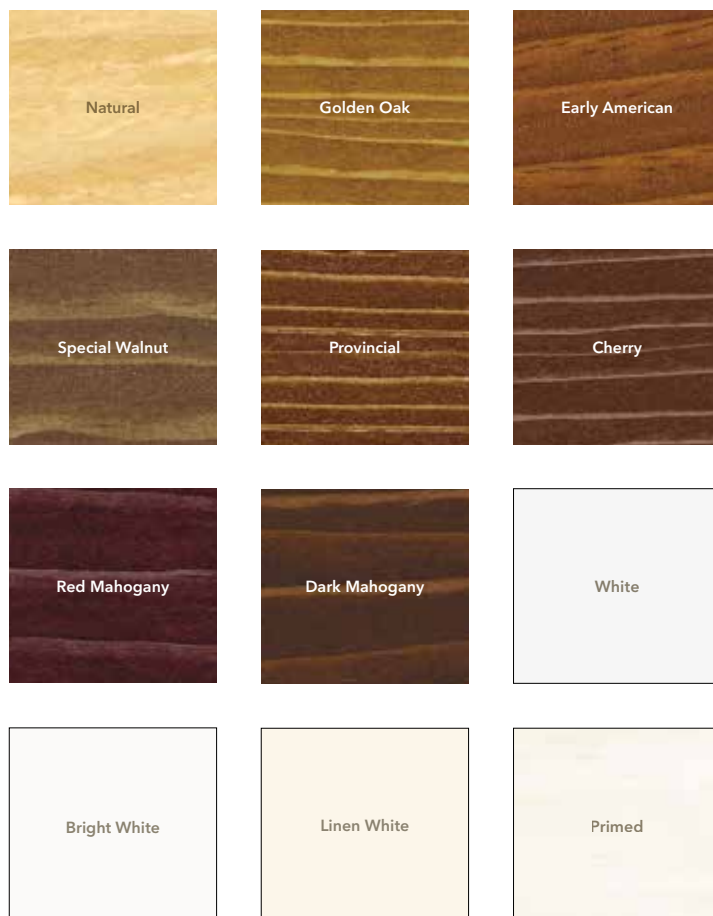
HARDWARE STYLES

Find beauty and function in Pella's innovative, easy-to-operate hardware styles.



PREFINISHED PINE INTERIORS

The interiors of all Pella® Pine windows and patio doors can arrive prefinished in your choice of eight stain colors to complement your home. Three prefinished paint colors or primed, ready-to-paint interiors are also available.



ALUMINUM-CLAD EXTERIORS

Beautifully durable, Pella's low-maintenance EnduraClad® exterior finish resists fading and helps protect your windows and patio doors for years.



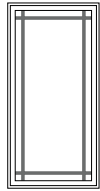
wood window and patio door

DESIGN GUIDE

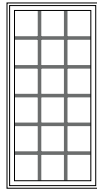
WINDOWS
PATIO DOORS

GRILLE PATTERNS⁴

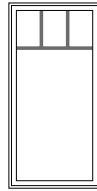
A variety of grille patterns for the traditional look of divided light. Custom patterns are also available.



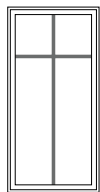
9-Lite Prairie



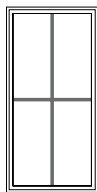
Traditional



Top Row



Cross



Custom (equally divided)

GRILLES

Choose the look of true divided light, or add grilles-between-the-glass that make cleaning the glass easier.



7/8" Simulated-Divided-Light with Spacer



7/8" Simulated-Divided-Light Without Spacer



2", 1-1/4" and 3/4" Roomside Removable



3/4" Aluminum Grilles-Between-the-Glass



White



Ivory



Tan⁵



Putty⁵



Brown⁵



Harvest



Brickstone



Cordovan

Aluminum grilles-between-the-glass feature the option of the interior grille colors shown above. The exterior will match the EnduraClad[®] color you choose.⁶

GLASS

INSULSHIELD[®] LOW-E GLASS COLLECTION¹



Advanced Low-E insulating glass with argon	S	S
AdvancedComfort Low-E insulating double-pane glass with argon	O	O
NaturalSun Low-E insulating glass with argon	O	O
SunDefense [™] Low-E insulating glass with argon	O	O

ADDITIONAL GLASS OPTIONS^{*}

Tempered glass	O	O
Laminated (non-impact-resistant), tinted and obscure glass available on select products	O	O

^{*} See glass information on pages 8 - 9 for details.

INTERIORS

WOOD TYPES

Pine	S	S
------	---	---

INTERIOR FINISHES

Unfinished	S	S
Primed, ready to finish [*]	O	O
Prefinished stain or paint [*]	O	O

INTERIOR TRIM

Primed, ready to finish [*]	O	O
Prefinished stain or paint [*]	O	O

^{*} See page 10 for finishes.

EXTERIORS^{*}

EXTERIOR FINISHES

Aluminum-clad with EnduraClad [®] protective finish	S	S
--	---	---

EXTERIOR TRIM

EnduraClad factory-applied trim	S	S
---------------------------------	---	---

^{*} See page 10 for finishes.

HARDWARE¹

FINISHES¹

Champagne, White, Brown, Bright Brass, Satin Nickel, Oil-Rubbed Bronze ² , Antique Brass ³ and Chrome ³	O	O
--	---	---

¹ See hardware finish colors and styles on page 10.

² Oil-Rubbed Bronze is a living finish that will develop its own unique patina with use.

³ Available on hinged patio doors only.

GRILLES^{*}

PERMANENT GRILLES

Simulated-Divided-Light grilles with or without spacer	O	O
Aluminum grilles-between-the-glass	O	O

REMOVABLE GRILLES

Roomside interior wood grilles	O	O
--------------------------------	---	---

^{*} See left for grille finish colors and styles.

SCREENS^{*}

InView [™] screen	S	S
Vivid View [®] high-transparency screen	O	-

^{*} ⚠ WARNING: Screen will not stop child or pet from falling out of window or door. Keep child or pet away from open window or door.

WARRANTY



Pella 20/10 Limited Warranty [*]	S	S
---	---	---

^{*} See written warranty for complete details at pella.com/warranty.

(S) Standard (O) Optional (-) Unavailable

See a Pella professional for specific details and additional options available.

Some features are part of our standard offering; not all options are available on all product styles.

¹ On hinged patio doors, Endura Hardware Collection offers a 10-year warranty. See written warranty for complete details at pella.com/warranty.

² Oil-Rubbed Bronze is a living finish that will develop its own unique patina with use.

³ Hinged patio doors only.

⁴ Grille patterns offered may vary per product. See specific product information for availability.

⁵ Only available with matching interior and exterior colors.

⁶ Appearance of exterior grille color may vary depending on the Low-E insulating glass selection.



VIEWED TO BE THE BEST.®

Want to learn more about Pella® windows and doors? Call us at **866-209-4260** or visit **pella.com**.



Always read the Pella limited warranties before purchasing or installing Pella products. See written warranties for complete details at pella.com/warranty.



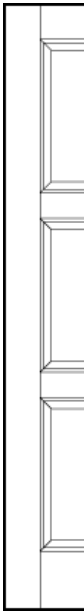
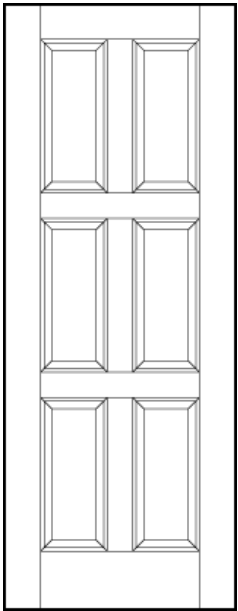
Pella Corporation is a proud volunteer partner in the U.S. Environmental Protection Agency and the Department of Energy's ENERGY STAR® program to promote the use of high-efficiency products.



Connect with Pella:



COVID-19 Update
CLICK HERE



TS6080

Colonial Cottage Traditional

Series:	TruStile (TS) Series
Application:	Interior, Exterior
Construction:	<div>MWR</div>
Thickness:	1-3/8", 1-3/4", 2-1/4"
Available Fire-Rating:	<div>20456090</div>

Fire-rated doors may require modified construction depending on rating.
Contact TruStile or your TruStile Representative for details.

Mr. Gibbs stated he is going to abstain because he arrived in the middle of the presentation.

Yeas: Messrs. Cotton, Hughes, Conlin and Williams

Nays: Mr. Lillie

Abstain: Mr. Gibbs
Motion passes to deny the variance.

Appeal 91-14

The Lutheran Church of the Redeemer, 1800 W. Maple, is requesting a variance to install a wooden stockade fence in lieu of a masonry fence.

Section 5.215, Chapter 39, Birmingham City Code, requires screening fences to be made of masonry and therefore requires a variance.

Mr. Gibbs excused himself from participating in this appeal because he is a member of this church.

Mr. Murphy explained that churches located in residentially-zoned property are required to obtain a Special Land Use Permit. This was granted by the City Commission with the exception of the masonry fence issue because this needed a variance from this Board.

The petitioner is requesting, with the neighborhood's consent, to install a fence to be made of stockade wood material, similar to the type of material already installed in back of the property.

Mr. Tom Boyce, Chairman of the Board of Trustees for the church, explained exactly where the proposed fence would be located. The stockade fence would begin at the first jog on the west side of the property and continue around to the east and back up to Mills Pharmacy. The chain-link fence would be removed and replaced with the stockade fence. There are some neighbors along the north property line who want to keep the chain-link fence in place so the church will continue the existing stockade fence on the north side. The church will maintain the responsibility for cleaning the debris between the two fences.

Mr. Boyce explained the stockade fence is considered more aesthetically pleasing to both the neighbors and the congregation. The wooden stockade fence will not have any kind of detrimental impact on the trees and shrubbery along the property line. There are 26 trees along the property line. A masonry fence would interfere with the root structure of these trees. The issue of snow packing up against the wooden fence and deteriorating it would not be an issue because there is a curb that runs inside the fence by approximately 6' around the whole property.

Mr. Boyce explained whole purpose of putting up the fence to begin with was to address a lot of the neighbors' concerns regarding privacy. Mr. Boyce stated this situation is similar to Holy Name's which was before the Board previously.

Mr. Conlin referred to the names on the petition and asked how many of these people are affected immediately by the fence. Mr. Boyce stated there are 17 names out of 21. The other 3 neighbors were unable to be reached.

A landscape architect had stated that the existence of the trees may be undermined by a masonry wall.

Mr. Boyce stated the fence will be of very high quality cedar. The wooden posts are guaranteed to last 30-40 years.

Mr. Bruce Pence of 210 N. Glenhurst stated he has been a neighbor on the north side of the church's property for 30 years and strongly recommends positive consideration to the petitioner's request.

Ms. Rebecca Morrell who lives on Fairview behind the church on the north end stated she is in favor of the stockade fence in lieu of a masonry fence because she doesn't want any vegetation destroyed. She would like the church to plant some trees to replace some that were originally destroyed.

Mr. Mike Doonan who lives at 166 N. Glenhurst stated he endorses the proposal. The church has done yeoman's work all the way around in pleasing everybody.

Motion by Mr. Conlin

Seconded by Mr. Lillie in reference to Appeal 91-14 to grant a variance under Section 5.215, Chapter 39, Birmingham City Code, to allow the Lutheran Church of the Redeemer to install a cedar stockade fence of the quality represented in the hearing tonight. The petitioner has demonstrated more than adequately two major points, one of which the purpose of the Ordinance is to screen neighboring uses, those being different uses. The neighbors have stood up unanimously and supported the stockade in lieu of the masonry and that shows the spirit of the Ordinance is kept intact. Secondly, the petitioner has gone on record to state that the existing vegetation would be damaged or would have to be substantially removed which would incur damage or inconvenience or ecological problems with the neighbors and that in and of itself is a practical difficulty. Consequently, I would move that the variance be granted per the proposal as outlined tonight by the Board and linked to the plans submitted.

Yeas: Messrs. Williams, Cotton, Hughes, Conlin
and Mr. Lillie

Nays: None
Motion passes to grant the variance.

Appeal 91-15

Ms. Susan Pohl, representing the property owner of 1872 Derby, Birmingham, Michigan is requesting a variance in order to permit a family day-care home closer than 750 feet from another family day-care home.

Section 5.22(f), Chapter 39, Birmingham City Code, states that no family day-care homes shall be located closer than seven hundred fifty (750) feet from another family day-care home or foster-care facility except as permitted below:

The Board of Zoning Appeals may approve the location of a family day-care home within seven hundred fifty (750) feet of another existing home or foster-care facility upon proof and specific findings by the Board that the resulting concentration of uses will not adversely affect the peace and tranquility or the residential character of the surrounding area.

Mr. Murphy explained the Board has received this evening some correspondence from some of the neighbors and from the petitioner. The application that was sent to the Board does not have the signature of the owner, however Mr. Murphy explained he did have it in his file.

Mr. Murphy stated that if the Board grants this approval, it will run with the land; it would be a permanent variance for this address.

Mr. Lillie asked how many houses there are between the two day-care facilities; Mr. Murphy believes there are two.

Ms. Pohl stated she would like to be granted the variance and didn't see how it would cause any problems with the neighbors. She explained that most of the traffic from the other day-care facility, on the corner of Derby and Graefield, is located on Graefield. The traffic from her proposed facility would be located on Derby. Her driveway can accommodate three cars. Ms. Pohl stated she is caring for three children at the present time and the maximum the City allows is six children.

Ms. Pohl stated she can rent the house with the option to buy.

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, APRIL 12, 2005**

04-37-05

**1800 WEST MAPLE
Lutheran Church of the Redeemer
(Appeal 05-23)**

The owners of the property known as 1800 W. Maple request the following variances or reviews:

- A. A dimensional variance of 240.5 ft. to eliminate the requirement for a 6 ft. high masonry wall along the unscreened portion of the parking area along the west property line and to use existing vegetative screening in lieu of the 6 ft. high masonry wall required by Section 126-572 (7) of the Zoning Ordinance;
- B. A dimensional variance of 137 ft. to eliminate the requirement for a 32 in. high masonry screenwall at the front setback line along W. Maple in lieu of the 32 in. high masonry screenwall required by Section 126-572 (d) (3) (a)
- C. A dimensional variance to allow the existing four parking spaces to remain in the required front setback along W. Maple in lieu of eliminating the existing four parking spaces as required by Section 126-572 (e) (1) of the Zoning Ordinance.
- D. A dimensional variance of one loading space in lieu of the one loading space required by Section 126-569 of the Zoning Ordinance.

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

One letter of approval has been received from an adjacent residential neighbor.

Mr. Sabo advised that the Lutheran Church of the Redeemer has received final site plan and design review approval from the Planning Board along with the Planning Board's recommendation to the City Commission for approval of a Special Land Use Permit ("SLUP") Amendment with conditions attached.

The applicant is proposing to make numerous minor site plan changes, including reconfiguration of the parking area, curb and gutter improvements, sidewalk improvements, installation of numerous barrier-free ramps, landscape changes, construction of a dumpster enclosure, and addition of cenotaphs. As a result of adding landscaping and handicap compliant parking spaces to the parking lot, they will go from 231 spaces existing to 224 spaces proposed.

Mr. Jeffrey Huhta, P.E. from Nowak & Fraus, Consulting Engineers, was present along with Mr. Curtis Burstein from the Church's building committee. Mr. Huhta explained that basically, the existing parking area is in disrepair. The church would like to pull their existing parking away from the mature pine trees on the east side of the property and create landscape islands throughout the lot. Mr. Huhta went on to address the four variances.

A. With respect to eliminating the requirement for a 6 ft. high masonry wall on the unscreened portion of the parking area along the west property line, the church has responded to the concerns of the individual property owners along the row who preferred vegetation behind their property, rather than a wall. Now that the vegetation is matured and established, any disturbance to this area would be a detriment to the neighborhood.

B. As far as the 32 in. masonry screenwalls along the front setback line, Mr. Huhta felt that placing screenwalls in that area really doesn't make a whole lot of sense. The two 20 ft. long screenwalls that would be required on either end of the parking horseshoe will not provide any significant benefit as they will do nothing to screen the other parking spaces that are permissible by the Ordinance. It would be much better to enhance that area with some landscaping.

C. The existing four parking spaces in the required 25 ft. front setback are visible to the general public and serve an important function for the Church operations. In addition, the Church needs to retain as many on-site parking spaces as possible to serve its congregation.

D. The Church has no need for a loading space as there are no functions within the Church that require such a space. The Church does not receive any deliveries from trucks; all deliveries are from passenger vehicles. Of greater importance as previously stated is to provide for as many regular parking spaces as possible.

No one from the audience wished to participate in the discussion at 11:10 p.m.

Motion by Mr. Judd

Seconded by Mr. Conlin with respect to Appeal 05-23, 1800 W. Maple, the petitioner seeks four variances to the Zoning Ordinance. (A) is a variance to Section 126-572 (7) to eliminate the requirement for a 6 ft. high masonry wall along the unscreened portion of the parking area; (B) is a variance to Section 126-572 (d) (3) (a) to eliminate the requirement of a 32 in. high masonry screenwall at the front setback along W. Maple; (C) is a variance to Section 126-572 (e) (1) to allow the existing four parking spaces to remain in the required front setback; and (D) is a variance to Section 126-569 to eliminate the requirement of one loading space. There are four standards that a petitioner must meet to successfully argue practical difficulty: The first is whether strict compliance with the restrictions governing the area setbacks, frontage, height, etc. would unreasonably prevent the petitioner from using the property and to require the petitioner to conform

would be unnecessarily burdensome. The petitioner has shown that the four parking spaces in the required 25 ft. front setback serve an important function for the Church operations and the Church needs to retain as many on-site parking spaces as possible.

The second standard is whether to grant the variance would do substantial justice to the applicant or surrounding property owners. Under these circumstances it would. The Church has made an extremely good faith effort to meet the requirements of abutting property owners by planting vegetation on the unscreened portion of the parking area rather than erecting a 6 ft. high screenwall. Vegetation and landscaping are also being added to the rest of the property in order to make it aesthetically more pleasing.

The third standard is whether the plight of the petitioner is due to unique circumstances of the property. This property is certainly unique, in that it is a church that needs as much parking as possible in order to serve its congregation.

Last is whether the problem is self-created. The problem has been self-created in an effort to improve the Church property from the perspective of its members as well as the neighbors.

For those reasons, the motion is to grant the variances and tie the motion to the plans as presented.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Judd, Conlin, Hughes, Koseck. Lillie, Lyon, Stamps

Nays: None

Absent: None

CITY OF BIRMINGHAM
VIRTUAL REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, APRIL 22, 2020
Held Remotely Via Zoom And Telephone Access

Minutes of the virtual regular meeting of the City of Birmingham Planning Board held on April 22, 2020. Chairman Scott Clein convened the meeting at 7:41 p.m.

A. Roll Call

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Daniel Share, Janelle Whipple-Boyce, Bryan Williams (joined at 7:59 p.m.); Alternate Board Members Jason Emerine, Nasseem Ramin

Absent: Student Representatives Rachel Hester, June Lee

Administration: Jana Ecker, Planning Director
Eric Brunk, IT Manager
Brooks Cowan, City Planner
Nicholas Dupuis, City Planner
Laura Eichenhorn, Transcriptionist

04-41-20

G. Special Land Use Permit Review and Final Site Plan & Design Review

1. 1800 W. Maple (Lutheran Church of the Redeemer) - Special Land Use Permit Amendment to allow renovation and expansion of the Church.

City Planner Cowan presented the item.

Mr. Boyle said that he had never struggled with a site plan as much as he had with the one for this proposal. He asked whether the proposed changes would result in a building that is dimensionally different from the present building, and if so where those changes would occur.

City Planner Cowan stated that the applicant would better be able to explain what parts of the building would remain or change, but that the horizontal dashed lines on the plan were meant to indicate the proposed changes.

In reply to Mr. Boyle, City Planner Cowan said the height would be remaining at 27 feet as measured to the middle of the pediment.

In reply to Mr. Williams, City Planner Cowan stated the plans would add an additional 8.3% in square footage to the building.

Steve Schneeman, architect, provided further information about the project. He explained the goal of the rebuild is to make a more modern interior space for the congregation while preserving the style of the church facade. He said the sanctuary and practice space would be expanded, the

office space on the east side of the building would be relocated to another area in the building, and that the steeple would be replaced with a brand new steeple.

In reply to Mr. Koseck, Mr. Schneeman confirmed that the owner of the building would be amenable to linking the property's pedestrian system to the City's that runs along the north side of Maple. He said that would likely be located on the east side of the entry and onto Maple. He said adding a sidewalk to the west of the entry had not yet been discussed.

Steve Scheidt, representative for the owner, said public access off the south sidewalk would make a lot of sense. He said he was interested in increasing pedestrian connectivity on the east side of the entry while noting that there are large evergreen trees to the west side of the entry. He said the congregation would hope to retain the evergreen trees, but that ultimately they would do whatever the Planning Board recommends.

In reply to Chairman Clein, Mr. Koseck confirmed he would be comfortable with allowing administrative approval for the plans for further pedestrian access.

Mr. Williams noted the applicant agreed to a sidewalk on the east side of the entry.

Mr. Koseck agreed with Mr. Williams, but said the Planning Board should allow for administrative approval of the design since the Board can neither design the sidewalk nor approve the plans presently.

Seeing no further Board discussion, Chairman Clein invited public comment.

Jon Bobrowski explained that he is Bloomfield Township resident who lives directly to the west of the church. He expressed concern that construction might commence while the state lockdown is in order, which would mean that he may be sheltering at home during the day while construction occurs. He said the noise from the construction could be very taxing on the neighbors of the church. Mr. Bobrowski said that during past church construction projects construction vehicles would idle in the church parking lot before the ordinance permitted construction start time. Mr. Bobrowski also asked where the vehicles and construction materials would be stored.

Chairman Clein asked Mr. Schneeman to comment on how the quality-of-life issues potentially raised by the construction would be mitigated for neighbors of the church.

Mr. Schneeman said the original plan was to begin the construction in the late fall of 2020. He said that if there are still construction prohibitions present in the late fall that the project would not commence then. Mr. Schneeman continued that the construction manager would be required to adhere to all the noise ordinances and other regulations within Birmingham. In addition, if there are more specific concerns not covered directly by ordinance the church would take those into consideration since the congregation is very keen on maintaining good relationships with the neighbors. Staging could be planned in a way that the impact on the neighbors would be minimized.

Chairman Clein recommended that the applicant make a concerted effort while going through the construction startup to meet with the neighbors and build consensus on any issues that could arise to avoid having to get the City involved.

Mr. Schneeman confirmed that the applicant would do so.

Mr. Scheidt said it was firmly the congregation's intention to build relationships with the neighbors, and told the Board that the church had a meeting scheduled to meet with the neighbors on March 12, 2020 which had to be cancelled due to escalating Covid-19 concerns at the time. He explained that a person from the congregation has been appointed to facilitate conversations with the neighbors and that there is an online group through which the congregants can discuss ways of further mitigating the impact on the surrounding area.

Seeing no further questions for the applicant, Chairman Clein returned the conversation to the Board.

Mr. Boyle stated that it was only in questioning that he was able to determine that the plan is to demolish and rebuild the church. He said this process raised issues for him regarding how the City handles the demolition of a very prominent building. Mr. Boyle said he wanted it on the record that in some ways the Board was misled in terms of what was presented to the Board.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Jeffares to recommend approval to the City Commission for the Final Site Plan for 1800 W. Maple and to recommend approval to the City Commission for the Special Land Use Permit Amendment for 1800 W. Maple.

Mr. Koseck asked if the City had the required information for this to be a final site plan approval. He said he agreed with Mr. Boyle's statement to an extent. He said this is a very pretty building and asked how that aesthetic appeal would be carried forward and maintained.

Chairman Clein cautioned the Board that the comments should be related to the motion, and that further discussion regarding the item should pause until the motion has undergone a vote.

Mr. Williams said he agreed with Mr. Boyle and Mr. Koseck, saying that final site plan approval seemed inappropriate since the applicant had not provided all the information the Board usually requires for a final site plan approval.

Ms. Whipple-Boyce said she believed that the write-up of the item stated that the construction would be using matching materials, and also noted that a materials list was provided as well. She said the Board could seek confirmation as to whether the materials would indeed be matching.

Planning Director Ecker confirmed Ms. Whipple-Boyce's recollection that the construction materials would be matching.

Chairman Clein invited public comment on the motion.

Mr. Bobrowski said he doubted that it was clear to any of the neighbors before this evening that the plan was to substantially demolish and rebuild the church. He said his concerns remained the same as his earlier comments.

In reply to a query by Chairman Clein, City Planner Cowan stated that the existing building to remain would be about 37,000 square feet, new construction would be about 11,000 square feet, and the demolition would be about 8,000 square feet.

Motion carried, 6-1.

VOICE VOTE

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

Nays: Boyle

Chairman Clein thanked both Mr. Schneeman and Mr. Scheidt for their attendance and enjoined them again to work with the neighbors to achieve a pleasant and conflict-free project.



Final
Preliminary Site Plan Review Application / *SLUP*
Planning Division

Form will not be processed until it is completely filled out.

1. Applicant

Name: MERRITT CIESLAK DESIGN
Address: 33610 GRAND RIVER
FARMINGTON, MI 48335
Phone Number: 248 374-0001
Fax Number: _____
Email address: ss@mcdarchitects.com

3. Applicant's Attorney/Contact Person

Cell: (2) 321-9800
Name: MERRITT CIESLAK DESIGN
Address: 33610 GRAND RIVER
FARMINGTON, MI 48335
Phone Number: 248 374-0001
Fax Number: _____
Email address: ss@mcdarchitects.com
STEVE SCHNEEMANN

5. Required Attachments

- I. Two (2) paper copies and one (1) digital copy of all project plans including:
 - i. A detailed Existing Conditions Plan including the subject site in its entirety, including all property lines, buildings, structures, curb cuts, sidewalks, drives, ramps and all parking on site and on the street(s) adjacent to the site, and must show the same detail for all adjacent properties within 200 ft. of the subject sites property lines;
 - ii. A detailed and scaled Site Plan depicting accurately and in detail the proposed construction, alteration or repair;
 - iii. A certified Land Survey;
 - iv. Interior floor plans;

2. Property Owner

Name: LUTHERAN CHURCH OF THE REDEEMER
Address: 1800 W. MAPLE
BIRMINGHAM, MI
Phone Number: 248-644-4010
Fax Number: 248-644-1471
Email address: _____

4. Project Designer/Developer

Name: MERRITT CIESLAK DESIGN
Address: 33610 GRAND RIVER
FARMINGTON, MI 48335
Phone Number: 248 374-0001
Fax Number: _____
Email address: _____

Pou Cieslak (2) 374-0003

- v. A Landscape Plan;
- vi. A Photometric Plan;
- vii. Colored elevation drawings for each building elevation;

- II. Specification sheets for all proposed materials, light fixtures and mechanical equipment;
- III. Samples of all proposed materials;
- IV. Photographs of existing conditions on the site including all structures, parking areas, landscaping and adjacent structures;
- V. Current aerial photographs of the site and surrounding properties;
- VI. Warranty Deed, or Consent of Property Owner if applicant is not the owner;
- VII. Any other data requested by the Planning Board, Planning Department, or other City Departments.

6. Project Information

Address/Location of the property: 1800 W. MAPLE
BIRMINGHAM, MI
Name of development: LUTHERAN CHURCH OF THE
Sidwell #: 19-26-378-072 REDEEMER
Current Use: CHURCH
Proposed Use: CHURCH
Area of Site in Acres: 0.053
Current zoning: R-1
Is the property located in the floodplain? NO

Name of Historic District site is located in: N/A
Date of Historic District Commission Approval: N/A
Date of Design Review Board Approval: _____
Will proposed project require the division of platted lots? NO

Will proposed project require the combination of platted lots?
NO

7. Details of the Proposed Development (attach separate sheet if necessary)

REPLACEMENT OF THE EXISTING CHURCH SANCTUARY (TWO LEVELS)
RENOVATION OF EXISTING SPACES ADJACENT TO THE NEW SANCTUARY IN
THE EAST AND WEST BUILDING WINGS, RELOCATION OF THE EXISTING
COLUMBARIUM TO THE EAST SIDE OF THE NEW SANCTUARY,
RECONFIGURATION OF THE ACCESS DRIVE AND WALKWAYS ON THE SITE
TO ACCOMMODATE THE NEW CONSTRUCTION.

8. Buildings and Structures

Number of Buildings on Site: 1
Height of Buildings & # of Stories: 27'-0" ±, 1 STORY +
BALCONY

Use of Buildings: CHURCH
Height of Rooftop Mechanical Equipment: 22'-0" TO TOP
OF HIGHEST
(SCREENED)

9. Floor Use and Area (in Square Feet)

Proposed Commercial Structures:

Total basement floor area: _____
Number of square feet per upper floor: 11,243 S.F. (NEW)
Total floor area: 49,140 S.F. (NEW + EXISTING)
Floor area ratio (total floor area ÷ total land area): 18%

Open space: 105,480 S.F.
Percent of open space: 40%

Office Space: 1,4931 S.F.
Retail Space: N/A
Industrial Space: N/A
Assembly Space: 5,817 S.F. (NEW SANCTUARY)
Seating Capacity: 482 (NEW SANCTUARY + CHANCEL)
Maximum Occupancy Load: 1,987 (ENTIRE BUILDING)
BALCONY SEATING CAPACITY: 74

Proposed Residential Structures:

Total number of units: N/A
Number of one bedroom units: _____
Number of two bedroom units: _____
Number of three bedroom units: _____
Open space: _____
Percent of open space: _____

Rental units or condominiums? _____
Size of one bedroom units: _____
Size of two bedroom units: _____
Size of three bedroom units: _____
Seating Capacity: _____
Maximum Occupancy Load: _____

Proposed Additions:

Total basement floor area, if any, of addition: _____
Number of floors to be added: 2
Square footage added per floor: 11,243 S.F.
Total building floor area (including addition): 49,140 S.F.
Floor area ratio (total floor area ÷ total land area): 18%

Open Space: 105,480 S.F.
Percent of open space: 40%

LOWER LEVEL CLASSROOMS + GATHERING,
Use of addition: CHURCH SANCTUARY + MUSIC ROOMS
Height of addition: 27'-0" TO ROOF MIDPOINT
Office space in addition: N/A
Retail space in addition: N/A
Industrial space in addition: N/A
Assembly space in addition: 5,817 S.F.
Maximum building occupancy load (including addition):
1,987

10. Required and Proposed Setbacks

Required front setback: 25'-0"
Required rear setback: 30'-0"
Required total side setback: 119'-5"
Side setback: 47'-9"

Proposed front setback: 122'-4"
Proposed rear setback: 124'-3"
Proposed total side setback: 217'-4"
Second side setback: 79'-7"

11. Required and Proposed Parking

Required number of parking spaces: 860
Typical angle of parking spaces: 90°
Typical width of maneuvering lanes: 22'-0"
Location of parking on site: FRONT, SIDE & REAR YARDS
Location of parking off site: NONE
Number of light standards in parking area: 23
Screenwall material: WOOD

Proposed number of parking spaces: 218 (unchanged)
Typical size of parking spaces: 9'-0" x 20'-0"
Number of spaces <180 sq. ft.: NONE
Number of handicap spaces: 11
Shared parking agreement? NO
Height of light standards in parking area: 13'-9"
Height of screenwall: 6'-0" NO OVERBARS

12. Landscaping

Location of landscape areas: SEE INCLUDED
SHEET L2

Proposed landscape material: SEE INCLUDED
SHEET L2

13. Streetscape

Sidewalk width: N/A
Number of benches: N/A
Number of planters: N/A
Number of existing street trees: N/A
Number of proposed street trees: N/A
Streetscape plan submitted? N/A

Description of benches or planters: N/A

Species of existing trees: N/A

Species of proposed trees: N/A

14. Loading

Required number of loading spaces: N/A
Typical angle of loading spaces: _____
Screenwall material: _____
Location of loading spaces on site: _____

Proposed number of loading spaces: _____

Typical size of loading spaces: _____

Height of screenwall: _____

Typical time loading spaces are used: _____

15. Exterior Waste Receptacles

Required number of waste receptacles: 1 (EXISTING)
Location of waste receptacles: NORTH PARKING LOT
Screenwall material: BRICK

Proposed number of waste receptacles: NO NEW

Size of waste receptacles: N/A

Height of screenwall: 6'-4"

16. Mechanical Equipment

Utilities and Transformers:

Number of ground mounted transformers: 1 (EXISTING)
Size of transformers (L•W•H): 68" L x 56" W x 60" H
Number of utility easements: N/A
Screenwall material: EXISTING LANDSCAPING

Location of all utilities & easements: SEE SHEET C1.

EXISTING TRANSFORMER AT EXST SIDE
OF EXISTING BUILDING

Height of screenwall: 6'-0"

Ground Mounted Mechanical Equipment:

Number of ground mounted units: 5 (NEW)
Size of ground mounted units (L•W•H): 35" x 35" x 46" H
Screenwall material: LANDSCAPING - SEE SHEET L2

Location of all ground mounted units: NORTH
SOUTH SIDE OF
WEST WING ADDITION

Height of screenwall: 6'-0" LANDSCAPING

Rooftop Mechanical Equipment:

Number of rooftop units: 9 EXISTING, 2 NEW
Type of rooftop units: SEE SHEET A-501 FOR
NEW ROOFTOP UNITS
Screenwall material: SHINGLED ROOF SCREEN (NEW)
Location of screenwall: SOUTH FACE OF WEST
WING ADDITION

Location of all rooftop units: NORTH END OF EXIST. BUILDING,
ROOF OF WEST WING ADDITION

Size of rooftop units (L•W•H): 10'-0" x 7'-0" x 5'-4" H

Percentage of rooftop covered by mechanical units: < 3%

Height of screenwall: 15'-9" ± A.F.F.

Distance from rooftop units to all screenwalls: 5'-0"

17. Accessory Buildings

Number of accessory buildings: NONE
Location of accessory buildings: N/A

Size of accessory buildings: N/A

Height of accessory buildings: N/A

18. Building Lighting

Number of light standards on building: 2 (COLUMBARIUM)
Size of light fixtures (L•W•H): 20" X 20" X 20" (EXIST IN PARKING LOT)
Maximum wattage per fixture: SEE INCLUDED
Light level at each property line: SEE INCLUDED

Type of light standards on building: DECORATIVE -
SEE SHEET AS-102
Height from grade: 9'-0"
Proposed wattage per fixture: _____

19. Site Lighting

Number of light fixtures: 20 (EXIST. AT DRIVES)
Size of light fixtures (L•W•H): 20" X 20" X 20"
Maximum wattage per fixture: SEE INCLUDED
Light level at each property line: SEE INCLUDED

Type of light fixtures: EXISTING DECORATIVE
Height from grade: 13'-9"
Proposed wattage per fixture: EXISTING
Holiday tree lighting receptacles: 0

20. Adjacent Properties

Number of properties within 200 ft.: 52 ± (ALL R-1 OR R-2)

Property #1

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

Property #2

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

Property #3

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

Property #4

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

Property #5

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

Property #6

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

The undersigned states the above information is true and correct, and understands that it is the responsibility of the applicant to advise the Planning Division and / or Building Division of any additional changes made to an approved site plan. The undersigned further states that they have reviewed the procedures and guidelines for Site Plan Review in Birmingham, and have complied with same. The undersigned will be in attendance at the Planning Board meeting when this application will be discussed.

By providing your e-mail to the City, you agree to receive news notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.

Signature of Owner: Steven M. Scheidt Date: 02/13/2020

Print Name: Steven M. Scheidt

Signature of Applicant: Stefan Schneemann Date: 2/12/2020

Print Name: Stefan Schneemann

Signature of Architect: Ronald A. Cieslak Date: 2/12/2020

Print Name: Ronald Cieslak

Office Use Only

Application #: PSLU20-0001 Date Received: _____ Fee: \$2800.00

Date of Approval: _____ Date of Denial: _____ Accepted by: _____



PRELIMINARY SIT PLAN REVIEW APPLICATION CHECKLIST - PLANNING DIVISION

Applicant: LUTHERAN CHURCH OF THE REDEEMER Case #: _____ Date: 2/10/20

Address: 1800 W. MAPLE RD. Project: SANCTUARY REPLACEMENT
BIRMINGHAM, MS

All site plans and elevation drawings prepared for approval shall be prepared in accordance with the following specifications and other applicable requirements of the City of Birmingham. If more than one page is used, each page shall be numbered sequentially. All plans must be legible and of sufficient quality to provide for quality reproduction or recording. Plans must be no larger than 24" x 36", and must be folded and stapled together. The address of the site must be clearly noted on all plans and supporting documentation.

Preliminary Site Plan

A full Site Plan detailing the proposed changes for which approval is requested shall be drawn at a scale no smaller than 1" = 100' (unless the drawing will not fit on one 24" X 36" sheet) and shall include:

- ☒ 1. Name and address of applicant and proof of ownership;
- ☒ 2. Name of Development (if applicable);
- ☒ 3. Address of site and legal description of the real estate;
- ☒ 4. Name and address of the land surveyor;
- ☒ 5. Legend and notes, including a graphic scale, north point, and date;
- ☒ 6. A separate location map;
- ☒ 7. A map showing the boundary lines of adjacent land and the existing zoning of the area proposed to be developed as well as the adjacent land;
- ☒ 8. Aerial photographs of the subject site and surrounding properties;
- ☒ 9. A detailed and scaled Site Plan depicting accurately and in detail the proposed construction, alteration or repair;
- ☒ 10. A detailed Existing Conditions Plan including the subject site in its entirety, including all property lines, buildings, structures, curb cuts, sidewalks, drives, ramps and all parking on site and on the street(s) adjacent to the site, and must show the same detail for all adjacent properties within 200 ft. of the subject site's property lines;
- ☒ 11. Interior floor plans;
- N/A ☐ 12. A chart indicating the dates of any previous approvals by the Planning Board, Board of Zoning Appeals, Design Review Board, or the Historic District Commission ("HDC");

- ☒ 13. Existing and proposed layout of streets, open space and other basic elements of the plan;
- ☒ 14. Existing and proposed utilities and easements and their purpose;
- ☒ 15. Location of natural streams, regulated drains, 100-year flood plains, floodway, water courses, marshes, wooded areas, isolated preserve-able trees, wetlands, historic features, existing structures, dry wells, utility lines, fire hydrants and any other significant feature(s) that may influence the design of the development;
- ☒ 16. General description, location, and types of structures on site;
- ☒ 17. Location of sidewalks, curb cuts, and parking lots on subject site and all sites within 200 ft. of the property line;
- ☒ 18. Details of existing or proposed lighting, signage and other pertinent development features;
- ☒ 19. Elevation drawings showing proposed design;
- ☒ 20. Screening to be utilized in concealing any exposed mechanical or electrical equipment and all trash receptacle areas;
- ☒ 21. Location of all exterior lighting fixtures;
- ☒ 22. A Photometric Plan depicting proposed illuminance levels at all property lines;
- ☒ 23. A Landscape Plan showing all existing and proposed planting and screening materials, including the number, size, and type of plantings proposed and the method of irrigation; and
- ☒ 24. Any other information requested in writing by the Planning Division, the Planning Board, or the Building Official deemed important to the development.

Elevation Drawings

Complete elevation drawings detailing the proposed changes for which approval is requested shall be drawn at a scale no smaller than 1" = 100' (unless the drawing will not fit on one 24" X 36" sheet) and shall include:

- ☒ 25. Color elevation drawings showing the proposed design for each façade of the building;
- ☒ 26. List of all materials to be used for the building, marked on the elevation drawings;
- ☒ 27. Elevation drawings of all screenwalls to be utilized in concealing any exposed mechanical or electrical equipment, trash receptacle areas and parking areas;
- ☒ 28. Details of existing or proposed lighting, signage and other pertinent development features;
- ☒ 29. A list of any requested design changes;
- ☒ 30. Itemized list and specification sheets of all materials, light fixtures and mechanical equipment to be used, including exact size specifications, color, style, and the name of the manufacturer;
- ☒ 31. Location of all exterior lighting fixtures, exact size specifications, color, style and the name of the manufacturer of all fixtures, and a photometric analysis of all exterior lighting fixtures showing light levels to all property lines; and
- ☒ 32. Any other information requested in writing by the Planning Division, the Planning Board, or the Building Official deemed important to the development.

LIRER1304

597

Standard and Ohio Building Company

WARRANTY DEED

7-27-1920

This Indenture

Witeth, this

1925

day of

1925, in the year of our Lord one thousand nine hundred and forty one

Between LILLIAN A. SCHWIDE

part of the first part, and RICHARD E. STANLEY, JR. and LUCY E. STANLEY, JR. a Michigan Ecclesiastical Corporation of Birmingham, Michigan

part of the second part, Witnesseth, that the said part of the first part, for and in consideration of the sum of \$100.00, to him in hand paid by the said part of the second part, the receipt whereof is hereby acknowledged and acknowledged, that by this present, grant, bargain, sell, convey, release, alien and confirm now and forever of the said part, and to the said part, and assigns, forever, all those certain pieces or parcels of land situate and being in the Village of Birmingham, County of Oakland and State of Michigan

and described as follows, to wit: Part of the Southwest Quarter of Section 26, commencing at the southeast corner of the Northwest Quarter of said section 26, thence running North 88°54' West, 232.82 feet to a point, thence North 4°38' East 188.14 feet to a point of beginning, thence North 4°38' East 432.79 feet to a point, thence North 88°54' West 477.79 feet to a point, thence South 88°54' East 432.80 feet to a point, thence South 88°54' East 477.79 feet to a point of beginning containing approximately 6.7 acres, and

Lots 21 to 216 inclusive of the Ruby M. Sub., a Sub. of part of the Southwest Quarter of Section 26, T.2 N., R. 10 E., Village (now city) of Birmingham, Oakland County, Michigan according to the recorded plat thereof.

DEEDS COUNTY RECORDS CLERK

May 30 1925

John A. Lyman



Together with all and singular the accretions and appurtenances thereto in anywise appertaining To have and to hold the said premises as herein described, with the appurtenances unto the said part of the second part, and to his heirs and assigns, forever; and the said LILLIAN A. SCHWIDE

part of the first part for her self and heirs, executors and administrators, do covenant, grant, bargain and agree to and with the said part of the second part its heirs and assigns, that at the time of the executing and delivery of these presents she is well seized of the above granted premises in fee simple; that they are free from all incumbrances whatever except such, if any, as are excepted from the covenant following, and that she will, and do

For your self, have executed and filed this deed with the County Clerk of Oakland County, Michigan

See your self, have executed and filed this deed with the County Clerk of Oakland County, Michigan

598

LIBER 1304

beirs, executors, administrators, shall warrant and defend the same
against all lawful claims whatsoever, except

In witness whereof the said party of the first part has hereunto set her hand and
seal the day and year first above written.

Signed, sealed and delivered in presence of

Lillian A. Schmidt
LILLIAN A. SCHMIDT

(L. S.)

(L. S.)

(L. S.)

State of Michigan,
County of Oakland

On this 19th day of May

in the year one thousand nine hundred and 1934 before me,
a Notary Public, in and for said county, personally appeared LILLIAN A. SCHMIDT

to me known to be the same person described in and who executed the within instrument, who
then acknowledged the same to be her free act and deed.

My commission expires AUGUST 28, 1934

Notary Public Lillian A. Schmidt
Oakland County, Michigan.

2-10

14857
Warranty Deed

LILLIAN A. SCHMIDT

TO

REDENER EVANGELICAL LUTHERAN
CHURCH, a Michigan Ecclesiasti-
cal Corporation to Birmingham
Michigan

REGISTER'S OFFICE

Oakland
Michigan County

This instrument was presented and
received for Record this

day of MAY 20 1934 A. D. 19

at 10:00 A. M. and Recorded

in LIBER 1304 of Deeds, on page 597

A certificate having been furnished in

compliance with 12134, Compiled Laws,

1915

Lillian A. Schmidt
Lillian A. Schmidt
Notary of Deeds

1934

TAXES PAYABLE—City Taxes payable from July

15 to August 15, within 30 days after the date

of recording this instrument at the City

Recorder's Office.

This and Other Taxes payable from December 1

to December 31, without prejudice at Ocedo

Recorder's Office.

This instrument is subject to the City of Detroit

Recorder's Office.

Lillian A. Schmidt
Lillian A. Schmidt
Notary of Deeds

1934

DATE: July 1, 2020

TO: Joseph A. Valentine, City Manager

FROM: Jana L. Ecker, Planning Director

SUBJECT: Public hearing to consider the rezoning of 469 – 479 S. Old Woodward from B3/D4 to B3/D5

INTRODUCTION:

The owner of the above-captioned properties applied for rezoning from B3/D4 to B3/D5 to allow a building over 5 stories in height.

BACKGROUND:

On May 27, 2020, the Planning Board conducted a public hearing to consider the requested rezoning of the properties located at 469 – 479 S. Old Woodward, currently the site of the former Mountain King restaurant and Talmer Bank. After much discussion, the Planning Board voted 4 – 3 in favor of recommending approval of the proposed rezoning to the City Commission and adopted the findings of fact contained in the staff report dated April 17, 2020.

LEGAL REVIEW:

The City Attorney has reviewed this application and has provided legal opinions as required throughout the review process.

FISCAL IMPACT:

There is no fiscal impact for this agenda item.

SUMMARY:

The Planning Board recommends that the City Commission approve the requested rezoning of the properties located at 469 – 479 S. Old Woodward from B3/D4 to B3/D5. However, it was recently discovered that while a legal notice was placed in a newspaper as required, individual notices to all owners and tenants of property within 300' of 469 – 479 S. Old Woodward were not sent out in time. All required notices have now been mailed a minimum of 15 days prior to a public hearing on the rezoning if the City Commission postpones the public hearing to July 20, 2020.

ATTACHMENTS:

Please find attached the following documents for your review:

- Rezoning application and supporting documents submitted by applicant
- Letter from the City Attorney dated September 11, 2018 and October 1, 2018
- Staff reports prepared for the Planning Board
- All relevant City Commission and Planning Board meeting minutes
- All letters and petitions received for and against the proposed rezoning

SUGGESTED RESOLUTION:

To postpone the public hearing of the rezoning of 469 – 479 S. Old Woodward to July 20, 2020 to ensure proper noticing of all affected properties.

DATE: April 17, 2020

TO: Planning Board

FROM: Jana Ecker, Planning Director

SUBJECT: Rezoning Request for 469-479 S. Old Woodward (Changes from review in 2019 noted in blue type)

The applicant for 469-479 S. Old Woodward (Parcel Numbers 1936208011 and 1936208012 respectively) requested that the Planning Board hold a public hearing to consider the rezoning of the property from B-3 (Office Residential) and D-4 (Downtown Overlay) to B-3 (Office Residential) and D-5 (Downtown Overlay). The maximum height allowed in the D-4 zoning district is 4-5 stories. In the D-5 zoning district, developers may build as high, but no higher than the adjacent buildings which are located in the D-5 zone.

The 0.423 acre subject site spans Hazel Street from S. Old Woodward to Woodward. The site currently contains two vacant single-story commercial buildings (formerly Mountain King Chinese Restaurant and First Place Bank). The applicant is proposing to demolish the present buildings for the construction of a nine-story mixed use building with three levels of underground parking.

On June 27, 2018, the Planning Board reviewed a rezoning request 469 – 479 S. Old Woodward (former Mountain King and Talmer Bank sites) to rezone the site from B3/D4 to B3/D5. This request was made pursuant to Article 7, section 7.02, of the Zoning Code. After much discussion, the Planning Board voted to recommend denial of the rezoning request to the City Commission for 469 – 479 S. Old Woodward.

On September 12, 2018, the applicant appeared before the Planning Board requesting a rehearing on the rezoning of 469 – 479 S. Old Woodward and outlined the substantial changes in the evidence that was previously presented to the board. In addition, an attorney speaking in opposition to the rezoning request also raised new information that had not been previously presented or discussed by the board. Board members had additional questions as to why the subject parcel was not put into the Parking Assessment District when the district was created, and whether or not the owner of the subject property is permitted to apply for rezoning to the new D5 zoning classification in the Downtown Birmingham Overlay District. After much discussion, the Planning Board voted to postpone consideration of the public hearing to October 10, 2018 with the condition that the Board receive the legal opinion of counsel to the City of Birmingham in writing as to whether the proposed site (former Mountain King and Talmer Bank) is eligible to be rezoned to the D-5 category.

On October 10, 2018, the Planning Board continued discussion and deliberations on the question of whether a rehearing should be held based on new facts or evidence. After much discussion, the Board made a motion finding that there were substantial changes from the evidence previously presented at the rezoning hearing on June 27, 2018, and thus voted to grant a rehearing of the rezoning request for 469 – 479 S. Old Woodward. The rehearing was scheduled for November 14, 2018.

On both November 14, 2018 and again on December 12, 2018, the applicant requested postponement of the rehearing to allow additional time for the developer and property owner to meet with the adjacent property owners. Thus, the matter was ultimately postponed until the January 23, 2019 meeting of the Planning Board.

On January 23, 2019, the Planning Board conducted a public rehearing to consider the requested rezoning of the properties. After much discussion, the Planning Board voted 4-3 in favor of recommending approval of the proposed rezoning to the City Commission and adopted the findings of fact contained in the staff report dated November 8, 2018.

On February 11, 2019, the City Commission set a public hearing for March 11, 2019 to consider the proposed rezoning for the properties located at 469 – 479 S. Old Woodward.

On March 11, 2019, the City Commission conducted a public hearing on the proposed rezoning for the properties located at 469-479 S. Old Woodward from B4/D-4 to B4/D-5. After extensive discussion, the City Commission was unable to reach consensus on the application. The matter was referred to the City Attorney to determine what action, if any, was taken.

Please find attached a letter from the City Attorney dated May 6, 2019 outlining the outcome of the public hearing of the City Commission on March 11, 2019, and the City's position that the applicant may bring their application for rezoning before the City again without waiting one year to do so.

Petition for Amendment to the Zoning Ordinance:

In June 2019, the Planning Board received a petition requesting an amendment to the Zoning Ordinance and / or the Zoning Map from the owners of 469-479 S. Old Woodward. Specifically, the applicant requested that the Planning Board address the following issues and suggest any zoning amendments necessary to do so as the City Commission discussed at their meeting on March 11, 2019:

- 1. Clarify the applicable standards to determine building height in the D5 Zone;**
- 2. Clarify the meaning of "immediately adjacent or abutting"; and**
- 3. Determine which properties to consider, if any, for rezoning to the D5 zoning.**

On July 10, 2019, the Planning Board discussed the applicant's petition. Board consensus was that the applicable regulations to determine building height were sufficiently clear in the Zoning Ordinance and no amendments were needed. Board members agreed that clarification was required for the terms "immediately adjacent" and "abutting". With regards to the determination of which properties to consider, if any, for rezoning to D5, the Planning Board recommended having DPZ CoDesign conduct a focused study to assist in this determination.

On September 11, 2019, the Planning Board reviewed the study prepared by DPZ CoDesign with respect to the area in Downtown Birmingham bounded by Haynes, Brown, Old Woodward and Woodward Avenue and the findings as to which properties

should be considered for rezoning to D5 given their proximity to properties with existing buildings over 5 stories in height. The Board requested additional massing illustrations. The Planning Board also discussed proposed ordinance language to clarify the meaning of the terms “immediately adjacent” and “abutting”. The Planning Board concluded that further study was needed on a clear definition of abutting, and stated that draft ordinance language should also address how streets and alleys would affect the definition of abutting.

On November 13, 2019, the Planning Board reviewed the additional massing studies provided by DPZ and stated that the study was requested to determine whether good planning practices would support future rezoning requests for parcels in the subject area. The Planning Board then discussed draft ordinance language that removed the use of the term “immediately adjacent” from the D5 language, and provided a definition for abutting, as well as clarifying how the presence of streets and alleys would affect whether properties were deemed abutting. After much discussion, the Planning Board voted to set a public hearing to amend Article 3, Overlay Districts, section 3.04(A) to amend the building height standards in the D5 zone of the Downtown Birmingham Overlay District and Article 9, Definitions, section 9.02 to add a definition for abutting.

On December 11, 2019, the Planning Board conducted a public hearing on the proposed ordinance amendments. The Planning Board voted unanimously to recommend the proposed amendments to the City Commission.

On December 16, 2019, the City Commission set a public hearing date for January 13, 2020.

On January 13, 2020, the City Commission conducted a public hearing on the proposed amendments to Article 3, Overlay Districts, section 3.04(A) and Article 9, Definitions, section 9.02. The City Commission voted to adopt the amendments and the new language for D5 as outlined in Article 3, section 3.04(A) is as follows:

New buildings constructed or additions to existing buildings in the D5 Zone must meet the requirements of the Downtown Birmingham Overlay District and the D4 Zone, except that the height of any addition and new construction in the D5 Zone may be over the maximum building height up to, but not exceeding, the height of an existing building on a directly abutting D5 Zone property, if the property owner agrees to the construction of the building under the provisions of a Special Land Use Permit. For the purposes of this section, private properties separated by public property (including public right-of-way and public vias), will not be deemed abutting.

Also on January 13, 2020, the City Commission voted to adopt an amendment to Article 9, section 9.02, Definitions, to add the following definition:

Abutting: Sharing a boundary or property line.

Please find attached to this report the staff report that was presented to the City Commission on January 13, 2020, with all of the relevant attachments.

At this time the applicant has requested that the rezoning request for 469 – 479 S. Old Woodward be brought back to the Planning Board for review and consideration given that no action was taken by the City Commission on March 11, 2019, and given that the

D5 ordinance language had been clarified and approved by the City Commission on January 13, 2020.

History of Property

Information gathered by PM Environmental for a Phase 1 Environmental Site Assessment on the property history revealed that 469 S. Old Woodward was home to various occupants since around 1937, including many auto sales companies and most recently the First Place Bank, which closed in 2014. The one story commercial building has since been vacant. 479 S. Old Woodward has been home to a few restaurants, most recently Mountain King (1998-2014). Similarly, the one story commercial building has also been vacant since its last tenant in 2014.

The applicant has noted that historically, Birmingham's buildings zoning permitted the height of the 555 building and the Birmingham Place in the late 1960's and early 1970's. When the zoning was changed in the 1970's, the two buildings were designated to a legal nonconforming use. Ultimately, the zoning was changed to D-4 in 1996 by the adoption of the 2016 Plan and the Downtown Overlay. In 2016, a new D5 zone was created. The properties known as the 555 Building, the Merrillwood Building and Birmingham Place were then rezoned to the new D5 zoning classification. The subject property is located between Birmingham Place and the 555 Building, both of which are zoned D5 currently.

Requirements for Rezoning

The requirements for a request for the rezoning of a property are set forth in Article 07, section 7.02 of the Zoning Ordinance as follows:

Each application for an amendment to change the zoning classification of a particular property shall include statements addressing the following:

- 1. An explanation of why the rezoning is necessary for the preservation and enjoyment of the rights of usage commonly associated with property ownership.**

Applicant response:

- Rezoning of the subject property is necessary to preserve the applicants enjoyment of rights associated with ownership of a property zoned for mixed uses. Because of the size and corner configuration of the parcel, it will not support street-level retail, residential, and parking for residents in the same manner as the neighboring properties. The 2016 Plan clearly anticipates mixed use developments. Such planning requires space to design and locate mixed uses within a given structure. Without the ability to go higher with a new building than current zoning allows, the applicant will not have the required area within which to locate a mix of uses, or otherwise to be able to enjoy all of the allowed uses that would commonly be associated the design of such a modern, mixed use building. Furthermore, the D-5 Ordinance, at Section 3.04-4-b, anticipates that the subject property and those similarly situated may enjoy the same rights of usage through an extension of height as other existing tall buildings already enjoy in the D-5 Overlay District.

- 2. An explanation of why the existing zoning classification is no longer appropriate**

Applicant response:

- The existing D-3 zoning classification is no longer appropriate for the subject property. The subject property is surrounded by the Birmingham Place, a 10-story building on the north side and the 555 Buildings, a 15-story building on the south side. This height is an established pattern in this area of the City. This rezoning request is actually an "infill" rezoning to bring the entire area into architectural and design harmony with surrounding buildings. It is reasonable for the subject property to share the same zoning classification as its surrounding neighbors. This would allow development of the property in a manner consistent with the existing structures from Brown Street south to Haynes Street. It will create a more unified block and enhance the character of the gateway area to Downtown Birmingham. The rezoning of the subject property would restore the property to a zoning classification this area of the City once enjoyed, as the Planning Board has done for with Birmingham Place and the 555 Buildings. Hence, given the location of the subject property sandwiched between two properties in the D-5 Zone, the D-3 Zone is no longer appropriate.

3. An explanation of why the proposed rezoning will not be detrimental to the surrounding properties.

Applicant response:

- The proposed rezoning of the subject property is not detrimental to surrounding property owners. Note that the proposed rezoning does not extend the D-5 classification further to the north or south of the current D-5 Zoning, but actually fills in the one gap in the streetscape that is noticeably out of place and anachronistically remains in the D-3 Zone. The surrounding properties to the north and south are already in the D-5 zone. When these neighboring properties were rezoned the Planning Board anticipated that eventually the subject property also may be rezoned for the reasons stated in this letter. Placing the subject property in the D-5 Zone will be placing it on equal footing with the surrounding properties from a structural, use and design perspective. The proposed rezoning will enhance the entire area by allowing it to be developed as an attractive part of the South Old Woodward gateway and bring that area into compliance with the spirit and intent of the 2016 Master Plan.

Article 7, section 7.02 of the Zoning Ordinance further states:

Applications for amendments that are intended to change the zoning classification of a particular property shall be accompanied by a plot plan. (See attached)

Information required on plot plans shall be as follows:

1. Applicant's name, address and telephone number.
2. Scale, north point, and dates of submission and revisions.
3. Zoning classification of petitioner's parcel and all abutting parcels.
4. Existing lot lines, building lines, structures, parking areas, driveways, and other improvements on the site and within 100 feet of the site.
5. Existing use of the property.

6. Dimensions, centerlines and right-of-way widths of all abutting streets and alleys.
7. Location of existing drainage courses, floodplains, lakes, streams, and wood lots.
8. All existing easements.
9. Location of existing sanitary systems and or septic systems.
10. Location and size of existing water mains, well sites and building service.
11. Identification and seal of architect, engineer, land surveyor, or landscape architect who prepared the plans. If any of the items listed above are not applicable to a particular plot plan, the applicant must specify in the plot plan which items do not apply and, furthermore, why the items are not applicable.

A land survey was provided by the applicant and submitted to the Planning Board (see attached).

Article 7 section 7.02 of the Zoning Ordinance further states:

The Planning Board shall hold at least one public hearing on each application for amendment at such time and place as shall be established by the Planning Board.

The Planning Board shall make findings based on the evidence presented to it with respect to the following matters:

- a. The objectives of the City's then current master plan and the City's 2016 plan.
- b. Existing uses of property within in the general area of the property in question.
- c. Zoning classification of property within the general area of the property in question.
- d. The suitability of the property in question to the uses permitted under the existing zoning classification.
- e. The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.

Planning Division Analysis & Findings

In accordance with Article 7 of the Zoning Ordinance, the Planning Board is required to conduct a public hearing on an application for rezoning, and to make a recommendation on the rezoning to the City Commission.

Article 7, section 7.0(B)(5) of the Zoning Ordinance states:

The Planning Board shall make written findings of fact and transmit same, together with its recommendation, to the City Commission. The City Commission may hold additional hearings if the City Commission considers it necessary. The Planning Board shall make findings based on the evidence presented to it with respect to the following matters:

- a. The objectives of the City's then current master plan and the City's 2016 Plan.
- b. Existing uses of property within the general area of the property in question.
- c. Zoning classification of property within the general area of the property in question.
- d. The suitability of the property in question to the uses permitted under the existing zoning classification.
- e. The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.

Accordingly, the Planning Division has reviewed the evidence presented with respect to the matters listed in Article 7, section 7.0(B)(5) of the Zoning Ordinance as noted below.

A. The objectives of the City's then current master plan and the City's 2016 Plan

Section 1.04 of the Birmingham Zoning Ordinance states: the purpose of the Zoning Ordinance is to guide the growth and development of the City in accordance with the goals, objectives and strategies stated within the Birmingham Future Land Use Plan and the Downtown Birmingham 2016 Plan. A review of both plans reveals that the proposal to rezone the subject property to the D-5 Zoning District meets the spirit and intent of the ordinance. The 2016 Plan recommends specific building heights and massing that appropriately defines the public street and are harmonious with existing buildings. The 2016 further requires first floor retail along Old Woodward and encourages a mix of uses within buildings to support an active live, work and play environment for downtown. A proposed building under the D5 would allow for mixed uses and a scale that will match the adjacent buildings, meanwhile supporting the improvement of the streetscape along S. Old Woodward, Hazel and Woodward by building to the frontage line as required by the 2016 Plan.

The 2016 Plan also recommends that the City should encourage future buildings to front Woodward to project a positive image of the City and to hold Woodward areas to the same standards of quality and design as the best areas of Birmingham. The proposed building will project a strong image of the City towards Woodward with consistent architectural details and similar massing to the adjacent buildings.

B. Existing uses of property within the general area of the property in question

As mentioned above, the Birmingham Place and 555 Buildings are located to the north and south of the subject site, respectively. Both buildings contain a mix of retail, commercial and residential uses. The subject property is located on Woodward Avenue, which has a 200' wide right of way. The southbound lanes of Woodward lie directly east of the property, and South Old Woodward lies to the west. Across Woodward to the east is the Audi dealership, and across S. Old Woodward to the west is a commercial center with both retail and commercial uses, including a drugstore, a drycleaners and a clothing store.

The following chart summarizes the land uses and zoning districts adjacent to and in the vicinity of the subject site.

	North	South	East	West
Existing Land Use	Retail/ Commercial / Residential	Retail/ Commercial / Residential	Retail / Commercial/ Parking	Commercial/ Parking
Existing Zoning	B-3, Office Residential	B-3, Office Residential	B-2, General Business	B-2B, General Business
Overlay Zoning	D-5	D-5	MU-5	D-2

C. Zoning classification of property within the general area of the property in question.

The properties immediately north and south of the subject site are zoned B3 and D5, which allow a mix of residential, retail and commercial uses, and buildings over 5 stories in height up to a maximum height of 180'. The property to the east across Woodward Avenue is zoned MU5 which also allows a mix of residential, retail and commercial uses and allows buildings up to 6 stories and 78' in height. The property to the west across S. Old Woodward is zoned B2-B and D2, also allowing a mix of residential, retail and commercial uses and buildings up to 3 stories and 56' in height.

D. The suitability of the property in question to the uses permitted under the existing zoning classification.

Under the current zoning, all of the same uses are permitted as those under the D5 zoning classification. However, given the size of the parcel and the fact that the property is not located in the Parking Assessment District, the applicant argues that they would be unable to develop an appropriately designed five story mixed use building under the current zoning. In addition, even if the property were developed to include a five story or less building under the current zoning of D4, the building would be completely inconsistent and dominated by the height of the adjacent Birmingham Place and 555 Buildings.

E. The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.

In the immediate Southern Woodward Gateway area, there have been no new buildings recently constructed, however, the 555 Building was recently renovated extensively. Three existing buildings were rezoned in 2017 to D5 under the Downtown Overlay (Merrillwood Building, the 555 Building and Birmingham Place) to permit buildings over 5 stories in height (up to 180') so long as they are compatible with adjacent buildings. There have been no new buildings constructed under the D-5 Overlay zoning classification.

Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable master plan documents, current zoning and recent development trends in the area, the Planning Department finds that the applicant meets the established Zoning Ordinance requirements in Article 7, section 7.02(B)(5) to qualify for a rezoning of the property from D-4 to D-5 in the Downtown Overlay district for the purpose of building as high, but no higher than, adjacent buildings. Given the recommendations of the 2016 Plan, the existing mix of uses in the immediate area and given the size and quality of the building, the proposal to rezone to D5 is appropriate and compatible with both the zoning and height of properties within the general area. In addition, a rezoning to D5 is consistent with recent zoning changes from D4 to D5 for adjacent properties within the Downtown Overlay district.

Departmental Reports

1. Engineering Division – The Engineering Department has no concerns with the rezoning application at this time.
2. Department of Public Services –The Department of Public Services has no concerns at this time.
3. Fire Department – The Fire Department has no concerns with the rezoning at this time.
4. Police Department – The Police Department has no concerns with the rezoning application.

5. Building Department – The Building Department has no concerns with the rezoning application at this time.

Sample motions with attached conditions have been provided in the event that the Planning Board deems it appropriate to send a recommendation of approval forward to the City Commission.

Suggested Action:

Based on a review of the rezoning request and supporting documentation submitted by the applicant, a review of the applicable master plan documents and the development trends in the area, the Planning Board adopts the findings of fact contained in the staff report dated April 17, 2020 and recommends **APPROVAL** to the City Commission for the rezoning of 469 - 479 S. Old Woodward from D-4 to D-5 in the Downtown Overlay.

OR

Based on a review of the rezoning request and supporting documentation submitted by the applicant, a review of the applicable master plan documents and the development trends in the area, the Planning Board recommends **DENIAL** to the City Commission of the applicant's request for the rezoning of the property at 469 - 479 S. Old Woodward from D-4 to D-5 in the Downtown Overlay for the following reasons:

1. _____
2. _____
3. _____

OR

Motion to recommend **POSTPONEMENT** of the applicant's request for the rezoning of the property at 469 - 479 S. Old Woodward from D-4 to D-5 in the Downtown Overlay, pending receipt and review of the following information:

1. _____
2. _____
3. _____

City Commission Minutes
February 13, 2017

02-29-17: PUBLIC HEARING TO CONSIDER AMENDMENTS TO CHAPTER 126, ZONING, TO CREATE NEW D5 ZONE

Mayor Nickita opened the Public Hearing at 10:22 PM.

City Planner Ecker explained the history of this zoning ordinance amendment request by the owners of the 555 Building. The amendment would allow buildings to be considered either legal and conforming, or legal non-conforming, but have the ability to add on in some way. The amendments have to do with height, number of stories, and setbacks. The Planning Board looked at several options. The Board came up with a fairly simple method, by changing Section 6.02 to allow all buildings to be improved in some way if they are non-conforming, or to consider the creation of a D5 zone, defined as over five stories. The impact of the amendments would make the three buildings legal conforming buildings, and they would be allowed to be extended or enlarged with a Special Land Use Permit. If a new building was constructed, it could match the height of the existing building with a Special Land Use Permit. The new category would deal with existing buildings located in the D5 zone. This change enables applicants to obtain funding for significant renovations or improvements as a legal conforming building. The second part allows expansion with the restriction to meet the overlay.

City Planner Ecker explained for Commissioner Boutros that the 555 site has room where a new building could be constructed.

City Planner Ecker explained that none of the three buildings can be any higher or add any extra stories under the ordinance amendment.

Mayor Pro Tem Harris asked about maintenance and repair under the current ordinance.

City Planner Ecker said an interpretation is required in every case currently. Under the ordinance amendment, maintenance and repair would be permitted.

Commissioner Hoff asked if Birmingham Place or Merrillwood could buy the adjacent structures and then build in the space.

City Planner Ecker said they could not, because the properties next door would not have the D5 zoning classification.

Commissioner Hoff asked how the determination is made as to an enlargement and an addition.

City Planner Ecker said the enlargements or extensions are an absolute right if the regular overlay standards are met. If it is an addition or new construction which would exceed the D4 requirements, it can be done with a Special Land Use Permit.

Mr. Rick Rattner addressed the Commission and said with the ordinance amendment, the 555 Building would be in compliance allowing the owners to move forward to make the changes and renovations to keep it an iconic building.

Mayor Nickita closed the Public Hearing at 10:40 PM.

MOTION: Motion by DeWeese, seconded by Boutros:

To amend Chapter 126, Zoning, Article 3, Downtown Birmingham Overlay District, Section 3.04, to create a new D5 Zone and to establish development standards for this district, and Article 6, Nonconformances, Section 6.02, to allow for the extension and/or enlargement of existing legal, non-conforming commercial buildings;

AND

To approve the rezoning of the following properties:

- (a) 555 S. Old Woodward (555 Office and Residential Buildings) from D4 in the Downtown Overlay to D5 in the Downtown Overlay;**
- (b) 411 S. Old Woodward (Birmingham Place) from D4 in the Downtown Overlay to D5 in the Downtown Overlay; and**
- (c) 225 E. Merrill (Merrillwood Building) from D4 in the Downtown Overlay to D5 in the Downtown Overlay.**

City Planner Ecker confirmed for Commissioner Hoff that the ordinance amendment would allow the 555 Building to build an addition as tall as it is only with a Special Land Use Permit approved by the Commission. She added that a new building to the south could be built that meets the D4 standards as of right. The setbacks will basically be the same.

VOTE: Yeas, 7
Nays, 0
Absent, None

Planning Board Minutes
June 27, 2018

REZONING APPLICATION

1. 469-479 S. Old Woodward Ave. (former Mountain King) - Request to rezone from B-3 and D-4 to B-3 and D-5 to allow a nine-story mixed-use building

Chairman Clein said that judging from all of the letters that have been received related to this project, it is very clear that the residents of Birmingham Place oppose the rezoning. All of the letters will be added to the record.

Ms. Ecker explained the applicant for 469-479 S. Old Woodward is requesting that the Planning Board hold a public hearing to consider the rezoning of the property from B-3 (Office Residential) and D-4 (Downtown Overlay) to B-3 (Office Residential) and D-5 (Downtown Overlay). The applicant is seeking the rezoning to allow for the construction of a nine-story mixed-use building with three levels of underground parking in between the Birmingham Place and the 555 Building. The maximum height allowed in the D-4 Zoning District is 4-5 stories. In the D-5 Zoning District, developers may build as high, but no higher than the adjacent buildings which are located in the D-5 Zone. The 0.423 acre subject site spans Hazel St. from S. Old Woodward Ave. to Woodward Ave. The site currently contains two vacant single-story commercial buildings (formerly Mountain King Restaurant and Talmer Bank). The applicant is proposing to demolish the present buildings for the construction of a ten-story mixed-use building.

The applicant has noted that when the zoning was changed down to one or two floors in the 1970s, the 555 Building and Birmingham Place were designated to a legal non-conforming use because their height was not allowable. Ultimately, the zoning was changed to D-4 in 1996 by the adoption of the 2016 Plan and the Downtown Overlay that raised the height up to a maximum of five stories Downtown. In 2017, a new D-5 Zone was created to bring the 555 Building, the Merrillwood Building and Birmingham Place into a legal conforming status. The subject property is located between Birmingham Place and the 555 Building, both of which are zoned D-5 currently.

Ms. Ecker went through the three items that the applicant must demonstrate for the rezoning of a property and the applicant's reasons as to how they feel they have met them.

Ms. Ecker then went through the planning analysis based on the evidence provided by the application. Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable Master Plan documents, current zoning and recent development trends in the area, the Planning Dept. finds that the applicant meets the established ordinance requirements to qualify for a rezoning of the property from D-4 to D-5 in the Downtown Overlay District for the purpose of building as high, but no higher than, the building to the north, Birmingham Place.

Answering Mr. Boyle, Ms. Ecker said the Master Plan which dates back to 1980 did not give specific height requirements like the 2016 Plan recommended. Under the 2016 Plan the recommended height in the Downtown was a maximum of five stories. The 555 Building submitted an application to the City and to the Planning Board to consider creating a new category that would make them a legal and conforming building that would allow them to receive financing to renovate the building and bring it up to current standards in the marketplace. The D-5 Ordinance was crafted by the Planning Board as a result of that application and included the other two buildings in a similar situation.

Mr. Rick Rattner, Attorney, Williams, Williams, Rattner & Plunkett, PC, emphasized that in the D-5 going above five stories subjects the property to a Special Land Use Permit ("SLUP") which is different than just building as of right. Secondly, in 2016 Andres Duany commented favorably on the 555 Building and on Birmingham Place.

He presented a PowerPoint that went to four issues that have to do with rezoning:

- Rezoning Amendment - Sec. 7.02 (B) (2) (b) (i)-(iii) requires that as part of an application for rezoning, the petitioner should address certain issues to be considered by the Planning Board and the City Commission.
- Sec. 7.02 (B) (2) (b) (i) - An Explanation of Why the Rezoning is Necessary for the Preservation and Enjoyment of the Rights and Usage Commonly Associated with Property Ownership. Without the ability to go higher with a new building than the zoning allows, the applicant will not have the required area within which to locate a mix of uses that would commonly be associated with the design of a modern, mixed-use building.
- Sec. 7.02 (B) (2) (b) (ii) - An explanation of Why the Existing Zoning Classification is No Longer Appropriate. It is reasonable for the subject property to share the same zoning classification as its surrounding neighbors. Given the location of the subject property sandwiched between two properties in the D-5 Zone, the D-4 Zone is no longer appropriate.
- Sec. 7.02 (B) (2) (b) (iii) - An Explanation of Why the Proposed Zoning will not be Detrimental to the Surrounding Properties. The proposed rezoning will enhance the entire area by allowing it to be developed as an attractive part of the S, Old Woodward gateway and bring that area into compliance with the spirit and intent of the 2016 Plan.

Mr. Rattner concluded by asking the Planning Board to favorably recommend that they are able to use their property and preserve their rights of usage, fit into the streetscape, fit the Master Plan and fit all elements of this Ordinance because they meet every single one of them.

At 8:45 p.m. the Chairman opened the meeting to public comments.

Ms. Susan Friedlander, 1564 Henrietta, attorney for Birmingham Place Residential Condominium Association, made the following points:

- The City created the D-5 District for a singular and special purpose which was to bring several buildings into conforming status.
- The proposed building is not sandwiched between the 10-story Birmingham Place and the 15-story 555 Building - there is Hazel, a 50 ft. right-of-way that provides a proper transition between buildings. There is not even a height difference, because the building that is immediately adjacent to Hazel is 77 ft. tall. So if this proposed building went up to 80 ft, which it is allowed to do under D-4 it would be very consistent with the building right across the street. There would be a perfect transition. It would only be 34 ft. shorter than Birmingham Place.
- If the proposed building is zoned D-5, what about the building on the north, the Powerhouse Building, Jax Car Wash or the Varsity Building. Why shouldn't they get the D-5 Zoning as well?
- There is a process that must be followed so that property is not rezoned on an ad hoc and an arbitrary basis.

Mr. Tom Lasky, 2006 Cole, spoke in support of the rezoning request. This is the face of new Birmingham and will be done responsibly.

Mr. Mike Humphrey, who lives in Birmingham Place, said there is nothing in the record that shows that the D-5 Overlay was created to do anything other than to make the three tall existing buildings legal and conforming. The developer bought the property knowing how it was zoned; but now

they say that they cannot develop a four or five-story mixed-use building there. If the City is going to change the Master Plan, go for it, but do it with professional study and community involvement; not a piece at a time.

Mr. David Nykian, 40700 Woodward Ave., said he represents some of the owners in the Birmingham Place Condominium. He believes the facts lead to the conclusion that the D-4 Zoning is actually clearly appropriate for this property:

- The D-5 District was created just to address the non-conformities of three buildings. So the City has already made the decision in the past as to what zoning is appropriate for this site.
- Nothing about the property has changed since then that should cause the City to alter its conclusion about what the appropriate height is.
- The height of the 555 Building on the north is 77 ft. So if the subject site were developed today under D-4, it could be taller than the 555 Building.
- Breaking up the building heights would provide more of an architectural character to the City than one monolithic height across the entire street.
- There is nothing under the D-4 Zoning classification that that would prohibit the developer from developing a mixed-use development.
- The only things that would change by amending the classification from D-4 to D-5 are the height of the building and the profit margin of the developer.

Mr. Mickey Schwartz, 411 Old Woodward Ave., stated that infill has nothing to do with height equality. So he thinks the developer has to have a better excuse for building a 10-story building. The small town feeling is what is unique about Birmingham. Deny the rezoning request.

Dr. Cynthia Neil, a resident of Birmingham Place, said she was deeply offended by the petitioner's statement that the development would not adversely affect the residents. From her balcony she would be able to bounce a tennis ball against the wall of the proposed building.

Mr. Chris Jonna, C&P Real Estate Group, spoke in support of the project. The applicant builds nothing but first-class buildings. Increasing the zoning classification will be a tremendous benefit to Downtown Birmingham by bringing in more people to the area.

Mr. Lewis Rockind, a resident of Birmingham Place, emphasized that the zoning has to be contemplated in the context of what is intended to be developed. As a resident of Birmingham Place he is looking at the detrimental effect on the surrounding properties of increased vehicle and pedestrian traffic.

Mr. Daniel Jacob, 261 E. Maple Rd., said he is 100% in support of the project. The intended use of the property is much needed and would be a huge benefit to the City. Birmingham is changing and this project moves with the times.

Mr. Joseph Shalala, 255 S. Old Woodward Ave., spoke in support of the proposed building. It will support all of the small businesses by bringing in people such as office, residential, and hotel users. All of those things combined will help Birmingham.

Ms. Tony Schwartz, 411 Old Woodward Ave., maintained that it is the height of the building that is in question here, not its quality. Secondly, traffic is a big problem on that corner. There is a new hotel that is starting to be built on the corner of Brown and Old Woodward which will add more traffic to that corner. She understands there may be a pool deck on the top floor of the proposed building - who is going to control music and noise and parties. She lives right across on the tenth floor.

Chairman Clein advised that concerns related to traffic and noise are not part of a rezoning but would be handled under a Site Plan Review, and should this be moved forward to a rezoning the applicant would be required to obtain a Special Land Use Permit ("SLUP") which allows the City Commission to put additional restriction on the uses of the building.

Mr. Duraid Markus, one of the partners in the ownership entity for 469-479 S. Old Woodward Ave. (former Mountain King and Talmer Bank), said if this happened in New York, Chicago or LA there would not be a single skyscraper built. He noted that everybody who opposes this is only one contingent, and it has not been the entire City that comes in to support or not support.

It makes sense to build where the project is harmonious and fits in with the rezoning proposal. For those reasons he asked the board to consider all of the comments and make the decision to allow them to rezone the parcel.

Ms. Wilma Thelman who lives in Birmingham Place said none of them have heard why a conforming building cannot be built on that site.

Mr. Jeffares noted that things change and now Birmingham holds 21 thousand people. Secondly he recalled that the Board did discuss rezoning the subject property; however there was nobody from there to make their case so the Board just rezoned the existing buildings.

Mr. Koseck advised that D-4 Zoning allows a building to be built to 80 ft. So it will already block six floors of Birmingham Place. He did not believe the applicant's contention that they cannot make a five-story building work. He thought that a five-story could be a successful mixed-use building. In some ways it might even fit the form and the transition better and the upper three floors of Birmingham Place will not be affected.

Ms. Whipple-Boyce said when the Board established the D-5 Zoning Classification she felt it applied to three specific buildings. In her mind it had to do with bringing non-conforming buildings into conformity so that they could qualify for financing and improve their properties. Thinking about some of the other properties that could be affected down the road that are adjacent to other properties like this is an unanswered question for her. It causes her to hesitate tonight on recommending the rezoning to D-5.

Mr. Boyle made the following points:

- The Master Plan is meant to have the ability to adapt to changing circumstances. Similarly, zoning is powerful when it is able to adapt. So, change is normal; it is not frequent, but it is usual.
- He was positive about the potential impact on the City as a whole of rezoning this property.
- The potential impact of rezoning on the contiguous properties will affect a number of people. The Board is here to determine who has the weight in this particular discussion, the entire City or the adjacent neighbors.
- There are checks and balances built into the system. If the rezoning were to be approved, the community would have two elements to be brought to the table. One would be the Site Plan Review process, and secondly the height would kick in the SLUP where the Planning Board can recommend controlling modifications to the City Commission who will hold a public hearing on the proposal.
- At the end of the day he is of a mind to approve the rezoning because overall he sees the benefits for the City and for this particular area. However, he does not underestimate the cost for the immediate residents in the contiguous building.

Ms. Ramin stated one of the burdens the applicant must carry to justify rezoning is an explanation of why the existing D-4 classification is no longer appropriate.

Mr. Duraid Markus said they cannot get in a hotel concept on this little parcel so they have to go vertical by a couple of floors. He has to be honest, it is the economics. He cannot get a development off the ground. They are not in the Parking Assessment District and are therefore limited by the required parking for an office building or a restaurant.

Answering Mr. Emerine, Ms. Ecker explained that anyone on any site on any site can apply for a rezoning to any of the existing zoning classifications.

Chairman Clein commented that rezoning is the most difficult thing the Board has to do - balancing the rights of adjacent land owners. To Ms. Ramin's point, the burden has not been met as to why a five-story building will not work. The answer that was given was economics, which has no place in a rezoning discussion. Therefore, he is not supportive of the rezoning.

Mr. Jeffares said he cannot come up with a reason for the height of the proposed building to be lower.

Ms. Whipple-Boyce indicated she has no problem with the subject building being built as high as Birmingham Place. But she doesn't think the applicant has made the case that they deserve to be rezoned and that the current zoning classification is no longer appropriate. She was appalled to hear the applicant say they bought this property and the only thing that will work there is a ten-story hotel and it should be rezoned because that is what they want to build. Therefore she doesn't think the applicant has proved their case.

Mr. Rattner noted that maybe the best thing for them to do is to ask for postponement so they can come back with a different plan. Chairman Clein stated that for him postponing would just be kicking the can down to another meeting. Mr. Boyle said he is in favor of not accepting that proposal and actually making a motion this evening.

Motion by Mr. Boyle

Seconded by Mr. Jeffares that based on a review of the rezoning request and supporting documentation submitted by the applicant, a review of the applicable Master Plan documents and the development trends in the area, the Planning Board recommends APPROVAL to the City Commission for the rezoning of 469-479 S. Old Woodward Ave. from D-4 to D-5 in the Downtown Overlay.

There were no comments from the public on the motion at 10 p.m.

Motion failed, 2-5.

ROLLCALL VOTE

Yeas: Boyle, Jeffares

Nays: Clein, Koseck, Emerine, Ramin, Whipple-Boyce

Absent: Share, Williams

Motion by Ms. Whipple-Boyce

Seconded by Mr. Koseck to recommend DENIAL to the City Commission of the applicant's request for the rezoning of the property at 469-479 S. Old Woodward Ave. from D-4 to D-5 in the Downtown Overlay.

Motion carried, 5-2.

ROLLCALL VOTE

Yeas: Whipple-Boyce, Koseck, Clein, Emerine, Ramin

Nays: Jeffares, Whipple-Boyce

Absent: Share, Williams

**Planning Board Minutes
September 12, 2018**

REZONING APPLICATION

**1. 469-479 S. Old Woodward Ave. (former Mountain King and Talmer Bank)
Request to reconsider application in light of new information to be presented to rezone
from B-3 and D-4 to B-3 and D-5 to allow a nine-story mixed-use building**

Chairman Clein recalled that on June 27, 2018, the Planning Board reviewed a rezoning request for 469 – 479 S. Old Woodward Ave. (former Mountain King and Talmer Bank sites) to rezone from B-3/D-4 to B-3/D-5. This request was made pursuant to Article 7, section 7.02 of the Zoning Code. After much discussion, the Planning Board voted to recommend denial of the rezoning request to the City Commission for 469 – 479 S. Old Woodward Ave. The City Commission then set a public hearing date for August 13, 2018 to review the rezoning request.

On August 13, 2018, the applicant submitted a letter requesting that the City postpone the public hearing that was previously set at the City Commission to allow the applicant to present new information to the Planning Board for their review and consideration. Accordingly, the City Commission cancelled the public hearing and the matter was sent back to the Planning Board for reconsideration.

Therefore, the Board's next step is to enter into a discussion of whether or not the application for 469-479 S. Old Woodward Ave. should receive a re-hearing. If they decide that there is substantial new evidence or new facts under section 7.02 (6) to warrant a re-hearing, the Board will at that point decide on the next steps.

Motion by Mr. Williams

Seconded by Mr. Koseck to include the following correspondence into the official record:

- **Letter dated September 11, 2018 from Susan K. Friedlaender, Attorney with Friedlaender, Nykanen, Rogowski, PLC;**
- **Letter dated September 10, 2018 from B. Geiger, Unit 623, 411 S. Old Woodward Ave;**
- **Letter dated September 11, 2018 from Timothy J. Currier, Beier Howlett, City Attorney, dealing with the process of rezoning application before the Planning Board.**

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Share

Mr. Williams pointed out the Planning Board has opinions of opposing counsel dealing with the issue as to whether the D-5 Ordinance can in fact apply to the two properties in question (former Mountain King and Talmer Bank sites). That is a legal question for the City Attorney to decide.

The second issue is whether the two parcels are or are not in the Parking Assessment District. It is important to know from the City's standpoint why this property is or is not in the Parking Assessment District based on the records of the City at the time the Parking Assessment District was created. Further, if they are in the Parking Assessment District, then the analogies to the other five-story buildings in the City in Downtown which are in the Parking Assessment District and don't have to provide on-site parking is relevant. If they are not in the Parking Assessment District and the applicant is required to provide on-site parking, then that is a different conclusion. He wants the opinion of the City Attorney before proceeding because if the conclusion is that the properties are not eligible for D-5 zoning then having a hearing is a waste of time.

Mr. Williams further noted that Ms. Friedlaender's letter questions what the City Commission intended by approving the D-5 category. He would like the opinion of the City Attorney on that narrow question and whether these two parcels are eligible to be rezoned into the D-5 category based on all the evidence to date.

Chairman Clein thought the question before the Board is whether there will be a rehearing; or since they are all present, whether they feel they have enough information to have that conversation tonight on the very narrow basis of whether there is new information that wasn't brought up at the original hearing.

Mr. Rick Rattner, Attorney, 380 N. Old Woodward Ave., was present to represent the applicant. They believe this site not only is eligible for D-5 Zoning, but they also think that they have new information. Further, they accept that the site is not in the Parking Assessment District. They feel they have enough information to go forward at this time and also believe their position relative to the eligibility and the new information is solid.

Ms. Ecker recommended that the Board should stick to the first question of whether there is new information that wasn't considered before that is brought forward now and thus warrant a rehearing.

Mr. Williams pointed out that the CIS contained a reference that this particular property is in the Parking Assessment District. So, the information from the City that was provided at the time of the hearing was incorrect. Therefore, the record needs to be corrected. He didn't think the Board should start down that road until they receive Mr. Currier's opinion.

Mr. Rattner indicated they have no objection, if that is what the Board decides.

Chairman Clein opened up public comment at 8:15 p.m.

Ms. Susan Friedlaender, Attorney representing Birmingham Place Residential Condominium Assoc., corrected that the applicant actually mentioned during the hearing that they are not in the Parking Assessment District and that is one reason they were asking for the rezoning, and one reason why they needed to be rezoned because they cannot meet the needs of a hotel in four stories.

Mr. Michael Schwartz, 411 S. Old Woodward Ave., Birmingham Place asked the Board to consider once they have a legal opinion, if it is that the process should move forward. Possibly decide that in October and then have the hearing for the project itself at future meeting.

Motion by Mr. Williams

Seconded by Ms. Whipple-Boyce to postpone consideration of the public hearing which was scheduled for tonight to October 10, 2018 with the condition that the Board receive

the legal opinion of counsel to the City of Birmingham submitted to the Planning Board in writing as to whether the proposed site (former Mountain King and Talmer Bank) is eligible to be rezoned to the D-5 category.

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

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Share

Planning Board Minutes

October 10, 2018

REZONING APPLICATION

1. 469-479 S. Old Woodward Ave. (former Mountain King and Talmer Bank)
**Request to reconsider application in light of new information to be presented to
rezone from B-3 and D-4 to B-3 and D-5 to allow a nine-story mixed-use building**

Chairman Clein recalled that on June 27, 2018, the Planning Board reviewed a rezoning request for 469 – 479 S. Old Woodward Ave. (former Mountain King and Talmer Bank sites) to rezone from B-3/D-4 to B-3/D-5. After much discussion, the Planning Board voted to recommend denial of the rezoning request to the City Commission for 469 – 479 S. Old Woodward Ave. The City Commission then set a public hearing date for August 13, 2018 to review the rezoning request.

Prior to the City Commission taking any action the applicant submitted a letter requesting that the City postpone the public hearing that was previously set at the City Commission to allow the applicant to present new information to the Planning Board for their review and consideration. Accordingly, on August 13 the City Commission cancelled the public hearing and sent the matter back to the Planning Board for reconsideration.

Section 7.02(6) of the Zoning Ordinance allows a rehearing on a rezoning request where there is a substantial change in the evidence that was previously presented even after the City Commission has issued a denial of the request. In this case, the City Commission did not hear the request, and thus did not issue an approval or denial. They did however send the matter back to the Planning Board to determine if there has been a substantial change in the evidence, and if so, to conduct a rehearing on the rezoning request previously considered.

On September 12, the Planning Board decided to postpone consideration. They were looking for additional information from the City Attorney as to 1) whether the applicant has the right to apply for rezoning under D-5; and 2) some of the facts behind the reasons why this property may or may not have been put in the PAD.

As to why this property may or may not have been put in the PAD, the City Attorney has written a letter stating there is no record from the 1960s. With regard to the legal question as to whether or not the applicant has the right to apply for rezoning to the D-5 category, the City Attorney responded they do have the legal right to apply for rezoning to this zoning classification.

Chairman Clein stated that the first thing the Board will do this evening is to discuss whether the new information being presented warrants a rehearing.

Mr. Rick Rattner, Attorney, 380 N. Old Woodward Ave., was present to represent the applicant. In a PowerPoint presentation he outlined the substantial change in the evidence that was previously presented to the Planning Board on June 27, 2018 and requested a rehearing of the rezoning request based on the following:

- There was a mistake in the CIS that was included in the packet that indicated this property is in the PAD. This property is not.
- The ordinance states pursuant to 7.02 (B) (5) (a-e) that the Planning Board should make findings of fact. There was no presentation of a finding of fact as it was presented to the City Commission.

- The D-5 Zone was enacted and at that time, three buildings were rezoned to D5, but the ordinance itself is clear and unambiguous. It provides language that indicates there are going to be different buildings put into the D-5 Zone.
- The fact that the property sits outside of the PAD should be looked at because of the potential five or six types of structures that could be built under the D-4 Ordinance. That is what is new to their rezoning argument. If a mixed-use building is constructed in D-4, it must have 288 parking spaces on-site. That requires their building to be accompanied by nine underground parking levels. That is a major change in the way the Planning Board might look at this for rezoning.

Mr. Rattner hoped the Board will take this seriously and give them a chance for a rehearing based on all of this context, so that a good and fair decision can be made.

Mr. Williams received confirmation from Ms. Ecker that there are no other commercial properties which are currently zoned D-4 and allow a mix of commercial and residential uses that are not located in the PAD.

Responding to Mr. Boyle, Ms. Ecker gave a brief history of the PAD and why it was created. She named the Brookside Terrace and the old school district building as being properties that bought into the PAD after it was formed. They both about the PAD. The City Engineer and the Finance Director figure out what the buy-in amount is and then it goes to the City Commission who makes the determination as to whether a property will be added or not.

Chairman Clein opened discussion from the public at 8:07 p.m.

Ms. Susan Friedlander, Attorney representing Birmingham Place Residential Condominium Assoc., noted that at the September 12 hearing she talked about the intent of the D-5 Ordinance and whether it was intended for rezoning for a multitude of properties that don't fit the non-conforming status. The history of the ordinance cannot be clearer. It was drafted because the 555 Building had space on its site.

Another issue is whether there has been new evidence submitted that justifies a rehearing. The only thing that was raised is that there was a mistake in the CIS report that said 469-479 S. Old Woodward Ave. is in the PAD. However, the CIS was specifically put aside at the hearing because the Planning Board was looking at rezoning and not the site plan or the CIS. It is on the record, on the video and in the minutes that the applicant said he can't build anything else because the property is not in the PAD.

Ms. Friedlander stated that in the example of what can be built, it is erroneous to say that parking must be on site if you are not in the PAD. The Zoning Ordinance clearly allows many of the mixed uses that are allowed in the D-4 District other than residential to have parking 100 ft. away. Ms. Friedlander said she is trying to wrap her head around the fact that because they are not in the PAD they want to have a use with an even greater parking need than they might be able to build under D-4. So, they haven't presented any new information.

The ordinance does not say that the Planning Board has the authority to rehear an application that it has denied when the City Commission has not heard it and denied it. It says the same application shall not be brought back within the same year unless there has been substantial change in conditions which the applicant can present to the Planning Board upon reapplication. That is not what happened here.

Ms. Friedlander stated that the City Commission speaks through its resolutions. The Commission's resolution says to cancel the public hearing to consider approval of the rezoning of 469-479 S. Old Woodward Ave. from B-3/D-4 to B-3/D-5 and refer the matter back to the Planning Board. It doesn't say to refer the matter back to the Planning for a rehearing and reconsideration of this rezoning request.

Mr. Clinton Ballard, 388 Greenwood, said he cares very much how this City is developed. He thinks this property should be zoned to D5 the same as the adjacent properties.

Motion by Mr. Boyle

Seconded by Mr. Share to receive and file a letter from Honigman Miller Schwartz and Cohn, LLP dated October 10, 2018 that says they represent the Condominiums at Birmingham Place Association.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Ramin

After a brief evacuation of the building because the fire alarm sounded, the meeting reconvened.

In response to Mr. Williams, Ms. Ecker said a letter was received from the City Attorney prior to the September 12 meeting indicating what the process would be and that it is the Board's responsibility to determine if there is new information; and to make a decision on that first; and then if the determination is made there is new information, to conduct a rehearing.

Several Board members indicated they were aware that this property was not in the PAD but several others were not. Chairman Clein did not believe it was ever discussed.

Ms. Whipple-Boyce said in all of her time on this board she can never remember seeing a rezoning application followed by a site plan for the same property on the same night. The applicant may not have touched on not being in the PAD in the first part of their presentation because they expected to be presenting that in the second part of their presentation. She finds that to be new evidence because the Board didn't give the applicant the opportunity to present their Site Plan. Therefore she leans toward voting in favor of the applicant tonight.

Mr. Koseck said he always wants to look at a proposed design along with a rezoning application. It is the applicant's job to make their case and he doesn't think there has been a change of facts to the degree that would make him have a different opinion.

Chairman Clein noted he is hard pressed to say that the news that the property is not in the PAD is a substantial change in facts, evidence, or condition. Therefore, he cannot support a rehearing.

Mr. Williams said his understanding is that the Board didn't go beyond the three properties which were non-conforming because no other properties were before them. It is clear to him that the written record of the CIS was incorrect. The record should be clear that the property is not within the PAD. Also, he doesn't think the Planning Board complied with the ordinance in its

findings. He added that it would be inappropriate to go forward with a rehearing tonight because there is a counsel of record who can't be present who said he represents a certain party that is not here. Everybody should be given an opportunity to be heard.

Mr. Share indicated his strong recollection is that when the Planning Board adopted the D-5 Zoning it was not exclusive to the three properties. It was open to other places but it was inappropriate for the Board to rezone a property without them being there to request it. Based on what he saw in the minutes and what he has heard from his colleagues, there has not been a substantial change in the evidence that would justify a rehearing

Motion by Mr. Share

Seconded by Mr. Koseck to RECOMMEND DENIAL of the applicant's request for a rehearing the property at 469-479 S. Old Woodward Ave.

There were no public comments related to the motion at 8:55 p.m.

Motion failed, 3-4.

ROLLCALL VOTE

Yeas: Share, Koseck, Clein

Nays: Boyle, Jeffares, Whipple-Boyce, Williams

Absent: Ramin

Motion by Ms. Whipple-Boyce that the Planning Board finds that there have been substantial changes in the evidence previously presented at the rezoning hearing on June 27, 2018, and thus grants a rehearing of the rezoning request for 469-479 S. Old Woodward Ave.

Motion carried, 4-3.

ROLLCALL VOTE

Yeas: Jeffares, Whipple-Boyce, Boyle, Williams

Nays: Koseck, Share, Clein

Absent: Ramin

At 9 p.m. there were no comments from the audience.

Motion by Mr. Williams

Seconded by Mr. Boyle that the re-hearing that has been approved by the Planning Board be held on Wednesday, November 14, 2018.

There was no discussion from members of the public at 9:05 p.m.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Ramin

**Planning Board Minutes
December 12, 2018**

E. REZONING REQUEST

1. 469-479 S. Old Woodward Ave. (former Mountain King and Talmer Bank) Request to reconsider application in light of new information to be presented to rezone from B-3 and D-4 to B-3 and D-5 to allow a nine-story mixed use building (postponed from November 14, 2018, and the applicant has asked for additional postponement)

Motion by Mr. Williams

Seconded by Ms. Whipple-Boyce that the rehearing of the rezoning request for

469-479 S. Old Woodward Ave. (former Mountain King and Talmer Bank) be postponed to the regular Planning Board meeting of January 23, 2019.

Motion carried, 7-0.

There were no comments from members of the public at 7:35 p.m.

VOICE VOTE

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

Nays: None

Absent: None

Mr. Williams asked that upon republishing this material, staff note any new information on the first page.

Planning Board Minutes
January 23, 2019

E. REZONING REQUEST

- 1. 469 – 479 S. Old Woodward (former Mountain King & Talmer Bank)** – Request to reconsider application in light of new information to be presented to rezone from B3 and D4 to B3 and D5 to allow a nine story mixed use building (Postponed from December 12, 2018).

Ms. Ecker identified the subject site and reviewed the history of the rezoning requests over the past year. It was noted that the building immediately to the north of 469-479 S. Old Woodward is approximately 115 feet tall, and that the tower to the south of 469-479 S. Old Woodward, attached to the 555 building, is approximately 80 feet tall. The current zoning would allow for an approximately 80 feet tall building at 469-479 S. Old Woodward.

The 2016 Plan would only allow a five-story building at the 469-479 S. Old Woodward site. D-5 zoning allows a building to go up to, but not exceed, the height of an adjacent building. D-4 zoning allows a building to have five stories if the top floor is residential. Planning Director Ecker did not believe there are any other properties zoned D-4 in the Downtown Overlay which are not also in the Parking Assessment District (PAD).

Planning Director Ecker reviewed the requirements for rezoning contained in the Zoning Ordinance and explained the findings related to these as outlined in the staff report, along with the applicant's responses as submitted. After the review was complete, Ms. Ecker noted that based on the Planning Department's review "of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable master plan documents, current zoning and recent development trends in the area, [...] the applicant meets the established Zoning Ordinance requirements of Article 7, section 7.02(B)(5) to qualify for a rezoning of the property from D-4 to D-5 in the Downtown Overlay district."

Mr. Rick Rattner, Attorney, was present to represent the applicant. On behalf of the applicant Mr. Rattner and architect Chris Longe gave a presentation first outlining the applicant's adherence to the Zoning Ordinance requirements of Article 7, section 7.02(B)(5), similar to the Planning Department's findings of positive rezoning qualifications of the property, and secondly showing a massing of the proposed building, zoned as D-5, at the 469-479 S. Old Woodward site.

Mr. Rattner began by saying he could not think of another situation in Birmingham where two buildings are zoned in the same way with a third building, in the middle, zoned differently. Mr. Rattner continued:

- The 469-479 S. Old Woodward site essentially creates a gap in the streetscape since it is currently one or two stories and cannot be rebuilt.
- Based on intended height, the applicant would return to the Board for a Special Land Use Permit (SLUP) which would also take into account the neighbors' preferences.
- D-5 zoning would allow for on-site parking and the same uses as the surrounding buildings.

Mr. Longe described the 469-479 S. Old Woodward site. If the current buildings were maintained and reused for a non-conforming use the applicant would need to provide parking for 55 cars since the site is outside of the PAD. His presentation illustrated and talked through some other D-4 zoned options that would be similarly untenable for the site.

The Board was then presented with two massing models to demonstrate what the proposed building would look like if the City Commission were to grant the change in zoning to D-5.

Mr. Longe clarified that the proposed building could be stepped back from Birmingham Place to provide more open space between the two buildings if the change in zoning to D-5 is granted. He added that this idea came about as part of the ongoing discussion with the tenants of Birmingham Place.

Mr. Longe confirmed for Mr. Emerine that the top block represented on the proposed building would be a mechanical block, not an additional story to the building.

Chairperson Clein thanked Mr. Longe for the massing diagrams, stating they were helpful.

Mr. Rattner told Mr. Share that the applicant is coming before the Board instead of the Board of Zoning Appeals because the applicant is attempting to do a development under the current zoning ordinances of the City. Mr. Rattner added that it is unusual and unfair to maintain the site at D-4 when both buildings adjacent to the site are zoned at D-5.

Doraid Markus, one of the applicants, opined that a five-story hotel would not be as becoming of Birmingham as a nine-story hotel. He specified that in order to create an uncrowded first floor and mezzanine level and a sufficient number of rooms, the building would need the extra height.

Susan Friedlander, Attorney representing Birmingham Place Residential Condominium Association, explained that the evening's discussion was supposed to be a rehearing since the site had originally been described incorrectly as being in the PAD. Given this, she wondered why the applicant had yet to explain this evening how the PAD was such a significant issue that the Board should consider voting differently than it had in the past. She added:

- The applicant's assertion that they could not park onsite with a five-story building, but could park onsite with a nine-story building -- even though a nine-story building would require an increase of parking spaces -- did not compute.
- Other hotels being built in the PAD are putting two levels of parking underground.
- The applicant said they would be able to use approximately 40 spaces from the 555 building if the site was built to nine stories. Ms. Friedlander questioned why this arrangement would not work with a five-story building as well.
- During tonight's presentation the applicant did not mention the various parking sharing arrangements available to the applicant under the ordinance. Such sharing arrangements could significantly decrease the burden of providing parking. She said addressing this issue is more of a parking variance matter than an ordinance matter.
- According to Planning Director Ecker's report, there is no consensus on whether the City should be raising building heights in this area. If the Board and Commission determined that these three high-value buildings should have their heights raised without consulting the Master Plan for the area, then the City was not zoning according to a Plan. Michigan law requires that every City zones according to its Plan(s).

- Changing building heights in the Downtown Overlay district merits a thorough community engagement process, similar to the process of changing building heights in the Triangle District. Insufficient consultation of the community on this matter could result in the impression that this zoning change was insufficiently considered and vetted. She also said the February 2017 Commission discussion on the issue reflected similar concerns from the Commissioners regarding the lack of community engagement.
- A number of other properties in Birmingham could also request changes in zoning based on being next to D-5 buildings. The problem is whether these changes are being made according to the City's 2016 and Master Plans.
- The City specified in its 2016 Plan that it wanted to maintain its small town character. According to Ms. Friedlander, small towns do not usually go above three or four story buildings. While Birmingham has gone back and forth on whether it would allow taller buildings, drastic changes to building heights should be made according to the City's Plans.
- The discussion of changing this site's zoning should occur under the auspices of the upcoming Master Planning process. Otherwise, this is similar to spot-zoning, since no land use patterns changed for the site.

David Nykanen, Attorney, said he represents some of the residential owners in the Birmingham Place Condominium Association. Noting that a hotel would require the least amount of parking on this site, Mr. Nykanen asserted that the applicant chose not to present the parking implications of that option in the current discussion so as to make the parking requirements seem more onerous than they are. He continued:

- Two other sites in Birmingham are building five story hotels, demonstrating that parking a five story hotel within the City is not excessively burdensome.
- In addition to the potential parking agreement with the 555 building, other options are available to the applicant for parking a five story hotel on this site.
- The applicant's statements this evening demonstrated that this rezoning request is based on the applicant's preference for a certain type of hotel, not the inability to build a hotel on the site more generally.
- The zoning uses for both D-4 and D-5 are the same, so Mr. Rattner's assertion that a change in zoning is necessary to allow the applicant to enjoy the same uses as the adjacent buildings is fallacious. The only difference between the zoning types is the building height.
- A five story hotel on the site would be taller than the 555 building and would adequately fill in the visual gap in the streetscape.
- It is clear that this rezoning request is about economics and not about land use, which is an insufficient reason to rezone a property.

Jason Abel, Attorney, said he represents the Masters' Association of the Birmingham Place Condominium Association. He said he echoed the previous two speakers and drew the Board's attention to 7.02(B)(2)(b)(i) and 7.02(B)(2)(b)(ii). Mr. Abel explained:

- Regarding 7.02(B)(2)(b)(i), the applicant is required to show, and the Board is required to present findings of facts, as to why the rezoning is necessary for the preservation and enjoyment of the rights of usage commonly associated with the property. Mr. Abel described 'necessary' as the critical word, since it is not necessary to develop a nine story hotel on this property. A five story building could be developed on this site with many different uses. The problem is that the applicant is requesting a change in the zoning to access a use that is not permitted in the five story setting. While Mr. Abel acknowledged

this to be an understandable preference on the part of the applicant, he asserted that it would not be a 'necessary' change. Additionally, the applicant's contention that they would make more money with a taller building or would not be able to provide enough parking with a shorter building could be used by any developer in any zoning environment, making their argument so broad as to fall outside the need for a specific and 'necessary' zoning change.

- Regarding 7.02(B)(2)(b)(ii), the zoning of D-4 is not inappropriate for the current land use. The issue is, rather, that the applicant would like to build a nine story hotel on a parcel zoned for a five story use.
- The applicant presented arguments adjacent to the Zoning Ordinance rather than addressing the Zoning Ordinance.
- Regarding 7.02(B)(2)(b)(iii), Mr. Abel said the applicant did not address the detrimental impact changing the zoning of the site to D-5 would have on the neighbors.

Carole Kozlow stated that her family has always loved Birmingham's smaller town nature. Recalling Mr. Markus making a statement similar to 'if the City does not want large buildings, it never should have allowed the first one to be built' during the June 2018 conversation on the issue, Ms. Kozlow said she agreed. Noting that Birmingham has since changed course on large buildings, she asked that the City continue to preserve its character, rather than having to fix the problem after the fact.

Karl Sachs said he has lived in Birmingham for about 25 years and said he had been asked to convey some of his neighbors' feelings on the potential rezoning. He continued that many of their points had already been covered by others but that he wanted to mention his neighbor Mike Humphrey's written statement that the potential rezoning does not adhere to the Master Plan. Mr. Sachs said that this hotel would make privacy nearly impossible for the residents of Birmingham Place living on the side adjacent to the proposed site.

Michele Prentiss, Property Manager of Birmingham Place, presented the Board with a written reply to the applicant's summary statements as included in the Board's agenda packet for the evening. She then gave a copy to Chairperson Clein.

Chairperson Clein asked if there was a motion to receive and file the letter.

Mr. Williams asked for a copy of the letter. Chairperson Clein said he would pass along his copy for Mr. Williams to read. Mr. Williams said that without a copy for each Board member to read, he would not make a motion to receive and file the letter.

Chairperson Clein said he would acknowledge the letter, and upon receipt of the letter as an email to Planning Director Ecker the letter would be included in agenda material on the matter moving forward.

Seeing no further comments from the public, Chairperson Clein brought the discussion back to the Board. Chairperson Clein said it was time for the Board to make a decision.

Mr. Share asked if the letter had any new information, saying he did not want to make a decision if there was information the Board had not yet heard.

Ms. Friedlander told the Board that all the letter's points had been covered in the evening's discussion.

Mr. Share spoke first, saying that this is an unusual zoning request since it only impacts the height of the building allowed. He continued that when D-5 was implemented, the Board did not preclude other sites from seeking to be zoned D-5 in the future. From a streetscape perspective, he saw no significant difference between a five story and nine story building on the site. The proposed change does not seem 'necessary' as defined by 7.02(B)(2)(b)(i). It would behoove the Board to look at the zoning of the entire block from Hazel to Brown. He would not be voting in favor of rezoning unless his colleagues persuade him otherwise.

Mr. Koseck said none of the new information persuasively explained why the City Commission should approve the rezoning. He noted the 2016 Plan conclusively zoned the building at D-4. Cities tend to have buildings of varying heights, and the variety is partially what makes cities interesting, so the streetscape argument was not particularly compelling. Assuming the site was purchased with awareness of the D-4 zoning, Mr. Koseck suggested that this is not so much a zoning issue as a parking issue. He recommended the applicant apply to join the PAD or enter into some other beneficial parking arrangement. Addressing Mr. Markus' assertion that certain hotel designs are not becoming of Birmingham, Mr. Koseck said his firm is currently building a hotel in Ann Arbor with nine-foot floor to ceiling heights, that he is confident that the result will be sufficiently upscale, and that something similar could be done in the applicant's case. Lastly, Mr. Koseck noted the community's consistent concerns that the rezoning would be detrimental to the neighbors. He said no new information could be provided that would change his thinking on the matter.

Mr. Williams pointed out that the City Attorney found the site eligible for D-5 zoning. He said Ms. Friedlander could pursue the matter further with the City Attorney, but that the Board is bound by the City Attorney's opinion. The D-4 zoning for this site does not allow reasonable enjoyment of the property since all other D-4 sites in Birmingham have access to the PAD. Because this currently makes the property non-competitive, Mr. Williams said he would be in favor of rezoning.

Mr. Emerine noted the persuasive impact of the City Attorney's opinion that this site is eligible for D-5 zoning. Adding that the developer would need to acquire a SLUP should the rezoning move forward, Mr. Emerine stated he was comfortable with the rezoning at this time.

Mr. Jeffares recalled the Board had considered rezoning the surrounding area but had decided they wanted to keep D-5 to this smaller area at the time. He expressed an equivocal opinion on the idea of zoning a building according to its neighbor's zoning, but said that a building zoned differently between two buildings of the same zone seemed significant enough to change.

Ms. Whipple-Boyce addressed Ms. Friedlander's contention that D-5 was in any way surreptitiously done, saying that the Board and the City Commission spent many public meetings discussing the issue in depth. Ms. Whipple-Boyce added that she affirmed the City Attorney's findings regarding the application, and that she believed the applicant proved their case.

Chairperson Clein said he was against the rezoning at this time. He continued that the origins of D-5 zoning have no bearing on the question before the Board this evening, or if they do it is a legal question not up to the Board's interpretation. He clarified that the Board's directive was to

determine whether this parcel and application met the ordinance requirements for rezoning. Arguments about adjacencies were also not relevant. The applicant did not meet the burden of proof. Building heights across the downtown should not be changed without a downtown Master Plan. While Chairperson Clein said he would likely recommend the building be permitted a height increase within a planning process, neither the City's Master or 2016 plans allow the flexibility to add four stories to this building outside of the planning process. He noted that there were a number of D-4 uses not presented that would be appropriate for this parcel. In conclusion Chairperson Clein said he was firmly in opposition to rezoning at this time, but said he would entertain any other Board member's replies.

Mr. Jeffares said the owners of the other D-5 parcels applied for rezoning based on finances but that ironically tonight's applicant was being chastised for doing the same thing.

Chairperson Clein begged to differ and clarified for the record that the owners of the other D-5 parcels were having to get a number of different variances for every change they wanted to make on their properties.

Mr. Jeffares asserted the other D-5 parcel owners had indeed brought up financing in their rezoning application.

Chairperson Clein disagreed, saying that D-5 zoning arose out of a directive from the City Commission asking the Board to find a way to bring the currently D-5 parcels in question into compliance.

Motion by Mr. Williams

Seconded by Mr. Jeffares that based on a review of the rezoning request by the applicant and the supporting documentation submitted by the applicant, a review of the City's current Master Plan and the City's current 2016 Plan, and development trends in the area, and in compliance with 7.02(B)(5)(a) - 7.02(B)(5)(e), the Planning Board adopts the findings of fact in the staff report dated November 8, 2018, and recommends approval to the City Commission for the rezoning of 469 – 479 S. Old Woodward from D-4 to D-5 in the downtown overlay.

Motion carried, 4-3.

ROLL CALL VOTE

Yeas: Whipple-Boyce, Emerine, Jeffares, Williams

Nays: Clein, Koseck, Share

Absent: Ramin

Chairperson Clein explained that this is a recommendation to the City Commission. He explained the Commission will then take this recommendation and all attendant information, hold another public hearing of the applicant's request and the community's perspective, and make their determination. Chairperson Clein thanked the audience for voicing their opinions during the discussion.

City Commission Minutes
March 11, 2019

NEW BUSINESS

PUBLIC HEARING TO CONSIDER THE REZONING OF 469 – 479 S. OLD WOODWARD FROM B3/D4 TO B3/D5

Mayor Bordman suggested the Commission consider including this property in the Parking Assessment District (PAD) before considering whether to rezone the property, since they are separate considerations.

Commissioner DeWeese supported Mayor Bordman's suggestion.

Commissioner Hoff said she was unsure whether the issues were actually separate, since the parking requirements for a property are partially dependent on whether the property is part of the PAD.

Mayor Bordman advised that the contractor's decisions vis-a-vis parking may change if the property is included in the PAD, but the Commission's decision on how to zone the property will not, and as a result should be considered separately.

Agreeing with Mayor Bordman, Commissioner Sherman suggested the entire discussion of this property's potential inclusion in the PAD be moved to a later date so as not to confuse this evening's public hearing on rezoning.

Commissioner DeWeese opined that if the Commission sends the possibility of this property's inclusion in the PAD to the Advisory Parking Committee (APC) for further study, it clarifies the topic of the evening's public hearing in the same way Commissioner Sherman intended.

Mayor Bordman sought comment from the Commission on whether this property's potential inclusion in the PAD should be sent to the APC for further study.

Mayor Pro Tem Boutros said the question of this property's inclusion in the PAD is an important subject and he would be comfortable voting on the issue separately this evening.

Commissioner Harris agreed with Commissioner Sherman and said he would like to see more thorough information from staff before the Commission decides whether to refer the question to the APC.

Commissioner Nickita said this will end up before the APC, so it would be most efficient to move the PAD question for their study now.

Commissioner Sherman opined that this discussion was inappropriate in both timing and procedure. He said that not only does this conversation have nothing to do with the current rezoning request, but the onus for requesting a property's inclusion in the PAD is on the property owner, not the City.

The Commission took no action on the question of the property's inclusion in the PAD, and Mayor Bordman affirmed it would not be part of the evening's discussions.

Mayor Bordman noted for the record that the City received a confirmed petition from the property's neighbors. As a result, according to state statute, the motion to re-zone would have to pass with a $\frac{3}{4}$ vote, meaning six out of the seven Commissioners approving.

Mayor Bordman then gave a review of public hearing procedure and opened the public hearing at 7:59 p.m.

Planning Director Ecker presented the proposed rezoning. Clarifications/Comments

Commissioner Nickita stated Birmingham Place, in terms of space which can be occupied, is 98' 2" tall. The mechanicals bring the height of the building up to 114' 4". This makes Birmingham Place 18' 2" taller in eave height than the allowable D4 height.

Planning Director Ecker explained:

- The on-site parking requirements do not change between D4 and D5.
- A D4 zoned building has a five-story and 80' maximum, including all mechanicals. If a property in the D4 district wanted to go to six stories and 80', the property would have to receive a variance from the Board of Zoning Appeals (BZA).
- Any building zoned D5 is subject to a Special Land Use Permit (SLUP) over five stories or 80'.
- Any Birmingham property owner can apply for any zoning classification, but it does not mean the owner will be granted approval for the rezoning.
- Buildings in the downtown overlay district have a maximum overall height, which includes mechanical height.
- The City has increased flexibility in influencing the design, development and use of buildings zoned D5 through the SLUP requirement, once the building is over five stories or 80'.

Rick Rattner, attorney for the applicant, presented the rezoning request. The presentation began with a four-minute video excerpt from the July 8, 2015 Planning Board (PB) meeting. Mr. Rattner said:

- The Planning Board considered the matter of the D5 zoning designation very carefully, as the video excerpt demonstrated. He reviewed the Board's process for creating the D5 designation, adding that new construction was anticipated as a result of the D5 zoning classification.
- This is clearly not an instance of spot-zoning, since spot-zoning entails changing one building to be zoned differently from the surrounding properties, allowing permitted uses that are inconsistent with the area, and is an unreasonable classification. None of those conditions are

present in the subject rezoning request. The proposed rezoning would make this building the same as the surrounding properties, have similar use to the surrounding buildings, and would be a reasonable classification change.

- Rezoning 469 - 479 S. Old Woodward to D5 fits the Master Plan by allowing for the building of aesthetically similar buildings in the downtown in order to encourage a sense of place. While the property owner could build a D4-compliant building, this would result in the owner of the property not being able to enjoy the same rights of usage that the adjacent buildings enjoy.
- If Birmingham Place or the 555 Building had owned 469 - 479 S. Old Woodward at the time the D5 zoning designation was created, it is likely the 469 - 479 S. Old Woodward property would have been rezoned to D5 at the time as well. Mr. Rattner cited the 555 Building's pursuit and eventual receipt of a D5 rezoning of the vacant lot to the south of the property.
- The 469 - 479 S. Old Woodward lot is unusual in that it is long, narrow, and neither part of the PAD nor adjacent to any building that is part of the PAD. To not rezone this parcel would be to leave it as a D4 island surrounded by two D5 buildings.
- Part of the due diligence done in purchasing this parcel was understanding the City ordinance could potentially permit the rezoning of this parcel to D5. Purchasing the parcel with the intent to request its rezoning was appropriate and in-line with the intention of the D5 zoning ordinance.
- The applicant is not pursuing entry into the PAD because of their distance from the relevant parking decks.

Mayor Bordman made clear that the current issue before the Commission is whether to rezone the parcel to D5, and not any consideration of what might be built on the parcel. She emphasized that the focus must remain on whether rezoning the parcel is appropriate for the City as a whole.

Mayor Bordman also noted that the building to the south of 469 - 479 S. Old Woodward is 77½' tall, which is 2½' shorter than the permitted height for a D4 building.

Mr. Rattner replied that the height of the closest building to the 469 - 479 S. Old Woodward parcel is 114'. He suggested it is more appropriate to compare the parcel to the buildings directly abutting it, rather than to the building across the street. He added that the 77½' building being reference is zoned D5, and if they were approved for a SLUP could build higher because of that zoning.

Mayor Bordman invited members of the public to speak.

Mr. Rattner spoke once more, stating an objection to the submitted petition since he and the applicant have not yet had an opportunity to review its contents.

Mayor Bordman thanked Mr. Rattner for his comments.

Susan Friedlaender, attorney at Friedlaender Nykanen & Rogowski, said the excerpt Mr. Rattner presented from the July 8, 2015 PB meeting was irrelevant because the minutes from a PB

meeting in January 2016 reflect the PB was unable to reach consensus about D5 zoning. At that time the PB decided to address the non-conforming aspects of the 555 Building and not the whole surrounding area. Ms. Friedlaender continued:

- At the July 26, 2016 City Commission meeting, a motion was passed "to review the non-conformance provisions pertaining to commercial buildings to provide specific requirements considering a new zoning category or categories that allow for changes to non-conforming buildings for the maintenance and renovation of existing buildings consistent with those permitted for residential buildings and structures."
- The reason the applicant asked for the rehearing from the PB was because the PB failed to recognize the applicant was not in the PAD.
- The Master Plan recognizes that building height varies within the City, and the standard is that the maximum building height should be based on the smaller buildings in proximity.

Michele Prentice, property manager at Birmingham Place, said a number of condominiums sold in the building were partially purchased on the assurance that the parcel at 469 - 479 S. Old Woodward could not be built over five stories, and thus would not significantly obstruct southern sun or views even when developed. She continued:

- The effect of the proposed rezoning on the south-facing condominiums is already apparent, as one was taken off the market with no offers and two have been on the market for over 120 days, when in the last four years condominiums in Birmingham Place were on the market for less than 35 day.
- Sales of condominiums in other parts of the building have not fared better.
- A sixteen-year office tenant of Birmingham Place informed Ms. Prentice he would not be renewing his lease because he did not want his view to be obstructed by a hotel.
- Continued slow residential sales and rentals will decrease the taxable value of Birmingham Place and decrease tax revenue received by the City. The current taxable value of Birmingham Place is estimated at \$36 million which generates an estimated \$1.6 million in yearly property taxes to the City.
- Birmingham Place has 146 residential units.

Patrick Howe, attorney representing the Birmingham Place Commercial Condo Association, said:

- The Commission has to determine whether the whole of the downtown overlay district should be eligible to go from D4 to D5.
- The record reflects that this matter has only been considered by the Commission for a cumulative 18 minutes prior to this evening, in the context of discussing the applicability of the D5 ordinance to three non-conforming buildings.
- Birmingham's Master Plan speaks to compatible building heights, not whether it is appropriate for buildings to be built taller than five stories.
- According to Planning Director Ecker, the height maximum for a building zoned D5 on the 469 - 479 S. Old Woodward parcel would be 15 stories. In addition, Planning Director Ecker indicated that buildings across the street can be considered adjacent for the purpose of determining height

maximums. Given this, many more parcels could reasonably argue for a D5 rezoning, which would change the look of Woodward Ave.

- It would be most appropriate to explore the potential ramifications during the City's planning process rather than exclusively during the consideration of the rezoning of a single parcel.

Bob Clemente of 411 S. Old Woodward advised the Commission that he owns a couple of condominiums in Birmingham Place, and works in a Birmingham Place office where his employer has been a tenant since around 1985. Mr. Clemente agreed with Mr. Howe. He added:

- The goal of the 2016 Plan was to strengthen the spatial and architectural character of the downtown area in mass and scale with the immediate surroundings and the downtown tradition of two- to four- story buildings.
- Rezoning the 469 - 479 S. Old Woodward parcel stands to have an intensely negative impact on Birmingham Place over an eighteen-foot height difference.
- The applicant and their representative have made it clear that the building would be viable if they kept the D4 zoning on the parcel in question, but just prefer it to be D5.

Jason Abel, attorney for the Birmingham Place Development Master Association, said:

- The implications of 7.02(b)(5)(d) and 7.02(b)(2)(b)(1) would be the focus of his comments.
- The PB recommended the Commission consider the rezoning by a 4-3 vote, with two of the dissenting members asking why the rezoning would be required for enjoyment of use. Mr. Abel asserted they were not provided with an answer to that inquiry because the rezoning is not, in fact, necessary for the enjoyment of use.
- City staff reports show no finding of fact that would allow for the legitimate support of the applicant on this issue. The findings of fact only noted that under the current zoning classification all the same uses are permitted as under the D5 classification, and that the building is not part of the PAD.
- He challenges the applicant to prove that the property cannot be used under the D4 classification, as that is the fundamental consideration of 7.02(b)(2)(b)(1).
- Mr. Rattner argued that rezoning should be considered based on whether it is necessary in order to bestow the rights and usage common to an adjacent property to the property in question, which is not what the City ordinance says. The question the ordinance actually addresses is whether the current zoning allows for the enjoyment of property ownership.

Mickey Schwartz of Birmingham Place said the City's previous plans intentionally limited building height, and this matter should be considered as part of the current Master Planning process. He noted that a number of other buildings in the area have conformed to their D4 zoning and it has not been a problem for them.

Richard Huddleston, vice-president of Valstone Asset Management and office tenant at 260 E. Brown, explained that from November 2010 - December 2017 Valstone owned the commercial space at Birmingham Place. He continued:

- Valstone rescued the commercial space at Birmingham Place from foreclosure by purchasing the note, renovating the building, and turning it into one of the most desirable business addresses in southeastern Michigan.
- When 469 - 479 S. Old Woodward was on the market, he was approached by the real estate brokers to purchase the property. After running the numbers, he determined that the only way to make the parcel profitable would be to significantly obscure the southern view for the tenants of Birmingham Place, and he found that he would not in good conscience be able to do that.

Karl Sachs of 666 Baldwin Ct. said he would be concerned about the domino effect of granting D5 zoning to this parcel and other buildings along Woodward pursuing the same height increases through their own subsequent requests for rezoning.

Anthony Yousaif, one of the developers of the 469 - 479 S. Old Woodward parcel, yielded his time to Duraid Markus.

Duraid Markus introduced himself as one of the partners in the 469 - 479 S. Old Woodward development. Mr. Markus said:

- The project went back to the PB because the developers were unsure whether a D5 zoning allowed for the expansion of buildings, not only because the building had not been appropriately described as being outside of the PAD.
- City Attorney Currier had already opined that the parcel is eligible for D5 rezoning.
- When he considered purchasing the parcel, research into the City ordinances indicated rezoning should be possible subject to the owners entering into a SLUP.
- There are no other buildings in Birmingham where the middle building is zoned differently from the buildings on the left and the right.
- Rezoning to D5 would allow the proposed building to be stepped back, which would minimize the impact on Birmingham Place. Leaving the zoning at D4 would require the building to be built up to the lot line, resulting in far more obstruction for south-facing Birmingham Place tenants.
- The domino effect concern with rezoning leading to more rezoning is a red herring considering the loss of flexibility a developer experiences when agreeing to a SLUP. In many cases it is more likely that a developer would find it more beneficial to remain in D4 than to agree to a SLUP.

Alice Lezotte, a Birmingham Place resident, said that Birmingham Place is a vertical neighborhood and entreated the Commissioners to consider it as such, keeping in mind what they would want for their horizontal neighborhoods. She explained this discussion is a matter of quality of life, air, space, noise, and safety for the residents of Birmingham Place.

Fred Lavery, owner of the Audi Dealership on Woodward in Birmingham, said that as a business owner who has been party to SLUPs with the City he believes Mr. Markus is correct in saying that the City gains control by rezoning the parcel to D5 because of the SLUP requirement. The Triangle District, which is designed with consideration of New Urbanism, requires building heights from five to nine stories, meaning the precedent for taller buildings has already been set in Birmingham.

Paul Reagan, 997 Purdy, said he had occasion to attend the PB meeting on adjacent buildings and recalled it being said that it was nothing more than cleaning house for the two non-conforming buildings. The 555 Building and Birmingham Place are aberrations in Birmingham planning, not an appropriate standard. Mr. Reagan shared concern that this is an attempt to get a parcel rezoned in a way that would no longer be possible after the community has its say as part of the upcoming Master Planning process, and he urged the Commission not to let it go through. He asked the Commission to send the issue back to the PB with a focus on respecting the 2016 Plan and figuring out the issue of shared parking for the parcel.

Mayor Bordman closed the public hearing at 9:42 p.m.

Commissioner Hoff explained that she understood Birmingham Place residents' concerns, but the decision before the Commission is the rezoning of a parcel, not how that rezoning might affect the residents of Birmingham Place. She continued:

- Rezoning the parcel to D5 would not significantly change or benefit the streetscape versus a D4 parcel, despite the applicant's assertion that it would.
- When the PB determined which buildings would be part of the D5 zone, the decision specifically applied to those buildings. The ordinance specifies that it is "to allow for the extension or enlargement of existing legal non-conforming commercial buildings."
- She is concerned about setting a precedent for further D5 zoning. The condition of buildings of different heights in Birmingham already exists, and Birmingham is a beautiful city with it.
- Section 7.02(b)(2) states that rezoning must be proven necessary for the preservation and enjoyment of rights of usage, and she was not convinced that it is necessary.
- She would not be voting in favor of the rezoning.

Commissioner DeWeese said he did not understand the D5 zoning designation to be applicable to any buildings beyond the specific non-conforming buildings for which the designation was designed. He said he was not convinced the zoning needed to be changed for enjoyment of use, and that the 555 Building seems to be made up of two buildings, the shorter of which would be more appropriate to determine the height to which the proposed building at 469 - 479

- S. Old Woodward could go. While he said he would consider other points, at this time Commissioner DeWeese indicated he would not be voting to approve the rezoning.

Commissioner Sherman said the question of what buildings and areas would be appropriately included in the D5 zoning area, with specific attention from Haines to Brown, should be sent back

to the PB with a request for a definitive answer. No action should be taken on the motion because it is too related to the potential development in this case.

Commissioner DeWeese said he would be comfortable sending this back to the PB with the request that they pay particular attention to the issues broached this evening. He added that he was not comfortable with the 4-3 vote by the PB and would like more unanimity in their recommendation.

Mayor Bordman said she was not in favor of sending the matter back to the PB. She noted all the information the Commission had been provided with in order to make a decision and said it would not be appropriate to delay.

Commissioner Nickita said:

- The 200-foot right-of-way of the Woodward Corridor between the 555 Building and Birmingham Place on the west side and the west side of the Triangle District on the east side has been intentionally planned and developed as a high-density area.
- While the Downtown Overlay has always adhered to buildings that are no more than five stories in height, the Woodward Corridor has been built with taller buildings. For this reason, rezoning the parcel at 469 - 479 S. Old Woodward to D5 would not establish a precedent for the buildings in the Downtown Overlay. The D4 parcel in question is anomalous among the other buildings along the Woodward Corridor.
- The City has much more influence on any development at 469 - 479 S. Old Woodward if they change the zoning to D5 because of the SLUP requirement.
- The Citywide Master Plan is a broad view, and as such will not focus on specific zoning details like the question currently before the Commission.
- The ability to update non-conforming properties or parcels was the intention of the D5 classification. The ordinance was supposed to refer to whatever property is closest to the property in question in order to determine the maximum height. Because the ordinance language seems not to be clear on the issue, it would be inappropriate to vote on this since the definition of 'adjacent and abutting' is being interpreted more broadly than may have been originally intended. The point in the D5 ordinance language should be clarified so that an 'adjacent' building cannot be interpreted as a building across the street.

Mayor Pro Tem Boutros said he would like to see this studied as part of the Master Planning process.

Commissioner Harris said he agrees with Mayor Bordman that the decision should be made this evening. Referring to 7.02(2)(b)(2), he continued:

- He does not see a significant difference between the first criterion requiring rezoning for the necessity and preservation of enjoyment and rights and the second criterion requiring rezoning if the zoning classification is no longer appropriate. That said, the applicant made a

compelling case that parking is unfeasible with this parcel zoned to D4, which satisfies both criteria.

- He was hoping to hear how D5 zoning would resolve the issue of parking, but since the applicant sufficiently demonstrated that parking would be an issue in D4 the criteria were still met.
- A staff report from November 8, 2018 stated adhering to a D4 would be "completely inconsistent and dominated by the height of the adjacent Birmingham Place and 555 Buildings."
- The last criterion under 7.02(b)(2)(b) is "why the proposed zoning will not be detrimental to the surrounding properties." The applicant made a compelling case as to why D5 is better for Birmingham Place, and the SLUP requirement would allow the City to encourage the accommodation of the neighboring properties.
- Commissioner Nickita's assessment that there are limitations on when the D5 can be applied to future properties is accurate. There is no real risk of a 'slippery slope' with this zoning because this decision is not binding for any other decision. In addition, any building that sought to be rezoned to D5 would be subject to a SLUP.
- The risk level that the property owner assumed when buying the 469 - 479 S. Old Woodward parcel is irrelevant to the present discussion.
- Although the D5 was designed with the particular focus on the previous non-conforming properties, it was not restricted to only those non-conforming properties.
- For all those reasons, he is inclined to support the rezoning request.
- He also took heed of Commissioner Nikita's comments about the ambiguity in the ordinance, which he agrees should be addressed, but at a later date. The ambiguity does not dissuade him from approving the rezoning for this particular property.

Commissioner Hoff said there were valid reasons for sending this back to the PB, but she believed that a decision should be made.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner DeWeese: To deny the rezoning of 469 - 479 S. Old Woodward from B3/D4 to B3/D5.

City Attorney Carrier said he would have to research whether the applicant could submit a new application before a year's time elapses if the City makes changes to the D5 ordinance, because it might sufficiently constitute a material change in circumstance.

Mayor Bordman said she would be supporting the motion because she does not want the issue to go back to the PB.

VOTE: Yeas, 3
Nays, 4 (Boutros, Harris, Nickita, Sherman)

MOTION FAILED

MOTION: Motion by Commissioner Harris
To approve the rezoning of 469 - 479 S. Old Woodward from B3/D4 to B3/D5.

MOTION DIED FOR LACK OF A SECOND

MOTION: Motion by Mayor Pro Tem Boutros
To postpone the hearing to do a comprehensive study.

MOTION DIED FOR LACK OF SECOND

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Nickita:
To postpone the public hearing to July 22, 2019 for the purposes of sending it back to the Planning Board with specific direction to look at the issues raised by Commissioner Nickita on the D-5 ordinance and to look at the properties between Haines and Brown, Old Woodward and Woodward for the appropriate zoning classification.

Planning Director Ecker said the ordinance language could possibly be reviewed and brought back by July 22, 2019. She was not sure if the PB would reach consensus in three months on the geographic area to which the D5 zoning should be applied, since they have already studied the issue and were not able to reach consensus.

Commissioner Hoff said she would be interested in knowing whether building heights should be to the eaves or to the tallest structure on a building, and the specific meaning of the 'adjacent' and 'abutting' in the context of the ordinance.

Commissioner Sherman said he would be willing to change the date in the motion to allow an additional month of study.

Commissioner Nickita said it should not take four months to define the method of determining building height and the definitions of 'adjacent' and 'abutting'. He said it would be better to keep the date in the motion and to extend it if necessary.

Mayor Bordman invited public comment on the motion.

Mr. Rattner stated the applicant had no objection to the motion.

Mr. Schwartz said that all the interested parties have weighed in on the issue, and the Commission is in effect postponing a civic duty.

Mr. Bloom said he would like to know the impact on the City if the parcel is built up as a hotel, office building, mixed use space, or any other type of development. He would want the PB to

report on each building-type's likely impact on parking, public safety, density, and overall quality of life for Birmingham residents.

Mr. Reagan said 'adjacent' and 'abutting' were terms already discussed at the beginning of the 2016 planning process. In addition, the expansion of the geographic area being studied concerned Mr. Reagan because, as he stated, the neighborhood included within that area already deals with significant congestion, cut-through traffic, and parking issues. If these developments occur, there has to be sufficient parking accommodations. Mr. Reagan asserted parking shortages would stem the possible larger D5 developments the City is considering allowing.

Ms. Friedlaender said choosing to raise the heights of buildings should be part of a community study process, and all the buildings around the Merrillwood building should be included in this motion and studied since Merrillwood is also zoned D5.

Mr. Abel said the Commission should make a decision this evening.

Commissioner Hoff said Commissioner Nickita's concerns should be spelled out in the motion. Mayor Bordman agreed with Mr. Abel and Commissioner Hoff. She asked if there was a motion to amend in order to include Commissioner Nickita's comments. No motion to amend was offered.

VOTE:	Yeas,	2 (Nickita, Sherman)
	Nays,	5

MOTION FAILED

The Commission took no action. The property remains zoned D4.

Mayor Bordman referred the issue to City Attorney Currier to determine the specific terms under which the applicant may re-apply, since the application was not denied.

Mayor Bordman recessed the meeting for three minutes. The meeting resumed at 10:48 p.m.

DATE: March 4, 2019

TO: Joseph A. Valentine, City Manager

FROM: Jana L. Ecker, Planning Director

SUBJECT: Public hearing to consider the rezoning of 469 – 479 S. Old Woodward from B3/D4 to B3/D5

INTRODUCTION:

The owner of the above-captioned properties applied for rezoning from B3/D4 to B3/D5 to allow them to proceed with site plan review approval to demolish the existing one story Mountain King and Talmer Bank buildings, and construct a new 9 story hotel on the two properties.

BACKGROUND:

On June 27, 2018, the Planning Board conducted a public hearing to consider the requested rezoning of the properties located at 469 – 479 S. Old Woodward, currently the site of the former Mountain King restaurant and Talmer Bank. After much discussion, the Planning Board voted to recommend denial of the proposed rezoning to the City Commission.

The City Commission then set a public hearing date for August 13, 2018 to review the rezoning request.

On August 13, 2018, the applicant submitted a letter requesting that the City postpone the public hearing at the City Commission that was previously set to allow the applicant to present new information to the Planning Board for their review and consideration. Accordingly, the City Commission cancelled the public hearing and the matter was sent back to the Planning Board for reconsideration.

Section 7.02(6) of the Zoning Ordinance states:

If the City Commission denies the application, no application shall be reheard for at least one year, unless there have been substantial changes in the facts, evidence, and/or conditions demonstrated by the applicant. The determination of whether there have been such changes shall be made by the Planning Board at the time the application is submitted for processing.

Accordingly, section 7.02(6) of the Zoning Ordinance allows a rehearing on a rezoning request where there is a substantial change in the evidence that was previously presented even after the City Commission has issued a denial of the request. In this case, the City Commission did not hear the request, and thus did not issue an approval or denial. They did however send the matter back to the Planning Board to determine if there has been a substantial change in the evidence, and if so, to conduct a rehearing on the rezoning request previously considered.

On September 12, 2018, the Planning Board considered the applicant's request for a rehearing based on new information. After much discussion, the Planning Board voted to postpone consideration of the public hearing until October 10, 2018, pending receipt of a legal opinion of counsel in writing as to whether the proposed properties are eligible to be rezoned to the D5 category.

On October 10, 2018, the Planning Board again considered the applicant's request for a rehearing, and after further discussion, voted to grant a rehearing based on the substantial change in the evidence that was presented to the Board on June 27, 2018. However, the Planning Board further voted to conduct the public rehearing of the rezoning on November 14, 2018.

On both November 14, 2018 and again on December 12, 2018, the applicant requested postponement of the rehearing to allow additional time for the developer and property owner to meet with the adjacent property owners. Thus, the matter was ultimately postponed until the January 23, 2019 meeting of the Planning Board.

On January 23, 2019, the Planning Board conducted a public rehearing to consider the requested rezoning of the properties. After much discussion, the Planning Board voted 4-3 in favor of recommending approval of the proposed rezoning to the City Commission and adopted the findings of fact contained in the staff report dated November 8, 2018.

On February 11, 2019, the City Commission set a public hearing for March 11, 2019 to consider the proposed rezoning for the properties located at 469 – 479 S. Old Woodward.

LEGAL REVIEW:

No legal review is required.

FISCAL IMPACT:

There is no fiscal impact for this agenda item.

SUMMARY:

The City Commission is set to conduct a public hearing to consider the requested rezoning of the properties located at 469 – 479 S. Old Woodward from B3/D4 to B3/D5.

In the alternative, the City Commission could also consider approving the placement of the properties at 469 – 479 S. Old Woodward into the Parking Assessment District, and charging the required assessment fee. This would eliminate the onsite parking requirements for all retail and commercial uses., although parking for any proposed residential units would still be required on site.

ATTACHMENTS:

Please find attached the following documents for your review:

- Rezoning application and supporting documents submitted by applicant
- Letter from the City Attorney dated September 11, 2018 and October 1, 2018
- Staff reports prepared for the Planning Board
- All relevant City Commission and Planning Board meeting minutes
- All letters and petitions received for and against the proposed rezoning

SUGGESTED RESOLUTION:

To APPROVE the rezoning of 469 – 479 S. Old Woodward from B3/D4 to B3/D5;

OR

To DENY the rezoning of 469 – 479 S. Old Woodward from B3/D4 to B3/D5;

OR

To POSTPONE the hearing on the rezoning of 469 – 479 S. Old Woodward from B3/D4 to B3/D5 to _____, 2019;

AND / OR

To direct the Advisory Parking Committee to review the properties at 469 – 479 S. Old Woodward for inclusion into the Parking Assessment District, and to provide a recommendation to the City Commission.

APPLICATION & SUPPORTING DOCUMENTS FROM APPLICANT

APPLICATION FOR ZONING MAP OR ORDINANCE CHANGE Birmingham, Michigan

TO THE CITY COMMISSION:

The undersigned hereby makes application to the City Commission to:

1. Zoning Map Change:

Change premises described as:

479 South Old Woodward Avenue

No. Street
Tax ID #: 19-36-208-012; see documents for more information

Legal Description

from its present zoning

classification of B3/D4 to B3/D5.

A sealed land survey showing location, size of lot and placement of building (if any) on the lot to scale must be attached.

Statements and reason for request or other data have a direct bearing on the request.

2. Change premises described as:

No.

Street

Legal Description

from its present zoning

classification of _____ to _____.

A sealed land survey showing location, size of lot and placement of building (if any) on the lot to scale must be attached.

Statements and reasons for request or other data have a direct bearing on the request.

Signature of Applicant: _____

Print Name: Christopher J. Longe

Name of Owner: Birmingham Tower Parters, LLC

Address and Telephone Number: 251 East Merrill Street, Suite 205

Birmingham, Michigan 48009

CITY OF BIRMINGHAM
Date 05/07/2018 10:31:32 AM
Ref 00148181
Receipt 426908
Amount \$1,550.00

CITY OF BIRMINGHAM
Date 05/07/2018 10:31:32 AM
Ref 00148182
Receipt 426908
Amount \$100.00

APPLICATION FOR ZONING MAP OR ORDINANCE CHANGE
Birmingham, Michigan

A letter of authority, or power of attorney, shall be attached in case the appeal is made by a person other than the actual owner of the property.

Date Received: _____ Received By: _____

Resolution No. _____ Approved/Denied _____

Application Fee: \$1,500.00 Receipt Number _____

The petitioner shall be responsible for any costs incurred by consultant, 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.

ZONING MAP OR ORDINANCE AMENDMENT PROCEDURE

Procedure to be followed on all applications for Zoning Map or Ordinance amendments.

1. Preliminary discussion with the Community Development Director or City Planner.
2. Formal application to City Commission with the following information:
 - a) Change requested
 - b) Signature and name of persons requesting change
 - c) Reasons for requested change
3. City Commission will refer request to the Planning Board for recommendation and final report.
4. Planning Board will hold a public hearing prior to which a notice will be published in an official paper or a paper of general circulation not less than fifteen (15) days prior to the hearing.
5. At the conclusion of a public hearing, the Planning Board will forward a recommendation of the Zoning Map or Ordinance amendment request. The City Commission may, by ordinance, change the Zoning Map or Ordinance only after the Planning Board had held at least one (1) public hearing regarding the proposed amendment and has reported to the City Commission thereon. The City Commission may hold additional public hearings as it deems necessary.
6. Upon the presentation of protest petition meeting the requirements listed below, an amendment to the Zoning Map or Ordinance which is the object of the petition shall be passed only by a three-fourths (3/4) vote of the City Commission. The protest petition shall be presented to the City Commission before final action on the amendment, and shall be signed by one (1) of the following:
 - a) The owners of at least twenty percent (20%) of the area of land included in the proposed change.
 - b) The owners of at least twenty percent (20%) of the area of the land included within an area extending outward one hundred (100) feet from any point on the boundary of the land included in the proposed change.

For the purpose of calculating the twenty percent (20%) requirement, publicly-owned land shall be excluded.

7. The City Commission will then take action on the application upon review of the Planning Board's recommendation and approved minutes of the Public Hearing.
8. Following adoption of a Zoning Map or Ordinance change by the City Commission, one (1) notice of adoption shall be published in the newspaper of general circulation in the City within fifteen (15) days after adoption.

CITY OF BIRMINGHAM
Date 05/07/2018 10:31:32 AM
Ref 00148179
Receipt 426908
Amount \$1,550.00

APPLICATION FOR ZONING MAP OR ORDINANCE CHANGE
Birmingham, Michigan

TO THE CITY COMMISSION:

The undersigned hereby makes application to the City Commission to:

1. Zoning Map Change:

Change premises described as:

469 South Old Woodward Avenue

No. Street
Tax ID #: 19-36-208-011; see documents for more information

Legal Description
_____ from its present zoning

classification of B3/D4 to B3/D5.

A sealed land survey showing location, size of lot and placement of building (if any) on the lot to scale must be attached.

Statements and reason for request or other data have a direct bearing on the request.

2. Change premises described as:

No. Street
_____ Legal Description
_____ from its present zoning

classification of _____ to _____.

A sealed land survey showing location, size of lot and placement of building (if any) on the lot to scale must be attached.

Statements and reasons for request or other data have a direct bearing on the request.

Signature of Applicant: 

Print Name: Christopher J. Longe

Name of Owner: Birmingham Tower Parters, LLC

Address and Telephone Number: 251 East Merrill Street, Suite 205

Birmingham, Michigan 48009

CITY OF BIRMINGHAM
Date 05/07/2018 10:31:32 AM
Ref 00148180
Receipt 426908
Amount \$100.00

APPLICATION FOR ZONING MAP OR ORDINANCE CHANGE
Birmingham, Michigan

A letter of authority, or power of attorney, shall be attached in case the appeal is made by a person other than the actual owner of the property.

Date Received: _____ Received By: _____

Resolution No. _____ Approved/Denied _____

Application Fee: \$1,500.00 Receipt Number _____

The petitioner shall be responsible for any costs incurred by consultant, 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.



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

380 North Old Woodward Avenue
Suite 300
Birmingham, Michigan 48009

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

May 17, 2018

Richard D. Rattner
rdr@wwrplaw.com

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

Re: Application to include 469 and 479 S. Old Woodward, Birmingham, MI
("Subject Property") in the D5 Downtown Birmingham Overlay District
Zone ("Application")

Dear Members of the Planning Board and City Commission:

Please accept this letter from the property owner ("Property Owner") of 469 and 479 S. Old Woodward ("Property") as a Supplement to the referenced rezoning Application file to rezone the Subject Property from the D-3 Zone to the D-5 Overlay Zone in the Downtown Birmingham Overlay District.

Executive Summary

The Subject Property is a former single-story restaurant building and bank that sits between two existing tall buildings in the City. Birmingham Place is located to the north and the 555 Buildings are located to the south. The placement of the buildings is not only inconsistent with a cohesive and harmonious streetscape in that area but is contrary to the intent of the Master Plan. This inconsistent height results in a streetscape along South Old Woodward that appears to have a "missing tooth."

If the Subject Property is rezoned to D-5, there is an excellent opportunity for the Subject Property, Birmingham Place and the 555 Buildings to create an impressive southern gateway to Downtown Birmingham. It is therefore reasonable that the Subject Property, sitting directly between the 555 Buildings and Birmingham Place, be included in the same zoning district, that is as part of the D-5 Overlay District, as those neighboring two buildings.

Rezoning the Subject Property to the same classification as the buildings immediately to the north and south will enhance and complete the streetscape of these important two blocks of Downtown Birmingham. Inclusion of the Subject Property in the D-5 Overlay Zone is consistent with the 2016 Master Plan. Moreover, it will allow the Subject Property to enjoy the same development regulations as the neighboring properties.

The Subject Property and the Master Plans

A review of the history surrounding the zoning of this area of Downtown is instructive. The minutes of the City Commission during the late 1960s and early 1970s, reveals that the height of the buildings in this area of Downtown were historically zoned for the height of the 555 Buildings and Birmingham Place. However, the zoning ordinance was amended in the 1970's after the construction of those buildings to a maximum of four stories. Therefore, for several years, the taller buildings in the City were burdened with the status of legal nonconforming uses.

In 2016, the City corrected this down zoning for the 555 Building to the south and Birmingham Place to the north, with the creation of the D-5 Zone to allow for existing heights (in the case of the 555 Buildings and Birmingham Place) and to allow for new construction to a height up to the same height of an immediately adjacent or abutting building (see Ordinance 3.04-4-b). While the 555 Building and Birmingham Place are now at allowable heights, sitting in between them, the Subject Property is the only building in that streetscape that cannot be constructed to a height that is consistent to its neighbors. This inconsistency creates an obvious gap in the street's architecture which is not harmonious with the overall downtown design and longer-range plan for that part of South Old Woodward.

The Birmingham of 2016

In 1996, the City Commission adopted the Downtown Birmingham 2016 Plan ("2016 Plan") and amended the Zoning Ordinance to include the Downtown Birmingham Overlay District. The Subject Property is located in the D-3 Zone, sitting between two tall buildings in the City that have been rezoned to the D-5 zone. These multi-story buildings are the established character of this particular area of the City. Placing the Subject Property in the D-5 zone would allow development of the Subject Property to be at a similar height to the buildings directly to the north and south. The Applicant desires to develop the Subject Property in a manner that completes the block between Brown and Hazel while adding to the cohesiveness of the South Old Woodward southern gateway area.

The Birmingham Zoning Ordinance at Sec. 1.04 provides that the purpose of the Zoning Ordinance is to "...guide the growth and development of the City in accordance with the goals, objectives and strategies stated within the Birmingham Master Plan ("Birmingham Plan"), and Downtown Birmingham 2016 Plan. A review of the Birmingham Plan (1980) and the Downtown Birmingham 2016 Plan (1996) reveals that this application to include the Subject Property in a D-5 Overlay District meets the spirit and intent of the ordinance as well as the 2016 Plan. It will allow for mixed uses and add to the vitality of the modern streetscape envisioned for this part of town by the 2016 Plan. With rezoning, the Subject Property can become that desired mixed-use space for retail, residential and hotel, and bring new life to the South Old Woodward area.

Any redevelopment of the Subject Property in compliance with its current zoning classification would result in a building with frontage dwarfed by the existing neighboring structures. Therefore, by rezoning the Subject Property to the D-5 overlay, a new building could be built to a similar height as the neighboring buildings, and effectively complete an otherwise missing piece of the streetscape.

In summary, it is clear that the intent of the 2016 Plan includes development of this southern area of the Downtown Overlay District as a gateway to Downtown through enhancing the character of buildings and providing our City with an active, pedestrian-friendly, urban streetscape.

Rezoning Amendment – Sec. 7.02 (B)(2)(b)(i)-(iii)

The Zoning Ordinance at Sec. 7.02 requires that as part of an application for rezoning, the petitioner should address certain issues to be considered by the Planning Board and the City Commission. Please consider the following comments with respect to these issues.

7.02(B)(2)(b)(i) - An Explanation of Why the Rezoning is Necessary for the Preservation and Enjoyment of the Rights and Usage Commonly Associated with Property Ownership

Rezoning of the Subject Property is necessary to preserve the Applicant's enjoyment of rights associated with ownership of a property zoned for mixed uses. Because of the size and corner configuration of the parcel, it will not support street-level retail, residential, and parking for residents in the same manner as the neighboring properties. The 2016 Plan clearly anticipates mixed use developments. Such planning requires space to design and locate mixed uses within a given structure. Without the ability to go higher with a new building than current zoning allows, the Applicant will not have the required area within which to locate a mix of uses, or otherwise to be able to enjoy all of the allowed uses that would commonly be associated the design of such a modern, mixed-use building. Furthermore, the D-5 Ordinance, at section 3.04-4-b, anticipates that the Subject Property and those similarly situated may enjoy the same rights of usage through an extension of height as other existing tall buildings already enjoy in the D-5 Overlay District.

Sec. 7.02(B)(2)(b)(ii) - An Explanation of Why the Existing Zoning Classification is No Longer Appropriate

The existing D-3 zoning classification is no longer appropriate for the Subject Property. The Subject Property is surrounded by the Birmingham Place, a ten-story building on the north side and the 555 Buildings, a fifteen-story building on the south side. This height is an established pattern in this area of the City. This rezoning request is actually an "infill" rezoning to bring the entire area into architectural and design harmony with surrounding buildings. It is reasonable for the Subject Property to share the same zoning classification as its surrounding neighbors. This would allow development of the property in a manner consistent with the

existing structures from Brown Street south to Haynes Street. It will create a more unified block and enhance the character of the gateway area to Downtown Birmingham. The rezoning of the Subject Property would restore the property to a zoning classification this area of the City once enjoyed, as the Planning Board has done for with Birmingham Place and the 555 Buildings. Hence, given the location of the Subject Property sandwiched between two properties in the D-5 Zone, the D-3 Zone is no longer appropriate.

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

The proposed rezoning of the Subject Property is not detrimental to surrounding property owners. Note that the proposed rezoning does not extend the D-5 classification further to the north or south of the current D-5 Zoning, but actually fills in the one gap in the streetscape that is noticeably out of place and anachronistically remains in the D-3 Zone. The surrounding properties to the north and south already are in the D-5 Zone. When these neighboring properties were rezoned, the Planning Board anticipated that eventually the Subject Property also may be rezoned for the reasons stated in this letter. Placing the Subject Property in D-5 Zone will be placing it on equal footing with the surrounding properties from a structural, use and design perspective. The proposed rezoning will enhance the entire area by allowing it to be developed as an attractive part of the South Old Woodward gateway and bring that area into compliance with the spirit and intent of the 2016 Master Plan.

Conclusion

The Applicant respectfully requests that the City Commission rezone the Subject Property from the D-3 to the D-5 Zone as discussed in this letter.

Very truly yours,

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

A handwritten signature in black ink, appearing to read "Richard D. Rattner", written in a cursive style.

Richard D. Rattner

RDR/cmc

Corrected
May 17, 2018

Richard D. Rattner
rdr@wwrplaw.com

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

Re: Application to include 469 and 479 S. Old Woodward, Birmingham, MI
("Subject Property") in the D5 Downtown Birmingham Overlay District
Zone ("Application")

Dear Members of the Planning Board and City Commission:

Please accept this letter from the property owner ("Property Owner") of 469 and 479 S. Old Woodward ("Property") as a Supplement to the referenced rezoning Application file to rezone the Subject Property from the **D-4 Zone** to the **D-5 Overlay Zone** in the Downtown Birmingham Overlay District.

Executive Summary

The Subject Property is a former single-story restaurant building and bank that sits between two existing tall buildings in the City. Birmingham Place is located to the north and the 555 Buildings are located to the south. The placement of the buildings is not only inconsistent with a cohesive and harmonious streetscape in that area but is contrary to the intent of the Master Plan. This inconsistent height results in a streetscape along South Old Woodward that appears to have a "missing tooth."

If the Subject Property is rezoned to D-5, there is an excellent opportunity for the Subject Property, Birmingham Place and the 555 Buildings to create an impressive southern gateway to Downtown Birmingham. It is therefore reasonable that the Subject Property, sitting directly between the 555 Buildings and Birmingham Place, be included in the same zoning district, that is as part of the D-5 Overlay District, as those neighboring two buildings.

Rezoning the Subject Property to the same classification as the buildings immediately to the north and south will enhance and complete the streetscape of these important two blocks of Downtown Birmingham. Inclusion of the Subject Property in the D-5 Overlay Zone is consistent with the 2016 Master Plan. Moreover, it will allow the Subject Property to enjoy the same development regulations as the neighboring properties.

The Subject Property and the Master Plans

A review of the history surrounding the zoning of this area of Downtown is instructive. The minutes of the City Commission during the late 1960s and early 1970s, reveals that the height of the buildings in this area of Downtown were historically zoned for the height of the 555 Buildings and Birmingham Place. However, the zoning ordinance was amended in the 1970's after the construction of those buildings to a maximum of four stories. Therefore, for several years, the taller buildings in the City were burdened with the status of legal nonconforming uses.

In 2016, the City corrected this down zoning for the 555 Building to the south and Birmingham Place to the north, with the creation of the D-5 Zone to allow for existing heights (in the case of the 555 Buildings and Birmingham Place) and to allow for new construction to a height up to the same height of an immediately adjacent or abutting building (see Ordinance 3.04-4-b). While the 555 Building and Birmingham Place are now at allowable heights, sitting in between them, the Subject Property is the only building in that streetscape that cannot be constructed to a height that is consistent to its neighbors. This inconsistency creates an obvious gap in the street's architecture which is not harmonious with the overall downtown design and longer-range plan for that part of South Old Woodward.

The Birmingham of 2016

In 1996, the City Commission adopted the Downtown Birmingham 2016 Plan ("2016 Plan") and amended the Zoning Ordinance to include the Downtown Birmingham Overlay District. The Subject Property is located in the **D-4**

Zone, sitting between two tall buildings in the City that have been rezoned to the D-5 zone. These multi-story buildings are the established character of this particular area of the City. Placing the Subject Property in the D-5 zone would allow development of the Subject Property to be at a similar height to the buildings directly to the north and south. The Applicant desires to develop the Subject Property in a manner that completes the block between Brown and Hazel while adding to the cohesiveness of the South Old Woodward southern gateway area.

The Birmingham Zoning Ordinance at Sec. 1.04 provides that the purpose of the Zoning Ordinance is to "...guide the growth and development of the City in accordance with the goals, objectives and strategies stated within the Birmingham Master Plan ("Birmingham Plan"), and Downtown Birmingham 2016 Plan. A review of the Birmingham Plan (1980) and the Downtown Birmingham 2016 Plan (1996) reveals that this application to include the Subject Property in a D-5 Overlay District meets the spirit and intent of the ordinance as well as the 2016 Plan. It will allow for mixed uses and add to the vitality of the modern streetscape envisioned for this part of town by the 2016 Plan. With rezoning, the Subject Property can become that desired mixed-use space for retail, residential and hotel, and bring new life to the South Old Woodward area.

Any redevelopment of the Subject Property in compliance with its current zoning classification would result in a building with frontage dwarfed by the existing neighboring structures. Therefore, by rezoning the Subject Property to the D-5 overlay, a new building could be built to a similar height as the neighboring buildings, and effectively complete an otherwise missing piece of the streetscape.

In summary, it is clear that the intent of the 2016 Plan includes development of this southern area of the Downtown Overlay District as a gateway to Downtown through enhancing the character of buildings and providing our City with an active, pedestrian-friendly, urban streetscape.

Rezoning Amendment – Sec. 7.02 (B)(2)(b)(i)-(iii)

The Zoning Ordinance at Sec. 7.02 requires that as part of an application for rezoning, the petitioner should address certain issues to be considered by the Planning Board and the City Commission. Please consider the following comments with respect to these issues.

7.02(B)(2)(b)(i) - An Explanation of Why the Rezoning is Necessary for the Preservation and Enjoyment of the Rights and Usage Commonly Associated with Property Ownership

Rezoning of the Subject Property is necessary to preserve the Applicant's enjoyment of rights associated with ownership of a property zoned for mixed uses. Because of the size and corner configuration of the parcel, it will not support street-level retail, residential, and parking for residents in the same manner as the neighboring properties. The 2016 Plan clearly anticipates mixed use developments. Such planning requires space to design and locate mixed uses within a given structure. Without the ability to go higher with a new building than current zoning allows, the Applicant will not have the required area within which to locate a mix of uses, or otherwise to be able to enjoy all of the allowed uses that would commonly be associated the design of such a modern, mixed-use building. Furthermore, the D-5 Ordinance, at section 3.04-4-b, anticipates that the Subject Property and those similarly situated may enjoy the same rights of usage through an extension of height as other existing tall buildings already enjoy in the D-5 Overlay District.

Sec. 7.02(B)(2)(b)(ii) - An Explanation of Why the Existing Zoning Classification is No Longer Appropriate

The existing **D-4** zoning classification is no longer appropriate for the Subject Property. The Subject Property is surrounded by the Birmingham Place, a ten-story building on the north side and the 555 Buildings, a fifteen-story building on the south side. This height is an established pattern in this area of the City. This rezoning request is actually an "infill" rezoning to bring the entire area into architectural and design harmony with surrounding buildings. It is reasonable for the Subject Property to share the same zoning classification as its surrounding neighbors. This would allow development of the property in a manner consistent with the

existing structures from Brown Street south to Haynes Street. It will create a more unified block and enhance the character of the gateway area to Downtown Birmingham. The rezoning of the Subject Property would restore the property to a zoning classification this area of the City once enjoyed, as the Planning Board has done for with Birmingham Place and the 555 Buildings. Hence, given the location of the Subject Property sandwiched between two properties in the D-5 Zone, the **D-4** Zone is no longer appropriate.

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

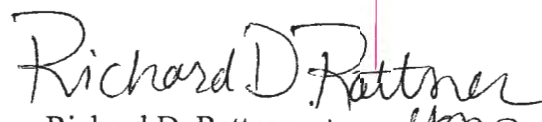
The proposed rezoning of the Subject Property is not detrimental to surrounding property owners. Note that the proposed rezoning does not extend the D-5 classification further to the north or south of the current D-5 Zoning, but actually fills in the one gap in the streetscape that is noticeably out of place and anachronistically remains in the **D-4** Zone. The surrounding properties to the north and south already are in the D-5 Zone. When these neighboring properties were rezoned, the Planning Board anticipated that eventually the Subject Property also may be rezoned for the reasons stated in this letter. Placing the Subject Property in D-5 Zone will be placing it on equal footing with the surrounding properties from a structural, use and design perspective. The proposed rezoning will enhance the entire area by allowing it to be developed as an attractive part of the South Old Woodward gateway and bring that area into compliance with the spirit and intent of the 2016 Master Plan.

Conclusion

The Applicant respectfully requests that the City Commission rezone the Subject Property from the **D-4** to the D-5 Zone as discussed in this letter.

Very truly yours,

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


Richard D. Rattner *by [signature]*

RDR/cmc

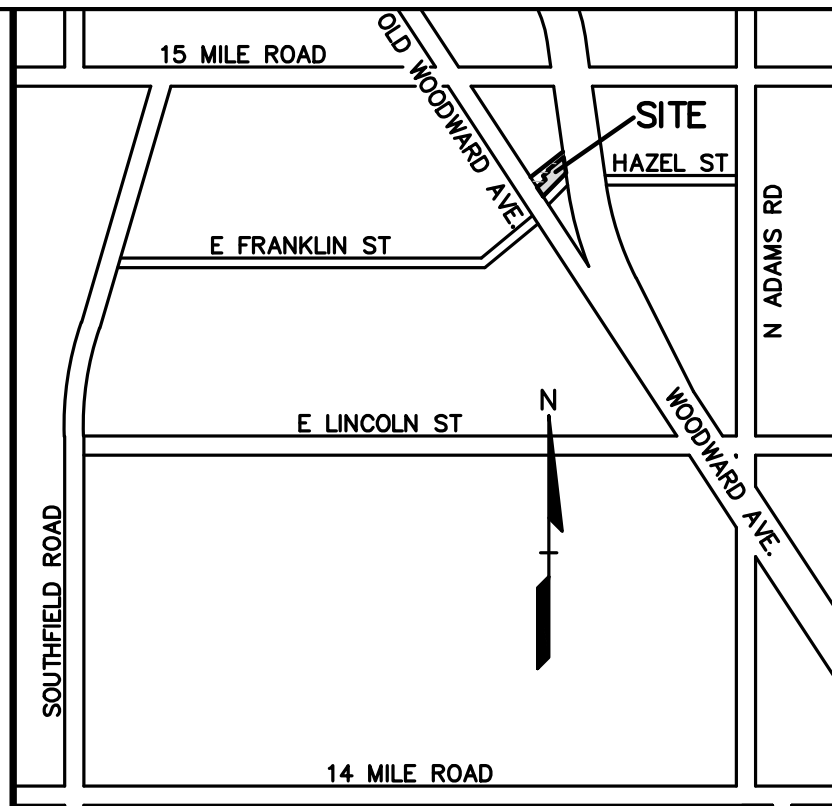
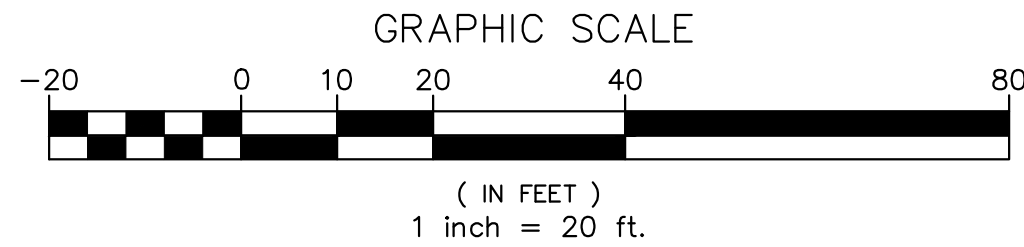
BENCHMARKS:
(GPS DERIVED - NAVD88)

BM #300
BENCH TIE IN NORTH FACE OF
U-POLE, SOUTHWEST CORNER HAZEL
STREET AND WOODWARD AVENUE
(HUNTER BOULEVARD)
ELEV. = 765.98

BM #301
TOP OF NORTHEAST ANCHOR BOLT
OF LIGHT POLE BASE, NORTHEAST
CORNER OF HAZEL STREET AND OLD
WOODWARD AVENUE
ELEV. = 766.58

FLOOD PLAN:

BY GRAPHICAL PLOTTING, SITE IS WITHIN ZONE "X",
AREA DETERMINED TO BE OUTSIDE OF THE 0.2%
ANNUAL CHANCE FLOODPLAIN PER FLOOD INSURANCE
RATE MAP NUMBER 26125C0537F (PANEL 537 OF 704),
DATED SEPTEMBER 29, 2006.



LOCATION MAP - NOT TO SCALE

NO.	DATE	REV.	BY	DESCRIPTION
1	04/15/2017	01	AL	ISSUED FOR PERMITS

REVISIONS

CAUTION!!
THE LOCATIONS AND ELEVATIONS OF EXISTING
UNDERGROUND UTILITIES AS SHOWN ON THIS
DRAWING ARE ONLY APPROXIMATE. NO GUARANTEE IS
GIVEN THAT THE UTILITIES ARE EXACTLY AS SHOWN.
THE CONTRACTOR SHALL BE RESPONSIBLE FOR
VERIFYING THE EXACT UTILITY LOCATIONS AND
ELEVATIONS PRIOR TO THE START OF CONSTRUCTION.

THIS DRAWING AND DESIGN ARE THE PROPERTY OF
PEA, INC. AND ARE NOT TO BE REPRODUCED, COPIED,
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CONSTRUCTION CONTRACTOR AGREES THAT IN
ACCORDANCE WITH GENERALLY ACCEPTED
CONSTRUCTION PRACTICES, CONSTRUCTION
CONTRACTOR SHALL BE RESPONSIBLE FOR ASSUMING SOLE
AND COMPLETE RESPONSIBILITY FOR JOB SET
CONNECTIONS DURING THE COURSE OF CONSTRUCTION
OF THE PROJECT, INCLUDING SAFETY OF ALL PERSONS
AND PROPERTY. THAT THE REQUIREMENT SHALL BE
MADE TO APPLY CONTINUOUSLY AND NOT BE LIMITED
TO NORMAL WORKING HOURS AND CONSTRUCTION
CONTRACTOR FURTHER AGREES TO DEFEND, INDEMNIFY
AND HOLD DESIGN PROFESSIONAL HARMLESS FROM ANY
AND ALL LIABILITY REAL OR ALLEGED IN CONNECTION
WITH THE PERFORMANCE OF WORK ON THIS PROJECT
EXCEPTING LIABILITY ARISING FROM THE SOLE
NEGLECTANCE OF THE DESIGN PROFESSIONAL.

**3 FULL WORKING DAYS
BEFORE YOU DIG CALL**

811

Know what's below
Call before you dig

Miss Dig System, Inc.

1-800-482-7171 www.missdig.net

(TOLL FREE)



PEA, Inc.

2430 Rochester Ct, Ste 100
Troy, MI 48063-1872
T: 248.689.9090
F: 248.689.1044
www.peainc.com

MARKUS ASSOCIATES, LLC BIRMINGHAM, MI 48009		TOPOGRAPHIC & ALTA/NSPS LAND	
TITLE SURVEY-HAZEL ST./WOODWARD		PART OF THE NE 1/4 OF SECTION 36, T. 02N., R. 10E., CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN	
DES.	DN.	DLC/CS	JPB
		SUR.	P.M.
S:\PROJECTS\2017\2017-093 HAZEL STREET & WOODWARD AVE - PEA\SURVEY-DEPT\T0204\TA\T0204.TA.dwg			

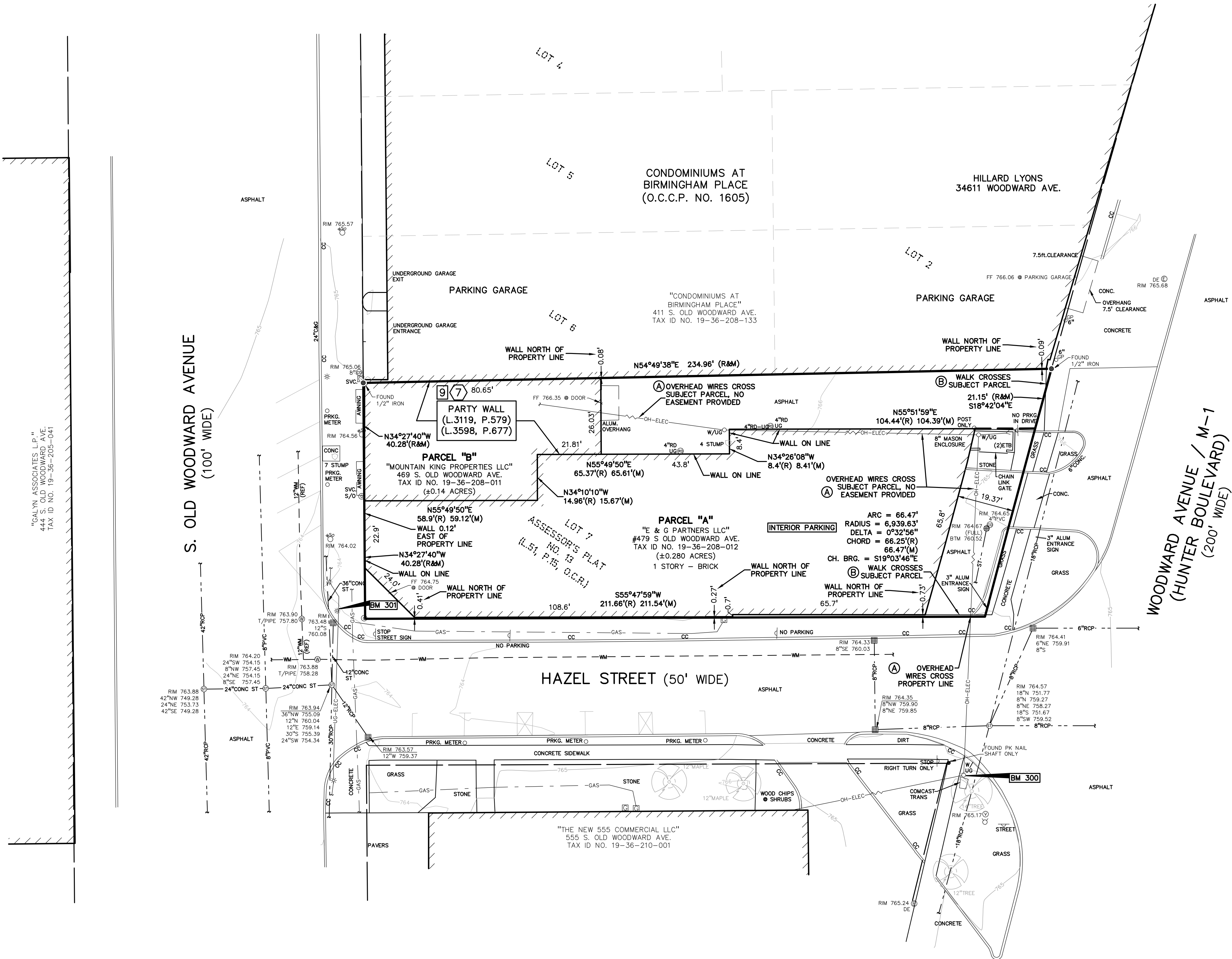
ORIGINAL ISSUE DATE:
APRIL 15, 2017

PEA JOB NO. 2017-093

SCALE: 1" = 20'

DRAWING NUMBER:

1 OF 2



PARCEL "A" LEGAL DESCRIPTION

(per Fidelity National Title Insurance Company, Commitment No. 17–110744, dated January 5, 2017)

Land situated in the City of Birmingham, County of Oakland, and State of Michigan, described as:

South part of Lot 7 of ASSESSOR'S PLAT NO. 13, City of Birmingham, according to the plat thereof, as recorded in Liber 51 of Plats, Page 15, Oakland County Records, described as beginning at Southwest corner Lot 7; thence Northerly on West line said Lot, 40.28 feet; thence Easterly 58.9 feet; thence Northerly at right angle 14.96 feet; thence Easterly at right angle 65.37 feet; thence Northerly at right angle 8.4 feet; thence Easterly at right angle 104.44 feet to East line said Lot; thence Southerly along East lot line, 66.25 feet to Southeast corner said Lot; thence Westerly along South lot line 211.66 feet to point of beginning.

PARCEL "A" SURVEYOR'S NOTES:

- A

Overhead wires run through the subject parcel and cross the property lines as shown, no easement provided.

B

Walk runs through the subject parcel and cross the property lines as shown.

C

Property line matches existing exterior walls and interior party walls on the north side of the subject parcel.

D

Parking on the subject parcel is enclosed in the existing building, no access available at the time of the survey.

E

The current zoning classification was not provided by the client, as item 6(a) in table a of the "minimum standard detail requirements for ALTA/NSPS land title surveys," states.
- PARCEL "A" SCHEDULE BII EXCEPTIONS
- (per Fidelity National Title Insurance Company, Commitment No. 17–110744, dated January 5, 2017)
- 1

Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.

2

Standard exceptions set forth in jacket.

3

Taxes and/or assessments which become a lien or become due and payable subsequent to the effective date herein.

4

No liability is assumed by the Company for tax increase occasioned by retroactive revaluation or change in land usage status for the Land.

5

Rights of tenants under unrecorded leases and any and all parties claiming by, through and thereunder.

6

Rights of the public to any portion of the Land lying within the bounds of any street, road, alley or highway.

7

Possible deficiencies in the creation, organization or authority of the Insured or its agent to acquire or hold the Title.

8

Railroad line, switches and spur tracks, if any, and all rights therein. [No Railroad line, switches & spur tracks observed at the time of the survey.]

9

An instrument entitled Party Wall Agreement, Recording No: Liber 3119, Page 579 and re–recorded in Liber 3598, Page 677. [As plotted.]
- PARCEL "B" LEGAL DESCRIPTION
- (per First American Title Insurance Company, Commitment No. TC13–69882, dated February 9, 2017)
- Land situated in the City of Birmingham, County of Oakland, and State of Michigan, described as:
- The Northerly part of Lot 7 of ASSESSOR'S PLAT NO. 13, according to the plat thereof recorded in Liber 51 of Plats, page 15, Oakland County Records, City of Birmingham, Oakland County, Michigan, described as beginning at the Northwesterly corner of said Lot 7 on the Easterly line of 100 foot Woodward Avenue; thence Easterly along Northerly line of said Lot, a distance of 234.96 feet to the Westerly line of 200 foot Hunter Blvd. of the Northeast corner of said Lot 7; thence Southerly along the Westerly line of said Hunter Blvd. or Easterly line of said Lot 7, a distance of 21.15 feet to extension of North face of wall of garage building located on Southerly part of said Lot 7; thence Westerly along said extension of North face of wall and along said North face of wall 104.44 feet to a corner of said garage building; thence Southerly at right angles along Westerly face of wall of said garage building 8.40 feet to a corner of said garage building; thence Westerly at right angles along North face of wall of said garage building 65.37 feet to a corner of said garage building; thence Southerly at right angles along West face of wall of said garage building 14.96 feet to a corner of said garage building; thence Westerly at rights angles along North face of wall of said garage building and extension of same 58.90 feet to Westerly line of said Lot 7; thence Northerly along said Westerly line 40.28 feet to the point of beginning.
- PARCEL "B" SURVEYOR'S NOTES:
- A

Overhead wires run through the subject parcel and cross the property lines as shown, no easement provided.

B

Walk runs through the subject parcel and cross the property lines as shown.

C

Property line matches existing exterior walls and interior party walls on the south side of the subject parcel.

D

The current zoning classification was not provided by the client, as item 6(a) in table a of the "minimum standard detail requirements for ALTA/NSPS land title surveys," states.

PARCEL "B" SCHEDULE BII EXCEPTIONS

(per First American Title Insurance Company, Commitment No. TC13–69882, dated February 9, 2017)

1

The Company does not make any representation as to the value of the property.

2

Rights of the public and any governmental unit in any part of the land taken, deeded or used for street, road or highway purposes.

3

Any provisions contained in any instruments of record which provisions pertain to the transfer of divisions under Section 109(2) of the Subdivision Control Act of 1967, as amended.

4

Taxes which are a lien pursuant to Public Act 143 of 1995 and any other taxes and/or assessments which become a lien or become due and payable subsequent to the date of the commitment, including all assessments for weed cutting, grass cutting or any other matters for which City services were provided but not assessed against the tax rolls prior to the effective date of the Commitment.

5

This Policy does not insure against any delinquent or current water charges pertaining to the subject matter property as the parties failed to produce a final meter reading and/or final paid water bill prior to Closing.

6

Rights of tenants under any unrecorded leases, as to tenants only.

7

Terms and conditions of Party Wall Agreement as disclosed by instrument recorded in Liber 3119, page 579 and re–recorded in Liber 3598, page 677, Oakland County Records. [As plotted.]

LOCATION MAP – NOT TO SCALE

CAUTION!!
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3 FULL WORKING DAYS BEFORE YOU DIG CALL

811

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2430 Rochester Ct, Ste 100
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t: 248.689.9090
f: 248.689.1044
www.peainc.com

MARKUS ASSOCIATES, LLC BIRMINGHAM, MI 48009	TOPOGRAPHIC & ALTA/NSPS LAND TITLE SURVEY-HAZEL ST./WOODWARD			
	PART OF THE NE 1/4 OF SECTION 36, T. 12N., R. 10E., CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN			
	DES.	DN.	DL/C/DSD	SUR.
	JPB	RS	RS	P.M.

ORIGINAL ISSUE DATE: APRIL 15, 2017
PEA JOB NO. 2017-093
SCALE: 1" = 20'
DRAWING NUMBER: 2 OF 2

CERTIFICATE OF SURVEY

To: First American Title Insurance Company
Title Connect, L.L.C.
Markus Associates, LLC

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 2, 3, 4, 5, 7(a), 8, 10(a), 11, and 13 of Table A thereof. The fieldwork was completed on March 24, 2017.

Daniel Cole, PS No. 59791
Agent for PEA, Inc.

C-3.0

FLOODPLAIN NOTE:
BY GRAPHICAL PLOTTING, SITE IS WITHIN ZONE "X", AREA
DETERMINED TO BE OUTSIDE OF THE 0.2% ANNUAL CHANCE
FLOODPLAIN PER FLOOD INSURANCE RATE MAP NUMBER
26125C0537F (PANEL 537 OF 704), DATED SEPTEMBER 29, 2006.

PROPOSED SPOT GRADE ELEVATION. ADD 700 TO
4-DIGIT ELEVATIONS TO OBTAIN ACTUAL ELEVATION \times 64.50

PROPOSED CONTOUR LINE — 764 —

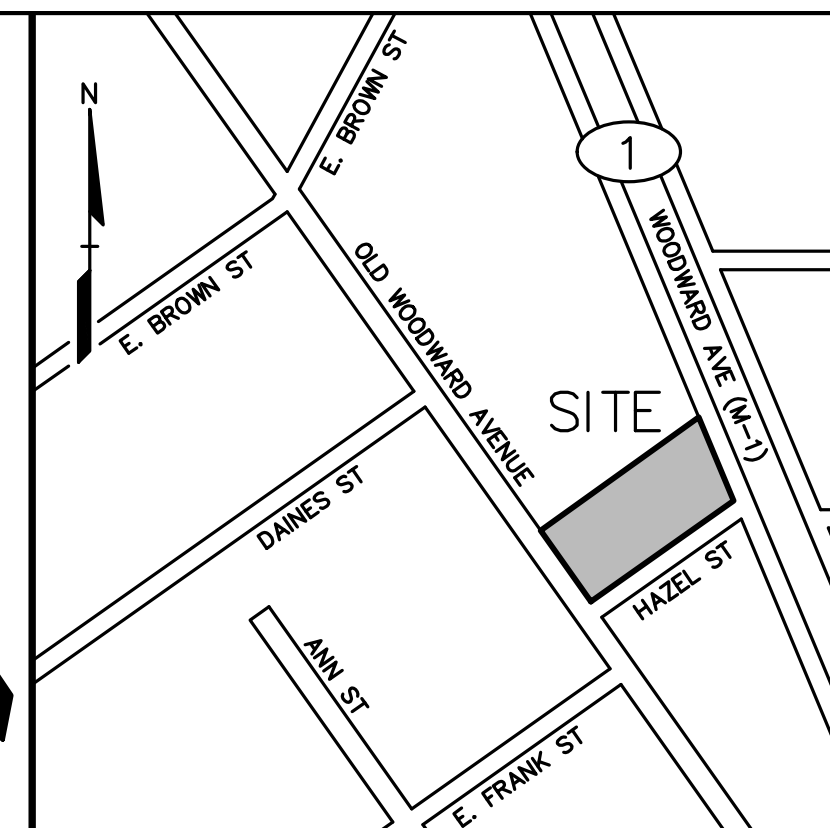
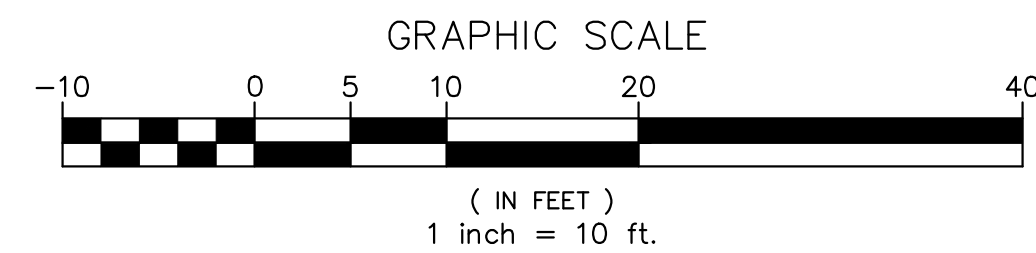
ABBREVIATIONS USED, IF REQUIRED FOR CLARITY:
 TOP OF CURB = T/C
 GUTTER GRADE = G
 TOP OF PAVEMENT = T/P
 TOP OF SIDEWALK = T/S
 RIM = RIM ELEVATION OF STRUCTURE
 FINISH GRADE = F.G.

THESE NOTES APPLY TO ALL CONSTRUCTION ACTIVITIES ON THIS PROJECT

1. CONTRACTOR TO FIELD VERIFY ALL EXISTING TREES AND BRUSH AND REMOVE ALL THAT ARE NECESSARY TO GRADE SITE.
2. ALL GRADES ARE TO TOP OF PAVEMENT UNLESS OTHERWISE NOTED.
3. ALL SOIL EROSION AND SEDIMENTATION CONTROL MEASURES SHALL MEET THE REQUIREMENTS OF THE CITY OF BIRMINGHAM AN EROSION CONTROL PERMIT MUST BE SECURED FROM THE CITY PRIOR TO CONSTRUCTION.
4. ALL EARTHWORK AND GRADING OPERATIONS SHALL BE PERFORMED IN ACCORDANCE WITH THE FORTHCOMING SOILS INVESTIGATION AND REPORT.
5. SEE ADDITIONAL GRADING AND EARTHWORK NOTES ON DETAIL SHEET C-8.1
6. REFER TO CONSTRUCTION PLANS FOR ALL SOIL EROSION AND SEDIMENTATION CONTROL MEASURES AND NOTES.
7. ALL DISTURBED AREAS SHALL BE SEEDED AND MULCHED OR SODED IN ACCORDANCE WITH THE LANDSCAPE PLANS. PROVIDE A MINIMUM OF 3" OF TOPSOIL IN THESE AREAS UNLESS OTHERWISE NOTED.
8. THE CONTRACTOR SHALL NOTE EXISTING UNDERGROUND UTILITIES WITHIN AND ADJACENT TO THE SITE. ALL EXISTING UTILITY TRENCHES SHALL BE REMOVED AND CRITICAL AREAS WHERE TRENCHES FOUND TO HAVE SOFT, UNSTABLE OR UNSUITABLE BACKFILL MATERIAL, IN THE OPINION OF THE GEOTECHNICAL ENGINEER, THAT ARE TO BE WITHIN THE ZONE OF INFLUENCE OF PROPOSED PAVEMENT OR PAVEMENT SHALL BE COMPLETELY EXCAVATED AND BACKFILLED WITH SUITABLE MATERIAL.

SIDEWALK RAMP 'TYPE D'	(D)
SIDEWALK RAMP 'TYPE R'	(R)
CURB DROP ONLY	(X)

THE CONTRACTOR SHALL BE RESPONSIBLE FOR IMPORTING OR EXPORTING ALL MATERIALS AS REQUIRED TO PROPERLY GRADE THIS PROJECT TO THE FINISHED ELEVATIONS SHOWN ON THE APPROVED PLANS. THE CONTRACTOR SHALL MAKE THEIR OWN DETERMINATION OF CUT AND FILL QUANTITIES AND ALLOW FOR REMOVAL OF EXCESS OR IMPORTATION OF ADDITIONAL MATERIAL AT NO ADDITIONAL COST TO THE OWNER.



LOCATION MAP – NOT TO SCALE

[illegible]

NOTE:
ALL WORK WITHIN THE OLD WOODWARD AVENUE
RIGHT-OF-WAY IS UNDER THE JURISDICTION OF
THE CITY OF BIRMINGHAM AND REQUIRES A PERMIT

PROVIDE INTEGRAL CURB AT EDGE
OF NEW SIDEWALK IF THE EXISTING
SIDEWALK CURB IS OF INSUFFICIENT
HEIGHT FOR REVISED GRADING.
REFER TO INTEGRAL SIDEWALK
CURB DETAIL ON SHEET C-8.1

NOTE:
THE AREA TO BE PAVED WITH EXPOSED AGGREGATE CONCRETE BETWEEN THE PROPOSED SIDEWALK AND THE PROPOSED CURB AND GUTTER WILL VARY IN CROSS-SLOPE AND MAY EXCEED THE CROSS-SLOPE ALLOWED FOR AN ACCESSIBLE ROUTE UNDER A.D.A. GUIDELINES. IT IS CONSIDERED A 'TRANSITION' BETWEEN THE PEDESTRIAN ROUTE (SIDEWALK) AND THE STREET CURB LINE.

OLD SOUTH WOODWARD
9-STORY WITH TWO-FLOOR
BASEMENT PARKING
114,670 SQ.FT.
F.F. 764.90

THERE IS A PROPOSED 3" HIGH RAMP
WITHIN THE BUILDING TO TRANSITION
FROM THE ENTRY GRADE AT 764.65
TO THE FINISH FLOOR ELEVATION OF
764.90. REFER TO ARCHITECTURAL
PLANS FOR ADDITIONAL DETAILS

DASHED LINE IS THE
PROPERTY BOUNDARY. TYP.

ENTRANCE TO FIRST FLOOR
AND UNDERGROUND PARKING

NOTE:
ALL WORK WITHIN THE WOODWARD AVENUE
(M-1) RIGHT-OF-WAY IS UNDER THE
JURISDICTION OF THE MICHIGAN DEPARTMENT
OF TRANSPORTATION AND REQUIRES A PERMIT

NOTE:
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NOTE:
ALL WORK WITHIN THE HAZEL STREET
RIGHT-OF-WAY IS UNDER THE JURISDICTION OF
THE CITY OF BIRMINGHAM AND REQUIRES A PERMIT

NOT FOR CONSTRUCTION

XREF: S:PROJECTS\2017\2017093\DWG\17093-TOPBASE.DWG
XREF: S:PROJECTS\2017\2017093\DWG\SITE PLAN\CBASE-17093.DWG
XREF: S:PROJECTS\2017\2017093\DWG\SITE PLAN\BLK-17093.DWG

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MARKUS MANAGEMENT GROUP, LLC

251 EAST MERRILL STREET, SUITE #205
BIRMINGHAM, MICHIGAN, 48009

GRADING PLAN

SOUTH OLD WOODWARD

OLD WOODWARD AVENUE AT HAZEL STREET

CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN, 48009

DES.

PB.

DN.

PB.

SUR.

DLC.

P.M.

JPB.

PROJECTS 2017-2025

493 HAZEL STREET & WOODWARD AVE.

2410001001

17031001

17031001

ORIGINAL ISSUE DATE:
MARCH 6, 2017

PEA JOB NO. 2017-093

SCALE: 1" = 10'

DRAWING NUMBER:

C-4.1

BENCHMARKS
(GPS DERIVED - NAVD88)

BM #300
BENCH TIE IN NORTH FACE OF U-POLE, SOUTHWEST CORNER HAZEL STREET AND WOODWARD AVENUE (HUNTER BOULEVARD)
ELEV = 765.98

BM #301
TOP OF NORTHEAST ANCHOR BOLT OF LIGHT POLE BASE, NORTHEAST CORNER OF HAZEL STREET AND OLD WOODWARD AVENUE
ELEV = 766.58

FLOODPLAIN NOTE:
BY GRAPHICAL PLOTTING, SITE IS WITHIN ZONE "X", AREA DETERMINED TO BE OUTSIDE OF THE 0.2% ANNUAL CHANCE FLOODPLAIN PER FLOOD INSURANCE RATE MAP NUMBER 26125C0537F (PANEL 537 OF 704), DATED SEPTEMBER 29, 2006.

Permit No. _____
Date: _____

CITY OF BIRMINGHAM
STORM WATER RUNOFF CONTROL

Project Location: Hazel Street at Old Woodward
Designed by: Paul Bater, PEA

PE: Yes No

	(A) Exist. *	(B) Proposed	
(1) Affected Area	0.423	0.423	acres
(2) Area of Impervious Surface	0.423	0.423	acres
(3) Percent Impervious	100	100	%
(4) Runoff Factor	2.4	2.4	cfs/acre
(5) Unrestricted Runoff Rate	1.02	1.02	cfs
(6) Maximum Permitted Runoff Rate		1.02	cfs
(7) Uncontrolled Runoff Area		-	acres
(8) Area of Impervious Surfaces - Uncontrolled Runoff Area		-	acres
(9) Runoff Factor - Uncontrolled Runoff Area		-	%
(10) Runoff Factor - Uncontrolled Runoff Area		-	cfs/acre
(11) Runoff Rate - Uncontrolled Runoff Area		-	cfs
(12) Maximum Permitted Runoff Rate via Sewer Service Connection		-	cfs
(13) Runoff Rate per Acre		-	cfs/acre
(14) Required Storage per Acre		-	cu.ft./acre
(15) Required Storage for Parcel		-	cu.ft.

PROPOSED DESIGN

(16) Design Storage	-	cu.ft.
(17) Design Outlet Capacity to Sewer Service	-	cfs

Approved by: _____

City Engineer

* Existing Prior to Re-Development

NOTE:
BASED ON THE CITY OF BIRMINGHAM STORM WATER DETENTION WORKSHEET, THIS SITE WILL NOT REQUIRE STORM WATER DETENTION AS THE POST-DEVELOPMENT RUNOFF RATE WILL BE LOWER THAN THE EXISTING RUNOFF RATE.

NOTE:
ALL WORK WITHIN THE WOODWARD AVENUE (M-1) RIGHT-OF-WAY IS UNDER THE JURISDICTION OF THE MICHIGAN DEPARTMENT OF TRANSPORTATION AND REQUIRES A PERMIT

NOTE:
ALL WORK WITHIN THE OLD WOODWARD AVENUE RIGHT-OF-WAY IS UNDER THE JURISDICTION OF THE CITY OF BIRMINGHAM AND REQUIRES A PERMIT

CVS PHARMACY
444 S. OLD WOODWARD AVE.

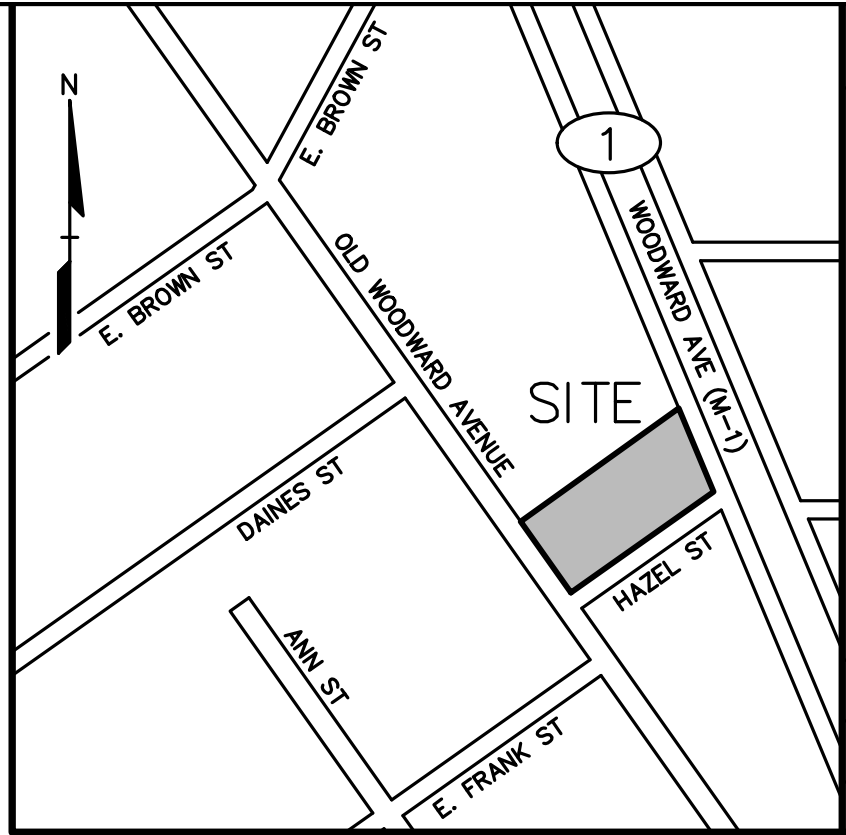
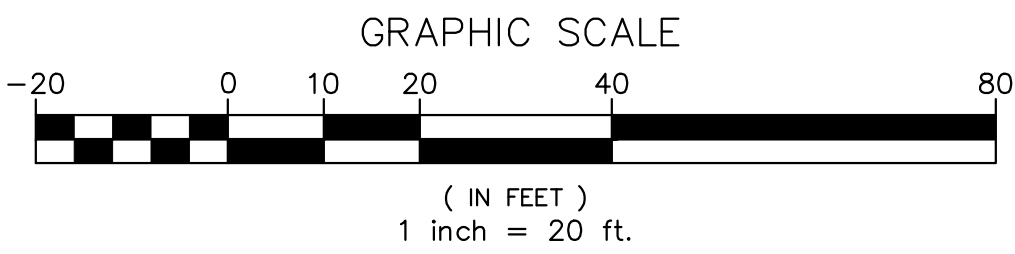
S. OLD WOODWARD AVENUE
(100' WIDE)

WOODWARD AVENUE / M-1
(200' WIDE)

HAZEL STREET (50' WIDE)

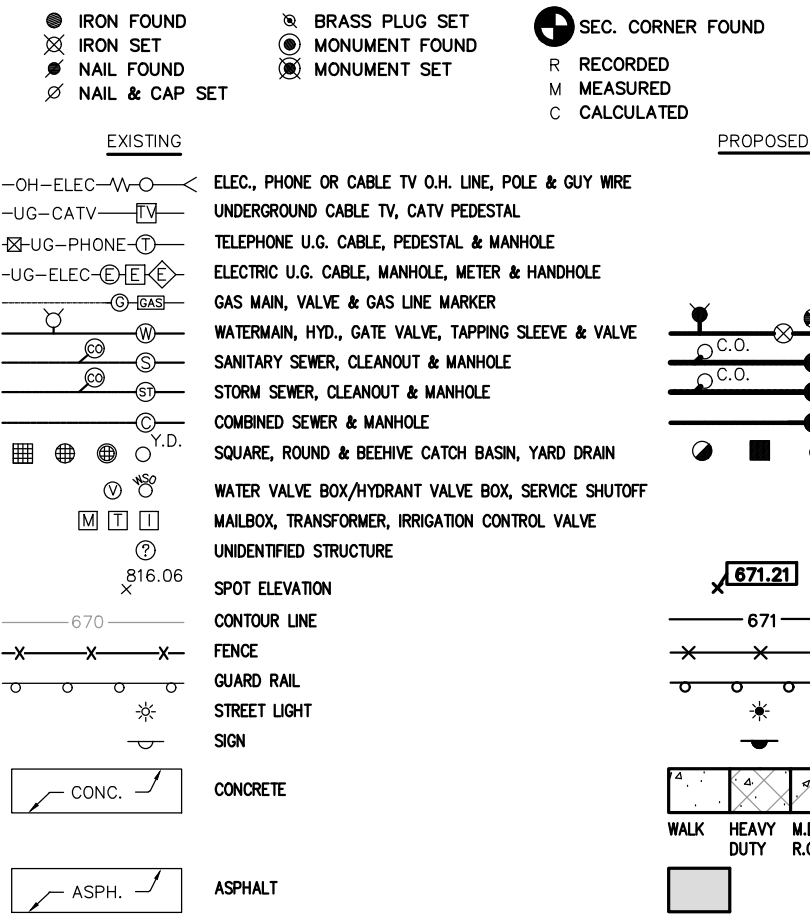
555 S. OLD WOODWARD AVE.

NOTE:
ALL WORK WITHIN THE HAZEL STREET RIGHT-OF-WAY IS UNDER THE JURISDICTION OF THE CITY OF BIRMINGHAM AND REQUIRES A PERMIT



LOCATION MAP - NOT TO SCALE

LEGEND



REFERENCE DRAWINGS

WATER MAIN NOT RECEIVED AT TIME OF SURVEY
SANITARY SEWER NOT RECEIVED AT TIME OF SURVEY
STORM SEWER NOT RECEIVED AT TIME OF SURVEY
COMBINED SEWER NOT RECEIVED AT TIME OF SURVEY
ELECTRIC NOT RECEIVED AT TIME OF SURVEY
TELEPHONE NOT RECEIVED AT TIME OF SURVEY
GAS NOT RECEIVED AT TIME OF SURVEY
PETROLEUM NOT RECEIVED AT TIME OF SURVEY
CATV NOT RECEIVED AT TIME OF SURVEY
FLOOD PLAIN ZONE X, FEMA FORM 26125C0537F, DATED 09-29-06

GENERAL UTILITY NOTES:

- ALL UTILITY LINES, STRUCTURES AND TRENCHES SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE STANDARDS AND REQUIREMENTS OF THE CITY OF BIRMINGHAM.
- NO PHYSICAL CONNECTION TO THE EXISTING WATER MAIN CAN BE MADE UNTIL ALL NEW WATER MAIN PASSES PRESSURE AND BACTERIOLOGICAL TESTS TO THE SATISFACTION OF THE CITY.
- REFER TO DETAIL SHEET C-7.1 FOR ADDITIONAL UTILITY DETAILS AND NOTES.
- ALL WATER MAIN AND FITTINGS (3" DIAMETER AND LARGER) SHALL BE DUCTILE IRON, CLASS 54.
- WATER MAIN SERVICE LEADS SHALL BE TYPE 'K' ANNEALED SEAMLESS COPPER WITH FLARED FITTINGS, UNLESS OTHERWISE NOTED.
- ALL WATER MAIN SHALL BE PROVIDED WITH 5.5' OF COVER UNLESS OTHERWISE NOTED.
- ALL FIRE HYDRANTS SHALL BE EFW #5BR MODEL #250 PER CITY STANDARDS.
- ALL HYDRANTS TO BE A MINIMUM OF 5' FROM BACK OF CURB, TYP.
- ALL NECESSARY FITTINGS, THRUST BLOCKS, RESTRAINING GLANDS, BLOW OFFS, ETC. FOR WATER MAIN ARE CONSIDERED INCIDENTAL TO THIS PROJECT. THE CONTRACTOR SHALL INSTALL THESE ITEMS AS NECESSARY AND AS REQUIRED BY THE CITY OF BIRMINGHAM.
- ALL SANITARY SEWER LEADS SHALL BE POLYVINYL CHLORIDE (PVC) SDR 23.5 PIPE AND FITTINGS. ALL JOINTS TO BE ELASTOMERIC GASKET JOINTS PER ASTM D3212 UNLESS OTHERWISE NOTED.
- SANITARY LEADS SHALL BE PROVIDED WITH CLEANOUTS EVERY 100 FEET AND AT EVERY BEND AS SHOWN. ALL CLEANOUTS TO BE PROVIDED WITH E.J.L.W. #1565 BOX OR EQUAL.
- ALL STORM SEWER 12" DIAMETER OR LARGER SHALL BE REINFORCED CONCRETE PIPE (RCP C-76) CLASS IV WITH MODIFIED TONGUE AND GROOVE JOINT WITH RUBBER GASKETS UNLESS SPECIFIED OTHERWISE (ASTM C-443).
- ALL STORM SEWER LEADS SHALL BE PVC SCHEDULE 40 WITH GLUED JOINTS UNLESS OTHERWISE NOTED.
- PIPE LENGTHS ARE GIVEN FROM CENTER OF STRUCTURE AND TO END OF FLARED END SECTION UNLESS NOTED OTHERWISE.
- THE CITY OF BIRMINGHAM STANDARD DETAIL SHEETS ARE INCORPORATED INTO AND MADE A PART OF THESE PLANS. CONTRACTOR TO REFER TO THE CITY OF BIRMINGHAM STANDARD DETAIL SHEETS FOR ALL STRUCTURE, PIPE MATERIALS, BEDDING, TESTING, ETC. NOTES AND DETAILS.

SAND BACKFILL NOTE:
ALL UTILITIES UNDER PAVEMENT OR WITHIN 3' OF THE EDGE OF PAVEMENT (OR WITHIN THE 45° LINE OF INFLUENCE OF PAVEMENT) SHALL HAVE M.D.O.T. CLASS II GRANULAR BACKFILL COMPACTED TO 95% MAX. DRY DENSITY (ASTM D-1557).

REVISIONS

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MARKUS MANAGEMENT GROUP, LLC
251 EAST MERRILL STREET, SUITE #205
BIRMINGHAM, MICHIGAN 48009
PRELIMINARY UTILITY PLAN
SOUTH OLD WOODWARD
OLD WOODWARD AVENUE AT HAZEL STREET
CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN 48009

DES.	PB	DN	PB	SUR.	DLC	P.M.	JPB
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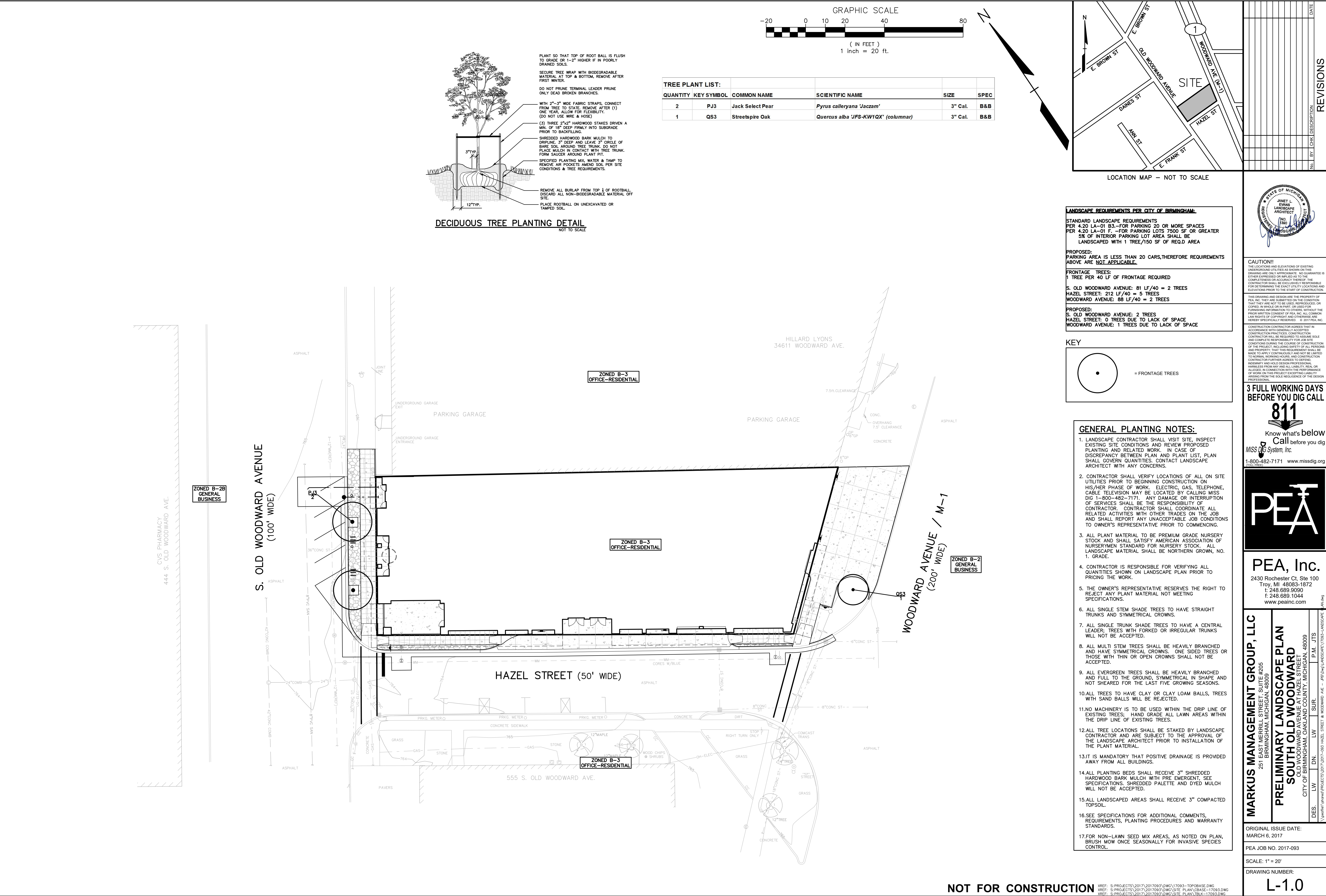
S:\PROJECTS\2017\2017093\DWG\17093-17093.dwg

ORIGINAL ISSUE DATE:
MARCH 6, 2017
PEA JOB NO. 2017-093
SCALE: 1" = 20'
DRAWING NUMBER:

C-6.0

NOT FOR CONSTRUCTION

XREF: S:\PROJECTS\2017\2017093\DWG\17093-17093.dwg
XREF: S:\PROJECTS\2017\2017093\DWG\17093-17093.dwg
XREF: S:\PROJECTS\2017\2017093\DWG\17093-17093.dwg





Richard D. Rattner
rdr@wwrplaw.com

August 13, 2018

City of Birmingham
City Commission
Planning Board
151 Martin St.
Birmingham, MI 48009
Attention: Ms. Jana Ecker

Re: Request for Re-Hearing on Application to include 469 and 479 S. Old Woodward, Birmingham, MI ("Subject Property") in the D5 Downtown Birmingham Overlay District Zone ("Application")

Dear Members of the City Commission, Planning Board and Ms. Ecker:

Please accept this letter from the property owner ("Property Owner") of 469 and 479 S. Old Woodward ("Property") as a Request for Re-Hearing of the Property Owner's rezoning Application to rezone the Subject Property from the D-4 Overlay Zone to the D-5 Overlay Zone in the Downtown Birmingham Overlay District.

The information set forth in this letter supplements the information set forth in the Application and the undersigned's letter of May 17, 2018. Please recall that the subject Property is a former single-story restaurant building and drive-through bank that sits between two existing D-5 zoned buildings in the City. The Property is in the B-3 Office-Residential Zone and the D-4 Overlay Zone.

Summary

The Application was considered by the Planning Board at its meeting on June 27, 2018 and the Planning Board denied the Application. The Applicant requests that the Planning Board rehear the Application due to consideration of new information not reviewed and to correct certain factual inaccuracies or errors in the record that quite likely prevented the Planning Board from affording this Application a full and fair hearing. Without such a full consideration of all of these new and pertinent factors, the Board will be in the position of recommending denial of a petition without the opportunity of hearing all of the important issues related to the intent, purpose and consequences of such a zone, and without the advantage of putting those issues in perspective when considering a zoning ordinance that is a crucial part of the Birmingham Downtown Overlay District plan.

The D-5 ordinance is one of the most carefully drafted ordinances produced by the City. It is the subject of over two years of study and research. Multiple alternative drafts were proposed by the City Planning Department over the years, and every section has been fully discussed and vetted by the City Commission and the Planning Board. This D-5 ordinance was recognized as being an integral part of the Downtown Birmingham Overlay District by the City. When the ordinance was passed it was heralded as not only solving existing problems but it fit into the fabric of the Overlay District's plan to encourage mixed use buildings in the Downtown Overlay (especially in the South Old Woodward area) so that our city can maintain a vibrant, pedestrian friendly attractive live, work and entertainment district. It was enacted as part of the City's modern plan to create a sustainable, vibrant downtown.

To mischaracterize this ordinance as a mere correction of nonconformity for three buildings is not only erroneous, but does disservice to the hard work done by the City Commission, Planning Board and Administration. Most importantly, such an analysis does not comply with the spirit, intent and vision exhibited in theory and practice in the Downtown Birmingham Overlay District. Said simply, such an interpretation ignores and discredits all of the good faith hard work that went into the creation of not only the Ordinance, but the master plan process for the future of our growing and vibrant downtown.

The Property is *not* within the Parking Assessment District, Contrary to Information Presented in the Board's Packet

This Property is *not* within the parking assessment district. This is a serious flaw in any zoning analysis and must be corrected in order for the public record of the Board's action and recommendation on the Application to properly reflect the realities of this matter. Correcting this fact leads to new information about the Property and the plan for development of the Property that is central to the question of rezoning pursuant to the Zoning Enabling Act. The Board has not had an opportunity to review this new information in the first instance. The new information significantly changes the analysis of rezoning under Article 7.02B2b and 7.02B5 of the Zoning Ordinance.

Contrary to what was assumed by the Planning Board, because the Property is not in the Parking Assessment District (Parking Assessment District Map is enclosed for your reference at **Exhibit A**), it currently has no possibility of providing off-street parking on the premises. In fact, it is currently non-conforming and cannot comply with Article 4.46 of the Zoning Ordinance (Off-Street Parking Spaces Required).

The Planning Department's Memorandum submitted to the Planning Board, dated May 18, 2018, regarding the Community Impact Statement of the Property's redevelopment, erroneously provides, "The subject Property is in the Parking Assessment District." And not only is the subject Property not in the Parking Assessment District, contrary to what was reported to the Planning Board, but we understand that this Property is the only D-4 zoned property in the

City not included in the Parking Assessment District.

Zoning Analysis – Revisited

Whether or not the Property is within the Parking Assessment District makes a significant difference in terms of the analysis under Sec. 7.02(B)(2)(b)(i-iii), Zoning Amendments. Section 7.02(B) requires the Applicant to provide certain explanations about the rezoning to be considered by the Planning Board and the City Commission. Please consider the following new information regarding the effects of the Parking Assessment District on this analysis, which was not reviewed by the Board.

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

The issue of location outside of the Parking Assessment District provides new information about the necessity of rezoning the Property to preserve the Applicant's enjoyment of rights associated with ownership. Because of the size and narrow corner configuration of the Property, it will not support street-level retail, residential, *and the required parking for those uses*. The off-street parking requirements for this Property make the engineering and design of a mixed-use D-4 seriously impractical if not impossible. The 2016 Plan promotes mixed use developments. Such planning requires space to design and locate mixed uses within a given structure. Not only will the Applicant lack the required area within which to locate all of the mixed uses with a first-floor retail mandate, the Applicant also is absolutely hamstrung by the off-street parking requirements for this site. The maximum use of the underground area will not yield enough parking spaces for a building designed to current zoning. Rezoning the Property to the D-5 Zone will allow more vertical space within which to accommodate a mixed-use building together with the required parking for all permitted uses.

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

The Applicant provided information that the current zoning was no longer appropriate at the June 27, 2108 meeting. However, the Board inadvertently coalesced around a discussion and conclusion that the Applicant had not shown that a "D-4 building would not work" at the site (Mr. Koseck and Ms. Whipple-Boyce at hearing time 2:20:15). But this is not the requirement set forth in the ordinance. Further, the Board denied discussion about the development plan for the Property, until after the Applicant obtained rezoning. The Board applied a standard of proof that is not part of the ordinance, but rather more aptly applies to considering whether the rezoning depended on whether the Applicant can use the property as zoned. This is not the standard under the ordinance. Such a standard is often heard in a discussion of whether the property has been inversely condemned by the application of the ordinance. It is unfair to hold the applicant to a

standard that requires proof that the property cannot be used as zoned rather than the “appropriateness” of current zoning. When properly analyzed in the context of the Master Plan, which is the standard of the Birmingham ordinances, it is appropriate for the subject Property to share the same zoning classification as its immediate neighbors. As will be demonstrated in the next paragraph, the Property is incapable of supporting a structure built to current D-4 or B-3 zoning requirements.

The Property consists of two lots -- 469 and 479 -- which front Old Woodward and Woodward Avenue. The lots are in the “retail/red-line district” and under current zoning, each lot is severely restricted.

469 S. Old Woodward

The 469 lot width narrows as it extends east and has approximately 21 feet of Woodward Avenue frontage. The site has an existing 1 story, 2,900 square feet building, formerly used as a restaurant. Should this parcel be re-used, its only use (by necessity) would need to be a ‘nonconforming’ restaurant, since any change in use without a parking assessment district designation would require it to provide onsite parking for the new intended uses. However, since the restaurant has been closed for more than six months, it would not be eligible to continue as a nonconforming use!

Given the parcel’s narrow configuration, the only onsite parking that could be provided to satisfy the ordinance is two (2) spaces off of Woodward Avenue. Only two onsite parking spaces would limit the building footprint to approximately 300 to 600 square feet, depending on the permitted use. There is no practically feasible way to provide greater parking spaces.

479 S. Old Woodward

The 479 parcel has 211 feet of frontage on Hazel and approximately 40 feet of frontage on Old Woodward. This lot expands as it extends east to approximately 66 feet of Woodward Avenue frontage. The lot has an existing one-story, 11,826 square foot enclosure of which a small portion is a finished bank building. The balance is dedicated to a drive-thru lane for a drive-thru bank. Should this parcel be re-used, its only use (by necessity) must be a ‘nonconforming’ drive-thru bank since any change in use under the Ordinance would trigger onsite parking requirements for the new intended use. Also, drive-thru banks are specifically prohibited in the downtown Birmingham Overly District. See ordinance at Article 3(4)(C)(2)(b): “The following uses are prohibited...Drive-in facilities or any commercial use that encourages patrons to remain in their automobiles while receiving goods or services.”

Given lot 479’s configuration, the only onsite parking that would be practically feasible is approximately 13 spaces to be entered off of Woodward Avenue or Hazel. Thirteen onsite parking spaces would limit the building footprint to not more than from 1,950 square feet to

approximately 3,900 square feet, depending on the permitted use. It is possible for a new building to be multiple stories and this may allow for greater area on the ground floor for parking spaces. At most with a 2200 square foot ground floor, 27 parking spaces could be fit to the site. However, the building would be limited to approximately two stories and would not be contextual to the neighborhood. In essence, the lot would be converted partially to a surface parking lot.

Combined Lots

Seemingly, the combination of the two parcels would create greater opportunity to develop a project conforming to the Master Plan and the 2016 Downtown Plan goals for the B3/D4 zoning. Unfortunately, the combined parcel cannot meet the Master Plan and 2016 Downtown Plan goals of mixed uses and first floor retail without both onsite parking and underground parking. The Ordinance mandates main level retail (20' minimum in depth) on Old Woodward. Of course, onsite parking must be provided for any additional uses. This forces redevelopment toward uses with minimal parking requirements, such as hotels, which is what the Applicant proposes. As stated elsewhere in this letter, there are serious difficulties with building an underground garage within the D-4 design parameters that is deeper than two levels. Clearly, the current zoning unfairly forces the owner into an unreasonable position when considering the parcel's potential use and its place in the Downtown Overly District. Consequently, any such garage is limited to approximately 60 parking spaces.

To discuss these difficulties in a vacuum is not the intention of the Zoning Enabling Act. The Act at MCL 125.3203 provides that zoning must be determined according to a plan. Here, the Applicant attempted to explain to the Board that the site plan is impacted by the fact that the Property is not within the Parking Assessment District. Unfortunately, the Board refused to consider any site plan and its conformance to the 2016 Plan, putting such review off until the Applicant obtained rezoning. This placed the Applicant in a double-bind. He could not demonstrate the inappropriateness of current zoning without an analysis of how the Parking Assessment District, or lack thereof, affects the site plan design. Had the Applicant been allowed to at least discuss a site plan design in relation to the rezoning analysis, he would have demonstrated that there is no feasible option to develop the Property within the current zoning classifications outside of the Parking Assessment District. This would have been a valuable discussion of new information that should have at least been heard by the Planning Board.

Mischaracterization that the D-5 Ordinance was Passed Only to Make Three Properties Conforming

Two attorneys from the same law firm, as representatives of the residents of Birmingham Place, each separately addressed the Board during the June 27th hearing. The main thrust of their argument to the Board was that the only reason the D-5 Zone was added to the ordinance was in order to correct the non-conformity of the 555 Building, Merrill Wood and Birmingham

Place. They argued that the new Zone did not apply to any other properties. This assertion ignores the very careful hard work of the City Commission, the Planning Board, and the Administration. This claim is also clearly contrary to the history of the D-5 ordinances and to its plain language.

The history of the Planning Board's consideration of the D-5 Zone was outlined in detail by Ms. Ecker at the June 27th meeting. The Planning Board studied and considered the revisions to the ordinance for the South Old Woodward area for two years prior to adopting the D-5 Zone. In the Planning Department's Memorandum to the Planning Board, dated September 22, 2016, submitted to the Board for its September 28, 2016 study session, Ms. Ecker wrote: "The consensus of the Board was to allow additional height for new buildings in the D-5 zone district to match existing adjacent buildings, if the new building was constructed under the provisions of a SLUP."

During the June 27, 2018 hearing, Chairman Clein expressed (at time 2:10:25 of the hearing video), that during consideration of the new D-5 Zone, the Board considered the entire southern area of Downtown and positively did discuss the subject Property for potential property rezoning. However, the Board did not include the Property initially because no applicant or interested owner had come forward at that time. Mr. Jeffares also reiterated the same point (at time 1:48:30 of the hearing video). Ms. Ecker clearly stated (at video time 2:09:00) that the new D-5 Zone is a zoning classification that is not limited to the three non-conforming buildings (555 Building, Merrill Wood and Birmingham Place).

Despite clear evidence to the contrary, the mischaracterizations assumed in this hearing were espoused by Ms. Whipple-Boyce who indicated that she understood the D-5 Zone only applied to the three properties, and was not available for the Applicant's Property. These misrepresentations had a direct bearing on consideration of the Applicant's explanation of why the rezoning will not be detrimental to surrounding properties.

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

Both the adjacent and abutting properties are in the D-5 Zone. These misrepresentations that the D-5 is closed to other buildings led the Board to bypass the Applicant's D-5 site plan design. Instead the Board envisioned the abutment of a D-5 structure next to the Birmingham Place and the impact of such on the Birmingham Place residents. However, it is clear that when these neighboring properties were rezoned to D-5, the Planning Board anticipated that eventually the owner of the subject Property would apply to be rezoned for the reasons stated in this letter. The idea that an ordinance is created for only a few buildings, when the ordinance itself states otherwise, is unsupportable and unreasonable. Rezoning the subject Property to a D-5 Zone will be putting this parcel on equal footing with the surrounding properties from a structural, use and design perspective. The proposed rezoning will enhance the entire area by allowing it to be

developed as an attractive part of the South Old Woodward gateway and, most importantly, bring that area into compliance with the spirit and intent of the 2016 Master Plan. Many of the condominium owners from Birmingham Place who spoke out against the rezoning, as did their attorneys, will lose their views to the south even with a development compliant with current zoning. Please see the attached depiction of the D-4 height overlaid against the Birmingham Place (**Exhibit B**). However, the Board seemed to acknowledge the mootness of the alleged detriment to Birmingham Place given the potential impact of a conforming D-4 structure, and yet at least one member, Ms. Whipple-Boyce, still maintained that the D-5 Zone was intended to correct the non-conformance of only three properties.

The Board Failed to Make Required Findings of Fact under Ordinance Sec. 7.02(B)(5)

In making its decision on June 27th, the Board denied the Application based on Ordinance Sec. 7.02(B)(2)(b) and the required explanations imposed on the Applicant. As a result of its misunderstanding of the analysis required by the Zoning Amendments section of the Ordinance, the Board committed error in basing its decision on Sec. 7.02(B)(2)(b) rather than on the findings of fact required by Sec. 7.02(B)(5). Section 7.02(B)(5)(a-e) lists five findings the Board must make regarding the Application when making its recommendation to the City Commission. Without these findings by the Planning Board, the recommendation to the City Commission does not give the commission sufficient information to understand why this rezoning Application was denied.

- ***Sec. 7.02(B)(5)(a) - The objectives of the City's then current master plan and the City's 2016 Plan.***

The Board made no findings of fact with respect to the objectives of the City's current master plan and the City's 2016 Plan. A simple motion to deny a recommendation of rezoning was made "to recommend DENIAL to the City Commission of the applicant's request for the rezoning of the property at 469-479 S. Old Woodward Ave. from D-4 to D-5 in the Downtown Overlay." (See **Exhibit C**, June 27, 2018 meeting minutes, at p.10).

The Applicant, however, in its May 17, 2018 letter to the Board, submitted significant information relating to the conformance of D-4 to D-5 rezoning of the Property with the goals of the 2016 Master Plan to promote mixed uses and consistency in architectural details and massing to neighboring structures.

- ***Sec. 7.02(B)(5)(b) - Existing uses of the property within the general area of the property in question.***

The Board made no finding of fact with respect to uses of property within the area of the Property, although the Board acknowledged the D-5 zone to the immediate north and south of the Property. And as stated above, the Board coalesced around the conclusion that the Applicant had not "shown a D-4 building could not work."

In his May 17, 2018 supplemental letter to the Board, the Applicant explained the proposed mix-use of the development as retail, hotel and residential, all uses consistent with surrounding properties.

- ***Sec. 7.02(B)(5)(c) - Zoning classification of the property within the general area of the property in question.***

The Board acknowledged that the entire southern area of Birmingham has been studied for change in zoning possibly to a gateway district due to the established heights of the iconic 555 Building and the Birmingham Place Building. The Board acknowledged the recent rezoning of the abutting and adjacent properties to the D-5 Zone and the current zoning classifications of nearby properties. The Board did not make any findings that addressed the fact that the subject Property is not only located in the area of the D-5 zone, but actually is situated between two D-5 zoned parcels. The adjacent and abutting properties are zoned D-5.

- ***Sec. 7.02(B)(5)(d) - The suitability of the property in question to the uses permitted under the existing zoning classification.***

The Board made no findings of fact regarding the suitability of the Property in question to the uses under the existing zoning classification. The Board's discussion centered on the height of the proposed development under the D-5 versus the D-4. There was no finding or discussion of suitability to permitted uses. The Applicant directs the Board's attention here because the Property sits outside of the Parking Assessment District. The Board failed to engage with this fact and its implications on the Applicant's site plan, which has a significant negative impact on the Applicant's ability to use the Property within the uses promoted by the 2016 Plan. Again, without a factual finding, the Board concluded that the Applicant had not proven that a D-4 building would not work at the Property (June 27, 2018 hearing video, Chairman Clein, starting at video time 2:10:25).

- ***Sec. 7.02(B)(5)(e) - The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.***

There was little discussion of the trend of development in the general area, other than the discussion of the historical development of the 555 Building and Birmingham Place prior to their down-zoning in later amendments to the Ordinance. Again, the Board acknowledged the recent changes in zoning to the 555 Building and Birmingham Place, as well as a mention of a zoning variance obtained for the development of the Pearl property. However, the Board did not make a finding of fact regarding the trend of development and its relationship to its decision to deny the Applicant's request.

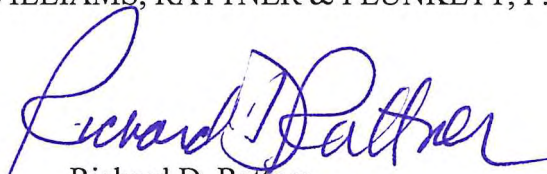
Conclusion

Applicant respectfully requests that this matter be referred back to the Planning Board to allow full consideration of the following:

- Report of the Planning Department concluding that the Petitioner had satisfied all of the ordinance requirements of Sec. 7.02(B)(5)(a-e). No contrary findings of fact were made by the Planning Board.
- The Property is the only D-4 property in the City *not* in the Parking Assessment District. The report in the Planning Department's packet to the Planning Board with regard to the CIS mistakenly stated that the Property was in the Parking Assessment District. This new fact is crucial to an accurate analysis of the rezoning request.
- The purpose of the D-5 ordinance was mischaracterized as merely an ordinance to correct only three buildings in the City. The ordinance clearly states otherwise, and there was much discussion during the years of meetings about the area of the City that should be considered for the D-5 zone.
- The standard used for the discussion of rezoning the Property was not a requirement of the zoning ordinance. An applicant must present facts that support the ordinances in Sec. 7.02(B)(5)(a-e) as well as Sec. 7.02(B)(2)(b)(i-iii). None of those ordinance sections requires the Applicant show that the Property cannot be used as zoned, contrary to what was discussed in the public hearing.

Very truly yours,

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



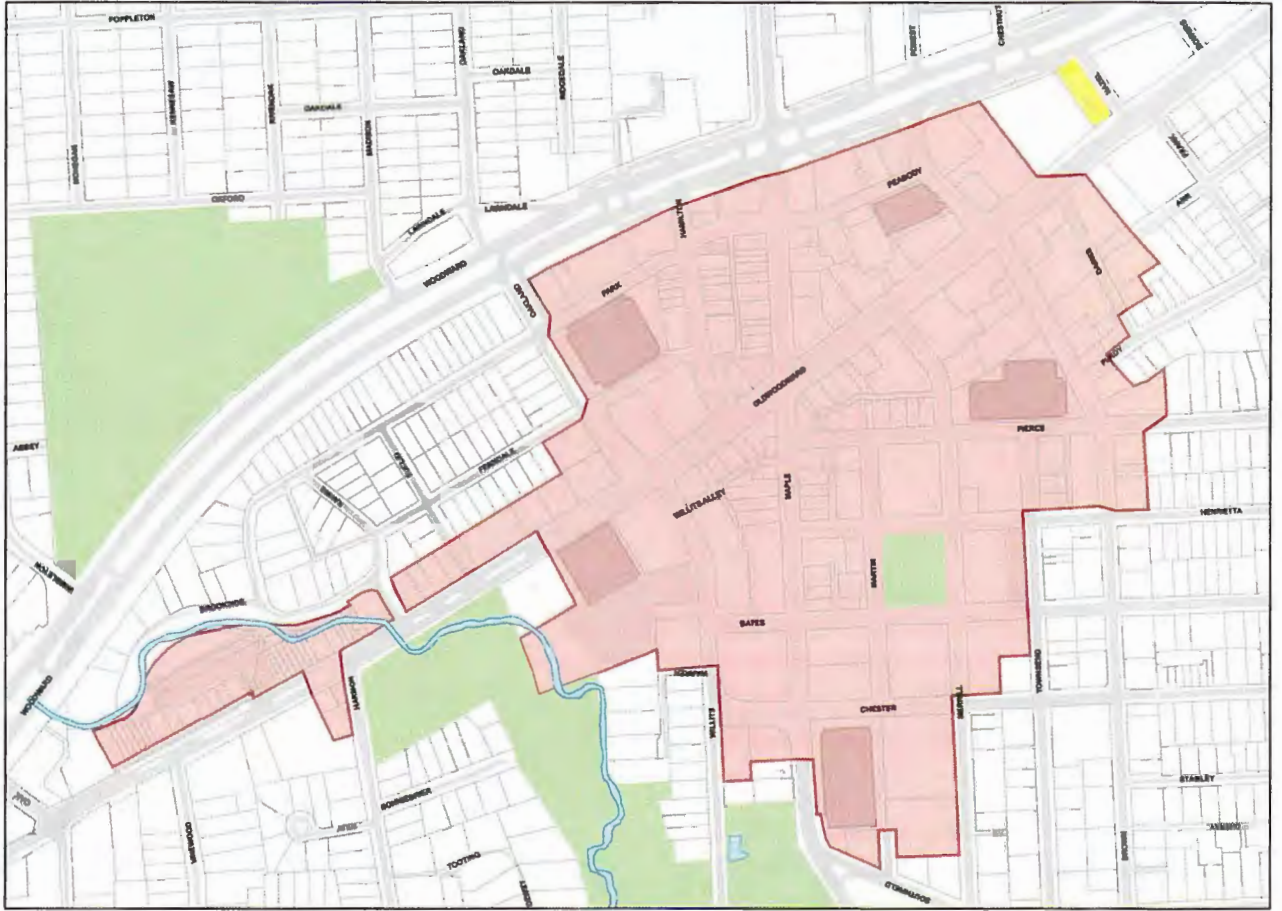
Richard D. Rattner

RDR/gsm

CITY OF BIRMINGHAM
DOWNTOWN PARKING ASSESSMENT DISTRICT

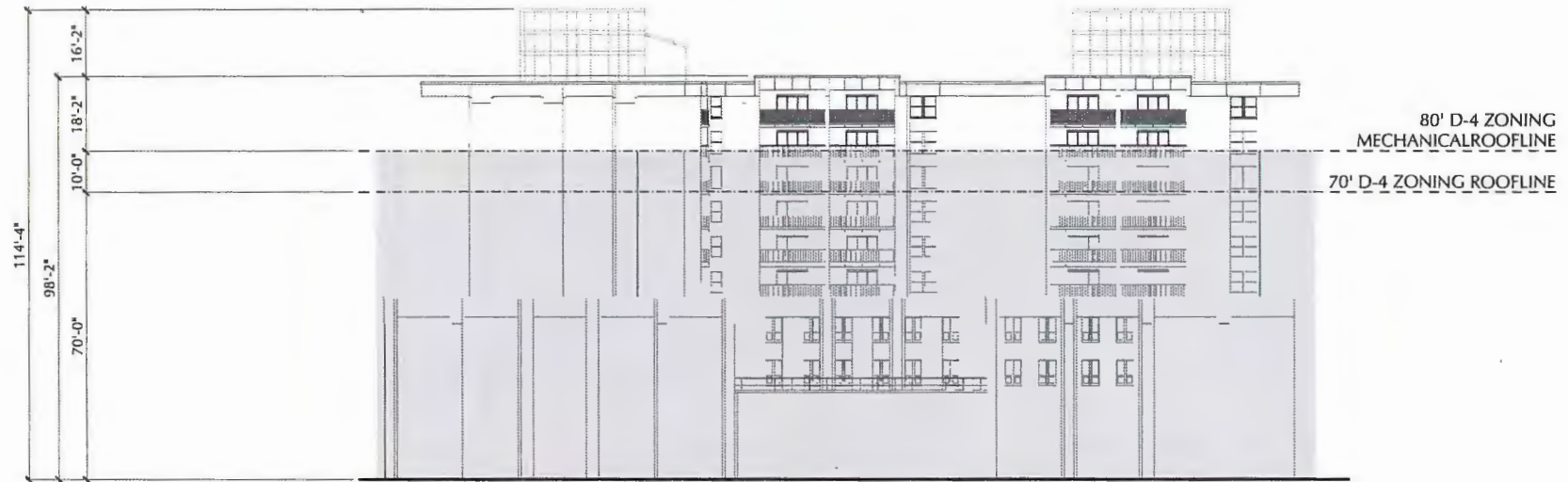


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tabbies' EXHIBIT
A

Project M1 - The Hazelton
Birmingham Tower Partners, LLC
469 + 479 South Old Woodward
Birmingham, Michigan 48009



BIRMINGHAM PLACE HEIGHT COMPARISON DIAGRAM

CHRISTOPHER J LONGE AIA
ARCHITECTURE
INTERIORS
124 Peabody, Birmingham, Michigan 48029 248.258.6943



**CITY OF BIRMINGHAM
PLANNING BOARD ACTION ITEMS
OF WEDNESDAY, JUNE 27, 2018**

Item	Page
SPECIAL LAND USE PERMIT ("SLUP") AMENDMENT REVISED FINAL SITE PLAN AND DESIGN REVIEW	
1. 260 N. Old Woodward Ave., The Morrie - Application for Special Land Use Permit ("SLUP") Amendment to allow the addition of a dance floor to the previously approved restaurant	2
Motion by Ms. Whipple-Boyce	2
Seconded by Mr. Koseck to recommend APPROVAL to the City Commission of the Final Site Plan and SLUP Amendment for 260 N. Old Woodward Ave., The Morrie, to add a dance floor to the previously approved plans with the condition that the applicant comply with Chapter 50, Noise, Division 4.	
Motion carried, 7-0.	2
2. 2010 Cole St. (currently vacant) - Application for Final Site Plan and Design Review to renovate the existing building and expand the parking lot	3
Motion by Mr. Jeffares	5
Seconded by Mr. Koseck to recommend APPROVAL of the Final Site Plan and Design Review for 2010 Cole St. subject to the following conditions:	
1. Applicant submit a signed letter from DTE approving the location of all electrical transformers;	
2. Applicant install City standard bike racks, benches and trash receptacles as required in the Rail District;	
3. Applicant submit all signage details to the Planning Division for approval, including specifications on any wall signs, canopy signs or address signs;	
4. Applicant add pedestrian striping on the west side of the building leading to the west entrance of the building.	
5. Applicant move the arborvitae screening to the north with Administrative Approval from the Planning Dept.	
6. Applicant comply with the requests of all City Departments.	
Motion carried, 7-0.	
REZONING APPLICATION	5
1. 469-479 S. Old Woodward Ave. (former Mountain King) - Request to rezone from B-3 and D-4 to B-3 and D-5 to allow a nine-story mixed-use building	

Item	Page
<p>Motion by Mr. Boyle Seconded by Mr. Jeffares that based on a review of the rezoning request and supporting documentation submitted by the applicant, a review of the applicable Master Plan documents and the development trends in the area, the Planning Board recommends APPROVAL to the City Commission for the rezoning of 469-479 S. Old Woodward Ave. from D-4 to D-5 in the Downtown Overlay.</p>	5
<p>Motion failed, 2-5.</p>	11
<p>Motion by Ms. Whipple-Boyce Seconded by Mr. Koseck to recommend DENIAL to the City Commission of the applicant's request for the rezoning of the property at 469-479 S. Old Woodward Ave. from D-4 to D-5 in the Downtown Overlay.</p>	11
<p>Motion carried, 5-2.</p>	11
<p>PRELIMINARY SITE PLAN REVIEW AND COMMUNITY IMPACT STUDY ("CIS")</p>	11
<p>1. 469-479 S. Old Woodward Ave. (former Mountain King) - Application for Preliminary Site Plan and CIS to permit new construction of a nine-story mixed-use building</p>	12
<p>Motion by Mr. Boyle Seconded by Ms. Whipple-Boyce to postpone this application to August 22, 2018 following the consideration of this rezoning application at the City Commission.</p>	12
<p>Motion carried, 7-0.</p>	12

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, JUNE 27, 2018**

City Commission Room
151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Planning Board held on June 27, 2018. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Janelle Whipple-Boyce; Alternate Board Members Jason Emerine, Nasseem Ramin

Absent: Board Members Daniel Share, Bryan Williams; Student Representatives Madison Dominato, Sam Fogel, Ellie McElroy

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

06-108-18

APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING OF JUNE 13, 2018

Mr. Jeffares made a correction:

Page 8 - Fourth paragraph from the bottom insert after "of," "office use for business to business."

Motion by Mr. Koseck

Seconded by Mr. Boyle to approve the Minutes of the Regular Planning Board Meeting of June 13, 2018.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Abstain: Emerine

Absent: Share, Williams

06-109-18

CHAIRPERSON'S COMMENTS (none)

06-110-18

APPROVAL OF THE AGENDA (no change)

06-111-18

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

1. 260 N. Old Woodward Ave., The Morrie - Application for Special Land Use Permit ("SLUP") Amendment to allow the addition of a dance floor to the previously approved restaurant

Mr., Baka recalled that this application has already been approved by the Planning Board and the applicant is coming back for one change. On May 14th, 2018, the applicant went before the City Commission and indicated that they were also proposing to move tables to clear a dance area when needed. The City Commission determined that a dancing area was not in the original scope or shown on the plans; therefore it must be re-reviewed by the Planning Board.

The applicant has submitted a SLUP Amendment application with associated site plans depicting the location and size of a dancing area proposed in their dining room. The dance floor measures 10 ft. by 38 ft. and is located in front of the raised booth seating area.

At 7:32 p.m., there were no comments from the audience on the proposal.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Koseck to recommend APPROVAL to the City Commission of the Final Site Plan and SLUP Amendment for 260 N. Old Woodward Ave., The Morrie, to add a dance floor to the previously approved plans with the condition that the applicant comply with Chapter 50, Noise, Division 4.

Motion carried, 7-0.

There were no comments from the public on the motion at 7:35 p.m.

VOICE VOTE

Yeas: Whipple-Boyce, Koseck, Boyle, Clein. Emerine, Jeffares, Ramin

Nays: None

Absent: Share, Williams

06-112-18

2. 2010 Cole St. (currently vacant) - Application for Final Site Plan and Design Review to renovate the existing building and expand the parking lot

Mr. Baka advised the subject property, located in the Rail District, is a 0.77 acre site currently containing a single-story commercial building and a parking lot. The applicant is proposing to renovate the existing building to allow for three tenant spaces consisting of retail, fitness and potentially storage uses. The existing parking lot is proposed to be expanded, while the landscaping and streetscape will also be improved. The building is proposed to receive new

paint, awnings, lighting and architectural detail. Also, the applicant would like to screen the loading space with arborvitae.

The applicant engaged in a pre-application discussion with the Planning Board on May 23, 2018. At that time the applicant described the plan to beautify and fill the current building to bring the site back into function while the property owners work on a plan to redevelop the entire property in the future. Planning Board members asked the owners to provide active first-floor uses to activate the street, as well as add glazing and architectural details to break the monotony of the existing blank walls.

The submitted site plan shows a new electrical transformer adjacent to the dumpster enclosure at the southeast corner of the property that is screened with arborvitae. The applicant has noted that DTE has been contacted regarding the transformer location and that DTE approval will be acquired in regards to the location. The applicant must still submit a signed letter from DTE approving the location of all electrical transformers.

The applicant is proposing to expand and rework the existing parking lot to a 38 space lot containing both additional landscaping and two ADA parking spaces. The parking requirement for the three tenants is 12 spaces.

Design Review

The applicant is proposing new renovations that include new paint, awnings, lighting and architectural details including new windows and doors along the north and west elevations. Eight new door/window installations with dark bronze metal frames are proposed along the north and west elevations. Four open-ended canvas awnings are also proposed over the new window/door installations. The doors, windows and awnings help to break up the vast blank space that currently exists on the walls.

Article 4, section 4.90 of the Zoning Ordinance requires buildings in the MX Zoning District to provide a minimum of 70% glazing on any ground floor façade that faces a street or parking area.

Signage: The applicant has indicated that the northern portion of the wall on the west elevation will be a potential location for tenant signage. The applicant is also proposing to place their address sign on the parking lot screen wall in front of the building. The applicant must submit all signage details to the Planning Dept. for approval, including specifications on any wall signs, canopy signs or address signs. The applicant has now submitted material samples of each newly proposed material (including new glass, awning fabric, patio pavers) to complete the Design Review.

In response to Mr. Koseck, Ms. Ecker explained the City is in the process of figuring out the street lighting in the Rail District. DTE has installed three different types of lights with three different types of globes, along with different fixtures throughout the Rail District and none of them are correct since the first installation at Armstrong White on E. Lincoln. Basically the negotiations with DTE to correct the problem are down to cost right now.

Mr. Boyle noticed that the plans do not show a safe pedestrian zone through the parking lot. Further, Mr. Boyle noted on the west facade of the building there are grey awnings with small windows underneath; but no windows on the large section that is adjacent to the patio.

Mr. Koseck pointed out that the plans show the driveway bisects the sidewalk. Mr. Baka replied that the Engineering Dept. has stated that the sidewalk must maintain its current configuration by placing it through the driveway approach.

Mr. Baka agreed with Mr. Emerine that clarification is needed because the applicant is required to have six trees in the parking lot and ten are shown in the site plan.

Mr. Jason Krieger, Krieger Klatt Architects, was present with Mr. Tom Lasky and Mr. Andy Petcoff from the ownership, along with Mr. Brian Kowalski, the project architect. Mr. Krieger said the site plan is correct regarding the trees. The windows on the west elevation are up high because a fitness center is proposed and they tried to maintain as much wall space as possible for them. They are trying to add more fenestrations and glass. Windows have been added on the southwest corner of the building. On the north elevation the windows have been lowered down to the ground to create more of a storefront feel.

Their proposal is to basically clean up the building, paint it, improve it, and then occupy it. They will comply with City standards for lights, trash cans, and benches. With regard to the parking lot, they hope to keep as much as they can and add on to it in compliance with City engineering standards. Personally, he would rather see more screening closer to Cole St., behind the retaining wall, and not right at the loading area where it might get hit. Then, just leave the loading zone as a striped area. Mr. Koseck agreed, because typically there is no truck parked in the loading space. He suggested that Mr. Krieger could work with staff to shift the arborvitae to the north where it wouldn't be hit. Additionally, Mr. Koseck thought it would be nice to have some planter boxes in the patio area just to soften it. Mr. Krieger agreed that the patio should be broken up a little with some greenery.

Mr. Krieger explained that tenant to the north is a cabinet shop and the south tenant space is vacant.

Responding to Mr. Boyle, Mr. Krieger said did not see a problem with putting in a pedestrian safety path through the parking lot to the entrance of the center. However they might lose one parking space.

No one from the public cared to comment on the proposal at 8:01 p.m.

Motion by Mr. Jeffares

Seconded by Mr. Koseck to recommend APPROVAL of the Final Site Plan and Design Review for 2010 Cole St. subject to the following conditions:

- 1. Applicant submit a signed letter from DTE approving the location of all electrical transformers;**
- 2. Applicant install City standard bike racks, benches and trash receptacles as required in the Rail District;**
- 3. Applicant submit all signage details to the Planning Division for approval, including specifications on any wall signs, canopy signs or address signs;**
- 4. Applicant add pedestrian striping on the west side of the building leading to the west entrance of the building.**
- 5. Applicant move the arborvitae screening to the north with Administrative Approval from the Planning Dept.**
- 6. Applicant comply with the requests of all City Departments.**

At 8:05 p.m. there were no comments on the motion from members of the audience.

Motion carried, 7-0.

VOICE VOTE

Yeas: Jeffares, Koseck, Boyle, Emerine, Klein, Ramin, Whipple-Boyce

Nays: None

Absent: Share, Williams

06-113-18

REZONING APPLICATION

1. 469-479 S. Old Woodward Ave. (former Mountain King) - Request to rezone from B-3 and D-4 to B-3 and D-5 to allow a nine-story mixed-use building

Chairman Clein said that judging from all of the letters that have been received related to this project, it is very clear that the residents of Birmingham Place oppose the rezoning. All of the letters will be added to the record.

Ms. Ecker explained the applicant for 469-479 S. Old Woodward is requesting that the Planning Board hold a public hearing to consider the rezoning of the property from B-3 (Office Residential) and D-4 (Downtown Overlay) to B-3 (Office Residential) and D-5 (Downtown Overlay). The applicant is seeking the rezoning to allow for the construction of a nine-story mixed-use building with three levels of underground parking in between the Birmingham Place and the 555 Building. The maximum height allowed in the D-4 Zoning District is 4-5 stories. In the D-5 Zoning District, developers may build as high, but no higher than the adjacent buildings which are located in the D-5 Zone. The 0.423 acre subject site spans Hazel St. from S. Old Woodward Ave. to Woodward Ave. The site currently contains two vacant single-story commercial buildings (formerly Mountain King Restaurant and Talmer Bank). The applicant is proposing to demolish the present buildings for the construction of a ten-story mixed-use building.

The applicant has noted that when the zoning was changed down to one or two floors in the 1970s, the 555 Building and Birmingham Place were designated to a legal non-conforming use because their height was not allowable. Ultimately, the zoning was changed to D-4 in 1996 by the adoption of the 2016 Plan and the Downtown Overlay that raised the height up to a maximum of five stories Downtown. In 2017, a new D-5 Zone was created to bring the 555 Building, the Merrillwood Building and Birmingham Place into a legal conforming status. The subject property is located between Birmingham Place and the 555 Building, both of which are zoned D-5 currently.

Ms. Ecker went through the three items that the applicant must demonstrate for the rezoning of a property and the applicant's reasons as to how they feel they have met them.

Ms. Ecker then went through the planning analysis based on the evidence provided by the application. Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable Master Plan documents, current zoning and recent development trends in the area, the Planning Dept. finds that the applicant meets the established ordinance requirements to qualify for a rezoning of the property from D-4 to D-5 in the Downtown Overlay District for the purpose of building as high, but no higher than, the building to the north, Birmingham Place.

Answering Mr. Boyle, Ms. Ecker said the Master Plan which dates back to 1980 did not give specific height requirements like the 2016 Plan recommended. Under the 2016 Plan the recommended height in the Downtown was a maximum of five stories. The 555 Building submitted an application to the City and to the Planning Board to consider creating a new category that would make them a legal and conforming building that would allow them to receive financing to renovate the building and bring it up to current standards in the marketplace. The D-5 Ordinance was crafted by the Planning Board as a result of that application and included the other two buildings in a similar situation.

Mr. Rick Rattner, Attorney, Williams, Williams, Rattner & Plunkett, PC, emphasized that in the D-5 going above five stories subjects the property to a Special Land Use Permit ("SLUP") which is different than just building as of right. Secondly, in 2016 Andres Duany commented favorably on the 555 Building and on Birmingham Place.

He presented a PowerPoint that went to four issues that have to do with rezoning:

- Rezoning Amendment - Sec. 7.02 (B) (2) (b) (i)-(iii) requires that as part of an application for rezoning, the petitioner should address certain issues to be considered by the Planning Board and the City Commission.
- Sec. 7.02 (B) (2) (b) (i) - An Explanation of Why the Rezoning is Necessary for the Preservation and Enjoyment of the Rights and Usage Commonly Associated with Property Ownership. Without the ability to go higher with a new building than the zoning allows, the applicant will not have the required area within which to locate a mix of uses that would commonly be associated with the design of a modern, mixed-use building.
- Sec. 7.02 (B) (2) (b) (ii) - An explanation of Why the Existing Zoning Classification is No Longer Appropriate. It is reasonable for the subject property to share the same zoning classification as its surrounding neighbors. Given the location of the subject property sandwiched between two properties in the D-5 Zone, the D-4 Zone is no longer appropriate.
- Sec. 7.02 (B) (2) (b) (iii) - An Explanation of Why the Proposed Zoning will not be Detrimental to the Surrounding Properties. The proposed rezoning will enhance the entire area by allowing it to be developed as an attractive part of the S, Old Woodward gateway and bring that area into compliance with the spirit and intent of the 2016 Plan.

Mr. Rattner concluded by asking the Planning Board to favorably recommend that they are able to use their property and preserve their rights of usage, fit into the streetscape, fit the Master Plan and fit all elements of this Ordinance because they meet every single one of them.

At 8:45 p.m. the Chairman opened the meeting to public comments.

Ms. Susan Friedlander, 1564 Henrietta, attorney for Birmingham Place Residential Condominium Association, made the following points:

- The City created the D-5 District for a singular and special purpose which was to bring several buildings into conforming status.
- The proposed building is not sandwiched between the 10-story Birmingham Place and the 15-story 555 Building - there is Hazel, a 50 ft. right-of-way that provides a proper transition between buildings. There is not even a height difference, because the building that is immediately adjacent to Hazel is 77 ft. tall. So if this proposed building went up to 80 ft, which it is allowed to do under D-4 it would be very consistent with the building right across the street. There would be a perfect transition. It would only be 34 ft. shorter than Birmingham Place.

- If the proposed building is zoned D-5, what about the building on the north, the Powerhouse Building, Jax Car Wash or the Varsity Building. Why shouldn't they get the D-5 Zoning as well?
- There is a process that must be followed so that property is not rezoned on an ad hoc and an arbitrary basis.

Mr. Tom Lasky, 2006 Cole, spoke in support of the rezoning request. This is the face of new Birmingham and will be done responsibly.

Mr. Mike Humphrey, who lives in Birmingham Place, said there is nothing in the record that shows that the D-5 Overlay was created to do anything other than to make the three tall existing buildings legal and conforming. The developer bought the property knowing how it was zoned; but now they say that they cannot develop a four or five-story mixed-use building there. If the City is going to change the Master Plan, go for it, but do it with professional study and community involvement; not a piece at a time.

Mr. David Nykian, 40700 Woodward Ave., said he represents some of the owners in the Birmingham Place Condominium. He believes the facts lead to the conclusion that the D-4 Zoning is actually clearly appropriate for this property:

- The D-5 District was created just to address the non-conformities of three buildings. So the City has already made the decision in the past as to what zoning is appropriate for this site.
- Nothing about the property has changed since then that should cause the City to alter its conclusion about what the appropriate height is.
- The height of the 555 Building on the north is 77 ft. So if the subject site were developed today under D-4, it could be taller than the 555 Building.
- Breaking up the building heights would provide more of an architectural character to the City than one monolithic height across the entire street.
- There is nothing under the D-4 Zoning classification that that would prohibit the developer from developing a mixed-use development.
- The only things that would change by amending the classification from D-4 to D-5 are the height of the building and the profit margin of the developer.

Mr. Mickey Schwartz, 411 Old Woodward Ave., stated that infill has nothing to do with height equality. So he thinks the developer has to have a better excuse for building a 10-story building. The small town feeling is what is unique about Birmingham. Deny the rezoning request.

Dr. Cynthia Neil, a resident of Birmingham Place, said she was deeply offended by the petitioner's statement that the development would not adversely affect the residents. From her balcony she would be able to bounce a tennis ball against the wall of the proposed building.

Mr. Chris Jonna, C&P Real Estate Group, spoke in support of the project. The applicant builds nothing but first-class buildings. Increasing the zoning classification will be a tremendous benefit to Downtown Birmingham by bringing in more people to the area.

Mr. Lewis Rockind, a resident of Birmingham Place, emphasized that the zoning has to be contemplated in the context of what is intended to be developed. As a resident of Birmingham Place he is looking at the detrimental effect on the surrounding properties of increased vehicle and pedestrian traffic.

Mr. Daniel Jacob, 261 E. Maple Rd., said he is 100% in support of the project. The intended use of the property is much needed and would be a huge benefit to the City. Birmingham is changing and this project moves with the times.

Mr. Joseph Shalala, 255 S. Old Woodward Ave., spoke in support of the proposed building. It will support all of the small businesses by bringing in people such as office, residential, and hotel users. All of those things combined will help Birmingham.

Ms. Tony Schwartz, 411 Old Woodward Ave., maintained that it is the height of the building that is in question here, not its quality. Secondly, traffic is a big problem on that corner. There is a new hotel that is starting to be built on the corner of Brown and Old Woodward which will add more traffic to that corner. She understands there may be a pool deck on the top floor of the proposed building - who is going to control music and noise and parties. She lives right across on the tenth floor.

Chairman Clein advised that concerns related to traffic and noise are not part of a rezoning but would be handled under a Site Plan Review, and should this be moved forward to a rezoning the applicant would be required to obtain a Special Land Use Permit ("SLUP") which allows the City Commission to put additional restriction on the uses of the building.

Mr. Duraid Markus, one of the partners in the ownership entity for 469-479 S. Old Woodward Ave. (former Mountain King and Talmer Bank), said if this happened in New York, Chicago or LA there would not be a single skyscraper built. He noted that everybody who opposes this is only one contingent, and it has not been the entire City that comes in to support or not support.

It makes sense to build where the project is harmonious and fits in with the rezoning proposal. For those reasons he asked the board to consider all of the comments and make the decision to allow them to rezone the parcel.

Ms. Wilma Thelman who lives in Birmingham Place said none of them have heard why a conforming building cannot be built on that site.

Mr. Jeffares noted that things change and now Birmingham holds 21 thousand people. Secondly he recalled that the Board did discuss rezoning the subject property; however there was nobody from there to make their case so the Board just rezoned the existing buildings.

Mr. Koseck advised that D-4 Zoning allows a building to be built to 80 ft. So it will already block six floors of Birmingham Place. He did not believe the applicant's contention that they cannot make a five-story building work. He thought that a five-story could be a successful mixed-use building. In some ways it might even fit the form and the transition better and the upper three floors of Birmingham Place will not be affected.

Ms. Whipple-Boyce said when the Board established the D-5 Zoning Classification she felt it applied to three specific buildings. In her mind it had to do with bringing non-conforming buildings into conformity so that they could qualify for financing and improve their properties. Thinking about some of the other properties that could be affected down the road that are adjacent to other properties like this is an unanswered question for her. It causes her to hesitate tonight on recommending the rezoning to D-5.

Mr. Boyle made the following points:

- The Master Plan is meant to have the ability to adapt to changing circumstances. Similarly, zoning is powerful when it is able to adapt. So, change is normal; it is not frequent, but it is usual.
- He was positive about the potential impact on the City as a whole of rezoning this property.
- The potential impact of rezoning on the contiguous properties will affect a number of people. The Board is here to determine who has the weight in this particular discussion, the entire City or the adjacent neighbors.
- There are checks and balances built into the system. If the rezoning were to be approved, the community would have two elements to be brought to the table. One would be the Site Plan Review process, and secondly the height would kick in the SLUP where the Planning Board can recommend controlling modifications to the City Commission who will hold a public hearing on the proposal.
- At the end of the day he is of a mind to approve the rezoning because overall he sees the benefits for the City and for this particular area. However, he does not underestimate the cost for the immediate residents in the contiguous building.

Ms. Ramin stated one of the burdens the applicant must carry to justify rezoning is an explanation of why the existing D-4 classification is no longer appropriate.

Mr. Duraid Markus said they cannot get in a hotel concept on this little parcel so they have to go vertical by a couple of floors. He has to be honest, it is the economics. He cannot get a development off the ground. They are not in the Parking Assessment District and are therefore limited by the required parking for an office building or a restaurant.

Answering Mr. Emerine, Ms. Ecker explained that anyone on any site on any site can apply for a rezoning to any of the existing zoning classifications.

Chairman Clein commented that rezoning is the most difficult thing the Board has to do - balancing the rights of adjacent land owners. To Ms. Ramin's point, the burden has not been met as to why a five-story building will not work. The answer that was given was economics, which has no place in a rezoning discussion. Therefore, he is not supportive of the rezoning.

Mr. Jeffares said he cannot come up with a reason for the height of the proposed building to be lower.

Ms. Whipple-Boyce indicated she has no problem with the subject building being built as high as Birmingham Place. But she doesn't think the applicant has made the case that they deserve to be rezoned and that the current zoning classification is no longer appropriate. She was appalled to hear the applicant say they bought this property and the only thing that will work there is a ten-story hotel and it should be rezoned because that is what they want to build. Therefore she doesn't think the applicant has proved their case.

Mr. Rattner noted that maybe the best thing for them to do is to ask for postponement so they can come back with a different plan. Chairman Clein stated that for him postponing would just be kicking the can down to another meeting. Mr. Boyle said he is in favor of not accepting that proposal and actually making a motion this evening.

Motion by Mr. Boyle

Seconded by Mr. Jeffares that based on a review of the rezoning request and supporting documentation submitted by the applicant, a review of the applicable Master Plan documents and the development trends in the area, the Planning Board

recommends APPROVAL to the City Commission for the rezoning of 469-479 S. Old Woodward Ave. from D-4 to D-5 in the Downtown Overlay.

There were no comments from the public on the motion at 10 p.m.

Motion failed, 2-5.

ROLLCALL VOTE

Yeas: Boyle, Jeffares

Nays: Clein, Koseck, Emerine, Ramin, Whipple-Boyce

Absent: Share, Williams

Motion by Ms. Whipple-Boyce

Seconded by Mr. Koseck to recommend DENIAL to the City Commission of the applicant's request for the rezoning of the property at 469-479 S. Old Woodward Ave. from D-4 to D-5 in the Downtown Overlay.

Motion carried, 5-2.

ROLLCALL VOTE

Yeas: Whipple-Boyce, Koseck, Clein, Emerine, Ramin

Nays: Jeffares, Whipple-Boyce

Absent: Share, Williams

06-114-18

PRELIMINARY SITE PLAN REVIEW AND COMMUNITY IMPACT STUDY ("CIS")

1. 469-479 S. Old Woodward Ave. (former Mountain King) - Application for Preliminary Site Plan and CIS to permit new construction of a nine-story mixed-use building

Motion by Mr. Boyle

Seconded by Ms. Whipple-Boyce to postpone this application to August 22, 2018 following the consideration of this rezoning application at the City Commission.

There was no discussion from the public on the motion at 10:02 p.m.

Motion carried, 7-0.

VOICE VOTE

Yeas: Boyle, Whipple-Boyce, Clein, Emerine, Jeffares, Koseck, Ramin

Nays: None

Absent: Share, Williams

06-115-18

MISCELLANEOUS BUSINESS AND COMMUNICATIONS

a. Communications (none)

b. Administrative Approval Requests

- 2211 Cole, Cole II - Approval for screening of two rooftop units.
- East of Woodward Ave. and north of Bennaville, parking lot - Renovate existing parking lot to increase number of parking spots, install new screen wall per code.
- Mr. Baka brought forward a request from a resident of Crosswinds to add to their outdoor deck motorized screening that rolls up and down. It is fastened to the building and would need a permit. The neighbor put one up too. Ms. Ecker said it is a design change from what was approved for the deck and there was not a Building Permit issued. Consensus was they should come to the Planning Board for approval and that Board members should visit the site.

c. Draft Agenda for the next Regular Planning Board Meeting of July 11, 2018

- Bistro Regulations;
- Ongoing discussion of first-floor retail;
- Discussion on parking.

d. Other Business

- Ms. Ecker noted the SLUP request for 191 N. Chester was approved at the City Commission to allow the office use in the old Church of Christ Scientist Bldg.
- The Hazel, Ravines, Downtown SLUP was also approved.
- Also, the Commission established the Master Plan Selection Committee.

06-116-18

PLANNING DIVISION ACTION ITEMS

Staff report on previous requests (none)

Additional items from tonight's meeting (none)

06-117-18

ADJOURNMENT

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

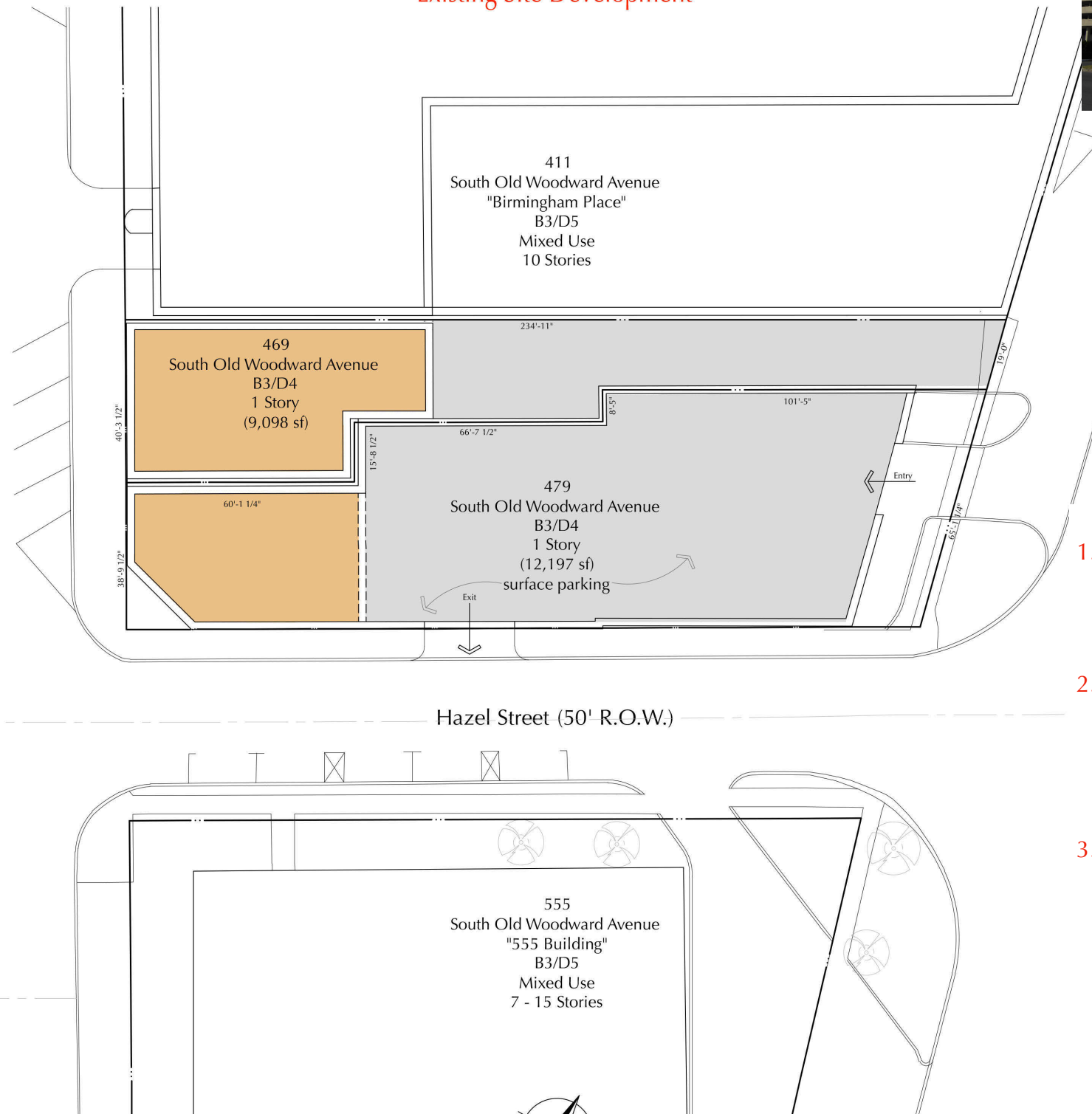
Jana L. Ecker
Planning Director



Project M1

Markus Management Group LLC
469 + 479 South Old Woodward Avenue
Birmingham, MI 48009

Existing Site Development



Use and Parking Data

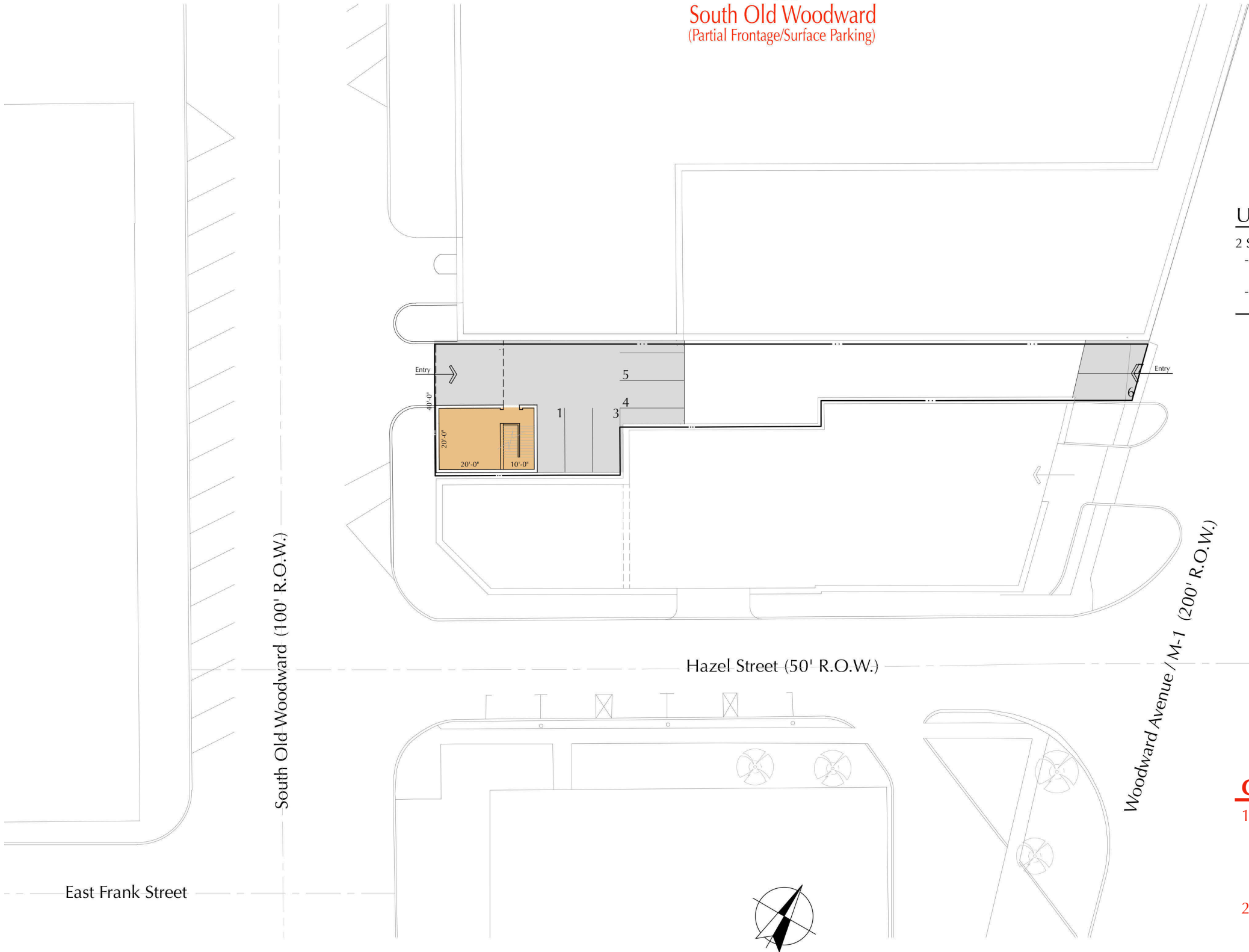
Current Use	
- 469 2,516 sf Restaurant / 75 =	39 Spaces
- 479 1,873 sf Bank / 150 =	16 Spaces
Total Required	55 Spaces

1. Cannot redevelop either site with the same use or building size and provide adequate parking
2. Cannot redevelop either site with a single-story building (required to meet the 'Downtown Birmingham Overlay Ordinance').
3. Combined sites have 3 separate frontages that are required to meet the 'Downtown Birmingham Overlay Ordinance'.



Project M1
Markus Management Group LLC
469 + 479 South Old Woodward Avenue
Birmingham, MI 48009

469
South Old Woodward
(Partial Frontage/Surface Parking)

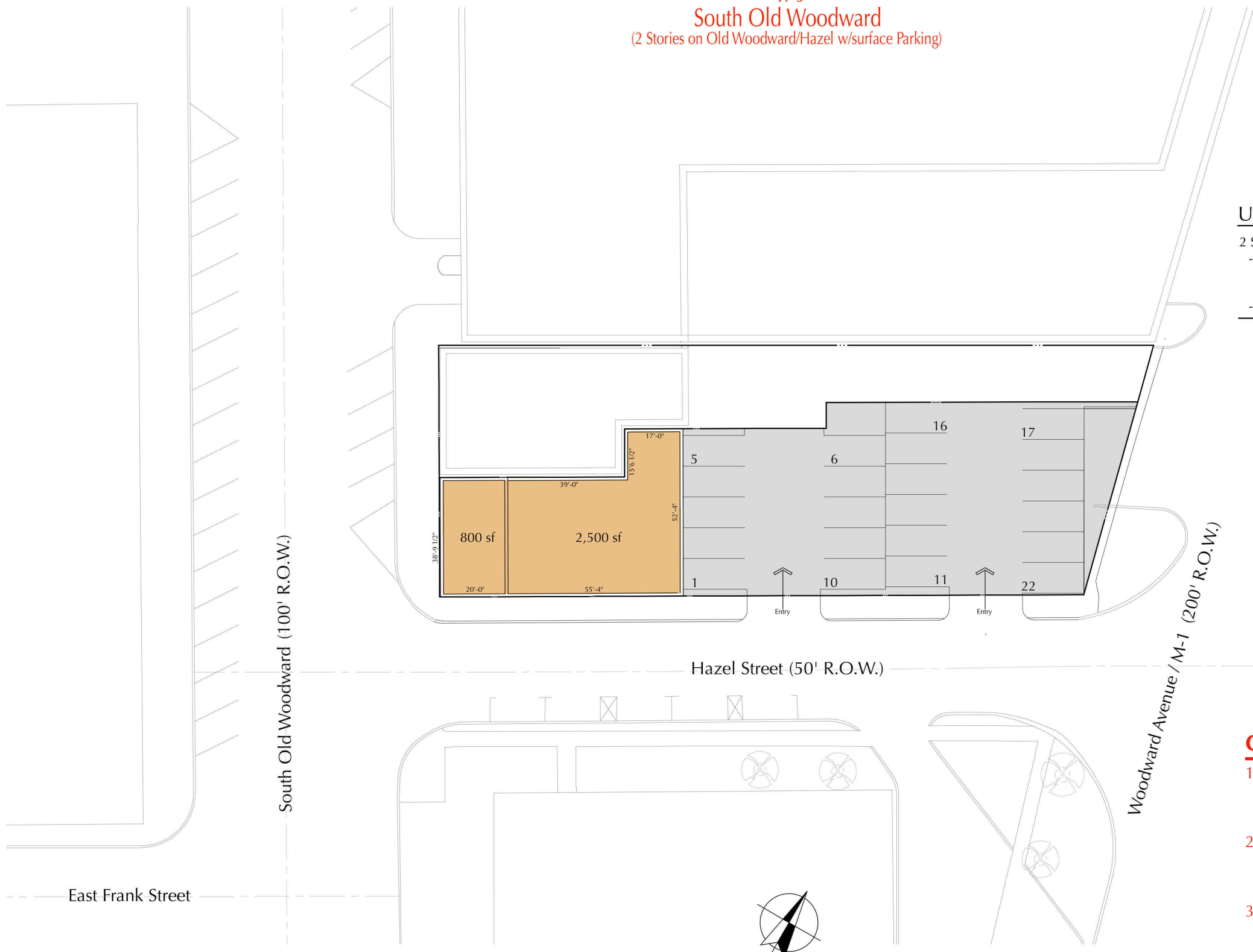


Use and Parking Data		
2 Story Building		
-	600 sf Retail (1st) / 300 =	2 Spaces
-	800 sf Office (2nd) / 150 =	5.3 Spaces
Total Required		7.3 Spaces
Total Provided		7 Spaces

- Comments**
- Provides 1,400 square feet of 2 story mixed-use building with surface parking.
 - Leaves 5,750 sf of undeveloped property

Project M1
Markus Management Group LLC
469 + 479 South Old Woodward Avenue
Birmingham, MI 48009

479
South Old Woodward
(2 Stories on Old Woodward/Hazel w/surface Parking)



Use and Parking Data	
2 Story Building	
- 800 sf x 2= 1,600 sf	
Retail (1st & 2nd) / 300 =	5.3 Spaces
<hr/>	
- 2,500 sf Office (1st) / 150 =	16.7 Spaces
<hr/>	
Total Required	22 Spaces
Total Provided	22 Spaces

- Comments**
- Provides 2 story frontage (retail) on South Old Woodward
 - Provides 1 story office partially on Hazel
 - Surface parking occupies all of Woodward Avenue and most of Hazel

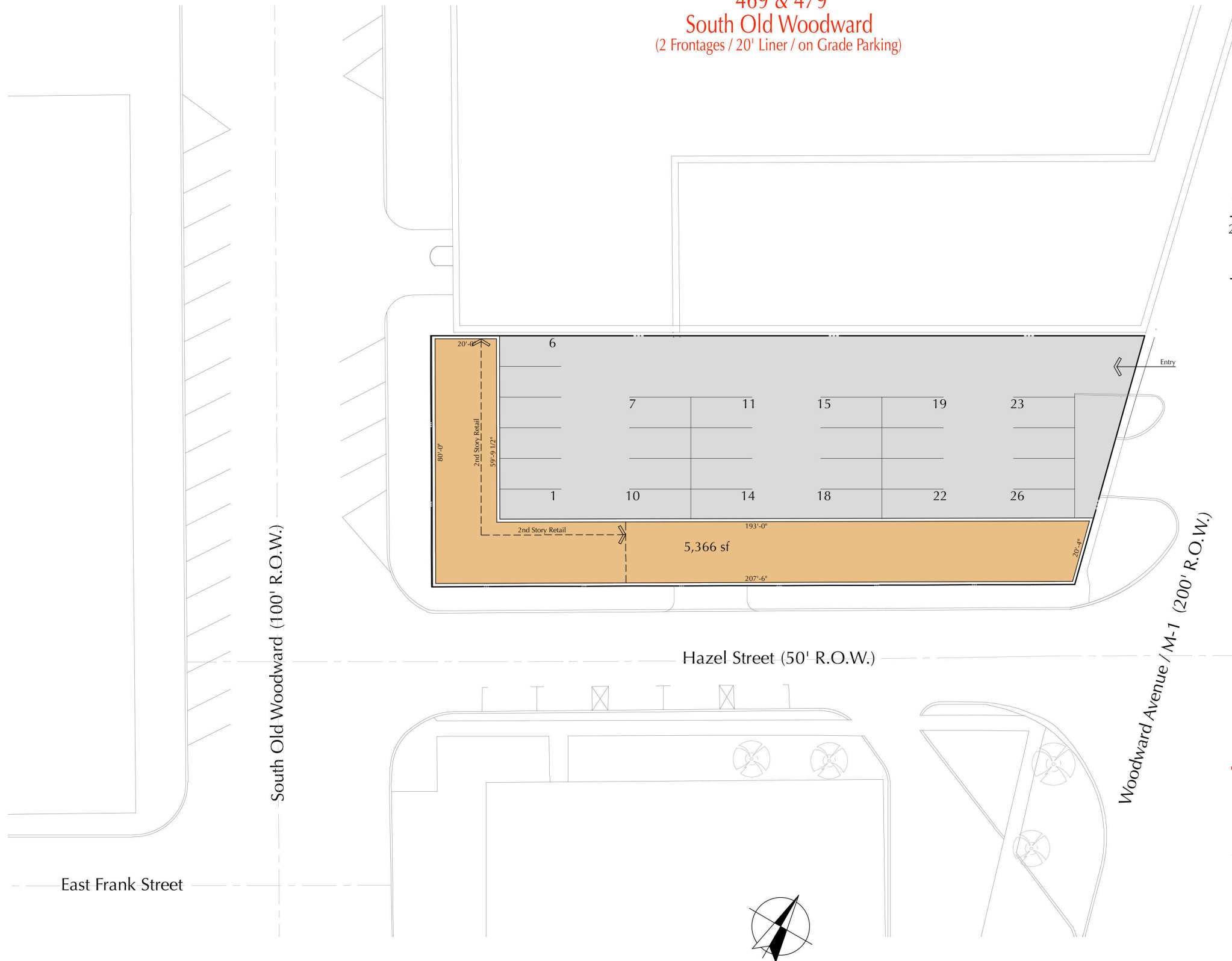


Project M1
Markus Management Group LLC
469 + 479 South Old Woodward Avenue
Birmingham, MI 48009

469 & 479
South Old Woodward
(2 Frontages / 20' Liner / on Grade Parking)

Use and Parking Data

2 Story Building (Retail)	
- 5,366 sf Retail (1st) / 300 =	17.9 Spaces
- 2,434 st Retail (2nd) / 300 =	8.1 Spaces
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Total Required	26 Spaces
Total Provided	26 Spaces

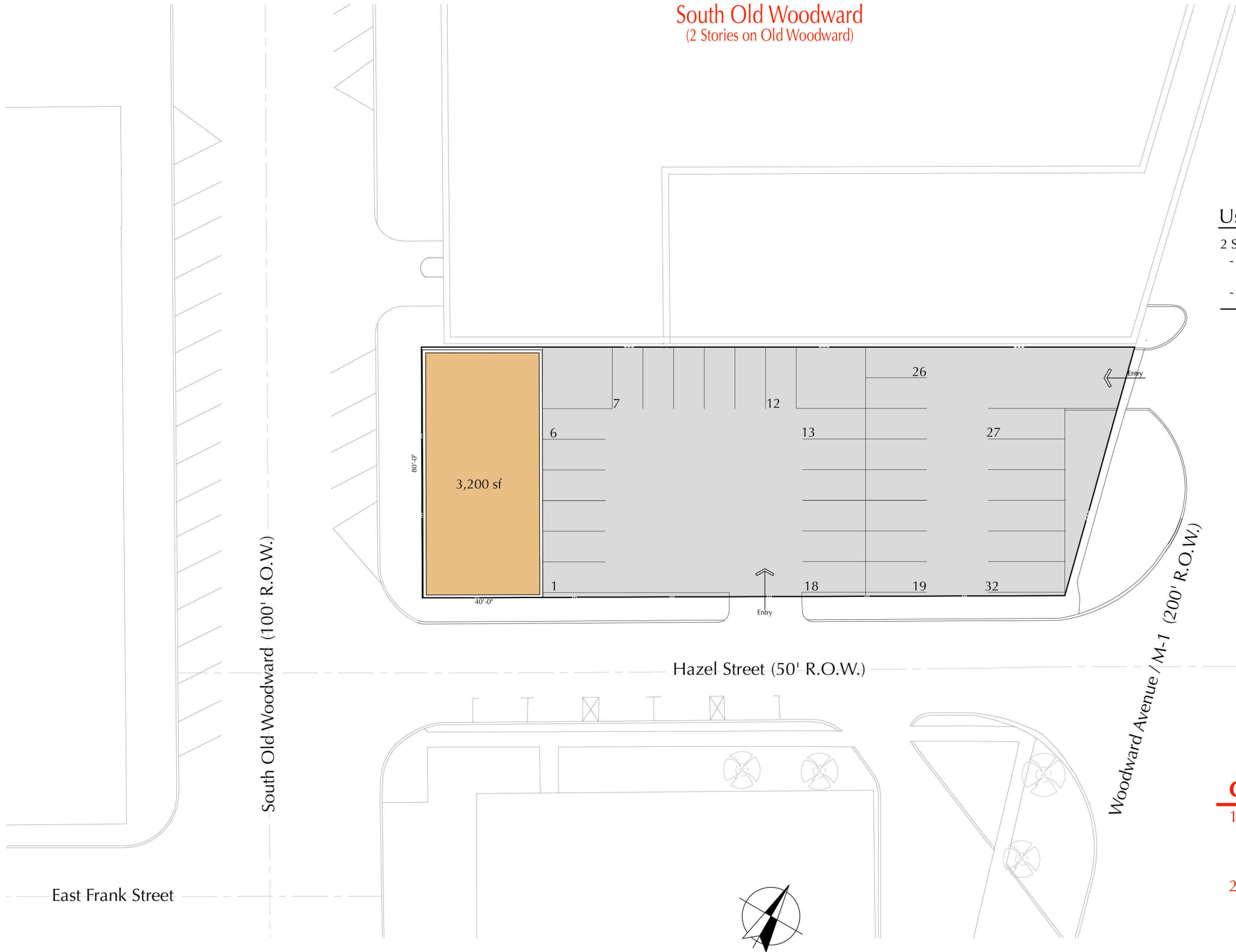


Comments

1. Provides 2 story/single-use (retail) on south Old Woodward
2. Provides 2 story/single-use (retail) partially on Hazel
3. Surface parking occupies most of Woodward Avenue

Project M1
Markus Management Group LLC
469 + 479 South Old Woodward Avenue
Birmingham, MI 48009

469 & 479
South Old Woodward
(2 Stories on Old Woodward)

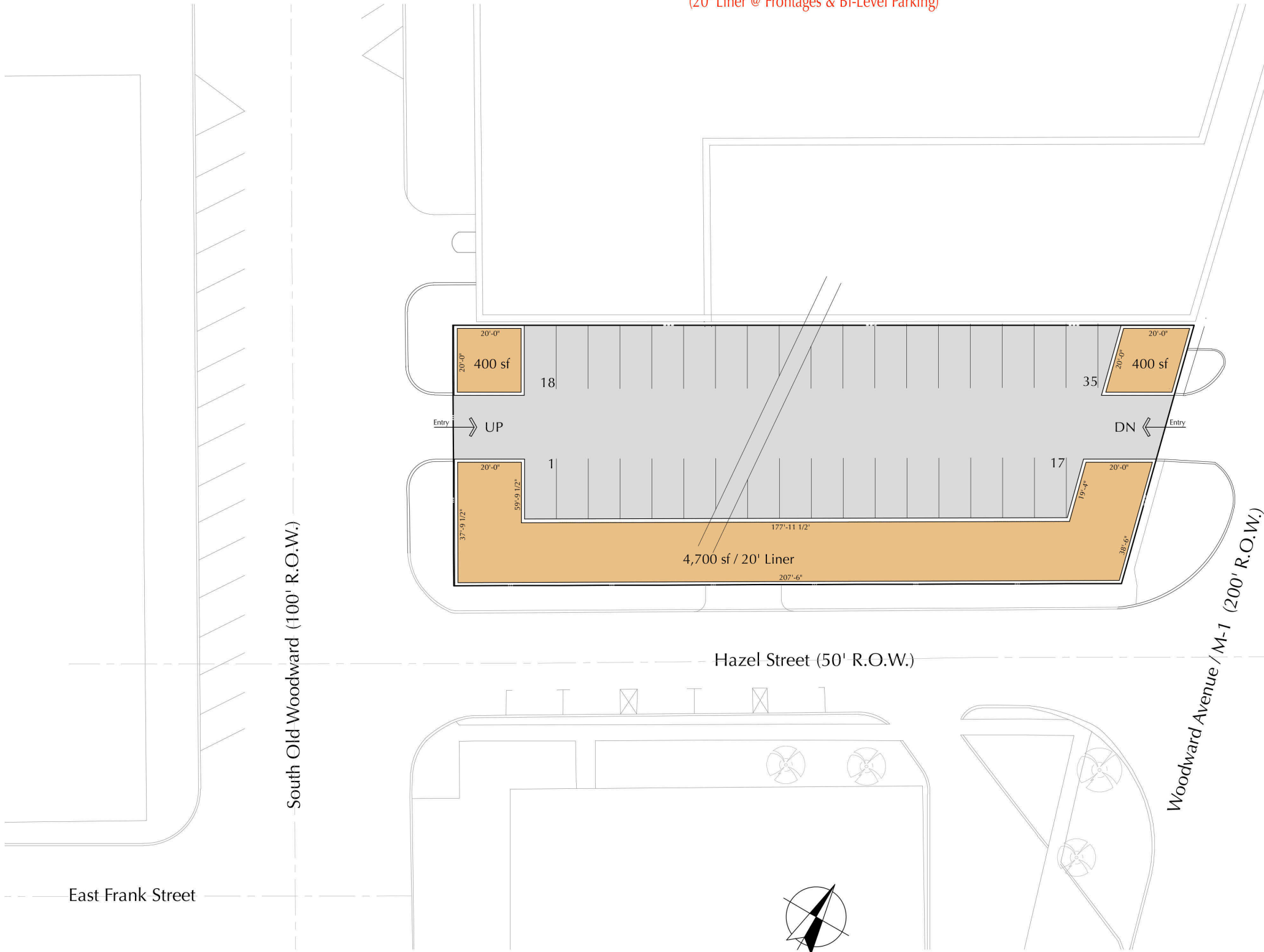


Use and Parking Data	
2 Story Building	
- 3,200 sf Retail (1st) / 300 =	10.7 Spaces
- 3,200 sf Office (2nd) / 150 =	21.3 Spaces
Total Required	32 Spaces
Total Provided	32 Spaces

- Comments**
- Provides 2 story/mixed-use (retail/office) on South Old Woodward
 - Surface parking on both Hazel and Woodward Avenue (2 curb cuts)

Project M1
Markus Management Group LLC
469 + 479 South Old Woodward Avenue
Birmingham, MI 48009

469 & 479
South Old Woodward
(20' Liner @ Frontages & Bi-Level Parking)



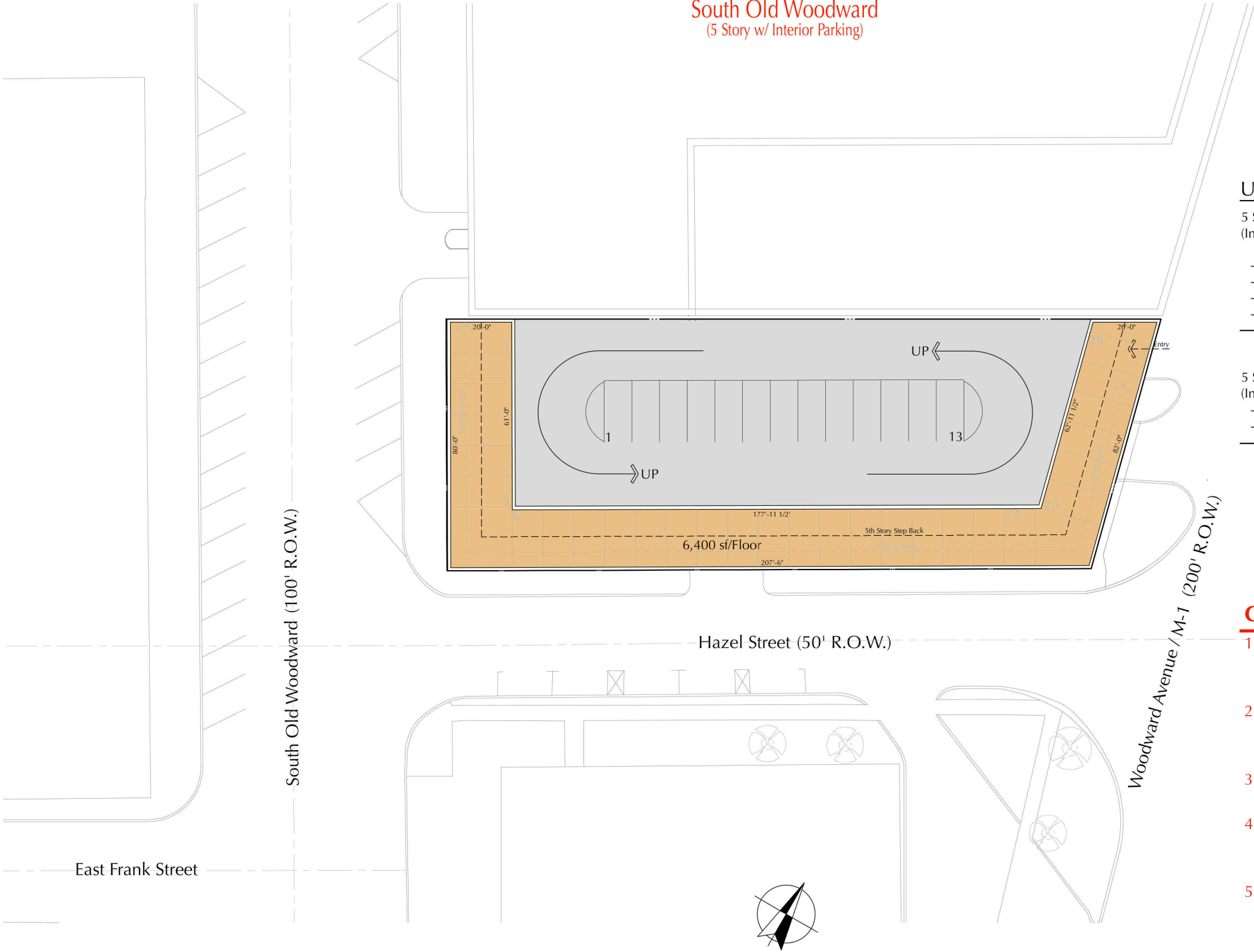
Use and Parking Data

3 Story Building	
- 5,500 sf Retail (1st) / 300 =	18.3 Spaces
- 5,500 sf Office (2nd) / 150 =	36.4 Spaces
- 8 Residences (3rd) x 1.5 =	12 Spaces
Total Required	67 Spaces
Total Provided	70 Spaces

Comments

1. Provides 3 story building/mixed-use building on all 3 frontages
2. Provides a 'ramp over ramp' hybrid internal parking w/2 curb cuts
3. Provides 8 residences

469 & 479
South Old Woodward
(5 Story w/ Interior Parking)



Use and Parking Data

5 Story Building w/ 20' Liner on all frontages
(Interior Parking)

- 6,000 sf Retail (1st) / 300 = 20 Spaces
- 6,400 sf Office (2nd/3rd) / 150 = 85 Spaces
- Parking (4th)
- 5 Units Residential (5th)/ 1.5 = 7.50 Spaces

Total Required 113 Spaces

5 Story Building w/ 20' Liner on all frontages
(Interior Parking)

- 1st, 2nd, 3rd Stories @ +/- 13 ea. 39 Spaces
- 4th Story 41 Spaces

Total Provided 80 Spaces

Comments

1. Provides 5 story building/mixed-use building on all 3 frontages
2. Provides internal parking ramp on 1st, 2nd and 3rd floors
3. Provides parking on entire 4th floor
4. Provides a 20' liner on 1st, 2nd and 3rd floors
5. Provides 5 residential units on 5th floor



REZONING REQUEST FOR 469-479 S. OLD WOODWARD
SUMMARY OF PRIOR SUBMITTAL FROM THE APPLICANT AND
THE ANALYSIS & FINDINGS OF THE PLANNING DEPARTMENT'S REVIEW

Over the past several months, the applicant has submitted written documentation and evidence in support of applicant's application to rezone 469-479 S. Old Woodward to the D-5 Downtown Overlay District. In addition, the Planning Department has completed a thorough analysis of the applicant's request to rezone the subject property as well as all of the information that was submitted by the applicant during this rezoning process. The following is a summary of the Planning Department's analysis and findings under the City Ordinance regarding the applicant's request to rezone 469-479 S. Old Woodward:

- The subject site consists of two vacant, single story commercial buildings (Mountain King and First Place Bank).
- The 0.423-acre site includes two narrow parcels, one facing 3 streets (Old Woodward, Hazel and Woodward), and the other facing 2 streets (Old Woodward and Woodward).
- The rezoning request is made pursuant to Article 7, section 7.02 of the Zoning Code.
- Section 7.02(B)(2)(b)(i) – Due to the site configuration fronting S. Old Woodward, Hazel and Woodward, and the narrow lot size and the off-street parking requirements, rezoning is necessary to preserve enjoyment of rights and usage commonly associated with ownership.
- Section 7.02(B)(2)(b)(ii) – Current zoning is no longer appropriate due to off-site parking requirements, narrow lot size configurations, and frontages.
- Section 7.02(B)(2)(b)(iii) – Rezoning will not be detrimental to surrounding properties as the adjacent and abutting properties are zoned D-5, mixed retail, commercial and residential properties, and applicant's proposal will add consistency to the streetscape in mass and architectural detail.
- Section 7.02(B)(5)(a) -- The objectives of the City's master plan and 2016 Plan are met by the rezoning as the proposed streetscape will improve the frontages of S. Old Woodward, Hazel and Woodward and project a strong image of the City toward Woodward with similar massing and architectural detail to adjacent buildings.
- Section 7.02(B)(5)(b) -- The existing uses of property in the general area align with applicant's proposed rezoning. Both the Birmingham Place and the 555 Building (neighboring properties) are mixed use buildings with both retail, commercial and residential uses. Properties to the east and west of the subject property are used for parking, retail and commercial.
- Section 7.02(B)(5)(c) -- Both neighboring properties are zoned in the D-5 Overlay Zone.
- Section 7.02(B)(5)(d) – The applicant's property is suitable for uses in the D-5 which are the same as in the current D-4 Zone. However, if a 5-story or less building is constructed under the D-4 at the site, it would be completely dominated by and inconsistent with the height of the neighboring Birmingham Place and 555 Building.
- Section 7.02(B)(5)(e) – The requested rezoning is consistent with the trend of development of this area of S. Old Woodward which is dominated by the height of the 555 Building and Birmingham Place.
- Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable master plan documents, current zoning and recent development trends in the area, the Planning Department finds that the applicant meets the established Zoning Ordinance requirements of Article 7, section 7.02(B)(5) to qualify for a rezoning of the property from D-4 to D-5 in the Downtown Overlay district.

September 11, 2018

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

Re: Rezoning Application Before the Planning Board

Dear Ms. Ecker:

This letter is in response to your request to clarify the procedure by which applications for rezoning and determinations of rezoning are made. The Zoning Ordinance states in Section 7.02 B.2. *Application for Rezoning*, as follows:

"2. Application for Rezoning.

1. *Persons Entitled to Seek Rezoning.* Only a person who has a fee interest in a piece of property, or a contractual interest which may become a fee interest in a piece of property, may seek an amendment in the zoning classification of that property under this section.
2. *Application for Rezoning.*
 - a. An application for an amendment to change the zoning classification of a particular property must be filed with the Building Official on such forms and accompanied by such fees as may be specified by the City Commission. The application and any supporting documentation shall be forwarded by the City Building Department to the Planning Board for study and recommendation.
 - b. Each application for an amendment to change the zoning classification of a particular property shall include statements addressing the following:
 - i. An explanation of why the rezoning is necessary for the preservation and enjoyment of the rights of usage commonly associated with property ownership.
 - ii. An explanation of why the existing zoning classification is no longer appropriate.
 - iii. An explanation of why the proposed rezoning will not be detrimental to surrounding properties.
 - c. Applications for amendments that are intended to change the zoning classification of a particular property shall be accompanied by a plot plan. The plot plan shall be drawn to a scale of not less than one inch equals 50 feet for a property of less than 3 acres and one inch equals 100

Beier Howlett

Ms. Jana Ecker, Planning Director
September 11, 2018
Page 2

feet for property of 3 acres or more in size. Information required on plot plans shall be as follows:

- i. Applicant's name, address and telephone number.
- ii. Scale, north point, and dates of submission and revisions.
- iii. Zoning classification of petitioner's parcel and all abutting parcels.
- iv. Existing lot lines, building lines, structures, parking areas, driveways, and other improvements on the site and within 100 feet of the site.
- v. Existing use of the property.
- vi. Dimensions, centerlines and right-of-way widths of all abutting streets and alleys.
- vii. Location of existing drainage courses, floodplains, lakes, streams, and wood lots.
- viii. All existing easements.
- ix. Location of existing sanitary systems and/or septic systems.
- x. Location and size of existing water mains, well sites and building service.
- xi. Identification and seal of architect, engineer, land surveyor, or landscape architect who prepared the plans.

If any of the items listed above are not applicable to a particular plot plan, the applicant must specify in the plot plan which items do not apply, and, furthermore, why the items are not applicable."

The foregoing is the information that is to be provided by the applicant to provide the materials to assist the Planning Board in making its findings of fact. It does not set the criteria by which findings of fact or recommendations should be made. Those are set forth in Section 7.02 B.5, which reads as follows:

"5. Findings of Fact and Recommendation of the Planning Board. The Planning Board shall make written findings of fact and transmit same, together with its recommendation, to the City Commission. The City Commission may hold additional hearings if the City Commission considers it necessary. The Planning Board shall make findings based on the evidence presented to it with respect to the following matters:

- a. The objectives of the City's then current master plan and the City's 2016 Plan.
- b. Existing uses of property within in the general area of the property in question.
- c. Zoning classification of property within the general area of property in question.
- d. The suitability of the property in question to the uses permitted under the existing zoning classification.

Beier Howlett

Ms. Jana Ecker, Planning Director
September 11, 2018
Page 3

- e. The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.

The foregoing Section 7.02 B.5. sets forth the criteria upon which the Planning Board makes written findings of fact. Thereafter, the findings of fact, together with its recommendations, are sent to the City Commission to determine possible rezoning of the subject property.

* * * * *

I have also been asked to outline the procedure for the Board to consider a petition by the applicant for rehearing of the rezoning application. The instant case involves 469-479 South Old Woodward. The first matter the Planning Board should consider is whether they will grant the rehearing of this matter to the applicant. If they believe there is not sufficient information to grant a rehearing, it could be denied at that time and no rehearing will be granted.


Second, if the Planning Board believes a rehearing should be granted, then a ruling granting the rehearing should be entered, followed by a rehearing on the substance of the matter before the Board. At such time, the Planning Board can take into account such additional information that is submitted by the applicant or by any person opposing the application. This will create an additional record upon which the Planning Board will then make its findings of fact and recommendation pursuant to 7.02 B.5.

A rehearing does not automatically grant the request of the applicant, nor does it automatically deny it. The Planning Board is free to make whatever decision it deems appropriate based on the material and the facts placed before it by the applicant and those in opposition.

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@bhlaw.us.com
Telephone (248) 645-9400
Fax (248) 645-9344

October 1, 2018

Ms. Jana L. Ecker and
Planning Board Members
City of Birmingham
151 Martin Street, P.O. Box 3001
Birmingham, MI 48012

Re: Parking Assessment District- 469-479 S. Old Woodward

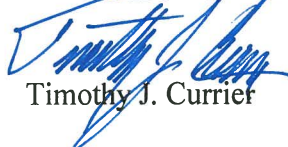
Dear Members of the Board:

The Board has asked if we have any information as to why the above properties were not included in the Parking Assessment District when they were first created and any explanation as to the City's reasoning at that time. We do not have any files or documents that can assist you in this regard.

If you have any additional questions, please do not hesitate to contact me.

Very truly yours,

BEIER HOWLETT, P.C.



Timothy J. Currier

TJC/jc

Beier Howlett

ATTORNEYS AND COUNSELORS

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

October 1, 2018

Ms. Jana L. Ecker and
Planning Board Members
City of Birmingham
151 Martin Street, P.O. Box 3001
Birmingham, MI 48012

Re: Legal Opinion Regarding Rezoning Application for 468-479 S. Old Woodward

Dear Members of the Board:

The Board has requested a legal opinion in connection with the following question:

Is the owner of the property located 469-479 S. Old Woodward (currently zoned D4 in the Downtown Overlay District) legally permitted to apply for rezoning to the newly created D5 zone district in the Downtown Overlay District?

ANSWER: YES.

If you have any additional questions, please do not hesitate to contact me.

Very truly yours,

BEIER HOWLETT, P.C.



Timothy J. Currier

TJC/jc

STAFF REPORTS TO PLANNING BOARD (MOST RECENT FIRST)



MEMORANDUM

Planning Division

DATE: January 17, 2019

TO: Planning Board

FROM: Jana L. Ecker, Planning Director

SUBJECT: Rehearing of Rezoning Request for 469 – 479 S. Old Woodward
(New information in Blue Type)

On June 27, 2018, the Planning Board reviewed a rezoning request 469 – 479 S. Old Woodward (former Mountain King and Talmer Bank sites) to rezone the site from B3/D4 to B3/D5. This request was made pursuant to Article 7, section 7.02, of the Zoning Code. After much discussion, the Planning Board voted to recommend denial of the rezoning request to the City Commission for 469 – 479 S. Old Woodward.

The City Commission then set a public hearing date for August 13, 2018 to review the rezoning request.

On August 13, 2018, the applicant submitted a letter requesting that the City postpone the public hearing at the City Commission that was previously set to allow the applicant to present new information to the Planning Board for their review and consideration. Accordingly, the City Commission cancelled the public hearing and the matter was sent back to the Planning Board for reconsideration.

Section 7.02(6) of the Zoning Ordinance states:

If the City Commission denies the application, no application shall be reheard for at least one year, unless there have been substantial changes in the facts, evidence, and/or conditions demonstrated by the applicant. The determination of whether there have been such changes shall be made by the Planning Board at the time the application is submitted for processing.

Accordingly, section 7.02(6) of the Zoning Ordinance allows a rehearing on a rezoning request where there is a substantial change in the evidence that was previously presented even after the City Commission has issued a denial of the request. In this case, the City Commission did not hear the request, and thus did not issue an approval or denial. They did however send the matter back to the Planning Board to determine if there has been a substantial change in the evidence, and if so, to conduct a rehearing on the rezoning request previously considered.

Please find attached the applicant's letter that outlines the substantial change in the evidence that was previously presented to the Planning Board on June 27, 2018, and requests a rehearing of the rezoning request.

On September 12, 2018, the applicant appeared before the Planning Board and outlined the substantial change in the evidence that was previously presented to the board. In addition, an attorney speaking in opposition to the rezoning request also raised new information that had not been previously presented or discussed by the board. Board members had additional questions as to why the subject parcel was not put into the Parking Assessment District when the district was created, and whether or not the owner of the subject property is permitted to apply for rezoning to the new D5 zoning classification in the Downtown Birmingham Overlay District. After much discussion, the Planning Board voted to postpone consideration of the public hearing to October 10, 2018 with the condition that the Board receive the legal opinion of counsel to the City of Birmingham in writing as to whether the proposed site (former Mountain King and Talmer Bank) is eligible to be rezoned to the D-5 category.

Please find attached two letters from the City Attorney, one addressing the eligibility of the subject site to be rezoned to the D-5 category, and one addressing Parking Assessment District records regarding the creation of the district.

On October 10, 2018, the applicant appealed to the Planning Board for a rehearing based on new facts or evidence. After much discussion, the Board made a motion finding that there were substantial changes from the evidence previously presented at the rezoning hearing on June 27, 2018, and thus voted to grant a rehearing of the rezoning request for 469 – 479 S. Old Woodward. The rehearing was scheduled for November 14, 2018.

As the Planning Board accepted that the applicant has proven a substantial change in the evidence and that a rehearing should occur, all of the previous application documents, plans and reports are provided for your review and consideration. An updated staff report is also attached for your review.

At the Planning Board meeting on November 14, 2018, the applicant requested postponement of the rehearing to December 12, 2018.

At the Planning Board meeting on December 12, 2018, the applicant requested further postponement of the rehearing to January 27, 2019 to allow additional time to meet with the neighbors and attempt to reach an agreement on the proposed development.

The only new document that is being provided at this time is a memo from the applicant dated January 18, 2019 summarizing previous documents submitted and discussed at Planning Board meetings. This document is attached immediately following this memo and minutes.

REZONING REQUEST FOR 469-479 S. OLD WOODWARD
SUMMARY OF PRIOR SUBMITTAL FROM THE APPLICANT AND
THE ANALYSIS & FINDINGS OF THE PLANNING DEPARTMENT'S REVIEW

Over the past several months, the applicant has submitted written documentation and evidence in support of applicant's application to rezone 469-479 S. Old Woodward to the D-5 Downtown Overlay District. In addition, the Planning Department has completed a thorough analysis of the applicant's request to rezone the subject property as well as all of the information that was submitted by the applicant during this rezoning process. The following is a summary of the Planning Department's analysis and findings under the City Ordinance regarding the applicant's request to rezone 469-479 S. Old Woodward:

- The subject site consists of two vacant, single story commercial buildings (Mountain King and First Place Bank).
- The 0.423-acre site includes two narrow parcels, one facing 3 streets (Old Woodward, Hazel and Woodward), and the other facing 2 streets (Old Woodward and Woodward).
- The rezoning request is made pursuant to Article 7, section 7.02 of the Zoning Code.
- Section 7.02(B)(2)(b)(i) – Due to the site configuration fronting S. Old Woodward, Hazel and Woodward, and the narrow lot size and the off-street parking requirements, rezoning is necessary to preserve enjoyment of rights and usage commonly associated with ownership.
- Section 7.02(B)(2)(b)(ii) – Current zoning is no longer appropriate due to off-site parking requirements, narrow lot size configurations, and frontages.
- Section 7.02(B)(2)(b)(iii) – Rezoning will not be detrimental to surrounding properties as the adjacent and abutting properties are zoned D-5, mixed retail, commercial and residential properties, and applicant's proposal will add consistency to the streetscape in mass and architectural detail.
- Section 7.02(B)(5)(a) -- The objectives of the City's master plan and 2016 Plan are met by the rezoning as the proposed streetscape will improve the frontages of S. Old Woodward, Hazel and Woodward and project a strong image of the City toward Woodward with similar massing and architectural detail to adjacent buildings.
- Section 7.02(B)(5)(b) -- The existing uses of property in the general area align with applicant's proposed rezoning. Both the Birmingham Place and the 555 Building (neighboring properties) are mixed use buildings with both retail, commercial and residential uses. Properties to the east and west of the subject property are used for parking, retail and commercial.
- Section 7.02(B)(5)(c) -- Both neighboring properties are zoned in the D-5 Overlay Zone.
- Section 7.02(B)(5)(d) – The applicant's property is suitable for uses in the D-5 which are the same as in the current D-4 Zone. However, if a 5-story or less building is constructed under the D-4 at the site, it would be completely dominated by and inconsistent with the height of the neighboring Birmingham Place and 555 Building.
- Section 7.02(B)(5)(e) – The requested rezoning is consistent with the trend of development of this area of S. Old Woodward which is dominated by the height of the 555 Building and Birmingham Place.
- Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable master plan documents, current zoning and recent development trends in the area, the Planning Department finds that the applicant meets the established Zoning Ordinance requirements of Article 7, section 7.02(B)(5) to qualify for a rezoning of the property from D-4 to D-5 in the Downtown Overlay district.

DATE: November 8, 2018

TO: Planning Board

FROM: Jana Ecker, Planning Director

SUBJECT: Rezoning Request for 469-479 S. Old Woodward – Project M1

The applicant for 469-479 S. Old Woodward (Parcel Numbers 1936208011 and 1936208012 respectively) requested that the Planning Board hold a public hearing to consider the rezoning of the property from B-3 (Office Residential) and D-4 (Downtown Overlay) to B-3 (Office Residential) and D-5 (Downtown Overlay). The applicant is seeking the rezoning to allow for the construction of a nine-story mixed use building in between the Birmingham Place and the 555 building. The maximum height allowed in the D-4 zoning district is 4-5 stories. In the D-5 zoning district, developers may build as high, but no higher than the adjacent buildings which are located in the D-5 zone.

The 0.423 acre subject site spans Hazel Street from S. Old Woodward to Woodward. The site currently contains two vacant single-story commercial buildings (formerly Mountain King Chinese Restaurant and First Place Bank). The applicant is proposing to demolish the present buildings for the construction of a nine-story mixed use building with three levels of underground parking.

On June 27, 2018, the Planning Board reviewed a rezoning request 469 – 479 S. Old Woodward (former Mountain King and Talmer Bank sites) to rezone the site from B3/D4 to B3/D5. This request was made pursuant to Article 7, section 7.02, of the Zoning Code. After much discussion, the Planning Board voted to recommend denial of the rezoning request to the City Commission for 469 – 479 S. Old Woodward.

On September 12, 2018, the applicant appeared before the Planning Board requesting a rehearing on the rezoning of 469 – 479 S. Old Woodward and outlined the substantial changes in the evidence that was previously presented to the board. In addition, an attorney speaking in opposition to the rezoning request also raised new information that had not been previously presented or discussed by the board. Board members had additional questions as to why the subject parcel was not put into the Parking Assessment District when the district was created, and whether or not the owner of the subject property is permitted to apply for rezoning to the new D5 zoning classification in the Downtown Birmingham Overlay District. After much discussion, the Planning Board voted to postpone consideration of the public hearing to October 10, 2018 with the condition that the Board receive the legal opinion of counsel to the City of Birmingham in writing as to whether the proposed site (former Mountain King and Talmer Bank) is eligible to be rezoned to the D-5 category.

On October 10, 2018, the Planning Board continued discussion and deliberations on the question of whether a rehearing should be held based on new facts or evidence. After much discussion, the Board made a motion finding that there were substantial changes from the evidence previously presented at the rezoning hearing on June 27, 2018, and thus voted to grant a rehearing of the rezoning request for 469 – 479 S. Old Woodward. The rehearing was scheduled for November 14, 2018.

History of Property

Information gathered by PM Environmental for a Phase 1 Environmental Site Assessment on the property history revealed that 469 S. Old Woodward was home to various occupants since around 1937, including many auto sales companies and most recently the First Place Bank, which closed in 2014. The one story commercial building has since been vacant. 479 S. Old Woodward has been home to a few restaurants, most recently Mountain King (1998-2014). Similarly, the one story commercial building has also been vacant since its last tenant in 2014.

The applicant has noted that historically, Birmingham's buildings zoning permitted the height of the 555 building and the Birmingham Place in the late 1960's and early 1970's. When the zoning was changed in the 1970's, the two buildings were designated to a legal nonconforming use. Ultimately, the zoning was changed to D-4 in 1996 by the adoption of the 2016 Plan and the Downtown Overlay. In 2016, a new D5 zone was created. The properties known as the 555 Building, the Merrillwood Building and Birmingham Place were then rezoned to the new D5 zoning classification. The subject property is located between Birmingham Place and the 555 Building, both of which are zoned D5 currently.

Requirements for Rezoning

The requirements for a request for the rezoning of a property are set forth in Article 07, section 7.02 of the Zoning Ordinance as follows:

Each application for an amendment to change the zoning classification of a particular property shall include statements addressing the following:

- 1. An explanation of why the rezoning is necessary for the preservation and enjoyment of the rights of usage commonly associated with property ownership.**

Applicant response:

- Rezoning of the subject property is necessary to preserve the applicants enjoyment of rights associated with ownership of a property zoned for mixed uses. Because of the size and corner configuration of the parcel, it will not support street-level retail, residential, and parking for residents in the same manner as the neighboring properties. The 2016 Plan clearly anticipates mixed use developments. Such planning requires space to design and locate mixed uses within a given structure. Without the ability to go higher with a new building than current zoning allows, the applicant will not have the required area within which to locate a mix of uses, or otherwise to be able to enjoy all of the allowed uses that would commonly be associated the design of such a modern, mixed use building. Furthermore, the D-5 Ordinance, at Section 3.04-4-b, anticipates that the subject property and those similarly situated may enjoy the same rights of usage through an extension of height as other existing tall buildings already enjoy in the D-5 Overlay District.

- 2. An explanation of why the existing zoning classification is no longer appropriate**

Applicant response:

- The existing D-3 zoning classification is no longer appropriate for the subject property. The subject property is surrounded by the Birmingham Place, a 10-story building on the north side and the 555 Buildings, a 15-story building on the south side. This height is an established pattern in this area of the City. This rezoning request is actually an “infill” rezoning to bring the entire area into architectural and design harmony with surrounding buildings. It is reasonable for the subject property to share the same zoning classification as its surrounding neighbors. This would allow development of the property in a manner consistent with the existing structures from Brown Street south to Haynes Street. It will create a more unified block and enhance the character of the gateway area to Downtown Birmingham. The rezoning of the subject property would restore the property to a zoning classification this area of the City once enjoyed, as the Planning Board has done for with Birmingham Place and the 555 Buildings. Hence, given the location of the subject property sandwiched between two properties in the D-5 Zone, the D-3 Zone is no longer appropriate.

3. An explanation of why the proposed rezoning will not be detrimental to the surrounding properties.

Applicant response:

- The proposed rezoning of the subject property is not detrimental to surrounding property owners. Note that the proposed rezoning does not extend the D-5 classification further to the north or south of the current D-5 Zoning, but actually fills in the one gap in the streetscape that is noticeably out of place and anachronistically remains in the D-3 Zone. The surrounding properties to the north and south are already in the D-5 zone. When these neighboring properties were rezoned the Planning Board anticipated that eventually the subject property also may be rezoned for the reasons stated in this letter. Placing the subject property in the D-5 Zone will be placing it on equal footing with the surrounding properties from a structural, use and design perspective. The proposed rezoning will enhance the entire area by allowing it to be developed as an attractive part of the South Old Woodward gateway and bring that area into compliance with the spirit and intent of the 2016 Master Plan.

Article 7, section 7.02 of the Zoning Ordinance further states:

Applications for amendments that are intended to change the zoning classification of a particular property shall be accompanied by a plot plan. (See attached)

Information required on plot plans shall be as follows:

1. Applicant's name, address and telephone number.
2. Scale, north point, and dates of submission and revisions.
3. Zoning classification of petitioner's parcel and all abutting parcels.
4. Existing lot lines, building lines, structures, parking areas, driveways, and other improvements on the site and within 100 feet of the site.
5. Existing use of the property.
6. Dimensions, centerlines and right-of-way widths of all abutting streets and alleys.
7. Location of existing drainage courses, floodplains, lakes, streams, and wood lots.

8. All existing easements.
9. Location of existing sanitary systems and or septic systems.
10. Location and size of existing water mains, well sites and building service.
11. Identification and seal of architect, engineer, land surveyor, or landscape architect who prepared the plans. If any of the items listed above are not applicable to a particular plot plan, the applicant must specify in the plot plan which items do not apply and, furthermore, why the items are not applicable.

A land survey was provided by the applicant and submitted to the Planning Board (see attached).

Article 7 section 7.02 of the Zoning Ordinance further states:

The Planning Board shall hold at least one public hearing on each application for amendment at such time and place as shall be established by the Planning Board.

The Planning Board shall make findings based on the evidence presented to it with respect to the following matters:

- a. The objectives of the City's then current master plan and the City's 2016 plan.
- b. Existing uses of property within in the general area of the property in question.
- c. Zoning classification of property within the general area of the property in question.
- d. The suitability of the property in question to the uses permitted under the existing zoning classification.
- e. The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.

Planning Division Analysis & Findings

In accordance with Article 7 of the Zoning Ordinance, the Planning Board is required to conduct a public hearing on an application for rezoning, and to make a recommendation on the rezoning to the City Commission.

Article 7, section 7.0(B)(5) of the Zoning Ordinance states:

The Planning Board shall make written findings of fact and transmit same, together with its recommendation, to the City Commission. The City Commission may hold additional hearings if the City Commission considers it necessary. The Planning Board shall make findings based on the evidence presented to it with respect to the following matters:

- a. The objectives of the City's then current master plan and the City's 2016 Plan.
- b. Existing uses of property within the general area of the property in question.
- c. Zoning classification of property within the general area of the property in question.
- d. The suitability of the property in question to the uses permitted under the existing zoning classification.
- e. The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.

Accordingly, the Planning Division has reviewed the evidence presented with respect to the matters listed in Article 7, section 7.0(B)(5) of the Zoning Ordinance as noted below.

A. The objectives of the City's then current master plan and the City's 2016 Plan

Section 1.04 of the Birmingham Zoning Ordinance states: the purpose of the Zoning Ordinance is to guide the growth and development of the City in accordance with the goals, objectives and strategies stated within the Birmingham Future Land Use Plan and the Downtown Birmingham 2016 Plan. A review of both plans reveals that the proposal to rezone the subject property to the D-5 Zoning District meets the spirit and intent of the ordinance. The 2016 Plan recommends specific building heights and massing that appropriately defines the public street and are harmonious with existing buildings. The 2016 further requires first floor retail along Old Woodward and encourages a mix of uses within buildings to support an active live, work and play environment for downtown. A proposed building under the D5 would allow for mixed uses and a scale that will match the adjacent buildings, meanwhile supporting the improvement of the streetscape along S. Old Woodward, Hazel and Woodward by building to the frontage line as required by the 2016 Plan.

The 2016 Plan also recommends that the City should encourage future buildings to front Woodward to project a positive image of the City and to hold Woodward areas to the same standards of quality and design as the best areas of Birmingham. The proposed building will project a strong image of the City towards Woodward with consistent architectural details and similar massing to the adjacent buildings.

B. Existing uses of property within the general area of the property in question

As mentioned above, the Birmingham Place and 555 Buildings are located to the north and south of the subject site, respectively. Both buildings contain a mix of retail, commercial and residential uses. The subject property is located on Woodward Avenue, which has a 200' wide right of way. The southbound lanes of Woodward lie directly east of the property, and South Old Woodward lies to the west. Across Woodward to the east is the Audi dealership, and across S. Old Woodward to the west is a commercial center with both retail and commercial uses, including a drugstore, a drycleaners and a clothing store.

The following chart summarizes the land uses and zoning districts adjacent to and in the vicinity of the subject site.

	North	South	East	West
Existing Land Use	Retail/ Commercial / Residential	Retail/ Commercial / Residential	Retail / Commercial/ Parking	Commercial/ Parking
Existing Zoning	B-3, Office Residential	B-3, Office Residential	B-2, General Business	B-2B, General Business
Overlay Zoning	D-5	D-5	MU-5	D-2

C. Zoning classification of property within the general area of the property in question.

The properties immediately north and south of the subject site are zoned B3 and D5, which allow a mix of residential, retail and commercial uses, and buildings over 5 stories in height up to a maximum height of 180'. The property to the east across Woodward Avenue is

zoned MU5 which also allows a mix of residential, retail and commercial uses and allows buildings up to 6 stories and 78' in height. The property to the west across S. Old Woodward is zoned B2-B and D2, also allowing a mix of residential, retail and commercial uses and buildings up to 3 stories and 56' in height.

D. The suitability of the property in question to the uses permitted under the existing zoning classification.

Under the current zoning, all of the same uses are permitted as those under the D5 zoning classification. However, given the size of the parcel and the fact that the property is not located in the Parking Assessment District, the applicant argues that they would be unable to develop an appropriately designed five story mixed use building under the current zoning. In addition, even if the property were developed to include a five story or less building under the current zoning of D4, the building would be completely inconsistent and dominated by the height of the adjacent Birmingham Place and 555 Buildings.

E. The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.

In the immediate Southern Woodward Gateway area, there have been no new buildings recently constructed, however, the 555 Building was recently renovated extensively. Three existing buildings were rezoned in 2017 to D5 under the Downtown Overlay (Merrillwood Building, the 555 Building and Birmingham Place) to permit buildings over 5 stories in height (up to 180') so long as they are compatible with adjacent buildings. There have been no new buildings constructed under the D-5 Overlay zoning classification.

Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable master plan documents, current zoning and recent development trends in the area, the Planning Department finds that the applicant meets the established Zoning Ordinance requirements in Article 7, section 7.02(B)(5) to qualify for a rezoning of the property from D-4 to D-5 in the Downtown Overlay district for the purpose of building as high, but no higher than, adjacent buildings. Given the recommendations of the 2016 Plan, the existing mix of uses in the immediate area and given the size and quality of the building, the proposal to rezone to D5 for the purpose of building to nine stories is appropriate and compatible with both the zoning and height of properties within the general area. In addition, a rezoning to D5 is consistent with recent zoning changes from D4 to D5 for adjacent properties within the Downtown Overlay district.

Departmental Reports

1. Engineering Division – The Engineering Department has no concerns with the rezoning application at this time.
2. Department of Public Services –The Department of Public Services has no concerns at this time.
3. Fire Department – The Fire Department has no concerns with the rezoning at this time.
4. Police Department – The Police Department has no concerns with the rezoning application.
5. Building Department – No comments were provided from the Building Department on the rezoning application.

Sample motions with attached conditions have been provided in the event that the Planning Board deems it appropriate to send a recommendation of approval forward to the City Commission. Should additional information be presented at the public hearing not contained within this staff report, the Planning Board should add any findings related to such information to the motion language provided below.

Suggested Action:

Based on a review of the rezoning request and supporting documentation submitted by the applicant, a review of the applicable master plan documents and the development trends in the area, the Planning Board adopts the findings of fact contained in the staff report dated November 8, 2018 and recommends **APPROVAL** to the City Commission for the rezoning of 469 - 479 S. Old Woodward from D-4 to D-5 in the Downtown Overlay.

OR

Based on a review of the rezoning request and supporting documentation submitted by the applicant, a review of the applicable master plan documents and the development trends in the area, the Planning Board recommends **DENIAL** to the City Commission of the applicant's request for the rezoning of the property at 469 - 479 S. Old Woodward from D-4 to D-5 in the Downtown Overlay for the following reasons:

1. _____
2. _____
3. _____

OR

Motion to recommend **POSTPONEMENT** of the applicant's request for the rezoning of the property at 469 - 479 S. Old Woodward from D-4 to D-5 in the Downtown Overlay, pending receipt and review of the following information:

1. _____
2. _____
3. _____



MEMORANDUM

Planning Division

DATE: October 5, 2018

TO: Planning Board

FROM: Jana L. Ecker, Planning Director

SUBJECT: Request for Rehearing of Rezoning Request for 469 – 479 S. Old Woodward

On June 27, 2018, the Planning Board reviewed a rezoning request 469 – 479 S. Old Woodward (former Mountain King and Talmer Bank sites) to rezone the site from B3/D4 to B3/D5. This request was made pursuant to Article 7, section 7.02, of the Zoning Code. After much discussion, the Planning Board voted to recommend denial of the rezoning request to the City Commission for 469 – 479 S. Old Woodward.

The City Commission then set a public hearing date for August 13, 2018 to review the rezoning request.

On August 13, 2018, the applicant submitted a letter requesting that the City postpone the public hearing at the City Commission that was previously set to allow the applicant to present new information to the Planning Board for their review and consideration. Accordingly, the City Commission cancelled the public hearing and the matter was sent back to the Planning Board for reconsideration.

Section 7.02(6) of the Zoning Ordinance states:

If the City Commission denies the application, no application shall be reheard for at least one year, unless there have been substantial changes in the facts, evidence, and/or conditions demonstrated by the applicant. The determination of whether there have been such changes shall be made by the Planning Board at the time the application is submitted for processing.

Accordingly, section 7.02(6) of the Zoning Ordinance allows a rehearing on a rezoning request where there is a substantial change in the evidence that was previously presented even after the City Commission has issued a denial of the request. In this case, the City Commission did not hear the request, and thus did not issue an approval or denial. They did however send the matter back to the Planning Board to determine if there has been a substantial change in the evidence, and if so, to conduct a rehearing on the rezoning request previously considered.

Please find attached the applicant's letter that outlines the substantial change in the evidence that was previously presented to the Planning Board on June 27, 2018, and requests a rehearing of the rezoning request.

On September 12, 2018, the applicant appeared before the Planning Board and outlined the substantial change in the evidence that was previously presented to the board. In addition, an attorney speaking in opposition to the rezoning request also raised new information that had not been previously presented or discussed by the board. Board members had additional questions as to why the subject parcel was not put into the Parking Assessment District when the district was created, and whether or not the owner of the subject property is permitted to apply for rezoning to the new D5 zoning classification in the Downtown Birmingham Overlay District. After much discussion, the Planning Board voted to postpone consideration of the public hearing to October 10, 2018 with the condition that the Board receive the legal opinion of counsel to the City of Birmingham in writing as to whether the proposed site (former Mountain King and Talmer Bank) is eligible to be rezoned to the D-5 category.

Please find attached two letters from the City Attorney, one addressing the eligibility of the subject site to be rezoned to the D-5 category, and one addressing Parking Assessment District records regarding the creation of the district.

Should the Planning Board accept that the applicant has proven a substantial change in the evidence and a rehearing should occur, all of the previous application documents, plans and reports are also provided for your review and consideration.

Suggested Action:

1. Sample Motion Language on Request for Rehearing:

The Planning Board finds that there have been substantial changes in the evidence previously presented at the rezoning hearing on June 27, 2018, and thus grant a rehearing of the rezoning request for 469 – 479 S. Old Woodward.

OR

The Planning Board finds that there have not been substantial changes in the evidence previously presented at the rezoning hearing on June 27, 2018, and thus denies a rehearing of the rezoning request for 469 – 479 S. Old Woodward.

2. Sample Motion Language on Rezoning Request if Rehearing is Granted:

Based on a review of the rezoning request and supporting documentation submitted by the applicant, a review of the applicable master plan documents and the development trends in the area, the Planning Board recommends **APPROVAL** to the City Commission for the rezoning of 469 - 479 S. Old Woodward from D-4 to D-5 in the Downtown Overlay.

OR

Motion to recommend **DENIAL** to the City Commission of the applicant's request for the rezoning of the property at 469 - 479 S. Old Woodward from D-4 to D-5 in the Downtown Overlay for the following reasons:

1. _____
2. _____
3. _____

OR

Motion to recommend **POSTPONEMENT** of the applicant's request for the rezoning of the property at 469 - 479 S. Old Woodward from D-4 to D-5 in the Downtown Overlay, pending review and approval of the following:

1. _____
2. _____
3. _____



MEMORANDUM

Planning Division

DATE: September 7, 2018

TO: Planning Board

FROM: Jana L. Ecker, Planning Director

SUBJECT: Request for Rehearing of Rezoning Request for 469 – 479 S. Old Woodward

On June 27, 2018, the Planning Board reviewed a rezoning request 469 – 479 S. Old Woodward (former Mountain King and Talmer Bank sites) to rezone the site from B3/D4 to B3/D5. This request was made pursuant to Article 7, section 7.02, of the Zoning Code. After much discussion, the Planning Board voted to recommend denial of the rezoning request to the City Commission for 469 – 479 S. Old Woodward.

The City Commission then set a public hearing date for August 13, 2018 to review the rezoning request.

On August 13, 2018, the applicant submitted a letter requesting that the City postpone the public hearing at the City Commission that was previously set to allow the applicant to present new information to the Planning Board for their review and consideration. Accordingly, the City Commission cancelled the public hearing and the matter was sent back to the Planning Board for reconsideration.

Section 7.02(6) of the Zoning Ordinance states:

If the City Commission denies the application, no application shall be reheard for at least one year, unless there have been substantial changes in the facts, evidence, and/or conditions demonstrated by the applicant. The determination of whether there have been such changes shall be made by the Planning Board at the time the application is submitted for processing.

Accordingly, section 7.02(6) of the Zoning Ordinance allows a rehearing on a rezoning request where there is a substantial change in the evidence that was previously presented even after the City Commission has issued a denial of the request. In this case, the City Commission did not hear the request, and thus did not issue an approval or denial. They did however send the matter back to the Planning Board to determine if there has been a substantial change in the evidence, and if so, to conduct a rehearing on the rezoning request previously considered.

Please find attached the applicant's letter that outlines the substantial change in the evidence that was previously presented to the Planning Board on June 27, 2018, and requests a rehearing of the rezoning request. Should the Planning Board accept that the applicant has proven a

substantial change in the evidence and a rehearing should occur, all of the previous application documents, plans and reports are also provided for your review and consideration.

Suggested Action:

1. Sample Motion Language on Request for Rehearing:

The Planning Board finds that there have been substantial changes in the evidence previously presented at the rezoning hearing on June 27, 2018, and thus grant a rehearing of the rezoning request for 469 – 479 S. Old Woodward.

OR

The Planning Board finds that there have not been substantial changes in the evidence previously presented at the rezoning hearing on June 27, 2018, and thus denies a rehearing of the rezoning request for 469 – 479 S. Old Woodward.

2. Sample Motion Language on Rezoning Request if Rehearing is Granted:

Based on a review of the rezoning request and supporting documentation submitted by the applicant, a review of the applicable master plan documents and the development trends in the area, the Planning Board recommends **APPROVAL** to the City Commission for the rezoning of 469 - 479 S. Old Woodward from D-4 to D-5 in the Downtown Overlay.

OR

Motion to recommend **DENIAL** to the City Commission of the applicant's request for the rezoning of the property at 469 - 479 S. Old Woodward from D-4 to D-5 in the Downtown Overlay for the following reasons:

1. _____
2. _____
3. _____

OR

Motion to recommend **POSTPONEMENT** of the applicant's request for the rezoning of the property at 469 - 479 S. Old Woodward from D-4 to D-5 in the Downtown Overlay, pending review and approval of the following:

1. _____
2. _____
3. _____



MEMORANDUM

Planning Division

DATE: May 18th, 2018

TO: Jana Ecker, Planning Director

FROM: Nicholas Dupuis, Planning Intern

SUBJECT: Rezoning Request for 469-479 S. Old Woodward – Project M1

The applicant for 469-479 S. Old Woodward (Parcel Numbers 1936208011 and 1936208012 respectively) is requesting that the Planning Board hold a public hearing to consider the rezoning of the property from B-3 (Office Residential) and D-4 (Downtown Overlay) to B-3 (Office Residential) and D-5 (Downtown Overlay). The applicant is seeking the rezoning to allow for the construction of a nine-story mixed use building in between the Birmingham Place and the 555 building. The maximum height allowed in the D-4 zoning district is 4-5 stories. In the D-5 zoning district, developers may build as high, but no higher than the adjacent buildings which are located in the D-5 zone.

The 0.423 acre subject site spans Hazel Street from S. Old Woodward to Woodward. The site currently contains two vacant single-story commercial buildings (formerly Mountain King Chinese Restaurant and First Place Bank). The applicant is proposing to demolish the present buildings for the construction of a nine-story mixed use building with three levels of underground parking.

History of Property

Information gathered by PM Environmental for a Phase 1 Environmental Site Assessment on the property history revealed that 469 S. Old Woodward was home to various occupants since around 1937, including many auto sales companies and most recently the First Place Bank, which closed in 2014. The one story commercial building has since been vacant. 479 S. Old Woodward has been home to a few restaurants, most recently Mountain King (1998-2014). Similarly, the one story commercial building has also been vacant since its last tenant in 2014.

The applicant has noted that historically, Birmingham's buildings were zoned for the height of the 555 building and the Birmingham Place in the late 1960's and early 1970's. When the zoning was changed in the 1970's, the two buildings were designated to a legal nonconforming use. Ultimately, the zoning was changed to D-4 in 1996 by the adoption of the 2016 Plan and the Downtown Overlay. In 2016, a new D5 zone was created to bring the 555 Building, the Merrillwood Building and Birmingham Place into a legal conforming status. The subject property is located between Birmingham Place and the 555 Building, both of which are zoned D5 currently.

Requirements for Rezoning

The requirements for a request for the rezoning of a property are set forth in Article 07, section 7.02 of the Zoning Ordinance as follows:

Each application for an amendment to change the zoning classification of a particular property shall include statements addressing the following:

1. An explanation of why the rezoning is necessary for the preservation and enjoyment of the rights of usage commonly associated with property ownership.

Applicant response:

- Rezoning of the subject property is necessary to preserve the applicants enjoyment of rights associated with ownership of a property zoned for mixed uses. Because of the size and corner configuration of the parcel, it will not support street-level retail, residential, and parking for residents in the same manner as the neighboring properties. The 2016 Plan clearly anticipates mixed use developments. Such planning requires space to design and locate mixed uses within a given structure. Without the ability to go higher with a new building than current zoning allows, the applicant will not have the required area within which to locate a mix of uses, or otherwise to be able to enjoy all of the allowed uses that would commonly be associated the design of such a modern, mixed use building. Furthermore, the D-5 Ordinance, at Section 3.04-4-b, anticipates that the subject property and those similarly situated may enjoy the same rights of usage through an extension of height as other existing tall buildings already enjoy in the D-5 Overlay District.

2. An explanation of why the existing zoning classification is no longer appropriate

Applicant response:

- The existing D-3 zoning classification is no longer appropriate for the subject property. The subject property is surrounded by the Birmingham Place, a 10-story building on the north side and the 555 Buildings, a 15-story building on the south side. This height is an established pattern in this area of the City. This rezoning request is actually an "infill" rezoning to bring the entire area into architectural and design harmony with surrounding buildings. It is reasonable for the subject property to share the same zoning classification as its surrounding neighbors. This would allow development of the property in a manner consistent with the existing structures from Brown Street south to Haynes Street. It will create a more unified block and enhance the character of the gateway area to Downtown Birmingham. The rezoning of the subject property would restore the property to a zoning classification this area of the City once enjoyed, as the Planning Board has done for with Birmingham Place and the 555 Buildings. Hence, given the location of the subject property sandwiched between two properties in the D-5 Zone, the D-3 Zone is no longer appropriate.

3. An explanation of why the proposed rezoning will not be detrimental to the surrounding properties.

Applicant response:

- The proposed rezoning of the subject property is not detrimental to surrounding property owners. Note that the proposed rezoning does not extend the D-5 classification further to the north or south of the current D-5 Zoning, but actually fills in the one gap in the streetscape that is noticeably out of place and anachronistically remains in the D-3 Zone. The surrounding properties to the north and south are already in the D-5 zone. When these neighboring properties were rezoned the Planning Board anticipated that eventually the subject property also may be rezoned for the reasons stated in this letter. Placing the subject property in the D-5 Zone will be placing it on equal footing with the surrounding properties from a structural, use and design perspective. The proposed rezoning will enhance the entire area by allowing it to be developed as an attractive part of the South Old Woodward gateway and bring that area into compliance with the spirit and intent of the 2016 Master Plan.

Article 7, section 7.02 of the Zoning Ordinance further states:

Applications for amendments that are intended to change the zoning classification of a particular property shall be accompanied by a plot plan. (See attached)

Information required on plot plans shall be as follows:

1. Applicant's name, address and telephone number.
2. Scale, north point, and dates of submission and revisions.
3. Zoning classification of petitioner's parcel and all abutting parcels.
4. Existing lot lines, building lines, structures, parking areas, driveways, and other improvements on the site and within 100 feet of the site.
5. Existing use of the property.
6. Dimensions, centerlines and right-of-way widths of all abutting streets and alleys.
7. Location of existing drainage courses, floodplains, lakes, streams, and wood lots.
8. All existing easements.
9. Location of existing sanitary systems and or septic systems.
10. Location and size of existing water mains, well sites and building service.
11. Identification and seal of architect, engineer, land surveyor, or landscape architect who prepared the plans. If any of the items listed above are not applicable to a particular plot plan, the applicant must specify in the plot plan which items do not apply and, furthermore, why the items are not applicable.

A land survey was provided by the applicant and submitted to the Planning Board (see attached).

Article 7 section 7.02 of the Zoning Ordinance further states:

The Planning Board shall hold at least one public hearing on each application for amendment at such time and place as shall be established by the Planning Board.

The Planning Board shall make findings based on the evidence presented to it with respect to the following matters:

- a. The objectives of the City's then current master plan and the City's 2016 plan.
- b. Existing uses of property within in the general area of the property in question.
- c. Zoning classification of property within the general area of the property in question.
- d. The suitability of the property in question to the uses permitted under the existing zoning classification.
- e. The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.

Planning Division Analysis

A. The objectives of the City's then current master plan and the City's 2016 Plan

Section 1.04 of the Birmingham Zoning Ordinance states: the purpose of the Zoning Ordinance is to guide the growth and development of the City in accordance with the goals, objectives and strategies stated within the Birmingham Future Land Use Plan and the Downtown Birmingham 2016 Plan. A review of both plans reveals that the proposal to rezone the subject property to the D-5 Zoning District meets the spirit and intent of the ordinance. The 2016 Plan recommends specific building heights and massing that appropriately defines the public street. The proposed building allows for mixed uses and a scale that will seamlessly match the adjacent buildings, meanwhile supporting the improvement of the streetscape along S. Old Woodward, Hazel and Woodward by building to the frontage line.

The 2016 Plan also recommends that the City should encourage future buildings to front Woodward to project a positive image of the City and to hold Woodward areas to the same standards of quality and design as the best areas of Birmingham. The proposed building will project a strong image of the City towards Woodward with consistent architectural details and similar massing to the adjacent buildings.

B. Existing uses of property within the general area of the property in question

As mentioned above, the Birmingham Place and 555 Buildings are located to the north and south of the subject site, respectively. The property is located on Woodward Avenue, which has a 200' wide right of way. The southbound lanes of Woodward lie directly east of the property, and South Old Woodward lies to the west. Across Woodward to the east is the Audi dealership, and across S. Old Woodward to the West is the long commercial building with a CVS and other businesses.

The following chart summarizes the land uses and zoning districts adjacent to and in the vicinity of the subject site.

	North	South	East	West
--	-------	-------	------	------

Existing Land Use	Retail/ Commercial	Retail/ Commercial	Commercial/ Parking	Commercial/ Parking
Existing Zoning	B-3, Office Residential	B-3, Office Residential	B-2, General Business	B-2B, General Business
Overlay Zoning	D-5	D-5	MU-5	D-2

C. Zoning classification of property within the general area of the property in question.

The properties immediately north and south of the subject site are zoned B3 and D5, which allow a mix of residential, retail and commercial uses, and buildings over 5 stories in height up to a maximum height of 180'. The property to the east across Woodward Avenue is zoned MU5 which also allows a mix of residential, retail and commercial uses and allows buildings up to 6 stories and 78' in height. The property to the west across S. Old Woodward is zoned B2-B and D2, also allowing a mix of residential, retail and commercial uses and buildings up to 3 stories and 56' in height.

D. The suitability of the property in question to the uses permitted under the existing zoning classification.

Under the current zoning, all of the same uses are permitted as those under the D5 zoning classification. However, under the current zoning of D4, the building would be capped at a height of 5 stories and thus be dwarfed by the adjacent Birmingham Place and 555 Buildings.

E. The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.

In the immediate Southern Woodward Gateway area, there have been no new buildings recently constructed, however, the 555 Building was renovated extensively. Three existing buildings were rezoned in 2017 to D5 under the Downtown Overlay (Merrillwood Building, the 555 Building and Birmingham Place) to permit buildings over 5 stories in height (up to 180') so long as they are compatible with adjacent buildings. There have been no new buildings constructed under the D-5 Overlay Zoning classification.

Departmental Reports

1. Engineering Division – The Engineering Department has no concerns with the rezoning application at this time.
2. Department of Public Services –The Department of Public Services has no concerns at this time.
3. Fire Department – The Fire Department has no concerns with the rezoning at this time.
4. Police Department – The Police Department has no concerns with the rezoning application.

5. Building Department – No comments were provided from the Building Department on the rezoning application.

Planning Department Findings

Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable master plan documents, current zoning and recent development trends in the area, the Planning Department finds that the applicant meets the established ordinance requirements to qualify for a rezoning of the property from D-4 to D-5 in the downtown overlay district for the purpose of building as high, but no higher than, adjacent buildings. Given the recommendations of the 2016 Plan, the existing mix of uses in the immediate area and given the size and quality of the building, the proposal to rezone for the purpose of building to nine stories is appropriate and compatible in the area. The following sample motions with attached conditions have been provided in the event that the Planning Board deems it appropriate to send a recommendation of approval forward to the City Commission.

Sample Motion Language

Based on a review of the rezoning request and supporting documentation submitted by the applicant, a review of the applicable master plan documents and the development trends in the area, the Planning Board recommends **APPROVAL** to the City Commission for the rezoning of 469 - 479 S. Old Woodward from D-4 to D-5 in the Downtown Overlay.

OR

Motion to recommend **DENIAL** to the City Commission of the applicant's request for the rezoning of the property at 469 - 479 S. Old Woodward from D-4 to D-5 in the Downtown Overlay for the following reasons:

1. _____
2. _____
3. _____

OR

Motion to recommend **POSTPONEMENT** of the applicant's request for the rezoning of the property at 469 - 479 S. Old Woodward from D-4 to D-5 in the Downtown Overlay, pending review and approval of the following:

1. _____
2. _____
3. _____

**City Commission Minutes
February 13, 2017**

02-29-17: PUBLIC HEARING TO CONSIDER AMENDMENTS TO CHAPTER 126, ZONING, TO CREATE NEW D5 ZONE

Mayor Nickita opened the Public Hearing at 10:22 PM.

City Planner Ecker explained the history of this zoning ordinance amendment request by the owners of the 555 Building. The amendment would allow buildings to be considered either legal and conforming, or legal non-conforming, but have the ability to add on in some way. The amendments have to do with height, number of stories, and setbacks. The Planning Board looked at several options. The Board came up with a fairly simple method, by changing Section 6.02 to allow all buildings to be improved in some way if they are non-conforming, or to consider the creation of a D5 zone, defined as over five stories. The impact of the amendments would make the three buildings legal conforming buildings, and they would be allowed to be extended or enlarged with a Special Land Use Permit. If a new building was constructed, it could match the height of the existing building with a Special Land Use Permit. The new category would deal with existing buildings located in the D5 zone. This change enables applicants to obtain funding for significant renovations or improvements as a legal conforming building. The second part allows expansion with the restriction to meet the overlay.

City Planner Ecker explained for Commissioner Boutros that the 555 site has room where a new building could be constructed.

City Planner Ecker explained that none of the three buildings can be any higher or add any extra stories under the ordinance amendment.

Mayor Pro Tem Harris asked about maintenance and repair under the current ordinance.

City Planner Ecker said an interpretation is required in every case currently. Under the ordinance amendment, maintenance and repair would be permitted.

Commissioner Hoff asked if Birmingham Place or Merrillwood could buy the adjacent structures and then build in the space.

City Planner Ecker said they could not, because the properties next door would not have the D5 zoning classification.

Commissioner Hoff asked how the determination is made as to an enlargement and an addition.

City Planner Ecker said the enlargements or extensions are an absolute right if the regular overlay standards are met. If it is an addition or new construction which would exceed the D4 requirements, it can be done with a Special Land Use Permit.

Mr. Rick Rattner addressed the Commission and said with the ordinance amendment, the 555 Building would be in compliance allowing the owners to move forward to make the changes and renovations to keep it an iconic building.

Mayor Nickita closed the Public Hearing at 10:40 PM.

MOTION: Motion by DeWeese, seconded by Boutros:

To amend Chapter 126, Zoning, Article 3, Downtown Birmingham Overlay District, Section 3.04, to create a new D5 Zone and to establish development standards for this district, and Article 6, Nonconformances, Section 6.02, to allow for the extension and/or enlargement of existing legal, non-conforming commercial buildings;

AND

To approve the rezoning of the following properties:

- (a) 555 S. Old Woodward (555 Office and Residential Buildings) from D4 in the Downtown Overlay to D5 in the Downtown Overlay;**
- (b) 411 S. Old Woodward (Birmingham Place) from D4 in the Downtown Overlay to D5 in the Downtown Overlay; and**
- (c) 225 E. Merrill (Merrillwood Building) from D4 in the Downtown Overlay to D5 in the Downtown Overlay.**

City Planner Ecker confirmed for Commissioner Hoff that the ordinance amendment would allow the 555 Building to build an addition as tall as it is only with a Special Land Use Permit approved by the Commission. She added that a new building to the south could be built that meets the D4 standards as of right. The setbacks will basically be the same.

VOTE: Yeas, 7
Nays, 0
Absent, None

ORDINANCE NO. _____

THE CITY OF BIRMINGHAM ORDAINS:

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

TO AMEND ARTICLE 03, DOWNTOWN BIRMINGHAM OVERLAY DISTRICT, SECTION 3.04, TO CREATE A NEW D5 ZONE AND TO ESTABLISH DEVELOPMENT STANDARDS FOR THIS DISTRICT.

Article 03 shall be amended as follows:

Section 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 or 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. **D5 Zone (over 5 stories)**
 - a. **All existing buildings located in the D5 Zone on November 1, 2016 are deemed legal, conforming buildings with regards to setbacks, number of stories and height.**
 - b. **All existing buildings located in this zone district on November 1, 2016 may be extended or enlarged only if the property owner elects to develop the extended or enlarged portion of the building under the provisions of the Downtown Overlay and the extension or enlargement meets all of the requirements of the Downtown Birmingham Overlay District and the D4 Zone.**
 - c. **New buildings constructed or additions to existing buildings in the D5 Zone must meet the requirements of the Downtown Birmingham Overlay District and the D4 Zone, except that the height of any addition and new construction in the D-5 Zone may be over the maximum building height up to, but not exceeding, the height of an existing building in the D-5 to which they are immediately adjacent or abutting if the property owner agrees to the construction of the building under the provisions of a Special Land Use Permit.**
- 4.5 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.
- 5.6. 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.

~~6-7.~~A transition line shall be provided between the first and second stories. The transition shall be detailed to facilitate an awning.

~~7-8~~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.

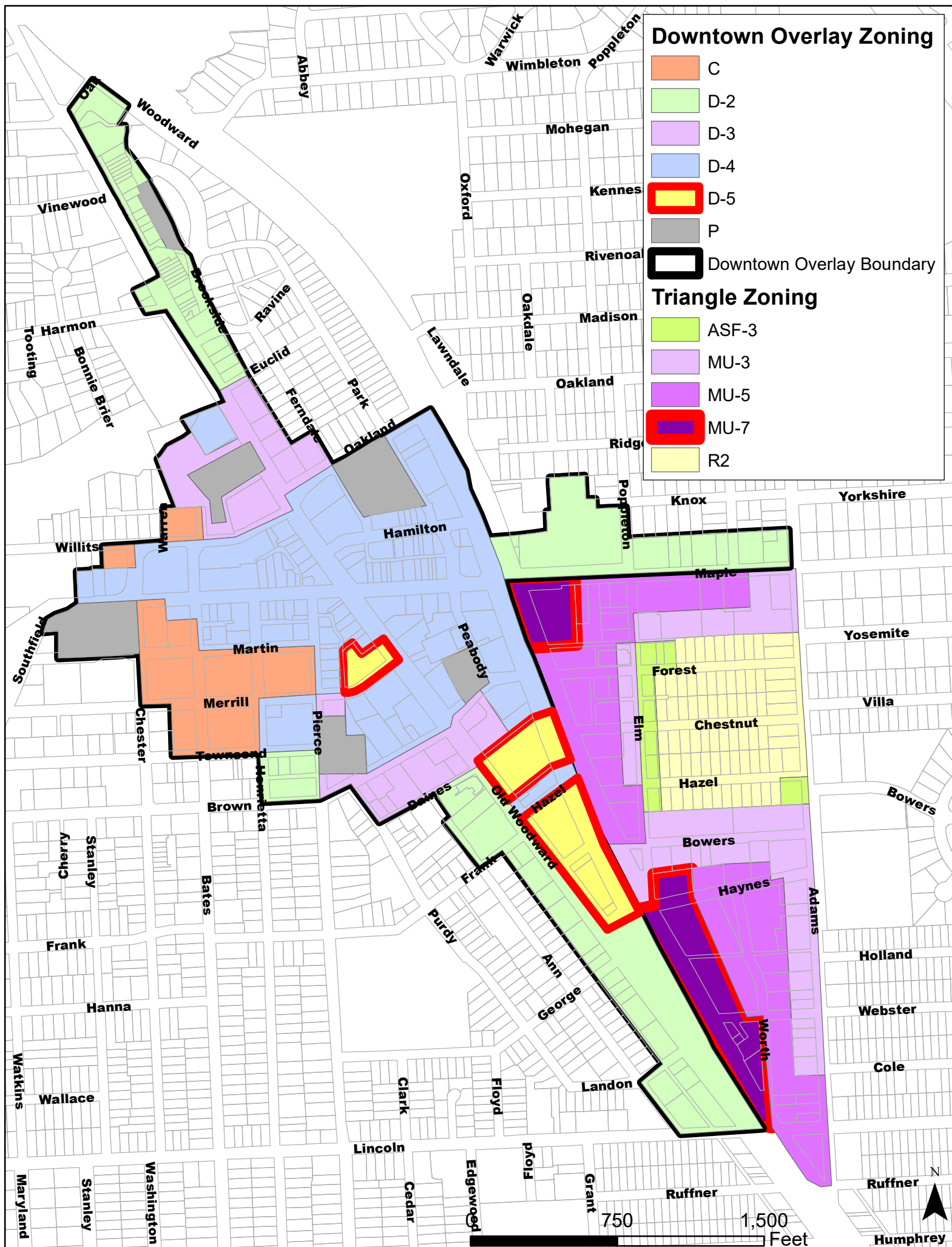
B. Building placement. Buildings and their elements shall be placed on lots as follows:

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, screen- walls 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.

ORDAINED this _____ day of _____, 2017 to become effective 7 days after publication.

Mark Nickita, Mayor

Cheryl Arft, City Clerk





CITY OF BIRMINGHAM FIRE DEPARTMENT

572 SOUTH ADAMS • BIRMINGHAM, MICHIGAN 48009 • 248.530.1900 Fax 248.530.1950

June 22, 2018

Jana Ecker, Planning Director
City of Birmingham (MI)
151 Martin St.
P.O. Box 3001
Birmingham, MI 48012-3001

Dear Jana:

I am following up on our communications in regards to residents at 411 S. Old Woodward known as Birmingham Place and their concerns with fire protection. The proposed project at 469-479 S. Old Woodward is potentially going to be a nine story building, built very close to the South side of Birmingham Place. Their concern is the fire department's ability to fight a fire at Birmingham Place if the proposed project does not allow aerial operations on the South side of the building.

Though we would not deploy our aerial truck for operations on the South side of the building, we do have access from both the East and West sides of the building. Our aerial truck has an extended 100' ladder which would reach approximately six to seven stories based on the distance the aerial is positioned, due to this most high rise fires are fought from the inside of a high rise building. The Birmingham Place has a fire pump to increase pressure to upper floors, fire suppression sprinklers that when activated would extinguish a fire or contain the spread of the fire, standpipes at each floor allowing firefighters to connect hose lines to fight a fire and a fire alarm which would alert residents of the building. The exterior of the building is of a material that is non-combustible and smoke alarms throughout the building. Our officers and firefighters are well trained to aggressively attack a fire in a high rise building. There should be no concerns that the proposed project would hinder fire operations in the Birmingham Place.

I hope this letter will help ease the concerns of our residents as the Planning Board and other stakeholders discuss the proposal and the future of the site. Please let me know if I can assist you in any other way.

Sincerely,

John M. Connaughton, Fire Chief

RELEVANT MEETING MINUTES

City Commission Minutes February 13, 2017

02-29-17: PUBLIC HEARING TO CONSIDER AMENDMENTS TO CHAPTER 126, ZONING, TO CREATE NEW D5 ZONE

Mayor Nickita opened the Public Hearing at 10:22 PM.

City Planner Ecker explained the history of this zoning ordinance amendment request by the owners of the 555 Building. The amendment would allow buildings to be considered either legal and conforming, or legal non-conforming, but have the ability to add on in some way. The amendments have to do with height, number of stories, and setbacks. The Planning Board looked at several options. The Board came up with a fairly simple method, by changing Section 6.02 to allow all buildings to be improved in some way if they are non-conforming, or to consider the creation of a D5 zone, defined as over five stories. The impact of the amendments would make the three buildings legal conforming buildings, and they would be allowed to be extended or enlarged with a Special Land Use Permit. If a new building was constructed, it could match the height of the existing building with a Special Land Use Permit. The new category would deal with existing buildings located in the D5 zone. This change enables applicants to obtain funding for significant renovations or improvements as a legal conforming building. The second part allows expansion with the restriction to meet the overlay.

City Planner Ecker explained for Commissioner Boutros that the 555 site has room where a new building could be constructed.

City Planner Ecker explained that none of the three buildings can be any higher or add any extra stories under the ordinance amendment.

Mayor Pro Tem Harris asked about maintenance and repair under the current ordinance.

City Planner Ecker said an interpretation is required in every case currently. Under the ordinance amendment, maintenance and repair would be permitted.

Commissioner Hoff asked if Birmingham Place or Merrillwood could buy the adjacent structures and then build in the space.

City Planner Ecker said they could not, because the properties next door would not have the D5 zoning classification.

Commissioner Hoff asked how the determination is made as to an enlargement and an addition.

City Planner Ecker said the enlargements or extensions are an absolute right if the regular overlay standards are met. If it is an addition or new construction which would exceed the D4 requirements, it can be done with a Special Land Use Permit.

Mr. Rick Rattner addressed the Commission and said with the ordinance amendment, the 555 Building would be in compliance allowing the owners to move forward to make the changes and renovations to keep it an iconic building.

Mayor Nickita closed the Public Hearing at 10:40 PM.

MOTION: Motion by DeWeese, seconded by Boutros:

To amend Chapter 126, Zoning, Article 3, Downtown Birmingham Overlay District, Section 3.04, to create a new D5 Zone and to establish development standards for this district, and Article 6, Nonconformances, Section 6.02, to allow for the extension and/or enlargement of existing legal, non-conforming commercial buildings;

AND

To approve the rezoning of the following properties:

- (a) 555 S. Old Woodward (555 Office and Residential Buildings) from D4 in the Downtown Overlay to D5 in the Downtown Overlay;**
- (b) 411 S. Old Woodward (Birmingham Place) from D4 in the Downtown Overlay to D5 in the Downtown Overlay; and**
- (c) 225 E. Merrill (Merrillwood Building) from D4 in the Downtown Overlay to D5 in the Downtown Overlay.**

City Planner Ecker confirmed for Commissioner Hoff that the ordinance amendment would allow the 555 Building to build an addition as tall as it is only with a Special Land Use Permit approved by the Commission. She added that a new building to the south could be built that meets the D4 standards as of right. The setbacks will basically be the same.

VOTE: Yeas, 7

Nays, 0

Absent, None

Planning Board Minutes
June 27, 2018

REZONING APPLICATION

1. 469-479 S. Old Woodward Ave. (former Mountain King) - Request to rezone from B-3 and D-4 to B-3 and D-5 to allow a nine-story mixed-use building

Chairman Clein said that judging from all of the letters that have been received related to this project, it is very clear that the residents of Birmingham Place oppose the rezoning. All of the letters will be added to the record.

Ms. Ecker explained the applicant for 469-479 S. Old Woodward is requesting that the Planning Board hold a public hearing to consider the rezoning of the property from B-3 (Office Residential) and D-4 (Downtown Overlay) to B-3 (Office Residential) and D-5 (Downtown Overlay). The applicant is seeking the rezoning to allow for the construction of a nine-story mixed-use building with three levels of underground parking in between the Birmingham Place and the 555 Building. The maximum height allowed in the D-4 Zoning District is 4-5 stories. In the D-5 Zoning District, developers may build as high, but no higher than the adjacent buildings which are located in the D-5 Zone. The 0.423 acre subject site spans Hazel St. from S. Old Woodward Ave. to Woodward Ave. The site currently contains two vacant single-story commercial buildings (formerly Mountain King Restaurant and Talmer Bank). The applicant is proposing to demolish the present buildings for the construction of a ten-story mixed-use building.

The applicant has noted that when the zoning was changed down to one or two floors in the 1970s, the 555 Building and Birmingham Place were designated to a legal non-conforming use because their height was not allowable. Ultimately, the zoning was changed to D-4 in 1996 by the adoption of the 2016 Plan and the Downtown Overlay that raised the height up to a maximum of five stories Downtown. In 2017, a new D-5 Zone was created to bring the 555 Building, the Merrillwood Building and Birmingham Place into a legal conforming status. The subject property is located between Birmingham Place and the 555 Building, both of which are zoned D-5 currently.

Ms. Ecker went through the three items that the applicant must demonstrate for the rezoning of a property and the applicant's reasons as to how they feel they have met them.

Ms. Ecker then went through the planning analysis based on the evidence provided by the application. Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable Master Plan documents, current zoning and recent development trends in the area, the Planning Dept. finds that the applicant meets the established ordinance requirements to qualify for a rezoning of the property from D-4 to D-5 in the Downtown Overlay District for the purpose of building as high, but no higher than, the building to the north, Birmingham Place.

Answering Mr. Boyle, Ms. Ecker said the Master Plan which dates back to 1980 did not give specific height requirements like the 2016 Plan recommended. Under the 2016 Plan the recommended height in the Downtown was a maximum of five stories. The 555 Building submitted an application to the City and to the Planning Board to consider creating a new category that would make them a legal and conforming building that would allow them to receive financing to renovate the building and bring it up to current standards in the marketplace. The D-5 Ordinance was crafted by the

Planning Board as a result of that application and included the other two buildings in a similar situation.

Mr. Rick Rattner, Attorney, Williams, Williams, Rattner & Plunkett, PC, emphasized that in the D-5 going above five stories subjects the property to a Special Land Use Permit ("SLUP") which is different than just building as of right. Secondly, in 2016 Andres Duany commented favorably on the 555 Building and on Birmingham Place.

He presented a PowerPoint that went to four issues that have to do with rezoning:

- Rezoning Amendment - Sec. 7.02 (B) (2) (b) (i)-(iii) requires that as part of an application for rezoning, the petitioner should address certain issues to be considered by the Planning Board and the City Commission.
- Sec. 7.02 (B) (2) (b) (i) - An Explanation of Why the Rezoning is Necessary for the Preservation and Enjoyment of the Rights and Usage Commonly Associated with Property Ownership. Without the ability to go higher with a new building than the zoning allows, the applicant will not have the required area within which to locate a mix of uses that would commonly be associated with the design of a modern, mixed-use building.
- Sec. 7.02 (B) (2) (b) (ii) - An explanation of Why the Existing Zoning Classification is No Longer Appropriate. It is reasonable for the subject property to share the same zoning classification as its surrounding neighbors. Given the location of the subject property sandwiched between two properties in the D-5 Zone, the D-4 Zone is no longer appropriate.
- Sec. 7.02 (B) (2) (b) (iii) - An Explanation of Why the Proposed Zoning will not be Detrimental to the Surrounding Properties. The proposed rezoning will enhance the entire area by allowing it to be developed as an attractive part of the S, Old Woodward gateway and bring that area into compliance with the spirit and intent of the 2016 Plan.

Mr. Rattner concluded by asking the Planning Board to favorably recommend that they are able to use their property and preserve their rights of usage, fit into the streetscape, fit the Master Plan and fit all elements of this Ordinance because they meet every single one of them.

At 8:45 p.m. the Chairman opened the meeting to public comments.

Ms. Susan Friedlander, 1564 Henrietta, attorney for Birmingham Place Residential Condominium Association, made the following points:

- The City created the D-5 District for a singular and special purpose which was to bring several buildings into conforming status.
- The proposed building is not sandwiched between the 10-story Birmingham Place and the 15-story 555 Building - there is Hazel, a 50 ft. right-of-way that provides a proper transition between buildings. There is not even a height difference, because the building that is immediately adjacent to Hazel is 77 ft. tall. So if this proposed building went up to 80 ft, which it is allowed to do under D-4 it would be very consistent with the building right across the street. There would be a perfect transition. It would only be 34 ft. shorter than Birmingham Place.
- If the proposed building is zoned D-5, what about the building on the north, the Powerhouse Building, Jax Car Wash or the Varsity Building. Why shouldn't they get the D-5 Zoning as well?
- There is a process that must be followed so that property is not rezoned on an ad hoc and an arbitrary basis.

Mr. Tom Lasky, 2006 Cole, spoke in support of the rezoning request. This is the face of new Birmingham and will be done responsibly.

Mr. Mike Humphrey, who lives in Birmingham Place, said there is nothing in the record that shows that the D-5 Overlay was created to do anything other than to make the three tall existing buildings legal and conforming. The developer bought the property knowing how it was zoned; but now they say that they cannot develop a four or five-story mixed-use building there. If the City is going to change the Master Plan, go for it, but do it with professional study and community involvement; not a piece at a time.

Mr. David Nykian, 40700 Woodward Ave., said he represents some of the owners in the Birmingham Place Condominium. He believes the facts lead to the conclusion that the D-4 Zoning is actually clearly appropriate for this property:

- The D-5 District was created just to address the non-conformities of three buildings. So the City has already made the decision in the past as to what zoning is appropriate for this site.
- Nothing about the property has changed since then that should cause the City to alter its conclusion about what the appropriate height is.
- The height of the 555 Building on the north is 77 ft. So if the subject site were developed today under D-4, it could be taller than the 555 Building.
- Breaking up the building heights would provide more of an architectural character to the City than one monolithic height across the entire street.
- There is nothing under the D-4 Zoning classification that that would prohibit the developer from developing a mixed-use development.
- The only things that would change by amending the classification from D-4 to D-5 are the height of the building and the profit margin of the developer.

Mr. Mickey Schwartz, 411 Old Woodward Ave., stated that infill has nothing to do with height equality. So he thinks the developer has to have a better excuse for building a 10-story building. The small town feeling is what is unique about Birmingham. Deny the rezoning request.

Dr. Cynthia Neil, a resident of Birmingham Place, said she was deeply offended by the petitioner's statement that the development would not adversely affect the residents. From her balcony she would be able to bounce a tennis ball against the wall of the proposed building.

Mr. Chris Jonna, C&P Real Estate Group, spoke in support of the project. The applicant builds nothing but first-class buildings. Increasing the zoning classification will be a tremendous benefit to Downtown Birmingham by bringing in more people to the area.

Mr. Lewis Rockind, a resident of Birmingham Place, emphasized that the zoning has to be contemplated in the context of what is intended to be developed. As a resident of Birmingham Place he is looking at the detrimental effect on the surrounding properties of increased vehicle and pedestrian traffic.

Mr. Daniel Jacob, 261 E. Maple Rd., said he is 100% in support of the project. The intended use of the property is much needed and would be a huge benefit to the City. Birmingham is changing and this project moves with the times.

Mr. Joseph Shalala, 255 S. Old Woodward Ave., spoke in support of the proposed building. It will support all of the small businesses by bringing in people such as office, residential, and hotel users. All of those things combined will help Birmingham.

Ms. Tony Schwartz, 411 Old Woodward Ave., maintained that it is the height of the building that is in question here, not its quality. Secondly, traffic is a big problem on that corner. There is a new hotel that is starting to be built on the corner of Brown and Old Woodward which will add more

traffic to that corner. She understands there may be a pool deck on the top floor of the proposed building - who is going to control music and noise and parties. She lives right across on the tenth floor.

Chairman Clein advised that concerns related to traffic and noise are not part of a rezoning but would be handled under a Site Plan Review, and should this be moved forward to a rezoning the applicant would be required to obtain a Special Land Use Permit ("SLUP") which allows the City Commission to put additional restriction on the uses of the building.

Mr. Duraid Markus, one of the partners in the ownership entity for 469-479 S. Old Woodward Ave. (former Mountain King and Talmer Bank), said if this happened in New York, Chicago or LA there would not be a single skyscraper built. He noted that everybody who opposes this is only one contingent, and it has not been the entire City that comes in to support or not support.

It makes sense to build where the project is harmonious and fits in with the rezoning proposal. For those reasons he asked the board to consider all of the comments and make the decision to allow them to rezone the parcel.

Ms. Wilma Thelman who lives in Birmingham Place said none of them have heard why a conforming building cannot be built on that site.

Mr. Jeffares noted that things change and now Birmingham holds 21 thousand people. Secondly he recalled that the Board did discuss rezoning the subject property; however there was nobody from there to make their case so the Board just rezoned the existing buildings.

Mr. Koseck advised that D-4 Zoning allows a building to be built to 80 ft. So it will already block six floors of Birmingham Place. He did not believe the applicant's contention that they cannot make a five-story building work, He thought that a five-story could be a successful mixed-use building. In some ways it might even fit the form and the transition better and the upper three floors of Birmingham Place will not be affected.

Ms. Whipple-Boyce said when the Board established the D-5 Zoning Classification she felt it applied to three specific buildings. In her mind it had to do with bringing non-conforming buildings into conformity so that they could qualify for financing and improve their properties. Thinking about some of the other properties that could be affected down the road that are adjacent to other properties like this is an unanswered question for her. It causes her to hesitate tonight on recommending the rezoning to D-5.

Mr. Boyle made the following points:

- The Master Plan is meant to have the ability to adapt to changing circumstances. Similarly, zoning is powerful when it is able to adapt. So, change is normal; it is not frequent, but it is usual.
- He was positive about the potential impact on the City as a whole of rezoning this property.
- The potential impact of rezoning on the contiguous properties will affect a number of people. The Board is here to determine who has the weight in this particular discussion, the entire City or the adjacent neighbors.
- There are checks and balances built into the system. If the rezoning were to be approved, the community would have two elements to be brought to the table. One would be the Site Plan Review process, and secondly the height would kick in the SLUP where the Planning Board can recommend controlling modifications to the City Commission who will hold a public hearing on the proposal.

- At the end of the day he is of a mind to approve the rezoning because overall he sees the benefits for the City and for this particular area. However, he does not underestimate the cost for the immediate residents in the contiguous building.

Ms. Ramin stated one of the burdens the applicant must carry to justify rezoning is an explanation of why the existing D-4 classification is no longer appropriate.

Mr. Duraid Markus said they cannot get in a hotel concept on this little parcel so they have to go vertical by a couple of floors. He has to be honest, it is the economics. He cannot get a development off the ground. They are not in the Parking Assessment District and are therefore limited by the required parking for an office building or a restaurant.

Answering Mr. Emerine, Ms. Ecker explained that anyone on any site on any site can apply for a rezoning to any of the existing zoning classifications.

Chairman Clein commented that rezoning is the most difficult thing the Board has to do - balancing the rights of adjacent land owners. To Ms. Ramin's point, the burden has not been met as to why a five-story building will not work. The answer that was given was economics, which has no place in a rezoning discussion. Therefore, he is not supportive of the rezoning.

Mr. Jeffares said he cannot come up with a reason for the height of the proposed building to be lower.

Ms. Whipple-Boyce indicated she has no problem with the subject building being built as high as Birmingham Place. But she doesn't think the applicant has made the case that they deserve to be rezoned and that the current zoning classification is no longer appropriate. She was appalled to hear the applicant say they bought this property and the only thing that will work there is a ten-story hotel and it should be rezoned because that is what they want to build. Therefore she doesn't think the applicant has proved their case.

Mr. Rattner noted that maybe the best thing for them to do is to ask for postponement so they can come back with a different plan. Chairman Clein stated that for him postponing would just be kicking the can down to another meeting. Mr. Boyle said he is in favor of not accepting that proposal and actually making a motion this evening.

Motion by Mr. Boyle

Seconded by Mr. Jeffares that based on a review of the rezoning request and supporting documentation submitted by the applicant, a review of the applicable Master Plan documents and the development trends in the area, the Planning Board recommends APPROVAL to the City Commission for the rezoning of 469-479 S. Old Woodward Ave. from D-4 to D-5 in the Downtown Overlay.

There were no comments from the public on the motion at 10 p.m.

Motion failed, 2-5.

ROLLCALL VOTE

Yeas: Boyle, Jeffares

Nays: Clein, Koseck, Emerine, Ramin, Whipple-Boyce

Absent: Share, Williams

Motion by Ms. Whipple-Boyce

Seconded by Mr. Koseck to recommend DENIAL to the City Commission of the applicant's request for the rezoning of the property at 469-479 S. Old Woodward Ave. from D-4 to D-5 in the Downtown Overlay.

Motion carried, 5-2.

ROLLCALL VOTE

Yeas: Whipple-Boyce, Koseck, Klein, Emerine, Ramin

Nays: Jeffares, Whipple-Boyce

Absent: Share, Williams

City Commission Minutes
August 13, 2018

8-221-18 CANCEL PUBLIC HEARING – 469–479 S. OLD WOODWARD – REZONING

City Manager Valentine reported the applicant wishes to go back to Planning Board.

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

To cancel the public hearing to consider approval of the rezoning of 469–479 S. Old Woodward from B3/D4 to B3/D5 and to refer the matter back to the Planning Board.

VOTE:	Yeas,	7
	Nays,	0
	Absent,	0

The Commission decided to further discuss during Commissioner Comments:

- How much information needs to be provided to the Commission upon the cancellation of a public hearing; and,
- How to supply Commissioners with previously submitted background information for agenda items.

**Planning Board Minutes
September 12, 2018**

REZONING APPLICATION

**1. 469-479 S. Old Woodward Ave. (former Mountain King and Talmer Bank)
Request to reconsider application in light of new information to be presented to rezone
from B-3 and D-4 to B-3 and D-5 to allow a nine-story mixed-use building**

Chairman Clein recalled that on June 27, 2018, the Planning Board reviewed a rezoning request for 469 – 479 S. Old Woodward Ave. (former Mountain King and Talmer Bank sites) to rezone from B-3/D-4 to B-3/D-5. This request was made pursuant to Article 7, section 7.02 of the Zoning Code. After much discussion, the Planning Board voted to recommend denial of the rezoning request to the City Commission for 469 – 479 S. Old Woodward Ave. The City Commission then set a public hearing date for August 13, 2018 to review the rezoning request.

On August 13, 2018, the applicant submitted a letter requesting that the City postpone the public hearing that was previously set at the City Commission to allow the applicant to present new information to the Planning Board for their review and consideration. Accordingly, the City Commission cancelled the public hearing and the matter was sent back to the Planning Board for reconsideration.

Therefore, the Board's next step is to enter into a discussion of whether or not the application for 469-479 S. Old Woodward Ave. should receive a re-hearing. If they decide that there is substantial new evidence or new facts under section 7.02 (6) to warrant a re-hearing, the Board will at that point decide on the next steps.

Motion by Mr. Williams

Seconded by Mr. Koseck to include the following correspondence into the official record:

- **Letter dated September 11, 2018 from Susan K. Friedlaender, Attorney with Friedlaender, Nykanen, Rogowski, PLC;**
- **Letter dated September 10, 2018 from B. Geiger, Unit 623, 411 S. Old Woodward Ave;**
- **Letter dated September 11, 2018 from Timothy J. Currier, Beier Howlett, City Attorney, dealing with the process of rezoning application before the Planning Board.**

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Share

Mr. Williams pointed out the Planning Board has opinions of opposing counsel dealing with the issue as to whether the D-5 Ordinance can in fact apply to the two properties in question (former Mountain King and Talmer Bank sites). That is a legal question for the City Attorney to decide.

The second issue is whether the two parcels are or are not in the Parking Assessment District. It is important to know from the City's standpoint why this property is or is not in the Parking Assessment District based on the records of the City at the time the Parking Assessment District was created. Further, if they are in the Parking Assessment District, then the analogies to the other five-story buildings in the City in Downtown which are in the Parking Assessment District and don't have to provide on-site parking is relevant. If they are not in the Parking Assessment District and the applicant is required to provide on-site parking, then that is a different conclusion. He wants the opinion of the City Attorney before proceeding because if the conclusion is that the properties are not eligible for D-5 zoning then having a hearing is a waste of time.

Mr. Williams further noted that Ms. Friedlaender's letter questions what the City Commission intended by approving the D-5 category. He would like the opinion of the City Attorney on that narrow question and whether these two parcels are eligible to be rezoned into the D-5 category based on all the evidence to date.

Chairman Clein thought the question before the Board is whether there will be a rehearing; or since they are all present, whether they feel they have enough information to have that conversation tonight on the very narrow basis of whether there is new information that wasn't brought up at the original hearing.

Mr. Rick Rattner, Attorney, 380 N. Old Woodward Ave., was present to represent the applicant. They believe this site not only is eligible for D-5 Zoning, but they also think that they have new information. Further, they accept that the site is not in the Parking Assessment District. They feel they have enough information to go forward at this time and also believe their position relative to the eligibility and the new information is solid.

Ms. Ecker recommended that the Board should stick to the first question of whether there is new information that wasn't considered before that is brought forward now and thus warrant a rehearing.

Mr. Williams pointed out that the CIS contained a reference that this particular property is in the Parking Assessment District. So, the information from the City that was provided at the time of the hearing was incorrect. Therefore, the record needs to be corrected. He didn't think the Board should start down that road until they receive Mr. Currier's opinion.

Mr. Rattner indicated they have no objection, if that is what the Board decides.

Chairman Clein opened up public comment at 8:15 p.m.

Ms. Susan Friedlaender, Attorney representing Birmingham Place Residential Condominium Assoc., corrected that the applicant actually mentioned during the hearing that they are not in the Parking Assessment District and that is one reason they were asking for the rezoning, and one reason why they needed to be rezoned because they cannot meet the needs of a hotel in four stories.

Mr. Michael Schwartz, 411 S. Old Woodward Ave., Birmingham Place asked the Board to consider once they have a legal opinion, if it is that the process should move forward. Possibly decide that in October and then have the hearing for the project itself at future meeting.

Motion by Mr. Williams

Seconded by Ms. Whipple-Boyce to postpone consideration of the public hearing which was scheduled for tonight to October 10, 2018 with the condition that the Board receive

the legal opinion of counsel to the City of Birmingham submitted to the Planning Board in writing as to whether the proposed site (former Mountain King and Talmer Bank) is eligible to be rezoned to the D-5 category.

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

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Share

Planning Board Minutes
October 10, 2018

REZONING APPLICATION

1. 469-479 S. Old Woodward Ave. (former Mountain King and Talmer Bank)
Request to reconsider application in light of new information to be presented to
rezone from B-3 and D-4 to B-3 and D-5 to allow a nine-story mixed-use building

Chairman Clein recalled that on June 27, 2018, the Planning Board reviewed a rezoning request for 469 – 479 S. Old Woodward Ave. (former Mountain King and Talmer Bank sites) to rezone from B-3/D-4 to B-3/D-5. After much discussion, the Planning Board voted to recommend denial of the rezoning request to the City Commission for 469 – 479 S. Old Woodward Ave. The City Commission then set a public hearing date for August 13, 2018 to review the rezoning request.

Prior to the City Commission taking any action the applicant submitted a letter requesting that the City postpone the public hearing that was previously set at the City Commission to allow the applicant to present new information to the Planning Board for their review and consideration. Accordingly, on August 13 the City Commission cancelled the public hearing and sent the matter back to the Planning Board for reconsideration.

Section 7.02(6) of the Zoning Ordinance allows a rehearing on a rezoning request where there is a substantial change in the evidence that was previously presented even after the City Commission has issued a denial of the request. In this case, the City Commission did not hear the request, and thus did not issue an approval or denial. They did however send the matter back to the Planning Board to determine if there has been a substantial change in the evidence, and if so, to conduct a rehearing on the rezoning request previously considered.

On September 12, the Planning Board decided to postpone consideration. They were looking for additional information from the City Attorney as to 1) whether the applicant has the right to apply for rezoning under D-5; and 2) some of the facts behind the reasons why this property may or may not have been put in the PAD.

As to why this property may or may not have been put in the PAD, the City Attorney has written a letter stating there is no record from the 1960s. With regard to the legal question as to whether or not the applicant has the right to apply for rezoning to the D-5 category, the City Attorney responded they do have the legal right to apply for rezoning to this zoning classification.

Chairman Clein stated that the first thing the Board will do this evening is to discuss whether the new information being presented warrants a rehearing.

Mr. Rick Rattner, Attorney, 380 N. Old Woodward Ave., was present to represent the applicant. In a PowerPoint presentation he outlined the substantial change in the evidence that was previously presented to the Planning Board on June 27, 2018 and requested a rehearing of the rezoning request based on the following:

- There was a mistake in the CIS that was included in the packet that indicated this property is in the PAD. This property is not.
- The ordinance states pursuant to 7.02 (B) (5) (a-e) that the Planning Board should make findings of fact. There was no presentation of a finding of fact as it was presented to the City Commission.

- The D-5 Zone was enacted and at that time, three buildings were rezoned to D5, but the ordinance itself is clear and unambiguous. It provides language that indicates there are going to be different buildings put into the D-5 Zone.
- The fact that the property sits outside of the PAD should be looked at because of the potential five or six types of structures that could be built under the D-4 Ordinance. That is what is new to their rezoning argument. If a mixed-use building is constructed in D-4, it must have 288 parking spaces on-site. That requires their building to be accompanied by nine underground parking levels. That is a major change in the way the Planning Board might look at this for rezoning.

Mr. Rattner hoped the Board will take this seriously and give them a chance for a rehearing based on all of this context, so that a good and fair decision can be made.

Mr. Williams received confirmation from Ms. Ecker that there are no other commercial properties which are currently zoned D-4 and allow a mix of commercial and residential uses that are not located in the PAD.

Responding to Mr. Boyle, Ms. Ecker gave a brief history of the PAD and why it was created. She named the Brookside Terrace and the old school district building as being properties that bought into the PAD after it was formed. They both about the PAD. The City Engineer and the Finance Director figure out what the buy-in amount is and then it goes to the City Commission who makes the determination as to whether a property will be added or not.

Chairman Clein opened discussion from the public at 8:07 p.m.

Ms. Susan Friedlander, Attorney representing Birmingham Place Residential Condominium Assoc., noted that at the September 12 hearing she talked about the intent of the D-5 Ordinance and whether it was intended for rezoning for a multitude of properties that don't fit the non-conforming status. The history of the ordinance cannot be clearer. It was drafted because the 555 Building had space on its site.

Another issue is whether there has been new evidence submitted that justifies a rehearing. The only thing that was raised is that there was a mistake in the CIS report that said 469-479 S. Old Woodward Ave. is in the PAD. However, the CIS was specifically put aside at the hearing because the Planning Board was looking at rezoning and not the site plan or the CIS. It is on the record, on the video and in the minutes that the applicant said he can't build anything else because the property is not in the PAD.

Ms. Friedlander stated that in the example of what can be built, it is erroneous to say that parking must be on site if you are not in the PAD. The Zoning Ordinance clearly allows many of the mixed uses that are allowed in the D-4 District other than residential to have parking 100 ft. away. Ms. Friedlander said she is trying to wrap her head around the fact that because they are not in the PAD they want to have a use with an even greater parking need than they might be able to build under D-4. So, they haven't presented any new information.

The ordinance does not say that the Planning Board has the authority to rehear an application that it has denied when the City Commission has not heard it and denied it. It says the same application shall not be brought back within the same year unless there has been substantial change in conditions which the applicant can present to the Planning Board upon reapplication. That is not what happened here.

Ms. Friedlander stated that the City Commission speaks through its resolutions. The Commission's resolution says to cancel the public hearing to consider approval of the rezoning of 469-479 S. Old Woodward Ave. from B-3/D-4 to B-3/D-5 and refer the matter back to the Planning Board. It doesn't say to refer the matter back to the Planning for a rehearing and reconsideration of this rezoning request.

Mr. Clinton Ballard, 388 Greenwood, said he cares very much how this City is developed. He thinks this property should be zoned to D5 the same as the adjacent properties.

Motion by Mr. Boyle

Seconded by Mr. Share to receive and file a letter from Honigman Miller Schwartz and Cohn, LLP dated October 10, 2018 that says they represent the Condominiums at Birmingham Place Association.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Ramin

After a brief evacuation of the building because the fire alarm sounded, the meeting reconvened.

In response to Mr. Williams, Ms. Ecker said a letter was received from the City Attorney prior to the September 12 meeting indicating what the process would be and that it is the Board's responsibility to determine if there is new information; and to make a decision on that first; and then if the determination is made there is new information, to conduct a rehearing.

Several Board members indicated they were aware that this property was not in the PAD but several others were not. Chairman Clein did not believe it was ever discussed.

Ms. Whipple-Boyce said in all of her time on this board she can never remember seeing a rezoning application followed by a site plan for the same property on the same night. The applicant may not have touched on not being in the PAD in the first part of their presentation because they expected to be presenting that in the second part of their presentation. She finds that to be new evidence because the Board didn't give the applicant the opportunity to present their Site Plan. Therefore she leans toward voting in favor of the applicant tonight.

Mr. Koseck said he always wants to look at a proposed design along with a rezoning application. It is the applicant's job to make their case and he doesn't think there has been a change of facts to the degree that would make him have a different opinion.

Chairman Clein noted he is hard pressed to say that the news that the property is not in the PAD is a substantial change in facts, evidence, or condition. Therefore, he cannot support a rehearing.

Mr. Williams said his understanding is that the Board didn't go beyond the three properties which were non-conforming because no other properties were before them. It is clear to him that the written record of the CIS was incorrect. The record should be clear that the property is not within the PAD. Also, he doesn't think the Planning Board complied with the ordinance in its

findings. He added that it would be inappropriate to go forward with a rehearing tonight because there is a counsel of record who can't be present who said he represents a certain party that is not here. Everybody should be given an opportunity to be heard.

Mr. Share indicated his strong recollection is that when the Planning Board adopted the D-5 Zoning it was not exclusive to the three properties. It was open to other places but it was inappropriate for the Board to rezone a property without them being there to request it. Based on what he saw in the minutes and what he has heard from his colleagues, there has not been a substantial change in the evidence that would justify a rehearing

Motion by Mr. Share

Seconded by Mr. Koseck to RECOMMEND DENIAL of the applicant's request for a rehearing the property at 469-479 S. Old Woodward Ave.

There were no public comments related to the motion at 8:55 p.m.

Motion failed, 3-4.

ROLLCALL VOTE

Yeas: Share, Koseck, Clein

Nays: Boyle, Jeffares, Whipple-Boyce, Williams

Absent: Ramin

Motion by Ms. Whipple-Boyce that the Planning Board finds that there have been substantial changes in the evidence previously presented at the rezoning hearing on June 27, 2018, and thus grants a rehearing of the rezoning request for 469-479 S. Old Woodward Ave.

Motion carried, 4-3.

ROLLCALL VOTE

Yeas: Jeffares, Whipple-Boyce, Boyle, Williams

Nays: Koseck, Share, Clein

Absent: Ramin

At 9 p.m. there were no comments from the audience.

Motion by Mr. Williams

Seconded by Mr. Boyle that the re-hearing that has been approved by the Planning Board be held on Wednesday, November 14, 2018.

There was no discussion from members of the public at 9:05 p.m.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Ramin

Planning Board Minutes
November 14, 2018

E. REZONING APPLICATION

1. 469-479 S. Old Woodward Ave. (former Mountain King and Talmer Bank)

Rehearing of application to rezone from B-3 and D-4 to B-3 and D-5 to allow a nine-story mixed-use building (postponed from October 10, 2018)

Mr. Rick Rattner, 380 N. Old Woodward Ave., said that after many hours of work they thought it might be helpful if they were given a chance to talk to the Birmingham Place neighbors and see if they could come to some conclusion about how they might accommodate each other. Therefore, they ask that the application be postponed to a date certain.

Mr. Clein announced that communication between parties is always something this board has strived for. Therefore, he would be willing to wait in order to allow that to happen.

Mr. Share assured that the Planning Board would not simply rubber stamp the agreement that was made, should they make one.

Mr. Koseck added that through communication there is always a better result, better planning, and happier people. So he was in favor of the request.

At 7:35 p.m. the Chairman asked for public discussion.

Ms. Susan Friedlander, who represents Birmingham Place Residential Condominium Assoc., said this is the first they are hearing about the postponement request. Her clients are upset about it because this is their fifth time in front of the Planning Board. It has gotten really expensive for them as well as time consuming. Further, they lose people every time their hearing is put off. Therefore, they want to just go ahead this evening. Additionally, she questioned why they were not notified of the postponement before tonight's meeting.

Mr. Jason Able spoke on behalf of the Condominiums of Birmingham Place Master Assoc. He echoed Ms. Friedlander's words. Every time this appeal is postponed less people show up.

Mr. Larry Rockind, resident of Birmingham Place, said at a minimum the applicant should be required to give some indication of what they have in mind. Also they should talk about paying the costs that the residents have incurred as a result of the delays.

Mr. Mickey Schwartz, resident of Birmingham Place, noted that in other developments like the Frank St. project the developer met with the neighborhood before submitting anything to the Planning Dept., which is the appropriate way of doing something. This has been going along for a long time and he doesn't see any grounds for further postponement. So, he asked the Board not to extend the hearing. If the hearing is extended he asked that it be for a period of six months in order to accommodate the residents who will be away for the winter.

Mr. Duraid Markus, one of the principals of the ownership of the two buildings, said he understands the concerns. He asked for a chance to show the residents of Birmingham Place

what the development would look like at five and nine stories and what he can or cannot accommodate them with. He wants to do a lot to appease their fears. It came to this late juncture because they finally finalized the plans.

Discussion clarified that tonight the Board is dealing with massing and the intensity of use.

Ms. Whipple-Boyce asked Mr. Markus if anything he is planning to discuss with the residents of Birmingham Place has to do with him not rezoning the property. Mr. Markus responded that if he can show the residents a rezoning plan that they are happy with maybe there will be less opposition.

Mr. Share explained that the Board is well aware of the intensity of the feelings of the residents of Birmingham Place. Their letters are all part of the record. Therefore, ~~no matter how many if~~ **fewer** people show up for the hearing it won't influence the Board's decision.

Mr. Koseck hoped this would be a win-win and the residents would see something positive in what is being proposed by the applicant.

Mr. Jeffares said the Board has seen where something received complete opposition and they worked on it and came up with a great outcome. That is what he would like to strive for and have everybody be happy. Maybe it will work or not work, but why not give it a shot.

Mr. Emerine thought it is important that people get together and discuss this. He was in favor of postponement. Mr. Boyle said he is of the same mind. From his experience on this Board, the more conversation there is outside of this room, the better understanding there is between parties. Chairman Clein was in general agreement with those feelings.

Mr. Markus indicated that December 12th would be fine to come back.

Motion by Mr. Boyle

Seconded by Mr. Koseck that in light of the statements from the applicant that we postpone this rezoning application for 469-479 S. Old Woodward Ave. (former Mountain King and Talmer Bank) to the Planning Board meeting scheduled for December 12, 2018.

There were two further comments from the public on the motion at 7:58 p.m.

Mr. Mickey Schwartz, resident of Birmingham Place, said tonight's hearing is about rezoning. It seemed to him they have digressed into talking about the specifics of the project that have nothing to do with rezoning. He heard Ms. Whipple-Boyce ask Mr. Markus whether or not he would request a rezoning change. However, he didn't hear him answer her question, and gave a non-responsive answer. If this is really about the rezoning then maybe they should talk about that tonight. They can always talk about the specifics of the project if the Board agrees to the rezoning request.

Ms. Tony Schwartz, resident of Birmingham Place, said this is a rezoning and why discuss a project that may not even happen if it is not approved. It is hard for her to believe that when the developer originally bought the property he did not have the intention of building to ten stories.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Williams

**Planning Board Minutes
December 12, 2018**

E. REZONING REQUEST

1. 469-479 S. Old Woodward Ave. (former Mountain King and Talmer Bank) Request to reconsider application in light of new information to be presented to rezone from B-3 and D-4 to B-3 and D-5 to allow a nine-story mixed use building (postponed from November 14, 2018, and the applicant has asked for additional postponement)

Motion by Mr. Williams

Seconded by Ms. Whipple-Boyce that the rehearing of the rezoning request for 469-479 S. Old Woodward Ave. (former Mountain King and Talmer Bank) be postponed to the regular Planning Board meeting of January 23, 2019.

Motion carried, 7-0.

There were no comments from members of the public at 7:35 p.m.

VOICE VOTE

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

Nays: None

Absent: None

Mr. Williams asked that upon republishing this material, staff note any new information on the first page.

DRAFT Planning Board Minutes
January 23, 2018

E. REZONING REQUEST

- 1. 469 – 479 S. Old Woodward (former Mountain King & Talmer Bank)** – Request to reconsider application in light of new information to be presented to rezone from B3 and D4 to B3 and D5 to allow a nine story mixed use building (Postponed from December 12, 2018).

Ms. Ecker identified the subject site and reviewed the history of the rezoning requests over the past year. It was noted that the building immediately to the north of 469-479 S. Old Woodward is approximately 115 feet tall, and that the tower to the south of 469-479 S. Old Woodward, attached to the 555 building, is approximately 80 feet tall. The current zoning would allow for an approximately 80 feet tall building at 469-479 S. Old Woodward.

The 2016 Plan would only allow a five-story building at the 469-479 S. Old Woodward site. D-5 zoning allows a building to go up to, but not exceed, the height of an adjacent building. D-4 zoning allows a building to have five stories if the top floor is residential. Planning Director Ecker did not believe there are any other properties zoned D-4 in the Downtown Overlay which are not also in the Parking Assessment District (PAD).

Planning Director Ecker reviewed the requirements for rezoning contained in the Zoning Ordinance and explained the findings related to these as outlined in the staff report, along with the applicant's responses as submitted. After the review was complete, Ms. Ecker noted that based on the Planning Department's review "of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable master plan documents, current zoning and recent development trends in the area, [...] the applicant meets the established Zoning Ordinance requirements of Article 7, section 7.02(B)(5) to qualify for a rezoning of the property from D-4 to D-5 in the Downtown Overlay district."

Mr. Rick Rattner, Attorney, was present to represent the applicant. On behalf of the applicant Mr. Rattner and architect Chris Long gave a presentation first outlining the applicant's adherence to the Zoning Ordinance requirements of Article 7, section 7.02(B)(5), similar to the Planning Department's findings of positive rezoning qualifications of the property, and secondly showing a massing of the proposed building, zoned as D-5, at the 469-479 S. Old Woodward site.

Mr. Rattner began by saying he could not think of another situation in Birmingham where two buildings are zoned in the same way with a third building, in the middle, zoned differently. Mr. Rattner continued:

- The 469-479 S. Old Woodward site essentially creates a gap in the streetscape since it is currently one or two stories and cannot be rebuilt.
- Based on intended height, the applicant would return to the Board for a Special Land Use Permit (SLUP) which would also take into account the neighbors' preferences.
- D-5 zoning would allow for on-site parking and the same uses as the surrounding buildings.

Mr. Longe described the 469-479 S. Old Woodward site. If the current buildings were maintained and reused for a non-conforming use the applicant would need to provide parking for 55 cars since the site is outside of the PAD. His presentation illustrated and talked through some other D-4 zoned options that would be similarly untenable for the site.

The Board was then presented with two massing models to demonstrate what the proposed building would look like if the City Commission were to grant the change in zoning to D-5.

Mr. Longe clarified that the proposed building could be stepped back from Birmingham Place to provide more open space between the two buildings if the change in zoning to D-5 is granted. He added that this idea came about as part of the ongoing discussion with the tenants of Birmingham Place.

Mr. Longe confirmed for Mr. Emerine that the top block represented on the proposed building would be a mechanical block, not an additional story to the building.

Chairperson Clein thanked Mr. Longe for the massing diagrams, stating they were helpful.

Mr. Rattner told Mr. Share that the applicant is coming before the Board instead of the Board of Zoning Appeals because the applicant is attempting to do a development under the current zoning ordinances of the City. Mr. Rattner added that it is unusual and unfair to maintain the site at D-4 when both buildings adjacent to the site are zoned at D-5.

Doraid Markus, one of the applicants, opined that a five-story hotel would not be as becoming of Birmingham as a nine-story hotel. He specified that in order to create an uncrowded first floor and mezzanine level and a sufficient number of rooms, the building would need the extra height.

Susan Friedlander, Attorney representing Birmingham Place Residential Condominium Association, explained that the evening's discussion was supposed to be a rehearing since the site had originally been described incorrectly as being in the PAD. Given this, she wondered why the applicant had yet to explain this evening how the PAD was such a significant issue that the Board should consider voting differently than it had in the past. She added:

- The applicant's assertion that they could not park onsite with a five-story building, but could park onsite with a nine-story building -- even though a nine-story building would require an increase of parking spaces -- did not compute.
- Other hotels being built in the PAD are putting two levels of parking underground.
- The applicant said they would be able to use approximately 40 spaces from the 555 building if the site was built to nine stories. Ms. Friedlander questioned why this arrangement would not work with a five-story building as well.
- During tonight's presentation the applicant did not mention the various parking sharing arrangements available to the applicant under the ordinance. Such sharing arrangements could significantly decrease the burden of providing parking. She said addressing this issue is more of a parking variance matter than an ordinance matter.
- According to Planning Director Ecker's report, there is no consensus on whether the City should be raising building heights in this area. If the Board and Commission determined that these three high-value buildings should have their heights raised without consulting the Master Plan for the area, then the City was not zoning according to a Plan. Michigan law requires that every City zones according to its Plan(s).

- Changing building heights in the Downtown Overlay district merits a thorough community engagement process, similar to the process of changing building heights in the Triangle District. Insufficient consultation of the community on this matter could result in the impression that this zoning change was insufficiently considered and vetted. She also said the February 2017 Commission discussion on the issue reflected similar concerns from the Commissioners regarding the lack of community engagement.
- A number of other properties in Birmingham could also request changes in zoning based on being next to D-5 buildings. The problem is whether these changes are being made according to the City's 2016 and Master Plans.
- The City specified in its 2016 Plan that it wanted to maintain its small town character. According to Ms. Friedlander, small towns do not usually go above three or four story buildings. While Birmingham has gone back and forth on whether it would allow taller buildings, drastic changes to building heights should be made according to the City's Plans.
- The discussion of changing this site's zoning should occur under the auspices of the upcoming Master Planning process. Otherwise, this is similar to spot-zoning, since no land use patterns changed for the site.

David Nykanen, Attorney, said he represents some of the residential owners in the Birmingham Place Condominium Association. Noting that a hotel would require the least amount of parking on this site, Mr. Nykanen asserted that the applicant chose not to present the parking implications of that option in the current discussion so as to make the parking requirements seem more onerous than they are. He continued:

- Two other sites in Birmingham are building five story hotels, demonstrating that parking a five story hotel within the City is not excessively burdensome.
- In addition to the potential parking agreement with the 555 building, other options are available to the applicant for parking a five story hotel on this site.
- The applicant's statements this evening demonstrated that this rezoning request is based on the applicant's preference for a certain type of hotel, not the inability to build a hotel on the site more generally.
- The zoning uses for both D-4 and D-5 are the same, so Mr. Rattner's assertion that a change in zoning is necessary to allow the applicant to enjoy the same uses as the adjacent buildings is fallacious. The only difference between the zoning types is the building height.
- A five story hotel on the site would be taller than the 555 building and would adequately fill in the visual gap in the streetscape.
- It is clear that this rezoning request is about economics and not about land use, which is an insufficient reason to rezone a property.

Jason Abel, Attorney, said he represents the Masters' Association of the Birmingham Place Condominium Association. He said he echoed the previous two speakers and drew the Board's attention to 7.02(B)(2)(b)(i) and 7.02(B)(2)(b)(ii). Mr. Abel explained:

- Regarding 7.02(B)(2)(b)(i), the applicant is required to show, and the Board is required to present findings of facts, as to why the rezoning is necessary for the preservation and enjoyment of the rights of usage commonly associated with the property. Mr. Abel described 'necessary' as the critical word, since it is not necessary to develop a nine story hotel on this property. A five story building could be developed on this site with many different uses. The problem is that the applicant is requesting a change in the zoning to access a use that is not permitted in the five story setting. While Mr. Abel acknowledged

this to be an understandable preference on the part of the applicant, he asserted that it would not be a 'necessary' change. Additionally, the applicant's contention that they would make more money with a taller building or would not be able to provide enough parking with a shorter building could be used by any developer in any zoning environment, making their argument so broad as to fall outside the need for a specific and 'necessary' zoning change.

- Regarding 7.02(B)(2)(b)(ii), the zoning of D-4 is not inappropriate for the current land use. The issue is, rather, that the applicant would like to build a nine story hotel on a parcel zoned for a five story use.
- The applicant presented arguments adjacent to the Zoning Ordinance rather than addressing the Zoning Ordinance.
- Regarding 7.02(B)(2)(b)(iii), Mr. Abel said the applicant did not address the detrimental impact changing the zoning of the site to D-5 would have on the neighbors.

Carole Kozlow stated that her family has always loved Birmingham's smaller town nature. Recalling Mr. Markus making a statement similar to 'if the City does not want large buildings, it never should have allowed the first one to be built' during the June 2018 conversation on the issue, Ms. Kozlow said she agreed. Noting that Birmingham has since changed course on large buildings, she asked that the City continue to preserve its character, rather than having to fix the problem after the fact.

Karl Sachs said he has lived in Birmingham for about 25 years and said he had been asked to convey some of his neighbors' feelings on the potential rezoning. He continued that many of their points had already been covered by others but that he wanted to mention his neighbor Mike Humphrey's written statement that the potential rezoning does not adhere to the Master Plan. Mr. Sachs said that this hotel would make privacy nearly impossible for the residents of Birmingham Place living on the side adjacent to the proposed site.

Michele Prentiss, Property Manager of Birmingham Place, presented the Board with a written reply to the applicant's summary statements as included in the Board's agenda packet for the evening. She then gave a copy to Chairperson Clein.

Chairperson Clein asked if there was a motion to receive and file the letter.

Mr. Williams asked for a copy of the letter. Chairperson Clein said he would pass along his copy for Mr. Williams to read. Mr. Williams said that without a copy for each Board member to read, he would not make a motion to receive and file the letter.

Chairperson Clein said he would acknowledge the letter, and upon receipt of the letter as an email to Planning Director Ecker the letter would be included in agenda material on the matter moving forward.

Seeing no further comments from the public, Chairperson Clein brought the discussion back to the Board. Chairperson Clein said it was time for the Board to make a decision.

Mr. Share asked if the letter had any new information, saying he did not want to make a decision if there was information the Board had not yet heard.

Ms. Friedlander told the Board that all the letter's points had been covered in the evening's discussion.

Mr. Share spoke first, saying that this is an unusual zoning request since it only impacts the height of the building allowed. He continued that when D-5 was implemented, the Board did not preclude other sites from seeking to be zoned D-5 in the future. From a streetscape perspective, he saw no significant difference between a five story and nine story building on the site. The proposed change does not seem 'necessary' as defined by 7.02(B)(2)(b)(i). It would behoove the Board to look at the zoning of the entire block from Hazel to Brown. He would not be voting in favor of rezoning unless his colleagues persuade him otherwise.

Mr. Koseck said none of the new information persuasively explained why the City Commission should approve the rezoning. He noted the 2016 Plan conclusively zoned the building at D-4. Cities tend to have buildings of varying heights, and the variety is partially what makes cities interesting, so the streetscape argument was not particularly compelling. Assuming the site was purchased with awareness of the D-4 zoning, Mr. Koseck suggested that this is not so much a zoning issue as a parking issue. He recommended the applicant apply to join the PAD or enter into some other beneficial parking arrangement. Addressing Mr. Markus' assertion that certain hotel designs are not becoming of Birmingham, Mr. Koseck said his firm is currently building a hotel in Ann Arbor with nine-foot floor to ceiling heights, that he is confident that the result will be sufficiently upscale, and that something similar could be done in the applicant's case. Lastly, Mr. Koseck noted the community's consistent concerns that the rezoning would be detrimental to the neighbors. He said no new information could be provided that would change his thinking on the matter.

Mr. Williams pointed out that the City Attorney found the site eligible for D-5 zoning. He said Ms. Friedlander could pursue the matter further with the City Attorney, but that the Board is bound by the City Attorney's opinion. The D-4 zoning for this site does not allow reasonable enjoyment of the property since all other D-4 sites in Birmingham have access to the PAD. Because this currently makes the property non-competitive, Mr. Williams said he would be in favor of rezoning.

Mr. Emerine noted the persuasive impact of the City Attorney's opinion that this site is eligible for D-5 zoning. Adding that the developer would need to acquire a SLUP should the rezoning move forward, Mr. Emerine stated he was comfortable with the rezoning at this time.

Mr. Jeffares recalled the Board had considered rezoning the surrounding area but had decided they wanted to keep D-5 to this smaller area at the time. He expressed an equivocal opinion on the idea of zoning a building according to its neighbor's zoning, but said that a building zoned differently between two buildings of the same zone seemed significant enough to change.

Ms. Whipple-Boyce addressed Ms. Friedlander's contention that D-5 was in any way surreptitiously done, saying that the Board and the City Commission spent many public meetings discussing the issue in depth. Ms. Whipple-Boyce added that she affirmed the City Attorney's findings regarding the application, and that she believed the applicant proved their case.

Chairperson Clein said he was against the rezoning at this time. He continued that the origins of D-5 zoning have no bearing on the question before the Board this evening, or if they do it is a legal question not up to the Board's interpretation. He clarified that the Board's directive was to

determine whether this parcel and application met the ordinance requirements for rezoning. Arguments about adjacencies were also not relevant. The applicant did not meet the burden of proof. Building heights across the downtown should not be changed without a downtown Master Plan. While Chairperson Clein said he would likely recommend the building be permitted a height increase within a planning process, neither the City's Master or 2016 plans allow the flexibility to add four stories to this building outside of the planning process. He noted that there were a number of D-4 uses not presented that would be appropriate for this parcel. In conclusion Chairperson Clein said he was firmly in opposition to rezoning at this time, but said he would entertain any other Board member's replies.

Mr. Jeffares said the owners of the other D-5 parcels applied for rezoning based on finances but that ironically tonight's applicant was being chastised for doing the same thing.

Chairperson Clein begged to differ and clarified for the record that the owners of the other D-5 parcels were having to get a number of different variances for every change they wanted to make on their properties.

Mr. Jeffares asserted the other D-5 parcel owners had indeed brought up financing in their rezoning application.

Chairperson Clein disagreed, saying that D-5 zoning arose out of a directive from the City Commission asking the Board to find a way to bring the currently D-5 parcels in question into compliance.

Motion by Mr. Williams

Seconded by Mr. Jeffares that based on a review of the rezoning request by the applicant and the supporting documentation submitted by the applicant, a review of the City's current Master Plan and the City's current 2016 Plan, and development trends in the area, and in compliance with 7.02(B)(5)(a) - 7.02(B)(5)(e), the Planning Board adopts the findings of fact in the staff report dated November 8, 2018, and recommends approval to the City Commission for the rezoning of 469 – 479 S. Old Woodward from D-4 to D-5 in the downtown overlay.

Motion carried, 4-3.

ROLL CALL VOTE

Yeas: Whipple-Boyce, Emerine, Jeffares, Williams

Nays: Clein, Koseck, Share

Absent: Ramin

Chairperson Clein explained that this is a recommendation to the City Commission. He explained the Commission will then take this recommendation and all attendant information, hold another public hearing of the applicant's request and the community's perspective, and make their determination. Chairperson Clein thanked the audience for voicing their opinions during the discussion.

CORRESPONDENCE RECEIVED FOR & AGAINST REZONING

411 S. Old Woodward Ave., Unit 1018
Birmingham, MI 48009
May 16, 2018

VIA HAND DELIVERY

Ms. Jana Ecker, Director
City of Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 4694 79 S. Old Woodward Avenue (the "Proposed Development")
Request to Rezone from B3/D4 to B3/D5 Filed by Christopher Long
on Behalf of Birmingham Tower Partners, LLC (the "Applicant")
Hearing Scheduled for Wednesday, May 23, 2018 (the "Hearing")

Dear Ms. Ecker:

I request that the Hearing be rescheduled for two (2) reasons. First, I received notice of the Hearing by mail on May 8, 2018 and visited the City Planning Office on Friday, May 11, 2018 to review the application. As of that date, the Applicant had not filed the statements required under subsection 7.02 B.2.b of the Rezoning Amendments (i.e., explanations of why rezoning is necessary, of why the existing zoning classification is no longer appropriate, and of why the proposed rezoning will not be detrimental to the surrounding properties). I suggest that failure to timely file those explanations caused the notice of the Hearing not to meet the fifteen (15) day advance notification required under subsection 7.02 B.4.a.i of the Rezoning Amendments.

Second, as a Birmingham resident living adjacent to the Proposed Development, I would appreciate time to review the very extensive documents filed by the Applicant. I suggest that public input is critical on a project that seeks to permission to erect the first building greater than five (5) stories to be built in downtown Birmingham in decades, which could well set a precedent for continuing development of high rise structures in our beautiful community. Substantial additional time will be required for myself and the many other Birmingham residents who are affected by the Proposed Development to adequately review and to respond to these filings.

Please contact me at the above address, via email to mickeyschwartz@gmail.com, or at telephone numbers (248) 229-9989 or (248) 593-3155 with any questions or further requirements and in any event with the new hearing date. Thank you for your time and attention.

Yours very truly,



Michael Schwartz, MD

xc: Applicant (via email to dsmarkus@yahoo.com)
Planning Board Members (via separate emails)

Eric and Janis Sterling
411 S. Old Woodward Avenue, Unit 615
Birmingham, MI 48009

June 7, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project ")

Ladies and Gentlemen:

We are residents of the City of Birmingham and are writing to express our deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. We believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

The city's 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest. Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population.

The Proposed Project is also esthetically displeasing. Instead of enhancing the Woodward corridor with an attractive entrance, it presents only a blank wall to the passing public. It would also create the hostile appearance of blocking off much of South Old Woodward and beyond by erecting a virtual wall of buildings running from the south end of the 555 residential units through the north end of Birmingham Place, reminiscent of medieval walls built around cities to keep people out, not to invite them in.

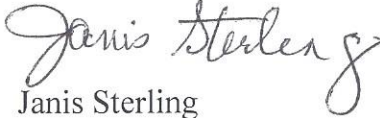
In addition, we have serious safety and other concerns, including:

1. Birmingham firefighting capability is limited to 7 stories. This would leave most of the back of the Proposed Project and virtually all of the south end of Birmingham Place with inadequate or no fire protection.
2. We also suggest that the Proposed Project would unduly burden our city's already hard-pressed police and public safety/rescue facilities.
3. Hazel Street is already a busy connector between Woodward and Old Woodward, especially at rush hour times. The Proposed Project would literally clog this small street with excess traffic, especially if the "four stack" valet service recommended by the developer's own traffic study is implemented and if the current four on-street parking spaces are included in the Proposed Project's plan for adequate parking, as Christopher Longe recently stated to the Planning Board would be the case. We note that the City's own traffic advisor, Fleis & Vandenbrink, also finds considerable fault with the developer's traffic study.
4. The demolition and construction time of the Proposed Project would be finite, but during that time, the heavy equipment needed for a project this size would cause construction damage to Hazel Street, Old Woodward and Woodward. Depending on the timing, this could result in at least the repaving work already planned for Old Woodward south having to be redone at a very substantial cost.
5. The Proposed Project will require deep excavation ("digging half way to China," as Mr. Longe recently expressed to the Planning Board) and heavy equipment and materials, which could seriously jeopardize the structural integrity of Birmingham Place. The developer has not adequately addressed this and has not made provision to repair, or more importantly to prevent, any damage to Birmingham Place.

Thank you for your time and attention, and for, we sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,


Eric Sterling


Janis Sterling

ADDRESS: ~~411~~ 411 S. Old Woodward, #1029
DATE: 6/7/2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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The city's 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest. Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population.

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In addition, we have serious safety and other concerns, including:

1. Birmingham firefighting capability is limited to 7 stories. This would leave most of the back of the Proposed Project and virtually all of the south end of Birmingham Place with inadequate or no fire protection.

2. I also suggest that the Proposed Project would unduly burden our city's already hard-pressed police and public safety/rescue facilities.
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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,



Nikole Fine

Unit #521

411 S. Old Woodward, Suite 603
Birmingham, MI 48009

June 8, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

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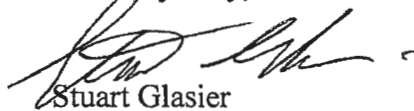
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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

A handwritten signature in black ink, appearing to read "Stuart Glasier", written over a horizontal line.

Stuart Glasier

411 S. Old Woodward, Suite 729
Birmingham, MI 48009

June 8, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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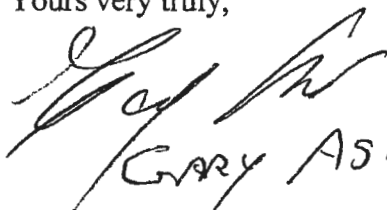
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Yours very truly,


Gary Askeir
305 Purdy

2400 East Lincoln Street, Unit 425
Birmingham, MI 48009

June 8, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project ")

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

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ADDRESS: 411 S. Old Woodward # 1028
Birmingham Mi
DATE: 6-9-2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

We are residents of the City of Birmingham and are writing to express our deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally *not* zoned as D5, despite being located between two of the D5 buildings.

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Yours very truly,


Bev Ross

Edwin B. and Felicia P. Shaw
411 South Old Woodward Ave. Unit #910
Birmingham, Michigan 48009

June 12 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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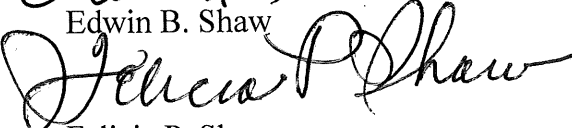
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Yours very truly,


Edwin B. Shaw

Felicia P. Shaw



Jana Ecker <jecker@bhamgov.org>

Fwd: 469-479 S. Old Woodward Ave. (the " Proposed Project") Objection

1 message

Stuart Jeffares <stuartjeffares@gmail.com>
To: Jana Ecker <jecker@bhamgov.org>

Wed, Jun 13, 2018 at 9:52 PM

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

From: Alice Lezotte <zareyskid@gmail.com>
Date: Sun, Jun 10, 2018, 12:53 PM
Subject: Fwd: [469-479 S. Old Woodward Ave.](#) (the " Proposed Project") Objection
To: <stuartjeffares@gmail.com>

Sent from my iPad

Begin forwarded message:

From: Alice Lezotte <zareyskid@gmail.com>
Date: June 10, 2018 at 12:47:33 PM EDT

Subject: [469-479 S. Old Woodward Ave.](#) (the " Proposed Project") Objection

[411 S. Old Woodward. #511](#)

[Birmingham, MI. 48000](#)

June 8, 2018

Mr. Jeffares, I am a city of Birmingham constituent. I would like to express my disapproval and opposition to the request for rezoning and to the Proposed Project itself.

The Birmingham city code has many statements to keep in mind when considering a new city project (I paraphrase):

1. Regulation and control of a project should promote the public health, safety, and general welfare of the city
2. Provide orderly growth and HARMONIOUS development
3. Secure adequate traffic circulation and "lessen" congestion on our streets
4. Ensure adequate provisions for water drainage, sanitary sewer facilities, and other health requirements
5. Achieve the maximum utility and "livability" of a project
6. Natural features must be preserved and changes should "add" to the attractiveness and "value" of the neighborhood
7. Any Proposed project should take into consideration as to the impact on adequate supply of light and air to adjacent properties and

the capacity of essential public facilities, such as police and fire protection, drainage structures, municipal water, sanitary sewers, and refuse disposal
Wise decisions have been made in the past (e.g., Forefront, Bristol,etc.) in accordance with The city's 2016 Master Plan and our Building Codes.

6/19/2018

City of Birmingham MI Mail - Fwd: 469-479 S. Old Woodward Ave. (the " Proposed Project") Objection

It is my hope similar consideration will prevail and this proposal will be denied.

Maple Road and Woodward on the south east corner would be an ideal location for this proposed project.

We want to keep our "Walkable" community as safe and pleasant as possible.

Best regards,

Alice Lezotte



Jana Ecker <jecker@bhamgov.org>

Fwd: Proposal for a 9 story building on S. Old Woodward, Birmingham

1 message

Stuart Jeffares <stuartjeffares@gmail.com>
To: Jana Ecker <jecker@bhamgov.org>

Wed, Jun 13, 2018 at 9:52 PM

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

From: Julie Wolfe <julie@moosejaw.com>
Date: Sun, Jun 10, 2018, 1:08 PM
Subject: Proposal for a 9 story building on S. Old Woodward, Birmingham
To: Julie Wolfe <julie@moosejaw.com>

From: Julie Wolfe
[411 S. Old Woodward #1021](#)
[Birmingham, MI 48009](#)

6/10/18

Birmingham City Commission
Birmingham Planning Board
[151 Martin Street](#)
[Birmingham, MI 48009](#)

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project ")

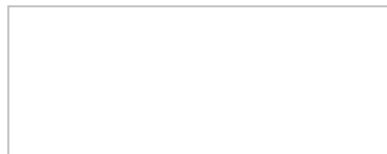
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I believe that a nine story building on this 0.41 acre parcel would be totally out of place, would violate the 2016 Master Plan and would be inconsistent with the small town downtown concept I firmly believe is very important to maintaining the character and long-standing plan for this beautiful city. I respectfully ask that you stay the course that has been followed and has been successful for so long. More construction to this area is very disturbing and frustrating. The city has been torn up enough.

Thank you.

Julie Wolfe



2 attachments



image001.png
6K



image003.png
7K

411 S. Old Woodward, Suite 1012
Birmingham, MI 48009

June 14, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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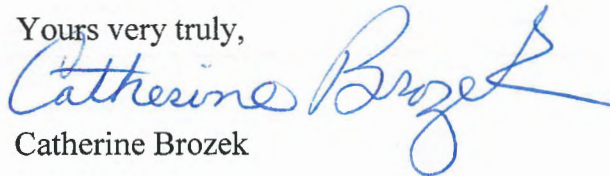
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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,



Catherine Brozek

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

Carol Kozlow

A handwritten signature in cursive script that reads "Carol Kozlow". The signature is written in dark ink and is positioned below the printed name.

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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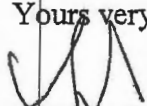
In addition, I have serious safety and other concerns, including:

1. Birmingham firefighting capability is limited to 7 stories. This would leave most of the back of the Proposed Project and virtually all of the south end of Birmingham Place with inadequate or no fire protection.

2. I also suggest that the Proposed Project would unduly burden our city's already hard-pressed police and public safety/rescue facilities.
3. Hazel Street is already a busy connector between Woodward and Old Woodward, especially at rush hour times. The Proposed Project would literally clog this small street with excess traffic, especially if the "four stack" valet service recommended by the developer's own traffic study is implemented and if the current four on-street parking spaces are included in the Proposed Project's plan for adequate parking, as Christopher Longe recently stated to the Planning Board would be the case. We note that the City's own traffic advisor, Fleis & Vandenbrink, also finds considerable fault with the developer's traffic study.
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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,


Lewis P. Rucklind
Birmingham Place
Unit 510

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally *not* zoned as D5, despite being located between two of the D5 buildings.

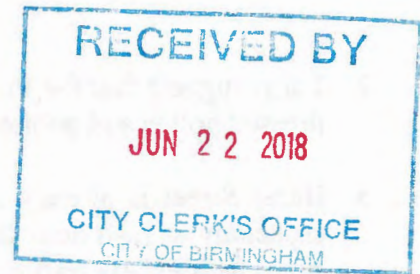
I believe that a nine story building on this 0.41 acre parcel would be totally out of place, would violate the 2016 Master Plan and would be inconsistent with the small town downtown concept I firmly believe is very important to maintaining the character and long-standing plan for this beautiful city. I respectfully ask that you stay the course that has been followed and has been successful for so long. Thank you.

Yours very truly,

A handwritten signature in black ink, appearing to read "Erin Mellett". The signature is written in a cursive, flowing style with some capital letters.

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018



Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

The city's 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest. Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population.

The Proposed Project is also esthetically displeasing. Instead of enhancing the Woodward corridor with an attractive entrance, it presents only a blank wall to the passing public. It would also create the hostile appearance of blocking off much of South Old Woodward and beyond by erecting a virtual wall of buildings running from the south end of the 555 residential units through the north end of Birmingham Place, reminiscent of medieval walls built around cities to keep people out, not to invite them in.

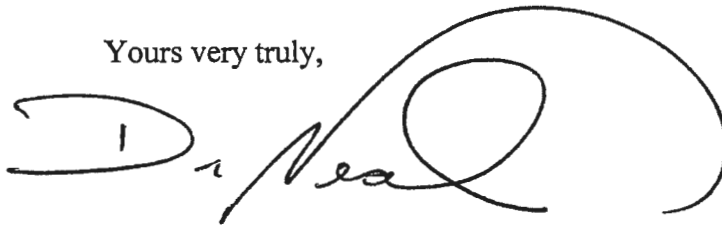
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2. I also suggest that the Proposed Project would unduly burden our city's already hard-pressed police and public safety/rescue facilities.
3. Hazel Street is already a busy connector between Woodward and Old Woodward, especially at rush hour times. The Proposed Project would literally clog this small street with excess traffic, especially if the "four stack" valet service recommended by the developer's own traffic study is implemented and if the current four on-street parking spaces are included in the Proposed Project's plan for adequate parking, as Christopher Longe recently stated to the Planning Board would be the case. We note that the City's own traffic advisor, Fleis & Vandenbrink, also finds considerable fault with the developer's traffic study.
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5. The Proposed Project will require deep excavation ("digging half way to China," as Mr. Longe recently expressed to the Planning Board) and heavy equipment and materials, which could seriously jeopardize the structural integrity of Birmingham Place. The developer has not adequately addressed this and has not made provision to repair, or more importantly to prevent, any damage to Birmingham Place.

Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

A handwritten signature in black ink, appearing to read "Dr. Neal". The signature is stylized with a large, sweeping loop at the end.

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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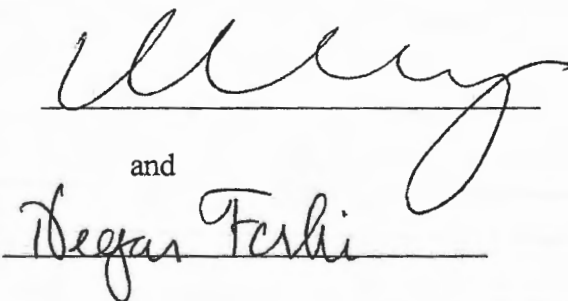
Thank you for your time and attention, and for, we sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

Vandad Raofi

and

Negar Farhi

The block contains two handwritten signatures. The first signature, for Vandad Raofi, is written in dark ink and is a fluid, cursive script. The second signature, for Negar Farhi, is also in dark ink and is a cursive script, appearing slightly more stylized than the first. Both signatures are written over horizontal lines that serve as baselines for the printed names.

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

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Yours very truly,

Valerie Foley
411 S. Old Woodward Ave
Unit 508
Birmingham AL
35209

Unit # 703

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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Yours very truly,

A handwritten signature in black ink, appearing to read "Arthur Longe". The signature is fluid and cursive, with a large, stylized initial "A".

UNIT #806

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

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Yours very truly,

Michael C. Schwartz
Voni Schwartz
411 S. Old Woodward
#1018
B'ham 38009

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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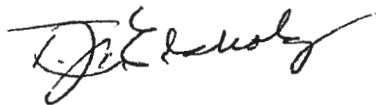
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Yours very truly,

T. J. ELSHOLTZ



E. A. ELSHOLTZ



411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project ")

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Yours very truly,

Sigina Tellman

Unit 606

*411 S. Old Woodward Ave
Birmingham, MI 48009*

411 S. Old Woodward, Suite 902
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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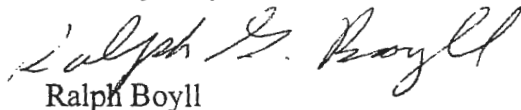
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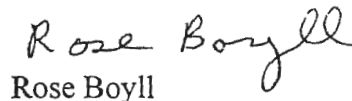
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Yours very truly,


Ralph Boyll


Rose Boyll

06/08/18

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project ")

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Yours very truly,
Victoria Shounieya
Victoria Shounieya
Unit #514

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Yours very truly,

Gavin Butler
411 S. Old Woodward Ave
Unit 508
Birmingham Michigan

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Yours very truly,


Alex Shoenberger

514

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Alice Legatte #511

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Yours very truly,


Ted Elsholz

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Margie White
#505

411 S. Old Woodward, Suite # 725
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009



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Yours very truly,

Rose M. Boyle
Ralph S. Boyle

411 S. Old Woodward, Suite ~~#~~ 901
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Yours very truly,

Helen O. Kane
OWNER

411 S. Old Woodward, Suite 529
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

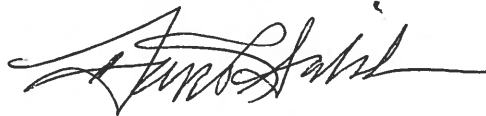
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Yours very truly,

A handwritten signature in black ink, appearing to read "David Saliba", with a stylized flourish at the end.

DAVID SALIBA
Unit 529

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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Yours very truly,

Ronnie M. Schibb

Birmingham Place, unit #529

Birmingham, MI 48009

June 16, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

The city's 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest. Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population.

The Proposed Project is also esthetically displeasing. Instead of enhancing the Woodward corridor with an attractive entrance, it presents only a blank wall to the passing public. It would also create the hostile appearance of blocking off much of South Old Woodward and beyond by erecting a virtual wall of buildings running from the south end of the 555 residential units through the north end of Birmingham Place, reminiscent of medieval walls built around cities to keep people out, not to invite them in.

In addition, I have serious safety and other concerns, including:

1. Birmingham firefighting capability is limited to 7 stories. This would leave most of the back of the Proposed Project and virtually all of the south end of Birmingham Place with inadequate or no fire protection.
2. I also suggest that the Proposed Project would unduly burden our city's already hard-pressed police and public safety/rescue facilities.
3. Hazel Street is already a busy connector between Woodward and Old Woodward, especially at rush hour times. The Proposed Project would literally clog this small street with excess traffic, especially if the "four stack" valet service recommended by the developer's own traffic study is implemented and if the current four on-street parking spaces are included in the Proposed Project's plan for adequate parking, as Christopher Longe recently stated to the Planning Board would be the case. We note that the City's own traffic advisor, Fleis & Vandenbrink, also finds considerable fault with the developer's traffic study.
4. The demolition and construction time of the Proposed Project would be finite, but during that time, the heavy equipment needed for a project this size would cause construction damage to Hazel Street, Old Woodward and Woodward. Depending on the timing, this could result in at least the repaving work already planned for Old Woodward south having to be redone at a very substantial cost.
5. The Proposed Project will require deep excavation ("digging half way to China," as Mr. Longe recently expressed to the Planning Board) and heavy equipment and materials, which could seriously jeopardize the structural integrity of Birmingham Place. The developer has not adequately addressed this and has not made provision to repair, or more importantly to prevent, any damage to Birmingham Place.

Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

Leslie Rolden
687 Vinewood

Birmingham, MI 48009

June 16, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project ")

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

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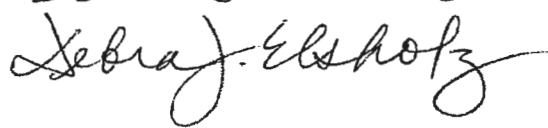
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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

Debra J. Elsholz


Birmingham, MI 48009

June 16, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project ")

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

The city's 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest. Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

Mike Galperin
460 Park

Birmingham, MI 48009

June 18, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

1034 Waterfall Court
Birmingham MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally *not* zoned as D5, despite being located between two of the D5 buildings.

I believe that a nine story building on this 0.41 acre parcel would be totally out of place, would violate the 2016 Master Plan and would be inconsistent with the small town downtown concept I firmly believe is very important to maintaining the character and long-standing plan for this beautiful city. I respectfully ask that you stay the course that has been followed and has been successful for so long. Thank you.

Yours very truly,

Judge Susan D. Borman (Retired)

Susan Borman

DJ MARLUC HOLDINGS LLC

6632 Telegraph Rd. #359
Bloomfield Hills, MI 48301

6/18/2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

The project that has been proposed for this in-fill site should be approved because it would be appropriate for this parcel of land. If allowed to be built, the project would:

1. Be in harmony with the pattern of the neighboring buildings by filling in the noticeable 'gap' between them, which can be seen from both South Old Woodward and Woodward Avenue.
2. Be consistent with the building heights, uses, and character of Birmingham Place and the 555 Building.
3. Increase the walkability of this area by providing retail at the street level, and by strengthening the retail connection between Birmingham Place and the 555 Building.
4. Add foot traffic (shopper & travelers) to the south end of the city by encouraging foot traffic from the downtown to continue on the completed blocks.
5. Activate Hazel Street in perpetuity – while currently busy with construction bypass traffic, Hazel is an otherwise dormant street (which is vacated on the east side of Woodward Avenue).
6. Adhere to the spirit and intent of both the 2016 Master Plan and the D5 zoning overlay.
7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,



John Kello

411 S. Old Woodward
Birmingham, MI 48009

June 19, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project ")

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally *not* zoned as D5, despite being located between two of the D5 buildings.

I believe that a nine story building on this 0.41 acre parcel would be totally out of place, would violate the 2016 Master Plan and would be inconsistent with the small town downtown concept I firmly believe is very important to maintaining the character and long-standing plan for this beautiful city. I respectfully ask that you stay the course that has been followed and has been successful for so long. Thank you.

Yours very truly,

A handwritten signature in black ink, appearing to read "Dana Bassipour", with a stylized flourish at the end.

Dana Bassipour

June 19, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

I am writing, as the owner of a residential comdo unit in Birmingham Place, to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

The city's 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest. Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population.

The Proposed Project is also esthetically displeasing. Instead of enhancing the Woodward corridor with an attractive entrance, it presents only a blank wall to the passing public. It would also create the hostile appearance of blocking off much of South Old Woodward and beyond by erecting a virtual wall of buildings running from the south end of the 555 residential units through the north end of Birmingham Place, reminiscent of medieval walls built around cities to keep people out, not to invite them in.

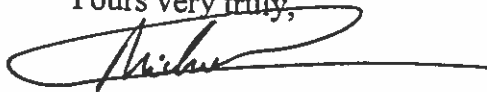
In addition, I have serious safety and other concerns, including:

1. Birmingham firefighting capability is limited to 7 stories. This would leave most of the back of the Proposed Project and virtually all of the south end of Birmingham Place with inadequate or no fire protection.

2. I also suggest that the Proposed Project would unduly burden our city's already hard-pressed police and public safety/rescue facilities.
3. Hazel Street is already a busy connector between Woodward and Old Woodward, especially at rush hour times. The Proposed Project would literally clog this small street with excess traffic, especially if the "four stack" valet service recommended by the developer's own traffic study is implemented and if the current four on-street parking spaces are included in the Proposed Project's plan for adequate parking, as Christopher Longe recently stated to the Planning Board would be the case. We note that the City's own traffic advisor, Fleis & Vandenbrink, also finds considerable fault with the developer's traffic study.
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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

A handwritten signature in black ink, appearing to read "Michael Hanna", written over a horizontal line.

Michael Hanna

June 19, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

I am writing, as the owner of three residential condo units in Birmingham Place, to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

The city's 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest. Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

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2. I also suggest that the Proposed Project would unduly burden our city's already hard-pressed police and public safety/rescue facilities.
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Yours very truly,

A handwritten signature in dark ink, appearing to read "Doris Hanna", written over a horizontal line.

Doris Hanna

ADDRESS:

319 GREENWOOD
BIRMINGHAM, MI 48009

DATE:

JUNE 19, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

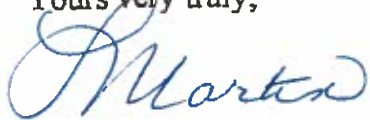
Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

We are residents of the City of Birmingham and are writing to express our deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally *not* zoned as D5, despite being located between two of the D5 buildings.

We believe that a nine story building on this 0.41 acre parcel would be totally out of place, would violate the 2016 Master Plan and would be inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city. We respectfully ask that you stay the course that has been followed and has been successful for so long. Thank you.

Yours very truly,



LISA A. MARTIN

June 19, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

I am writing, as the owner of one or more residential condo units in Birmingham Place, to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

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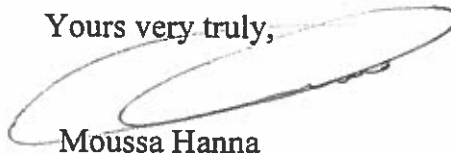
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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Moussa Hanna", written over a horizontal line.

Moussa Hanna

Lexi Drew
152 N Old Woodward
Birmingham, MI 48009
248.220.1731

Date 6/20/2018
Birmingham City Commission & Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue
Dear City Commission and Planning Board Members,

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

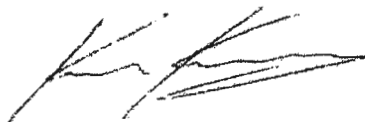
The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

The project that has been proposed for this in-fill site should be approved because it would be appropriate for this parcel of land. If allowed to be built, the project would:

1. Be in harmony with the pattern of the neighboring buildings by filling in the noticeable 'gap' between them, which can be seen from both South Old Woodward and Woodward Avenue.
2. Be consistent with the building heights, uses, and character of Birmingham Place and the 555 Building.
3. Increase the walkability of this area by providing retail at the street level, and by strengthening the retail connection between Birmingham Place and the 555 Building.
4. Add foot traffic (shopper & travelers) to the south end of the city by encouraging foot traffic from the downtown to continue on the completed blocks.
5. Activate Hazel Street in perpetuity – while currently busy with construction bypass traffic, Hazel is an otherwise dormant street (which is vacated on the east side of Woodward Avenue).
6. Adhere to the spirit and intent of both the 2016 Master Plan and the D5 zoning overlay.
7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin Kejbou', with a stylized, sweeping flourish at the end.

Kevin Kejbou
152 N Old Woodward
Birmingham MI 48009



2000 Town Center
Suite 2200
Southfield, MI 48075

248 353 5400 Tel
248 353 8134 Fax

June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

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7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

David Hesano
First Vice President
David.hesano@cbre.com



DETROIT ATLANTA CHICAGO CLEVELAND DALLAS HOUSTON LOS ANGELES MIAMI NEW YORK SAN FRANCISCO SOUTH JERSEY WASHINGTON DC

June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which is 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

The project that has been proposed for this in-fill site should be approved because it would be appropriate for this parcel of land. If allowed to be built, the project would:

1. Be in harmony with the pattern of the neighboring buildings by filling in the noticeable 'gap' between them, which can be seen from both South Old Woodward and Woodward Avenue.
2. Be consistent with the building heights, uses, and character of Birmingham Place and the 555 Building.
3. Increase the walkability of this area by providing retail at the street level, and by strengthening the retail connection between Birmingham Place and the 555 Building.
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9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony Toma".

Anthony Toma
CEO & Founder
Nine9
2653 Industrial Row Dr.
Troy, MI 48084



June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

RE: Proposed Project at 469-479 S Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

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9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

Gregg Speaks
Managing Director
CIBC Bank USA
34901 Woodward Avenue, Suite 200
Birmingham, MI 48009



MIDWEST HOSPITALITY GROUP INC.

June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

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The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

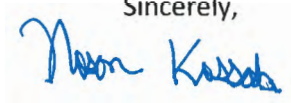
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9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,



Nason Kassab
35270 Woodward Ave
Birmingham, MI 48009



June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete and old one-story buildings that sit between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

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8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.
10. This project would continue to make the City of Birmingham the premier city to live and shop

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

A handwritten signature in black ink, appearing to be 'KD' or 'Kevin Denha', written in a cursive style.

Kevin Denha
40700 Woodward Ave Suite 125
Bloomfield Hills, MI. 48304

ISHBIA & GAGLEARD, P.C.
ATTORNEYS AND COUNSELORS
MERRILLWOOD BUILDING
251 MERRILL STREET, SUITE 212
BIRMINGHAM, MICHIGAN 48009

JEFFREY A. ISHBIA
MICHAEL A. GAGLEARD *
MARK W. CHERRY
DAVID N. ZACKS **

PHILIP CWAGENBERG
FRANK J. LAROCCA
MICHAEL J. WEISBERG **
SARA E. ROHLAND

ISIDORE B. TORRES, OF COUNSEL
C. GILES SMITH, JR., OF COUNSEL

(248) 647-8590
(800) 647-6269

FAX (248) 647-8596

* ALSO ADMITTED IN CALIFORNIA
** ALSO ADMITTED IN FLORIDA

June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

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For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

ISHBIA & GAGLEARD, P.C.



Jeffrey A. Ishbia

June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

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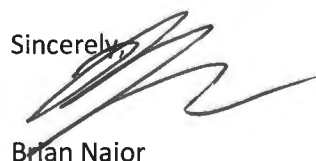
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For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,



Brian Najor
Najor Companies
600 N. Old Companies, Ste 100
Birmingham, MI 48009



JONNA

luxury homes

6/20/18

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

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For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,



Joseph Jonna, Jonna Luxury Homes



June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

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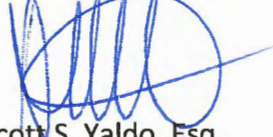
500 S. Old Woodward Ave., Second Floor, Birmingham, MI 48009

Phone: (248)645-5300 Fax: (248)645-5301

www.yaldolaw.com

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Scott S. Yaldo', is written over a light blue rectangular background.

Scott S. Yaldo, Esq.



Phone: 586-268-3200 | Fax: 586-268-3224
7096 E 14 Mile Rd Warren, MI 48092
andiamoitalia.com

June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

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For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

Joseph P. Vicari
7096 E. 14 Mile Rd.
Warren, MI 48092



David Breedlove
85 Tradd Street
Charleston, SC. 29401

June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

I am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project referenced above. I am no longer a resident of Birmingham but maintain a condominium in Birmingham. Birmingham has been my home for most of my 70 years since my parents bought their first home on Villa in 1949. I remember visiting Pearls for a nice Chinese dinner. So, I know the area well. And while we moved from our home on Lincoln to warmer weather after retirement, Birmingham will always be home. I have watched how the character of the town has changed over the last 65 years. I was sad when the City allowed 555 to be built. I will always believe it was a mistake. We do not need another mistake.

I was encouraged when the City leaders realized they needed to protect the character and feel of the city. There was no place for skyscrapers in Birmingham. The city's 2016 Master Plan recognized the need to control the height of new buildings in the city center. I think they have done an excellent job over the last twenty years.

I have watched in my new home, Charleston, as real estate investors have tried to come in and build one more hotel and destroy what makes Charleston attractive. It is an on-going battle. You are faced with the same economic pressures and arguments I hear in Charleston. It is just one more hotel. There are already buildings of similar height in town. The city needs more hotel rooms. It will generate more business in town. The arguments are always the same and unfortunately, so are the results. The town becomes more impersonal. Small businesses are replaced by those that cater to the transient visitors. Residents must go elsewhere to shop.

As city commissioner, you must protect what you have today and what makes Birmingham so attractive as a place to live, work and raise a family. It is unique place in southeast Michigan, beautiful neighborhoods surrounding a friendly and inviting downtown.

I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept I firmly believe is very important to

maintaining the character and long-standing plan for this beautiful city. If someone wants to build a 9 or 10 story hotel, let them go to Troy or Southfield.

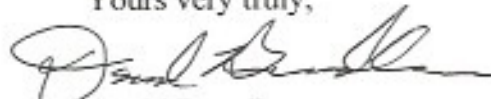
The city's 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest. Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population. Approving a change to the zoning will open the door for the next developer to come in and argue for a similar change. What is the argument against building a high rise on the North side of Birmingham Place? Across the street?

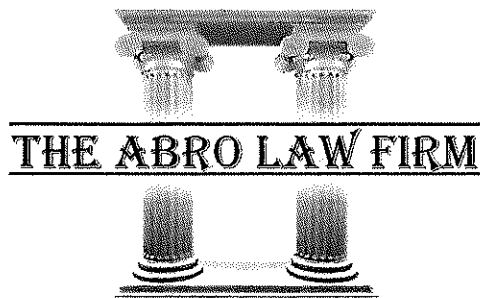
I cannot assess the technical implications of the proposal such as traffic, impact on city services, disruption of business during construction and impact on surrounding structures. I leave that to the Commissioners and their technical experts. The parties who purchased the reference property knew the zoning at the time. They are calculating they can change the City Commissioner's minds. They are not concerned with the long term implications to the city but only how to maximize return on their investment. I sincerely hope their calculations are wrong. Another high rise in the southern end of town will ruin the neighborhood feel and open the door for more rezoning requests.

Thank you for your time and attention, and for, I sincerely hope, your vote to preserve what is a beautiful and people friendly city.

Yours very truly,



David Breedlove



Phone: (248) 723-4545
Fax: (248) 598-4049
E-Mail: gus@abrolaw.com

500 S. Old Woodward
Second Floor, Suite 200
Birmingham, Michigan 48009

ATTORNEYS AND COUNSELORS AT LAW

June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

RE: *Proposed Project at 469-479 S. Old Woodward Avenue*

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

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9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Thank you for your attention herein. As always, should you have any question or require any additional information, please do not hesitate to call me directly. I remain,

Very truly yours,

THE ABRO LAW FIRM

Gus J. Abro, Esq.



GA/gja



June 21, 2018

*The Elia Group, LLC
Real Estate & Development Services*

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members:

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For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

The Elia Group, LLC

Zaid D. Elia, President



June 21, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

Jonna Construction is a builder and investor in Downtown Birmingham.

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

The project that has been proposed for this in-fill site should be approved because it would be appropriate for this parcel of land. If allowed to be built, the project would:

1. Be in harmony with the pattern of the neighboring buildings by filling in the noticeable 'gap' between them, which can be seen from both South Old Woodward and Woodward Avenue.
2. Be consistent with the building heights, uses, and character of Birmingham Place and the 555 Building.
3. Increase the walkability of this area by providing retail at the street level, and by strengthening the retail connection between Birmingham Place and the 555 Building.
4. Add foot traffic (shopper & travelers) to the south end of the city by encouraging foot traffic from the downtown to continue on the completed blocks.
5. Activate Hazel Street in perpetuity – while currently busy with construction bypass traffic, Hazel is an otherwise dormant street (which is vacated on the east side of Woodward Avenue).
6. Adhere to the spirit and intent of both the 2016 Master Plan and the D5 zoning overlay.
7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.



For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Frank Jonna', is written over the printed name.

Frank G. Jonna
6200 2nd Ave., Suite D-102
Detroit, MI 48202

LAW OFFICES OF
RANDAL TOMA & ASSOCIATES, P.C.
500 S. OLD WOODWARD AVENUE, SECOND FLOOR
BIRMINGHAM, MICHIGAN 48009
OFFICE (248) 948-1500
FAX (248) 948-1501

June 21, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.


The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which is 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

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9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Very truly yours,
RANDAL TOMA & ASSOCIATES, P.C.



Randal S. Toma
Attorney at Law



2941 Mediterranean

street food

June 21, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

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The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which is 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

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For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

Jacques Van Staden - Founder & CEO
176 S. Old Woodward Ave
Birmingham, MI 48009



Jana Ecker <jecker@bhamgov.org>

Rezoning issue

1 message

Clinton Baller <cmballer@avidpays.com>
To: Jana Ecker <Jecker@bhamgov.org>

Fri, Jun 22, 2018 at 10:17 AM

Jana,

Could you please let the Planning Board know my thoughts on the rezoning request for the former Franklin/First Place/Talmer bank building and Chinese restaurant on Woodward/Old Woodward?

I don't know why that property was not included in the D5 rezoning that occurred several months ago, but it should have been. Birmingham Place is nine stories, and the 555 building is 15. I can't imagine that the city would not allow something of similar height and mass to occupy the space between these two projects.

Beyond that, I think the city ought to insist on a project that brings some vitality to Old Woodward and the side street (Hazel), which are now dead zones. Either that, or just vacate Hazel insist on a use that is advantageous to the city.

My two cents, which are worth at least a nickel, I think.

Cheers!

Clint

June 25, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

The project that has been proposed for this in-fill site should be approved because it would be appropriate for this parcel of land. If allowed to be built, the project would:

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9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,



Derek Dickow
211 E Merrill St., 504
Birmingham, MI 48009

411 S. Old Woodward, Suite 631
Birmingham, MI 48009

June 26, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

The city's 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest. Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population.

The Proposed Project is also esthetically displeasing. Instead of enhancing the Woodward corridor with an attractive entrance, it presents only a blank wall to the passing public. It would also create the hostile appearance of blocking off much of South Old Woodward and beyond by erecting a virtual wall of buildings running from the south end of the 555 residential units through the north end of Birmingham Place, reminiscent of medieval walls built around cities to keep people out, not to invite them in.

In addition, I have serious safety and other concerns, including:

1. Birmingham firefighting capability is limited to 7 stories. This would leave most of the back of the Proposed Project and virtually all of the south end of Birmingham Place with inadequate or no fire protection.

2. I also suggest that the Proposed Project would unduly burden our city's already hard-pressed police and public safety/rescue facilities.
3. Hazel Street is already a busy connector between Woodward and Old Woodward, especially at rush hour times. The Proposed Project would literally clog this small street with excess traffic, especially if the "four stack" valet service recommended by the developer's own traffic study is implemented and if the current four on-street parking spaces are included in the Proposed Project's plan for adequate parking, as Christopher Longe recently stated to the Planning Board would be the case. We note that the City's own traffic advisor, Fleis & Vandenbrink, also finds considerable fault with the developer's traffic study.
4. The demolition and construction time of the Proposed Project would be finite, but during that time, the heavy equipment needed for a project this size would cause construction damage to Hazel Street, Old Woodward and Woodward. Depending on the timing, this could result in at least the repaving work already planned for Old Woodward south having to be redone at a very substantial cost.
5. The Proposed Project will require deep excavation ("digging half way to China," as Mr. Longe recently expressed to the Planning Board) and heavy equipment and materials, which could seriously jeopardize the structural integrity of Birmingham Place. The developer has not adequately addressed this and has not made provision to repair, or more importantly to prevent, any damage to Birmingham Place.

Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,



Dennis W. Liu

PETER R. SOBELTON
420 HARMON
BIRMINGHAM, MI 48009
248-433-5200



June 27, 2018

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

I am writing to express my strong support for the Re-Zoning request for the mixed use project being proposed for 469-479 S. Old Woodward Ave.

The proposed project will fit in nicely with its neighbors on either side, bearing in mind, each of which are 9 and 15 stories in height. With this development, rather than the present one story buildings, we will now have a building matching the scale, character and use of those buildings on either side.

Additionally, the proposed project would most certainly attract a greater amount of people to the south end of town, and no doubt also throughout the town, while adding retail shopping, thus tying into the already existing retail in the two neighboring buildings. Perhaps one of the most advantageous parts of the project, will be the alleviation of the necessity to accommodate parking on the street, as a result of the parking that will be provided on site.

This project is a win-win, and should be approved for re-zoning in the most hasty of manners, continuing Birmingham's lead in cutting edge developments, as we continue to see the increasing competition for tenancy from our neighboring cities.

Sincerely,

A handwritten signature in blue ink that reads "Peter R. Sobelton".

Peter R. Sobelton

411 S. Old Woodward Avenue
Birmingham, MI 48009

June 27, 2018



Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

A handwritten signature in black ink, appearing to read "Tom Longe". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

MICHAEL D. UMPHREY. ESQ.
411 S. Old Woodward Ave., Unit 618
Birmingham, MI 48009-6647
(248) 339-7708 – Telephone
(248) 528-5129 – Facsimile

June 27, 2018

VIA HAND DELIVERY

John M. Connaughton, Fire Chief
572 South Adams
Birmingham, MI 48009

Re: Proposal to Rezone 469-479 S. Old Woodward Avenue

Dear Chief Connaughton:

I am writing, individually and as an officer and director of the Birmingham Place Residential Condominium Association, in response to your letter of June 22 Jana Ecker. A number of residents here discussed this matter with Joel Campbell and wish we had been sent a copy of the letter, but at least we got it as part of the agenda for tomorrow night's Planning Board hearing.

In any event, we have some serious concerns with this situation in general and with your letter in particular, which include:

1. The proposed new building is *not* planned to be built "very close to the South Side of Birmingham Place" but rather is proposed to literally abut the southerly walls of Birmingham Place. This may not have a direct bearing on fire issues, but it does raise other issues and should, in any event, be stated accurately.
2. We understand that the fire equipment currently has some, albeit limited, access to Birmingham Place from Hazel Street. Your letter correctly states that you "... would not deploy our aerial truck for operations on the South Side of the building," but it fails to note that the proposed building, which would be 22 feet taller than Birmingham Place, completely eliminates whatever access is currently available from Hazel Street.
3. Your letter also states "... we do have access from both the East and West sides of the building." If the proposed building is built, a review of the drawings makes it clear that there would, in fact, be no fire equipment access whatsoever to most, if not all, of the residential and office units on the southerly part of Birmingham Place from the east side and only limited access to these units from the west side.

4. Current access from the west side also includes an alley running from Woodward Avenue to the rear of 469 S. Old Woodward. While this alley might well not accommodate larger fire trucks, it certainly provides some access to some equipment, which would be completely cut off by the proposed building.
5. We agree completely with the balance of the second paragraph regarding fighting "high rise" fires from within the building and also detailing the helpful fire fighting fixtures and equipment in Birmingham Place. Nevertheless, the simple fact remains that fire protection for Birmingham Place (and more importantly, the people who live and work here) will be less than it was if the proposed building is built as planned.

Our bottom line, so to speak, is that fire protection to at least the southerly portion of Birmingham Place would be reduced if the proposed building were allowed, and we have to ask you, as Fire Chief, how much increased risk for the sake of new development that hopes to maximize and increase the currently allowable building size is acceptable. The increased risk can easily be avoided by the City denying the rezoning request and maintaining the status quo. The value of adding several stories to a building pales in comparison to any increased risk to the health, safety and welfare of the Birmingham Place residents and occupants as well as the firefighters tasked with protecting the residents and occupants.

We request that you very seriously reconsider your position on this matter and advise both the Planning Board and the City Commission of the same, preferably before the meeting tonight but in any event at your first opportunity. Thank you for your time and attention. Best regards.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Michael D. Umphrey", with several long, sweeping horizontal strokes extending to the right.

Michael D. Umphrey

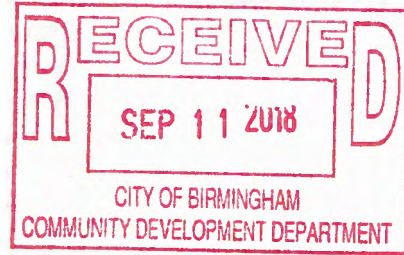
xc: All Birmingham Planning Board Members (via hand delivery)
All Birmingham City Commissioners (via hand delivery)



Susan K. Friedlaender
Direct: (248) 406-6088
sfriedlaender@fnrplc.com

September 11, 2018

City of Birmingham
Planning Board
151 Martin St.
Birmingham, MI 48009
Attention: Ms. Jana Ecker



Re: Request for Re-Hearing on Application to include 469 and 479 S. Old Woodward
in the D5 Downtown Birmingham Overlay District Zone

Dear Members of the Planning Board and Ms. Ecker:

We are writing this letter on behalf of the Birmingham Place Residential Condominium Association. The Association opposes the rehearing and rezoning of the Applicant's property to the D5 overlay zone for many reasons as detailed in this letter. The dispositive reason to again deny recommendation of the rezoning is because the D5 ordinance was never intended to be applied in the manner requested.

Introduction

It is first baffling to the Association that the Applicant was able to obtain a rehearing of this Board's decision at the June 27, 2018 public hearing to deny the Applicant's request for a tabling of its the rezoning request. The Applicant apparently was able to defy this Board's denial of the tabling request and come back again with the exact same rezoning request. The Applicant's latest submission not only fails to demonstrate any substantial change in facts, evidence or conditions but is also fails to show that the Planning Board made any mistake, failed to consider any relevant facts or was misled by alleged mischaracterizations regarding the clear, history, intent and purpose of the D5 Ordinance. A close examination of the Applicant's rehearing request reveals inconsistencies, fallacies, erroneous assumptions, unsupported assertions, and mischaracterizations of the record and history of the D5 ordinance. The intention of this letter is to provide that closer examination which should leave no doubt that the Planning Board should not change its original vote to deny a positive rezoning recommendation.

There Has Been No Mischaracterization of the Intent of the D5 Ordinance and its Inapplicability to the Applicant's Property.

It is impossible to read through the history of the D5 ordinance and arrive at a good faith conclusion that Birmingham Place or any Planning Board member has mischaracterized the purpose of the D5 ordinance enactment. The facts and history of the D5 ordinance, and its plain language, leave no doubt that the final product was concerned only with existing buildings which were non-conforming due to height over 5 stories and setbacks. The following is a summary of the history of the D5 ordinance. However, attached as Exhibit A, is a detailed timeline with references to the relevant public records which supports the statements made in this summary.

The 555 Building proposed the first draft of the D5 ordinance as the means to renovate and expand its existing non-conforming buildings and develop a new building on the southern portion of its site. The owners could not make those changes under the City's then existing ordinances that governed the renovation and expansion of nonconforming property. Although the Planning Board discussed several different approaches to help the 555 Building overcome its nonconforming status, which included taking a broader look at the Southern Gateway area, the Planning Board ultimately decided to deal only with three nonconforming taller buildings: The 555 Building, Birmingham Place and Merrillwood. It settled on dealing only with nonconforming commercial buildings over 5 stories because there was no consensus on how to address the development of other parcels on the West side of Woodward that did not have the height nonconformity. Moreover, the only direction that the City Commission gave the Planning Board regarding the drafting of a new overlay ordinance was (1) to find a way to make those taller buildings legally conforming structures and (2) draft language that would allow the reasonable renovation and expansion of other commercial nonconforming buildings throughout the City. The City Commission did not direct the Planning Board to draft a new overlay ordinance that allowed any building *under* 5 stories to obtain greater height because located adjacent to a building that was over 5 stories. The Applicant's representations to the contrary are simply opportunistic.

The above conclusion is amply supported by a memorandum from Planning Director Jana Ecker to the Planning Board dated September 22, 2015 (sic) that was included in the City Commission's February 13, 2017 packet.¹ The City Commission voted to approve the D5 ordinance at that February meeting. (Memorandum attached as Exhibit B)

Ecker discusses in the memorandum that the Planning Board faced a dilemma regarding how to deal with the 555 Building. While the Planning Board recognized the importance of the 555 Building, it was hesitant to create "a new classification around a specific building." (Ecker Memorandum, p. 1) The memorandum details the failed attempts to devise a way to not only address the 555 Building but also the future development of several other parcels, including parcels that did not share the height nonconformity. The Planning Board was unable to draft an ordinance regarding the future development of other parcels because *"there were varying viewpoints on whether a new overlay should be created that included multiple properties along Woodward, and if so, which properties to include. No consensus was reached."* (Ecker Memorandum, pp. 2-3) (Emphasis added) The Planning Board considered several options to allow changes to legal non-conforming commercial buildings.² The Planning Board considered drafting two new overlay ordinances, one of which could be applied even to conforming property on the west side of Woodward, which would allow building heights that matched the allowable height east of Woodward in the Triangle District. (*Id.* at p. 5) Ecker suggested amending the B-3 ordinance to allow the same development rights that existed when the 555 Building was constructed under that ordinance. Although no consensus could be reached regarding application of the ordinance to the future development of existing properties, there was consensus with the blessing of the City

¹ The contents of the memorandum suggest that the date contains a typographical error because the timeline discussed within the memo extends to setting the December 14, 2016 public hearing.

² The Zoning Ordinance already contained a provision that allowed the limited expansion of nonconforming residential buildings. See Section 6.02

Commission that the improvement and expansion of legal nonconforming buildings should be studied. (*Id.* at p. 3) The decision was made therefore only to deal with the nonconformity issue in the new D5 overlay district.

Thus, although Planning Board members correctly remember discussing additional properties in the Southern Gateway during the D5 drafting process, those discussions did not bear fruit or any action because of a lack of consensus. It was not because the Mountain King owners were not before the Board. It was because the Planning Board could not reach a consensus other than allowing valuable buildings such as the 555 Building, Birmingham Place and Merrillwood the greater right to renovate or expand without the disability of being a non-conforming property because of height and setback.

The Applicant was not prejudiced by the Planning Department's Mistaken Statement in its Review of the Community Impact Statement and Preliminary Site Plan

The Applicant claims that this Board made its rezoning recommendation based upon the mistaken assumption that the Property is located within the Parking Assessment District (PAD) and that it allegedly was prejudiced by the asserted mistaken assumption.

First, it is true that the Planning Department's review of the Applicant's Community Impact Statement (CIS) and Preliminary Site Plan review erroneously stated that the Applicant's property was within the PAD. The Planning Department's mistake, however, did not prejudice the Planning Board's review of the rezoning request for several reasons. First, the mistake regarding the PAD was in the Planning Department's CIS and Preliminary Site Plan review and the Planning Board did not consider the CIS or site plan at the rezoning hearing.

Second, the Planning Board did not prevent the Applicant from explaining how the parking requirements impacted its ability to develop the land under the D4 ordinance. The record shows that the Applicant discussed the fact that the property is not in the PAD. (Video of hearing at 2:07:56) In answer to the question why the property could not be developed under the D4 overlay ordinance, the Applicant claimed that it could not develop the Property under D4 because it was not in the PAD.

Owner: "But office building, to put a . . . I don't have the parking for it. *I'm not in the Parking Assessment District*, so I'm limited by parking. I can't put a restaurant there, because I . . . you know . . . I, I, don't have the parking to park it. The only thing I can really put there at the end of the day is a hotel. I mean that's the only thing that makes it work. *And again, to make it work as a hotel, I need to fit everything into this package that the hotel wants.*" (emphasis added)

Third, if the Applicant believed that not being part of the PAD was crucial to its rezoning request nothing prevented the Applicant from discussing that fact when initially addressing the standards for the rezoning. The fact that the Applicant made no mention of the PAD in its initial written rezoning request belies its post hoc argument that the issue was so crucial to its request.

Moreover, if parking is the issue as the Applicant now claims that it is, the remedy is not to develop a project that has even greater parking requirements than is required under the existing ordinance. The rezoning is not necessary to meet the parking requirements when the possibility of

variances for parking can resolve parking related problems.

Finally, the Applicant stated that it was its understanding that it is the only D4 site that is not in the PAD. That understanding appears to be wrong. If the GIS website is up to date, it appears that there are two other parcels that also are zoned D4 but shown as outside of the PAD. The parcels are 484 W. Maple and 460 W. Maple. (See Exhibit C, Map with Overlay District and PAD Map)

The Applicant Has not Demonstrated That the Applicable Parking Requirements Prevent Development Under the D4 Overlay Ordinance

The Applicant's supplemental explanation under Section 7.02(B)(2)(b)(i) of "why the rezoning is necessary for the preservation and enjoyment of the rights and usage commonly associated with property ownership" is that it cannot meet the parking requirements if developed under the D4 overlay ordinance. The Applicant asserts that it needs more vertical height for a mixed use project and to meet parking requirements. As discussed below, the Applicant has failed to support this claim. It is hard to determine whether the Applicant claims that the property cannot be used as it currently exists because of the inability to meet parking requirements or that it cannot be redeveloped physically for any purpose under the current zoning classification because of its configuration coupled with the D4/B-3 mixed use and parking requirements.

The Applicant makes the following assertions regarding parking requirements:

Contrary to what was assumed by the Planning Board, because the Property is not in the Parking Assessment District ... it currently has no possibility of providing off-street parking on the premises. In fact, it is currently non-conforming and cannot comply with Article 4. 46 of the Zoning Ordinance (Off-Street Parking Spaces Required) Letter, p. 2

The off-street parking requirements for this Property make the engineering and design of a mixed-use D-4 seriously impractical if not impossible. Letter, p.3

Not only will the Applicant lack the required area within which to locate all of the mixed uses with a first-floor retail mandate, the Applicant also is absolutely hamstrung by the off-street parking requirements for this site. The maximum use of the underground area will not yield enough parking spaces for a building designed to current zoning. Rezoning the Property to the D-5 Zone will allow more vertical space within which to accommodate a mixed-use building together with the required parking for all permitted uses. Letter, p. 3

There are serious difficulties with building an underground

garage within the D-4 design parameters that is deeper than two levels....Consequently , any such garage is limited to approximately 60 parking spaces. Letter, p. 5

Based upon the first quote above, the Applicant appears to be stating that the property as it currently exists cannot support any or very limited off-street parking. Even if that is true, under Section 4.45 (G) 2 and 4 of the zoning ordinance, off-street parking can be provided within 100 feet of the site or via shared parking arrangements. The Applicant claimed in its CIS that it has an agreement with the 555 Building for the use of 45 parking spaces. The Applicant could also apply for parking variances. If the application of the parking provision of the zoning ordinance prevents the property from being used, the likelihood of necessary variances is extremely high.

The next four quotes appear to be referring to a redevelopment under the D4 overlay district requirements. The Applicant essentially makes the logically challenged argument that because it is outside of the PAD it needs to develop a project that requires even more parking to meet the off street parking requirements. The Applicant's proposed use shows a three level underground parking facility with 100 spaces and an agreement with the 555 Building for 45 more spaces.³ The Applicant does not explain the discrepancy between its proposed plan and its new claim that any underground garage is limited to approximately 60 parking spaces because of D4 design regulations. However, the same D4 design regulations that would apply to an underground garage in the D4 district also apply in the D5 district. The D5 zone does not provide any relief from the design issue. The Applicant, however, asserts that it could meet the parking requirements if it could construct a 9 story building but it cannot meet the parking requirements if it constructs a 5 story building. If the site can only accommodate 60 parking spaces rather than the 100 spaces that the Applicant originally represented, it defies explanation how a taller building is better able to meet even greater parking requirements. Moreover, if there is a design requirement which hampers providing more onsite parking, that is a variance and not a zoning issue.

The Applicant also does not explain whether it means that if restricted to five stories, it cannot develop its preferred 98 hotel units, 29 residential units and a first floor coffee shop/ hotel lobby. The Applicant asserts that it needs more height because it cannot possibly fit mixed uses and meet parking requirements on its site if limited to 5 stories. According to its proposed plan, however, it can fit approximately 21-26 hotel rooms per floor and 13 residential units per floor. It is unclear if the Applicant is now claiming that it can only build a two level underground parking garage rather than a three level underground garage. In either case, it does not affect the above ground height of the building. The Applicant likely could develop a 5 story mixed use building with for example 70 hotel units, 13 residential units and the same size lobby/coffee shop as proposed. A 5 story development with these specifications might require 73 parking spaces for the hotel, approximately 13-16 spaces for the residential uses (depending on the number of rooms) and 12 spaces for the lobby/coffee shop. Even if the Applicant could only fit 60 spaces onsite, it

³ The Applicant appears to have made some mistakes in its parking analysis. For example the residential parking requirement under B-3 is 1 space for a 2 room dwelling and 1.25 spaces for a dwelling that has more than 3 rooms. The Applicant claimed that it needed 1.25 spaces for 26 apartments and 1.5 spaces for 3 apartments for a total of 37 spaces. The actual requirement is 29.75 spaces for 29 units.

could provide 105 spaces with the 555 Building parking agreement for 45 spaces.

The Applicant also has not explained whether it has explored the possibility of parking variances. A good argument exists that it should not have to provide any parking spaces for the lobby/coffee shop. The users of those retail spaces will likely be hotel guests or neighboring occupants who can easily walk to the coffee shop. The coffee shop likely will not be a destination spot for the motoring public. It is also likely that the hotel would not always be at full capacity which could provide a basis for obtaining additional parking variances. The City also is in the process of reviewing parking requirements for residential uses and possibility eliminating them for a site such as the Applicant's property.

Therefore, the answer to not being in the PAD is not to create taller buildings with higher density that requires more parking. The more reasonable solution is developing at lower densities with lower parking requirements and applying for any needed variances.

The Planning Board Appropriately Decided to Table Consideration of the CIS and Preliminary Site Plan Review

The Applicants second supplemental explanation under Sec. 7. 02(B){2}(b)(ii) of "why the existing zoning classification is no longer appropriate" essentially contains a confused diatribe regarding the Planning Board's decision to table consideration of the CIS and preliminary site plan review until after the City Commission acted on the rezoning request. It also discusses the ability to develop and use the property under the existing classification, which was addressed above in this letter. The Applicant also claims under this section that the Board was misled to believe that the D5 overlay zone only applies to existing buildings taller than five stories. That issue has also been addressed earlier in this letter.

First, the Planning Board correctly voted not to review the CIS or proposed site plan until and unless the rezoning was granted. There is no legal or factual basis for the CIS and preliminary site plan review until the petitioner secures the rezoning necessary to develop the property as proposed. In fact, it is an elementary zoning and planning principle that neither a planning board or legislative body should ever consider a particularized site plan at the rezoning stage unless the rezoning is conditional or part of a planned unit development. The reason is that the municipality is supposed to be making the rezoning decision based upon whether the general zoning classification is appropriate for the property and not whether any specific proposed plan is appropriate for the property. Another reason is because once the land is rezoned, the land owner cannot be tied to any specific site plan. The owner is free to develop the land under any provision of the new zoning classification. It would have been an error if the Planning Board had recommended rezoning based upon the CIS or site plan or had been unduly influenced by the proposed use for the site in making a decision.

Second, the Applicant's assertion that the Michigan Zoning Enabling Act, MCL 125.3101, et seq ("MZEA") requires that rezoning decisions be made according to a *site plan* is inaccurate and nonsensical. The MZEA provides that a *zoning ordinance* must be "based on a plan designed to promote the public health, safety and general welfare..." (emphasis added) This means that the zoning ordinance itself and any amendments to it must be based - not on a site plan for the particular use of a single parcel of property - but upon a general land use plan, like the 2016 Birmingham Plan. The MZEA does not require site plans for *rezoning* property. It does require

site plans for the approval of special land uses and planned unit developments. A site plan ensures that property is developed consistent with ordinance requirements. The Planning Board did not prejudice the Applicant in any way by not reviewing a proposed site plan for a zoning that did not exist for the site. The rezoning of property is a legislative rather than administrative act and depends on the implementation and furtherance of general policies. It does not depend on a site plan for a single parcel of property.

**The Applicant Failed to Support that the Rezoning Will Not Be Detrimental to
Surrounding Properties**

The Applicant's supplemental explanation of why the proposed rezoning will not be detrimental to surrounding properties relies on its factually inaccurate statement that the City intended that the D5 overlay zone apply to the Applicant's property and that the Birmingham Place owners will not be harmed by the rezoning.

First, as previously discussed, the history of the D5 zone indisputably supports that the clear intent of the D5 zone is only to apply to existing buildings taller than five stories. It should be noted here however that the Applicant's Letter very misleadingly takes Ms. Ecker's comment regarding new construction in the D5 zone completely out of context. All the participants in the D5 ordinance amendment process understood that the new construction provision was added for the benefit of the 555 Building. The language regarding new construction was not meant for property that had no existing height nonconformity that the D5 ordinance amendment was addressing.

Second, the Birmingham Place owners maintain their position that the proposed rezoning will be detrimental to the use and enjoyment of their property. A vast majority of the residential condominium owners, even those whose views will not be impacted, are opposed to the proposed development for many reasons that will be brought to the Board's and Commission's attention.

**The Board Did Not Fail to Make Required Findings of Fact or Misapply the Rezoning
Standards**

The Applicant further claims that the Planning Board failed to make the required findings under Ordinance Section 7.02(B)(5). Its primary complaint is that the ordinance allegedly does not require the Planning Board to determine whether the property can be used as zoned. This is splitting hairs.

Section 7.02(B)(5) (d) of the zoning ordinance requires that the Planning Board make findings of fact regarding "[t]he suitability of the property in question to the uses permitted under the existing zoning classification." Asking the Applicant why it cannot use the property as zoned is simply a way of determining whether the property is suitable for the uses permitted under the existing zoning ordinance.

Second, the Applicant claims that the Planning Board should have examined the appropriateness of the current zoning and not whether the Applicant could develop under this category. Again this is splitting hairs because it is the same question. The zoning may be inappropriate as applied to this site if the Applicant cannot develop or use its property under this classification. If the property can be used and the zoning classification still furthers master plan

goals and the public interest then it remains appropriate. The only difference between the D4 and D5 overlay zones is building height. The uses are the same. The Applicant's only argument that conditions changed is the rezoning of Birmingham Place and the 555 Building. However that rezoning has not changed any existing land use patterns. The rezoning recognized existing land uses that had become nonconforming because of building height policies that changed after those taller buildings were constructed. Birmingham Place is as tall now as it was when it was rezoned to D5. The rezoning merely normalized the existing heights of the affected buildings.

A community generally should preserve its master plan and existing zoning unless the zoning classification no longer furthers the master plan goals or is no longer suitable for the site because of changed conditions and development patterns. The City certainly can adopt new master plan goals but should not make sweeping changes to the City's land use plan through its zoning ordinances alone without first studying the issue of increasing building heights. The planning study is supposed to precede such zoning changes because the Zoning Enabling Act mandates that zoning be based on a plan. There has been no official study or public notice of any plan to allow more than 5 stories on the West side of Woodward. Moreover, the City weakens its master plan and its ability to defend it in court when it approves rezoning that is inconsistent with the plan. The proposed rezoning was not consistent with the 2016 Plan which reflects a policy decision to limit the height of buildings in the Downtown Overlay Zone to five stories. It is true that the City has since allowed taller buildings in the Triangle District but that new zoning was accomplished according to the Triangle District Plan. Therefore, when asked to depart from the 2016 Plan as it applies to the West side of Woodward, the City is well within its rights to require that the proponent demonstrate that the property cannot physically or viably be developed as zoned. To suggest otherwise ignores established zoning law and planning principles.

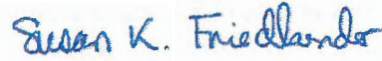
CONCLUSION

The Applicant has not provided any new information that should change the Planning Board's original and correct recommendation to rezone the property to the D5 overlay classification. It is beyond dispute that the D5 ordinance was meant only to apply to existing buildings over 5 stories or existing sites that contained buildings over 5 stories. The Planning Board determined when it drafted the D5 ordinance that it would not address the future development of any other parcels in the Southern Gateway. It would be unfair and a failure of process for the Planning Board to ignore that history because the public will then have been misled by the process to enact the D5 ordinance. It is customary for the City to involve the public in any study to raise building heights as it did in the Triangle District.

Moreover, the Applicant made no effort to demonstrate that the D4 ordinance is unreasonable or unworkable as applied to its property. It has not made any credible case to support the rezoning request. At the June 27, 2018 hearing, the Applicant claimed that he could only make the site work with a hotel and in order to develop a hotel *"I need to fit everything into this package that the hotel wants."* (emphasis added) This is the very reason why the City cannot rezone property based upon a proposed use. The issue is not what this particular hotel wants and the City cannot guarantee by rezoning the property that the hotel will even go through with the development. The issue is what does the existing zoning allow and can any of the allowable uses be reasonably developed consistent with the City's land use policies as reflected in the 2016 Plan and its zoning ordinance.

The Planning Board, therefore, must recommend a denial of this opportunistic and improper rezoning request.

Very truly yours,



Susan K. Friedlaender

EXHIBIT A

TIMELINE AND SUPPORTING MATERIALS REGARDING THE EVOLUTION OF THE INTENT AND PURPOSE OF THE D5 OVERLAY ORDINANCE

INTRODUCTION

It is impossible to read through the history of the D5 ordinance and arrive at a good faith conclusion that Birmingham Place has mischaracterized the purpose of its enactment. The facts and history of the D5 ordinance, and its plain language, leave no doubt that the final and enacted draft was concerned only with existing buildings which were non-conforming due to height over 5 stories and setbacks. In fact, the only direction that the City Commission gave the Planning Board regarding the drafting of a new overlay ordinance was to find a way to allow the renovation and expansion of legal nonconforming commercial buildings. Although the Planning Board discussed several different approaches to help the 555 Building overcome its nonconforming status, which included taking a broader look at the Southern Gateway area, the Planning Board ultimately decided to deal only with three nonconforming taller buildings: The 555 Building, Birmingham Place and Merrillwood. It settled on dealing only with nonconforming commercial buildings over 5 stories because there was no consensus on how to address the development of other parcels on the West side of Woodward that did not have the height nonconformity. This is why it would be completely improper to rezone the Applicant's property to D5. The rezoning would pose a serious question regarding whether the Planning Board properly notified the public and City Commission regarding the intent and application of the D5 ordinance.

June 10, 2015 Planning Board Study Session

In the spring of 2015 the owners of the 555 Building submitted a request to amend the zoning ordinance and create a new D5 overlay district for buildings over five stories. The owners proposed the ordinance after the building department found "that any changes to the existing legal non-conforming building would increase the nonconformity, and thus be prohibited unless numerous variances were approved." (2015-06-10 Minutes from Planning Board Study Session)

When first presented with several different drafts of the proposed D5 ordinance, **the Planning Board discussed that the proposed amendment "should be viewed not only as to how it applies to 555 S. Old Woodward Ave., but possibly to other properties as well." *Id.*** The reason for this cautious approach was to counter any charges of spot zoning or undue favoritism. The dilemma that emerged, however, was the valid concern about applying the ordinance to other properties without further study: (Emphasis added)¹

Mr. Koseck noted there are all kinds of non-conforming buildings in the City and he doesn't think the goal is that they should all go away and become conforming. That is why the Board of Zoning

¹ Please note that the reason for the inconsistency of referring to the "D-5" and "D5" overlay zone throughout this letter is because while the Zoning Ordinance uses the "D5" appellation, the minutes and other writers often use "D-5" designation. This writer chooses to use the official Zoning Ordinance version.

Appeals exists. He is in favor of improvements being made to the building, but as the applicant makes enhancements he (page 7) hopes they would go further to be more in compliance with D-4, D-3, D-2, and D-1. It scares him to expand D-5 beyond the limits of this property without further study.” *Id.*

Chairman Clein thought of this as an opportunity to take a look at this building along with several parcels in the context of future development. If Bruce Johnson, Building Official, and Tim Currier, City Attorney, would come to a Planning Board meeting and are on board, he would be in favor of providing some relief in a unique situation; but he just doesn't want to do it capriciously. The Ordinance standards were put in place for a reason and he would be supportive of fitting them into the context of a building that obviously is not going away, in order to help make it better.

Ms. Whipple-Boyce was also in support of helping to make this Gateway building better looking. She thought also that it would be helpful to have Messrs. Johnson and Currier come to a Planning Board meeting. She could not imagine why the Planning Board could not somehow help the applicant to get their building re-skinned in some other way. Further, the ordinance proposal should not include some of the things that the board does not want to have in the City.

Ms. Lazar was in full support, as well, of trying to do something with the building. However, she didn't see how this board could whip up a new ordinance in a short period of time. It concerns her that what might be applied to this building could become applicable to some other sites which would not be appropriate. She would rather try to help the applicant get to where they need to be with this building” *Id.*

July 7, 2015 Planning Board Study Session

At the next study session, the Planning Board continued discussions regarding whether to target a larger area between Hazel and Brown or limit the application of the new ordinance to the 555 Building.

Mr. Williams summed up the discussion by saying the board wants to go the conforming route and use the SLUP process to do it. Maybe the applicant won't get everything but they can probably get a substantial achievement through the combination of the new MU classification plus SLUP exceptions for what they get as of right and what they get as a bonus. Ms. Ecker noted that is consistent with what the City does in other districts and what has been approved by the City Commission. This is a methodology that gives the Planning Board flexibility. It was the consensus that staff should work on

crafting something to that effect, taking the 555 Bldg. separately so that it gets through the City Commission.

September 9, 2015 Study Session

At the next study session, Ms. Ecker summarized the process as follows:

The applicant is seeking to rezone the 555 S. Woodward Ave. properties from the existing D-4 Overlay zoning classification to the proposed D-5 Overlay zoning classification, which would essentially render the existing building as a legal, conforming building that could then be renovated and expanded.” (2015-09- 09 Minutes, p. 9)

The Planning Board continued to ponder the scope of the work and whether it should go beyond dealing only with the 555 Building. Mr. Williams suggested creating a D5 district for the 555 Building and a D-6 District for other locations which might be nine stories. *Id.* at p. 10.

The Planning Board failed to reach a consensus or agreement with Mr. Williams suggestion.

September 30, 2015 Planning Board Study Session

At the next study session, the purpose of the proposed ordinance was characterized as follows:

Ms. Ecker explained that in order to renovate and expand the existing building, the owners of the 555 S. Old Woodward Building are requesting a Zoning Ordinance amendment to create a new D-5: Downtown Gateway Over Five Stories zoning classification in the Downtown Birmingham Overlay District. The proposal then is to seek rezoning of the 555 S. Woodward Ave. property from the existing D-4 Overlay zoning classification to the proposed D-5 Overlay zoning classification, which would essentially render the existing building as a legal, conforming building that could then be renovated and expanded.” (2015-09-30 Minutes, pp 10-11)

The Planning Board again discussed creating two new overlay zones to address not only the nonconformity issue but also to address other property in the Southern Gateway area. The Planning Board continued to debate the expanded approach and could not reach a consensus.

Ms. Whipple-Boyce said it is important to try to help the applicant have some sort of zoning classification so they can move on with their project. However, she also does not want to see 168 ft. up and down Woodward Ave. **She is not sure that looking at the whole area is even appropriate. So maybe just work with this building and give them a zoning classification.** Steer the applicant toward having their building conform with the sort of downtown standards that the board hopes to have; which for example, isn't the garden level. If they want to continue to have these when they come forward with a new plan that is when they can go to the BZA. (Emphasis Added)

Mr. Share was in favor of having the applicant first exhaust their remedies. If the BZA doesn't provide them with the relief they need and this board concludes that it is really critical, then maybe the board changes the ordinance, takes the heat for it, and tells everyone it is because they don't want the building to fall down.

Chairman Clein said he is not hearing any clear direction so the board needs to bring this back because it is a complicated issue.
(Emphasis Added)

The Owner's attorney assured the Planning Board that providing the 555 Building with relief would not be spot zoning.

January 17, 2016 Planning Board Study Session

At the opening of the study session, Ms. Ecker recounted the history of the ordinance amendment and rezoning request. She explained that the 555 Building not only wanted to renovate the existing building **but the owners also wanted to add "an addition to the south of the existing residential tower for new retail space and residential units."** (Emphasis Added)

In order to renovate and expand the existing building, the owners of the 555 S. Old Woodward Building are requesting a Zoning Ordinance amendment to create a new D- 5: Downtown Gateway Over Five Stories zoning classification in the Downtown Birmingham Overlay District which would essentially render the existing building as a legal, conforming building that could then be renovated and expanded." (2016-01-17 Minutes, pp 3-4)

Ms. Ecker also recounted that as of the last study session the Planning Board could not reach a consensus regarding whether to deal only with the 555 Building or look at properties along Woodward north to Brown Street:

There was no consensus on whether only the 555 S. Old Woodward Ave. property should be placed in a new overlay classification or whether this should extend north to Brown St. along Woodward Ave.

The minutes from the study session show that the Planning Board continued to debate whether to include properties other than the 555 Building in the proposed overlay district:

Mr. Share thought there are two separate questions. One relates to the 555 Building and whether or not it ought to be allowed to become conforming; separately, there is a question about general planning principles.

Mr. Boyle's opinion was there are three issues: the building itself; the corridor; and thirdly how to move forward with the details on S. Old Woodward Ave.

Mr. Williams stated the board should focus on the 555 Building and come up with a practical solution. The problem is that the building isn't right and it needs to be improved.

Ms. Whipple-Boyce said the question is whether a new zoning classification needs to be created, or can the applicant go through the variance process and achieve the same result.

Understandably, the owners of the 555 Building wanted to move forward with their request. The owners' attorney reiterated that the Owner was requesting that "the Zoning Ordinance be amended to accommodate their building; and second that the zoning map include the petitioner's property." (Emphasis added) The attorney did not believe that accommodating the building would be spot zoning, meaning that the Planning Board did not have to concern itself with anything other than moving forward on an ordinance that would apply only to the 555 Building.

Additionally, he [Mr. Rattner, the attorney] emphasized this is certainly not spot zoning. The idea is to modify the ordinance to make a nonconforming building one that should obviously be conforming in order to allow the owner to make improvements. Mr. Rattner requested that the proposed ordinance be moved forward to a public hearing.

The Planning Board was persuaded and concluded that it needed to focus on the 555 Building and leave discussion of the corridor for another day.

Chairman Clein summarized that the board has come to the conclusion that it needs to focus on the 555 Building. The rest of the corridor is a different discussion. The board concluded that a sub-committee consisting of Ms. Ecker, Mr. Rattner, the City Attorney, and two board members could have a discussion on this in an open meeting forum. Mr. Share and Mr. Koseck volunteered to represent the Planning Board in the deliberations.

There was one public comment which shows that this member of the public understood that the Planning Board would not be making any new and sweeping changes but only be focusing on how to help the 555 Building.

Mr. Paul Reagan, 997 Purdy, said he is encouraged by the discussion. No one wants the building to deteriorate. **He is glad that the Planning Board is not going beyond what was asked for, which is to restore the building. That is about how far it should go.** Right now there is real competition for parking on S. Old Woodward Ave. Imagine what expanding the density of that building would do to the neighborhood. Lastly, he was shocked to

hear the petitioner had a hand in drafting ordinance language for rezoning. (Emphasis Added)

The Planning Board decided to establish a sub-committee to work on the new ordinance amendment. The sub-committee did not present its findings and proposals until September 2016. In the interim however the Planning Board obtained direction from the City Commission regarding dealing with the important issue of nonconforming commercial buildings.

June 20, 2016 Joint Session with City Commission

The Planning Board presented several land use items to the City Commission at the joint session with the understanding that if the City Commission wanted further discussion the matter would be submitted at a subsequent meeting for more formal direction to further study and address the issue. (See 2016-06-13 Memo from J.A. Valentine to City Commission.) Mr. Valentine also submitted a more detailed memo to the City Commission dated June 14, 2016 which in part described the issue of “Existing Commercial Non-Conforming Buildings” and asked the Commission whether the issue merited further discussion. (See June 14, 2016 Valentine Memo.)

The representation made to the City Commission was that the Planning Board wanted to address the 555 Building and other existing non-conforming buildings like Birmingham Place and Merrillwood. There was no representation that the Planning Board would address extending the proposed new overlay ordinance to buildings like the Applicant’s building that was not in danger of losing substantial value like the 555 Building if forced to redevelop only by losing substantial building height.

July 25, 2016 City Commission Meeting

Ms. Ecker attended the City Commission meeting to get the Commission’s formal direction on how the Planning Board should proceed on the planning issues raised at the joint meeting.

Ms. Ecker represented to the Commission that the Board was only looking for ways to deal with existing nonconforming commercial buildings and not to create a new ordinance that would allow existing sites without any height non-conformity to construct new buildings under the proposed zoning district. The ordinance was not intended to deal with new development that could conform to the existing zoning classification. Ms. Ecker stated:

if a review of all the buildings in town was done, one would find something slightly non-conforming on many of the buildings that were built, especially if they were built prior to the sixty’s when the zoning ordinance came into effect. She noted specifically buildings such as the Merrillwood Building, Birmingham Place, and the 555 building in regards to the height and bulk of the buildings. She explained that the discussion at the workshop was that there should be some regulation in the zoning ordinance that allows for some maintenance or renovation to those types of buildings when they are already nonconforming. (Minutes, p. 6)

Mayor Pro Tem Nickita stated that this was an issue that the Commission wanted to address.

He questioned if the City is looking at identifying a district or a series of buildings throughout the City. Ms. Ecker explained that this is to establish a procedure where if there was a nonconforming building in the City and whichever way it is non-conforming, it would give the owner a way to make changes to modernize that building. (Minutes, p. 6) (emphasis added)

The City Commission gave the following direction to the Planning Board:

MOTION: Motion by DeWeese, seconded by Bordman: To review the non-conformance provisions pertaining to commercial buildings to provide specific requirements, considering a new zoning category or categories, that allow for changes to non-conforming buildings for the maintenance and renovation of existing buildings consistent with those permitted for residential buildings and structures. (*Id.*)

The City Commission's specific directive relative to any new zoning category was to allow for changes to non-conforming buildings and for their renovation and maintenance. It was not to create a new overlay district that allowed any property the option to build taller than 5 stories.

August 10, 2016 Planning Board Meeting

Ms. Ecker briefed the Planning Board on the City Commission's directives regarding the planning issues addressed at the joint meeting. She reported that that the Commission directed the Planning Board as follows:

3) Existing Commercial Non-Conforming Buildings - to review the non-conformance provisions pertaining to commercial buildings to provide specific requirements considering creating a new zoning category or categories to allow for changes to nonconforming buildings for maintenance and renovation consistent with those permitted for residential buildings and structures. (Minutes, p.5)

Ms. Ecker suggested creating a win-win situation by offering the ability to renovate or to add an addition, but the City would get something in return. Ms. Whipple-Boyce said it would be nice to have this in place ahead of time for buildings like 555 Woodward and Merrillwood. **Chairman Clein thought the board could consider new zoning categories if there are specific areas that need it; but they can also consider generic language changes. Look at the non-conforming buildings first.** (*Id.*)(Emphasis added)

September 14, 2016 Planning Board Meeting

At this meeting, the Planning Board resumed the discussion of non-conforming building regulation under the City Commission's parameters which did not include allowing sites with buildings under 5 stories the ability to go higher than 5 stories.

Ms. Ecker, along with the attorney for the 555 Building, suggested that instead of creating a new overlay district, the Planning Board could recommend amendments to the B-3 zoning ordinance that would render not only the 555 Building but also Birmingham Place as conforming buildings.

It was during the discussion to amend the B-3 ordinance that the only reference to Mountain King is recorded in any public document concerning the D5 zoning amendment:

Ms. Ecker stated that the 555 Building, Birmingham Place and Mountain King were the only properties in the City zoned B-3 in the underlying D-4 Zone. She suggested an option that would amend the regulations for height and setback similar to what they were when the buildings were approved. **Mr. Williams wanted to limit the focus on just the 555 Woodward Bldg. as he thinks it needs to be approved.** (Minutes, p. 5) (Emphasis added)

Ms. Ecker noted this option would allow the applicant to have a conforming status and apply for financing to do an expansion and improvement on the building. It would allow them to do an addition to the south and come to zero setback, and to go up to match the height of the building that is there. What it would not do is force them to address the issue of the garden level or the dead zone along Woodward Ave. However, it would permit them to address that. *Id.*

Ecker was mistaken regarding the number of parcels zoned B-3. The Power House Gym property is also zoned B-3. Regardless, it should be clear that the only reason Ecker mentioned Mountain King was to promote the idea that changing the B-3 zoning would alleviate any concern about spot zoning and at the same time would not open the door to many other parcels being able to take advantage of the amended ordinance. However, there was no support for the B-3 amendment option.

Mr. Koseck was in favor of allowing the building to continue to be updated but that doesn't mean it should be permitted to grow. Any add-on to the south would have to meet the current Ordinance."

Discussion concerned whether B-3 zoning that allows Birmingham Place and Mountain King to reach 168 ft. in height would be a hard sell to the public. The conclusion was they could not sell it on more than one piece of property. Mr. Williams proposed they go back to a previous zoning for the 555 Building that existed 45 years ago. He didn't think it should include any other

property. Because of that they would not be making a special case for this building in the form of spot zoning. The legal argument is that it would be remedying a wrong. (2016-09-14 Minutes, p. 5)(Emphasis added) (Minutes, p. 5) (Emphasis added)

September 28, 2016 Planning Board Meeting

Ms. Ecker provided background information including that at the last study session the Planning Board “resumed their discussion regarding legal nonconforming buildings.” The result was that “after much consideration” the Board directed the Planning Staff to meet with the 555 Building applicant to draft proposed ordinance language that addressed “the improvement of commercial buildings throughout the City, and also specifically addresses the legal, non-conforming status of three buildings downtown.” (2016-09-28 Minutes, p. 3) ²

It is clear that by this meeting the Planning Board was only discussing a draft of the D5 overlay ordinance that gave the 555 Building, Birmingham Place and Merrillwood conforming status and nothing more. According to the minutes, the approach, with which the 555 Building applicant agreed, “was first to create a D-5 Zone, and second to recommend rezoning of one or more properties into the new D-5 category. This would allow the board to have further discussion on whether they want it to be the 555 Building property, or include the Birmingham Place and the Merrillwood Building, which are also non-conforming with regard to height.” (*Id.* at p. 5.)

It is also very clear that the Planning Board intended that the D5 language regarding new development in the D5 zone was for the benefit of the 555 Building owners, who expressed throughout the process that they wanted the right to use their vacant property for a new building that could be built as tall as the 555 Building. The only issue was whether building higher than 5 stories would require a special land use permit.

Chairman Clein summarized that the language would make any property that is put into the D-5 Zone legal and conforming as to height and setback. It would allow expansions as part of building maintenance. Undeveloped portions of the property could be built upon so long as it meets the D-4 Overlay standards. The south side of the 555 Building still needs to be resolved.” (*Id.*)

Mr. Williams did not agree with limiting the south side to five stories. However, anything built above five stories would require a Special Land Use Permit ("SLUP"). Mr. Share was in favor of tying all of the expansions to a SLUP. Chairman Clein felt the D-4 controls are in place and any expansion must conform. Mr. Share thought the City should have some control over how changes get made. Mr. Koseck liked the SLUP because it allows the City to control the design to meet the spirit and intent of the D-4 Zone. Mr. Jeffares agreed. (*Id.*)

² As stated, the Planning Board also amended Section 6.02 so that it applied to nonconforming commercial and residential buildings.

The 555 Building owner's Attorney responded to the discussion as follows:

Mr. Richard Rattner, Attorney, represented the applicant. He said they are almost there with allowing the 555 Building to be conforming in all respects. Secondly, the proposed expansion language is fine. Third, they would like to see the height of a new building being constructed in the D-5 Zone be up to but not exceeding the height of the building immediately adjacent or abutting it. That means the south building cannot be any higher than the 555 Building. They would like to do that without a SLUP. (*Id.*) (Emphasis added)

October 28, 2016 Planning Commission Meeting

At this meeting, the Planning Board set a public hearing for making a recommendation on the amendment of the D5 ordinance and the proposed rezoning of the 555 Building to the new zoning overlay district category.

First, Ms. Ecker provided a recap which reiterated that the proposed D5 classification would accomplish two goals: (1) render 555 S. Old Woodward a legal conforming structure and (2) allow a new addition at the south end of the building that could be built as tall as the adjacent structure. (2016-10-26 Minutes, p. 4)

Ms. Ecker also suggested that the Board should recommend rezoning Birmingham Place and Merrillwood to the D5 classification because they were also nonconforming in building height. The consensus was to contact the owners before including them. There was no suggestion that they contact the owner of the Mountain King property or include that property in the rezoning because the Mountain King property did not contain an existing building over 5 stories.

The decision to include Merrillwood in the rezoning further establishes that the City did not intend the D5 Overlay ordinance as part of any general development incentive for the South Woodward Gateway as the Applicant has represented to the Board. Merrillwood is not located in the South Woodward Gateway. The Planning Board included Birmingham Place and Merrillwood because the only purpose of the D5 overlay district is to provide legal conforming status to existing buildings over 5 stories.

December 14, 2016 Planning Commission Meeting

At this meeting, the Planning Board held a public hearing on the proposed D5 amendment and the rezoning of the three nonconforming buildings. Ms. Ecker explained that the Planning Board set the public hearing "with the goal of bringing several non-conforming buildings in Birmingham into compliance. The proposed ordinance amendments would add a new D-5 classification to the Downtown Overlay Zone which would allow buildings that are currently non-conforming to be considered legal in regards to setbacks, number of stories, and height. The new

D-5 zone would also allow additions or new construction in the D-5 to match the height of abutting or adjacent buildings.” (2016-12-14 Minutes, p. 3) (Emphasis added)³

It should be obvious that Ms. Ecker would have notified the public that the new D5 classification could be applied to any property in the City whether or not it was nonconforming in height if that was the intent of the new ordinance. The failure to notify the public of that intent is another reason why the Planning Board must again deny recommendation of the rezoning request. In fact, a resident, who was concerned about the impact on parking demand commented that he did not believe that residents really understood what was being considered. If what was being proposed was other than what has been represented as the goal of the amendment, there has been a serious breach of the public trust.

February 13, 2017 City Commission Public Hearing

At this meeting, the City Commission held a public hearing on the D5 ordinance amendment and rezoning. The planning department briefed the City Manager prior to the hearing.

In a Memorandum dated February 6, 2017 from Senior Planner Matthew Baka he reminded the City Manager that the Planning Board and City Commission discussed the issue of legal non-conforming commercial buildings at the June 2016 joint meeting.

The Memo further provides that the Planning Board held a public hearing

to consider Zoning Ordinance amendments **with the goal of bringing several non-conforming buildings in Birmingham into compliance**. The proposed ordinance amendments would add a new D-5 classification to the Downtown Overlay Zone which would allow buildings that are currently nonconforming to be considered legal in regards to setbacks, number of stories, and height. The new D-5 zone would also allow additions or new construction in the D-5 to match the height of abutting or adjacent buildings. (Memo, p. 1.) (emphasis added)

The Memo advised only that the goal of the zoning ordinance amendment was to render several buildings legally conforming structures. The Memo would have alerted the City Manager if the intention was to allow new construction on sites that did not already contain a building greater than 5 stories.

The minutes from the February 13, 2017 public hearing show that City Planner Ecker advised the Commission that with respect to the new D5 classification and rezoning of the three buildings:

[The impact of the amendments would make the three buildings legal conforming buildings, and they would be allowed to be

³ As stated, the Planning Board also recommended amending Article 6, Nonconformances, Section 6.02 by removing the limitation that the extension or expansion of nonconforming property applied only to residential property.

extended or enlarged with a Special Land Use Permit. If a new building was constructed, it could match the height of the existing building with a Special Land Use Permit.

The new category would deal with existing buildings located in the D5 zone. This change enables applicants to obtain funding for significant renovations or improvements as a legal conforming building. The second part allows expansion with the restriction to meet the overlay. (Minutes, p. 15)

First, Ms. Ecker unmistakably represented to the City Commission that the proposed D5 ordinance would apply to taller existing buildings, like the 555 Building, Birmingham Place and Merrillwood, and allow improvements and expansions of those buildings or sites.

Second, Ms. Ecker also led the Commissioners to believe that only the 555 Building would be eligible to build a new taller building in the D5 district because of the vacant land on its site. **Ecker advised Commissioner Boutros that the language regarding new construction of a building as tall as an adjacent building was inserted because “the 555 site has room where a new building could be constructed.” (Id.)**

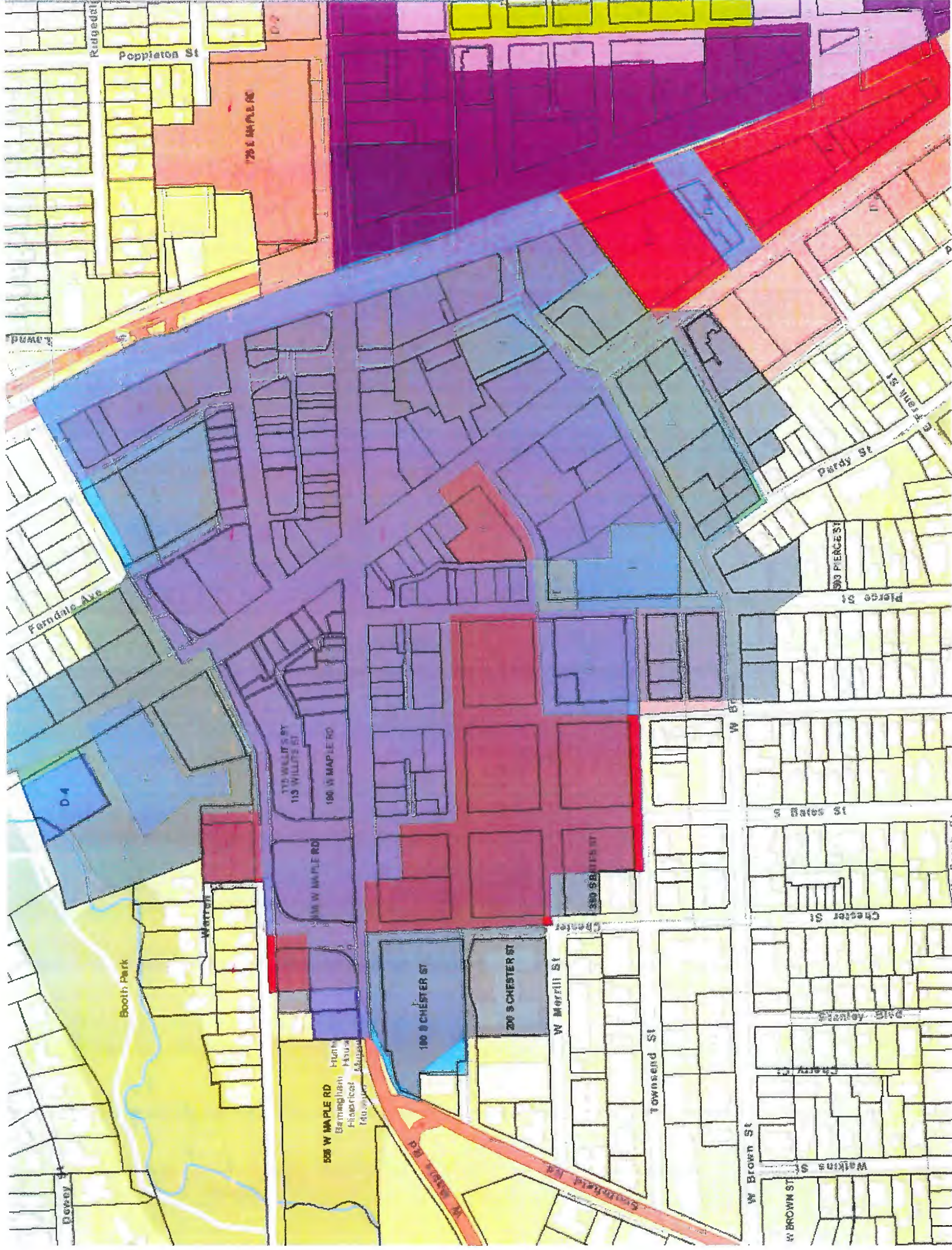
Ecker also assured Commissioner Hoff as follows:

Commissioner Hoff asked if Birmingham Place or Merrillwood could buy the adjacent structures and then build in the space. City Planner Ecker said that they could not, because the properties next door would not have the D5 zoning classification.”

The clear inference is that neither Merrillwood or Birmingham Place could build new taller buildings by simply buying the next door parcels because those parcels would not have been eligible to be part of the D5 district. The 555 Building could construct a new building because its entire site would be zoned D5.

CONCLUSION

The history of the D5 overlay ordinance should clear up any misconception or unsupported assertions by the Applicant that Birmingham Place, its attorneys or any Planning Board member mischaracterized the intent and purpose of the D5 ordinance. The facts show that the only intent was to allow the renovation and expansion of existing buildings taller than 5 stories. It was also to allow the 555 Building the option to build on its vacant property that also was zoned D5. There was no intent that the City apply the ordinance to property like the Applicant’s property which can be redeveloped under the D4 ordinance and not lose any preexisting height. As a nonconforming building for reasons other than being taller than 5 stories, the Applicant can seek permission to renovate or expand its existing buildings under Article 6, Section 6.02.





MEMORANDUM

Community Development Department

DATE: September 22, 2015

TO: Planning Board Members

FROM: Jana L. Ecker, Planning Director

SUBJECT: Study Session on Legal Non-conforming Buildings

Last year, the owners of the 555 S. Old Woodward building applied to the Planning Board to amend the Zoning Ordinance to allow the renovation of the existing building, the addition of new residential units along S. Old Woodward, as well as an addition to the south of the existing residential tower for new retail space and residential units. The Building Official had previously ruled that some changes to the existing legal non-conforming building may be permitted. However, the scale and scope of the changes that the property owner sought to implement would exceed what would be permitted as maintenance and thus were not permitted in accordance with the legal non-conforming regulations contained in the Zoning Ordinance.

In order to renovate and expand the existing building, the owners of the 555 S. Old Woodward building requested a Zoning Ordinance amendment to create a new D-5: Downtown Gateway Over Five Stories zoning classification in the Downtown Birmingham Overlay District. The proposal was then to seek rezoning of the 555 S. Old Woodward properties from the existing D-4 Overlay zoning classification to the proposed D-5 Overlay zoning classification, which would essentially render the existing building at 555 S. Old Woodward as a legal, conforming building that could then be renovated and expanded in accordance with new D5 development standards.

On May 13, 2015, the Planning Board began discussing the applicant's proposal to create a new D-5: Downtown Gateway (Over Five Stories) zoning classification in the Downtown Birmingham Overlay District. Planning Board members discussed the desire to review the proposed amendment within the spirit, vision and context of the entire downtown, and not to create a new zoning classification around a specific building. The Planning Board did, however, recognize the importance of the 555 S. Old Woodward building and the need to allow renovations and additions to improve its presence at the south end of Downtown Birmingham. Specific concerns raised regarding the existing 555 S. Old Woodward building were the unwelcome facades of the Woodward elevation, the split level concept on the S. Old Woodward elevation, and the exposed structured parking.

At subsequent Planning Board meetings on June 10th, 2015 and July 8th, 2015 the Planning Board further discussed the ways that the building could be modified and improved as a conforming structure and not through the use of variance requests. The Planning Board indicated that they would like to craft a zoning classification or overlay expansion that allows

the 555 Building to be renovated but also mirrors the development standards in the Triangle District across Woodward, which allows a maximum of 9 stories. Board members discussed taking a look at the 555 building along with several other parcels in the context of future development. It was suggested that this could be accomplished through a combination of a new zoning district and a Special Land Use Permit (SLUP) or the addition of a D6 zone as well, to differentiate permitted height north of Bowers, and south of Bowers along Woodward. The board reviewed multiple examples of similar "gateway corridor" districts in other cities (see attached), along with highlights, notes and sample ordinance language from other cities that were relevant. There were varying viewpoints on whether a new overlay should be created that included multiple properties along Woodward, and if so, which properties to include. No consensus was reached.

On September 9, 2016, the board reviewed a revised draft of the proposed D5 zone. Board members discussed the appropriate height for buildings along the west side of Woodward adjacent to the Triangle District. Some board members felt that the allowable height in a new D5 or D6 zone should mirror the 9 stories permitted in the Triangle District on the east side of Woodward. Other board members felt that additions should be permitted to match the height of existing non-conforming buildings. The board was unable to reach consensus on how to proceed, and requested additional information and direction from the City Attorney on potential options to provide exemptions for non-conforming buildings. The City Attorney's response letter dated September 29, 2016 is attached for your review.

On June 20, 2016 the issue of legal non-conforming commercial buildings was discussed at a joint meeting of the City Commission and Planning Board. The 555 S. Old Woodward building, the Merrillwood Building and Birmingham Place were referenced due to their non-conformity with regards to their height and bulk, and the desire to allow improvements or changes to these buildings. While no action was taken at the joint meeting, there was consensus that the issue of the improvement or expansion of legal non-conforming buildings should be studied.

On July 25, 2016, the City Commission again discussed the issue of legal, non-conforming commercial buildings and directed the Planning Board to review the non-conformance provisions pertaining to commercial buildings to provide specific requirements, considering a new zoning category or categories, that allow for changes to non-conforming buildings for the maintenance and renovation of existing buildings consistent with those permitted for residential buildings and structures.

On September 14, 2016, the Planning Board resumed their discussion regarding legal non-conforming buildings. Specifically, the Planning Board discussed the following options to allow changes to legal non-conforming buildings for maintenance, renovation and/or expansion:

1. Allow Maintenance and Renovation Only of Existing Legal, Non-conforming Commercial Buildings

Article 6, Section 6.02 of the Zoning Ordinance could be amended as follows:

6.02 Continuance of Nonconformity

- A. Limitations: Any nonconforming building or use existing at the time of enactment or amendment of this Zoning Ordinance may be continued if maintained in good condition, but:
1. The use shall not be changed to another nonconforming use except as permitted by the Board of Zoning Appeals.
 2. The use shall not be reestablished after discontinuance for 6 months.
 3. The use or building shall not be extended or enlarged except as herein provided. Nonconforming ~~residential~~ buildings may be extended or enlarged, provided that the extension or enlargement does not itself violate any provision of the Zoning Ordinance. Where the extension or enlargement will violate any provision of the Zoning Ordinance, application for a variance shall be made to the Board of Zoning Appeals pursuant to Section 8.01(F).

The amendment noted above would allow for the maintenance, extension or enlargement of an existing legal, non-conforming building so long as the addition meets the current zoning standards for the existing zone district. This amendment would allow both commercial and residential legal non-conforming buildings to be expanded using a consistent approach. As an example, this approach would allow a 10 story legal non-conforming building in a 5 story zone district (building that is non-conforming for height only) to construct an addition. However, the addition could not be 10 stories in height to match the existing building, but could be built up to a maximum of 5 stories as currently allowed in the zone district.

2. Allow the Expansion of Existing Legal, Non-conforming Buildings To Match Existing Non-conforming Conditions

Article 6, Section 6.02 of the Zoning Ordinance could be amended as follows:

6.02 Continuance of Nonconformity

- A. Limitations: Any nonconforming building or use existing at the time of enactment or amendment of this Zoning Ordinance may be continued if maintained in good condition, but:
1. The use shall not be changed to another nonconforming use except as permitted by the Board of Zoning Appeals.
 2. The use shall not be reestablished after discontinuance for 6 months.
 3. The use or building shall not be extended or enlarged except as herein provided. Nonconforming ~~residential~~ buildings may be extended or enlarged, provided that the extension or enlargement does not itself **increase the degree of the dimensional nonconformance, nor** violate any provision of the Zoning Ordinance. Where the extension or enlargement will violate any provision of the Zoning Ordinance, application for a variance shall be made to the Board of Zoning Appeals pursuant to Section 8.01(F).

OR

Section 6.02 Continuance of Nonconformity

- A. Limitations: Any nonconforming building or use existing at the time of enactment or amendment of this Zoning Ordinance may be continued if maintained in good condition, but:
1. The use shall not be changed to another nonconforming use except as permitted by the Board of Zoning Appeals.
 2. The use shall not be reestablished after discontinuance for 6 months.
 3. The use or building shall not be extended or enlarged except as herein provided. ~~Nonconforming residential buildings may be extended or enlarged, provided that the extension or enlargement does not itself violate any provision of the Zoning Ordinance. Where the extension or enlargement will violate any provision of the Zoning Ordinance, application for a variance shall be made to the Board of Zoning Appeals pursuant to Section 8.01(F).~~ **A legally nonconforming structure may expand its square footage provided that the expansion does not exceed the extent of the height and/or setback in nonconformance. All other development standards must be met in the expansion.**
 - a. **A vertical expansion of a nonconforming building or structure which is legally nonconforming as to one or more setback requirements is a permitted expansion of that nonconformity.**
 - b. **A horizontal expansion of a nonconforming building or structure which is legally nonconforming as to one or more height requirements is a permitted expansion of that nonconformity.**

Both of the amendments noted above would allow for the maintenance, extension or enlargement of an existing legal, non-conforming building up to, but not exceeding, the existing non-conforming dimension. The first option listed above is more general in nature, and could include the expansion of any type of non-conformity (height, setbacks, FAR, density, lot coverage etc.). The second option listed above is limited to expanding only height and/or setback non-conformities. As an example, this approach would allow a 10 story legal non-conforming building in a 5 story zone district (building that is non-conforming for height or setbacks) to construct an addition up to 10 stories in height to match the existing building height and setbacks.

3. Convert Existing Legal, Non-conforming Buildings to Conforming Using a Special Land Use Permit

Another option to consider may be to convert buildings or structures in Downtown Birmingham that are legal non-conforming with regards to height into conforming buildings through the use of a Special Land Use Permit. An amendment to Article 3, Overlay Districts, or to Article 6, Nonconformances, could be proposed as follows:

Conversion of Non-conforming Status: A building in the Downtown Birmingham Overlay District that is a legal non-conforming building or structure with regards to height may be deemed a conforming building or structure with regards to height if the property owner agrees to specific conditions to control the future extension, enlargement or renovation of the building or structure and said conditions are approved by the City Commission under the provisions of a Special Land Use Permit.

This approach would allow for the extension or enlargement of existing legal, non-conforming buildings downtown on a case by case basis as negotiated by the City Commission. The amendment noted above would provide flexibility for different site conditions and would provide control over the parameters of future expansion based on site and neighborhood context. As an example, a 10 story legal non-conforming building in a 5 story zone district could be deemed conforming if placed under the provisions of a SLUP that establish the specific conditions for maximum extension or enlargement of the building in the future.

4. Re-establish the Zoning District(s) in effect when Building Permits were Issued for Buildings in Excess of 5 Stories (or amend the B3 Zoning District) to render existing buildings conforming

Another option to consider may be to re-establish the former zoning classification(s) in place in the 1970's when several buildings were legally constructed greater than 5 stories in height, and to rezone properties with non-conforming buildings with regards to height back to this classification. Thus, any extension or enlargement of an existing legal, non-conforming building so rezoned would be permitted as anticipated at the time of construction. As an example, a 10 story building constructed in 1975 under a classification that permitted 11 stories in height could be extended or enlarged up to 11 stories in height.

5. Create a New Zoning District(s)

Another option to consider is to create a new zoning classification(s) that would permit additional building height and rezoning certain properties to this classification, thus rendering legal non-conforming buildings or structures conforming buildings with regard to height. This approach has been discussed by the Planning Board over the past year, and amendments have been drafted to create two new classifications under the Downtown Overlay, D5 and D6, to attempt to address the non-conforming heights of several buildings downtown. The Planning Board has also discussed using this approach to address sites along the west side of Woodward to allow additional height even for existing conforming buildings along the corridor to match the height permitted on the east side of Woodward in the Triangle District. The latest version of

the draft previously discussed by the Planning Board is attached and highlighted to indicate areas noted for further discussion. As an example using this approach, an existing 10 story legal non-conforming building in a 5 story zone district could be rezoned to a new zoning classification to be created that would allow 10 story buildings as of right.

At the Planning Board meeting on September 14, 2016, board members agreed that the improvement and maintenance of existing legal, non-conforming commercial buildings should be permitted, and expansion of such buildings should also be permitted consistent with regulations for residential buildings. Board members also discussed at length the issue of several legal, non-conforming buildings in the Downtown Overlay District, and the desire to allow improvements to those buildings as well. After much discussion, the Planning Board directed Planning staff to meet with the applicant for the 555 Building to craft ordinance language that would make existing buildings downtown conforming with regards to both height and setbacks, and to allow future expansion that would comply with the standards of the D4 Overlay.

On September 28, 2016, the Planning Board discussed draft ordinance language that proposed to create a D5 zone district that would render existing buildings legal and conforming with regards to setback and height. Board members agreed that additions or renovations should be permitted to existing buildings. With regards to the construction of new buildings in the proposed D5 zone district, there was much discussion as to whether such buildings should meet the 5 story maximum height in the D4 zone district, or should be allowed to match the height of the existing adjacent buildings. The consensus of the board was to allow additional height for new buildings in the D5 to match existing adjacent buildings, if the new building was constructed under the provisions of a SLUP. At the end of the discussion, the applicant asked if the Planning Board could simply waive certain requirements in the D5 zone instead of requiring a SLUP. Staff agreed to discuss this with the City Attorney.

Since the September 28, 2016 Planning Board meeting, City staff has met with the applicant to refine the draft ordinance language. Accordingly, please find attached draft ordinance language for your review based on the Planning Board's direction from the last meeting that addresses the improvement of commercial buildings throughout the City, and also specifically addresses the legal, non-conforming status of buildings downtown.

The applicant has also provided another version of a draft ordinance for the Planning Board's discussion as well based on their desire to construct a new building that exceeds the height of the existing 555 building, but maintains the same number of stories. The applicant's revised draft is also attached for your review.

Finally, City staff has reviewed the applicant's request as to whether the Planning Board can simply waive certain requirements in the D5 zone with both the City Manager and the City Attorney. Although it was unclear as to whether there was a legal question, the City Manager directed the City Attorney to respond. The City Attorney has advised that the question of whether the Planning Board can waive specific requirements is not a legal question, but rather a

policy question. Ultimately, the City Commission has the sole authorization to pass zoning legislation, with or without waivers, so long as they remain in compliance with the Michigan Zoning Enabling Act.

Should the Planning Board wish to recommend the attached ordinance amendments, the board may also wish to consider proposing a rezoning of the 555 Building, Birmingham Place and/or the Merrillwood Building to the proposed D5 Zone (over 5 stories).

Suggested Action:

To set a public hearing for December 14, 2016 to consider the following amendments to Chapter 126 Zoning:

- (a) Article 3, Downtown Birmingham Overlay District, Section 3.04, to create a new D5 Zone and to establish development standards for this district;
- (b) Article 6, Nonconformances, Section 6.02, to allow for the extension and/or enlargement of existing legal, non-conforming commercial buildings;

AND

To set a public hearing for December 14, 2016 to consider the rezoning of the following properties:

- (d) **555 S. Old Woodward** (555 Office and Residential Buildings) from D4 in the Downtown Overlay to D5 in the Downtown Overlay;
- (e) **411 S. Old Woodward** (Birmingham Place) from D4 in the Downtown Overlay to D5 in the Downtown Overlay; and
- (f) **225 E. Merrillwood** (Merrillwood Building) from D4 in the Downtown Overlay to D5 in the Downtown Overlay.

Via E-Mail and US Mail

October 10, 2018

Mr. Timothy J. Currier
Beier Howlett, P.C.
3001 W. Big Beaver Road
Suite 200
Troy, Michigan 48084

***Re: Opposition to Rezoning of Property located at 469 and 479 S. Old Woodward,
Birmingham, Michigan (the "Property")***

Mr. Currier:

We attempted to reach you by phone earlier today. We are contacting you to inform you, and the others copied on this letter, that our Firm has been engaged by Condominiums at Birmingham Place Association (the "Association") to work along with counsel for the Birmingham Place Residential Condominium Association. The Association is the so-called Master Association for the Birmingham Place development.

Please be advised that the Association opposes the application to rezone the Property to the D-5 Overlay Zone and fully supports the position of the Birmingham Place Residential Condominium Association. We understand the rezoning application is "back" on the Planning Board's agenda for its meeting tonight. Unfortunately, we will not be available to participate in the meeting tonight, but we wanted you to be aware of our involvement and our client's position.

As you might expect, we have recently become involved and have not had the opportunity to thoroughly review all of the extensive information and voluminous documents. However, even based on our limited review, we do not understand how (or why) this matter finds itself back before the Planning Board. In addition, even if the application is properly back before the Planning Board, we also do not see how (or why) any of the so-called "new" information or positions could possibly justify a change to the Planning Board's previous decision.

In any case, please be aware that if the Planning Board elects to reconsider the rezoning application based on so-styled "new" information, and/or if the Planning Board changes from its previous position of recommending denial of the rezoning application, our Firm will continue forward and complete our thorough review of all of the information and will join in also

HONIGMAN

Honigman Miller Schwartz and Cohn LLP
Attorneys and Counselors

J. Patrick Lennon

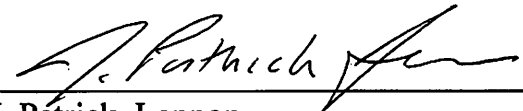
(269) 337-7712
Fax: (269) 337-7713
Lennon@honigman.com

advising the Association of its legal rights and remedies along with the Residential Condominium Association's counsel.

Thank you for your time and attention to this matter. As always, please feel free to contact me with any questions or comments.

Very truly yours,

HONIGMAN MILLER SCHWARTZ AND COHN LLP

By: 
J. Patrick Lennon

cc: Ms. Michele Prentice
Ms. Jana L. Ecker
Ms. Susan K. Friedlander
Mr. Richard D. Rattner

Submitted On Behalf of Birmingham Place on 01-23-18

REZONING REQUEST FOR 469-479 S. OLD WOODWARD

RESPONSE TO "SUMMARY OF PRIOR SUBMITTAL FROM THE APPLICANT

AND THE ANALYSIS & FINDINGS OF THE PLANNING DEPARTMENT'S REVIEW

Over the past several months, the applicant has submitted written documentation and evidence in support of applicant's application to rezone 469-479 S. Old Woodward to the D-5 Downtown Overlay District. In addition, the Planning Department has completed a thorough analysis of the applicant's request to rezone the subject property as well as all of the information that was submitted by the applicant during this rezoning process. The following is a summary of the Planning Department's analysis and findings under the City Ordinance regarding the applicant's request to rezone 469-479 S. Old Woodward:

- The subject site consists of two vacant, single story commercial buildings (Mountain King and First Place Bank).

Reply: Agreed

- The 0.423-acre site includes two narrow parcels, one facing 3 streets (Old Woodward, Hazel and Woodward), and the other facing 2 streets (Old Woodward and Woodward).

Reply: Agreed

- The rezoning request is made pursuant to Article 7, section 7.02 of the Zoning Code.

Reply: Agreed

- Section 7.02(B)(2)(b)(i) – Due to the site configuration fronting S. Old Woodward, Hazel and Woodward, and the narrow lot size and the off-street parking requirements, rezoning is necessary to preserve enjoyment of rights and usage commonly associated with ownership.

Reply: This is first of several completely subjective conclusions stated as fact but without any supporting facts or evidence. The actual fact is that the very nature of the lots' size and configuration and the parking requirements make building a nine (9) story building virtually unworkable, especially as regards parking and traffic issues (see report by independent expert retained by the City with findings to the contrary of what the developer claims the Planning Board has made).

- Section 7.02(B)(2)(b)(ii) – Current zoning is no longer appropriate due to off-site parking requirements, narrow lot size configurations, and frontages.

Reply: See immediately above; rezoning would only exacerbate already serious problems.

- Section 7.02(B)(2)(b)(iii) – Rezoning will not be detrimental to surrounding properties as the adjacent and abutting properties are zoned D-5, mixed retail, commercial and residential properties, and applicant's proposal will add consistency to the streetscape in mass and architectural detail.

Reply: The clear facts are that only Birmingham Place and the 555 Building are zoned D-5, that the office portion of the 555 Building on Hazel Street is only five (5) to six (6) stories, and that all other nearby properties are one (1) or two (2) story buildings. It is apparent at a glance that the building the developer proposes would dwarf almost all nearby buildings, would create substantial inconsistency to the area in both mass and architectural detail, the latter, based on the developer's filings with the City to date being a very substantial departure from all adjacent and nearby buildings, make the proposed building "stick out like a sore thumb" in an otherwise very attractive area.

- Section 7.02(B)(5)(a) -- The objectives of the City's master plan and 2016 Plan are met by the rezoning as the proposed streetscape will improve the frontages of S. Old Woodward, Hazel and Woodward and project a strong image of the City toward Woodward with similar massing and architectural detail to adjacent buildings.

Reply: The actual fact is that, based on the developer's drawings submitted to date, the proposed building would have a virtually blank wall facing Woodward Avenue, would crowd the already narrow Hazel Street area with hotel frontage and would be detriment to the Old Woodward frontage by adding inconsistent mass running all the way to the Hazel Street corner. The only "strong image of the City toward Woodward" would be the unwelcoming appearance of a modern day version of a medieval wall running from the north end of Birmingham Place all the way to the south end of the 555 Building.

- Section 7.02(B)(5)(b) -- The existing uses of property in the general area align with applicant's proposed rezoning. Both the Birmingham Place and the 555 Building (neighboring properties) are mixed use buildings with both retail, commercial and residential uses. Properties to the east and west of the subject property are used for parking, retail and commercial.

Reply: The factual portion of the above re mixed use buildings, etc. is accurate, but the statement that the proposed hotel somehow "aligns" with entirely different uses in all nearby buildings is obviously inaccurate at best.

- Section 7.02(B)(5)(c) -- Both neighboring properties are zoned in the D-5 Overlay Zone.

Reply: Correct but irrelevant, especially in light of the subject property having been intentionally zoned D-4 and "both neighboring properties" having been zoned D-5 primarily, if not exclusively, to give them legal conforming status, which was never necessary or intended for the subject property.

- Section 7.02(B)(5)(d) -- The applicant's property is suitable for uses in the D-5 which are the same as in the current D-4 Zone. However, if a 5-story or less building is constructed under the D-4 at the site, it would be completely dominated by and inconsistent with the height of the neighboring Birmingham Place and 555 Building.

Reply: In actual fact, a five (5) story or lower building would be entirely consistent with every building in the area other than Birmingham Place and the 555 Building, neither of which dominate or are inconsistent with the one (1) story properties that have occupied the subject property for decades.

- Section 7.02(B)(5)(e) – The requested rezoning is consistent with the trend of development of this area of S. Old Woodward which is dominated by the height of the 555 Building and Birmingham Place.

Reply: The alleged “domination” of Birmingham Place and the 555 Building is patently inaccurate, given the actual facts of the vast majority of development in the S. Old Woodward area. More importantly, the trend of development in Birmingham has complied with D-4 standards. A memo dated May 18, 2018 from the Planning Department to this Board (which may have been removed from this Board's second packet and on which the Planning Department has supposedly completely reversed itself) reads in part:

"Developments trends in Birmingham's Downtown Overlay have seen many buildings built, or approved to be built, to D-4 Standards such as the Maple gateway buildings close by (Greenleaf Trust, Balmoral and the proposed Peabody Redevelopment), the Brookside development, and the proposed mixed use development replacing the Varsity Shop. There have been no buildings erected to D-5 Overlay Zoning standards in some time."

Further, there has been no change in the trend in development or in the character of this area since the 2016 Plan was adopted – taller buildings existed then, and yet the predominant character of the downtown area remains two- to four-story buildings. All other recent developments (e.g., the Daxton Hotel, Forefront, Bristol, Brookside, Peabody, Westbrow, the new proposed Maple House, even 750 Forest in the Triangle District, etc.) have complied with the Master Plan; so should this development.

- Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable master plan documents, current zoning and recent development trends in the area, the Planning Department finds that the applicant meets the established Zoning Ordinance requirements of Article 7, section 7.02(B)(5) to qualify for a rezoning of the property from D-4 to D-5 in the Downtown Overlay district.

Reply: It is difficult to understand how the Planning Department could come to this conclusion, if it actually has, but even if it actually has, the conclusion is clearly contrary to the obvious facts and should be ignored by the Planning Board.

ADDRESS:

DATE:

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

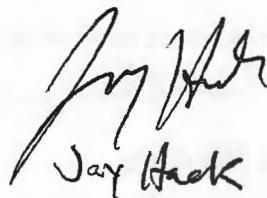
Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

We are residents of the City of Birmingham and are writing to express our deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally *not* zoned as D5, despite being located between two of the D5 buildings.

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Yours very truly,



Jay Hark
1276 Smith Ave.
Birmingham MI 48009

ADDRESS:

DATE:

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population.

The Proposed Project is also esthetically displeasing. Instead of enhancing the Woodward corridor with an attractive entrance, it presents only a blank wall to the passing public. It would also create the hostile appearance of blocking off much of South Old Woodward and beyond by erecting a virtual wall of buildings running from the south end of the 555 residential units through the north end of Birmingham Place, reminiscent of medieval walls built around cities to keep people out, not to invite them in.

In addition, we have serious safety and other concerns, including:

1. Birmingham firefighting capability is limited to 7 stories. This would leave most of the back of the Proposed Project and virtually all of the south end of Birmingham Place with inadequate or no fire protection.

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Thank you for your time and attention, and for, we sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

A handwritten signature in cursive script, reading "Brenda Knight". The signature is written in dark ink and is positioned above two vertical pink lines that serve as a separator.

ADDRESS:

DATE:

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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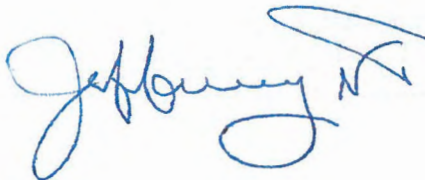
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Yours very truly,

 955 Bud Birmingham, HI
48009

ADDRESS:

DATE:

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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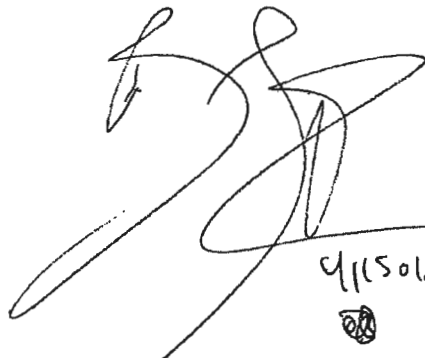
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Yours very truly,



4115 Old Woodward
Unit 624
Birmingham, AL

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Yours very truly,


Eunice Galperin

ADDRESS:

DATE:

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Yours very truly,

Jackie Piceu
642 Oak Ave
Birmingham 48009

ADDRESS

DATE

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 460-179 S Old Woodward Avenue (the "Proposed Project")

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Yours very truly,

P. Steven Warren
1296 Stanley Blvd
Birmingham, Mich
48009

ADDRESS:

DATE:

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

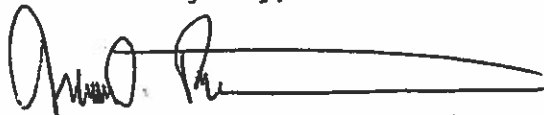
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Yours very truly,



Mark D. Rubinstein
268 Pilgrim
6/23/18

Arlene R. Rubinstein
268 Pilgrim
6/23/18

May 6, 2019

Mr. Joseph A. Valentine, City Manager
City of Birmingham
151 Martin Street, P.O. Box 3001
Birmingham, MI 48012-3001

Re: Request to Amend the D5 Overlay Zoning Ordinance

Dear Mr. Valentine:

On March 11, 2019, a request was made to rezone 469-479 South Old Woodward from B3/D4 to B3/D5. The following are the excerpts from the Minutes of that meeting as to the City Commission's discussion:

"MOTION: Motion by Commissioner Hoff, seconded by Commissioner DeWeese:
To deny the rezoning of 469 – 479 S. Old Woodward from B3/D4 to B3/D5.

City Attorney Currier said he would have to research whether the applicant could submit a new application before a year's time elapses if the City makes changes to the D5 ordinance, because it might sufficiently constitute a material change in circumstance.

Mayor Bordman said she would be supporting the motion because she does not want the issue to go back to the PB.

VOTE: Yeas, 3
Nays, 4 (Boutros, Harris, Nickita, Sherman)

MOTION FAILED

MOTION: Motion by Commissioner Harris
To approve the rezoning of 469 – 479 S. Old Woodward from B3/D4 to B3/D5.

MOTION DIED FOR LACK OF A SECOND

MOTION: Motion by Mayor Pro Tem Boutros
To postpone the hearing to do a comprehensive study.

MOTION DIED FOR LACK OF SECOND

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

To postpone the public hearing to July 22, 2019 for the purpose of sending it back to the Planning Board with specific direction to look at the issues raised by Commissioner Nickita on the D-5 ordinance and to look at the properties between Haines and Brown, Old Woodward and Woodward for the appropriate zoning classification.

Planning Director Ecker said the ordinance language could possibly be reviewed and brought back by July 22, 2019. She was not sure if the PB would reach consensus in three months on the geographic area to which the D5 zoning should be applied, since they have already studied the issue and were not able to reach consensus.

Commissioner Hoff said she would be interested in knowing whether building heights should be to the eaves or the tallest structure on a building, and the specific meaning of the ‘adjacent’ and ‘abutting’ in the context of the ordinance.

Commissioner Sherman said he would be willing to change the date in the motion to allow an additional month of study.

Commissioner Nickita said it should not take four months to define the method of determining building height and the definitions of ‘adjacent’ and ‘abutting’. He said it would be better to keep the date in the motion and to extend it if necessary.

Mayor Bordman invited public comment on the motion.

Mr. Rattner stated the applicant had no objection to the motion.

Mr. Schwartz said that all the interested parties have weighed in on the issue, and the Commission is in effect postponing a civic duty.

Mr. Bloom said he would like to know the impact on the City if the parcel is built up as a hotel, office building, mixed use space, or any other type of development. He would want the PB to report on each building-type’s likely impact on parking, public safety, density, and overall quality of life for Birmingham residents.

Mr. Reagan said ‘adjacent’ and ‘abutting’ were terms already discussed at the beginning of the 2016 planning process. In addition, the expansion of the geographic area being studied concerned Mr. Reagan because, as he stated, the

neighborhood included within that area already deals with significant congestion, cut-through traffic, and parking issues. If these developments occur, there has to be sufficient parking accommodations. Mr. Reagan asserted parking shortages would stem the possible larger D5 developments the City is considering allowing.

Ms. Friedlander said choosing to raise the heights of buildings should be part of a community study process, and all the buildings around the Merrillwood building should be included in this motion and studied since Merrillwood is also zoned D5.

Mr. Abel said the Commission should make a decision this evening.

Commissioner Hoff said Commissioner Nickita's concerns should be spelled out in the motion.

Mayor Bordman agreed with Mr. Abel and Commissioner Hoff. She asked if there was motion to amend in order to include Commissioner Nickita's comments.

No motion to amend was offered.

VOTE: Yeas, 2 (Nickita, Sherman)
 Nays, 5

MOTION FAILED

The Commission took no action. The property remains zoned D4.

Mayor Bordman recessed the meeting for three minutes. The meeting resumed at 10:48 p.m."

The Birmingham Zoning Ordinance provides under Section 7.02B6:

"6. *Underlying Action by the City Commission.* Following receipt of the written report and recommendations from the Planning Board, the City Commission may grant or deny any application for the amendment for rezoning. If the City Commission denies the application, no application shall be reheard for at least one year, unless there have been substantial changes in the facts, evidence, and/or conditions demonstrated by the applicant. The determination of whether there have been such changes shall be made by the Planning Board at the time the application is submitted for processing."

The question is, was the City Commission's motions a denial of the application that prevent it from being reheard for at least one year. In this regard, I refer you to Robert's Rules of Order:

“SECONDING A MOTION. After a motion has been made, another member who wishes it to be considered says, ‘I second the motion,’ or, ‘I second it,’ or even, ‘Second!’—without obtaining the floor, and in small assemblies without rising. ** In large assemblies, and especially in those where nonmembers may be seated in the hall, the seconder should stand, and without waiting to be recognized should state his name (with other identification, if appropriate) and say, ‘Mr. President [or ‘Mr. Chairman’], I second the motion.’ In some organizations, especially labor unions, the word ‘support’ is used in place of ‘second.’

If no member seconds the motion, the chair must be sure that all have heard it before proceeding to other business. In such a case the chair normally asks, ‘Is there a second to the motion?’ In a large hall he may repeat the motion before doing so. Or, if a resolution was submitted in writing and read by the chair or the secretary rather than by the mover (as described on p. 33) the chair may say, ‘Miss A has moved the adoption of the resolution just read. Is there a second to the resolution?’; or, if the text of the resolution has been distributed to the members in advance and was moved without being read, the chair may say, for example, ‘Miss A has moved the adoption of the resolution relating to....., as printed. Is there a second to the resolution?’ If there still is no second, the chair says, ‘The motion [or ‘resolution’] is not a seconded’; or, ‘Since there is no second, the motion is not before this meeting.’ Then he immediately says, ‘The next item of business is’; or, if appropriate, ‘Is there any further business?’

A second merely implies that the seconder agrees that the motion should *come before the meeting* and not that he necessarily favors the motion. A member may second a motion (even if using the word ‘support’ as indicated above) because he would like to see the assembly go on record as *rejecting* the proposal, if he believes a vote on the motion would have such a result. A motion made by direction of a board or duly appointed committee of the assembly requires no second from the floor (provided the subordinate group is composed of more than one person), since the motion's introduction has been directed by a majority vote within the board or committee and is therefore desired by at least two assembly members or elected or appointed persons to whose opinion the assembly is presumed to give weight regarding the board's or committee's concerns. (For rules governing the appointment of non-assembly members to committees, see pp. 174-75, 492-93, 496.)”

Beier Howlett

Mr. Joseph A. Valentine, City Manager
City of Birmingham
Page 5

Though the Minutes indicate that the motion to deny the rezoning failed, and the motion to approve the rezoning did not receive a second, the failure to have a second to the motion to approve only means that it was not before the meeting, and, therefore, it was not officially rejected. It is, therefore, our opinion that Section 702B6 is not applicable with respect to the request to amend the D5 Overlay Zoning Ordinance, and re-application can be made without waiting one year to do so.

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

CITY OF BIRMINGHAM
Date 05/07/2018 10:31:32 AM
Ref 00148181
Receipt 426908
Amount \$1,550.00

APPLICATION FOR ZONING MAP OR ORDINANCE CHANGE
Birmingham, Michigan

TO THE CITY COMMISSION:

The undersigned hereby makes application to the City Commission to:

1. Zoning Map Change:

Change premises described as:

479 South Old Woodward Avenue

No. Street
Tax ID #: 19-36-208-012; see documents for more information

Legal Description
from its present zoning

classification of B3/D4 to B3/D5.

A sealed land survey showing location, size of lot and placement of building (if any) on the lot to scale must be attached.

Statements and reason for request or other data have a direct bearing on the request.

2. Change premises described as:

No. Street
Legal Description
from its present zoning

classification of _____ to _____.

A sealed land survey showing location, size of lot and placement of building (if any) on the lot to scale must be attached.

Statements and reasons for request or other data have a direct bearing on the request.

Signature of Applicant: 

Print Name: Christopher J. Longe

Name of Owner: Birmingham Tower Parters, LLC

Address and Telephone Number: 251 East Merrill Street, Suite 205

Birmingham, Michigan 48009

CITY OF BIRMINGHAM
Date 05/07/2018 10:31:32 AM
Ref 00148182
Receipt 426908
Amount \$100.00

APPLICATION FOR ZONING MAP OR ORDINANCE CHANGE
Birmingham, Michigan

A letter of authority, or power of attorney, shall be attached in case the appeal is made by a person other than the actual owner of the property.

Date Received: _____ Received By: _____

Resolution No. _____ Approved/Denied _____

Application Fee: \$1,500.00 Receipt Number _____

The petitioner shall be responsible for any costs incurred by consultant, 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.

ZONING MAP OR ORDINANCE AMENDMENT PROCEDURE

Procedure to be followed on all applications for Zoning Map or Ordinance amendments.

1. Preliminary discussion with the Community Development Director or City Planner.
2. Formal application to City Commission with the following information:
 - a) Change requested
 - b) Signature and name of persons requesting change
 - c) Reasons for requested change
3. City Commission will refer request to the Planning Board for recommendation and final report.
4. Planning Board will hold a public hearing prior to which a notice will be published in an official paper or a paper of general circulation not less than fifteen (15) days prior to the hearing.
5. At the conclusion of a public hearing, the Planning Board will forward a recommendation of the Zoning Map or Ordinance amendment request. The City Commission may, by ordinance, change the Zoning Map or Ordinance only after the Planning Board had held at least one (1) public hearing regarding the proposed amendment and has reported to the City Commission thereon. The City Commission may hold additional public hearings as it deems necessary.
6. Upon the presentation of protest petition meeting the requirements listed below, an amendment to the Zoning Map or Ordinance which is the object of the petition shall be passed only by a three-fourths (3/4) vote of the City Commission. The protest petition shall be presented to the City Commission before final action on the amendment, and shall be signed by one (1) of the following:
 - a) The owners of at least twenty percent (20%) of the area of land included in the proposed change.
 - b) The owners of at least twenty percent (20%) of the area of the land included within an area extending outward one hundred (100) feet from any point on the boundary of the land included in the proposed change.

For the purpose of calculating the twenty percent (20%) requirement, publicly-owned land shall be excluded.

7. The City Commission will then take action on the application upon review of the Planning Board's recommendation and approved minutes of the Public Hearing.
8. Following adoption of a Zoning Map or Ordinance change by the City Commission, one (1) notice of adoption shall be published in the newspaper of general circulation in the City within fifteen (15) days after adoption.

CITY OF BIRMINGHAM
Date 05/07/2018 10:31:32 AM
Ref 00148179
Receipt 426908
Amount \$1,550.00

APPLICATION FOR ZONING MAP OR ORDINANCE CHANGE
Birmingham, Michigan

TO THE CITY COMMISSION:

The undersigned hereby makes application to the City Commission to:

1. Zoning Map Change:

Change premises described as:

469 South Old Woodward Avenue

No. Street
Tax ID #: 19-36-208-011; see documents for more information

Legal Description
_____ from its present zoning

classification of B3/D4 to B3/D5.

A sealed land survey showing location, size of lot and placement of building (if any) on the lot to scale must be attached.

Statements and reason for request or other data have a direct bearing on the request.

2. Change premises described as:

No. Street
_____ Legal Description
_____ from its present zoning

classification of _____ to _____.

A sealed land survey showing location, size of lot and placement of building (if any) on the lot to scale must be attached.

Statements and reasons for request or other data have a direct bearing on the request.

Signature of Applicant: 

Print Name: Christopher J. Longe

Name of Owner: Birmingham Tower Parters, LLC

Address and Telephone Number: 251 East Merrill Street, Suite 205

Birmingham, Michigan 48009

CITY OF BIRMINGHAM
Date 05/07/2018 10:31:32 AM
Ref 00148180
Receipt 426908
Amount \$100.00

APPLICATION FOR ZONING MAP OR ORDINANCE CHANGE
Birmingham, Michigan

A letter of authority, or power of attorney, shall be attached in case the appeal is made by a person other than the actual owner of the property.

Date Received: _____ Received By: _____

Resolution No. _____ Approved/Denied _____

Application Fee: \$1,500.00 Receipt Number _____

The petitioner shall be responsible for any costs incurred by consultant, 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.

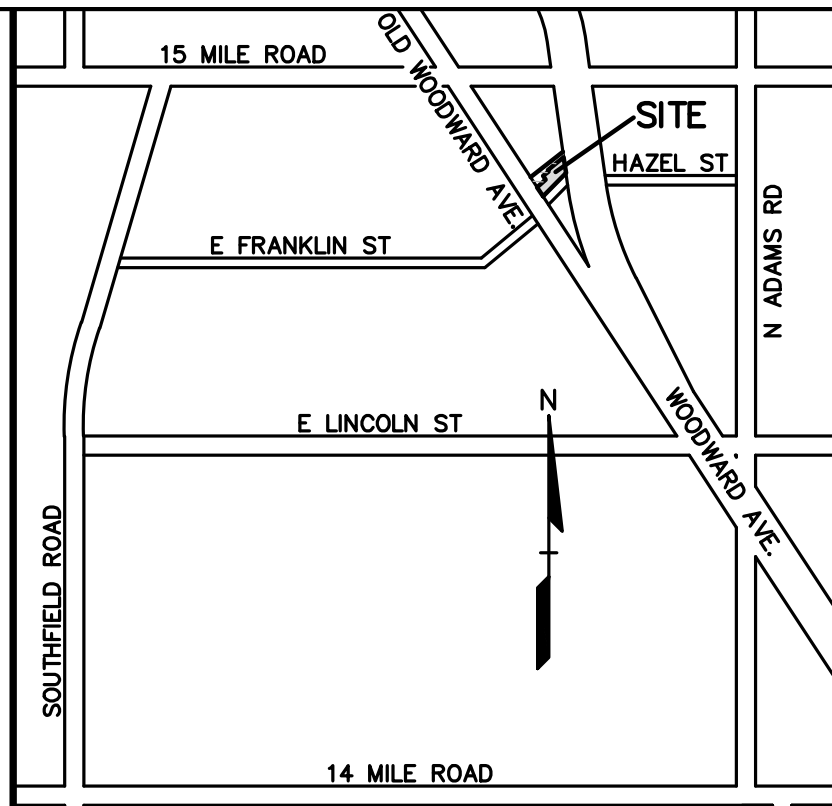
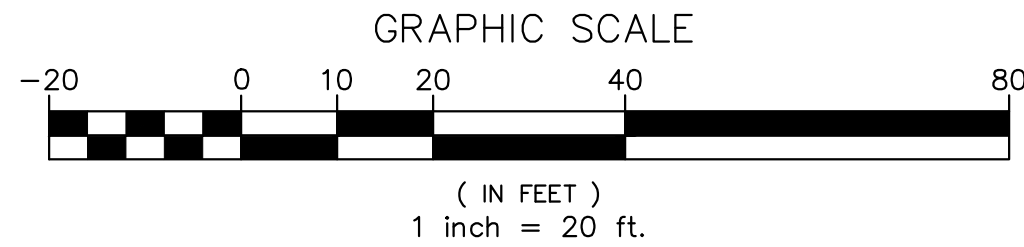
BENCHMARKS:
(GPS DERIVED - NAVD88)

BM #300
BENCH TIE IN NORTH FACE OF
U-POLE, SOUTHWEST CORNER HAZEL
STREET AND WOODWARD AVENUE
(HUNTER BOULEVARD)
ELEV. = 765.98

BM #301
TOP OF NORTHEAST ANCHOR BOLT
OF LIGHT POLE BASE, NORTHEAST
CORNER OF HAZEL STREET AND OLD
WOODWARD AVENUE
ELEV. = 766.58

FLOOD PLAN:

BY GRAPHICAL PLOTTING, SITE IS WITHIN ZONE "X",
AREA DETERMINED TO BE OUTSIDE OF THE 0.2%
ANNUAL CHANCE FLOODPLAIN PER FLOOD INSURANCE
RATE MAP NUMBER 26125C0537F (PANEL 537 OF 704),
DATED SEPTEMBER 29, 2006.



LOCATION MAP - NOT TO SCALE

REVISIONS	
NO.	DATE
1	04/15/2017
2	04/15/2017
3	04/15/2017
4	04/15/2017
5	04/15/2017
6	04/15/2017
7	04/15/2017
8	04/15/2017
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97	04/15/2017
98	04/15/2017
99	04/15/2017
100	04/15/2017

CAUTION!!
THE LOCATIONS AND ELEVATIONS OF EXISTING
UNDERGROUND UTILITIES AS SHOWN ON THIS
DRAWING ARE ONLY APPROXIMATE. NO GUARANTEE IS
GIVEN BY THE SURVEYOR THAT THE UTILITIES
LOCATED ARE THE SAME AS SHOWN ON THE
DRAWING. THE CONTRACTOR SHALL BE RESPONSIBLE
FOR VERIFYING THE EXACT LOCATION, DEPTH, AND
ELEVATIONS PRIOR TO THE START OF CONSTRUCTION.

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CONSTRUCTION CONTRACTOR AGREES THAT IN
ACCORDANCE WITH GENERALLY ACCEPTED
CONSTRUCTION PRACTICES, CONSTRUCTION
CONTRACTOR SHALL BE RESPONSIBLE FOR ASSUMING SOLE
AND COMPLETE RESPONSIBILITY FOR JOB SET
CONNECTIONS DURING THE COURSE OF CONSTRUCTION
OF THE PROJECT, INCLUDING SAFETY OF ALL PERSONS
AND PROPERTY. THAT THE REQUIREMENT SHALL BE
MADE TO APPLY CONTINUOUSLY AND NOT BE LIMITED
TO NORMAL WORKING HOURS AND CONSTRUCTION
CONTRACTOR FURTHER AGREES TO DEFEND, INDEMNIFY
AND HOLD DESIGN PROFESSIONAL HARMLESS FROM ANY
AND ALL LIABILITY, REAL OR ALLEGED, IN CONNECTION
WITH THE PERFORMANCE OF WORK ON THIS PROJECT
EXCEPTING LIABILITY ARISING FROM THE SOLE
NEGLECTANCE OF THE DESIGN PROFESSIONAL.

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T: 248.689.9090
F: 248.689.1044
www.peainc.com

MARKUS ASSOCIATES, LLC BIRMINGHAM, MI 48009	
TOPOGRAPHIC & ALTA/NSPS LAND TITLE SURVEY-HAZEL ST./WOODWARD	
PART OF THE NE 1/4 OF SECTION 36, T. 02N, R. 10E, CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN	
DES.	JPB
DN.	RS
DL/CSD	RS
SUR.	RS
DATE	04/15/2017
BY	MARKUS ASSOCIATES, LLC

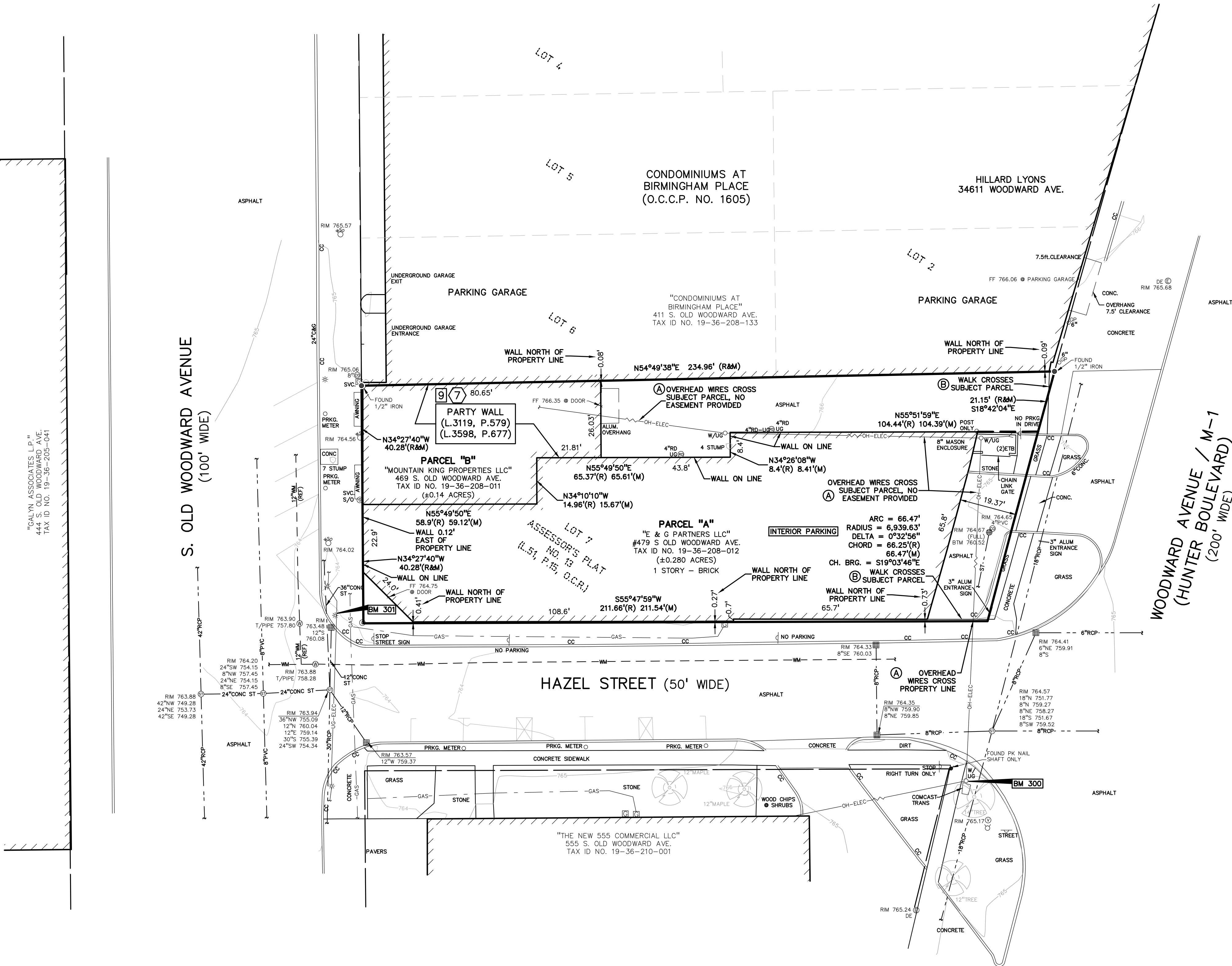
ORIGINAL ISSUE DATE:
APRIL 15, 2017

PEA JOB NO. 2017-093

SCALE: 1" = 20'

DRAWING NUMBER:

1 OF 2



PARCEL "A" LEGAL DESCRIPTION

(per Fidelity National Title Insurance Company, Commitment No. 17–110744, dated January 5, 2017)

Land situated in the City of Birmingham, County of Oakland, and State of Michigan, described as:

South part of Lot 7 of ASSESSOR'S PLAT NO. 13, City of Birmingham, according to the plat thereof, as recorded in Liber 51 of Plats, Page 15, Oakland County Records, described as beginning at Southwest corner Lot 7; thence Northerly on West line said Lot, 40.28 feet; thence Easterly 58.9 feet; thence Northerly at right angle 14.96 feet; thence Easterly at right angle 65.37 feet; thence Northerly at right angle 8.4 feet; thence Easterly at right angle 104.44 feet to East line said Lot; thence Southerly along East lot line, 66.25 feet to Southeast corner said Lot; thence Westerly along South lot line 211.66 feet to point of beginning.

PARCEL "A" SURVEYOR'S NOTES:

- A

Overhead wires run through the subject parcel and cross the property lines as shown, no easement provided.

B

Walk runs through the subject parcel and cross the property lines as shown.

C

Property line matches existing exterior walls and interior party walls on the north side of the subject parcel.

D

Parking on the subject parcel is enclosed in the existing building, no access available at the time of the survey.

E

The current zoning classification was not provided by the client, as item 6(a) in table a of the "minimum standard detail requirements for ALTA/NSPS land title surveys," states.
- PARCEL "A" SCHEDULE BII EXCEPTIONS
- (per Fidelity National Title Insurance Company, Commitment No. 17–110744, dated January 5, 2017)
- 1

Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.

2

Standard exceptions set forth in jacket.

3

Taxes and/or assessments which become a lien or become due and payable subsequent to the effective date herein.

4

No liability is assumed by the Company for tax increase occasioned by retroactive revaluation or change in land usage status for the Land.

5

Rights of tenants under unrecorded leases and any and all parties claiming by, through and thereunder.

6

Rights of the public to any portion of the Land lying within the bounds of any street, road, alley or highway.

7

Possible deficiencies in the creation, organization or authority of the Insured or its agent to acquire or hold the Title.

8

Railroad line, switches and spur tracks, if any, and all rights therein. [No Railroad line, switches & spur tracks observed at the time of the survey.]

9

An instrument entitled Party Wall Agreement, Recording No: Liber 3119, Page 579 and re–recorded in Liber 3598, Page 677. [As plotted.]
- PARCEL "B" LEGAL DESCRIPTION
- (per First American Title Insurance Company, Commitment No. TC13–69882, dated February 9, 2017)
- Land situated in the City of Birmingham, County of Oakland, and State of Michigan, described as:
- The Northerly part of Lot 7 of ASSESSOR'S PLAT NO. 13, according to the plat thereof recorded in Liber 51 of Plats, page 15, Oakland County Records, City of Birmingham, Oakland County, Michigan, described as beginning at the Northwesterly corner of said Lot 7 on the Easterly line of 100 foot Woodward Avenue; thence Easterly along Northerly line of said Lot, a distance of 234.96 feet to the Westerly line of 200 foot Hunter Blvd. of the Northeast corner of said Lot 7; thence Southerly along the Westerly line of said Hunter Blvd. or Easterly line of said Lot 7, a distance of 21.15 feet to extension of North face of wall of garage building located on Southerly part of said Lot 7; thence Westerly along said extension of North face of wall and along said North face of wall 104.44 feet to a corner of said garage building; thence Southerly at right angles along Westerly face of wall of said garage building 8.40 feet to a corner of said garage building; thence Westerly at right angles along North face of wall of said garage building 65.37 feet to a corner of said garage building; thence Southerly at right angles along West face of wall of said garage building 14.96 feet to a corner of said garage building; thence Westerly at rights angles along North face of wall of said garage building and extension of same 58.90 feet to Westerly line of said Lot 7; thence Northerly along said Westerly line 40.28 feet to the point of beginning.
- PARCEL "B" SURVEYOR'S NOTES:
- A

Overhead wires run through the subject parcel and cross the property lines as shown, no easement provided.

B

Walk runs through the subject parcel and cross the property lines as shown.

C

Property line matches existing exterior walls and interior party walls on the south side of the subject parcel.

D

The current zoning classification was not provided by the client, as item 6(a) in table a of the "minimum standard detail requirements for ALTA/NSPS land title surveys," states.

PARCEL "B" SCHEDULE BII EXCEPTIONS

(per First American Title Insurance Company, Commitment No. TC13–69882, dated February 9, 2017)

1

The Company does not make any representation as to the value of the property.

2

Rights of the public and any governmental unit in any part of the land taken, deeded or used for street, road or highway purposes.

3

Any provisions contained in any instruments of record which provisions pertain to the transfer of divisions under Section 109(2) of the Subdivision Control Act of 1967, as amended.

4

Taxes which are a lien pursuant to Public Act 143 of 1995 and any other taxes and/or assessments which become a lien or become due and payable subsequent to the date of the commitment, including all assessments for weed cutting, grass cutting or any other matters for which City services were provided but not assessed against the tax rolls prior to the effective date of the Commitment.

5

This Policy does not insure against any delinquent or current water charges pertaining to the subject matter property as the parties failed to produce a final meter reading and/or final paid water bill prior to Closing.

6

Rights of tenants under any unrecorded leases, as to tenants only.

7

Terms and conditions of Party Wall Agreement as disclosed by instrument recorded in Liber 3119, page 579 and re–recorded in Liber 3598, page 677, Oakland County Records. [As plotted.]

CAUTION!!
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CONSTRUCTION CONTRACTOR AGREES THAT IN ACCORDANCE WITH GENERALLY ACCEPTED CONSTRUCTION PRACTICES, CONSTRUCTION CONTRACTOR WILL BE REQUIRED TO ASSUME SOLE AND COMPLETE RESPONSIBILITY FOR JOB SET CONDITIONS DURING THE COURSE OF CONSTRUCTION OF THE PROJECT, INCLUDING SAFETY OF ALL PERSONS AND PROPERTY. THAT THIS REQUIREMENT SHALL BE MADE TO APPLY CONTINUOUSLY AND NOT BE LIMITED TO NORMAL WORKING HOURS, AND CONSTRUCTION CONTRACTOR FURTHER AGREES TO DEFEND, INDEMNIFY AND HOLD DESIGN PROFESSIONAL, WORKERS FROM ANY AND ALL LIABILITY, REAL OR ALLEGED, IN CONNECTION WITH THE PERFORMANCE OF WORK ON THIS PROJECT EXCEPTING LIABILITY ARISING FROM THE SOLE NEGLIGENCE OF THE DESIGN PROFESSIONAL.

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MARKUS ASSOCIATES, LLC BIRMINGHAM, MI 48009	TOPOGRAPHIC & ALTA/NSPS LAND TITLE SURVEY-HAZEL ST./WOODWARD			
	PART OF THE NE 1/4 OF SECTION 36, T. 12N., R. 10E., CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN			
	DES.	DN.	DL/C/DSD	SUR.
	JPB	RS	RS	P.M.

ORIGINAL ISSUE DATE: APRIL 15, 2017
PEA JOB NO. 2017-093
SCALE: 1" = 20'
DRAWING NUMBER: 2 OF 2

CERTIFICATE OF SURVEY

To: First American Title Insurance Company
Title Connect, L.L.C.
Markus Associates, LLC

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 2, 3, 4, 5, 7(a), 8, 10(a), 11, and 13 of Table A thereof. The fieldwork was completed on March 24, 2017.

Daniel Cole, PS No. 59791
Agent for PEA, Inc.

C-3.0

BENCHMARKS
(GPS DERIVED - NAVD88)

BM #300
BENCH TIE IN NORTH FACE OF U-POLE, SOUTHWEST CORNER HAZEL STREET AND WOODWARD AVENUE (HUNTER BOULEVARD)
ELEV = 765.98

BM #301
TOP OF NORTHEAST ANCHOR BOLT OF LIGHT POLE BASE, NORTHEAST CORNER OF HAZEL STREET AND OLD WOODWARD AVENUE
ELEV = 766.58

FLOODPLAIN NOTE:
BY GRAPHICAL PLOTTING, SITE IS WITHIN ZONE "X", AREA DETERMINED TO BE OUTSIDE OF THE 0.2% ANNUAL CHANCE FLOODPLAIN PER FLOOD INSURANCE RATE MAP NUMBER 26125C0537F (PANEL 537 OF 704), DATED SEPTEMBER 29, 2006.

Permit No. _____
Date: _____

CITY OF BIRMINGHAM
STORM WATER RUNOFF CONTROL

Project Location: Hazel Street at Old Woodward
Designed by: Paul Bater, PEA

PE: Yes No

	(A) Exist. *	(B) Proposed	
(1) Affected Area	0.423	0.423	acres
(2) Area of Impervious Surface	0.423	0.423	acres
(3) Percent Impervious	100	100	%
(4) Runoff Factor	2.4	2.4	cfs/acre
(5) Unrestricted Runoff Rate	1.02	1.02	cfs
(6) Maximum Permitted Runoff Rate		1.02	cfs
(7) Uncontrolled Runoff Area		-	acres
(8) Area of Impervious Surfaces - Uncontrolled Runoff Area		-	acres
(9) Runoff Factor - Uncontrolled Runoff Area		-	%
(10) Runoff Factor - Uncontrolled Runoff Area		-	cfs/acre
(11) Runoff Rate - Uncontrolled Runoff Area		-	cfs
(12) Maximum Permitted Runoff Rate via Sewer Service Connection		-	cfs
(13) Runoff Rate per Acre		-	cfs/acre
(14) Required Storage per Acre		-	cu.ft./acre
(15) Required Storage for Parcel		-	cu.ft.

PROPOSED DESIGN

(16) Design Storage	-	cu.ft.
(17) Design Outlet Capacity to Sewer Service	-	cfs

Approved by: _____

City Engineer

* Existing Prior to Re-Development

NOTE:
BASED ON THE CITY OF BIRMINGHAM STORM WATER DETENTION WORKSHEET, THIS SITE WILL NOT REQUIRE STORM WATER DETENTION AS THE POST-DEVELOPMENT RUNOFF RATE WILL BE LOWER THAN THE EXISTING RUNOFF RATE.

NOTE:
ALL WORK WITHIN THE WOODWARD AVENUE (M-1) RIGHT-OF-WAY IS UNDER THE JURISDICTION OF THE MICHIGAN DEPARTMENT OF TRANSPORTATION AND REQUIRES A PERMIT

NOTE:
ALL WORK WITHIN THE OLD WOODWARD AVENUE RIGHT-OF-WAY IS UNDER THE JURISDICTION OF THE CITY OF BIRMINGHAM AND REQUIRES A PERMIT

CVS PHARMACY
444 S. OLD WOODWARD AVE.

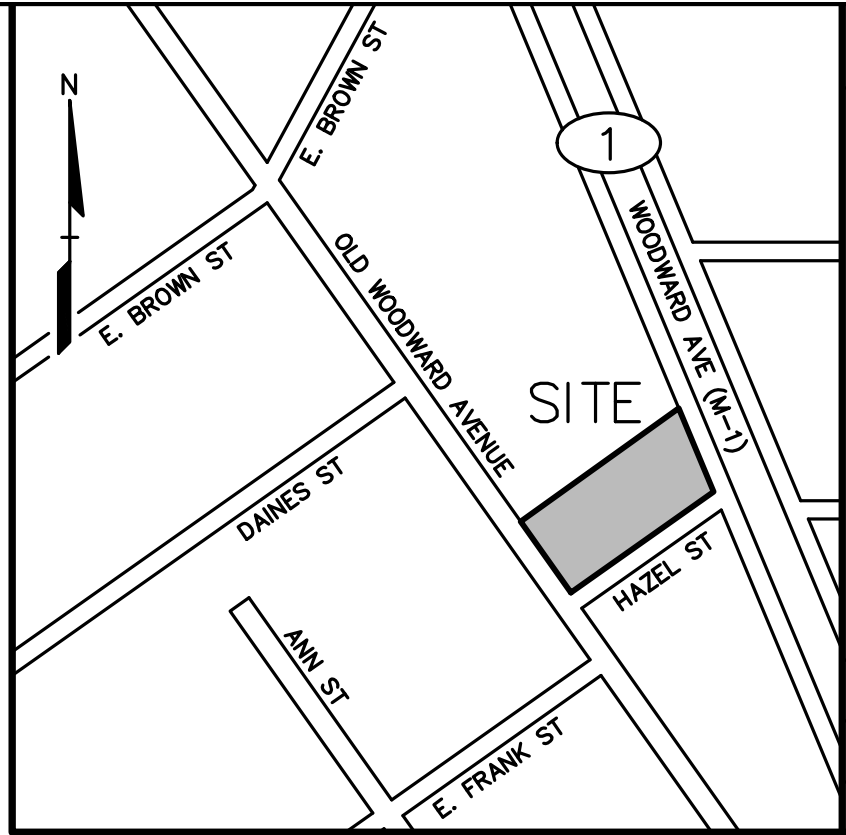
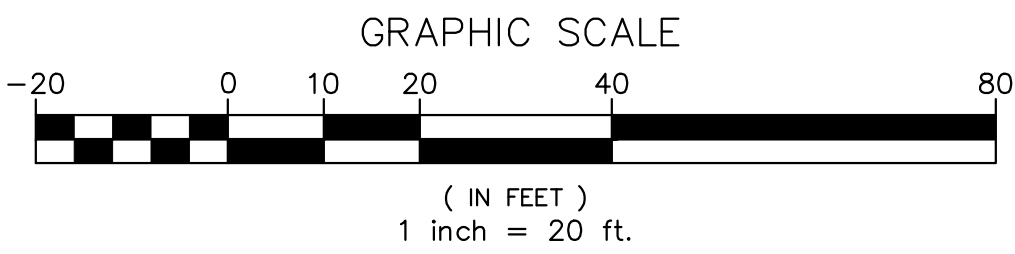
S. OLD WOODWARD AVENUE
(100' WIDE)

WOODWARD AVENUE / M-1
(200' WIDE)

HAZEL STREET (50' WIDE)

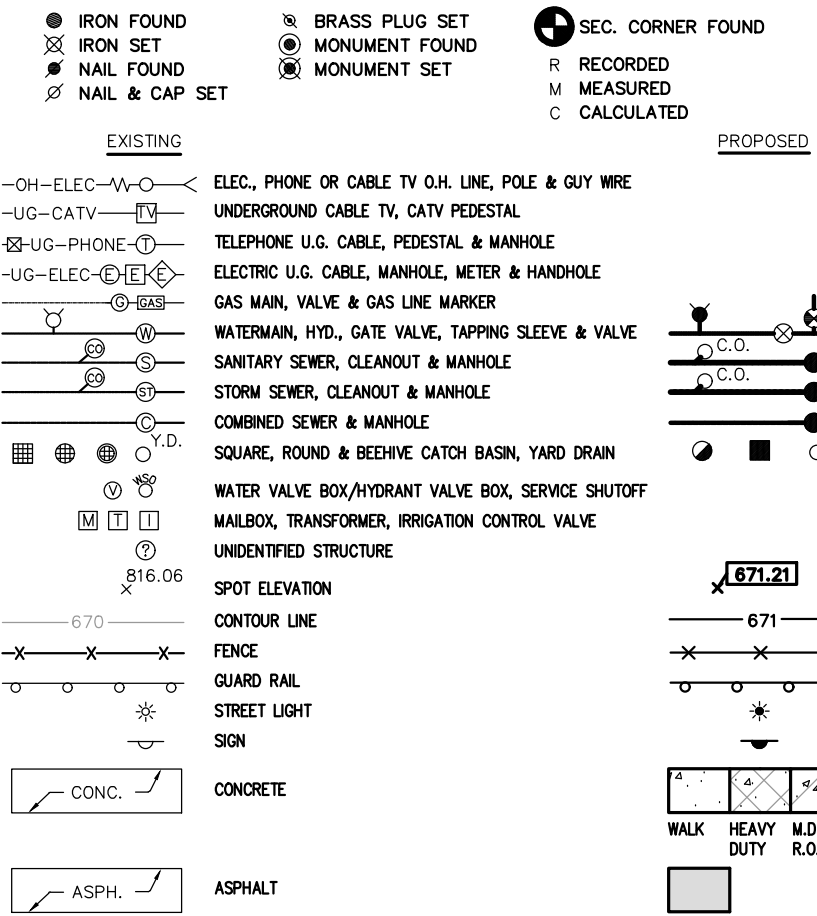
555 S. OLD WOODWARD AVE.

NOTE:
ALL WORK WITHIN THE HAZEL STREET RIGHT-OF-WAY IS UNDER THE JURISDICTION OF THE CITY OF BIRMINGHAM AND REQUIRES A PERMIT



LOCATION MAP - NOT TO SCALE

LEGEND



REFERENCE DRAWINGS

WATER MAIN NOT RECEIVED AT TIME OF SURVEY
SANITARY SEWER NOT RECEIVED AT TIME OF SURVEY
STORM SEWER NOT RECEIVED AT TIME OF SURVEY
COMBINED SEWER NOT RECEIVED AT TIME OF SURVEY
ELECTRIC NOT RECEIVED AT TIME OF SURVEY
TELEPHONE NOT RECEIVED AT TIME OF SURVEY
GAS NOT RECEIVED AT TIME OF SURVEY
PETROLEUM NOT RECEIVED AT TIME OF SURVEY
CATV NOT RECEIVED AT TIME OF SURVEY
FLOOD PLAIN ZONE X, FEMA FORM 26125C0537F, DATED 09-29-06

GENERAL UTILITY NOTES:

- ALL UTILITY LINES, STRUCTURES AND TRENCHES SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE STANDARDS AND REQUIREMENTS OF THE CITY OF BIRMINGHAM.
- NO PHYSICAL CONNECTION TO THE EXISTING WATER MAIN CAN BE MADE UNTIL ALL NEW WATER MAIN PASSES PRESSURE AND BACTERIOLOGICAL TESTS TO THE SATISFACTION OF THE CITY.
- REFER TO DETAIL SHEET C-7.1 FOR ADDITIONAL UTILITY DETAILS AND NOTES.
- ALL WATER MAIN AND FITTINGS (3" DIAMETER AND LARGER) SHALL BE DUCTILE IRON, CLASS 54.
- WATER MAIN SERVICE LEADS SHALL BE TYPE 'K' ANNEALED SEAMLESS COPPER WITH FLARED FITTINGS, UNLESS OTHERWISE NOTED.
- ALL WATER MAIN SHALL BE PROVIDED WITH 5.5' OF COVER UNLESS OTHERWISE NOTED.
- ALL FIRE HYDRANTS SHALL BE EFW #5BR MODEL #250 PER CITY STANDARDS.
- ALL HYDRANTS TO BE A MINIMUM OF 5' FROM BACK OF CURB, TYP.
- ALL NECESSARY FITTINGS, THRUST BLOCKS, RESTRAINING GLANDS, BLOW OFFS, ETC. FOR WATER MAIN ARE CONSIDERED INCIDENTAL TO THIS PROJECT. THE CONTRACTOR SHALL INSTALL THESE ITEMS AS NECESSARY AND AS REQUIRED BY THE CITY OF BIRMINGHAM.
- ALL SANITARY SEWER LEADS SHALL BE POLYVINYL CHLORIDE (PVC) SDR 23.5 PIPE AND FITTINGS. ALL JOINTS TO BE ELASTOMERIC GASKET JOINTS PER ASTM D3212 UNLESS OTHERWISE NOTED.
- SANITARY LEADS SHALL BE PROVIDED WITH CLEANOUTS EVERY 100 FEET AND AT EVERY BEND AS SHOWN. ALL CLEANOUTS TO BE PROVIDED WITH E.J.L.W. #1565 BOX OR EQUAL.
- ALL STORM SEWER 12" DIAMETER OR LARGER SHALL BE REINFORCED CONCRETE PIPE (RCP C-76) CLASS IV WITH MODIFIED TONGUE AND GROOVE JOINT WITH RUBBER GASKETS UNLESS SPECIFIED OTHERWISE (ASTM C-443).
- ALL STORM SEWER LEADS SHALL BE PVC SCHEDULE 40 WITH GLUED JOINTS UNLESS OTHERWISE NOTED.
- PIPE LENGTHS ARE GIVEN FROM CENTER OF STRUCTURE AND TO END OF FLARED END SECTION UNLESS NOTED OTHERWISE.
- THE CITY OF BIRMINGHAM STANDARD DETAIL SHEETS ARE INCORPORATED INTO AND MADE A PART OF THESE PLANS. CONTRACTOR TO REFER TO THE CITY OF BIRMINGHAM STANDARD DETAIL SHEETS FOR ALL STRUCTURE, PIPE MATERIALS, BEDDING, TESTING, ETC. NOTES AND DETAILS.

SAND BACKFILL NOTE:
ALL UTILITIES UNDER PAVEMENT OR WITHIN 3' OF THE EDGE OF PAVEMENT (OR WITHIN THE 45° LINE OF INFLUENCE OF PAVEMENT) SHALL HAVE M.D.O.T. CLASS II GRANULAR BACKFILL COMPACTED TO 95% MAX. DRY DENSITY (ASTM D-1557).

REVISIONS

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TOLL FREE



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Troy, MI 48063-1872
t: 248.689.9090
f: 248.689.1044
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MARKUS MANAGEMENT GROUP, LLC
251 EAST MERRILL STREET, SUITE #205
BIRMINGHAM, MICHIGAN 48009
PRELIMINARY UTILITY PLAN
SOUTH OLD WOODWARD
OLD WOODWARD AVENUE AT HAZEL STREET
CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN 48009

DES.	PB	DN	PB	SUR.	DLC	P.M.	JPB
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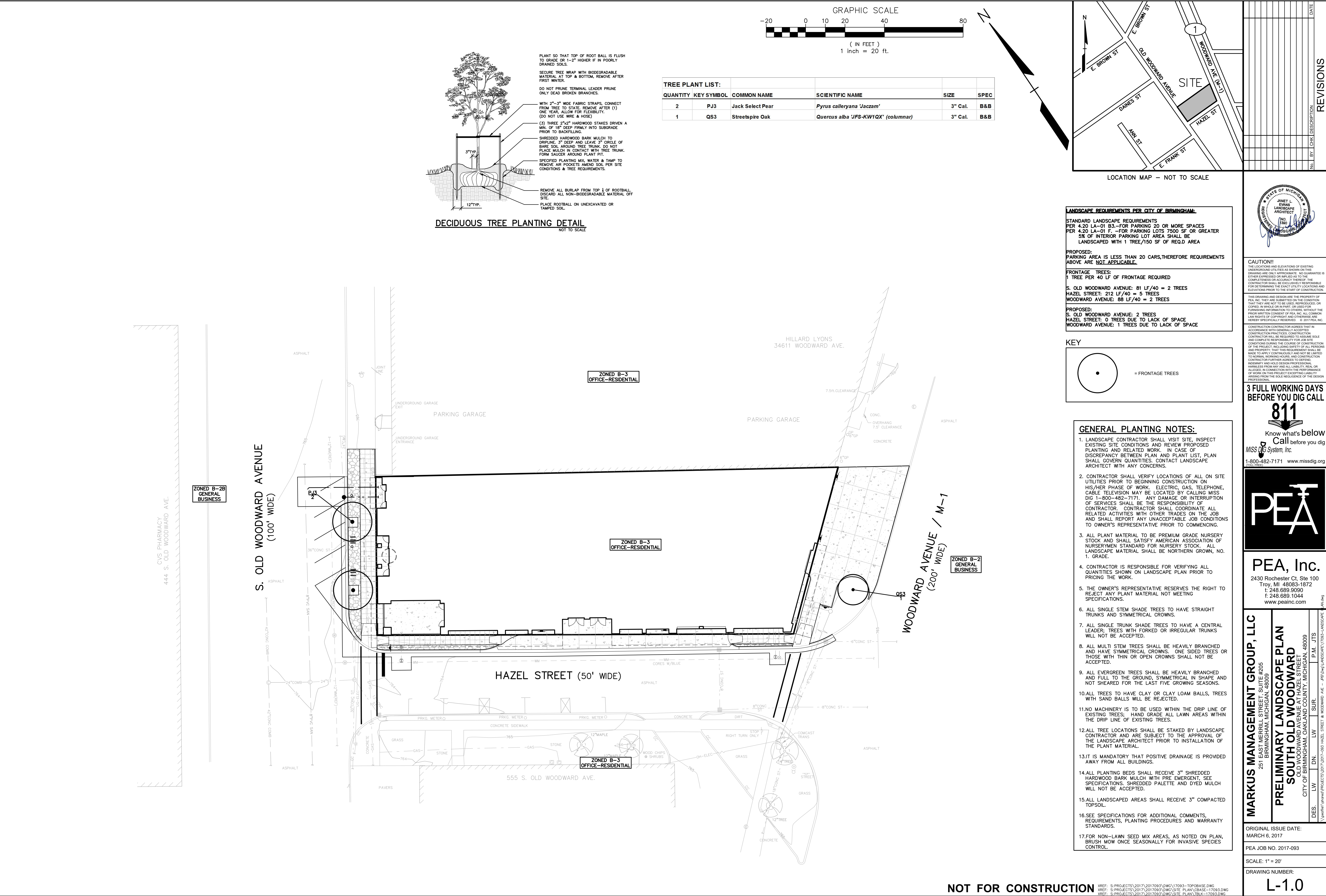
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ORIGINAL ISSUE DATE:
MARCH 6, 2017
PEA JOB NO. 2017-093
SCALE: 1" = 20'
DRAWING NUMBER:

C-6.0

NOT FOR CONSTRUCTION

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Attorneys and Counselors

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May 17, 2018

Richard D. Rattner
rdr@wwrplaw.com

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

Re: Application to include 469 and 479 S. Old Woodward, Birmingham, MI
("Subject Property") in the D5 Downtown Birmingham Overlay District
Zone ("Application")

Dear Members of the Planning Board and City Commission:

Please accept this letter from the property owner ("Property Owner") of 469 and 479 S. Old Woodward ("Property") as a Supplement to the referenced rezoning Application file to rezone the Subject Property from the D-3 Zone to the D-5 Overlay Zone in the Downtown Birmingham Overlay District.

Executive Summary

The Subject Property is a former single-story restaurant building and bank that sits between two existing tall buildings in the City. Birmingham Place is located to the north and the 555 Buildings are located to the south. The placement of the buildings is not only inconsistent with a cohesive and harmonious streetscape in that area but is contrary to the intent of the Master Plan. This inconsistent height results in a streetscape along South Old Woodward that appears to have a "missing tooth."

If the Subject Property is rezoned to D-5, there is an excellent opportunity for the Subject Property, Birmingham Place and the 555 Buildings to create an impressive southern gateway to Downtown Birmingham. It is therefore reasonable that the Subject Property, sitting directly between the 555 Buildings and Birmingham Place, be included in the same zoning district, that is as part of the D-5 Overlay District, as those neighboring two buildings.

Rezoning the Subject Property to the same classification as the buildings immediately to the north and south will enhance and complete the streetscape of these important two blocks of Downtown Birmingham. Inclusion of the Subject Property in the D-5 Overlay Zone is consistent with the 2016 Master Plan. Moreover, it will allow the Subject Property to enjoy the same development regulations as the neighboring properties.

The Subject Property and the Master Plans

A review of the history surrounding the zoning of this area of Downtown is instructive. The minutes of the City Commission during the late 1960s and early 1970s, reveals that the height of the buildings in this area of Downtown were historically zoned for the height of the 555 Buildings and Birmingham Place. However, the zoning ordinance was amended in the 1970's after the construction of those buildings to a maximum of four stories. Therefore, for several years, the taller buildings in the City were burdened with the status of legal nonconforming uses.

In 2016, the City corrected this down zoning for the 555 Building to the south and Birmingham Place to the north, with the creation of the D-5 Zone to allow for existing heights (in the case of the 555 Buildings and Birmingham Place) and to allow for new construction to a height up to the same height of an immediately adjacent or abutting building (see Ordinance 3.04-4-b). While the 555 Building and Birmingham Place are now at allowable heights, sitting in between them, the Subject Property is the only building in that streetscape that cannot be constructed to a height that is consistent to its neighbors. This inconsistency creates an obvious gap in the street's architecture which is not harmonious with the overall downtown design and longer-range plan for that part of South Old Woodward.

The Birmingham of 2016

In 1996, the City Commission adopted the Downtown Birmingham 2016 Plan ("2016 Plan") and amended the Zoning Ordinance to include the Downtown Birmingham Overlay District. The Subject Property is located in the D-3 Zone, sitting between two tall buildings in the City that have been rezoned to the D-5 zone. These multi-story buildings are the established character of this particular area of the City. Placing the Subject Property in the D-5 zone would allow development of the Subject Property to be at a similar height to the buildings directly to the north and south. The Applicant desires to develop the Subject Property in a manner that completes the block between Brown and Hazel while adding to the cohesiveness of the South Old Woodward southern gateway area.

The Birmingham Zoning Ordinance at Sec. 1.04 provides that the purpose of the Zoning Ordinance is to "...guide the growth and development of the City in accordance with the goals, objectives and strategies stated within the Birmingham Master Plan ("Birmingham Plan"), and Downtown Birmingham 2016 Plan. A review of the Birmingham Plan (1980) and the Downtown Birmingham 2016 Plan (1996) reveals that this application to include the Subject Property in a D-5 Overlay District meets the spirit and intent of the ordinance as well as the 2016 Plan. It will allow for mixed uses and add to the vitality of the modern streetscape envisioned for this part of town by the 2016 Plan. With rezoning, the Subject Property can become that desired mixed-use space for retail, residential and hotel, and bring new life to the South Old Woodward area.

Any redevelopment of the Subject Property in compliance with its current zoning classification would result in a building with frontage dwarfed by the existing neighboring structures. Therefore, by rezoning the Subject Property to the D-5 overlay, a new building could be built to a similar height as the neighboring buildings, and effectively complete an otherwise missing piece of the streetscape.

In summary, it is clear that the intent of the 2016 Plan includes development of this southern area of the Downtown Overlay District as a gateway to Downtown through enhancing the character of buildings and providing our City with an active, pedestrian-friendly, urban streetscape.

Rezoning Amendment – Sec. 7.02 (B)(2)(b)(i)-(iii)

The Zoning Ordinance at Sec. 7.02 requires that as part of an application for rezoning, the petitioner should address certain issues to be considered by the Planning Board and the City Commission. Please consider the following comments with respect to these issues.

7.02(B)(2)(b)(i) - An Explanation of Why the Rezoning is Necessary for the Preservation and Enjoyment of the Rights and Usage Commonly Associated with Property Ownership

Rezoning of the Subject Property is necessary to preserve the Applicant's enjoyment of rights associated with ownership of a property zoned for mixed uses. Because of the size and corner configuration of the parcel, it will not support street-level retail, residential, and parking for residents in the same manner as the neighboring properties. The 2016 Plan clearly anticipates mixed use developments. Such planning requires space to design and locate mixed uses within a given structure. Without the ability to go higher with a new building than current zoning allows, the Applicant will not have the required area within which to locate a mix of uses, or otherwise to be able to enjoy all of the allowed uses that would commonly be associated the design of such a modern, mixed-use building. Furthermore, the D-5 Ordinance, at section 3.04-4-b, anticipates that the Subject Property and those similarly situated may enjoy the same rights of usage through an extension of height as other existing tall buildings already enjoy in the D-5 Overlay District.

Sec. 7.02(B)(2)(b)(ii) - An Explanation of Why the Existing Zoning Classification is No Longer Appropriate

The existing D-3 zoning classification is no longer appropriate for the Subject Property. The Subject Property is surrounded by the Birmingham Place, a ten-story building on the north side and the 555 Buildings, a fifteen-story building on the south side. This height is an established pattern in this area of the City. This rezoning request is actually an "infill" rezoning to bring the entire area into architectural and design harmony with surrounding buildings. It is reasonable for the Subject Property to share the same zoning classification as its surrounding neighbors. This would allow development of the property in a manner consistent with the

existing structures from Brown Street south to Haynes Street. It will create a more unified block and enhance the character of the gateway area to Downtown Birmingham. The rezoning of the Subject Property would restore the property to a zoning classification this area of the City once enjoyed, as the Planning Board has done for with Birmingham Place and the 555 Buildings. Hence, given the location of the Subject Property sandwiched between two properties in the D-5 Zone, the D-3 Zone is no longer appropriate.

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

The proposed rezoning of the Subject Property is not detrimental to surrounding property owners. Note that the proposed rezoning does not extend the D-5 classification further to the north or south of the current D-5 Zoning, but actually fills in the one gap in the streetscape that is noticeably out of place and anachronistically remains in the D-3 Zone. The surrounding properties to the north and south already are in the D-5 Zone. When these neighboring properties were rezoned, the Planning Board anticipated that eventually the Subject Property also may be rezoned for the reasons stated in this letter. Placing the Subject Property in D-5 Zone will be placing it on equal footing with the surrounding properties from a structural, use and design perspective. The proposed rezoning will enhance the entire area by allowing it to be developed as an attractive part of the South Old Woodward gateway and bring that area into compliance with the spirit and intent of the 2016 Master Plan.

Conclusion

The Applicant respectfully requests that the City Commission rezone the Subject Property from the D-3 to the D-5 Zone as discussed in this letter.

Very truly yours,

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

A handwritten signature in black ink, appearing to read "Richard D. Rattner", written in a cursive style.

Richard D. Rattner

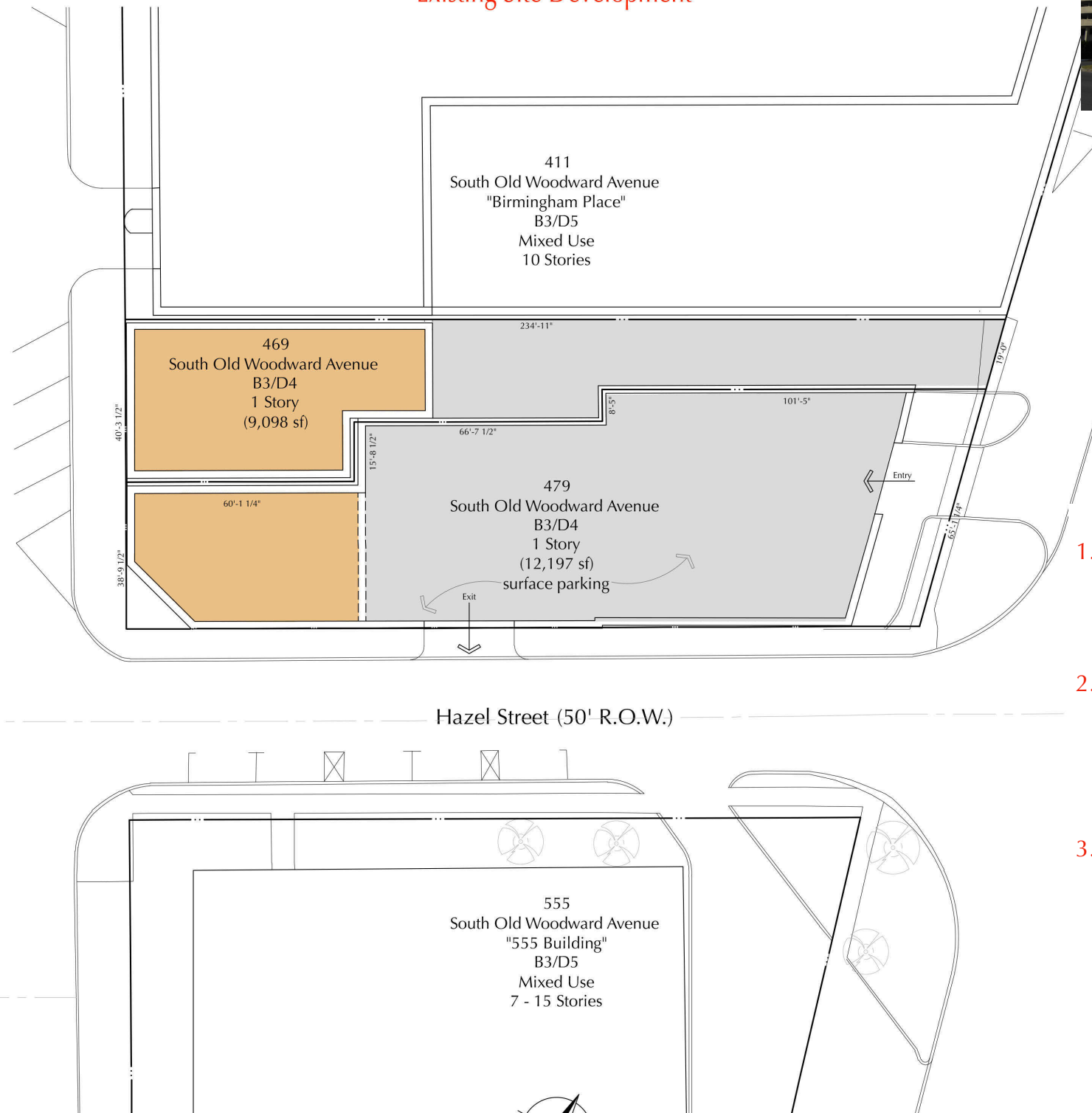
RDR/cmc



Project M1

Markus Management Group LLC
469 + 479 South Old Woodward Avenue
Birmingham, MI 48009

Existing Site Development



Use and Parking Data

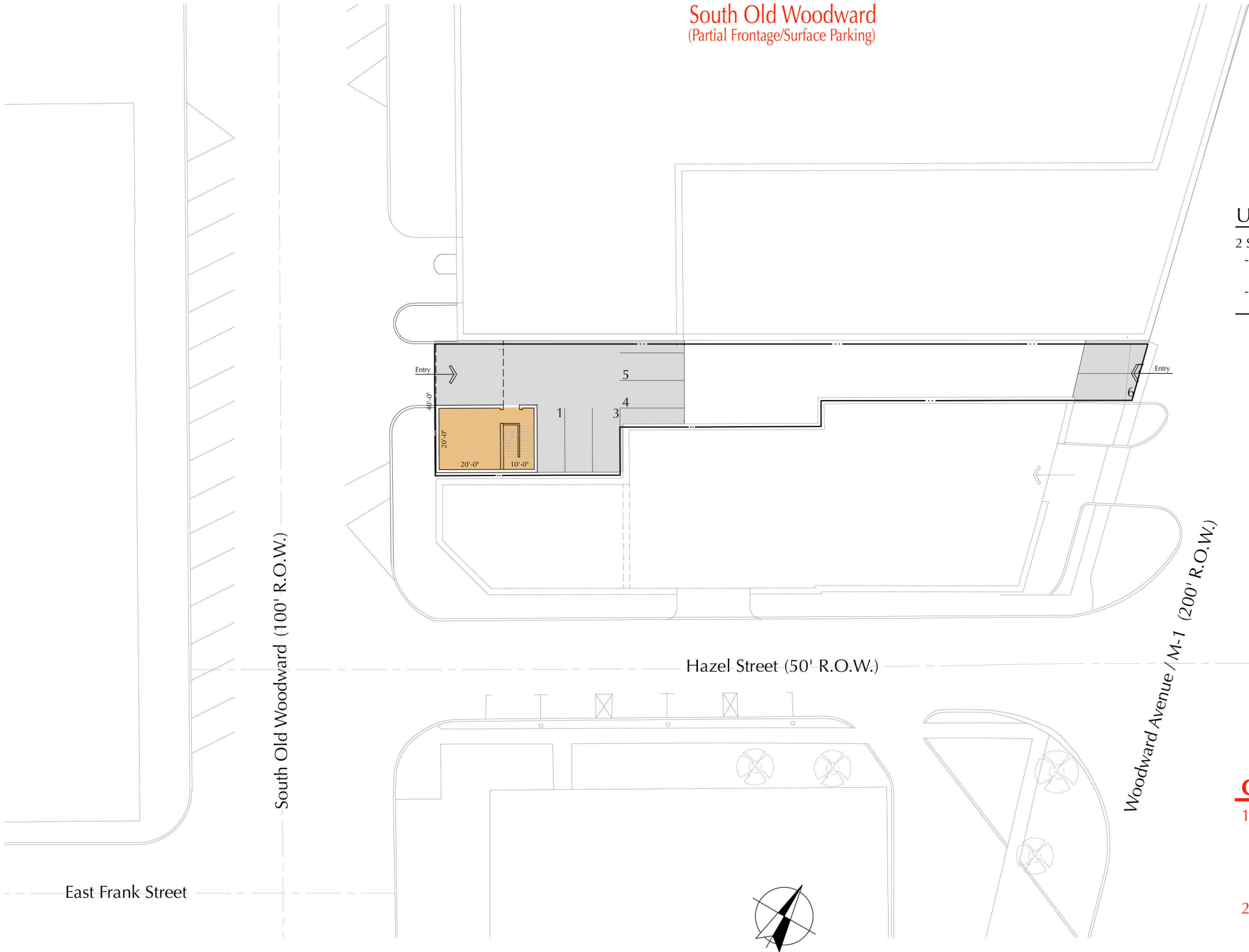
Current Use	
- 469 2,516 sf Restaurant / 75 =	39 Spaces
- 479 1,873 sf Bank / 150 =	16 Spaces
Total Required	55 Spaces

1. Cannot redevelop either site with the same use or building size and provide adequate parking
2. Cannot redevelop either site with a single-story building (required to meet the 'Downtown Birmingham Overlay Ordinance').
3. Combined sites have 3 separate frontages that are required to meet the 'Downtown Birmingham Overlay Ordinance'.



Project M1
Markus Management Group LLC
469 + 479 South Old Woodward Avenue
Birmingham, MI 48009

469
South Old Woodward
(Partial Frontage/Surface Parking)

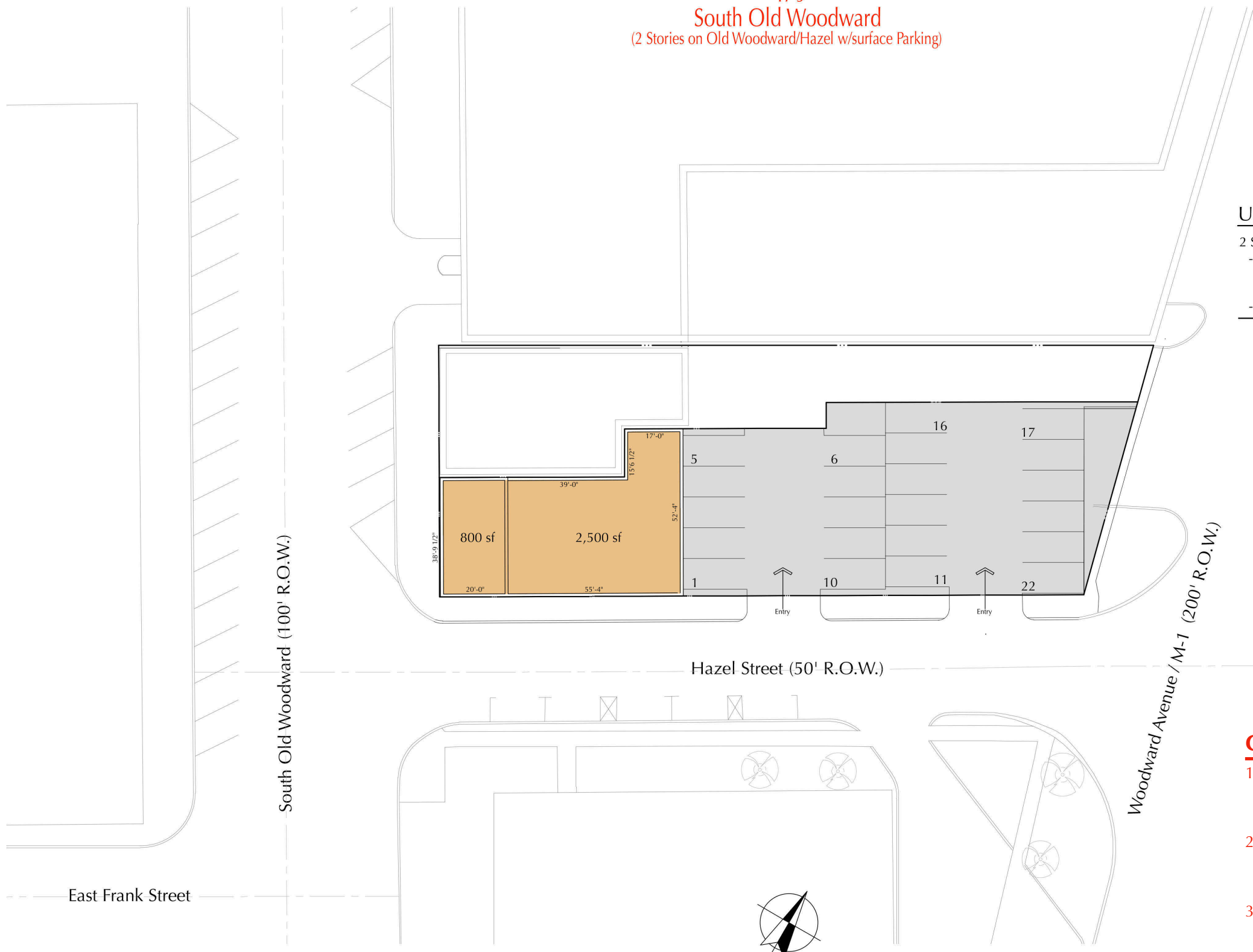


Use and Parking Data		
2 Story Building		
-	600 sf Retail (1st) / 300 =	2 Spaces
-	800 sf Office (2nd) / 150 =	5.3 Spaces
Total Required		7.3 Spaces
Total Provided		7 Spaces

- Comments**
- Provides 1,400 square feet of 2 story mixed-use building with surface parking.
 - Leaves 5,750 sf of undeveloped property

Project M1
Markus Management Group LLC
469 + 479 South Old Woodward Avenue
Birmingham, MI 48009

479
South Old Woodward
(2 Stories on Old Woodward/Hazel w/surface Parking)



Use and Parking Data	
2 Story Building	
- 800 sf x 2= 1,600 sf	
Retail (1st & 2nd) / 300 =	5.3 Spaces
<hr/>	
- 2,500 sf Office (1st) / 150 =	16.7 Spaces
<hr/>	
Total Required	22 Spaces
Total Provided	22 Spaces

- Comments**
- Provides 2 story frontage (retail) on South Old Woodward
 - Provides 1 story office partially on Hazel
 - Surface parking occupies all of Woodward Avenue and most of Hazel



Project M1
Markus Management Group LLC
469 + 479 South Old Woodward Avenue
Birmingham, MI 48009

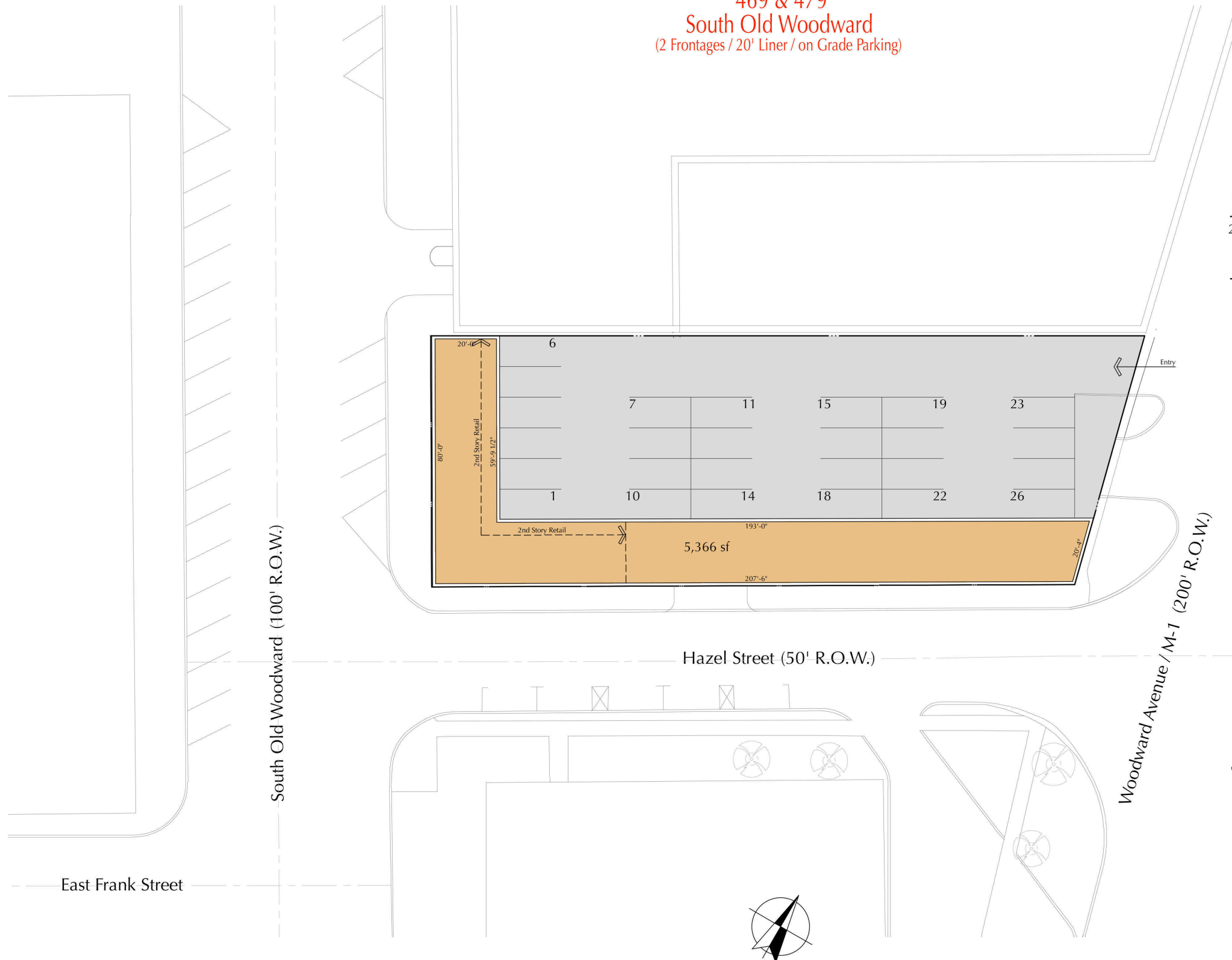
469 & 479
South Old Woodward
(2 Frontages / 20' Liner / on Grade Parking)

Use and Parking Data

2 Story Building (Retail)

-	5,366 sf Retail (1st) / 300 =	17.9 Spaces
-	2,434 st Retail (2nd) / 300 =	8.1 Spaces

Total Required	26 Spaces
Total Provided	26 Spaces

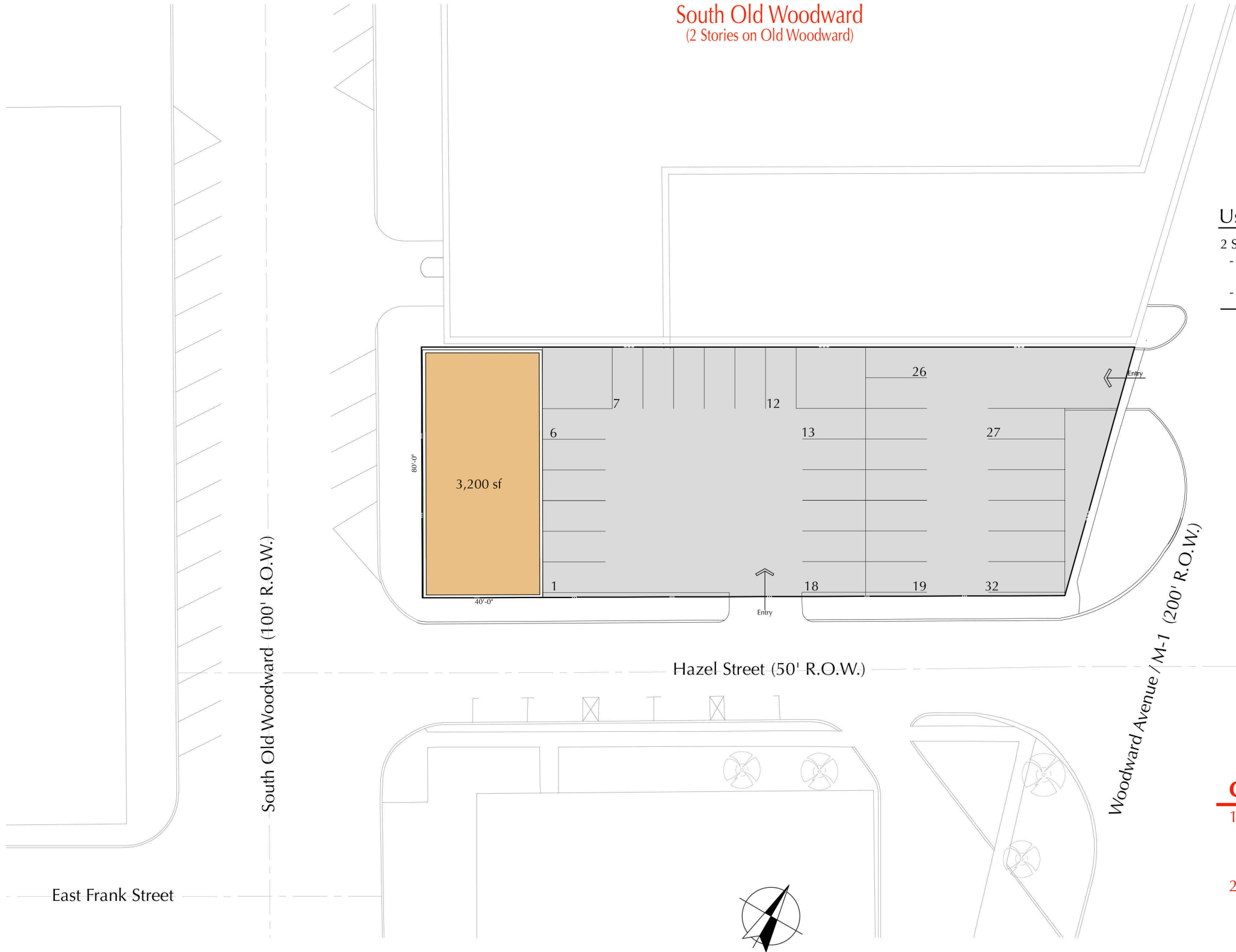


Comments

1. Provides 2 story/single-use (retail) on south Old Woodward
2. Provides 2 story/single-use (retail) partially on Hazel
3. Surface parking occupies most of Woodward Avenue

Project M1
Markus Management Group LLC
469 + 479 South Old Woodward Avenue
Birmingham, MI 48009

469 & 479
South Old Woodward
(2 Stories on Old Woodward)

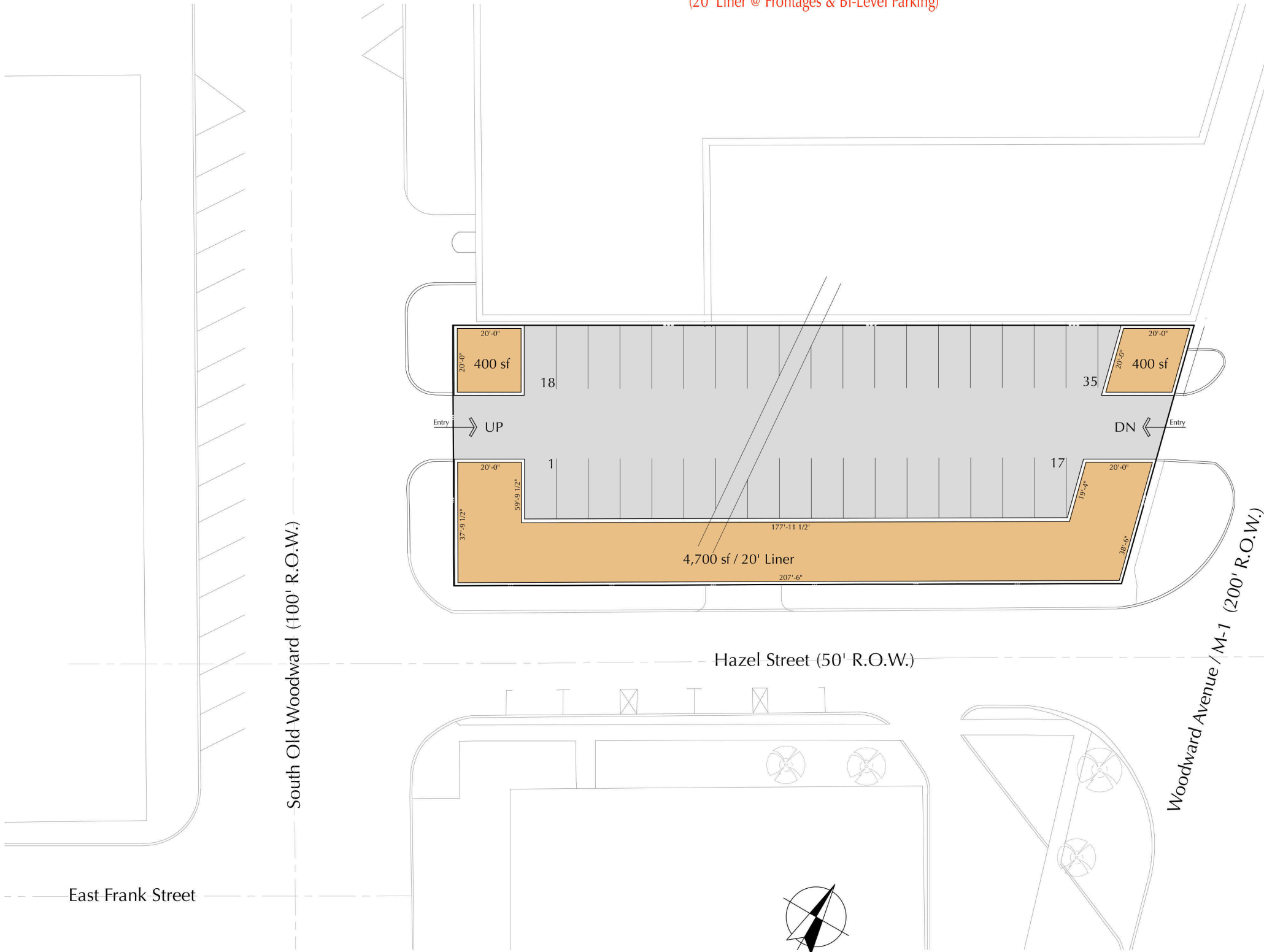


Use and Parking Data		
2 Story Building		
-	3,200 sf Retail (1st) / 300 =	10.7 Spaces
-	3,200 sf Office (2nd) / 150 =	21.3 Spaces
Total Required		32 Spaces
Total Provided		32 Spaces

- Comments
- Provides 2 story/mixed-use (retail/office) on South Old Woodward
 - Surface parking on both Hazel and Woodward Avenue (2 curb cuts)

Project M1
Markus Management Group LLC
469 + 479 South Old Woodward Avenue
Birmingham, MI 48009

469 & 479
South Old Woodward
(20' Liner @ Frontages & Bi-Level Parking)



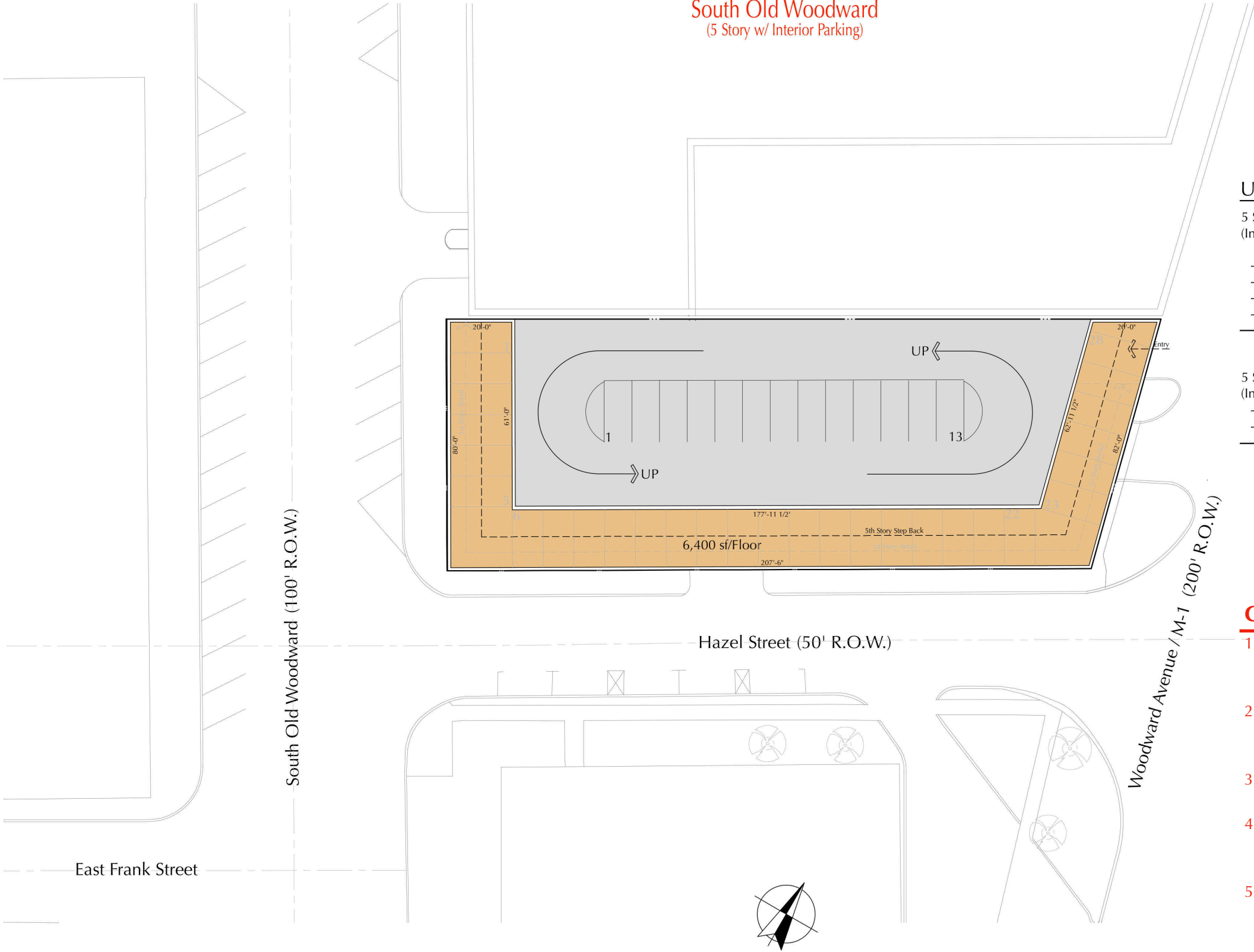
Use and Parking Data

3 Story Building	
- 5,500 sf Retail (1st) / 300 =	18.3 Spaces
- 5,500 sf Office (2nd) / 150 =	36.4 Spaces
- 8 Residences (3rd) x 1.5 =	12 Spaces
Total Required	67 Spaces
Total Provided	70 Spaces

Comments

1. Provides 3 story building/mixed-use building on all 3 frontages
2. Provides a 'ramp over ramp' hybrid internal parking w/2 curb cuts
3. Provides 8 residences

469 & 479
South Old Woodward
(5 Story w/ Interior Parking)



Use and Parking Data

5 Story Building w/ 20' Liner on all frontages
(Interior Parking)

- 6,000 sf Retail (1st) / 300 = 20 Spaces
- 6,400 sf Office (2nd/3rd) / 150 = 85 Spaces
- Parking (4th)
- 5 Units Residential (5th)/ 1.5 = 7.50 Spaces

Total Required 113 Spaces

5 Story Building w/ 20' Liner on all frontages
(Interior Parking)

- 1st, 2nd, 3rd Stories @ +/- 13 ea. 39 Spaces
- 4th Story 41 Spaces

Total Provided 80 Spaces

Comments

1. Provides 5 story building/mixed-use building on all 3 frontages
2. Provides internal parking ramp on 1st, 2nd and 3rd floors
3. Provides parking on entire 4th floor
4. Provides a 20' liner on 1st, 2nd and 3rd floors
5. Provides 5 residential units on 5th floor



Beier Howlett

ATTORNEYS AND COUNSELORS

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

October 1, 2018

Ms. Jana L. Ecker and
Planning Board Members
City of Birmingham
151 Martin Street, P.O. Box 3001
Birmingham, MI 48012

Re: Parking Assessment District- 469-479 S. Old Woodward

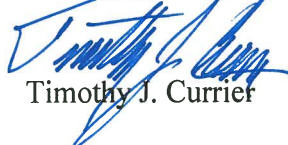
Dear Members of the Board:

The Board has asked if we have any information as to why the above properties were not included in the Parking Assessment District when they were first created and any explanation as to the City's reasoning at that time. We do not have any files or documents that can assist you in this regard.

If you have any additional questions, please do not hesitate to contact me.

Very truly yours,

BEIER HOWLETT, P.C.



Timothy J. Currier

TJC/jc

Beier Howlett

ATTORNEYS AND COUNSELORS

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

October 1, 2018

Ms. Jana L. Ecker and
Planning Board Members
City of Birmingham
151 Martin Street, P.O. Box 3001
Birmingham, MI 48012

Re: Legal Opinion Regarding Rezoning Application for 468-479 S. Old Woodward

Dear Members of the Board:

The Board has requested a legal opinion in connection with the following question:

Is the owner of the property located 469-479 S. Old Woodward (currently zoned D4 in the Downtown Overlay District) legally permitted to apply for rezoning to the newly created D5 zone district in the Downtown Overlay District?

ANSWER: YES.

If you have any additional questions, please do not hesitate to contact me.

Very truly yours,

BEIER HOWLETT, P.C.



Timothy J. Currier

TJC/jc



Richard D. Rattner
rdr@wwrplaw.com

August 13, 2018

City of Birmingham
City Commission
Planning Board
151 Martin St.
Birmingham, MI 48009
Attention: Ms. Jana Ecker

Re: Request for Re-Hearing on Application to include 469 and 479 S. Old Woodward, Birmingham, MI ("Subject Property") in the D5 Downtown Birmingham Overlay District Zone ("Application")

Dear Members of the City Commission, Planning Board and Ms. Ecker:

Please accept this letter from the property owner ("Property Owner") of 469 and 479 S. Old Woodward ("Property") as a Request for Re-Hearing of the Property Owner's rezoning Application to rezone the Subject Property from the D-4 Overlay Zone to the D-5 Overlay Zone in the Downtown Birmingham Overlay District.

The information set forth in this letter supplements the information set forth in the Application and the undersigned's letter of May 17, 2018. Please recall that the subject Property is a former single-story restaurant building and drive-through bank that sits between two existing D-5 zoned buildings in the City. The Property is in the B-3 Office-Residential Zone and the D-4 Overlay Zone.

Summary

The Application was considered by the Planning Board at its meeting on June 27, 2018 and the Planning Board denied the Application. The Applicant requests that the Planning Board rehear the Application due to consideration of new information not reviewed and to correct certain factual inaccuracies or errors in the record that quite likely prevented the Planning Board from affording this Application a full and fair hearing. Without such a full consideration of all of these new and pertinent factors, the Board will be in the position of recommending denial of a petition without the opportunity of hearing all of the important issues related to the intent, purpose and consequences of such a zone, and without the advantage of putting those issues in perspective when considering a zoning ordinance that is a crucial part of the Birmingham Downtown Overlay District plan.

The D-5 ordinance is one of the most carefully drafted ordinances produced by the City. It is the subject of over two years of study and research. Multiple alternative drafts were proposed by the City Planning Department over the years, and every section has been fully discussed and vetted by the City Commission and the Planning Board. This D-5 ordinance was recognized as being an integral part of the Downtown Birmingham Overlay District by the City. When the ordinance was passed it was heralded as not only solving existing problems but it fit into the fabric of the Overlay District's plan to encourage mixed use buildings in the Downtown Overlay (especially in the South Old Woodward area) so that our city can maintain a vibrant, pedestrian friendly attractive live, work and entertainment district. It was enacted as part of the City's modern plan to create a sustainable, vibrant downtown.

To mischaracterize this ordinance as a mere correction of nonconformity for three buildings is not only erroneous, but does disservice to the hard work done by the City Commission, Planning Board and Administration. Most importantly, such an analysis does not comply with the spirit, intent and vision exhibited in theory and practice in the Downtown Birmingham Overlay District. Said simply, such an interpretation ignores and discredits all of the good faith hard work that went into the creation of not only the Ordinance, but the master plan process for the future of our growing and vibrant downtown.

The Property is *not* within the Parking Assessment District, Contrary to Information Presented in the Board's Packet

This Property is *not* within the parking assessment district. This is a serious flaw in any zoning analysis and must be corrected in order for the public record of the Board's action and recommendation on the Application to properly reflect the realities of this matter. Correcting this fact leads to new information about the Property and the plan for development of the Property that is central to the question of rezoning pursuant to the Zoning Enabling Act. The Board has not had an opportunity to review this new information in the first instance. The new information significantly changes the analysis of rezoning under Article 7.02B2b and 7.02B5 of the Zoning Ordinance.

Contrary to what was assumed by the Planning Board, because the Property is not in the Parking Assessment District (Parking Assessment District Map is enclosed for your reference at **Exhibit A**), it currently has no possibility of providing off-street parking on the premises. In fact, it is currently non-conforming and cannot comply with Article 4.46 of the Zoning Ordinance (Off-Street Parking Spaces Required).

The Planning Department's Memorandum submitted to the Planning Board, dated May 18, 2018, regarding the Community Impact Statement of the Property's redevelopment, erroneously provides, "The subject Property is in the Parking Assessment District." And not only is the subject Property not in the Parking Assessment District, contrary to what was reported to the Planning Board, but we understand that this Property is the only D-4 zoned property in the

City not included in the Parking Assessment District.

Zoning Analysis – Revisited

Whether or not the Property is within the Parking Assessment District makes a significant difference in terms of the analysis under Sec. 7.02(B)(2)(b)(i-iii), Zoning Amendments. Section 7.02(B) requires the Applicant to provide certain explanations about the rezoning to be considered by the Planning Board and the City Commission. Please consider the following new information regarding the effects of the Parking Assessment District on this analysis, which was not reviewed by the Board.

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

The issue of location outside of the Parking Assessment District provides new information about the necessity of rezoning the Property to preserve the Applicant's enjoyment of rights associated with ownership. Because of the size and narrow corner configuration of the Property, it will not support street-level retail, residential, *and the required parking for those uses*. The off-street parking requirements for this Property make the engineering and design of a mixed-use D-4 seriously impractical if not impossible. The 2016 Plan promotes mixed use developments. Such planning requires space to design and locate mixed uses within a given structure. Not only will the Applicant lack the required area within which to locate all of the mixed uses with a first-floor retail mandate, the Applicant also is absolutely hamstrung by the off-street parking requirements for this site. The maximum use of the underground area will not yield enough parking spaces for a building designed to current zoning. Rezoning the Property to the D-5 Zone will allow more vertical space within which to accommodate a mixed-use building together with the required parking for all permitted uses.

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

The Applicant provided information that the current zoning was no longer appropriate at the June 27, 2108 meeting. However, the Board inadvertently coalesced around a discussion and conclusion that the Applicant had not shown that a "D-4 building would not work" at the site (Mr. Koseck and Ms. Whipple-Boyce at hearing time 2:20:15). But this is not the requirement set forth in the ordinance. Further, the Board denied discussion about the development plan for the Property, until after the Applicant obtained rezoning. The Board applied a standard of proof that is not part of the ordinance, but rather more aptly applies to considering whether the rezoning depended on whether the Applicant can use the property as zoned. This is not the standard under the ordinance. Such a standard is often heard in a discussion of whether the property has been inversely condemned by the application of the ordinance. It is unfair to hold the applicant to a

standard that requires proof that the property cannot be used as zoned rather than the “appropriateness” of current zoning. When properly analyzed in the context of the Master Plan, which is the standard of the Birmingham ordinances, it is appropriate for the subject Property to share the same zoning classification as its immediate neighbors. As will be demonstrated in the next paragraph, the Property is incapable of supporting a structure built to current D-4 or B-3 zoning requirements.

The Property consists of two lots -- 469 and 479 -- which front Old Woodward and Woodward Avenue. The lots are in the “retail/red-line district” and under current zoning, each lot is severely restricted.

469 S. Old Woodward

The 469 lot width narrows as it extends east and has approximately 21 feet of Woodward Avenue frontage. The site has an existing 1 story, 2,900 square feet building, formerly used as a restaurant. Should this parcel be re-used, its only use (by necessity) would need to be a ‘nonconforming’ restaurant, since any change in use without a parking assessment district designation would require it to provide onsite parking for the new intended uses. However, since the restaurant has been closed for more than six months, it would not be eligible to continue as a nonconforming use!

Given the parcel’s narrow configuration, the only onsite parking that could be provided to satisfy the ordinance is two (2) spaces off of Woodward Avenue. Only two onsite parking spaces would limit the building footprint to approximately 300 to 600 square feet, depending on the permitted use. There is no practically feasible way to provide greater parking spaces.

479 S. Old Woodward

The 479 parcel has 211 feet of frontage on Hazel and approximately 40 feet of frontage on Old Woodward. This lot expands as it extends east to approximately 66 feet of Woodward Avenue frontage. The lot has an existing one-story, 11,826 square foot enclosure of which a small portion is a finished bank building. The balance is dedicated to a drive-thru lane for a drive-thru bank. Should this parcel be re-used, its only use (by necessity) must be a ‘nonconforming’ drive-thru bank since any change in use under the Ordinance would trigger onsite parking requirements for the new intended use. Also, drive-thru banks are specifically prohibited in the downtown Birmingham Overly District. See ordinance at Article 3(4)(C)(2)(b): “The following uses are prohibited...Drive-in facilities or any commercial use that encourages patrons to remain in their automobiles while receiving goods or services.”

Given lot 479’s configuration, the only onsite parking that would be practically feasible is approximately 13 spaces to be entered off of Woodward Avenue or Hazel. Thirteen onsite parking spaces would limit the building footprint to not more than from 1,950 square feet to

approximately 3,900 square feet, depending on the permitted use. It is possible for a new building to be multiple stories and this may allow for greater area on the ground floor for parking spaces. At most with a 2200 square foot ground floor, 27 parking spaces could be fit to the site. However, the building would be limited to approximately two stories and would not be contextual to the neighborhood. In essence, the lot would be converted partially to a surface parking lot.

Combined Lots

Seemingly, the combination of the two parcels would create greater opportunity to develop a project conforming to the Master Plan and the 2016 Downtown Plan goals for the B3/D4 zoning. Unfortunately, the combined parcel cannot meet the Master Plan and 2016 Downtown Plan goals of mixed uses and first floor retail without both onsite parking and underground parking. The Ordinance mandates main level retail (20' minimum in depth) on Old Woodward. Of course, onsite parking must be provided for any additional uses. This forces redevelopment toward uses with minimal parking requirements, such as hotels, which is what the Applicant proposes. As stated elsewhere in this letter, there are serious difficulties with building an underground garage within the D-4 design parameters that is deeper than two levels. Clearly, the current zoning unfairly forces the owner into an unreasonable position when considering the parcel's potential use and its place in the Downtown Overly District. Consequently, any such garage is limited to approximately 60 parking spaces.

To discuss these difficulties in a vacuum is not the intention of the Zoning Enabling Act. The Act at MCL 125.3203 provides that zoning must be determined according to a plan. Here, the Applicant attempted to explain to the Board that the site plan is impacted by the fact that the Property is not within the Parking Assessment District. Unfortunately, the Board refused to consider any site plan and its conformance to the 2016 Plan, putting such review off until the Applicant obtained rezoning. This placed the Applicant in a double-bind. He could not demonstrate the inappropriateness of current zoning without an analysis of how the Parking Assessment District, or lack thereof, affects the site plan design. Had the Applicant been allowed to at least discuss a site plan design in relation to the rezoning analysis, he would have demonstrated that there is no feasible option to develop the Property within the current zoning classifications outside of the Parking Assessment District. This would have been a valuable discussion of new information that should have at least been heard by the Planning Board.

Mischaracterization that the D-5 Ordinance was Passed Only to Make Three Properties Conforming

Two attorneys from the same law firm, as representatives of the residents of Birmingham Place, each separately addressed the Board during the June 27th hearing. The main thrust of their argument to the Board was that the only reason the D-5 Zone was added to the ordinance was in order to correct the non-conformity of the 555 Building, Merrill Wood and Birmingham

Place. They argued that the new Zone did not apply to any other properties. This assertion ignores the very careful hard work of the City Commission, the Planning Board, and the Administration. This claim is also clearly contrary to the history of the D-5 ordinances and to its plain language.

The history of the Planning Board's consideration of the D-5 Zone was outlined in detail by Ms. Ecker at the June 27th meeting. The Planning Board studied and considered the revisions to the ordinance for the South Old Woodward area for two years prior to adopting the D-5 Zone. In the Planning Department's Memorandum to the Planning Board, dated September 22, 2016, submitted to the Board for its September 28, 2016 study session, Ms. Ecker wrote: "The consensus of the Board was to allow additional height for new buildings in the D-5 zone district to match existing adjacent buildings, if the new building was constructed under the provisions of a SLUP."

During the June 27, 2018 hearing, Chairman Clein expressed (at time 2:10:25 of the hearing video), that during consideration of the new D-5 Zone, the Board considered the entire southern area of Downtown and positively did discuss the subject Property for potential property rezoning. However, the Board did not include the Property initially because no applicant or interested owner had come forward at that time. Mr. Jeffares also reiterated the same point (at time 1:48:30 of the hearing video). Ms. Ecker clearly stated (at video time 2:09:00) that the new D-5 Zone is a zoning classification that is not limited to the three non-conforming buildings (555 Building, Merrill Wood and Birmingham Place).

Despite clear evidence to the contrary, the mischaracterizations assumed in this hearing were espoused by Ms. Whipple-Boyce who indicated that she understood the D-5 Zone only applied to the three properties, and was not available for the Applicant's Property. These misrepresentations had a direct bearing on consideration of the Applicant's explanation of why the rezoning will not be detrimental to surrounding properties.

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

Both the adjacent and abutting properties are in the D-5 Zone. These misrepresentations that the D-5 is closed to other buildings led the Board to bypass the Applicant's D-5 site plan design. Instead the Board envisioned the abutment of a D-5 structure next to the Birmingham Place and the impact of such on the Birmingham Place residents. However, it is clear that when these neighboring properties were rezoned to D-5, the Planning Board anticipated that eventually the owner of the subject Property would apply to be rezoned for the reasons stated in this letter. The idea that an ordinance is created for only a few buildings, when the ordinance itself states otherwise, is unsupportable and unreasonable. Rezoning the subject Property to a D-5 Zone will be putting this parcel on equal footing with the surrounding properties from a structural, use and design perspective. The proposed rezoning will enhance the entire area by allowing it to be

developed as an attractive part of the South Old Woodward gateway and, most importantly, bring that area into compliance with the spirit and intent of the 2016 Master Plan. Many of the condominium owners from Birmingham Place who spoke out against the rezoning, as did their attorneys, will lose their views to the south even with a development compliant with current zoning. Please see the attached depiction of the D-4 height overlaid against the Birmingham Place (**Exhibit B**). However, the Board seemed to acknowledge the mootness of the alleged detriment to Birmingham Place given the potential impact of a conforming D-4 structure, and yet at least one member, Ms. Whipple-Boyce, still maintained that the D-5 Zone was intended to correct the non-conformance of only three properties.

The Board Failed to Make Required Findings of Fact under Ordinance Sec. 7.02(B)(5)

In making its decision on June 27th, the Board denied the Application based on Ordinance Sec. 7.02(B)(2)(b) and the required explanations imposed on the Applicant. As a result of its misunderstanding of the analysis required by the Zoning Amendments section of the Ordinance, the Board committed error in basing its decision on Sec. 7.02(B)(2)(b) rather than on the findings of fact required by Sec. 7.02(B)(5). Section 7.02(B)(5)(a-e) lists five findings the Board must make regarding the Application when making its recommendation to the City Commission. Without these findings by the Planning Board, the recommendation to the City Commission does not give the commission sufficient information to understand why this rezoning Application was denied.

- ***Sec. 7.02(B)(5)(a) - The objectives of the City's then current master plan and the City's 2016 Plan.***

The Board made no findings of fact with respect to the objectives of the City's current master plan and the City's 2016 Plan. A simple motion to deny a recommendation of rezoning was made "to recommend DENIAL to the City Commission of the applicant's request for the rezoning of the property at 469-479 S. Old Woodward Ave. from D-4 to D-5 in the Downtown Overlay." (See **Exhibit C**, June 27, 2018 meeting minutes, at p.10).

The Applicant, however, in its May 17, 2018 letter to the Board, submitted significant information relating to the conformance of D-4 to D-5 rezoning of the Property with the goals of the 2016 Master Plan to promote mixed uses and consistency in architectural details and massing to neighboring structures.

- ***Sec. 7.02(B)(5)(b) - Existing uses of the property within the general area of the property in question.***

The Board made no finding of fact with respect to uses of property within the area of the Property, although the Board acknowledged the D-5 zone to the immediate north and south of the Property. And as stated above, the Board coalesced around the conclusion that the Applicant had not "shown a D-4 building could not work."

In his May 17, 2018 supplemental letter to the Board, the Applicant explained the proposed mix-use of the development as retail, hotel and residential, all uses consistent with surrounding properties.

- ***Sec. 7.02(B)(5)(c) - Zoning classification of the property within the general area of the property in question.***

The Board acknowledged that the entire southern area of Birmingham has been studied for change in zoning possibly to a gateway district due to the established heights of the iconic 555 Building and the Birmingham Place Building. The Board acknowledged the recent rezoning of the abutting and adjacent properties to the D-5 Zone and the current zoning classifications of nearby properties. The Board did not make any findings that addressed the fact that the subject Property is not only located in the area of the D-5 zone, but actually is situated between two D-5 zoned parcels. The adjacent and abutting properties are zoned D-5.

- ***Sec. 7.02(B)(5)(d) - The suitability of the property in question to the uses permitted under the existing zoning classification.***

The Board made no findings of fact regarding the suitability of the Property in question to the uses under the existing zoning classification. The Board's discussion centered on the height of the proposed development under the D-5 versus the D-4. There was no finding or discussion of suitability to permitted uses. The Applicant directs the Board's attention here because the Property sits outside of the Parking Assessment District. The Board failed to engage with this fact and its implications on the Applicant's site plan, which has a significant negative impact on the Applicant's ability to use the Property within the uses promoted by the 2016 Plan. Again, without a factual finding, the Board concluded that the Applicant had not proven that a D-4 building would not work at the Property (June 27, 2018 hearing video, Chairman Clein, starting at video time 2:10:25).

- ***Sec. 7.02(B)(5)(e) - The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.***

There was little discussion of the trend of development in the general area, other than the discussion of the historical development of the 555 Building and Birmingham Place prior to their down-zoning in later amendments to the Ordinance. Again, the Board acknowledged the recent changes in zoning to the 555 Building and Birmingham Place, as well as a mention of a zoning variance obtained for the development of the Pearl property. However, the Board did not make a finding of fact regarding the trend of development and its relationship to its decision to deny the Applicant's request.

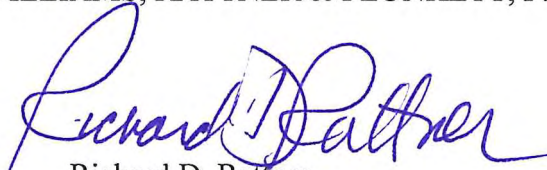
Conclusion

Applicant respectfully requests that this matter be referred back to the Planning Board to allow full consideration of the following:

- Report of the Planning Department concluding that the Petitioner had satisfied all of the ordinance requirements of Sec. 7.02(B)(5)(a-e). No contrary findings of fact were made by the Planning Board.
- The Property is the only D-4 property in the City *not* in the Parking Assessment District. The report in the Planning Department's packet to the Planning Board with regard to the CIS mistakenly stated that the Property was in the Parking Assessment District. This new fact is crucial to an accurate analysis of the rezoning request.
- The purpose of the D-5 ordinance was mischaracterized as merely an ordinance to correct only three buildings in the City. The ordinance clearly states otherwise, and there was much discussion during the years of meetings about the area of the City that should be considered for the D-5 zone.
- The standard used for the discussion of rezoning the Property was not a requirement of the zoning ordinance. An applicant must present facts that support the ordinances in Sec. 7.02(B)(5)(a-e) as well as Sec. 7.02(B)(2)(b)(i-iii). None of those ordinance sections requires the Applicant show that the Property cannot be used as zoned, contrary to what was discussed in the public hearing.

Very truly yours,

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



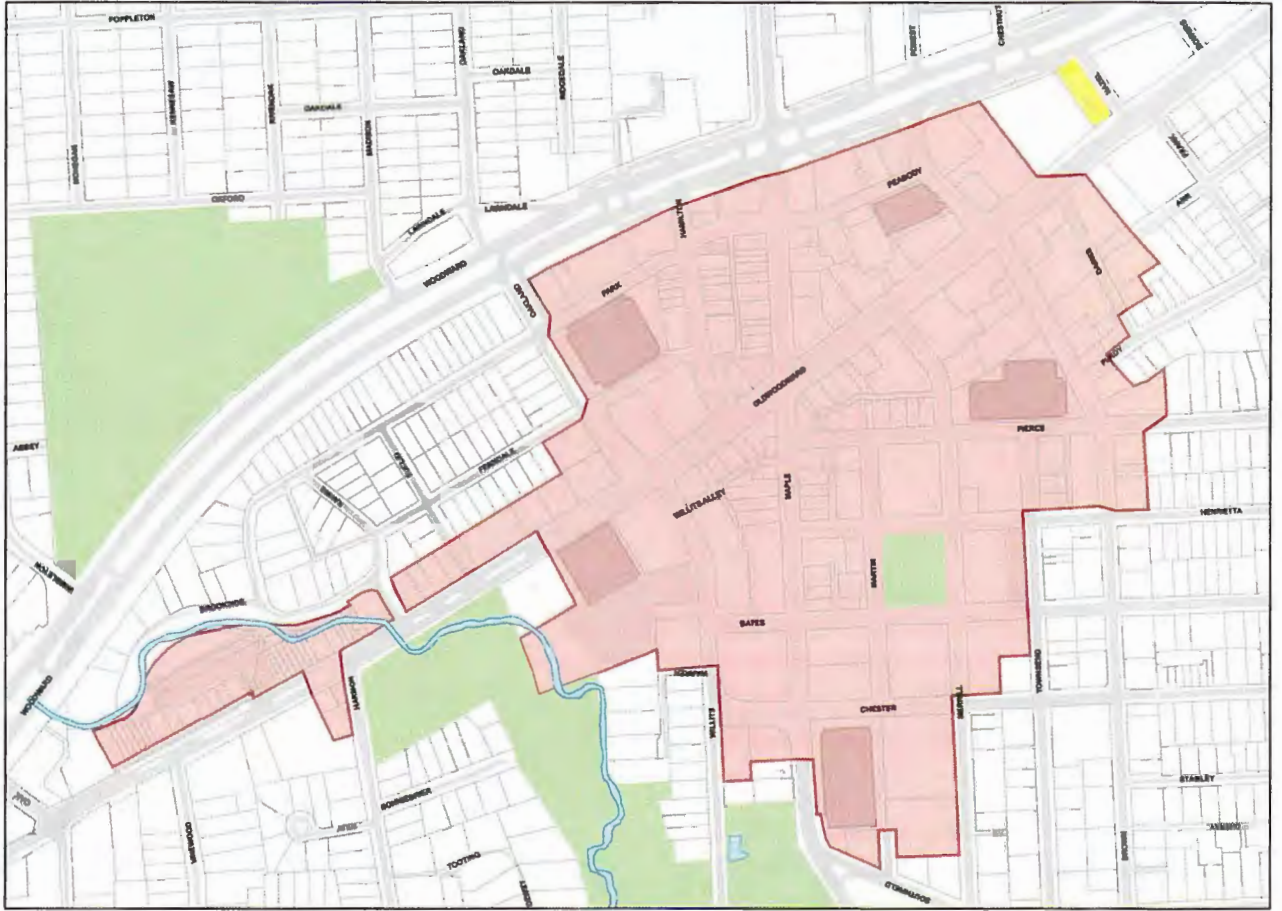
Richard D. Rattner

RDR/gsm

CITY OF BIRMINGHAM
DOWNTOWN PARKING ASSESSMENT DISTRICT

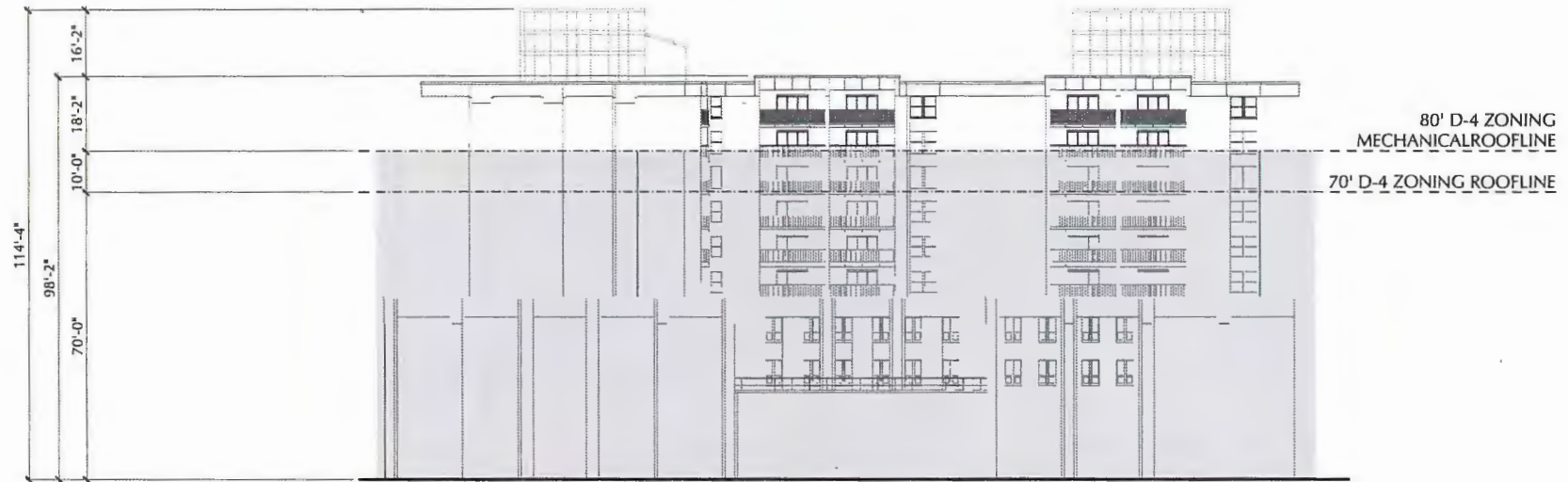


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tabbies' EXHIBIT
A

Project M1 - The Hazelton
Birmingham Tower Partners, LLC
469 + 479 South Old Woodward
Birmingham, Michigan 48009



BIRMINGHAM PLACE HEIGHT COMPARISON DIAGRAM

CHRISTOPHER J LONGE AIA
ARCHITECTURE
INTERIORS
124 Peabody, Birmingham, Michigan 48029 248.258.6943



**CITY OF BIRMINGHAM
PLANNING BOARD ACTION ITEMS
OF WEDNESDAY, JUNE 27, 2018**

Item	Page
SPECIAL LAND USE PERMIT ("SLUP") AMENDMENT REVISED FINAL SITE PLAN AND DESIGN REVIEW	
1. 260 N. Old Woodward Ave., The Morrie - Application for Special Land Use Permit ("SLUP") Amendment to allow the addition of a dance floor to the previously approved restaurant	2
Motion by Ms. Whipple-Boyce	2
Seconded by Mr. Koseck to recommend APPROVAL to the City Commission of the Final Site Plan and SLUP Amendment for 260 N. Old Woodward Ave., The Morrie, to add a dance floor to the previously approved plans with the condition that the applicant comply with Chapter 50, Noise, Division 4.	
Motion carried, 7-0.	2
2. 2010 Cole St. (currently vacant) - Application for Final Site Plan and Design Review to renovate the existing building and expand the parking lot	3
Motion by Mr. Jeffares	5
Seconded by Mr. Koseck to recommend APPROVAL of the Final Site Plan and Design Review for 2010 Cole St. subject to the following conditions:	
1. Applicant submit a signed letter from DTE approving the location of all electrical transformers;	
2. Applicant install City standard bike racks, benches and trash receptacles as required in the Rail District;	
3. Applicant submit all signage details to the Planning Division for approval, including specifications on any wall signs, canopy signs or address signs;	
4. Applicant add pedestrian striping on the west side of the building leading to the west entrance of the building.	
5. Applicant move the arborvitae screening to the north with Administrative Approval from the Planning Dept.	
6. Applicant comply with the requests of all City Departments.	
Motion carried, 7-0.	
REZONING APPLICATION	5
1. 469-479 S. Old Woodward Ave. (former Mountain King) - Request to rezone from B-3 and D-4 to B-3 and D-5 to allow a nine-story mixed-use building	

Item	Page
<p>Motion by Mr. Boyle</p> <p>Seconded by Mr. Jeffares that based on a review of the rezoning request and supporting documentation submitted by the applicant, a review of the applicable Master Plan documents and the development trends in the area, the Planning Board recommends APPROVAL to the City Commission for the rezoning of 469-479 S. Old Woodward Ave. from D-4 to D-5 in the Downtown Overlay.</p> <p>Motion failed, 2-5.</p> <p>Motion by Ms. Whipple-Boyce</p> <p>Seconded by Mr. Koseck to recommend DENIAL to the City Commission of the applicant's request for the rezoning of the property at 469-479 S. Old Woodward Ave. from D-4 to D-5 in the Downtown Overlay.</p> <p>Motion carried, 5-2.</p> <p>PRELIMINARY SITE PLAN REVIEW AND COMMUNITY IMPACT STUDY ("CIS")</p> <p>1. 469-479 S. Old Woodward Ave. (former Mountain King) - Application for Preliminary Site Plan and CIS to permit new construction of a nine-story mixed-use building</p> <p>Motion by Mr. Boyle</p> <p>Seconded by Ms. Whipple-Boyce to postpone this application to August 22, 2018 following the consideration of this rezoning application at the City Commission.</p> <p>Motion carried, 7-0.</p>	<p>5</p> <p>11</p> <p>11</p> <p>11</p> <p>11</p> <p>12</p> <p>12</p> <p>12</p>

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, JUNE 27, 2018**

City Commission Room
151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Planning Board held on June 27, 2018. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Janelle Whipple-Boyce; Alternate Board Members Jason Emerine, Nasseem Ramin

Absent: Board Members Daniel Share, Bryan Williams; Student Representatives Madison Dominato, Sam Fogel, Ellie McElroy

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

06-108-18

APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING OF JUNE 13, 2018

Mr. Jeffares made a correction:

Page 8 - Fourth paragraph from the bottom insert after "of," "office use for business to business."

Motion by Mr. Koseck

Seconded by Mr. Boyle to approve the Minutes of the Regular Planning Board Meeting of June 13, 2018.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Abstain: Emerine

Absent: Share, Williams

06-109-18

CHAIRPERSON'S COMMENTS (none)

06-110-18

APPROVAL OF THE AGENDA (no change)

06-111-18

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

1. 260 N. Old Woodward Ave., The Morrie - Application for Special Land Use Permit ("SLUP") Amendment to allow the addition of a dance floor to the previously approved restaurant

Mr., Baka recalled that this application has already been approved by the Planning Board and the applicant is coming back for one change. On May 14th, 2018, the applicant went before the City Commission and indicated that they were also proposing to move tables to clear a dance area when needed. The City Commission determined that a dancing area was not in the original scope or shown on the plans; therefore it must be re-reviewed by the Planning Board.

The applicant has submitted a SLUP Amendment application with associated site plans depicting the location and size of a dancing area proposed in their dining room. The dance floor measures 10 ft. by 38 ft. and is located in front of the raised booth seating area.

At 7:32 p.m., there were no comments from the audience on the proposal.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Koseck to recommend APPROVAL to the City Commission of the Final Site Plan and SLUP Amendment for 260 N. Old Woodward Ave., The Morrie, to add a dance floor to the previously approved plans with the condition that the applicant comply with Chapter 50, Noise, Division 4.

Motion carried, 7-0.

There were no comments from the public on the motion at 7:35 p.m.

VOICE VOTE

Yeas: Whipple-Boyce, Koseck, Boyle, Clein. Emerine, Jeffares, Ramin

Nays: None

Absent: Share, Williams

06-112-18

2. 2010 Cole St. (currently vacant) - Application for Final Site Plan and Design Review to renovate the existing building and expand the parking lot

Mr. Baka advised the subject property, located in the Rail District, is a 0.77 acre site currently containing a single-story commercial building and a parking lot. The applicant is proposing to renovate the existing building to allow for three tenant spaces consisting of retail, fitness and potentially storage uses. The existing parking lot is proposed to be expanded, while the landscaping and streetscape will also be improved. The building is proposed to receive new

paint, awnings, lighting and architectural detail. Also, the applicant would like to screen the loading space with arborvitae.

The applicant engaged in a pre-application discussion with the Planning Board on May 23, 2018. At that time the applicant described the plan to beautify and fill the current building to bring the site back into function while the property owners work on a plan to redevelop the entire property in the future. Planning Board members asked the owners to provide active first-floor uses to activate the street, as well as add glazing and architectural details to break the monotony of the existing blank walls.

The submitted site plan shows a new electrical transformer adjacent to the dumpster enclosure at the southeast corner of the property that is screened with arborvitae. The applicant has noted that DTE has been contacted regarding the transformer location and that DTE approval will be acquired in regards to the location. The applicant must still submit a signed letter from DTE approving the location of all electrical transformers.

The applicant is proposing to expand and rework the existing parking lot to a 38 space lot containing both additional landscaping and two ADA parking spaces. The parking requirement for the three tenants is 12 spaces.

Design Review

The applicant is proposing new renovations that include new paint, awnings, lighting and architectural details including new windows and doors along the north and west elevations. Eight new door/window installations with dark bronze metal frames are proposed along the north and west elevations. Four open-ended canvas awnings are also proposed over the new window/door installations. The doors, windows and awnings help to break up the vast blank space that currently exists on the walls.

Article 4, section 4.90 of the Zoning Ordinance requires buildings in the MX Zoning District to provide a minimum of 70% glazing on any ground floor façade that faces a street or parking area.

Signage: The applicant has indicated that the northern portion of the wall on the west elevation will be a potential location for tenant signage. The applicant is also proposing to place their address sign on the parking lot screen wall in front of the building. The applicant must submit all signage details to the Planning Dept. for approval, including specifications on any wall signs, canopy signs or address signs. The applicant has now submitted material samples of each newly proposed material (including new glass, awning fabric, patio pavers) to complete the Design Review.

In response to Mr. Koseck, Ms. Ecker explained the City is in the process of figuring out the street lighting in the Rail District. DTE has installed three different types of lights with three different types of globes, along with different fixtures throughout the Rail District and none of them are correct since the first installation at Armstrong White on E. Lincoln. Basically the negotiations with DTE to correct the problem are down to cost right now.

Mr. Boyle noticed that the plans do not show a safe pedestrian zone through the parking lot. Further, Mr. Boyle noted on the west facade of the building there are grey awnings with small windows underneath; but no windows on the large section that is adjacent to the patio.

Mr. Koseck pointed out that the plans show the driveway bisects the sidewalk. Mr. Baka replied that the Engineering Dept. has stated that the sidewalk must maintain its current configuration by placing it through the driveway approach.

Mr. Baka agreed with Mr. Emerine that clarification is needed because the applicant is required to have six trees in the parking lot and ten are shown in the site plan.

Mr. Jason Krieger, Krieger Klatt Architects, was present with Mr. Tom Lasky and Mr. Andy Petcoff from the ownership, along with Mr. Brian Kowalski, the project architect. Mr. Krieger said the site plan is correct regarding the trees. The windows on the west elevation are up high because a fitness center is proposed and they tried to maintain as much wall space as possible for them. They are trying to add more fenestrations and glass. Windows have been added on the southwest corner of the building. On the north elevation the windows have been lowered down to the ground to create more of a storefront feel.

Their proposal is to basically clean up the building, paint it, improve it, and then occupy it. They will comply with City standards for lights, trash cans, and benches. With regard to the parking lot, they hope to keep as much as they can and add on to it in compliance with City engineering standards. Personally, he would rather see more screening closer to Cole St., behind the retaining wall, and not right at the loading area where it might get hit. Then, just leave the loading zone as a striped area. Mr. Koseck agreed, because typically there is no truck parked in the loading space. He suggested that Mr. Krieger could work with staff to shift the arborvitae to the north where it wouldn't be hit. Additionally, Mr. Koseck thought it would be nice to have some planter boxes in the patio area just to soften it. Mr. Krieger agreed that the patio should be broken up a little with some greenery.

Mr. Krieger explained that tenant to the north is a cabinet shop and the south tenant space is vacant.

Responding to Mr. Boyle, Mr. Krieger said did not see a problem with putting in a pedestrian safety path through the parking lot to the entrance of the center. However they might lose one parking space.

No one from the public cared to comment on the proposal at 8:01 p.m.

Motion by Mr. Jeffares

Seconded by Mr. Koseck to recommend APPROVAL of the Final Site Plan and Design Review for 2010 Cole St. subject to the following conditions:

- 1. Applicant submit a signed letter from DTE approving the location of all electrical transformers;**
- 2. Applicant install City standard bike racks, benches and trash receptacles as required in the Rail District;**
- 3. Applicant submit all signage details to the Planning Division for approval, including specifications on any wall signs, canopy signs or address signs;**
- 4. Applicant add pedestrian striping on the west side of the building leading to the west entrance of the building.**
- 5. Applicant move the arborvitae screening to the north with Administrative Approval from the Planning Dept.**
- 6. Applicant comply with the requests of all City Departments.**

At 8:05 p.m. there were no comments on the motion from members of the audience.

Motion carried, 7-0.

VOICE VOTE

Yeas: Jeffares, Koseck, Boyle, Emerine, Klein, Ramin, Whipple-Boyce

Nays: None

Absent: Share, Williams

06-113-18

REZONING APPLICATION

1. 469-479 S. Old Woodward Ave. (former Mountain King) - Request to rezone from B-3 and D-4 to B-3 and D-5 to allow a nine-story mixed-use building

Chairman Clein said that judging from all of the letters that have been received related to this project, it is very clear that the residents of Birmingham Place oppose the rezoning. All of the letters will be added to the record.

Ms. Ecker explained the applicant for 469-479 S. Old Woodward is requesting that the Planning Board hold a public hearing to consider the rezoning of the property from B-3 (Office Residential) and D-4 (Downtown Overlay) to B-3 (Office Residential) and D-5 (Downtown Overlay). The applicant is seeking the rezoning to allow for the construction of a nine-story mixed-use building with three levels of underground parking in between the Birmingham Place and the 555 Building. The maximum height allowed in the D-4 Zoning District is 4-5 stories. In the D-5 Zoning District, developers may build as high, but no higher than the adjacent buildings which are located in the D-5 Zone. The 0.423 acre subject site spans Hazel St. from S. Old Woodward Ave. to Woodward Ave. The site currently contains two vacant single-story commercial buildings (formerly Mountain King Restaurant and Talmer Bank). The applicant is proposing to demolish the present buildings for the construction of a ten-story mixed-use building.

The applicant has noted that when the zoning was changed down to one or two floors in the 1970s, the 555 Building and Birmingham Place were designated to a legal non-conforming use because their height was not allowable. Ultimately, the zoning was changed to D-4 in 1996 by the adoption of the 2016 Plan and the Downtown Overlay that raised the height up to a maximum of five stories Downtown. In 2017, a new D-5 Zone was created to bring the 555 Building, the Merrillwood Building and Birmingham Place into a legal conforming status. The subject property is located between Birmingham Place and the 555 Building, both of which are zoned D-5 currently.

Ms. Ecker went through the three items that the applicant must demonstrate for the rezoning of a property and the applicant's reasons as to how they feel they have met them.

Ms. Ecker then went through the planning analysis based on the evidence provided by the application. Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable Master Plan documents, current zoning and recent development trends in the area, the Planning Dept. finds that the applicant meets the established ordinance requirements to qualify for a rezoning of the property from D-4 to D-5 in the Downtown Overlay District for the purpose of building as high, but no higher than, the building to the north, Birmingham Place.

Answering Mr. Boyle, Ms. Ecker said the Master Plan which dates back to 1980 did not give specific height requirements like the 2016 Plan recommended. Under the 2016 Plan the recommended height in the Downtown was a maximum of five stories. The 555 Building submitted an application to the City and to the Planning Board to consider creating a new category that would make them a legal and conforming building that would allow them to receive financing to renovate the building and bring it up to current standards in the marketplace. The D-5 Ordinance was crafted by the Planning Board as a result of that application and included the other two buildings in a similar situation.

Mr. Rick Rattner, Attorney, Williams, Williams, Rattner & Plunkett, PC, emphasized that in the D-5 going above five stories subjects the property to a Special Land Use Permit ("SLUP") which is different than just building as of right. Secondly, in 2016 Andres Duany commented favorably on the 555 Building and on Birmingham Place.

He presented a PowerPoint that went to four issues that have to do with rezoning:

- Rezoning Amendment - Sec. 7.02 (B) (2) (b) (i)-(iii) requires that as part of an application for rezoning, the petitioner should address certain issues to be considered by the Planning Board and the City Commission.
- Sec. 7.02 (B) (2) (b) (i) - An Explanation of Why the Rezoning is Necessary for the Preservation and Enjoyment of the Rights and Usage Commonly Associated with Property Ownership. Without the ability to go higher with a new building than the zoning allows, the applicant will not have the required area within which to locate a mix of uses that would commonly be associated with the design of a modern, mixed-use building.
- Sec. 7.02 (B) (2) (b) (ii) - An explanation of Why the Existing Zoning Classification is No Longer Appropriate. It is reasonable for the subject property to share the same zoning classification as its surrounding neighbors. Given the location of the subject property sandwiched between two properties in the D-5 Zone, the D-4 Zone is no longer appropriate.
- Sec. 7.02 (B) (2) (b) (iii) - An Explanation of Why the Proposed Zoning will not be Detrimental to the Surrounding Properties. The proposed rezoning will enhance the entire area by allowing it to be developed as an attractive part of the S, Old Woodward gateway and bring that area into compliance with the spirit and intent of the 2016 Plan.

Mr. Rattner concluded by asking the Planning Board to favorably recommend that they are able to use their property and preserve their rights of usage, fit into the streetscape, fit the Master Plan and fit all elements of this Ordinance because they meet every single one of them.

At 8:45 p.m. the Chairman opened the meeting to public comments.

Ms. Susan Friedlander, 1564 Henrietta, attorney for Birmingham Place Residential Condominium Association, made the following points:

- The City created the D-5 District for a singular and special purpose which was to bring several buildings into conforming status.
- The proposed building is not sandwiched between the 10-story Birmingham Place and the 15-story 555 Building - there is Hazel, a 50 ft. right-of-way that provides a proper transition between buildings. There is not even a height difference, because the building that is immediately adjacent to Hazel is 77 ft. tall. So if this proposed building went up to 80 ft, which it is allowed to do under D-4 it would be very consistent with the building right across the street. There would be a perfect transition. It would only be 34 ft. shorter than Birmingham Place.

- If the proposed building is zoned D-5, what about the building on the north, the Powerhouse Building, Jax Car Wash or the Varsity Building. Why shouldn't they get the D-5 Zoning as well?
- There is a process that must be followed so that property is not rezoned on an ad hoc and an arbitrary basis.

Mr. Tom Lasky, 2006 Cole, spoke in support of the rezoning request. This is the face of new Birmingham and will be done responsibly.

Mr. Mike Humphrey, who lives in Birmingham Place, said there is nothing in the record that shows that the D-5 Overlay was created to do anything other than to make the three tall existing buildings legal and conforming. The developer bought the property knowing how it was zoned; but now they say that they cannot develop a four or five-story mixed-use building there. If the City is going to change the Master Plan, go for it, but do it with professional study and community involvement; not a piece at a time.

Mr. David Nykian, 40700 Woodward Ave., said he represents some of the owners in the Birmingham Place Condominium. He believes the facts lead to the conclusion that the D-4 Zoning is actually clearly appropriate for this property:

- The D-5 District was created just to address the non-conformities of three buildings. So the City has already made the decision in the past as to what zoning is appropriate for this site.
- Nothing about the property has changed since then that should cause the City to alter its conclusion about what the appropriate height is.
- The height of the 555 Building on the north is 77 ft. So if the subject site were developed today under D-4, it could be taller than the 555 Building.
- Breaking up the building heights would provide more of an architectural character to the City than one monolithic height across the entire street.
- There is nothing under the D-4 Zoning classification that that would prohibit the developer from developing a mixed-use development.
- The only things that would change by amending the classification from D-4 to D-5 are the height of the building and the profit margin of the developer.

Mr. Mickey Schwartz, 411 Old Woodward Ave., stated that infill has nothing to do with height equality. So he thinks the developer has to have a better excuse for building a 10-story building. The small town feeling is what is unique about Birmingham. Deny the rezoning request.

Dr. Cynthia Neil, a resident of Birmingham Place, said she was deeply offended by the petitioner's statement that the development would not adversely affect the residents. From her balcony she would be able to bounce a tennis ball against the wall of the proposed building.

Mr. Chris Jonna, C&P Real Estate Group, spoke in support of the project. The applicant builds nothing but first-class buildings. Increasing the zoning classification will be a tremendous benefit to Downtown Birmingham by bringing in more people to the area.

Mr. Lewis Rockind, a resident of Birmingham Place, emphasized that the zoning has to be contemplated in the context of what is intended to be developed. As a resident of Birmingham Place he is looking at the detrimental effect on the surrounding properties of increased vehicle and pedestrian traffic.

Mr. Daniel Jacob, 261 E. Maple Rd., said he is 100% in support of the project. The intended use of the property is much needed and would be a huge benefit to the City. Birmingham is changing and this project moves with the times.

Mr. Joseph Shalala, 255 S. Old Woodward Ave., spoke in support of the proposed building. It will support all of the small businesses by bringing in people such as office, residential, and hotel users. All of those things combined will help Birmingham.

Ms. Tony Schwartz, 411 Old Woodward Ave., maintained that it is the height of the building that is in question here, not its quality. Secondly, traffic is a big problem on that corner. There is a new hotel that is starting to be built on the corner of Brown and Old Woodward which will add more traffic to that corner. She understands there may be a pool deck on the top floor of the proposed building - who is going to control music and noise and parties. She lives right across on the tenth floor.

Chairman Clein advised that concerns related to traffic and noise are not part of a rezoning but would be handled under a Site Plan Review, and should this be moved forward to a rezoning the applicant would be required to obtain a Special Land Use Permit ("SLUP") which allows the City Commission to put additional restriction on the uses of the building.

Mr. Duraid Markus, one of the partners in the ownership entity for 469-479 S. Old Woodward Ave. (former Mountain King and Talmer Bank), said if this happened in New York, Chicago or LA there would not be a single skyscraper built. He noted that everybody who opposes this is only one contingent, and it has not been the entire City that comes in to support or not support.

It makes sense to build where the project is harmonious and fits in with the rezoning proposal. For those reasons he asked the board to consider all of the comments and make the decision to allow them to rezone the parcel.

Ms. Wilma Thelman who lives in Birmingham Place said none of them have heard why a conforming building cannot be built on that site.

Mr. Jeffares noted that things change and now Birmingham holds 21 thousand people. Secondly he recalled that the Board did discuss rezoning the subject property; however there was nobody from there to make their case so the Board just rezoned the existing buildings.

Mr. Koseck advised that D-4 Zoning allows a building to be built to 80 ft. So it will already block six floors of Birmingham Place. He did not believe the applicant's contention that they cannot make a five-story building work. He thought that a five-story could be a successful mixed-use building. In some ways it might even fit the form and the transition better and the upper three floors of Birmingham Place will not be affected.

Ms. Whipple-Boyce said when the Board established the D-5 Zoning Classification she felt it applied to three specific buildings. In her mind it had to do with bringing non-conforming buildings into conformity so that they could qualify for financing and improve their properties. Thinking about some of the other properties that could be affected down the road that are adjacent to other properties like this is an unanswered question for her. It causes her to hesitate tonight on recommending the rezoning to D-5.

Mr. Boyle made the following points:

- The Master Plan is meant to have the ability to adapt to changing circumstances. Similarly, zoning is powerful when it is able to adapt. So, change is normal; it is not frequent, but it is usual.
- He was positive about the potential impact on the City as a whole of rezoning this property.
- The potential impact of rezoning on the contiguous properties will affect a number of people. The Board is here to determine who has the weight in this particular discussion, the entire City or the adjacent neighbors.
- There are checks and balances built into the system. If the rezoning were to be approved, the community would have two elements to be brought to the table. One would be the Site Plan Review process, and secondly the height would kick in the SLUP where the Planning Board can recommend controlling modifications to the City Commission who will hold a public hearing on the proposal.
- At the end of the day he is of a mind to approve the rezoning because overall he sees the benefits for the City and for this particular area. However, he does not underestimate the cost for the immediate residents in the contiguous building.

Ms. Ramin stated one of the burdens the applicant must carry to justify rezoning is an explanation of why the existing D-4 classification is no longer appropriate.

Mr. Duraid Markus said they cannot get in a hotel concept on this little parcel so they have to go vertical by a couple of floors. He has to be honest, it is the economics. He cannot get a development off the ground. They are not in the Parking Assessment District and are therefore limited by the required parking for an office building or a restaurant.

Answering Mr. Emerine, Ms. Ecker explained that anyone on any site on any site can apply for a rezoning to any of the existing zoning classifications.

Chairman Clein commented that rezoning is the most difficult thing the Board has to do - balancing the rights of adjacent land owners. To Ms. Ramin's point, the burden has not been met as to why a five-story building will not work. The answer that was given was economics, which has no place in a rezoning discussion. Therefore, he is not supportive of the rezoning.

Mr. Jeffares said he cannot come up with a reason for the height of the proposed building to be lower.

Ms. Whipple-Boyce indicated she has no problem with the subject building being built as high as Birmingham Place. But she doesn't think the applicant has made the case that they deserve to be rezoned and that the current zoning classification is no longer appropriate. She was appalled to hear the applicant say they bought this property and the only thing that will work there is a ten-story hotel and it should be rezoned because that is what they want to build. Therefore she doesn't think the applicant has proved their case.

Mr. Rattner noted that maybe the best thing for them to do is to ask for postponement so they can come back with a different plan. Chairman Clein stated that for him postponing would just be kicking the can down to another meeting. Mr. Boyle said he is in favor of not accepting that proposal and actually making a motion this evening.

Motion by Mr. Boyle

Seconded by Mr. Jeffares that based on a review of the rezoning request and supporting documentation submitted by the applicant, a review of the applicable Master Plan documents and the development trends in the area, the Planning Board

recommends APPROVAL to the City Commission for the rezoning of 469-479 S. Old Woodward Ave. from D-4 to D-5 in the Downtown Overlay.

There were no comments from the public on the motion at 10 p.m.

Motion failed, 2-5.

ROLLCALL VOTE

Yeas: Boyle, Jeffares

Nays: Clein, Koseck, Emerine, Ramin, Whipple-Boyce

Absent: Share, Williams

Motion by Ms. Whipple-Boyce

Seconded by Mr. Koseck to recommend DENIAL to the City Commission of the applicant's request for the rezoning of the property at 469-479 S. Old Woodward Ave. from D-4 to D-5 in the Downtown Overlay.

Motion carried, 5-2.

ROLLCALL VOTE

Yeas: Whipple-Boyce, Koseck, Clein, Emerine, Ramin

Nays: Jeffares, Whipple-Boyce

Absent: Share, Williams

06-114-18

PRELIMINARY SITE PLAN REVIEW AND COMMUNITY IMPACT STUDY ("CIS")

1. 469-479 S. Old Woodward Ave. (former Mountain King) - Application for Preliminary Site Plan and CIS to permit new construction of a nine-story mixed-use building

Motion by Mr. Boyle

Seconded by Ms. Whipple-Boyce to postpone this application to August 22, 2018 following the consideration of this rezoning application at the City Commission.

There was no discussion from the public on the motion at 10:02 p.m.

Motion carried, 7-0.

VOICE VOTE

Yeas: Boyle, Whipple-Boyce, Clein, Emerine, Jeffares, Koseck, Ramin

Nays: None

Absent: Share, Williams

06-115-18

MISCELLANEOUS BUSINESS AND COMMUNICATIONS

a. Communications (none)

b. Administrative Approval Requests

- 2211 Cole, Cole II - Approval for screening of two rooftop units.
- East of Woodward Ave. and north of Bennaville, parking lot - Renovate existing parking lot to increase number of parking spots, install new screen wall per code.
- Mr. Baka brought forward a request from a resident of Crosswinds to add to their outdoor deck motorized screening that rolls up and down. It is fastened to the building and would need a permit. The neighbor put one up too. Ms. Ecker said it is a design change from what was approved for the deck and there was not a Building Permit issued. Consensus was they should come to the Planning Board for approval and that Board members should visit the site.

c. Draft Agenda for the next Regular Planning Board Meeting of July 11, 2018

- Bistro Regulations;
- Ongoing discussion of first-floor retail;
- Discussion on parking.

d. Other Business

- Ms. Ecker noted the SLUP request for 191 N. Chester was approved at the City Commission to allow the office use in the old Church of Christ Scientist Bldg.
- The Hazel, Ravines, Downtown SLUP was also approved.
- Also, the Commission established the Master Plan Selection Committee.

06-116-18

PLANNING DIVISION ACTION ITEMS

Staff report on previous requests (none)

Additional items from tonight's meeting (none)

06-117-18

ADJOURNMENT

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

Jana L. Ecker
Planning Director

REZONING REQUEST FOR 469-479 S. OLD WOODWARD
SUMMARY OF PRIOR SUBMITTAL FROM THE APPLICANT AND
THE ANALYSIS & FINDINGS OF THE PLANNING DEPARTMENT'S REVIEW

Over the past several months, the applicant has submitted written documentation and evidence in support of applicant's application to rezone 469-479 S. Old Woodward to the D-5 Downtown Overlay District. In addition, the Planning Department has completed a thorough analysis of the applicant's request to rezone the subject property as well as all of the information that was submitted by the applicant during this rezoning process. The following is a summary of the Planning Department's analysis and findings under the City Ordinance regarding the applicant's request to rezone 469-479 S. Old Woodward:

- The subject site consists of two vacant, single story commercial buildings (Mountain King and First Place Bank).
- The 0.423-acre site includes two narrow parcels, one facing 3 streets (Old Woodward, Hazel and Woodward), and the other facing 2 streets (Old Woodward and Woodward).
- The rezoning request is made pursuant to Article 7, section 7.02 of the Zoning Code.
- Section 7.02(B)(2)(b)(i) – Due to the site configuration fronting S. Old Woodward, Hazel and Woodward, and the narrow lot size and the off-street parking requirements, rezoning is necessary to preserve enjoyment of rights and usage commonly associated with ownership.
- Section 7.02(B)(2)(b)(ii) – Current zoning is no longer appropriate due to off-site parking requirements, narrow lot size configurations, and frontages.
- Section 7.02(B)(2)(b)(iii) – Rezoning will not be detrimental to surrounding properties as the adjacent and abutting properties are zoned D-5, mixed retail, commercial and residential properties, and applicant's proposal will add consistency to the streetscape in mass and architectural detail.
- Section 7.02(B)(5)(a) -- The objectives of the City's master plan and 2016 Plan are met by the rezoning as the proposed streetscape will improve the frontages of S. Old Woodward, Hazel and Woodward and project a strong image of the City toward Woodward with similar massing and architectural detail to adjacent buildings.
- Section 7.02(B)(5)(b) -- The existing uses of property in the general area align with applicant's proposed rezoning. Both the Birmingham Place and the 555 Building (neighboring properties) are mixed use buildings with both retail, commercial and residential uses. Properties to the east and west of the subject property are used for parking, retail and commercial.
- Section 7.02(B)(5)(c) -- Both neighboring properties are zoned in the D-5 Overlay Zone.
- Section 7.02(B)(5)(d) – The applicant's property is suitable for uses in the D-5 which are the same as in the current D-4 Zone. However, if a 5-story or less building is constructed under the D-4 at the site, it would be completely dominated by and inconsistent with the height of the neighboring Birmingham Place and 555 Building.
- Section 7.02(B)(5)(e) – The requested rezoning is consistent with the trend of development of this area of S. Old Woodward which is dominated by the height of the 555 Building and Birmingham Place.
- Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable master plan documents, current zoning and recent development trends in the area, the Planning Department finds that the applicant meets the established Zoning Ordinance requirements of Article 7, section 7.02(B)(5) to qualify for a rezoning of the property from D-4 to D-5 in the Downtown Overlay district.

RE: Scheduling of Hearing Before Planning Commission - 469 and 479 S Old Woodward (Collectively "Property")

1 message

Richard Rattner <RDRattner@wwrplaw.com>
To: Jana Ecker <Jecker@bhamgov.org>

Mon, Jan 27, 2020 at 4:25 PM

Jana:

Thanks for your response.

Rick



Richard D. Rattner

380 North Old Woodward Avenue, Suite 300

Birmingham, Michigan 48009

Main: (248) 642-0333 • Fax (248) 642-0856

rdr@wwrplaw.com



[Bio](#)

[vCard](#)

wwrplaw.com

From: Jana Ecker <Jecker@bhamgov.org>
Sent: Monday, January 27, 2020 4:17 PM
To: Richard Rattner <RDRattner@WWRPLaw.com>
Cc: Doraide Marcus (dmarkus@markusllc.com.) <dmarkus@markusllc.com>; Christopher Longe (cjlonge@cjlongeaia.com) <cjlonge@cjlongeaia.com>
Subject: Re: Scheduling of Hearing Before Planning Commission - 469 and 479 S Old Woodward (Collectively "Property")

Good afternoon,

I received your email and I confirm that the rezoning request for [469 - 479 S. Old Woodward](#) will be placed on the February 27, 2020 meeting of the Planning Board.

Jana

On Mon, Jan 27, 2020 at 3:07 PM Richard Rattner <RDRattner@wwrplaw.com> wrote:

Ms. Ecker:

Pursuant to our prior discussions, please accept this email as our client's request to be added to the Agenda of the Planning Board meeting, scheduled for February 27, 2020. The subject of the hearing is the continuation of the hearing on the application to include 469 and [479 S. Old Woodward, Birmingham, MI](#) in the D-5 Downtown Birmingham Overlay

District Zone ("Application"). The Application and supporting information was filed with the Planning Department and, after a hearing at the Planning Board, the matter was heard by the City Commission on March 11, 2019. The City Commission took no action on the matter. Since the March 11, 2019 meeting, the Planning Board has reviewed certain issues to clarify the language of the D-5 Overlay Ordinance. Now that those discussions have been held, our client now request that the Application for rezoning now be added to the Agenda for the February 27, 2020, hearing at the Planning Board.

Please confirm that this matter has been added to the agenda.

Thank you for your attention to this matter.

Rick Rattner



Richard D. Rattner

380 North Old Woodward Avenue, Suite 300

Birmingham, Michigan 48009

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rdr@wwrplaw.com



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--

Jana L. Ecker

Planning Director

City of Birmingham

248-530-1841

An aerial view of a multi-story brick building with a white cornice. The building is located at 469/479 S. Old Woodward Avenue. The sky is clear and blue.

469/479 S. Old Woodward Avenue

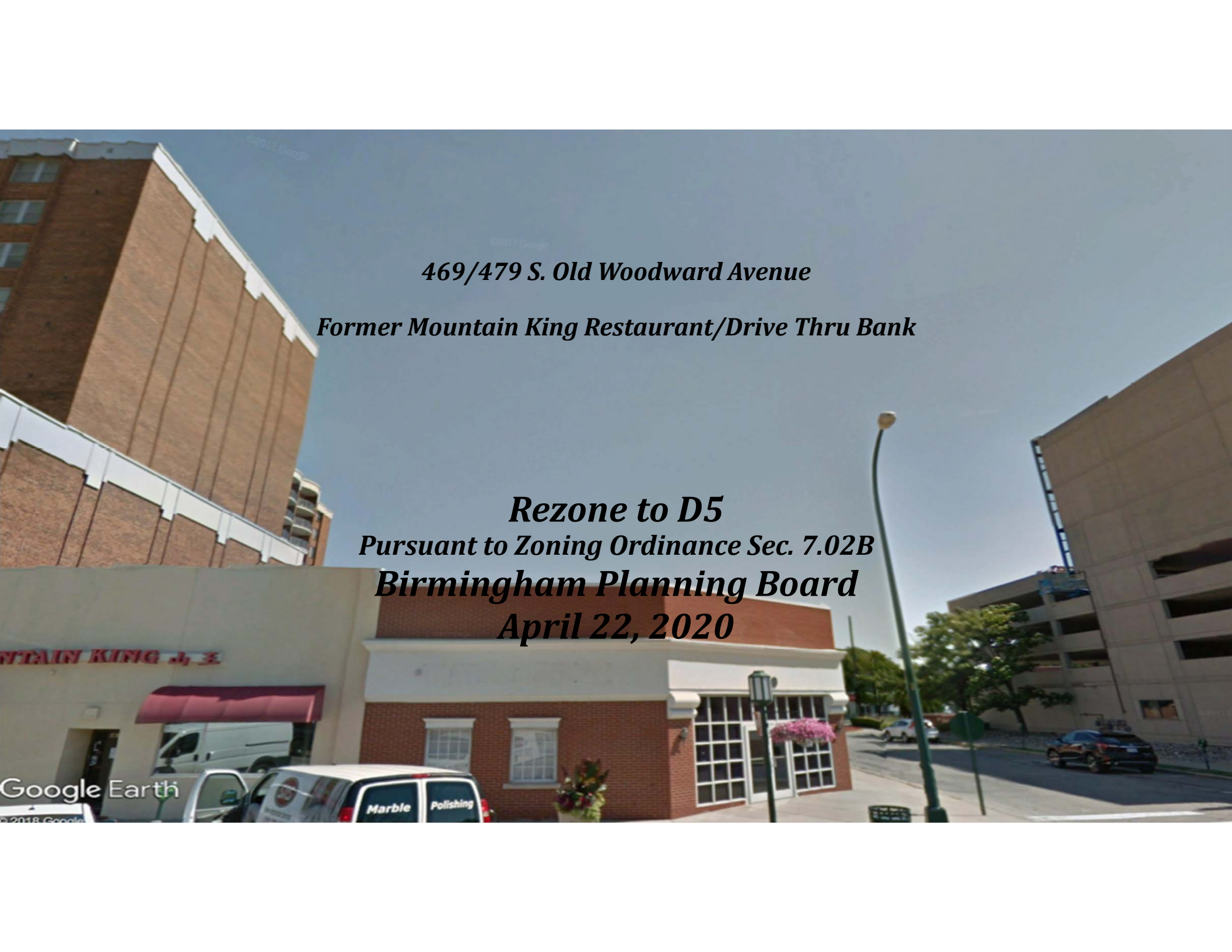
Former Mountain King Restaurant/Drive Thru Bank

Rezone to D5

Pursuant to Zoning Ordinance Sec. 7.02B

Birmingham Planning Board

April 22, 2020

A street-level view of the building. The ground floor is white with large windows, and the upper floors are brick. A red awning is over the entrance. A white van is parked in front. A street lamp and a green sign are visible on the sidewalk. A black car is parked on the street. The sky is clear and blue.

Google Earth



D5 Is the Culmination of Exhaustive Study

- ✓ Contemplated for 2 years before enacted
- ✓ Many study sessions, discussions, and public meetings
- ✓ Advertised and noticed
- ✓ Considered many different options
- ✓ Multiple iterations of draft amendments
- ✓ Studied entire downtown area and study by planning
 - ✓ Consultant targeting this specific area of downtown

Article 1, Section 1.04

From 2016 Plan, Vision Statement



D5 will “reinforce [an] identifiable district in the Downtown to provide a sense of place.”



D5 will allow for a “diverse mix of uses, including [street-level] retail, commercial . . . and especially residential.”



D5 will allow a building that is “compatible, in mass and scale, with its immediate surroundings.”

Establishment of Overlay Districts in 2016 Plan Ord. Art I,1.12,A

- The overlay districts ...have been established to add additional and unique development standards which will better help the City of Birmingham accomplish the goals of the Downtown Birmingham 2016 Plan...”

D-5 Zoning Satisfies the Required Basic Provisions of Sec. 1.04 and Ord. Sec. 7.02(B)(2)(b)(i-iii)

- **D-5 Satisfies Purpose of Zoning Ordinance Sec. 1.04**
- **Rezoning Preserves Enjoyment of Rights and Usage Associated with Ownership Ord. Sec. 7.02(B)(2)(b)(i)**
- **Existing Zoning Not Appropriate Ord. Sec. 7.02(B)(2)(b)(ii)**
- **Rezoning is Not Detrimental to Surrounding Properties Sec. 7.02(B)(2)(b)(iii)**
- **D-5 Satisfies Purpose of Zoning Ordinance Sec. 1.04**

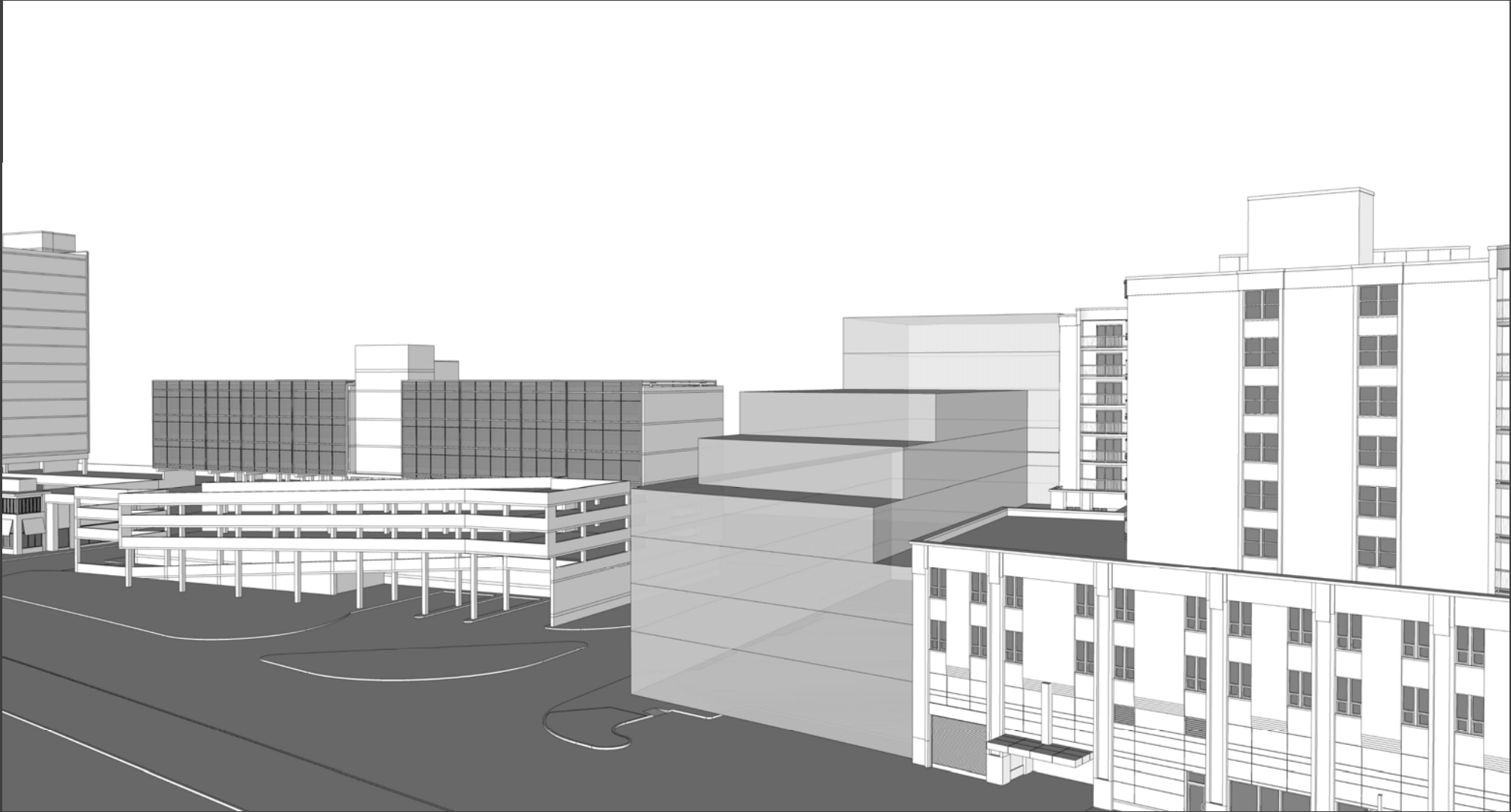
APPLICANT HAS DEMONSTRATED 5 FINDINGS OF ORDINANCE
SEC. 7.02(B)(5)(a)-(e)

- ✓ Sec. 7.02(B)(5)(a) – conforms to the City's Master Plan and 2016 Plan
- ✓ Sec. 7.02(B)(5)(b) – The proposed mixed uses of the subject property (retail, residential, and hotel) are consistent with existing uses in the neighborhood.
- ✓ Sec. 7.02(B)(5)(c) – Properties in the general area (abutting and adjacent) are zoned D-5.
- ✓ Sec. 7.02(B)(5)(d) – Property is not suitable to the uses permitted under existing zoning due to constraints of the property and the relationship to neighboring property.
- ✓ Sec. 7.02(B)(5)(e) – Trend of development in the area favours D-5 zoning.

City Action

- The City, after consideration, has already amended the new D5 proposed ordinance language







dmarkus@markusllc.com





Thank You

***Rezone to D5
Pursuant to Zoning Ordinance Sec. 7.02B
Birmingham Planning Board
April 22, 2020***

Google Earth

CITY OF BIRMINGHAM
ORDINANCE NO.

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

**TO AMEND ARTICLE 3, OVERLAY DISTRICTS, SECTION 3.04(A) TO AMEND THE
BUILDING HEIGHT STANDARDS IN THE D5 ZONE OF THE DOWNTOWN
BIRMINGHAM OVERLAY DISTRICT.**

Article 3, section 3.04 (A) of the Zoning Ordinance:

New buildings constructed or additions to existing buildings in the D5 Zone must meet the requirements of the Downtown Birmingham Overlay District and the D4 Zone, except that the height of any addition and new construction in the D5 Zone may be over the maximum building height up to, but not exceeding, the height of an existing building ~~in the~~ **on a directly abutting** D5 Zone **property**, ~~to which they are immediately adjacent or abutting~~ if the property owner agrees to the construction of the building under the provisions of a Special Land Use Permit. **For the purposes of this section, private properties separated by public property (including public right-of-way and public vias), will not be deemed abutting.**

ORDAINED this _____ publication day of _____, 2020 to become effective 7 days after publication.

Pierre Boutros, Mayor

Cheryl Arft, Acting City Clerk

CITY OF BIRMINGHAM
ORDINANCE NO.

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

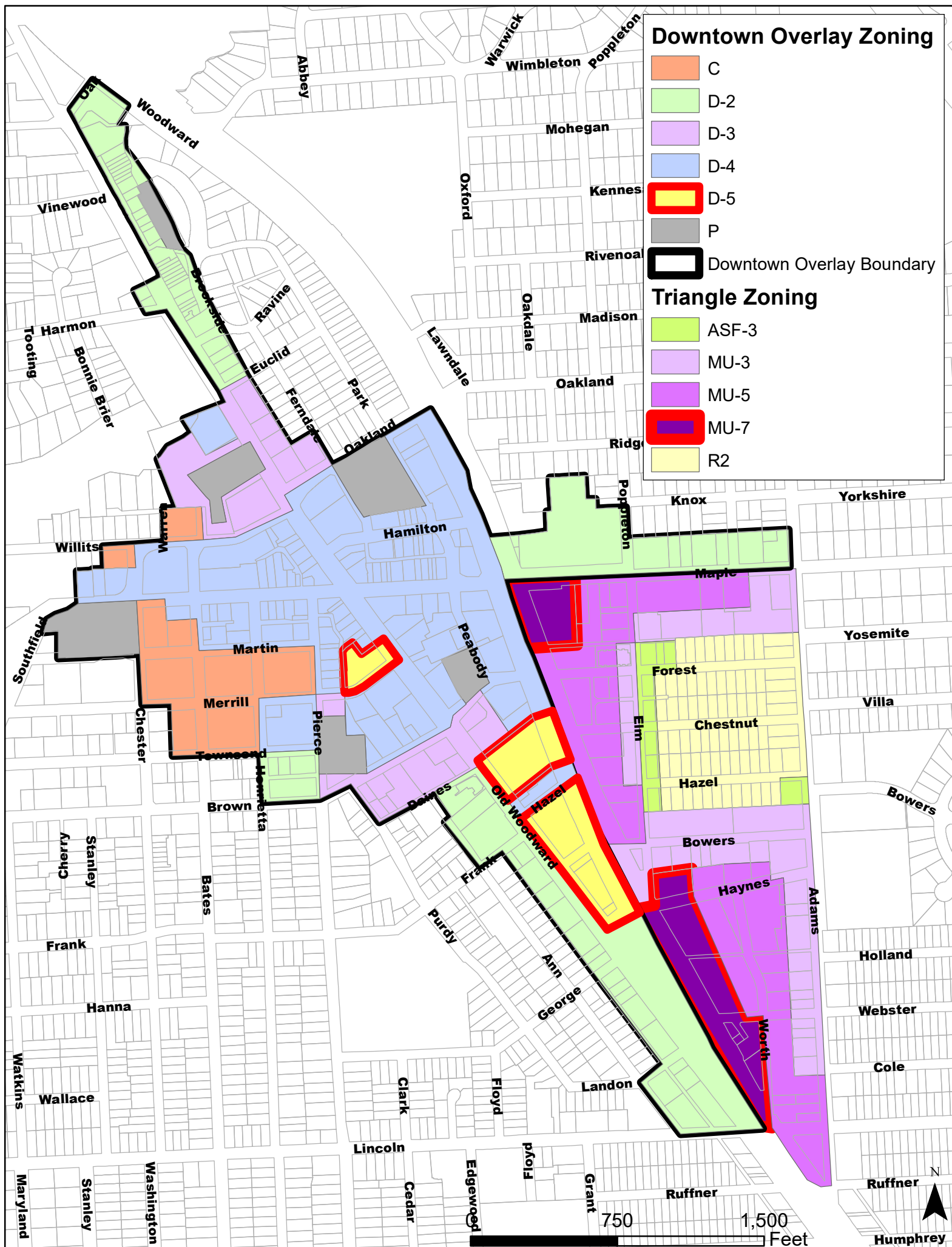
**TO AMEND ARTICLE 9, DEFINITIONS, SECTION 9.02 TO DEFINE THE TERM
ABUTTING.**

Abutting: Sharing a boundary or property line.

ORDAINED this _____ publication day of _____, 2020 to become effective 7 days
after publication.

Pierre Boutros, Mayor

Cheryl Arft, Acting City Clerk



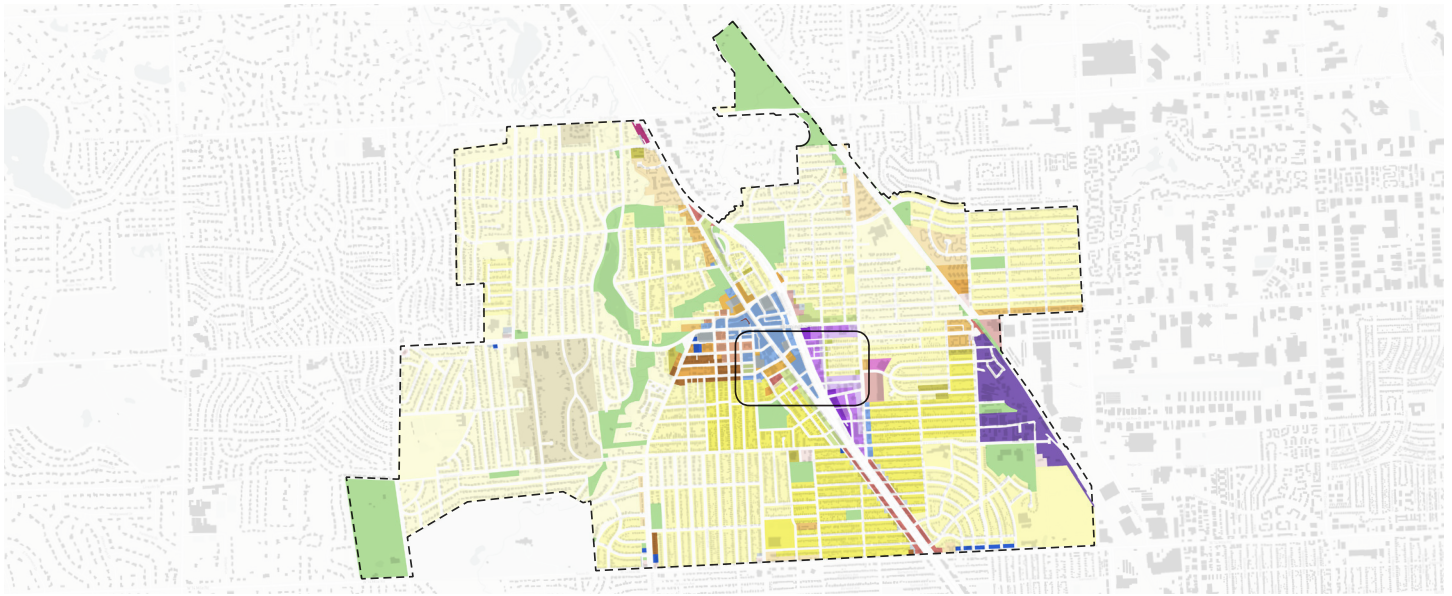


D5 STUDY

DPZ
CODESIGN

D5 Study

Purpose



Purpose:

To conduct a focused study of the area in Downtown Birmingham bounded by Haynes, Brown, Old Woodward and Woodward Avenue and make recommendations as to which properties should be considered for rezoning to D5 given their proximity to properties with existing buildings over 5 stories in height, to properties that are currently zoned to allow greater than 5 stories of height or due to other identified factors.

The Planning Board would then review the recommendations and use them to assist in clarifying the terms “abutting” and “adjacent” with regards to the D5 zone.

Zoning Enabling Act Reference:

125.3201 Regulation of land development and establishment of districts; provisions; uniformity of regulations; designations; limitations.

Sec. 201.

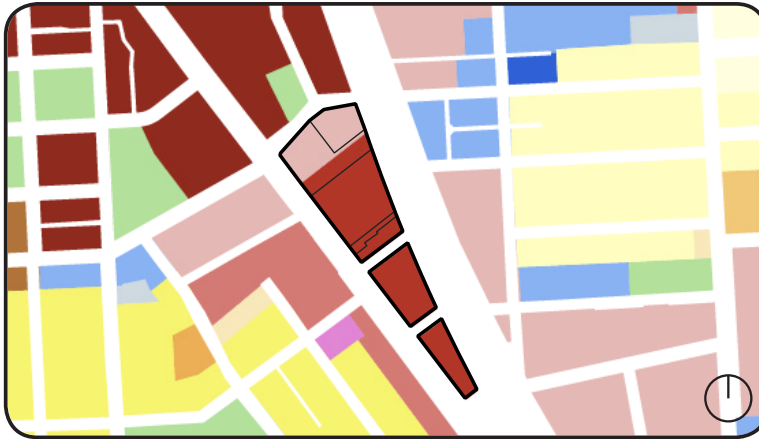
1. A local unit of government may provide by zoning ordinance for the regulation of land development and the establishment of 1 or more districts within its zoning jurisdiction which regulate the use of land and structures to meet the needs of the state’s citizens for food, fiber, energy, and other natural resources, places of

residence, recreation, industry, trade, service, and other uses of land, to ensure that use of the land is situated in appropriate locations and relationships, to limit the inappropriate overcrowding of land and congestion of population, transportation systems, and other public facilities, to facilitate adequate and efficient provision for transportation systems, sewage disposal, water, energy, education, recreation, and other public service and facility requirements, and to promote public health, safety, and welfare.

2. Except as otherwise provided under this act, the regulations shall be uniform for each class of land or buildings, dwellings, and structures within a district.
3. A local unit of government may provide under the zoning ordinance for the regulation of land development and the establishment of districts which apply only to land areas and activities involved in a special program to achieve specific land management objectives and avert or solve specific land use problems, including the regulation of land development and the establishment of districts in areas subject to damage from flooding or beach erosion.
4. A local unit of government may adopt land development regulations under the zoning ordinance designating or limiting the location, height, bulk, number of stories, uses, and size of dwellings, buildings, and structures that may be erected or altered, including tents and recreational vehicles.

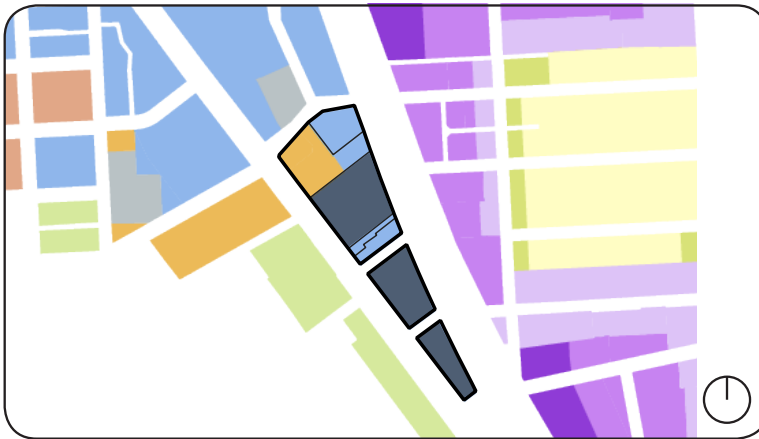
D5 Study Background

Zoning



Zoning district	max height
R3 SFR	28'
R5 MFR	30'
R7 MFR	50'
TZ1 attached SFR	35'
B-2 general business	40'
B-2B general business	40'
B-3 office-residential	60'
B-4 business-residential	60'
0-1 office	28'
0-2 office commercial	28'
P parking	50'
PP public property	-

Overlay zoning



Downtown overlay	max height
C community use	-
D2 3-story development	56'
D3 4-story development	68'
D4 5-story development	80'
D5 special land use	by permit
P parking structures	50'
Triangle overlay	max height
ASF-3 SFR	35'
R2 MFR	30'
MU-3 MFR	60'
MU-5 attached SF	82'
MU-7 general business	118'

Background:

The D5 zone is an overlay zone within the Downtown Birmingham Overlay District (DBOD), which is intended to implement the Downtown Birmingham 2016 Plan. Originally, the DBOD included 3 overlay zones: D2, D3, and D4, as well as Civic and Parking zones for parks and public parking. The D5 zone was established in order to make three otherwise legally non-conforming buildings legally conforming, two of which are within the study area. Prior to D5, the three non-conforming buildings fell within the D4 district, which restricts buildings to 5 stories if the upper floor is residential and 4 stories otherwise. The D5 district permits building height per the D4 requirements, except where a Special Land Use Permit (SLUP) allows heights over 5 stories. Above 5 stories there is no specified limit, outside of the subjective evaluation requirements of the SLUP process requiring recommendation of the Planning Board and approval of the City Commission.

The study area includes D5, D4, and D3 overlay zones, which are mapped over B-3, office-residential, and B-2, general business. D3 limits height to 4 stories where the upper floor is residential and 3 stories otherwise. The limits for D4 were previously stated. Properties mapped with D5 include two existing structures which exceeded 5 stories prior to the DBOD. The D3 and D4 district boundaries do not coincide with property lines at the northern end of the study area where one property is mapped with both D3 and D4. This is likely due to the location of Downtown Overlay zones recommended within the 2016 Plan which were drawn by hand prior to widespread adoption of GIS. Within the mid-block, there are two small properties mapped with D4, properties to the south and north of these being D5. See the map above and on the following page with D5 in dark gray, D4 in light blue, D3 in orange, and D2 in light green. The light gray parcels are public parking.

D5 Study

Background

Effective zoning within and around the study area



The current City Master Plan, from 1980, had recommended reducing the overall development capacity within Downtown from its 4 story limit at the time to 2 stories, due to parking limitations. The buildings which required the D5 zone had already been constructed, and some indicate that their presence at the time is in part what instigated the desire for a Master Plan update in 1980. The 555 Building is specifically discussed in the Master Plan as being out of character due to its bulk, not necessarily its height. The Master Plan also indicates that other high-rise buildings may be appropriate within the downtown to accentuate the skyline, provided careful regulation to ensure compatibility. At the time, most of Downtown was 2 stories or below, with a few taller buildings. The incompatibility between the higher buildings and 2 story downtown as a general practice is noted. Discussion of the Merrillwood Building, a 6 story building which steps back at the 3rd floor, states

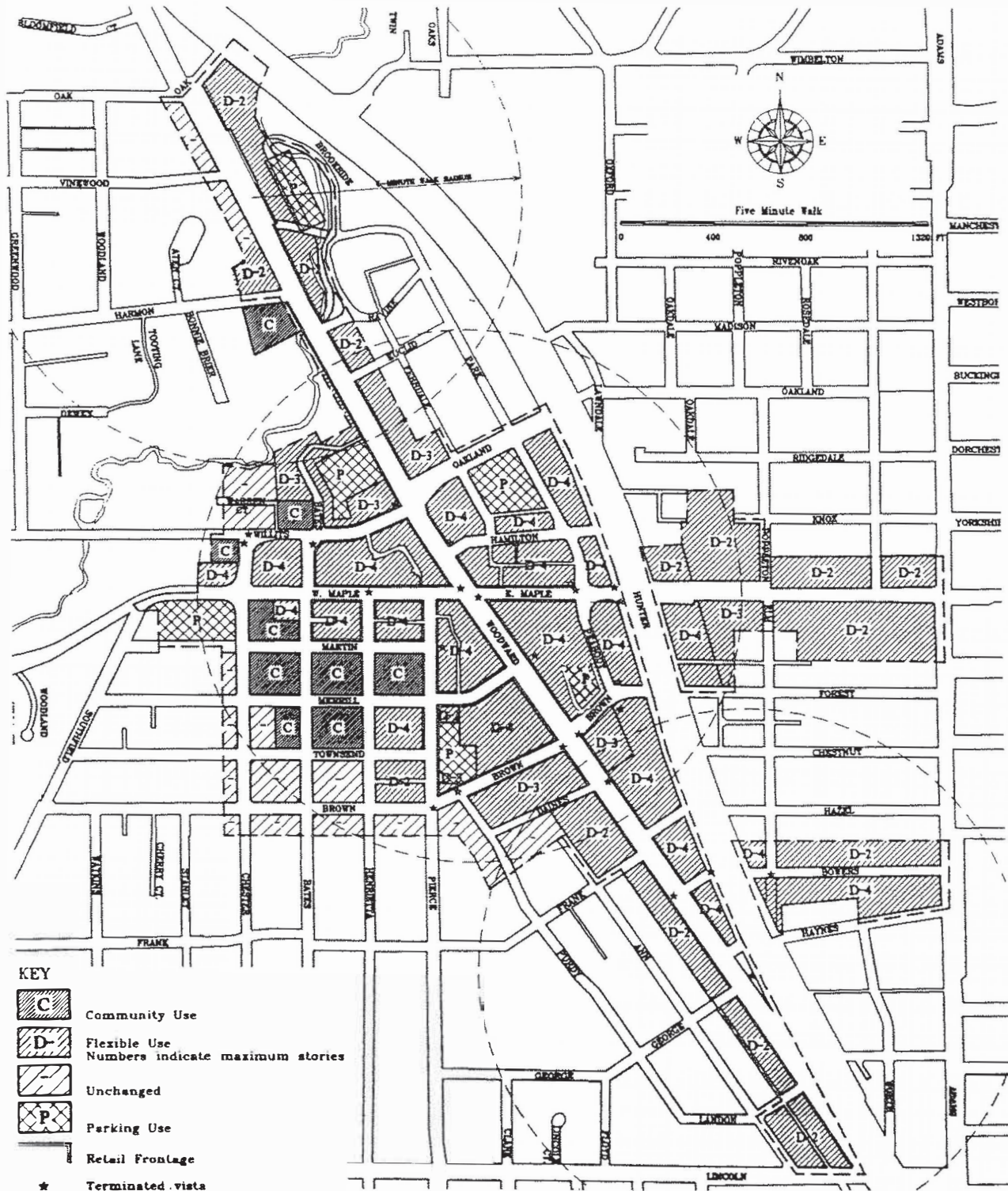
that its corner location is appropriate for taller buildings as a compliment to the otherwise low height of Downtown.

The Downtown Birmingham 2016 plan provided a recommended overlay district for Downtown and discussed heights such that the area generally retain a cap of five stories as most traditional American downtowns are between 2 and 4 stories. The Downtown Overlay District follows the height recommendations of the 2016 plan and zoning district boundary recommendations, shown below, with the exception of D5 which was added later. The boundary between D3 and D4 within the study area that does not coincide with property lines is a result of this map. Presumably, since D4 generally surrounds the area, the D3 portion is intended to preserve an existing historic building. Across Old Woodward, D3 and D2 districts are intended to provide a transition to the adjacent neighborhood.

Downtown Birmingham 2016

APPENDIX F – 2

BUILDING 1: REGULATING PLAN



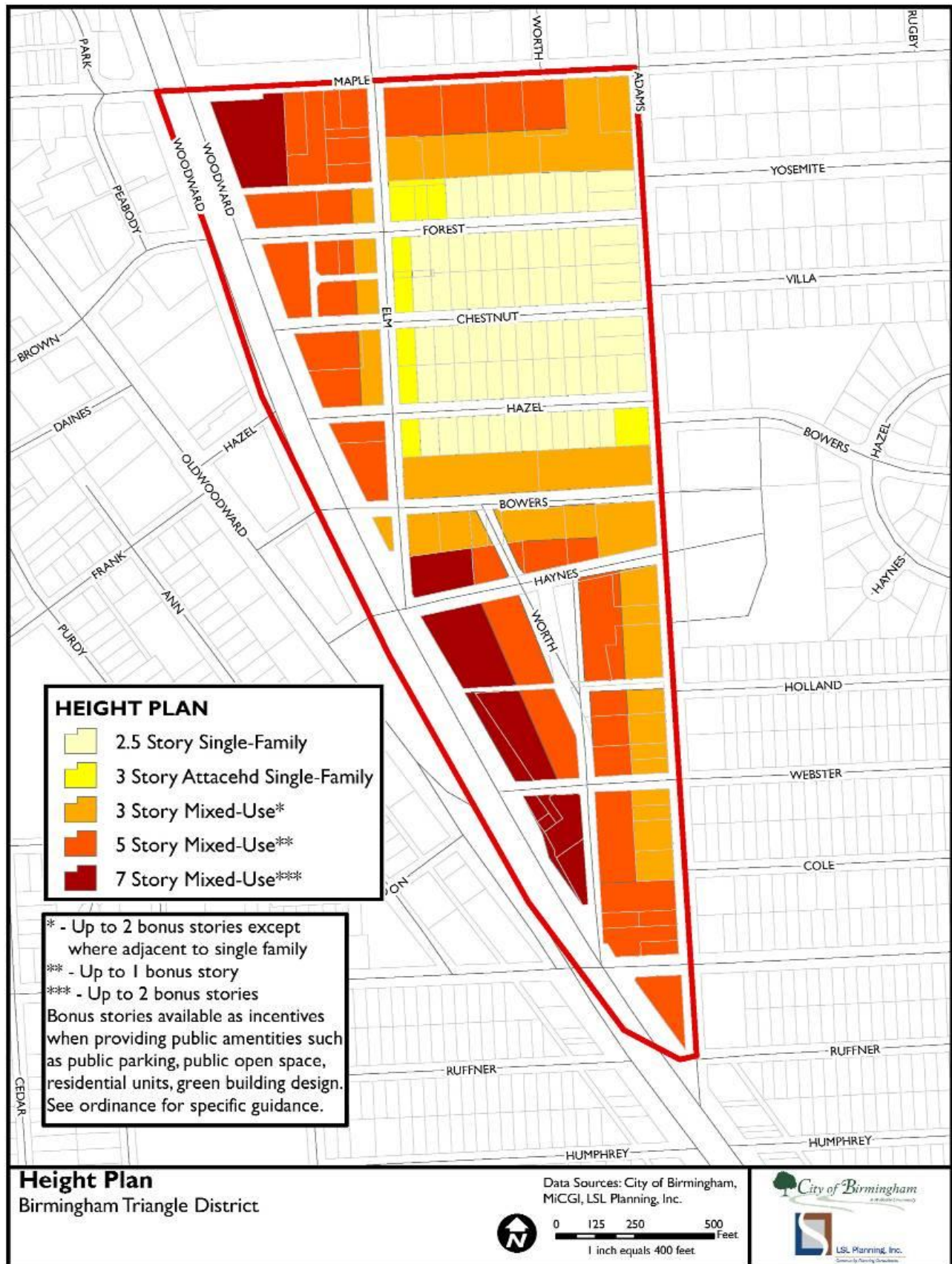
REGULATING PLAN OF THE DOWNTOWN BIRMINGHAM OVERLAY ZONING DISTRICT

D5 Study

Background

In addition to the core Downtown, the vision for the Triangle District, updated in 2007, is important contextually. Both the study area and the Triangle District frame the vision of Downtown Birmingham along big Woodward. The Triangle District Plan recommends that taller mixed-use buildings be located along Woodward, 7 to 9 stories, with medium height mixed-use buildings, 3 to 6 stories, within the District's interior. In all cases, the maximum permitted height is unclear due to the use of height bonuses where each stated height district can be increased in height, such as 3 Story Mixed-Use qualifying for 5 story buildings. The allocation of height and the Triangle District Overlay focus heavily on transitions to adjacent neighborhoods, especially the single-family housing which remains within the District. The study area is generally adjacent to areas of 5 to 6 story mixed-use buildings, due to the adjacency of those properties to residences along Forest, Chestnut, and Hazel. As apparent at Maple and Woodward and at Haynes and south along Woodward, the 7 to 9 story district would be mapped along the entirety of Woodward if residences were further, transitioning upward from the 5 to 6 story district.

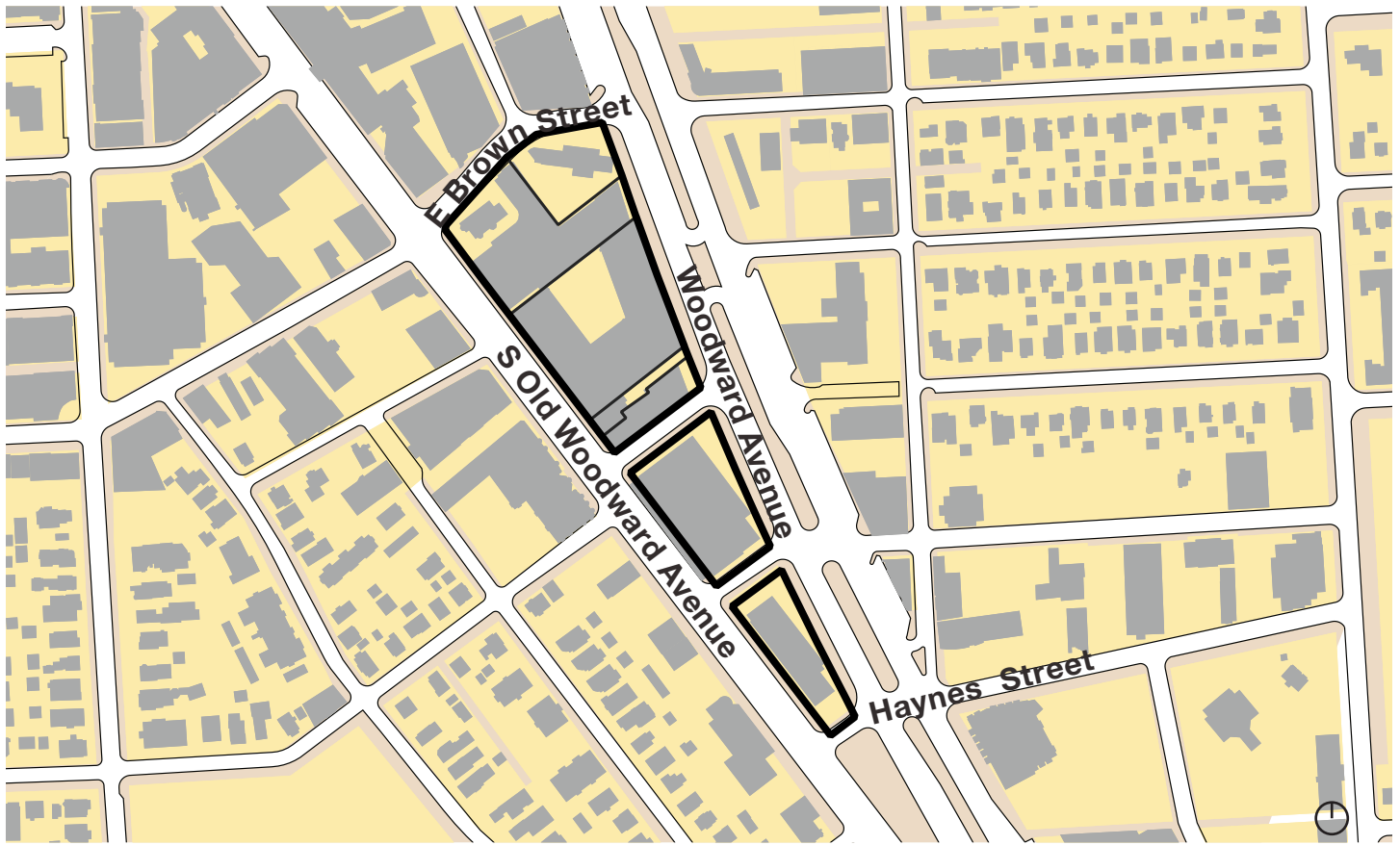
The Birmingham Plan for 2040, currently in progress, has proposed that Downtown Birmingham be considered to include 3 districts: Market North, Maple and Woodward, and Haynes Square. This proposal is aimed at bridging the Woodward divide and at improving the quality of retail and development along south Old Woodward. Presently, the experience of travel along Woodward is that one drives by Downtown Birmingham, rather than through Downtown Birmingham. The 2040 plan intends to change this perception to one of driving through the core of Downtown Birmingham. The study area occurs at a key seam between Haynes Square and Maple and Woodward, framing the northern end of Haynes Square. The concept for Haynes Square is to connect Old Woodward with big Woodward at a right-angle, accompanied by a public open space, the square. This alleviates the dangerous traffic condition at the current intersection of these roads, and provides a central public space to mark the entrance to greater Downtown Birmingham.



D5 Study

Discussion and Recommendation

Current Building Footprints



Discussion:

In order to evaluate the request, DPZ Partners Matthew Lambert and Marina Khoury discussed the conditions of the study area and surrounding Downtown Districts. Marina was consulted due to her extensive code experience and her lack of familiarity with the specifics of Birmingham, and objective party. Matthew provided familiarity with the conditions of the study area, the 2040 plan in progress, and the reason for this request.

Prior to being informed about further specifics, Marina was provided the information included in the Background section of this document, including the 3d models of the current conditions and present zoning allowances. Her initial take away was based upon 3 assertions:

1. Nothing in the present assignment of height through zoning justifies retaining a lower height for any properties within the study area.
2. Zones should generally be contiguous.
3. The design of buildings has a greater impact on compatibility than height.

Initial assertions from Marina reinforced the conclusions that Matthew had also arrived at. Further discussion ensued, addressing other issues of design compatibility and public benefit that are beyond the scope of the request, and addressed through the existing Special Land Use Permit (SLUP) process that is embedded in the D5 zone.

D5 Study

Discussion and Recommendation

Overall, it is clear that the entire study area merits rezoning to D5. This triangle of land occupies a very special position in Downtown Birmingham where Woodward and Old Woodward separate from each other. Already, the study area has been developed at a scale above the majority of the downtown area. Were the Triangle District height map extended in concept across Woodward, the study area would be mapped with the 7 to 9 story district. The most significant position within the study area is the site of the 555 building, which merits the greatest height. The remainder of the study area provides background to that key site: a podium which is capped by place where the Woodwards meet.

Impact overall must also be addressed. The sites within the study area that are not currently D5 would only impact directly abutting (sharing a property line) properties, Birmingham Place, which is already a taller building within D5. Context is established by the nearby properties, which includes the 555 building even though it is in the study area, properties zoned between 6 and 9 stories in the Triangle District, and 4 to 5 story properties within the overall Downtown District. Old Woodward and Woodward are both very wide roads where taller buildings on one side of the road have a limited impact on those adjacent properties across the road. In fact, due to the size of both roads, they require taller buildings to create a street room, greater height along Woodward than Old Woodward, as is recognized by the Triangle District zoning. Brown is also a relatively wide road, a portion of which is occupied by a parking structure. Taller buildings along the south side of Brown may require one or more stepbacks, which is already provided for in D4 and further requirements possible through D5's SLUP process. Hazel is the street where nearby properties are most impacted, however the only impacted property is the 555 building which is already tall and presents a mostly blank wall to the north.

One concern remains which is the preservation of the Ford-Peabody Mansion. This concern reflects the Downtown Overlay mapping of the 2016 Plan. While presently a listed historic resource, the Historic Preservation Ordinance provides little protection for the building overall. While the allocation of heights and zoning districts is not necessarily to be concerned with preservation in a downtown area, allocating significant additional height may induce development and loss of the historic asset. Yet the mansion could be relocated were the site to be redeveloped. This is a consideration left for the appointed boards and elected officials to address. Concerning the specifics of the request made, setting aside the question of historic significance, this site would also qualify for rezoning to D5.

Lastly, we want to reiterate an important point: the design of buildings is more impactful to compatibility than height. This sentiment was discussed at length in review of the study area, and also stated in the 1980 Master Plan which considered this same issue of the impact of height on the city. As also stated in the 1980 plan, the design of the 555 building was considered to be less compatible due to the long mass of the larger portion of the building. Should the study area be rezoned to D5 as recommended, it is incumbent upon the Planning Board and City Commission to ensure that the massing and design of any new building is compatible with the context.

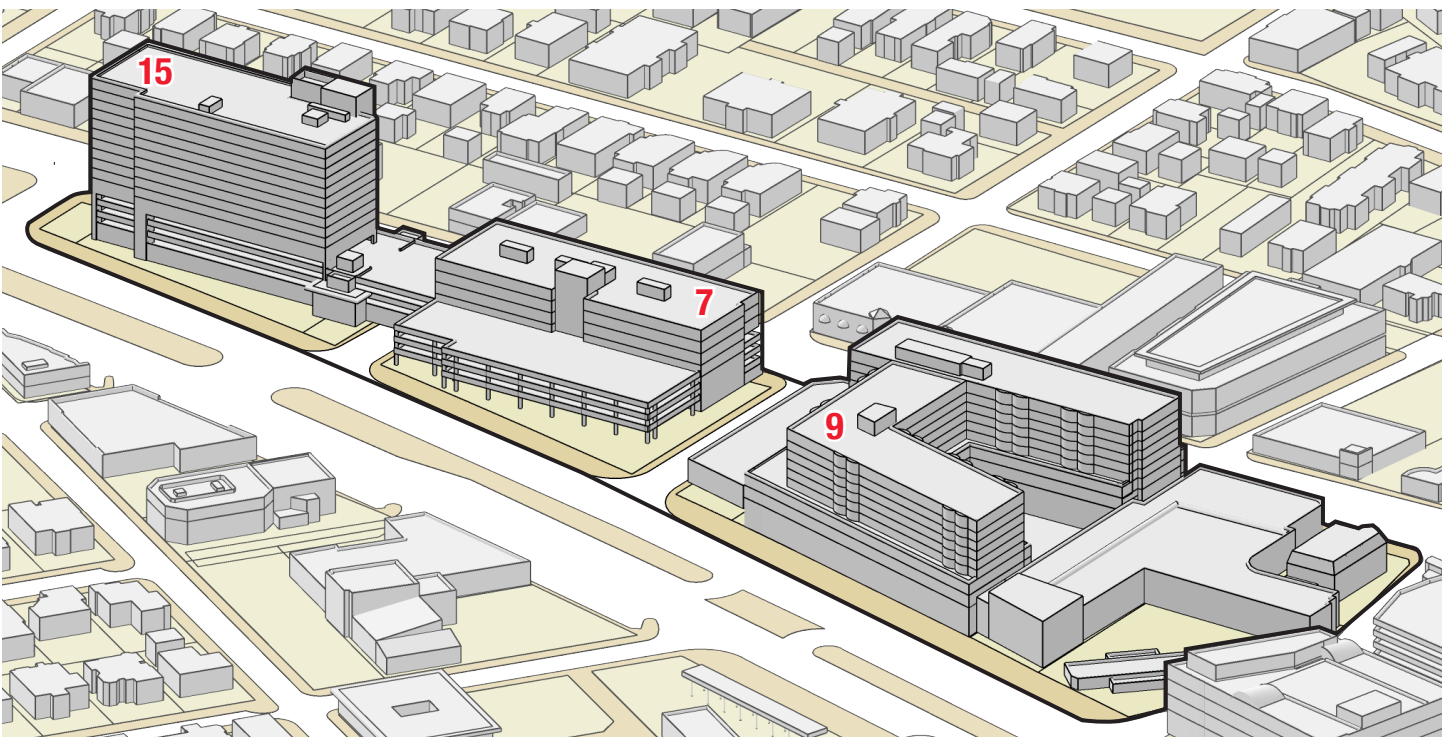
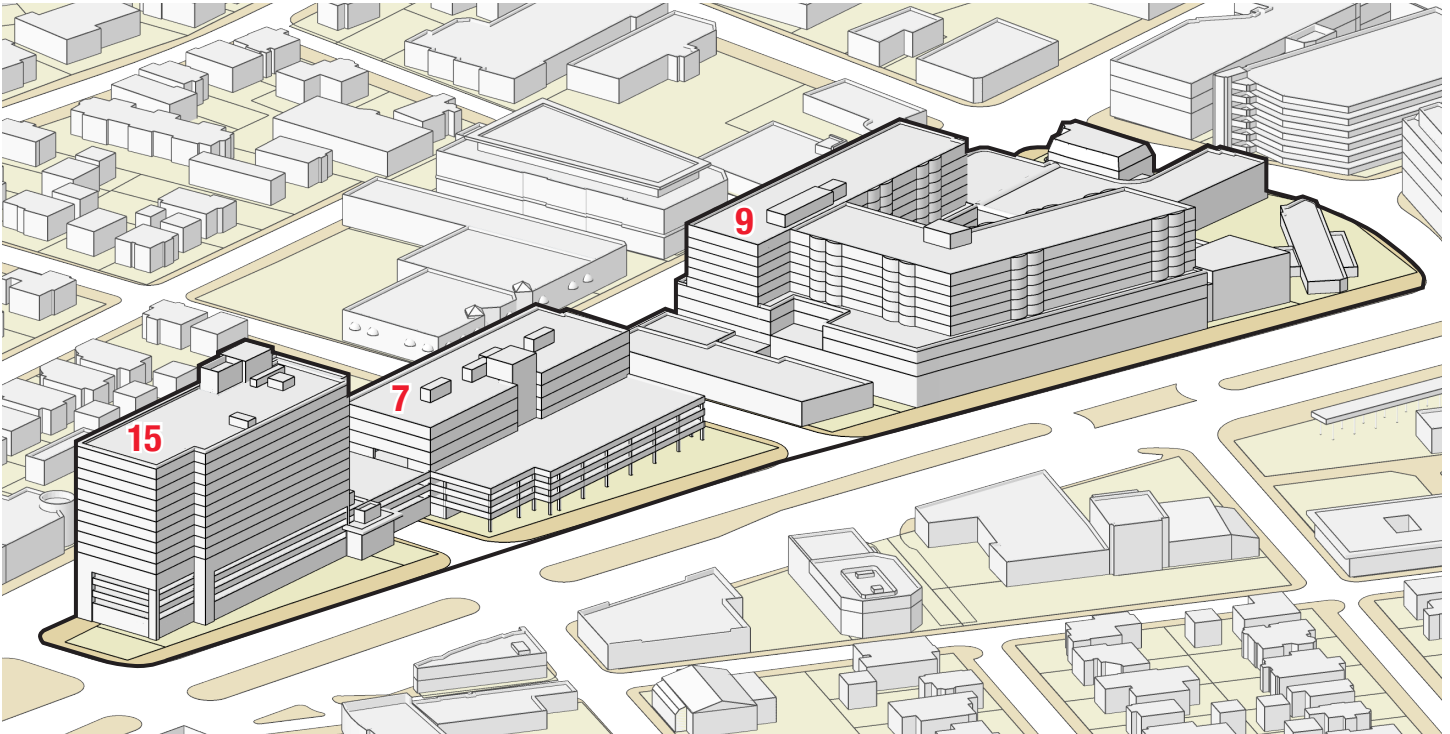
Recommendation:

All properties within the study area should be eligible for rezoning to D5, with the potential exception of the Ford-Peabody Mansion for considerations related to preservation.

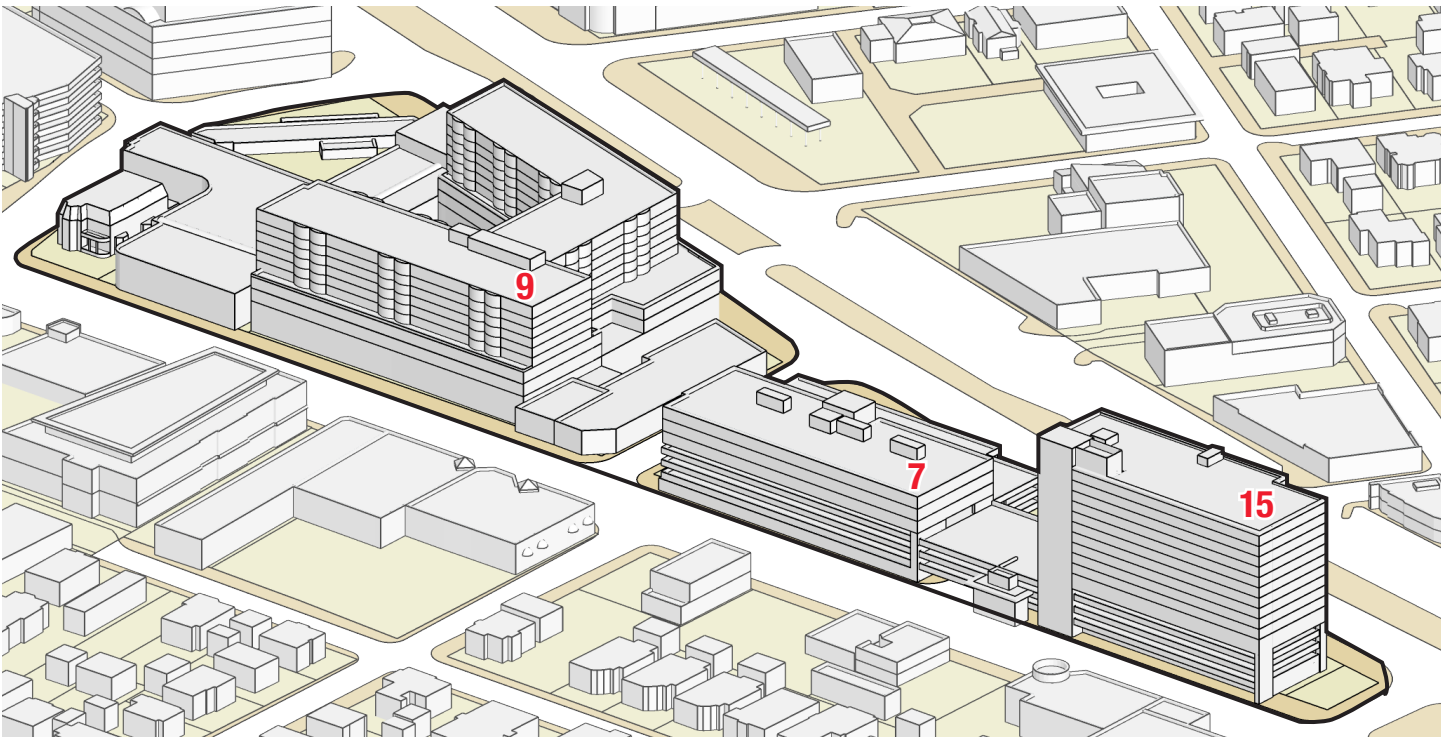
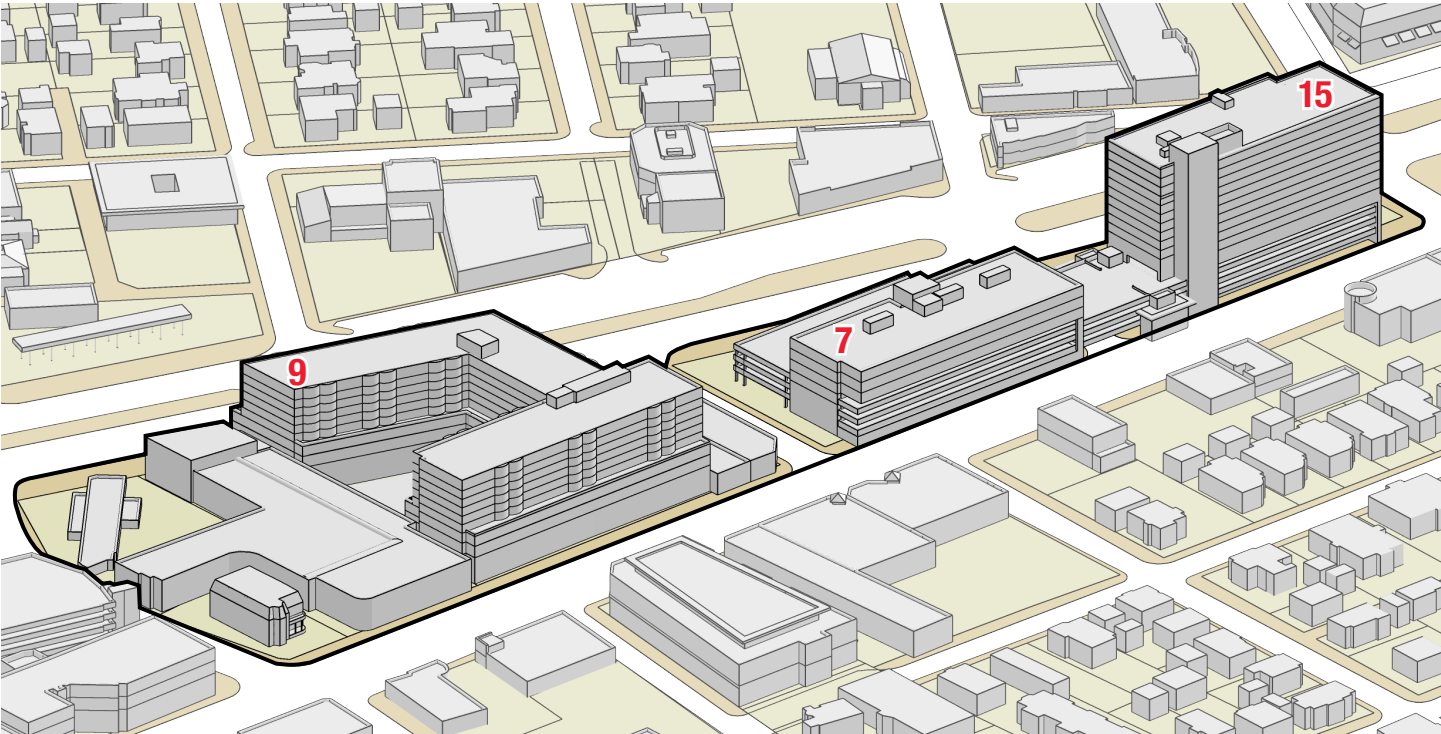
D5 Study

Massing Studies - Existing condition

Height of buildings in stories



Height of buildings in stories



D5 Study

Massing Studies - Development potential under current zoning

Downtown Overlay

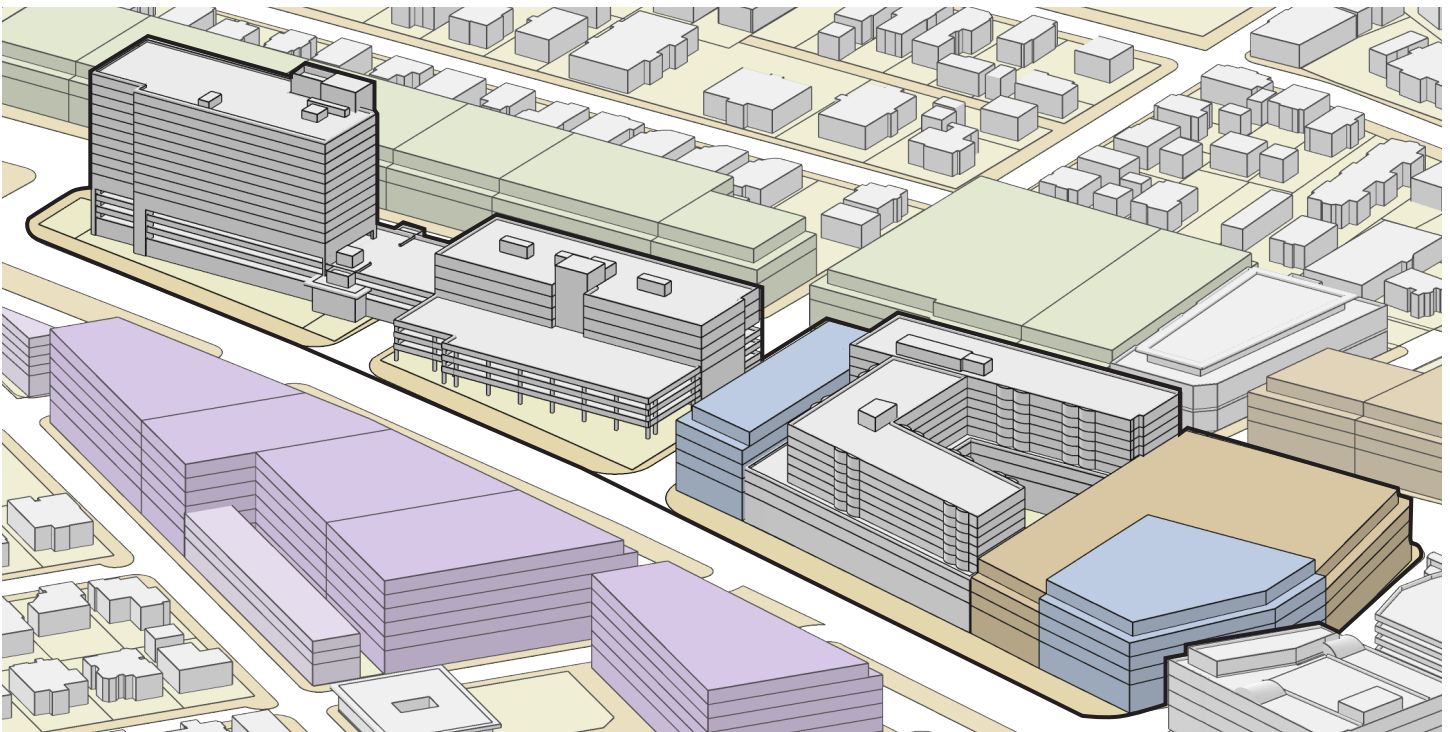
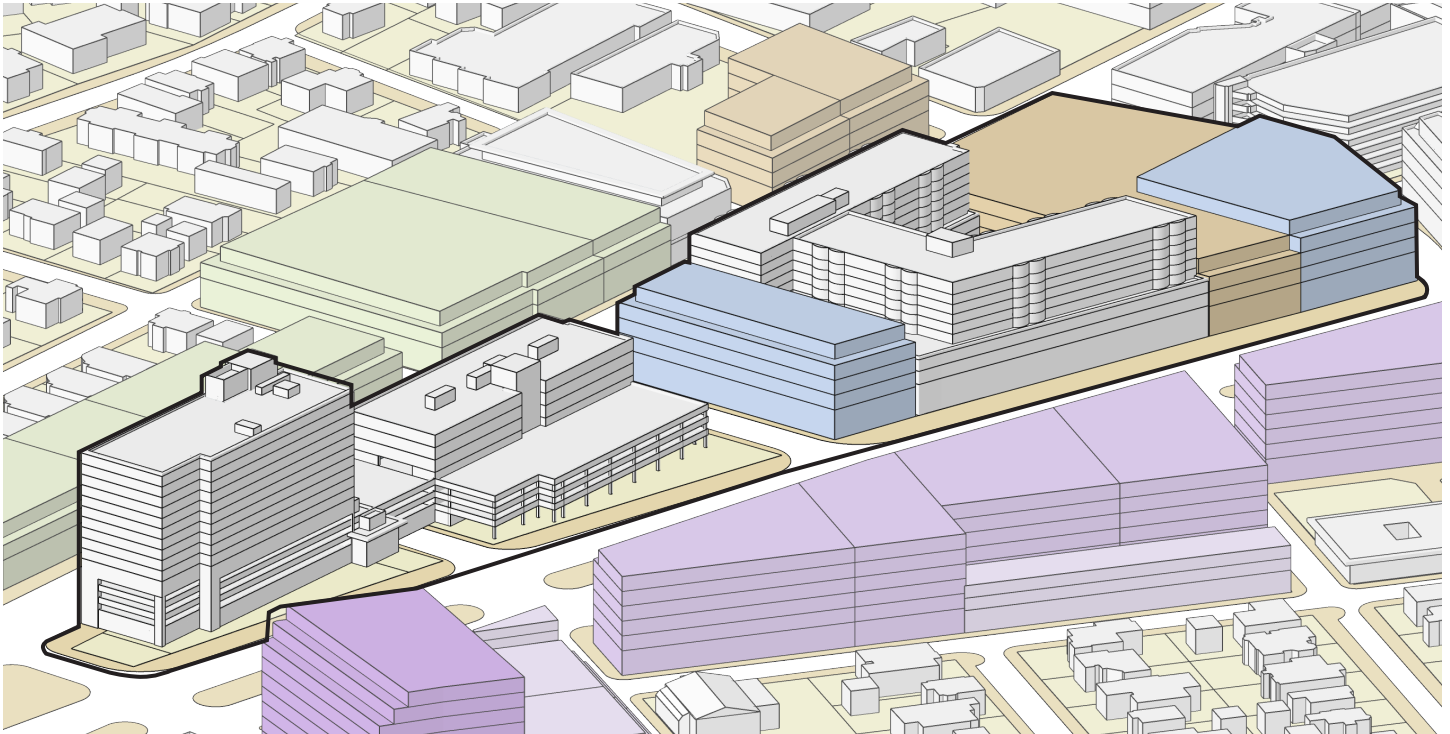
max allowable heights:

- D2 3-story development - 56'
- D3 4-story development - 68'
- D4 5-story development - 80'

Triangle Overlay

max allowable heights:

- MU-3 MFR - 60'
- MU-5 attached SF - 82'
- MU-7 general business - 118'



Massing Studies - Development potential under current zoning

Downtown Overlay

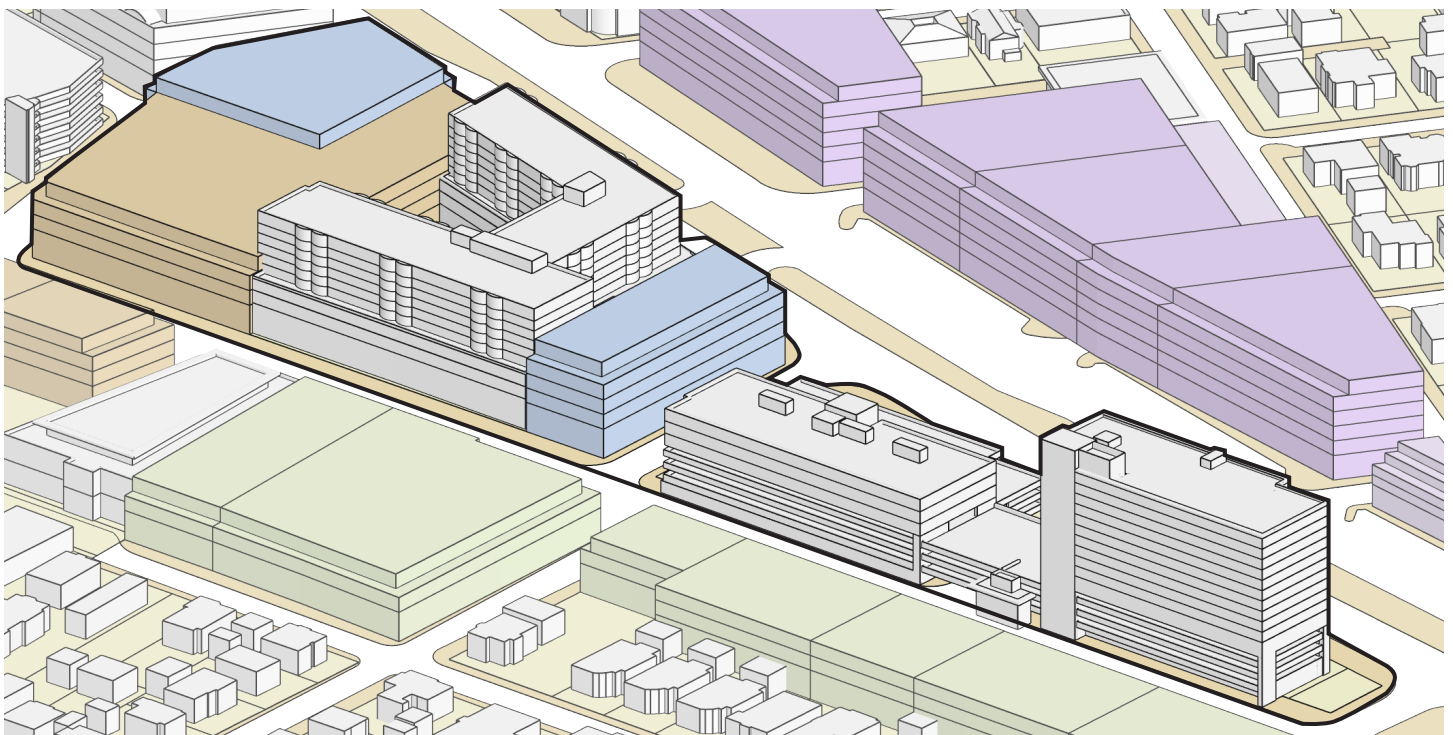
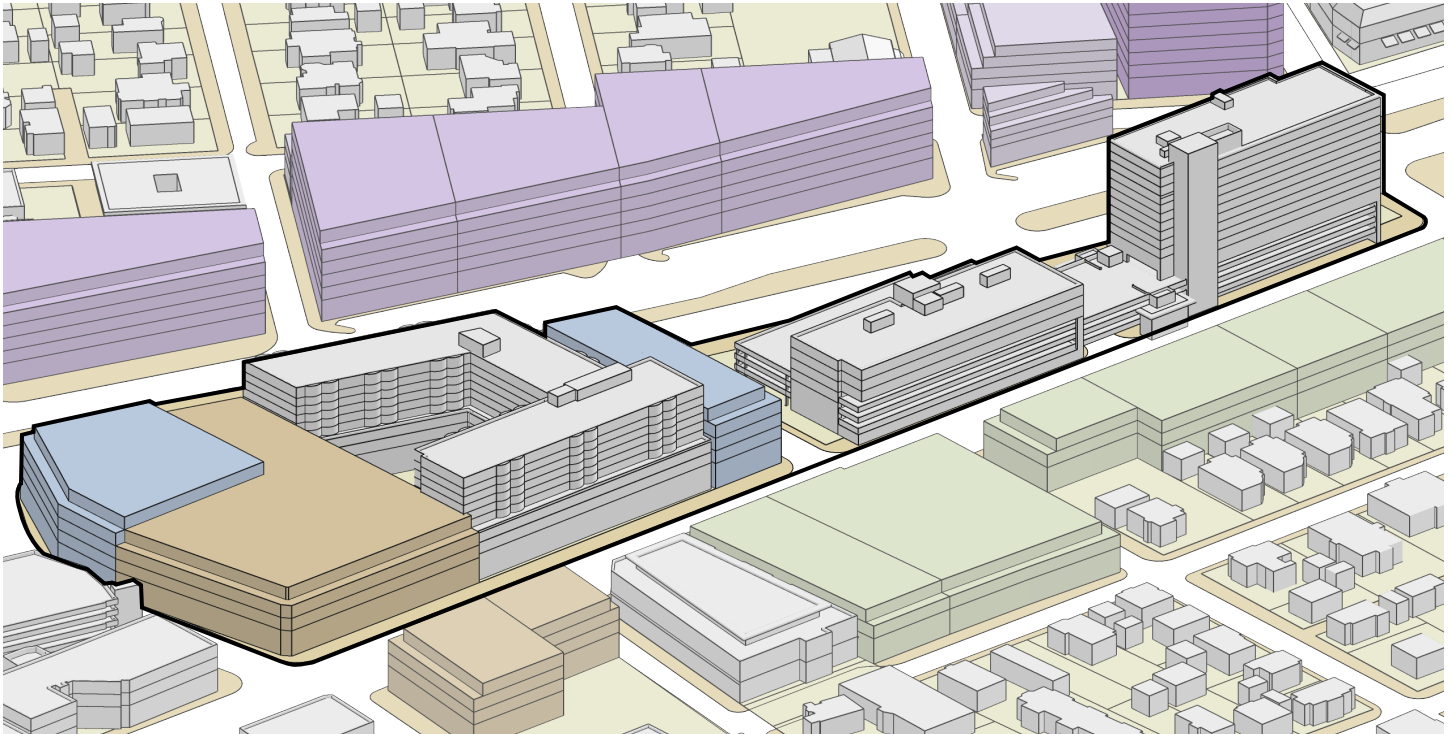
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- D4 5-story development - 80'

Triangle Overlay

max allowable heights:

- MU-3 MFR - 60'
- MU-5 attached SF - 82'
- MU-7 general business - 118'



411 S. Old Woodward Ave., Unit 1018
Birmingham, MI 48009
May 16, 2018

VIA HAND DELIVERY

Ms. Jana Ecker, Director
City of Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Development")
Request to Rezone from B3/D4 to B3/D5 Filed by Christopher Long
on Behalf of Birmingham Tower Partners, LLC (the "Applicant")
Hearing Scheduled for Wednesday, May 23, 2018 (the "Hearing")

Dear Ms. Ecker:

I request that the Hearing be rescheduled for two (2) reasons. First, I received notice of the Hearing by mail on May 8, 2018 and visited the City Planning Office on Friday, May 11, 2018 to review the application. As of that date, the Applicant had not filed the statements required under subsection 7.02 B.2.b of the Rezoning Amendments (i.e., explanations of why rezoning is necessary, of why the existing zoning classification is no longer appropriate, and of why the proposed rezoning will not be detrimental to the surrounding properties). I suggest that failure to timely file those explanations caused the notice of the Hearing not to meet the fifteen (15) day advance notification required under subsection 7.02 B.4.a.i of the Rezoning Amendments.

Second, as a Birmingham resident living adjacent to the Proposed Development, I would appreciate time to review the very extensive documents filed by the Applicant. I suggest that public input is critical on a project that seeks to permission to erect the first building greater than five (5) stories to be built in downtown Birmingham in decades, which could well set a precedent for continuing development of high rise structures in our beautiful community. Substantial additional time will be required for myself and the many other Birmingham residents who are affected by the Proposed Development to adequately review and to respond to these filings.

Please contact me at the above address, via email to mickeyschwartz@gmail.com, or at telephone numbers (248) 229-9989 or (248) 593-3155 with any questions or further requirements and in any event with the new hearing date. Thank you for your time and attention.

Yours very truly,

A handwritten signature in blue ink, appearing to read "Michael Schwartz", is written over a horizontal line.

Michael Schwartz, MD

xc: Applicant (via email to dsmarkus@yahoo.com)
Planning Board Members (via separate emails)

Eric and Janis Sterling
411 S. Old Woodward Avenue, Unit 615
Birmingham, MI 48009

June 7, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project ")

Ladies and Gentlemen:

We are residents of the City of Birmingham and are writing to express our deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. We believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

The city's 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest. Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population.

The Proposed Project is also esthetically displeasing. Instead of enhancing the Woodward corridor with an attractive entrance, it presents only a blank wall to the passing public. It would also create the hostile appearance of blocking off much of South Old Woodward and beyond by erecting a virtual wall of buildings running from the south end of the 555 residential units through the north end of Birmingham Place, reminiscent of medieval walls built around cities to keep people out, not to invite them in.

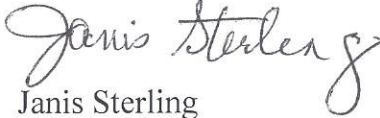
In addition, we have serious safety and other concerns, including:

1. Birmingham firefighting capability is limited to 7 stories. This would leave most of the back of the Proposed Project and virtually all of the south end of Birmingham Place with inadequate or no fire protection.
2. We also suggest that the Proposed Project would unduly burden our city's already hard-pressed police and public safety/rescue facilities.
3. Hazel Street is already a busy connector between Woodward and Old Woodward, especially at rush hour times. The Proposed Project would literally clog this small street with excess traffic, especially if the "four stack" valet service recommended by the developer's own traffic study is implemented and if the current four on-street parking spaces are included in the Proposed Project's plan for adequate parking, as Christopher Longe recently stated to the Planning Board would be the case. We note that the City's own traffic advisor, Fleis & Vandenbrink, also finds considerable fault with the developer's traffic study.
4. The demolition and construction time of the Proposed Project would be finite, but during that time, the heavy equipment needed for a project this size would cause construction damage to Hazel Street, Old Woodward and Woodward. Depending on the timing, this could result in at least the repaving work already planned for Old Woodward south having to be redone at a very substantial cost.
5. The Proposed Project will require deep excavation ("digging half way to China," as Mr. Longe recently expressed to the Planning Board) and heavy equipment and materials, which could seriously jeopardize the structural integrity of Birmingham Place. The developer has not adequately addressed this and has not made provision to repair, or more importantly to prevent, any damage to Birmingham Place.

Thank you for your time and attention, and for, we sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,


Eric Sterling


Janis Sterling



Jana Ecker <jecker@bhamgov.org>

Fwd: 469-479 S. Old Woodward Ave. (the " Proposed Project") Objection

1 message

Stuart Jeffares <stuartjeffares@gmail.com>
To: Jana Ecker <jecker@bhamgov.org>

Wed, Jun 13, 2018 at 9:52 PM

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

From: Alice Lezotte <zareyskid@gmail.com>
Date: Sun, Jun 10, 2018, 12:53 PM
Subject: Fwd: [469-479 S. Old Woodward Ave.](#) (the " Proposed Project") Objection
To: <stuartjeffares@gmail.com>

Sent from my iPad

Begin forwarded message:

From: Alice Lezotte <zareyskid@gmail.com>
Date: June 10, 2018 at 12:47:33 PM EDT

Subject: [469-479 S. Old Woodward Ave.](#) (the " Proposed Project") Objection

[411 S. Old Woodward. #511](#)

[Birmingham, MI. 48000](#)

June 8, 2018

Mr. Jeffares, I am a city of Birmingham constituent. I would like to express my disapproval and opposition to the request for rezoning and to the Proposed Project itself.

The Birmingham city code has many statements to keep in mind when considering a new city project (I paraphrase):

1. Regulation and control of a project should promote the public health, safety, and general welfare of the city
2. Provide orderly growth and HARMONIOUS development
3. Secure adequate traffic circulation and "lessen" congestion on our streets
4. Ensure adequate provisions for water drainage, sanitary sewer facilities, and other health requirements
5. Achieve the maximum utility and "livability" of a project
6. Natural features must be preserved and changes should "add" to the attractiveness and "value" of the neighborhood
7. Any Proposed project should take into consideration as to the impact on adequate supply of light and air to adjacent properties and

the capacity of essential public facilities, such as police and fire protection, drainage structures, municipal water, sanitary sewers, and refuse disposal
Wise decisions have been made in the past (e.g., Forefront, Bristol,etc.) in accordance with The city's 2016 Master Plan and our Building Codes.

6/19/2018

City of Birmingham MI Mail - Fwd: 469-479 S. Old Woodward Ave. (the " Proposed Project") Objection

It is my hope similar consideration will prevail and this proposal will be denied.

Maple Road and Woodward on the south east corner would be an ideal location for this proposed project.

We want to keep our "Walkable" community as safe and pleasant as possible.

Best regards,

Alice Lezotte



Jana Ecker <jecker@bhamgov.org>

Fwd: Proposal for a 9 story building on S. Old Woodward, Birmingham

1 message

Stuart Jeffares <stuartjeffares@gmail.com>
To: Jana Ecker <jecker@bhamgov.org>

Wed, Jun 13, 2018 at 9:52 PM

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

From: Julie Wolfe <julie@moosejaw.com>
Date: Sun, Jun 10, 2018, 1:08 PM
Subject: Proposal for a 9 story building on S. Old Woodward, Birmingham
To: Julie Wolfe <julie@moosejaw.com>

From: Julie Wolfe
[411 S. Old Woodward #1021](#)
[Birmingham, MI 48009](#)

6/10/18

Birmingham City Commission
Birmingham Planning Board
[151 Martin Street](#)
[Birmingham, MI 48009](#)

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project ")

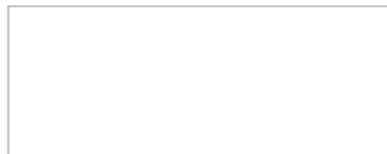
Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally **not** zoned as D5, despite being located between two of the D5 buildings.

I believe that a nine story building on this 0.41 acre parcel would be totally out of place, would violate the 2016 Master Plan and would be inconsistent with the small town downtown concept I firmly believe is very important to maintaining the character and long-standing plan for this beautiful city. I respectfully ask that you stay the course that has been followed and has been successful for so long. More construction to this area is very disturbing and frustrating. The city has been torn up enough.

Thank you.

Julie Wolfe



2 attachments



image001.png
6K



image003.png
7K

Edwin B. and Felicia P. Shaw
411 South Old Woodward Ave. Unit #910
Birmingham, Michigan 48009

June 12 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

We are residents of the City of Birmingham and are writing to express our deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. We believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

The city's 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest. Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population.

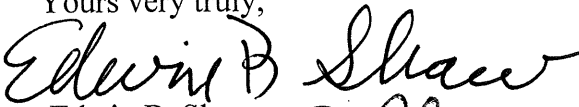
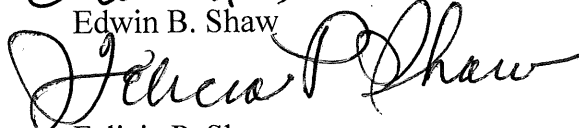
The Proposed Project is also esthetically displeasing. Instead of enhancing the Woodward corridor with an attractive entrance, it presents only a blank wall to the passing public. It would also create the hostile appearance of blocking off much of South Old Woodward and beyond by erecting a virtual wall of buildings running from the south end of the 555 residential units through the north end of Birmingham Place, reminiscent of medieval walls built around cities to keep people out, not to invite them in.

In addition, we have serious safety and other concerns, including:

1. Birmingham firefighting capability is limited to 7 stories. This would leave most of the back of the Proposed Project and virtually all of the south end of Birmingham Place with inadequate or no fire protection.
2. We also suggest that the Proposed Project would unduly burden our city's already hard-pressed police and public safety/rescue facilities.
3. Hazel Street is already a busy connector between Woodward and Old Woodward, especially at rush hour times. The Proposed Project would literally clog this small street with excess traffic, especially if the "four stack" valet service recommended by the developer's own traffic study is implemented and if the current four on-street parking spaces are included in the Proposed Project's plan for adequate parking, as Christopher Longe recently stated to the Planning Board would be the case. We note that the City's own traffic advisor, Fleis & Vandenbrink, also finds considerable fault with the developer's traffic study.
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Thank you for your time and attention, and for, we sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,


Edwin B. Shaw

Felicia P. Shaw



June 21, 2018

*The Elia Group, LLC
Real Estate & Development Services*

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members:

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

The project that has been proposed for this in-fill site should be approved because it would be appropriate for this parcel of land. If allowed to be built, the project would:

1. Be in harmony with the pattern of the neighboring buildings by filling in the noticeable 'gap' between them, which can be seen from both South Old Woodward and Woodward Avenue.
2. Be consistent with the building heights, uses, and character of Birmingham Place and the 555 Building.
3. Increase the walkability of this area by providing retail at the street level, and by strengthening the retail connection between Birmingham Place and the 555 Building.
4. Add foot traffic (shopper & travelers) to the south end of the city by encouraging foot traffic from the downtown to continue on the completed blocks.
5. Activate Hazel Street in perpetuity – while currently busy with construction bypass traffic, Hazel is an otherwise dormant street (which is vacated on the east side of Woodward Avenue).
6. Adhere to the spirit and intent of both the 2016 Master Plan and the D5 zoning overlay.
7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

The Elia Group, LLC

Zaid D. Elia, President



Phone: 586-268-3200 | Fax: 586-268-3224
7096 E 14 Mile Rd Warren, MI 48092
andiamoitalia.com

June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

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8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

Joseph P. Vicari
7096 E. 14 Mile Rd.
Warren, MI 48092





June 21, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

Jonna Construction is a builder and investor in Downtown Birmingham.

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

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7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.



For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

A handwritten signature in blue ink, which appears to read 'Frank Jonna', is written over the printed name.

Frank G. Jonna
6200 2nd Ave., Suite D-102
Detroit, MI 48202



June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

The project that has been proposed for this in-fill site should be approved because it would be appropriate for this parcel of land. If allowed to be built, the project would:

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2. Be consistent with the building heights, uses, and character of Birmingham Place and the 555 Building.
3. Increase the walkability of this area by providing retail at the street level, and by strengthening the retail connection between Birmingham Place and the 555 Building.
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5. Activate Hazel Street in perpetuity – while currently busy with construction bypass traffic, Hazel is an otherwise dormant street (which is vacated on the east side of Woodward Avenue).
6. Adhere to the spirit and intent of both the 2016 Master Plan and the D5 zoning overlay.
7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.

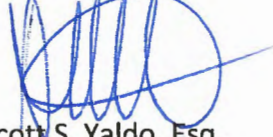
500 S. Old Woodward Ave., Second Floor, Birmingham, MI 48009

Phone: (248)645-5300 Fax: (248)645-5301

www.yaldolaw.com

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Scott S. Yaldo', is written over a light blue rectangular background.

Scott S. Yaldo, Esq.



June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete and old one-story buildings that sit between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

The project that has been proposed for this in-fill site should be approved because it would be appropriate for this parcel of land. If allowed to be built, the project would:

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7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.
10. This project would continue to make the City of Birmingham the premier city to live and shop

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

A handwritten signature in black ink, appearing to be 'KD' or 'Kevin Denha', written in a cursive style.

Kevin Denha
40700 Woodward Ave Suite 125
Bloomfield Hills, MI. 48304

ISHBIA & GAGLEARD, P.C.
ATTORNEYS AND COUNSELORS
MERRILLWOOD BUILDING
251 MERRILL STREET, SUITE 212
BIRMINGHAM, MICHIGAN 48009

JEFFREY A. ISHBIA
MICHAEL A. GAGLEARD *
MARK W. CHERRY
DAVID N. ZACKS **

PHILIP CWAGENBERG
FRANK J. LAROCCA
MICHAEL J. WEISBERG **
SARA E. ROHLAND

ISIDORE B. TORRES, OF COUNSEL
C. GILES SMITH, JR., OF COUNSEL

(248) 647-8590
(800) 647-6269

FAX (248) 647-8596

* ALSO ADMITTED IN CALIFORNIA
** ALSO ADMITTED IN FLORIDA

June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

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9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

ISHBIA & GAGLEARD, P.C.

Jeffrey A. Ishbia



June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

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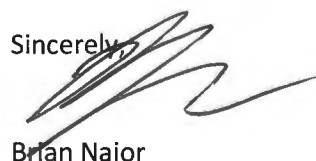
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9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,



Brian Najor
Najor Companies
600 N. Old Companies, Ste 100
Birmingham, MI 48009



JONNA

luxury homes

6/20/18

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

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For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,



Joseph Jonna, Jonna Luxury Homes

LAW OFFICES OF
RANDAL TOMA & ASSOCIATES, P.C.
500 S. OLD WOODWARD AVENUE, SECOND FLOOR
BIRMINGHAM, MICHIGAN 48009
OFFICE (248) 948-1500
FAX (248) 948-1501

June 21, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

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For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Very truly yours,
RANDAL TOMA & ASSOCIATES, P.C.



Randal S. Toma
Attorney at Law

Lexi Drew
152 N Old Woodward
Birmingham, MI 48009
248.220.1731

Date 6/20/2018
Birmingham City Commission & Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue
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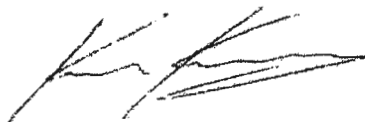
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For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin Kejbou', with a stylized, sweeping flourish at the end.

Kevin Kejbou
152 N Old Woodward
Birmingham MI 48009



2000 Town Center
Suite 2200
Southfield, MI 48075

248 353 5400 Tel
248 353 8134 Fax

June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

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For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

David Hesano
First Vice President
David.hesano@cbre.com

DJ MARLUC HOLDINGS LLC

6632 Telegraph Rd. #359
Bloomfield Hills, MI 48301

6/18/2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

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For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,



John Kello



DETROIT ATLANTA CHICAGO CLEVELAND DALLAS HOUSTON LOS ANGELES MIAMI NEW YORK SAN FRANCISCO SOUTH JERSEY WASHINGTON DC

June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

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For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony Toma".

Anthony Toma
CEO & Founder
Nine9
2653 Industrial Row Dr.
Troy, MI 48084



June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

RE: Proposed Project at 469-479 S Old Woodward Avenue

Dear City Commission and Planning Board Members,

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For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

Gregg Speaks
Managing Director
CIBC Bank USA
34901 Woodward Avenue, Suite 200
Birmingham, MI 48009



MIDWEST HOSPITALITY GROUP INC.

June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

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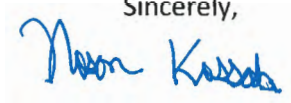
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For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,



Nason Kassab
35270 Woodward Ave
Birmingham, MI 48009



2941 Mediterranean

street food

June 21, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

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For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

Jacques Van Staden - Founder & CEO
176 S. Old Woodward Ave
Birmingham, MI 48009

David Breedlove
85 Tradd Street
Charleston, SC. 29401

June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

I am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project referenced above. I am no longer a resident of Birmingham but maintain a condominium in Birmingham. Birmingham has been my home for most of my 70 years since my parents bought their first home on Villa in 1949. I remember visiting Pearls for a nice Chinese dinner. So, I know the area well. And while we moved from our home on Lincoln to warmer weather after retirement, Birmingham will always be home. I have watched how the character of the town has changed over the last 65 years. I was sad when the City allowed 555 to be built. I will always believe it was a mistake. We do not need another mistake.

I was encouraged when the City leaders realized they needed to protect the character and feel of the city. There was no place for skyscrapers in Birmingham. The city's 2016 Master Plan recognized the need to control the height of new buildings in the city center. I think they have done an excellent job over the last twenty years.

I have watched in my new home, Charleston, as real estate investors have tried to come in and build one more hotel and destroy what makes Charleston attractive. It is an on-going battle. You are faced with the same economic pressures and arguments I hear in Charleston. It is just one more hotel. There are already buildings of similar height in town. The city needs more hotel rooms. It will generate more business in town. The arguments are always the same and unfortunately, so are the results. The town becomes more impersonal. Small businesses are replaced by those that cater to the transient visitors. Residents must go elsewhere to shop.

As city commissioner, you must protect what you have today and what makes Birmingham so attractive as a place to live, work and raise a family. It is unique place in southeast Michigan, beautiful neighborhoods surrounding a friendly and inviting downtown.

I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept I firmly believe is very important to

maintaining the character and long-standing plan for this beautiful city. If someone wants to build a 9 or 10 story hotel, let them go to Troy or Southfield.

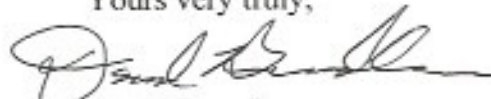
The city's 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest. Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population. Approving a change to the zoning will open the door for the next developer to come in and argue for a similar change. What is the argument against building a high rise on the North side of Birmingham Place? Across the street?

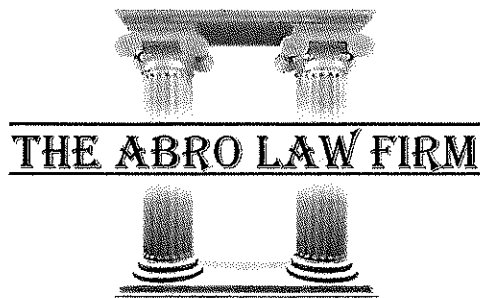
I cannot assess the technical implications of the proposal such as traffic, impact on city services, disruption of business during construction and impact on surrounding structures. I leave that to the Commissioners and their technical experts. The parties who purchased the reference property knew the zoning at the time. They are calculating they can change the City Commissioner's minds. They are not concerned with the long term implications to the city but only how to maximize return on their investment. I sincerely hope their calculations are wrong. Another high rise in the southern end of town will ruin the neighborhood feel and open the door for more rezoning requests.

Thank you for your time and attention, and for, I sincerely hope, your vote to preserve what is a beautiful and people friendly city.

Yours very truly,



David Breedlove



Phone: (248) 723-4545
Fax: (248) 598-4049
E-Mail: gus@abrolaw.com

500 S. Old Woodward
Second Floor, Suite 200
Birmingham, Michigan 48009

ATTORNEYS AND COUNSELORS AT LAW

June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

RE: *Proposed Project at 469-479 S. Old Woodward Avenue*

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which is 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

The project that has been proposed for this in-fill site should be approved because it would be appropriate for this parcel of land. If allowed to be built, the project would:

1. Be in harmony with the pattern of the neighboring buildings by filling in the noticeable 'gap' between them, which can be seen from both South Old Woodward and Woodward Avenue.
2. Be consistent with the building heights, uses, and character of Birmingham Place and the 555 Building.
3. Increase the walkability of this area by providing retail at the street level, and by strengthening the retail connection between Birmingham Place and the 555 Building.
4. Add foot traffic (shopper & travelers) to the south end of the city by encouraging foot traffic from the downtown to continue on the completed blocks.
5. Activate Hazel Street in perpetuity – while currently busy with construction bypass traffic, Hazel is an otherwise dormant street (which is vacated on the east side of Woodward Avenue).

6. Adhere to the spirit and intent of both the 2016 Master Plan and the D5 zoning overlay.
7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Thank you for your attention herein. As always, should you have any question or require any additional information, please do not hesitate to call me directly. I remain,

Very truly yours,

THE ABRO LAW FIRM

Gus J. Abro, Esq.



GA/gja



CITY OF BIRMINGHAM FIRE DEPARTMENT

572 SOUTH ADAMS • BIRMINGHAM, MICHIGAN 48009 • 248.530.1900 Fax 248.530.1950

June 22, 2018

Jana Ecker, Planning Director
City of Birmingham (MI)
151 Martin St.
P.O. Box 3001
Birmingham, MI 48012-3001

Dear Jana:

I am following up on our communications in regards to residents at 411 S. Old Woodward known as Birmingham Place and their concerns with fire protection. The proposed project at 469-479 S. Old Woodward is potentially going to be a nine story building, built very close to the South side of Birmingham Place. Their concern is the fire department's ability to fight a fire at Birmingham Place if the proposed project does not allow aerial operations on the South side of the building.

Though we would not deploy our aerial truck for operations on the South side of the building, we do have access from both the East and West sides of the building. Our aerial truck has an extended 100' ladder which would reach approximately six to seven stories based on the distance the aerial is positioned, due to this most high rise fires are fought from the inside of a high rise building. The Birmingham Place has a fire pump to increase pressure to upper floors, fire suppression sprinklers that when activated would extinguish a fire or contain the spread of the fire, standpipes at each floor allowing firefighters to connect hose lines to fight a fire and a fire alarm which would alert residents of the building. The exterior of the building is of a material that is non-combustible and smoke alarms throughout the building. Our officers and firefighters are well trained to aggressively attack a fire in a high rise building. There should be no concerns that the proposed project would hinder fire operations in the Birmingham Place.

I hope this letter will help ease the concerns of our residents as the Planning Board and other stakeholders discuss the proposal and the future of the site. Please let me know if I can assist you in any other way.

Sincerely,

John M. Connaughton, Fire Chief

Corrected
May 17, 2018

Richard D. Rattner
rdr@wwrplaw.com

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

Re: Application to include 469 and 479 S. Old Woodward, Birmingham, MI
("Subject Property") in the D5 Downtown Birmingham Overlay District
Zone ("Application")

Dear Members of the Planning Board and City Commission:

Please accept this letter from the property owner ("Property Owner") of 469 and 479 S. Old Woodward ("Property") as a Supplement to the referenced rezoning Application file to rezone the Subject Property from the **D-4 Zone** to the **D-5 Overlay Zone** in the Downtown Birmingham Overlay District.

Executive Summary

The Subject Property is a former single-story restaurant building and bank that sits between two existing tall buildings in the City. Birmingham Place is located to the north and the 555 Buildings are located to the south. The placement of the buildings is not only inconsistent with a cohesive and harmonious streetscape in that area but is contrary to the intent of the Master Plan. This inconsistent height results in a streetscape along South Old Woodward that appears to have a "missing tooth."

If the Subject Property is rezoned to D-5, there is an excellent opportunity for the Subject Property, Birmingham Place and the 555 Buildings to create an impressive southern gateway to Downtown Birmingham. It is therefore reasonable that the Subject Property, sitting directly between the 555 Buildings and Birmingham Place, be included in the same zoning district, that is as part of the D-5 Overlay District, as those neighboring two buildings.

Rezoning the Subject Property to the same classification as the buildings immediately to the north and south will enhance and complete the streetscape of these important two blocks of Downtown Birmingham. Inclusion of the Subject Property in the D-5 Overlay Zone is consistent with the 2016 Master Plan. Moreover, it will allow the Subject Property to enjoy the same development regulations as the neighboring properties.

The Subject Property and the Master Plans

A review of the history surrounding the zoning of this area of Downtown is instructive. The minutes of the City Commission during the late 1960s and early 1970s, reveals that the height of the buildings in this area of Downtown were historically zoned for the height of the 555 Buildings and Birmingham Place. However, the zoning ordinance was amended in the 1970's after the construction of those buildings to a maximum of four stories. Therefore, for several years, the taller buildings in the City were burdened with the status of legal nonconforming uses.

In 2016, the City corrected this down zoning for the 555 Building to the south and Birmingham Place to the north, with the creation of the D-5 Zone to allow for existing heights (in the case of the 555 Buildings and Birmingham Place) and to allow for new construction to a height up to the same height of an immediately adjacent or abutting building (see Ordinance 3.04-4-b). While the 555 Building and Birmingham Place are now at allowable heights, sitting in between them, the Subject Property is the only building in that streetscape that cannot be constructed to a height that is consistent to its neighbors. This inconsistency creates an obvious gap in the street's architecture which is not harmonious with the overall downtown design and longer-range plan for that part of South Old Woodward.

The Birmingham of 2016

In 1996, the City Commission adopted the Downtown Birmingham 2016 Plan ("2016 Plan") and amended the Zoning Ordinance to include the Downtown Birmingham Overlay District. The Subject Property is located in the **D-4**

Zone, sitting between two tall buildings in the City that have been rezoned to the D-5 zone. These multi-story buildings are the established character of this particular area of the City. Placing the Subject Property in the D-5 zone would allow development of the Subject Property to be at a similar height to the buildings directly to the north and south. The Applicant desires to develop the Subject Property in a manner that completes the block between Brown and Hazel while adding to the cohesiveness of the South Old Woodward southern gateway area.

The Birmingham Zoning Ordinance at Sec. 1.04 provides that the purpose of the Zoning Ordinance is to "...guide the growth and development of the City in accordance with the goals, objectives and strategies stated within the Birmingham Master Plan ("Birmingham Plan"), and Downtown Birmingham 2016 Plan. A review of the Birmingham Plan (1980) and the Downtown Birmingham 2016 Plan (1996) reveals that this application to include the Subject Property in a D-5 Overlay District meets the spirit and intent of the ordinance as well as the 2016 Plan. It will allow for mixed uses and add to the vitality of the modern streetscape envisioned for this part of town by the 2016 Plan. With rezoning, the Subject Property can become that desired mixed-use space for retail, residential and hotel, and bring new life to the South Old Woodward area.

Any redevelopment of the Subject Property in compliance with its current zoning classification would result in a building with frontage dwarfed by the existing neighboring structures. Therefore, by rezoning the Subject Property to the D-5 overlay, a new building could be built to a similar height as the neighboring buildings, and effectively complete an otherwise missing piece of the streetscape.

In summary, it is clear that the intent of the 2016 Plan includes development of this southern area of the Downtown Overlay District as a gateway to Downtown through enhancing the character of buildings and providing our City with an active, pedestrian-friendly, urban streetscape.

Rezoning Amendment – Sec. 7.02 (B)(2)(b)(i)-(iii)

The Zoning Ordinance at Sec. 7.02 requires that as part of an application for rezoning, the petitioner should address certain issues to be considered by the Planning Board and the City Commission. Please consider the following comments with respect to these issues.

7.02(B)(2)(b)(i) - An Explanation of Why the Rezoning is Necessary for the Preservation and Enjoyment of the Rights and Usage Commonly Associated with Property Ownership

Rezoning of the Subject Property is necessary to preserve the Applicant's enjoyment of rights associated with ownership of a property zoned for mixed uses. Because of the size and corner configuration of the parcel, it will not support street-level retail, residential, and parking for residents in the same manner as the neighboring properties. The 2016 Plan clearly anticipates mixed use developments. Such planning requires space to design and locate mixed uses within a given structure. Without the ability to go higher with a new building than current zoning allows, the Applicant will not have the required area within which to locate a mix of uses, or otherwise to be able to enjoy all of the allowed uses that would commonly be associated the design of such a modern, mixed-use building. Furthermore, the D-5 Ordinance, at section 3.04-4-b, anticipates that the Subject Property and those similarly situated may enjoy the same rights of usage through an extension of height as other existing tall buildings already enjoy in the D-5 Overlay District.

Sec. 7.02(B)(2)(b)(ii) - An Explanation of Why the Existing Zoning Classification is No Longer Appropriate

The existing **D-4** zoning classification is no longer appropriate for the Subject Property. The Subject Property is surrounded by the Birmingham Place, a ten-story building on the north side and the 555 Buildings, a fifteen-story building on the south side. This height is an established pattern in this area of the City. This rezoning request is actually an "infill" rezoning to bring the entire area into architectural and design harmony with surrounding buildings. It is reasonable for the Subject Property to share the same zoning classification as its surrounding neighbors. This would allow development of the property in a manner consistent with the

existing structures from Brown Street south to Haynes Street. It will create a more unified block and enhance the character of the gateway area to Downtown Birmingham. The rezoning of the Subject Property would restore the property to a zoning classification this area of the City once enjoyed, as the Planning Board has done for with Birmingham Place and the 555 Buildings. Hence, given the location of the Subject Property sandwiched between two properties in the D-5 Zone, the **D-4** Zone is no longer appropriate.

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

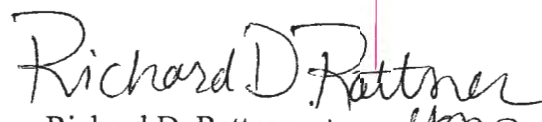
The proposed rezoning of the Subject Property is not detrimental to surrounding property owners. Note that the proposed rezoning does not extend the D-5 classification further to the north or south of the current D-5 Zoning, but actually fills in the one gap in the streetscape that is noticeably out of place and anachronistically remains in the **D-4** Zone. The surrounding properties to the north and south already are in the D-5 Zone. When these neighboring properties were rezoned, the Planning Board anticipated that eventually the Subject Property also may be rezoned for the reasons stated in this letter. Placing the Subject Property in D-5 Zone will be placing it on equal footing with the surrounding properties from a structural, use and design perspective. The proposed rezoning will enhance the entire area by allowing it to be developed as an attractive part of the South Old Woodward gateway and bring that area into compliance with the spirit and intent of the 2016 Master Plan.

Conclusion

The Applicant respectfully requests that the City Commission rezone the Subject Property from the **D-4** to the D-5 Zone as discussed in this letter.

Very truly yours,

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


Richard D. Rattner *by [signature]*

RDR/cmc

June 25, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

The project that has been proposed for this in-fill site should be approved because it would be appropriate for this parcel of land. If allowed to be built, the project would:

1. Be in harmony with the pattern of the neighboring buildings by filling in the noticeable 'gap' between them, which can be seen from both South Old Woodward and Woodward Avenue.
2. Be consistent with the building heights, uses, and character of Birmingham Place and the 555 Building.
3. Increase the walkability of this area by providing retail at the street level, and by strengthening the retail connection between Birmingham Place and the 555 Building.
4. Add foot traffic (shopper & travelers) to the south end of the city by encouraging foot traffic from the downtown to continue on the completed blocks.
5. Activate Hazel Street in perpetuity – while currently busy with construction bypass traffic, Hazel is an otherwise dormant street (which is vacated on the east side of Woodward Avenue).
6. Adhere to the spirit and intent of both the 2016 Master Plan and the D5 zoning overlay.
7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,



Derek Dickow
211 E Merrill St., 504
Birmingham, MI 48009

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project ")

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

The city's 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest. Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population.

The Proposed Project is also esthetically displeasing. Instead of enhancing the Woodward corridor with an attractive entrance, it presents only a blank wall to the passing public. It would also create the hostile appearance of blocking off much of South Old Woodward and beyond by erecting a virtual wall of buildings running from the south end of the 555 residential units through the north end of Birmingham Place, reminiscent of medieval walls built around cities to keep people out, not to invite them in.

In addition, I have serious safety and other concerns, including:

1. Birmingham firefighting capability is limited to 7 stories. This would leave most of the back of the Proposed Project and virtually all of the south end of Birmingham Place with inadequate or no fire protection.

2. I also suggest that the Proposed Project would unduly burden our city's already hard-pressed police and public safety/rescue facilities.
3. Hazel Street is already a busy connector between Woodward and Old Woodward, especially at rush hour times. The Proposed Project would literally clog this small street with excess traffic, especially if the "four stack" valet service recommended by the developer's own traffic study is implemented and if the current four on-street parking spaces are included in the Proposed Project's plan for adequate parking, as Christopher Longe recently stated to the Planning Board would be the case. We note that the City's own traffic advisor, Fleis & Vandenbrink, also finds considerable fault with the developer's traffic study.
4. The demolition and construction time of the Proposed Project would be finite, but during that time, the heavy equipment needed for a project this size would cause construction damage to Hazel Street, Old Woodward and Woodward. Depending on the timing, this could result in at least the repaving work already planned for Old Woodward south having to be redone at a very substantial cost.
5. The Proposed Project will require deep excavation ("digging half way to China," as Mr. Longe recently expressed to the Planning Board) and heavy equipment and materials, which could seriously jeopardize the structural integrity of Birmingham Place. The developer has not adequately addressed this and has not made provision to repair, or more importantly to prevent, any damage to Birmingham Place.

Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,
Victoria Shounieya
Victoria Shounieya
Unit #514

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

The city's 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest. Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population.

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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,


Alex Shoenberger

514

411 S. Old Woodward, Suite 603
Birmingham, MI 48009

June 8, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

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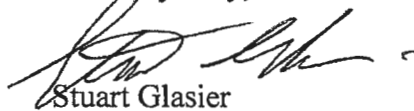
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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

A handwritten signature in black ink, appearing to read "Stuart Glasier", with a stylized flourish at the end.

Stuart Glasier

2400 East Lincoln Street, Unit 425
Birmingham, MI 48009

June 8, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project ")

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411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally *not* zoned as D5, despite being located between two of the D5 buildings.

I believe that a nine story building on this 0.41 acre parcel would be totally out of place, would violate the 2016 Master Plan and would be inconsistent with the small town downtown concept I firmly believe is very important to maintaining the character and long-standing plan for this beautiful city. I respectfully ask that you stay the course that has been followed and has been successful for so long. Thank you.

Yours very truly,

Alice Legatte #511

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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The city's 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest. Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population.

The Proposed Project is also esthetically displeasing. Instead of enhancing the Woodward corridor with an attractive entrance, it presents only a blank wall to the passing public. It would also create the hostile appearance of blocking off much of South Old Woodward and beyond by erecting a virtual wall of buildings running from the south end of the 555 residential units through the north end of Birmingham Place, reminiscent of medieval walls built around cities to keep people out, not to invite them in.


In addition, I have serious safety and other concerns, including:

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2. I also suggest that the Proposed Project would unduly burden our city's already hard-pressed police and public safety/rescue facilities.
3. Hazel Street is already a busy connector between Woodward and Old Woodward, especially at rush hour times. The Proposed Project would literally clog this small street with excess traffic, especially if the "four stack" valet service recommended by the developer's own traffic study is implemented and if the current four on-street parking spaces are included in the Proposed Project's plan for adequate parking, as Christopher Longe recently stated to the Planning Board would be the case. We note that the City's own traffic advisor, Fleis & Vandenbrink, also finds considerable fault with the developer's traffic study.
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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,


Ted Elsholz

ADDRESS: ~~411~~ 411 S. Old Woodward, #1029
DATE: 6/7/2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Yours very truly,



Nikole Fine

Unit #521

ADDRESS:

DATE:

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Yours very truly,

A handwritten signature in cursive script, reading "Brenda Knight". The signature is written in dark ink and is positioned above two vertical pink lines that serve as a signature line.

ADDRESS:

DATE:

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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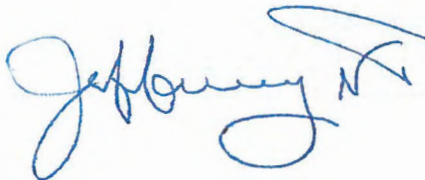
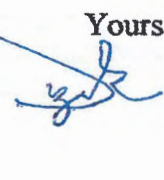
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Yours very truly,

  955 Bud Birmingham, HI
48009

ADDRESS:

DATE:

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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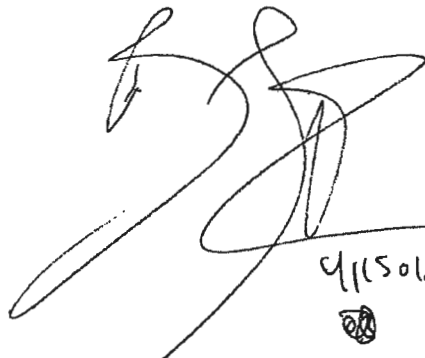
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Yours very truly,



4115 Old Woodward
Unit 624
Birmingham, AL

UNIT #806

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Ladies and Gentlemen:

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Yours very truly,

Michael C. Schwartz
Voni Schwartz

411 S. Old Woodward
#1018
B'ham 38009

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
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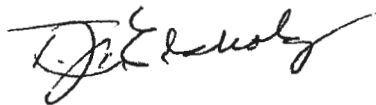
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Yours very truly,

T. J. ELSHOLTZ



E. A. ELSHOLTZ



411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
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Yours very truly,

Sigina Tellman

Unit 606

*411 S. Old Woodward Ave
Birmingham, MI 48009*

411 S. Old Woodward, Suite 902
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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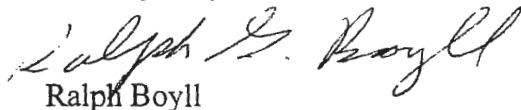
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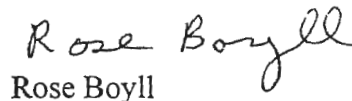
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Thank you for your time and attention, and for, we sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,


Ralph Boyll


Rose Boyll

06/08/18

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project ")

Ladies and Gentlemen:

We are residents of the City of Birmingham and are writing to express our deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. We believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

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Yours very truly,


Eunice Galperin

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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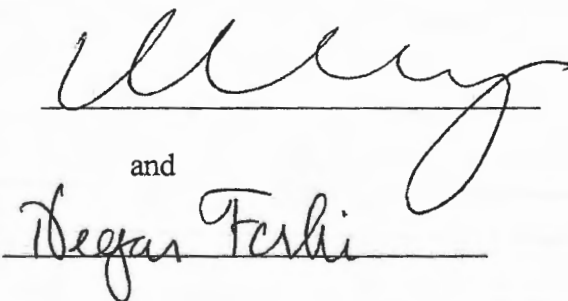
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Yours very truly,

Vandad Raofi

and

Negar Farhi

The block contains two handwritten signatures. The first signature, for Vandad Raofi, is written in dark ink and is quite stylized, appearing as a series of loops and curves. The second signature, for Negar Farhi, is also in dark ink and is more legible, showing the first letters of the first and last names. Both signatures are written over horizontal lines.

Unit # 703

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

A handwritten signature in black ink, appearing to read "Arthur Longe". The signature is fluid and cursive, with a large, stylized initial "A".

Birmingham, MI 48009

June 16, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project ")

Ladies and Gentlemen:

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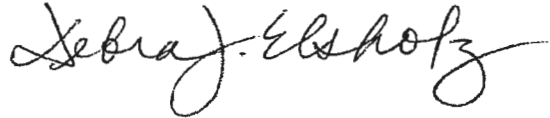
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Yours very truly,

Debra J. Elsholz


411 S. Old Woodward, Suite 729
Birmingham, MI 48009

June 8, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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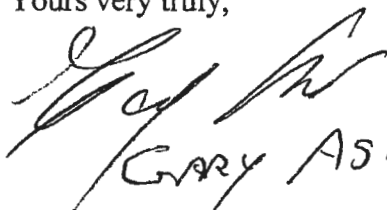
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Yours very truly,


Gary Askeir
305 Purdy

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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Yours very truly,

Carol Kozlow

A handwritten signature in cursive script that reads "Carol Kozlow". The signature is written in dark ink and is positioned below the printed name.

ADDRESS: 411 S. Old Woodward #1028
Birmingham Mi
DATE: 6-9-2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

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We believe that a nine story building on this 0.41 acre parcel would be totally out of place, would violate the 2016 Master Plan and would be inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city. We respectfully ask that you stay the course that has been followed and has been successful for so long. Thank you.

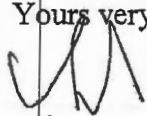
Yours very truly,


Bev Ross

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Yours very truly,


Lewis P. Rucklind
Birmingham Place
Unit 510

Birmingham, MI 48009

June 18, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

1034 Waterfall Court
Birmingham MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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Yours very truly,

Judge Susan D. Borman (Retired)

Susan Borman

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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Yours very truly,

A handwritten signature in black ink, appearing to read "Erin Mellett". The signature is written in a cursive, flowing style with some capitalization and a distinct ending flourish.

ADDRESS:

DATE:

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

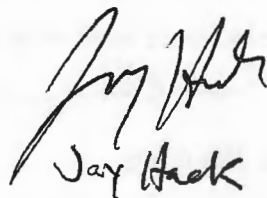
Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

We are residents of the City of Birmingham and are writing to express our deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally *not* zoned as D5, despite being located between two of the D5 buildings.

We believe that a nine story building on this 0.41 acre parcel would be totally out of place, would violate the 2016 Master Plan and would be inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city. We respectfully ask that you stay the course that has been followed and has been successful for so long. Thank you.

Yours very truly,



1276 Smith Ave.

Birmingham MI 48009

411 S. Old Woodward
Birmingham, MI 48009

June 19, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project ")

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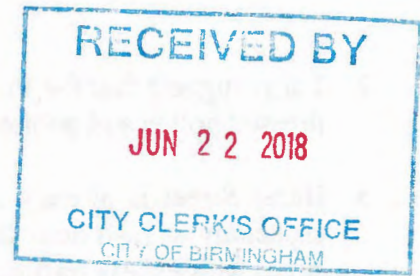
Yours very truly,

A handwritten signature in dark ink, appearing to read "Dana Bassipour", with a stylized flourish at the end.

Dana Bassipour

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018



Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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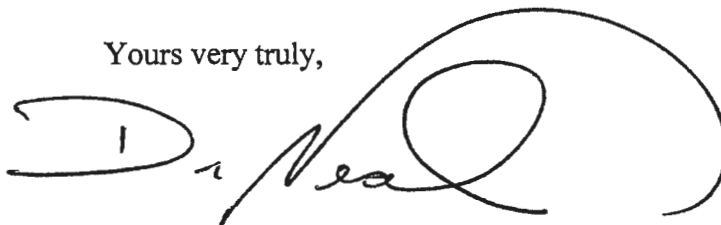
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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

A handwritten signature in black ink, appearing to read "Dr. Neal". The signature is stylized with a large, sweeping loop at the end.

411 S. Old Woodward, Suite 1012
Birmingham, MI 48009

June 14, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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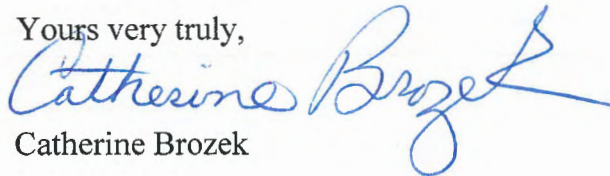
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Yours very truly,



Catherine Brozek

MICHAEL D. UMPHREY. ESQ.
411 S. Old Woodward Ave., Unit 618
Birmingham, MI 48009-6647
(248) 339-7708 – Telephone
(248) 528-5129 – Facsimile

June 27, 2018

VIA HAND DELIVERY

John M. Connaughton, Fire Chief
572 South Adams
Birmingham, MI 48009

Re: Proposal to Rezone 469-479 S. Old Woodward Avenue

Dear Chief Connaughton:

I am writing, individually and as an officer and director of the Birmingham Place Residential Condominium Association, in response to your letter of June 22 Jana Ecker. A number of residents here discussed this matter with Joel Campbell and wish we had been sent a copy of the letter, but at least we got it as part of the agenda for tomorrow night's Planning Board hearing.

In any event, we have some serious concerns with this situation in general and with your letter in particular, which include:

1. The proposed new building is *not* planned to be built "very close to the South Side of Birmingham Place" but rather is proposed to literally abut the southerly walls of Birmingham Place. This may not have a direct bearing on fire issues, but it does raise other issues and should, in any event, be stated accurately.
2. We understand that the fire equipment currently has some, albeit limited, access to Birmingham Place from Hazel Street. Your letter correctly states that you "... would not deploy our aerial truck for operations on the South Side of the building," but it fails to note that the proposed building, which would be 22 feet taller than Birmingham Place, completely eliminates whatever access is currently available from Hazel Street.
3. Your letter also states "... we do have access from both the East and West sides of the building." If the proposed building is built, a review of the drawings makes it clear that there would, in fact, be no fire equipment access whatsoever to most, if not all, of the residential and office units on the southerly part of Birmingham Place from the east side and only limited access to these units from the west side.

4. Current access from the west side also includes an alley running from Woodward Avenue to the rear of 469 S. Old Woodward. While this alley might well not accommodate larger fire trucks, it certainly provides some access to some equipment, which would be completely cut off by the proposed building.
5. We agree completely with the balance of the second paragraph regarding fighting "high rise" fires from within the building and also detailing the helpful fire fighting fixtures and equipment in Birmingham Place. Nevertheless, the simple fact remains that fire protection for Birmingham Place (and more importantly, the people who live and work here) will be less than it was if the proposed building is built as planned.

Our bottom line, so to speak, is that fire protection to at least the southerly portion of Birmingham Place would be reduced if the proposed building were allowed, and we have to ask you, as Fire Chief, how much increased risk for the sake of new development that hopes to maximize and increase the currently allowable building size is acceptable. The increased risk can easily be avoided by the City denying the rezoning request and maintaining the status quo. The value of adding several stories to a building pales in comparison to any increased risk to the health, safety and welfare of the Birmingham Place residents and occupants as well as the firefighters tasked with protecting the residents and occupants.

We request that you very seriously reconsider your position on this matter and advise both the Planning Board and the City Commission of the same, preferably before the meeting tonight but in any event at your first opportunity. Thank you for your time and attention. Best regards.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Michael D. Umphrey", with a stylized, sweeping flourish extending to the right.

Michael D. Umphrey

xc: All Birmingham Planning Board Members (via hand delivery)
All Birmingham City Commissioners (via hand delivery)

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

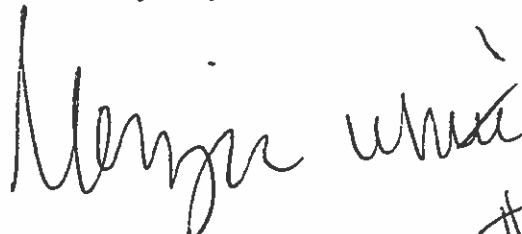
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Yours very truly,


#505

June 19, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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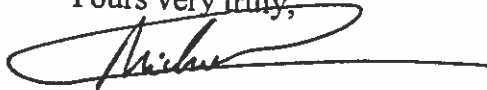
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Yours very truly,

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Michael Hanna

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Yours very truly,

Valerie Foley
411 S. Old Woodward Ave
Unit 508
Birmingham AL
35209

June 19, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

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Doris Hanna

June 19, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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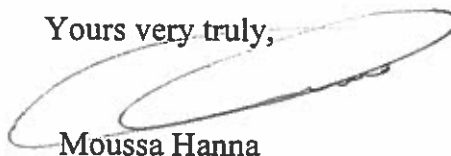
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Yours very truly,

A handwritten signature in dark ink, appearing to read "Moussa Hanna", written over a horizontal line.

Moussa Hanna

ADDRESS:

DATE:

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

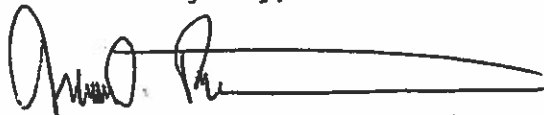
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Yours very truly,



Mark D. Rubinstein
268 Pilgrim
6/23/18

Arlene R. Rubinstein
268 Pilgrim
6/23/18

Birmingham, MI 48009

June 16, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project ")

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

The city's 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest. Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

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In addition, I have serious safety and other concerns, including:

1. Birmingham firefighting capability is limited to 7 stories. This would leave most of the back of the Proposed Project and virtually all of the south end of Birmingham Place with inadequate or no fire protection.
2. I also suggest that the Proposed Project would unduly burden our city's already hard-pressed police and public safety/rescue facilities.
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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

Mike Galperin
460 Park

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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Yours very truly,

Gavin Butler
411 S. Old Woodward Ave
Unit 508
Birmingham Michigan

411 S. Old Woodward, Suite 631
Birmingham, MI 48009

June 26, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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Yours very truly,



Dennis W. Liu

ADDRESS:

DATE:

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

We are residents of the City of Birmingham and are writing to express our deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally *not* zoned as D5, despite being located between two of the D5 buildings.

We believe that a nine story building on this 0.41 acre parcel would be totally out of place, would violate the 2016 Master Plan and would be inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city. We respectfully ask that you stay the course that has been followed and has been successful for so long. Thank you.

Yours very truly,

Jackie Piceu
642 Oak Ave
Birmingham 48009

ADDRESS:

DATE:

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 460-179 S Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

We are residents of the City of Birmingham and are writing to express our deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally *not* zoned as D5, despite being located between two of the D5 buildings.

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Yours very truly,

P. Steven Warren
1296 Stanley Blvd
Birmingham, Mich
48009

ADDRESS:

319 GREENWOOD
BIRMINGHAM, MI 48009

DATE:

JUNE 19, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

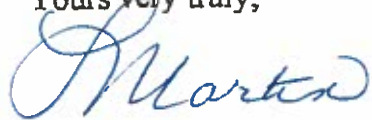
Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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Yours very truly,



LISA A. MARTIN

Birmingham, MI 48009

June 16, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

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Yours very truly,

Leslie Rolden
687 Vinewood

PETER R. SOBELTON
420 HARMON
BIRMINGHAM, MI 48009
248-433-5200



June 27, 2018

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

I am writing to express my strong support for the Re-Zoning request for the mixed use project being proposed for 469-479 S. Old Woodward Ave.

The proposed project will fit in nicely with its neighbors on either side, bearing in mind, each of which are 9 and 15 stories in height. With this development, rather than the present one story buildings, we will now have a building matching the scale, character and use of those buildings on either side.

Additionally, the proposed project would most certainly attract a greater amount of people to the south end of town, and no doubt also throughout the town, while adding retail shopping, thus tying into the already existing retail in the two neighboring buildings. Perhaps one of the most advantageous parts of the project, will be the alleviation of the necessity to accommodate parking on the street, as a result of the parking that will be provided on site.

This project is a win-win, and should be approved for re-zoning in the most hasty of manners, continuing Birmingham's lead in cutting edge developments, as we continue to see the increasing competition for tenancy from our neighboring cities.

Sincerely,

A handwritten signature in blue ink that reads "Peter R. Sobelton".

Peter R. Sobelton

411 S. Old Woodward Avenue
Birmingham, MI 48009

June 27, 2018



Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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Yours very truly,

A handwritten signature in black ink, appearing to read "Tom Longe". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

411 S. Old Woodward, Suite # 725
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009



Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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Yours very truly,

Rose M. Boyle
Ralph S. Boyle

411 S. Old Woodward, Suite ~~#~~ 901
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

Helen O. Kane
OWNER

411 S. Old Woodward, Suite 529
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

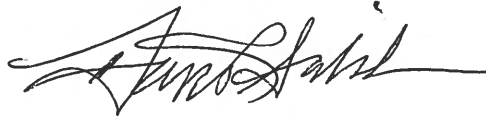
Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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Yours very truly,

A handwritten signature in black ink, appearing to read "David Saliba", with a stylized flourish at the end.

DAVID SALIBA
Unit 529

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

The city's 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest. Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population.

The Proposed Project is also esthetically displeasing. Instead of enhancing the Woodward corridor with an attractive entrance, it presents only a blank wall to the passing public. It would also create the hostile appearance of blocking off much of South Old Woodward and beyond by erecting a virtual wall of buildings running from the south end of the 555 residential units through the north end of Birmingham Place, reminiscent of medieval walls built around cities to keep people out, not to invite them in.

In addition, I have serious safety and other concerns, including:

1. Birmingham firefighting capability is limited to 7 stories. This would leave most of the back of the Proposed Project and virtually all of the south end of Birmingham Place with inadequate or no fire protection.

2. I also suggest that the Proposed Project would unduly burden our city's already hard-pressed police and public safety/rescue facilities.
3. Hazel Street is already a busy connector between Woodward and Old Woodward, especially at rush hour times. The Proposed Project would literally clog this small street with excess traffic, especially if the "four stack" valet service recommended by the developer's own traffic study is implemented and if the current four on-street parking spaces are included in the Proposed Project's plan for adequate parking, as Christopher Longe recently stated to the Planning Board would be the case. We note that the City's own traffic advisor, Fleis & Vandenbrink, also finds considerable fault with the developer's traffic study.
4. The demolition and construction time of the Proposed Project would be finite, but during that time, the heavy equipment needed for a project this size would cause construction damage to Hazel Street, Old Woodward and Woodward. Depending on the timing, this could result in at least the repaving work already planned for Old Woodward south having to be redone at a very substantial cost.
5. The Proposed Project will require deep excavation ("digging half way to China," as Mr. Longe recently expressed to the Planning Board) and heavy equipment and materials, which could seriously jeopardize the structural integrity of Birmingham Place. The developer has not adequately addressed this and has not made provision to repair, or more importantly to prevent, any damage to Birmingham Place.

Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

Ronnie M. Schibb

Birmingham Place, unit #529



Jana Ecker <jecker@bhamgov.org>

Rezoning issue

1 message

Clinton Baller <cmballer@avidpays.com>
To: Jana Ecker <Jecker@bhamgov.org>

Fri, Jun 22, 2018 at 10:17 AM

Jana,

Could you please let the Planning Board know my thoughts on the rezoning request for the former Franklin/First Place/Talmer bank building and Chinese restaurant on Woodward/Old Woodward?

I don't know why that property was not included in the D5 rezoning that occurred several months ago, but it should have been. Birmingham Place is nine stories, and the 555 building is 15. I can't imagine that the city would not allow something of similar height and mass to occupy the space between these two projects.

Beyond that, I think the city ought to insist on a project that brings some vitality to Old Woodward and the side street (Hazel), which are now dead zones. Either that, or just vacate Hazel insist on a use that is advantageous to the city.

My two cents, which are worth at least a nickel, I think.

Cheers!

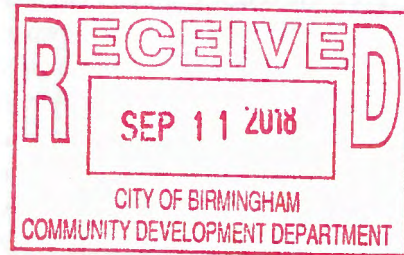
Clint



Susan K. Friedlaender
Direct: (248) 406-6088
sfriedlaender@fnrplc.com

September 11, 2018

City of Birmingham
Planning Board
151 Martin St.
Birmingham, MI 48009
Attention: Ms. Jana Ecker



Re: Request for Re-Hearing on Application to include 469 and 479 S. Old Woodward
in the D5 Downtown Birmingham Overlay District Zone

Dear Members of the Planning Board and Ms. Ecker:

We are writing this letter on behalf of the Birmingham Place Residential Condominium Association. The Association opposes the rehearing and rezoning of the Applicant's property to the D5 overlay zone for many reasons as detailed in this letter. The dispositive reason to again deny recommendation of the rezoning is because the D5 ordinance was never intended to be applied in the manner requested.

Introduction

It is first baffling to the Association that the Applicant was able to obtain a rehearing of this Board's decision at the June 27, 2018 public hearing to deny the Applicant's request for a tabling of its the rezoning request. The Applicant apparently was able to defy this Board's denial of the tabling request and come back again with the exact same rezoning request. The Applicant's latest submission not only fails to demonstrate any substantial change in facts, evidence or conditions but is also fails to show that the Planning Board made any mistake, failed to consider any relevant facts or was misled by alleged mischaracterizations regarding the clear, history, intent and purpose of the D5 Ordinance. A close examination of the Applicant's rehearing request reveals inconsistencies, fallacies, erroneous assumptions, unsupported assertions, and mischaracterizations of the record and history of the D5 ordinance. The intention of this letter is to provide that closer examination which should leave no doubt that the Planning Board should not change its original vote to deny a positive rezoning recommendation.

There Has Been No Mischaracterization of the Intent of the D5 Ordinance and its Inapplicability to the Applicant's Property.

It is impossible to read through the history of the D5 ordinance and arrive at a good faith conclusion that Birmingham Place or any Planning Board member has mischaracterized the purpose of the D5 ordinance enactment. The facts and history of the D5 ordinance, and its plain language, leave no doubt that the final product was concerned only with existing buildings which were non-conforming due to height over 5 stories and setbacks. The following is a summary of the history of the D5 ordinance. However, attached as Exhibit A, is a detailed timeline with references to the relevant public records which supports the statements made in this summary.

The 555 Building proposed the first draft of the D5 ordinance as the means to renovate and expand its existing non-conforming buildings and develop a new building on the southern portion of its site. The owners could not make those changes under the City's then existing ordinances that governed the renovation and expansion of nonconforming property. Although the Planning Board discussed several different approaches to help the 555 Building overcome its nonconforming status, which included taking a broader look at the Southern Gateway area, the Planning Board ultimately decided to deal only with three nonconforming taller buildings: The 555 Building, Birmingham Place and Merrillwood. It settled on dealing only with nonconforming commercial buildings over 5 stories because there was no consensus on how to address the development of other parcels on the West side of Woodward that did not have the height nonconformity. Moreover, the only direction that the City Commission gave the Planning Board regarding the drafting of a new overlay ordinance was (1) to find a way to make those taller buildings legally conforming structures and (2) draft language that would allow the reasonable renovation and expansion of other commercial nonconforming buildings throughout the City. The City Commission did not direct the Planning Board to draft a new overlay ordinance that allowed any building *under* 5 stories to obtain greater height because located adjacent to a building that was over 5 stories. The Applicant's representations to the contrary are simply opportunistic.

The above conclusion is amply supported by a memorandum from Planning Director Jana Ecker to the Planning Board dated September 22, 2015 (sic) that was included in the City Commission's February 13, 2017 packet.¹ The City Commission voted to approve the D5 ordinance at that February meeting. (Memorandum attached as Exhibit B)

Ecker discusses in the memorandum that the Planning Board faced a dilemma regarding how to deal with the 555 Building. While the Planning Board recognized the importance of the 555 Building, it was hesitant to create "a new classification around a specific building." (Ecker Memorandum, p. 1) The memorandum details the failed attempts to devise a way to not only address the 555 Building but also the future development of several other parcels, including parcels that did not share the height nonconformity. The Planning Board was unable to draft an ordinance regarding the future development of other parcels because *"there were varying viewpoints on whether a new overlay should be created that included multiple properties along Woodward, and if so, which properties to include. No consensus was reached."* (Ecker Memorandum, pp. 2-3) (Emphasis added) The Planning Board considered several options to allow changes to legal non-conforming commercial buildings.² The Planning Board considered drafting two new overlay ordinances, one of which could be applied even to conforming property on the west side of Woodward, which would allow building heights that matched the allowable height east of Woodward in the Triangle District. (*Id.* at p. 5) Ecker suggested amending the B-3 ordinance to allow the same development rights that existed when the 555 Building was constructed under that ordinance. Although no consensus could be reached regarding application of the ordinance to the future development of existing properties, there was consensus with the blessing of the City

¹ The contents of the memorandum suggest that the date contains a typographical error because the timeline discussed within the memo extends to setting the December 14, 2016 public hearing.

² The Zoning Ordinance already contained a provision that allowed the limited expansion of nonconforming residential buildings. See Section 6.02

Commission that the improvement and expansion of legal nonconforming buildings should be studied. (*Id.* at p. 3) The decision was made therefore only to deal with the nonconformity issue in the new D5 overlay district.

Thus, although Planning Board members correctly remember discussing additional properties in the Southern Gateway during the D5 drafting process, those discussions did not bear fruit or any action because of a lack of consensus. It was not because the Mountain King owners were not before the Board. It was because the Planning Board could not reach a consensus other than allowing valuable buildings such as the 555 Building, Birmingham Place and Merrillwood the greater right to renovate or expand without the disability of being a non-conforming property because of height and setback.

The Applicant was not prejudiced by the Planning Department's Mistaken Statement in its Review of the Community Impact Statement and Preliminary Site Plan

The Applicant claims that this Board made its rezoning recommendation based upon the mistaken assumption that the Property is located within the Parking Assessment District (PAD) and that it allegedly was prejudiced by the asserted mistaken assumption.

First, it is true that the Planning Department's review of the Applicant's Community Impact Statement (CIS) and Preliminary Site Plan review erroneously stated that the Applicant's property was within the PAD. The Planning Department's mistake, however, did not prejudice the Planning Board's review of the rezoning request for several reasons. First, the mistake regarding the PAD was in the Planning Department's CIS and Preliminary Site Plan review and the Planning Board did not consider the CIS or site plan at the rezoning hearing.

Second, the Planning Board did not prevent the Applicant from explaining how the parking requirements impacted its ability to develop the land under the D4 ordinance. The record shows that the Applicant discussed the fact that the property is not in the PAD. (Video of hearing at 2:07:56) In answer to the question why the property could not be developed under the D4 overlay ordinance, the Applicant claimed that it could not develop the Property under D4 because it was not in the PAD.

Owner: "But office building, to put a . . . I don't have the parking for it. *I'm not in the Parking Assessment District*, so I'm limited by parking. I can't put a restaurant there, because I . . . you know . . . I, I, don't have the parking to park it. The only thing I can really put there at the end of the day is a hotel. I mean that's the only thing that makes it work. *And again, to make it work as a hotel, I need to fit everything into this package that the hotel wants.*" (emphasis added)

Third, if the Applicant believed that not being part of the PAD was crucial to its rezoning request nothing prevented the Applicant from discussing that fact when initially addressing the standards for the rezoning. The fact that the Applicant made no mention of the PAD in its initial written rezoning request belies its post hoc argument that the issue was so crucial to its request.

Moreover, if parking is the issue as the Applicant now claims that it is, the remedy is not to develop a project that has even greater parking requirements than is required under the existing ordinance. The rezoning is not necessary to meet the parking requirements when the possibility of

variances for parking can resolve parking related problems.

Finally, the Applicant stated that it was its understanding that it is the only D4 site that is not in the PAD. That understanding appears to be wrong. If the GIS website is up to date, it appears that there are two other parcels that also are zoned D4 but shown as outside of the PAD. The parcels are 484 W. Maple and 460 W. Maple. (See Exhibit C, Map with Overlay District and PAD Map)

The Applicant Has not Demonstrated That the Applicable Parking Requirements Prevent Development Under the D4 Overlay Ordinance

The Applicant's supplemental explanation under Section 7.02(B)(2)(b)(i) of "why the rezoning is necessary for the preservation and enjoyment of the rights and usage commonly associated with property ownership" is that it cannot meet the parking requirements if developed under the D4 overlay ordinance. The Applicant asserts that it needs more vertical height for a mixed use project and to meet parking requirements. As discussed below, the Applicant has failed to support this claim. It is hard to determine whether the Applicant claims that the property cannot be used as it currently exists because of the inability to meet parking requirements or that it cannot be redeveloped physically for any purpose under the current zoning classification because of its configuration coupled with the D4/B-3 mixed use and parking requirements.

The Applicant makes the following assertions regarding parking requirements:

Contrary to what was assumed by the Planning Board, because the Property is not in the Parking Assessment District ... it currently has no possibility of providing off-street parking on the premises. In fact, it is currently non-conforming and cannot comply with Article 4. 46 of the Zoning Ordinance (Off-Street Parking Spaces Required) Letter, p. 2

The off-street parking requirements for this Property make the engineering and design of a mixed-use D-4 seriously impractical if not impossible. Letter, p.3

Not only will the Applicant lack the required area within which to locate all of the mixed uses with a first-floor retail mandate, the Applicant also is absolutely hamstrung by the off-street parking requirements for this site. The maximum use of the underground area will not yield enough parking spaces for a building designed to current zoning. Rezoning the Property to the D-5 Zone will allow more vertical space within which to accommodate a mixed-use building together with the required parking for all permitted uses. Letter, p. 3

There are serious difficulties with building an underground

garage within the D-4 design parameters that is deeper than two levels....Consequently , any such garage is limited to approximately 60 parking spaces. Letter, p. 5

Based upon the first quote above, the Applicant appears to be stating that the property as it currently exists cannot support any or very limited off-street parking. Even if that is true, under Section 4.45 (G) 2 and 4 of the zoning ordinance, off-street parking can be provided within 100 feet of the site or via shared parking arrangements. The Applicant claimed in its CIS that it has an agreement with the 555 Building for the use of 45 parking spaces. The Applicant could also apply for parking variances. If the application of the parking provision of the zoning ordinance prevents the property from being used, the likelihood of necessary variances is extremely high.

The next four quotes appear to be referring to a redevelopment under the D4 overlay district requirements. The Applicant essentially makes the logically challenged argument that because it is outside of the PAD it needs to develop a project that requires even more parking to meet the off street parking requirements. The Applicant's proposed use shows a three level underground parking facility with 100 spaces and an agreement with the 555 Building for 45 more spaces.³ The Applicant does not explain the discrepancy between its proposed plan and its new claim that any underground garage is limited to approximately 60 parking spaces because of D4 design regulations. However, the same D4 design regulations that would apply to an underground garage in the D4 district also apply in the D5 district. The D5 zone does not provide any relief from the design issue. The Applicant, however, asserts that it could meet the parking requirements if it could construct a 9 story building but it cannot meet the parking requirements if it constructs a 5 story building. If the site can only accommodate 60 parking spaces rather than the 100 spaces that the Applicant originally represented, it defies explanation how a taller building is better able to meet even greater parking requirements. Moreover, if there is a design requirement which hampers providing more onsite parking, that is a variance and not a zoning issue.

The Applicant also does not explain whether it means that if restricted to five stories, it cannot develop its preferred 98 hotel units, 29 residential units and a first floor coffee shop/ hotel lobby. The Applicant asserts that it needs more height because it cannot possibly fit mixed uses and meet parking requirements on its site if limited to 5 stories. According to its proposed plan, however, it can fit approximately 21-26 hotel rooms per floor and 13 residential units per floor. It is unclear if the Applicant is now claiming that it can only build a two level underground parking garage rather than a three level underground garage. In either case, it does not affect the above ground height of the building. The Applicant likely could develop a 5 story mixed use building with for example 70 hotel units, 13 residential units and the same size lobby/coffee shop as proposed. A 5 story development with these specifications might require 73 parking spaces for the hotel, approximately 13-16 spaces for the residential uses (depending on the number of rooms) and 12 spaces for the lobby/coffee shop. Even if the Applicant could only fit 60 spaces onsite, it

³ The Applicant appears to have made some mistakes in its parking analysis. For example the residential parking requirement under B-3 is 1 space for a 2 room dwelling and 1.25 spaces for a dwelling that has more than 3 rooms. The Applicant claimed that it needed 1.25 spaces for 26 apartments and 1.5 spaces for 3 apartments for a total of 37 spaces. The actual requirement is 29.75 spaces for 29 units.

could provide 105 spaces with the 555 Building parking agreement for 45 spaces.

The Applicant also has not explained whether it has explored the possibility of parking variances. A good argument exists that it should not have to provide any parking spaces for the lobby/coffee shop. The users of those retail spaces will likely be hotel guests or neighboring occupants who can easily walk to the coffee shop. The coffee shop likely will not be a destination spot for the motoring public. It is also likely that the hotel would not always be at full capacity which could provide a basis for obtaining additional parking variances. The City also is in the process of reviewing parking requirements for residential uses and possibility eliminating them for a site such as the Applicant's property.

Therefore, the answer to not being in the PAD is not to create taller buildings with higher density that requires more parking. The more reasonable solution is developing at lower densities with lower parking requirements and applying for any needed variances.

The Planning Board Appropriately Decided to Table Consideration of the CIS and Preliminary Site Plan Review

The Applicants second supplemental explanation under Sec. 7. 02(B){2}(b)(ii) of "why the existing zoning classification is no longer appropriate" essentially contains a confused diatribe regarding the Planning Board's decision to table consideration of the CIS and preliminary site plan review until after the City Commission acted on the rezoning request. It also discusses the ability to develop and use the property under the existing classification, which was addressed above in this letter. The Applicant also claims under this section that the Board was misled to believe that the D5 overlay zone only applies to existing buildings taller than five stories. That issue has also been addressed earlier in this letter.

First, the Planning Board correctly voted not to review the CIS or proposed site plan until and unless the rezoning was granted. There is no legal or factual basis for the CIS and preliminary site plan review until the petitioner secures the rezoning necessary to develop the property as proposed. In fact, it is an elementary zoning and planning principle that neither a planning board or legislative body should ever consider a particularized site plan at the rezoning stage unless the rezoning is conditional or part of a planned unit development. The reason is that the municipality is supposed to be making the rezoning decision based upon whether the general zoning classification is appropriate for the property and not whether any specific proposed plan is appropriate for the property. Another reason is because once the land is rezoned, the land owner cannot be tied to any specific site plan. The owner is free to develop the land under any provision of the new zoning classification. It would have been an error if the Planning Board had recommended rezoning based upon the CIS or site plan or had been unduly influenced by the proposed use for the site in making a decision.

Second, the Applicant's assertion that the Michigan Zoning Enabling Act, MCL 125.3101, et seq ("MZEA") requires that rezoning decisions be made according to a *site plan* is inaccurate and nonsensical. The MZEA provides that a *zoning ordinance* must be "based on a plan designed to promote the public health, safety and general welfare..." (emphasis added) This means that the zoning ordinance itself and any amendments to it must be based - not on a site plan for the particular use of a single parcel of property - but upon a general land use plan, like the 2016 Birmingham Plan. The MZEA does not require site plans for *rezoning* property. It does require

site plans for the approval of special land uses and planned unit developments. A site plan ensures that property is developed consistent with ordinance requirements. The Planning Board did not prejudice the Applicant in any way by not reviewing a proposed site plan for a zoning that did not exist for the site. The rezoning of property is a legislative rather than administrative act and depends on the implementation and furtherance of general policies. It does not depend on a site plan for a single parcel of property.

**The Applicant Failed to Support that the Rezoning Will Not Be Detrimental to
Surrounding Properties**

The Applicant's supplemental explanation of why the proposed rezoning will not be detrimental to surrounding properties relies on its factually inaccurate statement that the City intended that the D5 overlay zone apply to the Applicant's property and that the Birmingham Place owners will not be harmed by the rezoning.

First, as previously discussed, the history of the D5 zone indisputably supports that the clear intent of the D5 zone is only to apply to existing buildings taller than five stories. It should be noted here however that the Applicant's Letter very misleadingly takes Ms. Ecker's comment regarding new construction in the D5 zone completely out of context. All the participants in the D5 ordinance amendment process understood that the new construction provision was added for the benefit of the 555 Building. The language regarding new construction was not meant for property that had no existing height nonconformity that the D5 ordinance amendment was addressing.

Second, the Birmingham Place owners maintain their position that the proposed rezoning will be detrimental to the use and enjoyment of their property. A vast majority of the residential condominium owners, even those whose views will not be impacted, are opposed to the proposed development for many reasons that will be brought to the Board's and Commission's attention.

**The Board Did Not Fail to Make Required Findings of Fact or Misapply the Rezoning
Standards**

The Applicant further claims that the Planning Board failed to make the required findings under Ordinance Section 7.02(B)(5). Its primary complaint is that the ordinance allegedly does not require the Planning Board to determine whether the property can be used as zoned. This is splitting hairs.

Section 7.02(B)(5) (d) of the zoning ordinance requires that the Planning Board make findings of fact regarding "[t]he suitability of the property in question to the uses permitted under the existing zoning classification." Asking the Applicant why it cannot use the property as zoned is simply a way of determining whether the property is suitable for the uses permitted under the existing zoning ordinance.

Second, the Applicant claims that the Planning Board should have examined the appropriateness of the current zoning and not whether the Applicant could develop under this category. Again this is splitting hairs because it is the same question. The zoning may be inappropriate as applied to this site if the Applicant cannot develop or use its property under this classification. If the property can be used and the zoning classification still furthers master plan

goals and the public interest then it remains appropriate. The only difference between the D4 and D5 overlay zones is building height. The uses are the same. The Applicant's only argument that conditions changed is the rezoning of Birmingham Place and the 555 Building. However that rezoning has not changed any existing land use patterns. The rezoning recognized existing land uses that had become nonconforming because of building height policies that changed after those taller buildings were constructed. Birmingham Place is as tall now as it was when it was rezoned to D5. The rezoning merely normalized the existing heights of the affected buildings.

A community generally should preserve its master plan and existing zoning unless the zoning classification no longer furthers the master plan goals or is no longer suitable for the site because of changed conditions and development patterns. The City certainly can adopt new master plan goals but should not make sweeping changes to the City's land use plan through its zoning ordinances alone without first studying the issue of increasing building heights. The planning study is supposed to precede such zoning changes because the Zoning Enabling Act mandates that zoning be based on a plan. There has been no official study or public notice of any plan to allow more than 5 stories on the West side of Woodward. Moreover, the City weakens its master plan and its ability to defend it in court when it approves rezoning that is inconsistent with the plan. The proposed rezoning was not consistent with the 2016 Plan which reflects a policy decision to limit the height of buildings in the Downtown Overlay Zone to five stories. It is true that the City has since allowed taller buildings in the Triangle District but that new zoning was accomplished according to the Triangle District Plan. Therefore, when asked to depart from the 2016 Plan as it applies to the West side of Woodward, the City is well within its rights to require that the proponent demonstrate that the property cannot physically or viably be developed as zoned. To suggest otherwise ignores established zoning law and planning principles.

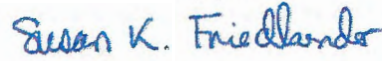
CONCLUSION

The Applicant has not provided any new information that should change the Planning Board's original and correct recommendation to rezone the property to the D5 overlay classification. It is beyond dispute that the D5 ordinance was meant only to apply to existing buildings over 5 stories or existing sites that contained buildings over 5 stories. The Planning Board determined when it drafted the D5 ordinance that it would not address the future development of any other parcels in the Southern Gateway. It would be unfair and a failure of process for the Planning Board to ignore that history because the public will then have been misled by the process to enact the D5 ordinance. It is customary for the City to involve the public in any study to raise building heights as it did in the Triangle District.

Moreover, the Applicant made no effort to demonstrate that the D4 ordinance is unreasonable or unworkable as applied to its property. It has not made any credible case to support the rezoning request. At the June 27, 2018 hearing, the Applicant claimed that he could only make the site work with a hotel and in order to develop a hotel *"I need to fit everything into this package that the hotel wants."* (emphasis added) This is the very reason why the City cannot rezone property based upon a proposed use. The issue is not what this particular hotel wants and the City cannot guarantee by rezoning the property that the hotel will even go through with the development. The issue is what does the existing zoning allow and can any of the allowable uses be reasonably developed consistent with the City's land use policies as reflected in the 2016 Plan and its zoning ordinance.

The Planning Board, therefore, must recommend a denial of this opportunistic and improper rezoning request.

Very truly yours,



Susan K. Friedlaender

EXHIBIT A

TIMELINE AND SUPPORTING MATERIALS REGARDING THE EVOLUTION OF THE INTENT AND PURPOSE OF THE D5 OVERLAY ORDINANCE

INTRODUCTION

It is impossible to read through the history of the D5 ordinance and arrive at a good faith conclusion that Birmingham Place has mischaracterized the purpose of its enactment. The facts and history of the D5 ordinance, and its plain language, leave no doubt that the final and enacted draft was concerned only with existing buildings which were non-conforming due to height over 5 stories and setbacks. In fact, the only direction that the City Commission gave the Planning Board regarding the drafting of a new overlay ordinance was to find a way to allow the renovation and expansion of legal nonconforming commercial buildings. Although the Planning Board discussed several different approaches to help the 555 Building overcome its nonconforming status, which included taking a broader look at the Southern Gateway area, the Planning Board ultimately decided to deal only with three nonconforming taller buildings: The 555 Building, Birmingham Place and Merrillwood. It settled on dealing only with nonconforming commercial buildings over 5 stories because there was no consensus on how to address the development of other parcels on the West side of Woodward that did not have the height nonconformity. This is why it would be completely improper to rezone the Applicant's property to D5. The rezoning would pose a serious question regarding whether the Planning Board properly notified the public and City Commission regarding the intent and application of the D5 ordinance.

June 10, 2015 Planning Board Study Session

In the spring of 2015 the owners of the 555 Building submitted a request to amend the zoning ordinance and create a new D5 overlay district for buildings over five stories. The owners proposed the ordinance after the building department found "that any changes to the existing legal non-conforming building would increase the nonconformity, and thus be prohibited unless numerous variances were approved." (2015-06-10 Minutes from Planning Board Study Session)

When first presented with several different drafts of the proposed D5 ordinance, **the Planning Board discussed that the proposed amendment "should be viewed not only as to how it applies to 555 S. Old Woodward Ave., but possibly to other properties as well." *Id.*** The reason for this cautious approach was to counter any charges of spot zoning or undue favoritism. The dilemma that emerged, however, was the valid concern about applying the ordinance to other properties without further study: (Emphasis added)¹

Mr. Koseck noted there are all kinds of non-conforming buildings in the City and he doesn't think the goal is that they should all go away and become conforming. That is why the Board of Zoning

¹ Please note that the reason for the inconsistency of referring to the "D-5" and "D5" overlay zone throughout this letter is because while the Zoning Ordinance uses the "D5" appellation, the minutes and other writers often use "D-5" designation. This writer chooses to use the official Zoning Ordinance version.

Appeals exists. He is in favor of improvements being made to the building, but as the applicant makes enhancements he (page 7) hopes they would go further to be more in compliance with D-4, D-3, D-2, and D-1. It scares him to expand D-5 beyond the limits of this property without further study.” *Id.*

Chairman Clein thought of this as an opportunity to take a look at this building along with several parcels in the context of future development. If Bruce Johnson, Building Official, and Tim Currier, City Attorney, would come to a Planning Board meeting and are on board, he would be in favor of providing some relief in a unique situation; but he just doesn't want to do it capriciously. The Ordinance standards were put in place for a reason and he would be supportive of fitting them into the context of a building that obviously is not going away, in order to help make it better.

Ms. Whipple-Boyce was also in support of helping to make this Gateway building better looking. She thought also that it would be helpful to have Messrs. Johnson and Currier come to a Planning Board meeting. She could not imagine why the Planning Board could not somehow help the applicant to get their building re-skinned in some other way. Further, the ordinance proposal should not include some of the things that the board does not want to have in the City.

Ms. Lazar was in full support, as well, of trying to do something with the building. However, she didn't see how this board could whip up a new ordinance in a short period of time. It concerns her that what might be applied to this building could become applicable to some other sites which would not be appropriate. She would rather try to help the applicant get to where they need to be with this building” *Id.*

July 7, 2015 Planning Board Study Session

At the next study session, the Planning Board continued discussions regarding whether to target a larger area between Hazel and Brown or limit the application of the new ordinance to the 555 Building.

Mr. Williams summed up the discussion by saying the board wants to go the conforming route and use the SLUP process to do it. Maybe the applicant won't get everything but they can probably get a substantial achievement through the combination of the new MU classification plus SLUP exceptions for what they get as of right and what they get as a bonus. Ms. Ecker noted that is consistent with what the City does in other districts and what has been approved by the City Commission. This is a methodology that gives the Planning Board flexibility. It was the consensus that staff should work on

crafting something to that effect, taking the 555 Bldg. separately so that it gets through the City Commission.

September 9, 2015 Study Session

At the next study session, Ms. Ecker summarized the process as follows:

The applicant is seeking to rezone the 555 S. Woodward Ave. properties from the existing D-4 Overlay zoning classification to the proposed D-5 Overlay zoning classification, which would essentially render the existing building as a legal, conforming building that could then be renovated and expanded.” (2015-09- 09 Minutes, p. 9)

The Planning Board continued to ponder the scope of the work and whether it should go beyond dealing only with the 555 Building. Mr. Williams suggested creating a D5 district for the 555 Building and a D-6 District for other locations which might be nine stories. *Id.* at p. 10.

The Planning Board failed to reach a consensus or agreement with Mr. Williams suggestion.

September 30, 2015 Planning Board Study Session

At the next study session, the purpose of the proposed ordinance was characterized as follows:

Ms. Ecker explained that in order to renovate and expand the existing building, the owners of the 555 S. Old Woodward Building are requesting a Zoning Ordinance amendment to create a new D-5: Downtown Gateway Over Five Stories zoning classification in the Downtown Birmingham Overlay District. The proposal then is to seek rezoning of the 555 S. Woodward Ave. property from the existing D-4 Overlay zoning classification to the proposed D-5 Overlay zoning classification, which would essentially render the existing building as a legal, conforming building that could then be renovated and expanded.” (2015-09-30 Minutes, pp 10-11)

The Planning Board again discussed creating two new overlay zones to address not only the nonconformity issue but also to address other property in the Southern Gateway area. The Planning Board continued to debate the expanded approach and could not reach a consensus.

Ms. Whipple-Boyce said it is important to try to help the applicant have some sort of zoning classification so they can move on with their project. However, she also does not want to see 168 ft. up and down Woodward Ave. **She is not sure that looking at the whole area is even appropriate. So maybe just work with this building and give them a zoning classification.** Steer the applicant toward having their building conform with the sort of downtown standards that the board hopes to have; which for example, isn't the garden level. If they want to continue to have these when they come forward with a new plan that is when they can go to the BZA. (Emphasis Added)

Mr. Share was in favor of having the applicant first exhaust their remedies. If the BZA doesn't provide them with the relief they need and this board concludes that it is really critical, then maybe the board changes the ordinance, takes the heat for it, and tells everyone it is because they don't want the building to fall down.

Chairman Clein said he is not hearing any clear direction so the board needs to bring this back because it is a complicated issue.
(Emphasis Added)

The Owner's attorney assured the Planning Board that providing the 555 Building with relief would not be spot zoning.

January 17, 2016 Planning Board Study Session

At the opening of the study session, Ms. Ecker recounted the history of the ordinance amendment and rezoning request. She explained that the 555 Building not only wanted to renovate the existing building **but the owners also wanted to add "an addition to the south of the existing residential tower for new retail space and residential units."** (Emphasis Added)

In order to renovate and expand the existing building, the owners of the 555 S. Old Woodward Building are requesting a Zoning Ordinance amendment to create a new D- 5: Downtown Gateway Over Five Stories zoning classification in the Downtown Birmingham Overlay District which would essentially render the existing building as a legal, conforming building that could then be renovated and expanded." (2016-01-17 Minutes, pp 3-4)

Ms. Ecker also recounted that as of the last study session the Planning Board could not reach a consensus regarding whether to deal only with the 555 Building or look at properties along Woodward north to Brown Street:

There was no consensus on whether only the 555 S. Old Woodward Ave. property should be placed in a new overlay classification or whether this should extend north to Brown St. along Woodward Ave.

The minutes from the study session show that the Planning Board continued to debate whether to include properties other than the 555 Building in the proposed overlay district:

Mr. Share thought there are two separate questions. One relates to the 555 Building and whether or not it ought to be allowed to become conforming; separately, there is a question about general planning principles.

Mr. Boyle's opinion was there are three issues: the building itself; the corridor; and thirdly how to move forward with the details on S. Old Woodward Ave.

Mr. Williams stated the board should focus on the 555 Building and come up with a practical solution. The problem is that the building isn't right and it needs to be improved.

Ms. Whipple-Boyce said the question is whether a new zoning classification needs to be created, or can the applicant go through the variance process and achieve the same result.

Understandably, the owners of the 555 Building wanted to move forward with their request. The owners' attorney reiterated that the Owner was requesting that "the Zoning Ordinance be amended to accommodate their building; and second that the zoning map include the petitioner's property." (Emphasis added) The attorney did not believe that accommodating the building would be spot zoning, meaning that the Planning Board did not have to concern itself with anything other than moving forward on an ordinance that would apply only to the 555 Building.

Additionally, he [Mr. Rattner, the attorney] emphasized this is certainly not spot zoning. The idea is to modify the ordinance to make a nonconforming building one that should obviously be conforming in order to allow the owner to make improvements. Mr. Rattner requested that the proposed ordinance be moved forward to a public hearing.

The Planning Board was persuaded and concluded that it needed to focus on the 555 Building and leave discussion of the corridor for another day.

Chairman Clein summarized that the board has come to the conclusion that it needs to focus on the 555 Building. The rest of the corridor is a different discussion. The board concluded that a sub-committee consisting of Ms. Ecker, Mr. Rattner, the City Attorney, and two board members could have a discussion on this in an open meeting forum. Mr. Share and Mr. Koseck volunteered to represent the Planning Board in the deliberations.

There was one public comment which shows that this member of the public understood that the Planning Board would not be making any new and sweeping changes but only be focusing on how to help the 555 Building.

Mr. Paul Reagan, 997 Purdy, said he is encouraged by the discussion. No one wants the building to deteriorate. **He is glad that the Planning Board is not going beyond what was asked for, which is to restore the building. That is about how far it should go.** Right now there is real competition for parking on S. Old Woodward Ave. Imagine what expanding the density of that building would do to the neighborhood. Lastly, he was shocked to

hear the petitioner had a hand in drafting ordinance language for rezoning. (Emphasis Added)

The Planning Board decided to establish a sub-committee to work on the new ordinance amendment. The sub-committee did not present its findings and proposals until September 2016. In the interim however the Planning Board obtained direction from the City Commission regarding dealing with the important issue of nonconforming commercial buildings.

June 20, 2016 Joint Session with City Commission

The Planning Board presented several land use items to the City Commission at the joint session with the understanding that if the City Commission wanted further discussion the matter would be submitted at a subsequent meeting for more formal direction to further study and address the issue. (See 2016-06-13 Memo from J.A. Valentine to City Commission.) Mr. Valentine also submitted a more detailed memo to the City Commission dated June 14, 2016 which in part described the issue of "Existing Commercial Non-Conforming Buildings" and asked the Commission whether the issue merited further discussion. (See June 14, 2016 Valentine Memo.)

The representation made to the City Commission was that the Planning Board wanted to address the 555 Building and other existing non-conforming buildings like Birmingham Place and Merrillwood. There was no representation that the Planning Board would address extending the proposed new overlay ordinance to buildings like the Applicant's building that was not in danger of losing substantial value like the 555 Building if forced to redevelop only by losing substantial building height.

July 25, 2016 City Commission Meeting

Ms. Ecker attended the City Commission meeting to get the Commission's formal direction on how the Planning Board should proceed on the planning issues raised at the joint meeting.

Ms. Ecker represented to the Commission that the Board was only looking for ways to deal with existing nonconforming commercial buildings and not to create a new ordinance that would allow existing sites without any height non-conformity to construct new buildings under the proposed zoning district. The ordinance was not intended to deal with new development that could conform to the existing zoning classification. Ms. Ecker stated:

if a review of all the buildings in town was done, one would find something slightly non-conforming on many of the buildings that were built, especially if they were built prior to the sixty's when the zoning ordinance came into effect. She noted specifically buildings such as the Merrillwood Building, Birmingham Place, and the 555 building in regards to the height and bulk of the buildings. She explained that the discussion at the workshop was that there should be some regulation in the zoning ordinance that allows for some maintenance or renovation to those types of buildings when they are already nonconforming. (Minutes, p. 6)

Mayor Pro Tem Nickita stated that this was an issue that the Commission wanted to address.

He questioned if the City is looking at identifying a district or a series of buildings throughout the City. Ms. Ecker explained that this is to establish a procedure where if there was a nonconforming building in the City and whichever way it is non-conforming, it would give the owner a way to make changes to modernize that building. (Minutes, p. 6) (emphasis added)

The City Commission gave the following direction to the Planning Board:

MOTION: Motion by DeWeese, seconded by Bordman: To review the non-conformance provisions pertaining to commercial buildings to provide specific requirements, considering a new zoning category or categories, that allow for changes to non-conforming buildings for the maintenance and renovation of existing buildings consistent with those permitted for residential buildings and structures. (*Id.*)

The City Commission's specific directive relative to any new zoning category was to allow for changes to non-conforming buildings and for their renovation and maintenance. It was not to create a new overlay district that allowed any property the option to build taller than 5 stories.

August 10, 2016 Planning Board Meeting

Ms. Ecker briefed the Planning Board on the City Commission's directives regarding the planning issues addressed at the joint meeting. She reported that that the Commission directed the Planning Board as follows:

3) Existing Commercial Non-Conforming Buildings - to review the non-conformance provisions pertaining to commercial buildings to provide specific requirements considering creating a new zoning category or categories to allow for changes to nonconforming buildings for maintenance and renovation consistent with those permitted for residential buildings and structures. (Minutes, p.5)

Ms. Ecker suggested creating a win-win situation by offering the ability to renovate or to add an addition, but the City would get something in return. Ms. Whipple-Boyce said it would be nice to have this in place ahead of time for buildings like 555 Woodward and Merrillwood. **Chairman Clein thought the board could consider new zoning categories if there are specific areas that need it; but they can also consider generic language changes. Look at the non-conforming buildings first.** (*Id.*)(Emphasis added)

September 14, 2016 Planning Board Meeting

At this meeting, the Planning Board resumed the discussion of non-conforming building regulation under the City Commission's parameters which did not include allowing sites with buildings under 5 stories the ability to go higher than 5 stories.

Ms. Ecker, along with the attorney for the 555 Building, suggested that instead of creating a new overlay district, the Planning Board could recommend amendments to the B-3 zoning ordinance that would render not only the 555 Building but also Birmingham Place as conforming buildings.

It was during the discussion to amend the B-3 ordinance that the only reference to Mountain King is recorded in any public document concerning the D5 zoning amendment:

Ms. Ecker stated that the 555 Building, Birmingham Place and Mountain King were the only properties in the City zoned B-3 in the underlying D-4 Zone. She suggested an option that would amend the regulations for height and setback similar to what they were when the buildings were approved. **Mr. Williams wanted to limit the focus on just the 555 Woodward Bldg. as he thinks it needs to be approved.** (Minutes, p. 5) (Emphasis added)

Ms. Ecker noted this option would allow the applicant to have a conforming status and apply for financing to do an expansion and improvement on the building. It would allow them to do an addition to the south and come to zero setback, and to go up to match the height of the building that is there. What it would not do is force them to address the issue of the garden level or the dead zone along Woodward Ave. However, it would permit them to address that. *Id.*

Ecker was mistaken regarding the number of parcels zoned B-3. The Power House Gym property is also zoned B-3. Regardless, it should be clear that the only reason Ecker mentioned Mountain King was to promote the idea that changing the B-3 zoning would alleviate any concern about spot zoning and at the same time would not open the door to many other parcels being able to take advantage of the amended ordinance. However, there was no support for the B-3 amendment option.

Mr. Koseck was in favor of allowing the building to continue to be updated but that doesn't mean it should be permitted to grow. Any add-on to the south would have to meet the current Ordinance."

Discussion concerned whether B-3 zoning that allows Birmingham Place and Mountain King to reach 168 ft. in height would be a hard sell to the public. The conclusion was they could not sell it on more than one piece of property. Mr. Williams proposed they go back to a previous zoning for the 555 Building that existed 45 years ago. He didn't think it should include any other

property. Because of that they would not be making a special case for this building in the form of spot zoning. The legal argument is that it would be remedying a wrong. (2016-09-14 Minutes, p. 5)(Emphasis added) (Minutes, p. 5) (Emphasis added)

September 28, 2016 Planning Board Meeting

Ms. Ecker provided background information including that at the last study session the Planning Board “resumed their discussion regarding legal nonconforming buildings.” The result was that “after much consideration” the Board directed the Planning Staff to meet with the 555 Building applicant to draft proposed ordinance language that addressed “the improvement of commercial buildings throughout the City, and also specifically addresses the legal, non-conforming status of three buildings downtown.” (2016-09-28 Minutes, p. 3) ²

It is clear that by this meeting the Planning Board was only discussing a draft of the D5 overlay ordinance that gave the 555 Building, Birmingham Place and Merrillwood conforming status and nothing more. According to the minutes, the approach, with which the 555 Building applicant agreed, “was first to create a D-5 Zone, and second to recommend rezoning of one or more properties into the new D-5 category. This would allow the board to have further discussion on whether they want it to be the 555 Building property, or include the Birmingham Place and the Merrillwood Building, which are also non-conforming with regard to height.” (*Id.* at p. 5.)

It is also very clear that the Planning Board intended that the D5 language regarding new development in the D5 zone was for the benefit of the 555 Building owners, who expressed throughout the process that they wanted the right to use their vacant property for a new building that could be built as tall as the 555 Building. The only issue was whether building higher than 5 stories would require a special land use permit.

Chairman Clein summarized that the language would make any property that is put into the D-5 Zone legal and conforming as to height and setback. It would allow expansions as part of building maintenance. Undeveloped portions of the property could be built upon so long as it meets the D-4 Overlay standards. The south side of the 555 Building still needs to be resolved.” (*Id.*)

Mr. Williams did not agree with limiting the south side to five stories. However, anything built above five stories would require a Special Land Use Permit ("SLUP"). Mr. Share was in favor of tying all of the expansions to a SLUP. Chairman Clein felt the D-4 controls are in place and any expansion must conform. Mr. Share thought the City should have some control over how changes get made. Mr. Koseck liked the SLUP because it allows the City to control the design to meet the spirit and intent of the D-4 Zone. Mr. Jeffares agreed. (*Id.*)

² As stated, the Planning Board also amended Section 6.02 so that it applied to nonconforming commercial and residential buildings.

The 555 Building owner's Attorney responded to the discussion as follows:

Mr. Richard Rattner, Attorney, represented the applicant. He said they are almost there with allowing the 555 Building to be conforming in all respects. Secondly, the proposed expansion language is fine. Third, they would like to see the height of a new building being constructed in the D-5 Zone be up to but not exceeding the height of the building immediately adjacent or abutting it. That means the south building cannot be any higher than the 555 Building. They would like to do that without a SLUP. (*Id.*) (Emphasis added)

October 28, 2016 Planning Commission Meeting

At this meeting, the Planning Board set a public hearing for making a recommendation on the amendment of the D5 ordinance and the proposed rezoning of the 555 Building to the new zoning overlay district category.

First, Ms. Ecker provided a recap which reiterated that the proposed D5 classification would accomplish two goals: (1) render 555 S. Old Woodward a legal conforming structure and (2) allow a new addition at the south end of the building that could be built as tall as the adjacent structure. (2016-10-26 Minutes, p. 4)

Ms. Ecker also suggested that the Board should recommend rezoning Birmingham Place and Merrillwood to the D5 classification because they were also nonconforming in building height. The consensus was to contact the owners before including them. There was no suggestion that they contact the owner of the Mountain King property or include that property in the rezoning because the Mountain King property did not contain an existing building over 5 stories.

The decision to include Merrillwood in the rezoning further establishes that the City did not intend the D5 Overlay ordinance as part of any general development incentive for the South Woodward Gateway as the Applicant has represented to the Board. Merrillwood is not located in the South Woodward Gateway. The Planning Board included Birmingham Place and Merrillwood because the only purpose of the D5 overlay district is to provide legal conforming status to existing buildings over 5 stories.

December 14, 2016 Planning Commission Meeting

At this meeting, the Planning Board held a public hearing on the proposed D5 amendment and the rezoning of the three nonconforming buildings. Ms. Ecker explained that the Planning Board set the public hearing "with the goal of bringing several non-conforming buildings in Birmingham into compliance. The proposed ordinance amendments would add a new D-5 classification to the Downtown Overlay Zone which would allow buildings that are currently non-conforming to be considered legal in regards to setbacks, number of stories, and height. The new

D-5 zone would also allow additions or new construction in the D-5 to match the height of abutting or adjacent buildings.” (2016-12-14 Minutes, p. 3) (Emphasis added)³

It should be obvious that Ms. Ecker would have notified the public that the new D5 classification could be applied to any property in the City whether or not it was nonconforming in height if that was the intent of the new ordinance. The failure to notify the public of that intent is another reason why the Planning Board must again deny recommendation of the rezoning request. In fact, a resident, who was concerned about the impact on parking demand commented that he did not believe that residents really understood what was being considered. If what was being proposed was other than what has been represented as the goal of the amendment, there has been a serious breach of the public trust.

February 13, 2017 City Commission Public Hearing

At this meeting, the City Commission held a public hearing on the D5 ordinance amendment and rezoning. The planning department briefed the City Manager prior to the hearing.

In a Memorandum dated February 6, 2017 from Senior Planner Matthew Baka he reminded the City Manager that the Planning Board and City Commission discussed the issue of legal non-conforming commercial buildings at the June 2016 joint meeting.

The Memo further provides that the Planning Board held a public hearing

to consider Zoning Ordinance amendments **with the goal of bringing several non-conforming buildings in Birmingham into compliance**. The proposed ordinance amendments would add a new D-5 classification to the Downtown Overlay Zone which would allow buildings that are currently nonconforming to be considered legal in regards to setbacks, number of stories, and height. The new D-5 zone would also allow additions or new construction in the D-5 to match the height of abutting or adjacent buildings. (Memo, p. 1.) (emphasis added)

The Memo advised only that the goal of the zoning ordinance amendment was to render several buildings legally conforming structures. The Memo would have alerted the City Manager if the intention was to allow new construction on sites that did not already contain a building greater than 5 stories.

The minutes from the February 13, 2017 public hearing show that City Planner Ecker advised the Commission that with respect to the new D5 classification and rezoning of the three buildings:

[The impact of the amendments would make the three buildings legal conforming buildings, and they would be allowed to be

³ As stated, the Planning Board also recommended amending Article 6, Nonconformances, Section 6.02 by removing the limitation that the extension or expansion of nonconforming property applied only to residential property.

extended or enlarged with a Special Land Use Permit. If a new building was constructed, it could match the height of the existing building with a Special Land Use Permit.

The new category would deal with existing buildings located in the D5 zone. This change enables applicants to obtain funding for significant renovations or improvements as a legal conforming building. The second part allows expansion with the restriction to meet the overlay. (Minutes, p. 15)

First, Ms. Ecker unmistakably represented to the City Commission that the proposed D5 ordinance would apply to taller existing buildings, like the 555 Building, Birmingham Place and Merrillwood, and allow improvements and expansions of those buildings or sites.

Second, Ms. Ecker also led the Commissioners to believe that only the 555 Building would be eligible to build a new taller building in the D5 district because of the vacant land on its site. **Ecker advised Commissioner Boutros that the language regarding new construction of a building as tall as an adjacent building was inserted because “the 555 site has room where a new building could be constructed.” (Id.)**

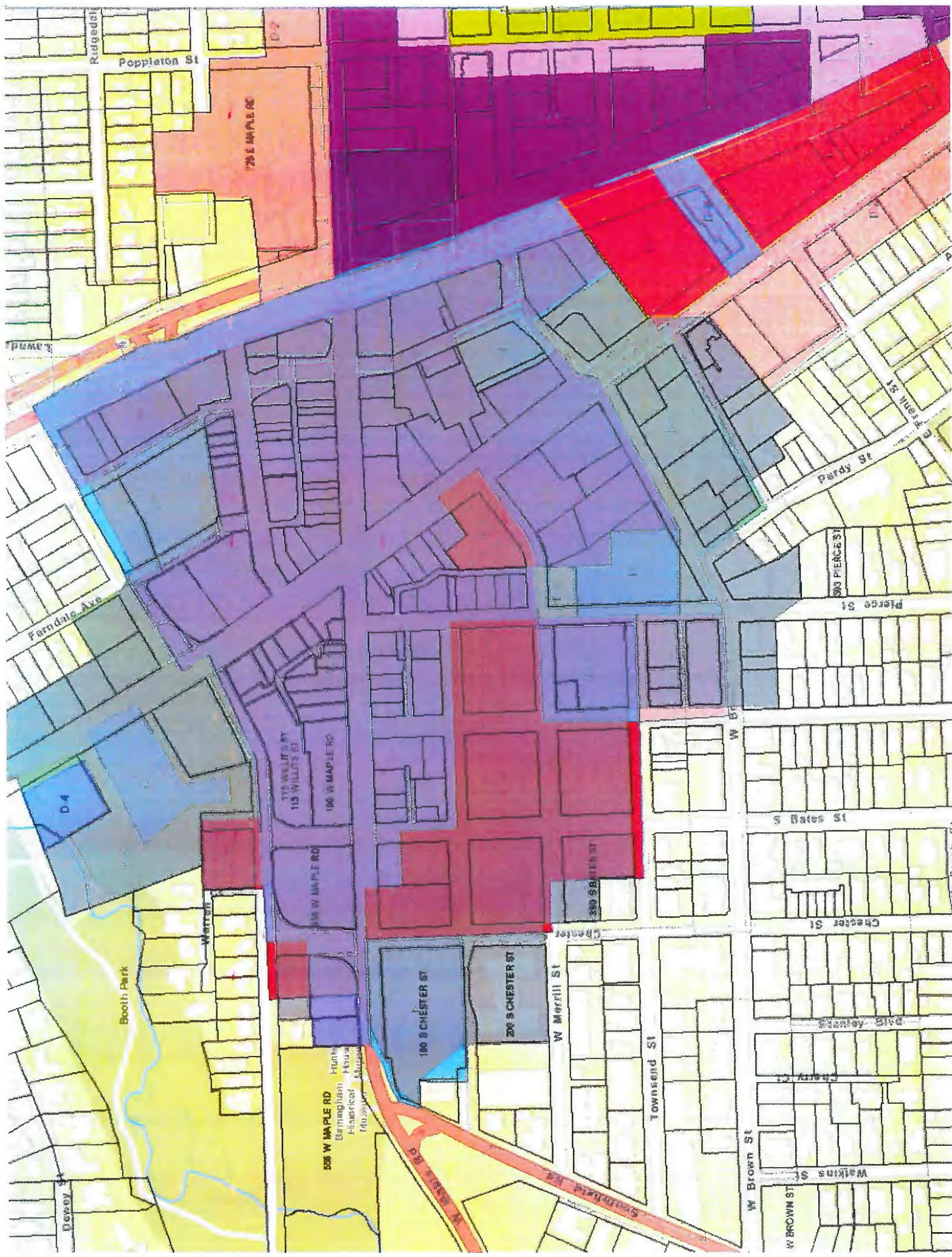
Ecker also assured Commissioner Hoff as follows:

Commissioner Hoff asked if Birmingham Place or Merrillwood could buy the adjacent structures and then build in the space. City Planner Ecker said that they could not, because the properties next door would not have the D5 zoning classification.”

The clear inference is that neither Merrillwood or Birmingham Place could build new taller buildings by simply buying the next door parcels because those parcels would not have been eligible to be part of the D5 district. The 555 Building could construct a new building because its entire site would be zoned D5.

CONCLUSION

The history of the D5 overlay ordinance should clear up any misconception or unsupported assertions by the Applicant that Birmingham Place, its attorneys or any Planning Board member mischaracterized the intent and purpose of the D5 ordinance. The facts show that the only intent was to allow the renovation and expansion of existing buildings taller than 5 stories. It was also to allow the 555 Building the option to build on its vacant property that also was zoned D5. There was no intent that the City apply the ordinance to property like the Applicant’s property which can be redeveloped under the D4 ordinance and not lose any preexisting height. As a nonconforming building for reasons other than being taller than 5 stories, the Applicant can seek permission to renovate or expand its existing buildings under Article 6, Section 6.02.



Poppiaton St

751 MAPLE

Fernale Ave

D-4

Booth Park

508 W MAPLE RD
Birmingham
Hollywood
1400

100 S CHESTER ST

200 S CHESTER ST

W Merrill St

Townsend St

W Brown St

W BROWN ST

Stanley St

Chester St

W Bates St

303 PIERCE ST

Piercy St



MEMORANDUM

Community Development Department

DATE: September 22, 2015

TO: Planning Board Members

FROM: Jana L. Ecker, Planning Director

SUBJECT: Study Session on Legal Non-conforming Buildings

Last year, the owners of the 555 S. Old Woodward building applied to the Planning Board to amend the Zoning Ordinance to allow the renovation of the existing building, the addition of new residential units along S. Old Woodward, as well as an addition to the south of the existing residential tower for new retail space and residential units. The Building Official had previously ruled that some changes to the existing legal non-conforming building may be permitted. However, the scale and scope of the changes that the property owner sought to implement would exceed what would be permitted as maintenance and thus were not permitted in accordance with the legal non-conforming regulations contained in the Zoning Ordinance.

In order to renovate and expand the existing building, the owners of the 555 S. Old Woodward building requested a Zoning Ordinance amendment to create a new D-5: Downtown Gateway Over Five Stories zoning classification in the Downtown Birmingham Overlay District. The proposal was then to seek rezoning of the 555 S. Old Woodward properties from the existing D-4 Overlay zoning classification to the proposed D-5 Overlay zoning classification, which would essentially render the existing building at 555 S. Old Woodward as a legal, conforming building that could then be renovated and expanded in accordance with new D5 development standards.

On May 13, 2015, the Planning Board began discussing the applicant's proposal to create a new D-5: Downtown Gateway (Over Five Stories) zoning classification in the Downtown Birmingham Overlay District. Planning Board members discussed the desire to review the proposed amendment within the spirit, vision and context of the entire downtown, and not to create a new zoning classification around a specific building. The Planning Board did, however, recognize the importance of the 555 S. Old Woodward building and the need to allow renovations and additions to improve its presence at the south end of Downtown Birmingham. Specific concerns raised regarding the existing 555 S. Old Woodward building were the unwelcome facades of the Woodward elevation, the split level concept on the S. Old Woodward elevation, and the exposed structured parking.

At subsequent Planning Board meetings on June 10th, 2015 and July 8th, 2015 the Planning Board further discussed the ways that the building could be modified and improved as a conforming structure and not through the use of variance requests. The Planning Board indicated that they would like to craft a zoning classification or overlay expansion that allows

the 555 Building to be renovated but also mirrors the development standards in the Triangle District across Woodward, which allows a maximum of 9 stories. Board members discussed taking a look at the 555 building along with several other parcels in the context of future development. It was suggested that this could be accomplished through a combination of a new zoning district and a Special Land Use Permit (SLUP) or the addition of a D6 zone as well, to differentiate permitted height north of Bowers, and south of Bowers along Woodward. The board reviewed multiple examples of similar "gateway corridor" districts in other cities (see attached), along with highlights, notes and sample ordinance language from other cities that were relevant. There were varying viewpoints on whether a new overlay should be created that included multiple properties along Woodward, and if so, which properties to include. No consensus was reached.

On September 9, 2016, the board reviewed a revised draft of the proposed D5 zone. Board members discussed the appropriate height for buildings along the west side of Woodward adjacent to the Triangle District. Some board members felt that the allowable height in a new D5 or D6 zone should mirror the 9 stories permitted in the Triangle District on the east side of Woodward. Other board members felt that additions should be permitted to match the height of existing non-conforming buildings. The board was unable to reach consensus on how to proceed, and requested additional information and direction from the City Attorney on potential options to provide exemptions for non-conforming buildings. The City Attorney's response letter dated September 29, 2016 is attached for your review.

On June 20, 2016 the issue of legal non-conforming commercial buildings was discussed at a joint meeting of the City Commission and Planning Board. The 555 S. Old Woodward building, the Merrillwood Building and Birmingham Place were referenced due to their non-conformity with regards to their height and bulk, and the desire to allow improvements or changes to these buildings. While no action was taken at the joint meeting, there was consensus that the issue of the improvement or expansion of legal non-conforming buildings should be studied.

On July 25, 2016, the City Commission again discussed the issue of legal, non-conforming commercial buildings and directed the Planning Board to review the non-conformance provisions pertaining to commercial buildings to provide specific requirements, considering a new zoning category or categories, that allow for changes to non-conforming buildings for the maintenance and renovation of existing buildings consistent with those permitted for residential buildings and structures.

On September 14, 2016, the Planning Board resumed their discussion regarding legal non-conforming buildings. Specifically, the Planning Board discussed the following options to allow changes to legal non-conforming buildings for maintenance, renovation and/or expansion:

1. Allow Maintenance and Renovation Only of Existing Legal, Non-conforming Commercial Buildings

Article 6, Section 6.02 of the Zoning Ordinance could be amended as follows:

6.02 Continuance of Nonconformity

- A. Limitations: Any nonconforming building or use existing at the time of enactment or amendment of this Zoning Ordinance may be continued if maintained in good condition, but:
1. The use shall not be changed to another nonconforming use except as permitted by the Board of Zoning Appeals.
 2. The use shall not be reestablished after discontinuance for 6 months.
 3. The use or building shall not be extended or enlarged except as herein provided. Nonconforming ~~residential~~ buildings may be extended or enlarged, provided that the extension or enlargement does not itself violate any provision of the Zoning Ordinance. Where the extension or enlargement will violate any provision of the Zoning Ordinance, application for a variance shall be made to the Board of Zoning Appeals pursuant to Section 8.01(F).

The amendment noted above would allow for the maintenance, extension or enlargement of an existing legal, non-conforming building so long as the addition meets the current zoning standards for the existing zone district. This amendment would allow both commercial and residential legal non-conforming buildings to be expanded using a consistent approach. As an example, this approach would allow a 10 story legal non-conforming building in a 5 story zone district (building that is non-conforming for height only) to construct an addition. However, the addition could not be 10 stories in height to match the existing building, but could be built up to a maximum of 5 stories as currently allowed in the zone district.

2. Allow the Expansion of Existing Legal, Non-conforming Buildings To Match Existing Non-conforming Conditions

Article 6, Section 6.02 of the Zoning Ordinance could be amended as follows:

6.02 Continuance of Nonconformity

- A. Limitations: Any nonconforming building or use existing at the time of enactment or amendment of this Zoning Ordinance may be continued if maintained in good condition, but:
1. The use shall not be changed to another nonconforming use except as permitted by the Board of Zoning Appeals.
 2. The use shall not be reestablished after discontinuance for 6 months.
 3. The use or building shall not be extended or enlarged except as herein provided. Nonconforming ~~residential~~ buildings may be extended or enlarged, provided that the extension or enlargement does not itself **increase the degree of the dimensional nonconformance, nor** violate any provision of the Zoning Ordinance. Where the extension or enlargement will violate any provision of the Zoning Ordinance, application for a variance shall be made to the Board of Zoning Appeals pursuant to Section 8.01(F).

OR

Section 6.02 Continuance of Nonconformity

- A. Limitations: Any nonconforming building or use existing at the time of enactment or amendment of this Zoning Ordinance may be continued if maintained in good condition, but:
1. The use shall not be changed to another nonconforming use except as permitted by the Board of Zoning Appeals.
 2. The use shall not be reestablished after discontinuance for 6 months.
 3. The use or building shall not be extended or enlarged except as herein provided. ~~Nonconforming residential buildings may be extended or enlarged, provided that the extension or enlargement does not itself violate any provision of the Zoning Ordinance. Where the extension or enlargement will violate any provision of the Zoning Ordinance, application for a variance shall be made to the Board of Zoning Appeals pursuant to Section 8.01(F).~~ **A legally nonconforming structure may expand its square footage provided that the expansion does not exceed the extent of the height and/or setback in nonconformance. All other development standards must be met in the expansion.**
 - a. **A vertical expansion of a nonconforming building or structure which is legally nonconforming as to one or more setback requirements is a permitted expansion of that nonconformity.**
 - b. **A horizontal expansion of a nonconforming building or structure which is legally nonconforming as to one or more height requirements is a permitted expansion of that nonconformity.**

Both of the amendments noted above would allow for the maintenance, extension or enlargement of an existing legal, non-conforming building up to, but not exceeding, the existing non-conforming dimension. The first option listed above is more general in nature, and could include the expansion of any type of non-conformity (height, setbacks, FAR, density, lot coverage etc.). The second option listed above is limited to expanding only height and/or setback non-conformities. As an example, this approach would allow a 10 story legal non-conforming building in a 5 story zone district (building that is non-conforming for height or setbacks) to construct an addition up to 10 stories in height to match the existing building height and setbacks.

3. Convert Existing Legal, Non-conforming Buildings to Conforming Using a Special Land Use Permit

Another option to consider may be to convert buildings or structures in Downtown Birmingham that are legal non-conforming with regards to height into conforming buildings through the use of a Special Land Use Permit. An amendment to Article 3, Overlay Districts, or to Article 6, Nonconformances, could be proposed as follows:

Conversion of Non-conforming Status: A building in the Downtown Birmingham Overlay District that is a legal non-conforming building or structure with regards to height may be deemed a conforming building or structure with regards to height if the property owner agrees to specific conditions to control the future extension, enlargement or renovation of the building or structure and said conditions are approved by the City Commission under the provisions of a Special Land Use Permit.

This approach would allow for the extension or enlargement of existing legal, non-conforming buildings downtown on a case by case basis as negotiated by the City Commission. The amendment noted above would provide flexibility for different site conditions and would provide control over the parameters of future expansion based on site and neighborhood context. As an example, a 10 story legal non-conforming building in a 5 story zone district could be deemed conforming if placed under the provisions of a SLUP that establish the specific conditions for maximum extension or enlargement of the building in the future.

4. Re-establish the Zoning District(s) in effect when Building Permits were Issued for Buildings in Excess of 5 Stories (or amend the B3 Zoning District) to render existing buildings conforming

Another option to consider may be to re-establish the former zoning classification(s) in place in the 1970's when several buildings were legally constructed greater than 5 stories in height, and to rezone properties with non-conforming buildings with regards to height back to this classification. Thus, any extension or enlargement of an existing legal, non-conforming building so rezoned would be permitted as anticipated at the time of construction. As an example, a 10 story building constructed in 1975 under a classification that permitted 11 stories in height could be extended or enlarged up to 11 stories in height.

5. Create a New Zoning District(s)

Another option to consider is to create a new zoning classification(s) that would permit additional building height and rezoning certain properties to this classification, thus rendering legal non-conforming buildings or structures conforming buildings with regard to height. This approach has been discussed by the Planning Board over the past year, and amendments have been drafted to create two new classifications under the Downtown Overlay, D5 and D6, to attempt to address the non-conforming heights of several buildings downtown. The Planning Board has also discussed using this approach to address sites along the west side of Woodward to allow additional height even for existing conforming buildings along the corridor to match the height permitted on the east side of Woodward in the Triangle District. The latest version of

the draft previously discussed by the Planning Board is attached and highlighted to indicate areas noted for further discussion. As an example using this approach, an existing 10 story legal non-conforming building in a 5 story zone district could be rezoned to a new zoning classification to be created that would allow 10 story buildings as of right.

At the Planning Board meeting on September 14, 2016, board members agreed that the improvement and maintenance of existing legal, non-conforming commercial buildings should be permitted, and expansion of such buildings should also be permitted consistent with regulations for residential buildings. Board members also discussed at length the issue of several legal, non-conforming buildings in the Downtown Overlay District, and the desire to allow improvements to those buildings as well. After much discussion, the Planning Board directed Planning staff to meet with the applicant for the 555 Building to craft ordinance language that would make existing buildings downtown conforming with regards to both height and setbacks, and to allow future expansion that would comply with the standards of the D4 Overlay.

On September 28, 2016, the Planning Board discussed draft ordinance language that proposed to create a D5 zone district that would render existing buildings legal and conforming with regards to setback and height. Board members agreed that additions or renovations should be permitted to existing buildings. With regards to the construction of new buildings in the proposed D5 zone district, there was much discussion as to whether such buildings should meet the 5 story maximum height in the D4 zone district, or should be allowed to match the height of the existing adjacent buildings. The consensus of the board was to allow additional height for new buildings in the D5 to match existing adjacent buildings, if the new building was constructed under the provisions of a SLUP. At the end of the discussion, the applicant asked if the Planning Board could simply waive certain requirements in the D5 zone instead of requiring a SLUP. Staff agreed to discuss this with the City Attorney.

Since the September 28, 2016 Planning Board meeting, City staff has met with the applicant to refine the draft ordinance language. Accordingly, please find attached draft ordinance language for your review based on the Planning Board's direction from the last meeting that addresses the improvement of commercial buildings throughout the City, and also specifically addresses the legal, non-conforming status of buildings downtown.

The applicant has also provided another version of a draft ordinance for the Planning Board's discussion as well based on their desire to construct a new building that exceeds the height of the existing 555 building, but maintains the same number of stories. The applicant's revised draft is also attached for your review.

Finally, City staff has reviewed the applicant's request as to whether the Planning Board can simply waive certain requirements in the D5 zone with both the City Manager and the City Attorney. Although it was unclear as to whether there was a legal question, the City Manager directed the City Attorney to respond. The City Attorney has advised that the question of whether the Planning Board can waive specific requirements is not a legal question, but rather a

policy question. Ultimately, the City Commission has the sole authorization to pass zoning legislation, with or without waivers, so long as they remain in compliance with the Michigan Zoning Enabling Act.

Should the Planning Board wish to recommend the attached ordinance amendments, the board may also wish to consider proposing a rezoning of the 555 Building, Birmingham Place and/or the Merrillwood Building to the proposed D5 Zone (over 5 stories).

Suggested Action:

To set a public hearing for December 14, 2016 to consider the following amendments to Chapter 126 Zoning:

- (a) Article 3, Downtown Birmingham Overlay District, Section 3.04, to create a new D5 Zone and to establish development standards for this district;
- (b) Article 6, Nonconformances, Section 6.02, to allow for the extension and/or enlargement of existing legal, non-conforming commercial buildings;

AND

To set a public hearing for December 14, 2016 to consider the rezoning of the following properties:

- (d) **555 S. Old Woodward** (555 Office and Residential Buildings) from D4 in the Downtown Overlay to D5 in the Downtown Overlay;
- (e) **411 S. Old Woodward** (Birmingham Place) from D4 in the Downtown Overlay to D5 in the Downtown Overlay; and
- (f) **225 E. Merrillwood** (Merrillwood Building) from D4 in the Downtown Overlay to D5 in the Downtown Overlay.

September 11, 2018

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

Re: Rezoning Application Before the Planning Board

Dear Ms. Ecker:

This letter is in response to your request to clarify the procedure by which applications for rezoning and determinations of rezoning are made. The Zoning Ordinance states in Section 7.02 B.2. *Application for Rezoning*, as follows:

"2. Application for Rezoning.

1. *Persons Entitled to Seek Rezoning.* Only a person who has a fee interest in a piece of property, or a contractual interest which may become a fee interest in a piece of property, may seek an amendment in the zoning classification of that property under this section.
2. *Application for Rezoning.*
 - a. An application for an amendment to change the zoning classification of a particular property must be filed with the Building Official on such forms and accompanied by such fees as may be specified by the City Commission. The application and any supporting documentation shall be forwarded by the City Building Department to the Planning Board for study and recommendation.
 - b. Each application for an amendment to change the zoning classification of a particular property shall include statements addressing the following:
 - i. An explanation of why the rezoning is necessary for the preservation and enjoyment of the rights of usage commonly associated with property ownership.
 - ii. An explanation of why the existing zoning classification is no longer appropriate.
 - iii. An explanation of why the proposed rezoning will not be detrimental to surrounding properties.
 - c. Applications for amendments that are intended to change the zoning classification of a particular property shall be accompanied by a plot plan. The plot plan shall be drawn to a scale of not less than one inch equals 50 feet for a property of less than 3 acres and one inch equals 100

Beier Howlett

Ms. Jana Ecker, Planning Director
September 11, 2018
Page 2

feet for property of 3 acres or more in size. Information required on plot plans shall be as follows:

- i. Applicant's name, address and telephone number.
- ii. Scale, north point, and dates of submission and revisions.
- iii. Zoning classification of petitioner's parcel and all abutting parcels.
- iv. Existing lot lines, building lines, structures, parking areas, driveways, and other improvements on the site and within 100 feet of the site.
- v. Existing use of the property.
- vi. Dimensions, centerlines and right-of-way widths of all abutting streets and alleys.
- vii. Location of existing drainage courses, floodplains, lakes, streams, and wood lots.
- viii. All existing easements.
- ix. Location of existing sanitary systems and/or septic systems.
- x. Location and size of existing water mains, well sites and building service.
- xi. Identification and seal of architect, engineer, land surveyor, or landscape architect who prepared the plans.

If any of the items listed above are not applicable to a particular plot plan, the applicant must specify in the plot plan which items do not apply, and, furthermore, why the items are not applicable."

The foregoing is the information that is to be provided by the applicant to provide the materials to assist the Planning Board in making its findings of fact. It does not set the criteria by which findings of fact or recommendations should be made. Those are set forth in Section 7.02 B.5, which reads as follows:

"5. Findings of Fact and Recommendation of the Planning Board. The Planning Board shall make written findings of fact and transmit same, together with its recommendation, to the City Commission. The City Commission may hold additional hearings if the City Commission considers it necessary. The Planning Board shall make findings based on the evidence presented to it with respect to the following matters:

- a. The objectives of the City's then current master plan and the City's 2016 Plan.
- b. Existing uses of property within in the general area of the property in question.
- c. Zoning classification of property within the general area of property in question.
- d. The suitability of the property in question to the uses permitted under the existing zoning classification.

Beier Howlett

Ms. Jana Ecker, Planning Director
September 11, 2018
Page 3

- e. The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.

The foregoing Section 7.02 B.5. sets forth the criteria upon which the Planning Board makes written findings of fact. Thereafter, the findings of fact, together with its recommendations, are sent to the City Commission to determine possible rezoning of the subject property.

* * * * *

I have also been asked to outline the procedure for the Board to consider a petition by the applicant for rehearing of the rezoning application. The instant case involves 469-479 South Old Woodward. The first matter the Planning Board should consider is whether they will grant the rehearing of this matter to the applicant. If they believe there is not sufficient information to grant a rehearing, it could be denied at that time and no rehearing will be granted.


Second, if the Planning Board believes a rehearing should be granted, then a ruling granting the rehearing should be entered, followed by a rehearing on the substance of the matter before the Board. At such time, the Planning Board can take into account such additional information that is submitted by the applicant or by any person opposing the application. This will create an additional record upon which the Planning Board will then make its findings of fact and recommendation pursuant to 7.02 B.5.

A rehearing does not automatically grant the request of the applicant, nor does it automatically deny it. The Planning Board is free to make whatever decision it deems appropriate based on the material and the facts placed before it by the applicant and those in opposition.

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

Via E-Mail and US Mail

October 10, 2018

Mr. Timothy J. Currier
Beier Howlett, P.C.
3001 W. Big Beaver Road
Suite 200
Troy, Michigan 48084

***Re: Opposition to Rezoning of Property located at 469 and 479 S. Old Woodward,
Birmingham, Michigan (the "Property")***

Mr. Currier:

We attempted to reach you by phone earlier today. We are contacting you to inform you, and the others copied on this letter, that our Firm has been engaged by Condominiums at Birmingham Place Association (the "Association") to work along with counsel for the Birmingham Place Residential Condominium Association. The Association is the so-called Master Association for the Birmingham Place development.

Please be advised that the Association opposes the application to rezone the Property to the D-5 Overlay Zone and fully supports the position of the Birmingham Place Residential Condominium Association. We understand the rezoning application is "back" on the Planning Board's agenda for its meeting tonight. Unfortunately, we will not be available to participate in the meeting tonight, but we wanted you to be aware of our involvement and our client's position.

As you might expect, we have recently become involved and have not had the opportunity to thoroughly review all of the extensive information and voluminous documents. However, even based on our limited review, we do not understand how (or why) this matter finds itself back before the Planning Board. In addition, even if the application is properly back before the Planning Board, we also do not see how (or why) any of the so-called "new" information or positions could possibly justify a change to the Planning Board's previous decision.

In any case, please be aware that if the Planning Board elects to reconsider the rezoning application based on so-styled "new" information, and/or if the Planning Board changes from its previous position of recommending denial of the rezoning application, our Firm will continue forward and complete our thorough review of all of the information and will join in also

HONIGMAN

Honigman Miller Schwartz and Cohn LLP
Attorneys and Counselors

J. Patrick Lennon

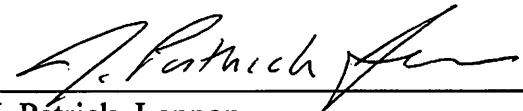
(269) 337-7712
Fax: (269) 337-7713
Lennon@honigman.com

advising the Association of its legal rights and remedies along with the Residential Condominium Association's counsel.

Thank you for your time and attention to this matter. As always, please feel free to contact me with any questions or comments.

Very truly yours,

HONIGMAN MILLER SCHWARTZ AND COHN LLP

By: 
J. Patrick Lennon

cc: Ms. Michele Prentice
Ms. Jana L. Ecker
Ms. Susan K. Friedlander
Mr. Richard D. Rattner



Gayle Goodman

411 S. Old Woodward, Unit 912, Birmingham, MI 48009

248-891-0908

3/2/2020

City Clerk
City of Birmingham
151 Martin
Birmingham, MI 48009

Dear City Clerk,

I am writing this letter to **strongly oppose** the rezoning request for **469-479 Old Woodward Avenue (former Mountain King and Talmer Bank)**.

A 9 story building would completely impede and block any view that I have from my condo unit. I paid a lot for my condo and have an amazing view of both old Woodward and Woodward. This 9 story building will not only impede on my view, but also devalue and depreciate my condo, which I paid handsomely for. I have no objection for a new building on the site as it would be a nice addition, however, 4 - 5 story building would be perfect, in my opinion. That said, I hope that this rezoning does **NOT** pass.

Best,

Gayle Goodman

411 S. Old Woodward Ave., Unit 1018
Birmingham, MI 48009
February 19, 2020



VIA HAND DELIVERY

Ms. Jana Ecker, Director
City of Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Development")
Request to Rezone from B3/D4 to B3/D5 Filed by William Rattner
Hearing Scheduled for Wednesday, February 27, 2020 (the "Hearing")

Dear Ms. Ecker:

I request that the Hearing be rescheduled for two (2) reasons as the legal requirements for a hearing have not been met.

First, the Developer has not met the legal requirement to request a hearing. As of last night (February 18, 2020), the Applicant had not posted the notice sign required under subsection 7.02 B.4.a.v of the Rezoning Amendments. As stated "A notice sign shall be posted in a conspicuous place on the subject property. . ." I would be glad to share with the planning board the photos of the property which demonstrated the lack of notice.

Second, the Planning Board errored in the required 15-day notice to adjacent property owners. (7.02 B3aiii). Specifically, the postcard mailed regarding Notice of Public Hearing stated the hearing would occur on "Wednesday, February 27, 2020". No such date exists. Either the meeting is on Wednesday February 26 or Thursday February 27. This confusion is unfair to concerned Birmingham citizens. Most importantly, accurate 15-day notification has not been mailed.

I request the Planning Board follow City Rules and Regulations and only hold a rezoning hearing when all regulations are met.

Please contact me via email to mickeschwartz@gmail.com, or at (248) 229-9989 with any questions or further requirements and in any event with the new hearing date.

Thank you for your time and attention.

Yours very truly,


Michael Schwartz, MD

xc: Planning Board Members (via separate emails)

Board Member		Term Expires/Email
Janelle Boyce	Residential/Interior Designer Member	03/28/2020 j/wboyce@hotmail.com
Robin Boyle	Planner/Professor	03/28/2022 r.boyle@wayne.edu
Scott Clein	Regular Member	03/28/2022 s.clein@comcast.net
Stuart Jeffares	Regular Member	03/28/2021 stuartjeffares@gmail.com
Bert Koseck	Architect	03/28/2020 bkoseck@comcast.net
Nasseem Ramin	Alternate Member	11/02/2020 nramin@dykema.com
Daniel Share	Building Owner	03/28/2021 dshare@bsdd.com
J. Bryan Williams	Attorney	03/28/2021 jwilliams@dickinsonwright.com
Jason Emerine	Alternate Member	11/02/2020
Sofia Trimble	Student Representative	12/31/2019
John Utley	Student Representative	12/31/2019

Re: Confirmation of postponement

1 message

Jana Ecker <Jecker@bhamgov.org>

Thu, Feb 20, 2020 at 9:07 AM

To: Mickey Schwartz <mickeyschwartz@gmail.com>, James J Arpin <jjarpin@gmail.com>

Good morning gentlemen,

As I indicated via email last evening, the **rezoning hearing for 469 - 479 S. Old Woodward will not be heard at the Planning Board meeting on February 27, 2020**. Please note that it will remain listed on the agenda, but there will be a note in bold type requesting postponement to March 25, 2020. We will send out new notices on the matter for that date. The applicant was advised yesterday that they are required to place the required notice sign on the property at least 15 days prior to the hearing, and to ensure that it remains posted until after the hearing.

Thank you for bringing this matter to our attention.

Jana Ecker

On Wed, Feb 19, 2020 at 8:55 PM Mickey Schwartz <mickeyschwartz@gmail.com> wrote:

Jana,

Can you please confirm that the rezoning hearing scheduled for next week's Planning Board meeting is postponed as per my concerns raised in my letter of 2/19/2020.

Thank you,

Mickey Schwartz, MD
248 229-9989
mickeyschwartz@gmail.com

--

Jana L. Ecker

*Planning Director
City of Birmingham
248-530-1841*

October 1, 2018

Ms. Jana L. Ecker and
Planning Board Members
City of Birmingham
151 Martin Street, P.O. Box 3001
Birmingham, MI 48012

Re: Legal Opinion Regarding Rezoning Application for 468-479 S. Old Woodward

Dear Members of the Board:

The Board has requested a legal opinion in connection with the following question:

Is the owner of the property located 469-479 S. Old Woodward (currently zoned D4 in the Downtown Overlay District) legally permitted to apply for rezoning to the newly created D5 zone district in the Downtown Overlay District?

ANSWER: YES.

If you have any additional questions, please do not hesitate to contact me.

Very truly yours,

BEIER HOWLETT, P.C.

Timothy J. Currier

TJC/jc

October 1, 2018

Ms. Jana L. Ecker and
Planning Board Members
City of Birmingham
151 Martin Street, P.O. Box 3001
Birmingham, MI 48012

Re: Legal Opinion Regarding Rezoning Application for 468-479 S. Old Woodward

Dear Members of the Board:

The Board has requested a legal opinion in connection with the following question:

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ANSWER: YES.

If you have any additional questions, please do not hesitate to contact me.

Very truly yours,

BEIER HOWLETT, P.C.

Timothy J. Currier

TJC/jc

400 S Old Woodward and 469-479 South Old Woodward

1 message

LYNN GROTH <lgroth@comcast.net>

Tue, Apr 7, 2020 at 5:10 PM

To: ndupuis@bham.org, jecker@bhamgov.org

To Whom it May Concern:

I am the Co- owner of the building at 444-494 S Old Woodward. We have tenants that pay a premium in their rent because they have dedicated parking for their customers. We are concerned that the change in usage, as in more tenants, for 400 South Old Woodward and 469-479 South Old Woodward could force people to look for offsite parking. We have a problem with the 555 South Old Woodward and 411 South Old Woodward building customers parking in our lot when they are not patronizing our businesses. Every week we have people looking to rent parking spaces. We can not handle more people looking for places to park because the building wasn't designed to accommodate it's tenants. Please consider the businesses that provide parking for their patrons when you contemplate usage changes to buildings on South Old Woodward.

Thank you,

Lynn Groth
Galyn Associates

Re: Upcoming Virtual Hearing for 469-479 S. Old Woodward Rezoning Request

1 message

Jana Ecker <Jecker@bhamgov.org>

Mon, Apr 13, 2020 at 3:38 PM

To: James J Arpin <jjarpin@gmail.com>

Cc: j/wboyce@hotmail.com, "r.boyle@wayne.edu" <r.boyle@wayne.edu>, Scott Clein <s.clein@comcast.net>, Stuart Jeffares <stuartjeffares@gmail.com>, bkosek@comcast.net, Nasseem Ramin <nramin@dykema.com>, Dan Share <dshare@bsdd.com>, Bryan Williams <jwilliams@dickinsonwright.com>

Good afternoon Mr. Arpin,

I received your email and will include it in the Planning Board's agenda for April 22, 2020.

Please allow me to respond to several of the comments in your email. The Planning Board meeting of April 22, 2020 was posted in a newspaper of general circulation on Sunday, April 5, 2020. Please see attached notice that was sent to the Oakland Press. Postcards were also mailed to all owners and occupants within 300' of the property requesting the rezoning more than 15 days prior to the scheduled public hearing, also attached. These are the required notices that must be posted/distributed 15 days prior. Both were completed, and both contained the details required to participate in the virtual meeting using a computer, smartphone or regular telephone.

The Planning Board's page on the City's website to which you refer that was listed in the postcard notice was to obtain copies of previously approved minutes of the Planning Board. All previously approved minutes are posted there for past meetings as noted on the postcard. This page will also be updated with the full agenda and all accompanying reports etc. on the Friday before the meeting as usual (Friday, April 17, 2020).

In addition, please find attached an easy to follow instruction sheet that may assist you in participating in virtual meetings.

Have a great day, and stay healthy,

Jana

On Mon, Apr 13, 2020 at 2:47 PM James J Arpin <jjarpin@gmail.com> wrote:

Hello Jana,

I hope this letter finds you safe and healthy. Thank you for reaching out.

In these unprecedented times of the ongoing pandemic, I realize the City must resort to Zoom virtual meetings in an attempt to conduct "essential" business.

Given that 469-479 South Old Woodward project application has gone through active public open forum discussions on;

- site plan reviews
- incomplete community impact studies
- extreme disagreements from Commissioners, PB members and outside counsels on the purpose of a D5 district
- parking district inclusion misinterpretations
- planning board rehearings
- no decision results from the City Commission
- D5 Subarea studies (and re-studies) by outside consultants
- Birmingham Master Plan impacts
- modifications to the D5 ordinance zoning code

I am respectfully requesting that the Planning Board consider postponing a hearing on the 469-479 rezoning application in a Zoom virtual meeting on April 22, 2020. Given the controversial nature and length of time the 469-479 South Old Woodward application(s) have been in discussion, I believe it is unfair to the community to hold a hearing that impedes equitable participation and can not guarantee open fair discussion by the public.

Given the governor's orders, our group who has concerns about the 469-479 South Old Woodward rezoning application, is unable to meet in a safe environment with each other or counsel to prepare for the upcoming April 22, 2020 hearing.

When I log onto https://www.bhamgov.org/government/boards/planning_agendas.php#outer-173 as of this letter it indicates there are "No documents" in the Virtual Meeting Notice section. Chapter 126 in the City ordinance states

- a. i. Notice of the time and place of the public hearing shall be published in an official newspaper or a paper of general circulation in the city, not less than 15 days before the date the application will be considered for approval.

If the PB is going to have a Zoom meeting, should the meeting be posted according to the zoning ordinance, not less than 15 days before the hearing?

Again, I realize the City has the technical capabilities and the concurrence of the MML / Governor (Orders 2020-15, 2020-42 ++) to hold Zoom virtual meetings, I am asking you and the PB to seriously consider whether you **should hold such a significant impactful rezoning hearing in the middle of a pandemic on a decision that will impact the City of Birmingham significantly forever.**

Regards,

Jim Arpin

m: +1 313 949 0252

On Apr 9, 2020, at 2:51 PM, Jana Ecker <Jecker@bhamgov.org> wrote:

Good afternoon,

I am reaching out to both of you as representatives of Birmingham Place to make sure you know that the upcoming rezoning request will be considered at a [virtual meeting](#) on April 22, 2020. Hopefully you have received your notice postcards with the Zoom link for the meeting. If you do not have the equipment (computer or smartphone) or desire to join the meeting over the internet, there is also a phone in option that allows you to listen and participate in the meeting in real time.

If you need any further information, please let me know.

Jana L. Ecker

*Planning Director
City of Birmingham
248-530-1841*

--
Jana L. Ecker

*Planning Director
City of Birmingham
248-530-1841*

3 attachments

 **469 - 479 S. Old Ww Rezoning - Virtual Meeting -4-22-20.doc**
47K

 **469 -479 S. Old Woodward - Rezoning - 4-22-20.doc**
47K

 **Public Meetings on Zoom - Guide for Members of the Public.docx**
381K

Fwd: Virtual Planning Board Meeting

1 message

Mickey Schwartz <mickeyschwartz@gmail.com>

To: Jana Ecker <jecker@bhamgov.org>

Tue, Apr 14, 2020 at 3:37 PM

As per your email, please forward this to the Planning Board members.
I am disappointed and do not understand why I can not communicate directly.

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

From: **Mickey Schwartz** <mickeyschwartz@gmail.com>

Date: Tue, Apr 14, 2020 at 2:45 PM

Subject: Virtual Planning Board Meeting

To: <pboutros@bhamgov.org>, <llonge@bhamgov.org>, <cballer@bhamgov.org>, <rackyhoff@hotmail.com>, <bhost@bhamgov.org>, <mnickita@bhamgov.org>, <ssherman@bhamgov.org>

To: City Commissioners (and Planning Board Members):

The Birmingham Planning Board has scheduled a virtual meeting to address a non-essential, controversial rezoning issue that had been under consideration for years (469-479 Old Woodward Rezoning). In light of the current COVID-19 pandemic, this borders on the absurd. The notion that they MAY legally do this does not mean that it should be done. The new concept of virtual meetings for non-essential issues is fraught with problems in a democratic society particularly for citizens without technical skills.

I object to the meeting and formally request the Planning Board to defer this issue pending the resolution of the Michigan mandated shutdown.

We have no knowledge of the long-term effects of this horrible pandemic. Will we want more tall buildings and an increase in population density in downtown? What will happen to Birmingham retail as the society moves more to online shopping? We are in unprecedented times and uncharted territory. Why the urgency to consider changes now that the City may regret in the future?

Rather than business as usual, perhaps the Planning Board should be studying how the proposed Master Plan should be updated for a post COVID-19 environment.

Please postpone this rezoning issue.

(I tried to send this to the Planning Board members but their emails are not included in the City Web Page).

Mickey Schwartz, MD
411 South Old Woodward Ave. Unit 1018
Birmingham, MI 48009
248 229-9989
mickeyschwartz@gmail.com

Re: Virtual Planning Board Meeting

1 message

Joe Valentine <jvalentine@bhamgov.org>
To: mickeyschwartz@gmail.com
Cc: Jana Ecker <jecker@bhamgov.org>

Tue, Apr 14, 2020 at 5:18 PM

Mr. Schwartz,

I am in receipt of your email to the City Commission and wanted to provide a reply given your concern for the application of [469-479 S. Old Woodward](#) being considered by the Planning Board on April 22nd. Given the applicant had submitted their application for consideration and their request to move it forward, they maintain their right to petition their government and continue the scheduled public hearing. A postponement at this time could come at the request of the applicant or by motion of the Planning Board if determined necessary in further considering their application. However, the City Commission does not have the ability to postpone a scheduled public hearing before the Planning Board.

In regard to watching this meeting, it should be streamed from our website and also broadcast over the normal cable stations for viewing, just as prior meetings.

I hope you find this information helpful.

Best regards,
Joe Valentine

From: Mickey Schwartz <mickeyschwartz@gmail.com>
Date: April 14, 2020 at 2:45:41 PM EDT
To: pboutros@bhamgov.org, tlonge@bhamgov.org, cballer@bhamgov.org, Rackyhoff@hotmail.com, bhost@bhamgov.org, mnickita@bhamgov.org, ssherman@bhamgov.org
Subject: Virtual Planning Board Meeting

To: City Commissioners (and Planning Board Members):

The Birmingham Planning Board has scheduled a virtual meeting to address a non-essential, controversial rezoning issue that had been under consideration for years (469-479 Old Woodward Rezoning). In light of the current COVID-19 pandemic, this borders on the absurd. The notion that they MAY legally do this does not mean that it should be done. The new concept of virtual meetings for non-essential issues is fraught with problems in a democratic society particularly for citizens without technical skills.

I object to the meeting and formally request the Planning Board to defer this issue pending the resolution of the Michigan mandated shutdown.

We have no knowledge of the long-term effects of this horrible pandemic. Will we want more tall buildings and an increase in population density in downtown? What will happen to Birmingham retail as the society moves more to online shopping? We are in unprecedented times and uncharted territory. Why the urgency to consider changes now that the City may regret in the future?

Rather than business as usual, perhaps the Planning Board should be studying how the proposed Master Plan should be updated for a post COVID-19 environment.

Please postpone this rezoning issue.

(I tried to send this to the Planning Board members but their emails are not included in the City Web Page).

Mickey Schwartz, MD
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--
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April 15, 2020

VIA EMAIL ONLY

Birmingham Planning Board
c/o Ms. Jana Ecker
Planning Director
City of Birmingham
151 Martin St.
Birmingham, MI 48009

Re: Request to Adjourn Hearing on Request to Rezone 469-479 S. Old Woodward Ave. Until the Rescission or Expiration of (i) Michigan Stay at Home Executive Order No. 2020-42, and (ii) Michigan Executive Order 2020-15 Suspending Compliance with the Michigan Open Meetings Act

Dear Members of the Birmingham Planning Board,

On behalf of the Birmingham Place Residential Condominium Association and Birmingham Place Commercial Condominium Association, we respectfully request that the Planning Board adjourn the hearing on the rezoning of 469-479 S. Old Woodward Ave., until such time that the hearing can be held in person under the requirements of the Michigan Open Meetings Act. Holding this meeting “virtually” on April 22, 2020 is not only unfair and prejudicial to the condominium owners of Birmingham Place and various other stakeholders in the City of Birmingham, but is completely contrary to Governor Whitmer’s Executive Directive No. 2020-02. That Executive Directive, which supplements Governor Whitmer’s Executive Order 2020-15 that authorized virtual meetings which are not otherwise permissible under the Open Meetings Act, is in full force and effect, and states that:

*All public bodies of departments and agencies of the State, including but not limited to boards, commissions, committees, subcommittees, authorities, and councils, **must, to the extent practicable,** considerer postponing public meetings and/or agenda items that may be deferred until a later time.*

Birmingham Planning Board

c/o Ms. Jana Ecker
Planning Director
City of Birmingham

April 15, 2020

If there ever was an agenda item that may be deferred to a later time under the circumstances we are currently facing, this is one of them. This rezoning application has been **pending since June 2018**. Now, while our community is under extreme uncertainty, stress, and anxiety, we have to revisit this difficult case, which could have many negative impacts on our community, and Birmingham Place residents and commercial occupants. If that were not enough, the Birmingham Place residents must find the means to participate virtually through an app or telephone. This is simply an unreasonable request, and does not allow residents to participate in a meaningful and productive way. Many of the residents of Birmingham Place are senior citizens, and either do not understand how to participate virtually, or are not comfortable participating in this manner. My clients have participated in all of the hearings related to this rezoning case to date, and based on that experience, the Planning Board should anticipate a packed and confusing virtual meeting room. Is this really the best way to handle a rezoning case of this magnitude?

Other than the applicant's presumed desire to move this application forward, there is certainly no reason why the Planning Board must consider this rezoning application in a virtual format under these circumstances. While it is a nice accommodation that virtual meetings are authorized under Governor Whitmer's Executive Order 2020-15 so **essential business** can be dealt with during this crisis, a postponement of a rezoning request that was initiated in 2018 is clearly required under the Governor's Executive Directive 2020-02. We strongly urge the Planning Board to postpone this hearing to comply with the Governor's orders. If this matter must be heard in a virtual format on April 22nd, we demand that the Planning Board place on the record why this rezoning application could not be deferred to a later date as required in the Governor's Executive Directive 2020-02.

Thank you for your consideration of our request. We look forward to hearing from you prior to April 22nd.

Sincerely,

JPHOWE, PLLC



J. Patrick Howe

cc: Timothy J. Currier, City Attorney (via email)
Joseph A. Valentine, City Manager (via email)
Birmingham Place Residential Condominium Association
Birmingham Place Commercial Condominium Association

Adjournment of Planning Board Virtual Meeting April 22,2020

1 message

larry rochkind <larryproch@gmail.com>

Wed, Apr 15, 2020 at 3:03 PM

To: Jana Ecker <jecker@bhamgov.org>, jvalentine@bhamgov.org, pboutros@bhamgov.org, larry rochkind <larryproch@gmail.com>

To: Birmingham Planning Board c/o Jan Ecker, Planning Director**Cc:** Mayor, City Manager**From:** Louis P. Rochkind**Date:** April 15, 2020**REQUEST TO ADJOURN VIRTUAL HEARING ON REZONING REQUEST FOR [469-479 S. OLD WOODWARD](#) SCHEDULED FOR APRIL 22, 2020**

I am the owner of a condominium at [411 South Old Woodward](#). I ask that you adjourn the above hearing for these reasons, more fully discussed below:

1. *The Board is required by Executive Order 2020-1(1) to adjourn this hearing until a hearing can be held in person.*
2. *The format of a virtual hearing does not provide a fair and adequate forum for objectors to state their views, particularly for seniors, especially given the unusual importance of the issues and the unique complexity of the issues.*
3. *Before taking the drastic action requested, the Board should wait until it has time to digest the effects of the pandemic on the needs of Birmingham.*
4. *The virtual notice of the hearing is not timely and this requires adjournment of the hearing..*

1. *The Board is required by Executive Order 2020-1 (1) to adjourn this hearing until a hearing can be held in person.*

Executive Order 2020-02, Sect. 1, which remains in effect, provides (emphasis added):

*All public bodies of departments and agencies of the State, including but not limited to boards, commissions, committees, subcommittees, authorities, and councils, **must**, to the extent practicable, consider postponing public meetings and/or agenda items that may be deferred until a later time.*

In other words, this is in effect an order to bodies such as the Birmingham Planning Board to adjourn hearings until they can be held in person unless there is a compelling reason not to do so.

This is no doubt a recognition that virtual meetings are simply not as good as in person meetings for many reasons, including the ability of participants to actually participate fully. This is even more true for senior citizens, as discussed below.

The severe limitations of virtual meetings are described in this article:

When meeting face to face, people are freer with each other than they would be online. People are able to express themselves by using body language, gestures and words all of which work together to convey a message. Communication is better in face to face meetings because misunderstandings are less likely.[Ed.

Note: All of this is especially critical for senior citizens, who may have more difficulty following the proceeding in the best of circumstances.]

When you go in for a physical meeting, it is the primary reason why you are at the particular place at any given time. You will be with others attending the meeting as well and none will tolerate the other wasting their time. Everyone will be disciplined and will not be easily distracted by things like phones and computers. The serious environment will emphasize the need to concentrate fully on the meeting and keep off any distractions...

However the chances of having a communication breakdown are increased in virtual meetings. Distractions by personal and work related issues are more likely to happen during virtual meetings than face to face ones.

As discussed below, this meeting requires a decision by the Board which will affect the daily lives, home values, and probably financial futures and retirement planning of many residents. It is just too important to limit public participation to a virtual meeting which has all the detriments described above.

There is no "practicable" reason why this hearing should not be adjourned. It has been pending for almost two years with no effort by the Developer to expedite the proceeding. There is no prejudice to anyone to an adjournment, but a tremendous benefit to many in an adjournment for an in person hearing. (It is worth noting that this proceeding has been delayed on more than one occasion by the Developer's failure to comply with certain requirements or the Developer's request.)

2. The format of a virtual hearing does not provide a fair and adequate forum for objectors to state their views, particularly seniors, especially given the unusual importance of the issues and the unique complexity of the issues.

There are doubtless many matters before the Planning Board which may work well in a virtual meeting. This is not one of them. It is of unusual significance to an unusually large number of residents and is remarkably complex.

This application for rezoning involves rezoning a parcel abutting Birmingham Place's residential condominiums to permit construction of a tall commercial building. As the Manager of Birmingham Place told this Board, the mere possibility of this rezoning has deflated the market value of a number of units and, if built out, would obstruct the views of a number of units. Furthermore, together with the hotel completing construction at Brown and Old South Woodward, vehicle and pedestrian traffic will soar. And this is just the beginning. This is a very big and unusual deal.

The Request for Rezoning was first heard by the Board on June 27, 2018. The issue went to the Council, which sent it back for rehearing by the Board. After a rehearing on December 12, 2018, the matter was heard by the City Council on February 11, 2019. The Council failed to pass motions to approve, deny, or adjourn. The Council President advised at the meeting the Council would need to consult with the City attorney as to further proceedings. In the meantime, an entirely different proceeding changed the wording of the zoning ordinance applicable to this parcel.

Even with the help of counsel, it is a difficult proceeding to understand. And currently we cannot even meet with counsel or among ourselves. The many prior meetings on this rezoning request have been very well attended by objectors, including residents of Birmingham Place which has its own counsel. We have prepared for these meetings with our own meetings, including meeting before and after the hearing. This has enabled us to coordinate our presentations to be effective and to save time. In addition, we have sometimes changed our presentation depending on what happens at the hearing itself, which is impossible at a virtual hearing. In addition, the hearings have often involved visual aids, which even on a zoom conference will be difficult to appreciate.

A virtual meeting is useless to people who are not very computer literate and especially hopeless for many seniors. I am 71. Trust me when I tell you me and my friends are overwhelmed by the pandemic. Just arranging for food, taking care of our medical appointments and medications, and worrying about and trying to stay in touch with our children and grandchildren is wearying in and of itself. Many of us are not comfortable with computers.

As a recent study explained:

The study also highlights the obstacles older adults experience such as a significant decrease in sensory keenness, particularly with vision and hearing, as well as a decrease in motor skills due to health problems, such as arthritis and tremors. "Often a large challenge for older adults when using the computer is navigating the mouse and keyboard, which is commonly due to a health problem like arthritis."

Many of us when we look at instructions for a Zoom meeting will give up before we even start. In addition, simply navigating and being heard at a large Zoom meeting (and I have been in those) is challenging for the best of us. Have a heart.

There is no prejudice to anyone by a postponement. The application for rezoning was filed on June 27, 2018 and was before the City Council on February 11, 2019. The Developer has made no effort to expedite its request. Even if the request were approved, no outside activities could proceed at this point anyway. The matter has already been pending for close to two years.

3) Before taking the drastic action requested, the Board should wait until it has time to digest the effects of the pandemic on the needs of Birmingham.

We don't know what the future holds even in the short term, but one thing is for sure, life will not return to what we knew before the pandemic. As has been noted:

Yet cities since then have thrived and grown. They're much cleaner and safer than they were a century ago. That's because cities are by their nature adaptable organisms. More efficient than rural areas and more flexible than suburbs, they are constantly reinventing themselves — sometimes so quickly that it's startling, sometimes so slowly that we don't even notice.

The world after COVID-19 will be different — as it is after any disaster. And COVID-19 will accelerate changes that have been brewing in cities for a long time. The result will be a new kind of city, different than what we have seen before. A city that should be able to withstand shocks like COVID-19 in a sturdier fashion.

The Board needs to see what this new world might require before so dramatically changing our downtown as it has existed for years.

4) The virtual notice of the hearing is not timely and this requires adjournment of the hearing.

The well-known Open Meetings Act requires hearings like this one to be held in a public place with personal attendance. The only reason there is a "virtual" alternative is due to Executive Order 2020-15 which exempts compliance with the Act under detailed and specific requirements because of the pandemic. One of those requirements prescribes the necessary notice (Sect. 1(e):

(e) If a public body directly or indirectly maintains an official internet presence, the public body must, consistent with and in addition to any other applicable notice requirements under the OMA, post advance notice of a meeting held electronically on a portion of the public body's website that is fully accessible to the public. The public notice on the website must be included on either the homepage or on a separate webpage dedicated to public notices for non-regularly scheduled public meetings or electronic meetings and accessible through a prominent and conspicuous link on the website's homepage that clearly describes its purpose for public notification of those non-regularly scheduled or electronic public meetings. Notice of a meeting of a public body that will be held electronically must include all of the following:

(i) An explanation of the reason why the public body is meeting electronically.

(ii) *Detailed procedures by which the public may participate in the meeting electronically, including a telephone number, internet address, or both.*

(iii) *Procedures by which persons may contact members of the public body to provide input or ask questions on any business that will come before the public body at the meeting.*

(iv) *Procedures by which persons with disabilities may participate in the meeting.*

As with any notice, this one is necessary to provide everyone with an adequate opportunity to prepare and attend, The more complex the meeting, the longer the notice period should be.

The detailed requirements in the Order are in obvious deference to the fact that virtual meetings are more difficult for the participants. This means the public should have the maximum time available for notice. But it did not.

Our ordinance requires 15 days' notice of a zoning request with notice personally sent to residents within 300 feet. But the Board's virtual notice was (a) not sent to persons within 300 feet, and (b) published on the website on April 14, only seven, not fifteen, days before the hearing.

For all the reasons discussed above, maximum notice is necessary to give the public even a chance to participate meaningfully in the hearing.

But aside from that, the notice is inadequate under the ordinance and requires adjournment of the hearing, which should be to a time when a hearing can be held in person,

Re: Planning Board meeting

1 message

Joe Valentine <jvalentine@bhamgov.org>
To: Mickey Schwartz <mickeyschwartz@gmail.com>
Cc: Jana Ecker <Jecker@bhamgov.org>

Wed, Apr 15, 2020 at 5:20 PM

Mr. Schwartz,

Thank you for your email. The public hearing was previously scheduled and noticed for this upcoming meeting by the board. As long as the applicant wishes to proceed, the public hearing would continue under the applicant's prior request. The Executive Directive you are referencing applies to State agencies and is not an Executive Order covering municipalities. There is no question these are challenging times, however, we are following the guidance from this State as well as our obligations as a municipality.

I hope this helps provide some clarity on this matter.

Regards,
Joe Valentine

On Wed, Apr 15, 2020 at 9:37 AM Mickey Schwartz <mickeyschwartz@gmail.com> wrote:

As a follow up to yesterdays, email:

Just to be clear, are you stating that the Planning Board (and any Birmingham City government Board (elected or appointed)) acts totally independent of the City Commissioners?

Do the City Commissioners not have the legislative ability to enforce Governor Whitmer's Executive Directive No. 2020-02.

"All public bodies of departments and agencies of the State, including but not limited to boards, commissions, committees, subcommittees, authorities, and councils, must, to the extent practicable, considerer postponing public meetings and/or agenda items that may be deferred until a later time".

Why is this issue which has been under consideration for almost 2 years now so critical that it can not be postponed pending resumption on non-virtual meetings?

Mickey Schwartz, MD
248 229-9989
mickeyschwartz@gmail.com

--

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Re: Planning Board meeting

1 message

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Regarding PB meeting to discuss rezoning request for downtown Birmingham:

Last night I attended a Birmingham Virtual Meeting. This **NONCONTROVERSIAL** virtual meeting was fraught with problems. The take home lesson is that **VIRTUAL MEETINGS ARE PROBLEMATIC** in a democracy and should be limited whenever possible. **AS SUCH, I AGAIN ASK FOR POSTPONEMENT OF PLANNING BOARD MEETINGS THAT REQUIRE PUBLIC PARTICIPATION UNTIL THESE HORRIBLE BUT NECESSARY COVID PANDEMIC RESTRICTIONS ARE EASED.**

The Birmingham Design Review Board (DRB) meeting was scheduled for 4/15/2020 at 7:15. Apparently, another meeting started first and the DRB was delayed for about an hour. I joined the meeting about 7:30 and had no concept of why the DRB meeting was not taking place. I could not ask for clarification. How is this fair to participants?

Nick Dupis handled the technical aspects of a virtual meeting as best as possible. Nonetheless, he could not overcome systematic limitations. **The limitations on citizen's ability to participate defeats the intent of the Open Meeting Act.**

Examples of problems include:

Participants that could not be seen, could not be easily called on to speak. To overcome this, Nick appropriately unmuted all participants but unfortunately, chaos ensued. Consider how challenging it is to try to let people speak when they all speak at the same time. Remember the story of the tower of Babel. One participant, unknowingly had background noise and had to be muted.

Nick suggested participants use a "raise hand" button on ZOOM to be recognized. This option is not available on all ZOOM devices and may require software updates on some computers. Citizen participation is limited. Telephone call-in citizens obviously cannot "raise hand".

One of the Board members had occasional random background noise in their house resulting in confusion to participants.

At times voices of speakers were muffled or frozen (due to external Internet issues) and potential important communications between the Board and Public were lost.

The pending rezoning issue before the Planning Board involves 100's (more realistically 1000's) of pages of documents. In a virtual meeting, citizens cannot review documents and participate without 2 computers/tablets. It is near impossible on an iPhone. How is this appropriate?

Zoom meetings limit open dialogue between board members due to initial inexperience (first zoom meeting ever for PB) and outcomes are unknown without any previous experiences in this technology. Goes without saying that the same tech issues apply to the public.

FOR ALL THESE CONCERNS AND MANY MORE, PLEASE POSTPONE THE REZONING HEARING PENDING A FAIR PROCESS ON AN ISSUE THAT ALL AGREE IS CONTROVERSIAL.

An aerial view from Google Earth showing a large, multi-story brick building with a white cornice. The building is situated on a street corner. To the right, a multi-story concrete parking garage is visible. A street lamp stands on the sidewalk in front of the brick building. The sky is clear and blue.

469/479 S. Old Woodward Avenue

Former Mountain King Restaurant/Drive Thru Bank

Rezone to D5

Pursuant to Zoning Ordinance Sec. 7.02B

Birmingham Planning Board

April 22, 2020

Google Earth



D5 Is the Culmination of Exhaustive Study

- ✓ Contemplated for 2 years before enacted
- ✓ Many study sessions, discussions, and public meetings
- ✓ Advertised and noticed
- ✓ Considered many different options
- ✓ Multiple iterations of draft amendments
- ✓ Studied entire downtown area and study by planning
 - ✓ Consultant targeting this specific area of downtown

Article 1, Section 1.04

From 2016 Plan, Vision Statement



D5 will “reinforce [an] identifiable district in the Downtown to provide a sense of place.”



D5 will allow for a “diverse mix of uses, including [street-level] retail, commercial . . . and especially residential.”



D5 will allow a building that is “compatible, in mass and scale, with its immediate surroundings.”

Establishment of Overlay Districts in 2016 Plan Ord. Art I,1.12,A

- The overlay districts ...have been established to add additional and unique development standards which will better help the City of Birmingham accomplish the goals of the Downtown Birmingham 2016 Plan..."

D-5 Zoning Satisfies the Required Basic Provisions of Sec. 1.04 and Ord. Sec. 7.02(B)(2)(b)(i-iii)

- **D-5 Satisfies Purpose of Zoning Ordinance Sec. 1.04**
- **Rezoning Preserves Enjoyment of Rights and Usage Associated with Ownership Ord. Sec. 7.02(B)(2)(b)(i)**
- **Existing Zoning Not Appropriate Ord. Sec. 7.02(B)(2)(b)(ii)**
- **Rezoning is Not Detrimental to Surrounding Properties Sec. 7.02(B)(2)(b)(iii)**
- **D-5 Satisfies Purpose of Zoning Ordinance Sec. 1.04**

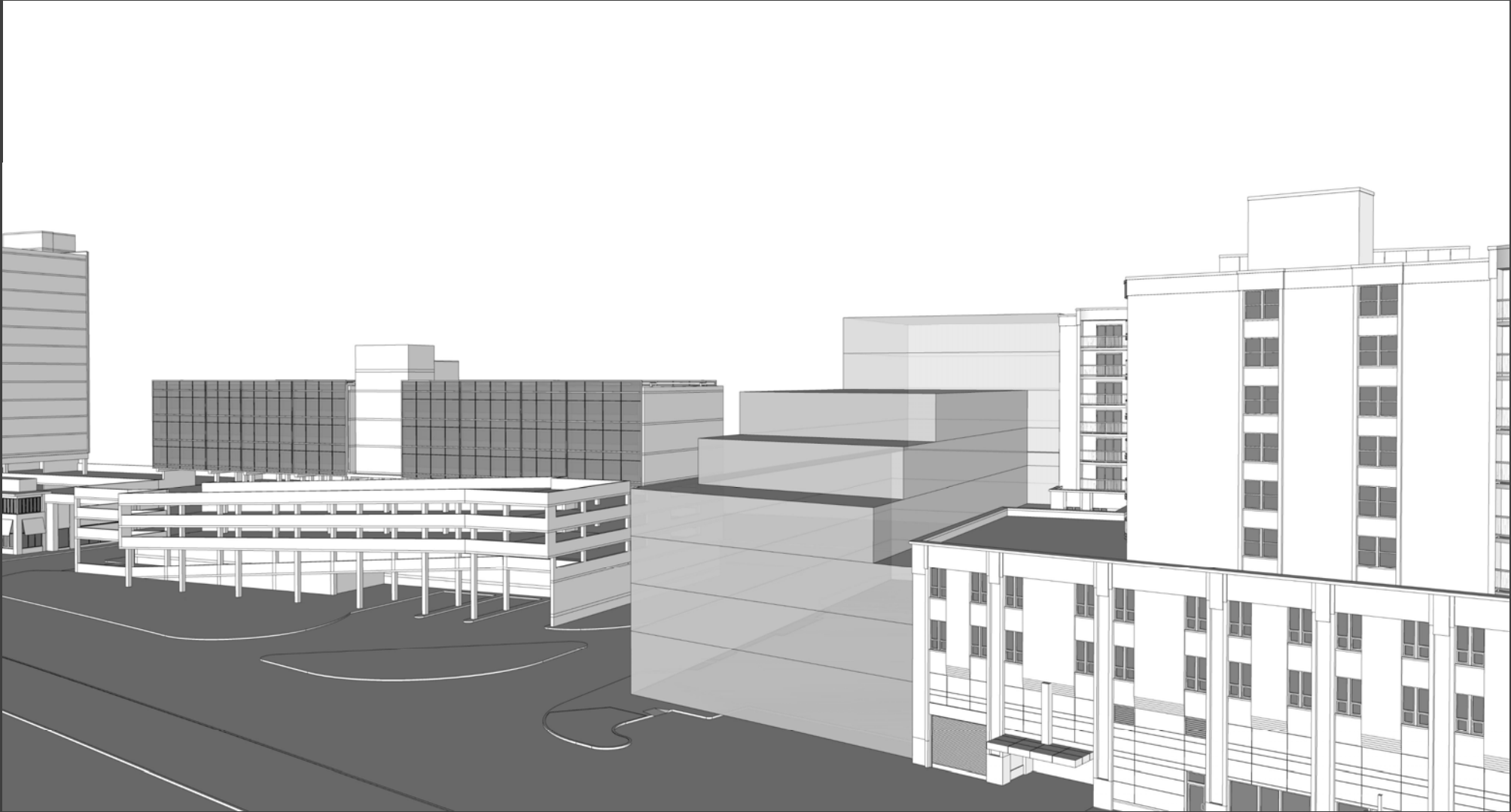
APPLICANT HAS DEMONSTRATED 5 FINDINGS OF ORDINANCE
SEC. 7.02(B)(5)(a)-(e)

- ✓ Sec. 7.02(B)(5)(a) – conforms to the City's Master Plan and 2016 Plan
- ✓ Sec. 7.02(B)(5)(b) – The proposed mixed uses of the subject property (retail, residential, and hotel) are consistent with existing uses in the neighborhood.
- ✓ Sec. 7.02(B)(5)(c) – Properties in the general area (abutting and adjacent) are zoned D-5.
- ✓ Sec. 7.02(B)(5)(d) – Property is not suitable to the uses permitted under existing zoning due to constraints of the property and the relationship to neighboring property.
- ✓ Sec. 7.02(B)(5)(e) – Trend of development in the area favours D-5 zoning.

City Action

- The City, after consideration, has already amended the new D5 proposed ordinance language







dmarkus@markusllc.com





Thank You

*Rezone to D5
Pursuant to Zoning Ordinance Sec. 7.02B
Birmingham Planning Board
April 22, 2020*

Google Earth

April 15, 2020

Ms. Jana Ecker, Planning Director
City of Birmingham
151 Martin St.
Birmingham, MI 48009

Re: Mr. J. Patrick Howe's Letter of April 15, 2020

Dear Ms. Ecker:

You forwarded the above referenced letter to this office for review, and in particular, to review the citations contained in the letter to the Governor's Directives and Orders.

In this regard, Mr. Howe stated the following:

"Holding this meeting 'virtually' on April 22, 2020 is not only unfair and prejudicial to the condominium owners of Birmingham Place and various other stakeholders in the City of Birmingham, but is completely contrary to Governor Whitmer's Executive Directive No. 2020-02. That Executive Directive, which supplements Governor Whitmer's Executive Order 2020-15 that authorized virtual meetings which are not otherwise permissible under the Open Meetings Act, is in full force and effect, and states that:

*All public bodies of departments and agencies of the State, including but not limited to boards, commissions, committees, subcommittees, authorities, and councils, **must, to the extent practicable**, considerer (sic) postponing public meetings and/or agenda items that may be deferred until a later time."*

What is not apparent from Mr. Howe's description, is there is a difference between Executive Directives and Executive Orders. Executive Directives, in this case, are sent only to State Department Directors and Autonomous Agency Heads. If you examine Executive Director 2020-02 which is attached hereto and incorporated by reference, you will see it is addressed as follows:

"Executive Directive 2020-02
Executive Directive
No. 2020-2

To: State Department Directors and Autonomous Agency Heads
From: Governor Gretchen Whitmer
Date: March 13, 2020"

Beier Howlett

Ms. Jana Ecker, Planning Director
City of Birmingham
April 15, 2020
Page 2

In addition, you will note that the operative section, which is also quoted by Mr. Howe, states in paragraph in 1, as follows:

“1. All public bodies of departments and agencies of the State, including but not limited to boards, commissions, committees, subcommittees, authorities, and councils, must, to the extent practicable, consider postponing public meetings and/or agenda items that may be deferred until a later time.” (Emphasis Added)

This Directive was not sent to cities, school districts or local government, but to State Department Directors and Agency Heads of the State. Therefore, it is not applicable in circumstances before the Planning Board.

Executive Order 2020-48, which rescinds 2020-15, was directed to local units of government, and all entities that are subject to the Open Meetings Act. On page 2 of the Governor’s Executive Order, she states as follows:

“To mitigate the spread of COVID-19, protect the public health, and provide essential protections to vulnerable Michiganders, it is crucial that all Michiganders take steps to limit in-person contact. These critical mitigation measures include social distancing and limiting the number of people interacting at public gatherings.

To that end, it is reasonable and necessary to temporarily suspend rules and procedures relating to physical presence at meetings and hearings of public bodies and other governmental entities in Michigan. These public bodies and entities must continue to conduct public business during this emergency, including actions to respond to COVID-19, and the general public must be able to continue to participate in government decision-making without unduly compromising public health, safety, and welfare.

Executive Order 2020-15 provided this limited and temporary relief from certain rules and procedures. This order clarifies and extends the duration of that relief, as it remains reasonable and necessary to suppress the spread of COVID-19 and protect the public health and safety of this state and its residents. With this order, Executive Order 2020-15 is rescinded.” (Emphasis Added)

You will note that this Order directs public bodies, and entities to continue to conduct public business. This document, which I have included for your review, does not direct that public bodies postpone business, but merely directs how remote meetings are to be conducted.

Beier Howlett

Ms. Jana Ecker, Planning Director
City of Birmingham
April 15, 2020
Page 3

As you will note from a thorough review of Executive Order 2020-48, there is no requirement that business be postponed. It is merely a modification of the requirements of the Open Meetings Act as to how remote meetings are to be conducted. In so doing, the Governor did not order any changes to the authority of the Planning Board in conducting its meetings or in the manner in which it considers requests for adjournments or postponements. Such requests are certainly still within the discretion of the Planning Board as to whether they wish to grant a postponement or not. It is not dictated by the Governor's Order 2020-48 and, as stated above, the Executive Directive 2020-02 is not applicable to cities and school districts.

We hope this is of assistance to you.

Very truly yours,

BEIER HOWLETT, P.C.

Timothy J. Currier
Birmingham City Attorney

TJC/jc

THE OFFICE OF

GOVERNOR GRETCHEN WHITMER

WHITMER / NEWS / EXECUTIVE DIRECTIVES

**Executive Directive 2020-02****Executive Directive****No. 2020-2**

To: State Department Directors and Autonomous Agency Heads

From: Governor Gretchen Whitmer

Date: March 13, 2020

Re: Public Meetings of State of Michigan Public Bodies During the COVID-19
Emergency

As governor, one of my most solemn obligations is to protect the health, safety, and welfare of Michigan residents, particularly in times of crisis. It is a core and critical duty of the executive branch to respond quickly and effectively to emergent threats to the public health, safety, and welfare of Michiganders, and to faithfully execute the laws of this state in a manner consistent with that priority.



With Executive Order 2020-4, I declared a statewide state of emergency due to the spread of the novel coronavirus (COVID-19). This is a new strain of coronavirus that had not been previously identified in humans, can easily spread from person to person, and can result in serious illness or death. To mitigate the spread of COVID-19 and to provide essential protections to vulnerable Michiganders and this state's health care system and other critical infrastructure, it is crucial that all Michiganders take steps to limit in-person contact, particularly in the context of large groups.

One of the cornerstones of public engagement in governmental activities is the ability to participate in the meetings of public bodies. The Open Meetings Act ("OMA"), 1976 PA 267, as amended, MCL 15.261-.275, sets forth guideposts to ensure that the public has meaningful access to the meetings and decision-making processes of certain public bodies. The OMA requires that "[a]ll meetings of a public body shall be open to the public and shall be held in a place available to the general public," and "[a]ll decisions of a public body" and "deliberations of a public body" must take place at a meeting open to the public. MCL 15.263(1)-(3). It further provides that "[a]ll persons shall be permitted to attend any meeting except as otherwise provided in this act" and "shall be permitted to address a meeting of a public body under rules established and recorded by the public body." MCL 15.263(1), (5). Finally, the OMA provides that "[a] meeting of a public body shall not be held unless public notice is given as provided in this section by a person designated by the public body." MCL 15.265(1).

The OMA promotes governmental accountability and fosters open and responsible governmental decision making. In conducting its business during this time of emergency, state government must ensure that it preserves these important governmental objectives without unduly compromising the public health, welfare, and safety of this state.

Acting under sections 1 and 8 of article 5 of the Michigan Constitution of 1963, I direct the following:

1. All public bodies of departments and agencies of the State, including but not limited to boards, commissions, committees, subcommittees, authorities, and councils, must, to the extent practicable, consider postponing public meetings and/or agenda items that may be deferred until a later time.

Q

X

2. All public bodies of departments and agencies of the State subject to the OMA that must continue to meet must do so by means sufficient to enable meaningful access and communication for all participants. Participation by remote access technology, including conference calling, real-time streaming, or other platforms is acceptable, and sufficient to form a quorum, so long as public access and participation is preserved.
3. Public notice of the time and date of each meeting of a public body of a department or agency of the State subject to the OMA must be given in the manner required by the OMA, which includes publication of the notice on the public body's internet website. The public

notice must include sufficient information such that the public's right to address a meeting of the public body is preserved.

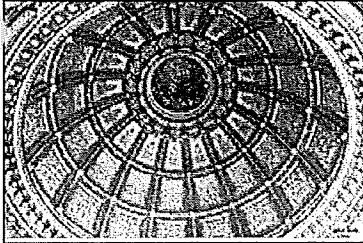
This directive is effective immediately and will remain in effect until further notice.

Thank you for your cooperation in implementing this directive.



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**Executive Order 2020-15 (COVID-19)****EXECUTIVE ORDER****No. 2020-15****Temporary authorization of remote participation in public meetings
and hearings and temporary relief from monthly meeting
requirements for school boards**

The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. There is currently no approved vaccine or antiviral treatment for this disease.

On March 10, 2020, the Michigan Department of Health and Human Services identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, I issued Executive Order 2020-4. This order declared a state of emergency across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended, MCL 30.401-.421, and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31-.33.

The Emergency Management Act vests the governor with broad powers and duties to “cop[e] with dangers to this state or the people of this state presented by a disaster or emergency,” which the governor may implement through “executive orders, proclamations, and directives having the force and effect of law.” MCL 30.403(1)-(2). Similarly, the Emergency Powers of the Governor Act of 1945, provides that, after declaring a state of emergency, “the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control.” MCL 10.31(1).

To mitigate the spread of COVID-19, protect the public health, and provide essential protections to vulnerable Michiganders, it is crucial that all Michiganders take steps to limit in-person contact. These critical mitigation measures include social distancing and limiting the number of people interacting at public gatherings.

To that end, it is reasonable and necessary to temporarily suspend rules and procedures relating to physical presence at meetings and hearings of public bodies and other governmental entities in Michigan. These public bodies and entities must continue to

conduct public business during this emergency, including actions to respond to COVID-19, and the general public must be able to continue to participate in government decision-making without unduly compromising public health, safety, and welfare.

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. Effective immediately and continuing until April 15, 2020 at 11:59 pm, to the extent that the Open Meetings Act, 1976 PA 267, as amended, MCL 15.261 to 15.272 (“OMA”) requires that a meeting of a public body be held in a physical place available to the general public or requires the physical presence of one or more members of a public body, strict compliance with section 3 of the OMA,

MCL 15.263, is temporarily suspended in order to alleviate any such physical-place or physical-presence requirements, as follows:

(a) A meeting of a public body may be held electronically, including by telephonic conferencing or video conferencing, in a manner in which both the general public and the members of the public body may participate by electronic means.

(b) A meeting of a public body held electronically must be conducted in a manner that permits two-way communication so that members of the public body can hear and be heard by other members of the public body and so that general public participants can hear members of the public body and can be heard by members of the public body and other participants during a public comment period. The public body also may use technology to facilitate typed public comments that may be read to or shared with members of the public body and other participants.

(c) Members of a public body and of the general public participating electronically will be considered present and in attendance at the meeting and may participate in the meeting as if physically present at the meeting.

(d) All persons must be permitted to participate in any meeting of a public body held electronically, except as otherwise provided in the OMA.

(e) If a public body directly or indirectly maintains an official internet presence, the public body must, consistent with and in addition to any other applicable notice requirements under the OMA, post advance notice of a meeting held electronically on a portion of the public body's website that is fully accessible to the public. The public notice on the website must be included on either the homepage or on a separate webpage dedicated to public notices for non-regularly scheduled public meetings or electronic meetings and accessible through a prominent and conspicuous link on the website's homepage that clearly describes its purpose for public notification of those non-regularly scheduled or electronic public meetings. Notice of a meeting of a public body that will be held electronically must include all of the following:

- (i) An explanation of the reason why the public body is meeting electronically.
 - (ii) Detailed procedures by which the public may participate in the meeting electronically, including a telephone number, internet address, or both.
 - (iii) Procedures by which persons may contact members of the public body to provide input or ask questions on any business that will come before the public body at the meeting.
 - (iv) Procedures by which persons with disabilities may participate in the meeting.
- (f) The right of a person to participate in a meeting of a public body held electronically includes the right to tape-record, to videotape, to broadcast live on radio, and to telecast live on television the proceedings of the public body at a public meeting. The exercise of this right does not depend on the prior approval of the public body. However, a public body may establish reasonable rules and regulations to minimize the possibility of disrupting the meeting.
- (g) A public body may not require a person as a condition of participating in a meeting of the public body held electronically to register or otherwise provide his or her name or other information or otherwise to fulfill a condition precedent to attendance, other than mechanisms necessary to permit the person to participate in a public comment period of the meeting.
- (h) A person must be permitted to address a meeting of a public body held electronically under rules established and recorded by the public body. A person must not be excluded from a meeting held electronically otherwise open to the public except for a breach of the peace actually committed during the meeting.
- (i) During a meeting of a public body held electronically, members of the public body are urged to take all votes by roll call to avoid any questions about how each member of the public body votes.
- (j) If a public body holding a meeting electronically directly or indirectly maintains an official internet presence, the public body is encouraged to make available to the general public through the public body's website homepage an agenda and other materials relating to the meeting.

(k) Members of the general public otherwise participating in a meeting of a public body held electronically may be excluded from participation in a closed session of the public body held electronically during that meeting if the closed session is convened and held in compliance with the requirements of the OMA applicable to a closed session.

2. A public body holding a meeting electronically as provided under this order is encouraged to do so in a manner that effectuates as fully as possible the purposes of the OMA, which include promoting government accountability and fostering openness in government to enhance responsible decision-making. Discussions or deliberations at an open meeting that cannot at a minimum be heard by the general public participating in the meeting are contrary to these purposes. Accordingly, members of a public body must avoid using email, texting, instant messaging, and other such electronic forms of communication to make a decision or deliberate toward a decision, and must avoid "round-the-horn" decision-making in a manner not accessible to the public at an open meeting.
3. If a decision or other action of a public body is in compliance with the requirements of this order and the other requirements of the OMA, it is in compliance with the OMA.
4. Effective immediately and continuing until April 15, 2020 at 11:59 pm, if a statute or rule other than the OMA requires that public comments be permitted or a public hearing be held, including in conjunction with the issuance of a permit or a hearing required under the Uniform Budgeting and Accounting Act, 1968 PA 2, as amended, MCL 141.421 to 141.440a, a public body or department or agency may provide a means for remote public comment or participation through the use of any technology that would facilitate a member of the general public's ability to participate remotely to the same extent as if the member of the general public appeared in person. If not expressly authorized by statute or rule, written comment, including by electronic means, also is permitted.
5. Effective immediately and continuing until April 15, 2020 at 11:59 pm, strict compliance with subsection 6 of section 11a, subsection 7 of section 384, and subsection 1 of section 418a of the Revised School Code, 1976 PA 451, as amended, MCL 380.11a(6), MCL 380.384(7), and MCL 380.418a(1), is temporarily

suspended so as not to require school district boards to hold meetings at least once each month.

6. Nothing in this order permits a public body to limit or restrict the rights of the press or other news media. Members of public bodies are encouraged to facilitate access by members of the press and other news media both to meetings held electronically and to members of public bodies.
7. As used in this order, the terms "decision," "meeting," and "public body" mean those terms as defined under section 2 of the OMA, MCL 15.262, except this order does not apply to state legislative bodies.
8. A provision of this order will prevail over any conflicting provision of a local charter, ordinance, or rule.
9. This order supersedes sections 2 and 3 of Executive Directive 2020-2.

Given under my hand and the Great Seal of the State of Michigan.



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Timothy Currier

From: Jana Ecker <Jecker@bhamgov.org>
Sent: Wednesday, April 15, 2020 3:37 PM
To: Timothy Currier
Subject: Fwd: Adjournment of Planning Board Virtual Meeting April 22,2020

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

From: **larry rockkind** <larryproch@gmail.com>
Date: Wed, Apr 15, 2020 at 3:03 PM
Subject: Adjournment of Planning Board Virtual Meeting April 22,2020
To: Jana Ecker <jecker@bhamgov.org>, <jvalentine@bhamgov.org>, <pboutros@bhamgov.org>, larry rockkind <larryproch@gmail.com>

To: Birmingham Planning Board c/o Jan Ecker, Planning Director
Cc: Mayor, City Manager
From: Louis P. Rockkind
Date: April 15, 2020

REQUEST TO ADJOURN VIRTUAL HEARING ON REZONING REQUEST FOR 469-479 S. OLD WOODWARD
SCHEDULED FOR APRIL 22, 2020

I am the owner of a condominium at 411 South Old Woodward. I ask that you adjourn the above hearing for these reasons, more fully discussed below:

1. *The Board is required by Executive Order 2020-1(1) to adjourn this hearing until a hearing can be held in person.*
2. *The format of a virtual hearing does not provide a fair and adequate forum for objectors to state their views, particularly for seniors, especially given the unusual importance of the issues and the unique complexity of the issues.*
3. *Before taking the drastic action requested, the Board should wait until it has time to digest the effects of the pandemic on the needs of Birmingham.*
4. *The virtual notice of the hearing is not timely and this requires adjournment of the hearing..*

1. *The Board is required by Executive Order 2020-1 (1) to adjourn this hearing until a hearing can be held in person.*

Executive Order 2020-02, Sect. 1, which remains in effect, provides (emphasis added):

*All public bodies of departments and agencies of the State, including but not limited to boards, commissions, committees, subcommittees, authorities, and councils, **must**, to the extent practicable, consider postponing public meetings and/or agenda items that may be deferred until a later time.*

In other words, this is in effect an order to bodies such as the Birmingham Planning Board to adjourn hearings until they can be held in person unless there is a compelling reason not to do so.

This is no doubt a recognition that virtual meetings are simply not as good as in person meetings for many reasons, including the ability of participants to actually participate fully. This is even more true for senior citizens, as discussed below.

The severe limitations of virtual meetings are described in this article:

When meeting face to face, people are freer with each other than they would be online. People are able to express themselves by using body language, gestures and words all of which work together to convey a message. Communication is better in face to face meetings because misunderstandings are less likely.[Ed.

Note: All of this is especially critical for senior citizens, who may have more difficulty following the proceeding in the best of circumstances.]

When you go in for a physical meeting, it is the primary reason why you are at the particular place at any given time. You will be with others attending the meeting as well and none will tolerate the other wasting their time. Everyone will be disciplined and will not be easily distracted by things like phones and computers. The serious environment will emphasize the need to concentrate fully on the meeting and keep off any distractions...

However the chances of having a communication breakdown are increased in virtual meetings. Distractions by personal and work related issues are more likely to happen during virtual meetings than face to face ones.

As discussed below, this meeting requires a decision by the Board which will affect the daily lives, home values, and probably financial futures and retirement planning of many residents. It is just too important to limit public participation to a virtual meeting which has all the detriments described above.

There is no "practicable" reason why this hearing should not be adjourned. It has been pending for almost two years with no effort by the Developer to expedite the proceeding. There is no prejudice to anyone to an adjournment, but a tremendous benefit to many in an adjournment for an in person hearing. (It is worth noting that this proceeding has been delayed on more than one occasion by the Developer's failure to comply with certain requirements or the Developer's request.)

2. *The format of a virtual hearing does not provide a fair and adequate forum for objectors to state their views, particularly seniors, especially given the unusual importance of the issues and the unique complexity of the issues.*

There are doubtless many matters before the Planning Board which may work well in a virtual meeting. This is not one of them. It is of unusual significance to an unusually large number of residents and is remarkably complex.

This application for rezoning involves rezoning a parcel abutting Birmingham Place's residential condominiums to permit construction of a tall commercial building. As the Manager of Birmingham Place told this Board, the mere possibility of this rezoning has deflated the market value of a number of units and, if built out, would obstruct the views of a number of units. Furthermore, together with the hotel completing construction at Brown and Old South Woodward, vehicle and pedestrian traffic will soar. And this is just the beginning. This is a very big and unusual deal.

The Request for Rezoning was first heard by the Board on June 27, 2018. The issue went to the Council, which sent it back for rehearing by the Board. After a rehearing on December 12, 2018, the matter was heard by the City Council on February 11, 2019. The Council failed to pass motions to approve, deny, or adjourn. The Council President advised at the meeting the Council would need to consult with the City attorney as to further proceedings. In the meantime, an entirely different proceeding changed the wording of the zoning ordinance applicable to this parcel.

Even with the help of counsel, it is a difficult proceeding to understand. And currently we cannot even meet with counsel or among ourselves. The many prior meetings on this rezoning request have been very well attended by objectors, including residents of Birmingham Place which has its own counsel. We have prepared for these meetings with our own meetings, including meeting before and after the hearing. This has enabled us to coordinate our presentations to be effective and to save time. In addition, we have sometimes changed our presentation depending on what happens at the hearing itself, which is impossible at a virtual hearing. In addition, the hearings have often involved visual aids, which even on a zoom conference will be difficult to appreciate.

A virtual meeting is useless to people who are not very computer literate and especially hopeless for many seniors. I am 71. Trust me when I tell you me and my friends are overwhelmed by the pandemic. Just arranging for food, taking care of our medical appointments and medications, and worrying about and trying to stay in touch with our children and grandchildren is wearying in and of itself. Many of us are not comfortable with computers.

As a recent study explained:

The study also highlights the obstacles older adults experience such as a significant decrease in sensory keenness, particularly with vision and hearing, as well as a decrease in motor skills due to health problems, such as arthritis and tremors. "Often a large challenge for older adults when using the computer is navigating the mouse and keyboard, which is commonly due to a health problem like arthritis."

Many of us when we look at instructions for a Zoom meeting will give up before we even start. In addition, simply navigating and being heard at a large Zoom meeting (and I have been in those) is challenging for the best of us. Have a heart.

There is no prejudice to anyone by a postponement. The application for rezoning was filed on June 27, 2018 and was before the City Council on February 11, 2019. The Developer has made no effort to expedite its request. Even if the request were approved, no outside activities could proceed at this point anyway. The matter has already been pending for close to two years.

3) *Before taking the drastic action requested, the Board should wait until it has time to digest the effects of the pandemic on the needs of Birmingham.*

We don't know what the future holds even in the short term, but one thing is for sure, life will not return to what we knew before the pandemic. As has been noted:

Yet cities since then have thrived and grown. They're much cleaner and safer than they were a century ago. That's because cities are by their nature adaptable organisms. More efficient than rural areas and more flexible than suburbs, they are constantly reinventing themselves — sometimes so quickly that it's startling, sometimes so slowly that we don't even notice.

The world after COVID-19 will be different — as it is after any disaster. And COVID-19 will accelerate changes that have been brewing in cities for a long time. The result will be a new kind of city, different than what we have seen before. A city that should be able to withstand shocks like COVID-19 in a sturdier fashion.

The Board needs to see what this new world might require before so dramatically changing our downtown as it has existed for years.

4) *The virtual notice of the hearing is not timely and this requires adjournment of the hearing.*

The well-known Open Meetings Act requires hearings like this one to be held in a public place with personal attendance. The only reason there is a "virtual" alternative is due to Executive Order 2020-15 which exempts compliance with the Act under detailed and specific requirements because of the pandemic. One of those requirements prescribes the necessary notice (Sect. 1(e):

(e) If a public body directly or indirectly maintains an official internet presence, the public body must, consistent with and in addition to any other applicable notice requirements under the OMA, post advance notice of a meeting held electronically on a portion of the public body's website that is fully accessible to the public. The public notice on the website must be included on either the homepage or on a separate webpage dedicated to public notices for non-regularly scheduled public meetings or electronic meetings and accessible through a prominent and conspicuous link on the website's homepage that clearly describes its purpose for public notification of those non-regularly scheduled or electronic public meetings. Notice of a meeting of a public body that will be held electronically must include all of the following:

- (i) An explanation of the reason why the public body is meeting electronically.*
- (ii) Detailed procedures by which the public may participate in the meeting electronically, including a telephone number, internet address, or both.*
- (iii) Procedures by which persons may contact members of the public body to provide input or ask questions on any business that will come before the public body at the meeting.*
- (iv) Procedures by which persons with disabilities may participate in the meeting.*

As with any notice, this one is necessary to provide everyone with an adequate opportunity to prepare and attend. The more complex the meeting, the longer the notice period should be.

The detailed requirements in the Order are in obvious deference to the fact that virtual meetings are more difficult for the participants. This means the public should have the maximum time available for notice. But it did not.

Our ordinance requires 15 days' notice of a zoning request with notice personally sent to residents within 300 feet. But the Board's virtual notice was (a) not sent to persons within 300 feet, and (b) published on the website on April 14, only seven, not fifteen, days before the hearing.

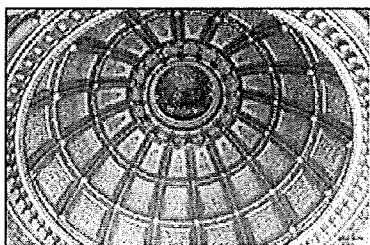
For all the reasons discussed above, maximum notice is necessary to give the public even a chance to participate meaningfully in the hearing.

But aside from that, the notice is inadequate under the ordinance and requires adjournment of the hearing, which should be to a time when a hearing can be held in person,

--

Jana L. Ecker

***Planning Director
City of Birmingham
248-530-1841***



MICHIGAN LEGISLATURE

Michigan Compiled Laws Complete Through PA 84 of 2020
 House: Adjourned until Thursday, April 16, 2020 10:00:00 AM
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GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GARLIN GILCHRIST II
LT. GOVERNOR

SECRETARY OF SENATE
2020 APR 15 AM 9:29

EXECUTIVE ORDER

No. 2020-48

Temporary authorization of remote participation in public meetings and hearings and temporary relief from monthly meeting requirements for school boards

Rescission of Executive Order 2020-15

The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. There is currently no approved vaccine or antiviral treatment for this disease.

On March 10, 2020, the Michigan Department of Health and Human Services identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, I issued Executive Order 2020-4. This order declared a state of emergency across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended, MCL 30.401 et seq., and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31 et seq.

In the three weeks that followed, the virus spread across Michigan, bringing deaths in the hundreds, confirmed cases in the thousands, and deep disruption to this state's economy, homes, and educational, civic, social, and religious institutions. On April 1, 2020, in response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, I issued Executive Order 2020-33. This order expanded on Executive Order 2020-4 and declared both a state of emergency and a state of disaster across the State of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, and the Emergency Powers of the Governor Act of 1945.

The Emergency Management Act vests the governor with broad powers and duties to "cop[e] with dangers to this state or the people of this state presented by a disaster or emergency," which the governor may implement through "executive orders, proclamations, and directives having the force and effect of law." MCL 30.403(1)-(2). Similarly, the Emergency Powers of the Governor Act of 1945 provides that, after declaring a state of emergency, "the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control." MCL 10.31(1).

To mitigate the spread of COVID-19, protect the public health, and provide essential protections to vulnerable Michiganders, it is crucial that all Michiganders take steps to limit in-person contact. These critical mitigation measures include social distancing and limiting the number of people interacting at public gatherings.

To that end, it is reasonable and necessary to temporarily suspend rules and procedures relating to physical presence at meetings and hearings of public bodies and other governmental entities in Michigan. These public bodies and entities must continue to conduct public business during this emergency, including actions to respond to COVID-19, and the general public must be able to continue to participate in government decision-making without unduly compromising public health, safety, and welfare.

Executive Order 2020-15 provided this limited and temporary relief from certain rules and procedures. This order clarifies and extends the duration of that relief, as it remains reasonable and necessary to suppress the spread of COVID-19 and protect the public health and safety of this state and its residents. With this order, Executive Order 2020-15 is rescinded.

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. To the extent that the Open Meetings Act ("OMA"), 1976 PA 267, as amended, MCL 15.261 to 15.272, requires that a meeting of a public body be held in a physical place available to the general public or requires the physical presence of one or more members of a public body, strict compliance with section 3 of the OMA, MCL 15.263, is temporarily suspended in order to alleviate any such physical-place or physical-presence requirements, as follows:
 - (a) A meeting of a public body may be held electronically, including by telephonic conferencing or video conferencing, in a manner in which both the general public and the members of the public body may participate by electronic means.
 - (b) A meeting of a public body held electronically must be conducted in a manner that permits two-way communication so that members of the public body can hear and be heard by other members of the public body and so that general public participants can hear members of the public body and can be heard by members of the public body and other participants during a public comment period. The public body also may use technology to facilitate typed public comments that may be read to or shared with members of the public body and other participants.
 - (c) Members of a public body and of the general public participating electronically will be considered present and in attendance at the meeting and may participate in the meeting as if physically present at the meeting.
 - (d) All persons must be permitted to participate in any meeting of a public body held electronically, except as otherwise provided in the OMA.

- (e) If a public body directly or indirectly maintains an official internet presence, the public body must, consistent with and in addition to any other applicable notice requirements under the OMA, post advance notice of a meeting held electronically on a portion of the public body's website that is fully accessible to the public. The public notice on the website must be included on either the homepage or on a separate webpage dedicated to public notices for non-regularly scheduled public meetings or electronic meetings and accessible through a prominent and conspicuous link on the website's homepage that clearly describes its purpose for public notification of those non-regularly scheduled or electronic public meetings. Notice of a meeting of a public body that will be held electronically must include all of the following:
- (i) An explanation of the reason why the public body is meeting electronically.
 - (ii) Detailed procedures by which the public may participate in the meeting remotely, including a telephone number, internet address, or both.
 - (iii) Procedures by which persons may contact members of the public body to provide input or ask questions on any business that will come before the public body at the meeting.
 - (iv) Procedures by which persons with disabilities may participate in the meeting.
- (f) The right of a person to participate in a meeting of a public body held electronically includes the right to tape-record, to videotape, to broadcast live on radio, and to telecast live on television the proceedings of the public body at a public meeting. The exercise of this right does not depend on the prior approval of the public body. However, a public body may establish reasonable rules and regulations to minimize the possibility of disrupting the meeting.
- (g) A public body may not require a person as a condition of participating in a meeting of the public body held electronically to register or otherwise provide his or her name or other information or otherwise to fulfill a condition precedent to attendance, other than mechanisms necessary to permit the person to participate in a public comment period of the meeting.
- (h) A person must be permitted to address a meeting of a public body held electronically under rules established and recorded by the public body. A person must not be excluded from a meeting held electronically otherwise open to the public except for a breach of the peace actually committed during the meeting.
- (i) During a meeting of a public body held electronically, members of the public body are urged to take all votes by roll call to avoid any questions about how each member of the public body votes.
- (j) If a public body holding a meeting electronically directly or indirectly maintains an official internet presence, the public body is encouraged to make available to

the general public through the public body's website homepage an agenda and other materials relating to the meeting.

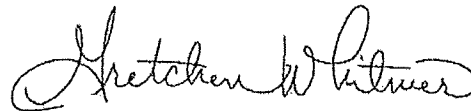
- (k) Members of the general public otherwise participating in a meeting of a public body held electronically may be excluded from participation in a closed session of the public body held electronically during that meeting if the closed session is convened and held in compliance with the requirements of the OMA applicable to a closed session.
- 2. A public body holding a meeting electronically as provided under this order is encouraged to do so in a manner that effectuates as fully as possible the purposes of the OMA, which include promoting government accountability and fostering openness in government to enhance responsible decision-making. Discussions or deliberations at an open meeting that cannot at a minimum be heard by the general public participating in the meeting are contrary to these purposes. Accordingly, members of a public body must avoid using email, texting, instant messaging, and other such electronic forms of communication to make a decision or deliberate toward a decision, and must avoid "round-the-horn" decision-making in a manner not accessible to the public at an open meeting.
- 3. If a decision or other action of a public body is in compliance with the requirements of this order and the other requirements of the OMA, it is in compliance with the OMA.
- 4. If a statute or rule other than the OMA requires that public comments be permitted or a public hearing be held, including in conjunction with the issuance of a permit or a hearing required under the Uniform Budgeting and Accounting Act, 1968 PA 2, as amended, MCL 141.421 to 141.440a, a public body or department or agency may provide a means for remote public comment or participation through the use of any technology that would facilitate a member of the general public's ability to participate remotely to the same extent as if the member of the general public appeared in person. If not expressly authorized by statute or rule, written comment, including by electronic means, also is permitted.
- 5. Strict compliance with subsection 6 of section 11a, subsection 7 of section 384, and subsection 1 of section 418a of the Revised School Code, 1976 PA 451, as amended, MCL 380.11a(6), MCL 380.384(7), and MCL 380.418a(1), is temporarily suspended so as not to require school district boards to hold meetings at least once each month.
- 6. Nothing in this order permits a public body to limit or restrict the rights of the press or other news media. Members of public bodies are encouraged to facilitate access by members of the press and other news media both to meetings held electronically and to members of public bodies.
- 7. As used in this order, the terms "decision," "meeting," and "public body" mean those terms as defined under section 2 of the OMA, MCL 15.262, except this order does not apply to state legislative bodies.

8. A provision of this order will prevail over any conflicting provision of a local charter, ordinance, or rule.
9. This order supersedes sections 2 and 3 of Executive Directive 2020-2.
10. This order is effective immediately and continues through May 12, 2020.
11. Executive Order 2020-15 is rescinded.

Given under my hand and the Great Seal of the State of Michigan.

Date: April 14, 2020

Time: 8:17 pm



GRETCHEN WHITMER
GOVERNOR

By the Governor:

SECRETARY OF STATE

Thoughts regarding a successful ZOOM Planning Board Meeting

1 message

Mickey Schwartz <mickeyschwartz@gmail.com>

Wed, May 13, 2020 at 9:45 AM

To: Jana Ecker <jecker@bhamgov.org>

Jana,

In an effort to facilitate Mr. Clein's request for a successful BP Zoom meeting, please forward this to the Planning Board members and anyone in IT involved in the upcoming meetings:

TO: SCOTT CLEIN and all BIRMINGHAM PLANNING BOARD MEMBERS
FROM: DR. MICHAEL SCHWARTZ
RE: SUCCESSFUL ZOOM MEETINGS
MAY 13, 2020

MR. CLEIN:

I'm sure that all parties want resolution of the requested rezoning of 469-479 S Old Woodward. As such, I write to you (and the Planning Board) to offer my feedback and suggestions as a Birmingham citizen on Zoom PB Public Meetings. The following is based on several ZOOM meetings I attended.

I would encourage you to have an IT person handle the logistics of a ZOOM meeting so that you can manage your role as the Chair and not have to also be the IT director.

At the beginning, please have an IT person discuss how to use the "Raise Hand" option. Two meetings I attended mentioned it but did not address how to use it. This option is in different locations (some of which are difficult to find) depending on the device being used (e.g. computer, tablet, phone). At the last PB meeting, I received a call from a participant who could not find the "Raise Hand" option. The individual is a Vice President of a Fortune 500 firm with considerable technical knowledge. Nonetheless, she could not communicate with the PB limiting citizen participation.

The call-in number can be problematic. I attempted to call in to the last PB meeting and received a message "more than 50 participants" I was then placed on hold with a message that the meeting is being recorded and would be available. Again, citizen participation may be restricted.

Meeting needs to start on time. The last PB meeting started late and several individuals expressed concern that the meeting may not be occurring, again limiting participation. If it can not start on time, perhaps some type of 'STANDBY MEETING STARTING SOON' message could be used.

Please remind PB members that they are being viewed. Walking, eating etc. during a professional meeting can be very distracting.

I hope these suggestions are helpful and look forward to this new means of citizen participation.

Mickey Schwartz, MD
248 229-9989
mickeyschwartz@gmail.com

May 19, 2020

Richard D. Rattner
rdr@wwrplaw.com

By Email

Planning Board
City of Birmingham
151 S. Martin Street
Birmingham, MI 48009
Attn: Jana Ecker

Re: Application to Rezone to D5 469/479 S. Old Woodward ("Application")

Dear Members of the Planning Board:

This letter is submitted to you on behalf of our client ("Applicant"), the owner of the former Mountain King restaurant and drive-thru bank property at 469/479 S. Old Woodward ("Property"). Please accept the following as a brief summary outline of certain relevant facts concerning the history of the review and significant issues discussed and resolved regarding the appropriateness of the rezoning of the Property to a D5 zoning district.

Two Years Ago. The Property owner first submitted this Application to rezone the Property from D4 to D5 in May of 2018.

- Over the past two years, multiple hearings and study sessions have been held regarding the Application. The Planning Board has heard comments at the hearings, or received written communications, from those citizens that were either in favor of, or those that objected ("Objectors") to, this Application.
- Over this period of two years, the Applicant has consistently demonstrated that this Application complies with all Ordinances of the City regarding the appropriateness of rezoning the Property to D5, including but not limited to, as set forth in Article 1, Sections 1.04 and 1.12(A), and Article 7, Sections 7.02(B)(2)(b)(i-iii) and 7.02(B)(5)(a)-(e) of the Birmingham Zoning Ordinances. Further, this conclusion has been recognized by the reports provided by the Planning Department.

- One objection to the rezoning claimed that the Property should not be eligible for rezoning to D5 because the D5 was intended to apply to 3 non-conforming properties only. Another objection was that any further rezoning to D5 should be part of a Master Plan for this area.
 - The Planning Board responded to the first objection by seeking and receiving an opinion from the City Attorney that responded to the question: “Is the owner of the property located at 460/470 Old South Woodward, legally permitted to apply for rezoning to the newly created D5 zoned district in the Downtown Overlay District”. In a letter dated October 1, 2018, the City Attorney responded: “yes”.
- As to the second objection, after a detailed discussion during its January 23, 2019 public hearing on the Application, the Planning Board confirmed that the D5 was intended as a zoning district in the same manner as other zoning districts set forth in the Ordinance and that the D5 is not limited to 3 nonconforming properties. Accordingly, on January 23, 2019, the Planning Board recommended to the City Commission that the Property be rezoned to the D5 zoning district.
- The City Commission took no action on March 11, 2019, but rather, during the discussion at the Commission level, there were comments made regarding a review of certain details of the Ordinance at the Planning Board and the possibility of clarifying three parts of the proposed Ordinance, to wit: (1) the maximum building height; (2) the definition of “immediately adjacent or abutting”; and (3) the properties within the City to which the D5 district should apply.
- On July 10, 2019, the Planning Board addressed these three issues in a study session. The result was as follows:
 - The Board believed that the zoning ordinance adequately defined building height and no further definition was required to address maximum building height in the D5;
 - The Planning Board proposed that the D5 Ordinance should be amended to clarify the definition of “immediately adjacent and abutting,” to remove reference to “adjacent” and to add a definition of “abutting,”; and

- With regard to the properties within the City to which the D5 district should apply, the Planning Board asked the City to engage its professional planning consultant, DPZ Co-Design (“DPZ”), to make a study of this area of the downtown (called the “Study Area” in their report) to determine where D5 is appropriate and to study if it was within good planning practices for the Planning Board to entertain further applications for additional buildings to be placed into the D5 district.
- On September 11, 2019 the Planning Board reviewed the DPZ report. That report confirmed that D5 was indeed an appropriate zone for this Property and that it is good planning practice to allow additional buildings into the D5 district. DPZ’s conclusion was that “...All properties within the study area should be eligible for rezoning to D5, with the potential exception of the Ford-Peabody Mansion for considerations related to preservation.”
- On November 13, 2019 the Planning Board took the extra step of reviewing additional massing studies provided DPZ.
- On December 11, 2019 the Planning Board recommended to the City Commission approval of the text amendment to the ordinance.
- On January 13, 2020 the City Commission approved the text amendment to the Ordinance as recommended by the Planning Board.

In conclusion, this Application has received a detailed and exhaustive study over its two-year pendency. It has been thoroughly studied by the Planning Board, the City’s Planning Department, the City Commission, and DPZ, and an independent outside expert planning consultant that has been a part of Birmingham’s Master Plan preparation for many years. Every report, planning study, legal opinion and planning consultant’s conclusion has indicated that D5 rezoning is appropriate for the Property. In fact, a denial of this rezoning Application clearly ignores the obvious fact that the Application offers a real benefit to the City. It complies with the concepts provided in the Master Plan as well as the latest plan provided by DPZ that focuses on this Property and the “Study Area” as described in that study. A D5 zone for this Property not only satisfies every requirement of the Birmingham Zoning Ordinances, and the spirit and intent of those ordinances, but will be a benefit to the entire community.

Applicant respectfully requests that the Planning Board recommend that the City Commission grant approval of the Application.

Very truly yours,

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

Richard D. Rattner

Richard D. Rattner

cc: Mr. Joseph Valentine
Mr. Timothy Currier, Esq.
Mr. Doraid Markus
Mr. Christopher Longe

An aerial view of a multi-story brick building with a white cornice. The building is located at 469/479 S. Old Woodward Avenue. The sky is clear and blue.

469/479 S. Old Woodward Avenue

Former Mountain King Restaurant/Drive Thru Bank

Rezone to D5

Pursuant to Zoning Ordinance Sec. 7.02B

Birmingham Planning Board

April 22, 2020

MOUNTAIN KING 4, 3

Google Earth

© 2018 Google

Marble Polishing



D5 Is the Culmination of Exhaustive Study

- ✓ Contemplated for 2 years before enacted
- ✓ Many study sessions, discussions, and public meetings
- ✓ Advertised and noticed
- ✓ Considered many different options
- ✓ Multiple iterations of draft amendments
- ✓ Studied entire downtown area and study by planning consultant targeting this specific area of downtown

Article 1, Section 1.04

From 2016 Plan, Vision Statement



D5 will “reinforce [an] identifiable district in the Downtown to provide a sense of place.”



D5 will allow for a “diverse mix of uses, including [street-level] retail, commercial . . . and especially residential.”



D5 will allow a building that is “compatible, in mass and scale, with its immediate surroundings.”

Establishment of Overlay Districts in 2016 Plan Ord. Art I,1.12,A

- The overlay districts ...have been established to add additional and unique development standards which will better help the City of Birmingham accomplish the goals of the Downtown Birmingham 2016 Plan..."

D-5 Zoning Satisfies the Required Basic Provisions of Sec. 1.04 and Ord. Sec. 7.02(B)(2)(b)(i-iii)

- **D-5 Satisfies Purpose of Zoning Ordinance Sec. 1.04**
- **Rezoning Preserves Enjoyment of Rights and Usage Associated with Ownership Ord. Sec. 7.02(B)(2)(b)(i)**
- **Existing Zoning Not Appropriate Ord. Sec. 7.02(B)(2)(b)(ii)**
- **Rezoning is Not Detrimental to Surrounding Properties Sec. 7.02(B)(2)(b)(iii)**
- **D-5 Satisfies Purpose of Zoning Ordinance Sec. 1.04**

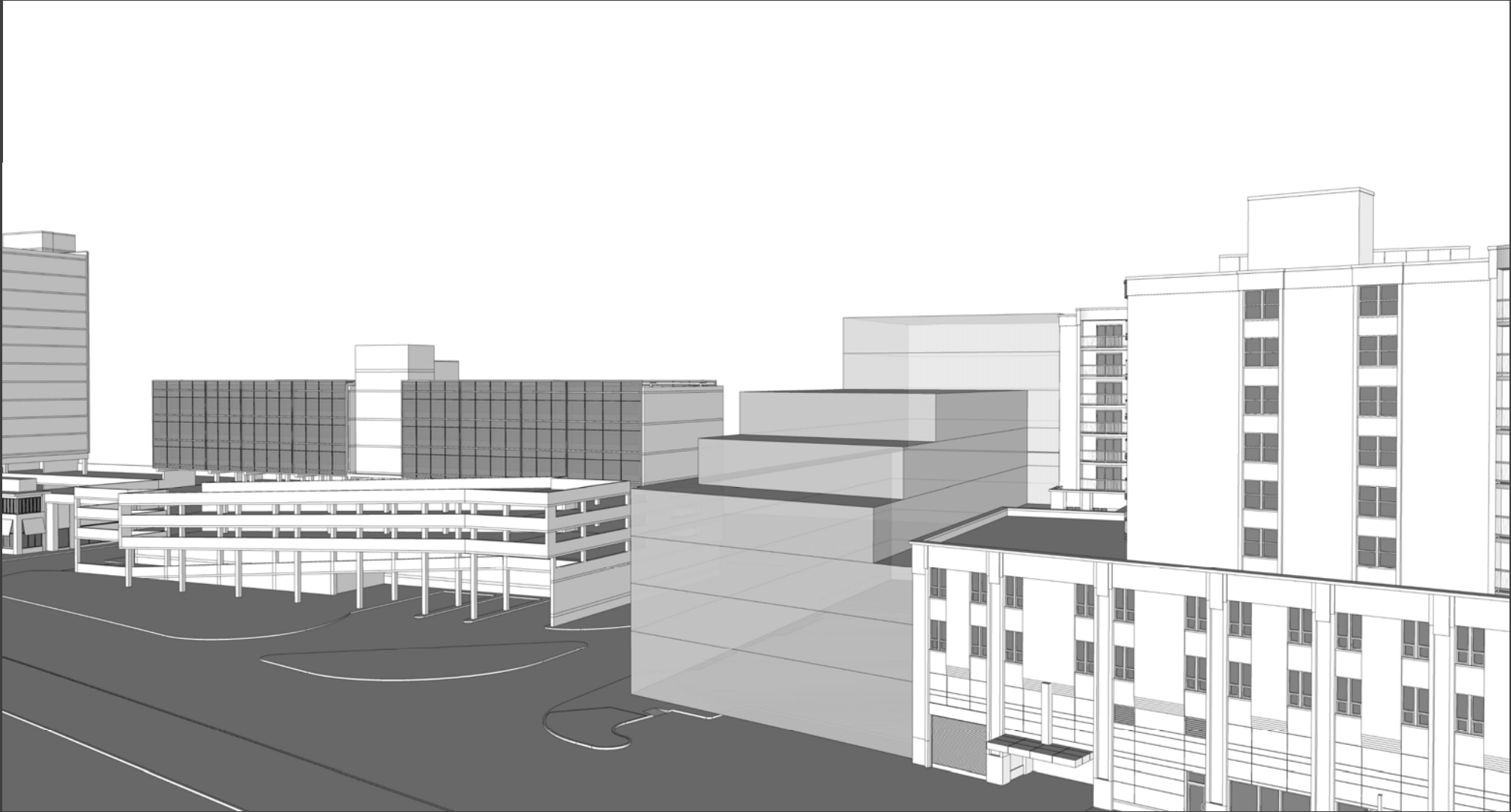
APPLICANT HAS DEMONSTRATED 5 FINDINGS OF ORDINANCE
SEC. 7.02(B)(5)(a)-(e)

- ✓ Sec. 7.02(B)(5)(a) – conforms to the City's Master Plan and 2016 Plan
- ✓ Sec. 7.02(B)(5)(b) – The proposed mixed uses of the subject property (retail, residential, and hotel) are consistent with existing uses in the neighborhood.
- ✓ Sec. 7.02(B)(5)(c) – Properties in the general area (abutting and adjacent) are zoned D-5.
- ✓ Sec. 7.02(B)(5)(d) – Property is not suitable to the uses permitted under existing zoning due to constraints of the property and the relationship to neighboring property.
- ✓ Sec. 7.02(B)(5)(e) – Trend of development in the area favours D-5 zoning.

City Action

- The City, after consideration, has already amended the new D5 proposed ordinance language.







dmarkus@markusllc.com





Thank You

***Rezone to D5
Pursuant to Zoning Ordinance Sec. 7.02B
Birmingham Planning Board
April 22, 2020***

Google Earth

469 - 479 S Old Woodward Zoning Application

1 message

Prentice, Michele <Michele.Prentice@colliers.com>

Tue, May 19, 2020 at 1:36 PM

To: Jana Ecker <Jecker@bhamgov.org>, "abingham@bhamgov.org" <abingham@bhamgov.org>, "s.clein@comcast.net" <s.clein@comcast.net>

Per the request made by Scott Clein at the April 22, 2020 Planning Board meeting, please find attached are pre-meeting written comments and the consensus of 70 Birmingham Residents for the Planning Board and City Commission members review prior to the May 27, 2020 Planning Board meeting. Please add this submittal as part of the official record for the D5 rezoning application and acknowledge its receipt. Thank you.

Michele Prentice

Senior Property Manager | Detroit


Dir +1 248 642 9000 | Fax +1 248 236 1490

401 S. Old Woodward, Birmingham MI 48009

michele.prentice@colliers.com

www.colliers.com



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4038K

BIRMINGHAM PLACE

401 S. Old Woodward Avenue, Suite 100 • Birmingham, Michigan 48009 • 248.642.9000 Phone • 248.236.1490 Fax

May 12, 2020

RE: 469 – 479 South Old Woodward Rezone Application from D4 to D5

To: City of Birmingham, MI Planning Board & City Commission:

At the April 22, 2020 Planning Board meeting, Chairman Scott Clein requested that any interested parties that have comments or objections to the application to rezone 469-479 S. Old Woodward Ave. from D4 to D5 (the “D5 Rezoning Application”), submit written material prior to the May 27, 2020 Planning Board meeting wherein the D5 Rezoning Application will be considered. The residents and commercial tenants of the Condominiums of Birmingham Place object to the D5 Rezoning Application, and for the reasons outlined herein, respectfully request that: (i) the Planning Board recommend to the City Commission that the D5 Rezoning Application be denied, and (ii) the City Commission deny the D5 Rezoning Application.

It is our desire to assist the Planning Board and City Commission in their efforts to manage a productive Zoom Planning Board meeting on May 27, 2020, and any future virtual meetings held by the City Commission. Therefore, we are substituting our pre-meeting written comments below with signatures of individuals that agree with these points and would have been speaking at the Planning Board meeting if it were held in person. We respectfully request that: (i) the Planning Board members review our opposition points prior to the Zoom meeting, (ii) Chairman Clein acknowledge this submittal from the residents and commercial tenants of the Condominiums of Birmingham Place at the Zoom meeting, and (iii) this submittal be made part of the official record for the D5 Rezoning Application.

Resident & Commercial Tenants of **Condominiums of Birmingham Place** **Opposition Points to 467-479 S. Old Woodward** **D4 to D5 Rezoning Request**

1. **REZONING THE SUBJECT PROPERTY IS NOT NECESSARY.** The applicant has not demonstrated why it cannot develop the subject property under the current D4 zoning, nor has it demonstrated why rezoning the subject property to D5 is necessary. This is a required element for the City to approve a rezoning under the City Zoning Ordinance, which the applicant has simply not demonstrated.
2. **D4 ZONING FOR THE SUBJECT PROPERTY IS, AND CONTINUES TO BE APPROPRIATE:** The applicant has not demonstrated that the current D4 zoning is no longer appropriate, which is required under the City Zoning Ordinance to rezone a

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property. Mixed uses are permitted under D4 and D5 zoning. The only difference between D4 and D5 zoning is building height. Why is D4 building height no longer appropriate, after it has been applied to many buildings over many years (eg. Daxton Hotel, Greenleaf Trust, Balmoral, Brookside Residences, Varsity Shop redevelopment, Peabody redevelopment)? Why should the subject property be treated differently now? It shouldn't!

3. **THE DEVELOPMENT TREND IN THE CITY IS CLEARLY 5 STORY BUILDINGS:** The development trend in the City is 5 stories or less, not above 5 stories. To make the argument that this portion of the City has experienced a development trend above 5 stories ignores that fact that the zoning ordinance that allowed Birmingham Place and the 555 Building to be developed over 5 stories was rejected years ago, and the City has intentionally permitted and encouraged the development of 5 story buildings since then. To say that there is a "development trend" above 5 stories in the City of Birmingham is misleading and disingenuous.
4. **JUST BECAUSE THE LANGUAGE OF THE D5 ORDINANCE WAS RECENTLY UPDATED BY THE CITY, DOES NOT MEAN THAT IT SHOULD BE APPLIED TO THE SUBJECT PROPERTY:** The question before that Planning Board is whether the D5 zoning designation is appropriate for the subject property under the requirements of Section 7.02 of the City Zoning Ordinance. The fact that the subject property is adjacent to two formerly legal non-confirming buildings, does not mean that it should be developed to the same standards as those buildings. The D5 Ordinance was clearly created to address the non-confirming status of three existing buildings, and to address expansions or modifications to those three buildings....not to encourage new development above 5 stories on other properties that were not zoned D5 when the D5 ordinance was created.
5. **PROPOSED REZONING IS INCONSISTENT WITH THE INTENT OF THE D5 ORDINANCE:** The intent of the D5 Ordinance was to address the legal non-confirming status of three existing buildings, not to encourage new development above 5 stories on properties not zoned D5. The record is clear on this fact. Had the residents and commercial tenants of the Condominiums of Birmingham Place known that the subject property could be developed above 5 stories, many of them may have decided to pass on the purchase or lease, or assign a different purchase or rental value to certain condominium units.
6. **D4 ZONING ALLOWS FOR A DEVELOPMENT THAT IS CONSISTENT WITH THE MASTER PLAN AND 2016 PLAN:** The development of a mixed use building is permitted under both D4 and D5 zoning, and a 5 story building is consistent with the goals of the City Master Plan and the 2016 Plan. Neither of these Plans call for the City to raise building heights in downtown Birmingham above 5 stories.

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7. **DEVELOPMENT OVER 5 STORIES WAS REJECTED MANY YEARS AGO:** Rezoning the subject property to D5 is essentially allowing the owner to develop the property at a height that the City of Birmingham rejected many years ago, and has consistently prohibited. The residents and commercial tenants of the Condominiums of Birmingham Place had no reason to believe that the City would “turn back the clock” on them and allow a development over 5 stories on the subject property to proceed.
8. **PARKING AND CONGESTION WILL GO FROM BAD TO WORSE:** The subject property is not within the Parking Assessment District, and must provide its own on-site parking or shared parking within 100 ft. of the subject property. Given this constraint, why would the City allow this property to be developed in a way that requires far more parking than it would under the existing D4 zoning? This is not logical, and will exacerbate the parking problems in Birmingham.
9. **DEVELOPING THE SUBJECT PROPERTY ABOVE 5 STORIES WILL BE DETRIMENTAL TO SURROUNDING RESIDENTS:** Rezoning the subject property to D5 would be detrimental to the residents and commercial tenants of the Condominiums of Birmingham Place, which has been described in the many letters filed with the City and placed on the record at previous hearings on this rezoning request.
10. **D4 ZONING ALLOWS THE SUBJECT PROPERTY TO BE BUILT TALLER THAN THE ADJACENT SOUTHERN BUILDING:** The existing D4 zoning of the subject property would allow it to be built higher than the northern edge of the 555 Office Building. A 5 story building would make for a more harmonious transition from Birmingham Place to the 555 Building, as opposed to abutting a 9-story building that would tower over the northern edge of the 555 Building.
11. **A 9 STORY BUILDING ON THE SUBJECT PROPERTY WOULD DWARF MOST OF ITS NEIGHBORING BUILDINGS:** The proposed 9 story development of the subject property would dwarf almost all surrounding buildings except for the three (3) buildings that were constructed under a zoning ordinance that was rejected by the City many years ago. If the proposed development was compared to the vast majority of buildings in this neighborhood, one could only conclude that a 5-story development is more harmonious with the neighborhood than a 9-story development.
12. **A 9 STORY BUILDING WOULD NOT CREATE A STRONG IMAGE:** The proposed 9 story building on the subject property would not improve the frontages of S. Old Woodward, Hazel and Woodward. The proposed elevation drawings show a crowding of a narrow right of way on Hazel and S. Old Woodward, and a blank wall facing Woodward. This is not the type of welcoming strong image envisioned in the City Zoning Ordinance and Master Plan.

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13. **THE CITY SHOULD WAIT FOR THE BIRMINGHAM 2040 PLAN TO BE ADOPTED, AND LOOK TO THAT FOR GUIDANCE.** The City is well aware that we are in the midst of updating the City Master Plan, which will guide the development of the City for the next 20 years. Before taking drastic action to increase building heights above 5 stories in downtown Birmingham, we should wait for the updated City Master Plan to guide us and follow that. To do otherwise would undermine the thousands of hours that various City stakeholders have been put into updating the City Master Plan.
14. **THE APPLICANT HAS AN ECONOMIC PROBLEM NOT A ZONING PROBLEM:** The City should not rezone a property to meet a developer's economic requirements, unit counts, or hotel brand mandates. The applicant has admitted on the record at previous hearings that the economics and unit count are driving this rezoning request. The City should stick to the City Zoning Ordinance that has been in place for many years. Economics, financial return, and adding hotel room or residential unit count has no place in a rezoning decision. The wellbeing of the community and the existing residents should outweigh an applicant's own financial interests.

Jim & Kim Zagurski 928
Owner's Name Unit #

Joe & James Arpin 706
Owner's Name Unit #

James & Eric Sterling 615
Owner's Name Unit #

Richard Hamilton 823
Owner's Name Unit #

Patrick Roberts 907
Owner's Name Unit #

Shane & Anna Spalding 525
Owner's Name Unit #

Cynthia Neal 612
Owner's Name Unit #

Chris & Barb Ammann 1025

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Ed Shaw	910
Owner's Name	Unit #

Melvin Stanford	802
Owner's Name	Unit #

Garry Baker	629
Owner's Name	Unit #

Valerie Foley	508
Owner's Name	Unit #

Mawn Foley	508
Owner's Name	Unit #

Trevor Worthington	522
Owner's Name	Unit #

Kyle A. Markey	603
Owner's Name	Unit #

Carol Kozlow	729
Owner's Name	Unit #

Mayle Goodman	912
Owner's Name	Unit #

Michael Frezza	812
Owner's Name	Unit #

Souheil Saba	903
Owner's Name	Unit #

Reema AbuMazga	1022
Owner's Name	Unit #

Dany Rochkind	710
Owner's Name	Unit #

Dennis Zui	631
Owner's Name	Unit #

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<u>Julie Wolfe</u>	<u>1021</u>
Owner's Name	Unit #

<u>Susan Sosneck</u>	<u>810 / 811</u>
Owner's Name	Unit #

<u>Estelle Miller</u>	<u>924</u>
Owner's Name	Unit #

<u>Nikki Fine</u>	<u>521</u>
Owner's Name	Unit #

<u>Dana Basoupan</u>	<u>1014</u>
Owner's Name	Unit #

<u>Rachel Maty</u>	<u>801</u>
Owner's Name	Unit #

<u>Catherine Brozek</u>	<u>1012</u>
Owner's Name	Unit #

<u>Susan Winshall</u>	<u>828</u>
Owner's Name	Unit #

<u>Wilson Chwang</u>	<u>712</u>
Owner's Name	Unit #

<u>Carlos Maidagan</u>	<u>1013</u>
Owner's Name	Unit #

<u>Farris & Bernice Kalil</u>	<u>801</u>
Owner's Name	Unit #

<u>Brenda Knight</u>	<u>1029</u>
Owner's Name	Unit #

<u>Betty Billing</u>	<u>918</u>
Owner's Name	Unit #

<u>Tom Schwartz</u>	<u>1018</u>
Owner's Name	Unit #

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Mickey Schwartz, MD 1018
Owner's Name Unit #

Toni Street 523
Owner's Name Unit #

Ganette & Frances Engelhart 904
Owner's Name Unit #

MTM Investments Holdings LLC 1
Owner's Name Unit #

Frederick & Kathleen Fromm 1006
Owner's Name Unit #

Michelle Dentice 100
Owner's Name Unit #

Charles Nalbandian 522
Owner's Name Unit #

Stuart Shoen 1003
Owner's Name Unit #

Sara & Virginia Keller 605
Owner's Name Unit #

Cynthia Ranzella 702
Owner's Name Unit #

Bawand Hamidi 814
Owner's Name Unit #

William Koeb 518
Owner's Name Unit #

Debra Elsholz 703
Owner's Name Unit #

David & Jana Szozupak 618
Owner's Name Unit #

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<u>Jin Kim</u>	<u>1029</u>
Owner's Name	Unit #
<u>Alex Shorneya</u>	<u>514</u>
Owner's Name	Unit #
<u>Karen & David Durrell</u>	<u>1008</u>
Owner's Name	Unit #
<u>Alexander & Claudia Plaw</u>	<u>611</u>
Owner's Name	Unit #
<u>Bradley Steel</u>	<u>704</u>
Owner's Name	Unit #
<u>Mark Banks</u>	<u>410</u>
Owner's Name	Unit #
<u>Boemay Sanaja</u>	<u>825</u>
Owner's Name	Unit #
<u>andy Raykin</u>	<u>410</u>

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Peter Chang #711
Owner's Name Unit #

Cal. O #711
Owner's Name Unit #

Owner's Name Unit #

Owner's Name Unit #

Owner's Name Unit #

Owner's Name Unit #

Owner's Name Unit #

Owner's Name Unit #

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May 19, 2020

VIA EMAIL ONLY

Birmingham Planning Board
c/o Ms. Jana Ecker
Planning Director
City of Birmingham
151 Martin St.
Birmingham, MI 48009

**Re: Birmingham Place Residential Condominium Association &
Birmingham Place Commercial Condominium Association Objection
to Application to Rezone 469-479 S. Old Woodward Ave. from D4 to
D5 Zoning Designation**

Dear Members of the Birmingham Planning Board,

This firm represents the Birmingham Place Residential Condominium Association and Birmingham Place Commercial Condominium Association, the members of which are the residents and commercial tenants of *Birmingham Place* located at 401-411 S. Old Woodward Ave. The record in the Application to Rezone 469-479 S. Old Woodward Ave. from D4 to D5 (the "D5 Rezoning Application"), contains numerous objections previously filed by my clients, and individual residents and commercial tenants of Birmingham Place. The purpose of this letter is to supplement all prior objections, and to summarize why the D5 Rezoning Application must be denied under the City's Zoning Ordinance.

You will likely hear from the applicant for the D5 Rezoning Application (the "Applicant"), that this request is the culmination of years of exhaustive study in this area of downtown Birmingham regarding the appropriateness of rezoning the subject parcel to a mixed-use building that exceeds 5 stories. This self-serving statement is just wrong and misleading. The truth is, the D5 zoning designation was created to address the non-conforming status of three existing buildings, and to address expansions or modifications to those three buildings on their parcels....not to encourage new development on a property that was not zoned D5 when the D5 zoning designation was created. The fact that the Planning Board and City Commission recently reviewed the simple language of the D5 zoning designation to clarify various ambiguities, is irrelevant to the appropriateness of

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rezoning the subject property from D4 to D5, and should have no bearing on the Planning Board's recommendation to the City Commission, or the City Commission's decision. The fact is, the original short and simple D5 zoning designation language needed a second look, as it was never intended to do anything more than correct the legal non-conforming status of three buildings. Setting aside the fact that the Applicant is attempting to utilize a zoning designation that was created to address three legal non-conforming buildings to obtain City approval for a new 9-story building, the question before that Planning Board is whether the D5 zoning designation is appropriate for the subject property under the requirements set forth in Section 7.02 of the City Zoning Ordinance. For the reasons set forth herein, along with numerous other reasons previously placed into the record, one must conclude that the Applicant has not met the burden required under the City's Zoning Ordinance to justify rezoning the subject property from D4 to D5.

All rezoning applications in the City are governed by the City Zoning Ordinance. The purpose of the Zoning Ordinance is to "guide the growth and development of the City in accordance with the goals, objectives, and strategies stated within the Birmingham Master Plan and Downtown Birmingham 2016 Plan" (see Section 1.04 of the City Zoning Ordinance). With respect to the D5 Rezoning Application, the question becomes: does rezoning the subject property from D4 to D5 further the goals, objectives, and strategies stated within the City Master Plan and Birmingham 2016 Plan? The answer is NO. The Applicant would enjoy the ability to utilize the subject property for the exact same mixture of uses under the D4 zoning classification and the D5 zoning classification. Then why does the Applicant need to rezone the subject property one might ask? Building height - that is the only distinction between the D4 and D5 zoning classification. The Applicant has summarily stated that allowing the subject property to be developed higher than the 5 stories "conforms to the City's Master Plan and Birmingham 2016 Plan." No, it does not actually. The Applicant has not provided, and the undersigned cannot find, one single section in either the City Master Plan or the Birmingham 2016 Plan, which calls for, or even impliedly encourages, the development of mixed-use buildings in downtown Birmingham that exceed 5 stories in height. For this reason, the D5 Rezoning Application does not further the goals, objectives, and strategies stated within the City Master Plan and Birmingham 2016 Plan, and must be denied.

In addition to proving that a proposed rezoning furthers the spirit of the City Zoning Ordinance, under Section 7.02(B)(2)(b) of the City Zoning Ordinance, an applicant for a rezoning must explain:

- i. why the rezoning is necessary for the preservation and enjoyment of the rights of usage commonly associated with property ownership;
- ii. why the existing zoning classification is no longer appropriate; and
- iii. why the proposed rezoning will not be detrimental to surrounding properties.

The Applicant's position as outlined in the D5 Rezoning Application, and our client's position with respect to each of these factors, is as follows:

i. why the rezoning is necessary for the preservation and enjoyment of the rights of usage commonly associated with property ownership;

Applicant's Response: Rezoning of the subject property is necessary to preserve the Applicant's enjoyment of rights associated with ownership of a property zoned for mixed uses. Because of the size and corner configuration of the parcel, it will not support street-level retail, residential, and parking for residents in the same manner as the neighboring properties. The 2016 Plan clearly anticipates mixed use developments. Such planning requires space to design and locate mixed uses within a given structure. Without the ability to go higher with a new building than current zoning allows, the Applicant will not have the required area within which to locate a mix of uses, or otherwise to be able to enjoy all of the allowed uses that would commonly be associated the design of such a modern, mixed use building. Furthermore, the D-5 Ordinance, at Section 3.04-4-b, anticipates that the subject property and those similarly situated may enjoy the same rights of usage through an extension of height as other existing tall buildings already enjoy in the D-5 Overlay District.

Our Response: The Applicant's response is confusing and misleading, and does not demonstrate how the Applicant is unable to use the property if it is not rezoned to D5. That is because the Applicant certainly can use and enjoy the subject property under the D4 zoning designation. The fact is that the mixed uses permitted under D4 are the same mixed uses permitted under D5. Somehow, we are supposed to believe that if we raise the building height to 9 stories as opposed to 5 stories, the Applicant's usage rights will somehow change? That does make any sense, and for this reason the Applicant has not demonstrated that rezoning the subject property to D5 is necessary for the preservation and enjoyment of the Applicant's rights of usage commonly associated with property ownership.

ii. why the existing zoning classification is no longer appropriate;

Applicant's Response: The existing D-4 zoning classification is no longer appropriate for the subject property. The subject property is surrounded by the Birmingham Place, a 10-story building on the north side and the 555 Buildings, a 15-story building on the south side. This height is an established pattern in this area of the City. This rezoning request is actually an "infill" rezoning to bring the entire area into architectural and design harmony with surrounding buildings. It is reasonable for the subject property to share the same zoning classification as its surrounding neighbors. This would allow development of the property in a manner

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consistent with the existing structures from Brown Street south to Haynes Street. It will create a more unified block and enhance the character of the gateway area to Downtown Birmingham. The rezoning of the subject property would restore the property to a zoning classification this area of the City once enjoyed, as the Planning Board has done for with Birmingham Place and the 555 Buildings. Hence, given the location of the subject property sandwiched between two properties in the D-5 Zone, the D-3 Zone is no longer appropriate.

Our Response: Again, the Applicant's response is misleading. D4 and D5 zoning designations allow for the same mixture of uses, so there is no way the Applicant can argue that the uses allowed under D4 are no longer appropriate. With respect to the 5-story height restriction in the D4 zoning designation, it is impossible to find that such a restriction is no longer appropriate. If you look at all of the major developments in Birmingham over the past 10 years, the 5-story restriction has been applied to all of them (eg. Greenleaf Trust, Balmoral, Brookside Residences, Daxton Hotel, Varsity Shop redevelopment, Peabody redevelopment). Furthermore, the Applicant has not provided, and the undersigned cannot find, one single section in either the City Master Plan or the Birmingham 2016 Plan which calls for, or even impliedly encourages, the development of mixed-use buildings in downtown Birmingham that exceed 5 stories in height.

The Applicant states that a 9-story building on the subject property would fill a gap between the 10 story Birmingham Place building to the north, and the 15-story 555 building to the south. This is just not accurate. Yes, the 10 story Birmingham Place building directly abuts the subject property to the north, but to the immediate south across Hazel is the 7 story 555 Office Building, which contains ground story retail, 3 stories of office, and 3 stories of parking. 4 floors of usable office space to the immediate south is a far cry from the 15-story tower as described by the Applicant. The 15 story 555 Residential Building is further to the south across Bowers St., hundreds of feet away from the subject property. Under current height regulations, a 5-story building built on the subject property **could actually exceed** the height of the 555 Office Building to the south. The Planning Board has no obligation to rezone the subject property to D5 as it did for Birmingham Place and the 555 Building. The D5 zoning designation was specifically created for those two (2) buildings (along with the Merrillwood Building), to simply remedy their legal non-conforming status, and to address expansions or modifications to those three buildings on their parcels. A 5-story mixed use building would also create a more unified block and would enhance the gateway area to downtown Birmingham – we don't need a 9-story building to accomplish this goal. Accordingly, 5 stories has been, and continues to be, appropriate.

iii. why the proposed rezoning will not be detrimental to surrounding properties.

Applicant's Response: The proposed rezoning of the subject property is not detrimental to surrounding property owners. Note that the proposed rezoning does not extend the D-5 classification further to the north or south of the current D-5 Zoning, but actually fills in the one gap in the streetscape that is noticeably out of place and anachronistically remains in the D-4 Zone. The surrounding properties to the north and south are already in the D-5 zone. When these neighboring properties were rezoned the Planning Board anticipated that eventually the subject property also may be rezoned for the reasons stated in this letter. Placing the subject property in the D-5 Zone will be placing it on equal footing with the surrounding properties from a structural, use and design perspective. The proposed rezoning will enhance the entire area by allowing it to be developed as an attractive part of the South Old Woodward gateway and bring that area into compliance with the spirit and intent of the 2016 Master Plan.

Our Response: Neither the residents of Birmingham Place nor any other stakeholders in the City of Birmingham ever anticipated that that the subject property would be rezoned for a development above 5 stories. The fact is (and the February 13, 2017 City Commission meeting transcript substantiates), that the D5 zoning designation was approved by the City Commission for the sole purpose of addressing the legal non-conforming status of 3 buildings constructed under 1960's / 1970's zoning regulations that were rejected by the City many years ago, and to address expansions or modifications to those three buildings on their parcels. To state that this D5 Rezoning Application was anticipated by the City is self-serving and wrong. Allowing a 9-story building over a 5 story building will be detrimental to surrounding properties for many reasons already placed into the record, including:

- Increased congestion
- Parking deficiency
- Traffic congestion along southbound Woodward Ave., Hazel St., and N. Old Woodward
- Increased noise
- Unexpected diminution in surrounding property values and rental values that were not be anticipated by nearby owners and tenants due to the fact that the City Zoning Ordinance, City Master Plan and the Birmingham 2016 Plan do not call for, or even impliedly encourage, the development of mixed-use buildings in downtown Birmingham that exceed 5 stories in height.

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- Blocked sun and view by neighbors to the north and south of the subject parcel

For the reasons outlined above, we submit that rezoning the subject property is not necessary for the Applicant to enjoy its property rights, D4 has been and remains the appropriate zoning designation for the subject property, and allowing the subject property to be developed above 5 stories would be to the extreme detriment of surrounding property owners, **who never had reason to believe that the City would allow the subject property to be developed above 5 stories.**

Based on the evidence presented in connection with a rezoning application, the Planning Board must make findings of fact under Section 7.02(B)(5) of the City Zoning Ordinance. Based on the record and the forgoing analysis, we submit that the Planning Board should find as follows:

- a. **Does the Rezoning Application meet the objectives of the City's then current master plan and the City's 2016 Plan?**

Finding: No, insofar as the D5 zoning designation was created to correct the legal non-conforming status of three buildings, and there is not one section of the City Master Plan or Birmingham 2016 Plan that calls for, or even impliedly encourages, the development of mixed-use buildings in downtown Birmingham that exceed 5 stories in height.

- b. **Is the proposed rezoning compatible with the existing uses of property within in the general area of the property in question.**

Finding: The D4 and D5 zoning classifications allow for the same mixed uses. Accordingly, this finding is not applicable to the D5 Rezoning Application.

- c. **How does the proposed rezoning compare to the zoning classification of property within the general area of the property in question?**

Finding: A 9-story building on the subject property would dwarf almost all surrounding buildings except for the three buildings that were constructed under a 1960's / 1970's zoning ordinance that was rejected by the City many years ago. If the proposed 9 story building was compared to the vast majority of both older and recently constructed buildings in downtown Birmingham, one could only conclude that a 5-story building under the D4 zoning designation is more harmonious in downtown Birmingham than a 9-story building.

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d. Is the subject property suitable for the existing zoning classification?

Finding. The D4 and D5 zoning classifications allow for the same mixed uses. Accordingly, there is no reason why a 5-story mixed use building under the existing D4 zoning classification is not suitable for the subject property, but a 9-story mixed use building under the D5 zoning classification is suitable. It appears that the Applicant just wants to rezone the subject property so it can increase the number of residential or hotel units in the building. This factor has no place in a rezoning decision.

e. What is the trend of development in the general area of the subject property in question, and have any changes taken place in this zoning classification?

Finding: The development trend in the City is 5 stories or less, not above 5 stories. The 1960's / 1970's zoning ordinance that allowed Birmingham Place and the 555 Building to be developed over 5 stories was rejected by the City years ago, and the City has intentionally permitted and encouraged the development of 5 story buildings since then.

In summary, it is our position that: (i) the D5 zoning designation was created to address the non-conforming status of three existing buildings, and to address expansions or modifications to those three buildings on their parcels, (ii) the D5 Rezoning Application does not further the spirit or intent of the City Zoning Ordinance, City Master Plan, or Birmingham 2016 Plan, (iii) rezoning the subject property to D5 is not required to preserve the Applicant's property rights, (iv) the existing D4 zoning classification remains appropriate and suitable for the subject property, (v) constructing a 9 story building as opposed to a 5 story building would be detrimental to surrounding properties owners in a manner that they had no reason to anticipate, (vi) the development trend in downtown Birmingham is 5 stories not 9, and (vii) nothing has changed in downtown Birmingham that justifies creating a new trend for new buildings to be constructed over 5 stories.

For these reasons, we respectfully submit that the Planning Board is bound under the City Zoning Ordinance to recommend that the City Commission deny the D5 Rezoning Application, and the City Commission is required to deny it.

Birmingham Planning Board

c/o Ms. Jana Ecker
Planning Director
City of Birmingham
Page 8
May 19, 2020

Thank you for your consideration of our objections.

Very truly yours,

JPHOWE, PLLC

J. Patrick Howe

cc: Timothy J. Currier, City Attorney (via email)
Joseph A. Valentine, City Manager (via email)
Birmingham Place Residential Condominium Association
Birmingham Place Commercial Condominium Association

Birmingham Planning Board
151 Martin
Birmingham, MI 48009

May 25, 2020

Re: Comment for May 27, 2020 Meeting on Rezoning 469-479 S. Old Woodward to D5

Birmingham should not be giving developers zoning changes worth millions of dollars without getting any community benefits in return. The owner of this property knew it was zoned D4 when he bought it. The owner knew the economics involved in developing a property zoned D4 and paid a price associated with the D4 zoning.

Now the owner comes in front of this Planning Board, hat in hand, asking for a rezoning change worth millions of dollars but offering nothing in return.

- The City has a goal of adding affordable housing into the downtown area. Why is the owner not offering that say 50% of the residential units will be affordable based in Birmingham's median income of \$114,537?
- The owner is offering to build three underground parking decks – will this be enough capacity for the building? Will it add capacity to the already strained parking system? If the new parking adds to the system, another community benefit.
- Will the ground floor retail be locally owned businesses? Another community benefit.

Birmingham has some of the most desirable development property in the State and this parcel is prime real estate. Our City should insist on clearly defined community benefits from this developer before even considering the D5 rezoning approval.



Brad Coulter
498 Wibleton
Birmingham, MI