

BIRMINGHAM CITY COMMISSION AGENDA
JULY 12, 2021
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Pierre Boutros, Mayor

II. ROLL CALL

Alexandria Bingham, City Clerk

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

ANNOUNCEMENTS

- The City Commission wishes Mayor Pro Tem Longe a happy birthday!

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

V. 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 to approve the City Commission Joint Planning Meeting minutes of June 21, 2021
- B. Resolution to approve the City Commission meeting minutes of June 28, 2021
- C. Resolution to approve the warrant list, including Automated Clearing House payments, dated June 30, 2021, in the amount of \$1,855,327.66.
- D. Resolution to approve the warrant list, including Automated Clearing House payments, dated July 7, 2021, in the amount of \$825,847.61
- E. Resolution to approve a request from the Birmingham Shopping District to hold the scaled-down 2021 Birmingham Cruise special event on Saturday, August 21, 2021, contingent upon compliance with all permit and insurance requirements and payment of all fees and, further, pursuant to any modifications or event cancellation that may be deemed necessary by administrative staff, leading up to or at the time of the event, due to health and safety measures.

- F. Resolution to approve a request from the City of Birmingham Department of Public Services for a special event permit to hold the 2021 In the Park Concert series in Shain Park on the dates as presented, contingent upon compliance with all permit and insurance requirements and payment of all fees and, further pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.
- G. Resolution to approve the TouchPrint 5600 cabinet booking station fingerprinting system purchase from IDEMIA, a sole source vendor, in the amount of \$18,094.00; further to waive normal bidding requirements and authorize this expenditure to the general fund police LEIN/CLEMIS expense account #101-301-000-731.0000.
- H. Resolution to authorize the IT department to purchase the components to upgrade the existing Mitel phone system and replace the ESNA Voicemail system as proposed, from BSB Communications. With a total cost of the upgrade, parts and labor not to exceed \$35,221.25 using funds in the network upgrade account 636-228.000-973.0400.
- I. Resolution to set a public hearing date for August 9, 2021 to consider the Special Land Use Permit, Final Site Plan and Design Review application for 300 - 394 S. Old Woodward and a portion of 294 E. Brown to allow a new building for Restoration Hardware, including a restaurant operating with an Economic Development Liquor License.
- J. Resolution to authorize the City Manager to cast a vote, on the City's behalf, for the five (5) candidates of the Michigan Municipal League Workers' Compensation Fund for four-year terms, beginning October 1, 2021.

VI. UNFINISHED BUSINESS

VII. NEW BUSINESS

- A. Public Hearing – Rezoning Request for 300-394 S. Old Woodward and a portion of 294 E. Brown Street from D3 to D4
 - 1. Resolution to APPROVE the rezoning of the new parcel encompassing 300 – 394 S. Old Woodward and portions of 294 E. Brown from B-2 (General Business) and D-3 (Downtown Overlay) to B-2 (General Business) and D-4 (Downtown Overlay);
OR
To DENY the rezoning of the new parcel encompassing 300 - 394 S. Old Woodward and portions of 294 E. Brown from B-2 (General Business) and D-3 (Downtown Overlay) to B-2 (General Business) and D-4 (Downtown Overlay);
OR
To POSTPONE the public hearing on the rezoning of the new parcel encompassing 300 - 394 S. Old Woodward and portions of 294 E. Brown from B-2 (General Business) and D-3 (Downtown Overlay) to _____.

- B. Public Hearing – Application to Amend the Economic Development License Map
1. Resolution to approve an amendment to Chapter 126, Zoning Ordinance, Appendix C, Exhibit 1, Licenses for Economic Development to include 300-394 S. Old Woodward and a portion of 294 E. Brown Street to be eligible for an Economic Development License.

OR

To deny an amendment to Chapter 126, Zoning Ordinance, Appendix C, Exhibit 1, Licenses for Economic Development to include 300-394 S. Old Woodward and a portion of 294 E. Brown Street to be eligible for an Economic Development License.

- C. Public Hearing - Special Land Use Permit, Final Site Plan & Design Review – MARE Mediterranean – 115 Willits

1. Resolution to approve the Special Land Use Permit, Final Site Plan and Design Review application for 115 Willits – MARE Mediterranean;

AND

To authorize the Chief of Police to sign the MLCC Police Investigation Report (LC-1800) and to approve the liquor license request of Hospitality Birmingham, LLC that requests a transfer of interest in a Class C License to be issued under MCL 436.1521(A)(1)(B) and SDM License (AM and PM) with Outdoor Service, and an Entertainment Permit located at 115 Willits, Birmingham, Oakland County, MI 48009.

Furthermore, pursuant to Birmingham City Ordinance, to authorize the City Clerk to complete the Local Approval Notice at the request of Hospitality Birmingham, LLC approving the liquor license transfer request of Hospitality Birmingham, LLC that requested a Class C License be transferred under MCL 436.1521 (A)(1)(B) & SDM License with Outdoor Service and an Entertainment Permit located at 115 Willits, Birmingham, Oakland County, MI 48009.

- D. Public Hearing – Special Land Use Permit, Final Site Plan & Design Review for 176 S. Old Woodward – Sushi Japan

1. Resolution to approve the Special Land Use Permit, Final Site Plan and Design Review application for 176 S. Old Woodward – Sushi Japan.

- E. Public Hearing – Special Land Use Permit, Final Site Plan & Design Review for 239 N. Old Woodward – Bloom Bistro

1. Resolution to approve the Special Land Use Permit, Final Site Plan and Design Review application for 239 N. Old Woodward – Bloom Bistro.

- F. Resolution to approve the Chapter 20 Section 471 Agreement with the Evergreen-Farmington Sanitary Drain Drainage District, agreeing to pay the City's share of apportioned costs related to the capital improvements described in said agreement. The total amount of the City's share of the cost is \$79,970: to be charged to 590-536.001-981.0100, Sewer Fund, Public Improvements. Also, to direct the Mayor to sign the agreement on behalf of the City.

- G. Resolution to approve the addendum to the Parking Structural Assessment Program with Wiss, Janney, Elstner Associates, Inc. (WJE) to include the design and bid

documentation preparation of parking structure repairs to take place during the 2021 construction season. Furthermore, to authorize the Mayor and City Clerk to sign the contract on behalf of the city.

- H. Commission discussion on items from prior meeting.
- I. Commission Items for Future Discussion. A motion is required to bring up the item for future discussion at the next reasonable agenda, no discussion on the topic will happen tonight.
- J. Resolution to meet in closed session to discuss a written Attorney/Client Privilege communications pursuant to MCL § 15.268(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.)

VIII. REMOVED FROM CONSENT AGENDA

IX. COMMUNICATIONS

- A. Letter from Birmingham Roast

X. REPORTS

- A. Commissioner Reports
 - 1. Notice to Appoint: Advisory Parking Committee
- B. Commissioner Comments
- C. Advisory Boards, Committees, Commissions' Reports and Agendas
- D. Legislation
- E. City Staff

INFORMATION ONLY

XI. ADJOURN

Should you wish to participate in this meeting, you are invited to attend the meeting in person or virtually through ZOOM: <https://zoom.us/j/655079760> Meeting ID: 655 079 760
You may also present your written statement to the City Commission, City of Birmingham, 151 Martin Street, P.O. Box 3001, Birmingham, Michigan 48012-3001 prior to the hearing.

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 por lo menos el día antes de la reunión pública. (Title VI of the Civil Rights Act of 1964).

**Birmingham City Commission /
Planning Board Workshop Session**

Monday, June 21, 2021

7:30 p.m.

Virtual Meeting via ZOOM

Vimeo Link: <https://vimeo.com/event/3470/videos/563053049/>

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Pierre Boutros called the meeting to order at 7:30 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

All located in Birmingham, MI.

Planning Board

ROLL CALL:

Present:

Chair Scott Clein
Robin Boyle
Stuart Jeffares
Bert Koseck
Daniel Share
Janelle Whipple-Boyce
J. Bryan Williams
Jason Emerine, alternate

All located in Birmingham, MI.

Absent:

Nasseem Ramin, alternate
Daniel Murphy, student
Jane Wineman, student

Administration: City Clerk Bingham, Planning Director Ecker, Building Official Johnson, City Attorney Kucharek, City Manager Markus

III. ITEMS FOR DISCUSSION

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

A. Outdoor Dining Discussion

PD Ecker introduced the item.

Chair Klein said it would be most helpful to know whether the Commission wanted the Planning Board to conduct a broad review of the outdoor dining ordinances or whether the Commission wanted the Board to focus on discussion enclosures.

Discussion generated a number of items for the Board to consider, including:

- What issues City departments encountered while the temporary outdoor dining standards were in place;
- Whether encroachment upon neighbors' properties might be permissible with the consent of the neighbors;
- How to ensure that potential year-round outdoor dining does not become de facto indoor dining;
- How to deal with matters of capacity, sidewalk clearance, ADA compliance, excessive uses of public space including public parking, summer versus winter regulations, public versus private regulations;
- How other municipalities, nationally and internationally, address outdoor dining;
- How expanded outdoor dining would impact the City's various mixed-use districts;
- How to make sure that the ordinance is enforceable;
- How to approach differences between bistro, Class C, economic development licenses, theater/hotel/onsite brewing, and non-alcoholic outdoor dining;
- Whether platforms are consistently necessary for outdoor dining;
- How to deal with snow and street sweeping;
- Whether minimizing covered space in the public right-of-way would be appropriate;
- How to ensure that outdoor dining is held to similarly consistent and high standards as buildings are in Birmingham;
- Whether all outdoor dining structures have to have roofs or walls year-round; and,
- How climate control might be used to mitigate colder weather without requiring complete enclosures.

The consensus was that the Board should review the outdoor dining ordinance overall and that their focus should not be limited to enclosures.

Public Comment

Blake George, restaurant owner, stated that the popularity of outdoor dining in the last year was often due to indoor dining being unavailable. He said it would be harder to persuade diners to dine outside in the colder months without a roof or partial protection from the wind. He stated that changing restrictions are hard on the restaurant owners and employees. He asked the Commission and Board to note that one size would not fit all in making these regulations, since restaurants operate in a variety of circumstances.

Joe Bongiovanni, restaurant owner, asked the Commission to consider maintaining the current temporary outdoor dining standards. He said the discussion was an encouraging one, and said that Summer 2020, despite the many difficulties, was the best summer for outdoor dining in the City thus far.

B. Parking Standards Discussion

PD Ecker introduced the item.

The Commission responded affirmatively to both questions included in the agenda packet regarding this item.

There was a general consensus among the Board and the Commission that lowering the parking requirements, especially for residential developments, would have a positive impact on the City.

Mayor Pro Tem Longe and Ms. Whipple-Boyce said a potential positive outcome to lowering the residential parking requirements could be the redevelopment of some office spaces into residential spaces.

Mayor Pro Tem Longe and Commissioner Baller commented that lowering the parking requirements could help increase the 'missing middle' housing available in the City.

A number of Commissioners spoke about the need to update how the Parking Assessment District (PAD) is managed as well. Of particular interest was figuring out what fees or costs would be more appropriate for businesses benefitting from the PAD to pay.

Commissioner Nickita said there is a national trend in urban design to lower parking requirements for a variety of reasons, including changing mobility options, work from home options, and better shared parking arrangements.

Commissioner Host said that the APC should advise the Planning Board as to whether sufficient parking would be available for a proposed development, and that the Planning Board should decline any applications that do not provide sufficient parking.

CM Markus noted that residential taxpayers in the City have not had to pay for the building of new parking decks. He noted those funds have been raised from general obligation bonds, which were paid back by parking system revenues and assessments to the businesses that benefited.

CM Markus spoke in favor of shared parking, saying an ideal scenario would be 95% occupancy in the decks at all times. He said that the City should decrease site-specific parking in developments, and stated that maintaining it burdens land in an inefficient manner. He said that developers are often concerned about offering less on-site parking, but said he has seen it work well in other places and that it would work in Birmingham as well.

Commissioner Baller expressed curiosity about possibly providing building height incentives for developers that create publicly-available parking in the Triangle District.

Public Comment

Paul Reagan agreed with Commissioner Host's proposal about making sure sufficient parking is available for developments before permitting them. He agreed that the Parking Assessment District needs to be reviewed.

David Bloom expressed concern that insufficient parking in the parking structures can lead to excess parking in the residential areas. He said that a parking structure in the Triangle District would be positive.

C. Activation of Public Property at Southfield and Wakefield Discussion

PD Ecker introduced the item.

CM Markus said the first step in exploring this item would be a discussion with the neighborhood and with the public. He explained that previous concerns about activating this area partially stemmed from not soliciting public feedback earlier in the process.

There was consensus from both Board and Commission members that exploring activating this property would be positive.

Mr. Jeffares explained that he lives in the neighborhood across the street from this property and that it would be important to ensure that all residents nearby are invited to participate in the discussions. He said previous discussions partially suffered from only communicating with neighborhood association presidents, whose views did not always represent the perspectives of everyone living nearby.

Ms. Whipple-Boyce emphasized that everyone should be invited to participate since Market Square is frequented by Birmingham residents from many different neighborhoods who could all benefit from the use of property.

CM Markus said the property should include restrooms, and said that as of right now it seemed that Market Square might be willing to offer donations towards facilities built on the property in question.

Mr. Williams stated that he lives in Birmingham Farms, and said they were having a meeting in July 2021. He said he would let the City know further information to see if initial discussions about the property could be scheduled for that meeting. He said the neighborhood also has an issue with cut-through parking, and said it would be positive for the City to discuss that issue with the neighborhood as well.

Commissioner Baller spoke in favor of using Bang the Table as one way of soliciting feedback regarding this parcel. He said that if leases are involved the City should use the leverage to get a development that meets the City's needs/

Commissioner Nickita noted there are a few other similar publicly-owned parcels in the City that would benefit from further activation, including one already undergoing some discussions near the Chesterfield Fire Station and one at the corner of Eton and Lincoln.

Ms. Whipple-Boyce noted that the Multi-Modal Transportation Board recently discussed adding sidewalks to parts of the neighborhood adjacent to this property. She said that information should be provided to residents as part of the discussions.

Public Comment

Maureen Field explained she lived near the property and was against the proposal in 2015. She said that the potential for increased traffic in the area was a significant concern. She stated that the owner of Market Square put in trees and landscaping on City property without getting

permission from the City. She said this gave her pause in terms of working with the owner of Market Square.

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.

Birmingham City Commission Minutes

June 28, 2021

7:30 p.m.

Virtual Meeting

Meeting ID: 655 079 760

Vimeo Link: <https://vimeo.com/event/3470/videos/565897336/>

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Pierre Boutros, Mayor, opened the meeting with the Pledge of Allegiance.

II. ROLL CALL

Alexandria Bingham, City Clerk, called the roll.

Present: Mayor Boutros (location: Birmingham, MI)
Mayor Pro Tem Longe (location: Birmingham, MI)
Commissioner Baller (location: Birmingham, MI)
Commissioner Hoff (location: Birmingham, MI)
Commissioner Host (location: Birmingham, MI)
Commissioner Nickita (location: Birmingham, MI)
Commissioner Sherman (location: Birmingham, MI)

Absent: None

Administration: City Manager Markus, City Clerk Bingham, BSD Operations & Event Manager Brook, IT Manager Brunk, Police Chief Clemence, City Planner Cowan, City Attorney Kucharek, Planning Director Ecker, City Attorney Kucharek, Consulting City Engineer Surhigh, Deputy Treasurer Todd, Fire Chief Wells, DPS Director Wood

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

ANNOUNCEMENTS

No one from the office of Senator McMorrow was in attendance.

APPOINTMENTS

06-166-21 Appointment of John Schrot to the Board of Ethics

The Commission interviewed John Schrot for the appointment.

MOTION: Nomination by Commissioner Hoff:

To appoint John Schrot as a regular member to the Board of Ethics to serve a three-year term to expire June 30, 2024.

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

Nays, None

06-167-21 Appointment of Jake German to the Historic District Study Committee

The Commission interviewed Jake German for the appointment.

MOTION: Nomination by Commissioner Hoff:
To appoint Jake German as a regular member to the Board of Ethics to serve a three-year term to expire June 30, 2024.

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

Nays, None

06-168-21 Appointment of Colleen McGough to the Historic District Study Committee

Colleen McGough was unable to attend the evening's meeting.

MOTION: Nomination by Commissioner Nickita:
To appoint Colleen McGough as a regular member to the Board of Ethics to serve a three-year term to expire June 30, 2024.

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

Nays, None

06-169-21 Appointment of Rick Wiand to the Building Trade Appeals

The Commission interviewed Rick Wiand for the appointment.

MOTION: Nomination by Commissioner Hoff:
To appoint Rick Wiand as a regular member to the Board of Building Trades Appeals as a regular member to serve a three-year term to expire May 23, 2024.

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

Nays, None

06-170-21 Appointment of Arya Afrakhtch to the Building Trade Appeals

The Commission interviewed Arya Afrakhtch for the appointment.

MOTION: Nomination by Commissioner Baller:
To appoint Arya Afrakhtch as a regular member to the Board of Building Trades Appeals as a regular member to serve a three-year term to expire May 23, 2024.

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

Nays, None

06-171-21 Appointment of Thomas Lindberg to the Building Trade Appeals

The Commission interviewed Thomas Lindberg for the appointment.

MOTION: Nomination by Mayor Pro Tem Longe:
To appoint Thomas Lindberg as a regular member to the Board of Building Trades Appeals as a regular member to serve the remainder of a three-year term to expire May 23, 2022.

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

Nays, None

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

Joey Curtis, owner of Bistro Joe's, asked the Commission to reconsider extending the temporary outdoor dining standards to allow restaurants the opportunity to recoup some of the money lost during the Covid-19 pandemic.

V. 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.

06-172-21 Consent Agenda

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Hoff:
To approve the Consent Agenda.

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

Nays, None

- A. Resolution to approve the City Commission Workshop meeting minutes of June 14, 2021
- B. Resolution to approve the City Commission meeting minutes of June 14, 2021
- C. Resolution to approve the warrant list, including Automated Clearing House payments, dated June 16, 2021, in the amount of \$1,430,167.59.
- D. Resolution to approve the warrant list, including Automated Clearing House payments, dated June 23, 2021, in the amount of \$722,368.00.
- E. Resolution to approve the service agreement with Next in the amount of \$122,940 for services described in Attachment A of the agreement for fiscal year 2021-2022, account number 101-299.000-811.0000, and further direct the Mayor and City Clerk to sign the agreement on behalf of the City.
- F. Resolution to approve the purchase of two (2) Toro 3555-D fairway mowers from Spartan Distributors, through State of Michigan extendable purchasing contract #071B0200329 at a cost of \$107,917.56 less the trade in amount of \$13,000 for a total expenditure of \$94,917.56. Funds for this purchase are available in the Auto Equipment Fund account # 641-441.006-971.0100.

- G. Resolution to approve the Cost Participation Agreement with Oakland County for the City of Birmingham to participate in the 2021 OAKSTEM Program. Further, to authorize the Director of Public Services to sign on behalf of the City of Birmingham the Cost Participation Agreement with Oakland County, for an amount not to exceed \$15,000, for planting street trees in Spring 2022.
- H. Resolution to allow the IT department to purchase the 36-month subscription for Enterprise Data protection and endpoint email and drive protection from Virtru for a total cost \$27,717.00 paid as a yearly subscription of \$9,239.00. Funds available in the IT Computer maintenance account: 636-228.000-933.0600
- I. Resolution to set a public hearing date for July 26th, 2021 to consider the Special Land Use Permit, Final Site Plan and Design Review application for 501 S. Eton – Whistle Stop to allow the operation of a bistro.
- J. Resolution to set public hearings on July 26, 2021 to consider the following amendments to Chapter 126, Zoning:
1. Article 3, Section 3.04 (Specific Standards) to amend the Architectural Standards;
 2. Article 4, Section 4.90 (Window Standards) to amend storefront window requirements; and
 3. Article 9, Section 9.02 (Definitions) to redefine clear glazing and eliminate lightly tinted glazing.
- K. Resolution to set public hearings for July 26, 2021 to consider the following amendments to Chapter 126, Zoning:
1. Article 4, Section 4.09 (Essential Services) to remove Roof Mounted Solar Electric Systems; and
 2. Article 4, Section 4.88 (Alternative Energy) to add amended Roof Mounted Solar Electric Systems language.
- L. Resolution to adopt a resolution for the City Commission to meet on Monday, July 26, 2021, at 7:30 P.M., for the purpose of conducting a Public Hearing of Necessity for the replacement of sewer and water services within the Townsend & Peabody Street Paving project areas.

Be it further RESOLVED, that the City Commission meet on Monday, August 9, 2021 at 7:30 P.M. for the purpose of conducting a Public Hearing on Confirmation of the Roll for the replacement of sewer and water services in the Townsend & Peabody Street Paving project areas.

VI. UNFINISHED BUSINESS

VII. NEW BUSINESS

06-173-21 American Rescue Plan Act

FD Gerber and CM Markus presented the item.

In reply to Commission inquiries, CM Markus explained:

- The City would still use the previously-allocated funds for this project since the total cost would be close to \$5 million. This will enable the City to complete the lead service line replacements faster than anticipated; and,

- The City will still apply for funds from the federal infrastructure plan if they become available. The City could come back and amend their funding plans if appropriate.

Commissioners Host and Nickita spoke in favor of this initiative.

MOTION: Motion by Commissioner Nickita, seconded by Commissioner Sherman:
To authorize the City Manager to use the City's allocation of Coronavirus State and Local Fiscal Recovery Funds towards lead service line replacement.

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

Nays, None

06-174-21 Request for Direction Regarding Pending Litigation

CA Kucharek summarized this item.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Host:
To enter into a Consent Judgement in connection with the pending litigation entitled Birmingham Wine Shop, LLC et al v City of Birmingham, et al; Oakland County Circuit Court Case No.: 2021-186823-AA.

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

Nays, None

06-175-21 Commission discussion on items from prior meeting.

1. Food Trucks in Birmingham

PD Ecker introduced the topic.

It was noted during discussion that:

- Current ordinance would allow food trucks to operate currently in Birmingham as long as they are on private property;
- Current Birmingham restaurants could participate in operating food trucks as long as they follow ordinances if they desired;
- Ordinances would have to be changed if food trucks were to operate on public property;
- Ordinances relating to frozen confection vendors would also require changes if ordinances relating to food trucks change; and,

- A “trial period” would not be possible without amending ordinance.

Three Commissioners spoke in favor of exploring and implementing food trucks. CM Markus said he was also supportive of the idea if done appropriately.

CA Kucharek said she was unsure about the potential legality of limiting food truck operations to restaurants already operating brick-and-mortar establishments in Birmingham.

CM Markus said updating special event regulations might be an appropriate way to allow food trucks on a trial basis.

Some Commissioners expressed concern that food trucks would provide competition for existing Birmingham restaurants. Other Commissioners said that food trucks offer a sufficient enough difference from sit-down restaurants that they would be unlikely to be in competition.

Some concern was expressed as to whether there would be enough demand to attract and retain food trucks.

Some concern was expressed about pursuing allowing food trucks when restaurants are still recovering from the financial impacts of the Covid-19 pandemic. A few Commissioners recommended delaying the consideration a bit longer in order to avoid putting additional pressure on currently operating restaurants.

After Commission discussion, there was consensus to solicit resident feedback regarding food trucks via Engage Birmingham/Bang the Table.

Some Commissioners supported this item returning more formally after feedback is gathered from Engage Birmingham/Bang the Table. Others said it would be more appropriate to have another preliminary discussion of feedback gathered and potentially required legislative changes once that information is available.

Public Comment

Paul Reagan advocated for a swift change to the ordinances in order to allow food trucks in the neighborhoods. He said that if there was a reliable schedule of when food trucks would be present, it would promote neighborhood cohesion.

06-176-21 Commission Items for Future Discussion. A motion is required to bring up the item for future discussion at the next reasonable agenda, no discussion on the topic will happen tonight.

None.

06-177-21 Closed Session Pursuant to the OMA at MCL §15.268(a)

(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.)

MOTION: Motion by Commissioner Host, seconded by Mayor Pro Tem Longe:
To meet in closed session pursuant to the OMA at MCL §15.268(a) for a performance evaluation of Mr. Markus at Mr. Markus' request that such performance evaluation be held in closed session.

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

Nays, None

The Mayor noted the Commission would go into closed session after the completion of the rest of the agenda.

The Commission went into closed session at 10:27 p.m.

The Commission reconvened into open session at 11:23 p.m.

VIII. REMOVED FROM CONSENT AGENDA

IX. COMMUNICATIONS

Commissioner Host said he was glad that the Commission got to hear from the Planning Board instead of the Commission solely speaking first at the joint meeting. He said that more conversations allowing the advisory boards and public to speak first would help increase the public's trust in the Commission.

X. REPORTS

The Mayor requested a brief pause to the meeting at 9:03 p.m.

The meeting reconvened at 9:08 p.m.

A. Commissioner Reports

In reply to Commissioner Hoff, PD Ecker and CA Kucharek briefly described the purpose of social districts as permitted by MLCC.

Commissioner Host reviewed his submission to the agenda regarding parking.

Commissioner Baller said he wanted to see efforts towards improving Park Street between Maple and Hamilton.

CM Markus noted that he and Commissioner Baller met with the developer of 35001 Woodward to discuss potential improvements to that stretch of Park Street. He said the developer was willing to consider potential improvements. He also noted that the City's participation in these discussions in no way reflected

on the civil dispute between the developer of 35001 Woodward and the owner of Hunter House Hamburgers.

Commissioner Nickita said that if the City were to pursue improvements to that stretch of Park Street they should begin working with MDOT as early in the process as possible.

CM Markus said he would likely be bringing proposals for Park Street between Maple and Hamilton before the Commission in the near future.

Commissioner Nickita said he did not believe that the parking system was oversubscribed. He said the goal of a well-managed parking system would be to ensure that parking spaces do not sit empty. He said the parking system in Birmingham was good and that the City was working on improving it further.

Commissioner Host thanked CM Markus for organizing Commission workshops and for his hands-on approach to engaging issues that arise around the City. He continued that meetings on workshop nights should not end at 10 p.m. and that residential ordinances should be reviewed to ensure that new construction better adheres to the character of the neighborhood in which it is built.

Commissioner Sherman and Mayor Boutros congratulated the Police Department on its accreditation with the Association of Chiefs.

- B. Commissioner Comments
- C. Advisory Boards, Committees, Commissions' Reports and Agendas
- D. Legislation
- E. City Staff
 - 1. Return to in-person City Commission & Board meetings, submitted by Fire Chief Wells

In reply to Commissioner Hoff, CA Kucharek confirmed that the City would not limit the public in attendance.

It was noted that if board and commission members wanted to advocate for the ability to attend meetings remotely, reaching out to their state elected officials would be the most effective way to do that.

In reply to Commissioner Host, Fire Chief Wells said that masks have been effective and that Commissioners and board members were welcome to wear masks during in-person meetings if so desired.

Public Comment

Andrew Haig wanted to know how the City could advocate for letting board and commission members attend meetings remotely when necessary.

- 2. Public comment during City meetings, submitted by City Attorney Kucharek

In reply to Commissioner Baller, CA Kucharek confirmed that the aggregate time for all public comment is unlimited but that the Commission does have the right to limit the length of comment of a single commenter.

- 3. City Commission Vote Revisited, submitted by City Attorney Kucharek

CM Markus and PD Ecker explained that when the State ended the indoor capacity limitations the City likely legally lost its basis for deviating from the ordinance to allow temporary outdoor dining standards. CM Markus recommended that the Commission's most appropriate option would be to let the temporary outdoor dining standards expire on June 30, 2021.

CA Kucharek concurred.

It was clarified that these changes would maintain outdoor dining in the same way it operated pre-Covid-19.

CA Kucharek stated that letters and emails would be going out to restaurateurs to clarify the requirements for the ending of the temporary outdoor dining standards.

Public Comment

Joe Bongiovanni expressed disappointment at the City's communication of the change in the outdoor dining standards. He also said he was not supportive of board and commission members attending meetings remotely.

Gerard Marti expressed disappointment at the ending of the temporary outdoor dining standards.

Mr. Curtis said he wanted to understand from where nearby municipalities were deriving their authority to permit enhanced outdoor dining allowances.

CM Markus said some municipalities may be using social districts, and others may not be aware that they may be in conflict with their own local ordinances. He said ultimately one would have to consult with the municipalities in question for clarification.

Mr. Curtis said he was concerned with Birmingham retaining its status as a restaurant destination.

CM Markus noted that the City is looking to update its outdoor dining ordinances.

4. Temporary COVID-19 Outdoor Structure Fire Code Violations, submitted by Fire Chief Wells
5. Parking Structure Debt, submitted by Finance Director Mark Gerber
6. City Manager's Report

CM Markus reviewed his report.

The Mayor thanked CM Markus for his reports. He said the reports offer the public and the Commission clarity and insight regarding the City's day-to-day operations.

INFORMATION ONLY

XI. ADJOURN

Mayor Boutros adjourned the meeting at 11:24 p.m.

City of Birmingham

Warrant List Dated 06/30/2021

Meeting of 07/12/2021

Check Number	Early Release	Vendor #	Vendor	Amount
<u>PAPER CHECK</u>				
279998		005430	21ST CENTURY MEDIA- MICHIGAN	4,044.00
279999	*	000855	48TH DISTRICT COURT	350,609.88
280000	*	002670	MIKE ALBRECHT	87.27
280002	*	006686	ALLTRONICS SYSTEMS LTD	275.00
280003	*	009296	ANTOINETTE LICARI	178.62
280004		000500	ARTECH PRINTING INC	62.00
280005	*	006759	AT&T	355.63
280007		008059	BALL EQUIPMENT	291.23
280008		MISC	BALTZER LSE	40.00
280009		MISC	BELFOR USA GROUP INC	150.00
280011		001201	BIRMINGHAM YOUTH ASSISTANCE	9,406.43
280012	*	006177	BULLSEYE TELECOM INC	128.28
280013	*	009281	C.E. GLEESON CONSTRUCTORS INC	392,205.60
280014		003907	CADILLAC ASPHALT, LLC	659.04
280016		007732	CAPITAL TIRE, INC.	280.02
280017		000444	CDW GOVERNMENT INC	170.95
280017	*	000444	CDW GOVERNMENT INC	2,538.25
280018		000605	CINTAS CORPORATION	138.12
280019		009194	CLARKSTON ANIMAL MEDICAL CENTER	96.00
280020		009167	COL'S FAMILY RESTAURANT	200.14
280021	*	008955	COMCAST	251.33
280022	*	MISC	CPI EXCAVATING, INC.	2,675.00
280023		004386	CYNERGY PRODUCTS	960.00
280027	*	000179	DTE ENERGY	114.00
280028	*	000179	DTE ENERGY	351.29
280029	*	000179	DTE ENERGY	16.83
280030	*	000179	DTE ENERGY	15.58
280031	*	000179	DTE ENERGY	36.62
280032	*	000179	DTE ENERGY	73.66
280033	*	000179	DTE ENERGY	727.19
280034	*	000179	DTE ENERGY	17.58
280035	*	000179	DTE ENERGY	25.09
280036	*	000179	DTE ENERGY	63.41
280037	*	000179	DTE ENERGY	452.14
280038	*	000179	DTE ENERGY	7,553.04
280039	*	000179	DTE ENERGY	1,335.54
280040	*	000179	DTE ENERGY	4,097.16
280041	*	000179	DTE ENERGY	2,578.39
280042	*	000179	DTE ENERGY	14.95
280043	*	000179	DTE ENERGY	1,546.22
280044	*	007876	DTE ENERGY	269,983.32
280045		000196	EJ USA, INC.	181.52

City of Birmingham
Warrant List Dated 06/30/2021

Meeting of 07/12/2021

Check Number	Early Release	Vendor #	Vendor	Amount
280046		001495	ETNA SUPPLY	53.06
280049	*	004604	GORDON FOOD	46.45
280051		001447	HALT FIRE INC	235.90
280052		009150	HANS & ASSOCIATES	1,200.00
280053	*	001956	HOME DEPOT CREDIT SERVICES	531.64
280055		MISC	HOWARD JACOBS	143.10
280056	*	MISC	ILLINOIS STATE TREASURER'S OFFICE	300.00
280057		008564	JERRY'S TIRE INC	550.04
280058	*	007423	K/E ELECTRIC SUPPLY	1,180.80
280060	*	007521	LUIGI FERDINANDI & SON INC	190,008.90
280061		003934	MADISON GENERATOR SERVICE INC	189.95
280062		002648	MARC DUTTON IRRIGATION INC	890.29
280063	*	MISC	MASSACHUSETTS DIVISION OF	500.00
280064	*	000369	MCMI	369.75
280066		MISC	N M GENERAL CONSTRUCTION	25.00
280068	*	004370	OCCUPATIONAL HEALTH CENTERS	735.00
280069	*	000481	OFFICE DEPOT INC	294.16
280071		002852	QMI GROUP INC	50.00
280072	*	008342	RAIN MASTER CONTROL SYSTEMS	29.85
280073	*	MISC	RON DIX	89.18
280074	*	007114	SHERWIN WILLIAMS COMPANY	24.45
280075	*	007142	SHERWIN-WILLIAMS COMPANY	97.08
280076	*	007907	SP+ CORPORATION	4,230.00
280077	*	007010	STATE OF MICHIGAN	14,020.91
280078		009201	STEPHEN SHUKWIT	1,075.00
280079	*	MISC	TEXAS COMPTROLLER OF PUBLIC	188.74
280080	*	009254	THOMAS M MARKUS	500.00
280081	*	MISC	TUFF SHED	3,310.80
280082	*	004379	TURNER SANITATION, INC	1,130.00
280083	*	003760	UNUM LIFE INSURANCE CO. OF AMERICA	22,889.45
280084	*	000158	VERIZON WIRELESS	871.45
280085	*	000158	VERIZON WIRELESS	129.20
280086	*	001536	JEFFREY WHIPPLE	569.19
280087		007620	WJE-WISS, JANNEY, ELSTNER ASSOC.INC	9,053.70
280088	*	008391	XEROX CORPORATION	87.14
SUBTOTAL PAPER CHECK				\$1,310,586.50
<u>ACH TRANSACTION</u>				
3906	*	008847	ABS- AUTOMATED BENEFIT SVCS, INC	21,385.67
3907	*	002284	ABEL ELECTRONICS INC	38.97
3908		009126	AMAZON CAPITAL SERVICES INC	193.69
3909		007382	BEACON ATHLETICS	147.00
3910	*	000518	BELL EQUIPMENT COMPANY	648.52
3911		006683	BIRMINGHAM LAWN MAINTENANCE	430.00

City of Birmingham
Warrant List Dated 06/30/2021

Meeting of 07/12/2021

Check Number	Early Release	Vendor #	Vendor	Amount
3912	*	007624	BIRMINGHAM OIL CHANGE CENTER, LLC	85.95
3913		007875	CANFIELD EQUIPMENT SERVICE INC.	4,990.00
3914		009297	CITY OF BIRMINGHAM #245	43,578.40
3915	*	007359	DETROIT CHEMICAL & PAPER SUPPLY	47.94
3916	*	006077	DI PONIO CONTRACTING INC	418,300.95
3917	*	000565	DORNBOS SIGN & SAFETY INC	912.38
3918		000995	EQUATURE	5,000.04
3918	*	000995	EQUATURE	75.00
3919		001230	FIRE SYSTEMS OF MICHIGAN LLC	388.00
3920	*	007314	FLEIS AND VANDENBRINK ENG. INC	7,599.50
3921	*	007807	G2 CONSULTING GROUP LLC	4,063.75
3922	*	000243	GRAINGER	1,446.79
3923		000261	J.H. HART URBAN FORESTRY	16,100.25
3924	*	003458	JOE'S AUTO PARTS, INC.	105.22
3925	*	005876	KROPF MECHANICAL SERVICE COMPANY	1,306.46
3926	*	005550	LEE & ASSOCIATES CO., INC.	1,243.00
3927	*	000377	MICHIGAN MUNICIPAL LEAGUE	7,059.00
3928	*	006359	NYE UNIFORM COMPANY	2,003.00
3929	*	006853	PAUL C SCOTT PLUMBING INC	525.00
3930	*	006027	PENCHURA, LLC	231.00
3931	*	000478	ROAD COMM FOR OAKLAND CO	4,671.60
3932		000278	SAFELITE	616.67
3933		000273	TERMINAL SUPPLY CO.	153.65
3934	*	002088	WM. CROOK FIRE PROTECTION CO.	1,393.76
SUBTOTAL ACH TRANSACTION				\$544,741.16
GRAND TOTAL				\$1,855,327.66

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 07/07/2021

Meeting of 07/12/2021

Check Number	Early Release	Vendor #	Vendor	Amount
<u>PAPER CHECK</u>				
	*	009041	STEVE BONORA	425.00
280089		004627	A & L SYSTEMS INC	88.40
280090		005358	AARON'S EXCAVATING INC	3,200.00
280091	*	008649	ROBERT ABRAHAM JR.	425.00
280092		009088	ALADTEC INC	2,995.00
280093		000167	ANDERSON ECKSTEIN WESTRICK INC	624.50
280094	*	007510	GRANT ANKNEY	425.00
280096		000500	ARTECH PRINTING INC	96.00
280097	*	006759	AT&T	2,559.42
280098	*	006759	AT&T	221.15
280100	*	008009	TREVOR BAKER	425.00
280102	*	009042	RANDY BEARDEN	425.00
280103	*	009095	STEVEN BONORA	425.00
280104		003526	BOUND TREE MEDICAL, LLC	497.12
280105	*	009304	DUSHAWN BRANDY	425.00
280106		003907	CADILLAC ASPHALT, LLC	545.47
280107		009078	CANON SOLUTIONS AMERICA INC	251.73
280108	*	000444	CDW GOVERNMENT INC	310.45
280109		MISC	CHARTER TOWNSHIP OF BLOOMFIELD	7,560.00
280110	*	006244	CHET'S RENT ALL	115.26
280111		007710	CINTAS CORP	275.09
280112		000605	CINTAS CORPORATION	139.21
280113		009187	CLEARVIEW CAPTIONING LLC	2,668.75
280114	*	008955	COMCAST	659.84
280115	*	007774	COMCAST BUSINESS	1,259.10
280116		001907	COMMON GROUND	1,500.00
280117	*	000627	CONSUMERS ENERGY	316.88
280118		002167	CONTR. WELDING & FABRICATING INC	5,952.00
280119		002668	CONTRACTORS CLOTHING CO	160.51
280120		008512	COOL THREADS EMBROIDERY	1,233.80
280121	*	007638	MARSHALL CRAWFORD	25.00
280122	*	007638	MARSHALL CRAWFORD	425.00
280123		003802	CROSWELL GREENHOUSE	63.00
280123	*	003802	CROSWELL GREENHOUSE	20,549.60
280124		003923	CUMMINS BRIDGEWAY LLC	104.51
280125	*	003204	MARK DELAUDER	425.00
280126	*	006999	CHRISTOPHER DEMAN	425.00
280128	*	008641	DINGES FIRE COMPANY	116.24
280130	*	000179	DTE ENERGY	1,283.42
280131	*	000179	DTE ENERGY	21.48
280132	*	000179	DTE ENERGY	1,964.16
280133	*	000179	DTE ENERGY	179.05

City of Birmingham
Warrant List Dated 07/07/2021

Meeting of 07/12/2021

Check Number	Early Release	Vendor #	Vendor	Amount
280134	*	000179	DTE ENERGY	1,619.34
280135	*	000179	DTE ENERGY	137.12
280136	*	000179	DTE ENERGY	78.30
280137	*	000179	DTE ENERGY	654.21
280138	*	000179	DTE ENERGY	22.84
280139	*	000179	DTE ENERGY	376.65
280140	*	000179	DTE ENERGY	39.02
280142		000196	EJ USA, INC.	1,373.00
280143		001495	ETNA SUPPLY	2,330.00
280146		000936	FEDEX	11.78
280146	*	000936	FEDEX	36.25
280148	*	008154	GREGORY FOLEY	80.00
280149	*	007289	BRIAN FREELS	425.00
280150	*	008648	HUNTER GILICK	425.00
280151		008293	GRAINGER	98.90
280152	*	008105	JASON GRANROTH	425.00
280153	*	001956	HOME DEPOT CREDIT SERVICES	511.94
280154		007729	HOWARD COMMERCIAL DOOR	920.00
280155	*	003824	THOMAS I. HUGHES	84.79
280156	*	003824	THOMAS I. HUGHES	425.00
280157	*	009303	TREVOR HULBERT	425.00
280158		000948	HYDROCORP	1,381.00
280159		MISC	IAFC	430.00
280160	*	009299	JACK D. PESHA	107.96
280161	*	MISC	JACK TODD- PETTY CASH	1,239.96
280162	*	000347	JOHN R. SPRING & TIRE CENTER INC.	1,800.26
280163	*	007244	CHRISTOPHER JUDKINS	425.00
280164	*	007511	ADAM KNOWLES	425.00
280165	*	009287	KYLE KRAFT	425.00
280167	*	009043	IAN MCLAUGHLIN	425.00
280169	*	009306	RYAN MEHRHOF	425.00
280170		008793	MERGE MOBILE, INC.	73.00
280171	*	008207	METAL MART U.S.A.	126.96
280172	*	001387	MICHIGAN MUNICIPAL LEAGUE	307,045.00
280174	*	007306	MARK MISCHLE	425.00
280175	*	000649	MML WORKERS' COMP FUND	59,976.00
280177	*	005634	GINA MOODY	97.67
280178		001194	NELSON BROTHERS SEWER	380.00
280179	*	009096	RYAN NEUVILLE	425.00
280180	*	001010	NFPA	175.00
280182		009292	NOVA ENVIRONMENTAL INC	240.00
280184	*	000481	OFFICE DEPOT INC	783.18
280185		009204	OWEN BACHUSZ	425.00

City of Birmingham
Warrant List Dated 07/07/2021

Meeting of 07/12/2021

Check Number	Early Release	Vendor #	Vendor	Amount
280186	*	003963	DAVID PAPANDREA	425.00
280187		009154	POWERDMS INC	6,561.77
280188		MISC	PRECISION PLUMBING	3,400.00
280189		004137	R & R FIRE TRUCK REPAIR INC	763.73
280190	*	008875	JESSICA RAK	425.00
280191	*	007897	JEFFREY SCAIFE	425.00
280192	*	007898	JEFFREY SCHEMANSKY	425.00
280193		008815	SHI INTERNATIONAL CORP.	5,246.43
280194	*	009305	JEREMY SHULTZ	425.00
280195	*	006591	MICHAEL SLACK	425.00
280196	*	007899	NICHOLAS SLANDA	425.00
280197	*	003466	ALAN SOAVE	425.00
280198	*	007245	NICK SOPER	425.00
280199		001104	STATE OF MICHIGAN	50,643.65
280201		008748	TECHSEVEN COMPANY	100.00
280202	*	002433	THELMA GOLDEN	85.81
280203		009266	US SIGNAL COMPANY LLC	1,871.41
280205	*	000158	VERIZON WIRELESS	1,327.86
280206	*	000158	VERIZON WIRELESS	90.00
280207	*	000158	VERIZON WIRELESS	147.93
280208	*	000158	VERIZON WIRELESS	1,150.54
280209		009300	VIRTRU CORPORATION	9,239.00
280211	*	004497	WATERFORD REGIONAL FIRE DEPT.	176.75
280212		001490	WEST SHORE FIRE INC	217.94
280213	*	007900	RYAN WISEMAN	425.00
280214		009185	ZOOM VIDEO COMMUNICATIONS INC	598.78
SUBTOTAL PAPER CHECK				\$535,412.87

ACH TRANSACTION

3935	*	008847	ABS- AUTOMATED BENEFIT SVCS, INC	24,057.85
3936	*	002284	ABEL ELECTRONICS INC	1,940.00
3937		009126	AMAZON CAPITAL SERVICES INC	272.34
3937	*	009126	AMAZON CAPITAL SERVICES INC	99.65
3938	*	000518	BELL EQUIPMENT COMPANY	1,160.50
3939		006683	BIRMINGHAM LAWN MAINTENANCE	98.00
3940	*	007624	BIRMINGHAM OIL CHANGE CENTER, LLC	171.40
3941	*	000565	DORNBOS SIGN & SAFETY INC	104.48
3942	*	000995	EQUATURE	3,500.00
3943		001230	FIRE SYSTEMS OF MICHIGAN LLC	738.00
3944	*	000592	GAYLORD BROS., INC	520.21
3945	*	000243	GRAINGER	94.92
3946	*	003938	HART PAVEMENT STRIPING CORP	64,000.00
3947	*	008851	INSIGHT INVESTMENT	5,039.60
3948		000261	J.H. HART URBAN FORESTRY	15,783.88

City of Birmingham
Warrant List Dated 07/07/2021

Meeting of 07/12/2021

Check Number	Early Release	Vendor #	Vendor	Amount
3948	*	000261	J.H. HART URBAN FORESTRY	1,017.00
3949		000186	JACK DOHENY COMPANIES INC	713.65
3950		009298	JCR SUPPLY INC	399.92
3951	*	003458	JOE'S AUTO PARTS, INC.	704.52
3952	*	005876	KROPF MECHANICAL SERVICE COMPANY	5,697.11
3953	*	005550	LEE & ASSOCIATES CO., INC.	567.94
3955	*	007856	NEXT	30,736.00
3956		001864	NOWAK & FRAUS ENGINEERS	39,267.25
3957	*	006359	NYE UNIFORM COMPANY	1,112.31
3959		006729	QUENCH USA INC	247.20
3960	*	003554	RKA PETROLEUM	13,579.87
3961	*	001181	ROSE PEST SOLUTIONS	148.00
3962		000254	SOCRRA	77,688.00
3963		000273	TERMINAL SUPPLY CO.	21.78
3964	*	002037	TOTAL ARMORED CAR SERVICE, INC.	758.36
3965	*	004320	TRI-COUNTY POWER RODDING, INC	195.00
SUBTOTAL ACH TRANSACTION				\$290,434.74
GRAND TOTAL				\$825,847.61

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.



MEMORANDUM

Clerk's Office

DATE: July 8, 2021
TO: Tom Markus, City Manager
FROM: Alex Bingham, City Clerk
SUBJECT: Special Event: 2021 Birmingham Cruise

INTRODUCTION:

The Birmingham Shopping District (BSD) has submitted a Special Event application to hold a scaled-down 2021 Birmingham Cruise event on Saturday, August 21, 2021. Setup for the event is scheduled to begin at noon on Wednesday, August 18, on Haynes St. between Old Woodward and Woodward only, and on Friday, August 21 beginning at 7 AM. Event hours are 9 AM to 5 PM. Teardown is scheduled for Saturday, August 21 between 6 and 8 PM.

BACKGROUND:

At the City Commission meeting on May 24, 2021, the commission directed staff to present a "scaled-down" version of the City's participation in the annual Woodward Dream Cruise event, due to concerns for the safety of residents along the Woodward Avenue corridor and the 1 million attendees that normally participate, and the potential spread of the coronavirus. At the June 14, 2021 City Commission meeting, commissioners approved a resolution outlining the City's reduced participation, which, among other things:

- limits events on public property to a significantly smaller special-event zone on South Old Woodward from Landon to Bowers, and Haynes from Old Woodward to Woodward;
- requires that this special event zone ensures a minimum of 16 feet of clearance down the center of South Old Woodward for emergency vehicle traffic; and
- provides that the City will review all MDHHS orders on, before and at the time of the 2021 Woodward Dream Cruise, and if any new MDHHS orders prohibit the event from continuing, the City will cancel all permits and participation.

Prior to application submission, the Police Department reviewed the proposed event details for street closures and the need for safety personnel and approved the details. DPS, Planning, Building, Engineering, Police, and Fire have indicated their approval. SP+ Parking has been notified of the event for planning purposes.

The following events occur in Birmingham in August, and do not pose a conflict for this event:

Concerts in the Park

August 4, 11, 18 & 25

Shain Park

Friends and Family CPR
Movies in Booth Park
Farmers Market

August 11
August 13
Sundays in August

Station 1
Booth Park
Parking Lot #6

LEGAL REVIEW:

n/a

FISCAL IMPACT:

n/a

SUMMARY

The City Commission is being asked to approve the scaled-back 2021 Birmingham Cruise special event, to be held August 21, 2021 from 9:00 AM to 5:00 PM with setup to begin on Wednesday, August 18 on Haynes between Old Woodward and Woodward, and remaining setup on Friday, August 20 beginning at 7:00 AM. Teardown is scheduled for Saturday, August 21 to be completed at 8 PM.

ATTACHMENTS:

1. Special Event application
2. Notification letter with map of event area distributed to residents/businesses within 300 feet of the event area on June 16, 2021. Notification addresses are on file in the Clerk's Office
3. Certificate of insurance
4. Department approval page with comments and estimated costs
5. June 8, 2021 Woodward Dream Cruise memo and resolution
6. June 14, 2021 minutes regarding approval of resolution 06-159-21

SUGGESTED RESOLUTION:

To approve a request from the Birmingham Shopping District to hold the scaled-down 2021 Birmingham Cruise special event on Saturday, August 21, 2021, contingent upon compliance with all permit and insurance requirements and payment of all fees and, further, pursuant to any modifications or event cancellation that may be deemed necessary by administrative staff, leading up to or at the time of the event, due to health and safety measures.

**CITY OF BIRMINGHAM
APPLICATION FOR SPECIAL EVENT PERMIT
PARKS AND PUBLIC SPACES**

IMPORTANT: EVENTS UTILIZING CITY SIDEWALKS AND/OR STREETS MUST MEET WITH POLICE DEPARTMENT SPECIAL EVENT OFFICER TO REVIEW PROPOSED EVENT DETAILS PRIOR TO SUBMITTING APPLICATION.

Police Department acknowledgement: _____

I. EVENT DETAILS

- **Incomplete applications will not be accepted.**
- **Changes in this information must be submitted to the City Clerk, in writing, at least three weeks prior to the event**

FEES: **FIRST TIME EVENT:** **\$200.00**
 ANNUAL APPLICATION FEE: **\$165.00**

(Please print clearly or type)

Date of Application June 16, 2021

Name of Event Birmingham Cruise Event

Detailed Description of Event (attach additional sheet if necessary) Car show and cruise with related activities
including food vendors and sponsor displays

*set-up will begin at noon on Wednesday, August 18th on Haynes St. between Old Woodward and Woodward only

Location Old Woodward from Bowers to Landon with adjacent street selections - see attached map

Date(s) of Event Sat., August 21, 2021 Hours of Event 9 a.m. - 5 p.m.

Date(s) of Set-up Friday, August 20, 2021* Hours of Set-up beginning at 7 a.m.

NOTE: No set-up to begin before 7:00 AM, per City ordinance.

Date(s) of Tear-down day of event Hours of Tear-down 6-8 p.m.

Organization Sponsoring Event Birmingham Shopping District

Organization Address 151 Martin St., Birmingham, MI 48009

Organization Phone 248-530-1200

Contact Jaimi Brook

Person _____

Contact 248-530-1254 cell - 248-508-5518

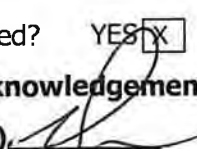
Phone _____

Contact Email jbrook@bhamgov.org

II. EVENT INFORMATION

1. Organization Type city - Birmingham Shopping District
(city, non-profit, community group, etc.)
2. Additional Sponsors or Participants (Provide name, address, contact person, status, etc. for all additional organizations sponsoring your event.) Chevy, WXYZ, WOMC, others TBD

3. Is the event a fundraiser? YES ☐ NO ☒
List _____ beneficiary _____
List _____ expected income _____
Attach information about the beneficiary.
4. First time event in Birmingham? YES ☐ NO ☒
If no, describe This is an annual event

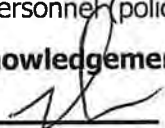
5. Total number of people expected to attend per day 50,000-75,000
6. The event will be held on the following City property: (Please list)
☒ Street(s) S. Old Woodward from Landon to Bowers and Haynes from Old Woodward to Woodward
☐ Sidewalk(s) _____
☐ Park(s) _____
7. Will street closures be required? YES ☒ NO ☐
(Police Department acknowledgement prior to submission of application is required) (initial here) 
8. What parking arrangements will be necessary to accommodate attendance? city parking structures and street parking

9. Will staff be provided to assist with safety, security and maintenance? YES ☒ NO ☐

If yes, please provide number of staff to be provided and any specialized training received.

Describe BSD event staff will be on-site throughout the event as well as numerous event volunteers

10. Will the event require safety personnel (police, fire, paramedics)? YES ☒ NO ☐

(Police Department acknowledgement prior to submission of application is required.) (initial here) 

Describe We would like police officers on-site during the event to help with crowd control and security.
Due to the smaller footprint, we do not feel that we need to have paramedics on-site.

11. Will alcoholic beverages be served? YES ☐ NO ☒

If yes, additional approval by the City Commission is required, as well as the Michigan Liquor Control Commission.

12. Will music be provided? YES ☒ NO ☐

Live Amplification X X Loudspeakers

Recorded Time music will begin 9 a.m.

Time music will end 5 p.m.

Location of live band, DJ, loudspeakers, equipment must be shown on the layout map.

13. Will there be signage in the area of the event? YES ☒ NO ☐

Number of signs/banners TBD

Size of signs/banners TBD

Submit a photo/drawing of the sign(s). **A sign permit is required.**

14. Will food/beverages/merchandise be sold? YES ☒ NO ☐

- Peddler/vendor permits must be submitted to the Clerk's Office, **at least two weeks prior to the event.**
- You must obtain approval from the Oakland County Health Department for all food/beverage sales/donations. Contact ehclerk@oakgov.com or 248-535-9612 to obtain Health Department approval.
- There is a \$50.00 application fee for all vendors and peddlers, in addition to the \$10.00 daily fee, per location.

LIST OF VENDORS/PEDDLERS

(attach additional sheet if necessary)

VENDOR NAME	GOODS TO BE SOLD	WATER HOOK-UP REQUIRED?	ELECTRIC REQUIRED?
EA Graphics	official merchandise	no	no
TBD	Food		
TBD	drinks/bottled water		
TBD	auto related products		

III. I. EVENT LAYOUT

- Include a map showing the park set up, street closures, and location of each item listed in this section.
- Include a map and written description of run/walk route and the start/finish area

1. Will the event require the use of any of the following municipal equipment?
(show location of each on map)

EQUIPMENT	QUANTITY	COST	NOTES
Picnic Tables		6 for \$500.00	A request for more than six tables will be evaluated based on availability.
Trash Receptacles		\$6.00 each includes 1 bag. For additional bags, the cost is \$32/per case.	Trash box placement and removal of trash is the responsibility of the event. Additional cost could occur if DPS is to perform this work.
Dumpsters	1	\$350.00/per dumpster per day.	Includes emptying the dumpster one time per day. The City may determine the need for additional dumpsters based on event requirements.
Utilities (electric)	# of vendors requiring utilities	Varies	Charges according to final requirements of event.
Water/Fire Hydrant		\$224.75/per hydrant. Includes the use of 5,000 gallons of water. Any additional water usage will be billed.	Applicant must supply their own means of disposal for all sanitary waste water. Waste water is NOT allowed to be poured into the street or on the grass.
Meter Bags / Traffic Cones / Barricades	# to be determined by the Police Department.		

2. Will the following be constructed or located in the area of the event? YES NO
(show location of each on map) NOTE: Stakes are not allowed.

TYPE	QUANTITY	SIZE
Tents/Canopies/Awnings (A permit is required for tents over 120 sq ft)	10 +/-	various
Portable Toilets	10	reg & handicap
Rides		
Displays	TBD	
Vendors	TBD	
Temporary Structure (must attach a photo)		
Other (describe)		


SIGNATURE OF APPLICANT REQUIRED

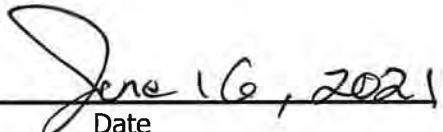
EVENT NAME Birmingham Cruise Event

EVENT DATE August 21, 2021

The Birmingham City Commission shall have sole and complete discretion in deciding whether to issue a permit. Nothing contained in the City Code shall be construed to require the City Commission to issue a permit to an applicant and no applicant shall have any interest or right to receive a permit merely because the applicant has received a permit in the past.

As the authorized agent of the sponsoring organization, I hereby agree that this organization shall abide by all conditions and restrictions specific to this special event as determined by the City administration and will comply with all local, state and federal rules, regulations and laws.


Signature

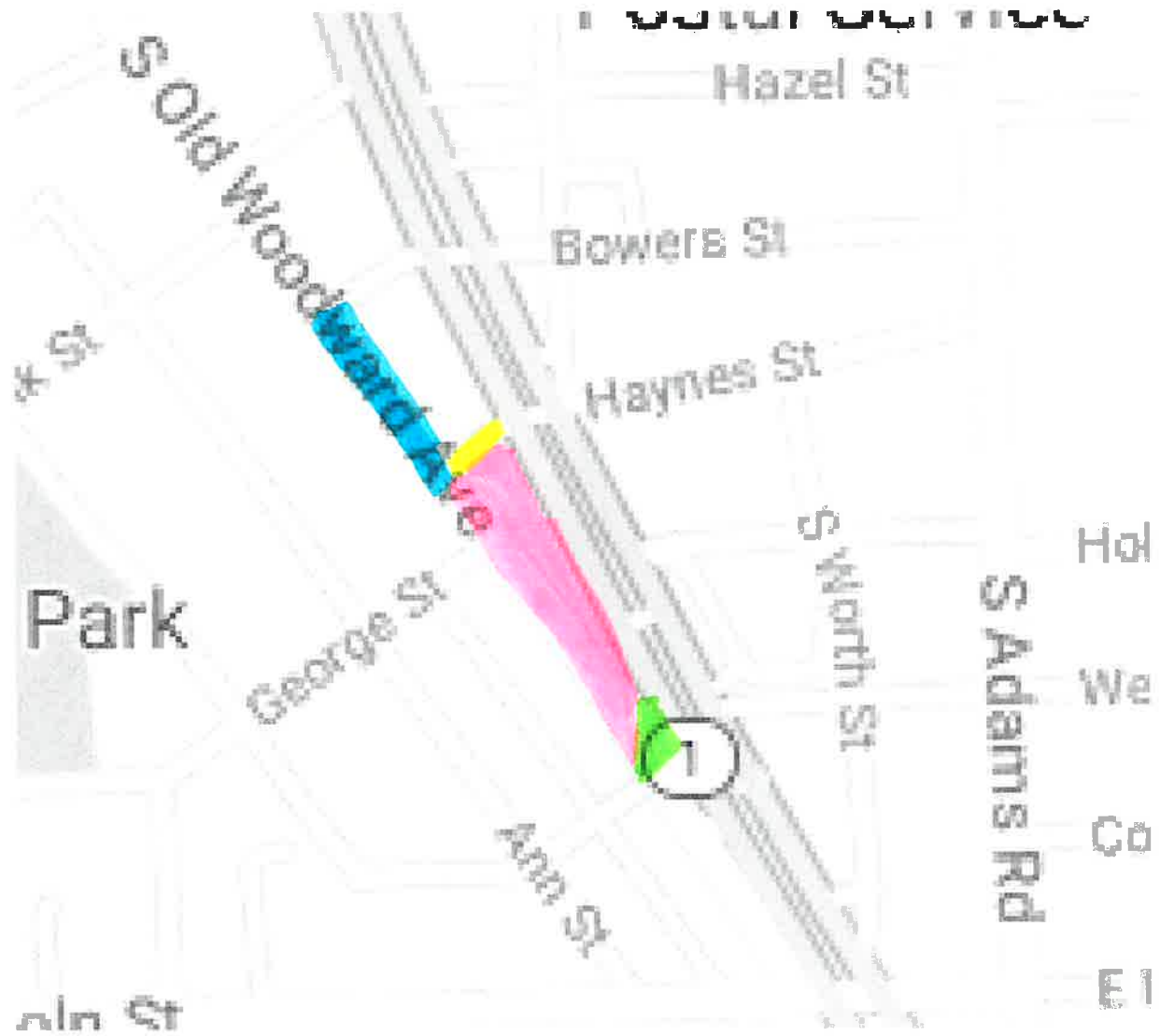

Date

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

IV. SAMPLE LETTER TO NOTIFY ANY AFFECTED PROPERTY/BUSINESS OWNERS

- Organizer must notify all potentially affected residential property and business owners of the date and time this application will be considered by the City Commission. (Sample letter attached to this application.)
- Attach a copy of the proposed letter to this application. The letter will be reviewed and approved by the Clerk's Office. The letter must be distributed at least two weeks prior to the Commission meeting.
- A copy of the letter and the distribution list must be submitted to the Clerk's Office at least two weeks prior to the Commission meeting.
- If street closures are necessary, a map must be included with the letter to the affected property/business owners.

Birmingham Cruise Event 2021



- car clubs + vendors
- WXYZ staging area
- Chevy
- Wome tower

SPECIAL EVENT REQUEST NOTIFICATION

June 16, 2021

TO: Property Owners and Business Owners

The Birmingham City Code requires that we receive approval from the Birmingham City Commission to hold the following special event. The code further requires that we notify any property owners or business owners that may be affected by the special event of the date and time that the City Commission will consider our request so that an opportunity exists for comments prior to this approval.

NAME OF EVENT: Birmingham Cruise Event

LOCATION: Old Woodward from Bowers Street to Landon Street.
Haynes between Old Woodward and Woodward.
Boundary includes frontage along Woodward Ave.

DATE/TIME: Saturday, August 21, 2021 from 9 a.m. to 6 p.m.

DATE OF CITY COMMISSION MEETING: Monday, June 28, 2021

The City Commission will be meeting via Zoom <https://zoom.us/j/655079760>—Meeting ID: 655 079 760 at 7:30 p.m. A complete copy of the application to hold this special event is available for your review at the city clerk's office (248/530-1880). Log on to www.bhamgov.org/ events for a complete list of special events.

EVENT ORGANIZER: Birmingham Shopping District
ADDRESS: 151 Martin Street, Birmingham
PHONE: 248-530-1200

For questions on day of event, contact BSD Events Mgr, Jaimi Brook at 248-508-5518

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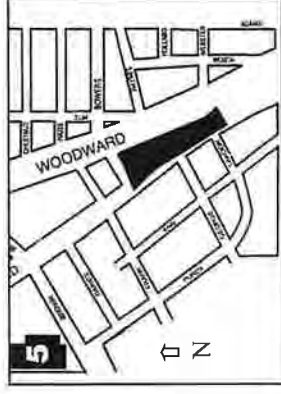
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**Birmingham Shopping District
151 Martin Street
Birmingham, MI 48009**

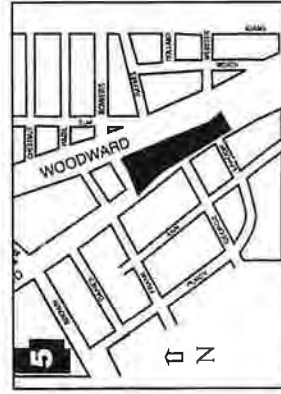
**BIRMINGHAM CRUISE EVENT
2021**



GALYN ASSOCIATES LTD PTNSHP
1435 N GLENGARRY RD
BLOOMFIELD HILLS MI 48301

**Birmingham Shopping District
151 Martin Street
Birmingham, MI 48009**

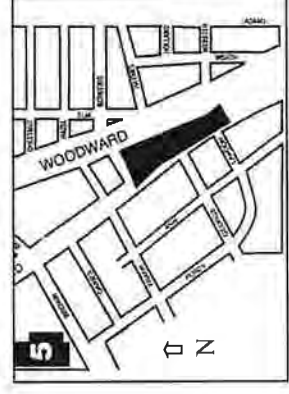
**BIRMINGHAM CRUISE EVENT
2021**



FLORENCE SHARE
333 W FORT ST FL 12TH
DETROIT MI 48226

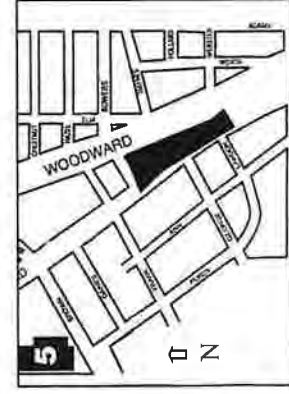
Birmingham Shopping District
151 Martin Street
Birmingham, MI 48009

BIRMINGHAM CRUISE EVENT
2021



BIRMINGHAM TOWER PARTNERS
LLC
251 E MERRILL ST STE 205
BIRMINGHAM MI 48009

Birmingham Shopping District
151 Martin Street
Birmingham, MI 48009

BIRMINGHAM CRUISE EVENT
2021

BIRMINGHAM TOWER PARTNERS
LLC
251 E MERRILL ST STE 205
BIRMINGHAM MI 48009



Northfield Insurance Company

385 Washington Street, St. Paul, MN 55102
1-800-237-9334 Claims: 1-800-328-5972

COMMERCIAL INSURANCE POLICY

Your Policy Number: WS456821

This policy consists of this policy cover, the Declarations and the forms, schedules and endorsements listed. **READ YOUR POLICY CAREFULLY.**

In return for the payment of the premium, the insuring company agrees with the Named Insured to provide the insurance afforded by this policy. That insurance will be provided by the company indicated as insuring company in the Declarations.

In Witness Whereof, we have caused this policy to be executed and attested, but this policy shall not be valid unless countersigned by a duly authorized representative for us.

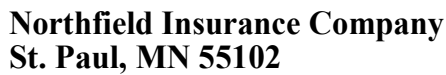
Secretary

President

NOTICES

IMPORTANT: THIS POLICY IS NOT SUBJECT TO FLAT CANCELLATION.

THIS POLICY IS SUBJECT TO AUDIT. EXPOSURES GREATER THAN THOSE ESTIMATED ON THIS POLICY WILL RESULT IN ADDITIONAL PREMIUM WHICH WILL BE DUE AND PAYABLE UPON RECEIPT OF BILLING.



Agency No: 465000001 Producer No: 05940 Policy No: WS456821
 Previous Policy No: NEW
POLICY PERIOD: **From** 08/20/2021 **To** 08/22/2021 **Term:** 2 Days
 at 12:01 A.M. at your mailing address shown below.

BUSINESS DESCRIPTION: SPECIAL EVENT


THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS. THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT.

PREMIUM

Service Fee is fully earned at inception and non-refundable in the event of flat cancellation.

This insurance has been placed with an insurer that is not licensed by the state of Michigan. In case of insolvency, payment of claims may not be guaranteed.

MEADOWBROOK INC
26255 AMERCIAN DR
Southfield, MI 48034

Countersigned: 07/07/2021 MI By 
Date Authorized Representative

SCHEDULE OF FORMS AND ENDORSEMENTS

Effective Date: 08/20/2021

Policy No: WS456821

Named Insured:

City of Birmingham

The following schedule of coverage declarations, forms and endorsements make up your policy as of the effective date shown above.

COMMON POLICY DECLARATIONS - S1D-IL (9/05)

The following forms and endorsements apply to coverage parts as stated on the form or endorsement:

S1-IL (9/05)	Commercial Insurance Policy
S1D-IL (9/05)	Common Policy Declarations
S1D-ILS (9/05)	Schedule of Forms and Endorsements
N-3384 (7/08)	Important Notice - Producer Compensation
IL 00 17 (11/98)	Common Policy Conditions
IL 00 21 (09/08)	Nuclear Energy Liability Exclusion Endorsement
N-3732 (5/21)	Notice of Change in Policy Terms
N-9999A (2/12)	Manuscript Endorsement A
S459-IL (5/06)	Amendment - Fully Earned Premium
S1030-IL (7/08)	Service of Suit
S2612-IL (6/17)	Amendment - Non-Renewal
IL T4 14 (01/21)	Cap on Losses From Certified Acts of Terrorism
S2965-IL (3/15)	Amendment of Common Policy Conditions Prohibited Coverage - Unlicensed Insurance and Trade or Economic Sanctions

COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS - S2584D-CG (9/05)

The following forms and endorsements apply to the Commercial General Liability Coverage Part only:

S2584D-CG (9/07)	Commercial GL Coverage Part Declarations
CG 00 01 (12/07)	General Liability Coverage Form
S19-CG (3/17)	Amendment - Contractual Liability
S21-CG (5/21)	Deductible Liability Insurance
S22-CG (1/16)	Exclusion - Mechanical Amusement Ride
S42-CG (2/16)	Total Pollution Exclusion with Exceptions for Building Heating, Cooling, Dehumidifying and Personal Hot Water Heating Equipment and Hostile Fire
S49-CG (4/20)	Exclusion - Voluntary Labor
S94-CG (11/17)	Exclusion - Injury to Employees, Workers Or Contracted Persons
S120-CG (1/16)	Exclusion - Special Events With Exception For Scheduled Special Events
S267-CG (8/21)	Combination Endorsement Bodily Injury and Property Damage Liability
S2582-CG (1/13)	Exclusion - Aircraft, Auto or Watercraft
IL T3 68 (01/21)	Federal Terrorism Risk Insurance Act Disclosure

SCHEDULE OF FORMS AND ENDORSEMENTS

S2623-CG (8/21)	Combination Endorsement Personal and Advertising Injury Liability
S2681-CG (1/16)	Exclusion - Concert Performers
S2875-CG (6/10)	Conditions - Required Certificates of Insurance
S2996-CG (5/16)	Exclusion - Cross Liability - Broad Form
CG 01 68 (11/20)	Michigan Changes
CG 20 26 (07/04)	Additional Insured - Designated Person or Organization
CG 21 32 (05/09)	Communicable Disease Exclusion
CG 21 36 (03/05)	Exclusion - New Entities
CG 21 44 (04/17)	Limitation of Coverage to Designated Premises, Project or Operation
CG 24 26 (07/04)	Amendment of Insured Contract Definition
S43-CG (1/14)	Exclusion - Punitive or Exemplary Damages
S354-CG (2/14)	Exclusion - Liquor - Absolute

IMPORTANT NOTICE REGARDING COMPENSATION DISCLOSURE

For information about how Northfield compensates its agents, brokers and program managers, please visit this website:

http://www.northlandins.com/Producer_Compensation_Disclosure.asp

If you prefer, you can call the following toll-free number: 1-866-904-8348. Or you can write to us at Northfield Insurance Company, c/o Law Department, 385 Washington St., St. Paul, MN 55102.

COMMON POLICY CONDITIONS

All Coverage Parts included in this policy are subject to the following conditions.

A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
 - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
 - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is canceled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

C. Examination Of Your Books And Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

D. Inspections And Surveys

1. We have the right to:
 - a. Make inspections and surveys at any time;

b. Give you reports on the conditions we find; and

c. Recommend changes.

2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:

a. Are safe or healthful; or

b. Comply with laws, regulations, codes or standards.

3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

E. Premiums

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

F. Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT (Broad Form)

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTOMOBILE COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
FARM COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
MEDICAL PROFESSIONAL LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
UNDERGROUND STORAGE TANK POLICY

1. The insurance does not apply:

A. Under any Liability Coverage, to "bodily injury" or "property damage":

(1) With respect to which an "insured" under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

(2) Resulting from the "hazardous properties" of "nuclear material" and with respect to which **(a)** any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or **(b)** the "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

B. Under any Medical Payments coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization.

C. Under any Liability Coverage, to "bodily injury" or "property damage" resulting from "hazardous properties" of "nuclear material", if:

(1) The "nuclear material" **(a)** is at any "nuclear facility" owned by, or operated by or on behalf of, an "insured" or **(b)** has been discharged or dispersed therefrom;

(2) The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an "insured"; or

(3) The "bodily injury" or "property damage" arises out of the furnishing by an "insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion **(3)** applies only to "property damage" to such "nuclear facility" and any property thereat.

2. As used in this endorsement:

"Hazardous properties" includes radioactive, toxic or explosive properties.

"Nuclear material" means "source material", "special nuclear material" or "by-product material".

"Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".

"Waste" means any waste material **(a)** containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and **(b)** resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

"Nuclear facility" means:

(a) Any "nuclear reactor";

(b) Any equipment or device designed or used for **(1)** separating the isotopes of uranium or plutonium, **(2)** processing or utilizing "spent fuel", or **(3)** handling, processing or packaging "waste";

(c) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

(d) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

"Property damage" includes all forms of radioactive contamination of property.

NOTICE OF CHANGE IN POLICY TERMS

S267-CG (8/21)	Combination Endorsement Bodily Injury And Property Damage Liability
S2623-CG (8/21)	Combination Endorsement Personal And Advertising Injury Liability

YOUR NEW POLICY INCLUDES COVERAGE CHANGES FROM YOUR PREVIOUS POLICY. THE IMPORTANT COVERAGE CHANGES ARE IDENTIFIED IN THIS NOTICE. PLEASE READ THIS NOTICE CAREFULLY.

WE ALSO MAY HAVE MADE CERTAIN WORDING AND FORMATTING CHANGES FOR THE PURPOSE OF CLARIFICATION OR IMPROVED READABILITY. THIS NOTICE DOES NOT NECESSARILY IDENTIFY ANY OR EVERY CLARIFICATION OR EDITORIAL CHANGE MADE.

NO COVERAGE IS PROVIDED BY THIS NOTICE. THIS NOTICE DOES NOT AMEND ANY PROVISION OF YOUR POLICY. YOU SHOULD REVIEW YOUR ENTIRE POLICY CAREFULLY FOR COMPLETE INFORMATION ON THE COVERAGES PROVIDED AND TO DETERMINE YOUR RIGHTS AND DUTIES UNDER YOUR POLICY. PLEASE CONTACT YOUR AGENT OR BROKER IF YOU HAVE ANY QUESTIONS ABOUT THIS NOTICE OR ITS CONTENTS. IF THERE IS ANY CONFLICT BETWEEN YOUR POLICY AND THIS NOTICE, THE PROVISIONS OF YOUR POLICY PREVAIL.

The Combination Endorsement Bodily Injury And Property Damage Liability (S267-CG (6/14)) and Combination Endorsement Personal And Advertising Injury Liability (S2623-CG (6/14)) included in your expiring policy will be replaced at renewal with the Combination Endorsement Bodily Injury And Property Damage Liability (S267-CG (8/21)) and Combination Endorsement Personal And Advertising Injury Liability (S2623-CG (8/21)), respectively.

The following changes in S267-CG (8/21) and S2623-CG (8/21) reduce coverage:

- The Asbestos Or Silica exclusion has been split into separate Asbestos and Silica Or Silica-Related Dust exclusions.
 - The Asbestos exclusion will also exclude the following:
 - Injury or damage arising out of the actual or alleged presence or actual, alleged or threatened dispersal of any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, chemicals and waste that are part of any claim or "suit" which also alleges injury or damage arising out of the actual or alleged presence or actual, alleged or threatened dispersal of asbestos, asbestos fibers or products containing asbestos; and
 - Any loss, cost or expense arising out of any request, demand, order or statutory or regulatory requirement to test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, or respond to or assess the effects of asbestos, asbestos fibers or products containing asbestos; or any claim or suit by or on behalf of any governmental authority or any other person or organization because of such testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, or responding to or assessing the effects of asbestos, asbestos fibers or products containing asbestos.
 - The Silica Or Silica-Related Dust exclusion will include defined terms "silica", meaning silicon dioxide (occurring in crystalline, amorphous and impure forms), silica particles, silica dust or silica compounds, and "silica-related dust", meaning a mixture or combination of "silica" and other dust or particles.
- The Discrimination exclusion will include discrimination based upon pregnancy, color, citizenship, veteran status, genetic information, mental disability, or any other attribute, trait, condition or status that qualifies a person for protection against discrimination under federal, state or local law.
- The Employment-Related Practices exclusion will include injury arising out of a failure to promote or advance.

The following change in S267-CG (8/21) reduces coverage:

- A Liquor Liability exclusion is added and specifically includes claims against any insured for alleged negligence or other wrongdoing in supervision, hiring, employment, training or monitoring of others or in providing or failing to provide transportation with respect to any person that may be under the influence of alcohol.

The following change in S2623-CG (8/21) reduces coverage:

- The Pollution-Related exclusion now applies to any claim or suit by or on behalf of any other person or organization because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

The following changes in S2623-CG (8/21) may reduce coverage:

- The Intellectual Property exclusion now includes additional wording to clarify that the exclusion applies when any party to a claim or suit, including any insured, alleges an infringement or violation of intellectual property rights or laws. This is a wording change that reinforces our intent and, therefore, does not change coverage. This change may be considered to reduce coverage, however, if the exclusion in your previous policy is interpreted to apply only when allegations of such infringement or violation are made against the insured.
- A definition of "independent contractor" has been added. This change may be considered a coverage reduction if the definition is interpreted to be narrower than the undefined term.



Northfield Insurance Company
St. Paul, MN 55102

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement is **EFFECTIVE** 08/20/2021 and is part of Policy Number: WS456821

issued to: City of Birmingham

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

IT IS HEREBY AGREED THAT AS A CONDITION OF THIS INSURANCE, YOU AGREE TO REQUIRE CERTIFICATES OF INSURANCE EVIDENCING COMMERCIAL GENERAL LIABILITY COVERAGE FROM ALL INDEPENDENT CONTRACTORS HIRED BY YOU AND FROM ALL VENDORS TO WHOM YOU HAVE ISSUED A PERMIT TO PARTICIPATE IN THE FESTIVAL.

IT IS ALSO AGREED THAT THIS COVERAGE SHALL BE PRIMARY AND NOT CONTRIBUTING OR PRO RATA WITH ANY OTHER INSURANCE WHICH IS OR MAY BE AVAILABLE TO YOU OR CARRIED BY YOU.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT - FULLY EARNED PREMIUM

This endorsement applies to all coverage parts.

The total premium and, if applicable, 100% of all fees, shown on the Common Policy Declarations is the minimum premium for the policy and is not subject to pro rata, or less than pro rata adjustment in the event of cancellation of this insurance by the first Named Insured.

Cancellation of this insurance for nonpayment of premium is considered a request by the first Named Insured for cancellation of this insurance.

The provisions of this amendment apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the minimum earned premium.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SERVICE OF SUIT

This policy is subject to the following:

In the event of our failure to pay any amount claimed to be due hereunder, we, at the request of the Insured (or reinsured), will submit to the jurisdiction of any court of competent jurisdiction within the United States and will comply with all requirements necessary to give such court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practices of such court.

The service of process in such suit may be made upon our President or his nominee, at 385 Washington Street, St. Paul, MN 55102 and that in any suit instituted against one of them upon this contract, we will abide by the final decision of such court or of any Appellate court in the event of an appeal.

The above named are authorized and directed to accept service of process on our behalf in any such suit and/or upon the request of the Insured (or reinsured) to give a written undertaking to the Insured (or reinsured) that they will enter a general appearance upon our behalf in the event that a suit shall be instituted.

Further, pursuant to any statute of any state, territory, or district of the United States which makes provision therefore, we hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his/her successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Insured (or reinsured) or any beneficiary hereunder arising out of this contract of insurance (or reinsurance), and hereby designates the above named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

Special rule for California. For the State of California we authorize CSC - Lawyers Incorporating Services, 2730 Gateway Oaks Drive, Suite 100, Sacramento, CA 95833 to be served and to mail us the papers.

Special rule for Rhode Island. For the State of Rhode Island we authorize Corporate Service Company, 222 Jefferson Boulevard, Suite 200, Warwick, RI 02888 to be served and to mail us the papers.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT - NON-RENEWAL

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

Paragraph 9., **When We Do Not Renew**, of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**, **SECTION IV - LIQUOR LIABILITY CONDITIONS** and **SECTION IV - PRODUCTS/COMPLETED OPERATIONS LIABILITY CONDITIONS** is deleted.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM

This endorsement modifies insurance provided under the following:

BOILER AND MACHINERY COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
COMMERCIAL INLAND MARINE COVERAGE PART
COMMERCIAL PROPERTY COVERAGE PART
CYBERFIRST ESSENTIALS GENERAL PROVISIONS FORM
CYBERFIRST GENERAL PROVISIONS FORM
DELUXE PROPERTY COVERAGE PART
EMPLOYEE BENEFITS LIABILITY COVERAGE PART
EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE PART
EMPLOYMENT PRACTICES LIABILITY⁺ WITH IDENTITY FRAUD EXPENSE REIMBURSEMENT
COVERAGE PART
ENVIRONMENTAL HAZARD POLICY
EQUIPMENT BREAKDOWN COVERAGE PART
EXCESS FOLLOW-FORM AND UMBRELLA LIABILITY INSURANCE
EXCESS (FOLLOWING FORM) LIABILITY INSURANCE
LAW ENFORCEMENT LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
MANUFACTURERS ERRORS AND OMISSIONS LIABILITY COVERAGE PART
MEDFIRST PRODUCTS/COMPLETED OPERATIONS, ERRORS AND OMISSIONS, AND
INFORMATION SECURITY LIABILITY COVERAGE FORM
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
PUBLIC ENTITY MANAGEMENT LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
SPECIAL PROTECTIVE AND HIGHWAY LIABILITY POLICY - NEW YORK DEPARTMENT OF
TRANSPORTATION
TRAVELERS PROPERTY COVERAGE PART
TRIBAL BUSINESS MANAGEMENT LIABILITY COVERAGE PART
Any other Coverage Part or Coverage Form included in this policy that is subject to the federal Terrorism Risk
Insurance Act of 2002 as amended

The following is added to this policy. This provision can limit coverage for any loss arising out of a "certified act of terrorism" if such loss is otherwise covered by this policy. This provision does not apply if and to the extent that coverage for the loss is excluded or limited by an exclusion or other coverage limitation for losses arising out of "certified acts of terrorism" in another endorsement to this policy.

If aggregate insured losses attributable to "certified acts of terrorism" exceed \$100 billion in a calendar year and we have met our insurer deductible under "TRIA", we will not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case, insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

"Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of "TRIA", to be an act of terrorism pursuant to "TRIA". The criteria contained in "TRIA" for a "certified act of terrorism" include the following:

1. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to "TRIA"; and
2. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

"TRIA" means the federal Terrorism Risk Insurance Act of 2002 as amended.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**AMENDMENT OF COMMON POLICY CONDITIONS -
PROHIBITED COVERAGE - UNLICENSED INSURANCE AND
TRADE OR ECONOMIC SANCTIONS**

This endorsement modifies insurance provided under the following:

ALL COVERAGES INCLUDED IN THIS POLICY

The following is added to the Common Policy Conditions:

Prohibited Coverage - Unlicensed Insurance

1. With respect to loss sustained by any insured, or loss to any property, located in a country or jurisdiction in which we are not licensed to provide this insurance, this insurance does not apply to the extent that insuring such loss would violate the laws or regulations of such country or jurisdiction.
2. We do not assume responsibility for:
 - a. The payment of any fine, fee, penalty or other charge that may be imposed on any person or organization in any country or jurisdiction because we are not licensed to provide insurance in such country or jurisdiction; or
 - b. The furnishing of certificates or other evidence of insurance in any country or jurisdiction in which we are not licensed to provide insurance.

Prohibited Coverage - Trade Or Economic Sanctions

We will provide coverage for any loss, or otherwise will provide any benefit, only to the extent that providing such coverage or benefit does not expose us or any of our affiliated or parent companies to:

1. Any trade or economic sanction under any law or regulation of the United States of America; or
2. Any other applicable trade or economic sanction, prohibition or restriction.



Northfield Insurance Company
St. Paul, MN 55102

COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS

Effective Date: 08/20/2021 12:01 A.M. at your mailing address

Policy No: WS456821

Named Insured:

City of Birmingham

LIMITS OF INSURANCE

Each Occurrence Limit	\$ 1,000,000
Damage To Premises Rented To You Limit	\$ 100,000 Any One Premises
Medical Expense Limit	\$ 5,000 Any One Person
Personal and Advertising Injury Limit	\$ 1,000,000 Any One Person or Organization
General Aggregate Limit	\$ 2,000,000
Products/Completed Operations Aggregate Limit	\$ 2,000,000

BUSINESS INFORMATION

Form of Business: ☐ Individual ☐ Joint Venture ☐ Partnership ☐ Limited Liability Company ☐ Trust
☒ Organization, including a Corporation (but not including a partnership, joint venture, trust or limited liability company.)

Loc. # Address of All Premises (Including Zip Code) That You Own, Rent or Occupy

001 OLD WOODWARD AVENUE Birmingham MI 48012

PREMIUM

Loc. #	Classification	Code No.	Premium Base	Rate		Advance Premium	
				Pr/CO	All Other	Pr/CO	All Other
001	Special Events - Group 1. - Products-completed operations are subject to General Aggregate Limit. - Per Event/PerDay	63221001	t+	Flat Chrg		\$ Included	\$ 12,037.00
	Additional Insureds - cg2026		t	1	50.000	\$	\$ 50.00
Subline Premiums						\$.00	\$ 12,087.00
Total Advance Premium						\$	12,087.00

FORMS AND ENDORSEMENTS

The schedule of coverage declarations, forms and endorsements shown on S1D-ILS make up your policy as of the effective date shown above.

THESE DECLARATIONS AND THE COMMON POLICY DECLARATIONS, IF APPLICABLE, TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE FORM(S) AND FORMS AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBERED POLICY.

When used as a premium base:

"Area" (premium basis symbol a) means:

The total number of square feet of floor space at the insured premises, computed as follows:

1. For entire buildings, by multiplying the product of the horizontal dimensions of the outside of the outer building walls by the number of floors, including basements but do not use the area of the following:
 - a. Courts and mezzanine types of floor openings.
 - b. Portions of basements or floors where 50% or more of the area is used for shop or storage for building maintenance, dwelling by building maintenance employees, heating units, power plants or air-conditioning equipment.
2. For tenants, determine the area they occupy in the same manner as for the entire buildings.
3. The rates apply per 1,000 square feet of area.

"Total Cost" (premium basis symbol c) means:

The total cost of all work let or sublet in connection with each specific project including:

1. The cost of all labor, materials and equipment furnished, used or delivered for use in the execution of the work, however, do not include the cost of finished equipment installed but not furnished by the subcontractor if the subcontractor does no other work on or in connection with such equipment; and
2. All fees, bonuses or commissions made, paid or due.
3. The rates apply per \$1,000 of total cost.

"Admissions" (premium basis symbol m) means:

The total number of persons, other than employees of the named insured, admitted to the event insured or to events conducted on the premises whether on paid admissions, tickets, complimentary tickets or passes.

The rates apply per 1,000 admissions.

"Payroll" (premium basis symbol p) means:

1. Commissions;
2. Bonuses;
3. Extra pay for overtime work, except as provided in Paragraph 17;
4. Pay for holidays, vacations or periods of sickness;
5. Payment by an employer of amounts otherwise required by law to be paid by employees to statutory insurance or pension plans, such as the Federal Social Security Act;
6. Payment to employees on any basis other than time worked, such as piecework, profit sharing or incentive plans;
7. Payment or allowance for hand tools or power tools used by hand provided by employees and used in their work or operations to the insured;
8. The rental value of an apartment or a house provided for an employee based on comparable accommodations;
9. The value of lodging, other than an apartment or house, received by employees as part of their pay, to the extent shown on the insureds records;
10. The value of meals received by employees as part of their pay to the extent shown in the insured's records;
11. The value of store certificates, merchandise, credits or any other substitute for money received by employees as part of their pay;
12. The payroll of mobile equipment operators and their helpers, whether or not the operators are designated or licensed to operate automobiles. If the operators and their helpers are provided to the insured along with equipment hired under contract and their actual payroll is not known, use 1/3 of the total amount paid out by the insured for the hire of the equipment;
13. The payroll of executive officers of a corporation and individual insureds and co-partners. For the purposes of payroll determination, managers of limited liability companies shall be considered executive officers and members of limited liability companies shall be considered co-partners. The executive officers of a corporation are those persons holding any of the officer positions created by the named insured's charter, constitution or by-laws or any other similar governing document. The payroll of all executive officers of a corporation and individual insureds or co-partners engaged principally in clerical operations or as salespersons, and officers and co-partners who are inactive for the entire policy period, shall not be included for premium purposes. For part-time or seasonal businesses the payroll amounts may be reduced by 2 percent for each full calendar week in excess of twelve during which the risk performs no operations.
14. The payroll of leased workers furnished to the named insured by a labor leasing firm. Premium on such payroll shall be based on the classifications and rates which would have applied if the leased workers had been the direct employees of the named insured. If payroll is unavailable, use 100% of the total cost of the contract for leased workers as the payroll of leased workers. The premium shall be charged on that amount as payroll. If investigation of a specific employee leasing contract discloses that a definite amount of the contract price represents payroll, such amount shall be considered payroll for premium computation purposes.
15. Fees paid to employment agencies for temporary personnel provided to the insured.
16. Payroll does not include:
 - a. Tips and other gratuities received by employees;
 - b. Payments by an employer to group insurance or group pension plans for employees other than payments covered by Paragraph 5. above.

- c. The value of special rewards for individual invention or discovery;
- d. Dismissal or severance payments except for time worked or accrued vacation;
- e. The payroll of clerical office employees. Clerical office employees are those employees who work in an area which is physically separated by walls, floors or partitions from all other work areas of the insured and whose duties are strictly limited to keeping the insured's books or records or conducting correspondence, including any other employees engaged in clerical work in the same area;
- f. The payroll of salesmen, collectors or messengers who work principally away from the insured's premises. Salesmen, collectors or messengers are those employees engaged principally in any such duties away from the premises of the employer; Exception: This term does not apply to any employee whose duties include the delivery of any merchandise handled, treated or sold.
- g. The payroll of drivers and their helpers if their principal duties are to work on or in connection with automobiles.
- h. The payroll of aircraft pilots or co-pilots if their principal duties are to work on or in connection with aircraft in either capacity.
- i. The payroll of draftsmen if their duties are limited to office work only and who are engaged strictly as draftsmen in such a manner that they are not exposed to the operative hazards of the business. The payroll of these draftsmen shall be assigned to the classification "Draftsmen" - Code 91805.

17. Overtime

a. Definition

Overtime means those hours worked for which there is an increase in the rate of pay:

- (1) For work in any day or in any week in excess of the number of hours normally worked; or
- (2) For hours worked in excess of 8 hours in any day or 40 hours in any week; or

- (3) For work on Saturdays, Sundays or holidays.

In the case of guaranteed wage agreements, overtime means only those hours worked in excess of the number specified in such agreement.

b. Exclusion Of Overtime Payroll

The extra pay for overtime shall be excluded from the payroll on which premium is computed as indicated in (1) or (2), provided the insured's books and records are maintained to show overtime pay separately by employee and in summary by classification.

- (1) If the records show separately the extra pay earned for overtime, the entire extra pay shall be excluded.

- (2) If the records show the total pay earned for overtime (regular pay plus overtime pay) in one combined amount, 1/3 of this total pay shall be excluded. If double time is paid for overtime and the total pay for such overtime is recorded separately, 1/2 of the total pay for double time shall be excluded.

Exclusion of overtime pay does not apply to payroll assigned to the "Stevedoring" classifications.

The rates apply per \$1,000 of payroll.

"Gross Sales" (premium basis symbol s) means:

- a. The gross amount charged by the named insured, concessionaires of the named insured or by others trading under the insured's name for:

- (1) All goods or products, sold or distributed;
- (2) Operations performed during the policy period;
- (3) Rentals; and
- (4) Dues and fees.

b. Inclusions

The following items shall not be deducted from gross sales:

- (1) Foreign exchange discounts;
- (2) Freight allowance to customers;
- (3) Total sales of consigned goods and warehouse receipts;
- (4) Trade or cash discounts;
- (5) Bad debts; and
- (6) Repossession of items sold on installments (amount actually collected).

c. Exclusions

The following items shall be deducted from gross sales:

- (1) Sales or excise taxes which are collected and submitted to a governmental division;
- (2) Credits for repossessed merchandise and products returned. Allowances for damaged and spoiled goods;
- (3) Finance charges for items sold on installments;
- (4) Freight charges on sales if freight is charged as a separate item on customer's invoice;
- (5) Royalty income from patent rights or copyrights which are not product sales; and
- (6) Rental receipts from products liability coverage only.

- d. The rates apply per \$1,000 of gross sales.

"Units" (premium basis symbol u) means:

A single room or group of rooms intended for occupancy as separate living quarters by a family, by a group of unrelated persons living together, or by a person living alone. The rates apply per each unit

Premium basis symbol t means: Refer to classification description.

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V - Definitions.

SECTION I - COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III - Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments - Coverages A and B.

- b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
- (2) The "bodily injury" or "property damage" occurs during the policy period; and

- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II - Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
- (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:

(a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and

(b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:

(a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured's business; or

- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:

(i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

(ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than additional insured; or

(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";

(b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

(c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for;

(i) Any insured; or

(ii) Any person or organization for whom you may be legally responsible; or

(d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:

(i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;

(ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or

(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".

(e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

(2) Any loss, cost or expense arising out of any:

(a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

(b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

(1) A watercraft while ashore on premises you own or rent;

(2) A watercraft you do not own that is:

(a) Less than 26 feet long; and

(b) Not being used to carry persons or property for a charge;

(3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;

(4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or

(5) "Bodily injury" or "property damage" arising out of:

(a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or

(b) The operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

(1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or

(2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

i. War

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

(1) War, including undeclared or civil war;

(2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

(3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Damage To Property

"Property damage" to:

(1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;

(2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;

(3) Property loaned to you;

(4) Personal property in the care, custody or control of the insured;

(5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

(6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate rate limit of insurance applies to Damage To Premises Rented To You as described in Section III - Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

k. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

l. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a sub-contractor.

m. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

(1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or

(2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

n. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

o. Personal And Advertising Injury

"Bodily injury" arising out of "personal and advertising injury".

p. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

q. Distribution Of Material In Violation Of Statutes

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

Exclusions **c.** through **n.** do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section **III** - Limits Of Insurance.

COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

(1) The amount we will pay for damages is limited as described in Section **III** - Limits Of Insurance; and

(2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments - Coverages **A** and **B**.

- b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed to the "coverage territory" during the policy period.

2. Exclusions

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury."

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity.

c. Material Published Prior To Policy Period

"Personal and advertising injury" arising out of the oral or written publication of material whose first publication took place before the beginning of the policy period.

d. Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of any insured.

e. Contractual Liability

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

f. Breach Of Contract

"Personal and advertising injury" arising out of breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

g. Quality Or Performance Of Goods - Failure To Conform To Statements

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

h. Wrong Description Of Prices

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

i. Infringement Of Copyright, Patent, Trademark or Trade Secret

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your "advertisement".

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

j. Insureds In Media And Internet Type Businesses

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of web-sites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs **14.a.**, **b.** and **c.** of "personal and advertising injury" under the Definitions Section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

k. Electronic Chatrooms Or Bulletin Boards

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

l. Unauthorized Use Of Another's Name Or Product

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

m. Pollution

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

n. Pollution-Related

Any loss, cost or expense arising out of any:

- (1) Request, demand or order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

o. War

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

p. Distribution Of Material In Violation Of Statutes

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

COVERAGE C MEDICAL PAYMENTS

1. Insuring Agreement

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent;
- (2) On ways next to premises you own or rent; or
- (3) Because of your operations;

provided that:

- (a) The accident takes place in the "coverage territory" and during the policy period;
- (b) The expenses are incurred and reported to us within one year of the date of the accident; and
- (c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

2. Exclusions

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.

f. Products-Completed Operations Hazards

Included within the "products-completed operations hazard".

g. Coverage A Exclusions

Excluded under Coverage A.

SUPPLEMENTARY PAYMENTS - COVERAGES A AND B

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

- a. All expenses we incur.
- b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
- e. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.

- f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

- 2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- b. This insurance applies to such liability assumed by the insured;
- c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
- e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- f. The indemnitee:

(1) Agrees in writing to:

- (a) Cooperate with us in the investigation, settlement or defense of the "suit";
- (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
- (c) Notify any other insurer whose coverage is available to the indemnitee; and
- (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

(2) Provides us with written authorization to:

- (a) Obtain records and other information related to the "suit"; and
- (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.(2) of Section I - Coverage A - Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when we have used up the applicable limit of insurance in the payment of judgments or settlements or the conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

SECTION II - WHO IS AN INSURED

- 1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

- a.** Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

(a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

(b) To the spouse, child, parent, brother or sister of that co-"employee" as a consequence of Paragraph **(1)(a)** above;

(c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs **(1)(a)** or **(b)** above; or

(d) Arising out of his or her providing or failing to provide professional health care services.

(2) "Property damage" to property:

(a) Owned, occupied or used by,

(b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by

you, any of your "employees", "volunteer workers," any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Any person or organization having proper temporary custody of your property if you die, but only:

(1) With respect to liability arising out of the maintenance or use of that property; and

(2) Until your legal representative has been appointed.

d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III - LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

a. Insureds;

b. Claims made or "suits" brought; or

c. Persons or organizations making claims or bringing "suits".

2. The General Aggregate Limit is the most we will pay for the sum of:

a. Medical expenses under Coverage **C**;

b. Damages under Coverage **A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and

c. Damages under Coverage **B**.

3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage **A** for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".

4. Subject to Paragraph 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage **B** for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.

5. Subject to Paragraph 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:

a. Damages under Coverage **A**; and

b. Medical expenses under Coverage **C**

because of all "bodily injury" and "property damage" arising out of any one "occurrence".

6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage **A** for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.

7. Subject to Paragraph 5. above, the Medical Expense Limit is the most we will pay under Coverage **C** for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

(1) How, when and where the "occurrence" or offense took place;

(2) The names and addresses of any injured persons and witnesses; and

(3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. If a claim is made or "suit" is brought against any insured, you must:

(1) Immediately record the specifics of the claim or "suit" and the date received; and

(2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. You and any other involved insured must:

(1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";

(2) Authorize us to obtain records and other information;

(3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and

(4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or

b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages **A** or **B** of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when Paragraph **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph **c.** below.

b. Excess Insurance

(1) This insurance is excess over:

(a) Any of the other insurance, whether primary, excess, contingent or on any other basis:

(i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(ii) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(iii) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or

(iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section **I** - Coverage **A** - Bodily Injury And Property Damage Liability.

(b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured by attachment of an endorsement.

(2) When this insurance is excess, we will have no duty under Coverages **A** or **B** to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

(3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

(a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(b) The total of all deductible and self-insured amounts under all that other insurance.

(4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. Premium Audit

a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.

b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date of the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.

c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. Representations

By accepting this policy, you agree:

a. The statements in the Declarations are accurate and complete;

b. Those statements are based upon representations you made to us; and

c. We have issued this policy in reliance upon your representations.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V - DEFINITIONS

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purposes of attracting customers or supporters. For the purposes of this definition:

- a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
- b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

2. "Auto" means:

- a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
- b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

4. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in Paragraph a. above; or
- c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in Paragraph a. above;
 - (2) The activities of a person whose home is in the territory described in Paragraph a. above, but is away for a short time on your business; or
 - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in Paragraph a. above or in a settlement we agree to.

5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.

7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.

8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:

- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
- b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by the repair, replacement, adjustment or removal of "your product" or "your work" or your fulfilling the terms of the contract or agreement.

9. "Insured contract" means:

- a.** A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b.** A sidetrack agreement;
- c.** Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d.** An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e.** An elevator maintenance agreement;
- f.** That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph **f.** does not include that part of any contract or agreement:

- (1)** That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- (2)** That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a)** Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b)** Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3)** Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in **(2)** above and supervisory, inspection, architectural or engineering activities.

10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

11. "Loading or unloading" means the handling of property:

- a.** After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
- b.** While it is in or on an aircraft, watercraft or "auto"; or
- c.** While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- a.** Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b.** Vehicles maintained for use solely on or next to premises you own or rent;
- c.** Vehicles that travel on crawler treads;
- d.** Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - (1)** Power cranes, shovels, loaders, diggers or drills; or
 - (2)** Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e.** Vehicles not described in Paragraph **a.**, **b.**, **c.** or **d.** above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - (1)** Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2)** Cherry pickers and similar devices used to raise or lower workers;

- f. Vehicles not described in Paragraph **a.**, **b.**, **c.** or **d.** above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

(1) Equipment designed primarily for:

(a) Snow removal;

(b) Road maintenance, but not construction or resurfacing; or

(c) Street cleaning;

(2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

(3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

14. "Personal and advertising injury" means injury, other than "bodily injury", arising out of one or more of the following offenses:

- a.** False arrest, detention or imprisonment;
- b.** Malicious prosecution;
- c.** The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
- d.** Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- e.** Oral or written publication, in any manner, of material that violates a person's right of privacy;

- f. The use of another's advertising idea in your "advertisement"; or

- g. Infringing upon another's copyright, trade dress or slogan in your "advertisement."

15. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

16. "Products-completed operations hazard":

- a.** Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

(1) Products that are still in your physical possession; or

(2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:

(a) When all of the work called for in your contract has been completed.

(b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.

(c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- b.** Does not include "bodily injury" or "property damage" arising out of:

(1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;

(2) The existence of tools, uninstalled equipment or abandoned or unused materials; or

(3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.

17. "Property damage" means:

- a.** Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b.** Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, factors or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage", "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

- a.** An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- b.** Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

19. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

20. "Volunteer worker" means a person who is not your "employee," and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

21. "Your product":

a. Means:

- (1)** Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

(a) You;

(b) Others trading under your name; or

(c) A person or organization whose business or assets you have acquired; and

- (2)** Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

- (1)** Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and

- (2)** The providing of or failure to provide warnings or instructions.

- c.** Does not include vending machines or other property rented to or located for the use of others but not sold.

22. "Your work":

a. Means:

- (1)** Work or operations performed by you or on your behalf; and

- (2)** Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

- (1)** Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and

- (2)** The providing of or failure to provide warnings or instructions.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT - CONTRACTUAL LIABILITY

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

PROVISIONS

1. The following is added to Exclusion **b.**, **Contractual Liability**, in Paragraph **2.**, **Exclusions**, of **SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

Paragraph **(2)** does not apply to any damages arising out of the:

- a. Sole negligence of the indemnitee; or
 - b. Ownership, operation, chartering, renting, maintenance, use, or entrustment to others of any aircraft, other than any "unmanned aircraft" insured under this Coverage Part.
2. The following is added to the **DEFINITIONS** Section:

"Unmanned aircraft" means an aircraft that is not designed, manufactured, or modified after it is manufactured, to be controlled directly by a person from within or on the aircraft.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DEDUCTIBLE LIABILITY INSURANCE

*This endorsement is **EFFECTIVE:** 08/20/2021

*and is part of Policy Number: WS456821

*issued to: City of Birmingham

*Entry optional if shown in the Policy Declarations. If no entry is shown, the effective date of the endorsement is the same as the effective date of the policy.

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART**

SCHEDULE OF DEDUCTIBLES

Coverage	Amount of Deductible		
Bodily Injury Liability	\$		Each Claim
	\$		Each Occurrence
Property Damage Liability	\$		Each Claim
	\$		Each Occurrence
Bodily Injury Liability and Property Damage Liability Combined	\$	500	Each Claim
	\$		Each Occurrence
Personal and Advertising Injury Liability	\$	500	Each Claim

PROVISIONS

The following Section is added:

DEDUCTIBLE LIABILITY INSURANCE

1. Our obligation to pay damages for Bodily Injury Liability, Property Damage Liability, and Personal and Advertising Injury Liability on your behalf applies only to the amount of damages in excess of any applicable deductible amount shown in the Schedule Of Deductibles.
2. The applicable limit of insurance will be reduced by the amount of any damages within the deductible amount. Any aggregate limit will not be reduced by the application of the deductible amount.
3. The deductible amount will also apply towards handling, investigation, adjustment, and legal expenses, even when no payment is made to the claimant, when a compromise settlement is reached, or when the claim is denied.
4. The deductible amount shown in the Schedule Of Deductibles applies as follows:
 - a. Each Claim. If the deductible amount is shown as Each Claim, the deductible amount applies as follows:
 - (1) Under Bodily Injury Liability, to all damages because of "bodily injury" sustained by any one person as a result of any one "occurrence", "assault or battery offense" or "abuse or molestation offense".
 - (2) Under Property Damage Liability, to all damages because of "property damage" sustained by any one person or organization as a result of any one "occurrence" or "assault or battery offense".

(3) Under Bodily Injury Liability and Property Damage Liability combined, to all damages because of "bodily injury" and "property damage" sustained by any one person or organization as a result of any one "occurrence", "assault or battery offense" or "abuse or molestation offense".

(4) Under Personal and Advertising Injury Liability, to all damages because of "personal and advertising injury" sustained by any one person or organization.

b. Each Occurrence. If the deductible amount is shown as Each Occurrence, the deductible amount applies as follows:

(1) Under Bodily Injury Liability, to the sum of all damages because of "bodily injury" as the result of any one "occurrence", "assault or battery offense" or "abuse or molestation offense" regardless of the number of persons or organizations who sustain damages because of that "occurrence", "assault or battery offense" or "abuse or molestation offense".

(2) Under Property Damage Liability, to the sum of all damages because of "property damage" as the result of any one "occurrence" or "assault or battery offense" regardless of the number of persons or organizations who sustain damages because of that "occurrence" or "assault or battery offense".

(3) Under Bodily Injury Liability and Property Damage Liability combined, to the sum of all damages because of all "bodily injury" and "property damage" as the result of any one "occurrence", "assault or battery offense" or "abuse or molestation offense" regardless of the number of persons or organizations who sustain damages because of that "occurrence", "assault or battery offense" or "abuse or molestation offense".

5. The terms of this insurance, including those with respect to:

a. Our right and duty to defend the insured against any "suits" seeking those damages; and

b. Your duties in the event of an "occurrence", offense, claim or "suit";

apply irrespective of the application of the deductible amount.

6. We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you will promptly reimburse us for the part of the deductible amount paid by us.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - MECHANICAL AMUSEMENT RIDE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

PROVISIONS

1. The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

Mechanical Amusement Ride

"Bodily injury" or "property damage" to any person arising out of the ownership, entrustment to others, maintenance, operation or use of any mechanical amusement ride.

2. The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I - COVERAGES - COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**:

Mechanical Amusement Ride

"Personal and advertising injury" to any person arising out of the ownership, entrustment to others, maintenance, operation or use of any mechanical amusement ride.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**TOTAL POLLUTION EXCLUSION WITH EXCEPTIONS FOR
BUILDING HEATING, COOLING, DEHUMIDIFYING AND PERSONAL HOT
WATER HEATING EQUIPMENT AND HOSTILE FIRE**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

PROVISIONS

- 1. The following replaces Exclusion f., *Pollution*, in Paragraph 2. of SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY:**

f. *Pollution*

- (1)** "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants".

This paragraph does not apply to:

- (a)** "Bodily injury" if sustained within a building which is or was at any time owned or occupied by, or rented or loaned to, any insured and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or produced by or originating from equipment that is used to heat water for personal use by the building's occupants or their guests; or
- (b)** "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire" unless that "hostile fire" occurred or originated:
 - (i)** At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste; or
 - (ii)** At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are or were at any time performing operations to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

- (2)** Any loss, cost or expense arising out of any:

- (a)** Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (b)** Claim or "suit" by or on behalf of a government authority or others because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

- 2. The following replaces the last paragraph of Paragraph 2., *Exclusions*, of SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY:**

Exclusions **c.** through **e.** and **g.** through **n.** do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in **SECTION III - LIMITS OF INSURANCE**.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - VOLUNTARY LABOR

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

PROVISIONS

1. The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

Voluntary Labor

"Bodily injury" or "property damage" arising out of work performed on your behalf by any person loaned to or volunteering services to you.

2. The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I - COVERAGES - COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**:

Voluntary Labor

"Personal and advertising injury" arising out of work performed on your behalf by any person loaned to or volunteering services to you.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - INJURY TO EMPLOYEES, WORKERS OR CONTRACTED PERSONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- 1. The following exclusion is added to Paragraph 2., Exclusions, of SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY:**

Bodily Injury To Employees, Workers Or Contracted Persons

This insurance does not apply to "bodily injury" to:

- (1)** Any person who is an "employee", "leased worker", "temporary worker" or "volunteer worker" of you or any insured arising out of and in the course of:
 - (a)** Employment by you or any insured; or
 - (b)** Performing duties related to the conduct of your business or any insured's business;
- (2)** Any person who contracted with you or with any insured for the performance of services, whether the services are to be performed by or for you, or by or for any insured, arising out of and in the course of performing duties related to the conduct of your business or any insured's business;
- (3)** Any person who is employed by, is leased to, or contracted with any other person or any organization that:
 - (a)** Contracted with you or with any insured for the performance of services, whether the services are to be performed by or for that other person or organization; or
 - (b)** Contracted with others on your behalf for the performance of services, whether the services are to be performed by or for that other person or organization;arising out of and in the course of employment by, or in the course of performing duties for, that other person or organization and while performing the contracted services;
- (4)** The spouse, child, parent, brother or sister of any of those persons as a consequence of the "bodily injury" described in Paragraphs **(1)**, **(2)** or **(3)** above.

For the purposes of this exclusion, contracted includes entering into an oral or written contract.

This exclusion applies:

- (1)** Whether the insured may be liable as an employer or in any other capacity; and
- (2)** Whether the insured may have any obligation to share damages with or repay someone else who must pay damages because of the injury.

- 2. The following exclusion is added to Paragraph 2., Exclusions, of SECTION I - COVERAGES - COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY:**

Injury To Employees, Workers Or Contracted Persons

This insurance does not apply to "personal and advertising injury" to:

- (1)** Any person who is an "employee", "leased worker", "temporary worker" or "volunteer worker" of you or any insured arising out of and in the course of:
 - (a)** Employment by you or any insured; or

(b) Performing duties related to the conduct of your business or any insured's business;

(2) Any person who contracted with you or with any insured for the performance of services, whether the services are to be performed by or for you, or by or for any insured, arising out of and in the course of performing duties related to the conduct of your business or any insured's business;

(3) Any person who is employed by, is leased to, or contracted with any other person or any organization that:

(a) Contracted with you or with any insured for the performance of services, whether the services are to be performed by or for that other person or organization; or

(b) Contracted with others on your behalf for the performance of services, whether the services are to be performed by or for that other person or organization;

arising out of and in the course of employment by, or in the course of performing duties for, that other person or organization and while performing the contracted services; or

(4) The spouse, child, parent, brother or sister of any of those persons as a consequence of the "personal and advertising injury" described in Paragraphs **(1)**, **(2)** or **(3)** above.

For the purposes of this exclusion, contracted includes entering into an oral or written contract.

This exclusion applies:

(1) Whether the insured may be liable as an employer or in any other capacity; and

(2) Whether the insured may have any obligation to share damages with or repay someone else who must pay damages because of the injury.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - SPECIAL EVENTS WITH EXCEPTION FOR SCHEDULED SPECIAL EVENTS

*This endorsement is **EFFECTIVE** 08/20/2021

*and is part of Policy Number: WS456821

*issued to: City of Birmingham

*Entry optional if shown in the Policy Declarations. If no entry is shown, the effective date of the endorsement is the same as the effective date of the policy.

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

PROVISIONS

1. The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

Special Events

"Bodily injury" or "property damage" arising out of any "special event".

This exclusion does not apply to "bodily injury" or "property damage" arising out of any "special event" designated in the Schedule Of Special Events.

2. The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I - COVERAGES - COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**:

Special Events

"Personal and advertising injury" arising out of any "special event".

This exclusion does not apply to "personal and advertising injury" arising out of any "special event" designated in the Schedule Of Special Events.

3. The following is added to the **DEFINITIONS** Section:

"Special event" means an event that is:

- a. Of a different type than the usual operations, programs or activities included within the classification shown on the Declarations;
- b. One-time or infrequently occurring; and
- c. Of short term duration.

SCHEDULE OF SPECIAL EVENTS

Special Event	Location	Dates
BIRMINGHAM CRUISE	Along Old Woodward Avenue between Bowers and Landen and on Haynes, between Woodward and Old Woodward, Birmingham, MI 48012	08/20/2021 - 08/22/2021

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMBINATION ENDORSEMENT

BODILY INJURY AND PROPERTY DAMAGE LIABILITY

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

PROVISIONS

A. AMENDMENT OF EXCLUSIONS

1. The following replaces Exclusion **c.**, **Liquor Liability**, in Paragraph 2. of **SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in:

- (a) The supervision, hiring, employment, training or monitoring of others by that insured; or
- (b) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol;

if the "occurrence" which caused the "bodily injury" or "property damage", involved that which is described in Paragraph (1), (2) or (3) above.

However, this exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

2. EXCLUSION - ELECTRONIC DATA

The following replaces Exclusion **p.**, **Electronic Data**, in Paragraph 2. of **SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

p. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

3. EXCLUSION - UNSOLICITED COMMUNICATION

The following replaces Exclusion **q.**, **Distribution Of Material In Violation Of Statutes**, in Paragraph 2. of **SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

q. Unsolicited Communication

"Bodily injury" or "property damage" arising out of any actual or alleged violation of any law that restricts or prohibits the sending, transmitting or distributing of "unsolicited communication".

4. EXCLUSION - ACCESS OR DISCLOSURE OF CONFIDENTIAL OR PERSONAL INFORMATION

The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

"Bodily injury" or "property damage" arising out of access to or disclosure of any person's or organization's confidential or personal information.

5. EXCLUSION - AIRCRAFT PRODUCTS AND GROUNDING

The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

Aircraft Products and Grounding

"Bodily injury" or "property damage" included in the "products-completed operations hazard" and arising out of any "aircraft product" or the "grounding" of any aircraft.

6. EXCLUSION - ASBESTOS

The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

Asbestos

- (1) "Bodily injury" or "property damage" arising out of the actual or alleged presence or actual, alleged or threatened dispersal of asbestos, asbestos fibers or products containing asbestos, provided that the "bodily injury" or "property damage" is caused or contributed to by the hazardous properties of asbestos.
- (2) "Bodily injury" or "property damage" arising out of the actual or alleged presence or actual, alleged or threatened dispersal of any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, chemicals and waste, and that are part of any claim or "suit" which also alleges any "bodily injury" or "property damage" described in Paragraph (1) above.
- (3) Any loss, cost or expense arising out of any:
 - (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, asbestos, asbestos fibers or products containing asbestos; or
 - (b) Claim or suit by or on behalf of any governmental authority or any other person or organization because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, asbestos, asbestos fibers or products containing asbestos.

7. EXCLUSION - DISCRIMINATION

The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

Discrimination

"Bodily injury" arising out of discrimination based upon a person's sex, sexual orientation, marital status, pregnancy, race, color, creed, religion, national origin, citizenship, veteran status, age, genetic information or physical or mental disability, or any other characteristic, attribute, trait, condition, or status that qualifies a person for protection against discrimination under federal, state or local law.

8. EXCLUSION - EMPLOYMENT-RELATED PRACTICES

The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

Employment-Related Practices

"Bodily injury" to:

- (1) A person, other than an "independent contractor", arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment or "temporary worker" status; or
 - (c) Employment-related practice, policy, act or omission related to that person's employment or "temporary worker" status, such as coercion, demotion, evaluation, reassignment, discipline, failure to promote or advance, harassment, humiliation, discrimination, libel, slander, violation of the person's right of privacy, malicious prosecution or false arrest, detention or imprisonment, regardless of whether such practice, policy, act or omission occurs, is applied or is committed before, during or after the time of that person's employment or "temporary worker" status; or
- (2) The spouse, child, parent, brother, sister, domestic partner or member of the household of that person as a consequence of "bodily injury" described in Paragraph (1) above.

This exclusion applies whether the insured may be held liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the "bodily injury".

9. EXCLUSION - FUNGI OR BACTERIA

The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

Fungi or Bacteria

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to the "bodily injury" or "property damage".
- (2) Any loss, cost or expense arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.

This exclusion does not apply to any "fungi" or bacteria that are, are on, or are contained in, a good or product intended for bodily consumption.

10. EXCLUSION - LEAD

The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

Lead

- (1) "Bodily injury" or "property damage" arising out of the actual or alleged presence or actual, alleged or threatened dispersal, release, ingestion, inhalation or absorption of lead, lead compounds or lead which is or was contained or incorporated into any material or substance.
- (2) Any loss, cost or expense arising out of any request, order or requirement to abate, mitigate, remediate, contain, remove or dispose of lead, lead compounds or materials or substances containing lead.

11. EXCLUSION - VIOLATION OF CONSUMER FINANCIAL PROTECTION LAWS

The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

Violation of Consumer Financial Protection Laws

"Bodily injury" or "property damage" arising out of any actual or alleged violation of a "consumer financial protection law", or any other "bodily injury" or "property damage" alleged in any claim or "suit" that also alleges any such violation.

12. EXCLUSION - SILICA OR SILICA-RELATED DUST

The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

Silica Or Silica-Related Dust

"Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, emission, release, escape, handling, contact with, exposure to or inhalation or respiration of "silica" or "silica-related dust". This includes, but is not limited to:

- (1) Any supervision, instructions, recommendations, warnings or advise given or which should have been given in connection with the above; and
- (2) Any obligation to share damages with or repay someone else who must pay damages because of such "bodily injury" or "property damage".

B. AMENDMENT OF LIMITS OF INSURANCE - NONCUMULATION OF EACH OCCURRENCE LIMIT

The following replaces Paragraph 5. of **SECTION III - LIMITS OF INSURANCE**:

5. Subject to Paragraph 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of all:

- a. Damages under Coverage **A** because of all "bodily injury" and "property damage"; and
- b. Medical expenses under Coverage **C** because of all "bodily injury";

arising out of any one "occurrence".

Noncumulation Of Each Occurrence Limit

If any one "occurrence" causes:

- a. "Bodily injury" or "property damage" to which this insurance applies; and
- b. "Bodily injury" or "property damage" to which commercial general liability coverage included in one or more prior or future policies issued to you by us, or any of our affiliated insurance companies, applies;

this policy's Each Occurrence Limit applicable to that "occurrence" also will be reduced by the amount of each payment made because of the "bodily injury" or "property damage" described in Paragraph **b.** above by us or any of our affiliated insurance companies under, and within the applicable limit of insurance of, each other applicable policy.

C. AMENDMENT OF CONDITIONS - OTHER INSURANCE

1. The following replaces the part of the first paragraph of Paragraph 4., **Other Insurance**, of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** that precedes Paragraph **a.**:

If valid and collectible other insurance is available to the insured for a loss we cover under Coverages **A** or **B** of this Coverage Part, our obligations are limited as described in Paragraphs **a.** and **b.** below.

As used anywhere in this Coverage Part, other insurance means insurance, or the funding of losses, that is provided by, through or on behalf of:

- (i) Another insurance company;
- (ii) Us or any of our affiliated insurance companies, except when the Noncumulation of Each Occurrence Limit provision of Paragraph 5. of Section III - Limits Of Insurance applies or when the Noncumulation of Personal and Advertising Injury Limit provision of Paragraph 4. of Section III - Limits of Insurance applies if that provision is part of this policy;
- (iii) Any risk retention group;
- (iv) Any self-insurance method or program, including any failure to buy insurance, or decision to not buy insurance, for any reason, in which case the insured will be deemed to be the provider of other insurance; or
- (v) Any similar risk transfer or risk management method.

Other insurance does not include umbrella insurance, or excess insurance, that you bought specifically to apply in excess of the Limits of Insurance shown in the Declarations for this Coverage Part.

2. The following replaces Paragraph 4.b., **Excess Insurance**, of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**:

b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

- (1) That is Fire, Extended Coverage, Builder's Risk, Installation Risk, or similar coverage for "your work";
- (2) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
- (3) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;
- (4) If the loss arises out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft to the extent not subject to Exclusion g. of Section I - Coverage A - Bodily Injury And Property Damage Liability; or
- (5) That is available to the insured when the insured has been added as an additional insured by attachment of an endorsement under any other insurance or is any other insured that is not a named insured under such insurance.

When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any provider of other insurance has a duty to defend the insured against that "suit". If no provider of other insurance defends, we will undertake to do so, but we will be entitled to the insured's rights against all those providers of other insurance.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all such other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision.

D. AMENDMENT OF DEFINITIONS

1. COVERAGE TERRITORY

The following replaces the definition of "coverage territory" in the **DEFINITIONS** Section:

"Coverage territory" means:

- a.** The United States of America (including its territories and possessions), Puerto Rico and Canada;
 - b.** International waters or airspace, but only if:
 - (1)** The "bodily injury" or "property damage" is caused by an "occurrence" that takes place; or
 - (2)** The "personal and advertising injury" is caused by an offense committed;
in the course of travel or transportation between any places included in Paragraph **a.** above; or
 - c.** All other parts of the world if the injury or damage arises out of:
 - (1)** Goods or products made or sold by you in the territory described in Paragraph **a.** above;
 - (2)** The activities of a person whose home is in the territory described in Paragraph **a.** above, but is away for a short time on your business; or
 - (3)** "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication;
- provided that the insured's responsibility to pay damages is determined in a "suit" on the merits in the territory described in Paragraph **a.** above, or in a settlement we agree to.

2. LEASED WORKER

The following replaces the definition of "leased worker" in the **DEFINITIONS** Section:

"Leased worker" means a person leased to you by a labor leasing firm under an agreement between the hirer and labor leasing firm to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

3. LOADING OR UNLOADING

The following replaces the definition of "loading or unloading" in the **DEFINITIONS** Section:

"Loading or unloading" means the handling of any person or property:

- a.** After it is moved from the place where the person or property is accepted for movement into or onto an aircraft, watercraft or "auto";
- b.** While it is in or on an aircraft, watercraft or "auto"; or
- c.** While it is being moved from an aircraft, watercraft or "auto" to the place where the person or property is finally delivered.

However, "loading or unloading" does not include the movement of any person or property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

4. PROPERTY DAMAGE

The following replaces the definition of "property damage" in the **DEFINITIONS** Section:

"Property damage" means:

- a.** Physical damage to tangible property of others, including all resulting loss of use of that property. All such loss of use will be deemed to occur at the time of the physical damage that caused it; or

- b. Loss of use of tangible property of others that is not physically damaged. All such loss of use will be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, "electronic data" is not tangible property.

5. TEMPORARY WORKER

The following replaces the definition of "temporary worker" in the **DEFINITIONS** Section:

"Temporary worker" means a person who is hired to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

6. AIRCRAFT PRODUCT

The following is added to the **DEFINITIONS** Section:

"Aircraft product" means:

- a. Aircraft, including missile or spacecraft, and any ground support or control equipment used with any aircraft, missile or spacecraft;
- b. Any of "your products" manufactured for, used in connection with, or incorporated into aircraft, aircraft parts, aircraft equipment or aircraft accessories, including ground handling tools and equipment;
- c. Any of "your products" used for the purpose of guidance, navigation or direction of aircraft, whether an aircraft is in flight or on the ground; or
- d. Training aids, navigation charts, navigation aids, manuals, blueprints, engineering or other data or advice, and services and labor relating to such aircraft or products.

7. CONSUMER FINANCIAL IDENTITY INFORMATION

The following is added to the **DEFINITIONS** Section:

"Consumer financial identity information" means any of the following information for a person that is used or collected for the purpose of serving as a factor in establishing such person's eligibility for personal credit, insurance or employment, or for the purpose of conducting a business transaction:

- a. Part or all of the account number, the expiration date or the balance of any credit, debit, bank or other financial account;
- b. Information bearing on a person's credit worthiness, credit standing or credit capacity;
- c. Social security number;
- d. Driver's license number; or
- e. Birth date.

8. CONSUMER FINANCIAL PROTECTION LAW

The following is added to the **DEFINITIONS** Section:

"Consumer financial protection law" means:

- a. The Fair Credit Reporting Act (FCRA) and any of its amendments, including the Fair and Accurate Credit Transactions Act (FACTA);
- b. California's Song-Beverly Credit Card Act and any of its amendments; or
- c. Any other law or regulation that restricts or prohibits the collection, dissemination, transmission, distribution or use of "consumer financial identity information".

9. ELECTRONIC DATA

The following is added to the **DEFINITIONS** Section:

"Electronic data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

10. FUNGI

The following is added to the **DEFINITIONS** Section:

"Fungi" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi.

11. GROUNDING

The following is added to the **DEFINITIONS** Section:

"Grounding" means the withdrawal of one or more aircraft from flight operations or the imposition of speed, passenger or load restrictions on such aircraft, by reason of the actual, alleged or suspected existence of any defect, fault or condition in such aircraft or any part thereof:

- a. Sold, handled or distributed by the insured; or
- b. Manufactured, assembled or processed by any other person or organization:
 - (1) According to specifications, plans, suggestions, orders, or drawings of the insured; or
 - (2) With tools, machinery or other equipment furnished to such persons or organizations by the insured;

whether such aircraft so withdrawn or restricted are owned or operated by the same or different persons or organizations.

12. INDEPENDENT CONTRACTOR

The following is added to the **DEFINITIONS** Section:

"Independent contractor" means any person who is not the insured's "employee", "temporary worker" or "volunteer worker", but who performs duties related to the conduct of the insured's business because of a contract or agreement between the insured and that person for specified services.

13. SILICA

The following is added to the **DEFINITIONS** Section:

"Silica" means silicon dioxide (occurring in crystalline, amorphous and impure forms), silica particles, silica dust or silica compounds.

14. SILICA-RELATED DUST

The following is added to the **DEFINITIONS** Section:

"Silica-related dust" means a mixture or combination of "silica" and other dust particles.

15. UNSOLICITED COMMUNICATION

The following is added to the **DEFINITIONS** Section:

"Unsolicited communication" means any communication, in any form, that the recipient of such communication did not specifically request to receive.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - AIRCRAFT, AUTO OR WATERCRAFT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

PROVISIONS

1. The following replaces Exclusion **g.**, **Aircraft, Auto or Watercraft**, of **SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured, an agent of any insured, or an independent contractor providing services for or on behalf of any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured, an agent of any insured, or an independent contractor providing services for or on behalf of any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 26 feet long; and
 - (b) Not being used to carry any person or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided that the "auto" is not owned by or rented or loaned to you, any insured, any employee of the insured, any of your "volunteer workers" or any "volunteer workers" of the insured.
- (4) Liability assumed by you under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft, provided that the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement;
- (5) "Bodily injury" or "property damage" arising out of:
 - (a) The operation of any "supplementary machinery or equipment" that is attached to, or part of, a land vehicle that would qualify as "mobile equipment" under the definition of "mobile equipment" if such land vehicle were not:
 - (i) Subject to a compulsory or financial responsibility law, or other motor vehicle insurance law in the state where it is licensed or principally garaged; or
 - (ii) Designated as a covered "auto" under your automobile liability insurance; or
 - (b) The operation of any of the machinery or equipment listed in Paragraph **f.(2)** or **f.(3)** of the definition of "mobile equipment"; or
- (6) An aircraft chartered with a pilot to any insured. This exception does not apply if:
 - (a) The aircraft is owned by any insured; or
 - (b) Any insured is using the aircraft to carry any person or property for a charge.

2. The following is added to the **DEFINITIONS** Section:

"Supplementary machinery or equipment" means machinery or equipment designed for work, other than the transportation of any person or property on a public road. However, "supplementary machinery or equipment" does not include:

- a.** Any communication device, such as a radio or telephone; or
- b.** Any machinery or equipment that is designed to perform any function normal to the operation of the land vehicle during travel on public roads, such as a steering mechanism.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FEDERAL TERRORISM RISK INSURANCE ACT DISCLOSURE

This endorsement applies to the insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
CYBERFIRST ESSENTIALS GENERAL PROVISIONS FORM
CYBERFIRST GENERAL PROVISIONS FORM
EMPLOYEE BENEFITS LIABILITY COVERAGE PART
EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE PART
EMPLOYMENT PRACTICES LIABILITY⁺ WITH IDENTITY FRAUD EXPENSE REIMBURSEMENT
COVERAGE PART
ENVIRONMENTAL HAZARD POLICY
EXCESS FOLLOW-FORM AND UMBRELLA LIABILITY INSURANCE
EXCESS (FOLLOWING FORM) LIABILITY INSURANCE
LAW ENFORCEMENT LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
MANUFACTURERS ERRORS AND OMISSIONS LIABILITY COVERAGE PART
MEDFIRST PRODUCTS/COMPLETED OPERATIONS, ERRORS AND OMISSIONS, AND
INFORMATION SECURITY LIABILITY COVERAGE FORM
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
PUBLIC ENTITY MANAGEMENT LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
SPECIAL PROTECTIVE AND HIGHWAY LIABILITY POLICY - NEW YORK DEPARTMENT OF
TRANSPORTATION
TRIBAL BUSINESS MANAGEMENT LIABILITY COVERAGE PART
Any other Commercial Liability coverage included in this policy that is subject to the federal Terrorism
Risk Insurance Act of 2002 as amended

PROVISIONS

The federal Terrorism Risk Insurance Act of 2002 as amended ("TRIA") establishes a program under which the Federal Government may partially reimburse "Insured Losses" (as defined in TRIA) caused by "Acts Of Terrorism" (as defined in TRIA). Act Of Terrorism is defined in Section 102(1) of TRIA to mean any act that is certified by the Secretary of the Treasury - in consultation with the Secretary of Homeland Security and the Attorney General of the United States - to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States Mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

The Federal Government's share of compensation for such Insured Losses is 80% of the amount of such Insured Losses in excess of each Insurer's "Insurer Deductible" (as defined in TRIA), subject to the "Program Trigger" (as defined in TRIA).

In no event, however, will the Federal Government be required to pay any portion of the amount of such Insured Losses occurring in a calendar year that in the aggregate exceeds \$100 billion, nor will any Insurer be required to pay any portion of such amount provided that such Insurer has met its Insurer Deductible. Therefore, if such Insured Losses occurring in a calendar year exceed \$100 billion in the aggregate, the amount of any payments by the Federal Government and any coverage provided by this policy for losses caused by Acts Of Terrorism may be reduced.

For each coverage provided by this policy that applies to such Insured Losses, the charge for such Insured Losses is included in the premium for such coverage. The charge for such Insured Losses that has been included for each such coverage is the percentage of the premium for such coverage indicated below, and does not include any charge for the portion of such Insured Losses covered by the Federal Government under TRIA:

1%.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMBINATION ENDORSEMENT

PERSONAL AND ADVERTISING INJURY LIABILITY

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

PROVISIONS

A. AMENDMENT OF EXCLUSIONS

1. EXCLUSION - ACCESS OR DISCLOSURE OF CONFIDENTIAL OR PERSONAL INFORMATION

The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I - COVERAGES - COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**:

Access Or Disclosure Of Confidential Or Personal Information

"Personal and advertising injury" arising out of any access to or disclosure of any person's or organization's confidential or personal information.

2. EXCLUSION - KNOWING VIOLATION OF RIGHTS OF ANOTHER

The following replaces Exclusion **a.**, **Knowing Violation Of Rights Of Another**, in Paragraph 2. of **SECTION I - COVERAGES - COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**:

a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

This exclusion does not apply to "personal and advertising injury" caused by malicious prosecution.

3. EXCLUSION - MATERIAL PUBLISHED WITH KNOWLEDGE OF FALSITY

The following replaces Exclusion **b.**, **Material Published With Knowledge Of Falsity**, in Paragraph 2. of **SECTION I - COVERAGES - COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**:

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral or written publication, including publication by electronic means, of material, if done by or at the direction of the insured with knowledge of its falsity.

4. EXCLUSION - MATERIAL PUBLISHED OR USED PRIOR TO POLICY PERIOD

The following replaces Exclusion **c.**, **Material Published Prior To Policy Period**, in Paragraph 2. of **SECTION I - COVERAGES - COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**:

c. Material Published Or Used Prior To Policy Period

"Personal and advertising injury" arising out of:

- (1)** Oral or written publication, including publication by electronic means, of material whose first publication took place prior to the policy period; or
- (2)** Infringement of copyright, "title" or "slogan" in your "advertisement" whose first infringement in your "advertisement" was committed prior to the policy period.

5. EXCLUSION - BREACH OF CONTRACT

The following replaces Exclusion f., **Breach Of Contract**, in Paragraph 2. of **SECTION I - COVERAGES - COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**:

f. Breach Of Contract

"Personal and advertising injury" arising out of a breach of contract.

6. EXCLUSION - INTELLECTUAL PROPERTY

The following replaces Exclusion i., **Infringement Of Copyright, Patent, Trademark Or Trade Secret**, in Paragraph 2. of **SECTION I - COVERAGES - COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**:

i. Intellectual Property

"Personal and advertising injury" arising out of any actual or alleged infringement or violation of any of the following rights or laws, or any other "personal and advertising injury" alleged in any claim or suit that also alleges any such infringement or violation:

- (1) Copyright;
- (2) Patent;
- (3) Trade dress;
- (4) Trade name;
- (5) Trademark;
- (6) Trade secret; or
- (7) Other intellectual property rights or laws.

This exclusion applies regardless of whether the allegation of infringement or violation of any of these rights or laws is made by any person or organization making the claim or bringing the suit, by any insured or any other party to the claim or suit.

This exclusion does not apply to:

- (1) "Personal and advertising injury" arising out of any actual or alleged infringement or violation of another's copyright, "title" or "slogan" in your "advertisement"; or
- (2) Any other "personal and advertising injury" alleged in any claim or "suit" that also alleges any such infringement or violation of another's copyright, "title" or "slogan" in your "advertisement".

7. EXCLUSION - INSUREDS IN MEDIA AND INTERNET TYPE BUSINESSES

The following replaces Exclusion j., **Insureds In Media And Internet Type Businesses**, in Paragraph 2. of **SECTION I - COVERAGES - COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**:

j. Insureds In Media And Internet Type Businesses

"Personal and advertising injury" arising out of an offense committed by an insured whose business is:

- (1) Advertising, "broadcasting" or publishing;
- (2) Designing or determining content of web-sites for others; or
- (3) An Internet search, access, content or service provider.

This exclusion does not apply to Paragraphs **a.(1), (2) and (3)** of the definition of "personal and advertising injury".

For the purposes of this exclusion:

- (1) Creating and producing correspondence written in the conduct of your business, bulletins, financial or annual reports, or newsletters about your goods, products or services will not be considered the business of publishing; and
- (2) The placing of frames, borders or links, or advertising, for you or others anywhere on the Internet will not, by itself, be considered the business of advertising, "broadcasting" or publishing.

8. EXCLUSION - POLLUTION-RELATED

The following replaces Paragraph **(2)** of Exclusion **n., Pollution-Related**, in Paragraph **2.** of **SECTION I - COVERAGES - COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**:

- (2) Claim or suit by or on behalf of any governmental authority or any other person or organization because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

9. EXCLUSION - WAR

The following replaces Exclusion **o., War**, in Paragraph **2.** of **SECTION I - COVERAGES - COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**:

o. War

"Personal and advertising injury" arising out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

10. EXCLUSION - UNSOLICITED COMMUNICATION

The following exclusion replaces Exclusion **p., Distribution Of Material In Violation Of Statutes**, in Paragraph **2., Exclusions**, of **SECTION I - COVERAGES - COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**:

p. Unsolicited Communication

"Personal and advertising injury" arising out of any actual or alleged violation of any law that restricts or prohibits the sending, transmitting or distributing of "unsolicited communication".

11. EXCLUSION - ASBESTOS

The following exclusion is added to Paragraph **2., Exclusions**, of **SECTION I - COVERAGES - COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**:

Asbestos

- (1) "Personal and advertising injury" arising out of the actual or alleged presence or actual, alleged or threatened dispersal of asbestos, asbestos fibers or products containing asbestos, provided that the "personal and advertising injury" is caused or contributed to by the hazardous properties of asbestos.
- (2) "Personal and advertising injury" arising out of the actual or alleged presence or actual, alleged or threatened dispersal of any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, chemicals and waste, and that are part of any claim or "suit" which also alleges any "personal and advertising injury" described in Paragraph **(1)** above.

(3) Any loss, cost or expense arising out of any:

- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, asbestos, asbestos fibers or products containing asbestos; or
- (b) Claim or suit by or on behalf of any governmental authority or any other person or organization because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, asbestos, asbestos fibers or products containing asbestos.

12. EXCLUSION - DISCRIMINATION

The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I - COVERAGES - COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**:

Discrimination

"Personal and advertising injury" arising out of discrimination based upon a person's sex, sexual orientation, marital status, pregnancy, race, color, creed, religion, national origin, citizenship, veteran status, age, genetic information or physical or mental disability, or any other characteristic, attribute, trait, condition, or status that qualifies a person for protection against discrimination under federal, state or local law.

13. EXCLUSION - EMPLOYMENT-RELATED PRACTICES

The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I - COVERAGES - COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**:

Employment-Related Practices

"Personal and advertising injury" to:

- (1) A person, other than an "independent contractor", arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment or "temporary worker" status; or
 - (c) Employment-related practice, policy, act or omission related to that person's employment or "temporary worker" status, such as coercion, demotion, evaluation, reassignment, discipline, failure to promote or advance, harassment, humiliation, discrimination, libel, slander, violation of the person's right of privacy, malicious prosecution or false arrest, detention or imprisonment, regardless of whether such practice, policy, act or omission occurs, is applied or is committed before, during or after the time of that person's employment or "temporary worker" status; or
- (2) The spouse, child, parent, brother, sister, domestic partner or member of the household of that person as a consequence of "personal and advertising injury" described in Paragraph (1) above.

This exclusion applies whether the insured may be held liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the "personal and advertising injury".

14. EXCLUSION - FUNGI OR BACTERIA

The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I - COVERAGES - COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**:

Fungi or Bacteria

- (1) "Personal and advertising injury" arising out of the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to the "personal and advertising injury".

- (2) Any loss, cost or expense arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.

15. EXCLUSION - LEAD

The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I - COVERAGES - COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**:

Lead

- (1) "Personal and advertising injury" arising out of the actual or alleged presence or actual, alleged or threatened dispersal, release, ingestion, inhalation or absorption of lead, lead compounds or lead which is or was contained or incorporated into any material or substance.
- (2) Any loss, cost or expense arising out of any request, order or requirement to abate, mitigate, remediate, contain, remove or dispose of lead, lead compounds or materials or substances containing lead.

16. EXCLUSION - VIOLATION OF CONSUMER FINANCIAL PROTECTION LAWS

The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I - COVERAGES - COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**:

Violation of Consumer Financial Protection Laws

"Personal and advertising injury" arising out of any actual or alleged violation of a "consumer financial protection law", or any other "personal and advertising injury" alleged in any claim or "suit" that also alleges any such violation.

17. EXCLUSION - SILICA OR SILICA-RELATED DUST

The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I - COVERAGES - COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**:

Silica Or Silica-Related Dust

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, emission, release, escape, handling, contact with, exposure to or inhalation or respiration of "silica" or "silica-related dust". This includes, but is not limited to:

- (1) Any supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with the above; and
- (2) Any obligation to share damages with or repay someone else who must pay damages because of such "personal and advertising injury".

B. AMENDMENT OF CONTRACTUAL LIABILITY EXCLUSION - EXCEPTION FOR PERSONAL AND ADVERTISING INJURY ASSUMED IN AN INSURED CONTRACT

1. The following is added to Exclusion e., **Contractual Liability**, in Paragraph 2. of **SECTION I - COVERAGES - COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**:

This exclusion also does not apply to liability for damages because of "personal and advertising injury" assumed by you in a contract or agreement that is an "insured contract", provided that the "personal and advertising injury" is caused by an offense committed subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed by you in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured will be deemed to be damages because of "personal and advertising injury", provided that:

- (1) Liability to such party for, or for the cost of, that party's defense has also been assumed by you in the same "insured contract"; and

(2) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

2. The following replaces Paragraph 2.d. of **SUPPLEMENTARY PAYMENTS - COVERAGES A AND B** of **SECTION I - COVERAGES**:

d. The allegations in the "suit" and the information we know about the "occurrence" or offense are such that no conflict appears to exist between your interests and the interests of the indemnitee;

3. The following replaces the third sentence of Paragraph 2. of **SUPPLEMENTARY PAYMENTS - COVERAGES A AND B**:

Notwithstanding the provisions of Paragraph 2.b.(2) of Section I - Coverage A - Bodily Injury And Property Damage Liability, or the provisions of Paragraph 2.e. of Section I - Coverage B - Personal and Advertising Injury Liability, such payments will not be deemed to be damages because of "bodily injury", "property damage" or "personal and advertising injury", and will not reduce the limits of insurance.

4. The following replaces the first paragraph of Paragraph f. of the definition of "insured contract" in the **DEFINITIONS** Section:

f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury", "property damage" or "personal and advertising injury" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

C. AMENDMENT OF LIMITS OF INSURANCE - NONCUMULATION OF PERSONAL AND ADVERTISING LIABILITY LIMIT

The following is added to Paragraph 4. of **SECTION III - LIMITS OF INSURANCE**:

Noncumulation Of Personal And Advertising Injury Limit

If any one person or organization sustains damages because of:

- a. "Personal and advertising injury" to which this insurance applies; and
- b. "Personal and advertising injury" coverage included in one or more prior or future policies issued to you by us, or any of our affiliated insurance companies, applies;

this policy's Personal and Advertising Injury Limit applicable to that person or organization also will be reduced by the amount of each payment made for damages because of the "personal and advertising injury" described in Paragraph b. above by us or any of our affiliated insurance companies under, and within the applicable limit of insurance of, each other applicable policy.

D. AMENDMENT OF DEFINITIONS

1. PERSONAL AND ADVERTISING INJURY

The following replaces the definition of "personal and advertising injury" in the **DEFINITIONS** Section:

"Personal and advertising injury":

- a. Means injury caused by one or more of the following offenses committed by or on behalf of the insured:
 - (1) False arrest, detention or imprisonment, provided that the claim is made or the "suit" is brought by a person who claims to have been falsely arrested, detained or imprisoned;
 - (2) Malicious prosecution, provided that the claim is made or the "suit" is brought by a person or organization that claims to have been maliciously prosecuted;

- (3) The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, provided that the wrongful eviction, wrongful entry or invasion of the right of private occupancy is committed by or on behalf of the owner, landlord or lessor of that room, dwelling or premises;
 - (4) Oral or written publication, including publication by electronic means, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services, provided that the claim is made or the "suit" is brought by a person or organization that claims to have been slandered or libeled, or that claims to have had its goods, products or services disparaged;
 - (5) Oral or written publication, including publication by electronic means, of material that:
 - (a) Appropriates a person's name, voice, photograph or likeness; or
 - (b) Unreasonably places a person in a false light; or
 - (6) Infringement of copyright, "title" or "slogan" in your "advertisement", provided that the claim is made or the "suit" is brought by a person or organization that claims ownership of such copyright, "title" or "slogan".
- b. Includes "bodily injury" caused by one or more of the offenses described in Paragraph a. above.

2. BROADCASTING

The following is added to the **DEFINITIONS** Section:

"Broadcasting" means transmitting any audio or visual material for any purpose:

- a. By radio or television; or
- b. In, by or with any other electronic means of communication, such as the Internet, if that material is part of:
 - (1) Radio or television programming being transmitted;
 - (2) Other entertainment, educational, instructional, music or news programming being transmitted; or
 - (3) Advertising transmitted with any of such programming.

3. CONSUMER FINANCIAL IDENTITY INFORMATION

The following is added to the **DEFINITIONS** Section:

"Consumer financial identity information" means any of the following information for a person that is used or collected for the purpose of serving as a factor in establishing such person's eligibility for personal credit, insurance or employment, or for the purpose of conducting a business transaction:

- a. Part or all of the account number, the expiration date or the balance of any credit, debit, bank or other financial account;
- b. Information bearing on a person's credit worthiness, credit standing or credit capacity;
- c. Social security number;
- d. Driver's license number; or
- e. Birth date.

4. CONSUMER FINANCIAL PROTECTION LAW

The following is added to the **DEFINITIONS** Section:

"Consumer financial protection law" means:

- a. The Fair Credit Reporting Act (FCRA) and any of its amendments, including the Fair and Accurate Credit Transactions Act (FACTA);
- b. California's Song-Beverly Credit Card Act and any of its amendments; or
- c. Any other law or regulation that restricts or prohibits the collection, dissemination, transmission, distribution or use of "consumer financial identity information".

5. FUNGI

The following is added to the **DEFINITIONS** Section:

"Fungi" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi.

6. INDEPENDENT CONTRACTOR

The following is added to the **DEFINITIONS** Section:

"Independent contractor" means any person who is not the insured's "employee", "temporary worker" or "volunteer worker", but who performs duties related to the conduct of the insured's business because of a contract or agreement between the insured and that person for specified services.

7. SILICA

The following is added to the **DEFINITIONS** Section:

"Silica" means silicon dioxide (occurring in crystalline, amorphous and impure forms), silica particles, silica dust or silica compounds.

8. SILICA-RELATED DUST

The following is added to the **DEFINITIONS** Section:

"Silica-related dust" means a mixture or combination of "silica" and other dust particles.

9. SLOGAN

The following is added to the **DEFINITIONS** Section:

"Slogan":

- a. Means a phrase that others use for the purpose of attracting attention in their advertising.
- b. Does not include a phrase used as, or in, the name of:
 - (1) Any person or organization, other than you; or
 - (2) Any business, or any of the premises, goods, products, services or work, of any person or organization, other than you.

10. TITLE

The following is added to the **DEFINITIONS** Section:

"Title" means a name of a literary or artistic work.

11. UNSOLICITED COMMUNICATION

The following is added to the **DEFINITIONS** Section:

"Unsolicited communication" means any communication, in any form, that the recipient of such communication did not specifically request to receive.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - CONCERT PERFORMERS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

PROVISIONS

1. The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

Concert Performers

"Bodily injury" or "property damage" to any person arising out of that person's practicing for or performing in any concert.

2. The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I - COVERAGES - COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**:

Concert Performers

"Personal and advertising injury" to any person arising out of that person's practicing for or performing in any concert.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONDITIONS - REQUIRED CERTIFICATES OF INSURANCE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following is added to **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:**

Certificates of Insurance

- a.** You must keep certificates of insurance on file for all contractors or subcontractors who work for you or perform work on your behalf showing Commercial General Liability Insurance is in effect with coverage and limits equal to or greater than the coverage and limits carried by you under this policy.
- b.** An additional premium charge will be made for your contractors and subcontractors for which you do not have certificates of insurance as described in **a.** above. Premium will be developed by applying the total cost of work let or sublet to the appropriate premises/operations and products/completed operations rate (if applicable) for the type of work permitted.
- c.** Failure to secure certificates of insurance does not alter the coverage provided by this policy.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - CROSS LIABILITY - BROAD FORM

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

PROVISIONS

1. The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

Cross Liability

"Bodily injury" or "property damage" sustained or alleged by:

- (1) Any business enterprise in which any insured owns an interest, is a partner, or which is a parent, affiliate, subsidiary or sister company of any insured;
- (2) Any business enterprise directly or indirectly controlled, operated or managed by a business enterprise described in (1);
- (3) A present, former, future or prospective partner, officer, director, stockholder or employee of any insured;
- (4) Any named insured; or
- (5) The spouse, child, parent or sibling of any of the above as consequence of (1), (2), (3) or (4).

2. The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I - COVERAGES - COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**:

Cross Liability

"Personal and advertising injury" sustained or alleged by:

- (1) Any business enterprise in which any insured owns an interest, is a partner, or which is a parent, affiliate, subsidiary or sister company of any insured;
- (2) Any business enterprise directly or indirectly controlled, operated or managed by a business enterprise described in (1);
- (3) A present, former, future or prospective partner, officer, director, stockholder or employee of any insured;
- (4) Any named insured; or
- (5) The spouse, child, parent or sibling of any of the above as consequence of (1), (2), (3) or (4).

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

MICHIGAN CHANGES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
ELECTRONIC DATA LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

- A.** The paragraph relating to prejudgment interest in **Supplementary Payments**, Section **I**, is replaced by the following:

Prejudgment interest awarded against the insured on that part of the judgment we pay.

- B.** With respect to the **Duties** Condition, Section **IV**:

1. Notice given by or on behalf of the insured to our authorized agent, with particulars sufficient to identify the insured, shall be considered notice to us.
2. The last sentence of Paragraph **2.b.** is deleted.
3. The reference to Paragraph **d.** is amended to read Paragraph **e.**
4. The following is added:
 - d.** Failure to give any notice required by this condition within the time period specified shall not invalidate any claim made by you if it shall be shown not to have been reasonably possible to give notice within the prescribed time period and that notice was given as soon as was reasonably possible.

- C.** The **Criminal Acts** Exclusion under **Coverage B - Personal And Advertising Injury Liability** of the Commercial General Liability Coverage Part is replaced by the following:

Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

However, this exclusion only applies to the extent that the insured:

1. Admits, under oath; or

2. Is determined in any legal proceeding;

to have committed or directed the criminal act. For purposes of this exclusion, a determination in any legal proceeding includes, but is not limited to, a criminal conviction, a judgment, decree, ruling or order pronounced by any court of competent jurisdiction or an order or ruling pronounced by any administrative agency.

- D.** The **Criminal Or Fraudulent Acts** Exclusion of the Electronic Data Liability Coverage Form is replaced by the following:

Criminal Or Fraudulent Acts

"Loss of electronic data" arising out of a criminal or fraudulent act committed by or at the direction of the insured.

However, with respect to "loss of electronic data" arising out of a criminal act, this exclusion only applies to the extent that the insured:

1. Admits, under oath; or
2. Is determined in any legal proceeding;

to have committed or directed the criminal act. For purposes of this exclusion, a determination in any legal proceeding includes, but is not limited to, a criminal conviction, a judgment, decree, ruling or order pronounced by any court of competent jurisdiction or an order or ruling pronounced by any administrative agency.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)
Birmingham principal shopping district, 151 Martin street, Birmingham, MI 48009
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Section II - Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury," "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- A.** In the performance of your ongoing operations; or
- B.** In connection with your premises owned by or rented to you.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMUNICABLE DISEASE EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. The following exclusion is added to Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability:**

2. Exclusions

This insurance does not apply to:

Communicable Disease

"Bodily injury" or "property damage" arising out of the actual or alleged transmission of a communicable disease.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the:

- a.** Supervising, hiring, employing, training or monitoring of others that may be infected with and spread a communicable disease;
- b.** Testing for a communicable disease;
- c.** Failure to prevent the spread of the disease; or
- d.** Failure to report the disease to authorities.

- B. The following exclusion is added to Paragraph 2. Exclusions of Section I - Coverage B - Personal And Advertising Injury Liability:**

2. Exclusions

This insurance does not apply to:

Communicable Disease

"Personal and advertising injury" arising out of the actual or alleged transmission of a communicable disease.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the:

- a.** Supervising, hiring, employing, training or monitoring of others that may be infected with and spread a communicable disease;
- b.** Testing for a communicable disease;
- c.** Failure to prevent the spread of the disease; or
- d.** Failure to report the disease to authorities.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - NEW ENTITIES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Paragraph **3.** of **Section II - Who Is An Insured** does not apply.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMITATION OF COVERAGE TO DESIGNATED PREMISES, PROJECT OR OPERATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Premises:

All Covered Locations as Scheduled on the Declarations

Project Or Operation:

Not Applicable

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. If this endorsement is attached to Commercial General Liability Coverage Form **CG 00 01**, the provisions under this Paragraph **A.** apply:

1. Paragraph **1.b.** under **Section I - Coverage A - Bodily Injury And Property Damage Liability** is replaced by the following:

b. This insurance applies to "bodily injury" and "property damage" caused by an "occurrence" that takes place in the "coverage territory" only if:

(1) The "bodily injury" or "property damage":

(a) Occurs on the premises shown in the Schedule or the grounds and structures appurtenant to those premises; or

(b) Arises out of the project or operation shown in the Schedule;

(2) The "bodily injury" or "property damage" occurs during the policy period; and

(3) Prior to the policy period, no insured listed under Paragraph **1.** of Section **II - Who Is An Insured** and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

2. Paragraph **1.b.** under **Section I - Coverage B - Personal And Advertising Injury Liability** is replaced by the following:

b. This insurance applies to "personal and advertising injury" caused by an offense committed in the "coverage territory" but only if:

(1) The offense arises out of your business:

(a) Performed on the premises shown in the Schedule; or

(b) In connection with the project or operation shown in the Schedule; and

(2) The offense was committed during the policy period.

However, with respect to Paragraph 1.b.(1)(a) of this Insuring Agreement, if the "personal and advertising injury" is caused by:

(1) False arrest, detention or imprisonment; or

(2) The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;

then such offense must arise out of your business performed on the premises shown in the Schedule and the offense must have been committed on the premises shown in the Schedule or the grounds and structures appurtenant to those premises.

3. Paragraph 1.a. under **Section I - Coverage C - Medical Payments** is replaced by the following:

a. We will pay medical expenses as described below for "bodily injury" caused by an accident that takes place in the "coverage territory" if the "bodily injury":

(1) Occurs on the premises shown in the Schedule or the grounds and structures appurtenant to those premises; or

(2) Arises out of the project or operation shown in the Schedule;

provided that:

(a) The accident takes place during the policy period;

(b) The expenses are incurred and reported to us within one year of the date of the accident; and

(c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

B. If this endorsement is attached to Commercial General Liability Coverage Form **CG 00 02**, the provisions under this Paragraph B. apply:

1. Paragraph 1.b. under **Section I - Coverage A - Bodily Injury And Property Damage Liability** is replaced by the following:

b. This insurance applies to "bodily injury" and "property damage" caused by an "occurrence" that takes place in the "coverage territory" only if:

(1) The "bodily injury" or "property damage":

(a) Occurs on the premises shown in the Schedule or the grounds and structures appurtenant to those premises; or

(b) Arises out of the project or operation shown in the Schedule;

(2) The "bodily injury" or "property damage" did not occur before the Retroactive Date, if any, shown in the Declarations or after the end of the policy period; and

(3) A claim for damages because of the "bodily injury" or "property damage" is first made against any insured, in accordance with Paragraph 1.c. of this Insuring Agreement, during the policy period or any Extended Reporting Period we provide under Section V - Extended Reporting Periods.

2. Paragraph 1.b. under **Section I - Coverage B - Personal And Advertising Injury Liability** is replaced by the following:

b. This insurance applies to "personal and advertising injury" caused by an offense committed in the "coverage territory" but only if:

(1) The offense arises out of your business:

(a) Performed on the premises shown in the Schedule; or

(b) In connection with the project or operation shown in the Schedule;

(2) The offense was not committed before the Retroactive Date, if any, shown in the Declarations or after the end of the policy period; and

(3) A claim for damages because of the "personal and advertising injury" is first made against any insured, in accordance with Paragraph **1.c.** of this Insuring Agreement, during the policy period or any Extended Reporting Period we provide under Section **V - Extended Reporting Periods**.

However, with respect to Paragraph **1.b.(1)(a)** of this Insuring Agreement, if the "personal and advertising injury" is caused by:

- (1)** False arrest, detention or imprisonment; or
- (2)** The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;

then such offense must arise out of your business performed on the premises shown in the Schedule and the offense must have been committed on the premises shown in the Schedule or the grounds and structures appurtenant to those premises.

3. Paragraph 1.a. under Section I - Coverage C - Medical Payments is replaced by the following:

a. We will pay medical expenses as described below for "bodily injury" caused by an accident that takes place in the "coverage territory" if the "bodily injury":

- (1)** Occurs on the premises shown in the Schedule or the grounds and structures appurtenant to those premises; or
- (2)** Arises out of the project or operation shown in the Schedule;

provided that:

- (a)** The accident takes place during the policy period;
- (b)** The expenses are incurred and reported to us within one year of the date of the accident; and
- (c)** The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT OF INSURED CONTRACT DEFINITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Paragraph **9.** of the **Definitions** Section is replaced by the following:

9. "Insured contract" means:

- a.** A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b.** A sidetrack agreement;
- c.** Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d.** An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e.** An elevator maintenance agreement;
- f.** That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph **f.** does not include that part of any contract or agreement:

- (1)** That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- (2)** That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a)** Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b)** Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3)** Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in **(2)** above and supervisory, inspection, architectural or engineering activities.

THESE ENDORSEMENTS CHANGE THE POLICY. PLEASE READ THEM CAREFULLY.

These endorsements modify insurance provided under the COMMERCIAL GENERAL LIABILITY COVERAGE PART.

EXCLUSION - PUNITIVE OR EXEMPLARY DAMAGES

The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

Punitive Or Exemplary Damages

Any claim for punitive or exemplary damages, fines, penalties or multiplied damages.

S43-CG (1/14)

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EXCLUSION - LIQUOR - ABSOLUTE

The following replaces Exclusion c., **Liquor Liability**, in Paragraph 2., **Exclusions**, of **SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1)** Causing or contributing to the intoxication of any person, including causing or contributing to the intoxication of any person because alcoholic beverages were permitted to be brought on your premises for consumption on your premises;
- (2)** The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol;
or
- (3)** Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

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S354-CG (2/14)

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DEPARTMENT APPROVALS

EVENT NAME: BIRMINGHAM CRUISE EVENT

LICENSE NUMBER #21-000009006

COMMISSION HEARING DATE: 7/12/2021

NOTE TO STAFF: Please submit approval by **JULY 7, 2021**

DATE OF EVENT: 8/21/2021

DEPARTMENT	APPROVED	COMMENTS	PERMITS REQUIRED (Must be obtained directly from individual departments)	ESTIMATED COSTS (Must be paid two weeks prior to the event. License will not be issued if unpaid.)	ACTUAL COSTS (Event will be invoiced by the Clerk's office after the event)
PLANNING 101-000.000-634.0005 248.530.1855	TBC	No cost/no comments			
BUILDING 101-000.000.634.0005 248.530.1850	BJ	No cost/no comments			
FIRE 101-000.000-634.0004 248.530.1900	JDP	Maintain fire lane at all times a minimum width of 16 feet . No obstruction (table, trash cans, parked vehicles) permitted in fire lane. Food trucks will require an fire safety inspection for hood maintenance, inspection fire extinguisher (size, type and inspection record) Propane cylinders on food trucks shall be tested for leaks. Those found out of compliance shall not operate. No gas or fuel cans on festival premises No cooking devices under tents without proper clearance. All extension cord use shall require a protective "wire bridge" to avoid direct contact from foot or vehicle traffic, no exception.		\$4,500	

		Fire extinguishers required for tent vendors, size 3A:40:BC (5lb, ABC) no exceptions.			
POLICE 101-000.000.634.0003 248.530.1870	MHC	Safety and Security – Personnel/Barricades	None	7,000	
PUBLIC SERVICES 101-000.000-634.0002 248.530.1642	Carrie Laird 7/1/2021	Roll off dumpsters, location TBD Costs include dumpsters, setup, staffing during event and cleanup.		\$10,000	
ENGINEERING 101-000.000.634.0002 248.530.1839	SDZ	Obstruction Permits, Likely multiple unless whole area is being shut down. Meter bags from police.	Obstruction permits	\$65-260?	
SP+ PARKING	MHC	Notified by Police	None	0	
INSURANCE 248.530.1807	AB	BSD event. Separate special event policy expected week of 7/5	None	\$0	\$0
CLERK 101-000.000-614.0000 248.530.1803	AB	Notification letters mailed by applicant on 6/16/2021. Notification addresses on file in the Clerk's Office.	Applications for vendors license must be submitted no later than 8/6	\$165	
				TOTAL DEPOSIT REQUIRED: \$21,925	ACTUAL COST

FOR CLERK'S OFFICE USE

Deposit paid _____

Actual Cost _____

Due/Refund _____

DATE: June 8, 2021

TO: Thomas M. Markus, City Manager

FROM: Paul A. Wells, Fire Chief

SUBJECT: Woodward Dream Cruise

INTRODUCTION:

The continuation of the COVID-19 pandemic has caused us to review and evaluate our City sponsored events for this summer with concerns for the public's health and safety. All City events were canceled last summer and some large events have already been canceled for 2021.

The annual Woodward Dream Cruise event is held with the support of neighboring communities along the Woodward corridor. Several communities, including Birmingham, have shared concerns about this event occurring in the current environment.

At the request of the City Commission, a resolution is being proposed to formalize the City's "scaled down" participation in the Woodward Dream Cruise event taking place on August 21, 2021.

BACKGROUND:

The Woodward Dream Cruise event is managed through a non-profit corporation, Woodward Dream Cruise (WDC), Inc., comprised of community representatives along the Woodward corridor and representatives from Oakland County, as well as private sector media partners. This body has handled the promotion and organization of this multi-community event over the years.

This year, with the continuation of the COVID-19 pandemic and the uncertainty of safely engaging large crowds, the ability and prudence to hold this annual event has come into question. Certainly, canceling this event for a second year would be a disappointment to many who relish in this annual celebration of car culture and, as such, there is some reluctance to cancel the event. Conversely, attracting over one million people to an event during a worldwide pandemic is very concerning and is the reality we face.

At the City Commission meeting on May 24, 2021, the suggested resolution from City staff was to cancel the City's participation in the Woodward Dream Cruise for 2021. The City Commission did not support the suggested resolution and directed staff to present a possible option of a "scaled down" version of the City's participation in the Dream Cruise.

LEGAL REVIEW:

The resolution has been reviewed and approved by the City attorney.

FISCAL IMPACT:

In 2019, event related expenses were \$29,042.98, which included extra police and fire personnel, public services set up and clean up, building-related inspections, etc. The anticipated 2021 expenses are \$34,000. The Birmingham Shopping District (BSD) is anticipating this year's revenues to be around \$63,000 based on several small vendors and three tentative sponsors: General Motors, WOMC, WXYZ.

PUBLIC COMMUNICATIONS:

If the Commission adopts this resolution, the City's communications team will prepare a press release informing residents of the scaled down scope of participation.

SUMMARY:

Given the large crowds that are drawn to the annual Woodward Dream Cruise event and the continuing concerns with COVID-19, it is recommended to adopt the attached resolution for a scaled down scope of participation in the Woodward Dream Cruise on August 21, 2021. These efforts are in an attempt to properly manage the large gatherings this event produces, while still prioritizing public health and safety.

ATTACHMENTS:

- Draft Resolution for scaled down participation by the City in the 2021 Woodward Dream Cruise
- Current CDC recommendations for large gatherings
- Current MDHHS guidance on large outdoor events
- BSD map of the proposed "scaled down" site with sponsor locations

SUGGESTED RESOLUTION:

To approve a resolution that the City of Birmingham will have a scaled down participation in the annual Woodward Dream Cruise event for 2021, due to public health and safety concerns attributed to the COVID-19 pandemic, by managing the large crowds that any participation in the Dream Cruise naturally creates.

CITY OF BIRMINGHAM
RESOLUTION REDUCING THE PARTICIPATION IN THE ANNUAL
WOODWARD DREAM CRUISE EVENT FOR 2021 DUE TO PUBLIC HEALTH AND SAFETY
CONCERNS ATTRIBUTED TO THE COVID-19 PANDEMIC

WHEREAS, the Woodward Dream Cruise event has developed from a grass roots community based effort to promote a one-day, non-alcoholic car event along the Woodward Avenue corridor, and

WHEREAS, the Woodward Dream Cruise is established by the community involvement of Berkley, Birmingham, Bloomfield Hills, Bloomfield Township, Ferndale, Huntington Woods, Pleasant Ridge, Pontiac and Royal Oak to coordinate the event through an intergovernmental partnership, and

WHEREAS, the annual Woodward Dream Cruise event attracts people from around the world, the country, and the state to celebrate car history and car culture along Woodward Avenue in Oakland County, and

WHEREAS, the annual Woodward Dream Cruise event attracts crowds in excess of one (1) million people to the Woodward corridor in Oakland County, and

WHEREAS, on March 10, 2020, Michigan Governor, Gretchen Whitmer had declared a State of Emergency across the State of Michigan due to public health concerns related to a novel coronavirus (COVID-19) that was introduced in our state, and

WHEREAS, at the time of this resolution only 55% of the population 12 years and older of Michigan has been fully vaccinated, and

WHEREAS, the promotion of the 2021 annual Woodward Dream Cruise event is contributing to the current public health crisis by encouraging large crowds to convene during a worldwide pandemic, and

WHEREAS, the Center for Disease Control and Prevention (CDC) and Michigan Department of Health and Human Services (MDHHS) continue to recommend avoiding large events and gatherings regardless of vaccination status, and

WHEREAS, the City of Birmingham Commissioners gave the direction to submit a "scaled down" participation plan for the Dream Cruise event for 2021 at the May 24, 2021 Commission meeting, and

WHEREAS, it is recommended that the City Commission designate one specific public area for all City approved participation in the Dream Cruise event, and

WHEREAS, this specified zone for City approved participation shall span South Old Woodward south of Bowers Street to north of Landon Street, and

WHEREAS, this specified zone for City approved participation shall ensure a minimum of 16 feet of clearance down the center of South Old Woodward for emergency vehicle traffic, and

WHEREAS, all vendors, car clubs, sponsors, etc. wishing to do business in this specified zone for City approved participation will require all necessary City permits and fees prior to approval, and

WHEREAS, all permits for events, block parties, temporary structures, etc. outside the specified special event zone on public property for City approved participation will be denied.

NOW, THEREFORE, IT IS RESOLVED that due to concerns for the safety of the residents of the communities along the Woodward Avenue corridor and the one million attendees that normally participate in the annual event, and the potential spread of the coronavirus, the City will reduce the allowed Dream Cruise public property events within its boundaries during this event for 2021, and

BE IT FURTHER RESOLVED, the City of Birmingham will prohibit any events on public property that requires a permit, except for the designated special event zone on South Old Woodward south of Bowers Street to north of Landon Street, and

BE IT FURTHER RESOLVED, that on, before, and at the time of the 2021 Woodward Dream Cruise all MDHHS orders will be reviewed, and if any new MDHHS orders prohibit the event from continuing, the City will cancel all permits and participation.

Passed, adopted and approved this _____ day of _____, 2021.

AYES: _____

NAYS: _____

PRESENT: _____

ABSENT: _____

CERTIFICATION

I, Alexandria Bingham, City Clerk, do hereby certify that the foregoing is a complete and true copy of a resolution adopted by the City Commission of the City of Birmingham at a regular Birmingham City Commission meeting held on June 14, 2021.

Alexandria Bingham, City Clerk

The Mayor closed the public hearing at 8:12 p.m.

MOTION: Motion by Commission Sherman, seconded by Commissioner Hoff:
To remove this item from the agenda.

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

Nays, None

06-159-21 Woodward Dream Cruise

Fire Chief Wells presented.

He explained that the BSD would select which car clubs could use the space in the City as they do every year. He stated that the City would be maintaining a larger fire lane and having a more generally scaled-down event.

MOTION: Motion by Commission Hoff, seconded by Commissioner Nickita:
To approve a scaled down participation in the annual Woodward Dream Cruise event for 2021 in the City of Birmingham, due to public health and safety concerns attributed to the COVID-19 pandemic, by managing the large crowds that any participation in the Dream Cruise naturally creates. (complete resolution in agenda packet).

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

Nays, None

VII. NEW BUSINESS

**06-160-21 Public Hearing for a Rezoning Request for 300 - 394 S. Old Woodward
and a portion of 294 E. Brown Street from D3 to D4**

The Mayor opened the public hearing at 8:18 p.m.

The Mayor explained that due to improper noticing of the project by the applicant on the property it was being recommended that the item be postponed to a date certain of July 12, 2021.



MEMORANDUM

Clerk's Office

DATE: July 7, 2021
TO: Tom Markus, City Manager
FROM: Alexandria Bingham, City Clerk
SUBJECT: 2021 In the Park Concerts

INTRODUCTION:

The Department of Public Services submitted a Special Event application to hold the 2021 In the Park Concert series in Shain Park on the following dates. All concerts are held between 7 PM – 9 PM, unless noted otherwise.

Wednesday, July 28
Wednesday, August 4
Wednesday, August 11
Wednesday, August 18
Wednesday, August 25
Wednesday, September 1
Wednesday, September 8

Set-up for the events is scheduled for the day of the concert, with tear down to begin the day after the concert.

BACKGROUND:

The Police Department has reviewed the proposed event details prior to submission for street closures and the need for safety personnel and has approved the details. DPS, Planning, Building, Police, Fire, and Engineering have indicated their approval. SP+ Parking has been notified of the event for planning purposes.

The following events occur in June, July and August in Birmingham, and do not pose a conflict for this event:

Farmers Market	Sundays	Lot 6
Movie Night	July 16, August 13	Booth Park
Heartsaver CPR/AED	July 24	Station 1
Day on the Town	July 31	Downtown
Friends and Family CPR	August 11 September 8	Station 1
Birmingham Dream Cruise	August 21	S. Old Woodward
Greenwood Cemetery Tour	September 18	Greenwood Cemetery

LEGAL REVIEW:

n/a

FISCAL IMPACT:

n/a

SUMMARY

The City Commission is being asked to approve a special event permit for the 2021 In the Park Concert series to be held on the dates noted above, with set-up to begin on the day of the concert and tear-down will take place the day after the concerts.

ATTACHMENTS:

1. Special Event application
2. Notification letter with map of event area distributed to residents/businesses within 300 feet of the event area on Monday, June 28. Notification addresses are on file in the Clerk's Office.
3. City of Birmingham Certificate of Insurance
4. Department Approval page with comments and estimated costs

SUGGESTED RESOLUTION:

To approve a request from the City of Birmingham Department of Public Services for a special event permit to hold the 2021 In the Park Concert series in Shain Park on the dates as presented, contingent upon compliance with all permit and insurance requirements and payment of all fees and, further pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.

**CITY OF BIRMINGHAM
APPLICATION FOR SPECIAL EVENT PERMIT
PARKS AND PUBLIC SPACES**

**IMPORTANT: EVENTS UTILIZING CITY SIDEWALKS AND/OR STREETS MUST MEET
WITH POLICE DEPARTMENT SPECIAL EVENT OFFICER TO REVIEW PROPOSED
EVENT DETAILS PRIOR TO SUBMITTING APPLICATION.**

Police Department acknowledgement: _____

I. EVENT DETAILS

- Incomplete applications will not be accepted.
- Changes in this information must be submitted to the City Clerk, in writing, at least three weeks prior to the event

FEES: **FIRST TIME EVENT:** **\$200.00**
 ANNUAL APPLICATION FEE: **\$165.00**

(Please print clearly or type)

Date of Application June 28, 2021

Name of Event 2021 City of Birmingham In The Park Concert Series

Detailed Description of Event (attach additional sheet if necessary) Summer Concert Series sponsored
by the City of Birmingham. The evening concerts will be 7pm-9pm on the following dates:
Potential Wednesday evenings: 7/28, 8/4, 8/11, 8/18, 8/25, 9/1, 9/8, 2021

Location Shain Park (Thomas M. Markus Pavilion)

Date(s) of Event See above Hours of Event See above

Date(s) of Set-up Day of the concert Hours of Set-up Day of the concert

NOTE: No set-up to begin before 7:00 AM, per City ordinance.

Date(s) of Tear-down Day after the concert Hours of Tear-down Day after the concert

Organization Sponsoring Event City of Birmingham Department of Public Services

Organization Address 851 South Eton, Birmingham, MI 48009

Organization Phone 248-530-1642

Contact Person Connie Folk, Recreation Coordinator

Contact Phone 248-530-1642

Contact Email Cfolk@bhamgov.org

II. EVENT INFORMATION

1. Organization Type City of Birmingham
(city, non-profit, community group, etc.)
2. Additional Sponsors or Participants (Provide name, address, contact person, status, etc. for all additional organizations sponsoring your event.) TBD

3. Is the event a fundraiser? YES ☐ NO ☒
List beneficiary _____
List expected income _____
Attach information about the beneficiary.
4. First time event in Birmingham? YES ☐ NO ☒
If no, describe _____

5. Total number of people expected to attend per day 500 (approximate)
6. The event will be held on the following City property: (Please list)
☐ Street(s) _____

☐ Sidewalk(s) _____

☒ Park(s) Shain Park (Thomas M. Markus Pavilion

7. Will street closures be required? YES ☐ NO ☒
(Police Department acknowledgement prior to submission of application is required) (initial here) MTB
8. What parking arrangements will be necessary to accommodate attendance? City of Birmingham parking structures and street parking.

9. Will staff be provided to assist with safety, security and maintenance? YES ☒ NO ☐
If yes, please provide number of staff to be provided and any specialized training received.
 Describe City of Birmingham representative will be present for each concert.
10. Will the event require safety personnel (police, fire, paramedics)? YES ☐ NO ☒
(Police Department acknowledgement prior to submission of application is required.) (initial here) mjt
 Describe _____
11. Will alcoholic beverages be served? YES ☐ NO ☒
 If yes, additional approval by the City Commission is required, as well as the Michigan Liquor Control Commission.
12. Will music be provided? YES ☒ NO ☐
X Live X Amplification _____ Recorded X Loudspeakers
 Time music will begin: 7pm
 Time music will end: 9pm
 Location of live band, DJ, loudspeakers, equipment must be shown on the layout map.
13. Will there be signage in the area of the event? YES ☒ NO ☐
 Number of signs/banners 1-Sponsor sign hung at the pavilion during the event.
 Size of signs/banners 48" x 90"
 Submit a photo/drawing of the sign(s). **A sign permit is required.**
14. Will food/beverages/merchandise be sold? YES ☐ NO ☒
 • Peddler/vendor permits must be submitted to the Clerk's Office, **at least two weeks prior to the event.**
 • You must obtain approval from the Oakland County Health Department for all food/beverage sales/donations. Contact ehclerk@oakgov.com or 248-535-9612 to obtain Health Department approval.
 • There is a \$50.00 application fee for all vendors and peddlers, in addition to the \$10.00 daily fee, per location.

LIST OF VENDORS/PEDDLERS

(attach additional sheet if necessary)

VENDOR NAME	GOODS TO BE SOLD	WATER HOOK- UP REQUIRED?	ELECTRIC REQUIRED?
TBD			

III. EVENT LAYOUT

- Include a map showing the park set up, street closures, and location of each item listed in this section.
- Include a map and written description of run/walk route and the start/finish area

1. Will the event require the use of any of the following municipal equipment?
(show location of each on map)

EQUIPMENT	QUANTITY	COST	NOTES
Picnic Tables		6 for \$200.00	A request for more than six tables will be evaluated based on availability.
Trash Receptacles		\$10.00 each	Trash box placement and removal of trash is the responsibility of the event. Additional cost could occur if DPS is to perform this work.
Dumpsters		\$350.00 per day	Includes emptying the dumpster one time per day. The City may determine the need for additional dumpsters based on event requirements.
Utilities (electric)	____ # of vendors requiring utilities	Varies	Charges according to final requirements of event.
Water/Fire Hydrant		Contact the Fire Department.	Applicant must supply their own means of disposal for all sanitary waste water. Waste water is NOT allowed to be poured into the street or on the grass.
Audio System		\$200.00 per day	Must meet with City representative.
Meter Bags / Traffic Cones / Barricades	# to be determined by the Police Department.		

2. Will the following be constructed or located in the area of the event? YES NO
(show location of each on map) NOTE: Stakes are not allowed.

TYPE	QUANTITY	SIZE
Tents/Canopies/Awnings (A permit is required for tents over 120 sq ft)		
Portable Toilets	2	(1) standard/(1) handicap
Rides		
Displays		
Vendors		
Temporary Structure (must attach a photo)		
Other (describe)		

SIGNATURE OF APPLICANT REQUIRED

EVENT NAME 2021 City of Birmingham In The Park Concert Series

EVENT DATE Potential Concert Dates: 7/28, 8/4, 8/11, 8/18, 8/25, 9/1, 9/8, 2021

The Birmingham City Commission shall have sole and complete discretion in deciding whether to issue a permit. Nothing contained in the City Code shall be construed to require the City Commission to issue a permit to an applicant and no applicant shall have any interest or right to receive a permit merely because the applicant has received a permit in the past.

As the authorized agent of the sponsoring organization, I hereby agree that this organization shall abide by all conditions and restrictions specific to this special event as determined by the City administration and will comply with all local, state and federal rules, regulations and laws.

Connie J. Folk

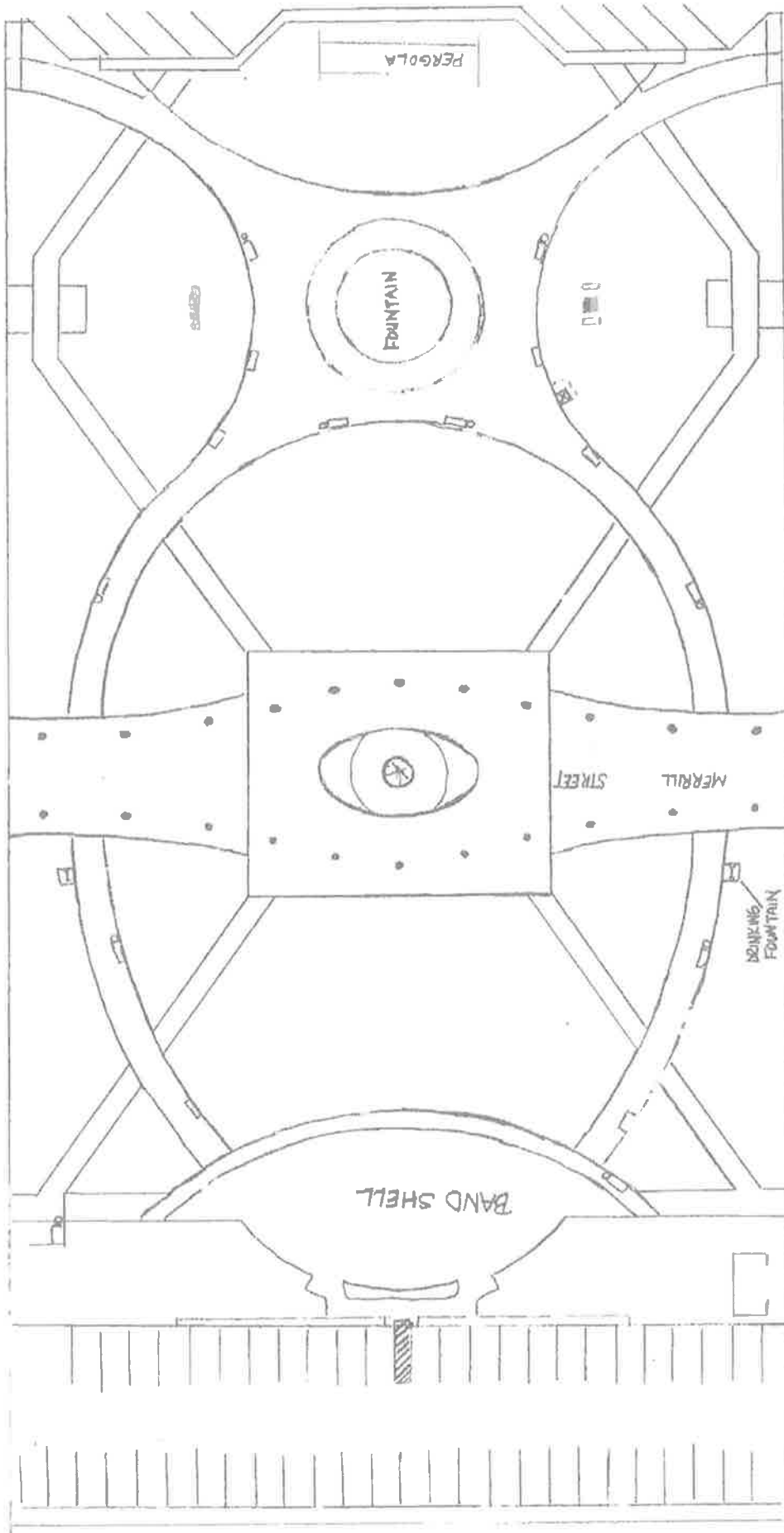
6/28/2021

Signature

Date

IV. SAMPLE LETTER TO NOTIFY ANY AFFECTED PROPERTY/BUSINESS OWNERS

- Organizer must notify all potentially affected residential property and business owners of the date and time this application will be considered by the City Commission. (*Sample letter attached to this application.*)
- Attach a copy of the proposed letter to this application. The letter will be reviewed and approved by the Clerk's Office. The letter must be distributed at least two weeks prior to the Commission meeting.
- A copy of the letter and the distribution list must be submitted to the Clerk's Office at least two weeks prior to the Commission meeting.
- If street closures are necessary, a map must be included with the letter to the affected property/business owners.



HENRIETTA STREET

MERRILL STREET

FOUNTAIN

BAND SHELL

DRINKING
FOUNTAIN

PERGOLA

MARRN STREET



SPECIAL EVENT NOTIFICATION TO ALL PROPERTY/BUSINESS OWNERS

The Birmingham City Code requires that we receive approval from the Birmingham City Commission to hold the following special event. The code further requires that we notify any property owners or business owners that may be affected by the special event of the date and time that the City Commission will consider our request so that an opportunity exists for comments prior to this approval.

NAME OF EVENT: In The Park Summer Concerts

LOCATION: Shain Park (Thomas M. Markus Pavilion)

DATES/TIMES: Potential Wednesday Evenings: (7/28, 8/4, 8/11, 8/18, 8/25, 9/1, 9/8, 2021) 7:00 pm -9:00 pm

DATE/TIME OF CITY COMMISSION MEETING:

Monday, July 12, 2021 at 7:30 PM

The City Commission meets in room 205 of the Municipal Building at 151 Martin. A complete copy of the application to hold this special event is available for your review at the City Clerk's office (248/530.1880).

EVENT ORGANIZER: City of Birmingham, DPS
851 South Eton, Birmingham, MI 48009

City Contact Person: Connie Folk, 248.530.1642, Cfolk@bhamgov.org

TO BUILDING MANAGERS CONTAINING MORE THAN ONE UNIT:

PLEASE POST THIS NOTICE AT THE MAIN ENTRANCE TO YOUR BUILDING.



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COVID-19 Guidelines For In The Park Summer Concert Series

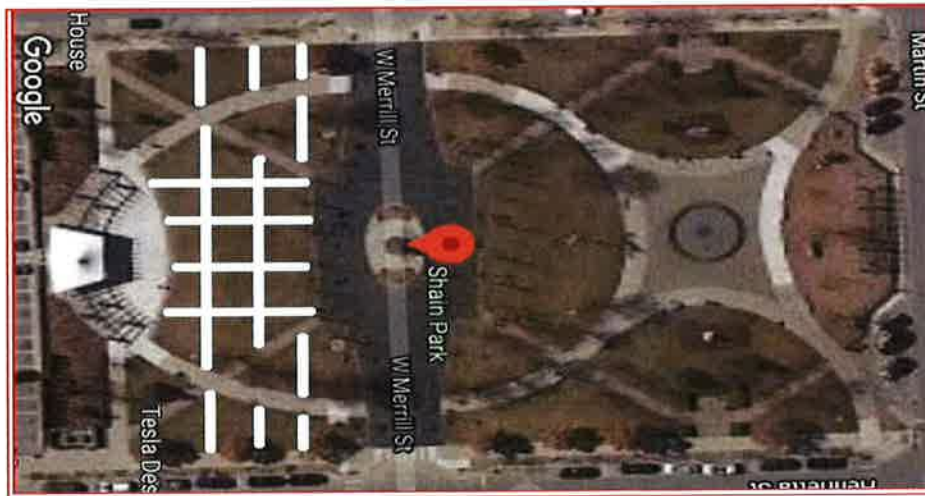
Responsibilities of Performers:

1. Frequent hand sanitizing.
2. Wear Personal Protective Equipment (PPE) when not performing.
3. Temperatures taken prior to performing and fill out screening log that will be provided
4. Remain at home if any symptoms of COVID-19 are exhibited or if the performer(s) have been in contact with anyone who has tested positive for COVID-19 in the last 10 days.
5. Performances will be structured to allow for appropriate social distancing and other safety measures.

Responsibilities of Attendees:

To help us maintain a safe and sanitized environment, we ask that our attendees observe the following courtesies:

1. Remain at home if you are experiencing any symptoms of COVID-19 in the last day or running a fever, please take your temperature prior to arriving at Shain Park.
2. Remain at home if you have a compromised immune system or are considered "high risk" please stay at home.
3. Maintain 6ft social distancing at all times.
4. Personal Protective Equipment (PPE) for attendees are required.
5. Avoid shaking hands or engaging in any unnecessary physical contact.
6. Signage throughout the property to encourage social distancing.
7. Markings will be placed on the grass area indicating seating for attendees.



Thank You for Your Cooperation

DEPARTMENT APPROVALS

EVENT NAME: IN THE PARK CONCERTS

LICENSE NUMBER #21-00011631

COMMISSION HEARING DATE: JULY 12, 2021

NOTE TO STAFF: Please submit approval by **JULY 7, 2021**

DATE OF EVENT: WEEKLY, JULY 28 - SEPT. 8, 2021

DEPARTMENT	APPROVED	COMMENTS	PERMITS REQUIRED (Must be obtained directly from individual departments)	ESTIMATED COSTS (Must be paid two weeks prior to the event. License will not be issued if unpaid.)	ACTUAL COSTS (Event will be invoiced by the Clerk's office after the event)
PLANNING 101-000.000-634.0005 248.530.1855	TBC	No Cost / No Comment			
BUILDING 101-000.000-634.0005 248.530.1850	MJM	No Building Department Involvement	Tents over 400 SQ/ft	0	
FIRE 101-000.000-634.0004 248.530.1900	JDP	No Fire Department Involvement Follow all public health guidelines required by MDHHS at time of event. Do not block streets with permanent crowds or vehicle parking		0	
POLICE 101-000.000-634.0003 248.530.1870	MHC	No Cost – Will provide Extra Patrols		0	
PUBLIC SERVICES 101-000.000-634.0002 248.530.1642	Carrie Laird	Includes set-up and take down for concerts. And (1) staff member at each concert.		\$4,000	

ENGINEERING 101-000.000.634.0002 248.530.1839	SDZ	No Engineering Comments all within Park	none	\$0	
SP+ PARKING	MHC	Notified by Police	None	0	
INSURANCE 248.530.1807	City event		None	\$0	\$0
CLERK 101-000.000-614.0000 248.530.1803		Notification letters mailed by applicant on 6/23, 2021. Notification addresses on file in the Clerk's Office. Evidence of required insurance must be on file with the Clerk's Office no later than (city event).	Applications for vendors license must be submitted no later than 7/14/21	\$165	
				TOTAL DEPOSIT REQUIRED \$4,165.00	ACTUAL COST

FOR CLERK'S OFFICE USE

Deposit paid _____

Actual Cost _____

Due/Refund _____



MEMORANDUM

Police Department

DATE: June 16, 2021

TO: Thomas M. Markus, City Manager

FROM: Mark H. Clemence, Chief of Police

SUBJECT: CLEMIS – Livescan Fingerprinting Equipment Replacement

INTRODUCTION:

The Oakland County CLEMIS Livescan fingerprinting system used by the police department is in need of replacement due to age and condition. The budgeted replacement of this equipment is part of a county-wide initiative to update all of the fingerprint computers and palm scanners in Oakland County. The current Livescan equipment hardware and software will not be supported after the end of the 2021 calendar year.

The new Livescan equipment is manufactured by IDEMIA of Anaheim, CA. The recommended device for our department is the IDEMIA TouchPrint 5600 cabinet booking station. This equipment will be used to capture all types of fingerprints including rolls, tenprints and writers' edges. The quality of the fingerprint images processed using this equipment exceeds FBI standard requirements.

BACKGROUND:

The existing Livescan equipment was purchased in 2015. The purchase cost of Livescan equipment is the responsibility of local law enforcement agencies and Oakland County Cooperative Purchasing contract pricing is available. The total cost for this required equipment replacement is \$18,094.00 and includes the TouchPrint 5600 cabinet booking station, driver's license reader and tenprint fingerprint card duplex printer. A one year warranty period is included with the purchase.

LEGAL REVIEW:

No legal review is necessary for this equipment purchase.

FISCAL IMPACT:

Sufficient funding is budgeted in the 2021-22 police general fund LEIN/CLEMIS expense account number 101-301.000-731.0000 to provide for this purchase. IDEMIA is the sole source provider for this purchase, as no other vendor is authorized by Oakland County CLEMIS and the State of Michigan. Therefore, competitive bidding requirements will need to be waived for this project.

SUMMARY:

The police department is recommending the budgeted purchase of a Livescan TouchPrint 5600 cabinet booking station including driver's license reader and printer from manufacturer and sole source vendor IDEMIA in the amount of \$18,094.00

ATTACHMENTS:

1. IDEMIA cover letter with price quote (2 pages)

SUGGESTED RESOLUTION:

To approve the TouchPrint 5600 cabinet booking station fingerprinting system purchase from IDEMIA, a sole source vendor, in the amount of \$18,094.00; further to waive normal bidding requirements and authorize this expenditure to the general fund police LEIN/CLEMIS expense account #101-301-000-731.0000.



5515 East La Palma Avenue, Suite 100
Anaheim CA 92807

June 15, 2021

Commander Michael Albrecht
Birmingham Police Department
151 Martin Street,
P.O. Box 3001
Birmingham, Michigan 48012

Email: malbrecht@bhamgov.org

Reference No. IDMI-L021021-07A

IDEMIA is pleased to provide Birmingham Police Department with the following price quote for the IDEMIA LiveScan System equipped with the accepted State of Michigan-Oakland County/CLEMIS software and workflows.

IDEMIA's fully integrated LiveScan solution provides Birmingham Police Department the following features and benefits:

- ◆ Single-source vendor for all components of the LiveScan solution, including the AFIS interface for records submission to the State
- Certification to the FBI's Electronic Fingerprint Transmission Specifications
- ◆ "Hit/No Hit" Response from the State AFIS Search
- ◆ Automatic fingerprint sequencing and duplicate print checking before scanning is completed, ensuring data integrity
- ◆ Quick check, review, and edit can be performed on each print
- ◆ All livescan configurations include on-site installation, training, and 1 Year on-site warranty

Solution Description and Pricing

IDEMIA proposes the equipment and services described in Table 1.

Tenprint/Palmprint – Cabinet Adjustable Height

Table 1. Pricing

Price source: SL-LAWENF

	Description	Unit Price
TPE-5600-ED-TS TPE-CSTX-MI001 TPE-CSTX-MIPALM TPE-COMX-FTP-SSH TP-IAT-CUSTOM 47FRT	IDEMIA LiveScan System Cabinet AH Tenprint/Palmprint, including: <ul style="list-style-type: none"> IDEMIA LiveScan System Software FBI Appendix F Certified Tenprint/Palmprint 500PPI Scanner with Moisture Discriminating Optics Scanner™ (MDO) Block Technology Computer, Touch Screen Monitor, keyboard Ruggedized Cabinet – Adjustable Height Standard Michigan/Oakland-CLEMIS defined Workflows and profiles On-site Installation / On-site Training Warranty: 1 Year On-site Advantage Solution warranty, 9X5, Next day on-site response and parts replacement Freight 	\$16,712
5600-TPE-ED-M95	Annual Maintenance (to start after 1st year Warranty) 1 Year On-site Advantage Solution, 9X5, Next day on-site response and parts replacement	\$2,380

Current shipping is 30+ days after receipt by IDEMIA of Birmingham Police Department completed pre-installation documentation, or as otherwise scheduled.

Options and Pricing

IDEMIA equipment options and pricing described in Table 2. Options Pricing

	Description	Unit Price
TPE-HWOX-IDRDR-ICHEK	Driver's License Reader	\$282
TPE-PRT-DUP	Printer Black & White Tenprint Card, Duplexer	\$1,100
PRT-DUP-M95	Printer: Annual Maintenance (to start after the 1 st Year Warranty)	\$199

IDEMIA LiveScan System – Details

Table 3. Details

Item	Description
Michigan Enterprise Customization	<ul style="list-style-type: none"> Supported TOT'S: CRMBLD=CAR, CRIMCOURT=CAR, MAP Transmission method: NATMS and NIST file output to local drive Return messages: NATMS Return Messages (if in use) Michigan Touch Print Enterprise customization <i>(for Palm capture)</i>
TPE-COMX-FTP-SSH	<ul style="list-style-type: none"> Touch Print Enterprise Fingerprint Record Transmission via FTP over SSH (SFTP)—secure FTP Communication using SSH (Secure SHell)

Customer Responsibilities

Birmingham Police Department is responsible for the following:

- Providing necessary facility resources required for equipment installation and operation including access, space, environmental control, electrical power and networking.
- Providing a technical point of contact for IDEMIA who will be the primary person responsible for providing and/or coordinating obtainment of site installation pre-requisite information such as network information, IP addresses, power information, etc.
- To obtain and maintain the required transmission lines and hardware for remote communications to and from the necessary agencies.
- Providing the necessary local area and wide area networking (LAN and WAN) including service and backend connectivity as well as any required VPN authorizations
- Obtaining all required authorizations for connectivity.

NOTE: Birmingham Police Department is encouraged to contact Larry Adams, CLEMIS Application Support, Email: adamsl@oakgov.com for establishing connectivity to the Oakland County/CLEMIS server prior to purchasing an IDEMIA LiveScan System.

DATE: 07/02/2021

TO: Tom Markus, City Manager

FROM: Eric Brunk, IT Manager

SUBJECT: Mitel Phone system / Voicemail Upgrade

INTRODUCTION:

The City has been having intermittent issues with the phone system for some time. The IT department has worked with our phone system vendor to make modifications and correct issues as they arise. In October of 2020 the IT department was tasked with evaluating our existing phone and voicemail system and making recommendations for replacement or upgrade. The IT department has recently invested resources in our Mitel system by upgrading all of the IP phones connected to the system and has narrowed the existing issues to the voicemail part of the system. We enlisted our phone system vendor CBTS to perform the evaluation of the remaining hardware and to make recommendations with budgetary numbers for upgrade of the existing environment.

BACKGROUND:

The City Of Birmingham is currently using a Mitel MiVoice Business system and an ESNA OfficeLinx voicemail platform. The Mitel MiVoice Business system is Mitel's flagship enterprise Unified Communications solution. Mitel continues to put R&D into the solution adding features/functionality and new technology as it emerges, making Mitel one of the leading UC voice manufacturers in the world.

The current MiVoice Business solution architecture includes Mitel 3300 appliances at each location with users at each location programmed on their local controller. All controllers are clustered together to provide seamless communications and feature availability across all locations. The majority of IP phones, with the exception of Baldwin Library have been recently upgraded to new Mitel 6900 series IP phones. The MiVB systems are running Release 8.0 SP2 software, the minimum required for the new 6900 series IP phones. The most current available software from Mitel is Release 9.1. With this release Mitel has re-architected the database which requires a multiple step upgrade and increased RAM. Five of the six 3300 controllers are older, over 10 years old, and do not support a RAM module upgrade so they will not support release 9.1 software. It is recommended that they be replaced with new controllers. The Baldwin Library controller will support release 9.1 software but will need a RAM module upgrade.

The ESNA voicemail system is still a current voicemail system but unfortunately Avaya, a Mitel competitor, purchased ESNA several years ago and has not tested their OfficeLinx platform against the latest Mitel MiVB releases and will likely not do so in the future. It is recommended that we replace the ESNA voicemail system with one that is compatible

with the current and future Mitel software releases. CBTS proposed a migration to Mitel NuPoint Unified messaging which will also enable users to connect using MiCollab client unified messaging and twinning.

Recently CBTS sold off the Mitel portion of its business to BSB Communications so at this time the City has a new vendor supporting our phone system. BSB Communications has reviewed and concurs with the CBTS recommendations and has provided a current quote for the upgrade of the system.

Total cost of the upgrade, parts and labor is \$35,221.25

LEGAL REVIEW:

The current system is under an existing contract – we are purchasing upgraded hardware and software which will fall under that contract.

FISCAL IMPACT:

This is a budgeted item with funds set aside in the Network upgrade account 636-228.000-973.0400.

SUMMARY

The IT department would like to purchase the components to upgrade the phone system and replace the Voicemail system from BSB Communications. With a total cost of the upgrade, parts and labor of \$35,221.25

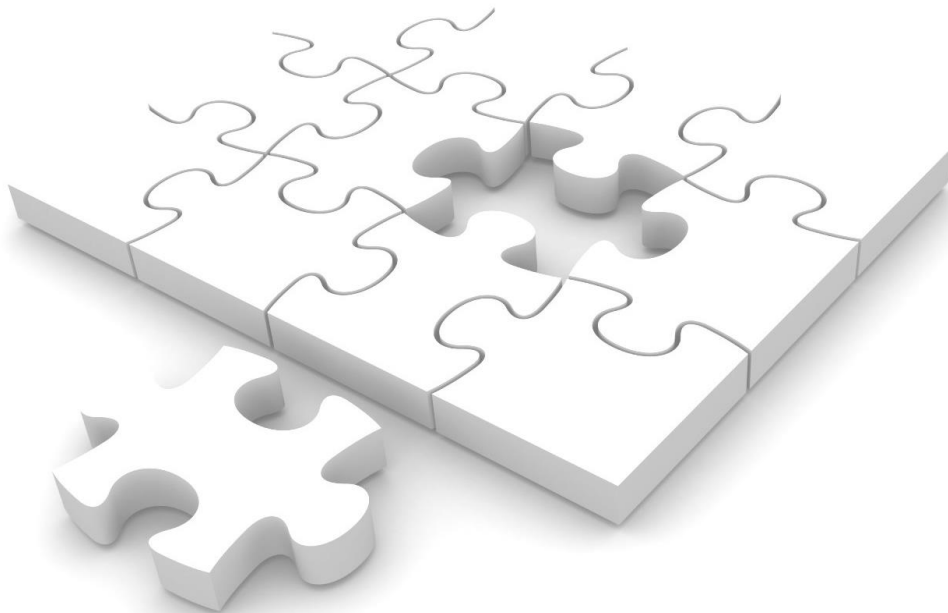
SUGGESTED RESOLUTION:

Resolution to authorize the IT department to purchase the components to upgrade the existing Mitel phone system and replace the ESNA Voicemail system as proposed, from BSB Communications. With a total cost of the upgrade, parts and labor not to exceed \$35,221.25 using funds in the network upgrade account 636-228.000-973.0400.



BSB COMMUNICATIONS INC
SYSTEM PROPOSAL & STATEMENT OF WORK

PREPARED FOR
CITY OF BIRMINGHAM



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5708 W Wackerly St, Ste B
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Tel 989.492.7000
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GRAND RAPIDS, MICHIGAN
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TRAVERSE CITY, MICHIGAN
120 E Front St, Ste 2
Traverse City, MI 49684
Tel 231.715.7111
Fax 231.715.7113

PREPARED BY
BRENT OUDERKIRK

5/14/2021

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41150 Technology Park Dr, Ste 101
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Tel 586.774.6000
Fax 586.774.3413

PORT HURON, MICHIGAN
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Port Huron, MI 48060
Tel 810.987.4543
Fax 810.987.9165

TOLEDO, OHIO
5660 Southwyck Blvd, Ste 103
Toledo, OH 43614
Tel 419.866.9999
Fax 419.725.6426

Contact Information

END USER

Company Name:	City of Birmingham
Site Address:	151 Martin Street, P.O. Box 3001, Birmingham, MI 48012
Primary Contact Name / Title:	Eric Brunk
Contact Address:	151 Martin Street, P.O. Box 3001, Birmingham, MI 48012
Phone Number:	E-mail:

PROVIDER OF SERVICES

Company Name:	BSB Communications
Address:	41150 Technology Park Dr, Ste 101, Sterling Heights, MI 48314
Primary Contact Name / Title:	Brent Ouderkirk
Phone Number:	989.492.7071 E-mail: brent_ouderkirk@gobsb.com

PROJECT MANAGER

Project Manager Name:	TBD
Phone Number:	TBD E-mail: TBD

Proposed Solutions

City of Birmingham

Mitel Systems Upgrades / Migrations

Migrate ESNA to NuPoint UM on MiCollab

MiCollab server software will be installed and configured in the city's virtual environment. The city will be responsible for creating a virtual machine to manufacturer specifications. (280) IP user licenses will be upgraded to UCCv4 Entry licenses which will provide users with (280) voicemail boxes, twinning, MiCollab PC client/Web client. There are currently (208) active IP phones on the system as well as (237) personal mailboxes. Migrating all user licenses to UCC licenses will provide consistent licensing and extra licenses for future use. There are also (56) departmental mailboxes and (62) Voice menu's or auto attendants on the system. These will be licensed and configured with (120) standalone mailboxes on the NuPoint system. The voicemail system will be integrated to Gmail for unified messaging. (3) Speech auto-attendant ports will be enabled with (300) speech directory names for users and departments. The NuPoint UM speech auto attendant does not work exactly the same as the ESNA. With ESNA, speech auto-attendant is available and active when a caller reaches the auto-attendant. On the NuPoint, callers will first go to a standard auto-attendant where they can press digits for choices. The caller will have to press a digit to be directed to the speech enabled auto-attendant where they can then speak the name of a person or department to be transferred. (2) fax ports will be enabled and two users will be enabled

for outbound fax. This proposal does not include end user training or recording greetings for auto-attendants. BSB will provide administration training, training on recording auto-attendant greetings and cheat sheets for setting up and using personal voicemail boxes. Up to (280) users will be licensed for MiCollab UC. This can be a web client and/or a thick client. BSB will deploy and test two users for client, install clients and test. The city will be responsible for configuring additional users and client installation.

MiVoice Border Gateway

MiVoice Border Gateway will be installed and configured in the City's virtual environment to provide Web Proxy and easy provisioning for MiCollab Client. The City will be required to create a VM to manufacturer specifications. The MBG will be configured in the DMZ of the City's firewall and will require a valid SSL certificate and split DNS.

4r	Project Management
4r	Create DLM / Create ULM / Move (280) user licenses to ULM / Apply licenses
16r	Configure MiCollab Server / (293) user/departmental mailboxes
10r	Configure (56) Auto-Attendants
8r	Configure Speech Auto-Attendant and Fax
4ot	Cutover to NuPoint UM
6r	Admin Training
2r	Provision, install and test MiCollab client for two users
4r	Configure MiVoice Border Gateway Web Proxy

3300 Controller upgrades

The controller at City Hall will be replaced with a 3300MXe III controller. The DPS, Adams, Chester and Museum controllers will be replaced with new 3300CX II controllers. The 3300 CX II controller at Baldwin Library will have the RAM module upgraded. The software will be upgraded to release 9.1 on all controllers.

4r	Project Management
10r	Provision 5 new controllers with 8.0 SP2 software / DB Restore and Migrate to 9.1
8ot	Install and cutover to new controllers / Upgrade Baldwin Library RAM and software

Mitel MiCollab

Across your typical business, user collaboration, mobility, and messaging are the core communication requirements. To simplify these functions, Mitel combines them into a single solution: the Mitel MiCollab.

Promoting simplicity for users

Despite being physically separated, users appreciate being able to find each other quickly and connect without delays and long wait times for return calls and emails. Instead of users toggling between their communications applications, each with their own login procedure, MiCollab provides users access to all of their applications from one place – from anywhere on any device.

Also included in MiCollab is Presence, which provides a visual of someone's status and real-time access to everyone in the organization, on or off the premises, and enhances the effectiveness of "in the moment" communications.

Promoting simplicity for IT teams

MiCollab operates on a single management console providing administrators with one view of the entire solution - presence, collaboration, mobility, and messaging. As a single solution, MiCollab brings several other benefits to IT teams, including:

- One server for all functionality
- One interface for user deployment
- One management view
- One point of control
- Multiple deployment options including virtualized environments
- Powerful APIs to bring other applications like email and CRM into the user's communication realm.

MiCollab is a robust communications solution that unifies mission-critical applications on a cost-effective, easy-to-use platform. MiCollab minimizes installation and management costs because it consolidates multiple communication applications (see list below) on a single server with common installation, commissioning, and administration tools.

- Unified communications and collaboration
- Mobility
- Unified messaging
- Audio, video and web conferencing
- Real-time contact information
- Speech-enabled auto attendant
- Teleworking

By residing on a single server, MiCollab drastically cuts power consumption, reduces maintenance costs and requires less rack space. Time and effort are also saved with a single installation of all applications, an integrated initial system configuration wizard, and a simplified browser-based administration interface. As well, for everyday use, a browser-based user portal provides access to the applications.

Through integration with the MiVoice Business platform, MiCollab delivers call control, extensive features and support for a wide range of innovative desktop devices and applications.

MiCollab Unified Messaging

From basic voice mail to advanced unified messaging, MiCollab Unified Messaging (UM) is a reliable, cost-effective messaging application that satisfies the diverse needs of the entire user population.

As part of the MiCollab suite, MiCollab UM enables users to access their voice mail remotely through their existing e-mail clients (IBM Lotus Notes, Novell GroupWise, or Microsoft Outlook 2003/2007/2010 or 2013) or telephony user interface (TUI). MiCollab UM also enables access to voice messages from the desktop by e-mail client or web browser.

Benefits:

- Advanced unified messaging and text-to-speech e-mail reading allows users to manage voice mail, e-mail and faxes from a desk phone, mobile device or PC
- Improves customer service levels while Speech Auto Attendant offloads the company receptionist from routine calls
- Personal call routing options, such as Find Me/Follow Me and the ability to create schedules and caller ID filtering, empower users to control how and when calls reach them
- NuPoint upgrade process improvement (vNPM Restore)

Speech Auto Attendant

The MiCollab UM Speech Auto Attendant (SAA) is an application that allows users to place calls to people quickly and efficiently by speaking their names. Users can also make a call by saying a department name or telephone number.

Speech Auto Attendant has the ability to store four numbers per person and provides the configurable option for the user to select which phone number will be called. Department names are also supported and can be heard after saying the "Department" command.

The auto attendant provides users with the ability to optionally play back the current presence state of the matched person prior to transferring a caller. This feature is supported through integration with the following clients:

- IBM Sametime
- Microsoft Live Communications Server 2005 (LCS) and Microsoft Office
- Communications Server 2007 (OCS)

MiCollab Audio, Web, Video Conferencing

MiCollab Audio, Web and Video Conferencing brings together the benefits of a feature-rich audio conferencing solution with easy-to-use, intuitive web conferencing capabilities. These enable users to enhance a conference call or meeting through the use of shared documents, presentations, chat and desktop video.

The audio conferencing and web presentation capabilities facilitate better collaboration among internal and external employees, business partners and customers. Users can rapidly schedule and conduct conference calls and share documents with any participant from the browser-based interface. Recording and publishing options extend the conference beyond the initial meeting.

MiCollab Audio, Web, Video Conferencing on MiCollab is a cost-effective, scalable solution that connects people quickly and easily, regardless of their location. When part of MAS, MiCollab Audio, Web, Video Conferencing not only provides all the same features as its stand-alone version, but it also provides the simplicity of administration on a single server, a decreased server footprint, and combination with a rich set of Mitel's advanced IP applications.

MiCollab Audio, Web, Video Conferencing on MiCollab also includes the following features:

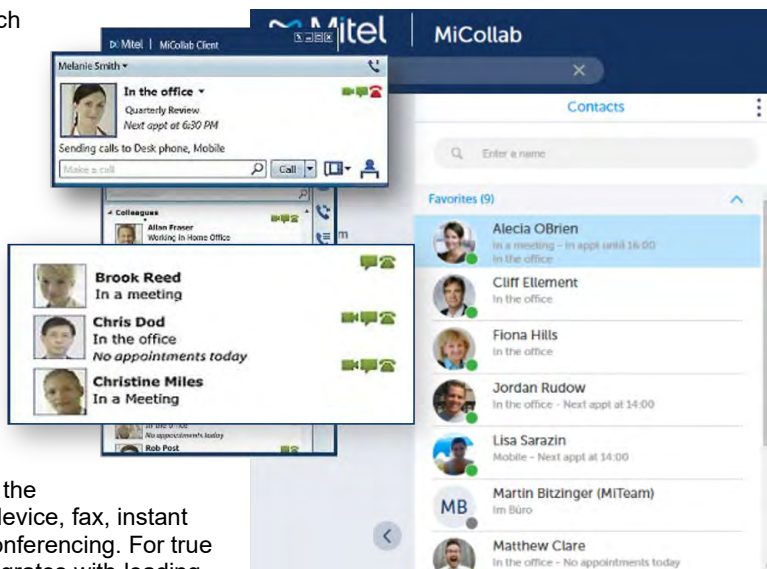
- High-quality audio and video for better collaboration among internal and external employees, business partners and customers
- Quick and easy conference call scheduling and conduct with shared documents, presentations, chat and video
- Complete call control and management directly from the desktop
- Comprehensive call detail records for bookkeeping and billing purposes
- Cost-effective group calling
- Web-based collaboration tools designed for sharing desktops and individual applications
- Support for an unlimited number of conferencing hosts
- No special event connection costs, and no expensive add-ons
- Handles javaless browsers
- Supported in a Windows 10 environment and Edge Browser

MiCollab Client

MiCollab Client provides a console from which users can manage all their business communication and collaboration needs. It converges the call control capabilities of Mitel communications platforms with contact management, Dynamic Status, and collaboration applications, to simplify and enhance real-time communications.

MiCollab Client allows real-time access to everyone in the organization, on or off the premises, with user and phone presence information that make every phone call or instant message (IM) count. It also provides simple ways to manage personal communications.

Users can find, communicate and collaborate with others quickly, easily and in the moment by desk phone, softphone, mobile device, fax, instant messaging, instant collaboration, or video conferencing. For true unified communications, MiCollab Client integrates with leading business productivity tools such as Microsoft Exchange, Microsoft Outlook, and Microsoft Office as well as IBM Lotus Notes.



MiCollab Client also includes mobile device applications that enable RIM BlackBerry, Apple iPhone and iPad, and Google Android users to upload UC Advanced directly to their devices for use while on the go. GPS and Bluetooth location-based features ensure the mobile user's presence and availability are always up-to-date and the user remains in touch with in-office contacts.

MiCollab Client delivers increased efficiency and productivity, reduced costs, enhanced responsiveness, and streamlined business operations through advanced features:

- Simplified call management and logging
- Presence and availability
- MiCollab softphone
- Visual voice mail
- Secure instant messaging
- MiCollab web and mobile portals
- Dynamic Status (an easy way for users to specify IM, presence, and call routing options)
- Location-based presence



MiCollab Client Options:

- MiCollab Web Client
- MiCollab Mac Client
- MiCollab Client

Integration with Skype for Business/Microsoft Lync

MiCollab integrates seamlessly with Skype for Business/Microsoft Lync, enhancing the clients with the following Mitel voice capabilities:

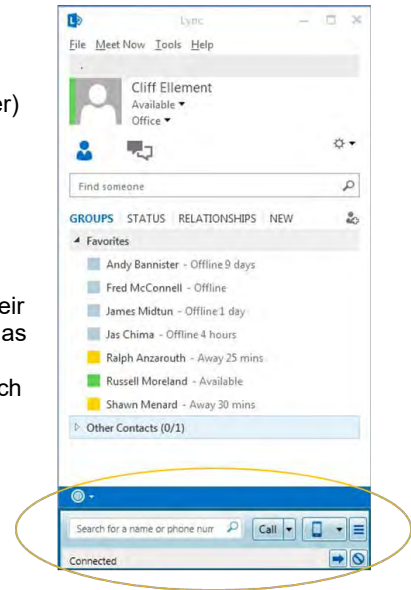
- Mobility (e.g., single-number reach, hand off to external mobile number)
- Desk-phone control
- Control from mobile phone or SIP device
- Mitel softphone
- Mid-call features
- Voice presence

From within the Skype for Business/Microsoft Lync clients, users can control their Mitel desk phones or their mobile devices, move calls between devices as well as view phone presence. When installed with Microsoft desktop applications, the Mitel solution also supports voice integration with Microsoft Office programs such as Outlook along with Click-to-Call capabilities from a number of web browsers (including Microsoft Internet Explorer, Google Chrome, and Mozilla Firefox).

MiVoice Border Gateway

The MiVoice Border Gateway (MBG) solution securely enables remote employees to work and collaborate productively by having a complete in-office unified communications experience without being physically in the office. To ensure the deployment of secure internal and external workspaces, MBG provides comprehensive threat protection, strict access control, and privacy. It can be installed either on a Mitel MiCollab server or a separate server residing on the corporate network edge. A reliable, secure platform, MBG accommodates multiple network connectivity services in a number of network edge scenarios:

- **Teleworker Service** is a secure plug-and-play solution for remote workers.
- **SIP Trunk Proxy Service** services a SIP-aware firewall at the edge of the company network, which eliminates the need for third-party firewalls. This also simplifies configuration and deployment.
- **Secure Recording Connector (SRC)** is a software solution that facilitates the recording of Mitel encrypted voice streams by third-party call recording equipment (CRE).



Mitel Unified Communications and Collaboration (UCC)

The Mitel UCC license bundles include the following components:

UCC Features	Enterprise User (* Basic User)	Entry User (Office Worker)	Standard User (Info Worker)	MiTeam Uplift (Mobile Collab Worker)
MiVoice Business User License	●	●	●	●
Voice Mail & Unified Messaging	NA	●	●	●
Single Number Reach (Mobile Phone Integration)	NA	Up to 8 Devices	Up to 8 Devices	Up to 8 Devices
Web Client	●	●	●	●
PC-MAC Desktop Client	NA	●	●	●
▪ Instant Messaging	●	●	●	●
▪ IM and Telephony Presence	NA	●	●	●
▪ Enhanced Client Capabilities (Dynamic Status, Email-Calendar Int)	NA	●	●	●
Mobile Client	NA	Opt 50% off, with Entry	●	●
Voice / Video Softphone	NA	Opt	PC & Mobile (1 Active Device)	3 Remote Devices
Teleworker – Remote Access	NA	Opt	1 Device	3 Devices
Audio, Video and Web Collaboration	Participant Only	Participant Only	Participant, Schedule, Moderate	Participant, Schedule, Moderate
Application Integration (Plug-in)	NA	NA	Google	Google, Salesforce
Ad Hoc Meeting	NA	NA	●	●
MiCollab Meeting Center	NA	NA	●	●
MiTeam Collaboration ***	NA	NA	NA	●

* Basic User typically used as Common Tel's (Conference Room, Kitchen, Lobby, Copier Room, etc)

** 10 MiCollab conferencing ports with the purchase of the first Standard user and 1 additional port for each additional 10 Standard and 5 MiTeam Uplift UCC users

*** 1st Year Included, Monthly Subscription after 1st Year

Mitel's unified communications and collaboration (UCC) licensing structure is based on the UCC solutions that are most used by businesses today. These licenses encompass 80 percent of typical business functions employed by three core user types—from unified messaging with IM and presence for the desk-bound user (Entry License), to a full in-office experience for the mobile and team user (MiTeam Uplift).

User Types

- **Enterprise (Basic)** – This license is for common area telephones (Conference Room, Kitchen, Lobby, Copier Room, etc) that do not require voice mail or collaboration tools.
- **Entry** - This license is ideal for a desk-bound office worker who needs messaging and some in-office mobility.
- **Standard** - This license is for knowledge workers who need to collaborate and share documents. It will provide them with mobility within the corporate network as well as presence, a desktop softphone, video support, and teleworker access.

Mitel Software Assurance

Mitel Software Assurance (SWA) provides two primary components for optimization and ongoing support of your software-driven Mitel communications system.

The first component provides comprehensive access to new software update releases (which includes bug fixes, patches and minor feature enhancements) as well as software upgrade releases (which include new features and functionality developed and made available in the most current software version, and may contain bug fixes and patches) for the applicable product(s) during the term of the Software Assurance subscription term.

The second component provides Mitel technical support services on your behalf to BSB Communications Inc (BSB). In the event a technical issue arises that requires the manufacturers engineering or developer assistance, BSB will have access on your behalf to those services direct from Mitel.

Software Assurance Programs

- Standard Software Assurance is Mitel's core software support offering which includes access to new software releases, updates, technical support services during normal business hours (8AM-8PM Mon-Fri).
- Premium Software Assurance is Mitel's enhanced software support offering extending Standard SWAS with 24/7 technical support coverage.

Software Assurance Subscription Options

- Software Assurance can be purchased yearly, or in 2-5 year bundles. Subscriptions can be extended prior to expiration of the current Software Assurance program.
- In event the current software assurance has expired; a new subscription can be purchased with an additional re-enlistment fee.

Schedule of Equipment and Services

Total Price for Core Solution:
\$35,221.25

Qty	Part Number	Description	Unit Sell	Ext Sell
		MiVoice Business Software		
1	54005339	MiVoice Border Gateway Virtual	\$125.00	\$125.00
1	54005442	MiCollab Virtual Appliance	\$497.50	\$497.50
		MiVoice Business Hardware		
4	50006266	3300 CX(i) II Controller SATA SSD	\$150.00	\$600.00
1	50006268	3300 MXe III Controller SATA SSD	\$220.00	\$220.00
5	50006271	PWR CRD C13 10A 125V - NA Plug	\$8.75	\$43.75
1	50006727	MXe III & CX/i II , 1GB RAM Mod Upgrade	\$150.00	\$150.00
4	50006729	3300 CX II w/ 1GB RAM Controller	\$825.00	\$3,300.00
1	50006731	3300 MXe III w/ 1GB RAM Controller	\$2,500.00	\$2,500.00
		MiVoice Business License		
1	54001627	NPUM Record A Call	Incl.	Incl.
2	54002375	NPUM Fax on One Port (max 6/node)	\$500.00	\$1,000.00
3	54002692	NPUM Text to Speech Port	\$600.00	\$1,800.00
2	54003292	NPUM SAA +1 SAA Port	\$500.00	\$1,000.00
6	54003293	NPUM SAA Corp Directory Names x50	\$250.00	\$1,500.00
2	54004110	NPUM Outbound Fax User x1	\$20.00	\$40.00
1	54005380	MiCClient Licnse - Peering Adv Server	Incl.	Incl.
1	54005381	MiCClient Licnse - Federation Adv Server	Incl.	Incl.
2	54005610	MiCollab NPUM MiVBus Mailbox Licensesx10	\$175.00	\$350.00
2	54005611	MiCollab NPUM MiVBus Mailbox Licensesx50	\$750.00	\$1,500.00
280	54006553	UCCv4.0 Basic to Entry for MiVoice Bus	\$27.50	\$7,700.00
		Software Assurance & Support (SWAS)		
1	54009186	SWA Std 1y MiCollab System	\$60.00	\$60.00
120	54009189	SWA Std 1y MiCollab UM Mailbox	\$2.10	\$252.00
280	54009211	SWA Std 1y UCC Bsc-Ent MiVB	\$2.10	\$588.00
1	54009229	SWA Std 1y MiV BG System	\$15.00	\$15.00
		Services		
60	L3-LBR-TEC	L3 Advanced Implementation & Design	\$145.00	\$8,700.00
8	L1-LBR-PM	L1 Project Management	\$125.00	\$1,000.00
		- Document of Extensions & Devices		
		- Document of Call Flow & Auto-Att		
12	L3-NB-LBR	After Hours Implementation Work	\$190.00	\$2,280.00
		Warranty / Support		
1	PartsWrtY	1 Year Standard Parts Warranty	Incl.	Incl.
1	Support24X7	1 Year (24x7) Labor Support	Incl.	Incl.
		SERVICES SUB-TOTAL		\$11,980.00

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Warranty Support Plan

Scope and Definition of Support Services

During the warranty period defined in the above "Schedule of Equipment and Services", BSB will provide support for the above quoted system as follows:

Full Service 24 x 7 Plan with 4 Hour Response for Major Failures

Hours of Coverage

- 24x7x365 (24 hours per day, seven days per week, 365 days per year) remote and onsite and support for a Major Failure.
- 8 a.m. - 5 p.m. Monday through Friday (local time at the Site, excluding BSB's locally observed holidays) remote and onsite support for a Minor Failure.

Response Objectives

Major Failure

- Response within two (2) hours upon receipt of a trouble report of a Major Failure by attempting to clear the failure remotely and/or contacting the End-User to begin troubleshooting the system failure.
- Onsite response within four (4) hours upon receipt of a trouble report of a Major Failure which cannot be resolved by a remote engineer.

Minor Failure

- Response within eight (8) business hours (Monday through Friday 8 a.m. - 5 p.m. at the local time at the Site, excluding BSB's locally-observed holidays) upon receipt of a trouble report of a Minor Failure by attempting to clear the failure remotely and/or contacting the End-User to begin troubleshooting the system failure.
- Onsite response within the next business day (Monday through Friday 8 a.m. - 5 p.m. at the local time at the Site, excluding BSB's locally-observed holidays) upon receipt of a trouble report of a Minor Failure which cannot be resolved by a remote engineer.

Parts Replacement

- Expedited replacement of defective parts and materials is included in this Support Plan during the coverage hours purchased as detailed above.

Additional Services

- Network service provider liaison support: BSB will communicate and cooperate with the End-User's network service provider to determine the source of Equipment failure (when applicable).
- Carrier Service liaison support: BSB will communicate and cooperate with the End-User's Carrier Services Provider to facilitate new carrier services (when applicable).
- Periodic system back-ups to be done remotely as needed.

Software Updates

- Provision of software updates, containing maintenance fixes, will be provided as needed to resolve a Major or Minor Application Failure.

Note: Any peripheral or ancillary products not listed above may be serviced, at BSB's option, at the End-User's request on a time and materials basis at then current support services rate.

IP Endpoints & Pricing (6900 Series) (* Not including IP License or Installation)



Model 6940

- 7" Color Backlit Touch-screen display
- 96 Programmable, self-labeling keys
- 6 Soft Keys, 10 Fixed Function Keys
- Built In Bluetooth Handset
- HD Full Duplex Speakerphone
- Built-in 10/100/1000 Dual Port Switch
- Requires IP User License

MSRP \$550

Sourcewell \$330 **



Model 6930

- 4.3" Color Backlit display
- 72 Programmable, self-labeling keys
- 5 Soft Keys, 10 Fixed Function Keys
- Optional Bluetooth Handset
- HD Full Duplex Speakerphone
- Built-in 10/100/1000 Dual Port Switch
- Requires IP User License

MSRP \$410

Sourcewell \$246 **



Model 6930t (Antimicrobial Coating)

- Antimicrobial Coating + Non-Crevise HS
- 4.3" Color Backlit display
- 72 Programmable, self-labeling keys
- 5 Soft Keys, 10 Fixed Function Keys
- Optional Bluetooth Handset
- HD Full Duplex Speakerphone
- Built-in 10/100/1000 Dual Port Switch
- Requires IP User License

MSRP \$410

Sourcewell \$279 **



Model 6920

- 3.5" Color Backlit display
- 18 Programmable, self-labeling keys
- 4 Soft Keys, 10 Fixed Function Keys
- HD Full Duplex Speakerphone
- Built-in 10/100/1000 Dual Port Switch
- Requires IP User License

MSRP \$295

Sourcewell \$177 **

IP Endpoints & Pricing (6900 Series - Continued)



Model 6920 (Antimicrobial Coating)

- Antimicrobial Coating + Non-Crevise HS
- 3.5" Color Backlit display
- 18 Programmable, self-labeling keys
- 4 Soft Keys, 10 Fixed Function Keys
- HD Full Duplex Speakerphone
- Built-in 10/100/1000 Dual Port Switch
- Requires IP User License

MSRP \$295

Sourcewell \$201 **



Model 6910

- 3.4" 128x48 Backlit LCD display
- 8 Programmable, self-labeling keys
- 11 Fixed Function Keys
- HD Full Duplex Speakerphone
- Built-in 10/100/1000 Dual Port Switch
- Requires IP User License

MSRP \$190

Sourcewell \$114 **



Model 6905

- 2.75" 128x48 Backlit LCD display
- 3 Programmable, self-labeling keys
- 6 Fixed Function Keys
- One Way Speaker
- Built-in (10/100) Port Switch
- Requires IP User License

MSRP \$100

Sourcewell \$60 **



Model 6970 Conference Unit

- 7" Color Backlit Touch-screen display
- 16 Programmable, self-labeling keys
- 6 Contact Sensitive 6 Soft Keys
- HD Full Duplex Speakerphone
- 10/100/1000 Ethernet Port
- Requires IP User License

MSRP \$825

Sourcewell \$495 **

MSRP \$295 Dual Mics

Sourcewell \$177 **

IP Endpoint (6900 Series) Accessory Options & Pricing



Model M695 PKM

- Programmable Key Module
- 4.3" Color Backlit display
- 28 Programmable, self-labeling keys
- Daisy chain up to (3) Modules
- Support for Models 6940, 6930, 6920 Tels
- PKM's powered thru phone

MSRP \$200

Sourcewell \$120 **

6900 Series Bluetooth Handset



- Included with 6940 Tel
- Optional for 6930 Tel (NA for 6920 Tel)
- Answer/Hang-up, mute and volume up/down
- Ringtone play thru handset while out of cradle
- Bluetooth 4.1 Class
- 10 meter / 30 foot range

MSRP \$173

Sourcewell \$104 **

WLAN Adapter (6900/5300 Series Phones)



- Provides POE power to Wireless connected Tel
- Wireless LAN Adapter
- 802.11 a/b/g/n Dual Band (2.4Ghz / 5Ghz)
- Support for 6900 / 5300 Tels
- Provides connection of PC with true 2x2 MIMO
- Includes Power Cord

MSRP \$200

Sourcewell \$170 **

Ethernet Power Adapter (6900/5300 Series Phones)



- Provides POE power to Wired connected Tel
- Support for 6900 / 5300 Tels
- Includes Optional NA Power Cord

MSRP \$63

Sourcewell \$32 **

** Approx Individual Sell Price

IP Endpoint (6900 Series) Accessory Options & Pricing (Continued)



Integrated DECT Headset

- 300 foot (100 meter) range
- Premium mono-ear headset
- Attaches to phone via phone's Expansion Port
- Headset Call Control Buttons
- Support for Models 6940, 6930 Tels
- Powered directly thru phone

MSRP \$325

Sourcewell \$260 **



S720 Wireless BT Speakerphone

- Bluetooth Wireless HD Speakerphone
- Support for Models 6940 & 6930 Tels
- Works with Mobile Smartphone
- Talk time up to 15 Hours
- Up to (2) Units can be paired together for extended coverage or stereo sound

MSRP \$375

Sourcewell \$375 **

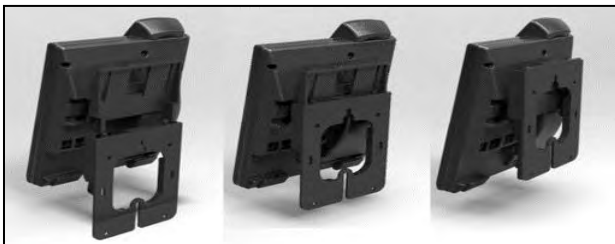


USB Bluetooth Dongle

- Provides Bluetooth Capability to 6920 Tels
 - o MobileLink Mobile Integration
 - o Bluetooth Headset Support
 - o Bluetooth Speakerphone Support

MSRP \$75

Sourcewell \$75 **



6900 Series Wall Mount Unit







- Support for Models 6940, 6930, 6920 Tels
- 2-piece slide & lock design for simple installation
- 2-fixed phone angles (10°/20°)
- Telco wall plate support
- Direct wall mounting holes
- Includes short Ethernet cable and tool for positioning handset hook

MSRP \$29

Sourcewell \$17 **

** Approx Individual Sell Price

Mitel 6900 Series Phone Feature Matrix

						
FEATURES	6940	6930	6920	6910	6905	6970
Display Type	Touchscreen	Color LCD	Color LCD	Mono LCD	Mono LCD	Touchscreen
Display Size	7" (800x480)	4.3" (468x272)	3.5" (320x240)	3.4" (128x48)	2.75" (128x48)	7" (800x480)
Backlit Display	Yes	Yes	Yes	Yes	No	Yes
Programmable Keys	96 (6x16)	72 (6x12)	18 (3x6)	8	3	96
Context Sensitive Soft Keys	6	5	4	8	3	6
Dedicated Feature Keys	11	11	11	8	8	6
4 Way Navigation Key	Yes	Yes	Yes	Yes	Yes	No
Wideband Speakerphone	Yes	Yes	Yes	Yes	Yes	Yes
Bluetooth 4.1 Support	Yes	Yes	Optional	No	No	Yes
Mobile Integration (1)	Yes	Yes	Optional	No	No	Yes
Bluetooth Handset Support (2)	Yes	Optional	No	No	No	No
Mobile Charging Port	Yes	Yes	No	No	No	No
Wired Analog Headset Support (3)	No	Yes	Yes	No	No	No
EHS/DHSG Headset Support (4)	No	Yes	Yes	Yes	Yes	No
USB Headset Support	Yes	Yes	Optional	No	No	No
Integrated DECT Headset Support	Yes	Yes	No	No	No	No
LCD PKM Support (5)	Yes (3 max)	Yes (3 max)	Yes (3 max)	No	No	No
WLAN Adapter Support	Yes	Yes	Yes	Yes	Yes	Yes
S720 BT Spkrphone Support	Yes (2 max)	Yes (2 max)	Opt (2 max)	No	No	No
Wired Remote Mic Support	No	No	No	No	No	Yes
Optional Wall Mount Support	Yes	Yes	Yes	Yes	Yes	No
Dual Ethernet Ports	2 x GigE	2 x GigE	2 x GigE	2 x GigE	2 x 10/100	2 x GigE
Power Draw Idle	1.8W	1.5W	1.3W	PoE Class 2	PoE Class 1	2.6W
Power Draw Typical	9.0W	7.2W	3.4W	PoE Class 2	PoE Class 1	5.5W

Note (1) - (Mobile Integration) - MobileLink provides seamless pairing of IP desk phone and smartphone

Note (2) - (Bluetooth Handset Support) - Integrated bluetooth wireless handset

Note (3) - (Wired Analog Headset Support) - Connection of 3rd Party Headsets

Note (4) - (EHS/DHSG Headset Support) - Electronic headset eliminates need for handset lifter when using headset

Note (5) - (LCD PKM Support) - LCD Programmable Key Module (PKM) Sidecar

Key Dependencies

The scope, pricing and successful completion of this statement of work is dependent on the key assumptions and expectations listed below. Please review these assumptions carefully and validate their accuracy. Should these assumptions and expectations require modification, BSB will endeavor to accommodate such modifications by revising the SOW or issuing a Change Order that documents the requested change and, if applicable, any impact on pricing.

Designated Point of Contact

City of Birmingham will assign a designated single point of contact to work with BSB for the duration of the implementation. City of Birmingham will ensure that during the period of implementation, Information Technology (IT) / Telecom resources responsible for key LAN/WAN/Telephony configurations will be available to work with BSB. It is assumed that the assigned contact will have the authority to make decisions regarding implementation activities in a timely manner.

Facilities

City of Birmingham will provide full access to all of City of Birmingham's premises as needed by BSB to perform its responsibilities under this SOW. Any refusal of access shall relieve BSB of its performance obligations and the implementation schedule shall be revised to reflect the delay. City of Birmingham will also provide a suitable work area for BSB personnel.

Network Services Verification & Liaison

City of Birmingham will assume responsibility for all Network Service Provider liaison activities, including the ordering and delivery coordination of network services, unless otherwise stated. City of Birmingham will provide BSB with accurate Network Service Provider records identifying all existing network services and any new network services that are being ordered, including the expected delivery date(s) of the new services. The delivery date of new network services will be mutually agreed by BSB, the Network Services Provider and City of Birmingham, and this date will be documented as a milestone in the master project schedule. In the event that the Network Service Provider documentation given to BSB proves to be inaccurate or unavailable, all BSB labor required to verify and document the existing network services and/or coordinate the delivery of new services with the City of Birmingham's Network Service Provider(s) is subject to an additional charge. Alternatively, BSB can provide City of Birmingham with an additional quote for Network Service Provider "Audit, Verification and Liaison" services.

Equipment Delivery & Inventory Acceptance Process

BSB will coordinate equipment delivery with City of Birmingham based on a mutually agreed delivery schedule. At the time of delivery, both BSB and City of Birmingham will inspect and inventory the equipment. To facilitate generation of this equipment inventory, BSB will provide a Notice of Equipment Delivery (NED) form. Upon completion of the inventory, both the designated contact of BSB and the designated contact of City of Birmingham will confirm receipt of the equipment by signing the NED form.

City of Birmingham should be aware that equipment may be delivered to the site in stages, and City of Birmingham is responsible for equipment once it is delivered to the site. City of Birmingham will pre-arrange for elevator and/or other facility access necessary to accommodate delivery. City of Birmingham agrees to provide for secure storage of equipment. City of Birmingham is responsible for the costs of any hoisting or building alterations that may be required to gain entry to the communications room.

Design & Programming

BSB will meet with City of Birmingham designated point of contact to review the Design Plan options purchased, introduce the Station/Voice Mailbox Information Design Forms and agree on expectations for the completion and return of Design Forms.

Training

City of Birmingham will provide a suitable on-site training facility for purchased training classes. The training room should be adequately cabled for installation of the training room endpoints. City of Birmingham is responsible for scheduling the training classes for its employees and providing BSB with a copy of the schedule. There should be a maximum of two people per set for display phones. BSB will record attendance for each training class and provide a copy to City of Birmingham upon completion of training.

City of Birmingham-Supplied PCs

All City of Birmingham-supplied servers and client PCs will meet the hardware & software specifications for all application software purchased. Any additional work required by BSB due to "out-of-spec" City of Birmingham-supplied PCs will be subject to an additional charge.

City of Birmingham-Supplied OEM Equipment

City of Birmingham will provide BSB all required information about the integration between the proposed equipment and all City of Birmingham-supplied OEM equipment (including existing PBXs and Voice Messaging systems). City of Birmingham will assume responsibility for all OEM equipment vendor coordination as applicable.

Product Specific Prerequisites

Additional prerequisites may apply to the specific product solutions being implemented; refer to *Description of Services and Deliverables* section.

Completion & Acceptance Criteria

The provision of implementation services shall be deemed completed upon system cutover, as specified in the Notification of Cutover form submitted to City of Birmingham by BSB.

If City of Birmingham has purchased optional post-cut-over support services, BSB will provide these additional services immediately following cutover for the duration purchased.

Change Management

BSB will review changes to this statement of work that are requested by City of Birmingham. As part of this review, BSB will prepare a Change Order that documents the requested change and, if applicable, any impact on the implementation schedule and pricing.

BSB will incorporate the change into the project schedule and scope of work upon receipt of the City of Birmingham-signed Change Order.

It is important to note that changes requested during implementation will result in changes to the previously negotiated "cut-over" date. BSB will work with City of Birmingham to anticipate requested changes prior to implementation so as to minimize the impact of requested Change Orders on the negotiated "cut-over" date. Change requests will be reviewed according to the process outlined above.

Statement of Work (Terms and Conditions)

This Statement of Work (SOW) is subject to the terms and conditions executed by and between City of Birmingham and BSB Communications.

This SOW is also subject to the completion of a Site Survey by BSB to validate BSB's understanding of site conditions as documented in this SOW and to identify any potential areas of concern. Any additional requirements or deliverables identified through the Site Survey, and/or requested by City of Birmingham, must be confirmed in writing through a Change Order or separate SOW.

This Statement of Work (SOW) is also subject to the following terms and conditions:

- City of Birmingham acknowledges that while BSB maintains overall responsibility for the management and delivery of the services requested, BSB may utilize an authorized subcontractor(s) to perform some or all of the specific services defined herein.
- BSB shall not be responsible for any delays in the implementation of the proposed equipment that result from incomplete or inaccurate information supplied by City of Birmingham.
- Any work performed by BSB that is not listed in the scope of work or which is required to assist City of Birmingham with the completion of site preparation activities will be subject to the change management process described above.
- BSB will not be responsible for any delays attributed to faulty cabling that is not provided or installed by BSB.
- In the event that a universal power supply (UPS) is not provided, BSB shall not be responsible for any or all damage(s) related directly or indirectly to power related problems.

BSB shall not be responsible for any failure of equipment or network service resulting from the integration of the equipment with any City of Birmingham-supplied OEM equipment. City of Birmingham shall at its expense indemnify and defend BSB, its parent and subsidiaries from any claim of actual or alleged infringement of valid Canadian or U.S. intellectual property rights arising from City of Birmingham's integration of the proposed equipment with any City of Birmingham-supplied OEM equipment.

PRICE

The price for the Equipment is **\$35,221.25** ("Purchase Price"), excluding taxes. The Purchase Price may be adjusted to reflect any new configuration of the Equipment. The Customer shall pay under the following schedule:

50%	Upon Execution of this Agreement
40%	At Cutover
10%	Upon Completion

Notice to Proceed

Execution of this Statement of Work (SOW) by City of Birmingham shall constitute notice to BSB to proceed with the work described in this SOW. By signing this SOW the customer acknowledges that they will undertake site preparations and meet network specifications as detailed in the Site Preparation section of this SOW.

BSB Communications

City of Birmingham

Authorized Representative

Authorized Representative

Printed Name

Printed Name

Title

Title

Date

Date

Customer Purchase Order# _____

Next Steps

Upon receipt of Notice to Proceed and confirmation of purchase order receipt, BSB will initiate the following "next steps":

1. Contact City of Birmingham to schedule implementation dates and introduce BSB's Project Manager (if applicable).
2. Assign trained and certified technical resources following confirmation of scheduled implementation dates. These resources will ensure successful implementation of the product(s) and solutions as detailed in this SOW.
3. Schedule a Project Kick-off Meeting/Conference call with City of Birmingham. During this meeting, BSB will introduce the implementation team, work with City of Birmingham to develop a detailed project schedule, set project milestones and discuss all aspects of this implementation. The Kick-off will provide an opportunity for BSB and City of Birmingham to address any outstanding questions or areas of concern. In addition, BSB's system designer will consult with the designated contact of City of Birmingham to further clarify requirements and expectations. The system designer will also review station information design forms and identify any other information that BSB will need from City of Birmingham to complete the implementation.
4. Begin implementation according to this statement of work and the agreed implementation schedule.



MEMORANDUM

Planning Division

DATE: July 6, 2021

TO: Thomas Markus, City Manager

FROM: Jana L. Ecker, Planning Director

SUBJECT: Set a Public Hearing for 300 - 394 S. Old Woodward and a portion of 294 E. Brown and a portion of 294 E. Brown Street – New Mixed Use 4 story Building, RH – Special Land Use Permit, Final Site Plan & Design Review

INTRODUCTION:

The applicant has submitted an application for a special Land Use Permit, Final Site Plan and Design Review for a new mixed use, four story building in the Downtown Birmingham Overlay District to house Restoration Hardware (“RH”). The subject site includes the properties known as 300 – 394 S. Old Woodward, and portions of the property located at 294 E. Brown. These properties are currently occupied by Capital Title/Lutz, Roche Bobois/Frank’s Shoe Service and Coldwell Banker Weir Manual. The entire property has a total land area of 54,052.96 sq.ft. or 1.24 acres. It is located on the west side of S. Old Woodward, including the entire block of S. Old Woodward from Brown Street south to Daines Street and all parcels are zoned B2 General Business and D-3 in the Downtown Birmingham Overlay District.

BACKGROUND:

The applicant is proposing to rearrange the parcel lines for the above three properties to create two new parcels through the lot split and combination process. The applicant is proposing to split off the westernmost portion of the 300 S. Old Woodward (currently parking lot) and combine this portion with the parcel at 294 E. Brown Street. In addition, the applicant is proposing to split off the easternmost portion of the L-shaped parcel at 294 E. Brown and combine this with the parcel at 394 S. Old Woodward. Finally, the applicant proposes to combine the new parcels at 300 and 394 S. Old Woodward to create one large new parcel that will run from Brown south to Daines. **The applicant was required to obtain approval of the City Commission for the proposed lot splits and lot combination to create the new lot that is the subject of this application and shown on the site plan.** These applications were approved by the City Commission.

Both existing buildings (currently 300 and 394 S. Old Woodward) on the lot to be newly created are proposed to be demolished to construct a new 4 story mixed use building with retail and design uses on the first 3 floors, and a restaurant on the fourth floor. One level of underground parking is proposed to house 24 cars. As the building is located within the

Parking Assessment District, no on-site parking is required for the proposed commercial uses.

In order to permit the use of a restaurant on the fourth floor, the applicant is also proposing a rezoning of the new parcel encompassing 300 – 394 S. Old Woodward from D-3 to D-4 in the Overlay District. In addition, the applicant is also proposing a zoning amendment to the Exhibit 1, Appendix C, to add the properties at 300 – 394 S. Old Woodward to this map. Both of these applications are scheduled for public hearings at the City Commission on July 12, 2021.

On April 28, 2021, the Planning Board unanimously accepted the Community Impact Study as provided by the applicant for the proposed development at 300 - 394 S. Old Woodward and a portion of 294 E. Brown Street with the following conditions:

1. The applicant is required to provide information on all life safety issues and Fire Dept. approval;
2. The applicant is required to provide information on the proposed security system for approval by the Police Department; and,
3. The applicant shall add the bicycle racks in accordance with the Fleis and Vandenbrink letter dated April 26, 2021.

On April 28, 2021, the Planning Board also unanimously approved the Preliminary Site Plan for 300 - 394 S. Old Woodward and a portion of 294 E. Brown Street subject to the following conditions:

1. The applicant is required to obtain approval of the City Commission for the proposed lot splits and lot combination to create the new lot that is the subject of this application and shown on the site plan;
2. The applicant obtain a variance for the use of the fourth floor as a restaurant, or obtain approval of a rezoning of the property to D-4 in the Downtown Overlay;
3. The applicant obtain a variance for the use of an Economic Development license on the site, or obtain approval of a zoning amendment to alter the map contained in Appendix C, Exhibit 1 of the Zoning Ordinance to include the subject property;
4. The applicant reduce the height of the proposed building to 68' and 3 stories and the eave height to 34' maximum, or obtain the requested rezoning of the site from D-3 to D-4 in the Downtown Overlay District, or obtain a variance from the Board of Zoning Appeals;
5. The applicant update the landscape plan to provide species and size details on all proposed plantings, and provide material specifications on hardscape items at the time of Final Site Plan Review;
6. The applicant is required to receive separate Planning approval for all landscaping changes proposed for the adjacent site, as they are not included in this site plan review approval;
7. The applicant must submit a complete streetscape plan, including detail on hanging planters, at the time of Final Site Plan review;
8. All streetscape elements on S. Old Woodward will be required to be consistent with the enhanced streetscape design planned by the City for future construction;
9. The applicant must obtain approval of the Police Department and/or City Commission for any valet operation proposed;

10. The applicant must submit all light fixture specification sheets and material and color samples at Final Site Plan Review;
11. Compliance with the requirements of all departments; and,
12. The applicant provide all material samples, specifications and colors at the time of Final Site Plan Review.

On July 14, 2021, the Planning Board is scheduled to conduct a review of a Special Land Use Permit and Final Site Plan and Design Review for RH.

LEGAL REVIEW:

The City Attorney has reviewed this application and has no concerns as to form and content.

FISCAL IMPACT:

There are no fiscal impacts for this agenda item.

PUBLIC COMMUNICATIONS:

As required for Special Land Use Permit and Final Site Plan Reviews, a legal ad was placed in a newspaper of local circulation to advertise the nature of the request advance of the July 14, 2021 Planning Board meeting, and notices were sent out to all property owners and tenants within 300' of the property. In addition, a second round of notices will be sent out to advertise the public hearing at the City Commission once the date has been set.

SUMMARY:

The Planning Division requests that the City Commission set a public hearing date for **August 9, 2021** to consider the Special Land Use Permit, Final Site Plan and Design Review application for 300 - 394 S. Old Woodward and a portion of 294 E. Brown Street to allow a new building for Restoration Hardware ("RH"), including a restaurant operating with an Economic Development Liquor License.

ATTACHMENTS:

Please find attached the following documents for your review:

- Planning Division Report
- Meeting Minutes
- Site/Design Plans
- Application & Supporting Documents

SUGGESTED RESOLUTION:

To set a public hearing date for August 9, 2021 to consider the Special Land Use Permit, Final Site Plan and Design Review application for 300 - 394 S. Old Woodward and a portion of 294 E. Brown to allow a new building for Restoration Hardware, including a restaurant operating with an Economic Development Liquor License.

Date: July 7, 2021

To: Planning Board Members

From: Jana L. Ecker, Planning Director

Re: 300 - 394 S. Old Woodward and a portion of 294 E. Brown Street – New Mixed Use 4 story Building, Final Site Plan and Design Review

The subject site includes the properties known as 300 – 394 S. Old Woodward, and portions of the property located at 294 E. Brown. These properties are currently occupied by Capital Title/Lutz, Roche Bobois/Frank's Shoe Service and Coldwell Banker Weir Manual. The entire property has a total land area of 54,052.96 sq.ft. or 1.24 acres. It is located on the west side of S. Old Woodward, including the entire block of S. Old Woodward from Brown Street south to Daines Street and all parcels are zoned B2 General Business and D-3 in the Downtown Birmingham Overlay District.

The applicant applied for and obtained approval to rearrange the parcel lines for the above three properties to create two new parcels through the lot split and combination process. The applicant was approved to split off the westernmost portion of the 300 S. Old Woodward (currently parking lot) and combine this portion with the parcel at 294 E. Brown Street. In addition, the applicant was approved to split off the easternmost portion of the L-shaped parcel at 294 E. Brown and combine this with the parcel at 394 S. Old Woodward. Finally, the applicant was approved to combine the new parcels at 300 and 394 S. Old Woodward to create one large new parcel that will run from Brown south to Daines.

Both existing buildings (currently 300 and 394 S. Old Woodward) on the lot that was newly created are proposed to be demolished to construct a new 4 story mixed use building with retail and design uses on the first 3 floors, and a restaurant on the fourth floor. One level of underground parking is proposed to house 24 cars. As the building is located within the Parking Assessment District, no on-site parking is required for the proposed commercial uses.

In order to permit the use of a restaurant on the fourth floor, the applicant is also proposing a rezoning of the new parcel encompassing 300 – 394 S. Old Woodward from D-3 to D-4 in the Overlay District. In addition, the applicant will be proposing zoning amendments to the B2 zoning district to allow the use of economic development liquor licenses with a Special Land Use Permit on this site, which will include an application for an amendment to Exhibit 1, Appendix C, to add the properties at 300 – 394 S. Old Woodward to this map. Both of these applications have been made and will be considered by the City Commission on

July 12, 2021.

The new 4 story building is proposed to be 49,624 sq.ft. in size (not including the underground parking level), thus requiring the applicant to prepare a Community Impact Study in accordance with Article 7, section 7.27(E) of the Zoning Ordinance as they are proposing a new building containing more than 20,000 square feet of gross floor area.

On March 26, 2021, the Planning Board conducted a detailed review of the applicant's CIS. After much discussion, the board voted to postpone the CIS until April 28, 2021 to allow the applicant to address the issues noted in the report below. The main issue to be resolved was the traffic analysis method used by Rowe Engineering. The applicant agreed to meet with the City's traffic engineers to agree upon a methodology and resolve all traffic issues. Mr. Emerine was asked to meet with the traffic experts and City staff to assist in resolving the issues to the satisfaction of the Planning Board.

On April 28, 2021, the Planning Board unanimously accepted the Community Impact Study as provided by the applicant for the proposed development at 300 - 394 S. Old Woodward and a portion of 294 E. Brown Street with the following conditions:

1. The applicant is required to provide information on all life safety issues and Fire Dept. approval;
2. The applicant is required to provide information on the proposed security system for approval by the Police Department; and,
3. The applicant shall add the bicycle racks in accordance with the Fleis and Vandenbrink letter dated April 26, 2021.

On April 28, 2021, the Planning Board also unanimously approved the Preliminary Site Plan for 300 - 394 S. Old Woodward and a portion of 294 E. Brown Street subject to the following conditions:

1. The applicant is required to obtain approval of the City Commission for the proposed lot splits and lot combination to create the new lot that is the subject of this application and shown on the site plan;
2. The applicant obtain a variance for the use of the fourth floor as a restaurant, or obtain approval of a rezoning of the property to D-4 in the Downtown Overlay;
3. The applicant obtain a variance for the use of an Economic Development license on the site, or obtain approval of a zoning amendment to alter the map contained in Appendix C, Exhibit 1 of the Zoning Ordinance to include the subject property;
4. The applicant reduce the height of the proposed building to 68' and 3 stories and the eave height to 34' maximum, or obtain the requested rezoning of the site from D-3 to D-4 in the Downtown Overlay District, or obtain a variance from the Board of Zoning Appeals;

5. The applicant update the landscape plan to provide species and size details on all proposed plantings, and provide material specifications on hardscape items at the time of Final Site Plan Review;
6. The applicant is required to receive separate Planning approval for all landscaping changes proposed for the adjacent site, as they are not included in this site plan review approval;
7. The applicant must submit a complete streetscape plan, including detail on hanging planters, at the time of Final Site Plan review;
8. All streetscape elements on S. Old Woodward will be required to be consistent with the enhanced streetscape design planned by the City for future construction;
9. The applicant must obtain approval of the Police Department and/or City Commission for any valet operation proposed;
10. The applicant must submit all light fixture specification sheets and material and color samples at Final Site Plan Review;
11. Compliance with the requirements of all departments; and,
12. The applicant provide all material samples, specifications and colors at the time of Final Site Plan Review.

At this time, the applicant is requesting approval of the Special Land Use Permit and Final Site Plan and Design Review for RH.

1.0 Land Use and Zoning

- 1.1. Existing Land Use – The existing land uses on the site include Capital Title/Lutz and Coldwell Banker Weir Manual real estate services, as well as Roche Bobois' retail use and Frank's Shoe Repair Services. The existing Capital Title/Lutz and Frank's Shoe Repair building are proposed to demolished to allow construction of the proposed four story mixed use building.
- 1.2 Zoning – The property is zoned B2 General Business, and D-3 in the Downtown Overlay District. The proposed retail, gallery, design services and restaurant use and surrounding uses appear to conform to the permitted uses of the zoning district. **However, the use of the fourth floor as a restaurant is not permitted in the D-3 zoning district, which allows a fourth floor only when used for residential units. Thus, the applicant must obtain a variance for this use, or obtain the requested rezoning from D-3 to D-4 in the Downtown Overlay District. The applicant has submitted a rezoning application which will be considered by the City Commission on July 12, 2021.**

In addition, the applicant is proposing that the restaurant on the fourth floor serve alcoholic liquors, thus requiring a liquor license and a Special Land Use Permit. The applicant has advised that they wish to seek an Economic Development liquor license for use on this site

given the significant investment in the redevelopment of the site. **However, Economic Development liquor licenses are not permitted for use on the site, as none of the properties involved in this application are included on the map contained in Appendix C, Exhibit 1, of the Zoning Ordinance. Thus, the applicant will be required to obtain a variance for the use of an Economic Development license on the site, or obtain approval of a zoning amendment to alter the map contained in Appendix C, Exhibit 1 of the Zoning Ordinance to include the subject property. The applicant has submitted a request for an amendment to the Zoning Ordinance to amend Appendix C, Exhibit 1 to include the subject site, which will be considered by the City Commission on July 12, 2021.**

- 1.3 Summary of Adjacent Land Use and Zoning - The following chart summarizes existing land use and zoning adjacent to and/or in the vicinity of the subject site, including the 2016 Regulating Plan.

	North	South	East	West
Existing Land Use	Retail/ Commercial / Hotel	Retail/ Commercial & Residential	Retail/ Commercial/ Residential	Commercial/ Parking
Existing Zoning District	B-4 Business Residential	B-2B General Business	B-2 General Business & B-3 Office- Residential	B-2 General Business
Overlay Zoning District	D-4	D-2	D-3& D-4	D-3

2.0 Economic Development License Requirements

At this time, the applicant is also requesting approval of a SLUP to allow the use of an Economic Development Liquor License on the top floor of the proposed story RH building.

Chapter 126, Article 3, section 3.04(C)(11) Building Use, states that:

Establishments operating with a liquor license obtained under Chapter 10, Alcoholic Liquors, Article II, Division 3, Licenses for Economic Development, are permitted with a valid Special Land Use Permit only on those parcels on Woodward Avenue identified in Map 3.1.

The proposed location for the use of the Economic Development Liquor License at 300 – 394 S. Old Woodward and a portion of 294 E. Brown Street is not currently one of the parcels on Woodward Avenue identified in Map 3.1. **In order to permit the use of a restaurant on the fourth floor, the applicant is proposing an ordinance amendment to Exhibit 1, Appendix C, to add the subject property to this map. If this application is approved by the City Commission on July 12, 2021, the City Commission will be permitted to issue a SLUP to RH to allow the use of an Economic Development License on this site to permit the service of alcoholic liquors in the top floor restaurant.**

3.0 Setback and Height Requirements

Please see the attached Zoning Compliance Summary Sheet for detailed zoning compliance information. The proposed four story building meets all of the setback and placement requirements of the D-3 zoning district, and most of the height, scale and mass development standards. **However, the applicant will be required to reduce the height of the proposed building to 68' and 3 stories and the eave height to 34' maximum, or obtain the requested rezoning of the site from D-3 to D-4 in the Downtown Overlay District, or obtain a variance from the Board of Zoning Appeals.**

4.0 Screening and Landscaping

- 4.1 Dumpster Screening – The applicant is proposing to store all trash in containers in two back of house rooms located towards the center of the building on each floor. All trash rooms will be air conditioned. The rooms have no windows and are fully screened within the building on all levels.
- 4.2 Parking Lot Screening – The applicant is proposing 24 parking spaces in the underground parking level, including one barrier-free parking space. The underground parking area is fully enclosed, with a 21' wide vehicular entrance off of Daines. Five public parking spaces are also located on S. Old Woodward, including 1 barrier-free space.
- 4.3 Mechanical Equipment Screening –The applicant has provided detail on the proposed rooftop mechanical equipment, which includes two energy recovery units, one make-up air unit, eight condensing units and eight exhaust fans. A roof plan has now been

provided, along with dimensions of the units. **However, the height of the units has not been provided, and is required to determine if all units will be fully screened by the proposed mechanical screen wall system.** The applicant is also proposing a ground-mounted transformer to be located along the north elevation of the building on E. Brown. The transformer is proposed to be screened by Green Velvet Boxwoods on the east side, Emerald Green Arborvitae on the south side, and **additional plantings are shown on the north and west sides of the transformer, but no species type or size is indicated at this time. Details regarding the height of all mechanical equipment and associated screening must be provided to ensure full screening is proposed.**

- 4.4 Landscaping –A detailed landscape plan has been provided which shows extensive plantings surrounding the building, and on the rooftop terrace space adjacent to the fourth floor restaurant.

The only landscaping requirements that apply to the proposed development are the street tree standards, and mechanical equipment screening. The Downtown Overlay District requires that one street tree be provided for every 40' of street frontage. Thus, 5 street trees are required along S. Old Woodward, and 8 Kindred Spirit Columnar Oak street trees are proposed. Three street trees are required along both E. Brown and Daines Street. Four Hybrid Elm street trees are proposed along E. Brown, but space is not available for the addition of street trees along Daines, as a minimum 5' wide sidewalk would not remain. **The applicant must obtain a waiver of the street tree requirement from the City's Arborist on Daines.** The applicant has however proposed 3 Green Vase Zelkovia trees on private property along the sidewalk edge that will function as street trees along Daines Street.

As stated, extensive landscaping is proposed surrounding the building on all sides. In the right-of-way along S. Old Woodward, All Gold Japanese Grass is proposed in large raised planters between street trees. This design may change as the plans for the improvements to S. Old Woodward between Brown Street and Lincoln progress. **All plantings along S. Old Woodward will be required to be consistent with the enhanced streetscape design planned by the City for future construction.**

On the E. Brown frontage, Green Velvet Boxwoods are proposed to line the sidewalk, with Little Quick Fire Hydrangea and Slender Silhouette Sweetgum trees mixed in, and Green Carpet Pachysandra proposed as groundcover. Additional landscaping is

proposed to screen the transformer as discussed above. On the Daines Street frontage, the applicant is proposing a landscaped outdoor courtyard, to be surrounded on three sides by a masonry and metal picket screen wall, with All Gold Japanese Grass planted on the outside of the wall, and three Green Vase Zelkovia trees lining the street on the inside of the wall. Within the courtyard area and flanking the building entrances, Green Velvet Boxwood and Slender Silhouette Sweetgum trees and Little Quick Fire Hydrangea shrubs are also proposed. **Six additional shrubs are located in the courtyard area, but no species information has been provided at this time.**

Along the western elevation of the building, the applicant is proposing to create a pedestrian via lined on both sides by extensive landscaping and punctuated by several outdoor seating areas. The pedestrian via proposed is 5' wide, and is lined to the east with Green Velvet Boxwood, Bobo Hydrangea and K. Forester Feather Grass, with Little Quick Fire Hydrangea shrubs in planters at the western building entry. **Six additional shrubs are located along the western elevation of the building, but no species information has been provided at this time.**

The proposed via is also lined to the west with a clipped evergreen hedge of Hatfield Yews and Limelight Hydrangea shrubs on the subject site. In addition, the applicant is proposing landscaping improvements extending onto the property to the west at 294 E. Brown Street. Plantings proposed on the adjacent property include Hatfield Yews, Bobo Hydrangeas, Incrediball Hydrangea, Frans Fontaine Hornbeam trees and Limelight Hydrangea shrubs. **All landscaping changes proposed for the adjacent site must receive separate Planning approval and are not included in this site plan review approval.**

4.5 Streetscape Elements

In accordance with Downtown Streetscape Standards, the following streetscape standards must be met.

- Provide Sidewalks - Based on the drawings submitted the sidewalk along S. Old Woodward is proposed to be 14.5' in width, with an 8' pedestrian path at its narrowest, and street trees and planting beds in the furnishing zone closer to the curbline. The existing sidewalk along Daines Street will remain at 6.6' in width. While this does not permit space for street trees, the applicant is proposing 3 trees on their property that will act in lieu of street trees. The sidewalk

proposed along E. Brown is proposed to be 12.3' in width, with a 7.5' pedestrian path and street trees in tree wells lining the roadway.

- Exposed aggregate along curb with broom finish in pedestrian path – The applicant has provided the standard sidewalk design with a broom finish pedestrian path and exposed aggregate between the pedestrian path and the curb on S. Old Woodward and E. Brown. The applicant will be required to replace all existing sidewalk to provide the exposed aggregate sections in the furniture zone along S. Old Woodward, and to use the required joint pattern. **All streetscape elements on S. Old Woodward will be required to be consistent with the enhanced streetscape design planned by the City for future construction.**
- Pedestrian level street lighting along all sidewalks with hanging planters. Plans submitted indicate the required pedestrian scale street lights are in place along S. Old Woodward and E. Brown Street, spaced 40' on center as required. Pedestrian scale lighting is not required along Daines Street. **No details have been provided regarding the existence or installation of hanging planters.**
- Benches and trash receptacles in park and plaza areas and along adjoining sidewalks where pedestrian activity will benefit as determined by the Planning Board. The applicant is proposing to add a City bench, trash receptacle and a bicycle rack along E. Brown Street, adjacent to the new via. All furniture proposed must be the City approved standard design for the Downtown Overlay District. Along S. Old Woodward, there is an existing granite bench near the corner of E. Brown Street, and the applicant has added bicycle parking at two locations on S. Old Woodward. The Planning Board may wish to recommend the addition of benches and/or trash receptacles along S. Old Woodward. **However, all streetscape elements on S. Old Woodward will be required to be consistent with the enhanced streetscape design planned by the City for future construction.**

The proposed 6.5' sidewalk along Daines is not wide enough to allow room for street furniture. However, as noted above the proposed courtyard area on private property will provide an enhanced pedestrian experience along Daines.

The applicant has now submitted a complete streetscape plan that meets each of the streetscape standards listed above. The plan also includes an enlarged valet parking drop off and pick up area to the south end of the block along S. Old Woodward. **The valet**

operation must be reviewed and approved by the Police Department and/or City Commission.

5.0 Parking, Loading and Circulation

- 5.1 Parking –No on-site parking is required for the proposed retail or commercial uses as the site is located within the Parking Assessment District. However, the applicant is proposing 24 parking spaces on site in an underground parking level. All parking spaces meet the minimum size requirement of 180 square feet, and are not located within the first floor storefronts. Five public right-of-way parking spaces are proposed along the S. Old Woodward frontage at this time, in addition to the valet operation noted above.
- 5.2 Loading – In accordance with Article 4, section 4.22 of the Zoning Ordinance, two loading spaces are required for the proposed development as the building is 49,624 sq.ft. in size. The applicant is proposing two loading spaces on the entry drive to the underground parking level, which is fully screened within the building. One portion of a loading space extends outside of the building, but landscaping materials assist in screening on both the east and west sides of this drive should this loading space be needed.
- 5.3 Vehicular Circulation and Access – The proposed development includes the removal of one curb cut on S. Old Woodward, and one curb cut on E. Brown Street. The existing curb cut on Daines will be relocated to the west to provide vehicular access to the underground parking level. Vehicles entering the site from Daines do so via a 21' wide entrance to park under the building. With regards to internal circulation on the site, a 21.5' side two way drive has been provided through most of the parking level, with a 13.5 drive in one area. The proposed drive widths on the interior of the site are adequate for proper maneuvering within the site.
- 5.4 Pedestrian Circulation and Access – As discussed above, the applicant has provided pedestrian entrances on all sides of the building. The main entrances are located on the east and west elevations of the building, directly across from the other, leading to a great room in the center of the building. Smaller entrances are also located on E. Brown, and off of the courtyard area on Daines. All entrances are directly accessible from a City sidewalk or the new pedestrian via which connects the City sidewalks on E. Brown and Daines.

6.0 Lighting

The applicant has submitted a photometric plan, which includes specification sheets for one of the proposed styles of fixtures. Specification sheets will be required for all proposed light fixtures.

The photometric plan and building elevations show two large lantern style light fixtures at all entrances on each of the four building elevations, to be mounted at 9' above grade. **Specification sheets have not been provided for these custom fixtures, and are required. The photometric plan also shows an illustration of pole mounted double head fixtures, but it does not indicate where these are proposed or if they are included in the calculated light levels.** The photometric plan also shows 26 Bega 17 watt LED in-grade floodlights (non-cut off fixtures) proposed around the entire building to enhance the architecture of the building.

Article 4, Section 4.21 (D)(1) requires all luminaries to be full cutoff or cutoff, as defined in Section 9.02, and positioned in a manner that does not unreasonably invade abutting or adjacent properties. Exception to cutoff luminaries can be made at the discretion of the Planning Board under any of the following conditions:

- a. The distribution of upward light is controlled by means of refractors or shielding to the effect that it be used solely for the purpose of decorative enhancement of the luminaire itself and does not expel undue ambient light into the nighttime environment.
- b. The luminaire is neither obtrusive nor distracting, nor will it create a traffic hazard or otherwise adversely impact public safety, with appropriate methods used to eliminate undesirable glare and/or reflections.
- c. The luminaire is consistent with the intent of the Master Plan, Urban Design Plan(s), Triangle district plan, Rail District plan and/or Downtown Birmingham 2016 Report, as applicable.
- d. The scale, color, design or material of the luminaire will enhance the site on which it is located, as well as be compatible with the surrounding buildings or neighborhood.
- e. Lighting designed for architectural enhancement of building features (i.e. architectural enhancement lighting). Appropriate methods shall be used to minimize reflection and glare.
- f. The site lighting meets all requirements set forth in this ordinance including, but not limited to, light trespass and nuisance violations.

The Planning Board may wish to approve the in-grade lighting proposed to highlight and enhance the architecture of the building.

Furthermore, Section 4.21 (E) states that the intensity of light on a site shall not exceed one and one half (1.5) maintained foot-candles at any property line for non-residentially zoned property. The light intensity shall be measured at 6 ft. above ground level on a vertical plane. Additionally, the intensity of light on a site which provides a front setback of less than 5' shall be measured from 5' beyond the front property line. The photometric plan submitted shows illuminance levels that do not exceed the requirements of the Zoning Ordinance.

The photometric plan submitted shows illumination levels exceeding 1.5 maintained foot candles on both the S. Old Woodward and Brown Street elevations. The light intensity is as high as 4.2 at roughly 5' beyond the front property line near the main building entrance. However, it appears as though the photometric plan may include the light output from the City streetlights, which are not required to be included. **The applicant must submit a revised photometric plan that meets required light levels, or obtain a variance from the Board of Zoning Appeals.**

7.0 Departmental Reports

7.1 Engineering Division – The Engineering Department will provide comments prior to the Planning Board meeting on July 14, 2021.

7.2 Department of Public Services – The Department of Public Services will provide comments prior to the Planning Board meeting on July 14, 2021.

7.3 Fire Department – The Fire Department has provided the following comments:

- A fire command center is required on the first floor per IFC '15 ed., section 508.1, 508.1.1, 508.1.2, 508.1.3, 508.1.4, 508.1.5, 508.1.6
- Full fire suppression installation per fire code and approval of submitted drawings.
- Fire pump installation.
- Emergency generator installation.
- Full fire alarm system installation per fire code. Drawings submitted to AHJ for approval.
- CO gas detection system per fire code in the parking garage(s)
- Emergency responder radio amplification system installation if necessary. The determination for this device shall be made after walls are installed and poured. Usually this issue is discovered after near final completion of the building project. Refer to

- IFC'15 for code referencing.
- Stair case to roof access (not roof hatch).
- Knox box installation
- Construction phase of project install standpipe system with access of all floors during entire construction phase.
- Fire hydrant within 100 feet of Fire Department Connection FDC
- Roof top garden/landscaped roofs. Refer to IFC '15 ed. Section 317 and 905.3.8 for all requirements.
- Install Knox Remote Power Box 4500 Series for emergency power shut off for First Responder use. Ensure that life safety systems are still energized (elevators, generators, egress lighting, etc.).

The plans submitted for Final Site Plan Review now include the Fire Command Room and Fire Department water connection as previously requested by the Fire Department.

7.3 Police Department – The Police Department has no concerns with the proposed building.

7.4 Building Division – The Building Division has examined the plans for the proposed project. The plans were provided to the Planning Department for site plan review purposes only and present conceptual elevations and floor plans. Although the plans lack sufficient detail to perform a code review, the Building Department has no concerns with the building as proposed.

8.0 Design Review

At this time, the applicant has provided elevations and renderings of the proposed building. Contextual renderings have also been provided to show the existing S. Old Woodward streetscape and skyline. The applicant is proposing to utilize the following materials for the construction of the four story, mixed use building:

- Slate Grey Velour architectural brick by Norman brick for the main body of the building;
- Basaltina Basalt Stone to highlight vertical portions of the building at each of the entrances;
- Hope steel windows and doors in black with sunscreens on all windows;
- Stucco to match the Basaltina Stone on portions of the upper level parapet and rooftop mechanical screen walls;
- Black metal awnings and railings; and
- Clear glazing on all windows, tinted glazing on the rooftop of the restaurant conservatory.

The applicant has provided color renderings of some of the proposed building materials.

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

The proposed building appears to meet most of the architectural standards set out in Article 3, Downtown Birmingham Overlay District, of the Zoning Ordinance as the first floor storefronts are directly accessible from the sidewalk, the storefront windows are vertically proportioned, no blank walls face a public street, balconies and railings are made of metal, and the main entries incorporate canopy features to add architectural interest on a pedestrian scale. In addition at least 90% of the exterior finish of the building is brick, stone and glass, the storefront windows have mullion systems, and the required storefront glazing minimum appears to have been met. **However, the applicant is required to provide detailed glazing calculations for the north, south and west elevations of the building prior to hearing at the City Commission.**

The proposed development implements the recommendations contained in the Downtown Birmingham 2016 Master Plan ("2016 Plan") as the applicant is proposing a mixed use building with first floor retail space, and the applicant has proposed high quality materials and provided architectural elements to provide a pedestrian scale on all sides of the proposed building. The proposed four story building provides for significant massing at this important corner of Brown and S. Old Woodward, and provides a transition from the five story Daxton Hotel to the north and the three story Forefront building to the south.

In addition, the proposed development and uses relate to the pedestrian, as the building is located at the property line and was designed with human scale detailing on the first floor, including canopies, large windows, and pedestrian entrances on S. Old Woodward, Daines and Brown streets. The 2016 Plan encourages proper building mass and scale to create an environment that is more comfortable to pedestrians creating a walkable downtown. The proposed development will help improve the visual appearance of the area, by creating a denser, more compact development with enough height to create a street wall along both S. Old Woodward, E. Brown and Daines.

Signage

The only signage proposed for the new building includes the letters "RH" engraved in the stone of the building. The RH engravings are located on the third floor sign band areas on both the east and west elevations of the building, and on the second floor sign band areas on both the north and south elevations of the building. Signage is permitted above the first floor sign band for building identification

signage. The proposed signage is 1.75' in height by 2.5' in length, for a total of 4.375 sq.ft. per elevation, and total signage of 17.5 sq.ft. This is well below the permitted maximum signage of 166 sq.ft. for the proposed building. No details have been provided on signage materials or mounting. However, if the signage is engraved into the stone as it appears, all signage requirements have been met. **If the applicant is proposing another material to be mounted to the building, further detail must be provided. Building identification signage is not permitted to be lit.**

9.0 Selection Criteria for Economic Development Licenses

As noted above, Article 3, section 3.04(C)(11) Building Use, of the Zoning Ordinance permits the use of Economic Development Licenses in the Overlay District on certain parcels, if approved as a SLUP by the City Commission. In determining whether to grant approval of a SLUP for an Economic Development License, Chapter 10, Alcoholic Liquors, section 10-61 establishes the following criteria:

Selection criteria. In addition to the usual factors and criteria used by the city commission for liquor license requests, including those listed in section 10-61, the commission shall consider the following non-exclusive list of criteria to assist in the determination of whether any economic development licenses should be approved:

- a) Whether the amount of investment by the applicant in the proposed development involves a substantial investment in the City. **The city deems projects resulting in a 500 percent increase in assessed value post-development over the pre-development assessed value of the parcel and/or projects with an investment of more than \$10,000,000.00, whichever is less, to be substantial. However, special circumstances may warrant flexibility on the minimum investment at the sole discretion of the city commission.**
- b) The applicant's **demonstrated ability to finance** the proposed project.
- c) The applicant's **track record with the city** including responding to city and/or citizen concerns.
- d) Whether the applicant has an **adequate site plan** to handle the proposed liquor license activities.
- e) Whether the applicant has **adequate health and sanitary facilities.**
- f) The **establishment's location in relation to the determined interest in development.**
- g) The **extent that the cuisine offered by applicant is represented in the city.**

- h) The **percentage of proceeds from the sale of food products as compared to the sale of alcoholic beverages.**
- i) Whether the applicant has **outstanding obligations to the city** (i.e. property taxes paid, utilities paid, etc.).

The selection criteria provided above must be considered to provide a recommendation to the City Commission as to whether or not to approve the operation of an Economic Development License for the proposed RH restaurant.

The applicant has submitted a detailed application package, which includes an economic impact statement contained in a letter from Mr. Rattner dated February 24, 2021. This letter is attached for your review. The economic impact statement contained in the application states that the proposed 4 story building will involve a substantial investment in the City of at least \$25,000,000.00. This clearly meets the “substantial investment” requirement of greater than \$10,000,000.00 as required by section 10-61 (a). In addition, the applicant has advised that the proposed development will create 130 new, permanent positions between the retail and restaurant operations. Further, the construction of the proposed building will create several hundred construction jobs during the two year construction period.

The applicant has stated that RH is a publicly traded company, with a demonstrated ability to finance the project internally.

Although RH is a newcomer to the City of Birmingham, the applicant’s track record working with the city including responding to City and/or citizens’ concerns during the entitlement application process has been exemplary. All information required has been provided and any concerns have been immediately addressed.

The complete site plan analysis detailed above, and the previously accepted Community Impact Study, have demonstrated an adequate site plan to handle the proposed liquor license activities for the restaurant on the fourth floor, with adequate health and sanitary facilities. All of the facilities at the premises will be in compliance with local, state and federal laws. The applicant has a long history of successfully operating similar facilities across the country.

The proposed RH restaurant is located within the Downtown Birmingham Overlay District, which is one of the areas in the City where there is a determined interest in mixed use, compact, pedestrian-oriented development as outlined in Article 3 of the Zoning Ordinance and in the Downtown Birmingham 2016 Plan.

The applicant has provided a menu outlining the type of cuisine offered, and the applicant specifically notes that the unique concept of a large retail establishment with on site dining and the ability to stroll through RH retail galleries with a

beverage of choice does not now exist within the City, and will provide a new experience-based retail destination.

The application further states that the percentage of proceeds from the sale of food products as compared to the sale of alcoholic beverages will be roughly equivalent (50%-50%, and will be minimal compared to the revenue generated from the retail sales in the RH gallery.

The applicant has no known outstanding obligations to the City.

10.0 Approval Criteria

In accordance with Article 7, section 7.27 of the Zoning Ordinance, the proposed plans for development seeking Final Site Plan and Design Review approval 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.

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.

11.0 Recommendation

Final Site Plan and Design:

Based on a review of the site plan submitted, the Planning Division finds that all of the requirements of section 7.27 of the Zoning Ordinance have been met and thus recommends that the Planning Board recommend APPROVAL of the Final Site Plan and Design Review for 300 - 394 S. Old Woodward and a portion of 294 E. Brown Street to the City Commission with the following conditions:

- (1) The applicant obtain a variance for the use of the fourth floor as a restaurant and 1' of additional height, or obtain approval of a rezoning of the property to D-4 in the Downtown Overlay;
- (2) The applicant obtain a variance for the use of an Economic Development license on the site, or obtain approval of a zoning amendment to alter the map contained in Appendix C, Exhibit 1 of the Zoning Ordinance to include the subject property;
- (3) The applicant update the landscape plan to provide species and size details on all proposed plantings, provide material specifications on hardscape items and obtain a waiver for the required street trees on Daines prior to City Commission review;
- (4) The applicant is required to receive separate Planning approval for all landscaping changes proposed for the adjacent site;
- (5) All streetscape elements on S. Old Woodward will be required to be consistent with the enhanced streetscape design planned by the City for future construction;
- (6) The applicant must obtain approval of the Police Department and / or City Commission for any valet operation proposed;
- (7) The applicant must submit all light fixture and mechanical equipment specification sheets and a revised photometric plan that meets all lighting requirements prior to City Commission review;
- (8) The Planning Board approves the use of non-cut off fixtures to enhance the architecture of the building; and
- (9) The applicant must comply with the requirements of all

departments.

Special Land Use Permit:

Based on a review of the plans submitted, the Planning Division finds that all of the requirements of section 7.34 of the Zoning Ordinance have been met and thus recommends that the Planning Board recommend APPROVAL of the Special Land Use Permit for 300 - 394 S. Old Woodward and a portion of 294 E. Brown Street to the City Commission for the use of an economic development license with the following conditions:

- (1) The applicant obtain a variance for the use of the fourth floor as a restaurant and 1' of additional height, or obtain approval of a rezoning of the property to D-4 in the Downtown Overlay;
- (2) The applicant obtain a variance for the use of an Economic Development license on the site, or obtain approval of a zoning amendment to alter the map contained in Appendix C, Exhibit 1 of the Zoning Ordinance to include the subject property;
- (3) The applicant must comply with the requests of all departments; and
- (4) The applicant is required to execute an agreement with the City for the use of an economic development liquor license with a Special Land Use Permit.

10.0 Sample Motion Language

Final Site Plan and Design:

The Planning Board finds that all of the requirements of section 7.27 of the Zoning Ordinance have been met and thus recommends APPROVAL of the Final Site Plan and Design Review for 300 - 394 S. Old Woodward and a portion of 294 E. Brown Street to the City Commission with the following conditions:

- (1) The applicant obtain a variance for the use of the fourth floor as a restaurant and 1' of additional height, or obtain approval of a rezoning of the property to D-4 in the Downtown Overlay;
- (2) The applicant obtain a variance for the use of an Economic Development license on the site, or obtain approval of a zoning amendment to alter the map contained in Appendix C, Exhibit 1 of the Zoning Ordinance to include the subject property;
- (3) The applicant update the landscape plan to provide species and size details on all proposed plantings, provide material specifications on hardscape items and obtain a waiver for the required street trees on Daines prior to City Commission review;
- (4) The applicant is required to receive separate Planning approval for all landscaping changes proposed for the adjacent site;
- (5) All streetscape elements on S. Old Woodward will be required to be consistent with the enhanced streetscape design planned by the City

- for future construction;
- (6) The applicant must obtain approval of the Police Department and / or City Commission for any valet operation proposed;
 - (7) The applicant must submit all light fixture and mechanical equipment specification sheets and a revised photometric plan that meets all lighting requirements prior to City Commission review;
 - (8) The Planning Board approves the use of non-cut off fixtures to enhance the architecture of the building; and
 - (9) The applicant must comply with the requirements of all departments.

AND

Special Land Use Permit:

The Planning Board finds that all of the requirements of section 7.34 of the Zoning Ordinance have been met and thus recommends APPROVAL of the Special Land Use Permit for 300 - 394 S. Old Woodward and a portion of 294 E. Brown Street to the City Commission for the use of an economic development license with the following conditions:

- (5) The applicant obtain a variance for the use of the fourth floor as a restaurant and 1' of additional height, or obtain approval of a rezoning of the property to D-4 in the Downtown Overlay;
- (6) The applicant obtain a variance for the use of an Economic Development license on the site, or obtain approval of a zoning amendment to alter the map contained in Appendix C, Exhibit 1 of the Zoning Ordinance to include the subject property;
- (7) The applicant must comply with the requests of all departments; and
- (8) The applicant is required to execute an agreement with the City for the use of an economic development liquor license with a Special Land Use Permit.

OR

Motion to POSTPONE the Final Site Plan and Design Review and SLUP for 300 - 394 S. Old Woodward and a portion of 294 E. Brown Street for the following reasons:

OR

Motion to recommend the DENIAL of the Final Site Plan and Design Review and SLUP for 300 - 394 S. Old Woodward and a portion of 294 E. Brown Street for the following reasons:

Zoning Compliance Summary Sheet
SLUP and Final Site Plan and Design Review
300 and 394 S. Old Woodward, portions of 294 E. Brown – Mixed Use Building

Existing Site:

Zoning: B-2, General Business, D-3 (**Proposed for rezoning to D-4, thus D-4 requirements are in blue type for comparison purposes**)
Land Use: Lutz/Capital Title, Frank's Shoe Repair & portion of Coldwell Banker Weir Manual parking lot

Existing Land Use and Zoning of Adjacent Properties:

	North	South	East	West
Existing Land Use	Retail/ Commercial	Retail/ Commercial & Residential	Retail/ Commercial /Residential	Commercial/ Parking
Existing Zoning District	B-4 Business Residential	B-2B General Business	B-2 General Business & B-3 Office- Residential	B-2 General Business
Overlay Zoning District	D-4	D-2	D-3 & D-4	D-3

Land Area: existing: 54,052.96 sq.ft. or 1.24 acres (total of all parcels prior to lot splits / combination)
proposed: 20,380 sq.ft. (new lot created after splits / combination)

Minimum Lot Area: required: N/A
proposed: N/A

Minimum Floor Area Per Unit: required: N/A as no residential use is proposed
proposed: N/A

Maximum Total Floor Area: required: N/A
proposed: N/A

Minimum Open Space:	required:	N/A
	Proposed:	N/A
Maximum Lot Coverage:	required:	N/A
	proposed:	N/A
Front Setback:	required:	0', building facades at the first story must be located at the frontage line (on or within 3' of the frontage line), Planning Board may adjust to average setback.
	proposed:	0 – 1' along S. Old Woodward
Side Setbacks:	required:	0'
	proposed:	3.58' on Brown, 15.5 – 30.41' on Daines
Rear Setback:	required:	10' from midpoint of alley or equal to that of adjacent building (7' – Forefront Building)
	proposed:	10.83' (no alley)
Max. Bldg. Height:	permitted:	D-3 – 68' overall (including mechanical), 34' maximum eave height, 4 stories (if 4th floor is used for residential and is set back 10' or on a 45 degree or less plane from the eaveline).
		D-4 – 80' overall (including mechanical), 58' maximum eave height, 5 stories (if 5th floor is used for residential and is set back 10' or on a 45 degree or less plane from the eave line).
	proposed:	69' overall height at tallest point including mechanical equipment and screening, 51' to the eave line, 4 stories.

The height of the proposed building must be reduced to 68' and 3 stories, and the eave height reduced to 34' maximum, or the applicant must obtain the requested rezoning of the site from D-3 to D-4 in the Downtown Overlay District.

Minimum Eave Height:	required:	20'.
	proposed:	51'
Floor to Ceiling Height:	required:	10' in height between finished floor and finished ceiling on the first level.
	proposed:	18'

Front Entry:	required:	Principal pedestrian entrances must be on the frontage line (S. Old Woodward).
	proposed:	Main entry 3' off frontage line on S. Old Woodward

The City Attorney deemed this section to be invalid as it is in conflict with the Building Code, thus the applicant is not required to comply with this provision.

Absence of Building Façade:	required:	Screen wall along all frontage lines where there is no building façade to provide a continuous street wall.
	proposed:	Building provides continuous street wall on S. Old Woodward, with the exception of the southernmost 30.4' of frontage next to Daines Street. This area is enclosed with a 3.5' high masonry screen wall with open portions of black steel picket fencing

The Planning Board may wish to consider the number and width of openings in the masonry screen wall that are accented with steel picket fencing. Openings are permitted to allow for pedestrian and vehicle access.

Opening Width:	required:	Maximum 25' wide opening.
	proposed:	One 21' wide opening on Daines is proposed for vehicular access to the underground parking level.

Parking:	required:	None as property is located in the Parking Assessment District.
	proposed:	24 parking spaces in underground parking level, plus bicycle parking

Parking in Frontage:	required:	No parking in front open space or within 20' of building frontage
	proposed:	None

Loading Area:	required:	2 loading spaces (building is less than 50,000 sq.ft. in size), must be 12' by 40' by 14' in height.
	proposed:	2 loading spaces, enclosed within the building at vehicular entry (12' by 40' by 18' in height)

Screening:

<u>Parking:</u>	required:	Minimum 32" high masonry wall with stone cap.
	proposed:	All parking is proposed within the building.

<u>Loading:</u>	required:	Minimum 6' screening where open to public view
	proposed:	Loading spaces are primarily proposed within the building.

<u>Rooftop Mechanical:</u>	required:	Full screening to compliment the building.
	proposed:	All rooftop mechanical appears to be screened by a screening system matching the building.

The applicant will be required to provide all mechanical specification sheets and screening details at Final Site Plan Review.

<u>Elect. Transformer:</u>	required:	Fully screened from public view.
	proposed:	One transformer location is noted along the north elevation of the building on S. Brown Street, fully screened by plantings.

<u>Dumpster:</u>	required:	6' high capped masonry wall with wooden gates
	proposed:	All trash and recyclable storage is proposed within the structure, with access from the southern elevation along Daines.

Planning Board Minutes
March 26, 2021

F. Community Impact Study Review

1. **300 & 394 S. Old Woodward, and portions of 294 E. Brown** – New Construction (Capital Title/Lutz & Frank's Shoe Service, portions of Coldwell Banker Weir Manual parking lot), Community Impact Study to consider approval of a new 4 story building, including a request to operate a restaurant using an Economic Development Liquor License.

Chair Klein said he would be recusing himself from the Board's considerations regarding 300 & 394 S. Old Woodward and portions of 294 E. Brown. While he said he and the City Attorney determined he had no conflict-of-interest, he was concerned that existing business relationships between his company and parties affiliated with the applicants could lead to the public impression of a conflict-of-interest. The Chair said that if it became clear in the future that his participation in these discussions would not result in the public impression of a conflict-of-interest, he would rejoin deliberations regarding 300 & 394 S. Old Woodward and portions of 294 E. Brown at that time.

The Chair recused himself and left the meeting at 8:06 p.m.

Mr. Emerine filled the Board vacancy stemming from the Chair's recusal and Vice-Chair Williams commenced facilitation of the meeting.

PD Ecker presented the CIS.

Victor Saroki, architect, Richard Rattner, attorney, Dave Stanchak, President of RH, Paul O'Meara, engineer, and Mike Kulka, **Environmental Engineer**, were present on behalf of the application.

Ms. Kroll reported she had met with the applicant team and they confirmed they would get her the additional traffic information she had requested.

In reply to Mr. Share, Ms. Kroll explained that the Multi-Modal Transportation Board had recently updated the transportation impact study requirements for the City, and that adding crash analyses was one of the updates. She said that there were no accident mitigation measures beyond signage recommended for the intersection of S. Old Woodward and Brown since the majority of the accidents resulted from parking issues and inattentive drivers. She confirmed some of the parking in front of the building may be eliminated to make room for the valet, and that if that were to occur it may reduce some of the parking accidents.

In reply to a request from Vice-Chair Williams, Mr. Emerine said he could work as the Board's representative with Ms. Kroll and Mr. O'Meara regarding the site's

traffic impact.

In reply to Mr. Emerine, Ms. Kroll explained she wanted to produce a conservative traffic analysis to make sure that the site could handle the peak amount of likely traffic. She said that would better ensure that severe issues with traffic around the site do not ensue from the proposed uses.

The Board was advised by the applicant team that furniture loading and unloading would occur infrequently since RH is a showroom only and furniture purchases would be coming from off-site. Vice-Chair Williams and Mr. Boyle asked that furniture delivery trucks still be addressed in upcoming discussions of this item since the pieces in the showroom would likely be refreshed from time to time.

Mr. Saroki stated that the applicant team would resolve all issues raised by City departments and by Ms. Kroll's comments on the traffic study.

Mr. Kulka stated that the site had no more significant environmental issues than similar urban sites. He said any issues found in the environmental study would be remediated.

In reply to Mr. Share, Mr. Kulka committed the applicant team to environmentally remediating the site to residential criteria.

Public Comment

Mr. Reagan said he was concerned about there being insufficient parking proposed and in the area to support the site. He said he was also concerned about the impact of the project on nearby residences.

In reply to a question from David Bloom, Mr. Saroki said one area of the site would gain three parking spaces and another area would lose 11, leading to a net loss of eight parking spaces from the current number available. He also stated that RH paid for the CIS.

Mr. Share complimented the applicant team on their work thus far.

Motion by Mr. Share

Seconded by Mr. Emerine to postpone action on the Community Impact Study as provided by the applicant to April 28, 2021 for the proposed development at 300 - 394 S. Old Woodward and a portion of 294 E. Brown Street, allowing the applicant the opportunity to address the issues raised by the Planning Department in its review of the CIS.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Share, Emerine, Williams, Whipple-Boyce, Koseck, Boyle, Ramin
Nays: None

03-045-21

G. Preliminary Site Plan Review

1. 300 & 394 S. Old Woodward, and portions of 294 E. Brown – New Construction

(Capital Title/Lutz & Frank's Shoe Service, portions of Coldwell Banker Weir Manual parking lot), Preliminary Site Plan Review to consider approval of a new 4 story building, including a request to operate a restaurant using an Economic Development Liquor License.

PD Ecker reviewed the item.

In reply to Mr. Share, PD Ecker said she would speak with the Engineering Department regarding possible options for additional sidewalk lighting on Daines.

Mr. Saroki explained that the landscaping off of Daines would be on the Coldwell Banker site with the consent of the property's owner. He stated that RH would be paying for the landscaping.

Mr. Stanchak provided a brief overview of the design inspiration for the Birmingham site and showed a rendering of RH Birmingham.

Jim Arpin, President of the Condo Association at Birmingham Place, said he appreciated what he had seen of the plans so far. Mr. Arpin invited the applicants to meet with the Condo Association.

Vice-Chair Williams encouraged the applicants to take Mr. Arpin up on his invitation.

Mr. Share asked if the applicant team had considered doing a three-story building without the need for a liquor license, since pursuing a four-story building with a liquor license adds complexity.

Mr. Stanchak said the restaurant and alcohol service were integral to creating the hospitable, appealing atmosphere of RH.

Mr. Koseck said he thought the applicant team had gone above and beyond to address site issues. He commended them on designing the building in context, on the attention paid to the aesthetics of all sides of the building, and on the

landscaping and hardscaping. He said he thought the designs for the building and grounds would fit well in the neighborhood's context.

There was Board consensus to postpone voting on the item until April 28, 2021 in order to consider the CIS, Preliminary Site Plan, Rezoning Request and Economic Development License for 300 & 394 S. Old Woodward and portions of 294 E. Brown during the same meeting.

Motion by Mr. Boyle

Seconded by Mr. Koseck to postpone the Preliminary Site Plan for 300 - 394 S. Old Woodward and a portion of 294 E. Brown Street pending receipt of an updated CIS addressing all issues noted in the CIS review above and setting the date for reconsideration to be April 28, 2021.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Boyle, Koseck, Ramin, Share, Emerine, Whipple-Boyce, Williams

Nays: None

Planning Board Minutes April 28, 2021

H. Community Impact Study Review

1. 300 & 394 S. Old Woodward, and portions of 294 E. Brown – New Construction (Capital Title/Lutz & Frank's Shoe Service, portions of Coldwell Banker Weir Manual parking lot), Community Impact Study to consider approval of a new 4 story building, including a request to operate a restaurant using an Economic Development Liquor License (Continued from March 26, 2021).

PD Ecker introduced the item. She noted that the only outstanding comment from Ms. Kroll was that the applicant consider adding more bicycle parking onsite.

Mr. Emerine was the Board liaison to the meeting between the City, Ms. Kroll and the applicant's traffic consultants regarding the transportation impact study. Mr. Emerine reported that the applicant addressed every issue raised by Ms. Kroll in her March 17, 2021 letter, with the exception of some possible additional bicycle parking, to Ms. Kroll's satisfaction. He stated that the applicant also shifted the proposed valet south in response to a request from the Police Department.

Ms. Kroll concurred with Mr. Emerine's summary.

Mr. Saroki said he would be happy to add additional bicycle racks, noting that there would be a bicycle rack provided for employees as well. He continued that while peak demand on the City's parking system is weekdays during business hours, the demand for parking from visitors to RH would be Saturdays and Sundays. He said, consequently, that RH would add little strain to the City's parking system. He said that during any shift there would be approximately 50 employees working and that they would park in the City's parking decks.

Motion by Mr. Emerine

Seconded by Ms. Whipple-Boyce to accept the Community Impact Study as provided by the applicant for the proposed development at 300 - 394 S. Old Woodward and a portion of 294 E. Brown Street with the following conditions:

- 1. The applicant is required to provide information on all life safety issues and Fire Dept. approval;**
- 2. The applicant is required to provide information on the proposed security system for approval by the Police Department; and,**
- 3. The applicant shall add the bicycle racks in accordance with the Fleis and Vandenbrink letter dated April 26, 2021.**

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Emerine, Whipple-Boyce, Share, Boyle, Jeffares, Koseck, Williams

Nays: None

I. Preliminary Site Plan Review

1. 300 & 394 S. Old Woodward, and portions of 294 E. Brown – New Construction (Capital Title/Lutz & Frank's Shoe Service, portions of Coldwell Banker Weir Manual parking lot), Preliminary Site Plan Review to consider approval of a new 4 story building, including a request to operate a restaurant using an Economic Development Liquor License (Continued from March 26, 2021).

PD Ecker summarized the item.

Vice-Chair Williams said that the applicant's offer to have a zoning with limitations consistent with the preliminary site plan would need the review of the City Attorney to make sure the rezoning, if authorized by the Commission, occurs in a way that is consistent with Michigan law.

In reply to Mr. Boyle, Mr. Saroki stated the building would be very adaptable for other uses in the future should the need arise.

Mr. Koseck concurred with Mr. Saroki. He expressed his support for the plans thus far, and recommended that the applicant consider an exterior building color that would contrast with the grey exterior of the Daxton instead of looking like an extension of it.

Messrs. Koseck and Emerine noted that RH would be a regional attraction.

Mr. Emerine spoke positively about previously living two blocks from the RH in Chicago. He also spoke about the positive impact the proposed development would have on the retail community in Birmingham. He said he was in support of the plan.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Jeffares to approve the Preliminary Site Plan for 300 - 394 S. Old Woodward and a portion of 294 E. Brown Street subject to the following conditions:

- 1. The applicant is required to obtain approval of the City Commission for the proposed lot splits and lot combination to create the new lot that is the subject of this application and shown on the site plan;**
- 2. The applicant obtain a variance for the use of the fourth floor as a restaurant, or obtain approval of a rezoning of the property to D-4 in the Downtown Overlay;**
- 3. The applicant obtain a variance for the use of an Economic Development license on the site, or obtain approval of a zoning amendment to alter the map contained in Appendix C, Exhibit 1 of the Zoning Ordinance to include the subject property;**
- 4. The applicant reduce the height of the proposed building to 68' and 3 stories and the eave height to 34' maximum, or obtain the requested rezoning of the site from D-3 to D-4 in the Downtown Overlay District, or obtain a**

variance from the Board of Zoning Appeals;

5. The applicant update the landscape plan to provide species and size details on all proposed plantings, and provide material specifications on hardscape items at the time of Final Site Plan Review;

6. The applicant is required to receive separate Planning approval for all landscaping changes proposed for the adjacent site, as they are not included in this site plan review approval;

7. The applicant must submit a complete streetscape plan, including detail on hanging planters, at the time of Final Site Plan review;

8. All streetscape elements on S. Old Woodward will be required to be consistent with the enhanced streetscape design planned by the City for future construction;

9. The applicant must obtain approval of the Police Department and/or City Commission for any valet operation proposed;

10. The applicant must submit all light fixture specification sheets and material and color samples at Final Site Plan Review;

11. Compliance with the requirements of all departments; and,

12. The applicant provide all material samples, specifications and colors at the time of Final Site Plan Review.

Vice-Chair Williams said he was in favor of the plan, especially since all outstanding issues from the transportation impact study had been resolved and since the applicant voluntarily offered to accept a rezoning with conditions.

Public Comment

Richard Astrein, who has been a merchant in Birmingham for 50 years, spoke of the positive impact RH would have on the Birmingham retail business community.

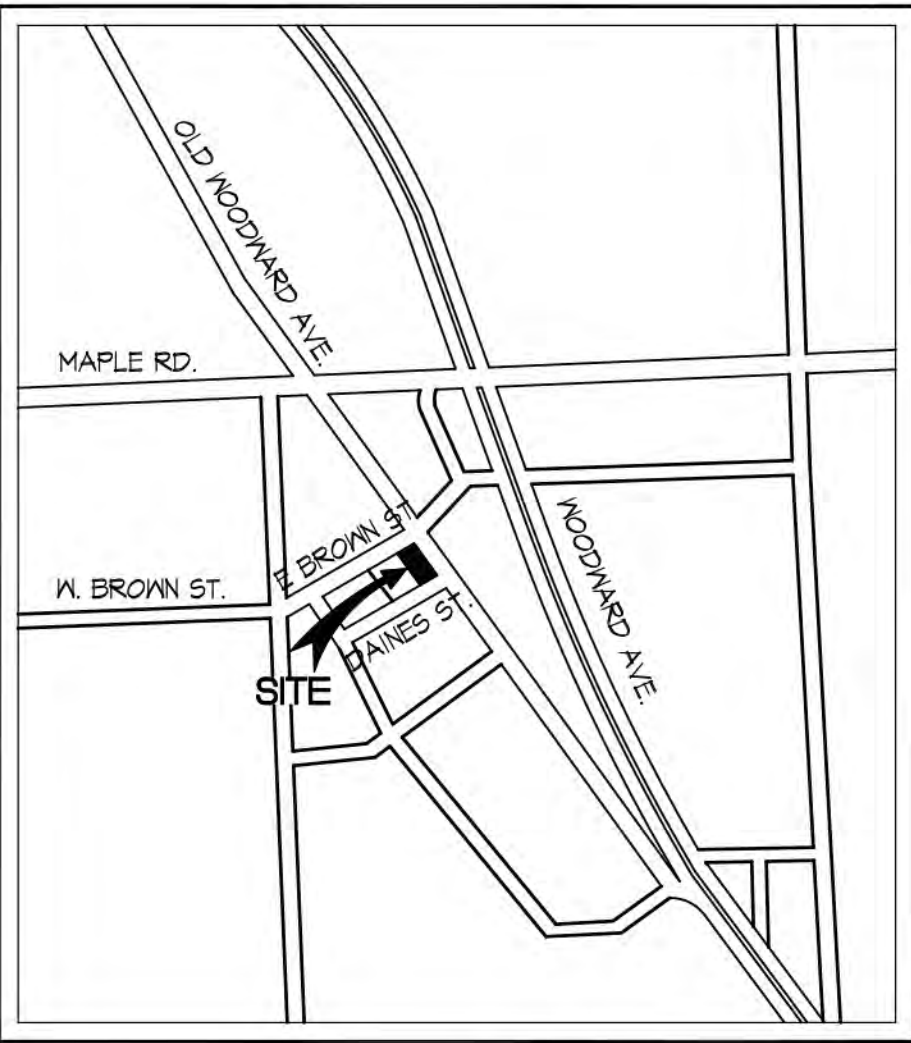
Motion carried, 7-0.

ROLL CALL VOTE

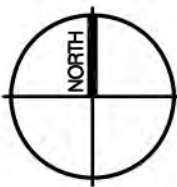
Yeas: Whipple-Boyce, Jeffares, Emerine, Share, Boyle, Koseck, Williams

Nays: None

Vice-Chair Williams thanked the applicant team and Ms. Kroll for their work.



site location map:
Not To Scale



LEGAL DESCRIPTION - SWAP PARCEL 1
LAND SITUATED IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI, DESCRIBED AS FOLLOWS:
PART OF LOT 12 OF BROWN'S ADDITION SUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS; BEING DESCRIBED AS: BEGINNING AT A POINT DISTANT 5.62°00'00"W, 119.37 FEET FROM THE NORTHEAST CORNER OF LOT 13 OF SAID BROWN'S ADDITION SUBDIVISION; THENCE S.35°35'52"E, 100.00 FEET; THENCE S.62°00'00"W, 30.76 FEET; THENCE N.36°14'00"W, 100.15 FEET; THENCE N.62°00'00"E, 31.88 FEET TO THE POINT OF BEGINNING. CONTAINING: 3,104 SQUARE FEET OR 0.07 ACRES OF LAND

LEGAL DESCRIPTION - SWAP PARCEL 2
LAND SITUATED IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI, DESCRIBED AS FOLLOWS:
PART OF LOT 15 OF ADDITION TO WILLIAM BROWN'S ADDITION NO. 1 ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS; BEING DESCRIBED AS: BEGINNING AT A POINT DISTANT 5.62°00'00"W, 119.37 FEET AND 5.35°35'52"E, 100.00 FEET FROM THE NORTHEAST CORNER OF LOT 13 OF BROWN'S ADDITION SUBDIVISION AS RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS; THENCE N.62°00'00"E, 19.24 FEET; THENCE S.35°14'00"E, 100.15 FEET; THENCE S.62°00'00"W, 20.36 FEET; THENCE N.35°35'52"W, 100.00 FEET TO THE POINT OF BEGINNING. CONTAINING: 1,963 SQUARE FEET OR 0.04 ACRES OF LAND

SAROKI
ARCHITECTURE

430 N. OLD WOODWARD
BIRMINGHAM, MI 48009
P. 248.258.5707
F. 248.258.5515

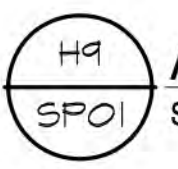
SarokiArchitecture.com

Project:
RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009

Date: **Issued For:**
03-16-2021 Preliminary Site Plan App.
04-26-2021 Preliminary Site Plan App.
05-06-2021 Final Site Plan App.

BUILDING SQUARE FOOTAGE TOTALS	
FIRST LEVEL:	13,451 SF
SECOND LEVEL:	13,958 SF
THIRD LEVEL:	13,679 SF
FOURTH LEVEL:	8,536 SF
TOTAL:	49,624 SF
LOWER PARKING LEVEL: 15,092 SF (24 PARKING SPACES)	

Sheet No.:
SP01
Architectural Site Plan



Architectural Site Plan
SCALE: 3/32" = 1'-0"

A
B
C
D
E
F
G
H

BROWN STREET

OLD WOODWARD AVENUE

DAINES STREET

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Date: Issued For:

03-16-2021 Preliminary Site Plan App.

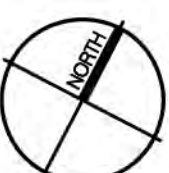
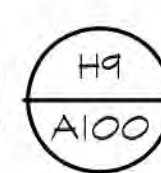
04-28-2021 Preliminary Site Plan App.

05-06-2021 Final Site Plan App.

Sheet No.:

A100

Lower Parking Level Floor Plan

  **Parking Level Floor Plan**
SCALE: 3/32" = 1'-0"

A
B
C
D
E
F
G
H

1 2 3 4 5 6 7 8 9 10



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Project:
RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009

Date:	Issued For:
03-16-2021	Preliminary Site Plan App.
04-28-2021	Preliminary Site Plan App.
05-06-2021	Final Site Plan App.

Sheet No.:
A120
Second Level Floor Plan

Second Level Floor Plan
SCALE: 3/32" = 1'-0"

A
B
C
D
E
F
G
H

1 2 3 4 5 6 7 8 9 10

BROWN STREET

OLD WOODWARD AVENUE

DAINES STREET

8,536 sf / floor

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Project:
RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009

Date: Issued For:
03-16-2021 Preliminary Site Plan App.
04-28-2021 Preliminary Site Plan App.
05-06-2021 Final Site Plan App.

Sheet No.:
A140
Fourth Level Floor Plan

  **Fourth Level Floor Plan**
SCALE: 3/32" = 1'-0"

A
B
C
D
E
F
G
H

1 2 3 4 5 6 7 8 9 10

BROWN STREET

OLD WOODWARD AVENUE

DAINES STREET

SAROKI
ARCHITECTURE

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Project:
RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009

Date: Issued For:

03-16-2021 Preliminary Site Plan App.

04-26-2021 Preliminary Site Plan App.

05-06-2021 Final Site Plan App.

Sheet No.:

A150

Roof Plan

  **Roof Plan**
SCALE: 3/32" = 1'-0"

A

B

C

D

E

F

G

H

Top of Mech Screen
+2'-0" (60'-0" Overall)
Top of Greenhouse
+18'-0" (60'-0" Overall)

4th FL. FF.
+18'-0" (60'-0" Overall)

3rd FL. FF.
+18'-0" (60'-0" Overall)

2nd FL. FF.
+18'-0"

1st FL. FF. (Proposed)



SAROKI
ARCHITECTURE
430 N. OLD WOODWARD
BIRMINGHAM, MI 48009
P. 248.258.5707
F. 248.258.5515
SarokiArchitecture.com

Project:
RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009

Date: Issued For:

02-24-2021 Preliminary Site Plan App.
04-28-2021 Preliminary Site Plan App.
05-06-2021 Final Site Plan App.

Sheet No.:

A210
EXTERIOR ELEVATION

H9
A210
East Exterior Elevation
SCALE: 1/8" = 1'-0"

1 2 3 4 5 6 7 8 9 10

A

B

C

D

E

F

G

H

1

2

3

4

5

6

7

8

9

10



SAROKI
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BIRMINGHAM, MI 48009
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Project:
RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009
Date: **Issued For:**
02-24-2021 Preliminary Site Plan App.
04-28-2021 Preliminary Site Plan App.
05-06-2021 Final Site Plan App.

Sheet No.:
A212
EXTERIOR ELEVATION

H9
A212
West Exterior Elevation
SCALE: 1/8" = 1'-0"

A

B

C

D

E

F

G

H

1

2

3

4

5

6

7

8

9

10



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BIRMINGHAM, MI 48009
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Project:
RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009

Date:	Issued For:
02-24-2021	Preliminary Site Plan App.
04-28-2021	Preliminary Site Plan App.
05-06-2021	Final Site Plan App.

Sheet No.:
A214
EXTERIOR ELEVATION

H9
A214
North Exterior Elevation
SCALE: 1/8" = 1'-0"

A

B

C

D

E

F

G

H

1

2

3

4

5

6

7

8

9

10



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430 N. OLD WOODWARD
BIRMINGHAM, MI 48009
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Project:
RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009

Date: **Issued For:**
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04-28-2021 Preliminary Site Plan App.
05-06-2021 Final Site Plan App.

Sheet No.:
A216
EXTERIOR ELEVATION

H9
A216
South Exterior Elevation
SCALE: 1/8" = 1'-0"



H9
A218
StreetView Elevation
SCALE: 1/16" = 1'-0"

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430 N. OLD WOODWARD
BIRMINGHAM, MI 48009
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F. 248.258.5515
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Project:
RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009

Date: **Issued For:**
02-24-2021 Preliminary Site Plan App.
04-26-2021 Preliminary Site Plan App.
06-06-2021 Final Site Plan App.

Sheet No.:
A218
EXTERIOR ELEVATION

A

B

C

D

E

F

G

H



Architectural Brick
Slate Grey Velour
Norman Brick Type (3" x 12")



Basaltina
Basalt Stone



Hope's Steel Windows & Doors



Exterior Light Fixtures & Steel Canopies



Steel and Glass Rooftop Restaurant

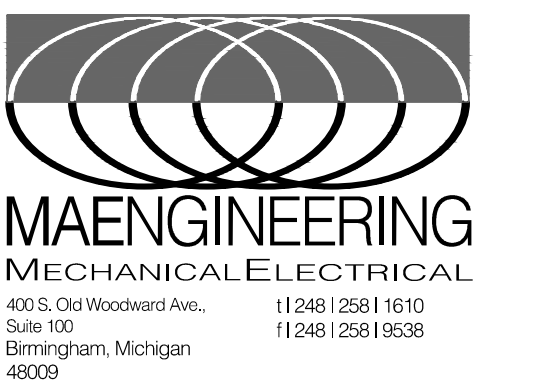
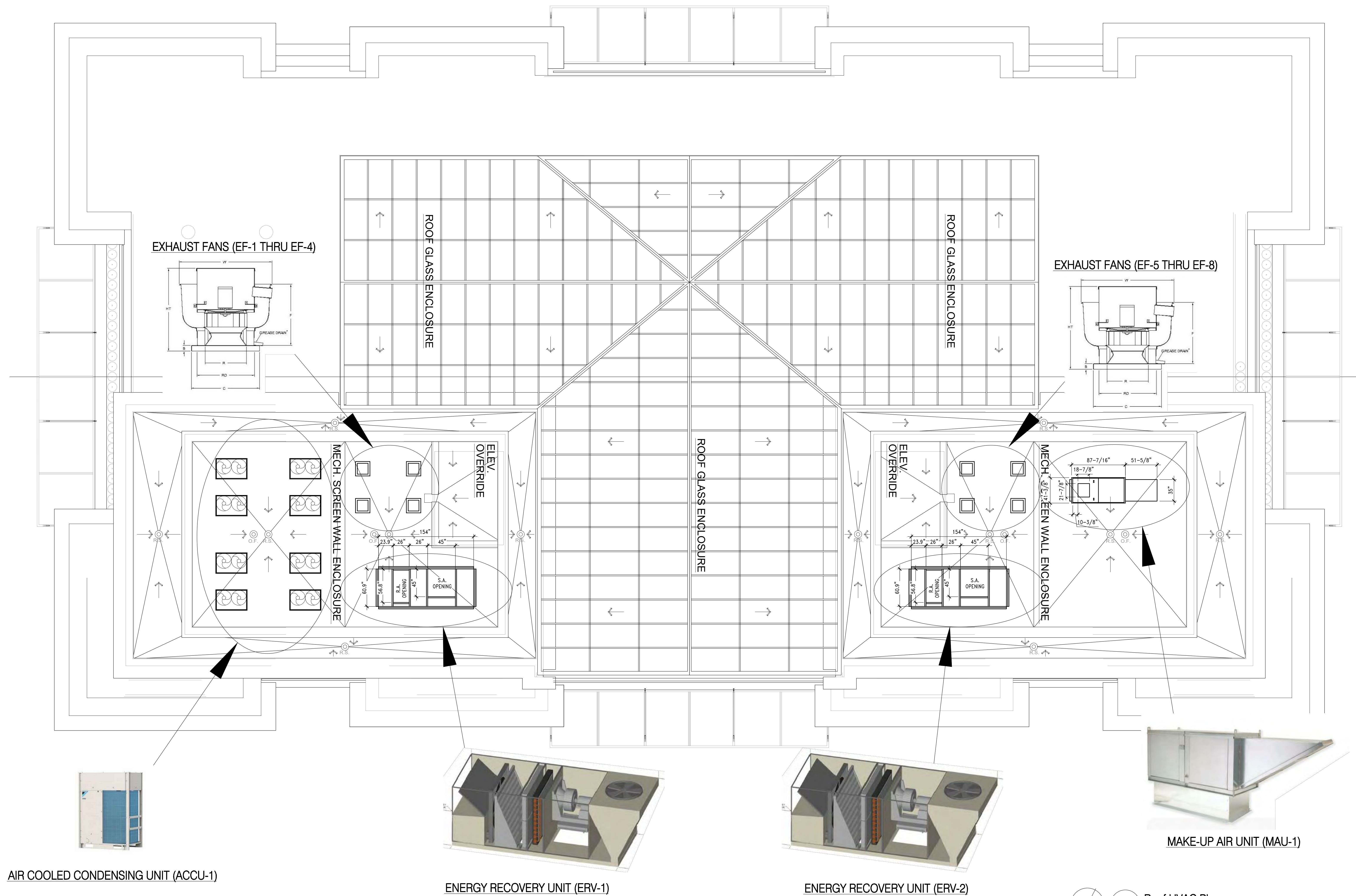
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F. 248.258.5515
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Project:
RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009

Date: Issued For:
03-16-2021 Preliminary Site Plan App.
04-26-2021 Preliminary Site Plan App.
05-06-2021 Final Site Plan App.

Sheet No.:
A900
Exterior Material Board

H:\ACAD\FILES\75175091-Restoration Hardware\CAD\MECH\75091-M250 - HVAC ROOF LEVEL.dwg Wed, 21 Apr 2021 - 10:16am



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ARCHITECTURE
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BIRMINGHAM, MI 48009
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Project:
RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009

Date: 03-16-2021 Issued For:
Preliminary Site Plan App.

Sheet No.:
M150
Roof HVAC Plan

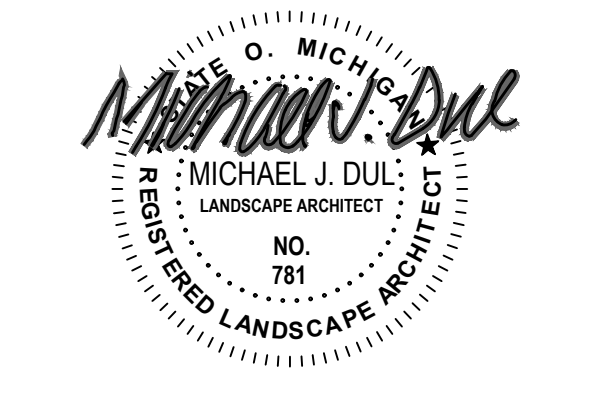


LANDSCAPE
ARCHITECTURE

MICHAEL J. DUL
& ASSOCIATES, INC

212 DAINES STREET
BIRMINGHAM
MICHIGAN 48009

P 248 644 3410
F 248 644 0819



SAROKI
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SarokiArchitecture.com

Project:
RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009

Date: 02-24-2021
Issued For: Preliminary Site Plan App.

Sheet No.:
L1.1
Landscape Plan

Drive-over LED in-grade floodlights

Enclosures: Outer housing of high tensile strength stainless steel; inner housing is factory sealed and fabricated of heavy gauge stainless steel. Reflector made of pure anodized aluminum.

Trim Ring: Heavy gauge, machined stainless steel secured to inner housing by five (5) stainless steel hex head fasteners. Trim is sealed in place using modpox, one piece high temperature silicone gasket. Glass is clear tempered, 1/2" thick, machined flush to trim ring.

Electrical: 13.9W LED luminaires, 17 total system watts, <20° C start temperature, integral 120V through 277V electronic LED driver, 0-10V, TRIAC, and ELV dimmable. The LED module and driver are mounted on a removable inner assembly for easy replacement. Standard LED color temperature is 4000K with an 85 CRI. Available in 3000K (85 CRI), add suffix K3 to order.

Note: Due to the dynamic nature of LED technology, LED luminaire data on this sheet is subject to change at the discretion of BEGA-US. For the most current technical data, please refer to www.bega-us.com.

Finish: Machined #4 brushed stainless steel. Custom colors not available.

CSA: Certified to U.S. and Canadian standards for wet locations. Protection class IP68.

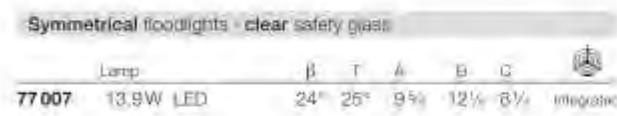
Temperature caution: The column "T" in this chart indicates the temperature in degrees Celsius which is reached on the center of the glass surface during operation. Surface temperatures are for exterior applications. For interior applications add 10° C to temperatures shown.

Note: A foundation and proper drainage must be supplied by the customer. These luminaires are designed to bear pressure loads up to 4,400 lbs. from vehicles with pneumatic tires. The luminaires must not be used for traffic lanes where they are subject to horizontal pressure from vehicles braking, accelerating and changing direction.

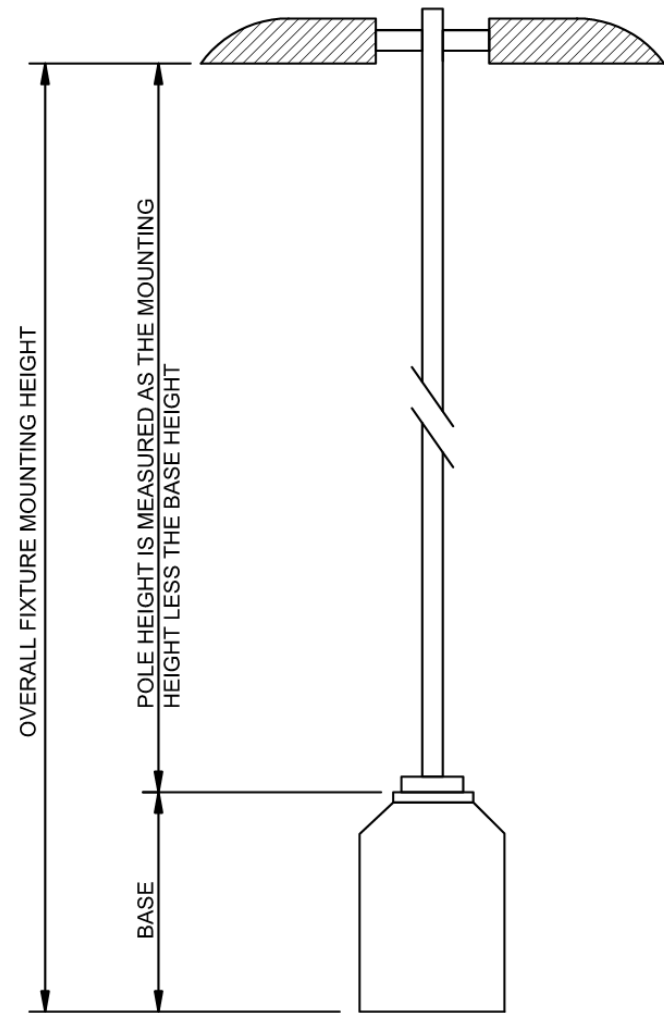
Weight: 9.5 lbs.

Luminaire Lumens: 970

Type:
BEGA Product:
Project:
Voltage:
Color:
Options:
Modified:



1000 BEGA Way, Carpinteria, CA 93013 (805) 684-0333 FAX (805) 366-9474 www.bega-us.com
Copyright BEGA 2017. Updated 1/18



Mounting Height Note

MOUNTING HEIGHT IS MEASURED FROM GRADE TO FACE OF FIXTURE. POLE HEIGHT SHOULD BE CALCULATED AS THE MOUNTING HEIGHT LESS BASE HEIGHT.

Drawing Note

THIS DRAWING WAS GENERATED FROM AN ELECTRONIC IMAGE FOR ESTIMATION PURPOSE ONLY. LAYOUT TO BE VERIFIED IN FIELD BY OTHERS.

General Note

- SEE SCHEDULE FOR LUMINAIRE MOUNTING HEIGHT.
- CALCULATIONS ARE SHOWN IN FOOTCANDLES AT: 0' - 0"

THE ENGINEER AND/OR ARCHITECT MUST DETERMINE APPLICABILITY OF THE LAYOUT TO EXISTING / FUTURE FIELD CONDITIONS. THIS LIGHTING LAYOUT REPRESENTS ILLUMINATION LEVELS CALCULATED FROM LABORATORY DATA TAKEN UNDER CONTROLLED CONDITIONS IN ACCORDANCE WITH ILLUMINATING ENGINEERING SOCIETY APPROVED METHODS. ACTUAL PERFORMANCE OF ANY MANUFACTURER'S LUMINAIRE MAY VARY DUE TO VARIATION IN ELECTRICAL VOLTAGE, TOLERANCE IN LAMPS, AND OTHER VARIABLE FIELD CONDITIONS. MOUNTING HEIGHTS INDICATED ARE FROM GRADE AND/OR FLOOR UP.

THESE LIGHTING CALCULATIONS ARE NOT A SUBSTITUTE FOR INDEPENDENT ENGINEERING ANALYSIS OF LIGHTING SYSTEM SUITABILITY AND SAFETY. THE ENGINEER AND/OR ARCHITECT IS RESPONSIBLE TO REVIEW FOR MICHIGAN ENERGY CODE AND LIGHTING QUALITY COMPLIANCE.

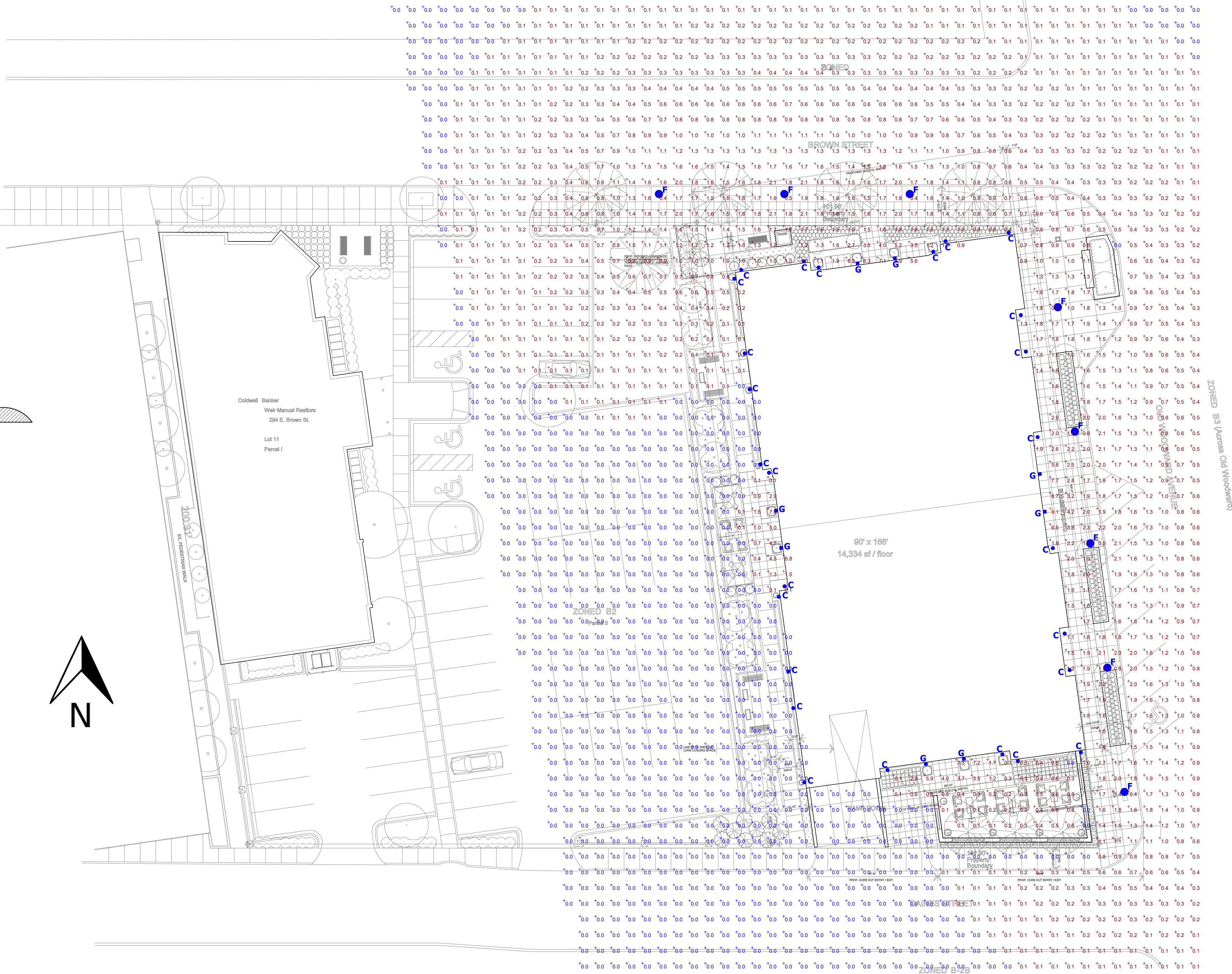
UNLESS EXEMPT, PROJECT MUST COMPLY WITH LIGHTING CONTROLS REQUIRMENTS DEFINED IN ASHRAE 90.1 2013. FOR SPECIFIC INFORMATION CONTACT GBA CONTROLS GROUP AT ASG@GASSERBUSH.COM OR 734-266-6705.

Ordering Note

FOR INQUIRIES CONTACT GASSER BUSH AT QUOTES@GASSERBUSH.COM OR 734-266-6705.

Alternates Note

THE USE OF FIXTURE ALTERNATES MUST BE RESUBMITTED TO THE CITY FOR APPROVAL.



Plan View
Scale - 1" = 20ft

Schedule									
Symbol	Label	QTY	Manufacturer	Catalog Number	Description	Lamp	Number Lamps	Lumens per Lamp	LLF
	C	26	BEGA	77007+K4	LED IN-GRADE FLOODLIGHT	LED	1	967	0.9
	F	8	UNKNOWN	SUPPLIED AND VERIFIED BY OTHERS	SUPPLIED AND VERIFIED BY OTHERS	SUPPLIED AND VERIFIED BY OTHERS	1	UNKNOWN	0.75
	G	8	LANTERN SUPPLIED BY RH	LANTERN SUPPLIED BY RH	LANTERN SUPPLIED BY RH	LANTERN SUPPLIED BY RH	1	UNKNOWN	0.9

Statistics						
Description	Symbol	Avg	Max	Min	Max/Min	Avg/Min
OVERALL	+	0.5 fc	9.1 fc	0.0 fc	N/A	N/A















Special Land Use Permit Application – Economic Development License Planning Division

Form will not be processed until it is completely filled out.

1. Applicant

Name: RHF&B Michigan, LLC

Address: 15 Koch Road

Corte Madera, CA 94925

Phone Number: (415) 936-9642

Fax Number: N/A

Email address: ds@rh.com

2. Property Owner

Name: See attached Consent Form for each of the 3 property owners

Address: See Consent Form

Phone Number: See Consent Form

Fax Number:

Email address: See Consent Form

3. Applicant's Attorney/Contact Person

Name: Dave Stanchak, President

Address: 15 Koch Road

Corte Madera, CA 94925

Phone Number: (415) 936-9642

Fax Number: N/A

Email address: ds@rh.com

4. Project Designer/Developer

Name: Victor Saroki, FAIA

Address: 430 N. Old Woodward Ave., Fl. 3

Birmingham, MI 48009

Phone Number: (248) 258-5707

Fax Number: N/A

Email address: vsaroki@sarokiarchitecture.com

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;
 - 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 the 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: 300-394 S. Old Woodward Ave. & part of 294 E Brown St (Southwest Corner of S. Old Woodward Ave. and E. Brown St.)

Name of development: RH Birmingham

Sidwell #: 19-36-204-006; 19-36-204-014; and 19-36-204-021

Current Use: Office and Retail

Proposed Use: Retail and Restaurant

Area of Site in Acres: .46 Acres

Current zoning: B2 General Business/D3 Overlay

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 Application for Preliminary Site Plan: 02/19/21

Date of Preliminary Site Plan Approval:

Date of Application for Final Site Plan:

Date of Final Site Plan Approval:

Date of Application for Revised Final Site Plan:

Date of Revised Final Site Plan Approval:

Date of Design Review Board Approval:

Is there a current SLUP in effect for this site? No

Date of Application for SLUP: 02/24/21

Date of SLUP Approval:

Date of Last SLUP Amendment:

7. Details of the Proposed Development (attach separate sheet if necessary)

Commanding four levels and over 49,810 interior and exterior square feet, this innovative retail concept features artistic installations of home furnishings in a gallery setting, showcasing RH Interiors, RH Modern, and RH Outdoors. RH's seamlessly integrated culinary offering, the RH rooftop restaurant highlights an ingredient-driven menu. RH Birmingham will also include an interactive design atelier offering professional design services in a studio environment and a rooftop park. A SLUP is required for alcoholic beverage service for on-site consumption in the B2 Zone.

8. Buildings and Structures

Number of Buildings on Site: 1

Height of Buildings & # of Stories: 67 feet / 4 levels above grade

Use of Buildings: Retail and Restaurant

Height of Rooftop Mechanical Equipment: 69 feet

9. Floor Use and Area (in Square Feet)

Structures:

Restaurant Space: 3,500 square feet (not including kitchen & back of house)

Office Space: N/A

Retail Space: 43,088 square feet

Number of Residential Units: N/A

Rental or Condominium? N/A

Total Floor Area: 49,810 square feet

10. Proposed Restaurant Operation

Number of Indoor Seats: +/- 128 (subject to change)

Number of Outdoor Seats: +/- 42 (subject to change)

Entertainment Proposed: N/A

Previous LCC Complaints? None

Number of Tables along Street Façade: None

Type of Cuisine: See attached menu

Bar Area? TBD

Number of Seats at Bar: None

Full Service Kitchen? Yes

Percentage of Glazing Proposed: TBD

Years of Experience in Birmingham: 0

Years of Experience Outside Birmingham:

11. Proposed Setbacks

Required Front Setback: 0 feet

Required Rear Setback: 0 feet

Required Total Side Setback: Not Required

Proposed Front Setback: 0 feet

Proposed Rear Setback: 10.5 feet

Proposed Total Side Setback: 20 feet

12. Outdoor Dining Facility

Location (sidewalk right-of-way or on-street parking space):
Rooftop

Hours of Operation:

Width of unobstructed sidewalk between door and café? (5 ft. required): N/A

Platform Proposed: N/A

Trash Receptacles: See Plan Drawings

Number of Tables/Chairs: 14 patio tables/no chairs

Material of Tables/Chairs: RH Furniture

Tables Umbrellas Height & Material:

Number and Location of Parking Spaces Utilized: 24

Below grade parking spaces

Screenwall Material: See Plan Drawings

Enclosure Material: See Plan Drawings

13. Required and Proposed Parking

Required number of parking spaces: N/A

Location of parking on site: Below Grade for 24 vehicles

Screenwall material: N/A

Shared Parking Agreement? N/A

Location of parking off site: Street

Height of screenwall: N/A

14. Landscaping

Location of landscape areas: Street trees along S. Old Woodward Ave. and E. Brown Street. New landscape plantings between streetscape and outdoor terrace along Daines Street. Trees and plantings on rooftop terrace.

Proposed landscape material: See Landscape Plan

15. Streetscape

Sidewalk width: 7.5 feet to 14 feet wide
Number of benches: 3 (2 proposed / 1 existing)
Number of planters: 6 (along S. Old Woodward Ave.)
Number of existing street trees: 6
Number of proposed street trees: 9
Streetscape plan submitted? Yes

Description of benches or planters: Per City Specifications

Species of existing trees: See Landscape Plan

Species of proposed trees: See Landscape Plan

16. Loading

Required number of loading spaces: 1
Typical angle of loading spaces: 90 degrees
Screenwall material: N/A
Location of loading spaces on site: Parking Garage Ramp

Proposed number of loading spaces: 1
Typical size of loading spaces: 12 feet wide x 40 feet long x 14 feet high
Height of screenwall: N/A
Typical time loading spaces are used: Early Morning

17. Exterior Waste Receptacles

Required number of waste receptacles: 2 part of streetscape-no exterior dumpster
Location of waste receptacles: 1 on Brown Street and 1 on Daines Street
Screenwall material: N/A

Proposed number of waste receptacles: 2
Size of waste receptacles: Per City Specifications
Height of screenwall: N/A - no exterior dumpster

18. Mechanical Equipment

Utilities and Transformers:

Number of ground mounted transformers: 1
Size of transformers (L•W•H): 4 feet x 4 feet (exact size TBD)
Number of utility easements: N/A
Screenwall material: See Plan Drawings

Location of all utilities & easements:

Height of screenwall: TBD

Ground Mounted Mechanical Equipment:

Number of ground mounted units: 0
Size of ground mounted units (L•W•H): N/A
Screenwall material: See Landscape Plan

Location of all ground mounted units: Southeast corner

Height of screenwall: See Landscape Plan

Rooftop Mechanical Equipment:

Number of rooftop units: 2
Type of rooftop units: 1 MAU and 1 VRF Condensing Unit
Screenwall material: Stucco
Location of screenwall: Fourth Floor Mechanical Well

Location of all rooftop units: Fourth Floor Mechanical Well
Size of rooftop units (L•W•H): TBD
Percentage of rooftop covered by mechanical units: Approx. 15%
Height of screenwall: 12 feet
Distance from rooftop units to all screenwalls: TBD

19. Accessory Buildings

Number of accessory buildings: N/A
Location of accessory buildings: N/A

Size of accessory buildings: N/A
Height of accessory buildings: N/A

20. Building Lighting

Number of light standards on building: See Photometric Plan
Size of light fixtures (L•W•H): Varies (See Photometric Plan)
Maximum wattage per fixture: Varies (See Photometric Plan)
Light level at each property line: See Photometric Plan

Type of light standards on building: Varies (See Photometric Plan)

Height from grade: Varies (See Photometric Plan)

Proposed wattage per fixture: Varies (See Photometric Plan)

21. Site Lighting

Number of light fixtures: See Photometric Plan
Size of light fixtures (L•W•H): See Photometric Plan
Maximum wattage per fixture: See Photometric Plan
Light level at each property line: See Photometric Plan

Type of light fixtures: See Photometric Plan

Height from grade: See Photometric Plan

Proposed wattage per fixture: See Photometric Plan

Holiday tree lighting receptacles: See Photometric Plan

22. Adjacent Properties

Number of properties within 200 ft.: 6

Property #1

Number of buildings on site: 1
Zoning district: B-4 (D-4 Overlay Zoning District)
Use type: Hotel
Square footage of principal building: 99,661 square feet
Square footage of accessory buildings: N/A
Number of parking spaces: 2 levels of below grade parking

Property Description: 298 S. Old Woodward Ave.
Daxton Hotel - 5-story hotel with ground floor restaurant

North, south, east or west of property? North

Property #2

Number of buildings on site: 1
Zoning district: B-2B (D-2 Overlay Zoning District)
Use type: Office and residential condo/rental units
Square footage of principal building: 60,000 square feet
Square footage of accessory buildings: N/A
Number of parking spaces: Below grade parking

Property Description: 400 S. Old Woodward Ave.
The forefront
3-story mixed-use building

North, south, east or west of property? South

Property #3

Number of buildings on site: 1
Zoning district: B-2 (D-3 Overlay Zoning District)
Use type: Office
Square footage of principal building: 13,290 square feet
Square footage of accessory buildings: N/A
Number of parking spaces: 46 surface spaces

Property Description: 297 E. Brown Street
Coldwell Banker Weir Manuel
2-story office building

North, south, east or west of property? West

Property #4

Number of buildings on site: 1
Zoning district: B-2 (D-3 Overlay Zoning District)
Use type: Restaurant and office
Square footage of principal building: 8,912 square feet
Square footage of accessory buildings: N/A
Number of parking spaces: 0

Property Description: 325 S. Old Woodward Ave.
Adachi restaurant and office
2-story mixed-use building

North, south, east or west of property? East

Property #5

Number of buildings on site: 1
Zoning district: B-3 (D-3 Overlay Zoning District)
Use type: Retail and office
Square footage of principal building: 79,935 square feet
Square footage of accessory buildings: N/A
Number of parking spaces: Parking below on grade (within building)

Property Description: 355 S. Old Woodward Ave.
2-story mixed-use building

North, south, east or west of property? East

Property #6

Number of buildings on site: 1
Zoning district: B-4 (D-4 Overlay Zoning District)
Use type: Retail and Office
Square footage of principal building: 69,222 square feet
Square footage of accessory buildings: N/A
Number of parking spaces: Below grade parking

Property Description: 255 S. Old Woodward Ave.
3-story mixed-use building

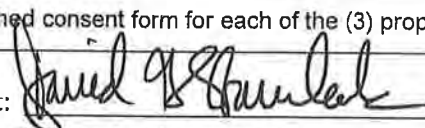
North, south, east or west of property? North

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: _____ Date: _____

Print Name: See attached consent form for each of the (3) property owners

Signature of Applicant:  _____ Date: 2.24.21

Print Name: Dave Stanchak, President

Signature of Architect:  _____ Date: 2.24.21

Print Name: Victor Saroki

Office Use Only

Application #: PSLU21-0003 Date Received: 3/4/21 Fee: \$1,600.00

Date of Approval: _____ Date of Denial: _____ Accepted by: _____



CONSENT OF PROPERTY OWNER

I, Frank T. Konjarevich or Lola H. Konjarevich, as Trustees for the Frank T. Konjarevich Rev. Liv. Trust dated 5/22/95
(Name of Property Owner), OF THE STATE OF Michigan AND
COUNTY OF Oakland STATE THE FOLLOWING:

1. That I am the owner of real estate located at 394 S. Old Woodward;
(Address of Affected Property)

2. That I have read and examined the Application for **SPECIAL LAND USE PERMIT-ECONOMIC DEVELOPMENT LICENSE** made to the City of

Birmingham by: RH F&B Michigan, LLC;
(Name of Applicant)

3. That I have no objections to, and consent to the request(s) described in the Application made to the City of
Birmingham.

Frank T. Konjarevich or Lola H. Konjarevich, as Trustees for the Frank T. Konjarevich Rev. Liv. Trust dated 5/22/95
Name of Owner (Printed): _____

Signature of Owner: Frank Konjarevich **Date:** 2/24/05



SPECIAL LAND USE PERMIT APPLICATION CHECKLIST – PLANNING DIVISION

Applicant: RHF&B Michigan, LLC Case #: _____ Date: 02/17/21
Address: 15 Koch Road, Corte Madera, CA 94925 Project: RH Birmingham

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.

Site Plan for Special Land Use Permit

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 sites property lines;
- ☒ 11. Interior floor plans;
- ☒ 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.

CONTRACT FOR TRANSFER OF A LIQUOR LICENSE
(ECONOMIC DEVELOPMENT)

This Contract is entered into this ____ day of _____ (month), 2021 (year), by and between RHF&B Michigan, LLC, whose address is 15 Koch Road, Corte Madera, CA 94925, (Licensee) and the **CITY OF BIRMINGHAM**, a Michigan Municipal Corporation, whose address is 151 Martin Street, Birmingham, Michigan 48012 (City).

R E C I T A L S:

WHEREAS, Licensee wishes to transfer the location of its liquor license from _____ to 300-394 S Old Woodward Ave, Birmingham, Michigan (Property); and

WHEREAS, local legislative approval is required by the **CITY OF BIRMINGHAM** for the transfer of a _____ liquor license pursuant to MCLA §436.1501 of the Michigan Liquor Control Code of 1998; and

WHEREAS, Licensee desires to enter into this Contract as an inducement to the **CITY OF BIRMINGHAM** to approve the request of the aforementioned transfer of the liquor license; and,

WHEREAS, the **CITY OF BIRMINGHAM** is relying upon this Contract in giving its approval to the transfer of the on-premises licenses as described herein.

NOW, THEREFORE, the parties agree as follows:

1. Licensee shall be permitted to transfer the location of its liquor license from _____ to the Property. Any transfer of the aforementioned license from the Property to any other location in the CITY OF BIRMINGHAM shall require the approval of the Birmingham City Commission in accordance with Section 10-83. In addition, any expansion of the building location at the Property shall also require the approval of the Birmingham City Commission.
2. Licensee does hereby agree that it shall establish as Economic Development, as defined in Birmingham City Code Chapter 126, Zoning, Article 9, section 9.02, at the Property.
3. Licensee further acknowledges that it must secure a Special Land Use Permit for Economic Development as required by the Birmingham City Code. It is further agreed that it shall comply with all provisions of the Special Land Use Permit, or any amendments thereto, as a condition of this contract. Licensee further acknowledges and agrees that a violation of any provision of the Special Land Use Permit or the Michigan Liquor Control Code is a violation of the terms of the contract entitling the City to exercise any or all of the remedies provided herein.
4. Licensee further agrees that it shall not apply or seek from the Michigan Liquor Control Commission any permit endorsements to its liquor license whether available in the current Michigan Liquor Control Code or in future Michigan Liquor Control Codes, or amendments thereto, without the prior approval of the Birmingham City Commission.
5. Licensee further agrees that it shall not seek any change in its license status/class whether such changes are available now in the current Michigan Liquor Control Code or in future Michigan Liquor Control Codes, or amendments thereto, without prior approval of the Birmingham City Commission.

6. Licensee agrees that it shall adhere to all Federal, State and Local laws currently in effect or as subsequently amended or enacted.

7. Licensee agrees that its failure to follow any of the provisions herein shall be grounds for the Michigan Liquor Control Commission to suspend, revoke or not renew its liquor license and/or for the Birmingham City Commission to revoke the Special Land Use Permit, either of which would prohibit Licensee from operating the Economic Development. Licensee agrees that in addition to the City of Birmingham's right to seek suspension, revocation or non-renewal of its liquor license and/or revocation of the Special Land Use Permit, the City retains any and all rights to enforce this Contract that may be available to it in law or in equity. Licensee further agrees that it shall reimburse the City all of its costs and actual attorney fees incurred by the City in seeking the suspension, revocation or non-renewal of its liquor license and revocation of the Special Land Use Permit, as well as enforcing such other rights as may be available at law and/or in equity.

8. To the fullest extent permitted by law, Licensee and any entity or person for whom Licensee is legally liable, agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the City, its elected and appointed officials, employees and volunteers and others working on behalf of the City against any and all claims, demands, suits, or loss, including all costs connected therewith, including all costs and actual attorney fees, and 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 behalf of the City, by reason of personal injury, including bodily injury, death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with Licensee's operation of a Economic Development at the Property.

9. In the event Licensee fails to reimburse the City the costs and/or attorney fees as required herein, or any part thereof, then said amount could be transferred to the tax roll in accordance with Section 1-14 of the Birmingham City Code.

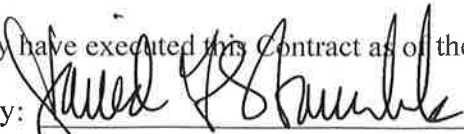
10. Any disputes arising under this Contract, not within the jurisdiction of the Michigan Liquor Control Commission, shall be settled either by commencement of a suit in Oakland County Circuit Court or by compulsory arbitration, at the election of the City. The Licensee shall notify the City of any dispute it has arising out of this Contract and shall demand that the City elect whether the dispute is to be resolved by submitting it to compulsory arbitration or by commencement of a suit in Oakland County Circuit Court. The City shall make its election in writing within thirty (30) days from the receipt of such notice. If the City elects to have the dispute resolved by compulsory arbitration, it shall be settled pursuant to Chapter 50 of the Revised Judicature Act for the State of Michigan, with each of the parties appointing one arbitrator and the two thus appointed appointing a third. In the event the City fails to make such an election, any dispute between the parties may be resolved by the filing of a suit in the Oakland County Circuit Court.

11. This Contract shall be governed by and performed, interpreted and enforced in accordance with the laws of the State of Michigan.

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

13. This Contract 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 OF BIRMINGHAM and Licensee. 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 contract without prior approval, in writing, of the other. Any attempt at assignment without prior written consent shall be void and of no effect.

IN WITNESS WHEREOF, the parties hereby have executed this Contract as of the date set forth above.

By: 

Its: Dave Stanchak, President

Date: 2.24.21

CITY OF BIRMINGHAM

By: _____
, Mayor

Date: _____

By: _____
, Clerk

Date: _____



Notice Signs - Rental Application Community Development

1. Applicant

Name: RHF&B Michigan, LLC
Address: 15 Koch Road
Corte Madera, CA 94925
Phone Number: (415) 936-9642
Fax Number: N/A
Email address: ds@rh.com

Property Owner

Name: See attached Consent Form for each of the 3 property owners
Address: See Consent Form
Phone Number: See Consent Form
Fax Number: N/A
Email address: See Consent Form

2. Project Information

Address/Location of Property: 300-394 S. Old Woodward Ave.
Name of Development: RH Birmingham
Area in Acres: .46 acres

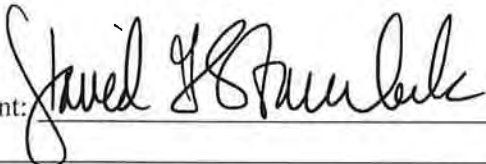
Name of Historic District site is in, if any: Not in any historic district
Current Use: Retail and Office
Current Zoning: D-3

3. Date of Board Review


Board of Building Trades Appeals: N/A
City Commission: TBD
Historic District Commission: N/A
Planning Board: 03/24/21

Board of Zoning Appeals: 300-394 S. Old Woodward Ave.
Design Review Board: N/A
Housing Board of Appeals: N/A

The undersigned states the above information is true and correct, and understands that it is the responsibility of the applicant to post the Notice Sign(s) at least 15 days prior to the date on which the project will be reviewed by the appropriate board or commission, and to ensure that the Notice Sign(s) remains posted during the entire 15 day mandatory posting period. The undersigned further agrees to pay a rental fee and security deposit for the Notice Sign(s), and to remove all such signs on the day immediately following the date of the hearing at which the project was reviewed. The security deposit will be refunded when the Notice Sign(s) are returned undamaged to the Community Development Department. Failure to return the Notice Sign(s) and/or damage to the Notice Sign(s) will result in forfeiture of the security deposit.

Signature of Applicant: 

Date: 2.24.21

Office Use Only		
Application #: <u>BLU21-0003</u>	Date Received: <u>3/4/21</u>	Fee: <u></u>
Date of Approval: _____	Date of Denial: _____	Reviewed by: _____

RH ROOFTOP RESTAURANT

FOR THE TABLE

- ARTISANAL PROSCIUTTO* Seasonal Fruit, Warm Baguette 24
- DÉLICE DE BOURGOGNE CHEESE Strawberry Preserves, Warm Baguette 19
- PROSCIUTTO AND DÉLICE BOARD* Seasonal Fruit, Strawberry Preserves, Warm Baguette 43
- SHRIMP COCKTAIL Lemon, Dijonnaise, Cocktail Sauce 25
- CRISPY ARTICHOKE* Potato, Rosemary, Aioli, Lemon 19
- BURRATA Cherry Tomatoes, Genovese Basil Pesto, Charred Sourdough 23

SALADS

- GEM LETTUCE Radish, Feta Cheese, Avocado, Buttermilk Herb Dressing 18
- ARUGULA Fennel, Grapes, Sunflower Seeds, Parmigiano-Reggiano, Citrus Vinaigrette 18
- SHAVED VEGETABLES Baby Greens, Pecans, Cider Vinaigrette 19
- KALE CAESAR* Garlic Sourdough Crumbs, Parmigiano-Reggiano, Classic Caesar Dressing 18

ENTRÉES

Served à la carte

- RH BURGER* Sharp American, Pickles, Onion, Dijonnaise 20
ADD: Avocado 4, Thick Cut Pork Belly Bacon 6
- SHAVED RIBEYE ON CHARRED GARLIC BREAD* Emmentaler Swiss Cheese, Cherry Peppers, Au Jus 24
- LOBSTER ROLL Drawn Butter, Mayonnaise, Old Bay 30
- BROILED SALMON* Honey, Black Pepper, Brown Butter, Lemon 32
- ROASTED HALF CHICKEN* Garlic Confit, Potato Purée, Natural Jus 34
- 16OZ CHARRED RIBEYE STEAK* Steak Salt 56

SIDES

- FRENCH FRIES Garlic Aioli 9
- TRUFFLED FRIES* Black Truffles, Parmigiano-Reggiano, Parsley, Truffle Aioli 18
- SIMPLE GREEN SALAD Radish, Citrus Vinaigrette 9
- POTATO PURÉE Yukon Gold Potatoes, Chive Butter, Maldon Salt 9
- CHARRED HEIRLOOM BROCCOLINI Lemon, Garlic Confit, Calabrian Chili 11
- WILD MUSHROOMS Garlic, Thyme, Sherry Vinegar 12

*These items can be cooked to order. Please let us know if you have any allergies or dietary restrictions as not all ingredients are listed.
Consuming raw or undercooked foods such as meats, poultry, seafood, shellfish, or eggs may increase risk of foodborne illness.
Individuals with certain underlying health conditions may be at higher risk.

RH BELINI

Prosecco, Peach Purée 15

RH MIMOSA

Prosecco, Fresh Squeezed Orange Juice 15

WINE BY THE GLASS

SPARKLING

BISOL Prosecco, Valdobbiadene, Italy, NV 14/56
JUVÉ Y CAMPS Cava, Reserva de la Familia, Penedès, Spain 2016 17/68
NICOLAS FEUILLATTE Brut Rosé, Champagne, France NV 35/140
DOMAINE CHANDON Brut, Étoile, Carneros, California NV 25/100
PIERRE SPARR Brut Rosé, Crémant d'Alsace, France NV 16/64
SCHRAMSBERG Brut Rosé, North Coast, California 2017 22/88
ROEDERER ESTATE Brut Rosé, Mendocino, California NV 20/80
PIERRE GIMONNET Cuis 1er Cru, Champagne, France NV 30/120
PERRIER JOUTÉ Grand Brut, Champagne, France NV 35/140
VEUVE CLICQUOT Brut, Yellow Label, Champagne, France NV 32/128

WHITE

J&H SELBACH Riesling Kabinett, Mosel, Germany 2016 18/72
SCARPETTA Pinot Grigio, Friuli, Italy 2019 14/56
A TO Z Pinot Gris, Oregon 2018 16/64
ALLAN SCOTT Sauvignon Blanc, Marlborough, New Zealand 2020 15/60
MICHEL REDDE Sauvignon Blanc, Sancerre, France 2018 25/100
TWO MEY Sauvignon Blanc, Napa Valley, California 2019 20/80
DOMAINE FERRET Chardonnay, Pouilly-Fuissé, Burgundy, France 2017 33/132
AERENA Chardonnay, Sonoma, California 2019 17/68
CHATEAU MONTELENA Chardonnay, Napa Valley, California 2016 35/140
HARTFORD COURT Chardonnay, Russian River Valley, Sonoma, California 2018 20/80

WINE BY THE BOTTLE

SPARKLING & WHITE

CHARLES HEIDSIECK Blanc des Millénaires, Champagne, France 2004 300
DOM PÉRIGNON Champagne, France 2009 320
DOMAINE LAROCHE Chardonnay, Les Blanchots, Chablis Grand Cru, France 2018 250
SONOMA-CUTRER Chardonnay, Les Pierres, Sonoma, California 2017 125
CAKEBREAD CELLARS Chardonnay, Reserve, Carneros, California 2017 155

PINOT NOIR

MAISON CHAMPY Le Rognet, Corton Grand Cru, Burgundy France 2016 280
GARY FARRELL Hallberg Vineyard, Russian River Valley, California 2016 140
PATZ & HALL Gap's Crown Vineyard, Sonoma Coast, California 2016 150
ZENA CROWN VINEYARD Slope, Eola-Amity Hills, Willamette Valley, Oregon 2016 160
KOSTA BROWNE Sonoma Coast, California 2018 210

ROSÉ

MIRAVAL Studio, Méditerranée, France 2019 16/64
PUECH-HAUT Argali, Languedoc, France 2019 18/72
CHATEAU D'ESCLANS Whispering Angel, Côtes de Provence, France 2019 20/80
ESPRIT GASSIER Côtes de Provence, France 2019 22/88
LA SPINETTA Il Rosé di Casanova, Tuscany, Italy 2019 14/56
DAOU Discovery Collection, Paso Robles, California 2019 17/68
SCRIBE Pinot Noir, Sonoma, California 2019 20/80
BLACKBIRD VINEYARDS Arriviste, Napa Valley, California 2019 15/60
DOMAINES OTT Château Romassan, Bandol, France 2019 30/120
CHATEAU D'AQUERIA Tavel, France 2018 19/76

RED

LIOCO Pinot Noir, Mendocino County, California 2019 17/68
GROS VENTRE CELLARS Pinot Noir, North Coast, California 2018 22/88
BOUCHARD Pinot Noir, Beaune du Château 1er Cru, Burgundy, France 2017 30/120
CATENA Malbec, Vista Flores, Mendoza, Argentina 2017 15/60
ANTINORI Cabernet Sauvignon Blend, Il Bruciato, Tuscany, Italy 2018 23/92
MARQUÉS DE CÁCERES Tempranillo, Reserva, Rioja, Spain 2015 16/64
HOURGLASS Proprietary Blend, HGIII, Napa Valley, California 2018 20/80
SILVER OAK Cabernet Sauvignon, Alexander Valley, California 2016 37/148
DUCKHORN Cabernet Sauvignon, Napa Valley, California 2017 32/128
CAYMUS-SUISUN Petite Sirah, Grand Durif, Suisun Valley, California 2018 25/100

RED VARIETALS

CHATEAU DE NALYS Grand Vin, Châteauneuf-du-Pape, France 2017 195
MICHELE CHIARLO Cerequio, Barolo, Italy 2016 250
MARCHESE ANTINORI Tignanello, Tuscany, Italy 2017 280
CHATEAU RAUZAN-SÉGLA Grand Cru Classé, Margaux, France 2017 390
PENFOLDS Shiraz, RWT Bin 798, Barossa Valley, Australia 2017 295

CABERNET SAUVIGNON

LAIL VINEYARDS Blueprint, Napa Valley, California 2018 180
THE MASCOT Napa Valley, California 2014 240
CAYMUS VINEYARDS Special Selection, Napa Valley, California 2016 350
SPOTTSWOOD St. Helena, Napa Valley, California 2017 395
SHAFFER Hillside Select, Stags Leap District, Napa Valley, California 2016 475

COFFEE

Drip 4
Espresso 4
Cortado 4.50
Cappuccino 5.50
Latte, Chai Latte 7
Matcha Latte 7
Hot Chocolate 5
Cold Brew 6

TEA

RH Breakfast 6
Lord Bergamot 6
Jasmine / Silver Tip 6
Meadow Chamomile 6
Peppermint Leaves 6
Bai Hao Oolong 6
Unsweetened Iced Tea 4.50

JUICES & SODAS

Pressed Juicery Greens / Roots
Citrus / Orange Turmeric 11
Fresh Squeezed
Lemonade / Orange 6
Coke / Diet Coke 5
Fentimans
Rose Lemonade / Ginger Beer 7

BEER

KSA Kölsch 8
Sfizio Italian Pilsner 8
Villager S.F. IPA 8
Animal Tropical IPA 8



Williams Williams Rattner & Plunkett, P.C.
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Birmingham, Michigan 48009
Tel: (248) 642-0333
Fax: (248) 642-0856

February 24, 2021

Richard D. Rattner
rdr@wwrplaw.com

City Commission
Planning Board
City of Birmingham
151 Martin Street
Birmingham, MI 48009
Attn: Thomas Markus and Jana Ecker

Re: *Special Land Use Permit Application – Economic Development License (“SLUP-EDL”) for 300 and 394 S. Old Woodward and a portion of 294 E. Brown Street, Birmingham, Michigan (“Subject Property”) submitted by RHFBFB, LLC (“RH” or “Applicant”) and Special Land Use Permit for B2 on-premises consumption of alcoholic beverages for the Subject Property (“SLUP-B2”) submitted by Applicant (the SLUP-EDL and SLUP-B2 are sometimes referred to as the “Applications”)*

Dear Commissioners and Members of the Planning Board:

This letter accompanies the two Applications of the RHFB, LLC for a Special Land Use Permit - Economic Development License and Special Land Use Permit for B2 to operate an establishment with a liquor license to be obtained by Economic Development License in the B2/D4 district. The Applicant is requesting to transfer a liquor license (“License”) into the City pursuant to the Birmingham Code of Ordinances, Section 10-42 and Section 10-62.

This SLUP will allow the exciting new, unique mixed-use RH retail store to have a fourth-floor restaurant with alcoholic beverage sales for on premises consumption. The new RH store will include the first three floors of retail galleries and a top floor restaurant. It will attract Birmingham residents and will be a destination for visitors to the South Old Woodward area of the central business district (“CBD”), consistent with the 2016 Plan for Birmingham. The application for SLUP and all site plan requirements relevant to this presentation are submitted with this letter.

The following outline demonstrates that this new RH gallery store and restaurant fulfills all ordinance and planning requirements for a Special Land Use Permit for an Economic Development Liquor License, as well as the requirements to transfer a license into the city, plus the general requirements for a Special Land Use Permit in the B2 zone.

I. Requirements for Special Land Use Permit (Section 126, Article 7, Section 7.36(A)(1-6).

A. 7.336(A)(1). “The use is consistent with and will promote the intent and purpose of this Zoning Ordinance.”

A review of the Applicant’s project clearly demonstrates that this newly proposed RH mixed-use gallery retail store and restaurant is consistent with and will promote the intent and purpose of the Zoning Ordinance.

First, with respect to the zoning district, the subject property is zoned B-2, General Business, and the Applicant has applied for a zoning change from D-3 to D-4 in the Downtown Overlay District in order to include a fourth-floor restaurant. The RH stand-alone retail store will be a new four-story structure located on the southwest corner of Brown Street and South Old Woodward Avenue, similar in mass and scale to the Daxton Hotel immediately to the north. The B-2 District specifically permits “alcoholic beverage sales with on premises consumption” pursuant to a special use permit.

Second, Section 7.36(A)(1) provides that a Special Land Use Permit shall be consistent with the “. . . intent and purpose . . .” of the zoning ordinance. The intent and purpose of the zoning ordinance of the City of Birmingham as set forth at Article 1, Section 1.04 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.”

1. Intent and goals of the Downtown Birmingham 2016 Plan (“2016 Plan”).

This area of the CBD is identified in the 2016 Plan as the “Retail 1” area and is discussed at pages 26-27 of the 2016 Plan (attached for your reference). The RH store/restaurant also is consistent with all the relevant recommendations and fits every one of the relevant bullet points set forth in the “Downtown Birmingham Vision Statement” discussed at page 181 of the 2016 Plan (attached for your reference).

a. Relevant recommendations of the 2016 Plan for the “Retail 1” South Woodward CBD.

- i. The first bullet point recommendation set forth at page 26 of the 2016 Plan, recommends that the City “enlarge the CBD shopping district area by merging it with the South Woodward... [area].”**

The new RH, with its first three floors of retail and fourth floor restaurant, will bring

significant patronage to the southern point of the CBD and will serve as a destination for residents and visitors to the City, helping to extend the CBD and pedestrian traffic south of Brown Street along South Old Woodward area.

- ii. The second relevant bullet point recommends that the City “connect all areas to each other by reducing apparent and actual physical barriers, by connecting discontinuous retail frontages, and, in some cases, by installing the recommended streetscape and signage improvements.”

The subject site consists of a single-story office building housing Lutz Capital, a surface parking lot, and the mostly single-story buildings housing Frank’s Shoe Repair and Roche Bobois. These buildings and surface lot were barriers to street-level retail and failed to inspire a pedestrian-friendly activated sidewalk, leaving a pedestrian “dead zone” south of Brown on S. Old Woodward. The new RH and its amenities will combine these frontages into one attractive, pedestrian-friendly structure with street-level retail galleries and a fourth-floor restaurant. The RH restaurant will provide the enjoyable experience of rooftop dining plus offer residents and visitors the unique experience of strolling through design galleries with one’s beverage of choice. The new RH is designed to fully comply with the standards of the B2 zone and Downtown Overlay District.

The presence of RH south of Brown Street will extend the CBD past Brown. The project is consistent with both goals for the Retail 1 area under the 2016 Plan. The RH retail store and restaurant will add economic vitality to the South Old Woodward corridor by serving residents and visitors as a retail destination. There are few eating establishments in this area of the City, as well, and the RH will include the welcome addition of a unique top floor eating establishment. These uses encourage pedestrian traffic, activate the sidewalk, and help to extend and connect the CBD with the South Woodward neighborhood. There is no other business in the CBD like the RH. The last time Birmingham enjoyed this type of retail development was during the days of Jacobson’s department store. RH’s Application encourages redevelopment of the southern CBD, south of Brown Street along the South Woodward corridor area while at the same time satisfies the planning amenities envisioned in the 2016 Plan.

b. “The Downtown Birmingham Vision Statement” in the 2016 Plan.”

At Page 181 of the 2016 Plan (attached), 17 bullet points are identified as being a summary of the vision for downtown Birmingham. Again, the RH development has the advantage of being consistent with all the relevant bullet points presented in that 2016 Plan.

- i. “Ensure the economic viability of downtown business community.”

The development of the RH store/restaurant at this location continues the revitalization of

economic activity along South Old Woodward past Brown Street. It increases the availability of large shopping venues and restaurant experiences in this part of Downtown, providing amenities to residents and attracting visitors and to Downtown and the South Old Woodward corridor. RH's first floor retail space and sidewalk redesign – in accord with the South Old Woodward reconstruction plan --will extend the walkability of the CBD and provide pedestrian destinations south of Brown Street. A retail establishment the caliber of RH in a walkable cosmopolitan community, with its unique shopping experience of strolling through design galleries with a glass of wine or beverage of choice, cannot be executed without a liquor license.

Furthermore, there is no alternative to Downtown Birmingham for RH in southeastern Michigan for one of its flagship retail stores. RH understands the effects internet shopping has had on large shopping malls. It is transitioning from that uncertain business model to the development of stand-alone stores, with an attractive offering of a unique shopping and dining experience. Downtown Birmingham is a perfect fit for one of RH's select locations. It cannot offer the high-level experience associated with RH, however, without a liquor license and food/beverage service on premises. Birmingham historically has been known as a Downtown shopping destination. The Applicant's new four-story RH promotes and helps grow Downtown Birmingham as a shopping destination.

- ii. "New development should be designed for safety, comfort, convenience and enjoyment of pedestrians, rather than vehicular traffic."

The RH store/restaurant provides a unique experience for both Birmingham residents and visitors of Birmingham alike. The proposed plan includes an underground parking garage for customers and employees, although the Applicant anticipates use of the nearby Pierce Street garage. The building, primarily retail with a fourth-floor restaurant facility is designed to appeal to pedestrians walking from the CBD towards South Woodward. The RH can be accessed by pedestrians without use of a car. All the residents living in or near the south area of the CBD, including residents across Old Woodward at Birmingham Place and the 555 building, as well as across Daines Street at the Forefront and any other nearby residents, will be able to walk to the RH. This pedestrian-friendly location and use is particularly appropriate for the City of Birmingham and the "treasured heritage" of the City as a walkable community. The new, unique and attractive retail space and rooftop restaurant will extend the CBD and support the CBD as an integral part in the lives of Birmingham residents.

The streetscape design includes widened sidewalks with trees and raised planters, placed to enhance the pedestrian experience, as well as pedestrian-level lighting and hanging planters. The design also includes benches, receptacles, and bicycle racks to further encourage multi-modal traffic flow. The main entrance is welcoming and inviting to pedestrians, with large first floor windows and a canopied doorway at the corner of Brown and South Old Woodward.

- iii. “Strengthen the spatial and architectural character of the downtown area and ensure buildings are compatible, in mass and scale, with their immediate surroundings and the downtown’s traditional two- to four-story buildings.”

This new building is designed by the renowned Birmingham architecture firm, Saroki Architecture. The design meets the zoning criteria for the D-4 and Downtown Overlay Districts. The building is a 4-story mixed use building that is consistent with the mass and scale of the surrounding buildings and will complement the architecture of the Daxton Hotel and other buildings in Downtown. The subject site is currently occupied by a one-story office building, a surface parking lot, a shoe repair shop, and a boutique furniture store. The four-story RH building, with its mix of retail and restaurant uses, will significantly strengthen the architectural and spatial character of the current lot and structures.

- iv. “Ensure good land use transitions and structural compatibility in form and mass to the traditional, residential neighborhoods surrounding downtown.”

The location of the RH offers a unique opportunity for development which will be convenient to, and an amenity for, all the residents living in the residential single-family areas surrounding the CBD and South Woodward. One of the visions of the 2016 Plan is to extend the CBD into the South Woodward area to provide services needed by Birmingham residents, and the RH will provide a transition point which will extend the CBD beyond Brown Street into the South Woodward area. The RH is the continuation of such pedestrian-oriented development in this area, like the Daxton, and will bring more foot traffic south of Brown Street into the South Woodward area. The RH will offer these residents uses that will encourage increased social and retail activities in and around the southern area of the CBD.

- v. “Create and reinforce identifiable districts within the downtown to provide a sense of place and a variety of experiences.”

The redevelopment of the South Woodward retail area depends upon the development of new and exciting retail and restaurant uses. The redevelopment of the Subject Property works to increase the identifiability of the South Old Woodward corridor, as well as create and strengthen the Downtown as a shopping destination. Plus, RH will add a new and unique shopping and dining experience while extending the CBD the South Woodward retail area further to the south.

- vi. “Encourage a diverse mix of uses including retail, commercial, entertainment, cultural, civic, and especially residential.”

The RH is the epitome of a mixed-use retail space. It combines high-end, stand-alone retail with a unique top-floor restaurant, creating a unique strolling shopping experience and all built above underground parking in one building.

- vii. “Encourage first floor retail businesses, services, and other activities which are required for everyday living.”

The RH retail space will be located at street level through the third floor. The street level entrance is accessible from the sidewalk at the corner of Brown and Old Woodward, inviting pedestrians and creating the atmosphere and street activation encouraged by the 2016 Plan. The RH building will continue the ambiance of the northern part of the CBD and extend it south of Brown Street.

- viii. “Provide easily accessible, identifiable, and convenient parking in an amount to support downtown density and use.”

The proposed development is located within the Parking Assessment District, so no further on-site parking is required for commercial use. Nonetheless, the Applicant is in a unique position to offer easily accessible parking. The development includes an underground garage that will allow for approximately 30 cars. Further, RH desires to offer a valet service for customers, which will assist to ease any burden on parking. In addition, RH is exploring with the City the possibility of an arrangement for reserved parking spaces in the Pierce Street garage.

The foregoing is a discussion of several of the more relevant bullet points which are set forth in the Downtown Birmingham Vision Statement. As can be seen, the introduction of RH's restaurant (with alcoholic beverage consumption on premises) in this area complies with the 2016 Plan and its vision for Downtown Birmingham.

- B. 7.36(A)(2). “The use will be compatible with adjacent uses of land, the natural environment, and the capabilities of the public services and facilities effected by the land use.”

As stated above, the mixed retail/restaurant uses of the RH store is compatible with adjacent uses of land and sets the stage for a more pedestrian-friendly and environmentally conscious streetscape south of Brown Street at the southern extension of the CBD. RH will not present any issues for added public services or facilities for the land use. All existing facilities and services in this area will easily serve the new building.

- C. 7.36(A)(3). “The use is consistent with public health, safety and welfare of the city.”

The use of an Economic Development liquor license for this exciting new mixed-use retail/restaurant development south of Brown Street is not only consistent with the health, safety and welfare of the community, but because of the services it provides, it is a benefit to the residents of this area and the City at large by adding a large retailer and a unique dining

establishment to the area where few restaurants are located. As stated above, the widened sidewalks, underground parking and proposed valet service are consistent with the health, safety and welfare of the residents of the City. The proposed RH development has been designed to result in no interference with traffic.

D. 7.36(A)(4). “The use is in compliance with all other requirements of the zoning ordinance.”

The site plan and building plans presented demonstrate that the new RH building has been designed consistent with the standards of the Downtown Overlay and otherwise complies with the ordinances of the City of Birmingham, in addition to being clearly consistent with the 2016 Plan as set forth in this letter.

E. 7.36(A)(5). “The Use Will Not Be Injurious to the Surrounding Neighborhood.”

There is no activity of RH which will be injurious to surrounding neighbors. In fact, this large retail space and top-floor restaurant, will be beneficial to its neighbors. This location is immediately adjacent to other commercial and office uses, including the Daxton Hotel directly to the north, the Forefront to the south, and Birmingham Place across the street. It offers a new retail concept to Downtown Birmingham, plus a new fourth-floor restaurant to which pedestrians can easily walk. It adds to the diversity of the uses in the neighborhood, which presently are dominated by offices, high rise multifamily, and single-story shops, with only two other restaurants south of Brown Street (former Triple Nickel and Phoenicia). Note that the Subject Property does not border on areas zoned single family residential.

F. 7.36(A)(6). “The RH establishment is not in violation of any State or Federal Statutes.”

The RH and its restaurant are designed and will be operated in a manner which is intended to comply with all relevant laws and regulations of the local, state, and federal authorities.

II. Birmingham City Code

Two sections of the City Code are relevant to this SLUP proposal.

A. Sec. 10-61. - Request for transfer of license into city.

“Persons desiring to transfer a liquor license from outside the city limits into the city limits in excess of the city's quota licenses shall make an application to the city commission and pay the applicable theater liquor license transfer review fee as set forth in appendix A of

this Code. In addition to those items and conditions set forth in section 10-42¹, the application shall set forth in detail its proposed project, including, but not limited to”:

1. **10-61(1):** “Utilization of said liquor licenses and details on the number of quota liquor licenses in escrow at the time of application.”

Applicant is proposing to transfer an existing license from outside the City of Birmingham under the City’s Economic Development license transfer Ordinance Section 10-62. The Applicant understands there are no quota licenses available to transfer to the Applicant available in the City.

With respect to escrow licenses, the following 6 liquor licenses are in escrow in Birmingham, but to the Applicant’s knowledge they are not available for purchase; they are controlled by landlords or are being transferred to future tenants of the buildings where they are held:

0261553 PEABODY OWNER, LLC
34965 Woodward Ave., Birmingham, MI 48009-0931

240015 WILLITS CO-LICENSE LLC / MITCHELL'S ENTERTAINMENT, INC.
115 Willits St., Birmingham, MI 48009-3317

238851 THE PALLADIUM OF BIRMINGHAM, LLC
201 Hamilton Row, Birmingham, MI 48009-3455

¹ Section 10-42:

1. **10-42(1):** “An applicant will be given consideration only if he proposes to provide and continues to provide for the service of meals to be consumed on the premises.” The RHFB will have a restaurant that will provide on-premises service to all its customers who desire it.
2. **10-42 (2):** “The location proposed, and methods of operation must not detrimentally and unreasonably impact nearby property owners, businesses and residents.” The location and methods of operation will benefit nearby property owners, businesses, and residents by increasing pedestrian traffic to the South Old Woodward area and extend the CBD south of Brown Street, plus it will provide residents with another unique shopping and dining experience that can be accessed without a car.
3. **10-42 (3):** “All applicable health and safety codes and ordinances, including zoning, must be met.” The Applicant plans to meet all safety codes and ordinances.
4. **10-42 (4):** “Applicants will be required to submit a detailed plan of proposed operation as part of their application for transfer, which shall include a plot plan of the site, a plan for any proposed change in exterior and interior design, lay-out of any proposed change to ancillary facilities and a general operational statements outlining the proposed manner in which the establishment will be operated, including a schedule of the hours of operation, crowd control plans, use of the facility, parking provisions and the estimated cost of any proposed improvements.” Please see the site plan submission made with this Application for Special Land Use Permit – Economic Development License.

233843 CRUSH, LLC /TRIPLE NICKEL
555 S. Old Woodward Ave., Birmingham, MI 48009-6658

0269104 ESSCO OF BIRMINGHAM, LLC
250-280 E. Merrill St., Birmingham, MI 48009

0270861 ESSCO OF BIRMINGHAM, LLC
210 S. Old Woodward, Ste. 100, Birmingham, MI 48009

2. **10-61(2):** “Proposed and/or existing site plan of the property, building floor plan and an operations floor plan.”

Please see the site plan submission made with this application for Special Land Use Permit – Economic Development License.

3. **10-61(3):** “An economic impact analysis.”

There is a significant positive economic impact on the City by the RH project. The City benefits economically by each of the following effects:

- i. Number of permanent new jobs created: 130 new, permanent positions will be created with the opening of the retail (50 employees) and restaurant operations (70 employees).
 - ii. Number of temporary construction and trade jobs: several hundred construction jobs are created by the project during the approximate two-year construction period.
 - iii. Almost all the construction and trade impact will be within 20 to 30 miles of the site.
 - iv. Total investment in the project: approximately \$25 Million Dollars.
 - v. Increase in assessed value for the City: the present assessed values of 300 and 394 S. Old Woodward together are approximately \$1.3 Million Dollars. The Applicant is planning to spend \$25 Million to develop the Subject Property; hence, the proposed project is a substantial economic development under either test set forth in Section 10-61 of the Ordinance.
4. **10-61(4):** “A copy of the special land use permit application and supporting documentation submitted by the applicant.”

Please see the Special Land Use application submitted with this letter.

5. **10-61(5):** "All documentation submitted to the MLCC requesting the transfer."

Applicant's MLCC application has been filed with the City Police Department.

6. **10-61(6):** "Full identification and history of the license holder(s) as it pertains to the license proposed to be transferred, including all complaints filed with the state liquor control commission (LCC) or actions taken by any municipality or the LCC to suspend, revoke or deny the non-renewal of said license and all other documentation setting forth the detail of the substantial economic development proposed by the applicant, including the approximate dollar amount of the investment to be made, number of jobs to be created and other benefits to the city. The city deems projects resulting in a 500 percent increase in assessed value post-development over the pre-development assessed value or the parcel and/or projects with an investment of more than \$10,000,000.00, whichever is less, to be substantial. However, special circumstances may warrant flexibility on the minimum investment at the sole discretion of the city commission."

- a. Applicant has no identification and history pertaining to the license proposed to be transferred, and no complaints or other actions taken by any person or entity to suspend, revoke, deny or denial of renewal of said license.
- b. The applicant is investing approximately \$25 Million Dollars in the design, engineering, approval and construction of the interior (including kitchens) and exterior of this 50,750 square foot retail store and restaurant.
- c. Applicant expects to create approximately 130 permanent jobs, and approximately several hundred construction jobs at the site.

7. **10-61(7):** "Information detailing how the proposed operation will create or sustain development in the city consistent with the master plan."

See Section I of the Requirements for SLUP contained in this letter.

8. **10-61(8):** "Such other items deemed necessary by city administration."

The Applicant will provide further items deemed necessary by the City administration.

B. Sec. 10-62. - Application for transfer of liquor license into the city for economic development purposes.

“10-62(a) Selection criteria: In addition to the usual factors and criteria used by the city commission for liquor license requests, including those listed in section 10-42², the commission shall consider the following non-exclusive list of criteria to assist in the determination of which of the existing establishment applicants, if any, should be approved”:

1. **10-62(1):** “The applicant's demonstrated ability to finance the proposed project.”

The Applicant is a publicly traded company, and the project is being financed internally.

2. **10-62(2):** “The applicant's track record with the City including responding to City and/or citizen concerns.”

RH and its developers commit to promptly and properly addressing the City's and citizen's concerns with all aspects of development. The Applicant intends to promptly respond to all the City and/or citizen concerns.

3. **10-62(3):** “Whether the applicant has an adequate site plan to handle the proposed liquor license activities.”

The attached site plan shows in detail that the restaurant facility is designed by restaurant professionals. There are adequate facilities, including parking, to handle vehicular outcomes of the business as well as the expected pedestrian traffic from the Birmingham residential clientele.

4. **10-62(4):** Whether the applicant has adequate health and sanitary facilities.

All the health and safety facilities at the premises will comply with local, state and federal laws.

5. **10-62(5):** “The establishment's location in relation to the determined interest in development.”

As set forth above, the development satisfies several goals of the City's 2016 Plan related to extension of the CBD further south along South Old Woodward. The Subject Property is presently in the D3 Overlay and Applicant is requesting a zoning change to D4. In either case, the Downtown Overlay encourages a three to four-story building at this site where presently there are single story buildings and a surface parking lot. The City has established in its master planning a determined interest in commercial development in the South Old Woodward corridor.

² Please see a discussion of the 10-42 requirements in Footnote 1.

6. **10-62(6)**: “The extent that cuisine offered by applicant is represented in the city.”

The unique concept of a large retail establishment with fourth floor dining, and the opportunity for strolling through the RH retail galleries with a beverage of choice, does not exist in the City of Birmingham and will be something new to the City.

7. **10-62(7)**: “The percentage of proceeds from the sale of food products as compared to the sale of alcoholic beverages.”

The Applicant predicts that food and beverage sales will be roughly equivalent, while the retail sales will far exceed the revenue generated by the restaurant.

8. **10-62(8)**: “Whether the applicant has outstanding obligation to the city (i.e. property taxes paid, utilities paid, etc.).”

The Applicant has not outstanding obligations to the City of Birmingham.

III. Conclusion

The foregoing sections of this letter have concentrated on the zoning ordinances, the Master Plan and 2016 Plan, and the ordinance requirements for Special Land Use Permits and the Economic Development License. This review clearly demonstrates that the RH’s proposed retail establishment and restaurant satisfy the requirements, guidelines, and goals established in the 2016 Plan and City ordinances. The location of the RH in the Retail 1 area, extending the CBD further south, makes this proposal especially attractive, since it will extend pedestrian interest and foot traffic into an area of the Downtown that presently is less activated than other CBD areas. In addition, it will greatly expand the retail and dining choices in the City, especially south of Brown Street, and offer the residents of Birmingham and visitors to the City a truly unique experience in all of Michigan, strengthening Birmingham as a retail destination.

Accordingly, the Applicant respectfully requests the Planning Board to favorably recommend this Application for Special Land Use Permit – Economic Development License to the City Commission, and the Special Land Use Permit for the B2 with the hope that the City Commission will grant the Applicant, RHFB, LLC, a Special Land Use Permit – Economic Development License.

City of Birmingham
February 24, 2021
Page 13

W|W|R|P

Should you have any further questions or comments regarding any of the above, please do not hesitate to call. With kind regards, I am,

Very truly yours,
WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, P.C.



Richard D. Rattner

RDR/cmc
Enclosure-SLUP Application



CITY OF BIRMINGHAM FIRE DEPARTMENT

572 SOUTH ADAMS • BIRMINGHAM, MICHIGAN 48009 • 248.530.1900 FAX 248.530.1950

300-394 S. Old Woodward

Final Site Plan and SLUP Review of RH

The following are a list of final site-plan review comments from the Fire Marshal

- A fire command center is required on the first floor per IFC '15 ed., section 508.1, 508.1.1, 508.1.2, 508.1.3, 508.1.4, 508.1.5, 508.1.6
- Full fire suppression installation per fire code and approval of submitted drawings.
- Fire pump installation.
- Emergency generator installation.
- Full fire alarm system installation per fire code. Drawings submitted to AHJ for approval.
- CO gas detection system per fire code in the parking garage(s)
- Emergency responder radio amplification system installation if necessary. The determination for this device shall be made after walls are installed and poured. Usually this issue is discovered after near final completion of the building project. Refer to IFC'15 for code referencing.
- Stair case to roof access (not roof hatch).
- Knox box installation
- Construction phase of project install standpipe system with access of all floors during entire construction phase.
- Fire hydrant within 100 feet of Fire Department Connection FDC
- Roof top garden/landscaped roofs. Refer to IFC '15 ed. Section 317 and 905.3.8 for all requirements.
- Install Knox Remote Power Box 4500 Series for emergency power shut off for First Responder use. Ensure that life safety systems are still energized (elevators, generators, egress lighting, etc.).

Please feel free to contact the Fire Marshal with any questions.

Sincerely,

Jack D. Pesha

Fire Marshal

Birmingham Fire Department



MEMORANDUM

Office of the City Manager

DATE: July 2, 2021

TO: Thomas M. Markus, City Manager

FROM: Melissa Fairbairn, Assistant to the City Manager

SUBJECT: Michigan Municipal League (MML) Workers' Compensation Fund Board of Trustees Election

The City of Birmingham is a member of the Michigan Municipal League Workers' Compensation Fund. The Michigan Municipal League is the state's leading provider of municipal workers' compensation and risk management services.

The Michigan Municipal League is holding an election for this year's Workers' Compensation Fund Board of Trustees. Three (3) incumbent Trustees have agreed to seek re-election and two (2) appointees are seeking election to their first term. A brief biographical sketch of each candidate is attached for your review. The five candidates are:

Lois Allen-Richardson, Mayor, City of Ypsilanti
Brian Boggs, City Council Member, City of Durand
Maureen Donker, Mayor, City of Midland
Scott Erickson, Manager, City of Ironwood
Susan Montenegro, Manager, City of Leslie

A resolution is required to authorize the City of Birmingham's vote to be cast for the above persons to serve as Trustees of the Michigan Municipal League Workers' Compensation Fund. These five (5) individuals are the only candidates seeking election to this Board.

SUGGESTED RESOLUTION:

To authorize the City Manager to cast a vote, on the City's behalf, for the five (5) candidates of the Michigan Municipal League Workers' Compensation Fund for four-year terms, beginning October 1, 2021.

To: Members of the MML Workers' Compensation Fund
From: Michael J. Forster, Fund Administrator
Date: June 25, 2021
Subject: Fund Trustee Election

Dear Fund Member:

Enclosed is your ballot for this year's Board of Trustees election. Three (3) incumbent Trustees have agreed to seek re-election and two (2) appointees are seeking election to their first term. You also may write in one or more candidates if you wish.

A brief biographical sketch of the candidate is provided for your review.

I hope you will affirm the work of the Nominating Committee by returning your completed ballot in the enclosed return envelope, no later than August 13. You may also submit your ballot online by going to www.mml.org. Click on *Insurance*, then *Workers' Compensation Fund*; the link to the ballot form is in the yellow banner.

The MML Workers' Compensation Fund is owned and controlled by its members. Your comments and suggestions on how we can serve you better are very much appreciated. Thank you again for your membership in the Fund, and for participating in the election of your governing board.

Sincerely,



Michael J. Forster
Fund Administrator
mforster@mml.org

We love where you live.



THE CANDIDATES

Four-year terms beginning October 1, 2021



Lois Allen-Richardson, Mayor, City of Ypsilanti

Lois has more than sixteen years of experience as a municipal official, currently serving as mayor of the City of Ypsilanti, having previously served as its councilmember and mayor pro tem. She is a founding member and the current president of Michigan Black Caucus of Local Elected Officials (MBC-LEO). Lois is also currently serving as president of the Elected Officials Academy Advisory Board, has previously served as a MML Board of Trustee member and is a past regional secretary with MML. Lois is also involved in several local civic organizations. Lois is seeking election to her second term.



Brian Boggs, City Council Member, City of Durand

Brian Boggs has more than 18 years' experience in local government and is currently the Shiawassee County Administrator and a longtime member of the Durand City Council. Brian is an Assistant Professor for the Hubert H. Humphrey Fellowship Programs in International Studies and Programs at Michigan State University. He has written extensively on educational organizational complexity, specifically as it affects urban schools and policy. He has most recently been published in Teacher's College Record at Columbia with a piece titled, "Conceptualizing Virtual Instructional Resource Enactment in an Era of Greater Centralization, Specification of Quality Instructional Practices, and Proliferation of Instructional Resources." Further, he has published book chapters in: Handbook of Urban Education Leadership; Handbook of Education Politics and Policy; School to Prison Pipeline; Emerging Issues and Trends in Education; Beyond Marginality; and Educational Policy Goes to School. He has also been published in the Journal of School Public Relations. Brian holds a Ph.D. in educational policy from Michigan State University and is currently finishing his J.D. from Mitchell Hamline School of Law. He holds an MA in Rhetoric and a BA in English from the University of Michigan. Brian is seeking election to his first term.



Maureen Donker, Mayor, City of Midland

Maureen has more than five years of experience as a municipal official, and has served as mayor of Midland since 2009. She has been the Executive Director of The Reece Endeavor of Midland, a community program providing homes for individuals with special needs, since 1998. Maureen is also active in the Midland community, serving on various local and regional civic organizations. Maureen is seeking re-election to her third term.



Scott Erickson, Manager, City of Ironwood

Scott has more than thirty years of experience as a municipal official, serving as city manager of Ironwood since 2005. He previously served with the city of Oshkosh, WI and Andover, MN. Scott was a Michigan Municipal League Board of Trustees member from 2011-2014 and received the MML Jim Sinclair Exceptional Service Award in 2016. He has previously served as the president of the Upper Peninsula City Managers Organization and is involved in several local civic organizations. Scott is seeking election to his second term.

THE CANDIDATES

Four-year terms beginning October 1, 2021



Susan Montenegro, Manager, City of Leslie

Susan Montenegro has more than eight years' experience in municipal government, having started her municipal career with the City of Owosso in 2013, where she first served as an intern and was then hired as assistant city manager and director of community development. In June of 2018, Susan was appointed city manager for the City of Leslie.

Susan is a member of the Michigan Municipal Executives, currently serving on its Board and its Early Career Outreach Committee, having previously served on its Professional Development Committee. Susan is a member of the 16/50 Work Group for the Michigan Municipal League's 16/50 Project. She is a member of the International City/County Management Association (ICMA) and previously served on its Welcome Ambassadors Committee.

Prior to her career in municipal government, Susan served as a pastor in the United Methodist Church for 10 years. Her move to local government was natural, with her extensive background working with volunteers and boards to promote growth, inclusiveness, and community spirit. Team building, outreach, and service have always been at the heart of everything Susan does.

Susan holds an Associate of Arts degree in Business from the University of Phoenix, a Bachelor of Science degree in Human Services Management from the University of Phoenix graduating with honors, and a Masters degree in Public Administration from the University of Michigan-Flint. Susan is seeking election to her first term.

**Michigan Municipal League
Workers' Compensation Fund**

OFFICIAL BALLOT - 2021

Vote for five Trustees by marking the line to the left of the name for four (4) year terms beginning October 1, 2021.

____ **Lois Allen-Richardson, Incumbent**
Mayor, City of Ypsilanti

____ **Brian Boggs, Appointee**
City Council Member, City of Durand

____ **Maureen Donker, Incumbent**
Mayor, City of Midland

____ **Scott Erickson, Incumbent**
Manager, City of Ironwood

____ **Susan Montenegro, Appointee**
Manager, City of Leslie

Write-in Candidate

I hereby certify that:

(Municipality/Agency)

by action of its governing body, has authorized its vote to be cast for the above persons to serve as Trustees of the Michigan Municipal League Workers' Compensation Fund.

Official Signature

Date:

**Ballot deadline:
August 13, 2021**



MEMORANDUM

Planning Division

DATE: July 1, 2021

TO: Thomas M. Markus, City Manager

FROM: Jana L. Ecker, Planning Director

SUBJECT: Public Hearing for a Rezoning Request for 300 - 394 S. Old Woodward and a portion of 294 E. Brown Street from D3 to D4

INTRODUCTION:

The owner of the property known as 300 S. Old Woodward is seeking a lot split/rearrangement to allow for 3,104.39 sq.ft. on the western edge of 300 S. Old Woodward to be split from the existing parcel, and added to the parcel known as 294 E. Brown Street. In addition, the owner of 294 E. Brown Street is seeking a lot split/rearrangement to divide the existing parcel into two parcels, to allow for 1,962.79 sq.ft. on the southeastern edge of the parcel to be split and added to the parcel at 394 S. Old Woodward. Both lot splits/rearrangements, if approved, will allow for a swap of land between property owners that will create a rectangular lot at 294 E. Brown, as well as new parcels at 300 and 394 S. Old Woodward. The owner of the amended parcels at 300 and 394 S. Old Woodward is then seeking a lot combination to create a larger rectangular parcel on S. Old Woodward running south of E. Brown Street to Daines Street to allow the development of a four story mixed use building on the site.

The existing buildings (currently 300 and 394 S. Old Woodward) on the lot to be newly created are proposed to be demolished to construct a new 4 story mixed use building with retail and design uses on the first three floors, and a restaurant on the fourth floor. In order to permit the use of a restaurant on the fourth floor, the applicant is proposing a rezoning of the new parcel encompassing 300 - 394 S. Old Woodward and portions of 294 E. Brown from B-2 (General Business) and D-3 (Downtown Overlay) to B-2 (General Business) and D-4 (Downtown Overlay). The maximum height allowed in the D-4 zoning district is 4 stories with a bonus fifth story for residential. The applicant has stated they plan to limit a building to four stories.

In addition, the applicant will be proposing zoning amendments to Chapter 126, Zoning, of the City Code to allow the use of economic development liquor licenses with a Special Land Use Permit on this site, which will include an application for an amendment to Exhibit 1, Appendix C, to add the properties at 300 – 394 S. Old Woodward to this map. This request is discussed under separate cover.

LEGAL REVIEW:

The City Attorney has reviewed the application and has no concerns as to the form of the application.

FISCAL IMPACT:

Not applicable.

PUBLIC COMMUNICATIONS:

Prior to the application being considered by the City Commission, the City Clerk's office sent out notices to all property owners and tenants within 300 feet of 300 and 394 S. Old Woodward and 294 E. Brown Street seeking public comment on the proposal.

SUMMARY:

The Planning Division recommends that the City Commission conduct a public hearing to consider the rezoning of the new parcel encompassing 300 - 394 S. Old Woodward and portions of 294 E. Brown from B-2 (General Business) and D-3 (Downtown Overlay) to B-2 (General Business) and D-4 (Downtown Overlay).

ATTACHMENTS:

- Application for Rezoning
- Planning Board report dated April 23, 2021
- Relevant meeting minutes
- Plans for proposed development at 300 -394 S. Old Woodward as submitted to the Planning Board for the meeting of April 28, 2021.

SUGGESTED ACTION:

To **APPROVE** the rezoning of the new parcel encompassing 300 - 394 S. Old Woodward and portions of 294 E. Brown from B-2 (General Business) and D-3 (Downtown Overlay) to B-2 (General Business) and D-4 (Downtown Overlay);

OR

To **DENY** the rezoning of the new parcel encompassing 300 - 394 S. Old Woodward and portions of 294 E. Brown from B-2 (General Business) and D-3 (Downtown Overlay) to B-2 (General Business) and D-4 (Downtown Overlay);

OR

To **POSTPONE** the public hearing on the rezoning of the new parcel encompassing 300 - 394 S. Old Woodward and portions of 294 E. Brown from B-2 (General Business) and D-3 (Downtown Overlay) to B-2 (General Business) and D-4 (Downtown Overlay) to _____.



CONSENT OF PROPERTY OWNER

Frank T. Konjarevich or Lois H. Konjarevich, as Trustees for the Frank T. Konjarevich Rev. Liv. Trust dated 5/22/95
I, _____, OF THE STATE OF Michigan AND
(Name of Property Owner)
COUNTY OF Oakland STATE THE FOLLOWING:

1. That I am the owner of real estate located at 394 S. Old Woodward;
(Address of Affected Property)
2. That I have read and examined the Application for **ZONING MAP CHANGE** made to the City of
Birmingham by: RH, Inc.;
(Name of Applicant)
3. That I have no objections to, and consent to the request(s) described in the Application made to the City of
Birmingham.

Frank T. Konjarevich or Lois H. Konjarevich, as Trustees for the Frank T. Konjarevich Rev. Liv. Trust dated 5/22/95
Name of Owner (Printed): _____

Signature of Owner: Frank Konjarevich Date: 2/24/21

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.

PRZ21-0001

Date Received: 3/4/21 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.

LEGAL DESCRIPTION – PARCELS I & II

LAND IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI, DESCRIBED AS FOLLOWS:

PARCEL I:

THE EAST 1/2 OF LOT(S) 11 OF BROWN'S ADDITION TO THE CITY OF BIRMINGHAM AND THE EAST 1/2 OF LOT 16 OF BROWN'S ADDITION NO. 1, IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS, INCLUDING THE VACATED WEST 20 FEET OF ANN STREET ADJOINING LOT 11 AND THE VACATED WEST 19 FEET OF ANN STREET ADJOINING LOT 16.

PARCEL II:

THE WEST 1/2 OF LOT(S) 12 OF BROWN'S ADDITION TO THE VILLAGE (NOW CITY) OF BIRMINGHAM, OF PART OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 36, TOWN 2 NORTH, RANGE 10 EAST, TOWNSHIP OF BLOOMFIELD (NOW CITY OF BIRMINGHAM), OAKLAND COUNTY, MICHIGAN ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS, ALSO LOT 15, ADDITION TO WILLIAM BROWN'S ADDITION NO. 1, BEING A PART OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 36, TOWN 2 NORTH, RANGE 10 EAST ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS, INCLUDING VACATED 20 FEET OF ANN STREET, ADJOINING THE WESTERLY SIDE OF LOT 12 AND VACATED 21 FEET OF ANN STREET ADJOINING THE WESTERLY SIDE OF LOT 15.

ADDRESS: 294 E. BROWN STREET, BIRMINGHAM, MI 48009

TAX ID NUMBER: 19-36-204-021

LEGAL DESCRIPTION – PARCEL 2

LAND IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI, DESCRIBED AS FOLLOWS:

THE EASTERLY 50 FEET OF LOT 12, AND THE WESTERLY PART OF LOT 13, MEASURING 82.45 FEET ON THE NORTH LOT LINE AND 82.48 FEET ON THE SOUTH LOT LINE OF BROWN'S ADDITION SUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS.

ADDRESS: 300 S. OLD WOODWARD AVENUE, BIRMINGHAM, MI 48009

TAX ID NUMBER: 19-36-204-006

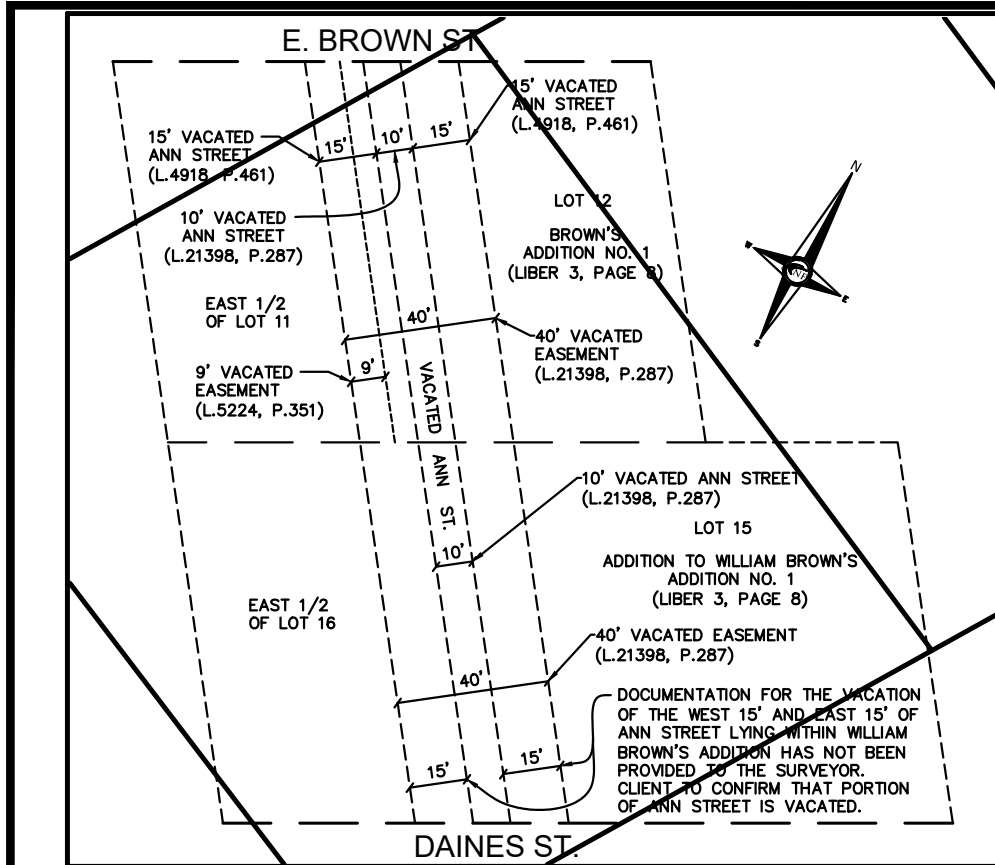
LEGAL DESCRIPTION – PARCEL 3

LAND IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI, DESCRIBED AS FOLLOWS:

LOT(S) 14, EXCEPT THAT PART TAKEN FOR WIDENING WOODWARD AVENUE OF ADDITION TO WILLIAM BROWN'S ADDITION NO. 1 ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS.

ADDRESS: 394 S. OLD WOODWARD AVENUE, BIRMINGHAM, MI 48009

TAX ID NUMBER: 19-36-204-014



FLOOD HAZARD NOTE

THE PROPERTY DESCRIBED ON THIS SURVEY DOES NOT LIE WITHIN A SPECIAL FLOOD HAZARD AREA AS DEFINED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY. THE PROPERTY LIES WITHIN ZONE X OF THE FLOOD INSURANCE RATE MAP IDENTIFIED AS MAP NO. 26125C05377 BEARING AN EFFECTIVE DATE OF 09-29-2006.

MISS DIG / UTILITY DISCLAIMER NOTE

A MISS DIG TICKET NUMBER A033240501, 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 DECEMBER 29, 2020. THE SURVEY ONLY REFLECTS THOSE UTILITIES WHICH COULD BE OBSERVED BY THE SURVEYOR IN THE FIELD OR AS DEPICTED 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.

ALTA SURVEY NOTES

THERE IS NO VISIBLE EVIDENCE OF CURRENT EARTH MOVING WORK, BUILDING CONSTRUCTION OR BUILDING ADJUSTMENTS.

THERE IS NO PROPOSED CHANGES IN STREET RIGHT OF WAY LINES AND THERE IS NO EVIDENCE OF RECENT STREET OR SIDEWALK CONSTRUCTION OR REPAIR.

THERE IS NO VISIBLE EVIDENCE OF SITE USE AS A SOLID WASTE DUMP, SUMP OR SANITARY LANDFILL.

THERE IS NO VISIBLE EVIDENCE OF ANY WETLAND AREAS.

LOCATION OF UTILITIES EXISTING ON OR SERVING THE PROPERTY AS DETERMINED BY OBSERVED EVIDENCE OR EVIDENCE FROM PLANS REQUESTED BY THE SURVEYOR AND OBTAINED FROM UTILITY COMPANIES.

THE SUBJECT PROPERTY HAS ACCESS TO S. OLD WOODWARD AVENUE, E. BROWN STREET AND DAINES STREET, ALL BEING A PUBLICLY DEDICATED ROAD.

BASIS OF BEARING NOTE

ALL BEARINGS ARE IN RELATION TO THE PREVIOUSLY ESTABLISHED SOUTH RIGHT-OF-WAY LINE OF STREET (60' WIDE) (NOW KNOWN AS BROWN STREET) OF BROWN'S ADDITION AS RECORDED IN LIBER 3 OF PLATS, PAGE 8, OAKLAND COUNTY RECORDS. (N.62.1°)

DATUM NOTE

ALL ELEVATIONS SHOWN HEREON ARE ON THE CITY OF BIRMINGHAM'S VERTICAL DATUM, REFERENCED HEREON, IS ONE (1.00) FOOT HIGHER THAN THE NORTH AMERICAN VERTICAL DATUM OF 1988 (N.A.V.D. 88).

SURVEY DATA

SITE AREA:
PARCEL I: 13,818.22 SQUARE FEET OR 0.317 ACRES
PARCEL II: 18,892.08 SQUARE FEET OR 0.433 ACRES
PARCEL 2: 13,204.93 SQUARE FEET OR 0.303 ACRES
PARCEL 3: 8,157.75 SQUARE FEET OR 0.187 ACRES
TOTAL: 54,052.96 SQUARE FEET OR 1.24 ACRES

ZONED:
B2, GENERAL BUSINESS DISTRICT

PARKING SPACES:

PARCEL I: 9 REGULAR SPACES
PARCEL II: 46 REGULAR SPACES AND 3 BARRIER-FREE SPACES
PARCEL 2: 20 REGULAR SPACES AND 1 BARRIER-FREE SPACE
PARCEL 3: NO ON-SITE PARKING SPACES

A SURVEYOR CANNOT MAKE A CERTIFICATION ON THE BASIS OF AN INTERPRETATION OR OPINION OF ANOTHER PARTY. A ZONING ENDORSEMENT LETTER SHOULD BE OBTAINED FROM THE CITY OF BIRMINGHAM TO INSURE CONFORMITY AS WELL AS MAKE A FINAL DETERMINATION OF THE REQUIRED BUILDING SETBACK REQUIREMENTS.

DTE DISCLAIMER NOTE

PLEASE NOTE THAT DTE HAS NEW REGULATIONS THAT MAY IMPACT DEVELOPMENT OUTSIDE THEIR EASEMENT OR THE PUBLIC RIGHT OF WAY. CLIENT SHALL CONTACT DTE TO DETERMINE THE "NEW STRUCTURES AND POWER LINE" REQUIREMENTS AS THEY MAY APPLY TO ANY FUTURE BUILDING OR RENOVATION OF A STRUCTURE. DTE ENERGY CAN BE CONTACTED AT 800-477-4747

LEGAL DESCRIPTION - PARCEL 2 (PER TITLE COMMITMENT)

LAND IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI, DESCRIBED AS FOLLOWS:

THE EASTERLY 50 FEET OF LOT 12, AND THE WESTERLY PART OF LOT 13, MEASURING 82.45 FEET ON THE NORTH LOT LINE AND 82.48 FEET ON THE SOUTH LOT LINE OF BROWN'S ADDITION SUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS.

ADDRESS: 300 S. OLD WOODWARD AVENUE, BIRMINGHAM, MI 48009

TAX ID NUMBER: 19-36-204-006

TITLE REPORT NOTES - PARCEL 2

REFERENCE FIRST AMERICAN TITLE INSURANCE COMPANY FILE NUMBER: 910055, COMMITMENT DATE: DECEMBER 21, 2020, REVISION B.

SCHEDULE B, PART II, EXCEPTIONS:

- EXCEPTIONS: 1, 4, 5, 6, 7, 8, 10, 11, 14 AND 15 REFER TO THE OWNERSHIP OF THE PROPERTY AND/OR ARE NOT PLOTTABLE.
- ANY FACTS, RIGHTS, INTERESTS OR CLAIMS NOT SHOWN BY THE PUBLIC RECORDS BUT THAT COULD BE ASCERTAINED BY MAKING INQUIRY OF PERSONS IN POSSESSION THEREOF OF THE LAND.
- EASEMENTS, ENCUMBRANCES, OR CLAIMS THEREOF, NOT SHOWN BY THE PUBLIC RECORDS.
- TERMS AND CONDITIONS CONTAINED IN RESOLUTION AS DISCLOSED BY INSTRUMENT RECORDED IN LIBER 8715, PAGE 137, (NO EASEMENTS OR RESTRICTIONS WITHIN SAID DOCUMENT, NOT PLOTTED).
- INTEREST, IF ANY, OF THE UNITED STATES, STATE OF MICHIGAN, OR ANY POLITICAL SUBDIVISION THEREOF, IN THE OIL, GAS AND MINERALS IN AND UNDER THAT MAY BE PRODUCED FROM THE CAPTIONED LAND.
- RIGHTS OF TENANTS, IF ANY, UNDER ANY UNRECORDED LEASES.

LEGAL DESCRIPTION - PARCEL 3 (PER TITLE COMMITMENT)

LAND IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI, DESCRIBED AS FOLLOWS:

LOT(S) 14, EXCEPT THAT PART TAKEN FOR WIDENING WOODWARD AVENUE OF ADDITION TO WILLIAM BROWN'S ADDITION NO. 1, ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS.

ADDRESS: 394 S. OLD WOODWARD AVENUE, BIRMINGHAM, MI 48009

TAX ID NUMBER: 19-36-204-014

TITLE REPORT NOTES - PARCEL 3

REFERENCE FIRST AMERICAN TITLE INSURANCE COMPANY FILE NUMBER: 910145, COMMITMENT DATE: DECEMBER 21, 2020, REVISION: A.

SCHEDULE B, PART II, EXCEPTIONS:

- EXCEPTIONS: 1, 4, 5, 6, 7, 9, 10, 13 AND 14 REFER TO THE OWNERSHIP OF THE PROPERTY AND/OR ARE NOT PLOTTABLE.
- ANY FACTS, RIGHTS, INTERESTS OR CLAIMS NOT SHOWN BY THE PUBLIC RECORDS BUT THAT COULD BE ASCERTAINED BY MAKING INQUIRY OF PERSONS IN POSSESSION THEREOF OF THE LAND.
- EASEMENTS, ENCUMBRANCES, OR CLAIMS THEREOF, NOT SHOWN BY THE PUBLIC RECORDS.
- TERMS AND CONDITIONS CONTAINED IN RESOLUTION AS DISCLOSED BY INSTRUMENT RECORDED IN LIBER 8715, PAGE 137, (NO EASEMENTS OR RESTRICTIONS WITHIN SAID DOCUMENT, NOT PLOTTED).
- INTEREST, IF ANY, OF THE UNITED STATES, STATE OF MICHIGAN, OR ANY POLITICAL SUBDIVISION THEREOF, IN THE OIL, GAS AND MINERALS IN AND UNDER THAT MAY BE PRODUCED FROM THE CAPTIONED LAND.
- RIGHTS OF TENANTS, IF ANY, UNDER ANY UNRECORDED LEASES.

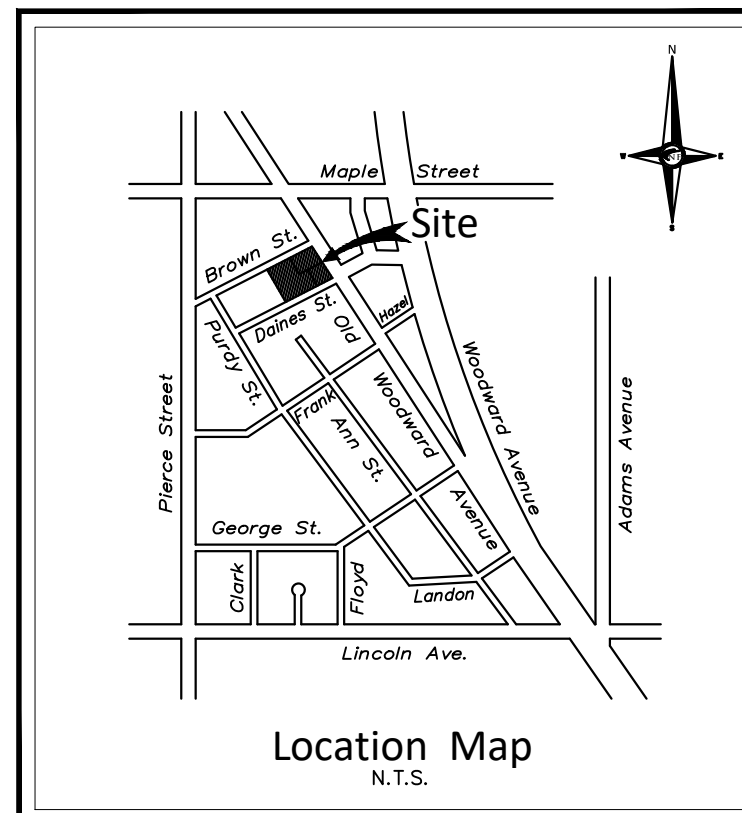
CERTIFICATE OF SURVEY

CERTIFIED TO:

-PURCHASER'S ASSIGNEE
-TROTTER PROPERTIES 294, LLC, A MICHIGAN LIMITED LIABILITY COMPANY, AS TO PARCEL 1
-BRB EQUITIES, L.L.C., AS TO PARCEL 2
-FRANK T. KONJAREVICH OR LOS H. KONJAREVICH (OR SUCCESSOR TRUSTEES) AS THE TRUSTEE FOR THE FRANK T. KONJAREVICH REVOCABLE LIVING TRUST DATED MAY 22, 1995, AS TO PARCEL 3
-FIRST AMERICAN TITLE INSURANCE COMPANY AND EACH OF THEIR RESPECTIVE SUCCESSORS AND/OR ASSIGNS AS THEIR INTERESTS MAY APPEAR

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 INCLUDE ITEMS 1, 2, 3, 4, 6(a), 7(a), 7(b)(1), 7(c), 8, 9, 11, 13, 14, 16, 17, 18 AND 20 OF TABLE A THEREOF. THE FIELD WORK WAS COMPLETED ON DECEMBER 16, 2020.

Kevin Navaroli
KEVIN NAVAROLI, P.S. NO. 4001053503 DATE 1-24-2021



LEGAL DESCRIPTION - PARCELS I & II (PER TITLE COMMITMENT)

LAND IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI, DESCRIBED AS FOLLOWS:

PARCEL I: THE EAST 1/2 OF LOT(S) 11 OF BROWN'S ADDITION TO THE CITY OF BIRMINGHAM AND THE EAST 1/2 OF LOT 16 OF BROWN'S ADDITION NO. 1, IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS, INCLUDING THE VACATED WEST 20 FEET OF ANN STREET ADJOINING LOT 11 AND THE VACATED WEST 19 FEET OF ANN STREET ADJOINING LOT 16.

PARCEL II: THE WEST 1/2 OF LOT(S) 12 OF BROWN'S ADDITION TO THE VILLAGE (NOW CITY) OF BIRMINGHAM, OF PART OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 36, TOWN 2 NORTH, RANGE 10 EAST, TOWNSHIP OF BLOOMFIELD (NOW CITY OF BIRMINGHAM), OAKLAND COUNTY, MICHIGAN ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS, ALSO LOT 15, ADDITION TO WILLIAM BROWN'S ADDITION NO. 1, BEING A PART OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 36, TOWN 2 NORTH, RANGE 10 EAST ACCORDING TO RECORDS, ALSO LOT 15, ADDITION TO WILLIAM BROWN'S ADDITION NO. 1, BEING A PART OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 36, TOWN 2 NORTH, RANGE 10 EAST ACCORDING TO RECORDS, INCLUDING VACATED 20 FEET OF ANN STREET, ADJOINING THE WESTERLY SIDE OF LOT 12 AND VACATED 21 FEET OF ANN STREET, ADJOINING THE WESTERLY SIDE OF LOT 15.

ADDRESS: 294 E. BROWN STREET, BIRMINGHAM, MI 48009

TAX ID NUMBER: 19-36-204-021

TITLE REPORT NOTES - PARCELS I & II

REFERENCE FIRST AMERICAN TITLE INSURANCE COMPANY FILE NUMBER: 915853, COMMITMENT DATE: DECEMBER 8, 2020.

SCHEDULE B, PART II, EXCEPTIONS:

- EXCEPTIONS: 1, 4, 5, 6, 7, 9, 10, 13 AND 16 REFER TO THE OWNERSHIP OF THE PROPERTY AND/OR ARE NOT PLOTTABLE.
- ANY FACTS, RIGHTS, INTERESTS OR CLAIMS NOT SHOWN BY THE PUBLIC RECORDS BUT THAT COULD BE ASCERTAINED BY MAKING INQUIRY OF PERSONS IN POSSESSION THEREOF OF THE LAND.
- EASEMENTS, ENCUMBRANCES, OR CLAIMS THEREOF, NOT SHOWN BY THE PUBLIC RECORDS.
- TERMS AND CONDITIONS CONTAINED IN RESOLUTION AS DISCLOSED BY INSTRUMENT RECORDED IN LIBER 8715, PAGE 137, (NO EASEMENTS OR RESTRICTIONS WITHIN SAID DOCUMENT, NOT PLOTTED).
- INTEREST, IF ANY, OF THE UNITED STATES, STATE OF MICHIGAN, OR ANY POLITICAL SUBDIVISION THEREOF, IN THE OIL, GAS AND MINERALS IN AND UNDER THAT MAY BE PRODUCED FROM THE CAPTIONED LAND.
- RIGHTS OF TENANTS, IF ANY, UNDER ANY UNRECORDED LEASES.

NOTE: DOCUMENTATION FOR THE VACATION OF THE WEST 15 FEET AND EAST 15 FEET OF ANN STREET Lying WITHIN WILLIAMS BROWN'S ADDITION HAS NOT BEEN PROVIDED TO THE SURVEYOR. CLIENT TO CONFIRM THAT PORTION OF ANN STREET IS VACATED.

LEGEND

MANHOLE(MH)	EXISTING SANITARY SEWER
CO	EXISTING SAN. CLEAN OUT
HYDRANT(HYD)	EXISTING WATER MAIN
GATE VALVE(GVW)	EXISTING STORM SEWER
MANHOLE(MH)	CATCH BASIN(CB)
CB	EX. BEEHIVE CATCH BASIN
UTILITY POLE	EX. UNDERGROUND (UG) CABLE
GUY WIRE	OVERHEAD (OH) LINES
LP	LIGHT POLE
↑	SIGN
ASPH.	EXISTING GAS MAIN
CONC.	ASPHALT
FD. / FND.	CONCRETE
RET. WALL	FOUND
R.O.W.	RETAINING WALL
SPK	RIGHT-OF-WAY
(TYP)	SET PK NAIL
(R)	TYPICAL
(M)	RECORD
C/L	MEASURED
PROPERTY LINE	CENTERLINE
GAS METER	PROPERTY LINE
ELECTRIC METER	GAS METER
PARKING METER	ELECTRIC METER
AIR CONDITIONING UNIT	PARKING METER
LANDSCAPE	LANDSCAPE



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

294 E. Brown St. and
300 & 394
S. Old Woodward Ave.
Birmingham, MI 48009

CLIENT

Saroki Architecture
430 N. Old Woodward Ave.
Birmingham, MI 48009

Contact: Victor Saroki

Phone: 248.258.5707

PROJECT LOCATION

Part of the NE 1/4
of Section 36,
T.2N., R.10E.,
City of Birmingham,
Oakland County, Michigan

SHEET

ALTA/NSPS Land Title /
Topographic Survey



Know what's below
Call before you dig.

DATE ISSUED/REVISED
00-00-00

DRAWN BY:

M. Carnaghi

DESIGNED BY:

APPROVED BY:

K. Navaroli

DATE:

February 24, 2021

SCALE: 1" = 20'

20 10 0 10 20 30

NFE JOB NO.

M106

SHEET NO.

SP-1

DATE: April 23, 2021

TO: Planning Board

FROM: Jana Ecker, Planning Director

SUBJECT: Rezoning Request for 300 - 394 S. Old Woodward and a portion of 294 E. Brown Street

The subject site includes the properties known as 300 – 394 S. Old Woodward, and portions of the property located at 294 E. Brown. These properties are currently occupied by Capital Title/Lutz, Roche Bobois/Frank's Shoe Service and Coldwell Banker Weir Manual. The entire property has a total land area of 54,052.96 sq.ft. or 1.24 acres. It is located on the west side of S. Old Woodward, including the entire block of S. Old Woodward from Brown Street south to Daines Street. All parcels are zoned B2 General Business and D-3 in the Downtown Birmingham Overlay District.

The applicant is proposing to rearrange the parcel lines for the above three properties to create two new parcels through the lot split and combination process. The applicant is proposing to split off the westernmost portion of the 300 S. Old Woodward (currently parking lot) and combine this portion with the parcel at 294 E. Brown Street. In addition, the applicant is proposing to split off the easternmost portion of the L-shaped parcel at 294 E. Brown and combine this with the parcel at 394 S. Old Woodward. Finally, the applicant proposes to combine the new parcels at 300 and 394 S. Old Woodward to create one large new parcel that will run from Brown south to Daines. **The applicant is required to obtain approval of the City Commission for the proposed lot splits and lot combination to create the new lot that is the subject of this application and shown on the site plan.** The applicant has submitted applications to the City Commission for their review. On April 12, 2021, the City Commission set a public hearing date of May 10, 2021 to consider the requests for lot split/rearrangements and lot combination for the subject properties.

The existing buildings (currently 300 and 394 S. Old Woodward) on the lot to be newly created are proposed to be demolished to construct a new 4 story mixed use building with retail and design uses on the first three floors, and a restaurant on the fourth floor. One level of underground parking is proposed to house 24 cars. As the building is located within the Parking Assessment District, no on-site parking is required for the proposed commercial uses. The applicant is required to obtain site plan approval for the proposed building, as well as acceptance of a Community Impact Study, as the building is larger than 20,000 sq.ft. in size. The Planning Board reviewed the Community Impact Study and Preliminary Site Plan on March 26, 2021. After much discussion, the Planning Board postponed both matters to the April 28, 2021 meeting to allow the applicant to address concerns about the traffic study methodology with the City's transportation consultants.

In order to permit the use of a restaurant on the fourth floor, the applicant is proposing a rezoning of the new parcel encompassing 300 - 394 S. Old Woodward and portions of 294 E. Brown. Thus, the applicant has requested that the Planning Board hold a public hearing to consider the rezoning of the property from B-2 (General Business) and D-3 (Downtown Overlay) to B-2 (General Business) and D-4 (Downtown Overlay). The maximum height allowed in the D-4 zoning district is 4 stories with a bonus fifth story for residential. The applicant has stated they plan to limit a building to four

stories.

In addition, the applicant will be proposing zoning amendments to Chapter 126, Zoning, of the City Code to allow the use of economic development liquor licenses with a Special Land Use Permit on this site, which will include an application for an amendment to Exhibit 1, Appendix C, to add the properties at 300 – 394 S. Old Woodward to this map. This request is discussed under separate cover.

History of Property

Information gathered by PM Environmental for a Phase 1 Environmental Site Assessment on the property history revealed that the subject property was previously used for automotive service and sales, a dry cleaning facility, a fur retailer with possible repair or cleaning operations, and a gasoline dispensing station with underground storage tanks.

300 S. Old Woodward

The northern portion of the subject property was developed prior to 1921 with a residential dwelling and a garage structure. A small storefront building was also constructed between 1926 and 1931, and may have been used to support a used car sales operation on the surface lot that existed at the time. Both structures were demolished in 1949, and the current building at 300 S. Old Woodward was completed in 1954, with an addition in 1994. Historical records demonstrate that existing building on the site has been used as professional offices since at least 1951.

360 – 394 S. Old Woodward

The southern portion of the subject property was also developed prior to 1921 with a residential dwelling and shed structure. The residential dwelling was converted to a storefront by 1926. In approximately 1929, both structures were demolished and a majority of the existing building was constructed to house an automotive service operation and gasoline dispensing station. An addition to the original service building was completed in the late 1960's, and the building continued to be used for automotive service operations until at least 1967. A portion of the existing building was occupied by a theater between 1966 and 1986, a portion of the building remained in use for automotive sales and service until 1988, and a portion was used for drycleaning services between 1969 and 1976. Frank's Shoe Service and other retail sales operations have also been located in the existing building since at least 1969.

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:

- The rezoning of the subject property to B2/D4 would result in the preservation and enjoyment of the rights of usage commonly associated with property ownership for the applicant. This property is unique in that it sits across

Brown Street from the five story Daxton Hotel and kitty-corner from the ten story Birmingham Place. However, this property is currently zoned B2/D3. While a four story building may be constructed in the D3 zone, the ordinance mandate the fourth floor to be residential. This area of S. Old Woodward has more apartments and condominiums than any other area of Downtown Birmingham. There are residential units in Birmingham Place, the 555 Building, and the Forefront. The applicant is a retailer seeking four stories of retail operations with food and beverage services on the fourth floor. The rezoning is necessary to preserve the applicant's enjoyment of its permitted uses of retail and restaurant in the Downtown Overlay District. Both uses are permitted in the Downtown Overlay; note that all restaurants serving alcoholic beverages are subject to a Special Land Use Permit.

- Other property owners in the S. Old Woodward corridor, including most of those across S. Old Woodward south of Brown Street, enjoy the designation of the Economic Development License zone, including those of principally residential buildings and whether the properties face S. Old Woodward or Woodward Avenue. Further, the iconic Phoenicia restaurant serves alcoholic beverages in the subject property's current D3 zone on the west side of S. Old Woodward. Placing the subject property in the Economic Development License zone would allow the applicant to enjoy the same restaurant use with alcoholic beverage service as is enjoyed by many of the neighboring property owners.

2. An explanation of why the existing zoning classification is no longer appropriate

Applicant response:

- After reviewing the 2016 Plan, the existing zoning for the subject property should be updated so it is possible to allow a four story retail development. The RH experience is one of stand-alone buildings in walkable neighborhoods. Destination stores with restaurant amenities are one of the ways retailers like RH continue to thrive. RH offers customers the cultural experience of visiting a gallery. This is good news for cities like Birmingham. Malls draw pedestrian shoppers away from downtown areas while the applicant's project will bring shoppers into Downtown Birmingham. Additionally, with Birmingham Place and the 555 Building just south of the subject property, the streetscape of S. Old Woodward in this area of the City is architecturally balanced by the addition of the applicant's proposed, classically designed four story building with a top floor restaurant, drawing pedestrians off the street to shop and relax in a restaurant setting.
- Similarly, the new or returning concept of stand-alone destination retail supports placing the subject property in the Economic Development License zone. Current zoning of the subject property does not support the RH concept of a destination retail that is a dramatic, economic improvement to the property, and that offers a first-class dining experience. The RH concept complements the goals of the Birmingham Master Plan and is a benefit to the City. The changes in the zoning requested here will allow this concept to be developed in our City. Hence, the current zoning is no longer appropriate.

3. An explanation of why the proposed rezoning will not be detrimental to the surrounding properties.

Applicant response:

- The rezoning of this property to B2/D4 is complimentary to the surrounding properties, rather than detrimental. First, the uses proposed for the building and the D4 zone will allow the property to accommodate a large, stand-alone, destination retailer. Second, it will bring a unique strolling shopping experience to the nearby residents of Birmingham Place, the 555 Building, and residential neighborhoods, as well as permit a handsome, four story building with underground garage designed to the standards of the D4 zone. Third, it will give new life to the S. Old Woodward streetscape between Brown and Daines, while at the same time it will comply with the spirit and intent of the 2016 Plan and the Birmingham Zoning Ordinances.

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. 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 with the required details and is attached to this report.

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 7.02(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 7.02(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

The Birmingham Plan (1980) is the master plan currently in effect for the entire city, although a first draft of an updated 2040 Master Plan has been completed, but not yet adopted by the City Commission. The 1980 plan shows the subject properties with commercial use, similar to the surrounding Central Business District, and a maximum height limit at the time of four stories.

The Future Land Use Plan ("FLUP") contained in the 1980 shows the subject property designated for office and low-intensity commercial development. The 1980 Plan states that art galleries, boutiques, and home furnishings stores are recommended for such low-intensity commercial areas. In addition, the FLUP also recommends that quality restaurant and entertainment facilities be encouraged to expand in the downtown area (with the exception of fast food establishments), as "restaurants are magnets which bring potential shoppers into the Downtown".

The Birmingham Plan also noted the presence of several sensitive residential neighborhoods surrounding Downtown, including the Woodward-Lincoln-Pierce area. The subject property requesting rezoning at this time does not abut any portion of this sensitive residential area. The entire area east of Purdy between Brown and Daines was considered the commercial area of downtown, thus there are no residential properties contained within the entire block on which the subject site is located. There are residential properties located on the southwest corner of the block located south of Daines Street.

The Downtown Birmingham 2016 Plan ("2016 Plan") was adopted in 1996 to specifically improve the downtown area. The 2016 Plan was formally integrated into the requirements of the Zoning Ordinance shortly thereafter through the creation of the Downtown Birmingham Overlay District which defined the area to be governed by the recommendations in the 2016 Plan. The subject property to be considered for rezoning is located in the Downtown Birmingham Overlay District. The current D-3 Overlay Zoning already permits the development of four story buildings, if the fourth floor is used as residential. The requested rezoning to D-4 Overlay Zoning would allow the applicant to construct a four story building with a fourth floor restaurant use.

The 2016 Plan encourages D-3 flexible use buildings in this area (which are permitted to be 4 stories in height), to provide a connection between Downtown and the south end of S. Old Woodward, and encourages anchor retail development. The rezoning request made by the applicant is to allow the construction of a four story mixed use building to house Restoration Hardware. The proposed retail, gallery, design services and restaurant uses all work together to provide a significant retail anchor as recommended by the 2016 Plan to activate this area and support an active live, work and play environment for downtown.

The 2016 Plan also states that "Traditional American cities, except the very largest, rarely

exceed five stories in building height and most commonly range from two to four stories. Downtown Birmingham adheres to this rule, with the most memorable streets tending to be at least two stories and the least memorable being mostly one story”, and encourages proper building mass and scale to create an environment that is more comfortable to pedestrians, thus creating a walkable downtown. While the proposed rezoning to D-4 would also permit five story buildings, the applicant has indicated that they wish to limit development on the subject property to four stories. Both four or five story buildings would provide for significant massing at this important corner of Brown and S. Old Woodward. The height limit of four stories proposed by the applicant will also provide a transition from the five story Daxton Hotel to the north and the three story Forefront building to the south, ensuring that any new building will be harmonious with existing buildings.

B. Existing uses of property within the general area of the property in question

The property to the north of the subject site houses a recently constructed five story hotel, with a mix of retail and restaurant uses on the first floor, and residential uses on the top floor. The properties to the east of the site across S. Old Woodward include a mix of retail, restaurant and office use, as well as residential uses in the Birmingham Place building. The property located to the west of the subject site is a commercial office building with surface parking. The property across Daines Street to the south contains a mix of retail and commercial uses on the first floor, and residential uses on the upper floors.

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 / Hotel	Retail/ Commercial / Residential	Retail / Commercial/ Residential	Commercial/ Parking
Existing Zoning	B-4, Business Residential	B-2, General Business	B-2, General Business & B-3, Office Residential	B-2, General Business
Overlay Zoning	D-4	D-2	D-3 & D-4	D-3

C. Zoning classification of property within the general area of the property in question.

The properties immediately north of the subject site are zoned B4 and D4, which allow a mix of residential, retail and commercial uses, and buildings up to 5 stories in height up to a maximum height of 80'. The property to the west of the subject site is zoned B2 and D3, which also allow a mix of residential, retail and commercial uses, and buildings up to 4 stories in height up to a maximum height of 68'. Across S. Old Woodward to the east, adjacent properties are zoned B2 and D3 (Peabody Mansion and Powerhouse Gym Building), which allow a mix of residential, retail and commercial uses, and a maximum height of 4 stories and 68'. In addition, also across S. Old Woodward to the east adjacent to the subject site is the Birmingham Place building which is zoned B3 and D5, which also allows a mix of residential, retail and commercial uses, allows more than 5 stories, up to a maximum height

of 180'. The property to the south across Daines 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 proposed D4 zoning classification. However, while the existing D3 zoning does permit a fourth floor as proposed by the applicant, it is only permitted if it is used solely for residential use. Thus, the applicant is proposing the rezoning from D3 to D4 to permit a fourth floor for restaurant use. Restaurant uses are permitted in both D3 and D4 of the Downtown Overlay District. The applicant has stated that the proposed restaurant use on the fourth floor is necessary for the proposed development to allow Restoration Hardware to create a unique, experience-based retail destination for Downtown Birmingham.

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 Daxton Hotel immediately north of the subject site was recently completed, and opened for business this spring. The Daxton Hotel is a 5 story, mixed use building that contains hotel, residential, retail and restaurant uses. In addition, to the south, the Forefront Building was completed several years ago with retail/commercial space on the first floor and residential units on the upper floors. The Forefront was purchased, and the new owners recently applied for approval to increase the number of residential units on the upper floors (within the original building envelope). In 2017, the Birmingham Place building adjacent to the east was also rezoned to D5 under the Downtown Overlay. While no changes were made to Birmingham Place at the time, the new zoning now permits buildings over 5 stories in height (up to 180') so long as they are compatible with adjacent buildings, thus correcting the previous legal, non-conforming status of that building with regards to height.

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-3 to D-4 in the Downtown Overlay district for the purpose of permitting a fourth floor to be used as a restaurant. 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 D4 is appropriate and compatible with both the zoning and height of properties within the general area.

Departmental Reports

1. Engineering Division – The Engineering Department will provide any comments prior to the April 28, 2021 Planning Board meeting.
2. Department of Public Services –The Department of Public Services will provide any comments prior to the April 28, 2021 Planning Board meeting.
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 300 -394 S. Old Woodward and a portion of 294 E. Brown Street from D-3 to D-4 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 300 - 394 S. Old Woodward and a portion of 294 E. Brown Street from D-3 to D-4 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 300 - 394 S. Old Woodward and a portion of 294 E. Brown Street from D-3 to D-4 in the Downtown Overlay, pending receipt and review of the following information:

1. _____
2. _____
3. _____

Planning Board Minutes
March 26, 2021

F. Community Impact Study Review

- 1. 300 & 394 S. Old Woodward, and portions of 294 E. Brown** – New Construction (Capital Title/Lutz & Frank's Shoe Service, portions of Coldwell Banker Weir Manual parking lot), Community Impact Study to consider approval of a new 4 story building, including a request to operate a restaurant using an Economic Development Liquor License.

Chair Klein said he would be recusing himself from the Board's considerations regarding 300 & 394 S. Old Woodward and portions of 294 E. Brown. While he said he and the City Attorney determined he had no conflict-of-interest, he was concerned that existing business relationships between his company and parties affiliated with the applicants could lead to the public impression of a conflict-of-interest. The Chair said that if it became clear in the future that his participation in these discussions would not result in the public impression of a conflict-of-interest, he would rejoin deliberations regarding 300 & 394 S. Old Woodward and portions of 294 E. Brown at that time.

The Chair recused himself and left the meeting at 8:06 p.m.

Mr. Emerine filled the Board vacancy stemming from the Chair's recusal and Vice-Chair Williams commenced facilitation of the meeting.

PD Ecker presented the CIS.

Victor Saroki, architect, Richard Rattner, attorney, Dave Stanchak, President of RH, Paul O'Meara, engineer, and Mike Kulka, **Environmental Engineer**, were present on behalf of the application.

Ms. Kroll reported she had met with the applicant team and they confirmed they would get her the additional traffic information she had requested.

In reply to Mr. Share, Ms. Kroll explained that the Multi-Modal Transportation Board had recently updated the transportation impact study requirements for the City, and that adding crash analyses was one of the updates. She said that there were no accident mitigation measures beyond signage recommended for the intersection of S. Old Woodward and Brown since the majority of the accidents resulted from parking issues and inattentive drivers. She confirmed some of the parking in front of the building may be eliminated to make room for the valet, and that if that were to occur it may reduce some of the parking accidents.

In reply to a request from Vice-Chair Williams, Mr. Emerine said he could work as the Board's representative with Ms. Kroll and Mr. O'Meara regarding the site's traffic impact.

In reply to Mr. Emerine, Ms. Kroll explained she wanted to produce a conservative traffic analysis to make sure that the site could handle the peak amount of likely traffic. She said that would better ensure that severe issues with traffic around the site do not ensue from the proposed uses.

The Board was advised by the applicant team that furniture loading and unloading would occur infrequently since RH is a showroom only and furniture purchases would be coming from off-site. Vice-Chair Williams and Mr. Boyle asked that furniture delivery trucks still be addressed in upcoming

discussions of this item since the pieces in the showroom would likely be refreshed from time to time.

Mr. Saroki stated that the applicant team would resolve all issues raised by City departments and by Ms. Kroll's comments on the traffic study.

Mr. Kulka stated that the site had no more significant environmental issues than similar urban sites. He said any issues found in the environmental study would be remediated.

In reply to Mr. Share, Mr. Kulka committed the applicant team to environmentally remediating the site to residential criteria.

Public Comment

Mr. Reagan said he was concerned about there being insufficient parking proposed and in the area to support the site. He said he was also concerned about the impact of the project on nearby residences.

In reply to a question from David Bloom, Mr. Saroki said one area of the site would gain three parking spaces and another area would lose 11, leading to a net loss of eight parking spaces from the current number available. He also stated that RH paid for the CIS.

Mr. Share complimented the applicant team on their work thus far.

Motion by Mr. Share

Seconded by Mr. Emerine to postpone action on the Community Impact Study as provided by the applicant to April 28, 2021 for the proposed development at 300 - 394 S. Old Woodward and a portion of 294 E. Brown Street, allowing the applicant the opportunity to address the issues raised by the Planning Department in its review of the CIS.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Share, Emerine, Williams, Whipple-Boyce, Koseck, Boyle, Ramin

Nays: None

03-045-21

G. Preliminary Site Plan Review

- 1. 300 & 394 S. Old Woodward, and portions of 294 E. Brown** – New Construction (Capital Title/Lutz & Frank's Shoe Service, portions of Coldwell Banker Weir Manual parking lot), Preliminary Site Plan Review to consider approval of a new 4 story building, including a request to operate a restaurant using an Economic Development Liquor License.

PD Ecker reviewed the item.

In reply to Mr. Share, PD Ecker said she would speak with the Engineering Department regarding possible options for additional sidewalk lighting on Daines.

Mr. Saroki explained that the landscaping off of Daines would be on the Coldwell Banker site with the consent of the property's owner. He stated that RH would be paying for the landscaping.

Mr. Stanchak provided a brief overview of the design inspiration for the Birmingham site and showed a rendering of RH Birmingham.

Jim Arpin, President of the Condo Association at Birmingham Place, said he appreciated what he had seen of the plans so far. Mr. Arpin invited the applicants to meet with the Condo Association.

Vice-Chair Williams encouraged the applicants to take Mr. Arpin up on his invitation.

Mr. Share asked if the applicant team had considered doing a three-story building without the need for a liquor license, since pursuing a four-story building with a liquor license adds complexity.

Mr. Stanchak said the restaurant and alcohol service were integral to creating the hospitable, appealing atmosphere of RH.

Mr. Koseck said he thought the applicant team had gone above and beyond to address site issues. He commended them on designing the building in context, on the attention paid to the aesthetics of all sides of the building, and on the landscaping and hardscaping. He said he thought the designs for the building and grounds would fit well in the neighborhood's context.

There was Board consensus to postpone voting on the item until April 28, 2021 in order to consider the CIS, Preliminary Site Plan, Rezoning Request and Economic Development License for 300 & 394 S. Old Woodward and portions of 294 E. Brown during the same meeting.

Motion by Mr. Boyle

Seconded by Mr. Koseck to postpone the Preliminary Site Plan for 300 - 394 S. Old Woodward and a portion of 294 E. Brown Street pending receipt of an updated CIS addressing all issues noted in the CIS review above and setting the date for reconsideration to be April 28, 2021.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Boyle, Koseck, Ramin, Share, Emerine, Whipple-Boyce, Williams

Nays: None

City Of Birmingham
Regular Meeting Of The Planning Board
Wednesday, April 28, 2021
Held Remotely Via Zoom And Telephone Access

E. Rezoning Request

1. 300 & 394 S. Old Woodward, and portions of 294 E. Brown (Capital Title/Lutz & Frank's Shoe Service, portions of Coldwell Banker Weir Manual parking lot), Request for rezoning from B2/D3 to B2/D4 in the Downtown Overlay District.

PD Ecker and Gayle McGregor, attorney for the applicant, reviewed the item.

Victor Saroki, applicant, and Kelly Allen, attorney for the applicant, were also present on behalf of the item.

Ms. McGregor affirmed the applicant was offering to voluntarily limit the height of the building to four stories as part of rezoning the proposed parcel to D4. She said she believed she had submitted that offer in writing to the City. She said that if she had not yet submitted the offer in writing she would.

Mr. Share noted that the use and development of the land as a condition of the rezoning could be voluntarily limited by the applicant if submitted in writing, and could then be accepted by the City, per MCL 125.3405(1).

Board discussion noted that the City had used the same mechanism to include rezoning restrictions when the Whole Foods Market parcel was rezoned.

Vice-Chair Williams said the applicant's offer to limit the height of the building was positive since he did not believe that a five-story building should be built on the proposed parcel.

Mr. Share agreed.

Public Comment

Jeff Hockman, Chair of the BSD Board, spoke in favor of the rezoning. He said rezoning this proposed parcel was in line with the goals of the 2016 Plan and would benefit the broader Birmingham business community.

Marko Berishaj spoke in favor of the project.

After further discussion, the Board asked the applicant to clarify whether their voluntary limitation was to four floors, or to the specific design being put forth.

Mr. Saroki said he would voluntarily limit the rezoning request to the design as proposed in the site plan.

In reply to Ms. Whipple-Boyce, Vice-Chair Williams said the City Attorney would have to determine what would happen to the rezoning if the building is not developed.

Motion by Mr. Share

Seconded by Mr. Emerine based on a review of the rezoning request and supporting documentation submitted by the applicant, the voluntary offer conditions submitted by the applicant, a review of the applicable master plan documents and the development trends in the area, the Planning Board 1. Adopts the findings of fact contained in the staff report dated April 23, 2020 and 2. Recommends approval to the City Commission for the rezoning of 300-394 S. Old Woodward and a portion of 294 E. Brown Street as delineated in the application from D-3 to D-4 in the Downtown Overlay, conditioned on the City Commission's acceptance of the applicant's voluntary offer to limit the height of the building on this parcel to four stories in accordance with the building's form and mass contained in the proposed site plan submitted by the applicant.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Share, Emerine, Boyle, Jeffares, Koseck, Whipple-Boyce, Williams

Nays: None

04-060-21

F. Zoning Ordinance Amendment Request

1. Request for an amendment to Chapter 126, Zoning, Appendix 1, Exhibit A, to amend the Economic Development License map to include the properties at 300 & 394 S. Old Woodward, and portions of 294 E. Brown – New Construction (Capital Title/Lutz & Frank's Shoe Service, portions of Coldwell Banker Weir Manual parking lot) on the map contained in Exhibit A to allow the use of economic development liquor licenses (EDL) on these properties.

CP Brooks and Ms. McGregor presented the item.

In reply to Vice-Chair Williams, Mr. Saroki confirmed the granting of an EDL is critical to the development of this project.

Mr. Share said that irrespective of the current proposal from RH the City should consider allowing this parcel to be eligible for an EDL since the 2016 Plan set it out as an ideal location for an anchor tenant.

Motion by Mr. Share

Seconded by Ms. Whipple-Boyce to recommend approval to the City Commission of the ordinance amendment to allow the use of an Economic Development Liquor License in the expanded area as shown on the attached map for Appendix C, Exhibit 1, Economic Development Licenses.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Share, Whipple-Boyce, Emerine, Boyle, Jeffares, Koseck, Williams

Nays: None

04-061-21

G. Special Land Use Permit Reviews

1. 300 & 394 S. Old Woodward, and portions of 294 E. Brown – New Construction (Capital Title/Lutz & Frank's Shoe Service, portions of Coldwell Banker Weir Manual parking lot), Request for a Special Land Use Permit to consider approval of a new 4 story building, including a request to operate a restaurant using an Economic Development Liquor License.

No discussion occurred regarding this item per PD Ecker's comments under Item D, Review of the Agenda.

04-062-21

H. Community Impact Study Review

1. 300 & 394 S. Old Woodward, and portions of 294 E. Brown – New Construction (Capital Title/Lutz & Frank's Shoe Service, portions of Coldwell Banker Weir Manual parking lot), Community Impact Study to consider approval of a new 4 story building, including a request to operate a restaurant using an Economic Development Liquor License (Continued from March 26, 2021).

PD Ecker introduced the item. She noted that the only outstanding comment from Ms. Kroll was that the applicant consider adding more bicycle parking onsite.

Mr. Emerine was the Board liaison to the meeting between the City, Ms. Kroll and the applicant's traffic consultants regarding the transportation impact study. Mr. Emerine reported that the applicant addressed every issue raised by Ms. Kroll in her March 17, 2021 letter, with the exception of some possible additional bicycle parking, to Ms. Kroll's satisfaction. He stated that the applicant also shifted the proposed valet south in response to a request from the Police Department.

Ms. Kroll concurred with Mr. Emerine's summary.

Mr. Saroki said he would be happy to add additional bicycle racks, noting that there would be a bicycle rack provided for employees as well. He continued that while peak demand on the City's parking system is weekdays during business hours, the demand for parking from visitors to RH would be Saturdays and Sundays. He said, consequently, that RH would add little strain to the City's parking system. He said that during any shift there would be approximately 50 employees working and that they would park in the City's parking decks.

Motion by Mr. Emerine

Seconded by Ms. Whipple-Boyce to accept the Community Impact Study as provided by the applicant for the proposed development at 300 - 394 S. Old Woodward and a portion of 294 E. Brown Street with the following conditions:

- 1. The applicant is required to provide information on all life safety issues and Fire Dept. approval;**
- 2. The applicant is required to provide information on the proposed security system for approval by the Police Department; and,**
- 3. The applicant shall add the bicycle racks in accordance with the Fleis and Vandenbrink letter dated April 26, 2021.**

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Emerine, Whipple-Boyce, Share, Boyle, Jeffares, Koseck, Williams

Nays: None

04-063-21

I. Preliminary Site Plan Review

1. 300 & 394 S. Old Woodward, and portions of 294 E. Brown – New Construction (Capital Title/Lutz & Frank's Shoe Service, portions of Coldwell Banker Weir Manual parking lot), Preliminary Site Plan Review to consider approval of a new 4 story building, including a request to operate a restaurant using an Economic Development Liquor License (Continued from March 26, 2021).

PD Ecker summarized the item.

Vice-Chair Williams said that the applicant's offer to have a zoning with limitations consistent with the preliminary site plan would need the review of the City Attorney to make sure the rezoning, if authorized by the Commission, occurs in a way that is consistent with Michigan law.

In reply to Mr. Boyle, Mr. Saroki stated the building would be very adaptable for other uses in the future should the need arise.

Mr. Koseck concurred with Mr. Saroki. He expressed his support for the plans thus far, and recommended that the applicant consider an exterior building color that would contrast with the grey exterior of the Daxton instead of looking like an extension of it.

Messrs. Koseck and Emerine noted that RH would be a regional attraction.

Mr. Emerine spoke positively about previously living two blocks from the RH in Chicago. He also spoke about the positive impact the proposed development would have on the retail community in Birmingham. He said he was in support of the plan.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Jeffares to approve the Preliminary Site Plan for 300 - 394 S. Old Woodward and a portion of 294 E. Brown Street subject to the following conditions:

1. The applicant is required to obtain approval of the City Commission for the proposed lot splits and lot combination to create the new lot that is the subject of this application and shown on the site plan;
2. The applicant obtain a variance for the use of the fourth floor as a restaurant, or obtain approval of a rezoning of the property to D-4 in the Downtown Overlay;
3. The applicant obtain a variance for the use of an Economic Development license on the site, or obtain approval of a zoning amendment to alter the map contained in Appendix C, Exhibit 1 of the Zoning Ordinance to include the subject property;
4. The applicant reduce the height of the proposed building to 68' and 3 stories and the eave height to 34' maximum, or obtain the requested rezoning of the site from D-3 to D-4 in the Downtown Overlay District, or obtain a variance from the Board of Zoning Appeals;
5. The applicant update the landscape plan to provide species and size details on all proposed plantings, and provide material specifications on hardscape items at the time of Final Site Plan Review;
6. The applicant is required to receive separate Planning approval for all landscaping changes proposed for the adjacent site, as they are not included in this site plan review approval;
7. The applicant must submit a complete streetscape plan, including detail on hanging planters, at the time of Final Site Plan review;
8. All streetscape elements on S. Old Woodward will be required to be consistent with the enhanced streetscape design planned by the City for future construction;
9. The applicant must obtain approval of the Police Department and/or City Commission for any valet operation proposed;
10. The applicant must submit all light fixture specification sheets and material and color samples at Final Site Plan Review;
11. Compliance with the requirements of all departments; and,
12. The applicant provide all material samples, specifications and colors at the time of Final Site Plan Review.

Vice-Chair Williams said he was in favor of the plan, especially since all outstanding issues from the transportation impact study had been resolved and since the applicant voluntarily offered to accept a rezoning with conditions.

Public Comment

Richard Astrein, who has been a merchant in Birmingham for 50 years, spoke of the positive impact RH would have on the Birmingham retail business community.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Whipple-Boyce, Jeffares, Emerine, Share, Boyle, Koseck, Williams

Nays: None

Vice-Chair Williams thanked the applicant team and Ms. Kroll for their work.

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G
H

BROWN STREET

OLD WOODWARD AVENUE

DAINES STREET

LINE OF (2) 12' WIDE, 40'
LONG LOADING SPACE



Parking Level Floor Plan

SCALE: 3/32" = 1'-0"

SAROKI
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Project:
RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009

Date: Issued For:

03-16-2021 Preliminary Site Plan App.

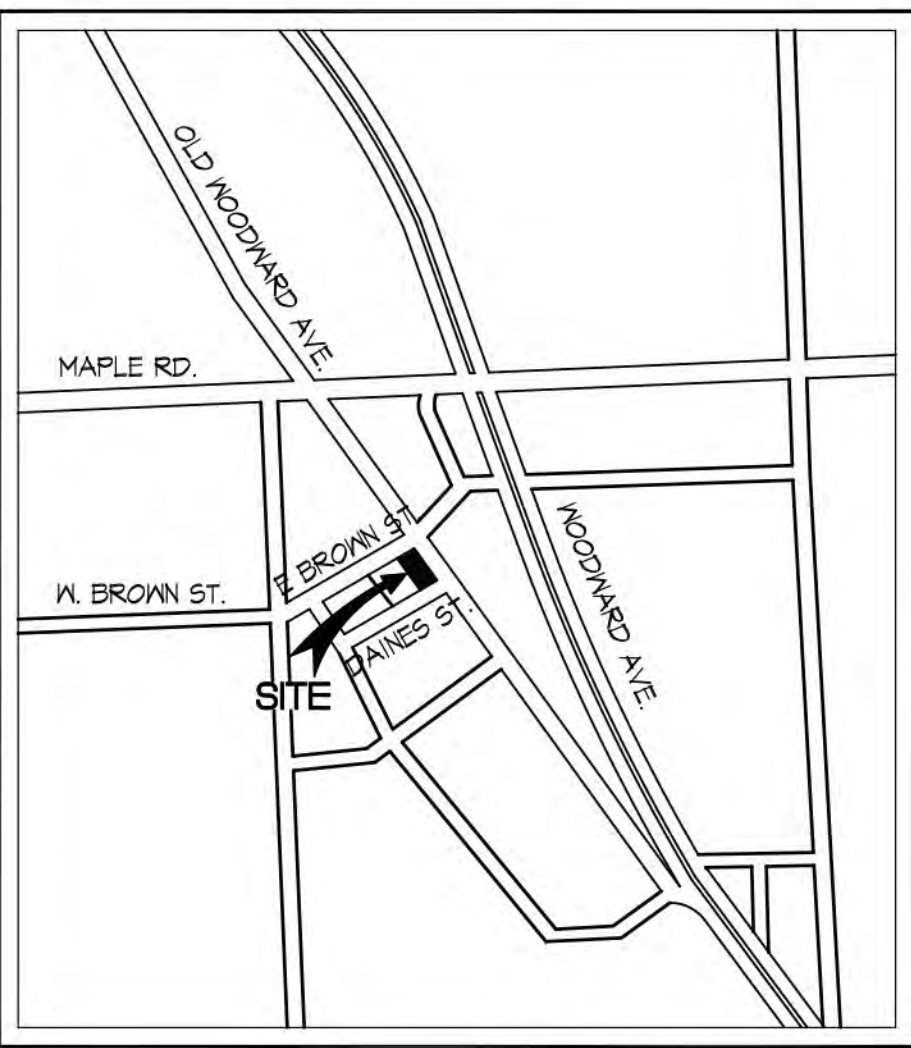
04-28-2021 Preliminary Site Plan App.

Sheet No.:

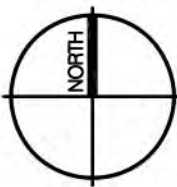
A100

Lower Parking Level Floor Plan

1 2 3 4 5 6 7 8 9 10



site location map:
Not To Scale



LEGAL DESCRIPTION - SWAP PARCEL 1
LAND SITUATED IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI, DESCRIBED AS FOLLOWS:
PART OF LOT 12 OF BROWN'S ADDITION SUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS; BEING DESCRIBED AS: BEGINNING AT A POINT DISTANT 5.62°00'00"W. 119.37 FEET FROM THE NORTHEAST CORNER OF LOT 13 OF SAID BROWN'S ADDITION SUBDIVISION; THENCE S.35°35'52"E. 100.00 FEET; THENCE S.62°00'00"W. 30.76 FEET; THENCE N.36°14'00"W. 100.15 FEET; THENCE N.62°00'00"E. 31.88 FEET TO THE POINT OF BEGINNING. CONTAINING: 3,104 SQUARE FEET OR 0.07 ACRES OF LAND

LEGAL DESCRIPTION - SWAP PARCEL 2
LAND SITUATED IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI, DESCRIBED AS FOLLOWS:
PART OF LOT 15 OF ADDITION TO WILLIAM BROWN'S ADDITION NO. 1 ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS; BEING DESCRIBED AS: BEGINNING AT A POINT DISTANT 5.62°00'00"W. 119.37 FEET AND 5.35°35'52"E. 100.00 FEET FROM THE NORTHEAST CORNER OF LOT 13 OF BROWN'S ADDITION SUBDIVISION AS RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS; THENCE N.62°00'00"E. 19.24 FEET; THENCE S.35°14'00"E. 100.15 FEET; THENCE S.62°00'00"W. 20.36 FEET; THENCE N.35°35'52"W. 100.00 FEET TO THE POINT OF BEGINNING. CONTAINING: 1,963 SQUARE FEET OR 0.04 ACRES OF LAND

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RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009

Date: Issued For:

03-16-2021 Preliminary Site Plan App.

04-26-2021 Preliminary Site Plan App.

BUILDING SQUARE FOOTAGE TOTALS	
FIRST LEVEL:	13,451 SF
SECOND LEVEL:	13,958 SF
THIRD LEVEL:	13,679 SF
FOURTH LEVEL:	8,536 SF
TOTAL:	49,624 SF
LOWER PARKING LEVEL: 15,092 SF (24 PARKING SPACES)	

Sheet No.:

SP01
Architectural Site Plan



Architectural Site Plan
SCALE: 3/32" = 1'-0"

A
B
C
D
E
F
G
H

1 2 3 4 5 6 7 8 9 10



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RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009

Date: Issued For:
03-16-2021 Preliminary Site Plan App.
04-28-2021 Preliminary Site Plan App.

Sheet No.:
A120
Second Level Floor Plan

Second Level Floor Plan
SCALE: 3/32" = 1'-0"

A
B
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10

BROWN STREET

OLD WOODWARD AVENUE

DAINES STREET

SAROKI
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Project:
RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009

Date: Issued For:

03-16-2021 Preliminary Site Plan App.

04-26-2021 Preliminary Site Plan App.

Sheet No.:

A150

Roof Plan



Roof Plan
SCALE: 3/32" = 1'-0"

A

B

C

D

E

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G

H

Top of Mech Screen
+2'-0" (60'-0" Overall)
Top of Greenhouse
+18'-0" (67'-0" Overall)

4th FL. FF.
+18'-0" (67'-0" Overall)

3rd FL. FF.
+18'-0" (67'-0" Overall)

2nd FL. FF.
+18'-0"

1st FL. FF. (Proposed)



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Project:
RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009

Date: Issued For:
03-09-2021 CONCEPT REVIEW
04-28-2021 Preliminary Site Plan App.

Sheet No.:
A210
EXTERIOR ELEVATION

H9
A210
East Exterior Elevation
SCALE: 1/8" = 1'-0"

1 2 3 4 5 6 7 8 9 10

A

B

C

D

E

F

G

H

1

2

3

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5

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7

8

9

10



SAROKI
ARCHITECTURE
430 N. OLD WOODWARD
BIRMINGHAM, MI 48009
P. 248.258.5707
F. 248.258.5515
SarokiArchitecture.com

Project:
RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009

Date: 03-09-2021
Issued For: CONCEPT REVIEW
04-28-2021 Preliminary Site Plan App.

Sheet No.:
A212
EXTERIOR ELEVATION

H9
A212
West Exterior Elevation
SCALE: 1/8" = 1'-0"

A

B

C

D

E

F

G

H

1

2

3

4

5

6

7

8

9

10



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Project:
RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009

Date: Issued For:

03-09-2021 CONCEPT REVIEW

04-28-2021 Preliminary Site Plan App.

Sheet No.:

A214
EXTERIOR ELEVATION

H9
A214
North Exterior Elevation
SCALE: 1/8" = 1'-0"

A

B

C

D

E

F

G

H

1 2 3 4 5 6 7 8 9 10



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Birmingham, MI 48009

Date: **Issued For:**
03-09-2021 CONCEPT REVIEW
04-28-2021 Preliminary Site Plan App.

Sheet No.:
A216
EXTERIOR ELEVATION

H9
A216
South Exterior Elevation
SCALE: 1/8"= 1'-0"



H9
A218 StreetView Elevation
SCALE: 1/16" = 1'-0"

SAROKI
ARCHITECTURE
430 N. OLD WOODWARD
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Project:
RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009

Date: 03-09-2021 **Issued For:** CONCEPT REVIEW
04-28-2021 Preliminary Site Plan App.

Sheet No.:
A218
EXTERIOR ELEVATION

A

B

C

D

E

F

G

H



Architectural Brick
Slate Grey Velour
Norman Brick Type (3" x 12")



Basaltina
Basalt Stone



Hope's Steel Windows & Doors



Exterior Light Fixtures & Steel Canopies



Steel and Glass Rooftop Restaurant

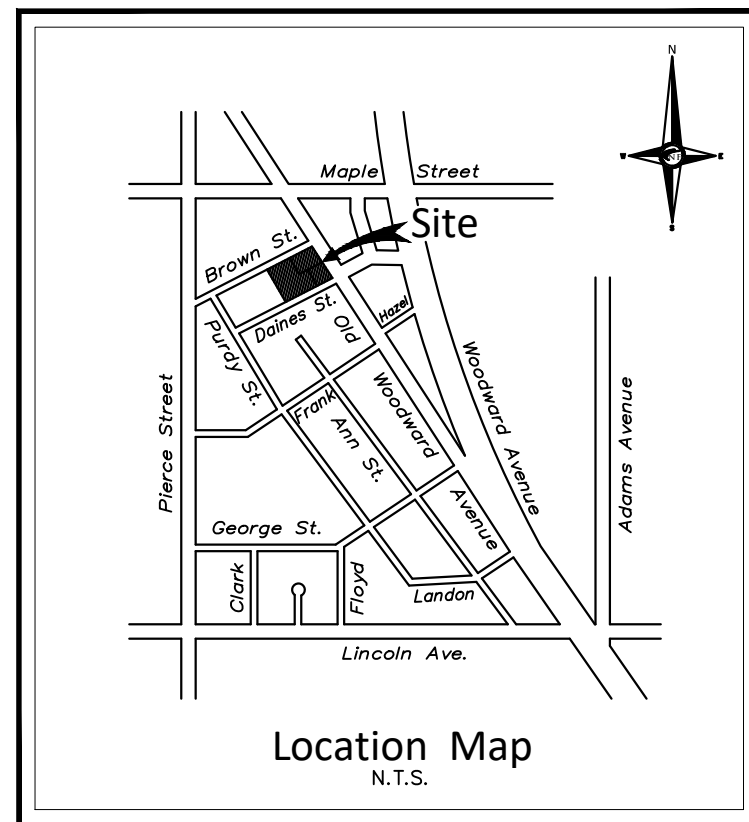
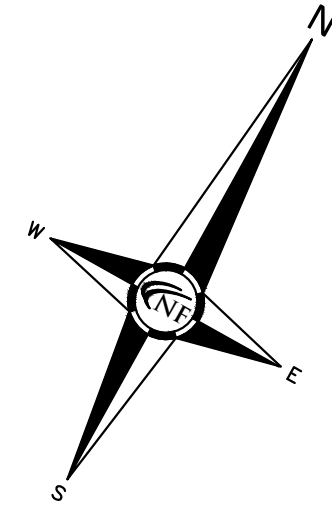
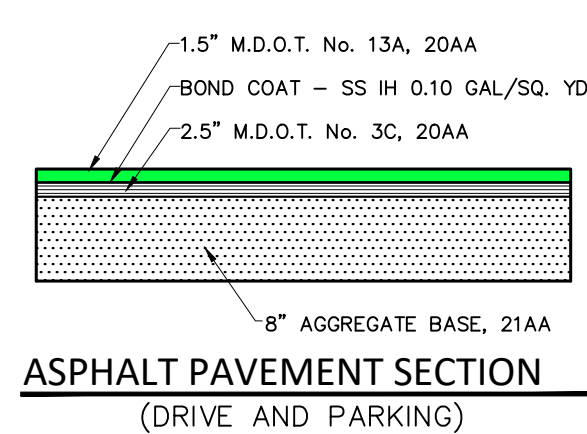
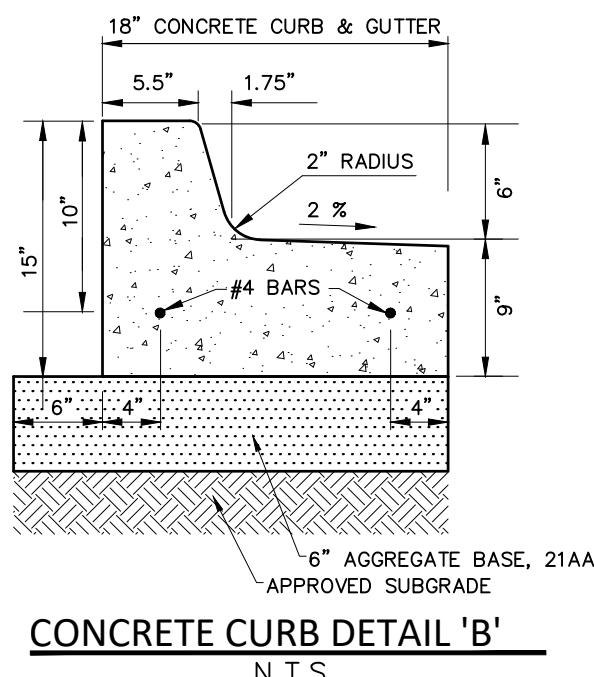
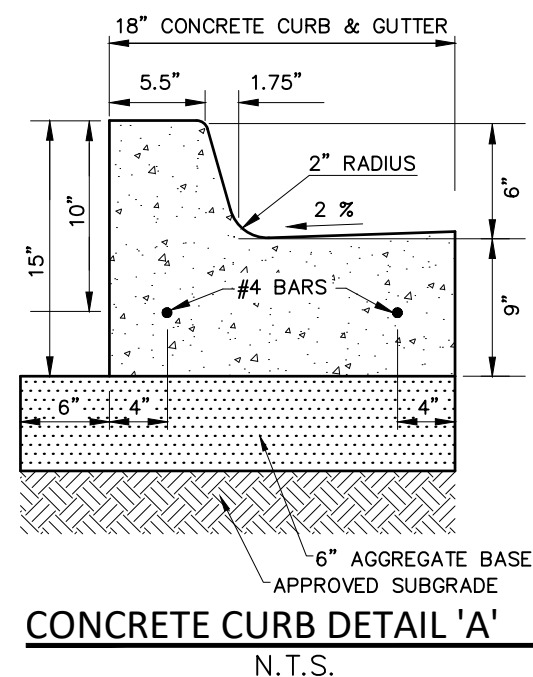
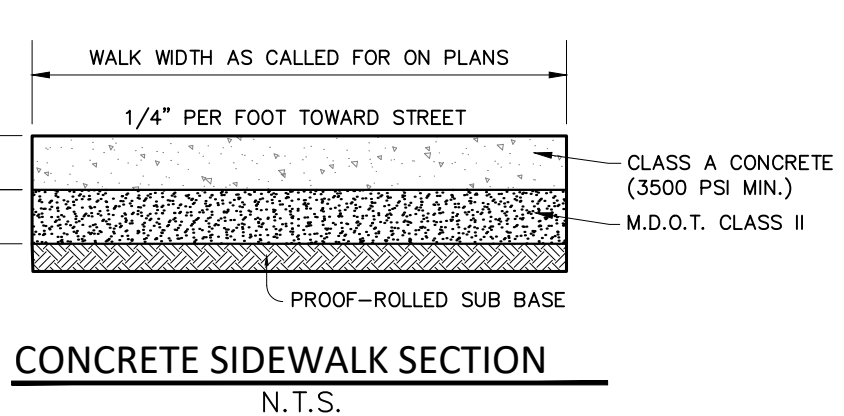
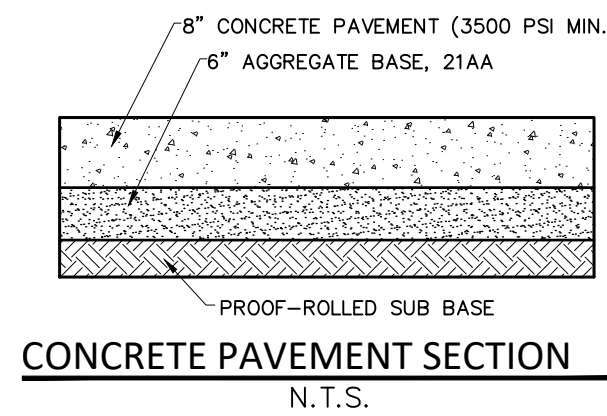
SAROKI
ARCHITECTURE
430 N. OLD WOODWARD
BIRMINGHAM, MI 48009
P. 248.258.5707
F. 248.258.5515
SarokiArchitecture.com

Project:
RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009

Date: Issued For:
03-16-2021 Preliminary Site Plan App.
04-26-2021 Preliminary Site Plan App.

Sheet No.:
A900
Exterior Material Board





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

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. 1100L, 20AA; SURFACE COURSE - MDOT BITUMINOUS MIXTURE NO. 1100T, 20AA; 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-5184.

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 LIKEWISE 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 RADI.

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 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.

COVID-19 PANDEMIC CONDITION

DUE TO THE UNPRECEDENTED COVID-19 PANDEMIC CONDITION AND RESTRICTIONS THE STANDARD DATA WHICH IS OBTAINED FROM MISS DIG / CALL 811 HAS BEEN RESTRICTED TO CRITICAL INFRASTRUCTURE ONLY. NFE WILL MAKE EVERY EFFORT TO OBTAIN CURRENT REFERENCE DATA FROM THE GOVERNING AGENCIES. HOWEVER, THIS DATA MAY BE PARTIAL OR INCOMPLETE. NFE WILL ISSUE THIS SURVEY WITH THE BEST AVAILABLE INFORMATION FROM OUR FIELD SURVEY AND OTHER AVAILABLE REFERENCE DATA. NFE WILL NOT BE RESPONSIBLE FOR INCOMPLETE OR PARTIAL DATA PROVIDED BY THIRD PARTY FACILITY OWNERS. NFE IS NOT RESPONSIBLE FOR BURIED UTILITIES FOR WHICH PLANS WERE NOT FURNISHED OR CANNOT BE OBSERVED IN THE FIELD.

ALL CONSTRUCTION DOCUMENTS WILL BE UPDATED WHEN THE UTILITY INFORMATION IS PROVIDED BY THE FACILITY OWNER UP UNTIL THE TIME OF SUBMITTAL ONCE THE PLANS HAVE BEEN SUBMITTED AND APPROVED IT IS THE CONTRACTORS RESPONSIBILITY TO OBTAIN A MISS DIG TICKET PRIOR TO COMMENCING ANY CONSTRUCTION REQUIRING EXCAVATION. CONTRACTOR SHALL IMMEDIATELY NOTIFY NFE OF ANY UTILITIES FLAGGED BY MISS DIG THAT WERE NOT SHOWN ON THE PLANS OR UTILITIES UNCOVERED DURING THEIR WORK.

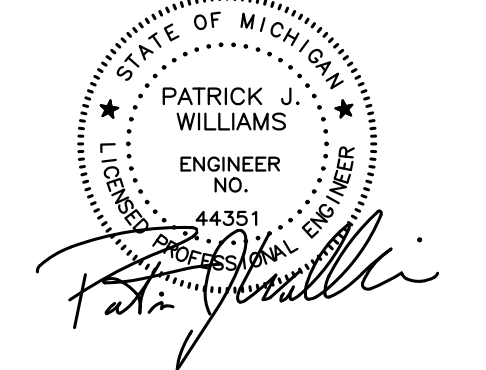
PAVING LEGEND

	PROPOSED CONCRETE PAVEMENT
	PROPOSED ASPHALT PAVEMENT

LEGEND

MANHOLE	EXISTING SANITARY SEWER
HYDRANT	GATE VALVE
MANHOLE	CATCH BASIN
UTILITY POLE	GUY POLE
	GUY WIRE
C.O.	MANHOLE
HYDRANT	GATE VALVE
INLET	C.B.
	MANHOLE
	PR. SANITARY SEWER
	PR. WATER MAIN
	PR. STORM SEWER
	PR. R. Y. CATCH BASIN
	EXISTING GAS MAIN
	SIGN
	OVERHEAD LINES
	EXISTING BURIED CABLES
	EXISTING WATER MAIN
	EXISTING STORM SEWER
	EX. R. Y. CATCH BASIN
	EXISTING BURIED CABLES
	OVERHEAD LINES
	SIGN
	EXISTING GAS MAIN
	PR. SANITARY SEWER
	PR. WATER MAIN
	PR. STORM SEWER
	PR. R. Y. CATCH BASIN
	PROPOSED LIGHT POLE

SEAL



PROJECT

294 E. Brown St. and
300 & 394
S. Old Woodward Ave.
Birmingham, MI 48009

CLIENT

Saroki Architecture
430 N. Old Woodward Ave.
Birmingham, MI 48009

Contact: Victor Saroki
Phone: 248.258.5707

PROJECT LOCATION

Part of the NE 1/4
of Section 36
T.2N., R.10E.,
City of Birmingham,
Oakland County, Michigan

SHEET

Dimensional Site Plan



DATE ISSUED/REVISED

00-00-00

DRAWN BY:

A. Eizember

DESIGNED BY:

A. Eizember

APPROVED BY:

P. Williams

DATE:

February 24, 2021

SCALE: 1" = 20'

20 10 0 10 20 30

NFE JOB NO.

M106

SHEET NO.

SP-2



Drive-over LED in-grade floodlights

Enclosures: Outer housing of high tensile strength stainless steel; inner housing is factory sealed and fabricated of heavy gauge stainless steel. Reflector made of pure anodized aluminum.

Trim Ring: Heavy gauge, machined stainless steel secured to inner housing by five (5) stainless steel hex head fasteners. Trim is sealed in place using mastic, one piece high temperature silicone gasket. Glass is clear tempered, 1/2" thick, machined flush to trim ring.

Electrical: 13.9W LED luminaires, 17 total system watts, <20° C start temperature, integral 120V through 277V electronic LED driver, 0-10V, TRIAC, and ELV dimmable. The LED module and driver are mounted on a removable inner assembly for easy replacement. Standard LED color temperature is 4000K with an 85 CRI. Available in 3000K (85 CRI), add suffix K3 to order.

Note: Due to the dynamic nature of LED technology, LED luminaire data on this sheet is subject to change at the discretion of BEGA-US. For the most current technical data, please refer to www.bega-us.com.

Finish: Machined #4 brushed stainless steel. Custom colors not available.

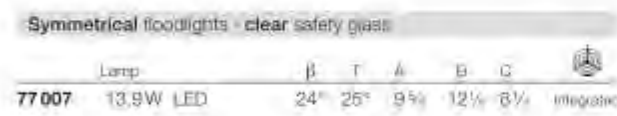
CSA: Certified to U.S. and Canadian standards for wet locations. Protection class IP68.

Temperature caution: The column "T" in this chart indicates the temperature in degrees Celsius which is reached on the center of the glass surface during operation. Surface temperatures are for exterior applications. For interior applications add 10° C to temperatures shown.

Note: A foundation and proper drainage must be supplied by the customer. These luminaires are designed to bear pressure loads up to 4,400 lbs. from vehicles with pneumatic tires. The luminaires must not be used for traffic lanes where they are subject to horizontal pressure from vehicles braking, accelerating and changing direction.

Weight: 9.5 lbs.

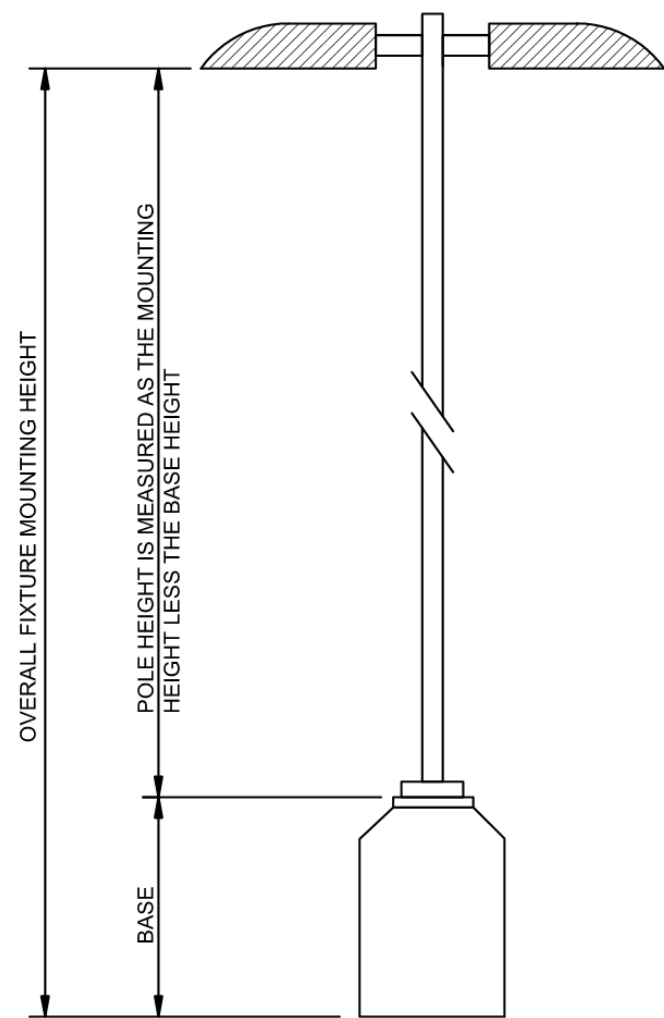
Luminaire Lumens: 970



1000 BEGA Way, Carpinteria, CA 93013 (805) 684-0333 FAX (805) 366-9474 www.bega-us.com
Copyright BEGA 2017. Updated 1/16



Type:
BEGA Product:
Project:
Voltage:
Color:
Options:
Modified:



Mounting Height Note

MOUNTING HEIGHT IS MEASURED FROM GRADE TO FACE OF FIXTURE. POLE HEIGHT SHOULD BE CALCULATED AS THE MOUNTING HEIGHT LESS BASE HEIGHT.

Drawing Note

THIS DRAWING WAS GENERATED FROM AN ELECTRONIC IMAGE FOR ESTIMATION PURPOSE ONLY. LAYOUT TO BE VERIFIED IN FIELD BY OTHERS.

General Note

1. SEE SCHEDULE FOR LUMINAIRE MOUNTING HEIGHT.
2. CALCULATIONS ARE SHOWN IN FOOTCANDLES AT: 0' - 0"

THE ENGINEER AND/OR ARCHITECT MUST DETERMINE APPLICABILITY OF THE LAYOUT TO EXISTING / FUTURE FIELD CONDITIONS. THIS LIGHTING LAYOUT REPRESENTS ILLUMINATION LEVELS CALCULATED FROM LABORATORY DATA TAKEN UNDER CONTROLLED CONDITIONS IN ACCORDANCE WITH ILLUMINATING ENGINEERING SOCIETY APPROVED METHODS. ACTUAL PERFORMANCE OF ANY MANUFACTURER'S LUMINAIRE MAY VARY DUE TO VARIATION IN ELECTRICAL VOLTAGE, TOLERANCE IN LAMPS, AND OTHER VARIABLE FIELD CONDITIONS. MOUNTING HEIGHTS INDICATED ARE FROM GRADE AND/OR FLOOR UP.

THESE LIGHTING CALCULATIONS ARE NOT A SUBSTITUTE FOR INDEPENDENT ENGINEERING ANALYSIS OF LIGHTING SYSTEM SUITABILITY AND SAFETY. THE ENGINEER AND/OR ARCHITECT IS RESPONSIBLE TO REVIEW FOR MICHIGAN ENERGY CODE AND LIGHTING QUALITY COMPLIANCE.

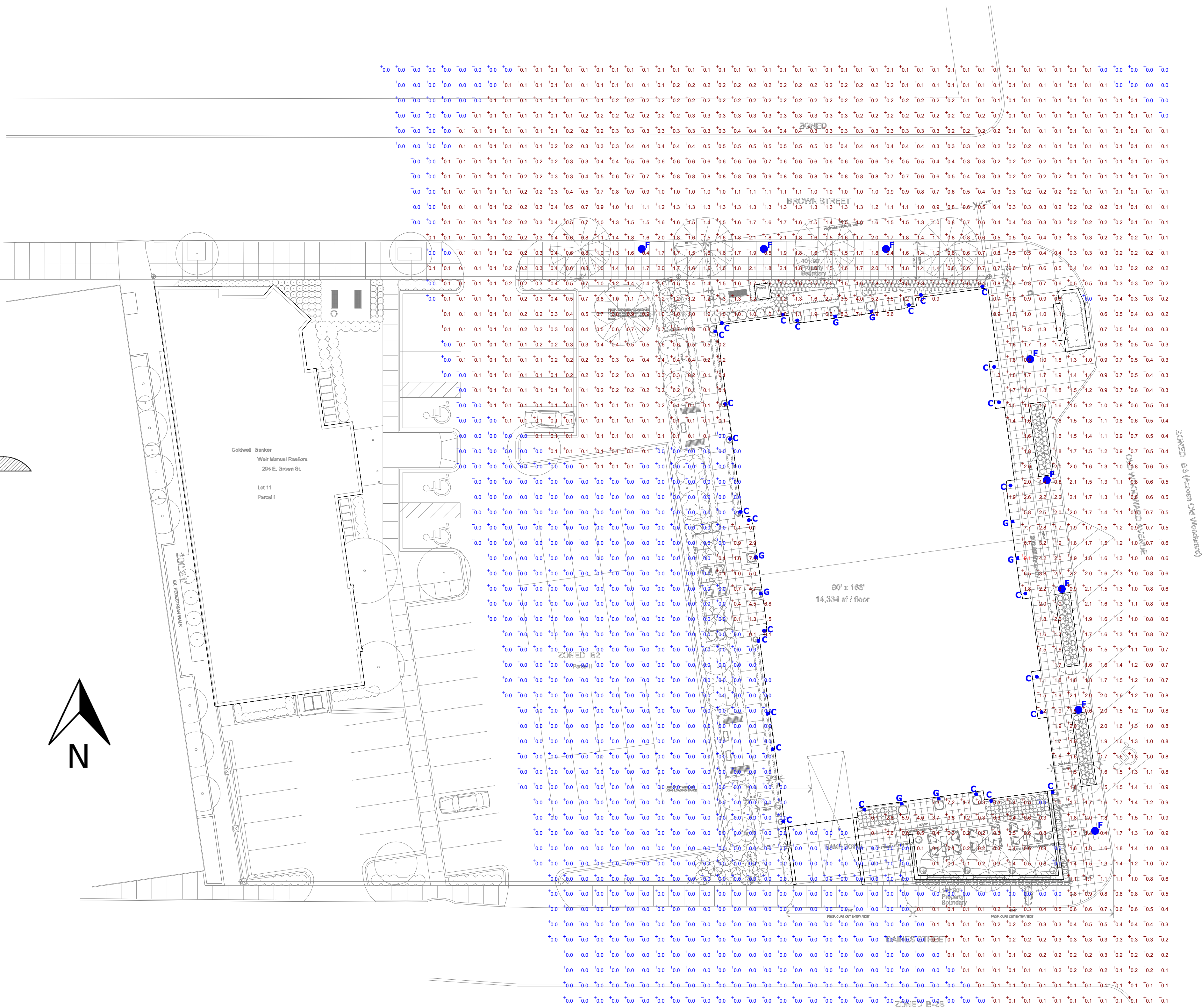
UNLESS EXEMPT, PROJECT MUST COMPLY WITH LIGHTING CONTROLS REQUIRMENTS DEFINED IN ASHRAE 90.1 2013. FOR SPECIFIC INFORMATION CONTACT GBA CONTROLS GROUP AT ASG@GASSERBUSH.COM OR 734-266-6705.

Ordering Note

FOR INQUIRIES CONTACT GASSER BUSH AT QUOTES@GASSERBUSH.COM OR 734-266-6705.

Alternates Note

THE USE OF FIXTURE ALTERNATES MUST BE RESUBMITTED TO THE CITY FOR APPROVAL.



Plan View
Scale - 1" = 20ft

Schedule									
Symbol	Label	QTY	Manufacturer	Catalog Number	Description	Lamp	Number Lamps	Lumens per Lamp	LLF
	C	26	BEGA	77007+K4	LED IN-GRADE FLOODLIGHT	LED	1	967	0.9
	F	8	UNKNOWN	SUPPLIED AND VERIFIED BY OTHERS	SUPPLIED AND VERIFIED BY OTHERS	SUPPLIED AND VERIFIED BY OTHERS	1	UNKNOWN	0.75
	G	8	LANTERN SUPPLIED BY RH	LANTERN SUPPLIED BY RH	LANTERN SUPPLIED BY RH	LANTERN SUPPLIED BY RH	1	UNKNOWN	0.9

Statistics						
Description	Symbol	Avg	Max	Min	Max/Min	Avg/Min
OVERALL	+	0.5 fc	9.1 fc	0.0 fc	N/A	N/A













MEMORANDUM

Planning Department

DATE: July1, 2021

TO: Thomas Markus, City Manager

FROM: Brooks Cowan, City Planner

APPROVED: Jana Ecker, Planning Director

SUBJECT: Public hearing for the application to amend the Economic Development License Map in Appendix C; Exhibit 1 of the Zoning Ordinance to include 300-394 S. Old Woodward and a portion of 294 E. Brown Street.

INTRODUCTION:

The owners of 300-394 S. Old Woodward and a portion of 294 E. Brown Street have requested a zoning amendment to have the properties located at 300-394 S. Old Woodward and a portion of 294 E. Brown Street included with the properties eligible for an Economic Development License as identified on the map in Appendix C; Exhibit 1 of the Zoning Ordinance.

BACKGROUND:

Properties with an Economic Development License may operate an establishment with on premise sales and consumption of liquor if they obtain a Special Land Use Permit and meet the criteria of Chapter 10, Article II, Division 3 of the Municipal Code. A liquor license associated with an Economic Development License does not have a limit on the number of seats inside or outside of the establishment. The applicant is applying to make this property eligible for an Economic Development License so they may pursue a SLUP for their RH concept store to allow patrons to purchase wine while dining at their restaurant and shopping the design galleries.

The City uses Economic Development Licenses to incentivize growth in certain areas and permit the use of a liquor license if the request is deemed to constitute a substantial economic development and benefit to the City.

On April 28th, 2021, the applicant appeared before the Planning Board to amend the Zoning Ordinance and have the subject property included within the area eligible for an Economic Development license. The Planning Board reviewed recommendations from the Downtown 2016 Plan, development trends in the surrounding area, and trends in retail while considering the zoning amendment. The Planning Board recommended approval of the amendment citing the 2016 Plan's recommendation for an anchor tenant in this location, and how enabling an Economic Development License in this location could help attract a retail anchor that activated the subject area.

LEGAL REVIEW:

The City Attorney has reviewed the documentation and has no concerns.

FISCAL IMPACT:

Expanding the boundary for properties eligible for an Economic Development License has the potential to increase the tax revenue for the City due to approval criteria requiring a 500% increase in assessed value and/or an investment of ten million dollars.

PUBLIC NOTIFICATION:

Prior to the application being considered by the City Commission, the City Clerk's office will send out notices to all property owners and tenants within 300 feet of 300-394 S. Old Woodward and 294 E. Brown Street seeking public comment on the proposal.

SUMMARY:

The Planning Division recommends the City Commission approve the ordinance amendment to Chapter 126, Zoning Ordinance, Appendix C, Exhibit 1, Licenses for Economic Development to include 300-394 S. Old Woodward and a portion of 294 E. Brown Street to be eligible for an Economic Development License.

ATTACHMENTS:

Draft Ordinance Amendment Map
Application
Planning Board Memo
Planning Board Minutes

SUGGESTED RESOLUTION:

To approve an amendment to Chapter 126, Zoning Ordinance, Appendix C, Exhibit 1, Licenses for Economic Development to include 300-394 S. Old Woodward and a portion of 294 E. Brown Street to be eligible for an Economic Development License.

OR

To deny an amendment to Chapter 126, Zoning Ordinance, Appendix C, Exhibit 1, Licenses for Economic Development to include 300-394 S. Old Woodward and a portion of 294 E. Brown Street to be eligible for an Economic Development License.



City of Birmingham Economic Development Licensing





CONSENT OF PROPERTY OWNER

Frank T. Konjarevich or Lois H. Konjarevich, as Trustees for the Frank T. Konjarevich Rev. Liv. Trust dated 5/22/95
I, _____, OF THE STATE OF Michigan AND
(Name of Property Owner)
COUNTY OF Oakland STATE THE FOLLOWING:

1. That I am the owner of real estate located at 394 S. Old Woodward;
(Address of Affected Property)
2. That I have read and examined the Application for **ZONING MAP CHANGE** made to the City of
Birmingham by: RH, Inc.;
(Name of Applicant)
3. That I have no objections to, and consent to the request(s) described in the Application made to the City of
Birmingham.

Frank T. Konjarevich or Lois H. Konjarevich, as Trustees for the Frank T. Konjarevich Rev. Liv. Trust dated 5/22/95
Name of Owner (Printed): _____

Signature of Owner: Frank Konjarevich Date: 2/24/21

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.

PRZ21-0001

Date Received: 3/4/21 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.

LEGAL DESCRIPTION – PARCELS I & II

LAND IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI, DESCRIBED AS FOLLOWS:

PARCEL I:

THE EAST 1/2 OF LOT(S) 11 OF BROWN'S ADDITION TO THE CITY OF BIRMINGHAM AND THE EAST 1/2 OF LOT 16 OF BROWN'S ADDITION NO. 1, IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS, INCLUDING THE VACATED WEST 20 FEET OF ANN STREET ADJOINING LOT 11 AND THE VACATED WEST 19 FEET OF ANN STREET ADJOINING LOT 16.

PARCEL II:

THE WEST 1/2 OF LOT(S) 12 OF BROWN'S ADDITION TO THE VILLAGE (NOW CITY) OF BIRMINGHAM, OF PART OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 36, TOWN 2 NORTH, RANGE 10 EAST, TOWNSHIP OF BLOOMFIELD (NOW CITY OF BIRMINGHAM), OAKLAND COUNTY, MICHIGAN ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS, ALSO LOT 15, ADDITION TO WILLIAM BROWN'S ADDITION NO. 1, BEING A PART OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 36, TOWN 2 NORTH, RANGE 10 EAST ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS, INCLUDING VACATED 20 FEET OF ANN STREET, ADJOINING THE WESTERLY SIDE OF LOT 12 AND VACATED 21 FEET OF ANN STREET ADJOINING THE WESTERLY SIDE OF LOT 15.

ADDRESS: 294 E. BROWN STREET, BIRMINGHAM, MI 48009

TAX ID NUMBER: 19-36-204-021

LEGAL DESCRIPTION – PARCEL 2

LAND IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI, DESCRIBED AS FOLLOWS:

THE EASTERLY 50 FEET OF LOT 12, AND THE WESTERLY PART OF LOT 13, MEASURING 82.45 FEET ON THE NORTH LOT LINE AND 82.48 FEET ON THE SOUTH LOT LINE OF BROWN'S ADDITION SUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS.

ADDRESS: 300 S. OLD WOODWARD AVENUE, BIRMINGHAM, MI 48009

TAX ID NUMBER: 19-36-204-006

LEGAL DESCRIPTION – PARCEL 3

LAND IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI, DESCRIBED AS FOLLOWS:

LOT(S) 14, EXCEPT THAT PART TAKEN FOR WIDENING WOODWARD AVENUE OF ADDITION TO WILLIAM BROWN'S ADDITION NO. 1 ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS.

ADDRESS: 394 S. OLD WOODWARD AVENUE, BIRMINGHAM, MI 48009

TAX ID NUMBER: 19-36-204-014



MEMORANDUM

Planning Department

DATE: April 23rd, 2021

TO: Planning Board

FROM: Brooks Cowan, City Planner

APPROVED: Jana Ecker, Planning Director

SUBJECT: Public Hearing for a Zoning Amendment to Chapter 126, Zoning Ordinance Appendix C, Exhibit 1 Economic Development Licenses Map to allow the use of an Economic Development License for the property located at the southwest corner of Brown Street and S. Old Woodward.

Introduction:

The owners of 300-394 S. Old Woodward and a portion of 294 E. Brown Street have requested a zoning amendment to have the properties located at 300-394 S. Old Woodward and a portion of 294 E. Brown Street be included with the properties eligible for an Economic Development License as identified on the map in Appendix C; Exhibit 1 of the Zoning Ordinance. Properties with an Economic Development License may operate an establishment with on premise sales and consumption of liquor if they obtain a Special Land Use Permit and meet the criteria of Chapter 10, Article II, Division 3 of the Municipal Code. A liquor license associated with an Economic Development License does not have a limit on the number of seats inside or outside of the establishment. The applicant is applying to make this property eligible for an Economic Development License which they intend to pursue for their RH concept store to allow patrons to purchase wine while browsing and shopping the design galleries.

Background:

The subject site is zoned B2 and D3 Overlay. The B2 (General Business) zoning classification permits businesses to operate with an Economic Development License as long as they obtain a Special Land Use Permit and are within the parcels eligible for an Economic Development License identified on the map in Exhibit 1; Appendix C of the Zoning Ordinance. The majority of the parcels currently eligible for an Economic Development License are located along Woodward Avenue between Oakland and Lincoln Avenue in the commercial areas of the Downtown Overlay and Triangle District. The southern portion of the Rail District is also eligible for an Economic Development License. Establishments currently operating with an Economic Development license in Birmingham include the All Seasons, Hazel Ravines & Downtown, and Birmingham Pub. Lincoln Yard was approved for an Economic Development License in the fall of 2019, however it has yet to open.

In regards to the purpose of an Economic Development License, the Municipal Code Chapter 10, Article II, Division 3, Section 10-60 states the following:

The purpose of this division is to establish a policy and conditions to allow the City Commission the ability to approve a request to transfer a liquor license into the city in excess of the city's quota licenses if the request is deemed to constitute a substantial economic development and benefit to the city, to establish criteria for selecting applicants, and to provide limitations on the influx of new liquor licenses and to insure controlled growth and development regarding liquor licenses and to evaluate the impact of increased liquor licenses on the city.

The applicant is requesting this zoning amendment to be eligible for the sale of wine at their proposed retail and restaurant development for RH. The applicant believes the combination of wine, food, and furniture design galleries will create a socially engaging retail experience that will serve as a destination based anchor tenant for the City. The eligibility of an Economic Development License may incentivize the applicant to pursue a development that meets the intent of the license which is *"to constitute a substantial economic development and benefit to the city."*

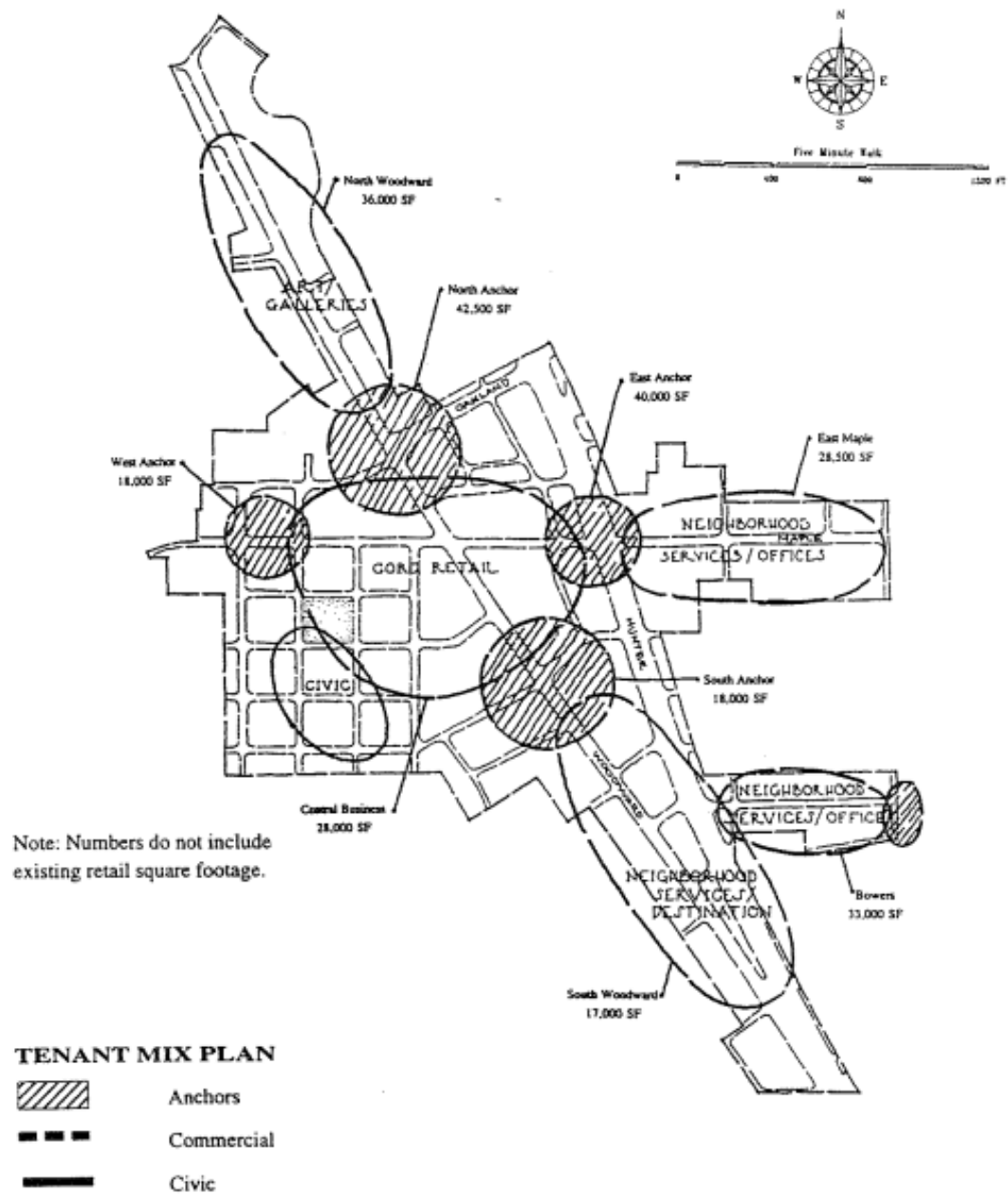
Master Plan:

In regards to the Downtown Birmingham 2016 Plan, it is recommended that the City encourage destination restaurants and retailers which serve as anchor tenants that compliment rather than compete with neighboring commercial uses. These anchor tenants should attract customers from outside the primary trade area, and not have negative impacts on surrounding neighborhoods or the CBD (p. 29-30).

The plan also states that Birmingham has five primary shopping areas in its Downtown which are isolated from each other. The distance between the primary shopping areas significantly limits cross-shopping between them. The plan states that the S. Old Woodward commercial area is separated from the CBD by the ring road traffic of Brown Street, and the plan identifies the intersection of Brown and S. Old Woodward as a location where an anchor tenant development will help spread out retail and encourage pedestrian movement between shopping districts. The illustration of this concept is provided below from Appendix D-1 of the Downtown 2016 Plan.

The plan recommends infill development with 0 foot setback and calls for the elimination of exposed surface parking. Breaks in the street wall for surface parking leads to isolation of retail sections and discourages pedestrian cross shopping from one area of town to the next. The plan also recommends a retail requirement for first floor buildings with frontage along main streets. A retail requirement would provide first floor uses that activate the street at a pedestrian level and provide a continuous engaging experience of items and activities to see in businesses as visitors pass through Birmingham's downtown.

An economic development license for the subject area could incentivize an anchor tenant that provides infill for the space and helps connect the downtown to the S. Old Woodward corridor which the 2016 Plan calls for. This anchor tenant could help continue the street wall from downtown and enhance the pedestrian experience with more retail activity. By attracting an anchor tenant for this location, an Economic Development License for this location could constitute a substantial economic development and benefit to the City and also help achieve the goals of the 2016 Master Plan.



Surrounding Area:

In regards to existing uses within the general area of the property, the subject property currently consists of a one story building and a two story building with a surface parking lot between them. The buildings are along the retail frontage line and consist of businesses offering financial services, shoe repair, and furniture.

The properties to the east and southeast from 355 to 555 S. Old Woodward are all eligible for an Economic Development license. Birmingham Pub at 555 S. Old Woodward currently operates with an Economic Development Liquor License. The area to the southeast is not within the Parking Assessment District, however it does include a parking deck in the 555 building that is available for public use, and a new 5-story mixed-use building has been approved at 469-479 S. Old Woodward. Adachi Sushi is located directly to the east at 325 S. Old Woodward and operates with a Bistro Liquor License in the historical Peabody Mansion. The Peabody Mansion is the only property south of Brown Street between Woodward and S. Old Woodward that is not eligible for an Economic Development license due to its historical designation.

To the north of the subject property is the newly developed Daxton Hotel which has replaced a former single story building and a large surface parking lot. The Daxton Hotel operates with a Hotel Liquor License which enables them to serve alcohol at the restaurant, banquet hall, and for room service. There are two public parking structures to the northeast and northwest of the subject property which are the Pierce Structure and Peabody Structure. Both public parking structures are within 200 feet of the subject property. Birmingham's core commercial area is currently located just north of the subject property, which is zoned as B4 and D4 Overlay.

Directly to the south is the newly developed Forefront property. The Forefront is a mixed-use 3-story building with a 1st floor commercial use and a mix of condos and apartments on floors two and three. There is an eclectic mix of uses continuing further south along Old Woodward which includes a pharmacy, an outdoor sporting goods store, and the restaurant "Phoenicia" which operates with a Class C Quota Liquor License.

Directly to the west along Brown Street is a 2-story office building for Coldwell Banker followed by a 3-story office building with Broder & Sachse amongst other tenants. The southwest portion of the property faces Daines Street which has a mix of office uses in the B2-B zone.

At this time, there are no properties on the west side of S. Old Woodward that are eligible for an Economic Development License.

Current Trends:

Brick and mortar retail has been shifting towards experience-based retail to compete with online shopping. This past decade, the retail industry has seen a number of businesses close their doors due to an inability to compete with online shopping. Successful brick and mortar stores have been able to combat online shopping by providing a positive experience that coincides with quality goods being sold. Doing so creates a destination-based experience that gets patrons walking into their doors and exploring the surrounding area.

The applicant wishes to become eligible for an Economic Development License to provide a luxury shopping experience that includes wine sales to go along with the furniture sales concept. Patrons of the restaurant would be able to bring their wine into various sections of the store while browsing the various design galleries with items for sale. This luxury shopping experience adds a social element to their shopping experience and encourages social interaction while visiting their store.

In regards to development and business trends in the area, The City has begun to see more activity near S. Old Woodward and Brown. The Forefront completed construction in 2018 however it did not occupy its first floor space with a tenant that quite meets the intent of the retail requirement. Attracting an anchor tenant on this side of town could help compliment and activate the surrounding retail spaces as spill-over shopping becomes a possibility. The Daxton Hotel recently completed construction across the street from the subject site and intends to activate the area with its hotel rooms for rent, its restaurant, and its banquet hall for various events. A 5-Story mixed use building was recently approved for 469-479 S. Old Woodward which also intends to bring more 1st floor retail and residents to this side of town. Attracting an anchor tenant could help compliment the surrounding development activity for this area.

An item for consideration and discussion is the impact of Covid-19 on downtowns such as Birmingham where restaurants and shops depend on business from surrounding office workers. There is a wide range of future projections for in-office work, many of them reducing the number of office workers and allowing more opportunities to work at home. If this occurs, Birmingham's businesses could experience a drastic reduction in revenue (or continue to...) An Economic Development License could help attract a destination anchor tenant that brings more people into downtown. Doing so could also provide an interesting destination for people working at home and looking to get out for social activity.

Amending the Ordinance to make the subject property eligible for an Economic Development License could incentivize development at this site that incorporates more experience-based retail that attracts patrons to the area and compliments the surrounding uses.

Summary:

The Planning Division finds that a zoning amendment to make the subject property eligible for an Economic Development License could help incentivize an anchor tenant that serves as an experience-based retail destination. Attracting such an anchor tenant would satisfy the recommendations of the Downtown 2016 Plan for the subject area of S. Old Woodward and Brown. Incentivizing an anchor tenant could also help connect retail from the CBD into the S. Old Woodward area and serve as a catalyst for surrounding businesses.

Suggested Action:

To recommend approval to the City Commission of the ordinance amendment to allow the use of an Economic Development Liquor License in the expanded area as shown on the attached map for Appendix C, Exhibit 1, Economic Development Licenses.

OR

To postpone the ordinance amendment to allow the use of an Economic Development Liquor License in the expanded area as shown on the attached map for Appendix C, Exhibit 1, Economic Development Licenses given the following reasons:

- 1.) _____
- 2.) _____
- 3.) _____

OR

To recommend denial to the City Commission of the ordinance amendment to allow the use of an Economic Development Liquor License in the expanded area as shown on the attached map for Appendix C, Exhibit 1, Economic Development Licenses.

City Of Birmingham
Regular Meeting Of The Planning Board
Wednesday, April 28, 2021
Held Remotely Via Zoom And Telephone Access

Minutes of the regular meeting of the City of Birmingham Planning Board held on April 28, 2021.
Vice-Chair Bryan Williams convened the meeting at 7:35 p.m.

A. Roll Call

Present: Vice-Chair Bryan Williams; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Daniel Share, Janelle Whipple-Boyce; Alternate Board Member Jason Emerine (all located in Birmingham, MI, with the exception of Stuart Jeffares who was in Traverse City, MI.)

Absent: Chair Scott Clein; Alternate Board Member Nasseem Ramin; Student Representatives Daniel Murphy, Jane Wineman

Administration: Jana Ecker, Planning Director ("PD")
Brooks Cowan, City Planner ("CP")
Laura Eichenhorn, City Transcriptionist

Fleis and Vandenbrink:
Julie Kroll

F. Zoning Ordinance Amendment Request

1. Request for an amendment to Chapter 126, Zoning, Appendix 1, Exhibit A, to amend the Economic Development License map to include the properties at **300 & 394 S. Old Woodward, and portions of 294 E. Brown** – New Construction (Capital Title/Lutz & Frank's Shoe Service, portions of Coldwell Banker Weir Manual parking lot) on the map contained in Exhibit A to allow the use of economic development liquor licenses (EDL) on these properties.

CP Brooks and Ms. McGregor presented the item.

In reply to Vice-Chair Williams, Mr. Saroki confirmed the granting of an EDL is critical to the development of this project.

Mr. Share said that irrespective of the current proposal from RH the City should consider allowing this parcel to be eligible for an EDL since the 2016 Plan set it out as an ideal location for an anchor tenant.

Motion by Mr. Share

Seconded by Ms. Whipple-Boyce to recommend approval to the City Commission of the ordinance amendment to allow the use of an Economic Development Liquor License in the expanded area as shown on the attached map for Appendix C, Exhibit 1, Economic Development Licenses.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Share, Whipple-Boyce, Emerine, Boyle, Jeffares, Koseck, Williams

Nays: None



MEMORANDUM

Planning Division

DATE: July 2, 2021

TO: Thomas Markus, City Manager

FROM: Jana L. Ecker, Planning Director

SUBJECT: Public Hearing for 115 Willits – MARE Mediterranean –
Special Land Use Permit, Final Site Plan & Design Review

INTRODUCTION:

The applicant has submitted an application for a Special Land Use Permit and Final Site Plan and Design Review to allow for the operation of a new restaurant, MARE Mediterranean, to occupy the former Cameron's Steakhouse space. In conjunction with this application, a request has also been made to transfer ownership of the Class C Liquor License and SDM License.

BACKGROUND:

The applicant is proposing to reuse the former Cameron's Steakhouse restaurant for MARE Mediterranean, a new restaurant to operate under an existing Class C quota license. A SLUP is required for the service of alcoholic liquors, which is proposed using a Class C quota liquor license. MARE Mediterranean is not a bistro, and thus there are no specific maximum number of indoor, outdoor or bar seats. Article 7, Section 7.34 of the Zoning Ordinance requires a review and recommendation on the SLUP and Final Site Plan and Design Review by the Planning Board, and then final approval of the City Commission.

MARE Mediterranean is proposed to include 181 indoor seats (including 26 at the existing bar), using the existing furniture from the former Cameron's restaurant. Additional seating outdoors is proposed on a new platform extending into 2 on street parking spaces adjacent to the storefront. The outdoor dining area as proposed includes 38 seats.

On May 26th, 2021, the Planning Board recommended approval to the City Commission of the Special Land Use, Final Site Plan and Design based on a review of the plans submitted and their adherence to Article 07, section 7.27 and Article 07, section 7.34 of the Zoning Ordinance and pending receipt of the following:

1. Details on the businesses sharing the trash facilities on site;
2. Applicant comply with all City Department requests;
3. Detailed sign plans for any proposed business signage to allow the Planning Department to complete their review of the recently submitted plans;
4. Outdoor dining be closed at midnight; and,
5. Specification sheets on the proposed tables, chairs, trash receptacle and railing system proposed in the outdoor dining area.

The applicant has now provided all requested information and drawings.

LEGAL REVIEW:

The City Attorney has reviewed this request and has no concern with the form of the application.

FISCAL IMPACT:

There are no fiscal impacts for this agenda item.

SUMMARY:

The Planning Division recommends that the City Commission approve the Special Land Use Permit, Final Site Plan and Design Review application for 115 Willits – MARE Mediterranean.

ATTACHMENTS:

Please find attached the following documents for your review:

- Draft Special Land Use Permit Resolution
- Police Memo dated April 5, 2021
- Planning Division Report
- Site/Design Plans
- Meeting Minutes
- Application & Supporting Documents

SUGGESTED RESOLUTION:

To approve the Special Land Use Permit, Final Site Plan and Design Review application for 115 Willits – MARE Mediterranean;

AND

To authorize the Chief of Police to sign the MLCC Police Investigation Report (LC-1800) and to approve the liquor license request of Hospitality Birmingham, LLC that requests a transfer of interest in a Class C License to be issued under MCL 436.1521(A)(1)(B) and SDM License (AM and PM) with Outdoor Service, and an Entertainment Permit located at 115 Willits, Birmingham, Oakland County, MI 48009.

Furthermore, pursuant to Birmingham City Ordinance, to authorize the City Clerk to complete the Local Approval Notice at the request of Hospitality Birmingham, LLC approving the liquor license transfer request of Hospitality Birmingham, LLC that requested a Class C License be transferred under MCL 436.1521 (A)(1)(B) & SDM License with Outdoor Service and an Entertainment Permit located at 115 Willits, Birmingham, Oakland County, MI 48009.

MARE MEDITERRANEAN
115 Willits
Special Land Use Permit 2021

WHEREAS, MARE MEDITERRANEAN filed an application pursuant to Article 7, section 7.34 of Chapter 126, Zoning, of the City Code to operate a food and drink establishment serving alcoholic liquors in the Downtown Birmingham Overlay District in accordance Article 3, Section 3.04(C)(10) 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 south side of Willits, east of Bates Street, and within the boundaries of the Birmingham Shopping District;

WHEREAS, The land is zoned B-4, and is located in the D-4 zone within the Downtown Birmingham Overlay District, which permits the operation of food and drink establishments serving alcoholic liquors with a Special Land Use Permit;

WHEREAS, Article 7, section 7.34 of Chapter 126, Zoning requires a Special Land Use Permit Amendment to be considered and acted upon by the Birmingham City Commission, after receiving recommendations on the site plan and design from the Planning Board for the proposed Special Land Use;

WHEREAS, The applicant submitted an application for a Special Land Use Permit, Final Site Plan and Design Review for MARE MEDITERRANEAN to operate at 115 Willits;

WHEREAS, The Planning Board on May 26, 2021 reviewed the application for a Special Land Use Permit, Final Site Plan and Design Review and recommended APPROVAL to the City Commission to permit a new food and drink establishment serving alcoholic liquors based on a review of the plans submitted and their adherence to Article 07, section 7.27 and Article 07, section 7.34 of the Zoning Ordinance and pending receipt of the following:

1. Details on the businesses sharing the trash facilities on site;
2. Applicant comply with all City Department requests;
3. Detailed sign plans for any proposed business signage to allow the Planning Department to complete their review of the recently submitted plans;
4. Outdoor dining be closed at midnight; and,
5. Specification sheets on the proposed tables, chairs, trash receptacle and railing system proposed in the outdoor dining area.

WHEREAS, The applicant has provided all requested information and agreed to comply with the requests of all City departments;

WHEREAS, The Birmingham City Commission has reviewed MARE MEDITERRANEAN'S Special Land Use Permit application and the standards for such review as set forth in Article 7, section 7.36 of Chapter 126, Zoning, of the City Code;

NOW, THEREFORE, BE IT RESOLVED, The Birmingham City Commission finds the standards imposed under the City Code have been met, subject to the conditions below, and that

MARE MEDITERRANEAN'S application for a Special Land Use Permit, Final Site Plan and Design Review at 115 Willits is hereby approved;

BE IT FURTHER RESOLVED, That the City Commission determines that to assure continued compliance with Code standards and to protect public health, safety, and welfare, this Special Land Use Permit is granted subject to the following conditions:

1. MARE MEDITERRANEAN will close outdoor dining areas at midnight each day of the week;
2. MARE MEDITERRANEAN shall abide by all provisions of the Birmingham City Code and comply with all Department requests;
3. The applicant enter into a contract with the City that must be fully executed upon approval of the SLUP; and
4. The Special Land Use Permit may be canceled by the City Commission upon finding that the continued use is not in the public interest.

BE IT FURTHER RESOLVED, That failure to comply with any of the above conditions shall result in termination of the Special Land Use Permit.

BE IT FURTHER RESOLVED, Except as herein specifically provided, MARE MEDITERRANEAN 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 be subsequently amended. Failure of MARE MEDITERRANEAN to comply with all the ordinances of the City may result in the Commission revoking this Special Land Use Permit.

MAY IT BE FURTHER RESOLVED that MARE MEDITERRANEAN is recommended for the operation of a food and drink establishment serving alcoholic beverages on premises, above all others, subject to final inspection.

I, Alexandria Bingham, City Clerk 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 July 12, 2021.

Alexandria Bingham
City Clerk



MEMORANDUM

Police Department

DATE: April 5, 2021

TO: Tom Markus, City Manager
Jana Ecker, Planning Director

FROM: Chris Busen, Investigative Commander

SUBJECT: Request to transfer ownership of the Class C and SDM Liquor License with Sunday Sales (AM and PM) Permit and an Outdoor Service Permit, Catering Permit, and One Direct Connection from Willits Co-License, LLC and Mitchell's Entertainment Inc. (Currently in Escrow located at 115 Willits, Birmingham, Oakland County, Business ID No. 240015) to Hospitality Birmingham, LLC; Request for a New Entertainment Permit; and Request to cancel the Catering Permit and the One Direct Connection.

INTRODUCTION:

The police department has received a request from the Law Offices of Adkison, Need, Allen and Rentrop regarding approval to transfer ownership of the Class C Liquor License from Willits Co-License, LLC and Mitchell's Entertainment Inc., located at 115 Willits, Birmingham to Hospitality Birmingham, LLC which will do business as Mare Mediterranean "Mare". The space was formerly Cameron's Steakhouse. Hospitality Birmingham also requests the following permits: SDM license (beer and wine to go), Sunday Sales AM/PM Permit, and an Entertainment Permit. Hospitality Birmingham is submitting the application for the special land use permit simultaneously with this application. Hospitality Birmingham has paid the initial fee of \$1500 for a business that serves alcoholic beverages for consumption on the premises per section 7.33 of the Birmingham City Code.

BACKGROUND:

Mare will be a traditional Mediterranean restaurant serving lunch and dinner. Mare will be open from 11am to 1am Tuesday-Friday and 5pm to 1am on Saturday. It will have interior seating for 200 patrons, which includes 26 seats at the bar. The exterior seating is not changing from the previously approved use. The menu prices have not been established, but fare includes Big Eye Tuna, Grilled Octopus, Blue Crab Cakes, and Lamb Chops. The liquor license will be assigned from the former operator for \$1.00. Hospitality Birmingham will invest \$500,000 in renovations of the existing building, furniture and equipment. These renovations will be financed through Antonino Cutraro and Jay Feldman, who are the sole proprietors of Mare. This will be self-financed by Cutraro and Feldman through bank savings. Mare has a lease with the property owner Willits Retail, LLC. The lease is for 10 years, with two 5-year options. The rent will start at \$18,376.00 per month.

LEGAL REVIEW:

Non-applicable

FISCAL IMPACT:
Non-applicable

SUMMARY:

Mare is owned by Antonino Cutraro and Jay Feldman. Cutraro is currently licensed as the sole member of Bella Piatti here in Birmingham. Both Cutraro and Feldman are indirect owners of Walhburger's which hold liquor licenses in Royal Oak, Detroit and Flint.

Hospitality Birmingham

Percentage of Interest

Antonino Cutraro	60%
Jay Feldman.....	40%

The Walhburger in Royal Oak had a MLCC violation in 2020 for selling to a minor.

A background check was conducted on Antonino Cutraro and Jay Feldman using the Law Enforcement Information Network (LEIN), and the Court's Law Enforcement Management Information System (CLEMIS). Cutraro and Feldman have no criminal contacts and no criminal convictions.

ATTACHMENTS:
Non-Applicable

SUGGESTED RESOLUTION:

To authorize the Chief of Police to sign the MLCC Police Investigation Report (LC-1800) and to approve the liquor license request of Hospitality Birmingham, LLC that requests a transfer of interest in a Class C License to be issued under MCL 436.1521(A)(1)(B) and SDM License (AM and PM) with Outdoor Service, and an Entertainment Permit located at 115 Willits, Birmingham, Oakland County, MI 48009.

Furthermore, pursuant to Birmingham City Ordinance, to authorize the City Clerk to complete the Local Approval Notice at the request of Hospitality Birmingham, LLC approving the liquor license transfer request of Hospitality Birmingham, LLC that requested a Class C License be transferred under MCL 436.1521 (A)(1)(B) & SDM License with Outdoor Service and an Entertainment Permit located at 115 Willits, Birmingham, Oakland County, MI 48009.



MEMORANDUM

Planning Department

DATE: May 18, 2021

TO: Planning Board

FROM: Jana L. Ecker, Planning Director

SUBJECT: 115 Willits – Mare Mediterranean – Special Land Use Permit, Final Site Plan and Design Review

The applicant is proposing to reuse the former Cameron's Steakhouse restaurant for MARE Mediterranean, a new restaurant to operate under an existing Class C quota license. A SLUP is required for the service of alcoholic liquors, which is proposed using a Class C quota liquor license. MARE Mediterranean is not a bistro, and thus there are no specific maximum number of indoor, outdoor or bar seats. Article 7, Section 7.34 of the Zoning Ordinance requires a review and recommendation on the SLUP and Final Site Plan and Design Review by the Planning Board, and then final approval of the City Commission.

MARE Mediterranean is proposed to include 181 indoor seats (including 26 at the existing bar), using the existing furniture from the former Cameron's restaurant. Additional seating outdoors is proposed on a new platform extending into 2 on street parking spaces adjacent to the storefront. The outdoor dining area as proposed includes 38 seats.

The kitchen and bathroom areas of the former Cameron's restaurant will remain as well.

1.0 Land Use and Zoning

- 1.1 Existing Land Use – The existing land use is vacant commercial, with retail, residential Church and parking uses surrounding the proposed restaurant space.
- 1.2 Existing Zoning – The property is currently zoned B-4, Business-Residential, and D-4 in the Downtown Overlay District. The existing use and surrounding uses appear to conform to the permitted uses of each Zoning District.
- 1.3 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.

	North	South	East	West
Existing Land Use	Commercial / Retail / Church / Parking	Commercial / Retail	Commercial / Retail / Residential	Commercial / Retail / Residential
Existing Zoning District	R7, Multiple Family & PP, Public Property	B-4, Business-Residential	B-4, Business-Residential	B-4, Business-Residential
Downtown Overlay Zoning District	C, D-3 & P	D-4	D-4	D-4

2.0 Screening and Landscaping

2.1 Screening – No changes are proposed. **However, it should be noted that the former restaurant shared the use of dumpsters with the Willits Building, and these were often moved outside of the building and left with no screening. In accordance with section 90-30 of the City Code, no more than 6 businesses may share trash facilities. Thus, the applicant will be required to provide details on the businesses sharing the trash facility to ensure compliance. Further, in accordance with the Zoning Ordinance, the dumpsters must remain inside the trash room at the rear of the Willits Building or the owners must apply for approval to store them outside and provide a screened enclosure.**

2.2 Landscaping – No changes are proposed.

3.0 Parking, Loading, Access, and Circulation

3.1 Parking – As the subject site is located within the Parking Assessment District, the applicant is not required to provide on-site parking.

3.2 Loading – No changes are proposed.

3.3 Vehicular Access & Circulation - Vehicular access to the building will not be altered.

3.4 Pedestrian Access & Circulation – Pedestrians will have direct access to MARE Mediterranean through the existing entry door off the sidewalk.

- 3.5 Streetscape – No changes are proposed to the permanent streetscape. The required broom finish sidewalk and exposed aggregate sidewalk is existing. There is one pedestrian scale street light along the storefront, and this will remain and be surrounded by an outdoor dining platform. As mentioned above, a new elevated outdoor dining platform is proposed to house 9 four-top tables and 1 two-top table, as well as the required trash receptacle. Two sloped ramps will provide access to the platform from the City sidewalk. The platform is proposed to be enclosed by a 42" railing system. **No specification sheets on the proposed railings have been provided at this time, and will be required prior to review by the City Commission.**

4.0 Lighting

The applicant is not proposing any new lighting for the property.

5.0 Departmental Reports

- 5.1 Engineering Division – The Engineering Department will provide comments before the meeting on May 26, 2021.
- 5.2 Department of Public Services – The DPS has no concerns at this time.
- 5.3 Fire Department – The Fire Department has provided the following comments:
- Please provide any sprinkler, fire alarm, kitchen hood / renovations or modification plans to the AHJ for approval.
 - Field test verification required on all systems involving life safety.
 - Field inspection required for building layout.
 - Final occupant load to be determined in the field by Building Department and Fire Marshal
 - Fire sprinkler and alarm system to remain in service during construction / demolition and all phases.
 - Follow all IFC 2015 code requirements for hot work, construction or demolition practices.
- 5.4 Police Department – The Police Department has no concerns at this time.
- 5.5 Building Division – The Building Division has no building code concerns at this time. A complete code review will be performed when the construction documents are provided for the renovation of the tenant space.

6.0 Design Review

At this time, the applicant is not proposing any design changes to the existing storefront, nor is any signage proposed. As this building is located within the Downtown Historic District, all design changes must be approved by the Historic District Commission.

Outdoor Dining Area

Outdoor cafes must comply with the site plan criteria as required by Article 04, Section 4.41 OD-01, Outdoor Dining Standards. Outdoor cafes are permitted immediately adjacent to the principal use and are subject to site plan review and the following conditions:

1. Outdoor dining areas shall provide and service refuse containers within the outdoor dining area and maintain the area in good order.
2. All outdoor activity must cease at the close of business, or as noted in Subsection 3 below, whichever is earlier.
3. When an outdoor dining area is immediately adjacent to any single-family or multiple-family residential district, all outdoor activity must cease at the close of business or 12:00 a.m., whichever is earlier.
4. All tables and chairs provided in the outdoor dining area shall be constructed primarily of metal, wood, or material of comparable quality.
5. Table umbrellas shall be considered under Site Plan Review and shall not impede sight lines into a retail establishment, pedestrian flow in the outdoor dining area, or pedestrian or vehicular traffic flow outside the outdoor dining area.
6. For outdoor dining located in the public right-of-way:
 - (a) All such uses shall be subject to a license from the city, upon forms provided by the Community Development Department, contingent on compliance with all city codes, including any conditions required by the Planning Board in conjunction with Site Plan approval.
 - (b) In order to safeguard the flow of pedestrians on the public sidewalk, such uses shall maintain an unobstructed sidewalk width as required by the Planning Board, but in no case less than 5 feet.
 - (c) An elevated, ADA compliant, enclosed platform may be erected on the street adjacent to an eating establishment to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.
 - (d) No such facility shall erect or install permanent fixtures in the public right-of-way.
 - (e) Commercial General Liability Insurance must be procured and maintained on an "occurrence basis" with limits of liability not less than \$1,000,000 per occurrence combined single limit, personal injury, bodily injury and property damage. This coverage shall include an endorsement naming the city, including all elected and appointed officials, all employees, all boards, commissions and/or authorities and board members, as an additional insured. This coverage must be primary and any other insurance maintained by the additional insureds shall be considered to be excess and non-contributing with this insurance, and shall include an endorsement providing for a thirty (30) day advance written notice of cancellation or non-renewal to be sent to the city's Director of Finance.

The applicant has provided a trash receptacle within the outdoor dining area as required by Article 04, section 4.41 OD-01 of the Zoning Ordinance. In addition, the applicant has provided proposed business hours for Mare Mediterranean as follows:

Monday – Closed

Tuesday thru Friday – 11:00 a.m. – Midnight
Saturday – 5:00 p.m. to 1:00 a.m.
Sunday – 12:00 p.m. to 10:00 p.m.

The proposed outdoor café is not immediately adjacent to any single-family zoned property.

The applicant has not provided specification sheets for the proposed tables and chairs and will be required to do so prior to review by the City Commission.

No umbrellas are proposed for the outdoor dining area.

A site plan has been submitted with dimensions that show the required 5' clear pedestrian path along the building.

The applicant will be required will be required to obtain an Outdoor Dining License from the City if the SLUP is approved by the City Commission.

Signage

No signage is proposed at this time. **All signage for SLUPs must be approved through the SLUP process.**

7.0 Downtown Birmingham 2016 Overlay District

The site is located within the D-4 zone of the DB 2016 Regulating Plan, within the Downtown Birmingham Overlay District. The Planning Division finds the proposed site plan adequately implements the goals of the plan as they relate to outdoor café uses. The 2016 Plan states that outdoor dining space is in the public's best interest as it enhances street life, thus promoting a pedestrian friendly environment.

8.0 Approval Criteria

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

- (1) The location, size and height of the building, walls and fences shall be such that there is adequate landscaped open space so as to provide light, air and access to the persons occupying the structure.
 - (2) The location, size and height of the building, walls and fences shall be such that there will be no interference with adequate light, air and access to adjacent lands and buildings.
 - (3) The location, size and height of the building, walls and fences shall be such that they will not hinder the reasonable development of adjoining property 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 Suggested Action

Based on a review of the site plans submitted, the Planning Division recommends that the Planning Board POSTPONE the applicant's request for Special Land Use Permit and Final Site Plan & Design Review for 115 Willits – Mare Mediterranean pending receipt of the following:

1. Details on the businesses sharing the trash facilities on site;
2. Detailed sign plans for any proposed business signage, including dimensions, materials and colors;
3. Specification sheets on the proposed tables, chairs, trash receptacle and railing system proposed in the outdoor dining area; and
4. Details regarding trash storage and disposal.

11.0 Sample Motion Language

Based on a review of the plans submitted, the Planning Board recommends **POSTPONEMENT** of the Special Land Use Permit and Final Site Plan & Design Review for 115 Willits – Mare Mediterranean pending receipt of the following:

1. Details on the businesses sharing the trash facilities on site;
-

2. Detailed sign plans for any proposed business signage, including dimensions, materials and colors;
3. Specification sheets on the proposed tables, chairs, trash receptacle and railing system proposed in the outdoor dining area; and
4. Details regarding trash storage and disposal.

OR

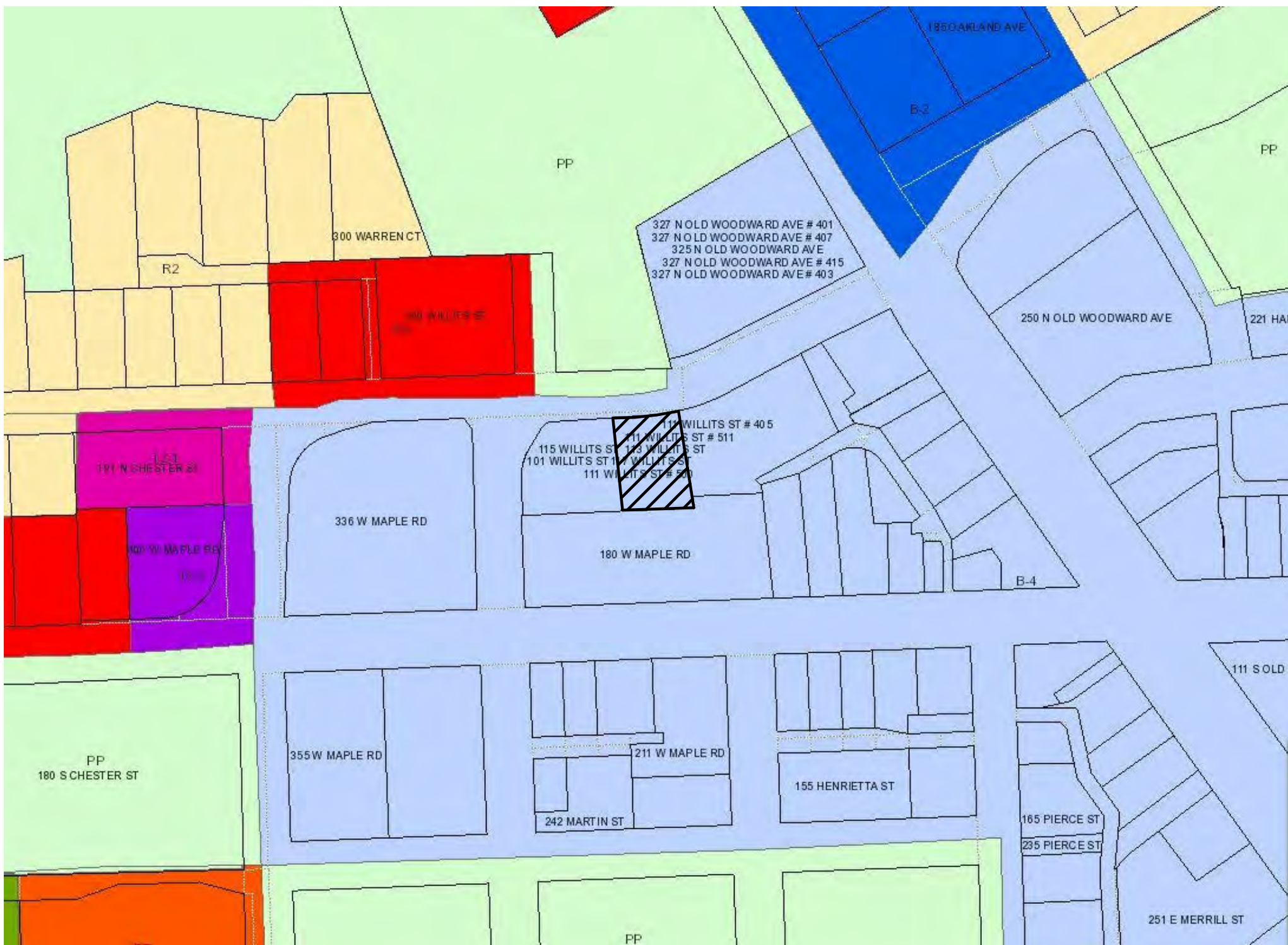
Based on a review of the plans submitted, the Planning Board finds that all of the requirements of Article 7, Section 7.27 and Article 7, Section 7.34 have been met. Motion to recommend **APPROVAL** to the City Commission of the Special Land Use Permit and Final Site Plan & Design Review for 115 Willits – Mare Mediterranean with the following conditions:

1. Applicant provide details on the businesses sharing the trash facilities on site;
2. Applicant provide detailed sign plans for any proposed business signage, including dimensions, materials and colors;
3. Applicant provide specification sheets on the proposed tables, chairs, trash receptacle and railing system proposed in the outdoor dining area; and
4. Details regarding trash storage and disposal.

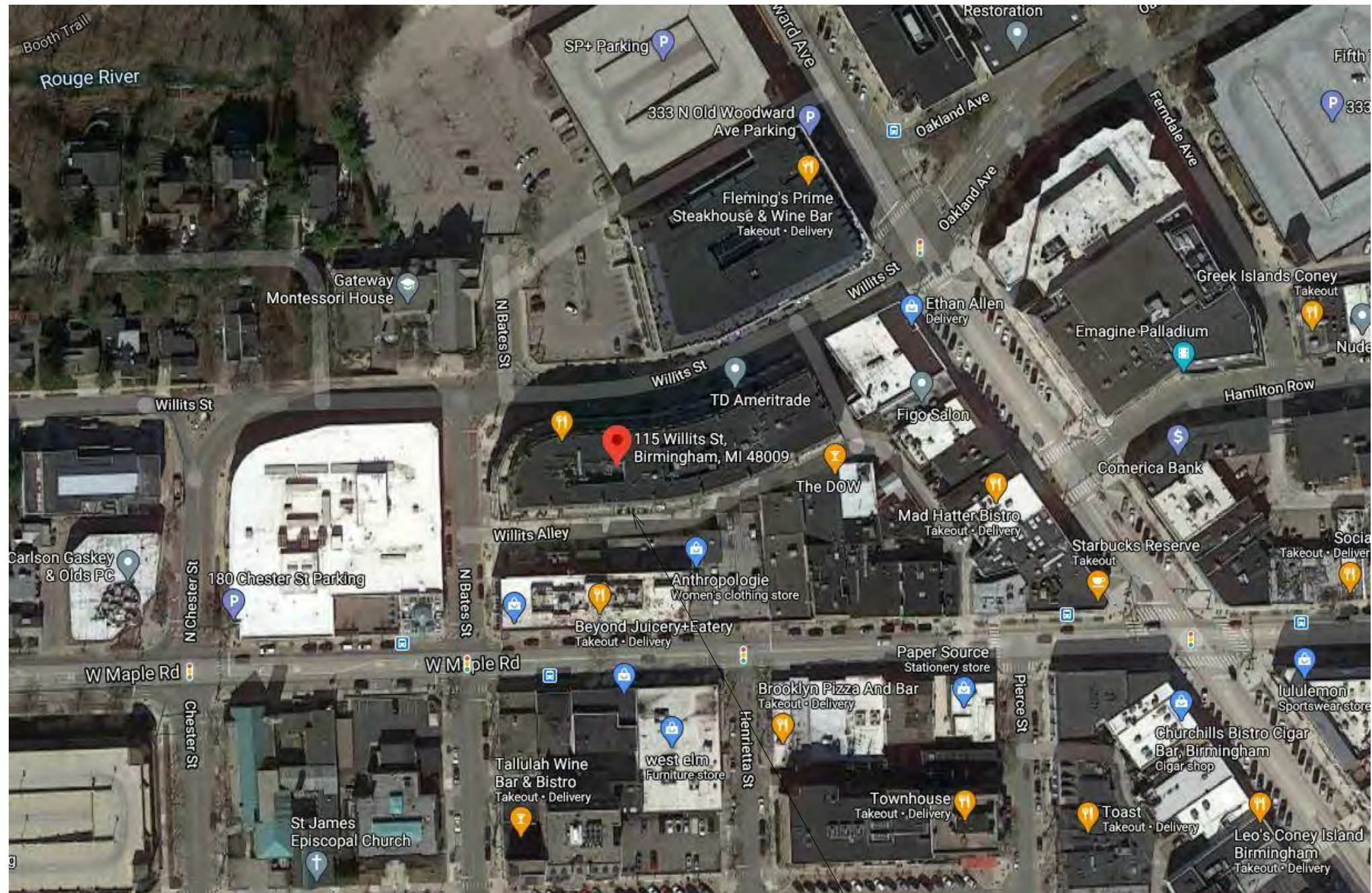
OR

Motion to recommend **DENIAL** of the Special Land Use Permit Amendment and Final Site Plan Review for 115 Willits – Mare Mediterranean for the following reasons:

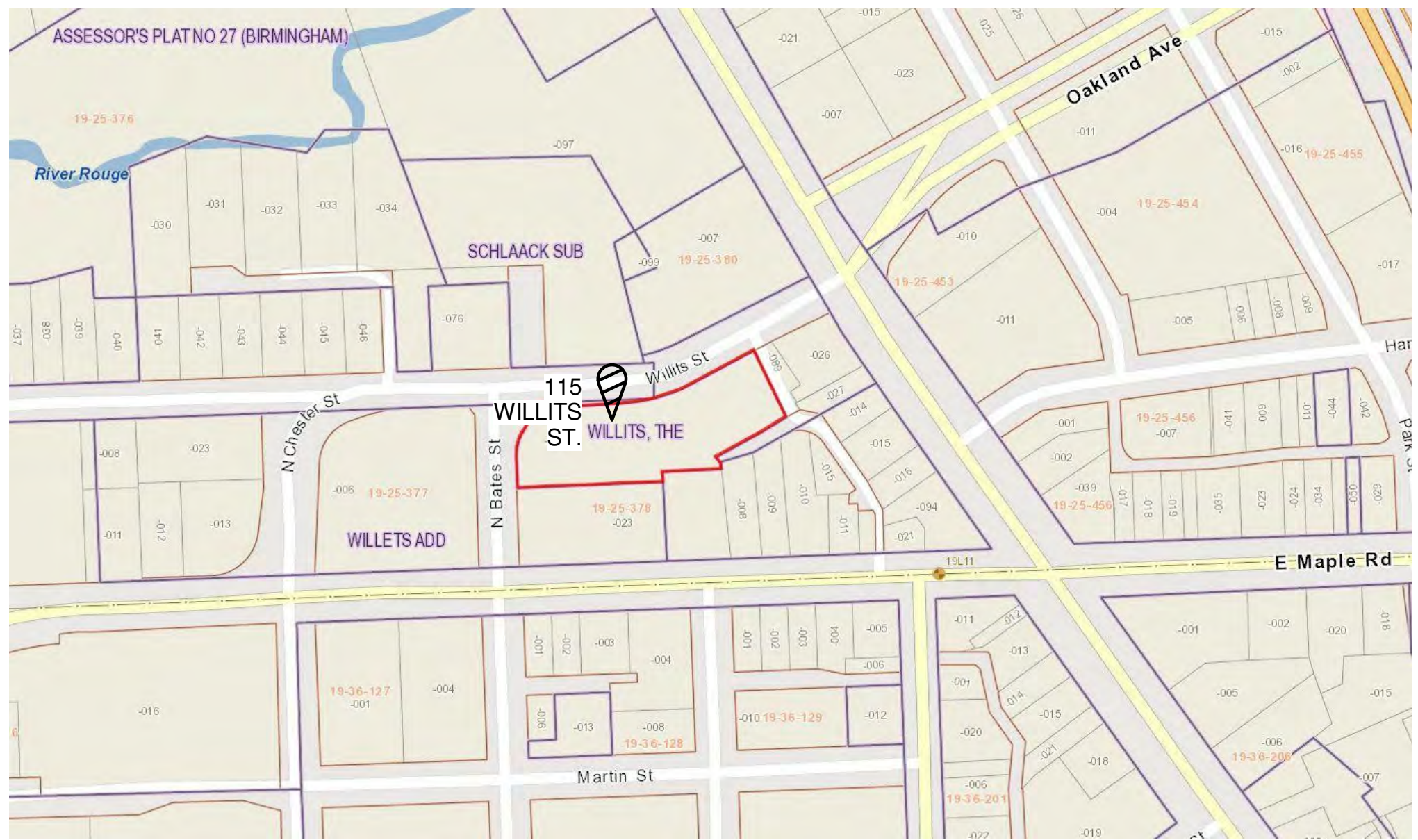
1. _____



ZONING MAP



AERIAL MAP



GIS MAP W/ LOCATION OF NEAREST WATER COURSE

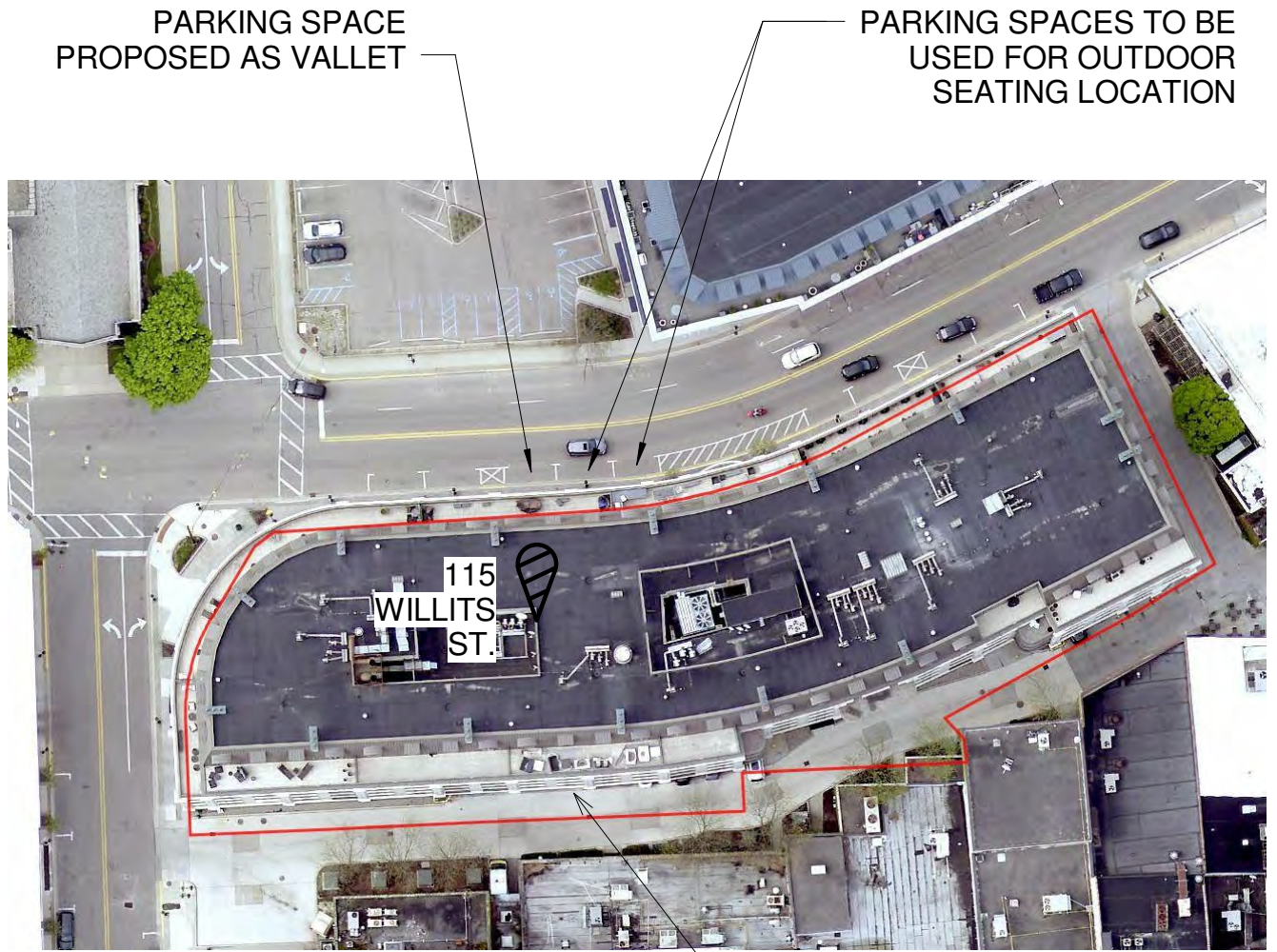


112" x 18" x 2" Deep Black Aluminum Composite Panface with 1/2" Thick Routed & Painted PVC Letters Qty 2

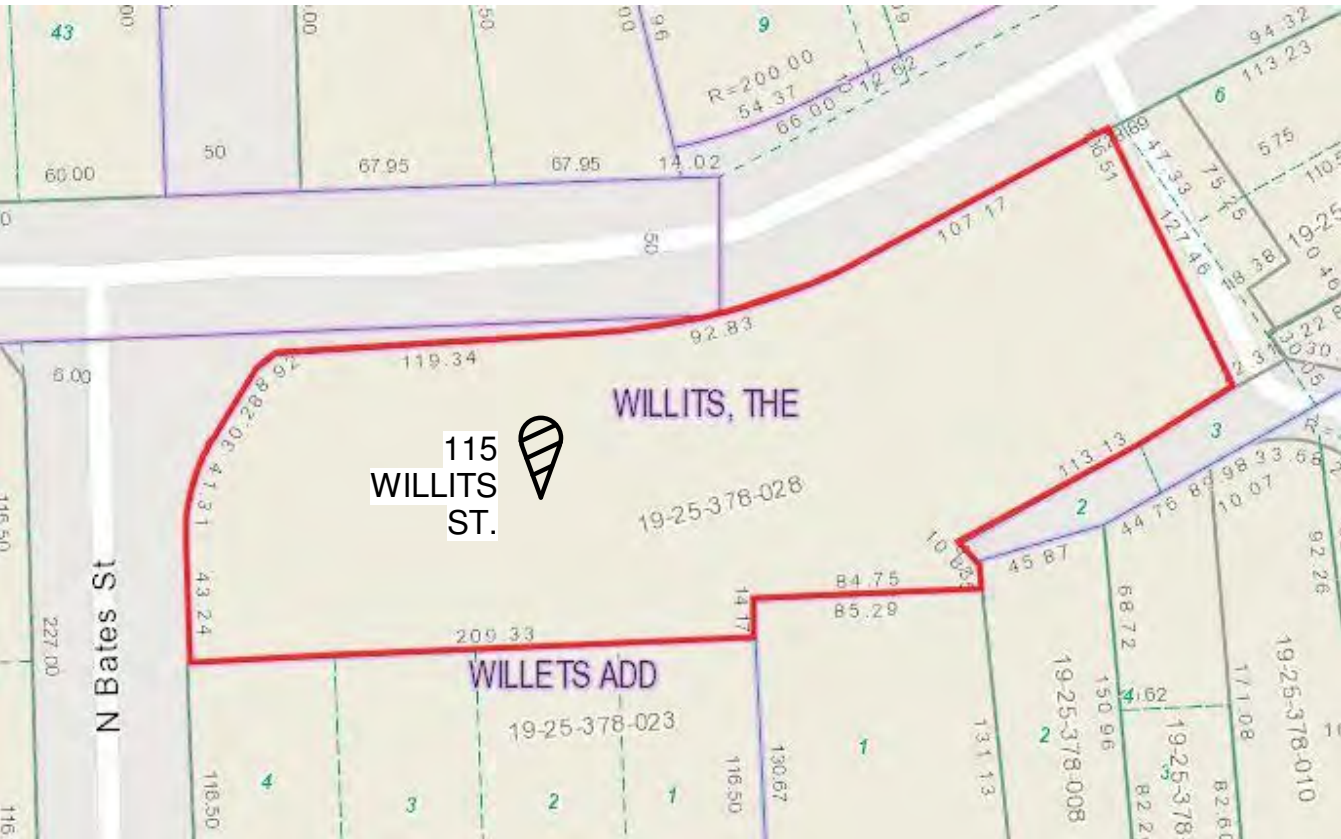
PROPOSED SIGNS FOR MARE MEDITERRANEAN TO BE LOCATED IN EXISTING CAMERON'S SIGN LOCATIONS; NO OTHER EXTERIOR STOREFRONT CHANGES SUCH AS PAINT ETC.

MARE MEDITERREAN HOURS OF OPERATION
MONDAY: CLOSED
TUESDAY THRU FRIDAY: 11:00 AM - MIDNIGHT
SATURDAY: 5:00 PM TO 10:00 AM
SUNDAY 12:00 PM TO 10:00 PM

*OUTDOOR PATIO CLOSES AT MIDNIGHT



AERIAL OF BUILDING FROM OAKLAND GIS



GIS MAP W/ DIMENSIONS

MARE MEDITERRANEAN

115 WILLITS ST.
BIRMINGHAM, MI

CLIENT CONTACT:
HOSPITALITY BIRMINGHAM LLC

ATTENTION:
NINO CUTRARO
248.343.3130

TENANT SPACE SUMMARY

115 WILLITS STREET, BIRMINGHAM, MICHIGAN
PARCEL I.D. 08-19-25-378-029

WORK TO BE COMPLETED IN ACCORDANCE TO:
MBC- MICHIGAN BUILDING CODE 2015
MEBC- MICHIGAN EXISTING BUILDING CODE 2015
MMC- MICHIGAN MECHANICAL CODE
IFC- INTERNATIONAL FIRE CODE 2015
IFGC- INTERNATIONAL FUEL GAS CODE 2015
ASHRAE 90.1 2013 COMPLIANCE

*NOTE
EXISTING ELECTRICAL TO REMAIN
EXISTING PLUMBING TO REMAIN
EXISTING MECHANICAL TO REMAIN

AREA OF RESTAURANT: APPROX. 6,600 S.F.

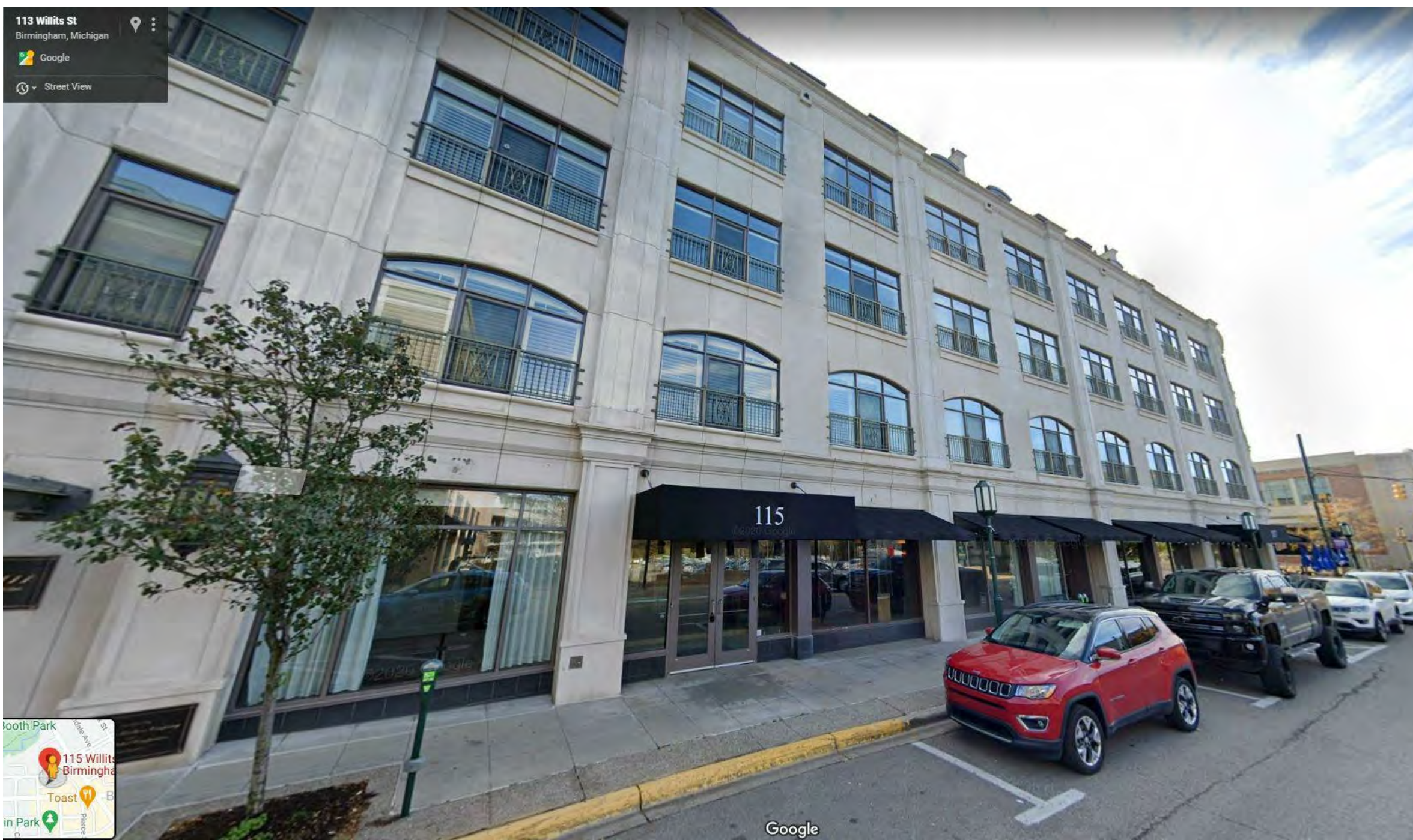
USE CATEGORY: A-2 RESTAURANT

CONSTRUCTION: 2B (BUILDING FULL SPRINKLED-TO REMAIN)

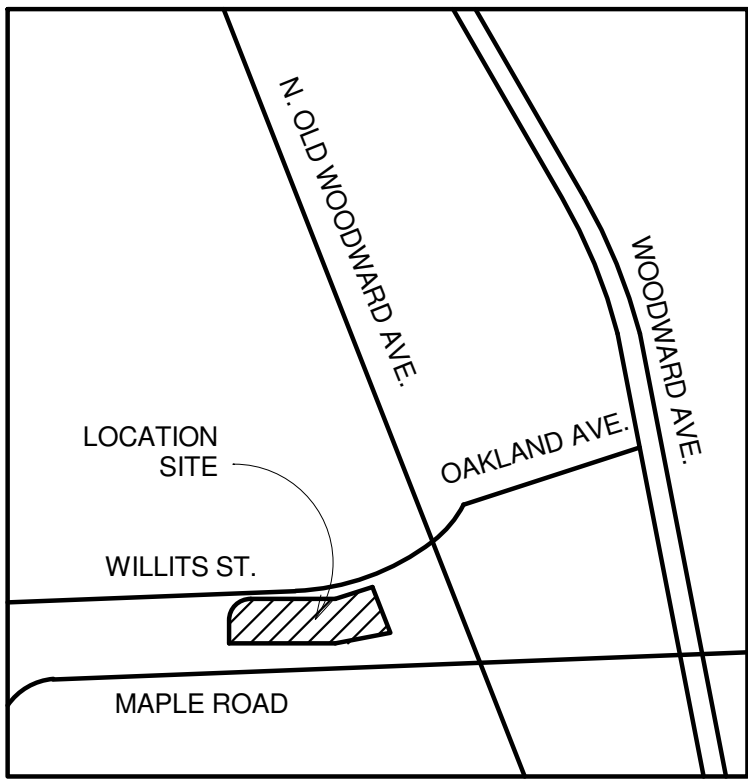
PROPOSED SPECIAL LAND USE PERMIT FOR:

OUTDOOR SEATING APPROXIMATELY 44' X 13' (VERIFIED ONSITE)
SEATING TO BE LOCATED WITHIN THE SIDEWALK AND OVER THE EAST TWO PARKING SPACES (OF THE THREE PROVIDED FOR MARE MEDITERRANEAN) WHILE THE THIRD TO BE DEDICATED AS SHARED VALLET PARKING FOR THE WILLITS BLOCK.

EXTERIOR DESIGN TO BE CONSISTED OF TREATED WOOD AND FLOOR PLANKING, RAISED 8" ABOVE EXISTING SIDE WALK, WHILE STREET AREA TO BE RAISED FLUSH WITH THE SIDEWALK. THIS WILL PROVIDE FOR FLUID DESIGN BETWEEN THE SIDEWALK AND STREET.



CURRENT STREET VIEW



LOCATION MAP

Site Address: 115 WILLITS ST, BIRMINGHAM, MI, 48009
Parcel Identification Number: 1925378028
Owner Name: WILLITS RETAIL LLC
Property Description: T2N, R10E, SEC 25 OAKLAND COUNTY CONDOMINIUM PLAN NO 1292 THE WILLITS UNIT 2 L 21855 P 1 11-8-00 FR 022 & 025

Sheet List	
Sheet Name	Sheet Number
COVER SHEET	A1
FLOOR PLAN	A2

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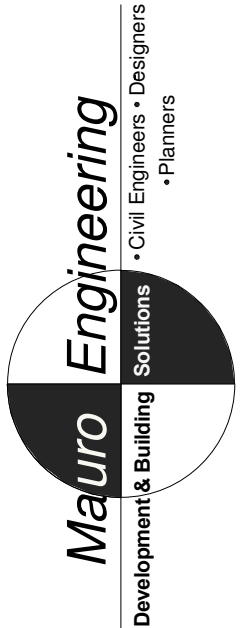
CLIENT: HOSPITALITY BIRMINGHAM LLC
ATTENTION: NINO CUTRARO
248.343.3130

PROJECT LOCATION: 115 WILLITS STREET, BIRMINGHAM, MI 48009

DATE: MARCH 2021

SCALE:

COVER SHEET



PRELIMINARY ☒ CONSTRUCTION ☐ AS BUILT

Drawn By: M.M.

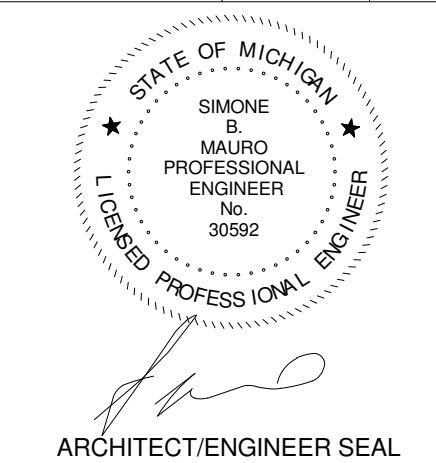
Checked By: S.M.

Approved By: S.M.

Revisions: Date: By:

PER PLAN DETAILS 2021-05-24 M.M.

PER CITY 2021-07-06 M.M.



ARCHITECT/ENGINEER SEAL

Job No. 21-023

Sheet No.

A1

28.75" H

32.25" H

24" D

35.5" D

35.5" W

21" W

TABLE AND CHAIRS

Product Details

This Flash Furniture CO-355Q-03CHR4-BK-GG is available from Central Restaurant Products.

Brighten up your patio space with this beautiful patio table set. This colorful set will enhance your bistro, cafe, restaurant, hotel or home patio space. The top includes an umbrella hole (umbrella not included). The patio chairs stack for storing. The frames are designed for all-weather use making it a great option for indoor and outdoor settings. For longevity, care should be taken to protect from long periods of wet weather. The possibilities are endless with the multitude of environments in which you can use this table, for both commercial and residential spaces.

For additional questions, please speak with one of our helpful Product Consultants at 800.215.9293 - or click the 'Live Chat' button.

Image shown may reflect a different configuration of this product than described. Please see features section or talk to a Product Consultant for details.

FIVE YEAR LIMITED (NON MOVING METAL PARTS), TWO YEAR PARTS WARRANTY

Specifications

Central Models:	476-34F
Width:	35.5"
Depth:	35.5"
Height:	28.75"
Size:	35.5"W

Specifications

Dimensions			
Post Spacing (in.)	3.662	Product Depth (in.)	1.38
Product Height (in.)	36	Product Width (in.)	12

Details			
Balance Rails per Panel	16	Color Family	Black
Features	Patented UV Protected Water Resistant	Includes	Bolsters, Brackets, Rails
Interior/Exterior	Exterior	Material	Aluminum
Post Rails per Panel	2	Railing Type	Railing Kit
Retractable	50-Day	Star Part Type	Kit

EXISTING LIGHT POST TO REMAIN

*OR USE CITY STANDARD

PROPOSED 42" RAILING PER ORDINANCE

2 x 6 FLOOR PLANKING

ELEVATION: 101.16

2 x 8 @ 16" O.C.

ELEVATION: 100.50

2 x 6 @ 16" O.C.

ELEVATION: 100.00

115

2 x 6 FLOOR PLANKING

ELEVATION: 101.16

2 x 8 @ 16" O.C.

ELEVATION: 100.50

2 x 6 @ 16" O.C.

ELEVATION: 100.00

*CHAIRS AND TABLES SELECTIONS PER OWNER

EXISTING LIGHT POST TO REMAIN

PROPOSED 42" RAILING PER ORDINANCE

Section 1
1/2" = 1'-0"

Section 2
1/4" = 1'-0"

*EXISTING RESTAURANT DUMPSTER LOCATION LOCATED IN THE REAR ALLEY, LOWER LEVEL; FOR NEIGHBORING TENANT COMBINE USE. (SEE COVER SHEET FOR LOCATION)

*MARE MEDITERRANEAN WILL HAVE A HOLDING AREA INSIDE FOR TENANT TRASH WHICH WILL BE CARRIED OUT TO EXTERIOR DUMPSTER.

TENANT SPACE SUMMARY

115 WILLITS STREET, BIRMINGHAM, MICHIGAN
PARCEL I.D. 08-19-25-378-029

WORK TO BE COMPLETED IN ACCORDANCE TO:
MBC- MICHIGAN BUILDING CODE 2015
MEBC- MICHIGAN EXISTING BUILDING CODE 2015
MMC- MICHIGAN MECHANICAL CODE
IFC- INTERNATIONAL FIRE CODE 2015
IFGC- INTERNATIONAL FUEL GAS CODE 2015
ASHRAE 90.1 2013 COMPLIANCE

*NOTE
EXISTING ELECTRICAL TO REMAIN
EXISTING PLUMBING TO REMAIN
EXISTING MECHANICAL TO REMAIN

AREA OF RESTAURANT: APPROX. 6,600 S.F.

USE CATEGORY: A-2 RESTAURANT

CONSTRUCTION: 2B (BUILDING FULL SPRINKLED-TO REMAIN)

EXIT CAPACITY:
EXIT #1 = 72'/2 = 360
EXIT #2 = 36'/2 = 180
TOTAL EXIT CAPACITY = 540

TOILET CALCULATIONS:
WOMENS = 3 [1 PER 75]
MENS = 1 TOILET, 2 URINALS [1 PER 75]
TOTAL = 4 TOILETS

4 FIXTURES X 75 = 300 OCCUPANTS ALLOWED.

OCCUPANT SEATING SUMMARY:

MAIN DINING:
709 S.F. / 15 NET = 47 ALLOWED 46 PROVIDED

PRIVATE DINING # 1:
379 S.F. / 15 NET = 25 ALLOWED 24 PROVIDED

PRIVATE DINING # 2:
189 S.F. / 15 NET = 12.6 ALLOWED 12 PROVIDED

BOOTH SEATING #1:
FIXED SEAT 1 PERSON PER 18" = 384"/18" =
21 PERSONS ALLOWED
16 PROVIDED

BOOTH SEATING #2:
FIXED SEAT 1 PERSON PER 18" = 384"/18" =
21 PERSONS ALLOWED
16 PROVIDED

BOOTH SEATING #3:
FIXED SEAT 1 PERSON PER 18" = 192"/18" =
10 PERSONS ALLOWED
10 PROVIDED

BAR SEATING:
FIXED SEAT 1 PERSON PER 18" = 504" / 18" =
28 PERSONS ALLOWED
26 PROVIDED

NEAR BAR SEATING:
120 S.F. / 15 = 8 SEATS ALLOWED 8 PROVIDED

TOTAL ALLOWABLE INTERIOR DINING = 172.6 SEATS
TOTAL PROPOSED INTERIOR DINING = 158 SEATS

LOUNGE AREA:
460 S.F. / 15 NET = 30.6 ALLOWED 30 PROVIDED

EMPLOYEE CALCULATION (AREA ALLOWANCES PER OCCUPANT)
KITCHEN: 1,715 S.F. / 200 = 8.5 ALLOWABLE

OCCUPANCY CALCULATION FOR STANDING AREA:
STANDING AREA 5 S.F. / PERSON
363 S.F. / 5 = 72 PERSONS ALLOWABLE

TOTAL PROPOSED OCCUPANCY: 269 PROPOSED

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PROSECUTION

CLIENT:
HOSPITALITY
BIRMINGHAM LLC
ATTENTION:
NINO CUTRARO
248.343.3130

PROJECT LOCATION:
115 WILLITS STREET,
BIRMINGHAM, MI 48009

DATE: MARCH 2021

SCALE: As indicated

FLOOR PLAN

PRELIMINARY ☒ CONSTRUCTION ☐ AS BUILT

Drawn By: M.M.

Checked By: S.M.

Approved By: S.M.

Revisions: Date: By:

PER PLAN DETAILS 2021-05-24 M.M.

PER CITY 2021-07-06 M.M.

ARCHITECT/ENGINEER SEAL

Job No. 21-023

Sheet No.

A2

PROOF



P: 810.225.7446

2150 Pless Dr. Ste 3A Brighton, MI 48114

Brighton@image360.com

APPROVAL PROCESS:

Please Respond
with Approval or
Not Approved to Continue

Give us a Call with 50% Deposit

Once both are received,
your order will be released to
PRODUCTION

• APPROVED

_____ if everything looks
good and you have reviewed all
details carefully

• NOT APPROVED

_____ if you have
any revisions/edits OR if you
have any questions

2021 IMAGE 360 BRIGHTON
ALL RIGHTS RESERVED.



112" x 18" x 2" Deep Black Aluminum COMposite Panface
with 1/2" Thick Routed & Painted PVC Letters
Qty 2

T:\JOBS BY CUSTOMER\Mare Mediterranean

Mare Mediterranean.fs

It is the client's responsibility to ensure that the proof is correct in all areas. Please be sure to double-check spelling, grammar, layout, color, sizes, quantities and design before APPROVING the proof. We are happy to fix any errors before APPROVAL or answer any questions. The final product will be produced as shown on this proof with the exception of some logos/art may appear blurry because the proof is low resolution. We can email a screen shot of any areas you are concerned about at 100% size to show how it will print. If a proof containing errors is approved by the client, it is the client's responsibility for payment of all original costs of printing, including corrections and reprints.

City Of Birmingham
Regular Meeting Of The Planning Board
Wednesday, May 26, 2021
Held Remotely Via Zoom And Telephone Access

2. 115 Willits Street – Mare Mediterranean (former Cameron’s Steakhouse),
Request for a Special Land Use Permit and Final Site Plan and Design Review to consider approval of new restaurant serving alcoholic liquors in an existing building.

PD Ecker reviewed the item.

Mr. Williams and Chair Clein agreed that the hours should not go past 12 a.m.

Applicant and owner Nino Cutraro agreed. Kelly Allen, attorney for the project and Simon Morrow, architect, were also present.

In reply to Mr. Jeffares, PD Ecker stated that she reached out to DPS to find out why there were only two trees between Bates and Old Woodward but had not yet heard back.

The applicant team confirmed they would adhere to the ordinance requirements regarding the dumpster and would adhere to the Fire Department’s comments.

There were no public comments.

Chair Clein said he would be comfortable allowing the remaining items outstanding to be administratively approved.

Motion by Mr. Share

Seconded by Mr. Jeffares to recommend approval to the City Commission for the Special Land Use Permit for 115 Willits – Mare Mediterranean based on a review of the plans submitted and their adherence to Article 07, section 7.27 and Article 07, section 7.34 of the Zoning Ordinance and pending receipt of the following: 1. Details on the businesses sharing the trash facilities on site; 2. Applicant comply with all City Department requests; 3. Detailed sign plans for any proposed business signage to allow the Planning Department to complete their review of the recently submitted plans; 4. Outdoor dining be closed at midnight; and, 5. Specification sheets on the proposed tables, chairs, trash receptacle and railing system proposed in the outdoor dining area.

Chair Clein stated that if documentation was not submitted to PD Ecker in time to allow for administrative review and approval that he did not want this item to proceed to the Commission for review.

Mr. Boyle commented that this applicant provided one of the best cover sheets he had ever seen for a site plan. He asked Planning to encourage other applicants to do the same.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

Motion by Mr. Share

Seconded by Mr. Williams to recommend approval to the City Commission for the Final Site Plan and Design Review for 115 Willits – Mare Mediterranean based on a review of the plans submitted and their adherence to Article 07, section 7.27 and Article 07, section 7.34 of the Zoning Ordinance and pending receipt of the following: 1. Details on the businesses sharing the trash facilities on site; 2. Applicant comply with all City Department requests; 3. Detailed sign plans for any proposed business signage to allow the Planning Department to complete their review of the recently submitted plans; and, 4. Specification sheets on the proposed tables, chairs, trash receptacle and railing system proposed in the outdoor dining area.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None



LAW OFFICES

ADKISON, NEED, ALLEN, & RENTROP

PROFESSIONAL LIMITED LIABILITY COMPANY

KELLY A. ALLEN
JESSICA A. HALLMARK
GREGORY K. NEED
G. HANS RENTROP

39572 Woodward, Suite 222
Bloomfield Hills, Michigan 48304
Telephone (248) 540-7400
Facsimile (248) 540-7401
www.ANAfirm.com

OF COUNSEL:

PHILLIP G. ADKISON
KEVIN M. CHUDLER
KATHERINE A. TOMASIK

March 31, 2021

Via Electronic Mail

Jana Ecker, Planning Director
City of Birmingham
151 Martin St.
P.O. Box 3001
Birmingham, MI 48012

Re: Special Land Use Application for Birmingham Hospitality, LLC d/b/a Mare Mediterranean

Dear Ms. Ecker:

Attached is the Special Land Use Application for Birmingham Hospitality, LLC. The required documents have been prepared by Mauro Engineering.

The fee of \$2,800.00 is being hand delivered to your office tomorrow.

The police department application is also being submitted tomorrow.

Please review the SLUP application and let me know when this may be considered by the Planning Board. If you require any further information, it will be immediately provided.

Thank you for your assistance.

Very truly yours,

ADKISON, NEED, ALLEN, & RENTROP, PLLC

Kelly A. Allen

/kjf
Enclosures



Special Land Use Permit Application

Planning Division

Form will not be processed until it is completely filled out.

1. Applicant

Name: Hospitality Birmingham LLC
Address: 115 Willits St, Birmingham, MI 48009

Phone Number: 248-343-3130
Fax Number: 248-733-1050
Email Address: mncontracting@att.net

2. Applicant's Attorney/Contact Person

Name: Kelly A. Allen
Address: 39572 Woodward, Suite 222, Bloomfield Hills, MI 48304

Phone Number: 248-540-7400
Fax Number: 248-540-7401
Email Address: kallen@anafirm.com

3. Required Attachments

- Warranty Deed with legal description of property
- Required fee (see Fee Schedule for applicable amount)
- Fifteen (15) folded copies of plans including a certified land survey, color elevations showing all materials, site plan, landscape plan, photometric plan, and interior plan
- Photographs of existing site and buildings
- Samples of all materials to be used

4. Project Information

Address/Location of Property: _____
Name of Development: _____
Sidwell #: _____
Current Use: _____
Proposed Use: _____
Area in Acres: _____
Current Zoning: _____
Zoning of Adjacent Properties: _____
Is there a current SLUP in effect for this site?: _____
Is property located in the floodplain? _____

Property Owner

Name: Willits Retail LLC
Address: c/o Seligman and Associates Inc.
One Towne Square #1913, Southfield, MI 48076
Phone Number: 248-862-8000
Fax Number: _____
Email Address: rcoopersmith@seligmangroup.com

Project Designer/Developer

Name: _____
Address: _____

Phone Number: _____
Fax Number: _____
Email Address: _____

- Catalog sheets for all proposed lighting, mechanical equipment & outdoor furniture
- An itemized list of all changes for which approval is requested
- Completed Checklist
- Digital copy of plans
- One (1) additional set of plans mounted on a foam board, including a color rendering of each elevation

Name of Historic District site is in, if any: _____
Date of HDC Approval, if any: _____
Date of Application for Preliminary Site Plan: _____
Date of Preliminary Site Plan Approval: _____
Date of Application for Final Site Plan: _____
Date of Final Site Plan Approval: _____
Date of Revised Final Site Plan Approval: _____
Date of Final Site Plan Approval: _____
Date of DRB approval, if any: _____
Date of Last SLUP Amendment: _____
Will proposed project require the division of platted lots? _____

5. Details of the Nature of Work Proposed (Site plan & design elements)

Proposed landscape material: N/A

11. Streetscape

Sidewalk width: EXISTING 10'-NEW 5' WHERE NEW SEATING DECK
Number of benches: EXISTING 1; TO REMAIN
Number of planters: 0
Number of existing street trees: 1
Number of proposed street trees: 0
Streetscape Plan submitted?: _____

Description of benches or planters: GREEN METAL BENCH

Species of existing street trees: N/A
Species of proposed street trees: N/A

12. Loading

Required number of loading spaces: LOADING IN REAR ALLEY
Typical angle of loading spaces: N/A
Screenwall material: N/A
Location of loading spaces on the site: REAR ALLEY

Proposed number of loading spaces: LOADING IN REAR ALLEY
Typical size of loading spaces: N/A
Height of screenwall: N/A

13. Exterior Trash Receptacles

Required number of trash receptacles: EXISTING TO REMAIN
Location of trash receptacles: REAR ALLEY
Screenwall material: N/A

Proposed number of trash receptacles: EXISTING TO REMAIN
Size of trash receptacles: EXISTING TO REMAIN
Height of screenwall: N/A

14. Mechanical Equipment

Utilities & Transformers:

Number of ground mounted transformers: EXISTING TO REMAIN
Size of transformers (LxWxH): N/A

Number of utility easements: N/A
Screenwall material: N/A

Location of all utilities & easements: N/A

Height of screenwall: N/A

Ground Mounted Mechanical Equipment:

Number of ground mounted units: EXISTING TO REMAIN
Size of ground mounted units (LxWxH): N/A

Screenwall material: N/A

Location of all ground mounted units: N/A

Height of screenwall: N/A

Rooftop Mechanical Equipment:

Number of rooftop units: EXISTING TO REMAIN
Type of rooftop units: N/A

Screenwall material: N/A
Location of screenwalls: N/A

Location of all ground mounted units: N/A
Size of rooftop units (LxWxH): N/A

Height of screenwall: N/A
Percentage of rooftop covered by mechanical units: N/A
Distance from units to rooftop units to screenwall: N/A

15. Accessory Buildings

Number of accessory buildings: _____
Location of accessory buildings: _____

Size of accessory buildings: _____
Height of accessory buildings: _____

16. Building Lighting

Number of light standards on building: N/A EXISTING TO REMAIN Type of light standards on building: EXISTING TO REMAIN
Size of light fixtures (LxWxH): N/A Height from grade: N/A

Maximum wattage per fixture: N/A Proposed wattage per fixture: N/A
Light level at each property line: N/A Number & location of holiday tree lighting receptacles: N/A

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 or Special Land Use Permit. The undersigned further states that they have reviewed the procedures and guidelines for site plan review and Special Land Use Permits in Birmingham and have complied with same. The undersigned will be in attendance at the Planning Board meeting when this application will be discussed.

Signature of Owner: _____

Date: 03-24-21

Print Name: S. M. ZIMMERMAN

Signature of Applicant: _____

Date: 3/18/21

Print Name: Antonino Cutraro

Signature of Architect: _____

Date: 03-16-2021

Print Name: SIMONE MAURO P.E.

Office Use Only

Application #: _____ Date Received: _____ Fee: _____

Date of Approval: _____ Date of Denial: _____ Accepted by: _____



SPECIAL LAND USE PERMIT APPLICATION CHECKLIST – PLANNING DIVISION

Applicant: Hospitality Birmingham LLC Case #: _____ Date: _____

Address: 115 Willits St Project: Mare Mediterranean

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.

Site Plan for Special Land Use Permit

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. A list of all requested elements / changes to the site plan;
- _____ 9. Any changes requested marked in color on the site plan and on all elevations of any building(s);
- _____ 10. A chart indicating the dates of any previous approvals by the Planning Board, Board of Zoning Appeals, Design Review Board, City Commission, or the Historic District Committee ("HDC");
- _____ 11. Existing and proposed layout of streets, open space and other basic elements of the plan;
- _____ 12. Existing and proposed utilities and easements and their purpose;
- _____ 13. Location of natural streams, regulated drains, 100-year flood plains, floodway, water courses, marshes, wooded areas, isolated preservable 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;
- _____ 14. General description, location, and types of structures on the site;
- _____ 15. Details of existing or proposed lighting, signage and other pertinent development features;
- _____ 16. 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
- _____ 17. 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:

- _____ 18. Name and address of applicant and proof of ownership;
- _____ 19. Name of Development (if applicable);
- _____ 20. Address of site and legal description of the real estate;
- _____ 21. A separate location map;
- _____ 22. Legend and notes, including a graphic scale, north point, date and all relevant dimensions;
- _____ 23. Color elevation drawings showing the proposed design for each façade of the building;
- _____ 24. Itemized list of all materials to be used, including exact size specifications, color, style, and the name of the manufacturer; and
- _____ 25. Elevation drawings of all screenwalls to be utilized in concealing any exposed mechanical or electrical equipment, trash receptacle areas and parking areas;
- _____ 26. Details of existing or proposed lighting, signage and other pertinent development features;
- _____ 27. A list of any requested design changes;
- _____ 28. Location of all exterior lighting fixtures, exact size specifications, color, style and the name of the manufacturer of all fixtures, and a photometry analysis of all exterior lighting fixtures showing light levels to all property lines; and
- _____ 29. Any other information requested in writing by the Planning Division, the Planning Board, or the Building Official deemed important to the development.



Notice Signs - Rental Application Community Development

1. Applicant

Name: Hospitality Birmingham LLC
Address: 115 Willits St. Birmingham, MI 48009
Phone Number: 248-343-3130
Fax Number: 248-733-1050

Property Owner

Name: Willits Retail LLC
Address: c/o Seligman and Associates Inc.
One Towne Square #1913, Southfield, MI 48076
Phone Number: 248-862-8000
Fax Number: _____

2. Project Information

Address/Location of Property: 115 Willits St.
Name of Development: Mare Mediterranean
Area in Acres: _____

Name of Historic District site is in, if any: N/A
Current Use: _____
Current Zoning: _____

3. Date of Board Review

Board of Building Trades Appeals: _____
City Commission: _____
Historic District Commission: _____
Planning Board: _____

Board of Zoning Appeals: _____
Design Review Board: _____
Housing Board of Appeals: _____

The undersigned states the above information is true and correct, and understands that it is the responsibility of the applicant to post the Notice Sign(s) at least 15 days prior to the date on which the project will be reviewed by the appropriate board or commission, and to ensure that the Notice Sign(s) remains posted during the entire 15 day mandatory posting period. The undersigned further agrees to pay a rental fee and security deposit for the Notice Sign(s), and to remove all such signs on the day immediately following the date of the hearing at which the project was reviewed. The security deposit will be refunded when the Notice Sign(s) are returned undamaged to the Community Development Department. Failure to return the Notice Sign(s) and/or damage to the Notice Sign(s) will result in forfeiture of the security deposit.

Signature of Applicant: [Signature]

Date: 3-31-21

Office Use Only

Application #: _____ Date Received: _____ Fee: _____

Date of Approval: _____ Date of Denial: _____ Reviewed by: _____

EXHIBIT "C"

TENANT'S MENU

From the Raw Bar

"Tartare al Mare"

Big Eye Tuna - Micro basil, serrano chili, orange
Wild Salmon - Fresno chili, cilantro

Whole Fish Chef Select "Sashimi Style" raw* MKP
Lime and cilantro and Lemon and thyme

Ceviche*

Loop de mer, tuna, lemon and fresh herbs

Crudo*

Chef's plate - a selection of raw fish sashimi style

Appetizers

Grilled Octopus

Served on fave bean puree

Calamari

Lightly fried squid with lemon olive oil dipping sauce

Maryland Blue Crab Cakes

Jumbo lump crab, bread crumbs and herbs topped with horseradish
sauce

Beef Tartare*

Prime raw beef and herbs

Beef Kabob
Grilled beef tenderloin pieces

Madagascar Shrimp
Sautéed in white wine, olive oil, herbs

Baked Stuffed Pastry
"Seafood" medley in béchamel or
"Veal" bechamel

From The Mare

"Whole Fish al Mare" MK per lb.
"Off the Grill" or "Baked under a bed of Sea Salt"
or "Off the Grill and Table Flambé"

Norwegian Wild Salmon
Baked in puff pastry

Whole Steamed East Coast Lobster MK per lb.
served with lemon and butter

Big Eye Tuna
Lightly seared rare or blue

Day Boat Scallops
Seared in brandy and butter

Fillet of Bronzino
Lightly floured and pan seared sea bream

Sword Fish Hawaii

Black Cod

Exhibit C – Page 2

"The Mare" and Couscous
A Medley of Shrimp, clams, mussels, calamari and monk fish in a light
tomato sauce

Paella Marisco "for 2"
An array of seafood - clams, shrimp, scallops, mussels in rice, peas
a Spanish tradition

From The Land

Colorado Lamb Chops
Grilled to order

NY Strip Steak Bone-in 18 oz. , American Wagyu
Grilled to order

Fillet Mignon 8 oz.
Grilled to order

Spaghetti Primavera
An array of seasonal vegetables in a light cream sauce tossed with
spaghetti

Chicken Moroccan
Chicken thigh and leg braised in traditional Moroccan tangine style of
cloves, lemon, onion served over a bed of couscous

Salads and Vegetables

Greek Salad
Tomatoes, cucumbers, onion, olives and Feta cheese in extra virgin
olive oil

Mixed Greens

Romaine, baby greens, carrot, fennel in balsamic vinaigrette

Heirloom Beet Salads

Oven roasted tricolored beets tossed in olive oil

Fingerling Potatoes oven roasted

Zucchini & Eggplant Tower

Lightly fried with tzatziki

Wild Mushrooms

An array of sautéed wild mushrooms

Grilled Vegetables

An array of seasonal vegetables

CONTRACT FOR TRANSFER OF A LIQUOR LICENSE

This Contract is entered into this ____ day of, _____, 2021, by and between Hospitality Birmingham, LLC whose address is 151 S Old Woodward, Suite 200, Birmingham, Michigan, 48009 and the **CITY OF BIRMINGHAM**, a Michigan Municipal Corporation, whose address is 151 Martin Street, Birmingham, Michigan 48009.

RECITALS:

WHEREAS, Willits Co-License, LLC and Mitchell's Entertainment Inc. wishes to transfer the ownership of its liquor license to Hospitality Birmingham, LLC; and

WHEREAS, local legislative approval is required by the **CITY OF BIRMINGHAM** for the transfer of a Class C liquor license pursuant to MCLA §436.1501 of the Michigan Liquor Control Code of 1998; and

WHEREAS, Hospitality Birmingham, LLC desires to enter into this Contract as an inducement to the **CITY OF BIRMINGHAM** to approve the request of the aforementioned transfer of the liquor license; and,

WHEREAS, the **CITY OF BIRMINGHAM** is relying upon this Contract in giving its approval to the transfer of the on-premises licenses as described herein.

NOW, THEREFORE, the parties agree as follows:

- Willits Co-License, LLC and Mitchell's Entertainment Inc.
1. Hospitality Birmingham, LLC, Birmingham, Michigan. Any transfer of the aforementioned license from Hospitality Birmingham, LLC to any other owner or location in the **CITY OF BIRMINGHAM** shall require the approval of the Birmingham City Commission. In addition, any expansion of the building location at 151 S Old Woodward, Suite 200 shall also require the approval of the Birmingham City Commission.
 2. Hospitality Birmingham, LLC further acknowledges that it must secure a special land use permit as required by the Birmingham City Code. It is further agreed that it shall comply with all provisions of the special land use permit, or any amendments thereto, as a condition of this contract. Hospitality Birmingham, LLC further acknowledges and agrees that a violation of any provision of the special land use permit is a violation of the terms of the contract entitling the City to exercise any or all of the remedies provided herein.
 4. Hospitality Birmingham, LLC further agrees that it shall not apply or seek from the Michigan Liquor Control Commission any permit endorsements to its liquor license whether available in the current Michigan Liquor Control Code or in future Michigan Liquor Control Codes, or amendments thereto, without the prior approval of the Birmingham City Commission.
 5. Hospitality Birmingham, LLC further agrees that it shall not seek any change in its license status whether such changes are available now in the current Michigan Liquor Control Code or in future Michigan Liquor Control Codes, or amendments thereto, without prior approval of the Birmingham City Commission.

6. Hospitality Birmingham, LLC also agrees that it shall adhere to all Federal, State and Local laws currently in effect or as subsequently amended or enacted.

7. Hospitality Birmingham, LLC agrees that its failure to follow any of the provisions herein shall be grounds for the Birmingham City Commission to seek the suspension, revocation or non-renewal of its liquor license. Hospitality Birmingham, LLC agrees that in addition to the City of Birmingham's right to seek suspension, revocation or non-renewal of its liquor license, it retains any and all rights to enforce this Contract that may be available to it in law or in equity. Hospitality Birmingham, LLC further agrees that it shall reimburse the City of Birmingham all of its costs and actual attorney fees incurred by the City of Birmingham in seeking the suspension, revocation or non-renewal of its liquor license as well as enforcing such other rights as may be available at law or in equity.

8. Hospitality Birmingham, LLC shall indemnify, defend and hold the City, its elected and appointed officials, employees and others working on behalf of the City of Birmingham, harmless from all claims, suits, actions or loss including all costs, and actual attorney fees whether arising under State or Federal statutes, or under common law for injury or alleged injury to any person or for damages or alleged damages to property or otherwise arising through, on account of, out of this Contract, or in any way associated with Hospitality Birmingham, LLC operating at 151 S Old Woodward, Suite 200, Birmingham, Michigan.

9. If the **CITY OF BIRMINGHAM** elects to have the dispute resolved by compulsory arbitration, it shall be settled pursuant to Chapter 50 of the Revised Judicature Act for the State of Michigan, with each of the parties appointing an arbitrator and the two thus appointing a third. The Oakland County Circuit Court or any Court having jurisdiction may render a judgment upon the award of the arbitrators. In the event that the **CITY OF BIRMINGHAM** elects not to have the matter in dispute arbitrated or fails to make such an election, any dispute between the parties may be resolved by the filing of a suit in the Oakland County Circuit Court. In the event that the **CITY OF BIRMINGHAM** feels aggrieved, it shall elect the method of resolving its dispute by either demanding that the matter be arbitrated or by filing a suit in the Oakland County Circuit Court.

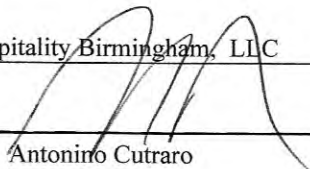
10. This contract shall be governed by and performed, interpreted and enforced in accordance with the laws of the State of Michigan.

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

12. This contract 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 OF BIRMINGHAM** and Hospitality Birmingham, LLC. 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 contract without prior approval, in writing, of the other. Any attempt at assignment without prior written consent shall be void and of no effect.

13. In the event Hospitality Birmingham, LLC fails to reimburse the City the costs and/or attorney fees as required hereby, or any part thereof, then said amount can be transferred to the tax roll in accordance with Section 1-14 of the Birmingham City Code.

IN WITNESS WHEREOF, the parties hereby have executed this Contract as of the date set forth above.

Hospitality Birmingham, LLC
By: 
Antonino Cutraro
Its: Member
Date: _____

CITY OF BIRMINGHAM

By: _____
Pierre Boutros, Mayor
Date: _____

By: _____
Alexandria Bingham, Clerk
Date: _____



MEMORANDUM

Planning Division

DATE: July 2, 2021

TO: Thomas Markus, City Manager

FROM: Jana L. Ecker, Planning Director

SUBJECT: Public Hearing for 176 S. Old Woodward – Sushi Japan –
Special Land Use Permit, Final Site Plan & Design Review

INTRODUCTION:

The applicant has submitted an application for a Special Land Use Permit and Final Site Plan and Design Review to allow for the operation of a new bistro, Sushi Japan.

BACKGROUND:

The subject site is located at 176 S. Old Woodward Street, in the former 2941 Mediterranean Street Food space. The parcel is zoned B4 (Business Residential) and D4 in the Downtown Birmingham Overlay District. The applicant is seeking approval to operate a new bistro named SUSHI JAPAN under Chapter 10, Alcoholic Liquors, of the City Code to allow the service of alcoholic beverages in the proposed bistro. Chapter 10 requires that the applicant obtain a Special Land Use Permit and approval from the City Commission to operate an establishment with a Bistro License within the City of Birmingham.

Accordingly, the applicant is required to obtain a recommendation from the Planning Board on the Final Site Plan and Special Land Use Permit, and then obtain approval from the City Commission for the Final Site Plan, Special Land Use Permit, and for the operation of a bistro.

On May 26th, 2021, the Planning Board recommended approval to the City Commission of the Special Land Use and Final Site Plan and Design to permit a bistro license to be used for Sushi Japan at 176 S. Old Woodward based on a review of the plans submitted and their adherence to Article 07, section 7.27 and Article 07, section 7.34 of the Zoning Ordinance with the following conditions:

1. The Planning Board approves of the proposed 65% storefront glazing;
2. The applicant comply with the requests of all City departments; and
3. A signed contract with the City that must be fully executed upon approval of the SLUP and bistro license.

The applicant has agreed to comply with the requests of all City departments and to enter into a contract with the City.

LEGAL REVIEW:

The City Attorney has reviewed this request and has no concerns with the form of the application.

FISCAL IMPACT:

There are no fiscal impacts for this agenda item.

SUMMARY:

The Planning Division recommends that the City Commission approve the Special Land Use Permit, Final Site Plan and Design Review application for 176 S. Old Woodward – Sushi Japan.

ATTACHMENTS:

Please find attached the following documents for your review:

- Draft Special Land Use Permit Resolution
- Planning Division Report
- Site/Design Plans
- Meeting Minutes
- Application & Supporting Documents

SUGGESTED RESOLUTION:

To approve the Special Land Use Permit, Final Site Plan and Design Review application for 176 S. Old Woodward – Sushi Japan.

SUSHI JAPAN
176 S. Old Woodward
Special Land Use Permit 2021

WHEREAS, SUSHI JAPAN filed an application pursuant to Article 7, section 7.34 of Chapter 126, Zoning, of the City Code to operate a food and drink establishment serving alcoholic liquors in the Downtown Birmingham Overlay District in accordance Article 3, Section 3.04(C)(10) 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 west side of S. Old Woodward, north of Merrill, and within the boundaries of the Birmingham Shopping District;

WHEREAS, The land is zoned B-4, and is located in the D-4 zone within the Downtown Birmingham Overlay District, which permits the operation of food and drink establishments serving alcoholic liquors with a Special Land Use Permit;

WHEREAS, Article 7, section 7.34 of Chapter 126, Zoning requires a Special Land Use Permit Amendment to be considered and acted upon by the Birmingham City Commission, after receiving recommendations on the site plan and design from the Planning Board for the proposed Special Land Use;

WHEREAS, The applicant submitted an application for a Special Land Use Permit, Final Site Plan and Design Review for SUSHI JAPAN to operate as a bistro at 176 S. Old Woodward;

WHEREAS, The Planning Board on May 26, 2021 recommended approval to the City Commission of the Special Land Use and Final Site Plan and Design to permit a bistro license to be used for Sushi Japan at 176 S. Old Woodward based on a review of the plans submitted and their adherence to Article 07, section 7.27 and Article 07, section 7.34 of the Zoning Ordinance with the following conditions:

1. The Planning Board approves of the proposed 65% storefront glazing;
2. The applicant comply with the requests of all City departments; and
3. A signed contract with the City that must be fully executed upon approval of the SLUP and bistro license.

WHEREAS, The applicant has agreed to comply with the requests of all City departments and to enter into a contract with the City;

WHEREAS, The Birmingham City Commission has reviewed SUSHI JAPAN'S Special Land Use Permit application and the standards for such review as set forth in Article 7, section 7.36 of Chapter 126, Zoning, of the City Code;

NOW, THEREFORE, BE IT RESOLVED, The Birmingham City Commission finds the standards imposed under the City Code have been met, subject to the conditions below, and that SUSHI JAPAN'S application for a Special Land Use Permit, Final Site Plan and Design Review at 176 S. Old Woodward is hereby approved;

BE IT FURTHER RESOLVED, That the City Commission determines that to assure continued compliance with Code standards and to protect public health, safety, and welfare, this Special Land Use Permit is granted subject to the following conditions:

1. SUSHI JAPAN will close outdoor dining areas at midnight each day of the week;
2. The Planning Board and City Commission approve of the proposed 65% storefront glazing;
3. The applicant comply with the requests of all City departments;
4. The applicant enter into a contract with the City that must be fully executed upon approval of the SLUP and bistro license;
5. SUSHI JAPAN shall abide by all provisions of the Birmingham City Code; and
6. The Special Land Use Permit may be canceled by the City Commission upon finding that the continued use is not in the public interest.

BE IT FURTHER RESOLVED, That failure to comply with any of the above conditions shall result in termination of the Special Land Use Permit.

BE IT FURTHER RESOLVED, Except as herein specifically provided, SUSHI JAPAN 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 be subsequently amended. Failure of SUSHI JAPAN to comply with all the ordinances of the City may result in the Commission revoking this Special Land Use Permit.

MAY IT BE FURTHER RESOLVED that SUSHI JAPAN is recommended for the operation of a food and drink establishment serving alcoholic beverages on premises, above all others, subject to final inspection.

I, Alexandria Bingham, City Clerk 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 July 12, 2021.

Alexandria Bingham
City Clerk

CONTRACT FOR A PRINCIPAL SHOPPING DISTRICT LIQUOR LICENSE
(BISTRO)

This Contract is entered into this ____ day of _____, 20____, by and between Sushi Japan Inc., a Michigan corporation, whose address is 4109 Rockingham Drive, Troy, Michigan 48085, (Licensee) and the **CITY OF BIRMINGHAM**, a Michigan Municipal Corporation, whose address is 151 Martin Street, Birmingham, Michigan 48012 (City).

R E C I T A L S:

WHEREAS, Licensee wishes to obtain a liquor license pursuant to MCLA 436.1521a(1)(b); and

WHEREAS, local legislative approval is required by the **CITY OF BIRMINGHAM** for the issuance of a liquor license pursuant to MCLA §436.152a(1)(b) of the Michigan Liquor Control Code of 1998; and

WHEREAS, Licensee desires to enter into this Contract as an inducement to the **CITY OF BIRMINGHAM** to approve the request of the aforementioned issuance of the liquor license; and,

WHEREAS, the **CITY OF BIRMINGHAM** is relying upon this Contract in giving its approval to the issuance of the on-premises licenses as described herein.

NOW, THEREFORE, the parties agree as follows:

1. Licensee shall be permitted to obtain a liquor license for use solely at the Property. Any transfer of the aforementioned license from the Property to any other location in the CITY OF BIRMINGHAM shall require the approval of the Birmingham City Commission in accordance with Section 10-83. In addition, any expansion of the building location at the Property shall also require the approval of the Birmingham City Commission.
2. Licensee does hereby agree that it shall establish a bistro, as defined in Birmingham City Code Chapter 126, Zoning, Article 9, section 9.02, at the Property within 18 months from the date of Special Land Use Permit approval granted by the Birmingham City Commission. Licensee agrees that the bistro must be open and fully operational within this time period, or approval of the Special Land Use Permit will automatically be revoked by the City.
3. Licensee further acknowledges that it must secure a special land use permit for a bistro as required by the Birmingham City Code. It is further agreed that it shall comply with all provisions of the special land use permit, or any amendments thereto, as a condition of this contract. Licensee further acknowledges and agrees that a violation of any provision of the special land use permit or the Michigan Liquor Control Code is a

violation of the terms of the contract entitling the City to exercise any or all of the remedies provided herein.

4. Licensee acknowledges that no modifications to the site plan, floor plan, elevations or operation of the bistro may be made unless approved by the City Commission through a Special Land Use Permit Amendment as required in the Zoning Ordinance. Modifications include, but are not limited to, name changes, ownership changes, remodeling, changes in the number of interior or exterior seats, the use of eisenglass and other enclosure materials on any outdoor dining area, relocation or addition of bar, etc.

5. Licensee acknowledges that it shall have a duty of continuing compliance with regards to off-street parking as required in the Zoning Ordinance, and further agrees to resolve any future parking issues that may arise, including but not limited to parking overflow and encroachment into residential areas or public parking facilities, to the satisfaction of the City or the Special Land Use Permit may be cancelled by the City Commission.

6. Licensee further acknowledges that outdoor dining is seasonally permitted from April 1st through November 15th only, with a valid Outdoor Dining Permit. The use of an enclosure system(s) does not allow the outdoor dining season to be extended.

7. Licensee further agrees that it shall not apply or seek from the Michigan Liquor Control Commission any permit endorsements to its liquor license whether available in the current Michigan Liquor Control Code or in future Michigan Liquor Control Codes, or amendments thereto, without the prior approval of the Birmingham City Commission.

8. Licensee further agrees that it shall not seek any change in its license status/class whether such changes are available now in the current Michigan Liquor Control Code or in future Michigan Liquor Control Codes, or amendments thereto, without prior approval of the Birmingham City Commission.

9. Licensee agrees that it shall adhere to all Federal, State and Local laws currently in effect or as subsequently amended or enacted.

10. Licensee agrees that its failure to follow any of the provisions herein shall be grounds for the Michigan Liquor Control Commission to suspend, revoke or not renew its liquor license and/or for the Birmingham City Commission to revoke the special land use permit, either of which would prohibit Licensee from operating the bistro. Licensee agrees that in addition to the City of Birmingham's right to seek suspension, revocation or non-renewal of its liquor license and/or revocation of the special land use permit, the City retains any and all rights to enforce this Contract that may be available to it in law or in equity. Licensee further agrees that it shall reimburse the City all of its costs and actual attorney fees incurred by the City in seeking the suspension, revocation or non-renewal of its liquor license and revocation of the special land use

permit, as well as enforcing such other rights as may be available at law and/or in equity.

11. To the fullest extent permitted by law, Licensee and any entity or person for whom Licensee is legally liable, agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the City, its elected and appointed officials, employees and volunteers and others working on behalf of the City against any and all claims, demands, suits, or loss, including all costs connected therewith, including all costs and actual attorney fees, and 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 behalf of the City, by reason of personal injury, including bodily injury, death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with Licensee's operation of a bistro at the Property.

12. In the event Licensee fails to reimburse the City the costs and/or attorney fees as required herein, or any part thereof, then said amount could be transferred to the tax roll in accordance with Section 1-14 of the Birmingham City Code.

13. Any disputes arising under this Contract, not within the jurisdiction of the Michigan Liquor Control Commission, shall be settled either by commencement of a suit in Oakland County Circuit Court or by compulsory arbitration, at the election of the City. The Licensee shall notify the City of any dispute it has arising out of this Contract and shall demand that the City elect whether the dispute is to be resolved by submitting it to compulsory arbitration or by commencement of a suit in Oakland County Circuit Court. The City shall make its election in writing within thirty (30) days from the receipt of such notice. If the City elects to have the dispute resolved by compulsory arbitration, it shall be settled pursuant to Chapter 50 of the Revised Judicature Act for the State of Michigan, with each of the parties appointing one arbitrator and the two thus appointed appointing a third. In the event the City fails to make such an election, any dispute between the parties may be resolved by the filing of a suit in the Oakland County Circuit Court.

14. This Contract shall be governed by and performed, interpreted and enforced in accordance with the laws of the State of Michigan.

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

16. This Contract 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 OF BIRMINGHAM and Licensee. 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 contract without prior approval, in writing, of the other. Any attempt at assignment without prior written consent shall be void and of no effect.

IN WITNESS WHEREOF, the parties hereby have executed this Contract as of the date set forth above.

By: Ximing Yu
Ximing Yu, Sushi Japan Inc.
Its: Member

Date: 7/6/2021

CITY OF BIRMINGHAM

By: _____
Pierre Boutros, Mayor

Date: _____

By: _____
Alexandra Bingham,
City Clerk

Date: _____



MEMORANDUM

Planning Division

DATE: May 21, 2021

TO: Planning Board

FROM: Jana L. Ecker, Planning Director

SUBJECT: 176 S. Old Woodward, Sushi Japan – Special Land Use Permit and Final Site Plan Review

Executive Summary

The subject site is located at 176 S. Old Woodward Street, in the former 2941 Mediterranean Streetfood space. The parcel is zoned B4 (Business Residential) and D4 in the Downtown Birmingham Overlay District. The applicant is seeking approval to operate a new bistro named SUSHI JAPAN.

Thus, at this time the applicant is seeking approval of a Bistro License under Chapter 10, Alcoholic Liquors, of the City Code to allow the service of alcoholic beverages in the proposed bistro. Chapter 10 requires that the applicant obtain a Special Land Use Permit and approval from the City Commission to operate an establishment with a Bistro License within the City of Birmingham. Accordingly, the applicant is required to obtain a recommendation from the Planning Board on the Final Site Plan and Special Land Use Permit, and then obtain approval from the City Commission for the Final Site Plan, Special Land Use Permit, and for the operation of a Bistro License.

1.0 Land Use and Zoning

- 1.1 Existing Land Use – Sushi Japan is proposed in the existing two story portion of the Merrillwood Building. The most recent tenant was 2941 Mediterranean Streetfood on the ground floor where Sushi Japan is proposed.
- 1.2 Existing Zoning – The property is currently zoned B4 (Business Residential). The existing use and surrounding uses appear to conform to the permitted uses of the Zoning Ordinance.
- 1.3 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.

	North	South	East	West
Existing Land Use	Retail & Commercial	Retail, Commercial & Residential	Retail, Commercial & Residential	Retail, Commercial & Residential
Existing Zoning District	B4, Business Residential	B4, Business Residential	B4, Business Residential	B4, Business Residential
Overlay Zoning District	D4	D4	D4	D4

2.0 Use, Setback and Height Requirements

The applicant is not proposing any changes to the footprint of the existing building. The proposed bistro use is permitted in the B4 zone district.

3.0 Bistro Requirements

Article 9, section 9.02, Definitions, of the Zoning Ordinance defines a bistro as a restaurant with a full service kitchen with interior seating for no more than 65 people and additional seating for outdoor dining. Sushi Japan is proposing 54 seats in the main dining room, including 6 seats at the bar. A total of 18 outdoor dining seats are proposed; 12 immediately adjacent to the building, and 6 seats east of the sidewalk next to the curblin and on street parking zone. Sushi Japan will be a new restaurant applying for a new bistro license.

The Zoning Ordinance permits bistros in the Downtown Birmingham Overlay District, provided the following conditions are met:

- (a) No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats;
- (b) Alcohol is served only to seated patrons, except those standing in a defined bar area;
- (c) No dance area is provided;
- (d) Only low key entertainment is permitted;
- (e) Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
- (f) A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1' and 8' in height;

- (g) All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
- (h) Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, enclosed platform must be erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.

As stated, Sushi Japan is proposing 6 seats at a bar located at the back of the bistro. No direct connect additional bar permit will be permitted from this license if approved. Alcohol may only be served to seated patrons and those standing in the bar area. The applicant has provided a designated bar area, which includes 6 seats at the bar and standing room behind the seating.

Sushi Japan does not propose any dancing or entertainment.

Sushi Japan is proposing to have 54 seats in the restaurant, including dining tables in the storefront space lining S. Old Woodward. A total of 8 seats line the storefront space along N. Old Woodward. **The applicant is proposing to maintain the existing storefront, which has a glazing percentage of 65% between 1' and 8' above grade. The applicant will be required to increase the storefront glazing to 70% or obtain a variance from the Board of Zoning Appeals.** However, in accordance with Article 4, section 4.90 of the Zoning Ordinance and to allow flexibility in design, the Planning Board may modify the glazing requirements by a majority vote provided that the following conditions are met:

- a. The subject property must be in a zoning district that allows mixed uses;
- b. The scale, color, design and quality of materials must be consistent with the building and site on which it is located;
- c. The proposed development must not adversely affect other uses and buildings in the neighborhood;
- d. Glazing above the first story shall not exceed a maximum of 70% of the façade area;
- e. Windows shall be vertical in proportion.

Thus, the Planning Board may vote to modify the glazing requirements for Sushi Japan upon finding that each of the above requirements are met.

The applicant will be required to enter into a contract with the City that must be fully executed upon approval of the SLUP and bistro license.

As required, Sushi Japan is proposing outdoor dining along S. Old Woodward. A total of 18 outdoor dining seats are proposed, of which 12 are proposed immediately adjacent to the building, and 6 of which are proposed east of the sidewalk along the curb line next to the on street parking zone. The outdoor dining areas are proposed to be enclosed with a combination of landscape planters and 42" high steel railings powder coated in black. All 4 planters

proposed are constructed of steel. The two planters adjacent to the building 14" in height, and the 2 proposed next to the on street parking are taller, however a specific height was not provided. Trellis' are proposed for the two planters adjacent to the building, and plantings of English Ivy, Mandevilla Climbing vine, Verbenum, ZZZ Plant, Impatiens and Petunias are proposed. The combined height of each planter/trellis/plantings will not exceed 42" in height. **The applicant will be required to replace the proposed English Ivy with another plant, as English Ivy is a prohibited planting in accordance with landscape standards of the Zoning Ordinance.**

The applicant has advised that the proposed hours of operation for Sushi Japan are as follows:

Monday - Thursday, 11:00 a.m. – 10:30 p.m.

Friday, Saturday, 11:00 a.m. – 11:00 p.m.

Sunday, 11:00 a.m. – 9:30 p.m.

4.0 Screening and Landscaping

- 4.1 Mechanical Screening –The applicant is proposing to use existing mechanical equipment on the rear of the building previously used by 2941 Mediterranean Streetfood. The only addition is a new exhaust fan on the top of existing ductwork. **None of the existing mechanical equipment is screened. The Planning Board may wish to have all mechanical equipment visible from the alley painted to match the color of the brick on the rear wall of the building.** No new rooftop mechanical equipment is proposed.
- 4.2 Dumpster Screening – The application does not include the addition of a new dumpster or enclosure. **The applicant intends to share the use of the existing trash dumpsters behind the Merrillwood Building, which are currently unscreened. However, in accordance with section 90-30 of the City Code, no more than 6 businesses may share trash facilities. Thus, the applicant will be required to provide details on the businesses sharing the trash facility to ensure compliance.**
- 4.3 Parking Lot Screening – The applicant is not required to provide any off street parking as the site is located within the Parking Assessment District.
- 4.4 Landscaping – There is currently 1 street tree existing along the frontage of 176 S. Old Woodward, and this tree is proposed to remain. In accordance with Article 4, section 4.20 LA-01; street trees are required along all streets, at a rate of at least 1 street tree / 40' of street frontage unless it is determined by the staff arborist not to be feasible. This requirement has been met.

The applicant is also proposing the addition of 4 steel planters, with plantings of English Ivy, Mandevilla Climbing Vine, Verbenum, ZZZ Plant, Impatiens and Petunias. The combined height of each planter/trellis/plantings will not exceed 42" in height. **The applicant will be required to replace the proposed English Ivy with**

another plant, as English Ivy is a prohibited planting in accordance with landscape standards of the Zoning Ordinance.

5.0 Parking, Loading, Access, and Circulation

- 5.1 Parking – As stated above, the applicant is not required to provide any parking spaces for commercial or retail uses as the site is located in the Parking Assessment District. However, the site plan shows one designated parking space behind the building off of the Pierce Street alley.
- 5.2 Loading – No loading spaces are required for the proposed bistro as it is less than 5,000 sq.ft. in size.
- 5.3 Vehicular Access & Circulation – There is a small parking lot to the rear of the building adjacent to the Merrillwood Building off of the Pierce Street alley, where 1 parking space has been designated for use by Sushi Japan. Most patrons that will arrive at Sushi Japan will park on the street or in a City parking garage to access the proposed bistro.
- 5.4 Pedestrian Access & Circulation – There is a City sidewalk running along S. Old Woodward that provides access to the front door for Sushi Japan. The applicant is proposing to maintain the required 5' of pedestrian pathway along the public sidewalk.
- 5.5 Streetscape – As stated above, there is an existing sidewalk along S. Old Woodward. The applicant is proposing to maintain a continuous 5' wide pedestrian pathway between the outdoor dining areas. The sidewalk is broom finish concrete, and the furnishing zone between the sidewalk and the curb is currently exposed aggregate concrete as required. There are no City standard benches, trash receptacles or pedestrian scale street lights existing in front of the proposed Sushi Japan storefront, nor are any proposed.

6.0 Lighting

The application submitted for Sushi Japan bistro states that there are 4 existing “wall washer” lights located on the east elevation, spaced between the existing door and windows. These existing lights do not appear to be cut off fixtures. No new lighting is proposed.

7.0 Departmental Reports

- 7.1 Engineering Division – The Engineering Department will provide comments for the May 26, 2021 Planning Board meeting.
 - 7.2 Department of Public Services – The DPS will provide comments for the May 26, 2021 Planning Board meeting.
 - 7.3 Fire Department – The Fire Department has no concerns regarding this proposal.
-

7.4 **Police Department** - The Police Department has no concerns regarding this proposal.

7.5 **Building Department** –The Building Department has no concerns at this time.

8.0 Design Review

The applicant has provided photos of the storefront of the portion of the two story building in which Sushi Japan is proposed. The black awnings on the Sushi Japan façade were approved as part of the exterior renovations for the Merrillwood Building as a whole several years ago. In addition, the Sushi Japan sign was approved administratively through the Historic District Commission process as the applicant plans to open the restaurant without alcohol service until a bistro SLUP may be approved.

Signage

At this time, the applicant is not proposing any new signage.

Outdoor Dining Area

Outdoor cafés must comply with the site plan criteria as required by Article 04, Section 4.42 OD-01, Outdoor Dining Standards. Outdoor cafes are permitted immediately adjacent to the principal use and are subject to site plan review and the following conditions:

1. Outdoor dining areas shall provide and service refuse containers within the outdoor dining area and maintain the area in good order.
 2. All outdoor activity must cease at the close of business, or as noted in Subsection 3 below, whichever is earlier.
 3. When an outdoor dining area is immediately adjacent to any single-family or multiple-family residential district, all outdoor activity must cease at the close of business or 12:00 a.m., whichever is earlier.
 4. All tables and chairs provided in the outdoor dining area shall be constructed primarily of metal, wood, or material of comparable quality.
 5. Table umbrellas shall be considered under Site Plan Review and shall not impede sight lines into a retail establishment, pedestrian flow in the outdoor dining area, or pedestrian or vehicular traffic flow outside the outdoor dining area.
 6. For outdoor dining located in the public right-of-way:
 - (a) All such uses shall be subject to a license from the city, upon forms provided by the Community Development Department, contingent on compliance with all city codes, including any conditions required by the Planning Board in conjunction with Site Plan approval.
 - (b) In order to safeguard the flow of pedestrians on the public sidewalk, such uses shall maintain an unobstructed sidewalk width as required by the Planning Board, but in no case less than 5 feet.
 - (c) An elevated, ADA compliant, enclosed platform may be erected on the street adjacent to an eating establishment to create an outdoor dining area
-

- if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.
- (d) No such facility shall erect or install permanent fixtures in the public right-of-way.
 - (e) Commercial General Liability Insurance must be procured and maintained on an "occurrence basis" with limits of liability not less than \$1,000,000 per occurrence combined single limit, personal injury, bodily injury and property damage. This coverage shall include an endorsement naming the city, including all elected and appointed officials, all employees, all boards, commissions and/or authorities and board members, as an additional insured. This coverage must be primary and any other insurance maintained by the additional insureds shall be considered to be excess and non-contributing with this insurance, and shall include an endorsement providing for a thirty (30) day advance written notice of cancellation or non-renewal to be sent to the city's Director of Finance.

The applicant has provided a trash receptacle south of the restaurant entry door, and another within the outdoor dining area adjacent to the on street parking zone

The applicant has provided the following proposed hours of operation as noted above:

Monday - Thursday, 11:00 a.m. – 10:30 p.m.
Friday, Saturday, 11:00 a.m. – 11:00 p.m.
Sunday, 11:00 a.m. – 9:30 p.m.

The proposed outdoor dining areas are not immediately adjacent to multi-family zoned property.

The applicant has provided specification sheets for the proposed tables and chairs, and is proposing 6 regular height two top Nardi Anthracite Cube 70 Tables, and 3 bar height two top Nardi Anthracite Cube 70 tables for the outdoor dining area. The tables have a black resin top and black lacquered aluminum legs, and are 27.8" square.

The applicant is also proposing 12 regular height Nardi Anthracite Bora Bistrot Chairs, and 6 bar height Nardi Anthracite Bora Bistrot chairs. The chairs are constructed of black fiberglass resin, and are 23" in width with back rests. The regular height tables and chairs are proposed along the building, and the bar height seating is proposed for the outdoor dining area west of the sidewalk and adjacent to the curb and the on street parking spaces. A total of 18 seats of outdoor dining are proposed between the two outdoor dining areas.

There are no umbrellas proposed for the outdoor dining areas.

The outdoor dining areas are proposed in the public right-of-way, on the sidewalk extending to the curb. No on street parking spaces are proposed for outdoor dining use.

The applicant will be required to obtain an Outdoor Dining License and enter into a contract with the City if the SLUP is approved by the City Commission.

9.0 Selection Criteria for Bistro Licenses

Chapter 10, Alcoholic Liquors, section 10-82 provides a limitation on the number of Bistro Licenses that the City Commission may approve, and provides selection criteria to assist the Planning Board and City Commission in evaluating applications for Bistro Licenses. For existing restaurants in the City of Birmingham, section 10-82 states:

- (a) **Maximum Number of Bistro Licenses.** The city commission may approve a maximum number of license transfers for Bistro licenses per calendar year as follows:

New establishments. Two (2) Bistro Licenses may be approved each calendar year to applicants who do not meet the definition of existing establishments as set forth in (a)(1) above. In addition to the usual criteria used by the city commission for liquor license requests, the commission shall consider the following non-exclusive list of criteria to assist in the determination of which of the new establishment applicants, if any, should be approved:

- The applicant's demonstrated ability to finance the proposed project.
- The applicant's track record with the city including responding to city and/or citizen concerns.
- Whether the applicant has an adequate site plan to handle the bistro liquor license activities.
- Whether the applicant has adequate health and sanitary facilities.
- The establishment's location in relation to the determined interest in the establishment of bistros in the Overlay District and the Triangle District.
- The extent that the cuisine offered by applicant is represented in the city.
- Whether the applicant has outstanding obligations to the city (ie property taxes, utilities, etc.).

Sushi Japan's bistro application was one of five bistro applications pre-selected for review by the City Commission for the 2021 calendar year. Sushi Japan will be a new establishment. The selection criteria provided above must be considered to provide a recommendation to the City Commission as to whether or not to approve the operation of a bistro.

The applicant has not provided specific financial information indicating assets available for the opening of Sushi Japan. However, the applicant has submitted an overview of their restaurant experience, and has indicated that they will be using personal funds to finance the proposed bistro. Counsel for the applicant has indicated that bank statements demonstrate the financial capability to open and operate the proposed bistro.

The applicant has significant restaurant experience, but has not previously operated a restaurant or bistro in Birmingham.

The applicant has proposed an adequate site plan to demonstrate the capability of handling the bistro liquor license activities. A full service kitchen and bar are proposed, along with 54 indoor seats and

18 outdoor dining seats. The proposed outdoor dining areas do provide for safe and efficient pedestrian flow. Adequate health and sanitary facilities are proposed.

Sushi Japan is proposed to be located within the Downtown Birmingham Overlay District. The City is interested in attracting bistro operations within the Overlay District, the Triangle District and the Rail District; therefore this operation fits into the parameters outlined by the Bistro Ordinance guidelines.

Sushi Japan is proposing to specialize in Chinese inspired cuisine, including a particular emphasis on ramen noodle dishes and other Chinese and Japanese inspired dishes, including appetizers, salads, entrees and desserts. Please see the menu included that demonstrates food offerings not currently represented in the City.

10.0 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.

11.0 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.

12.0 Suggested Action

Based on a review of the site plans submitted, the Planning Division recommends that the Planning Board recommend approval of Final Site Plan and a SLUP to the City Commission to permit a Bistro License for Sushi Japan at 176 S. Old Woodward with the following conditions:

1. A signed contract with the City that must be fully executed and an Outdoor Dining License obtained upon approval of the SLUP and bistro license;
2. The Planning Board approves of the proposed 65% storefront glazing, or the applicant increase the storefront glazing to 70% or obtain a variance from the Board of Zoning Appeals;
3. The applicant paint all mechanical equipment on the rear façade of the building to match the brick of the wall;
4. The applicant provide screening panels on either side of the trash disposal area adjacent to the alley; and
5. The applicant comply with the requests of all City departments.

13.0 Sample Final Site Plan & Design Review Motion Language

The Planning Board recommends approval of the Final Site Plan and Design Review to the City Commission to permit a bistro license for Sushi Japan at 176 S. Old Woodward with the following conditions:

1. The Planning Board approves of the proposed 65% storefront glazing, or the applicant increase the storefront glazing to 70% or obtain a variance from the Board of Zoning Appeals;
2. The applicant paint all mechanical equipment on the rear façade of the building to match the brick of the wall;
3. The applicant provide screening panels on either side of the trash disposal area adjacent to the alley; and
4. The applicant comply with the requests of all City departments.

OR

Motion to recommend DENIAL of the Final Site Plan and Design Review to the City Commission for 176 S. Old Woodward, Sushi Japan for the following reasons:

1. _____
-

2. _____
3. _____
4. _____
5. _____

OR

Motion to recommend POSTPONEMENT of the Final Site Plan and Design Review for 176 S. Old Woodward, Sushi Japan.

14.0 Sample SLUP Motion Language

Motion to recommend APPROVAL of the SLUP to the City Commission to permit a bistro license for Sushi Japan at 176 S. Old Woodward with the following conditions:

1. A signed contract with the City that must be fully executed upon approval of the SLUP and bistro license;
2. The applicant comply with the requests of all City departments.

OR

Motion to recommend DENIAL of the SLUP to the City Commission for 176 S. Old Woodward, Sushi Japan for the following reasons:

1. _____
2. _____
3. _____
4. _____

OR

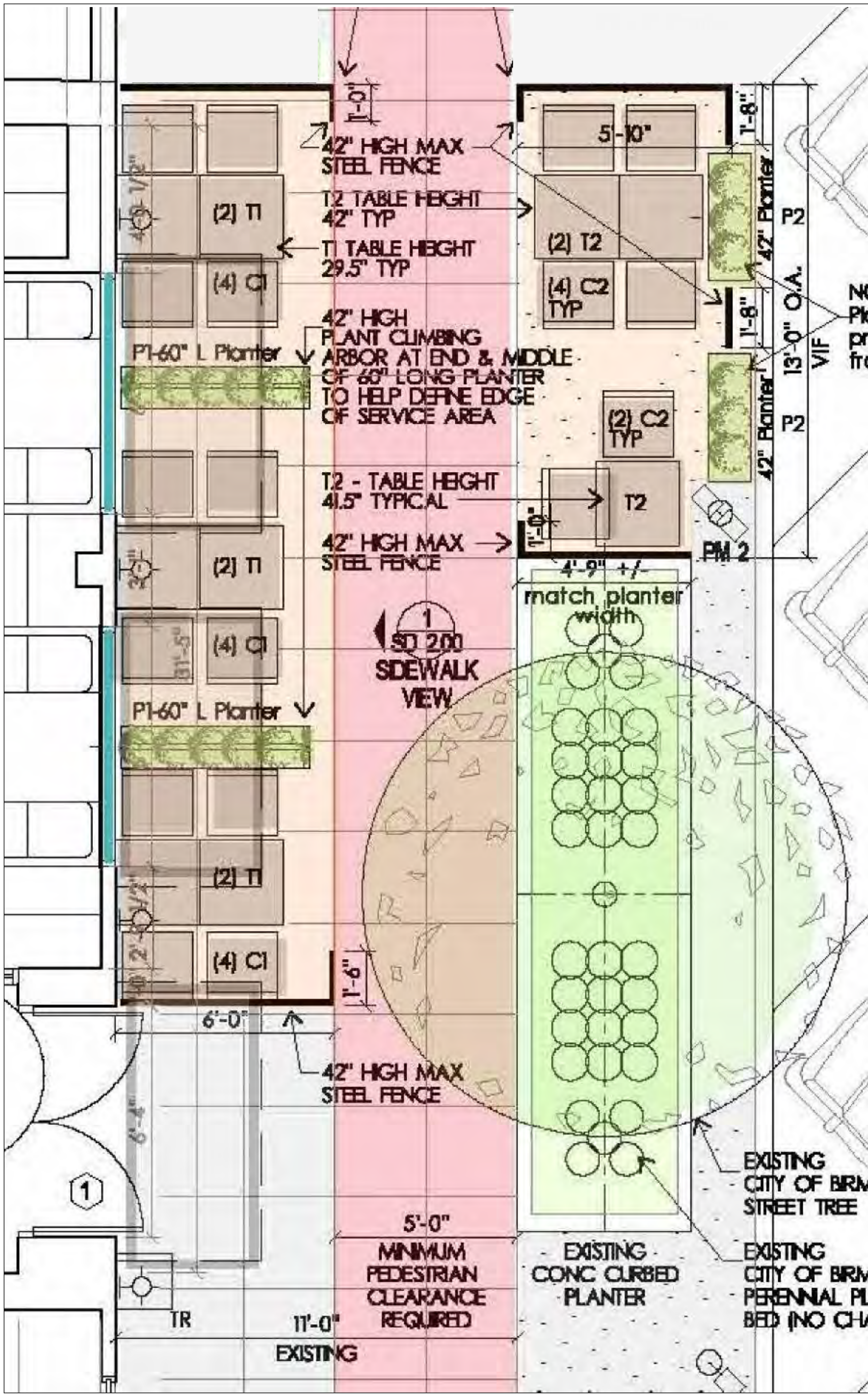
Motion to recommend POSTPONEMENT of the SLUP for 176 S. Old Woodward, Sushi Japan.

Sushi Japan Restaurant



SLUP / Bistro Application
176 South Old Woodward, Birmingham, Michigan

Architect's Project Number -010-2021



Bistro Plan Detail



Bistro Elevation From S. Oldwoodward

Zoning Information
Building Area / Building Criteria

Zoning = B4 Downtown Overlay District = D5 Part of Downtown Birmingham Parking Assessment District	
Building Codes: Michigan Building Code 2015 / Michigan Rehabilitation Code 2015	
Use Group: B2 - Business	
Number of Stories Existing Restaurant Space	1
Existing Level 1 Restaurant Net Area	2000 sf net interior area
Proposed Bistro Area 1 = 150 sf	
Proposed Bistro Area 2 = 70 sf	
Legal Description: See Site Plan - Sheet SD 0.00	

PLANNING BOARD
SLUP/BISTRO REVIEW

Sheet Schedule

●	T 1.00	TITLE SHEET & ARCHITECTURAL SITE PLAN
●	SD 0.00	SURVEY / SITE INFORMATION
●	SD 1.00	RESTAURANT FLOOR PLAN / OUTDOOR BISTRO PLAN
●	SD 2.00	EXTERIOR ELEVATIONS
●	SD 3.00	FURNITURE, FIXTURES, VEGETATION SHEET

seal:

L|Z|G
Architects

Luckenbach|Ziegelman|Gardner
Architects

555 S. Old Woodward Ave., Suite 27L
Birmingham, Michigan 48009

email:
gardner-archi@sbcglobal.net

tele:
248.642.3990

issue date

SD SITE PLAN REVIEW APRIL 14, 2021
SLUP/BISTRO APPL

sheet title:

TITLE SHEET
SHEET SCHEDULE
ZONING
INFORMATION

project:

SUSHI JAPAN
Sushi Japan
Restaurant
Outdoor
Dining

project address:

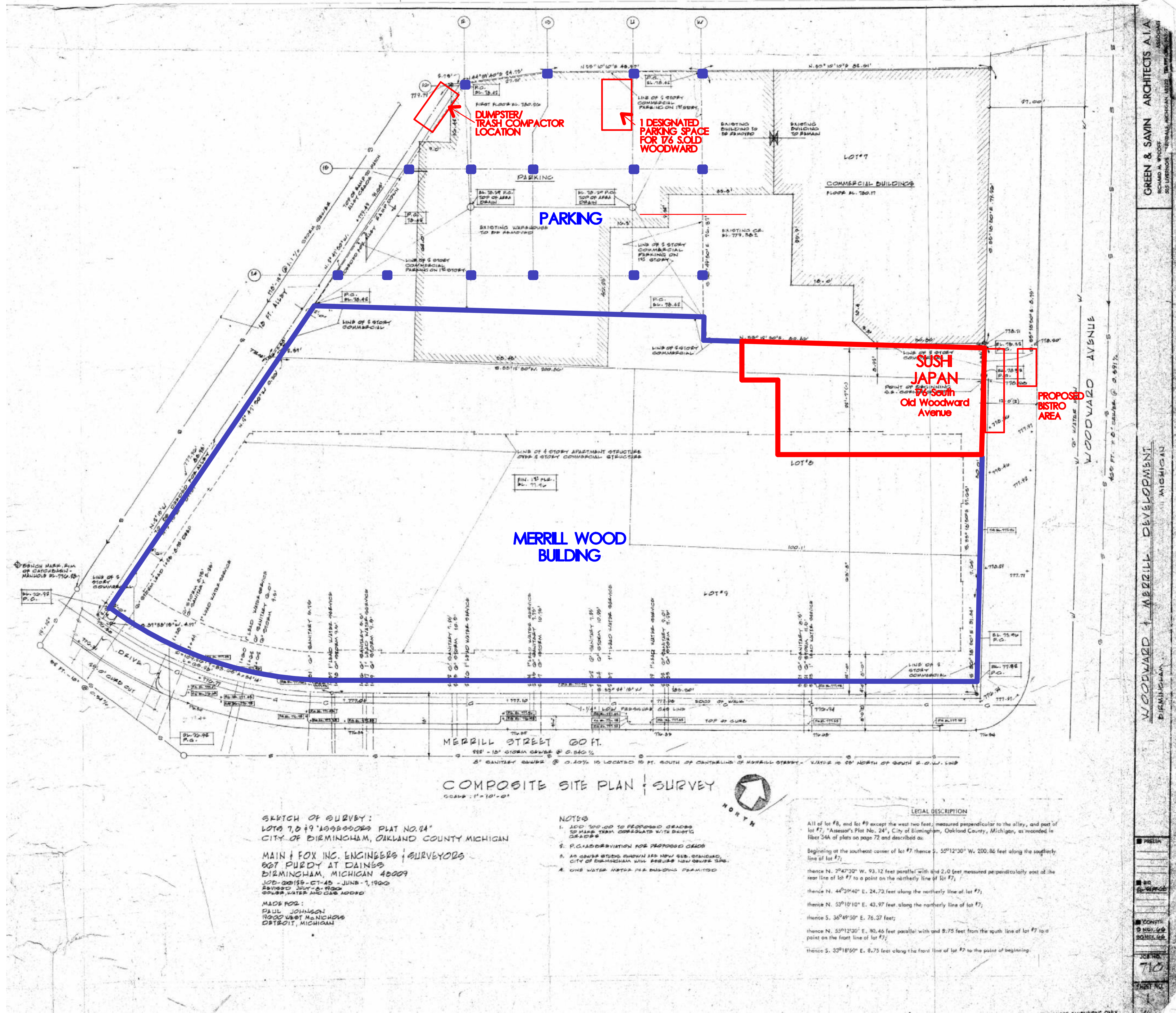
176 South Old Woodward Ave.
Birmingham, Michigan

designed
drawn JG
coordination checked
checked approved

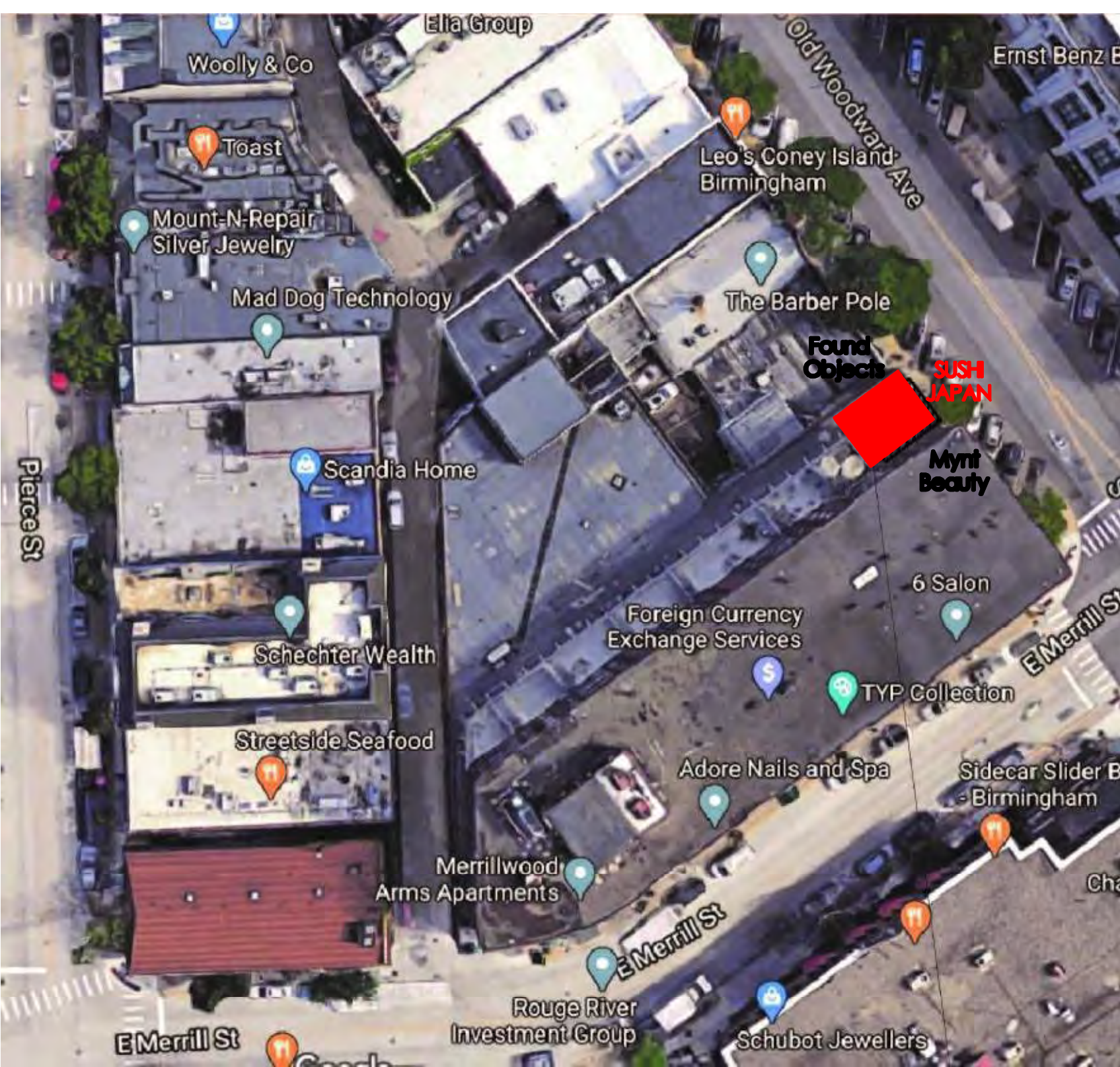
project number:
010-2021

sheet number:

T-1.00



1 SURVEY / SITE PLAN
SD 0.00 SCALE: 1/16"=1'-0"



2 ADJACENT PROPERTIES
SD 0.00 NTS



3 LOCATION MAP
SD 0.00 NTS

seal:

L|Z|G Architects

Luckenbach|Ziegelman|Gardner Architects

555 S. Old Woodward Ave, Suite 27L
Birmingham, Michigan 48009

email:
gardner-arch@sbglobal.net

tele:
248.642.3990

issue date

SD SITE PLAN REVIEW APRIL 14, 2021
SLUP/BISTRO APPL

sheet title:

LOCATION MAP SURVEY SITE INFORMATION

project:

SUSHI JAPAN

Sushi Japan Restaurant Outdoor Dining

project address:

176 South Old Woodward Ave.
Birmingham, Michigan

designed

drawn

coordination checked

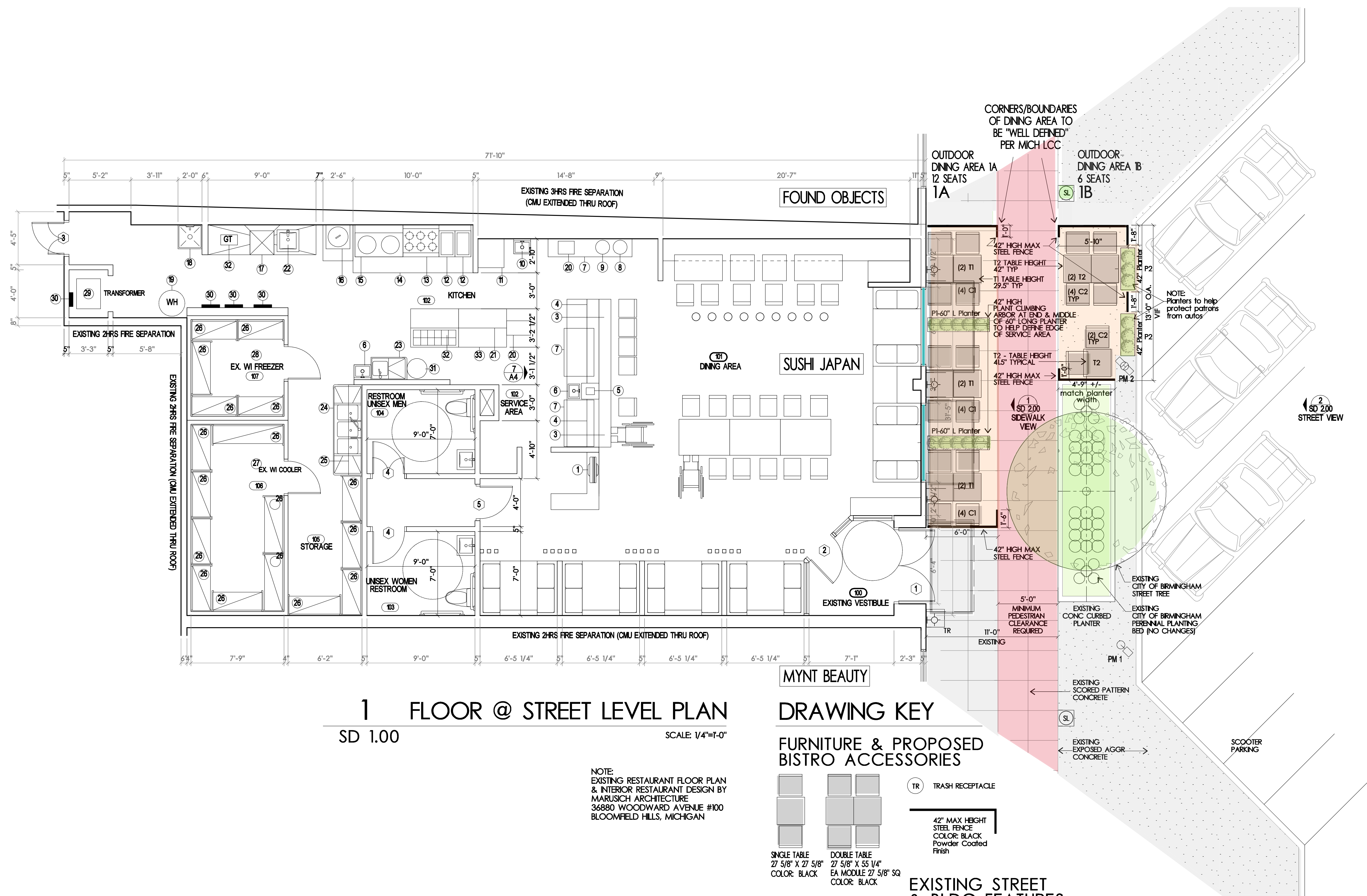
checked approved

project number:

010-2021

sheet number:

SD 0.00



L|Z|G
Architects

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email:
gardner-arch1@sbcglobal.net

tele:
248 642 3990

[illegible]

sheet title:

EXISTING
FLOOR PLAN +
PROPOSED
OUTDOOR
DINING PLAN

project:

SUSHI JAPAN

Sushi Japan
Restaurant
Outdoor
Dining

project address:

176 South Old Woodward Ave
Birmingham, Michigan

designed	
drawn	JG
coordination checked	
checked	approved

project number: 010-2021

sheet number:

SD 1.00

seal:

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Architects

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A r c h i t e c t s

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tele:
248.642.3990

[illegible]

sheet title:

EXISTING
FLOOR PLAN +
PROPOSED
OUTDOOR
DINING PLAN

project:

SUSHI JAPAN

Sushi Japan
Restaurant
Outdoor
Dining

project address:

**176 South Old Woodward Ave.
Birmingham, Michigan**

designed

drawn JG

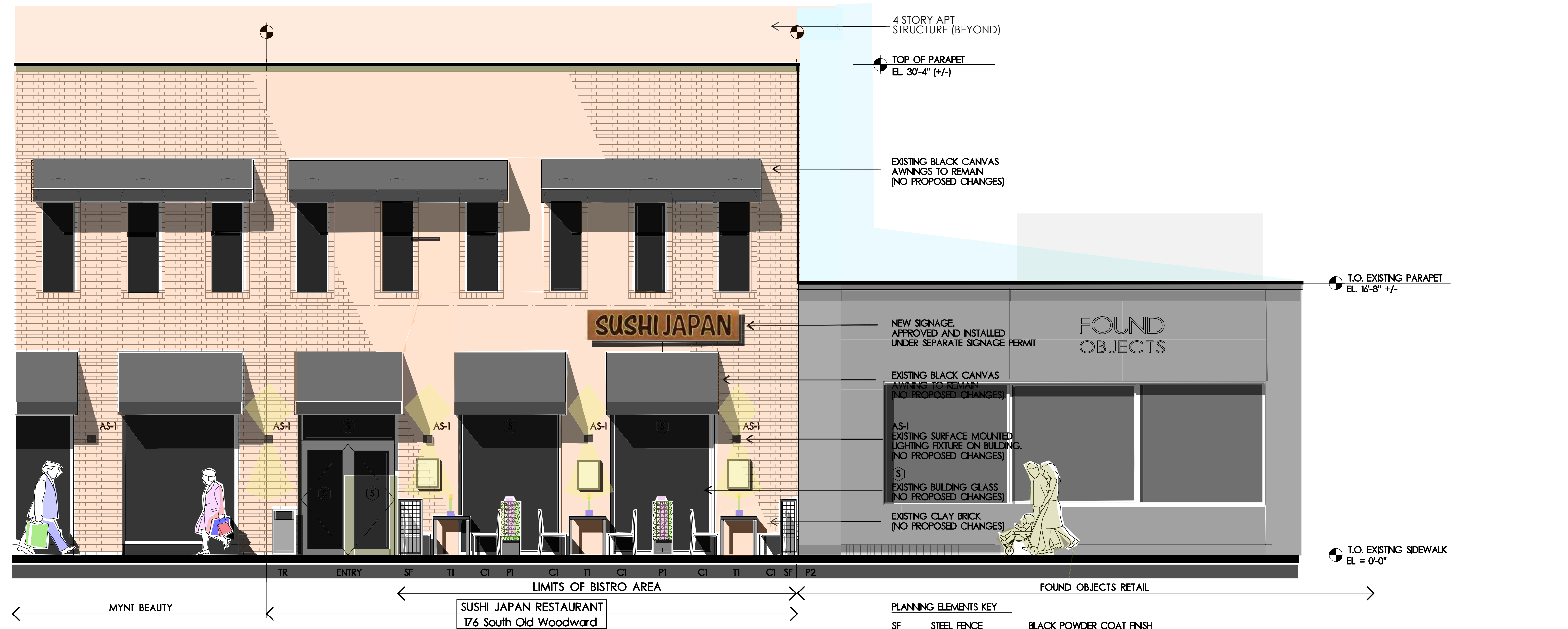
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checked	approved

project number:

010-2021

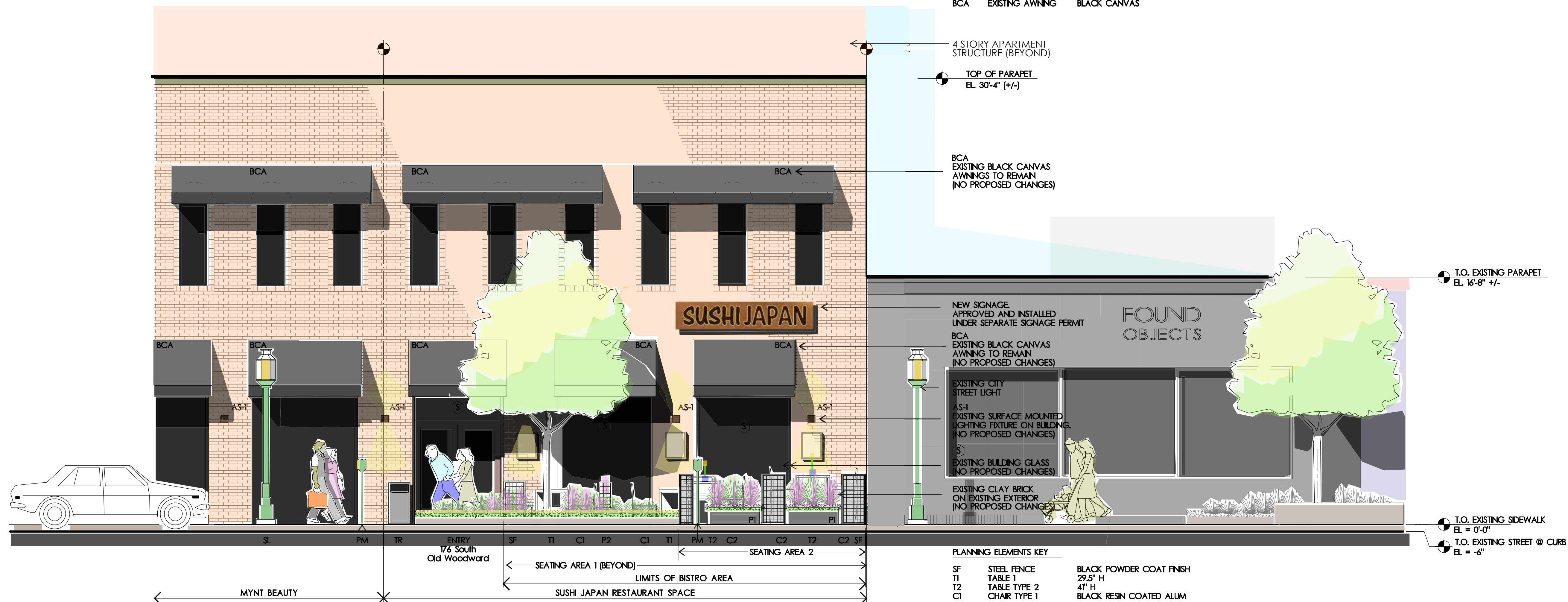
sheet number:

SD 2.00



1 EAST FACADE ELEVATION
SD 2.00 SIDEWALK

SCALE: 1/4"=1'-0"



2 EAST STREET ELEVATION
SD 2.00 OLD WOODWARD

SCALE: 1/4"=1'-0"

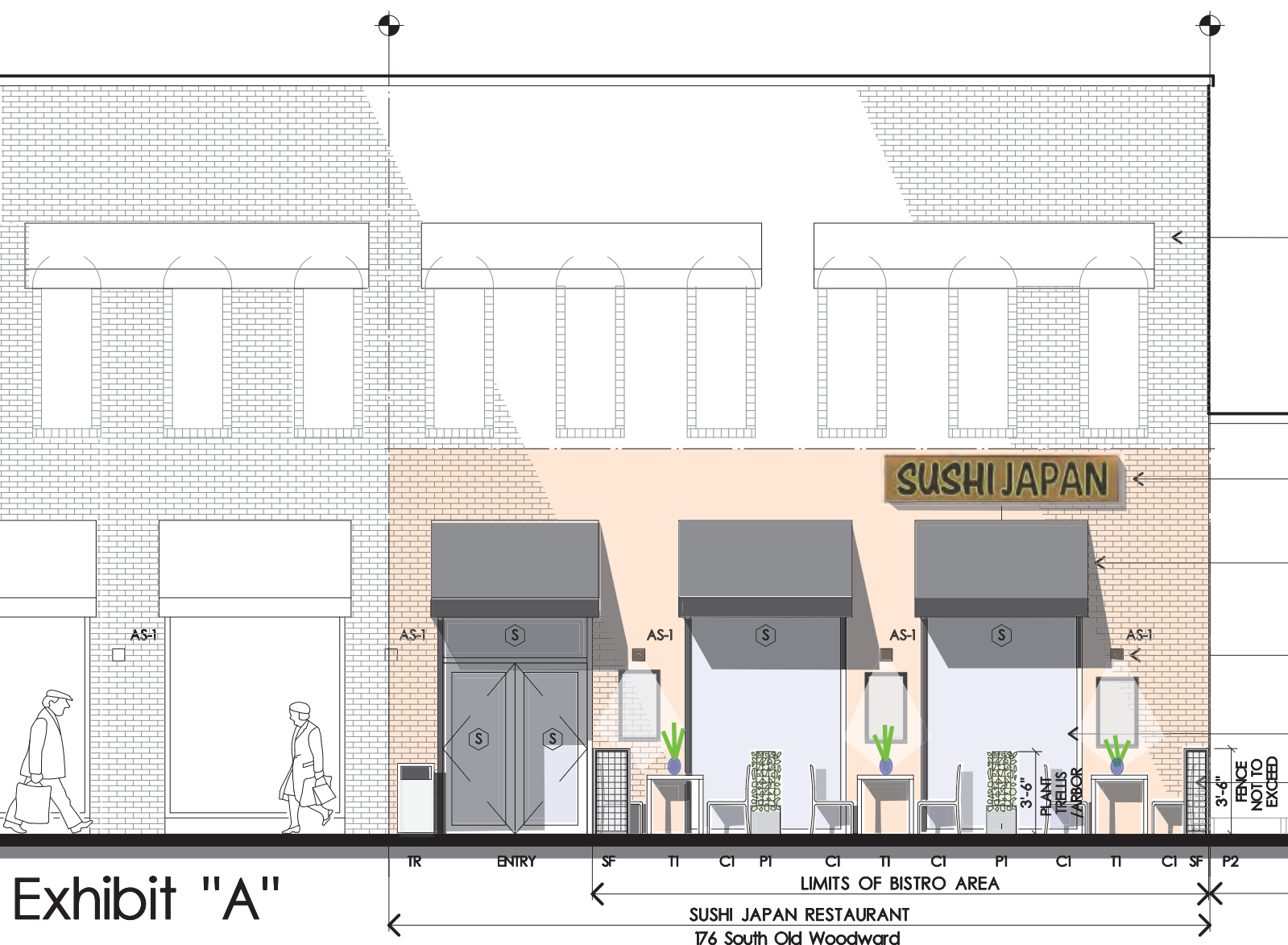


Exhibit "A"

SUSHI JAPAN

L|Z|G
Architects

1
SD 2.00

EAST FACADE ELEVATION
SIDEWALK

SCALE: 1/4"=1'-0"

Planter Box Trellis Height

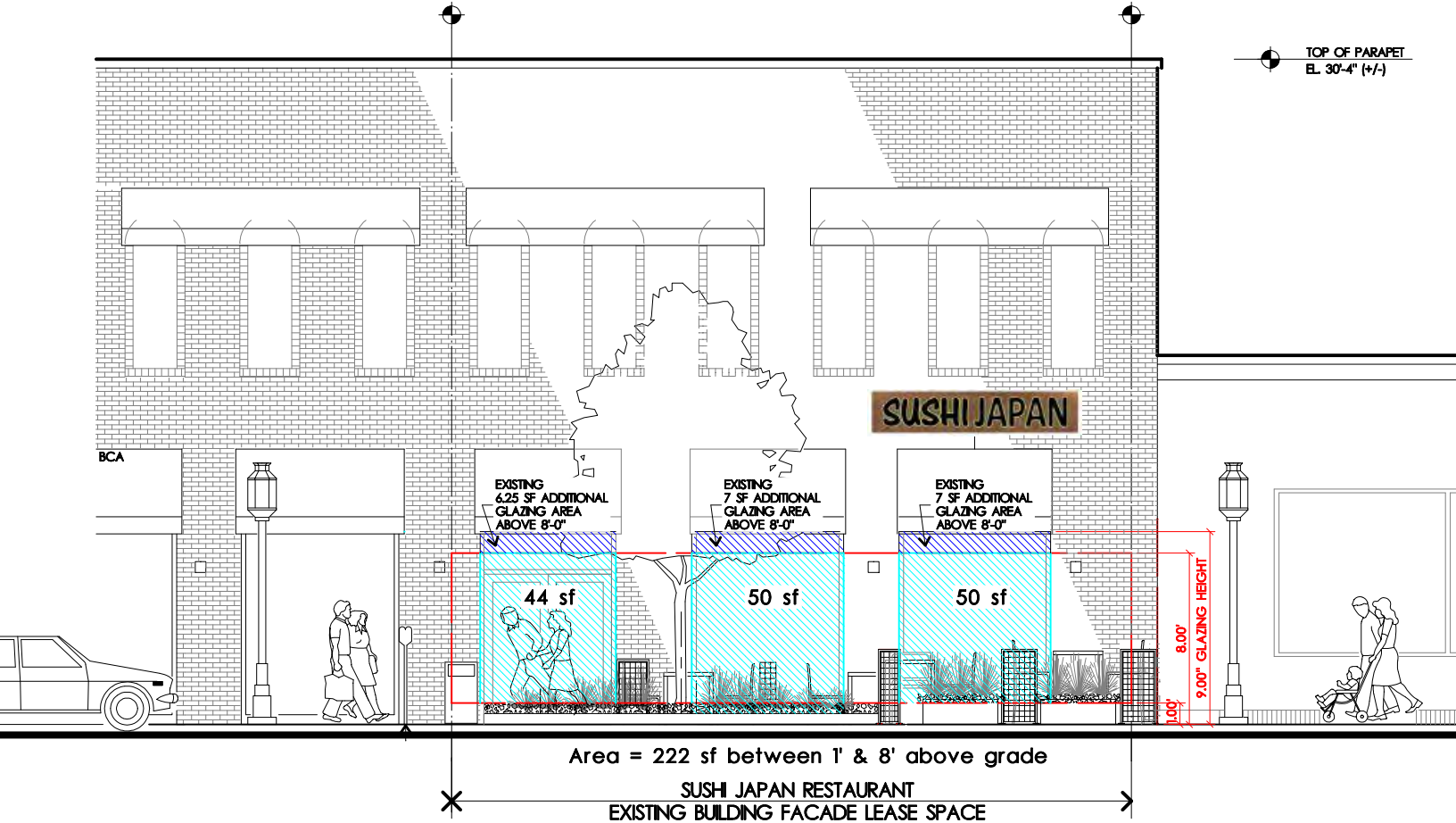


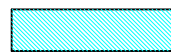
Exhibit "B"

SUSHI JAPAN

L|Z|G
Architects

2
SD 2.00

EAST STREET ELEVATION
OLD WOODWARD

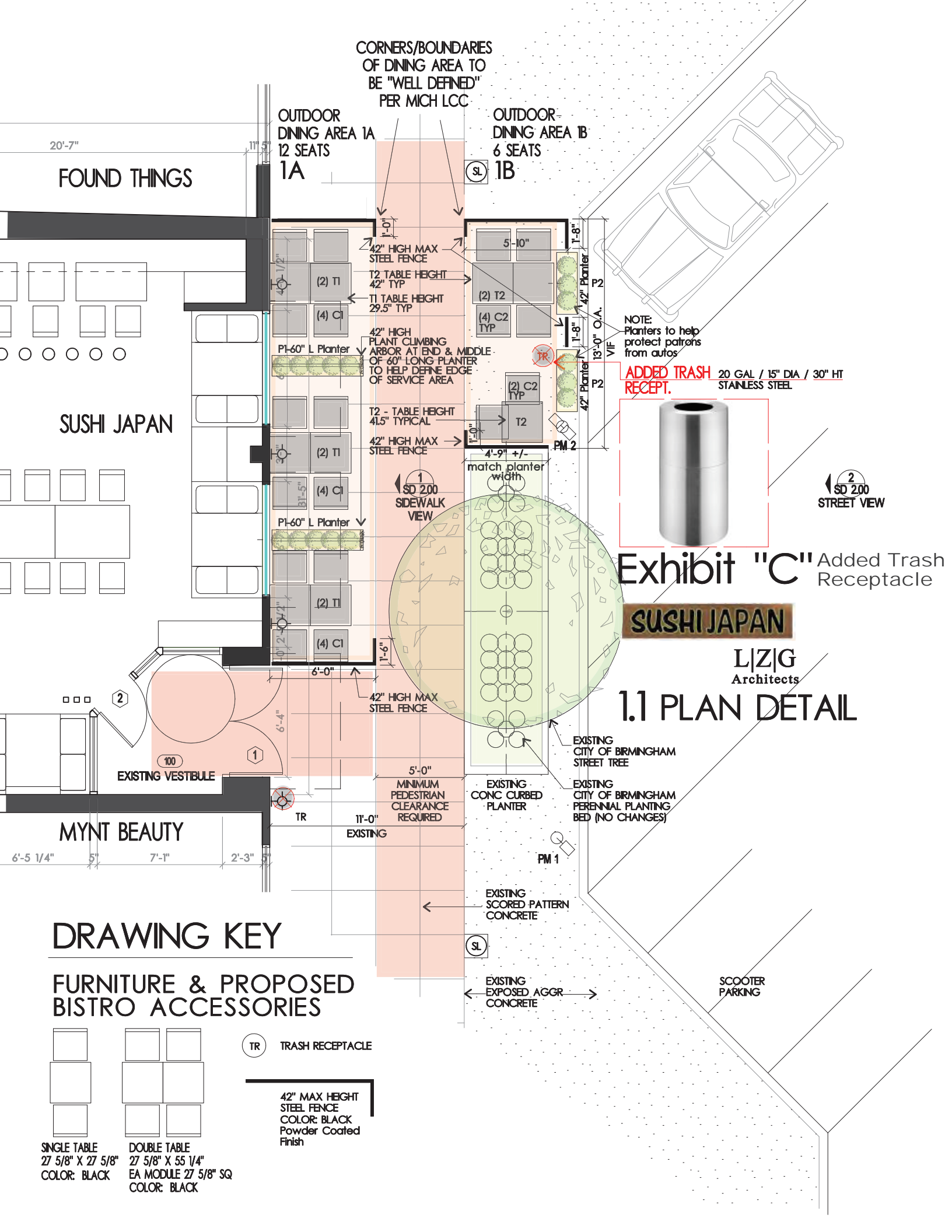


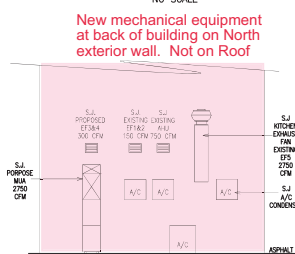
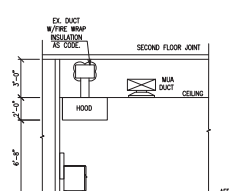
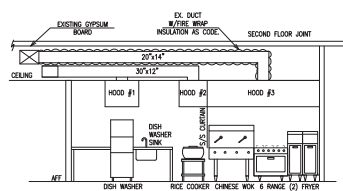
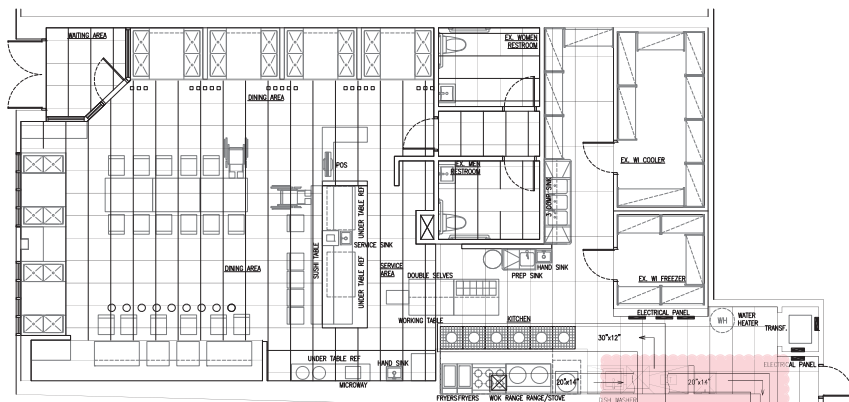
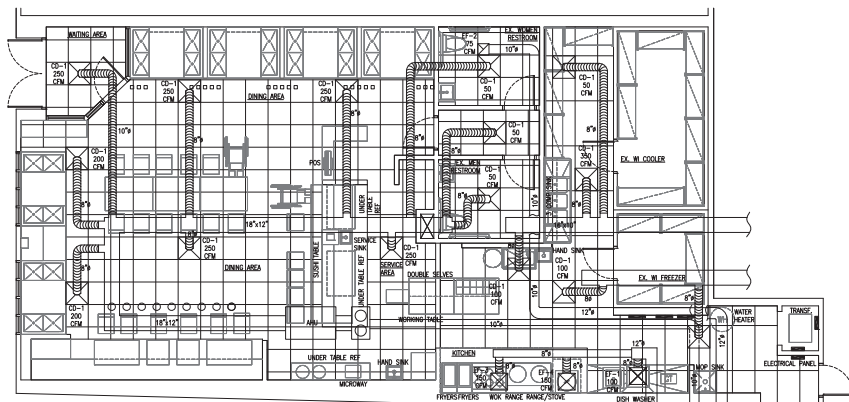
→ EXISTING GLAZING AREA
BETWEEN 1'-0" & 8'-0" ABOVE GRADE

GLAZING
% CALC

→ GLAZING AREA BETWEEN 1' & 8' ABOVE GRADE:
LEASE SPACE AREA BETWEEN 1' & 8' ABOVE GRADE:
% GLAZING AREA BETWEEN 1' & 8' ABOVE GRADE:

44' + 50' + 50' = 144 SF
222 SF
144 SF / 222 SF (100) = 65%





MARUSICH ARCHITECTURE
 3000 WOODWARD AVENUE
 SUITE 100
 BIRMINGHAM, AL 35203
 OFFICE PHONE 205 922 9900
 CELL PHONE 205 922 9900
 FAX 205 922 9900
 WWW.MARUSICHARCHITECT.COM

PROJECT NAME

SUSHI JAPAN

178 S. OLD WOODWARD AVE.
BIRMINGHAM, AL 35203

ISSUE DATE

06/14/2020

REVISION HISTORY

NO.	DATE	DESCRIPTION
1	06/14/2020	ISSUED FOR PERMIT

DESIGN BY

KA

CHECKED BY

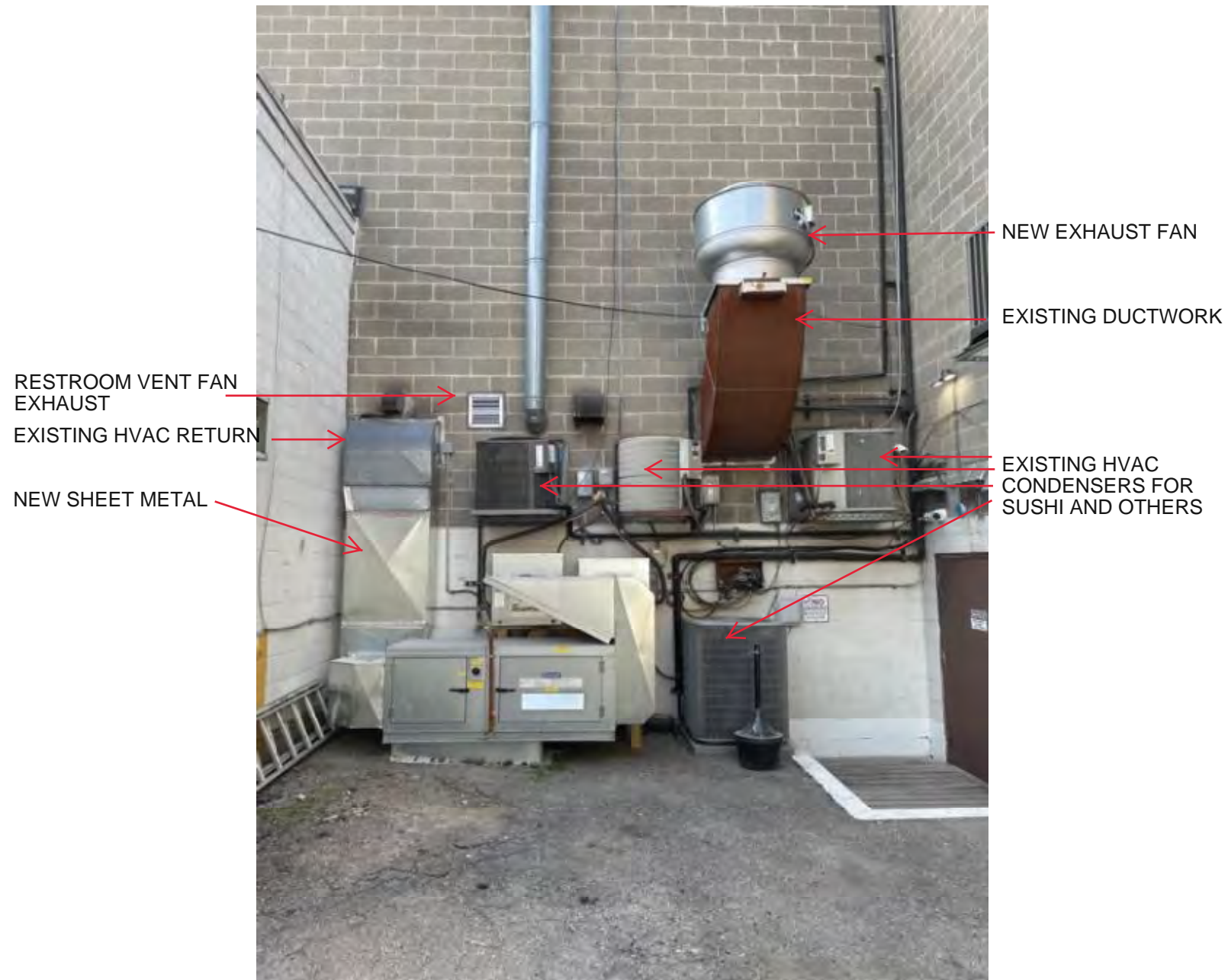
JA

DO NOT SCALE DRAWING

MECHANICAL PLAN

SHEET #

M-1



MECHANICAL EQUIPMENT
EXTERIOR WALL
NORTH SIDE OF SUSHI KITCHEN
LOCATED IN PARKING AREA
OFF FROM MERRILLWOOD ALLEY

Exhibit D.1



MERRILLWOOD BUILDING
EXISTING DUMPSTERS &
TRASH COMPACTOR
LOCATED ALONG ALLEY
@ NW SIDE OF BUILDING

Exhibit E

Small Plates

- Edamame 4.5 gf Spring rolls (vegetable) 5.5
- Dumpling (beef & veggie) 5.5, steamed or fried
- Agedashi tofu 5.5, lightly battered, ginger scallion dressing
- Steamed tofu 5.5
- Steamed Sumai (shrimp) 5.5
- *Prime ribeye slider 20, tataki beef, chef special sauce
- *Sushi Salad 10 gf, ahi tuna and crab salad
- *Mendaiko Ahi Tuna 10 gf, grill seared tuna, truffle mendaiko
- *Yellowtail salsa 10, chujang, scallion salsa, jalapeno, potato
- *Seared Pepper Salmon 10, scallion citrus salsa, torched
- *Tuna Poke w/special premium rice 12, dashi soy egg yolk
- Unagi Whole Tempura 13, green salsa, power crumbs
- Rock Crust Shrimp 13, aioli pepper Korean sauce
- Japanese Bacon 10, steamed, onion salsa, side dashi egg yolk
- Lettuce Wraps 12, sautéed chicken, veggie, nuts, side hoisin
- Karaage 12, chinese style chicken wings, pickled daikon,
- Avocado Silken Tofu 8 gf, soft tofu, dashi broth, layout
- Eggplant Agebitashi 10
- Garlic Asparagus Broccoli Spinach 10, garlic olive
- *Steak Bite (Beef) 13, mixed veggie, side oriental ssamjang

Ramen 12, Japanese style white soybean base housemade broth, asian veggies, scallion, wood ear mushroom, tomato, bok choy, nori, protein (charshu, 3 pcs), steamed ajitama, straight or curved noodles. Ramen history is a bit over 100 years old in Japan, dating back to the first credited shop in 1910.

Shoyu ramen, special blend soy based tare

Miso ramen, robust golden miso tare.

Tonkotsu ramen, our signature silky broth

Neginanban (white Hot) 13, scallion, tossed jalapeno

Kara (spicy) Red ramen 13, a hint of spiciness

Tofu ramen 14, organic tofu

Silken Tofu ramen 14, soft silken organic tofu

Tempura ramen 16, panko jumbo shrimp, veggie tempura

Spicy Shrimp ramen 16, mild spicy

Curry ramen 13 Japanese original best slow cooked curry

Unagi ramen 16, whole unagi light batter tempura

Seafood ramen 16, mild spicy, hoshi oil, asian veggies, mussels, shrimp, scallop, pacific ocean perch

Soup, Salad

- Miso soup 3.5 gf, tofu, scallion, wakame
- Wonton soup 5.5, chicken broth, pork, spinach, sesame oil
- Hot and Sour soup 5.5, spicy sour broth, tofu, egg, mushroom
- Spicy Tofu soup 5.5 gf, tofu, mild spicy, veggies
- Ginger salad 5, iceberg lettuce, spinach, pear dressing

Entrees (Chinese)

- Kung Pao Chicken 15, nuts, sichuan, chili peppers, veggies
- Sweet and Sour Chicken 15, sweet sour honey sauce
- Beef Broccoli 15, succulent beef, tossed phenomenally sauce
- Eggplant Mapo Tofu 15, organic tofu, vegetable, tobandjan, aioli, beef protein, scallion
- Crispy Pepper Shrimp 18, lightly battered jumbo shrimp, veggies, eastern spices
- General Tso's Chicken 15, tomato sauce, sour sweet chili sauce, aioli, light ginger, light hot glaze
- Crispy Boneless Chicken 15, bite size crispy, honey sauce
- Orange Chicken 15, wok-fried, sautéed orange citrus sauce
- Lemongrass Ginger Chicken 15, char-grilled marinated ginger lemongrass, asian vegetables
- Mongolian Beef 17, sautéed hand cut steak, scallions, ginger, lightly breaded, vegetables
- Sauteed Beef Fillet Black Pepper 19, use steak beef rib eye, aioli pepper, rice wine
- Chicken Wings 14, fried, XO, oyster and soy sauce
- Lamb Crispy 20, boneless, Japanese encrusted in bread crumbs, curry katsu glaze, our special marinated rice, cabbage
- Char Siu Plate 15, steamed seared pork, our special rice
- Teriyaki Grilled, slower cook char-grilled, housemade glaze
- Chicken 15 -*Fillet mignon 28
- *Cubed Beef 19 -Salmon 19
- Tofu 15, organic
- Pork Steak 15, Chinese style marinated handcut pork toro
- Tomato Bulgogi 18.5, thinly sliced beef, sizzling plate
- Noodle bulgogi 21.95, Chinese style noodles
- Curry Katsu (cutlet) 14.95, Japanese original best slow cooked curry, housemade pickles, cabbage
- Choice: Chicken / Tonkotsu (pork toro)
- Fish (pacific rockfish) 15

Chinese Wok Noodles (no broth)

- Dan Dan noodle 12, veggies, pork, carrot, bean sprouts
- Chinese Style Pasta 12, onion, carrot, asian vegetables
- Choice: Chicken / Beef / Shrimp
- Clear noodle 12.95 gf, gluten-free potato noodles, wood ear mushroom, vegetables
- Choice: Veggie gf / Tofu gf / Chicken gf / Beef 14.95
- Supreme Chow Mein noodle 12, savory soy, veggies
- Korudo Beef noodles 12, Japanese sauteed noodles, mixed veggies, grilled shabu protein, layout, steamed ajitama
- Hibachi Wok 11, stir fried udon noodles, mixed veggies
- Choice: Veggie Broccoli / Chicken / Tofu
- Beef 14.5 / Shrimp 14.5 / Spicy Pork 12

*Consuming raw or undercooked meats, poultry, seafood, shellfish and eggs may increase your risk of foodborne illness. These menu items may be served raw or undercooked. Before placing your order. Please let us know about any food sensitivities and allergies. separate checks please. Sizzling hot stone bowl and pots are very hot. Please do not touch and keep away from kids. Prices and menu are subject to change without notice.

SUSHI JAPAN

Japanese, Asian, Chinese Food and Fusion Noodles

ALCOHOLIC MENU



Available Hours
Mon~Thur. 11am~10:30pm
Fri ~Sat. 11am~11pm
Sun. 11am~9:30pm

Omakase Lunch Takeout
Gift certificates available
176 S. Old woodward Ave.
Birmingham, MI 48009

SAKE

Hot Sake

White Sake Punch

Kikusui, Niigata, Honjozo, very dry SMV +8

Hakkisan, Niigata, Tokubetsu Junmai, dry SMV +5

Dassai 50, Yamaguchi, Junmai Daiginjo, dry SMV +5

WHITES

Sauvignon Blanc, Pierre Martin, Les Monts Damnes,

Riesling Dry, Silver Thread, 2015

Chenin Blanc, Backsberg, 2017

Chardonnay, Roth, 2014

Olivier Leflaive, Bourgogne Blanc, Les Setilles, 2015

Boyer-Martenot, Les Narvaux, Meusault 2015

REDS

Pinot Noir, Pere & Fils, Chanson Bourgogne, 2014

Cabernet Sauvignon, Avalon, 2015

Pinot Noir, Sharecropper's, 2015

Saint-Joseph, Laurent Betton, 2015

Tempranillo, Reserva, Imperial, CVNE, 2012

COCKTAILS

China Punch, rum, fruit juice, Chinese liqueur

Mai Tai, Favorite Tahitian mixture of rum, lemon

Sake Flights

Tokyo Drift, skyy vodka, yuzu, shiso

Soju Sangria, sparkling shiraz, fruit-infused soju, aranciate

Singapore Sling, sole gin, dry gin, lime

Spicy Guava Margarita

Shiso Julep, old overholt rye whiskey, shiso, lemon

SOJU

Daejangbu, 21% ABV, premium rice soju

'50' soju, 17% ABV, house blend infused, w/ginseng

Kuro Yokaichi Shochu, 25% ABV, japanese sweet potato soju

NON-ALCOHOLIC

Strawberry Mint Spritzer, strawberry, mint, lemon

Shiso Lemonade, shiso, yuzu

Virgin Pina Colada

BEER

Tsing Tao,

Kloud Japanese Lager

Lagunitas IPA,

Hitachino White Ale

Duvel Belgian Golden Ale,

Sapporo, Draft, BTL

BRUNCH COCKTAILS

Blood Orange Minosa, prosecco, blood orange, grapefruit liqueur

Blood Mary, skyy vodka, tomato juice, horseradish

Spicy Guava Margarita, corazon tequila, guava, chipotle, lime

Sushi

Raw, *Tuna 2.95 gf / *Escolar White Tuna 2.95 gf

*Salmon 2.95 gf / *Albacore Tuna 3 gf /

*Squid 2.75 gf / *Yellowtail 3 gf / *Scallop 3.25 gf

*Mackeral 2.75 gf / *Uni Egg (sea urchin) 8 gf

*Mendaiko Uni 9 gf / *Smelt Fish Egg 2.5 gf

*Flying Fish Egg (tobiko) 3 gf

*Salmon Egg (ikura, soy marinated) 3.5

Cooked, Crab Stick 2.5 / Cooked Shrimp 2.75 gf

Egg omelette cake 2.5 / Octopus 2.75 gf

Ponzu Inari 2.5 / Smoked Salmon 2.75 gf

Signature rolls

Eggplant Arti Tuna roll (Soypaper) 13.5, artichoke

seared cooked ahi tuna, asparagus, marinated eggplant

Soy roll (Soypaper) 13, crab, avocado, cucumber, steamed

carrot, golden beets, spinach

Qome Back (Cucumber wrap) 14.5 gf, salmon, tuna,

kani, avocado, cucumber, scallion

Rock Shrimp (Soypaper) 13.5, avocado, kani salad,

shrimp tempura, spicy amarillo mayo

*Salmon Lemon roll 13.5, crab salad, cream cheese, avocado,

salmon, lemon, mendaiko, sauce

*Berry Good roll 13.5, shrimp tempura, spicy tuna, avocado,

King Crab (Soypaper) 18 gf, real king crab, asparagus, cuke,

avocado, spinach, sauce

Veggie Wrap roll (Cucumber Wrap) 8 gf, kani, avocado,

cucumber, steamed carrot

Tomato roll (Ricepaper) 12 gf, cucumber, avocado, mango,

asparagus, spinach, tomato, raisin. straw glaze

Rice Power 12 gf, steamed carrot, asparagus, cuke, avo, beets, spinach,

cilantro, tofu, vegan straw sauce

⑥ Fried Rice (Best) 12,

mixed wok veggies, onion, agitama, secret our fried sauce

-Choice: Veggie Broccoli / Chicken / Tofu

Beef Shabu 15 / Shrimp 15

Spicy Pork 14

Broth Noodles

Udon (うどん) 11, thick white wheat noodle in dashi broth

-Choice: Plain 8 / Chicken / Tofu / Veggie Broccoli

Shrimp Tempura Udon / Beef 14.5

Fish (pacific rock fish) Udon 12

Spicy Shrimp 14.5

Spicy Seafood Udon 14.5, mussels, shrimp, scallop

Miso Bak choy udon 11, miso broth, udon noodles

Silken Tofu Miso Somyeon noodle 12, white

miso broth, soft silken tofu, somyeon noodles, scallion

Chicken Somyeon noodle 12, chicken broth,

somyeon noodles, mixed veggie, lightly sesame oil



*Consuming raw or undercooked meats, poultry, seafood, shellfish and eggs may increase your risk of foodborne illness. These menu items may be served raw or undercooked. Before placing your order. Please let us know about any food sensitivities and allergies. separate checks please. Sizzling hot stone bowl and pots are very hot. Please do not touch and keep away from kids. Prices and menu are subject to change without notice.























City Of Birmingham
Regular Meeting Of The Planning Board
Wednesday, May 26, 2021
Held Remotely Via Zoom And Telephone Access

3. 176 S. Old Woodward – Sushi Japan (former 2941 Street Food), Request for a Special Land Use Permit and Final Site Plan and Design Review to consider approval of new bistro serving alcoholic liquors in an existing building

PD Ecker reviewed the item. She noted that she was able to track down the Engineering Department for comments, and that they indicated that the dimensions for the outdoor dining appeared to be inaccurate but did not specify how. The Engineering Department did clarify that they wanted to see the outdoor dining adjacent to the building limited to no more than five feet, eight inches from the building to make sure the five-foot pedestrian pathway would remain unimpeded. They also expressed concern that vehicles parking in front of the building may overhang the parking space and thus interfere with the planters. The Engineering Department recommended that the planters be moved in some way to reduce potential interference with parked vehicles. PD Ecker said the likely purpose of the planters was to deter vehicles from overhanging the parking space.

Two Board members commented that confusion might result from the restaurant being called 'Sushi Japan' when much of the menu includes Chinese cuisine.

Mr. Jeffares expressed concern that the parking could possibly push one of the planters into someone sitting in the outdoor dining area.

Kelly Allen, attorney for the applicant, Charlie Yu, applicant and owner, and John Gardner, architect, were present.

In reply to Mr. Share, Mr. Gardner stated that to raise the glazing to 70% would require an increase of 11.5 sq. ft.

Mr. Share noted that if the Board did require the glazing to be increased it would require the applicant to make another hole in the facade and to return to the Historic District Commission for review.

PD Ecker said that requiring the applicant to increase the glazing would also disrupt the rhythm of the facade.

Mr. Gardner stated that the English ivy could be replaced with another climbing vine. He stated that he would speak with the Engineering Department regarding their comments about a discrepancy in the outdoor dining measurements since he did the field measurements himself. He said he could also remove any planters Engineering recommended to make the interaction between parking and outdoor dining safer.

It was noted that the previous restaurant used the same shared trash compactor as the one Sushi Japan would use.

There were no public comments.

Mr. Williams and Chair Clein were fine with leaving the glazing at 65%.

Chair Clein continued that he was not inclined to ask a small business to put a shield around a shared dumpster/trash compactor or to paint the mechanical equipment behind the building.

PD Ecker confirmed for Mr. Jeffares that this via was next on the list in the City's via plan to be redone.

Chair Clein said that the issue of the dumpsters in this via should be addressed as part of the upcoming improvements. He expressed mild concern that there was seating proposed on both sides of the pedestrian walkway but said that given how few seats there were on the side further from the restaurant he was not overly concerned.

Mr. Jeffares asked Planning to discuss with Engineering to determine how to prevent parking vehicles from hitting diners while parking.

Motion by Mr. Williams

Seconded by Mr. Share to recommend approval of the Special Land Use Permit to the City Commission to permit a bistro license for Sushi Japan at 176 S. Old Woodward based on a review of the plans submitted and their adherence to Article 07, section 7.27 and Article 07, section 7.34 of the Zoning Ordinance with the following conditions: 1. The Planning Board approves of the proposed 65% storefront glazing; 2. The applicant comply with the requests of all City departments; and 3. A signed contract with the City that must be fully executed upon approval of the SLUP and bistro license.

Bert Whitehead spoke in support of the motion.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

Motion by Mr. Williams

Seconded by Ms. Whipple-Boyce to recommend approval of the Final Site Plan and Design Review to the City Commission to permit a bistro license for Sushi Japan at 176 S. Old Woodward based on a review of the plans submitted and their adherence to Article 07, section 7.27 and Article 07, section 7.34 of the Zoning Ordinance with the following conditions: 1. The Planning Board approves of the proposed 65% storefront glazing; and, 2. The applicant comply with the requests of all City departments.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None



LAW OFFICES

ADKISON, NEED, ALLEN, & RENTROP

PROFESSIONAL LIMITED LIABILITY COMPANY

KELLY A. ALLEN
JESSICA A. HALLMARK
GREGORY K. NEED
G. HANS RENTROP

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Bloomfield Hills, Michigan 48304
Telephone (248) 540-7400
Facsimile (248) 540-7401
www.ANAfirm.com

OF COUNSEL:

PHILLIP G. ADKISON
KEVIN M. CHUDLER
KATHERINE A. TOMASIK

April 22, 2021

Via Electronic Mail

Jana Ecker, Planning Director
City of Birmingham
151 Martin St.
Birmingham, MI 48009

**Re: Sushi Japan
Supplemental Documentation
SLUP and Final Site Plan**

Dear Ms. Ecker:

Attached are the revised SLUP application form and the completed plans for your review and consideration at the Planning Board Meeting on May 26, 2021.

Please let me know if you have any questions or require anything further.

Thank you for your assistance.

Very truly yours,

ADKISON, NEED, ALLEN, & RENTROP, PLLC

Kelly A. Allen

KAA/kjf
Enclosures

Cc: Charlie Yu
John Gardner



Special Land Use Permit Application - Bistro Planning Division

1. Applicant

Name: Sushi Japan, Inc.
Address: 176 S Old Woodward, Birmingham, MI 48009

Phone Number: 248-990-8327
Fax Number: _____
Email Address: ximigyu2011@gmail.com

2. Applicant's Attorney/Contact Person

Name: Kelly A. Allen, Esq.
Address: 39572 Woodward, Suite 222, Bloomfield Hills, MI 48304

Phone Number: 248-540-7400
Fax Number: 248-540-7401
Email Address: kallen@anafirm.com

3. Required Attachments

- Warranty Deed with legal description of property
- Floor Plan of Bistro Operation
- Proof of ability to finance the proposed project
- Required fee (see Fee Schedule for applicable amount)
- Photographs of existing site and buildings
- Samples and/or specification sheets of all materials to be used
- Landscape Plan showing all existing and proposed elements
- Catalog sheets for all proposed lighting & outdoor furniture

4. Project Information

Address/Location of Property: 176 S Old Woodward
Name of Bistro: Sushi Japan
Sidwell #: _____
Current Use: Restaurant
Proposed Use: Restaurant with bistro
Area in Acres: _____
Current Zoning: CBD
Zoning of Adjacent Properties: _____
Is there a current SLUP in effect for this site?: No

Property Owner

Name: Merrillwood Investment, LLC, d/b/a Merrillwood Collection
Address: 251 E Merrill St, Suite 212, Birmingham, MI 48009

Phone Number: 248-647-8590
Fax Number: _____
Email Address: ikelly@iglawfirm.com

Project Designer/Developer

Name: Luckenbach|Ziegelman|Gardner Architects, PLLC/John H. Gardner, AIA
Address: 555 South Old Woodward, Suite 27L, Birmingham, MI 48009

Phone Number: 248-642-3990
Fax Number: _____
Email Address: gardner-arch1@sbcglobal.net

- Completed Checklist
- Certified Land Survey
- Signed Contract
- Fifteen (15) folded copies of plans including color elevations showing all materials and an itemized list of all changes for which approval is requested with the changes marked in color
- One (1) additional set of plans mounted on a foam board, including a color rendering of each elevation

5. Details of the Nature of Work Proposed (Site plan & design elements)

Sushi Japan, Inc., which is solely owned by Ximing Yu, is a restaurant offering primarily Chinese cuisine. The space formerly operated as Mediterranean Street Food. The nature of the work involves outdoor dining space as required by the Bistro Ordinance.

6. Buildings and Structures existing on site

Number of Buildings on site: 1
Height of Building & # of stories: Building: 6 / Restaurant: 1

Use of Buildings: Restaurant
Height of rooftop mechanical equipment:

7. Floor Use and Area (in square feet)

Structures:

Restaurant Space: 2217
Office space: 0
Total floor area: 2217
2217 SF

Retail space: 0
Number of Residential Units: 0
Rental or Condominium: 0

8. Bistro Operation

Number of Indoor Seats: 56
Number of Outdoor Seats: SEE ARCHITECTURAL 18
Entertainment Proposed: No
Years of Experience in Birmingham: None
Previous LCC Complaints? No
Tables provided along street façade:
Required front setback: SEE ARCHITECTURAL
Required rear setback: SEE ARCHITECTURAL
Required total side setback: SEE ARCHITECTURAL

Type of Cuisine: Chinese/Japanese
Bar Area? None
Number of Seats at bar: NONE
Years of Experience outside of Birmingham:
Full Service Kitchen? Yes
Percentage of glazing proposed: 100% existing
Proposed front setback: n/a
Proposed rear setback: n/a
Proposed total side setback: n/a

9. Outdoor Dining Facility

Location (sidewalk right-of-way or on-street parking space): Sidewalk
Hours of operation: 11am-11pm (9:30pm on Sundays)
Width of unobstructed sidewalk between door and café (5' required):
Platform proposed: No
Trash receptacles: SEE ARCHITECTURAL 1 proposed

Number of tables/chairs: 9 TABLES / 18 CHAIRS - SEE ARCHITECTURAL

Material of tables/chairs: RESIN COATED COMPOSITE AND ALUM
Table umbrellas height and material: NO UMBRELLAS. 29.5" & 42"
Number and location of parking spaces: 0
Screenwall material: Steel Fabricated Ornamental Fence
Enclosure material: None

10. Required and Proposed Parking

Number of parking spaces: None on site
Location of off site parking: 333 Pierce St. Parking Structure
Screenwall material: 222 Peabody St. Parking Structure

Parking Structures @
333 Pierce Street
Location of parking spaces: 222 Peabody Street
Shared Parking Agreement?: No
Height of screenwall:

11. Landscaping

Location of landscape areas: Garden Planters/ See Architectural
within Bistro Seating area & edges

Proposed landscape material: Perennial/Annual Flowering Plants in
Planters: See Architectural Plans &
Detail Sheets SD-001 & SD-003

12. Streetscape

Sidewalk width: See Architectural
Number of benches: No Benches Proposed
Number of planters: 4 Planters Proposed
Number of existing street trees: 1 Existing in Front of Restaurant
Number of proposed street trees: 0 Added
Streetscape Plan submitted?: Yes- See Architectural Sheet SD 1.00

Description of benches or planters: See Architectural
Species of existing street trees: Ornamental Flowering Pear
Species of proposed street trees: N/A

13. Loading

Required number of loading spaces: Shared Loading
Location of loading spaces on the site: at rear of building in alley

Proposed number of loading spaces: _____

14. Mechanical Equipment

Ground Mounted Mechanical Equipment:

Number of ground mounted units: N/A for this Bistro Project
Size of ground mounted units (LxWxH): _____

Location of all ground mounted units: _____

Screenwall material: _____

Height of screenwall: _____

Rooftop Mechanical Equipment:

Number of rooftop units: N/A for this Bistro Project
Type of rooftop units: _____

Location of all ground mounted units: _____
Size of rooftop units (LxWxH): _____

Screenwall material: _____

Height of screenwall: _____

Location of screenwalls: _____

Percentage of rooftop covered by mechanical units: _____

Distance from units to rooftop units to screenwall: _____

15. Lighting

Number of light standards on building: See Architectural- Existing
Size of light fixtures (LxWxH): Lighting on Existing Building
to Remain. No changes are
proposed. Size approx 4"x4"x3"

Type of light standards on building: _____

Height from grade: Existing approx 83" above grade.
No changes proposed.

Maximum wattage per fixture: _____

Proposed wattage per fixture: _____

Parking lot lighting: N/A

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 or Special Land Use Permit. The undersigned further states that they have reviewed the procedures and guidelines for site plan review and Special Land Use Permits in Birmingham and have complied with same. The undersigned will be in attendance at the Planning Board meeting when this application will be discussed.

Signature of Owner: Irene Kelly-Bower Date: 4/21/21

Print Name: Irene Kelly-Bower, Building coordinator

Signature of Applicant: Ximing Yu Date: April 16, 2021

Print Name: Ximing Yu

Signature of Architect: John H. Gardner Date: April 1, 2021

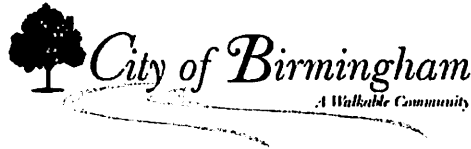
Print Name: John H. Gardner, AIA

Revised: Clarifications
April 14, 2021

Office Use Only

Application #: _____ Date Received: _____ Fee: _____

Date of Approval: _____ Date of Denial: _____ Accepted by: _____



Notice Signs - Rental Application Community Development

1. Applicant

Name: Sushi Japan, Inc
Address: 176 South Old Woodward

Phone Number: _____
Fax Number: _____

Property Owner

Name: _____
Address: _____

Phone Number: _____
Fax Number: _____

2. Project Information

Address/Location of Property: 176 South Old Woodward
Name of Development: Sushi Japan Restaurant
Area in Acres: _____

Name of Historic District site is in, if any: _____
Current Use: _____
Current Zoning: _____

3. Date of Board Review

Board of Building Trades Appeals: _____
City Commission: _____
Historic District Commission: _____
Planning Board: _____

Board of Zoning Appeals: _____
Design Review Board: _____
Housing Board of Appeals: _____

The undersigned states the above information is true and correct, and understands that it is the responsibility of the applicant to post the Notice Sign(s) at least 15 days prior to the date on which the project will be reviewed by the appropriate board or commission, and to ensure that the Notice Sign(s) remains posted during the entire 15 day mandatory posting period. The undersigned further agrees to pay a rental fee and security deposit for the Notice Sign(s), and to remove all such signs on the day immediately following the date of the hearing at which the project was reviewed. The security deposit will be refunded when the Notice Sign(s) are returned undamaged to the Community Development Department. Failure to return the Notice Sign(s) and/or damage to the Notice Sign(s) will result in forfeiture of the security deposit.

Signature of Applicant: Ximeng Yu Date: April 16, 2021

Office Use Only		
Application #: _____	Date Received: _____	Fee: _____
Date of Approval: _____	Date of Denial: _____	Reviewed by: _____



LAW OFFICES

ADKISON, NEED, ALLEN, & RENTROP

PROFESSIONAL LIMITED LIABILITY COMPANY

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KELLY A. ALLEN
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Facsimile (248) 540-7401
www.ANAfirm.com

OF COUNSEL:

KEVIN M. CHUDLER
KATHERINE A. TOMASIK

September 30, 2020

Via Electronic Mail

Jana Ecker, Planning Director
City of Birmingham
151 Martin St.
Birmingham, MI 48012

**Re: 2020 Initial Screening Bistro Application for Sushi Japan
176 S. Old Woodward**

Dear Ms. Ecker:

Attached is Sushi Japan's submission for the October 1, 2020 Initial Screening for Bistro Applications.

Please accept this for consideration by the City Commission. Please confirm your timely receipt of this submission and let us know when the City Commission meeting to consider this application will take place.

We look forward to presenting this concept to the City.

Please contact me if you have any questions.

Thank you for your assistance.

Very truly yours,

ADKISON, NEED, ALLEN, & RENTROP, PLLC

Kelly A. Allen

KAA/kjf
Enclosures

Cc: Charlie Yu (*via electronic mail*)

Sushi Japan

**176 S. Old Woodward Avenue
Birmingham, Michigan 48009**



Proposal for Bistro License

September 30, 2020

Submitted by:
Kelly A. Allen
Adkison, Need, Allen, & Rentrop, PLLC
39572 Woodward Ave., Suite 222
Bloomfield Hills, MI 48304

SUSHI JAPAN

Description of Bistro Concept/Owner

Sushi Japan will primarily offer authentic Chinese cuisine. The menu is the result of years of research into fusion cooking, and experience in Chinese and Japanese culture.

Sushi Japan is located in the heart of downtown Birmingham at 176 S. Old Woodward, previously the site of “Mediterranean Street Food.” The space is undergoing a complete renovation and will be beautiful with modern décor offering full service. The highlight of the restaurant will be the open kitchen so that the guests can see the creation of the cuisine.

The landlord is Merrillwood Collection Investment, LLC. The proposed opening date is late October, 2020.

Sushi Japan will have 56 indoor seats, outdoor dining, the required glazing, and will otherwise meet the requirements for a “Bistro” under the City’s ordinances. The ability to offer full service, including alcohol, is critical to the success of this small business.

The owner of Sushi Japan is Ximing (“Charlie”) Yu. Charlie and his family came to the United States from China in 2008. Charlie’s family has operated Chinese restaurants in China and in the United States. Charlie has been in the “family business” since he was 15 years old. He has worked in every capacity in the restaurant business. He is an expert at business, food, and social media management. He has been a host, a cashier, a chef, and a server. Currently, Charlie is a sushi chef at the Kona Grill.

Charlie’s energy and desire to own and operate his own business, combined with his experience and unique talent, will bring a Bistro to the downtown which will diversify the dining choices for the City’s residents and beyond. Charlie believes that Sushi Japan will become a clear destination for diners seeking an authentic Chinese experience.

One of Charlie’s special talents is the art of making noodles, including Chinese specialties and ramen. He prides himself in the presentation of his dishes and excellent customer service.

Unique Characteristics

Sushi Japan will be different than other Asian cuisine in the City. It will offer primarily Chinese cuisine, whereas the other full-service restaurants in the City are primarily Korean or Japanese cuisine.

Employees and Hours of Operation

Sushi Japan will employ an expert executive Chef and approximately 8 employees.

Sushi Japan will be open for lunch and dinner. The hours of operation will be Monday through Saturday from 11:00 am to 11:00 pm and on Sunday from 11:00 am to 9:30 pm.

Executive Chef

Sushi Japan has partnered with Executive Chef Yuen. Chef Yuen has more than 30 years of experience in American, Japanese, and Chinese restaurants.

Chef Yuen brings Chinese culture and cuisine together to present unique and delicious dishes from the open kitchen to the table with a wonderful presentation. She creates unique fusion noodles, ramen, and sauces. Chef Yuen is proud of her commitment to using fresh ingredients which enhance the taste of all of her creations.

Chef Yuen will also manage the back of the house in a first-class manner.

Financial Ability To Construct and Operate the Proposed Bistro

Charlie has employed and paid for the services of an expert contractor. He has the financial ability to complete the project, purchase a liquor license, and operate the restaurant. As Charlie's counsel I have reviewed of Charlie's Chase Bank account statement which shows more than sufficient funds to open and operate. This bank record can be produced if requested.

SUSHI JAPAN

Japanese, Asian, Chinese Food and Fusion Noodles
Lunch 11am-3pm Tel.248-000-0000

Available Hours(Open for Dine-in)
Mon-Thur. 11am-10:30pm
Fri-Sat. 11am-11pm
Sun. 11am-9:30pm

Gift certificates available
Dine-In and Carry-Out
176 S. Old woodward ave.
Birmingham, MI 48009

Starters (Appetizing Nibbles)

Tempura (lightly battered deep fried, w/sauce)
Vegetable 5, Double size 9
All sweet potato 6
Calamari 8.5, Avocado (add 3),
Shrimp (2pcs, add 4), (5pcs, add 10)
Chicken (2pcs, add 3), (5pcs, add 7)
Softshell crab & vegetable 10
Edamame (sea salted steamed soybeans) 4.5
Vegetarian spring rolls (w/sauce) 5.5
Dumpling (beef & veggie gyoza) 5.5
(choice: steamed or fried, w/sauce)
Agedashi tofu (lightly fried tofu, w/sauce) 5.5
Steamed tofu (w/house-made sauce) 5.5
Shrimp shumai (steamed, w/sauce) 5.5
Crab shumai (steamed, w/sauce) 6.5
*Prime ribeye truffle slider 20

Beverage

Soft drink 1.5 (coke, diet coke, sprite, zero coke)
Green Tea 1.5 **Lemonade** 2.25
Ice tea 2.25
Japanese ramune 2.95

Salad

Green Salad 4.95
(iceberg lettuce, spinach, house-made miso dressing)
Kani cucumber salad (sunomono) 5.5
(cuke, crab stick, light sweet vinegar sauce, sesame seeds)
Seaweed Salad 5.5
Calamari salad 6.95

Bibim Noodles

Niku noodles (korudo bibim), no broth
(Mixed bibim Japanese buckwheat or wheat noodles, veggie,
mild spicy sauce, steamed egg)
-Teriyaki bibim noodles 10
-Chicken or Tofu or Veggie bibim noodles 12
-Beef shabu-shabu or Shrimp bibim noodles 14
-Spicy Pork shabu-shabu bibim noodles 13
-Kotsu (Chicken or Pork) bibim noodles 13
-Kimchee bibim noodles 13,
-Kal-bi bibim noodles 17
-Vernicelli bibim noodles 13
-Gluten-free premium soft white vermicelli 13
-Bean noodle 12
(chilled white soybean broth, w/somen noodles)
-Cold Dan Dan noodles 12
(ground pork stir fried chinese sauteed vegetable)

Soup

White miso soup 3.5
(white soybean based broth, silken tofu, scallion, wakame)
Veggie soup (Japanese chicken broth, w/noodle, veggie) 5.5
Spicy tofu soup 5.5
(silken tofu, w/mild spicy dashi broth & noodle, veggie)
Spicy seafood soup 8.95
(mild spicy dashi broth, w/shrimp, scallop, mussel & veggie)
Somyen soup 5.5, **Wonton Soup** 6
Rice glutinous sesame balls 5.5
Shanghai steamed soup bao 7
Fish dumpling soup 6
Hot and Sour Veggie Soup 5

Broth Noodles

Udon, うどん
(thick white wheat noodle in Japanese dashi broth, w/veggie, inari)
-Plain udon 8, -Beef udon 14
-Tofu or Veggie or Chicken udon 11
-Jalapeno or Broccoli udon 13
-Shrimp & Veggie tempura udon 11
-Spicy shrimp or Spicy seafood udon 14.5
-Miso Udon (white miso broth base) 11
Soft tofu somyen noodle 12
(white miso broth, w/silken soft tofu, somen, scallion)
Somyen noodle 12
(Japanese style chicken broth, w/somen noodles, mixed
veggie and lightly sesame oil)
Bean noodle 12
(chilled white soybean broth, w/somen noodles)

Ramen and Fusion Noodles

Chinese Wok Noodles (yaki)
(Japanese wok sauteed udon noodles, mixed veggie, w/rice)
-Veggie or Chicken or Tofu yaki 11
-Beef or Shrimp yaki 14.5, -Spicy pork yaki 14
Glass noodles (Japchae)
(steamed veggie, glass sweet potato noodles, w/rice)
-Chicken or Tofu or Veggie clear noodle 12.95
-Beef shabu-shabu or Shrimp clear 14.5,
-Spicy(mild) pork clear 14

Ramen

(Japanese style white soy base miso and chicken broth, w/veggie,
baby bok choy, scallion, broccoli, mild spicy sauce, steamed egg)
-Veggie 11, Chicken or Tofu or Miso Veggie ramen 12
-Beef shabu-shabu or Shrimp ramen 13.5
-Spicy(mild) Pork shabu-shabu ramen 13
-Kotsu (Cutlet: Chicken or Pork sirloin) ramen 13
-Kimchee ramen 13, Kalbi Ramen 17
-Bibim Veggie ramen 12 (add: Beef2, Chicken2, Pork2)
-Black bean ramen 13
-Curry Veggie ramen 13

(Ramen history is a bit over 100 years old in Japan, dating
back to the first credited shop in 1910)

Sides: Fried Noodles 5, Asian Vegetables 5, Fried Rice 5,
Steamed White Rice 2, Steamed Brown Rice 3

*Consuming raw or undercooked meats, poultry, seafood, shellfish and eggs may increase your risk of foodborne illness. These menu items may be served raw or undercooked. Before placing your order. Please inform your server of any food allergies or dietary restrictions.

SUSHI JAPAN

ALCOHOLIC MENU



Available Hours(Open for Dine-in)
Mon-Thur. 11am-10:30pm
Fri-Sat. 11am-11pm
Sun. 11am-9:30pm

Gift certificates available
Dine-In and Carry-Out
176 S. Old woodward
Birmingham, MI 48009

SAKE

Hot Sake
White Sake Punch
Kikusui, Niigata, Honjozo,
very dry SMV +8
Hakkisan, Niigata, Tokubetsu Junmai,
dry SMV +5
Dassai 50, Yamaguchi, Junmai Daiginjo,
dry SMV +5

WHITES

Sauvignon Blanc, Pierre Martin, Les Monts Damnes,
Riesling Dry, Silver Thread, 2015
Chenin Blanc, Backsberg, 2017
Chardonnay, Roth, 2014
Olivier Leflaive, Bourgogne Blanc, Les Setilles, 2015
Boyer-Martenot, Les Narvaux, Meusault 2015

REDS

Pinot Noir, Pere & Fils, Chanson Bourgogne, 2014
Cabernet Sauvignon, Avalon, 2015
Pinot Noir, Sharecropper's, 2015
Saint-Joseph, Laurent Betton, 2015
Tempranillo, Reserva, Imperial, CVNE, 2012

COCKTAILS

China Punch, rum, fruit juice, Chinese liqueur
Mai Tai, Favorite Tahitian mixture of rum, lemon
Sake Flights
Tokyo Drift, skyy vodka, yuzu, shiso
Soju Sangria, sparkling shiraz, fruit-infused soju,
aranciate
Singapore Sling, sole gin, dry gin, lime
Spicy Guava Margarita
Shiso Julep, old overholt rye whiskey, shiso,
lemon, angostuna bitters

*Consuming raw or undercooked meats, poultry, seafood, shellfish and eggs may increase your risk of foodborne illness. These menu items may be served raw or undercooked. Before placing your order. Please inform your server of any food allergies or dietary restrictions.

SOJU

Daejangbu, 21% ABV,
premium rice soju
'50' soju, 17% ABV,
house blend infused, w/ginseng
Kuro Yokaichi Shochu, 25% ABV,
japanese sweet potato soju

NON-ALCOHOLIC

Strawberry Mint Spritzer, strawberry,
mint, lemon
Shiso Lemonade, shiso, yuzu
Virgin Pina Colada

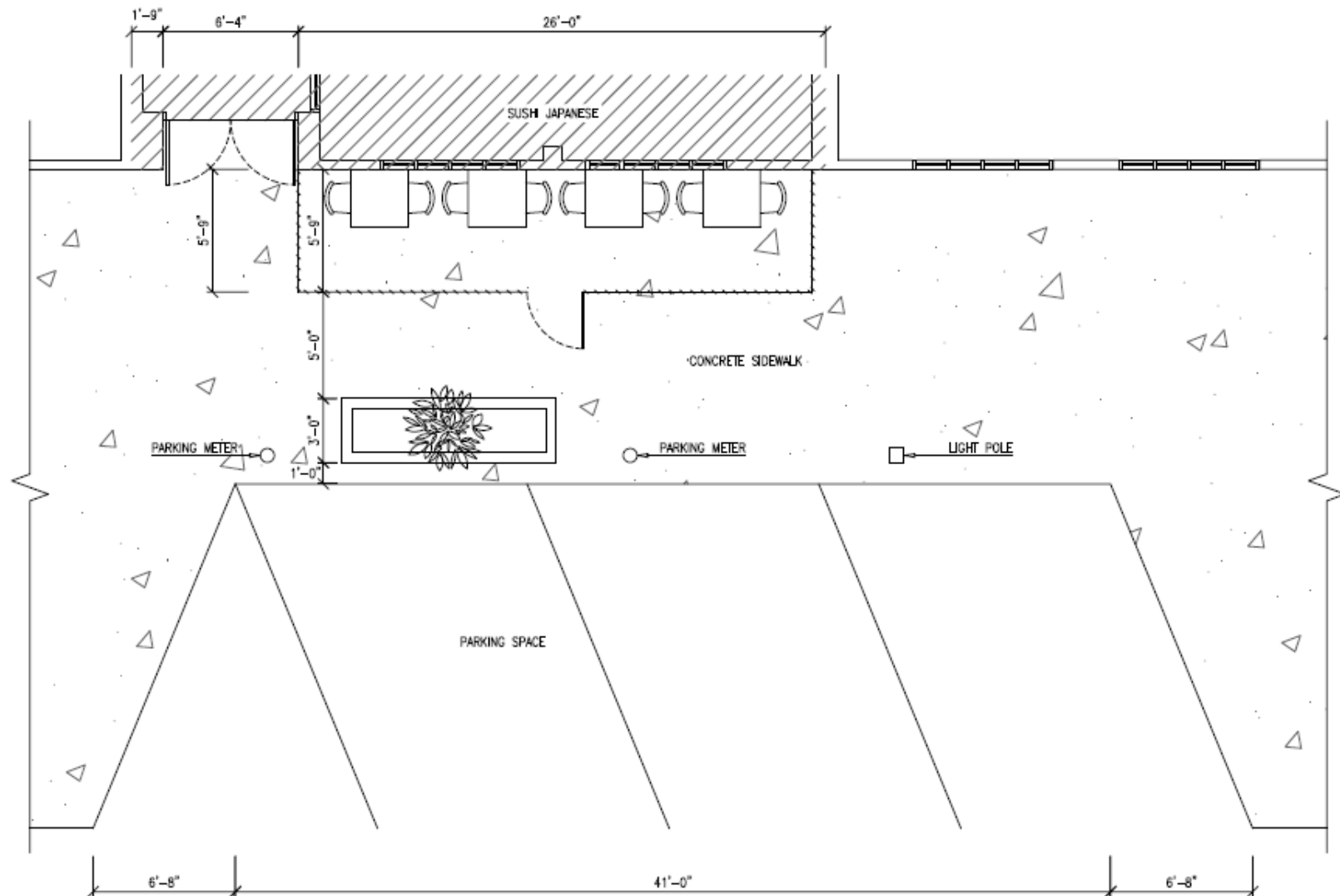
BEER

Tsing Tao
Kloud Japanese Lager
Lagunitas IPA
Hitachino White Ale
Duvel Belgian Golden Ale
Sapporo, Draft, BTL

BRUNCH COCKTAILS

Blood Orange Minosa, prosecco,
blood orange, grapefruit liqueur
Blood Mary, skyy vodka, tomato juice,
horseradish
Spicy Guava Margarita, corazon tequila,
guava, chipotle, lime





SITE PLAN

SCALE: 1/4"=1'-0"



MEMORANDUM

Planning Division

DATE: July 12th, 2021

TO: Thomas Markus, City Manager

FROM: Nicholas Dupuis, City Planner

APPROVED: Jana L. Ecker, Planning Director

SUBJECT: Public Hearing 239 N. Old Woodward – Bloom Bistro – Special Land Use Permit, Final Site Plan & Design Review

INTRODUCTION:

The applicant has submitted an application for a Special Land Use Permit, Final Site Plan and Design Review for a proposed new bistro in an existing 1st floor tenant space of an existing 2-story commercial building in the historic Huston Building in Downtown Birmingham.

BACKGROUND:

Bloom was selected by the City Commission on October 26, 2020 as one of five bistro applications to move forward to contend for one of the two *new* bistro licenses that may be approved each calendar year. During the selection process, the applicant described Bloom as a destination, plant-based experience driven by a trendy atmosphere and complemented by hand crafted cocktails and a chef intensive, seasonally changing menu.

On May 26th, 2021, the Planning Board recommended approval to the City Commission the Special Land Use, Final Site Plan and Design Review with the following conditions:

1. The applicant must receive Historic District Commission approval for all exterior changes proposed;
2. The applicant must submit revised site plans showing non-public trash receptacles in each outdoor dining area;
3. The Planning Board APPROVES the projection into the Willits Alley right-of-way;
4. The applicant must submit specification sheets with Visual Light Transmittance figures for all proposed glazing;
5. The applicant must revise the sign concept for Bloom to meet the dimensional requirements of the Sign Ordinance;
6. The applicant must comply with the requests of all City Departments; and
7. The Planning Board approves outdoor dining in the Willits Alley.

On June 16th, 2021, the Historic District Commission reviewed a Design Review application for the Bloom Bistro, as well as a façade rehabilitation of the entire historic Huston Building in which the Bloom Bistro will be located. The Historic District Commission postponed the Design Review applications citing issues with several elements of the façade proposal in relation to Chapter 127

of the City Code and the Secretary of the Interior Standards including historic material removal, windows/doors, and signage.

On July 7th, 2021, the Historic District Commission approved the Design Review applications for Bloom Bistro and the Huston Building, with the following conditions:

1. The Historic District Commission APPROVES the non-cutoff LED light strips beneath the limestone arch;
2. The Historic District commission APPROVES the proposed 53% glazing;
3. The applicant must submit specification sheets with Visual Light Transmittance figures for all proposed glazing; and
4. The Bloom Bistro façade will be constructed to the standards of the overall Huston Building facade approval.

LEGAL REVIEW:

The City Attorney has reviewed this request and has no concerns.

FISCAL IMPACT:

There are no fiscal impacts for this agenda item.

SUMMARY:

The Planning Division requests that the City Commission consider the Special Land Use Permit, Final Site Plan and Design Review application for 239 N. Old Woodward – Bloom Bistro.

ATTACHMENTS:

Please find attached the following documents for your review:

- Draft Special Land Use Permit Resolution
- Planning Division Report – Planning Board
- Planning Division Report(s) – Historic District Commission
- Site/Design Plans
- Meeting Minutes
- Applications & Supporting Documents

SUGGESTED RESOLUTION:

To approve the Special Land Use Permit, Final Site Plan and Design Review application for 239 N. Old Woodward – Bloom Bistro.

BLOOM
239 N. Old Woodward
Special Land Use Permit 2021

WHEREAS, BLOOM filed an application pursuant to Article 7, section 7.34 of Chapter 126, Zoning, of the City Code to operate a food and drink establishment serving alcoholic liquors in the Downtown Birmingham Overlay District in accordance Article 3, Section 3.04(C)(10) 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 west side of N. Old Woodward, north of Maple Rd., and within the boundaries of the Birmingham Shopping District;

WHEREAS, The land is zoned B-4, and is located in the D-4 zone within the Downtown Birmingham Overlay District, which permits the operation of food and drink establishments serving alcoholic liquors with a Special Land Use Permit;

WHEREAS, Article 7, section 7.34 of Chapter 126, Zoning requires a Special Land Use Permit to be considered and acted upon by the Birmingham City Commission, after receiving recommendations on the site plan and design from the Planning Board for the proposed Special Land Use;

WHEREAS, The applicant submitted an application for a Special Land Use Permit, Final Site Plan and Design Review for BLOOM to operate at 239 N. OLD WOODWARD;

WHEREAS, The Planning Board on May 26, 2021 reviewed the application for a Special Land Use Permit, Final Site Plan and Design Review and recommended APPROVAL to the City Commission to permit a new food and drink establishment serving alcoholic liquors with the following conditions:

1. The applicant must receive Historic District Commission approval for all exterior changes proposed;
2. The applicant must submit revised site plans showing non-public trash receptacles in each outdoor dining area;
3. The Planning Board APPROVES the projection into the Willits Alley right-of-way;
4. The applicant must provide the details on how many businesses utilize the shared compactor, including the proposed Bloom restaurant;
5. The applicant must submit specification sheets with Visual Light Transmittance figures for all proposed glazing;
6. The applicant must revise the sign concept for Bloom to meet the dimensional requirements of the Sign Ordinance; and
7. The applicant must comply with the requests of all City Departments.

WHEREAS, The Historic District Commission on July 7, 2021 reviewed the application for Design Review and APPROVED the exterior building changes to the designated historic resource – the Huston Building – with the following conditions;

1. The Historic District Commission APPROVES the non-cutoff LED light strips beneath the limestone arch;
2. The Historic District commission APPROVES the proposed 53% glazing;
3. The applicant must submit specification sheets with Visual Light Transmittance figures for all proposed glazing; and
4. The Bloom Bistro façade will be constructed to the standards of the overall Huston Building facade approval.

WHEREAS, The applicant has agreed to provide all requested information and to comply with the requests of all City departments;

WHEREAS, The Birmingham City Commission has reviewed BLOOM'S Special Land Use Permit application and the standards for such review as set forth in Article 7, section 7.36 of Chapter 126, Zoning, of the City Code;

NOW, THEREFORE, BE IT RESOLVED, The Birmingham City Commission finds the standards imposed under the City Code have been met, subject to the conditions below, and that BLOOM'S application for a Special Land Use Permit, Final Site Plan and Design Review at 239 N. OLD WOODWARD is hereby approved;

BE IT FURTHER RESOLVED, That the City Commission determines that to assure continued compliance with Code standards and to protect public health, safety, and welfare, this Special Land Use Permit is granted subject to the following conditions:

1. BLOOM will close outdoor dining areas at midnight each day of the week;
2. BLOOM shall abide by all provisions of the Birmingham City Code; and
3. The Special Land Use Permit may be canceled by the City Commission upon finding that the continued use is not in the public interest.
4. The Planning Board APPROVES the projection into the Willits Alley right-of-way.

BE IT FURTHER RESOLVED, That failure to comply with any of the above conditions shall result in termination of the Special Land Use Permit.

BE IT FURTHER RESOLVED, Except as herein specifically provided, BLOOM 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 be subsequently amended. Failure of BLOOM to comply with all the ordinances of the City may result in the Commission revoking this

Special Land Use Permit.

MAY IT BE FURTHER RESOLVED that BLOOM is recommended for the operation of a food and drink establishment serving alcoholic beverages on premises, above all others, subject to final inspection.

I, Alexandria Bingham, City Clerk 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 July 12, 2021.

Alexandria Bingham
City Clerk

Planning Board Documents – 239 N. Old Woodward – Bloom



MEMORANDUM

Planning Division

DATE: May 26th, 2021

TO: Jana Ecker, Planning Director

FROM: Nicholas Dupuis, City Planner

SUBJECT: 239 N. Old Woodward – Bloom Bistro – Special Land Use Permit,
Final Site Plan & Design Review

The subject site, 239 N. Old Woodward, is currently used as a 2-story commercial building (historic Huston Building) fronting onto N. Old Woodward. The applicant has submitted a Special Land Use and Final Site Plan/Design Review application for the introduction of a new bistro a first-floor tenant space, formerly the Pita Café. The applicant is proposing a 65-seat interior and a 36-seat outdoor dining space with extensive façade renovations proposed for this new tenant and for the building as a whole in the future.

Bloom was selected by the City Commission on October 26, 2020 as one of five bistro applications to move forward to contend for one of the two new bistro licenses that may be approved each calendar year. During the selection process, the applicant described Bloom as a destination, plant-based experience driven by a trendy atmosphere and complemented by hand crafted cocktails and a chef intensive, seasonally changing menu.

The Birmingham Code of Ordinances states that a contract for transfer and a Special Land Use Permit are required for all licenses approved under Chapter 10 – Alcoholic Liquors. The licensee must comply with all provisions of the contract and Special Land Use Permit, and any amendments thereto as a condition of granting of a requested transfer. Accordingly, the applicant must obtain a recommendation from the Planning Board on the Special Land Use and Final Site Plan/Design Review application, which is then reviewed for final consideration by the City Commission.

The Huston Building is a locally designated historic resource in the Central Business Historic District. The building was built in 1923, and has been altered several times over the years into what exists today. Although there have been changes, the building is considered to be in good shape, as the original brick façade remains (albeit painted), along with the second floor window openings, distinct roof shape, and its retail use split into two tenants on the first floor. The applicant has indicated that they will be proposing extensive façade renovations to the building aiming to restore the building to a look that more closely matches the original 1923 façade. These changes are required to be reviewed by the Historic District Commission, and may be altered

based on a review of the Secretary of the Interior Standards for Rehabilitation and Chapter 127 of the Birmingham Code of Ordinances. The applicant is scheduled to go before the Historic District Commission on June 16th, 2021 for the façade renovations, including Bloom. **The applicant must receive Historic District Commission approval for all exterior changes proposed.**

1.0 Land Use and Zoning

1.1 Existing Land Use – 2-Story historic commercial building

1.2 Zoning – B4 (Business-Residential) and D4 (Downtown Overlay)

1.3 Summary of Adjacent Land Use and Zoning –

	North	South	East	West
Existing Land Use	Commercial	Commercial	Commercial	Commercial
Existing Zoning District	B4 (Business-Residential)	B4 (Business-Residential)	B4 (Business-Residential)	B4 (Business-Residential)
Overlay Zoning District	D4	D4	D4	D4

2.0 Activation Overlay District

As the subject site is located on the Willits Alley, and the applicant is proposing to activate the rear of the building with outdoor dining, a review of the Activation Overlay District is required.

The Willits Alley is classified as an Active Via. An Active Via is defined as an alley with a mix of uses and activities used by pedestrians/bicyclists for travel, some commercial activities, pausing for respite, outdoor dining, etc. with shared use by service vehicles (deliveries, trash removal, etc.). However, Article 3, Section 3.16 (A) states that the following uses are permitted within Active, Connecting and Destination Vias:

1. Retail sales and display;
2. Public plazas and informal gathering spaces;
3. Art display; and
4. Community Gardens.

In addition, the following uses are also permitted within Connecting and Destination Vias:

1. Outdoor dining; and
2. Special Events.

It would appear as though there is a conflict between the definition of Active Via, which includes outdoor dining, and the permitted uses of each classification of Via, which seems to preclude outdoor dining in Active Vias. **The Planning Board should discuss this inconsistency in the context of the original intent of the Activation Overlay District.**

In addition to use, the applicant is also proposing several design approaches and a sign related to the requirements outlined in the Activation Overlay District. The new Bloom restaurant will be directly accessible from the adjoining via, and the applicant is proposing creative design and color to enhance the rear. The applicant is also proposing one sign that reads "Bloom" above the rear entry door measuring 6 sq. ft. Section 3.16 (I) of the Activation Overlay District requires the following:

1. All doors adjoining alleys or passages are required to provide signage identifying the first floor business(es) contained therein;
2. All first floor uses with rear or side entrances onto alleys or passages must provide pedestrian scaled projecting signs mounted perpendicular to the corresponding facade. One projecting sign is required for each facade with an entrance onto a via. Projecting signs may extend no more than 4 feet from the building facade, projecting banners may extend no more than 6 feet from the building facade, and neither may encroach the clear zone for service vehicles;
3. The lowest point of all projecting signage must be a minimum of 8 feet above grade;
4. Alley and passage commercial signage must be reviewed in accordance with the procedure contained in Article 2 of the Birmingham Sign Ordinance (Chapter 86 of the City Code), but is intended to be bolder and more graphic in nature than storefront signage; and
5. The square footage of the required alley and passage commercial signage required in this section will not count against the maximum total signage permitted on the site.

At this time, the rear sign as proposed does not meet the requirements of the Activation Overlay District, as the proposed sign is not a projecting sign mounted perpendicular to the facade. Thus, **the applicant must submit a revised sign plan that meets the requirements of the Activation Overlay District.**

3.0 Bistro Requirements

Article 9, Section 9.02, Definitions, of the Zoning Ordinance defines a bistro as a restaurant with a full service kitchen with interior seating for no more than 65 people and additional seating for outdoor dining for no more than 65 people.

Article 3, Section 3.04(C)(10) of the Zoning Ordinance permits bistros in the Downtown Overlay District as long as the following conditions are met:

- a. No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats;
- b. Alcohol is served only to seated patrons, except those standing in a defined bar area;
- c. No dance area is provided;
- d. Only low key entertainment is permitted;
- e. Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
- f. A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1' and 8' in height;
- g. All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
- h. Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, enclosed platform must be erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.
- i. Enclosures facilitating year round dining outdoors are not permitted.
- j. Railings, planters or similar barriers defining outdoor dining platforms may not exceed 42" in height.
- k. Outdoor rooftop dining is permitted with the conditions that surrounding properties are not impacted in a negative manner and adequate street level dining is provided as determined by the Planning Board and City Commission. Rooftop dining seats will count towards the total number of permissible outdoor dining seats.

At this time, the applicant appears to meet the requirements listed above. On the interior, the proposed L-shaped bar contains 7 seats and a well-defined bar area that is marked on the floor plan. There is no dance floor, and there are no indications on the plans that any entertainment will be provided at the proposed restaurant. In totality, the applicant is proposing 65 interior seats, including the 7 at the bar.

As far as exterior conditions, a 12-seat outdoor patio is proposed out front along S. Old Woodward, and a 24-seat outdoor dining area is proposed in the Willits Alley (36 total). Both outdoor dining areas are proposed to be defined by seasonal planter boxes, and contain metal tables and chairs with umbrellas matching the color palate of the Bloom concept. The applicant maintains a 5 ft. walking path on the S. Old Woodward thoroughfare, and a 13 ft. 2 in. drive aisle in the alley. The site plans submitted do not show a trash receptacle in the outdoor dining areas aside from an existing public trash can on S. Old Woodward. **The applicant must submit revised site plans showing non-public trash receptacles in each outdoor dining area.** The applicant has also submitted glazing calculations showing 71% glazing proposed, which will be discussed in further detail in the Design Review section below.

Bloom has indicated that the proposed hours of operation for the bistro are 11 AM – 1 AM on Monday-Friday, and 9:30 AM – 1 AM on Saturday and Sunday. The applicant has stated that the outdoor dining hours will comply with the Zoning Ordinance, which permits outdoor dining until 12 AM. It is worth noting that the proposed Willits Alley outdoor dining area is not directly adjacent to the Willits Building, which is predominantly residential, but it is within 70 ft. of the building. The only other outdoor dining that has been permitted in the Willits Alley is that of Dick O' Dows, which was approved while Maple Rd. was under construction under the temporary COVID-19 outdoor dining expansion resolution. Up to this point, the Planning Division has not received any complaints from the Willits regarding any nuisance stemming from that outdoor dining area.

4.0 Setback and Height Requirements

Please see the attached zoning compliance summary sheet for details on setback and height requirements. The following bulk, placement and/or height issues are present:

1. The applicant is proposing a plain (no text/graphics), vertical canvas banner that extends from the top of the first floor to just below the roofline at the rear of the building along the alley. Article 4, Section 4.74 (4)(D)(c)(i) states that removable architectural elements may be approved by the Planning Board to project into the right of way provided that they are constructed to support applicable loads without any ground mounted supports on public property. Encroachments with less than 15 ft. of clearance above the sidewalk shall not extend into or occupy more than two-thirds of the width of the sidewalk or 5 ft., whichever is less, and must not interfere with any existing or planned streetscape elements or infrastructure. The proposed banner extends 1.5 ft. into the public right-of-way, meeting the requirements of the Ordinance. Thus, **the applicant must receive**

approval from the Planning Board for the projection into the right-of-way.

5.0 Screening and Landscaping

- 5.1 Dumpster Screening – The applicant is proposing to utilize an existing trash compactor located behind the Sum-Thing retail store roughly 140 ft. away from the rear access door of Bloom. The applicant has not indicated how many users currently have access to the compactor, nor how often it is emptied. Chapter 90, Section 90-30 of the Birmingham Code of Ordinances permits commercial properties to share waste receptacles between no more than four to six businesses. **The applicant must provide the details on how many businesses utilize the shared compactor, including the proposed Bloom restaurant.**
- 5.2 Parking Lot Screening – The subject site is located within the Parking Assessment District. Therefore, no additional off-street parking facility and accompanying screening is required or proposed.
- 5.3 Mechanical Equipment Screening – The applicant is not proposing any changes to the existing rooftop mechanical units on the building.
- 5.4 Landscaping – The subject site is currently fully developed with no existing landscaping on site. The applicant is not proposing any new landscaping beds on site. Rather, there will be several planter boxes at the outdoor dining areas containing seasonal plantings such as assorted Coleus/Potato Vines, Palms, Bird of Paradise, and Sanservia. There is also some existing ivy located on the rear of the building that appears to be proposed to remain, although it appears more likely that new ivy would be planted due to the new paint proposed on the rear of the building. Although this potentially re-planted ivy appears to be proposed as Boston Ivy, the Planning Division would like to note at this time that English Ivy is a prohibited species per Article 4, Section 4.20 (D)(4) of the Zoning Ordinance.
- 5.5 Streetscape – There are no new streetscape items proposed as a part of this Special Land Use Permit and Final Site Plan/Design Review application. The N. Old Woodward streetscape in that area was recently redone and contains nearby planter boxes, a pedestrian streetlight, and a waste receptacle.

6.0 Parking, Loading and Circulation

- 6.1 Parking – The subject site is located within the Parking Assessment District. Therefore, no additional off-street parking facility is required or proposed.
- 6.2 Loading – The lower level tenant space measures 3,065 sq. ft. No off-street loading spaces are required for the less than 5,000 sq. ft. commercial use.
- 6.3 Vehicular Circulation and Access – The vehicular circulation and access is proposed to remain the same as is existing. The subject site is currently accessed by S. Old Woodward right-of-way parking, and the Willits Alley in the rear.
- 6.4 Pedestrian Circulation and Access – Pedestrians are able to access the new bistro space through a front door on the N. Old Woodward façade as well as a back door accessible to patrons in the Willits Alley.

7.0 Lighting

The applicant is not proposing to add any additional light fixtures to the building as a part of the façade renovations proposed. The applicant has noted that there are three exterior light sconces on the rear of the building that are proposed to remain.

8.0 Departmental Reports

- 8.1 Engineering Division – The Engineering Division has not provided any comments at this time. All comments received will be shared with the Planning board during Site Plan Review.
- 8.2 Department of Public Services – The Department of Public Services has not provided any comments at this time. All comments received will be shared with the Planning board during Site Plan Review.
- 8.3 Fire Department – The Fire Department has provided the following comments:
 - 1. Maintain fire suppression and alarm system during construction and occupancy.
 - 2. Keep life safety systems in service during construction / remodeling.
 - 3. Fire extinguishers required on premises during construction / remodeling.
 - 4. Knox box required.
 - 5. Site plan walk-thru by AHJ required and may change remodeling plans as required by code.

8.4 Police Department – The Police Department has no concerns at this time. They provided one comment that no liquor license has been submitted yet for Bloom to the Police Department for review/approval.

8.5 Building Division – The Building Division has provided the following comments:

1. As requested, the Building Department has examined the plans for the proposed project referenced above. The plans were provided to the Planning Department for site plan review purposes only and present conceptual elevations and floor plans. Although the plans lack sufficient detail to perform a code review, the following comments are offered for Planning Design Review purposes and applicant consideration:

Applicable Building Codes:

- 2015 Michigan Building Code. Applies to all buildings other than those regulated by the Michigan Residential Code.
- 2015 Michigan Mechanical Code. (Residential requirements for mechanical construction in all detached one and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height with a separate means of egress and their accessory structures are contained in the Michigan Residential Code)
- 2015 Michigan Plumbing Code. (Residential requirements for plumbing construction in all detached one and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height with a separate means of egress and their accessory structures are contained in the Michigan Residential Code)
- 2017 National Electrical Code along with the Michigan Part 8 Rules. (Residential requirements for electrical construction in all detached one and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height with a separate means of egress and their accessory structures are contained in the Michigan Residential Code)

Review Comments:





- There are no building code concerns at this time.

9.0 Design Review

As noted in the introduction, the applicant is proposing several exterior changes to the building for Bloom, but has also shown a future concept for the entire building that is

scheduled to go before the Historic District Commission on June 16th, 2021. For the purposes of this Special Land Use Permit, Final Site Plan and Design Review application for Bloom, the Planning Division will consider only the façade changes for the proposed restaurant space.

The changes specific to the proposed Bloom restaurant space are proposed to be simple and involve a reworked storefront, signage, and a painted rear façade. A complete list of all of the new proposed façade materials is as follows:

Material	Location	Color
Aluminum & Glass French Doors	1 st floor storefront	
Aluminum & Glass Transom Windows	Above 1 st floor French doors	
Paint	Front and rear facades	
Granite	Base of storefront	

Glazing

As noted above, the applicant is proposing to rework the entire storefront and add new glazing, which requires them to meet the glazing requirements outlined in Article 3, Section 3.04 of the Zoning Ordinance. The New Storefront Elevation drawing shown on sheet A-2 contains a calculation showing that the new storefront contains 71% glazing in between 1 ft. and 8 ft. from grade. However, the applicant has not submitted specification sheets on any proposed glazing to ensure that the clarity requirements of 80% VLT are met. **The applicant must submit specification sheets with Visual Light Transmittance figures for all proposed glazing.**

Signage

The applicant is proposing five total signs. The linear frontage of the building measures roughly 42 ft., which permits the building 42 sq. ft. of total signage. Article 3, Section 3.02 of the Sign Ordinance defines a sign as any object, device, logo, display or structure, or part thereof, which is intended to advertise, identify, display, or direct or attract attention to an object, person, institution, organization, business, product, service, event or location by any means.

In addition, Article 2, Section 2.03 requires sign area to be computed by means of the smallest square or rectangle that will encompass the extreme limits of the writing, representation, emblem or other display, together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed. Considering the definition and computation regulations above, a breakdown of the building signage is provided in the following table:

Sign (Type)	Sign Area (Sq. Ft.)
Stacked Deli (Wall Sign)	16
Bloom (Wall Sign – Canvas)	56
Bloom (Projecting Sign)	7
Bloom (Name Letter Sign – Rear)	6*
Bloom (Name Letter Sign – Clear Panel, Vinyl)	1
Bloom (Name Letter Sign – Window Header, Vinyl)	1
Total Proposed Combined Sign Area:	81
Total Permitted Combined Sign Area:	42
<i>*Area not included in proposed combined sign area per Activation Overlay District</i>	

In regards to the main canvas wall sign and the vinyl name letter sign on the clear panel in front of the transom windows, their projection from the building face also violates Article 1, Section 1.05 (K)(6)(b) of the Sign Ordinance which requires that no wall signs shall project more than 9 inches measured from the wall to which it is attached to the outer surface. The signs as proposed project 12 in.

In summation, **the applicant must revise the sign concept for Bloom to meet the dimensional requirements of the Sign Ordinance**

10.0 Required Attachments

	Submitted	Not Submitted	Not Required
Existing Conditions Plan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Detailed and Scaled Site Plan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Certified Land Survey	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Interior Floor Plans	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Landscape Plan	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Photometric Plan	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Colored Elevations	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Material Specification Sheets	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Material Samples	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Site & Aerial Photographs	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

11.0 Bistro Criteria

Chapter 10, Alcoholic Liquors, section 10-82 provides a limitation on the number of Bistro Licenses that the City Commission may approve, and provides selection criteria to assist the Planning Board and City Commission in evaluating applications for Bistro Licenses. Section 10-82 states:

(1) New establishments. Two (2) Bistro Licenses may be approved each calendar year to applicants who do not meet the definition of existing establishments as set forth in (a)(1) above. In addition to the usual criteria used by the city commission for liquor license requests, the commission shall consider the following non-exclusive list of criteria to assist in the determination of which of the new establishment applicants, if any, should be approved:

- a. The applicant's demonstrated ability to finance the proposed project.
- b. The applicant's track record with the city including responding to city and/or citizen concerns.
- c. Whether the applicant has an adequate site plan to handle the bistro liquor license activities.
- d. Whether the applicant has adequate health and sanitary facilities.
- e. The establishment's location in relation to the determined interest in the establishment of bistros in the Overlay District and the Triangle District.
- f. The extent that the cuisine offered by applicant is represented in the city.
- g. Whether the applicant has outstanding obligations to the city (ie property taxes, utilities, etc.).

The applicant demonstrated at the City Commission that they will be able to finance the project and will offer a bistro that compliments that many health-related enterprises already located in the City. The applicant also does not have any outstanding obligations to the City at this time. The bistro plans proposed provide an adequate space to carry out their liquor license activities with proper health and sanitary facilities. The proposed menu that features a variety of completely plant-based food is not over-represented in the area.

12.0 Approval Criteria

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

- (1) The location, size and height of the building, walls and fences shall be such that there is adequate landscaped open space so as to provide light, air and access to the persons occupying the structure.
- (2) The location, size and height of the building, walls and fences shall be such that there will be no interference with adequate light, air and access to adjacent lands and buildings.
- (3) The location, size and height of the building, walls and fences shall be such that they will not hinder the reasonable development of adjoining property nor diminish the value thereof.

- (4) The site plan, and its relation to streets, driveways and sidewalks, shall be such as to not interfere with or be hazardous to vehicular and pedestrian traffic.
- (5) The proposed development will be compatible with other uses and buildings in the neighborhood and will not be contrary to the spirit and purpose of this chapter.
- (6) The location, shape and size of required landscaped open space is such as to provide adequate open space for the benefit of the inhabitants of the building and the surrounding neighborhood.

In addition, Article 7, Section 7.26 requires applications for a Special Land Use Permit to meet the following criteria:

- (1) The use is consistent with and will promote the intent and purpose of this Zoning Ordinance.
- (2) The use will be compatible with adjacent uses of land, the natural environment, and the capabilities of public services and facilities affected by the land use.
- (3) The use is consistent with the public health, safety and welfare of the city.
- (4) The use is in compliance with all other requirements of this Zoning Ordinance.
- (5) The use will not be injurious to the surrounding neighborhood.
- (6) The use is in compliance with state and federal statutes.

13.0 Recommendation

Based on a review of the site plan submitted, the Planning Division recommends that the Planning Board recommend **APPROVAL** to the City Commission the Special Land Use and Final Site Plan/Design Review application for 239 N. Old Woodward – Bloom – with the following conditions:

1. The applicant must receive Historic District Commission approval for all exterior changes proposed;
2. The applicant must submit revised site plans showing non-public trash receptacles in each outdoor dining area;
3. The Planning Board APPROVES/DISSAPROVES the projection into the Willits Alley right-of-way;
4. The applicant must provide the details on how many businesses utilize the shared compactor, including the proposed Bloom restaurant;
5. The applicant must submit specification sheets with Visual Light Transmittance figures for all proposed glazing;
6. The applicant must revise the sign concept for Bloom to meet the dimensional requirements of the Sign Ordinance; and

7. The applicant must comply with the requests of all City Departments.

14.0 Sample Motion Language (*Final Site Plan & Design Review*)

Motion to recommend **APPROVAL** to the City Commission the Final Site Plan & Design Review for 239 N. Old Woodward – Bloom – subject to the following conditions:

1. The applicant must receive Historic District Commission approval for all exterior changes proposed;
2. The applicant must submit revised site plans showing non-public trash receptacles in each outdoor dining area;
3. The Planning Board APPROVES/DISSAPROVES the projection into the Willits Alley right-of-way;
4. The applicant must provide the details on how many businesses utilize the shared compactor, including the proposed Bloom restaurant;
5. The applicant must submit specification sheets with Visual Light Transmittance figures for all proposed glazing;
6. The applicant must revise the sign concept for Bloom to meet the dimensional requirements of the Sign Ordinance; and
7. The applicant must comply with the requests of all City Departments.

OR

Motion to **POSTPONE** the Final Site Plan & Design Review 239 N. Old Woodward – Bloom – pending receipt of the following:

1. _____
2. _____
3. _____

OR

Motion to recommend the **DENIAL** to the City Commission the Final Site Plan & Design Review for 239 N. Old Woodward – Bloom – for the following reasons:

1. _____
2. _____
3. _____

15.0 Sample Motion Language (*Special Land Use Permit*)

Motion to recommend **APPROVAL** to the City Commission the Special Land Use Permit for 239 N. Old Woodward – Bloom – subject to the conditions of Final Site Plan & Design Review approval.

OR

Motion to **POSTPONE** the Special Land Use Permit for 239 N. Old Woodward – Bloom – pending receipt of the following:

1. _____
2. _____
3. _____

OR

Motion to recommend **DENIAL** to the City Commission the Special Land Use Permit for 239 N. Old Woodward – Bloom – for the following reasons:

1. _____
2. _____
3. _____

**Zoning Compliance Summary Sheet
Final Site Plan Review
239 N. Old Woodward - Bloom**

Existing Site: 2-Story Commercial Building

Zoning: B4 (Business-Residential) and D4 (Downtown Overlay)

Land Use: Commercial

Existing Land Use and Zoning of Adjacent Properties:

	North	South	East	West
Existing Land Use	Commercial	Commercial	Commercial	Commercial
Existing Zoning District	B4 (Business-Residential)	B4 (Business-Residential)	B4 (Business-Residential)	B4 (Business-Residential)
Overlay Zoning District	D4	D4	D4	D4

Land Area: Existing: 0.049 ac.
Proposed: 0.049 ac.

Dwelling Units: Existing: 0 units
Proposed: 0 units

Minimum Lot Area/Unit: Required: N/A
Proposed: N/A

Min. Floor Area /Unit: Required: N/A
Proposed: N/A

Max. Total Floor Area: Required: N/A
Proposed: N/A

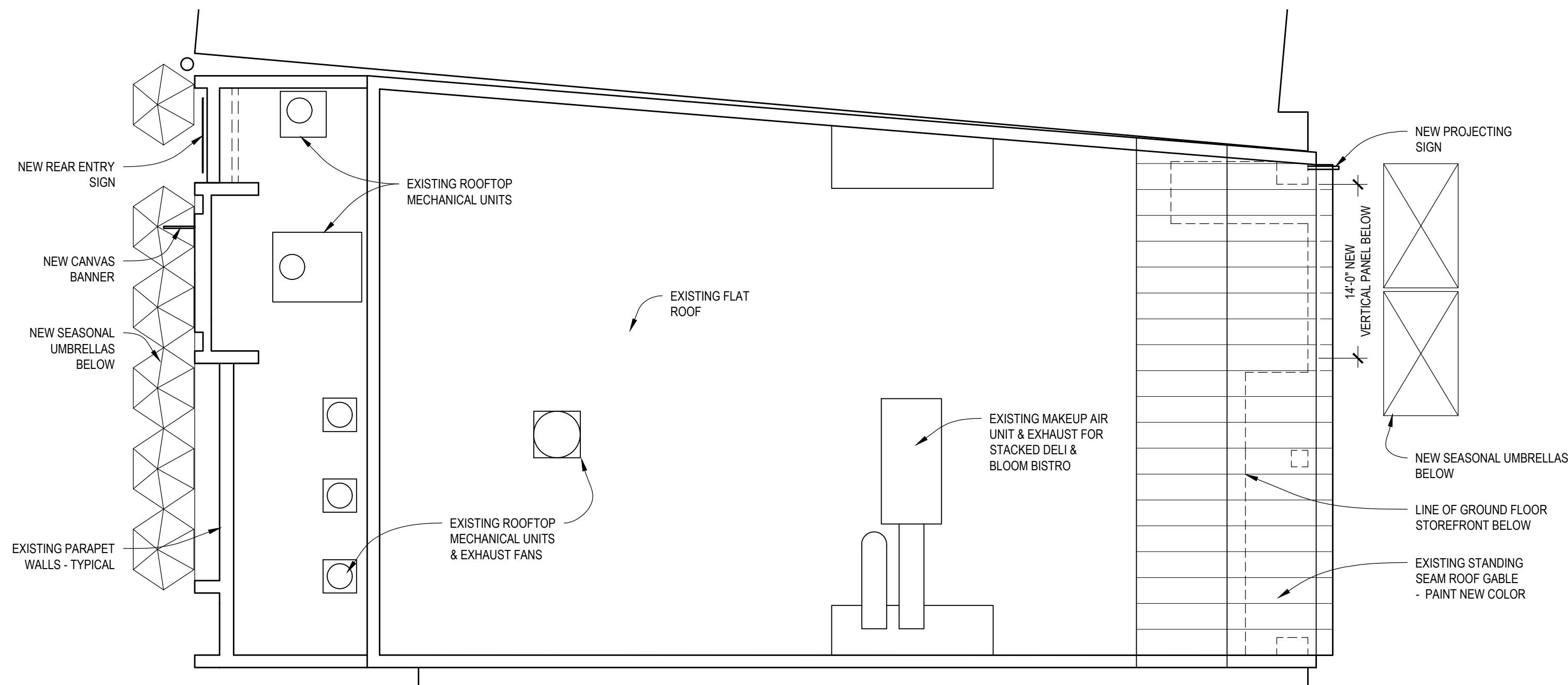
Min. Open Space: Required: N/A
Proposed: N/A

Max. Lot Coverage: Required: N/A
Proposed: N/A

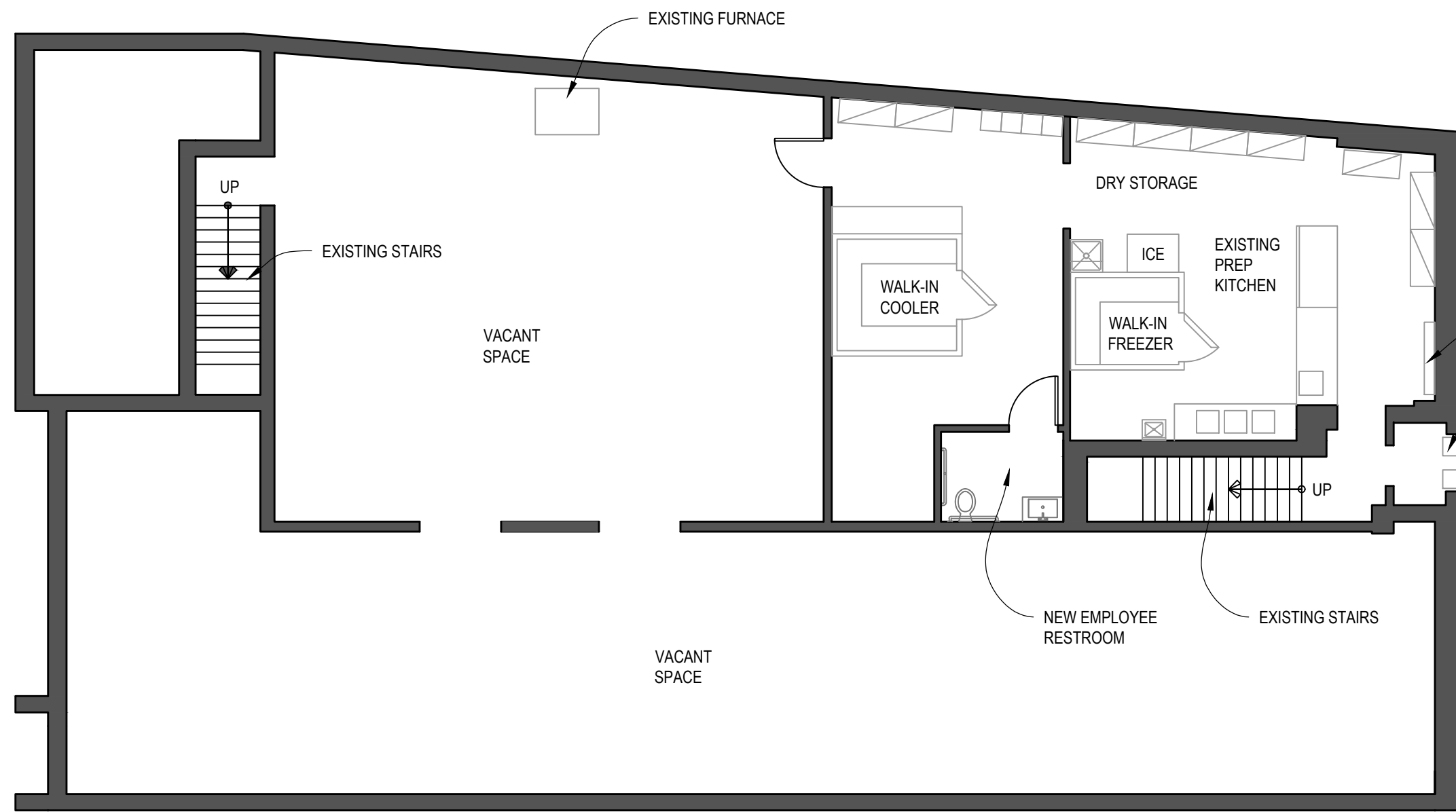
Front Setback:	Required:	0 ft.
	Proposed:	0 ft.
Side Setbacks	Required:	0 ft.
	Proposed:	0 ft.
Rear Setback:	Required:	0 ft.
	Proposed:	0 ft. (no changes proposed)
Min. Front+Rear Setback	Required:	N/A
	Proposed:	N/A
Max. Bldg. Height:	Permitted:	80 ft.
	Proposed:	33 ft. (no changes proposed)
Min. Eave Height:	Required:	58 ft.
	Proposed:	Existing
Floor-Ceiling Height:	Required:	N/A
	Proposed:	N/A
Front Entry:	Required:	N/A
	Proposed:	N/A
Absence of Bldg. Façade:	Required:	N/A
	Proposed:	N/A
Opening Width:	Required:	N/A
	Proposed:	N/A
Parking:	Required:	0 off-street spaces (Parking Assessment District)
	Proposed:	0 off- street spaces
Min. Parking Space Size:	Required:	180 sq. ft.
	Proposed:	N/A
Parking in Frontage:	Required:	N/A
	Proposed:	N/A
Loading Area:	Required:	None
	Proposed:	None
Screening:		

Parking: Required: None

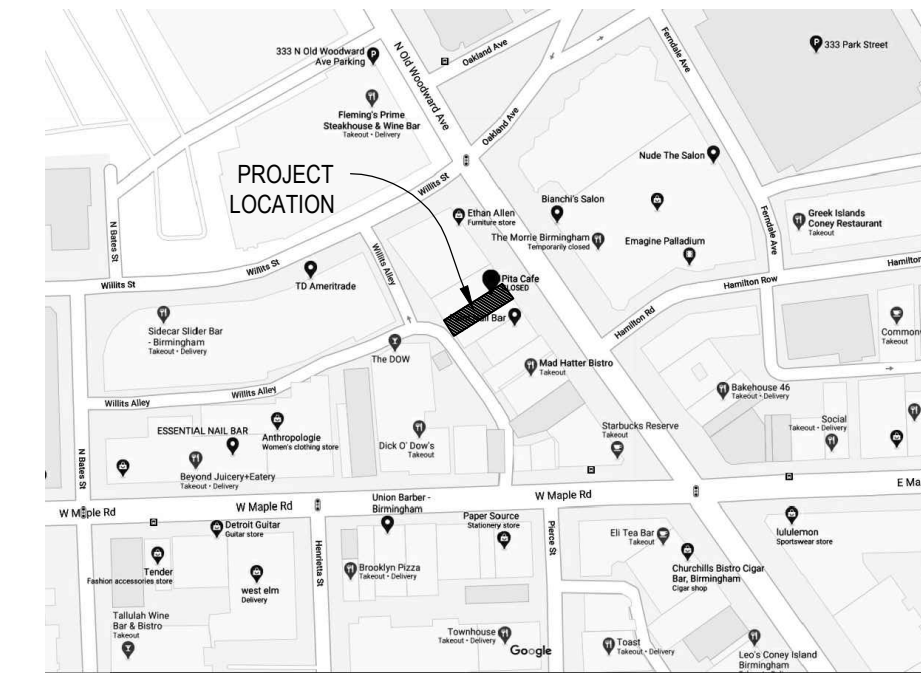
	Proposed:	None
<u>Loading:</u>	Required:	None
	Proposed:	None
<u>Rooftop Mechanical:</u>	Required:	Fully screened from public view
	Proposed:	No changes proposed
<u>Elect. Transformer:</u>	Required:	N/A
	Proposed:	N/A
<u>Dumpster:</u>	Required:	6 ft. masonry w/ wood gate
	Proposed:	No changes proposed



3 ROOF PLAN
scale: 1/8" = 1'-0"



2 BASEMENT FLOOR PLAN
scale: 1/8" = 1'-0"



LOCATION MAP
NORTH

PROJECT INFORMATION:
ZONING: B-4, D-4 OVERLAY & HISTORIC DISTRICT
CURRENT USE GROUP: A-2, RESTAURANT
PROPOSED USE GROUP: A-2, RESTAURANT

PROJECT AREAS:
MAIN FLOOR = 2,148 SF
BASEMENT = 917 SF
PARCEL NUMBER: 08-19-25-378-014

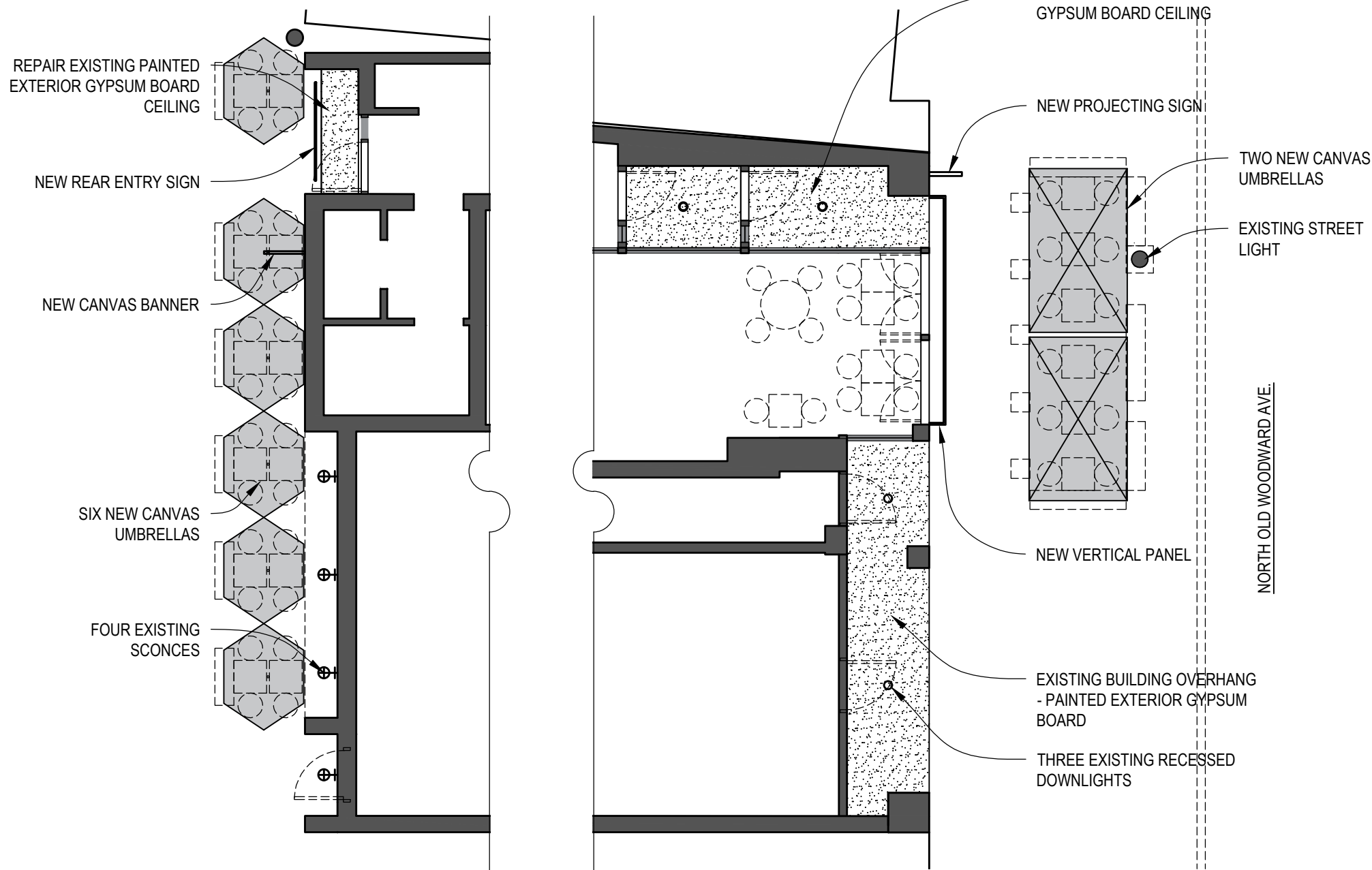
LEGAL DESCRIPTION -
T2N, R10E, SEC 25 ASSESSOR'S PLAT NO 19
PART OF LOT 10 BEG AT NE LOT COR, TH S
33-28-00 E 41.58 FT, TH S 57-35-00 W 90.60 FT, TH
N 33-26-50 W 49.57 FT, TH N 90.83 FT TO BEG

SEATING CAPACITY

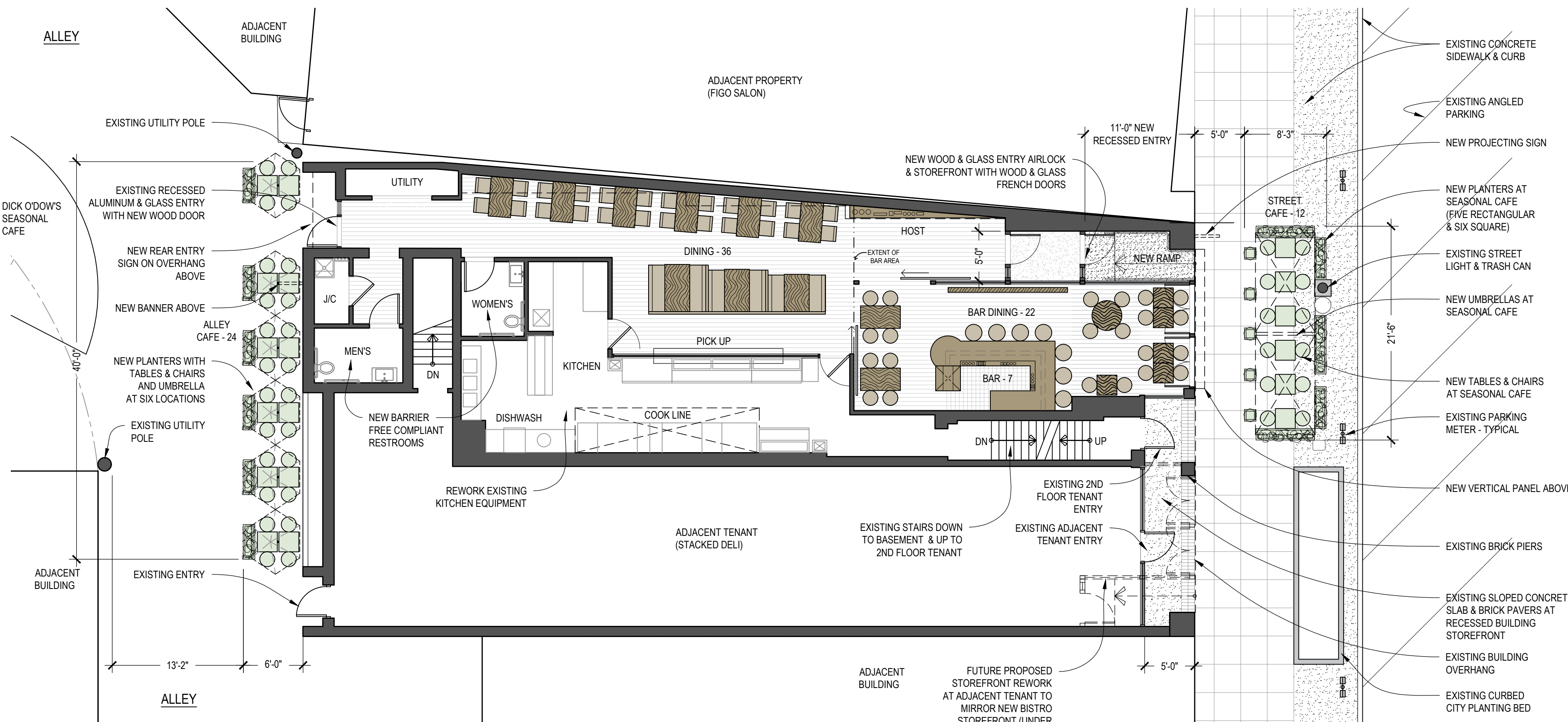
INTERIOR SEATING	
BAR	7
BAR DINING	22
DINING	36
TOTAL INTERIOR	65

SEASONAL SEATING, IN CITY R.O.W.	
STREET CAFE	12
ALLEY CAFE	24
TOTAL CAFE SEATING	36

GRAND TOTAL 101



4 EXTERIOR LIGHTING PLAN
scale: 1/8" = 1'-0"



1 MAIN LEVEL FLOOR PLAN
scale: 1/8" = 1'-0"

Project:

BLOOM
NEW BISTRO IN AN EXISTING RESTAURANT SPACE
239 N. OLD WOODWARD AVE., BIRMINGHAM, MI 48009

Seal:

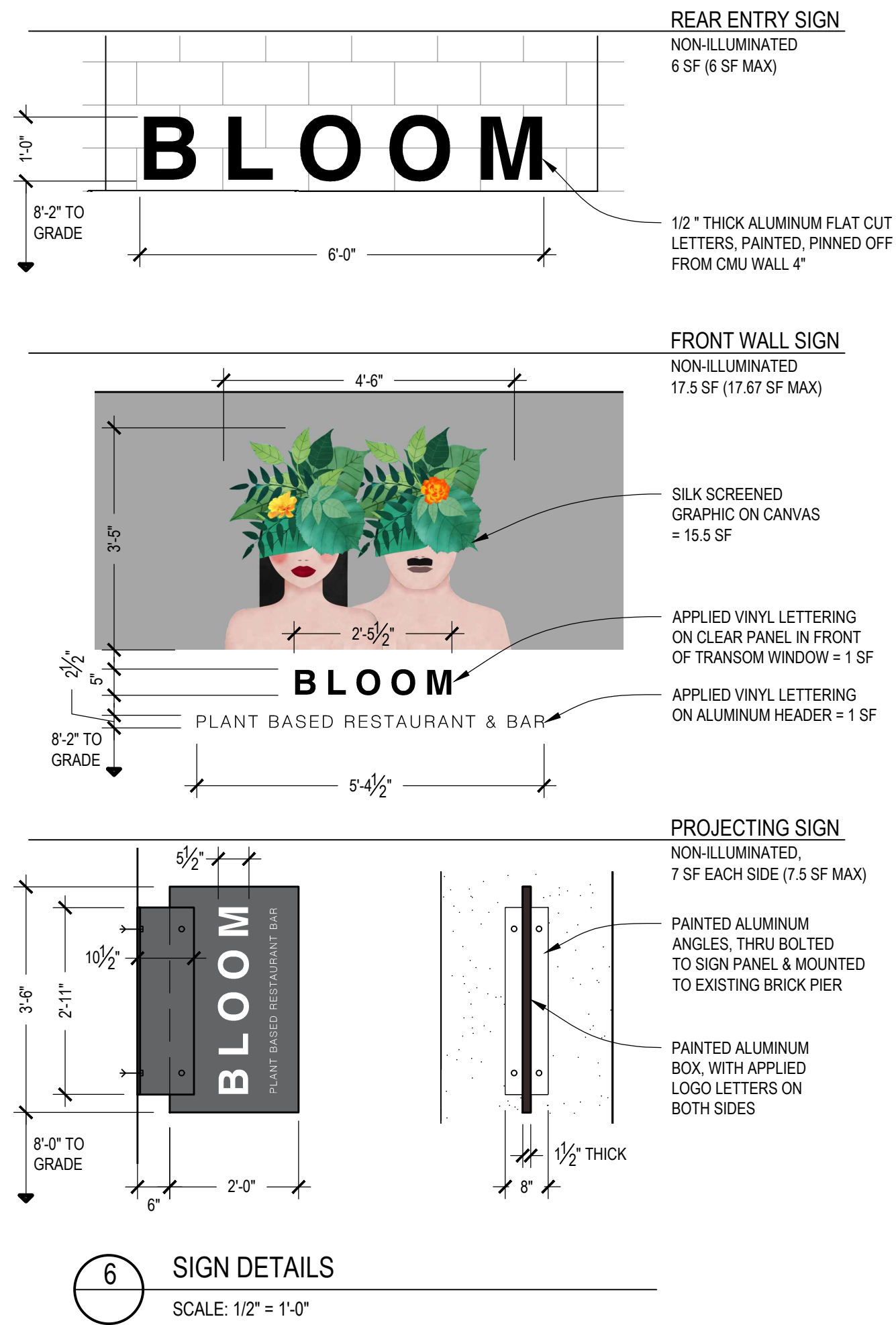
Issue Date:

BISTRO SLUP	5/12/21

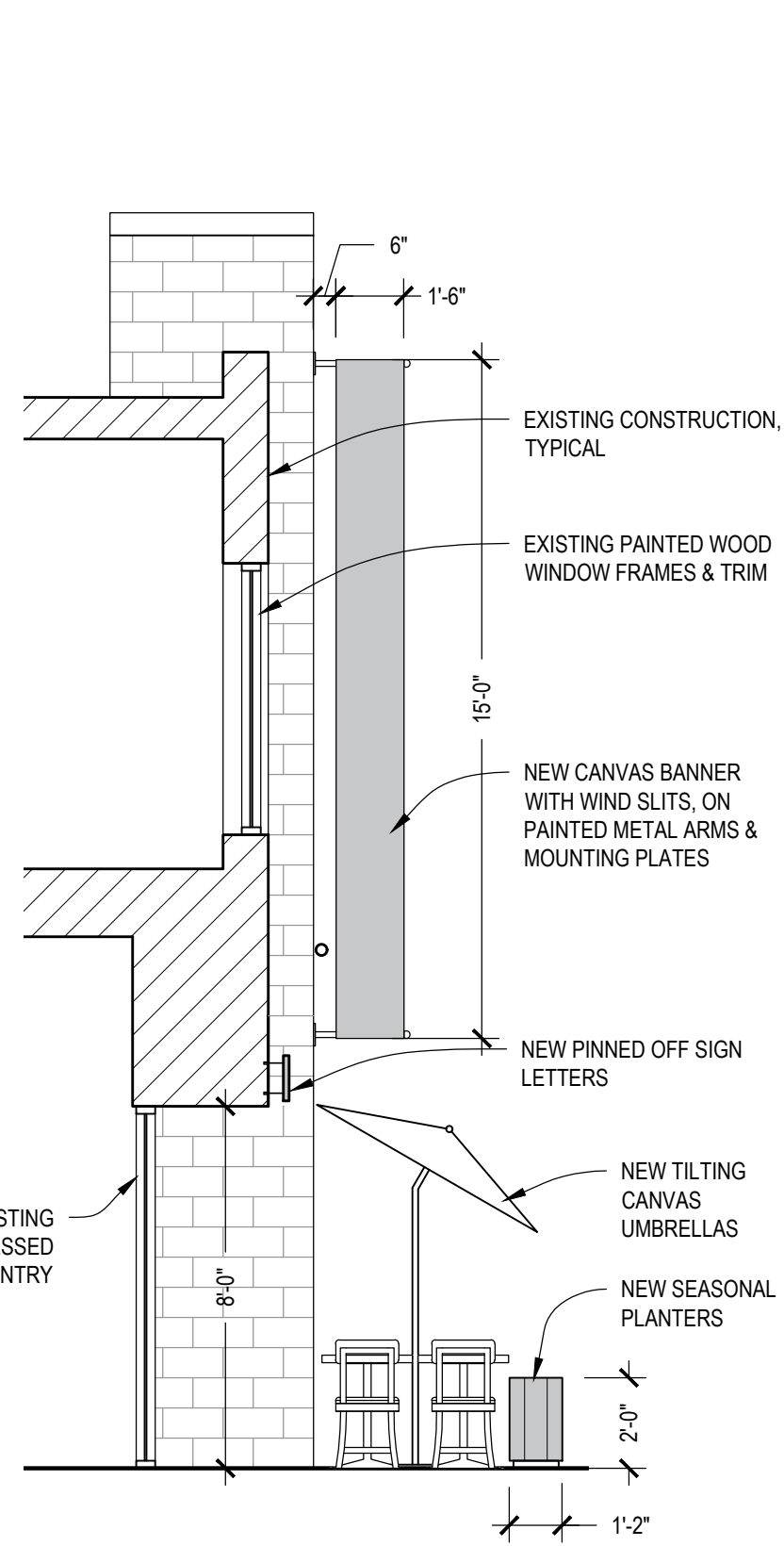
Sheet Title:

FLOOR PLANS

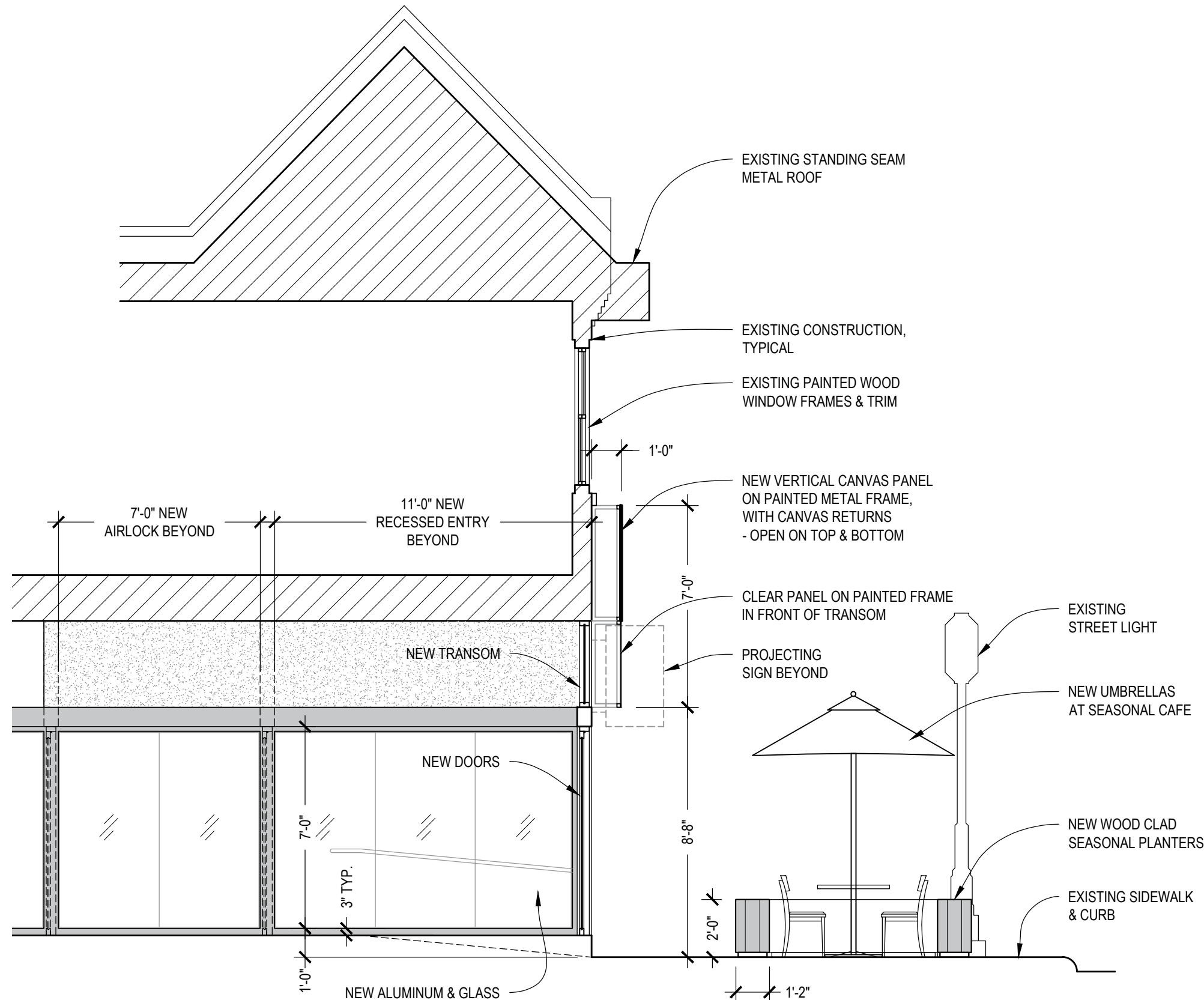
Sheet Number:



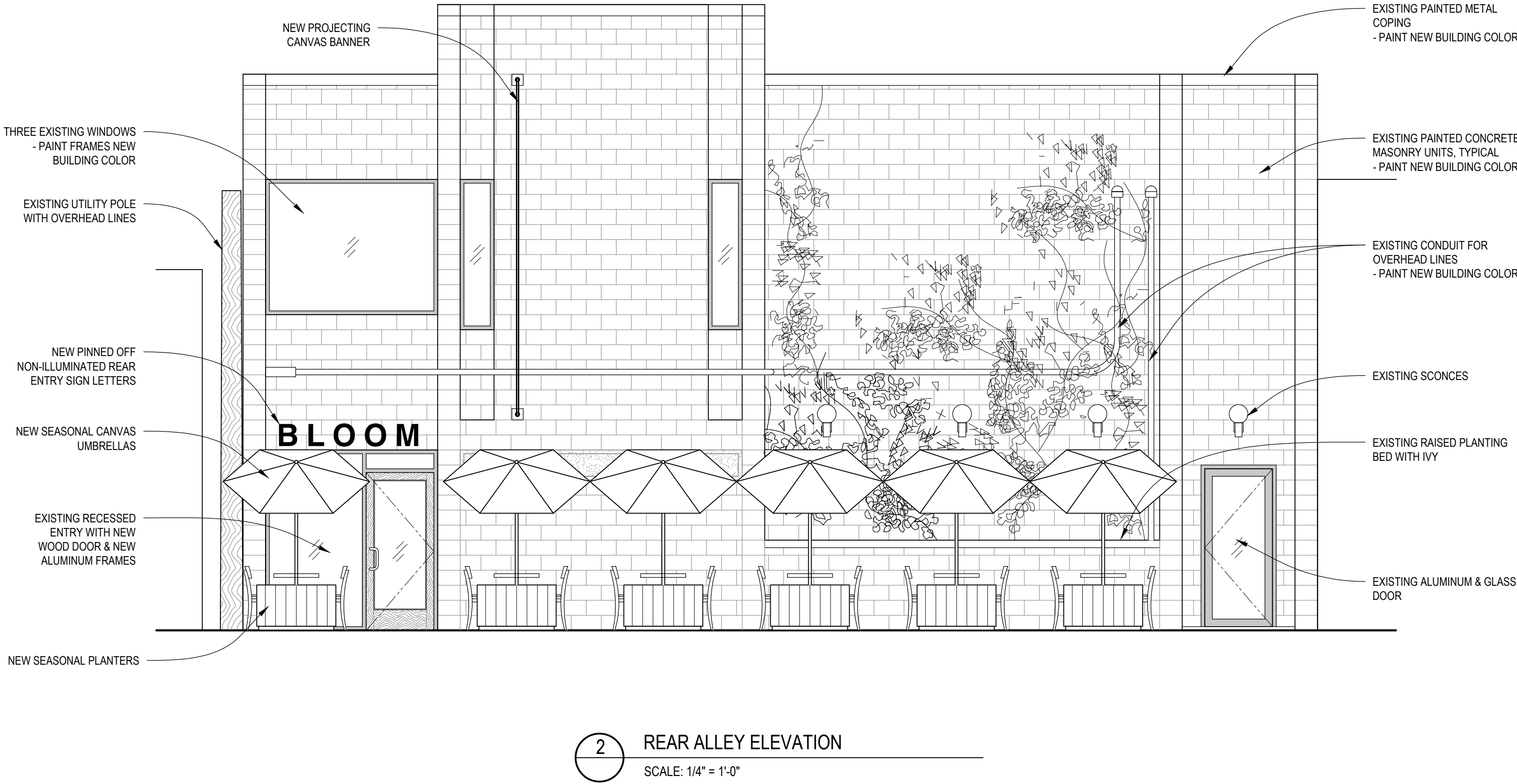
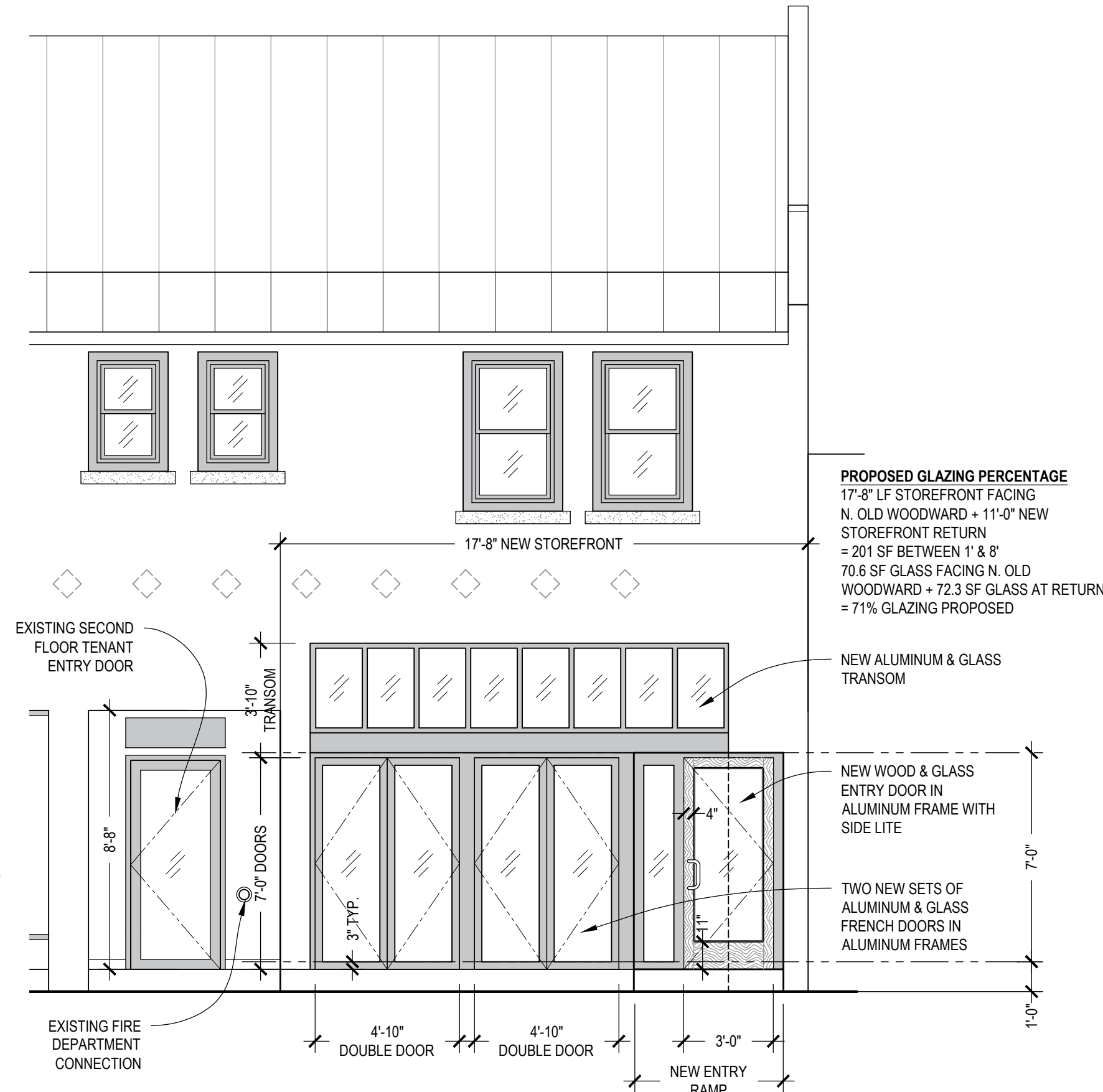
5 SECTION AT REAR ENTRY
SCALE: 1/4" = 1'-0"



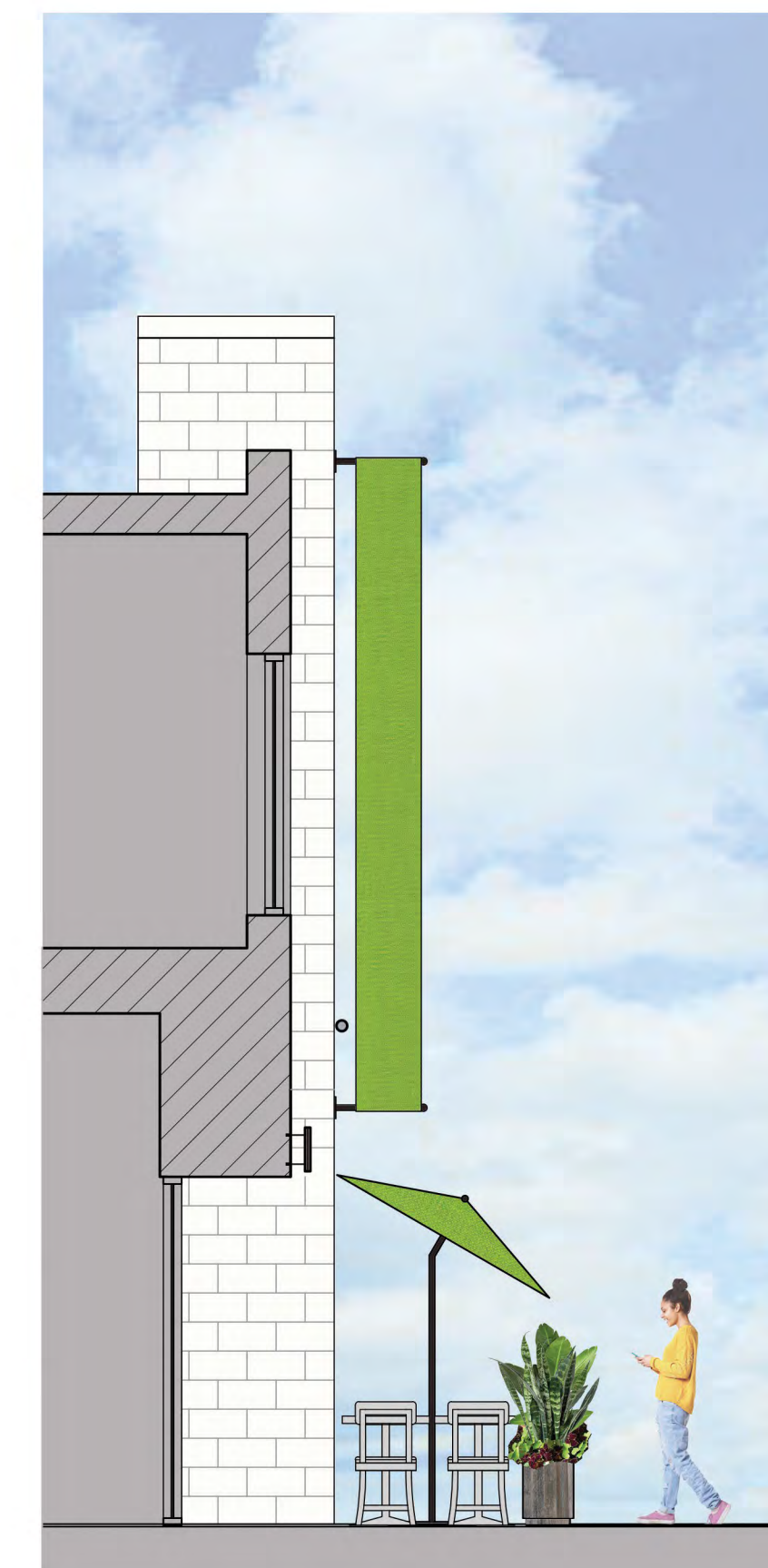
4 SECTION AT STOREFRONT
SCALE: 1/4" = 1'-0"



3 NEW STOREFRONT ELEVATION
SCALE: 1/4" = 1'-0"



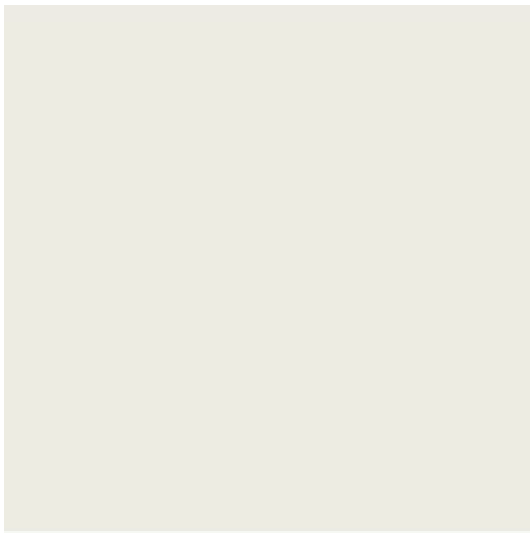
* OTHER BUILDING IMPROVEMENTS SHOWN FOR REFERENCE,
NOT PART OF BISTRO SLUP, NOTED AS "FUTURE" *



al:

Sheet Title:

Sheet Number:



WHITE PAINT COLOR
SHERWIN WILLIAMS "GLACIER WHITE" OC-37



BLACK SIGN BOX & SIGN LETTERS
SHERWIN WILLIAMS "CAVIAR" 6990



COLOR IMAGE PRINTED
ONTO CANVAS



METAL TABLES & CHAIRS
AT SEASONAL PATIO, HONEYDEW COLOR



SUNBRELLA "GINKGO"
CANVAS ON VERTICAL PANEL
& SEASONAL UMBRELLAS



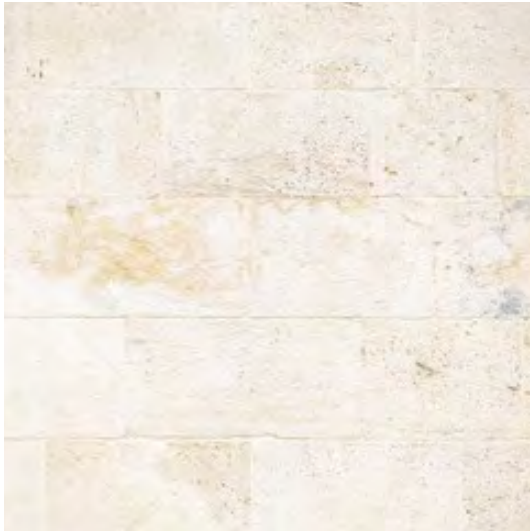
CLEAR VINYL SHEET (EZ2CY) IN CANVAS
BORDER ATTACHED TO METAL FRAME



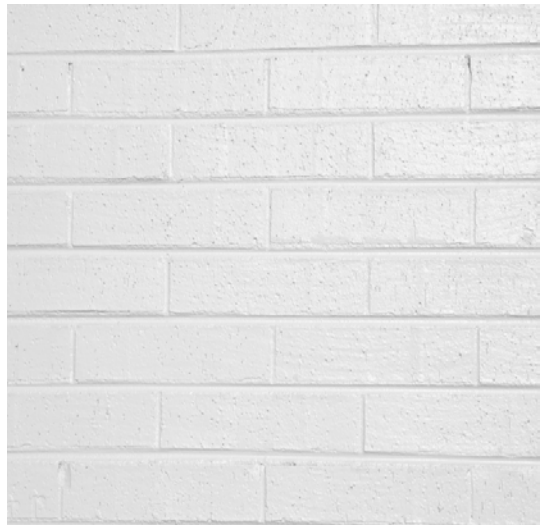
TERRA COTTA ROOF TILES
(PART OF FUTURE BUILDING IMPROVEMENTS)



WHITE PAINTED CONCRETE
MASONRY UNITS, ON ALLEY ELEVATION



LIMESTONE ON FRONT FACADE
(PART OF FUTURE BUILDING IMPROVEMENTS)



WHITE PAINTED BRICK



BLACK ANODIZED ALUMINUM WINDOWS &
DOORS



GRANITE BASE



CLIMBING BOSTON IVY
ON REAR ALLEY ELEVATION



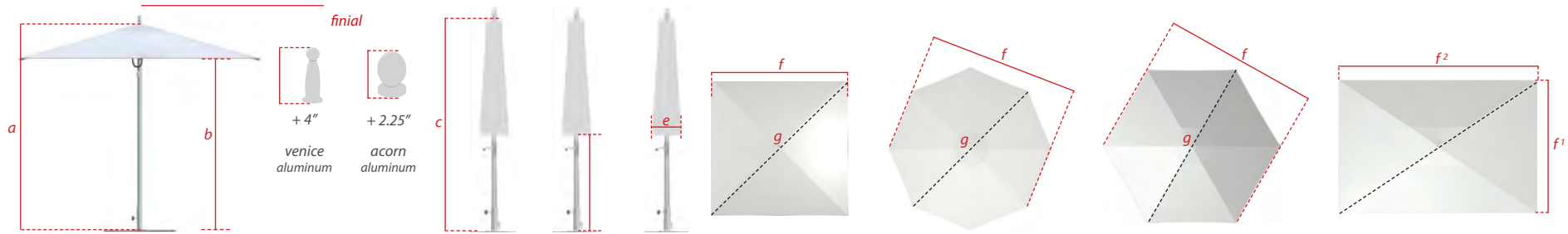
WOOD PLANK CLAD SEASONAL PLANTERS
- NATURAL IPE



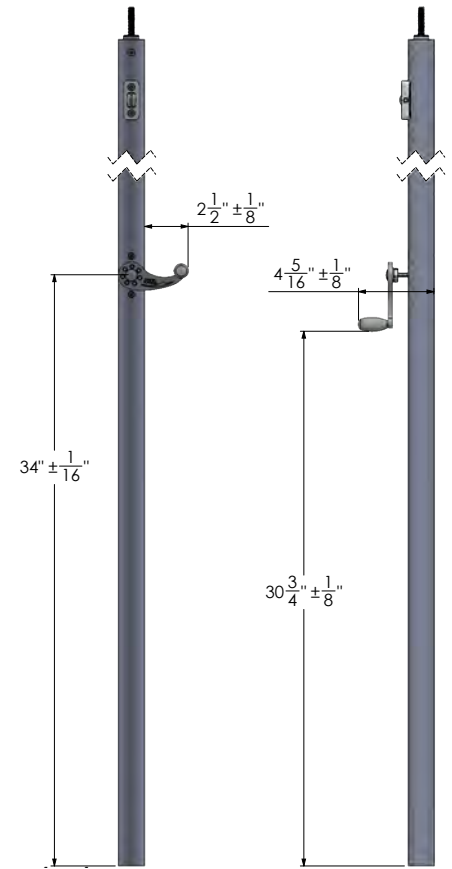
SEASONAL PLANTINGS - ASSORTED COLEUS/POTATO VINES, PALMS, BIRD OF PARADISE, SANSERVIA



UMBRELLAS, IN SUNBRELLA "GINKGO",
SEASONAL PATIOS

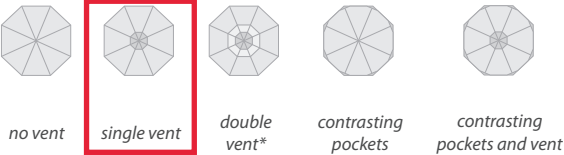


		mast height (open position)	canopy clearance	mast height (closed position)	table clearance	closed parasol width	flat to flat (Open Umbrella)	point to point	canopy area coverage	crank handle clearance
classic	sizes [ft/m]	a (in/cm)	b (in/cm)	c (in/cm)	d (in/cm)	e (in/cm)	f (in/cm)	g (in/cm)	ft ²	
square	6.5' / 2.0m	95 / 242	75 / 190	95 / 242	38 / 96	12 / 31	80 / 204	113 / 288	44.5	
	7.5' / 2.25m	95 / 242	73 / 185	95 / 242	32 / 81	13 / 33	88 / 244	124 / 315	54.25	
	8.5' / 2.6m	106 / 210	82 / 208	106 / 270	32 / 81	13 / 33	101 / 257	143 / 363	72	
	10.0' / 3.0m telescoping mast	104.5 / 265	83 / 210	139 / 354	52 / 132	15 / 81	119.5 / 304	169 / 430	99.25	
octagon	9.0' / 2.75m	94 / 188	80 / 203	94 / 188	37 / 94	15 / 81	105.5 / 268	114 / 290	62.75	
	10.5' / 3.2m	94 / 188	77 / 196	94 / 188	32 / 81	16 / 41	115 / 293	125 / 317.5	76.75	
	11.5' / 3.6m telescoping mast	97 / 247	75 / 190	121 / 308	51 / 130	16 / 41	125 / 318	135 / 343	89.5	
	13.0' / 4.0m telescoping mast	102 / 259	77 / 196	130.5 / 331	53 / 135	17 / 43	143 / 363	155 / 394	115	
hexagon	8.5' / 2.6m	95 / 242	78 / 198	95 / 242	36 / 91	11 / 28	98 / 249	113 / 288	57.5	
	10.0' / 3.0m	95 / 242	77 / 196	95 / 242	33 / 84	16 / 41	109 / 277	125 / 317.5	70.5	
	11.0' / 3.4m	99 / 252	77 / 195	99 / 252	30 / 76	12 / 31	117 / 298	135 / 343	82.25	
rectangle	6.0' x 9.0' / 1.8m x 2.75m	98 / 249	76 / 143	98 / 249	29 / 73	13 / 33	f ¹ X f ² 75x112 191x285	135 / 343	58.25	
	8.0' x 12.0' / 2.45m x 3.65m telescoping mast	100 / 254	87 / 221	134 / 340	48.5 /	52 / 132	f ¹ X f ² 94x141 239x359	172 / 437	92	

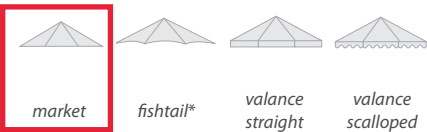


ocean master, plantation, bay master & vineyard classic (cont.)

vent and pocket options



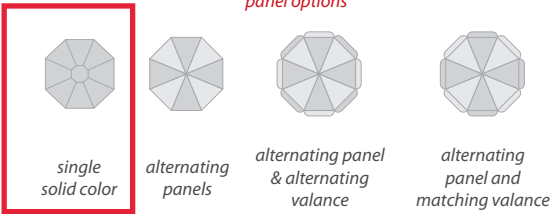
profile options



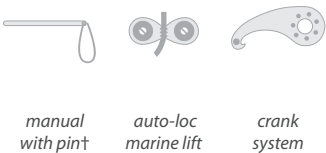
canopy options



panel options



lifting system options



finial

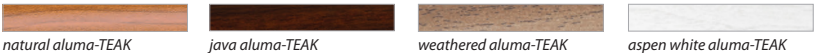


finish options:

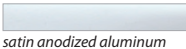
ocean master classic



plantation classic



bay master classic



vineyard classic





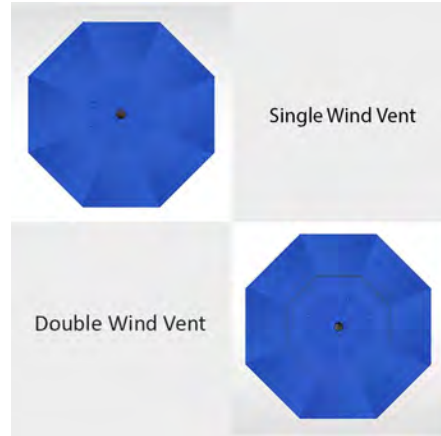
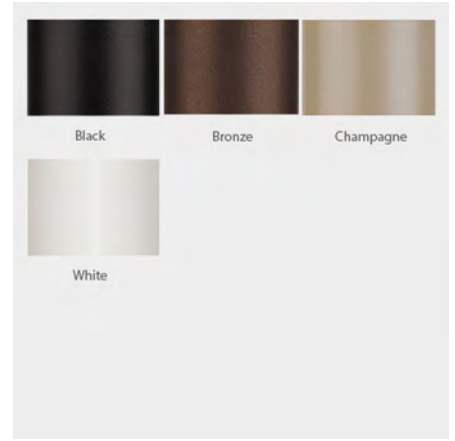
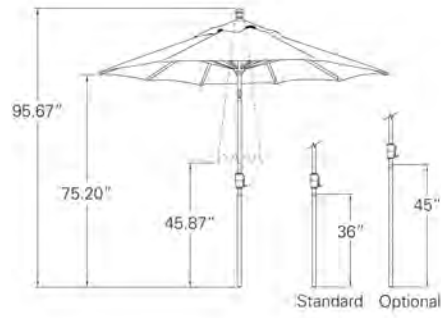
PATIO PRODUCTIONS

Downtown San Diego
2161 Hancock St
San Diego, CA 92110

Phone: 1-888-994-9196

Product Images





Short Description

7.5' Octagon Custom Push Button Tilt Market Umbrella UM907

Additional Information

SKU	UM907
Brand	Treasure Garden
Delivery Estimate	10 - 14 Weeks
Residential Warranty	Frame: 1 Year Sunbrella/Outdura/Docril Fabrics: 5 Years O'bravia Fabrics: 4 Years
Fabric	View Fabric Options
Dimensions	Height: 100.8" Coverage: 46 sq. ft. Top Pole: 1.38" Bottom Pole: 1.5" Weight: 15.4 lbs. Number of Ribs: 8

7.5' Octagon Custom Push Button Tilt Market Umbrella UM907

\$179.00

Orange Metal Indoor-Outdoor Table Set with 2 Stack Chairs

Central Model#: 47K-D42 Brand: Flash Furniture Mfg Part#: CH-31330-2-30-OR-GG



Product Details

Complete your dining room, restaurant or patio with this chic table and chair set. This colorful set will add a retro-modern look to your home or eatery. The table top features an engraved designer print, stabilizing cross brace and protective rubber floor glides. The lightweight stack chair features plastic caps that prevent the finish from scratching while being stacked. This 3 piece table set is designed for indoor and outdoor settings. For longevity, care should be taken to protect from long periods of wet weather. The possibilities are endless with the multitude of environments in which you can use this table, for both commercial and residential spaces. [CH-31330-2-30-OR-GG]

This Flash Furniture CH-31330-2-30-OR-GG is available from Central Restaurant Products.

Features Include:

- Table and Chair Set
- Set Includes Table and 2 Chairs
- Orange Powder Coat Finish
- Designed for Indoor and Outdoor Use
- Designed for Commercial and Residential Use
- Square Table
- Table Size: 27.75"W x 27.75"D x 29"H
- Engraved Designer Top
- 2" Thick Edge
- Cross Brace provides extra stability
- Protective Rubber Floor Glides
- Stackable Cafe Chair
- Stacks up to 8 Chairs High
- 330 lb. Weight Capacity
- Curved Back with Vertical Slats
- Drain Holes in Seat
- Cross Brace under seat provides extra stability
- Plastic Caps on cross brace protect finish when stacked
- Protective Rubber Floor Glides
- Overall Size: 18"W x 20"D x 33"H

R O N A N D R O M A N

Bloom Bistro

Proposed Hours of Operation:

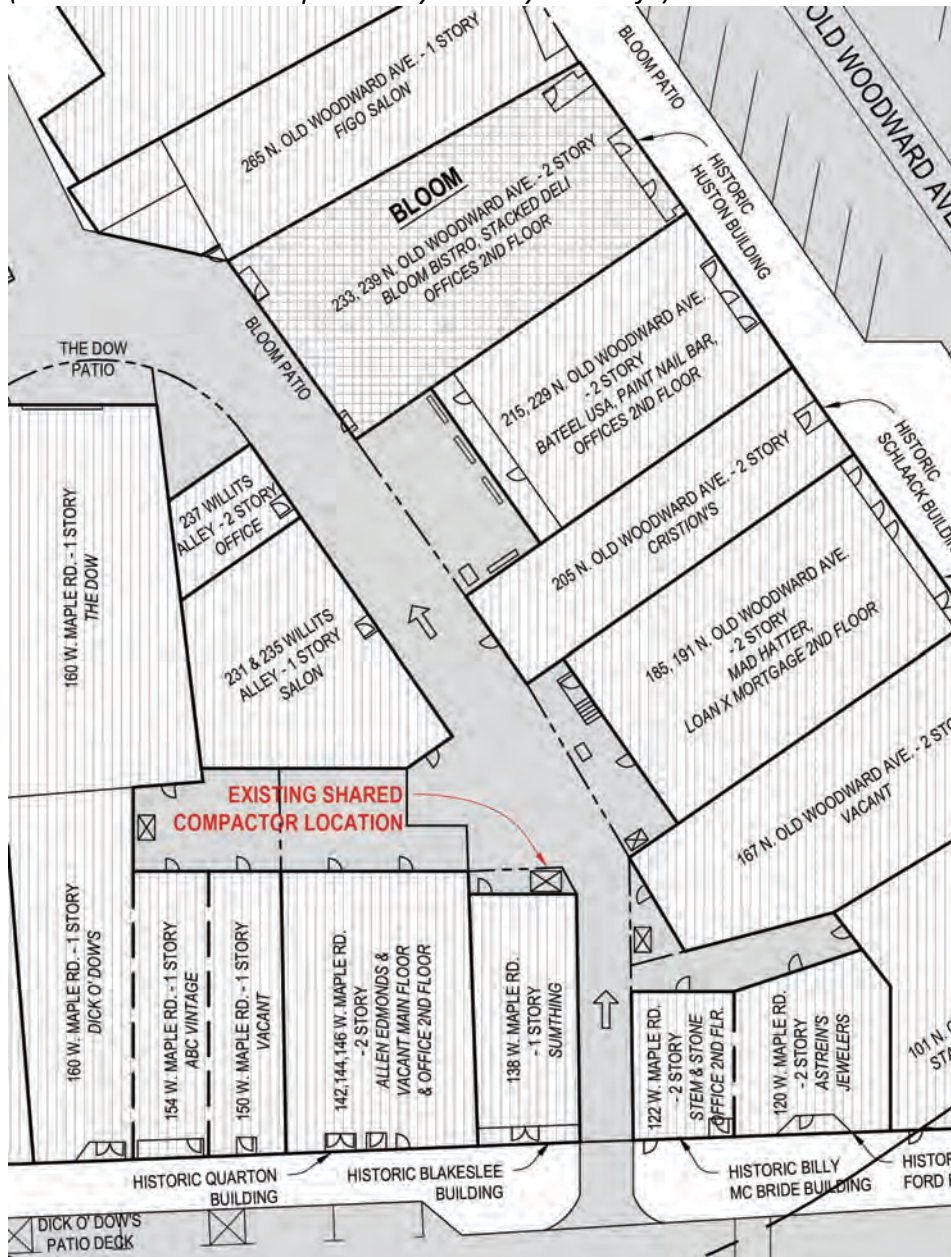
Monday – Friday 11am – 1am

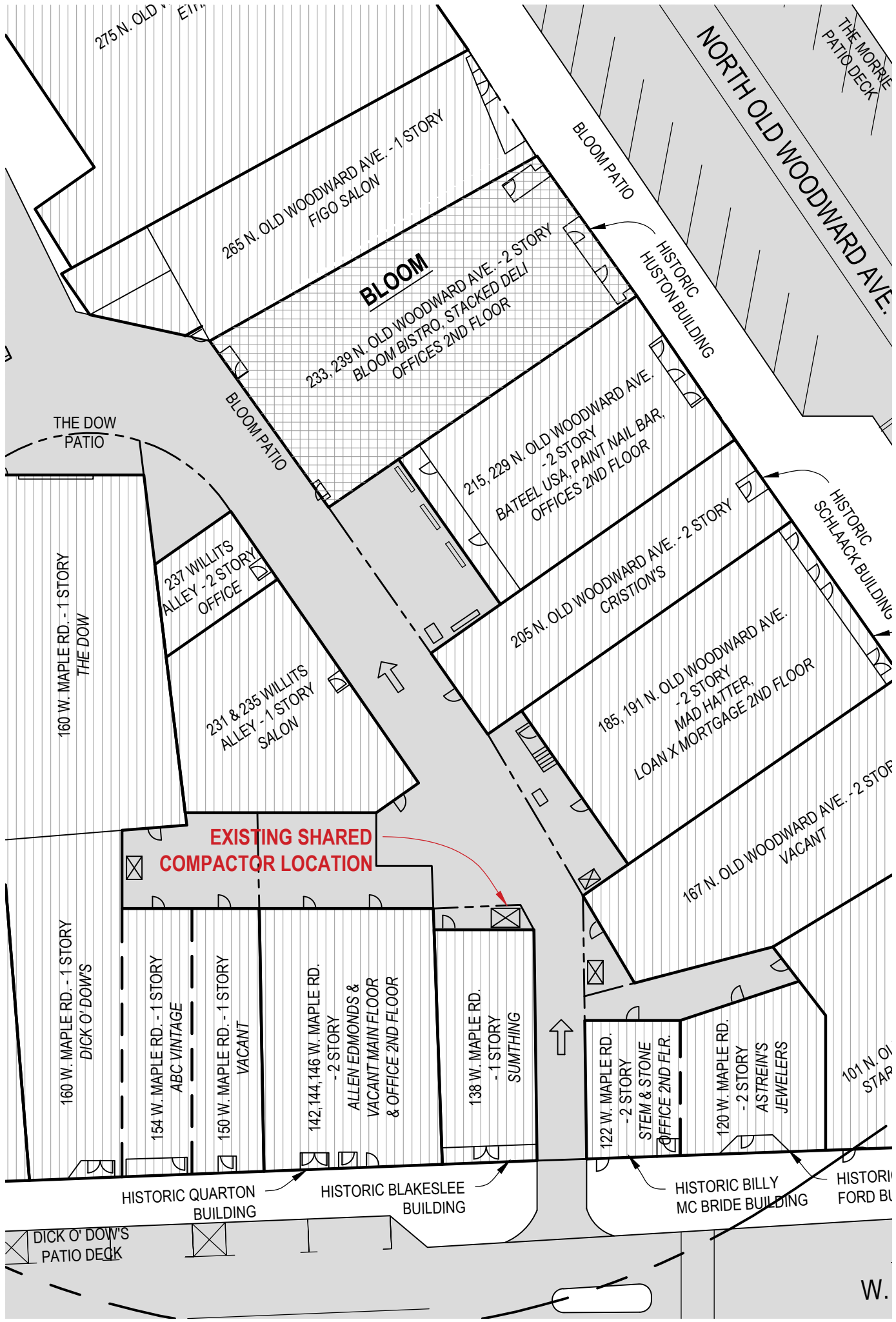
Saturday & Sunday 9:30am – 1am

(with Outdoor Café hours per city ordinance)

Existing Trash Compactor Location:

(same location as was previously used by Pita Café)





275 N. OLD WOODWARD AVE. - 1 STORY

265 N. OLD WOODWARD AVE. - 1 STORY
FIGO SALON

BLOOM

233, 239 N. OLD WOODWARD AVE. - 2 STORY
BLOOM BISTRO, STACKED DELI
OFFICES 2ND FLOOR

BLOOM PATIO

HISTORIC
HUSTON BUILDING

NORTH OLD WOODWARD AVE.

THE MORRIE
PATIO DECK

THE DOW
PATIO

160 W. MAPLE RD. - 1 STORY
THE DOW

237 WILLITS
ALLEY - 2 STORY
OFFICE

231 & 235 WILLITS
ALLEY - 1 STORY
SALON

215, 229 N. OLD WOODWARD AVE.
- 2 STORY
BATEEL USA, PAINT NAIL BAR,
OFFICES 2ND FLOOR

205 N. OLD WOODWARD AVE. - 2 STORY
CRISTION'S

HISTORIC
SCHLACK BUILDING

185, 191 N. OLD WOODWARD AVE.
- 2 STORY
MAD HATTER,
LOAN X MORTGAGE 2ND FLOOR

167 N. OLD WOODWARD AVE. - 2 STORY
VACANT

**EXISTING SHARED
COMPACTOR LOCATION**

160 W. MAPLE RD. - 1 STORY
DICK O' DOW'S

154 W. MAPLE RD. - 1 STORY
ABC VINTAGE

150 W. MAPLE RD. - 1 STORY
VACANT

142, 144, 146 W. MAPLE RD.
- 2 STORY
ALLEN EDMONDS &
VACANT MAIN FLOOR
& OFFICE 2ND FLOOR

138 W. MAPLE RD.
- 1 STORY
SUNTHING

122 W. MAPLE RD.
- 2 STORY
STEM & STONE
OFFICE 2ND FLR.

120 W. MAPLE RD.
- 2 STORY
ASTREIN'S
JEWELERS

101 N. OLD
WOODWARD AVE.

HISTORIC QUARTON
BUILDING

HISTORIC BLAKESLEE
BUILDING

HISTORIC BILLY
MC BRIDE BUILDING

HISTORIC
FORD BUILDING

DICK O' DOW'S
PATIO DECK

W.

R O N A N D R O M A N

Bloom Bistro

Existing Trash Compactor Operational Notes:

(The comments below are from the building owner -)

In regards to the compactor; we do not own the compactor. We pay a monthly fee to One Source Waste for our eight tenants to use the compactor. It's a 6 yard Vertical Style Compactor that is serviced 3 times a week (Mondays, Wednesdays and Fridays).

The following is a list of our tenants (by address) that use the compactor (please note * uses 1 trash bag a week) :

- 205 N. Old Woodward
- 209 N. Old Woodward
- 215 N. Old Woodward
- 219 N. Old Woodward
- 229 N. Old Woodward
- *231 Willits Alley
- *230 Willits Alley
- 235 Willits Alley











bloom

239 North Old Woodward
Birmingham. Michigan.
48009

Proposal for Bistro License
September 30, 2020



bloom
BIRMINGHAM



PLANT BASED CUISINE
IN PARTNERSHIP WITH MATTHEW KENNEY

Submitted by:
Joseph A. Shallal
Mekani, Orow, Mekani, Shallal & Hindo, P.C.
255 South Old Woodward
Suite 310
Birmingham. Michigan. 48009

BLOOM

Green Kitchen, LLC which proposes to do business as “Bloom”, submits this application for a New Bistro license pursuant to the City’s Bistro guidelines. Green Kitchen, LLC. is owned by Winta Tedla. Bloom has a projected opening date of January 2021.

CONCEPT

Bloom will be a destination, plant based, experience dedicated restaurant located at 239 North Old Woodward Road. The concept is driven by a trendy atmosphere and complemented by hand crafted cocktails and Chef intensive, seasonally changing menu, consulted on by Chef Matthew Kenney. The menu reinterprets favorite dishes by many, but executed in a plant driven style, and is complimented by an organic wine and craft cocktail program. This is unique to the immediate and surrounding areas and will draw not only a plant-based clientele, but a forward thinking community who enjoy the social experience, and want to do good for their bodies and their impact on global wellness. Bloom is on the cutting edge for bringing sustainability and wellness to the local community, along with providing a social atmosphere for both locals and visitors. Tedla, an accomplished business woman and philanthropist is enlisting Matthew Kenney to consult on this project, alongside award winning Chef Nina Paletta and Chef Meghan Shaw. Kenney has plant-based restaurants in multiple countries and domestically, including partnerships with Alo Yoga, Saks Fifth Avenue, Kerzner International Hotels, The Four Seasons, and Laduree and flagship locations in Los Angeles and New York City.

Bloom proposes opening for lunch + dinner service 7 days a week; 11am - 10pm, with brunch available on Saturday + Sunday.

TEAM

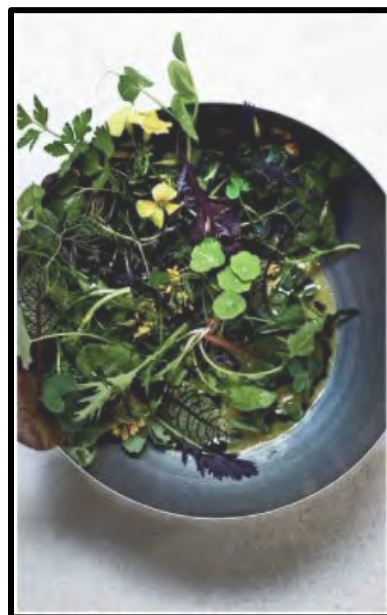
CONSULTANT

MATTHEW KENNEY CUISINE

Matthew Kenney is one of the world’s first leading chefs at the forefront of plant based cuisine, an author of 12 cookbooks and a best-selling memoir, a culinary educator and CEO of Matthew Kenney Cuisine, a multifaceted lifestyle company specializing in plant-based cuisine throughout several unique markets. In 2009, Kenney founded the world’s first classically structured raw food culinary academy. Matthew Kenney Academy has graduated students from over 30 countries, opening several global pop-up locations and an online program, which operated until 2017. Matthew has also partnered with numerous industry leaders throughout Australia, Europe, South America, and the Middle East in recent years, expanding the presence of MKC in global markets through licensing agreements, culinary consulting, educational events and chef conferences. In the past year, he has given lectures throughout multiple cities in Eastern Australia, hosted by Ovolo Hotels ; was a featured speaker at the Four Seasons Hotels ’ global innovation convention in Florence, Italy; and headed both an informative lecture and cooking demo as a panelist at Mesa Tendências, São Paulo , the largest gastronomic summit in Latin America. His extensive travels have enabled him to develop many strategic partnerships with like-minded entrepreneurs around the world, leading to new ventures in the hospitality and consumer product markets. Currently, Kenney has 28 restaurants operating throughout 15 international cities spanning 5 continents, including PLANT CITY, the world’s first plant-based food hall. Located in Providence, RI. MKC is also involved with an additional 15 restaurants that are currently under construction and located throughout San Francisco; New York City; Palm Beach, FL; San José del Cabo, Mexico; and several cities throughout Europe and the Middle East. The MKC brand has developed many strong licensing relationships with multiple brands, including The Four Seasons Hotels and KWB Ventures, a partnership that produced FOLIA, a fully plant-based menu, designed by Kenney, available to both hotel guests and patrons of in-house dining venues. FOLIA first launched in 2018 at the Los Angeles at Beverly Hills Location, followed by outposts in Bahrain Bay, Dubai, Kuwait and Qatar. The culinary program is expected to expand to an additional 40 FSH locations throughout the Middle East and Europe going forward. Currently, Kenney continues to focus on the strategic growth of his company into additional market segments with an increasingly global consumer reach. His latest passion project is to reinstate an educational component to MKC by rebuilding a global, plant-based culinary academy. Courses will be available both online and on site, where students will learn to develop proprietary cooking skills, cutting-edge techniques, and the ability to create elevated plant-based cuisine. The passionate corporate team at MKC is continuously working to evolve and innovate, whether it be through plant-based gastronomy, new restaurant concepts, consumer product goods, or strategic brand partnerships. Under Kenney’s direction, MKC is rapidly growing as it continues to expand its repertoire of intellectual property and creative content, and pursue excellence in crafting the future of food.

CHEFS

The operators behind this project are plant-based Chefs Nina Paletta and Meghan Shaw, the entrepreneurs responsible for the Detroit-based food outfit, Street Beet. Known for their wildly successful pop-up events throughout Detroit and their full-time restaurant residency inside Midtown's Third Street bar, the pair and their team have been serving up creative, comfort food together for over 3 years. Street Beet holds the Hour Detroit title of "Best Pop-Up Dining Experience" for both 2019 & 2020, ranked as finalists in the Comerica Bank Hatch Detroit contest in 2019, gained recognition at the Forbes 30 under 30 food festival, and gained national credibility in various national publications. Paletta and Shaw lead Street Beet's success in paving a new path for plant-based recognition in the Detroit area with their undeniable approachability and food so delicious, it continues to fool and win the heart of meat eaters and herbivores alike. The culinary duo has gained immense respect for their passion and creativity, and popularity in a digital world with +20k followers.



OWNER

Winta Tedla is an accomplished banker, real estate investor and entrepreneur. Ms. Tedla is the founder of Clear Scope Advisors, Inc., an independent full-service financial advisory firm specializing in charter school facility financing. Prior to starting her firm, Ms. Tedla was a Vice President at Fifth Third Securities, Assistant Vice President of Investment Banking at National City Bank and Oppenheimer & Company. Ms. Tedla has over 20 years of experience in the financial services industry. She has served as the banker on the financing of a wide range of projects for cities, school districts, charter schools and state/local municipal clients providing over \$900 million in financings. Ms. Tedla continues to eye strategic opportunities to complement her portfolio. In doing so, she has ventured into restaurant opportunities in the plant based market segment. Her passion for hospitality, sustainability, eliminating animal cruelty, low carbon footprint and green business practices made this an ideal addition for her. Ms. Tedla is hoping to have a positive impact on the communities she invests in by sharing the good news of healthy eating, healthy living and being a responsible citizen. Tedla has availability to fund this project to completion through personal savings in excess of \$500,000. She currently has the rights and ownership to a Class C Liquor license, which can be transferred to this location in Birmingham.

IMPACT ON CITY

Bloom will open its doors at 239 North Old Woodward, taking over the previous home of Pita Cafe. With relevant updates to the wonderfully located space, Bloom will offer Birmingham it's very first, fully plant based bistro. The heavy presence of gyms, athletic stores and health food markets in Birmingham prove that the city is ready for more health-conscious establishments. Meat-free & dairy-free lifestyle choices are on the rise, and this is undoubtedly the progressive course for a healthier future for our community and our planet. Now more than ever, ethically sourced ingredients are a must. It is our commitment to sourcing, storing and producing the most quality food in the most sanitary working conditions possible. The city of Birmingham deserves a restaurant that caters to our ever changing world, offering food and beverages that reduce our carbon footprint, aid in the fight to end the climate crisis, enhance our overall health, and coincide with the interests of bettering our surrounding community. Bloom aims to be a positive addition to the neighborhood, offering conscious cuisine and an inspired atmosphere to those who stop by. Below is a sample menu + price points.



PLANT BASED



SNACKS.

- KIMCHI DUMPLINGS. 15**
Cashew. Cilantro + Coconut. Red Cabbage.
Ginger Foam. GF R
- SMOKED HUMMUS. 12**
Chickpeas. Smoked Onion. Crudit .
Harissa Za'atar Lavash. NF
- BARBACOA TACO. 5**
Maitake + Oyster Mushrooms. Pepita Cream.
Avocado Puree. Toasted Pepitas. Microgreens. NF
- FLORA ARTISANAL CHEESE PLATE. 22**
Porcini Truffle. Harissa Jack Cheddar. Wine-Soaked
Mascarpone. Fennel Crackers + Condiments. GF R

STARTERS.

- ITALIAN CHOPPED SALAD. 13**
Local Romaine. Marinated Yuba. Salt + Vinegar Cashews.
MightyVine Tomato. Castelvetro Olive. Radicchio.
Smoked Chickpea Provolone. Pickled Chard Stems.
Romanesco. Tahini - Italian Dressing. GF
- THREE BEET CARPACCIO. 12**
Roasted Red + Pink Beets. Sour Golden Beets.
Gotham Greens Lettuce. Pistachio Cream.
Burnt Orange Oil. GF
- CRAB CAKES. 14**
Hearts of Palm. Artichoke. Quinoa. Ancho Aioli. Zucchini
Relish. GF
- BLACK + WHITE FLATBREAD. 17**
Sunchoke Puree. Black Garlic. Macadamia Ricotta. Cured
Black Olives. White Truffle Oil.
Crispy Black Kale.
- CHICKPEA FRITTATA. 12**
House Giardiniera. Gotham Greens. Celery Root.
Fuji Apple. Herbs. Hemp Seeds. Green Goddess. GF NF

MAINS.

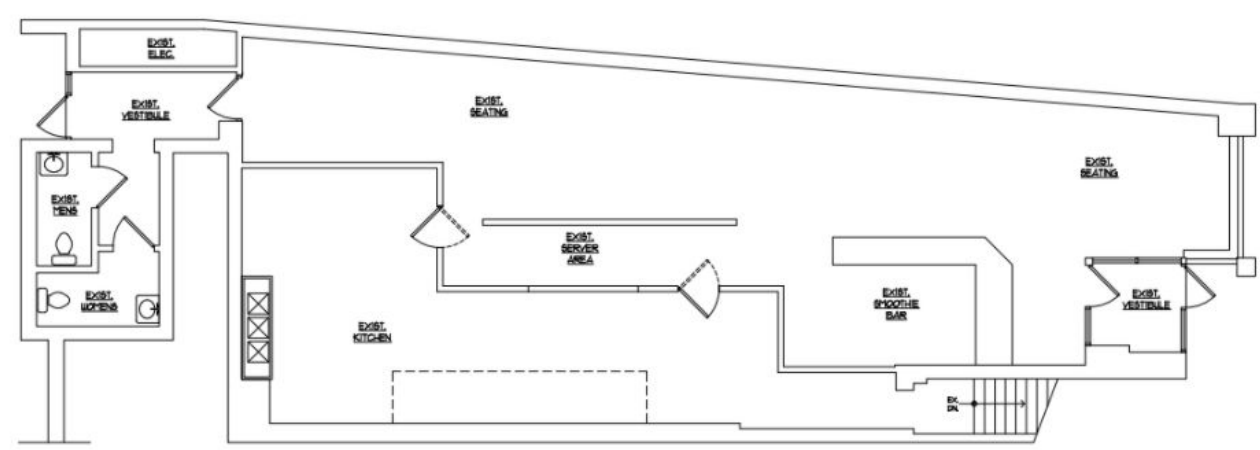
- MIGHTYVINE TOMATO + ZUCCHINI LASAGNA. 21**
Sun Dried Tomato Marinara. Basil Pistachio Pesto.
Macadamia Ricotta. Herb Oil. GF R
- BEET RAVIOLI. 19**
Chestnut Pasta. Macadamia Ricotta. Winter Greens.
Dashi Cream Sauce. GF NF
- SPICY UDON. 19**
Tempeh. Shiitake Mushrooms. Toasted Cashews.
Bok Choy. Watermelon Radish. Togarashi.
- PLANT BURGER. 18**
Sunflower Cheddar. Pickles. Beetroot Ketchup.
Brioche Bun. Roasted Potatoes. NF
- PLANT BOWL. 18**
Quinoa. Black Lentil. Charred Root Vegetables.
Marinated Kale. Avocado. Piquillo Romesco.
Preserved Lemon Tahini. GF
- COCONUT CURRY RISOTTO. 18**
Roasted Delicata Squash. Parsnip Puree.
Maitake Mushrooms. MightyVine Cherry Tomatoes.
Currants. Mint-Cilantro Chutney. GF NF
- KELP NOODLE CACIO E PEPE. 19**
Cashew + Black Pepper Cream. Sugar Snap Peas.
Pea Sprouts. Crispy Oil Cured Olives. GF R

PHILOSOPHY.

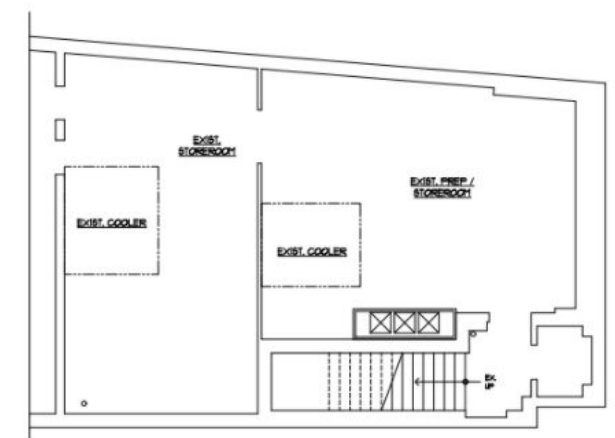
WE SOURCE THE HIGHEST QUALITY
fruits, vegetables, nuts + seeds. These ingredients
highlight the season's best produce and are the
inspiration for our plant-based menu.

WE ARE PLEASED
to feature organic plant foods from local producers.

GF - Gluten Free | NF - Nut Free | R - Raw



EXIST. GRADE LEVEL PLAN
SCALE: 1/8" = 1'-0"



EXIST. BASEMENT PLAN
SCALE: 1/8" = 1'-0"

JON SARKESIAN
ARCHITECTS, P.C.
233 N. OLD WOODWARD AVE.
BIRMINGHAM, AL 35203
205.975.1100
www.jonsarkesian.com
SHEET NO. A-2

CAPACITY:
45 interior
10 bar
12 outdoor





Special Land Use Permit Application - Bistro Planning Division

1. Applicant

Name: WINTA Tedla
Address: 1804 MOORS CT
Bloomfield Hills, MI 48302
Phone Number: (313) 920-2804
Fax Number: _____
Email Address: WTedla@gmail.com

2. Applicant's Attorney/Contact Person

Name: Joseph Shallal
Address: 255 S. Old Woodward Suite 210
Birmingham, MI 48009
Phone Number: 248-763-3480
Fax Number: _____
Email Address: Joe.shallal@momshlaw.com

3. Required Attachments

- Warranty Deed with legal description of property
- Floor Plan of Bistro Operation
- Proof of ability to finance the proposed project
- Required fee (see Fee Schedule for applicable amount)
- Photographs of existing site and buildings
- Samples and/or specification sheets of all materials to be used
- Landscape Plan showing all existing and proposed elements
- Catalog sheets for all proposed lighting & outdoor furniture

4. Project Information

Address/Location of Property: 239 N. OLD WOODWARD.

Name of Bistro: BLOOM.

Parcel ID #: 08-19-26-378-014.

Current Use: H-2 RESTAURANT

Proposed Use: H-2 RESTAURANT

Area in Acres: .049 ACRES (2,148 SF)

Current Zoning: B-4 W/ D-4 OVERLAY.

Zoning of Adjacent Properties: ALL B-4 SAME.

Is there a current SLUP in effect for this site?: NO.

Property Owner

Name: Oxford Land, LLC
Address: PO Box 414, Troy MI 48099

Phone Number: 248-362-2870

Fax Number: 248-362-3011

Email Address: office@atesian.net

Project Designer/Developer

Name: RON & ROMAN, INC
Address: 275 E. FRANK ST.
BIRMINGHAM, MI 48009

Phone Number: 248-702-3718

Fax Number: _____

Email Address: ROMAN@RONANDROMAN.COM.

- Completed Checklist
- Certified Land Survey
- Signed Contract
- Fifteen (15) folded copies of plans including color elevations showing all materials and an itemized list of all changes for which approval is requested with the changes marked in color
- One (1) additional set of plans mounted on a foam board, including a color rendering of each elevation

Name of Historic District site is in, if any: CBD.

Date of HDC Approval, if any: _____

Date of Application for Preliminary Site Plan: _____

Date of Preliminary Site Plan Approval: _____

Date of Application for Final Site Plan: _____

Date of Final Site Plan Approval: _____

Date of Revised Final Site Plan Approval: _____

Date of Final Site Plan Approval: _____

Date of DRB approval, if any: _____

Date of Last SLUP Amendment: _____

5. Details of the Nature of Work Proposed (Site plan & design elements)

PAINT BUILDING BRICK & METAL ROOF, FRONT & BACK. REWORK
STOREFRONT & PROVIDE NEW BARRIER FREE ACCESS. NEW
RAISED PEDESTAL @ STOREFRONT LEVEL W/ INTERIOR FLOOR.
NEW SIGNAGE @ FRONT & BACK, NEW LINEAR DOWNLIGHT @
WOODWARD STOREFRONT & NEW PATIO SEATING W/ PLANTERS
& UMBRELLAS @ FRONT & REAR.

6. Buildings and Structures existing on site

Number of Buildings on site: 1
Height of Building & # of stories: 2 STY - 32 FT.

Use of Buildings: MAIN LEVEL RESTAURANTS, UPPER
Height of rooftop mechanical equipment: 5'6" OFFIC

7. Floor Use and Area (in square feet)

Structures:

Restaurant Space: 2148 SF MAIN / 917 SF BSMNT -
Office space: APPROX 21,00 SF, N.A. - PREP
Total floor area: 2148 + 917 = 3065 SF FOR BLOOM.

Retail space: -
Number of Residential Units: -
Rental or Condominium: -

8. Bistro Operation

Number of Indoor Seats: 57
Number of Outdoor Seats: 6 ON PROPERTY, 12 STREET
Entertainment Proposed: NO
Years of Experience in Birmingham: 0
Previous LCC Complaints? 0
Tables provided along street façade: YES
Required front setback: 0'
Required rear setback: 0'
Required total side setback: 0'

Type of Cuisine: PLANT BASED
Bar Area? YES
Number of Seats at bar: 7
Years of Experience outside of Birmingham: MK (18 years)
Full Service Kitchen? YES
Percentage of glazing proposed: 71%
Proposed front setback: 0'
Proposed rear setback: 0'
Proposed total side setback: 0'

9. Outdoor Dining Facility

Location (sidewalk right-of-way or on-street parking space): SIDEWALK R.O.W. & ALLEY R.O.W.
Hours of operation: Monday - Sunday 11am - 10 pm
Width of unobstructed sidewalk between door and café (5' required): 5'
Platform proposed: NO.
Trash receptacles: YES.

Number of tables/chairs: STREET R.O.W. 6T & 12 CH.
ON PROP. @ FRONT 2T & 6 CH, ALLEY R.O.W. 12T & 24
Material of tables/chairs: METAL & SYNTH. SURF.
Table umbrellas height and material: CANVAS & MET, APPROX 7' CH
Number and location of parking spaces: N.A.
Screenwall material: N.A.
Enclosure material: N.A.

10. Required and Proposed Parking

Number of parking spaces: CBD PARKING -
Location of off site parking: DISTRICT.
Screenwall material: -

Location of parking spaces: -
Shared Parking Agreement?: -
Height of screenwall: -

11. Landscaping

Location of landscape areas: PLANTERS @ STREET
& ALLEY PATIOS.

Proposed landscape material: SEASONAL PLANTINGS.

12. 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: WOOD CLAD PLANTERS
@ PATIOS.
Species of existing street trees: N.A.
Species of proposed street trees: N.A.

13. Loading

Required number of loading spaces: N/A.
Location of loading spaces on the site: ALLEY

Proposed number of loading spaces: N/A.

14. Mechanical Equipment

Ground Mounted Mechanical Equipment:

Number of ground mounted units: 0
Size of ground mounted units (LxWxH): _____

Location of all ground mounted units: N/A.

Screenwall material: _____

Height of screenwall: _____

Roofstop Mechanical Equipment:

Number of rooftop units: ALL EXISTING
Type of rooftop units: PRE PACKAGE ROOF TOP
UNITS, MAKE UP AIR UNIT &
EXHAUST FANS.

Location of all ground mounted units: N/A.

Size of rooftop units (LxWxH): _____

Screenwall material: EXIST FRONT MANSARD.

Height of screenwall: _____

Location of screenwalls: ROOF,

Percentage of rooftop covered by mechanical units: _____

Distance from units to rooftop units to screenwall: _____

15. Lighting

Number of light standards on building: 1 PROPOSED @ FRONT. Type of light standards on building: LINEAR DOWNLIGHT.
Size of light fixtures (LxWxH): 6" WIDE x 16" LONG Height from grade: 9'-5" @ FRONT.
HIDDEN BEHIND SIGN.
Maximum wattage per fixture: APPROX 13 WATTS LED/FT. Proposed wattage per fixture: T.B.D.
Parking lot lighting: N/A.

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 or Special Land Use Permit. The undersigned further states that they have reviewed the procedures and guidelines for site plan review and Special Land Use Permits in Birmingham and have complied with same. The undersigned will be in attendance at the Planning Board meeting when this application will be discussed.

Signature of Owner: Darren P. Atesian

Date: 3-16-2021

Print Name: Darren P. Atesian

Signature of Applicant: Winta Tedla

Date: 3-16-2021

Print Name: WINTA Tedla

Signature of Architect: R. BOHISLAWSKI

Date: 3/3/21

Print Name: R. BOHISLAWSKI

Office Use Only

Application #: _____ Date Received: _____ Fee: _____

Date of Approval: _____ Date of Denial: _____ Accepted by: _____

CONTRACT FOR A PRINCIPAL SHOPPING DISTRICT LIQUOR LICENSE
(BISTRO)

This Contract is entered into this ____ day of _____, 2021, by and between Green Kitchen LLC, whose address is 239 North Old Woodward, (Licensee) and the **CITY OF BIRMINGHAM**, a Michigan Municipal Corporation, whose address is 151 Martin Street, Birmingham, Michigan 48012 (City).

R E C I T A L S:

WHEREAS, Licensee wishes to obtain a liquor license pursuant to MCLA 436.1521a(1)(b); and

WHEREAS, local legislative approval is required by the **CITY OF BIRMINGHAM** for the issuance of a liquor license pursuant to MCLA §436.152a(1)(b) of the Michigan Liquor Control Code of 1998; and

WHEREAS, Licensee desires to enter into this Contract as an inducement to the **CITY OF BIRMINGHAM** to approve the request of the aforementioned issuance of the liquor license; and,

WHEREAS, the **CITY OF BIRMINGHAM** is relying upon this Contract in giving its approval to the issuance of the on-premises licenses as described herein.

NOW, THEREFORE, the parties agree as follows:

1. Licensee shall be permitted to obtain a liquor license for use solely at the Property. Any transfer of the aforementioned license from the Property to any other location in the CITY OF BIRMINGHAM shall require the approval of the Birmingham City Commission in accordance with Section 10-83. In addition, any expansion of the building location at the Property shall also require the approval of the Birmingham City Commission.

2. Licensee does hereby agree that it shall establish a bistro, as defined in Birmingham City Code Chapter 126, Zoning, Article 9, section 9.02, at the Property within 18 months from the date of Special Land Use Permit approval granted by the Birmingham City Commission. Licensee agrees that the bistro must be open and fully operational within this time period, or approval of the Special Land Use Permit will automatically be revoked by the City.

3. Licensee further acknowledges that it must secure a special land use permit for a bistro as required by the Birmingham City Code. It is further agreed that it shall comply with all provisions of the special land use permit, or any amendments thereto, as a condition of this contract. Licensee further acknowledges and agrees that a violation of any provision of the special land use permit or the Michigan Liquor Control Code is a

violation of the terms of the contract entitling the City to exercise any or all of the remedies provided herein.

4. Licensee acknowledges that no modifications to the site plan, floor plan, elevations or operation of the bistro may be made unless approved by the City Commission through a Special Land Use Permit Amendment as required in the Zoning Ordinance. Modifications include, but are not limited to, name changes, ownership changes, remodeling, changes in the number of interior or exterior seats, the use of eisenglass and other enclosure materials on any outdoor dining area, relocation or addition of bar, etc.

5. Licensee acknowledges that it shall have a duty of continuing compliance with regards to off-street parking as required in the Zoning Ordinance, and further agrees to resolve any future parking issues that may arise, including but not limited to parking overflow and encroachment into residential areas or public parking facilities, to the satisfaction of the City or the Special Land Use Permit may be cancelled by the City Commission.

6. Licensee further acknowledges that outdoor dining is seasonally permitted from April 1st through November 15th only, with a valid Outdoor Dining Permit. The use of an enclosure system(s) does not allow the outdoor dining season to be extended.

7. Licensee further agrees that it shall not apply or seek from the Michigan Liquor Control Commission any permit endorsements to its liquor license whether available in the current Michigan Liquor Control Code or in future Michigan Liquor Control Codes, or amendments thereto, without the prior approval of the Birmingham City Commission.

8. Licensee further agrees that it shall not seek any change in its license status/class whether such changes are available now in the current Michigan Liquor Control Code or in future Michigan Liquor Control Codes, or amendments thereto, without prior approval of the Birmingham City Commission.

9. Licensee agrees that it shall adhere to all Federal, State and Local laws currently in effect or as subsequently amended or enacted.

10. Licensee agrees that its failure to follow any of the provisions herein shall be grounds for the Michigan Liquor Control Commission to suspend, revoke or not renew its liquor license and/or for the Birmingham City Commission to revoke the special land use permit, either of which would prohibit Licensee from operating the bistro. Licensee agrees that in addition to the City of Birmingham's right to seek suspension, revocation or non-renewal of its liquor license and/or revocation of the special land use permit, the City retains any and all rights to enforce this Contract that may be available to it in law or in equity. Licensee further agrees that it shall reimburse the City all of its costs and actual attorney fees incurred by the City in seeking the suspension, revocation or non-renewal of its liquor license and revocation of the special land use

permit, as well as enforcing such other rights as may be available at law and/or in equity.

11. To the fullest extent permitted by law, Licensee and any entity or person for whom Licensee is legally liable, agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the City, its elected and appointed officials, employees and volunteers and others working on behalf of the City against any and all claims, demands, suits, or loss, including all costs connected therewith, including all costs and actual attorney fees, and 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 behalf of the City, by reason of personal injury, including bodily injury, death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with Licensee's operation of a bistro at the Property.

12. In the event Licensee fails to reimburse the City the costs and/or attorney fees as required herein, or any part thereof, then said amount could be transferred to the tax roll in accordance with Section 1-14 of the Birmingham City Code.

13. Any disputes arising under this Contract, not within the jurisdiction of the Michigan Liquor Control Commission, shall be settled either by commencement of a suit in Oakland County Circuit Court or by compulsory arbitration, at the election of the City. The Licensee shall notify the City of any dispute it has arising out of this Contract and shall demand that the City elect whether the dispute is to be resolved by submitting it to compulsory arbitration or by commencement of a suit in Oakland County Circuit Court. The City shall make its election in writing within thirty (30) days from the receipt of such notice. If the City elects to have the dispute resolved by compulsory arbitration, it shall be settled pursuant to Chapter 50 of the Revised Judicature Act for the State of Michigan, with each of the parties appointing one arbitrator and the two thus appointed appointing a third. In the event the City fails to make such an election, any dispute between the parties may be resolved by the filing of a suit in the Oakland County Circuit Court.

14. This Contract shall be governed by and performed, interpreted and enforced in accordance with the laws of the State of Michigan.

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

16. This Contract 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 OF BIRMINGHAM and Licensee. 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 contract without prior approval, in writing, of the other. Any attempt at assignment without prior written consent shall be void and of no effect.

IN WITNESS WHEREOF, the parties hereby have executed this Contract as of the date set forth above.

By: Wanda Tella

Its: Manager

Date: 7/8/2021

CITY OF BIRMINGHAM

By: _____
Pierre Boutros, Mayor

Date: _____

By: _____
Alexandra Bingham,
City Clerk Designee

Date: _____

Chair Clein then welcomed everyone to the virtual meeting and reviewed the meeting's procedures.

05-069-21

D. Review Of The Agenda

There were no changes to the agenda.

05-070-21

E. Special Land Use Permit Reviews and Final Site Plan and Design Reviews

- 1. 239 N. Old Woodward - Bloom Bistro (former Pita Café)** Request for a Special Land Use Permit and Final Site Plan and Design Review to consider approval of a new bistro serving alcoholic liquors in an existing building.

CP Dupuis reviewed the item. He added that the ordinance requires a 10-foot wide clear zone for all active vias in the activation overlay district.

A number of Board members shared concern regarding the lack of departmental comments from Engineering.

Mr. Jeffares stated that if applicants provide their documentation on time the City must also provide its feedback on time. He said that if processes had to be updated to enable City departments to be able to do that, that should occur.

In reply to an inquiry from Ms. Whipple-Boyce, CP Dupuis said that in future SLUP reviews for bistros he would include the business hours of other currently-operating bistros in the City for reference.

Mr. Jeffares observed that the number of business users allowed for a dumpster or trash compactor should partially depend on the type of user.

Ron Rea and Roman Bonislowski, architects, and Matthew Kenney, food consultant, were present on behalf of the application.

Mr. Kenney provided a brief overview of Bloom Bistro's proposed cuisine.

Mr. Bonislowski confirmed that Bloom Bistro would be replacing Pita Cafe in their use of the compactor.

It was noted that Stacked Deli also uses the compactor, and the rest of the uses were lower-intensity than restaurants.

Mr. Bonislowski said the revised proposal for signage was submitted with the intent to meet the ordinance, and that the applicants would be adding additional trash receptacles as recommended.

Mr. Jeffares and Mr. Boyle spoke in favor of the proposal, concurring that it could be exemplary of what Birmingham has been striving for in the activation of its vias.

The Chair asked for public comment and seeing none returned the discussion to the Board. He asked Planning Staff to provide more guidance in SLUP and Final Site Plan and Design reviews regarding the use of trash compactors and dumpsters in the future.

Mr. Williams concurred with Chair Clein.

Ms. Whipple-Boyce said she was unconcerned with the number of users of the trash compactor in this case.

Chair Clein concurred.

Ms. Whipple-Boyce said she did have concerns about the hours given proximity of the bistro to residential uses on Willits.

While Mr. Boyle and Chair Clein both shared in the concern regarding the lack of Engineering comments more generally, they both cautioned that it was a via, not a roadway, being evaluated and as a result should not hold up the application.

A number of Board members expressed appreciation for the concept and plans.

Chair Clein recommended moving the approval forward, stating that the applicant should not be penalized for the City's lack of punctuality in providing feedback on the plans. He added he was specifically less concerned in this case since the conditions were not very problematic from an engineering perspective.

Motion by Mr. Jeffares

Seconded by Mr. Boyle to recommend approval to the City Commission for the Special Land Use Permit for 239 N. Old Woodward – Bloom – subject to the following conditions: 1. The applicant must receive Historic District Commission approval for all exterior changes proposed; 2. The applicant must submit revised site plans showing non-public trash receptacles in each outdoor dining area; 3. The Planning Board approves the projection into the Willits Alley right-of-way; 4. The applicant must submit specification sheets with Visual Light Transmittance figures for all proposed glazing; 5. The applicant must revise the sign concept for Bloom to meet the dimensional requirements of the Sign Ordinance; 6. The applicant must comply with the requests of all City Departments; and, 7. The Planning Board approves outdoor dining in the Willits Alley.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Jeffares, Boyle, Koseck, Whipple-Boyce, Williams, Clein, Share
Nays: None

Motion by Mr. Jeffares

Seconded by Mr. Boyle to recommend approval to the City Commission for the Final Site Plan & Design Review for 239 N. Old Woodward – Bloom – subject to the conditions of Special Land Use Permit approval.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Jeffares, Boyle, Koseck, Whipple-Boyce, Williams, Clein, Share
Nays: None

2. 115 Willits Street – Mare Mediterranean (former Cameron's Steakhouse),
Request for a Special Land Use Permit and Final Site Plan and Design Review to consider approval of new restaurant serving alcoholic liquors in an existing building.

PD Ecker reviewed the item.

Mr. Williams and Chair Clein agreed that the **outdoor dining** hours should not go past 12 a.m.

Applicant and owner Nino Cutraro agreed. Kelly Allen, attorney for the project and Simon Morrow, architect, were also present.

In reply to Mr. Jeffares, PD Ecker stated that she reached out to DPS to find out why there were only two trees between Bates and Old Woodward but had not yet heard back.

The applicant team confirmed they would adhere to the ordinance requirements regarding the dumpster and would adhere to the Fire Department's comments.

There were no public comments.

Chair Clein said he would be comfortable allowing the remaining items outstanding to be administratively approved.

Motion by Mr. Share

Seconded by Mr. Jeffares to recommend approval to the City Commission for the Special Land Use Permit for 115 Willits – Mare Mediterranean based on a review of the plans submitted and their adherence to Article 07, section 7.27 and Article 07, section 7.34 of the Zoning Ordinance and pending receipt of the following: 1. Details on the businesses sharing the trash facilities on site; 2. Applicant comply with all City Department requests; 3. Detailed sign plans for any proposed business signage to allow the Planning Department to complete their review of the recently submitted plans; 4. Outdoor dining be closed at midnight; and, 5. Specification sheets on the proposed tables, chairs, trash receptacle and railing system proposed in the outdoor dining area.

**Historic District Commission Documents – 239 N. Old Woodward –
Bloom**



MEMORANDUM

Planning Division

DATE: July 7th, 2021

TO: Historic District Commission

FROM: Nicholas Dupuis, City Planner

SUBJECT: 239 N. Old Woodward – Bloom Bistro – Design Review

Zoning: B4 (Business-Residential) & D4 (Downtown Overlay)

Existing Use: 2-Story Commercial Building

History

Elmer Huston put up this building with 2 stores on the ground level and apartments above in 1923. It housed the Post Office and variety store from 1924 to 1928. In 1929, the Mulholland Dry Goods Company moved into both spaces. Mulholland went out of business in 1963 or 1964. Several businesses were located there until Irving Kay moved into the north half in 1967. Between then and not several businesses, have succeeded each other in the southern half. In the spring of 1982, Irving Kay expanded and occupied the entire ground floor. The second floor façade resembles that of the Leonard Building in W. Maple.

Introduction

The subject site is located on the west side of N. Old Woodward just north of Hamilton Row. The multi-tenant building is located in the Central Business Historic District and is a designated historic resource. The applicant has submitted a Design Review application for exterior changes to an existing first-floor tenant space, Bloom Bistro.

On May 26th, 2020, the Planning Board reviewed the Special Land Use, Final Site Plan and Design Review application for Bloom Bistro and recommended approval to the City Commission with the following conditions:

1. The applicant must receive Historic District Commission approval for all exterior changes proposed;
2. The applicant must submit revised site plans showing non-public trash receptacles in each outdoor dining area;
3. The Planning Board APPROVES the projection into the Willits Alley right-of-way;
4. The applicant must submit specification sheets with Visual Light Transmittance figures for all proposed glazing;

5. The applicant must revise the sign concept for Bloom to meet the dimensional requirements of the Sign Ordinance;
6. The applicant must comply with the requests of all City Departments; and
7. The Planning Board APPROVES outdoor dining in the Willits Alley.

As required, the applicant is seeking Historic District Commission approval for the Bloom Bistro, and subsequently the exterior changes to the Huston Building proposed with the new tenant.

On June 16th, 2020, the Historic District Commission postponed consideration of the Design Review application citing concerns about historic materials and the overall design proposal for the historic façade.

Proposal

At this time, the applicant is proposing several exterior changes related to the Bloom bistro specifically in an effort to keep the Bloom approval process moving while the overall Huston Building proposal is reviewed separately. Please see the table below for a summary of all of the proposed façade materials related to Bloom Bistro:

Material	Location	Color
Metal Header Panel	Above 1 st floor windows	Blackened Patina
Wood & Glass Door	Storefront entry	Black Gloss
Wood & Glass French Doors	Storefront	Black Gloss
Paint (1)	Existing standing seam metal roof	Kendall Charcoal
Paint (2)	2 nd floor window frames	Caviar
Paint (3)	Existing brick facade	Glacier White
Paint (4)	Existing gutter & downspouts	Kendall Charcoal
Paint (5)	Rear of building	Glacier White
Granite	Storefront Base	Black

Although the applicant is proposing changes to the façade and some of its original materials, it is worth noting that the proposed façade meets several architectural standards required in the Downtown Overlay District including the following:

1. At least 90% of the exterior finish material on all facades that face a street shall be limited to the following: glass, brick, cut stone, cast stone, coarsely textured stucco, or wood.
2. The primary colors of building exteriors shall be compatible with the colors of adjacent buildings and in character with the surrounding area, although the trim may be of a contrasting color.
3. Sliding doors and sliding windows are prohibited along frontage lines.

A more detailed analysis of the façade in relation to the Secretary of the Interior (SOI) Standards will be provided below.

Signage

Article 2, Section 2.02 of the Sign Ordinance states that the City Commission shall hear and deny, approve, or approve with conditions, those signs for special land uses, after receiving the recommendation of the Planning Board. The Planning Board reviewed signage at the May 26th meeting and provided a condition of approval that the applicant must revise the sign concept for Bloom to meet the dimensional requirements of the Sign Ordinance. The applicant has revised the signage proposal and removed the green canvas panel, which is reviewed below.

The applicant is proposing five total signs. The linear frontage of the building measures roughly 42 ft., which permits the building 42 sq. ft. of total signage. Article 3, Section 3.02 of the Sign Ordinance defines a sign as any object, device, logo, display or structure, or part thereof, which is intended to advertise, identify, display, or direct or attract attention to an object, person, institution, organization, business, product, service, event or location by any means.

In addition, Article 2, Section 2.03 requires sign area to be computed by means of the smallest square or rectangle that will encompass the extreme limits of the writing, representation, emblem or other display, together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed. Considering the definition and computation regulations above, a breakdown of the building signage is provided in the following table:

Sign Content (Type)	Sign Area (Sq. Ft.)
Stacked Deli (Existing Wall Sign)	16
Bloom (Wall Sign – Sign Panel)	15
Bloom (Projecting Sign)	1.3
Bloom (Name Letter Sign – Window Header, Vinyl)	3.1
Bloom (Projecting Signs – Rear)	60*
Bloom (Wall Sign – Rear Door)	2*
Total Proposed Combined Sign Area:	35.4
Total Permitted Combined Sign Area:	42
<i>*Area not included in proposed combined sign area per Activation Overlay District</i>	

Additionally, the Sign Ordinance permits wall signs to project no more than 9 in. from the building face. As the signage is presently designed, the sign projects 6 in. from the building face, meeting the requirements of the Sign Ordinance.

Finally, the logo wall sign is proposed to be illuminated by a small architectural light fixture above the sign, which is permitted in the Central Business Historic District.

Lighting

The applicant is not proposing any new building lighting as a part of the Design Review for Bloom.

Planning and Zoning

In general, because the existing building footprint it proposed to remain, there are no bulk, placement or height requirements that must be addressed as a part of this review. However, there are four planning and zoning issues that must be reviewed:

Parking: The subject site is located within the Parking Assessment District. Thus, no parking analysis is required for the commercial use.

Landscaping: There are no existing landscaping beds on site, nor are any proposed at this time. However, there is a small planter in the rear of the building that contains ivy. The applicant is proposing to replant Boston Ivy after the building is repainted.

Glazing: As the applicant is proposing to install new glazing, the new glazing will be required to conform to the window standards outlined in Article 4, Section 4.90 of the Zoning Ordinance, which state that:

1. No less than 70% of a storefront/ground floor façade between 1 and 8 ft. above grade shall be clear glazing.
2. Only Clear glazing (80% Visual Light Transmittance) is permitted on storefront facades at the first floor. Lightly tinted glazing (70% Visual Light Transmittance) above the first floor may be permitted. Mirrored glass is prohibited.
3. Required window areas shall be either pedestrian entrances, windows that allow views into retail space, working areas or lobbies. Display windows set into the wall may be approved by the Planning Board.
4. Windows shall not be blocked with opaque materials or the back of shelving units or signs.
5. The bottom of the window shall be no more than 3 feet above the adjacent exterior grade.

The New Storefront Elevation drawing shown on sheet A-2 contains a calculation showing that the new Bloom storefront contains 63% glazing in between 1 ft. and 8 ft. from grade, falling short of the requirement. However, to allow flexibility in design, these standards may be modified by a majority vote of those appointed and serving on the Historic District Commission for architectural design considerations provided that the following conditions are met:

1. The subject property must be in a zoning district that allows mixed uses;
2. The scale, color, design and quality of materials must be consistent with the building and site on which it is located;
3. The proposed development must not adversely affect other uses and buildings in the neighborhood;

4. Glazing above the first story shall not exceed a maximum of 70% of the façade area;
5. Windows shall be vertical in proportion.

The Planning Division finds that each of these conditions are met and that the Historic District Commission has additional authority to approve a storefront based on historical context and construction that may not meet the current ordinance. Thus, **the applicant must receive approval from the Historic District Commission for the proposed 63% glazing, provide additional glazing, or obtain a variance from the Board of Zoning appeals.**

Additionally, the applicant has not submitted specification sheets on any proposed glazing to ensure that the clarity requirements of 80% VLT are met. **The applicant must submit specification sheets with Visual Light Transmittance figures for all proposed glazing.**

Projections into Right-of-Way: The applicant is proposing a vertical canvas banner that extends from the top of the first floor to just below the roofline at the rear of the building along the alley that projects 1.5 ft. into the Willits Alley right-of-way. The Planning Board approved this projection into the right-of-way.

Design Review Standards and Guidelines

Chapter 127, Section 127-11 of the Birmingham Code of Ordinances states that in reviewing plans, the commission shall follow the U.S. secretary of the interior's standards for rehabilitation and guidelines for rehabilitating historic buildings as set forth in 36 C.F.R. part 67. Design review standards and guidelines that address special design characteristics of historic districts administered by the commission may be followed if they are equivalent in guidance to the secretary of interior's standards and guidelines and are established or approved by the state historic preservation office of the Michigan Historical Center. The U.S. Secretary of the Interior Standards for Rehabilitation are provided in full at the end of this report.

In reviewing plans, the commission shall also consider all of the following:

1. The historic or architectural value and significance of the resource and its relationship to the historic value of the surrounding area.
2. The relationship of any architectural features of the resource to the rest of the resource and to the surrounding area.
3. The general compatibility of the design, arrangement, texture, and materials proposed to be used.
4. Other factors, such as aesthetic value, that the commission finds relevant.
5. Whether the applicant has certified in the application that the property where work will be undertaken has, or will have before the proposed project completion date, a fire alarm

system or a smoke alarm complying with the requirements of the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.

Recommendation

The Michigan State Historic Preservation Office defines rehabilitation as the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values.

The National Park's Service offers guidelines that suggest in *rehabilitation*, historic building materials and character-defining features are protected and maintained as they are in the treatment Preservation. However, greater latitude is given in the Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings to replace extensively deteriorated, damaged, or missing features using either the same material or compatible substitute materials. Of the four treatments, only Rehabilitation allows alterations and the construction of a new addition, if necessary for a continuing or new use for the historic building.

Considering the above, the applicant appears, generally, to meet Standards 1, 2, 7 and 9. However, the proposal in relation to Standards 3 and 6 should be discussed. A Planning Division review of each applicable standard is provided below:

1. *A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.*

As noted in the building history above, the building has historically contained retail uses on the ground floor since its construction. The introduction of the Bloom Bistro in the northern tenant space will continue to offer use that is compatible with the building and its history, with appropriate access to each tenant space.

2. *The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.*

The exterior changes for the introduction of Bloom Bistro do not remove or alter features or spaces that characterize the property. This is especially true because the original significant storefront no longer exists. The proposed new storefront appears to bring the tenant space closer to its historic character by bringing the glazing out from the inset and making it flush with the façade.

3. *Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.*

The introduction of tall, operable French doors at the storefront could foster a false sense of historical development and may be inappropriate. When it comes to replacing windows, National Park's Service guidelines recommend replacing incompatible, non-historic windows with new windows that are compatible with the historic character of the building. Operable French-door styled windows were not a feature of this 1923 building. However, Historic District Commission could realistically consider French style doors or operable windows IF they more closely matched the pane configuration, size, and component makeup that were a feature of the original windows.

6. *Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.*

Although the historic features of the original storefront had previously been removed rather than left to deteriorate, the proposed storefront does not closely match the design, color and texture evident in the photographs available of the original building façade. Specifically, the fenestration as a result of the French door styled windows conflicts with the original large paned glass storefront that existed originally.

7. *Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.*

As noted on the plans, the applicant is not proposing to remove the paint on the building to expose the original brick and restore the original look. Rather, the applicant is proposing to paint the front façade brick Glacier White. National Park Service guidance suggests that this is the best treatment when approaching brick that has been painted numerous times over a buildings lifetime. When repainting, the paint color should be, at a minimum, appropriate to the style and setting of the building. This also means that if the building is in a historic district, the color selection should complement the building in question as well as other buildings in the block. In general, color schemes for wall and major decorative trim or details should be kept simple; in most cases the color or colors chosen for a storefront should be used on other painted exterior detailing to unify upper and lower portions of the facade. The applicant appears to be doing just that.

9. *New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.*

As the storefront is not original, the proposed work does not remove any historic materials from the building.

Based on a review of the SOI standards and other guidance, the Planning Division recommends that the Historic District Commission **APPROVE** the Design Review for 239 N. Old Woodward – Bloom – with the condition below. The Secretary of the Interior Standards for Rehabilitation numbers 1, 2, 3, 6, 7, and 9 will be met upon completion.

1. The Historic District Commission approves the proposed 63% glazing on the ground floor façade;

OR

1. The applicant must provide additional glazing or obtain a variance from the Board of Zoning Appeals;
2. The applicant must submit specification sheets with Visual Light Transmittance figures for all proposed glazing; and
3. The applicant must revise the storefront glazing to meet the requirements of the Secretary of the Interior Standards for Rehabilitation and guidelines for rehabilitating historic buildings.

Sample Motion Language

I move that the Commission **APPROVE** the Historic Design Review application and issue a Certificate of Appropriateness for 239 N. Old Woodward – Bloom Bistro – provided the conditions below are met. The Secretary of the Interior's Standards for Rehabilitation standard number(s) 1, 2, 3, 6, 7 and will be met upon fulfillment of the condition(s):

1. The Historic District Commission approves the proposed 63% glazing on the ground floor façade;

OR

1. The applicant must provide additional glazing or obtain a variance from the Board of Zoning Appeals;
2. The applicant must submit specification sheets with Visual Light Transmittance figures for all proposed glazing; and
3. The applicant must revise the storefront glazing to meet the requirements of the Secretary of the Interior Standards for Rehabilitation and guidelines for rehabilitating historic buildings.

OR

Motion to **POSTPONE** the Design Review application for 239 N. Old Woodward – Bloom Bistro – to allow the applicant time to address the conflicts noted above with the Secretary of the Interior Standards.

OR

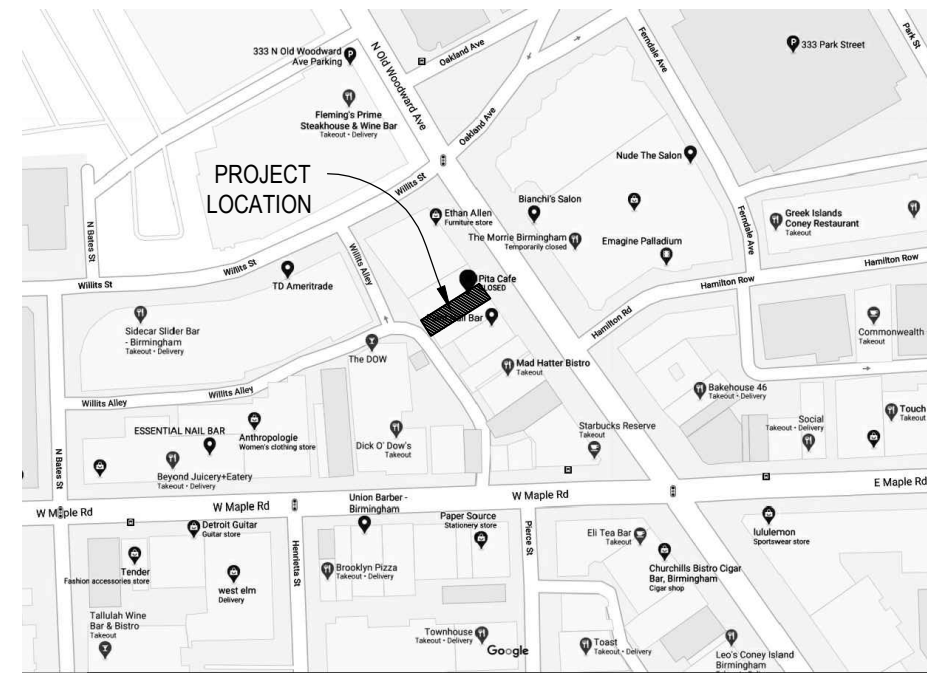
Motion to **DENY** the Design Review application for 239 N. Old Woodward – Bloom Bistro – for the following reasons:

1. _____
2. _____
3. _____

THE SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION AND GUIDELINES FOR REHABILITATING HISTORIC BUILDINGS

The U. S. secretary of the interior standards for rehabilitation are as follows:

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.
6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.
7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
8. Significant archaeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.



PROJECT INFORMATION:

ZONING: B-4, D-4 OVERLAY & HISTORIC DISTRICT
CURRENT USE GROUP: A-2, RESTAURANT
PROPOSED USE GROUP: A-2, RESTAURANT

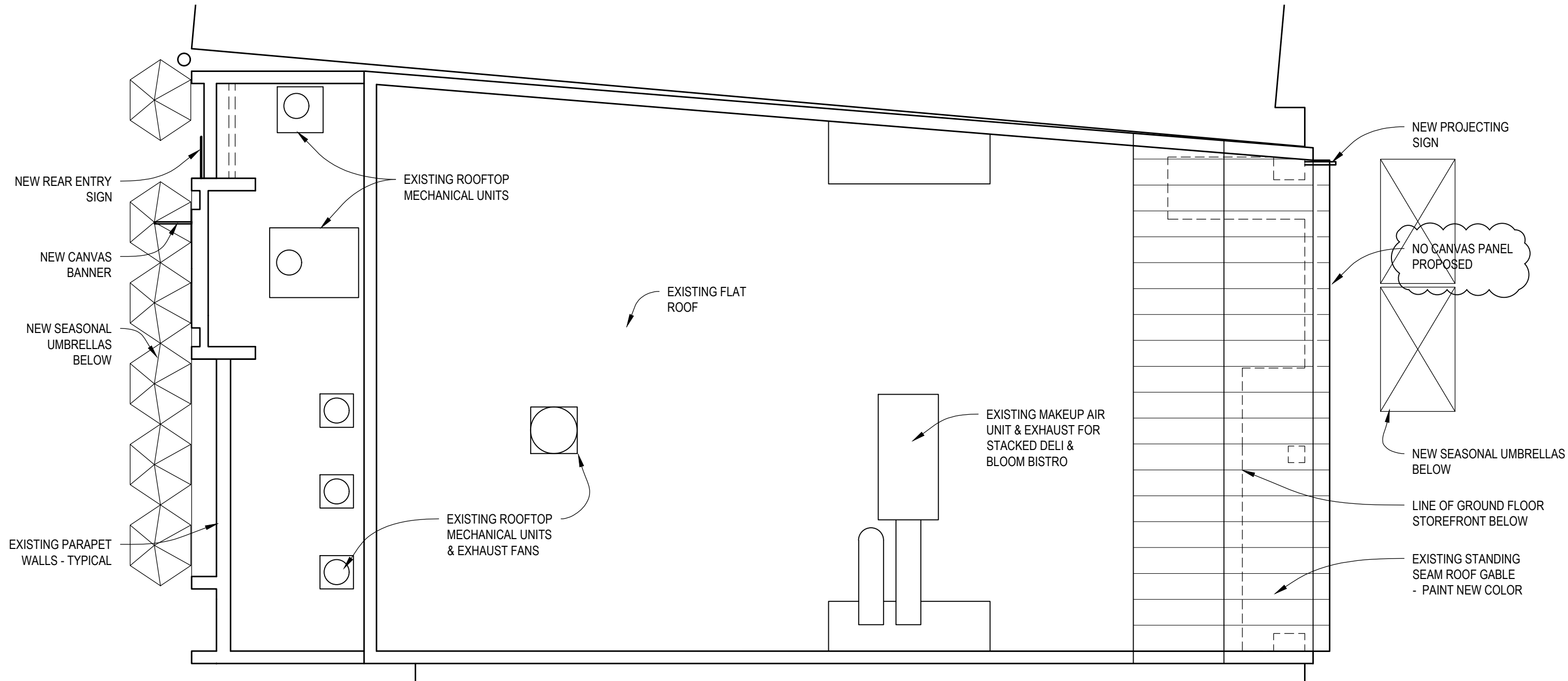
PROJECT AREAS:
MAIN FLOOR = 2,148 SF
BASEMENT = 917 SF

PARCEL NUMBER: 08-19-25-378-014

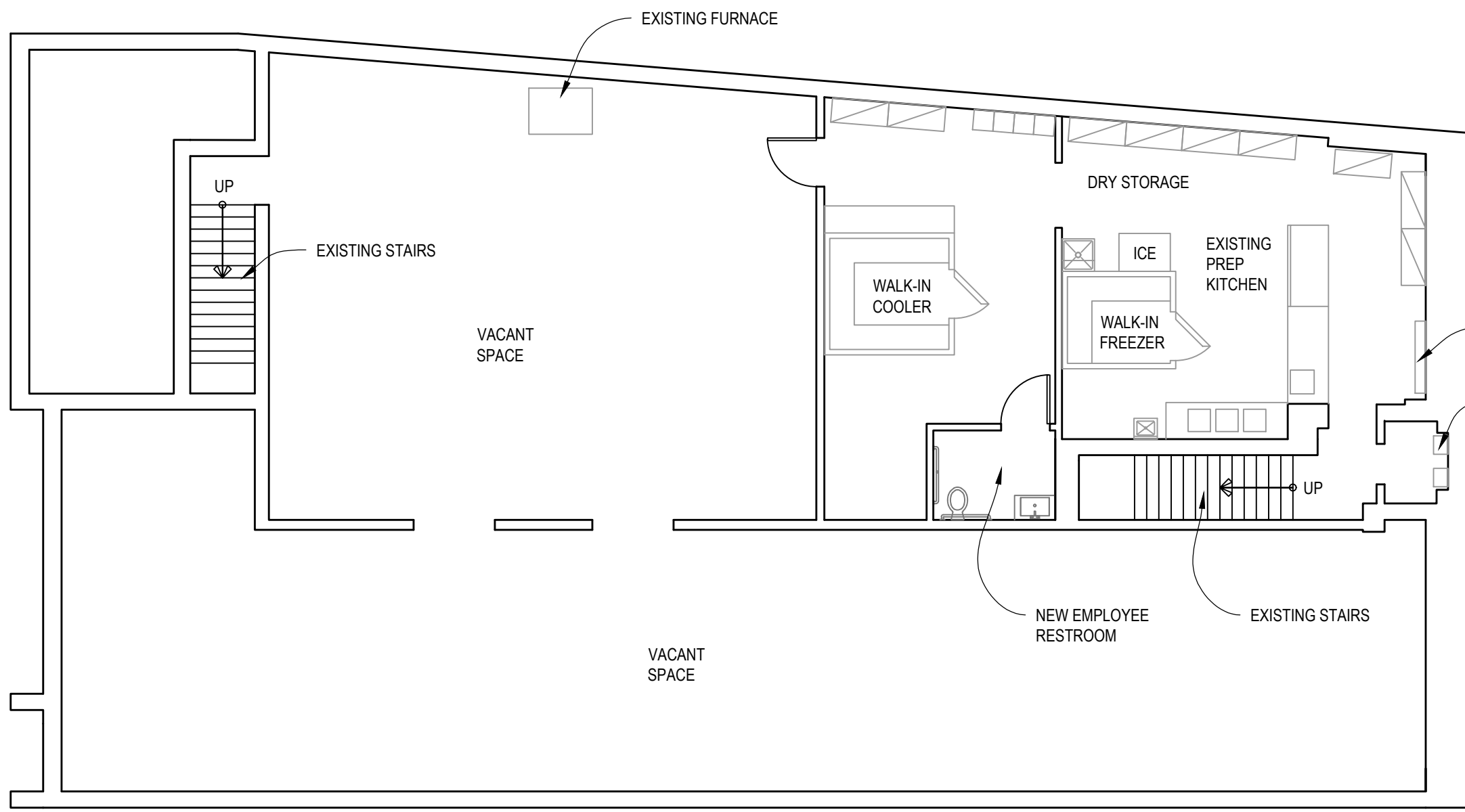
LEGAL DESCRIPTION -
T2N, R10E, SEC 25 ASSESSOR'S PLAT NO 19
PART OF LOT 10 BEG AT NE LOT COR, TH S
33-28-00 E 41.58 FT, TH S 57-35-00 W 90.60 FT, TH
N 33-26-50 W 49.57 FT, TH N 90.83 FT TO BEG

SEATING CAPACITY

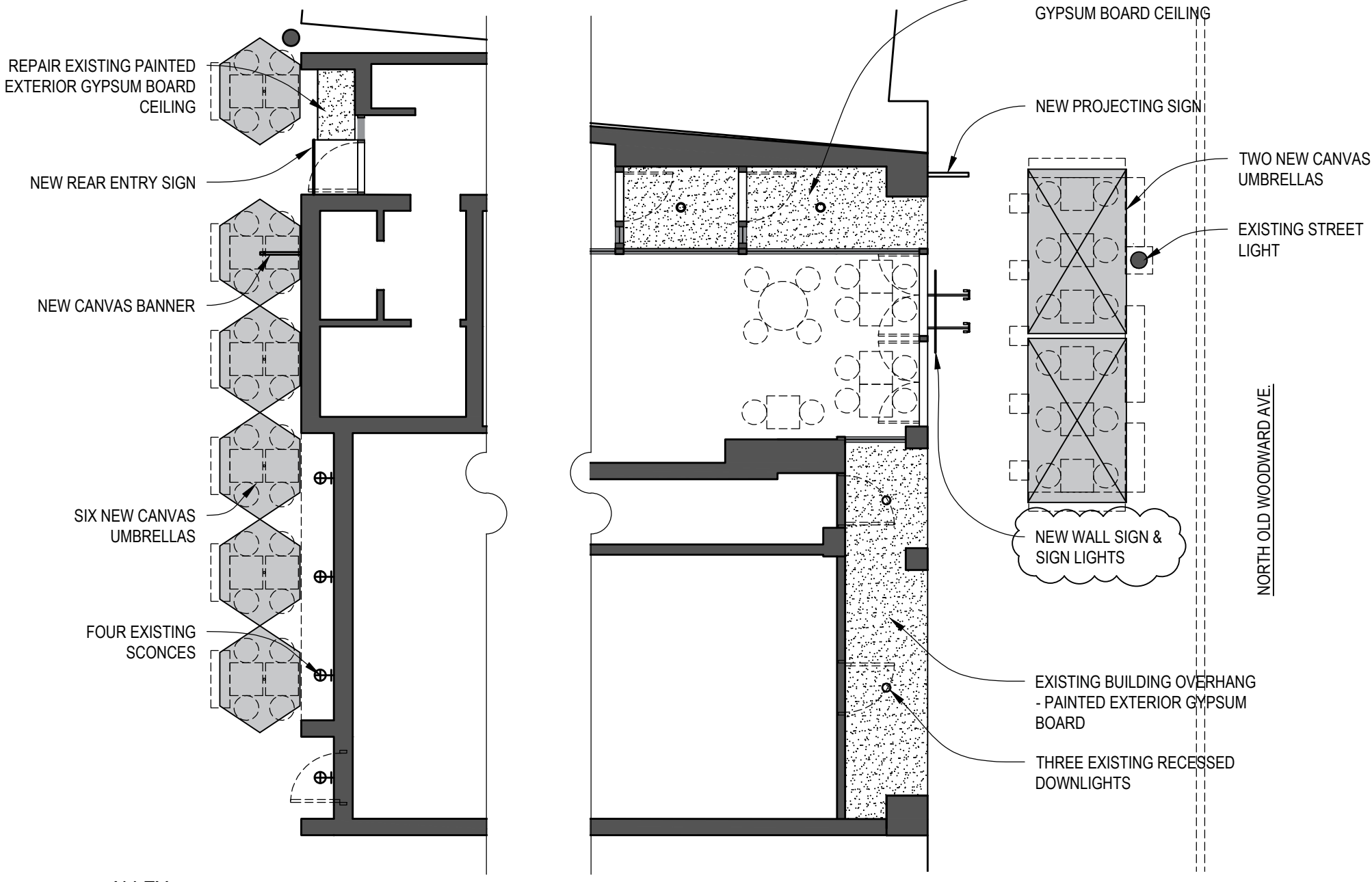
INTERIOR SEATING	
BAR	7
BAR DINING	22
DINING	36
TOTAL INTERIOR	65
SEASONAL SEATING, IN CITY R.O.W.	
STREET CAFE	12
ALLEY CAFE	24
TOTAL CAFE SEATING	36
GRAND TOTAL	101



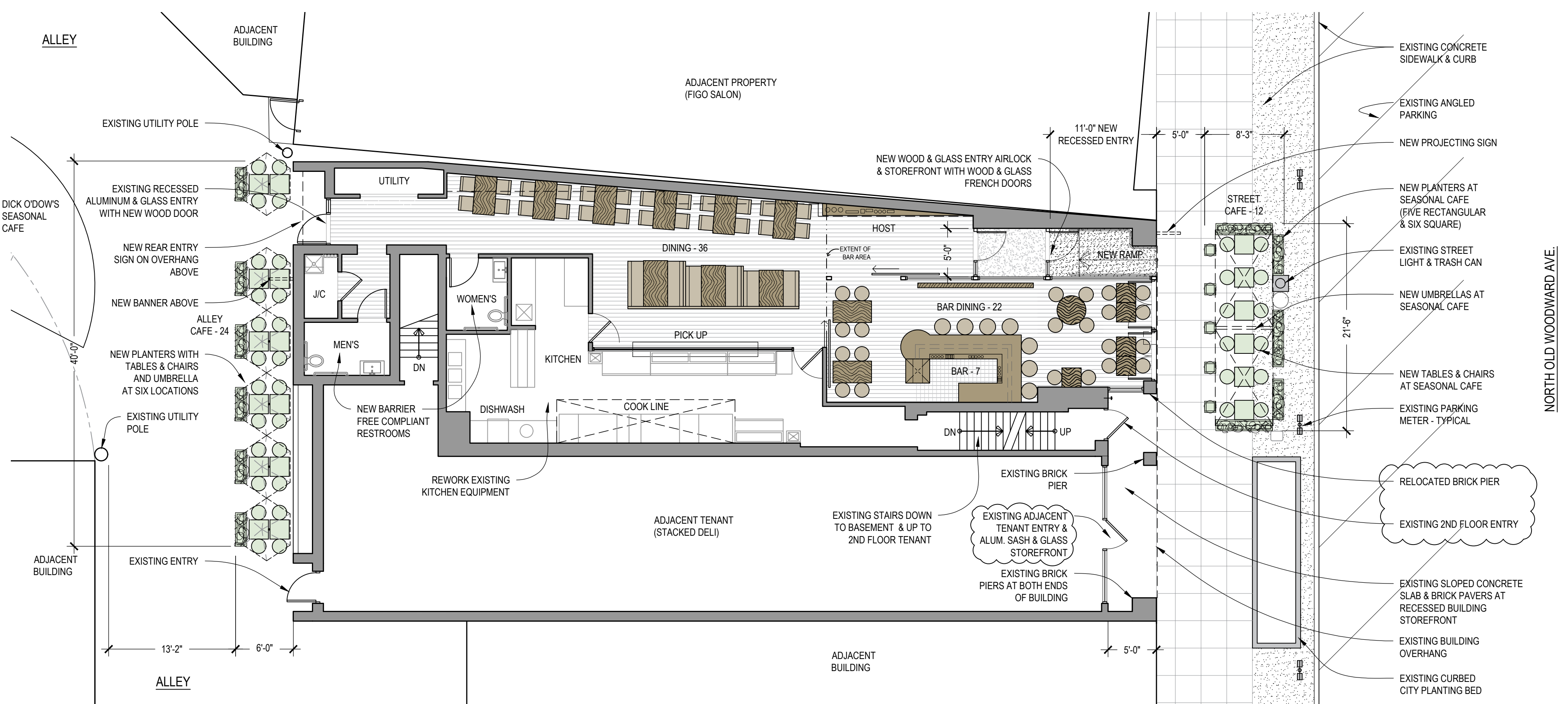
3 ROOF PLAN
scale: 1/8" = 1'-0"



2 BASEMENT FLOOR PLAN
scale: 1/8" = 1'-0"



4 EXTERIOR LIGHTING PLAN
scale: 1/8" = 1'-0"



1 MAIN LEVEL FLOOR PLAN
scale: 1/8" = 1'-0"

Project:

BLOOM
NEW BISTRO IN AN EXISTING RESTAURANT SPACE
239 N. OLD WOODWARD AVE., BIRMINGHAM, MI 48009

Seal:

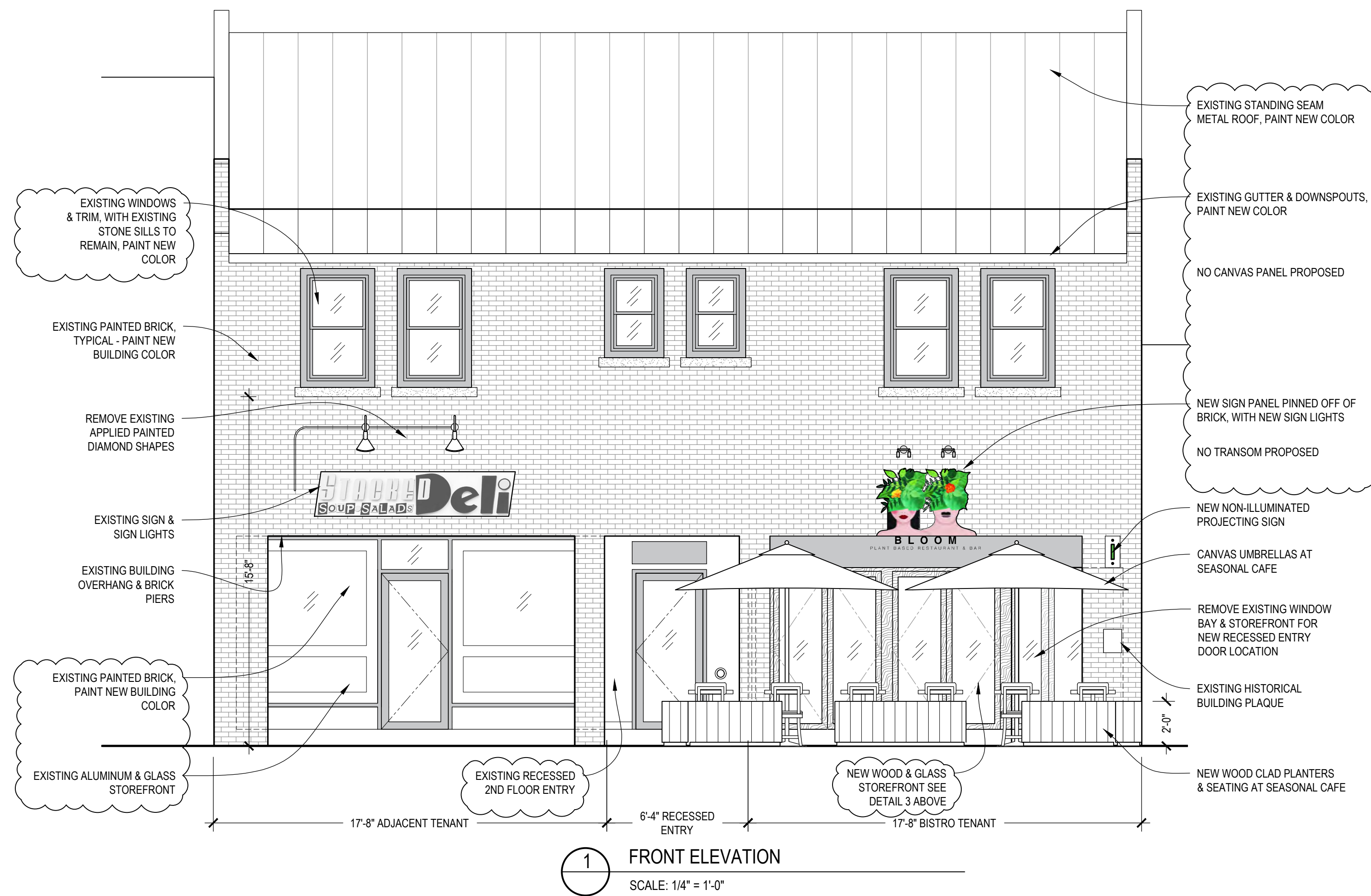
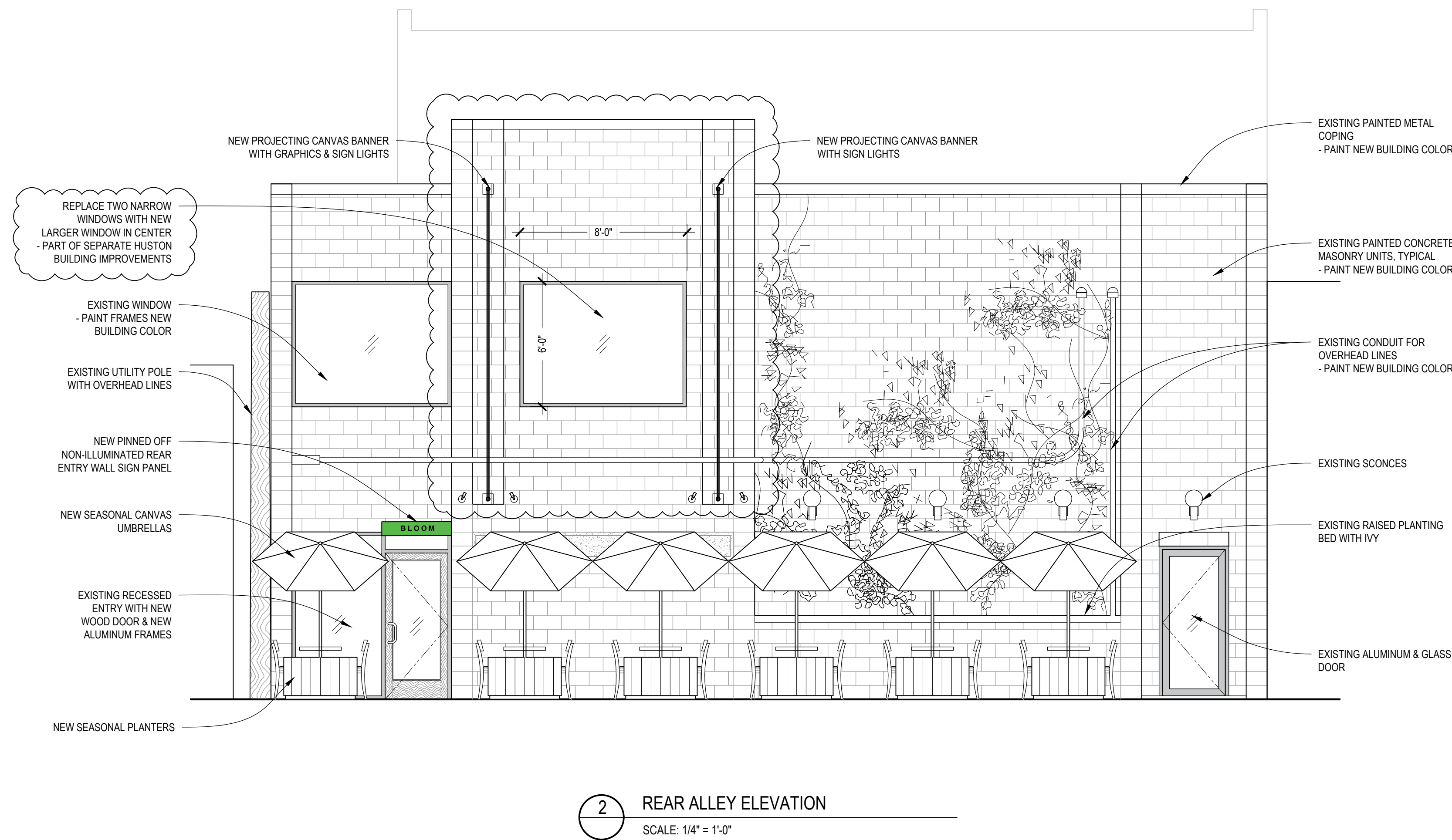
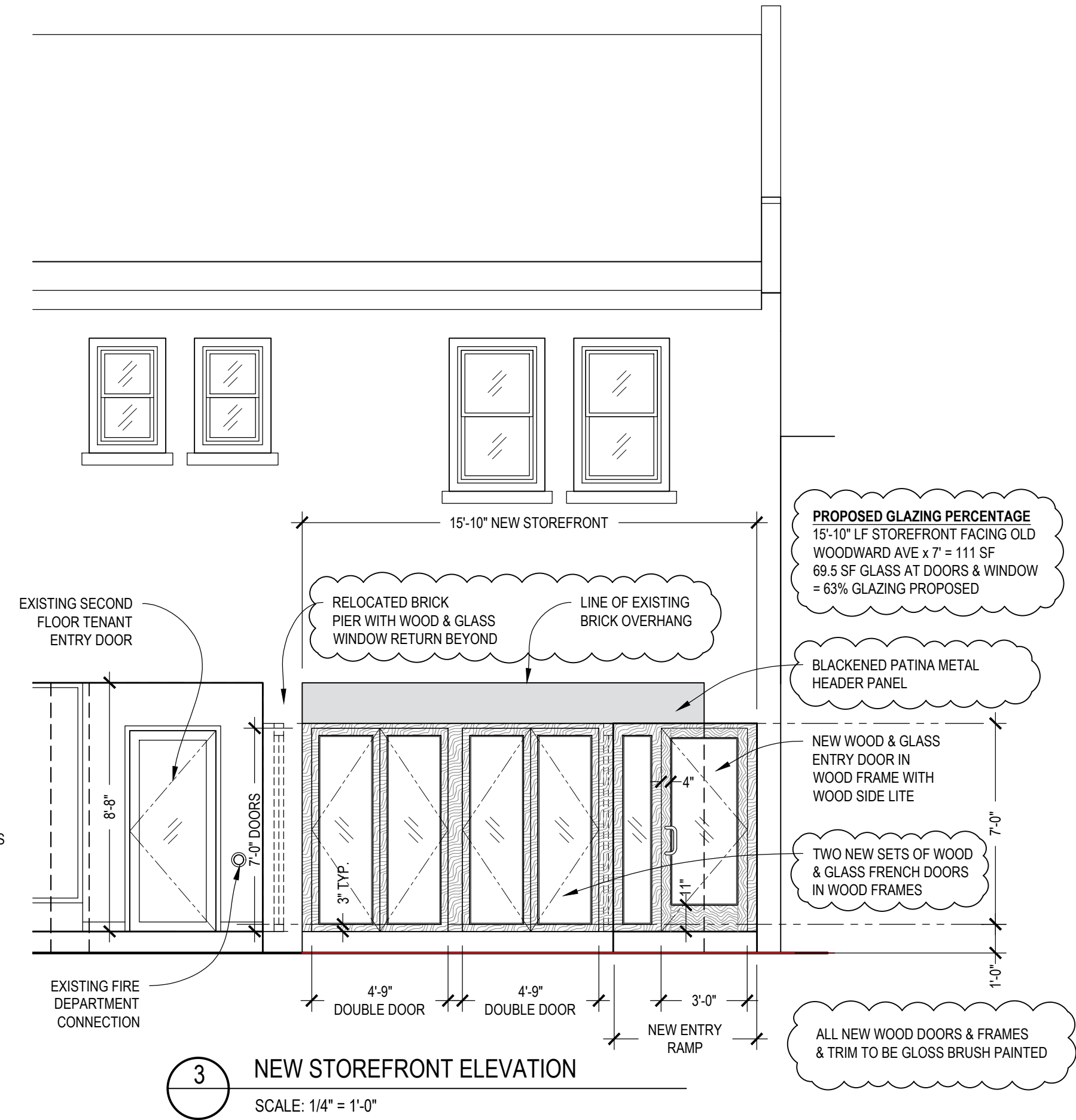
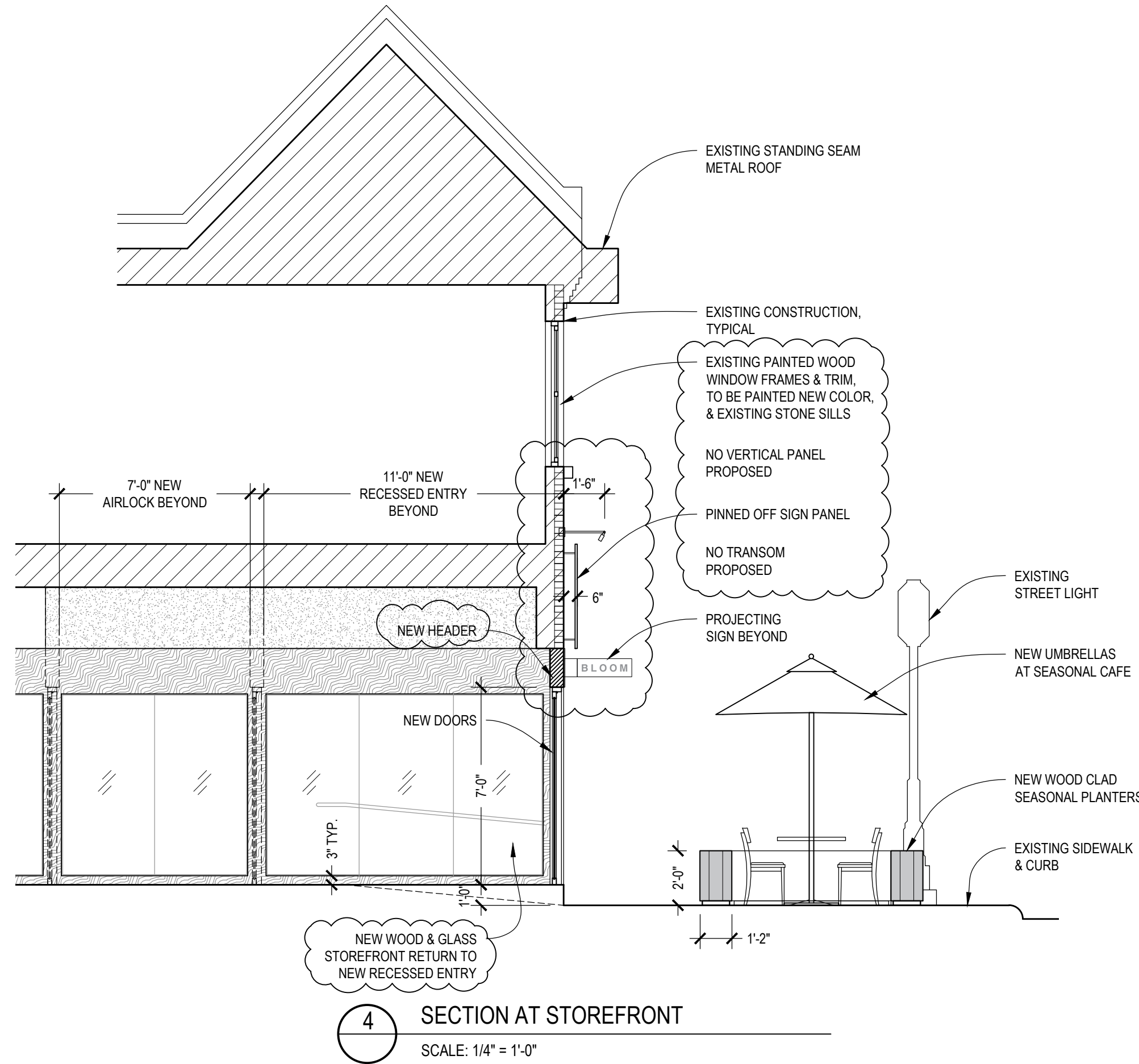
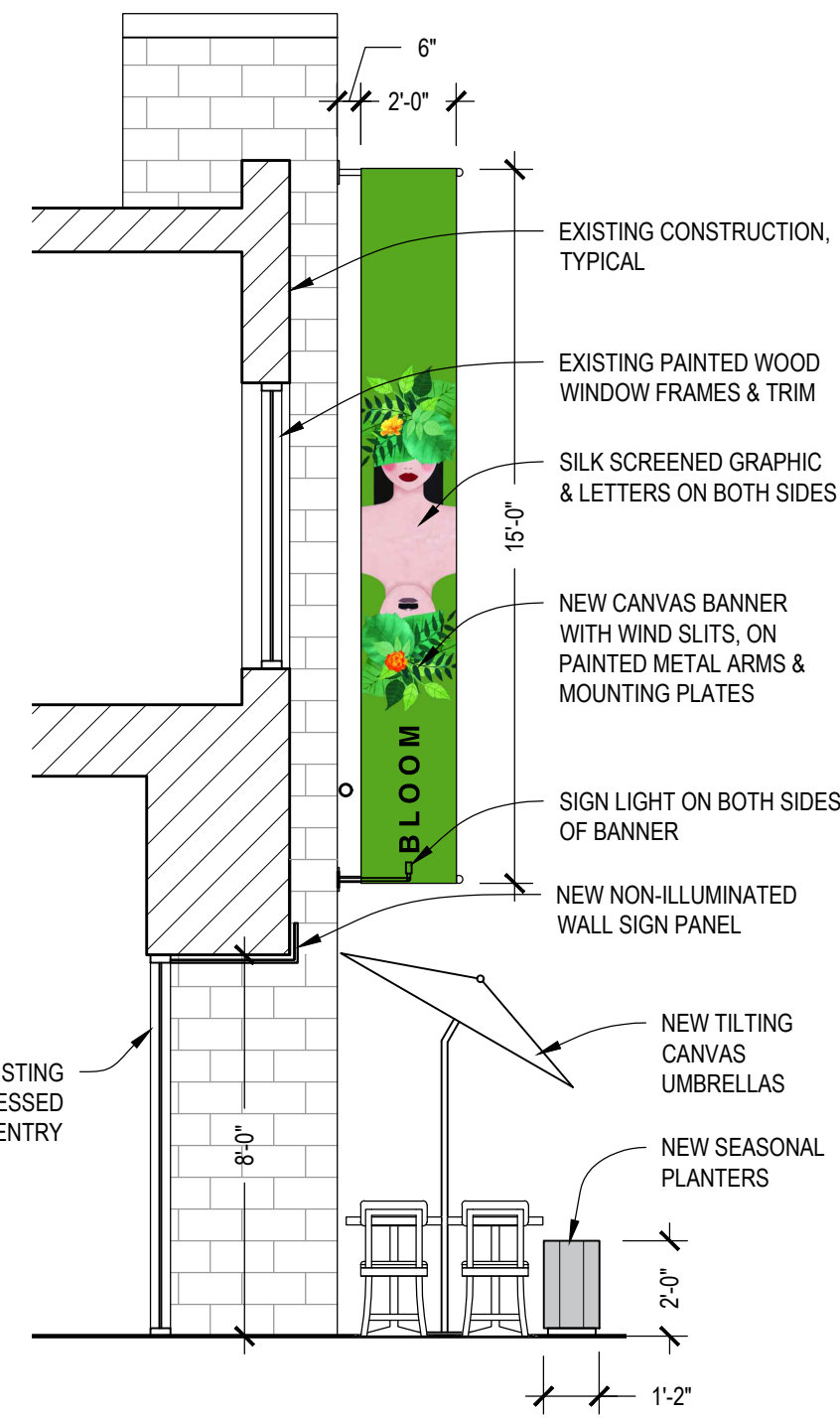
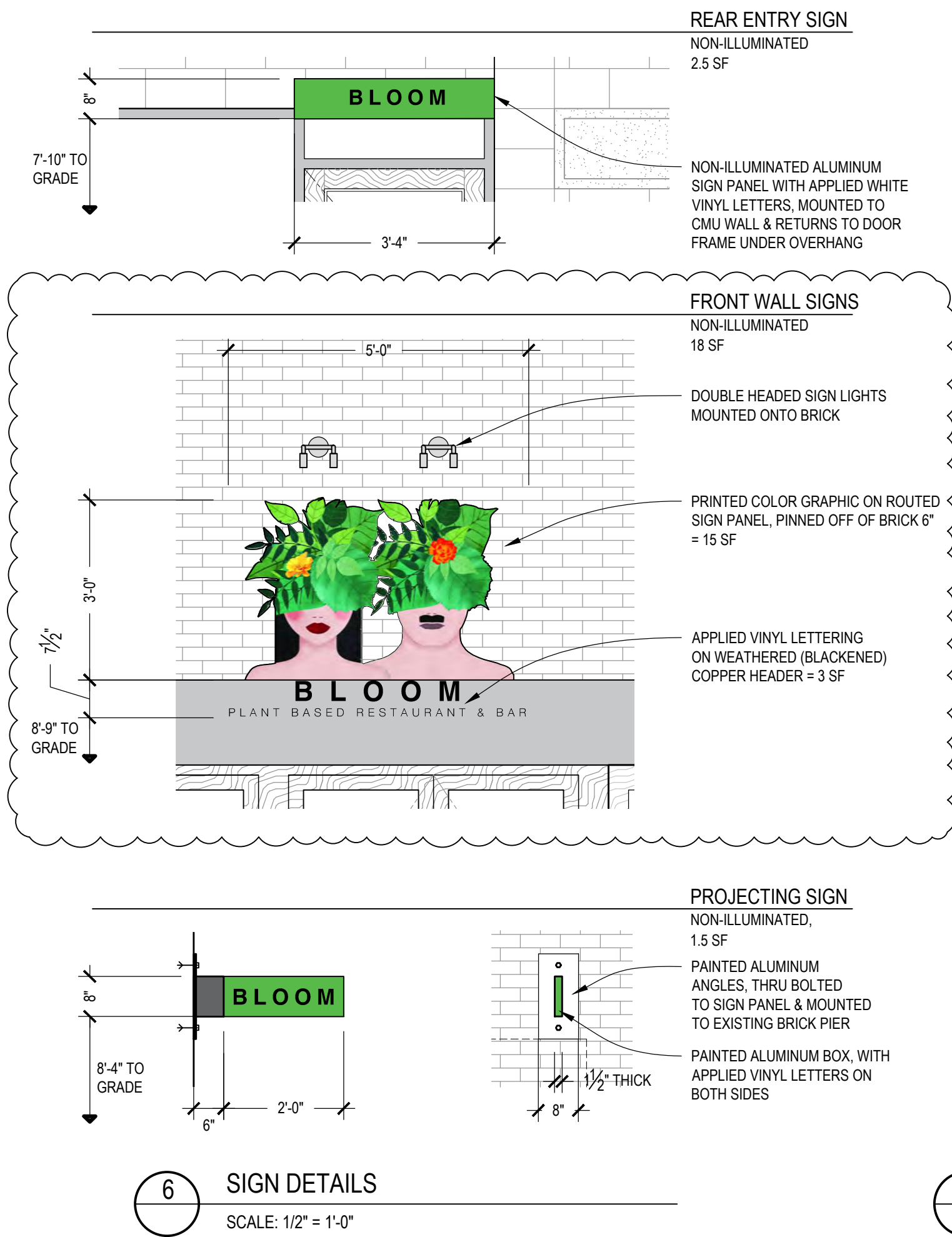
Issue Date:

BISTRO SLUP	5/12/21
HISTORIC REVIEW	5/25/21
HDC REVISION	6/28/21

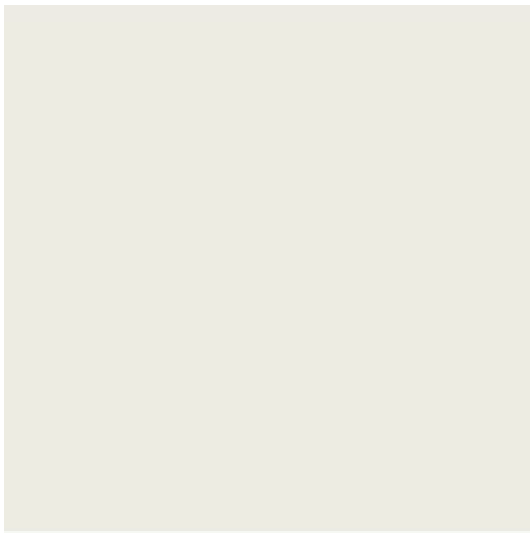
Sheet Title:

FLOOR PLANS

Sheet Number:







WHITE PAINT COLOR
SHERWIN WILLIAMS "GLACIER WHITE" OC-37



BLACK PAINT COLOR - WINDOWS & DOORS
SHERWIN WILLIAMS "CAVIAR" 6990



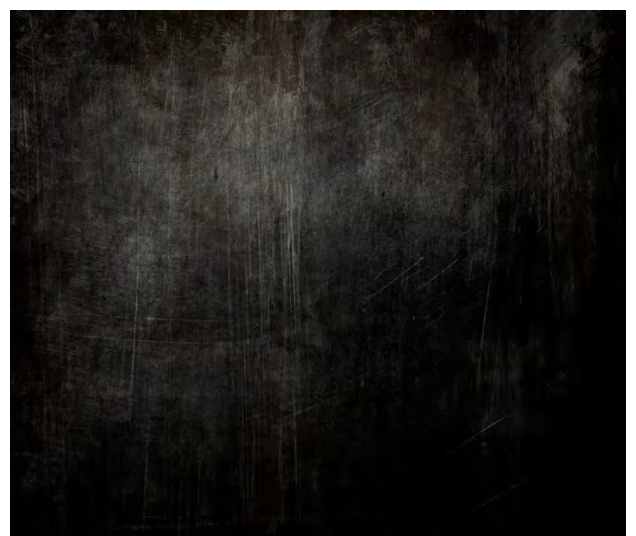
COLOR IMAGE ON PINNED OFF
SIGN PANEL & BANNER AT ALLEY



METAL TABLES & CHAIRS
AT SEASONAL PATIO, HONEYDEW COLOR



SUNBRELLA "GINKGO"
CANVAS ON SEASONAL UMBRELLAS



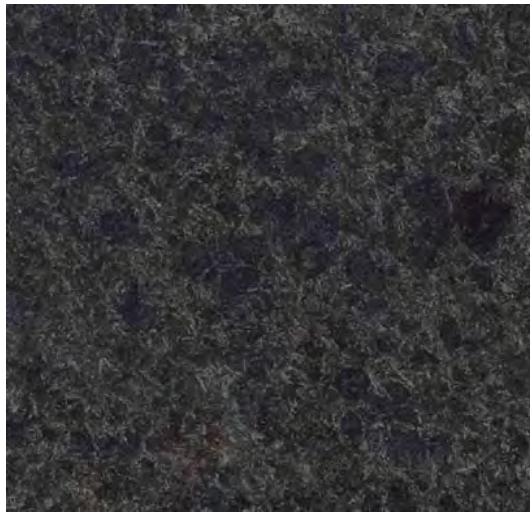
BLACKENED METAL FINISH ON
HEADER PANEL



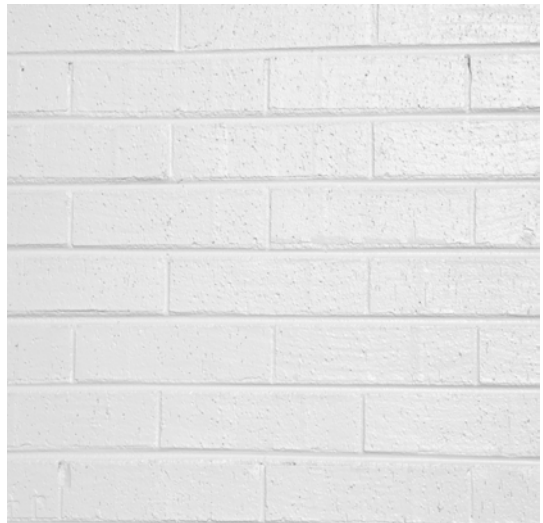
PAINT COLOR AT STANDING SEAM ROOF
BENJAMIN MOORE HC-166



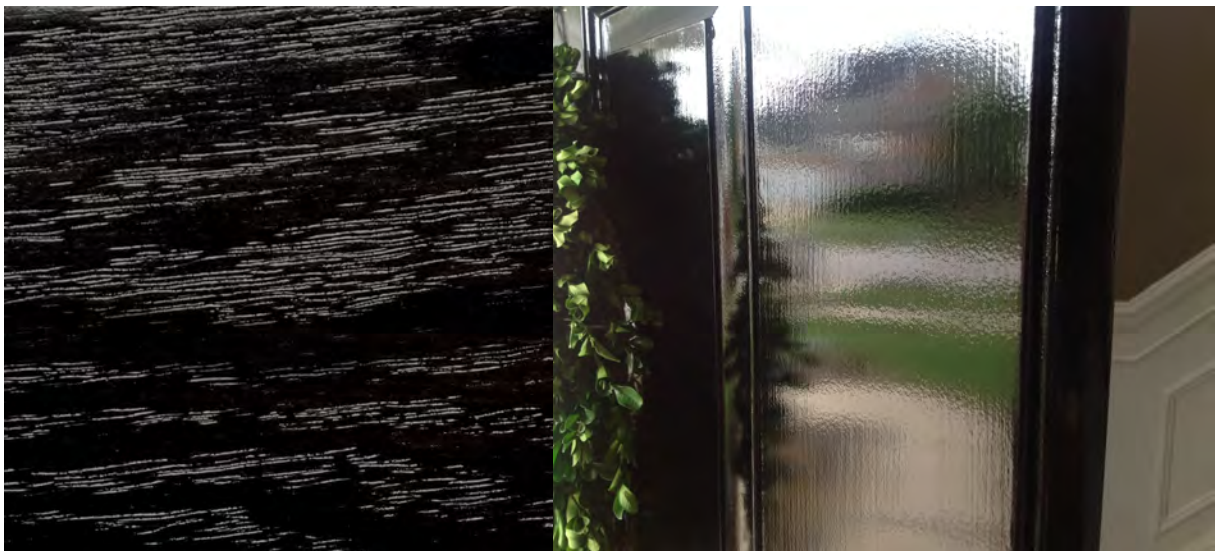
WHITE PAINTED CONCRETE
MASONRY UNITS, ON ALLEY ELEVATION



BLACK GRANITE BASE



WHITE PAINTED BRICK



BLACK GLOSS PAINTED WOOD DOORS &
FRAMES AT NEW STOREFRONT



CLIMBING BOSTON IVY
ON REAR ALLEY ELEVATION



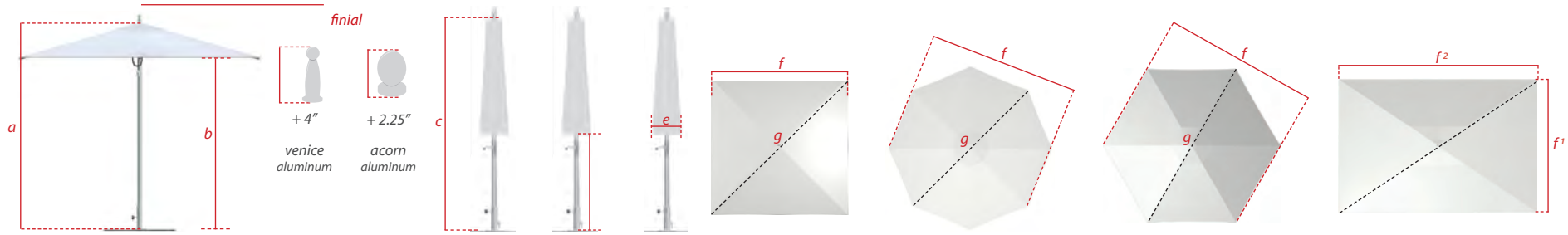
WOOD PLANK CLAD SEASONAL PLANTERS
- NATURAL IPE



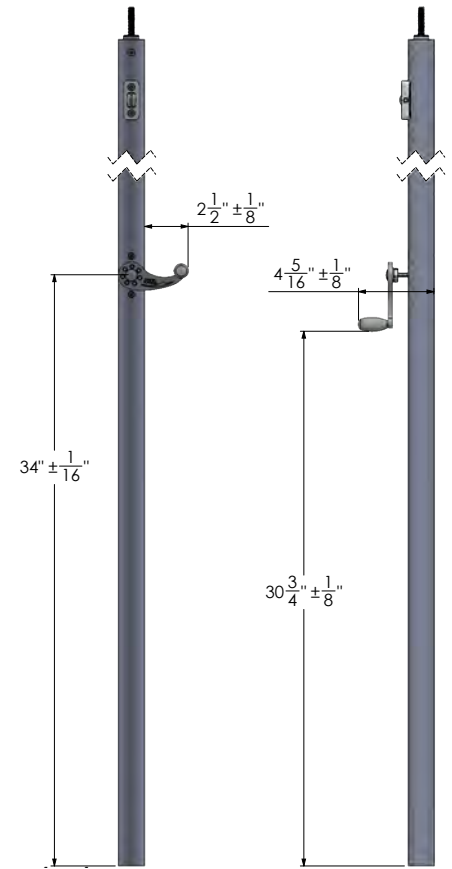
SEASONAL PLANTINGS - ASSORTED COLEUS/POTATO VINES, PALMS, BIRD OF PARADISE, SANSERVIA



UMBRELLAS, IN SUNBRELLA "GINKGO",
SEASONAL PATIOS

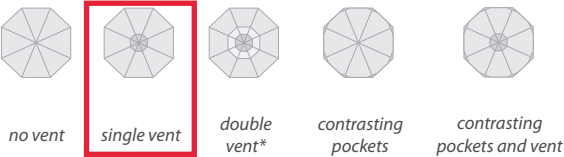


		mast height (open position)	canopy clearance	mast height (closed position)	table clearance	closed parasol width	flat to flat (Open Umbrella)	point to point	canopy area coverage	crank handle clearance
classic	sizes [ft/m]	a (in/cm)	b (in/cm)	c (in/cm)	d (in/cm)	e (in/cm)	f (in/cm)	g (in/cm)	ft ²	
square	6.5' / 2.0m	95 / 242	75 / 190	95 / 242	38 / 96	12 / 31	80 / 204	113 / 288	44.5	
	7.5' / 2.25m	95 / 242	73 / 185	95 / 242	32 / 81	13 / 33	88 / 244	124 / 315	54.25	
	8.5' / 2.6m	106 / 210	82 / 208	106 / 270	32 / 81	13 / 33	101 / 257	143 / 363	72	
	10.0' / 3.0m telescoping mast	104.5 / 265	83 / 210	139 / 354	52 / 132	15 / 81	119.5 / 304	169 / 430	99.25	
octagon	9.0' / 2.75m	94 / 188	80 / 203	94 / 188	37 / 94	15 / 81	105.5 / 268	114 / 290	62.75	
	10.5' / 3.2m	94 / 188	77 / 196	94 / 188	32 / 81	16 / 41	115 / 293	125 / 317.5	76.75	
	11.5' / 3.6m telescoping mast	97 / 247	75 / 190	121 / 308	51 / 130	16 / 41	125 / 318	135 / 343	89.5	
	13.0' / 4.0m telescoping mast	102 / 259	77 / 196	130.5 / 331	53 / 135	17 / 43	143 / 363	155 / 394	115	
hexagon	8.5' / 2.6m	95 / 242	78 / 198	95 / 242	36 / 91	11 / 28	98 / 249	113 / 288	57.5	
	10.0' / 3.0m	95 / 242	77 / 196	95 / 242	33 / 84	16 / 41	109 / 277	125 / 317.5	70.5	
	11.0' / 3.4m	99 / 252	77 / 195	99 / 252	30 / 76	12 / 31	117 / 298	135 / 343	82.25	
rectangle	6.0' x 9.0' / 1.8m x 2.75m	98 / 249	76 / 143	98 / 249	29 / 73	13 / 33	f ¹ X f ² 75x112 191x285	135 / 343	58.25	
	8.0' x 12.0' / 2.45m x 3.65m telescoping mast	100 / 254	87 / 221	134 / 340	48.5 /	52 / 132	f ¹ X f ² 94x141 239x359	172 / 437	92	

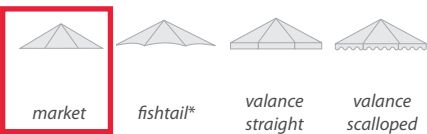


ocean master, plantation, bay master & vineyard classic (cont.)

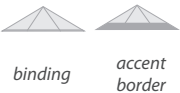
vent and pocket options



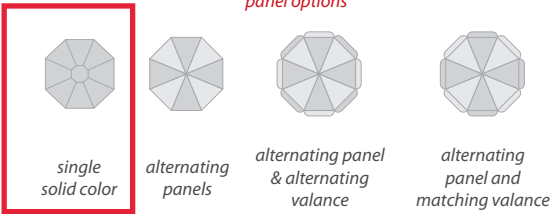
profile options



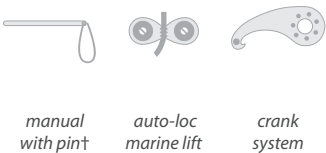
canopy options



panel options



lifting system options



finial

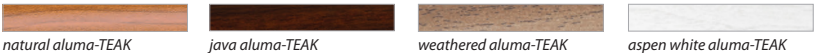


finish options:

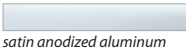
ocean master classic



plantation classic



bay master classic



vineyard classic





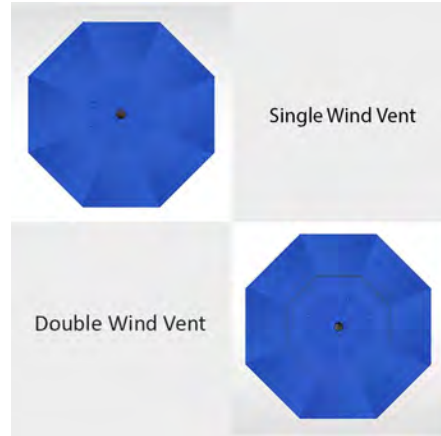
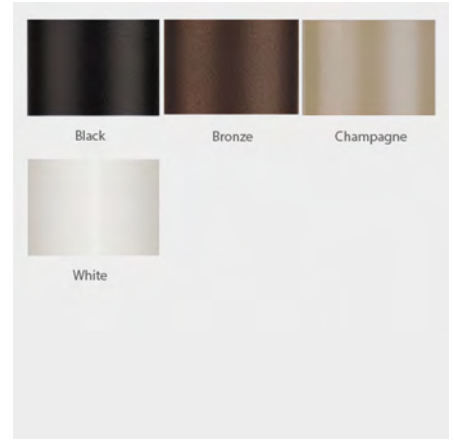
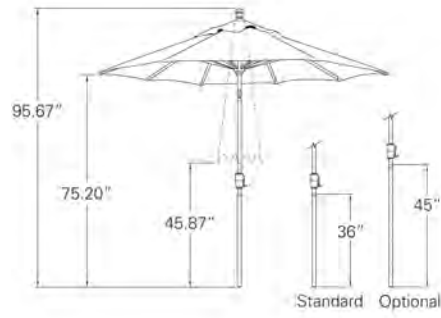
PATIO PRODUCTIONS

Downtown San Diego
2161 Hancock St
San Diego, CA 92110

Phone: 1-888-994-9196

Product Images





Short Description

7.5' Octagon Custom Push Button Tilt Market Umbrella UM907

Additional Information

SKU	UM907
Brand	Treasure Garden
Delivery Estimate	10 - 14 Weeks
Residential Warranty	Frame: 1 Year Sunbrella/Outdura/Docril Fabrics: 5 Years O'bravia Fabrics: 4 Years
Fabric	View Fabric Options
Dimensions	Height: 100.8" Coverage: 46 sq. ft. Top Pole: 1.38" Bottom Pole: 1.5" Weight: 15.4 lbs. Number of Ribs: 8

7.5' Octagon Custom Push Button Tilt Market Umbrella UM907

\$179.00

Orange Metal Indoor-Outdoor Table Set with 2 Stack Chairs

Central Model#: 47K-D42 Brand: Flash Furniture Mfg Part#: CH-31330-2-30-OR-GG



Product Details

Complete your dining room, restaurant or patio with this chic table and chair set. This colorful set will add a retro-modern look to your home or eatery. The table top features an engraved designer print, stabilizing cross brace and protective rubber floor glides. The lightweight stack chair features plastic caps that prevent the finish from scratching while being stacked. This 3 piece table set is designed for indoor and outdoor settings. For longevity, care should be taken to protect from long periods of wet weather. The possibilities are endless with the multitude of environments in which you can use this table, for both commercial and residential spaces. [CH-31330-2-30-OR-GG]

This Flash Furniture CH-31330-2-30-OR-GG is available from Central Restaurant Products.

Features Include:

- Table and Chair Set
- Set Includes Table and 2 Chairs
- Orange Powder Coat Finish
- Designed for Indoor and Outdoor Use
- Designed for Commercial and Residential Use
- Square Table
- Table Size: 27.75"W x 27.75"D x 29"H
- Engraved Designer Top
- 2" Thick Edge
- Cross Brace provides extra stability
- Protective Rubber Floor Glides
- Stackable Cafe Chair
- Stacks up to 8 Chairs High
- 330 lb. Weight Capacity
- Curved Back with Vertical Slat
- Drain Holes in Seat
- Cross Brace under seat provides extra stability
- Plastic Caps on cross brace protect finish when stacked
- Protective Rubber Floor Glides
- Overall Size: 18"W x 20"D x 33"H



Preliminary or Final Historic Sign/Design Review Application

Historic District Commission

Planning Division

Form will not be processed until it is completely filled out.

1. Applicant

Name: Roman Bonislawski, Ron & Roman Inc.
 Address: 275 E. Frank St.
Birmingham, AL 35209
 Phone Number: 248-127-5790
 Fax Number: _____
 Email address: roman@ronandroman.com

2. Property Owner

Name: Oxford Land LLC
 Address: P.O. Box 414
Troy, AL 36099
 Phone Number: 248-362-2870
 Fax Number: 248-362-3011
 Email address: darren@oxfordland.net

3. Applicants Attorney/Contact Person

Name: same as applicant
 Address: _____
 Phone Number: _____
 Fax Number: _____
 Email address: _____

4. Project Designer/Developer

Name: same as applicant
 Address: _____
 Phone Number: _____
 Fax Number: _____
 Email address: _____

5. Required Attachments

- Required fee (see Fee Schedule for applicable amount)
- Two (2) folded copies of scaled plans including color elevations showing all materials and an itemized list of all changes for which approval is requested with changes marked in color.
- Certified land survey
- Landscape plan showing all existing and proposed elements
- Photographs of existing site and/or building.
- Current aerial photos of the subject site, including all adjacent properties within 200 ft.
- Warranty Deed with legal description of property.
- Samples of all materials to be used
- Catalog sheets for all proposed lighting, mechanical equipment and outdoor furniture.
- Completed Checklist.
- Digital copy of plans.
- Any new structures or additions will require a signed letter from DTE approving the location of all electrical transformers and electrical equipment.
- Additional information as required.

6. Project Information

Address/Location of the property: 239 N. Old Woodward Ave. Date of Preliminary Historic Design Review Approval: 6-16-21 (tentative)
 Name of development: Bloom (Bistro) Date of Planning Board Approval: 5-26-21 (tentative)
 Sidwell #: _____ Date of Application for Preliminary Site Plan: _____
 Current Use: restaurant Date of Preliminary Site Plan Approval: _____
 Proposed Use: _____ Date of Application for Final Site Plan: _____
 Area of Site in Acres: _____ Date of Final Site Plan Approval: _____
 Current zoning: B-4 Will proposed project require the division of platted lots? no
 Zoning of Adjacent Properties: B-4 Will proposed project require the combination of platted lots? no
 Name of Historic District Site is Located in: Downtown
 Date of Application for Preliminary Historic Design Review: _____

7. Details of the Nature of Work Proposed (attach separate sheet if necessary)

(Please specifically list all materials and colors to be used)

new aluminum & glass storefront with french doors & transom, wood entry door; new canvas panel w/ clear base; new wall sign & projecting sign; new seasonal alley cafe; new seasonal street cafe both with canvas umbrellas & wood clad planters; paint all existing building brick & block in a new color

8. Buildings and Structures

Number of Buildings on Site: 1

Height of Buildings & # of Stories: 2 stories + Basement
32'

Use of Buildings:

Height of Rooftop Mechanical Equipment: 7-5'

9. Additions (in Square Feet)

Proposed Use: none

Number of Floors:

Number of Sq. Ft. on Each Floor:

Height:

Total Floor Area:

Retail Space:

Assembly Space:

Office Space:

Industrial Space:

Seating Capacity:

10. Required and Proposed Parking

Required number of parking spaces: none

Typical angle of parking spaces:

Typical width of maneuvering lanes:

Location of parking on site:

Location of parking off site:

Number of light standards in parking area:

Screenwall material:

Proposed number of parking spaces:

Typical size of parking spaces:

Number of spaces < 180 sq. ft.:

Number of handicap spaces:

Shared parking agreement?

Height of light standards in parking area:

Height of screenwall:

11. Landscaping

Location of landscape areas: none

Proposed landscape material:

12. Building Lighting

Number of light standards on building: none

Size of light fixtures (L•W•H):

Maximum wattage per fixture:

Light level at each property line:

Type of light standards on building:

Height from grade:

Proposed wattage per fixture:

13. Maximum Signage Allowance Calculation

Building Frontage (in feet): 17'-8" (tenant)

Maximum Sign Area Allowed: 17.5 sq. ft.

Sign Area Proposed: 17.5 sq. ft.

Maximum Sign Area = 1 square foot (1.5 for Woodward addresses) per each linear foot of principal building frontage

14. Location of Proposed Signs

wall sign & projecting sign @ front elevation, projecting sign @ alley

15. Number of Sign(s)

Wall: 1
Ground: _____
Projecting (Blade): 2

Canopy: _____
Building Name: _____
Post-Mounted Projecting: _____

16. Sign Size, Material & Content

Sign #1

Type of Sign: T&D
Width: _____
Depth: _____
Height: _____
Total Square Feet: _____
Height of Lettering: _____
Height from Grade: _____

Projection from Wall: _____
Sign Reads: " _____"

Sign Materials: _____

Sign Color(s) (including PMS color #): _____

Sign #2

Type of Sign: T&D
Width: _____
Depth: _____
Height: _____
Total Square Feet: _____
Height of Lettering: _____
Height from Grade: _____

Projection from Wall: _____
Sign Reads: " _____"

Sign Materials: _____

Sign Color(s) (including PMS color #): _____

Sign #3

Type of Sign: T&D
Width: _____
Depth: _____
Height: _____
Total Square Feet: _____
Height of Lettering: _____
Height from Grade: _____

Projection from Wall: _____
Sign Reads: " _____"

Sign Materials: _____

Sign Color(s) (including PMS color #): _____

17. Existing Signs Located on Property

Number of Signs: _____
Sign Type(s): _____

Square Feet per Sign: _____
Total Square Feet of Existing Signage: _____

18. Sign Lighting

Type of Lighting Proposed: T&D
Size of Light Fixtures (LxWxH): _____
Maximum Wattage per Fixture: _____
Location: _____

Number Proposed: _____
Lighting Height from Grade: _____
Proposed Wattage per Fixture: _____
Style (include specifications): _____

19. Landscaping (ground signs only)

Location of Landscape Areas: none

Proposed Landscape Material: _____

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.

Signature of Owner: [Signature] Date: 5-25-21

Print Name: Darren Atesian

Signature of Applicant: [Signature] Date: 5.25.21

Print Name: Roman Bonislowski

Signature of Architect: [Signature] Date: 5.25.21

Print Name: Roman Bonislowski

Office Use Only		
Application #: _____	Date Received: _____	Fee: _____
Date of Approval: _____	Date of Denial: _____	Accepted by: _____



MEMORANDUM

Planning Division

DATE: July 7th, 2021

TO: Historic District Commission

FROM: Nicholas Dupuis, City Planner

SUBJECT: 239 N. Old Woodward – Huston Building – Design Review

Zoning: B4 (Business-Residential) & D4 (Downtown Overlay)

Existing Use: 2-Story Commercial Building

History

Elmer Huston put up this building with 2 stores on the ground level and apartments above in 1923. It housed the Post Office and variety store from 1924 to 1928. In 1929, the Mulholland Dry Goods Company moved into both spaces. Mulholland went out of business in 1963 or 1964. Several businesses were located there until Irving Kay moved into the north half in 1967. Between then and not several businesses, have succeeded each other in the southern half. In the spring of 1982, Irving Kay expanded and occupied the entire ground floor. The second floor façade resembles that of the Leonard Building in W. Maple.

Introduction

The subject site is located on the west side of N. Old Woodward just north of Hamilton Row. The multi-tenant building is located in the Central Business Historic District and is a designated historic resource. The applicant has submitted a Design Review application for exterior changes to the entire building from roof to storefront.

On May 26th, 2020, the Planning Board reviewed a Special Land Use, Final Site Plan and Design Review application for Bloom Bistro (a newly proposed tenant in the building) and recommended approval to the City Commission with the following conditions:

1. The applicant must receive Historic District Commission approval for all exterior changes proposed;
2. The applicant must submit revised site plans showing non-public trash receptacles in each outdoor dining area;
3. The Planning Board APPROVES the projection into the Willits Alley right-of-way;
4. The applicant must submit specification sheets with Visual Light Transmittance figures for all proposed glazing;

5. The applicant must revise the sign concept for Bloom to meet the dimensional requirements of the Sign Ordinance;
6. The applicant must comply with the requests of all City Departments; and
7. The Planning Board APPROVES outdoor dining in the Willits Alley.

As required, the applicant is seeking Historic District Commission approval for the exterior changes to the Huston Building that are related to the introduction of Bloom.

On June 16th, 2020, the Historic District Commission postponed consideration of the Design Review application citing concerns about historic materials and the overall design proposal for the historic façade.

Proposal

The applicant is proposing a *rehabilitation* of the historic building facade storefront, parts of which were removed at some point in the buildings history. The proposed changes include extensive work to the ground floor façade including new and redesigned windows/entryways, new limestone façade, and paint. The upper floors are proposed to contain new windows, a new roof, and paint. Please see the table below for a summary of all of the proposed façade materials:

Material	Location	Color
Leaded Glass Transom	Above 1 st floor storefront windows	Blackened Patina
Wood & Glass French Doors	1 st floor storefront	Glossy Black
Wood & Glass Entry Door	2 nd floor entrance (center)	Stained
Wood & Glass Entry Door	Retail entrances	Glossy Black
Limestone	1 st floor façade, archway, piers	Natural
Terra Cotta Tile	Roof	Slate
Copper Gutter & Downspout	Roofline	Copper/Patina
Paint	2 nd floor façade, rear façade	Glacier White
Aluminum Clad Double Hung Wood Windows	2 nd floor windows	?

Although the applicant is proposing a restoration of the original façade and its original materials, it is worth noting that the proposed façade meets several architectural standards required in the Downtown Overlay District including the following:

1. At least 90% of the exterior finish material on all facades that face a street shall be limited to the following: glass, brick, cut stone, cast stone, coarsely textured stucco, or wood.
2. The primary colors of building exteriors shall be compatible with the colors of adjacent buildings and in character with the surrounding area, although the trim may be of a contrasting color.

3. Storefronts shall be directly accessible from public sidewalks. Each storefront must have transparent areas, equal to 70% of its portion of the facade, between one and eight feet from the ground.
4. Sliding doors and sliding windows are prohibited along frontage lines.

A more detailed analysis of the façade in relation to the Secretary of the Interior (SOI) Standards will be provided below.

Signage

Article 2, Section 2.02 of the Sign Ordinance states that the City Commission shall hear and deny, approve, or approve with conditions, those signs for special land uses, after receiving the recommendation of the Planning Board. The Planning Board reviewed signage at the May 26th meeting and provided a condition of approval that the applicant must revise the sign concept for Bloom to meet the dimensional requirements of the Sign Ordinance. The applicant has revised the signage proposal and removed the green canvas panel, which is reviewed below.

The applicant is proposing five total signs. The linear frontage of the building measures roughly 42 ft., which permits the building 42 sq. ft. of total signage. Article 3, Section 3.02 of the Sign Ordinance defines a sign as any object, device, logo, display or structure, or part thereof, which is intended to advertise, identify, display, or direct or attract attention to an object, person, institution, organization, business, product, service, event or location by any means.

In addition, Article 2, Section 2.03 requires sign area to be computed by means of the smallest square or rectangle that will encompass the extreme limits of the writing, representation, emblem or other display, together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed. Considering the definition and computation regulations above, a breakdown of the building signage is provided in the following table:

Sign Content (Type)	Sign Area (Sq. Ft.)
Stacked Deli (Existing Wall Sign)	16
Bloom (Wall Sign – Canvas/Sign Panel)	15
Bloom (Projecting Sign)	1.3
Bloom (Name Letter Sign – Window Header, Vinyl)	3.1
Bloom (Projecting Sign – Rear)	60*
Bloom (Wall Sign – Rear Door)	2*
Total Proposed Combined Sign Area:	35.4
Total Permitted Combined Sign Area:	42
<i>*Area not included in proposed combined sign area per Activation Overlay District</i>	

Additionally, the Sign Ordinance permits wall signs to project no more than 9 in. from the building face. As the signage is presently designed, the sign projects 6 in. from the building face. This is due in part to the proposed canvas panel located behind the logo wall sign.

Finally, the logo wall sign is proposed to be illuminated by a small architectural light fixture below the sign, which is permitted in the Central Business Historic District.

Lighting

The applicant is proposing minor LED strip up lighting underneath the proposed limestone arched entryway and two recessed downlights in the retail entrances. Although the applicant is proposing new light fixtures, the Planning Division did not seek a photometric plan, citing Article 4, Section 4.21 (C) which requires a photometric plan only if new lighting is proposed that may *significantly alter* the light distribution or illuminance on a site, as deemed necessary by the Planning Division or Historic District Commission. The Historic District Commission may wish to discuss this opinion and update the requirements accordingly, if necessary.

The applicant has submitted specification sheets on the proposed LED strip fixtures that demonstrate that the proposed fixtures are NOT cutoff as defined by Article 9 of the Zoning Ordinance. Exception to cutoff luminaires can be made at the discretion of the Historic District Commission under any of the following conditions:

1. The distribution of upward light is controlled by means of refractors or shielding to the effect that it be used solely for the purpose of decorative enhancement of the luminaire itself and does not expel undue ambient light into the nighttime environment.
2. The luminaire is neither obtrusive nor distracting, nor will it create a traffic hazard or otherwise adversely impact public safety, with appropriate methods used to eliminate undesirable glare and/or reflections.
3. The luminaire is consistent with the intent of the Master Plan, Urban Design Plan(s), Triangle district plan, Rail District plan and/or Downtown Birmingham 2016 Report, as applicable.
4. The scale, color, design or material of the luminaire will enhance the site on which it is located, as well as be compatible with the surrounding buildings or neighborhood.
5. Lighting designed for architectural enhancement of building features (i.e. architectural enhancement lighting). Appropriate methods shall be used to minimize reflection and glare.
6. The site lighting meets all requirements set forth in this ordinance including, but not limited to, light trespass and nuisance violations.

The Planning Division finds that the LED strip lighting is appropriate and controlled by the building, preventing ambient light from entering the nighttime environment. Thus, **the applicant must receive approval from the Historic District Commission for the use of non-cutoff light fixtures.**

Planning and Zoning

In general, because the existing building footprint it proposed to remain, there are no bulk, placement or height requirements that must be addressed as a part of this review. However, there are four planning and zoning issues that must be reviewed:

Parking: The subject site is located within the Parking Assessment District. Thus, no parking analysis is required for the commercial use.

Landscaping: There are no existing landscaping beds on site, nor are any proposed at this time. However, there is a small planter in the rear of the building that contains ivy. The applicant is proposing to replant Boston Ivy after the building is repainted.

Glazing: As the applicant is proposing to install new glazing, the new glazing will be required to conform to the window standards outlined in Article 4, Section 4.90 of the Zoning Ordinance, which state that:

1. No less than 70% of a storefront/ground floor façade between 1 and 8 ft. above grade shall be clear glazing.
2. Only Clear glazing (80% Visual Light Transmittance) is permitted on storefront facades at the first floor. Lightly tinted glazing (70% Visual Light Transmittance) above the first floor may be permitted. Mirrored glass is prohibited.
3. Required window areas shall be either pedestrian entrances, windows that allow views into retail space, working areas or lobbies. Display windows set into the wall may be approved by the Planning Board.
4. Windows shall not be blocked with opaque materials or the back of shelving units or signs.
5. The bottom of the window shall be no more than 3 feet above the adjacent exterior grade.

The applicant has submitted glazing calculations that show the proposed storefront contains about 53% glazing in between 1 ft. and 8 ft. from grade. The applicant has also submitted a "developed elevation" that takes into consideration the glass proposed within the recessed entrances, which shows about 67% glazing. Unfortunately, the Zoning Ordinance defines façade as "the vertical exterior surface of a building that is set parallel to a setback line" which would preclude the perpendicular glazing located within the recessed entrances.

However, to allow flexibility in design, these standards may be modified by a majority vote of those appointed and serving on the Historic District Commission for architectural design considerations provided that the following conditions are met:

1. The subject property must be in a zoning district that allows mixed uses;
2. The scale, color, design and quality of materials must be consistent with the building and site on which it is located;
3. The proposed development must not adversely affect other uses and buildings in the neighborhood;
4. Glazing above the first story shall not exceed a maximum of 70% of the façade area;
5. Windows shall be vertical in proportion.

The Planning Division finds that each of these conditions are met and that the Historic District Commission has additional authority to approve a storefront based on historical context and construction that may not meet the current ordinance. Thus, **the applicant must receive approval from the Historic District Commission for the proposed 53% glazing, provide additional glazing, or obtain a variance from the Board of Zoning appeals.**

The applicant has not submitted specification sheets on any proposed glazing to ensure that the clarity requirements of 80% VLT are met. **The applicant must submit specification sheets with Visual Light Transmittance figures for all proposed glazing.**

Projections into Right-of-Way: The applicant is proposing two vertical canvas banners that extend from the top of the first floor to just below the roofline at the rear of the building along the alley that projects 1.5 ft. into the Willits Alley right-of-way. The Planning Board approved this projection into the right-of-way.

Design Review Standards and Guidelines

Chapter 127, Section 127-11 of the Birmingham Code of Ordinances states that in reviewing plans, the commission shall follow the U.S. secretary of the interior's standards for rehabilitation and guidelines for rehabilitating historic buildings as set forth in 36 C.F.R. part 67. Design review standards and guidelines that address special design characteristics of historic districts administered by the commission may be followed if they are equivalent in guidance to the secretary of interior's standards and guidelines and are established or approved by the state historic preservation office of the Michigan Historical Center. The U.S. Secretary of the Interior Standards for Rehabilitation are provided in full at the end of this report.

In reviewing plans, the commission shall also consider all of the following:

1. The historic or architectural value and significance of the resource and its relationship to the historic value of the surrounding area.
2. The relationship of any architectural features of the resource to the rest of the resource and to the surrounding area.

3. The general compatibility of the design, arrangement, texture, and materials proposed to be used.
4. Other factors, such as aesthetic value, that the commission finds relevant.
5. Whether the applicant has certified in the application that the property where work will be undertaken has, or will have before the proposed project completion date, a fire alarm system or a smoke alarm complying with the requirements of the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.

Recommendation

The Michigan State Historic Preservation Office defines *rehabilitation* as the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values.

The National Parks Service offers guidelines that suggest in *rehabilitation*, historic building materials and character-defining features are protected and maintained as they are in the treatment Preservation. However, greater latitude is given in the Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings to replace extensively deteriorated, damaged, or missing features using either the same material or compatible substitute materials. Of the four treatments, only Rehabilitation allows alterations and the construction of a new addition, if necessary for a continuing or new use for the historic building.

Considering the above, the applicant appears, generally, to meet Standards 1, 7 and 9. However, elements of the proposal seem to conflict with, in some capacity, Standards 2, 3, and 6. A Planning Division review of each applicable standard is provided below:

1. *A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.*

As noted in the building history above, the building has historically contained retail uses on the ground floor since its construction. The proposed renovations do not alter the use of the building, and thus remains true to the buildings history.

2. *The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.*

The revised drawings submitted by the applicant rectify the issues noted in the June 16th report regarding the removal of historic brick and limestone window sills in favor of a new limestone storefront. The applicant is still proposing the addition of a new limestone storefront, but is no longer removing any brick. Additionally, the original storefront was removed some time ago and is no longer original or significant. However, the proposal submitted by the applicant involves an alteration of the original storefront that historically

featured large paned glass, stone base and leaded glass transom with a centrally located entry door for each tenant space.

National Parks Service guidelines suggest that when designing a new storefront - when the historic storefront is completely missing or has previously been replaced by one that is incompatible – the design may be an accurate restoration based on documentary evidence, OR it may be a new design that is compatible with the size, scale, material and color of the historic building. The applicant is not proposing a wholly accurate restoration of the storefront, as the proposed storefronts do not include the features described above. The Planning Division feels as though the new design proposed is not quite compatible with the rest of the building and the period of significance in which this building rehabilitation is working under due to the size and fenestration of the French-door styled windows. The relocation of the entry doors to the sides of the tenant space as opposed to the center of the space may be an acceptable alteration, as the building retains the mirrored look that was historically present, and brings the building into ADA compliance that suits the continued use of the building.

3. *Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.*

The introduction of tall, operable French doors at the storefront could foster a false sense of historical development and may be inappropriate. When it comes to replacing windows, National Parks Service guidelines recommend replacing incompatible, non-historic windows with new windows that are compatible with the historic character of the building. Operable French-door styled windows were not a feature of this 1923 building. However, Historic District Commission could realistically consider French style doors or operable windows IF they more closely matched the pane configuration, size, and component makeup that were a feature of the original windows.

6. *Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.*

Generally, many of historic features on the building facade have been removed rather than left to deteriorate. Still, the applicant has proposed new materials attempting to match the design, color and texture of the historic materials evident in the photographs. The replacement materials that require some discussion are the terra cotta roof tiles and the second floor windows. The original building would likely have had a slate roof, which seems to be confirmed by the photographs available. Although the terra cotta is a different

material, the finished slate-colored look could offer a similar visual experience in terms of color variations and general shape. Finally, the revised plans showing the replacement of the non-original second floor windows with new wood and glass double-hung windows with true divided lites is now appropriate. It is clear in photographs that the original windows were double-hung, and have remained double hung to present day.

7. *Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.*

As noted on the plans, the applicant is not proposing to remove the paint on the building to expose the original brick and restore the original look. Rather, the applicant is proposing to paint the front façade brick Glacier White. National Parks Service guidance suggests that this is the best treatment when approaching brick that has been painted numerous times over a buildings lifetime. When repainting, the paint color should be, at a minimum, appropriate to the style and setting of the building. This also means that if the building is in a historic district, the color selection should complement the building in question as well as other buildings in the block. In general, color schemes for wall and major decorative trim or details should be kept simple; in most cases the color or colors chosen for a storefront should be used on other painted exterior detailing to unify upper and lower portions of the facade. The applicant appears to be doing just that.

9. *New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.*

The revised proposal does not appear to remove any historic materials that are left on the building façade.

Based on a review of the SOI standards and other guidance, the Planning Division recommends that the Historic District Commission **POSTPONE** the Design Review for 239 N. Old Woodward – Huston Building – to allow the applicant time to address the conflicts noted above with the Secretary of the Interior Standards, as well as any further Historic District Commission comments.

Sample Motion Language

Motion to **POSTPONE** the Design Review application for 239 N. Old Woodward – Huston Building – to allow the applicant time to address the conflicts noted above with the Secretary of the Interior Standards.

OR

Motion to **APPROVE** the Design Review application for 239 N. Old Woodward – Huston Building – with the following conditions:

1. The Historic District Commission APPROVES the non-cutoff LED light strips beneath the limestone arch;
2. The Historic District commission APPROVES the proposed 53% glazing;

OR

2. The applicant must provide additional glazing, or obtain a variance from the Board of Zoning appeals.
3. The applicant must submit specification sheets with Visual Light Transmittance figures for all proposed glazing.

OR

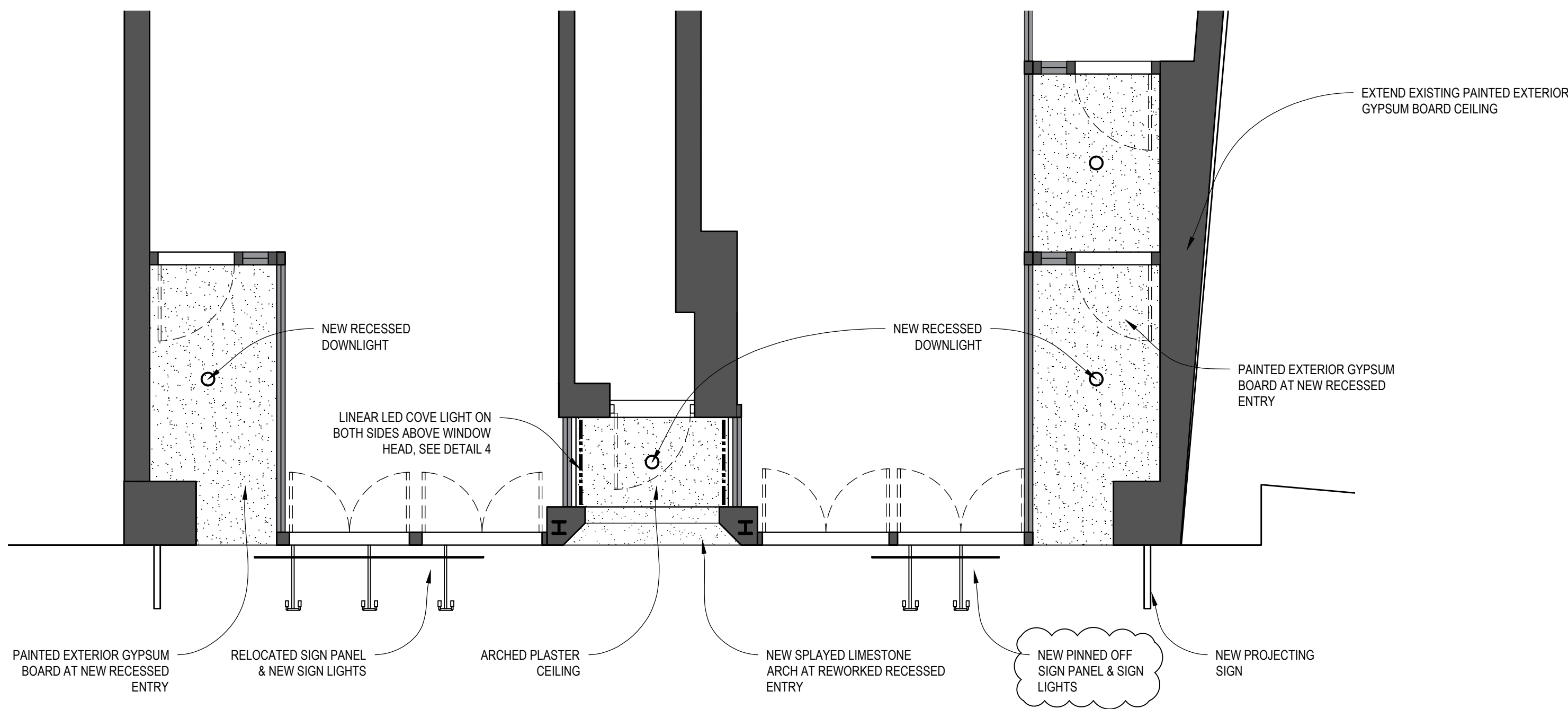
Motion to **DENY** the Design Review application for 239 N. Old Woodward – Huston Building – for the following reasons:

1. _____
2. _____
3. _____

THE SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION AND GUIDELINES FOR REHABILITATING HISTORIC BUILDINGS

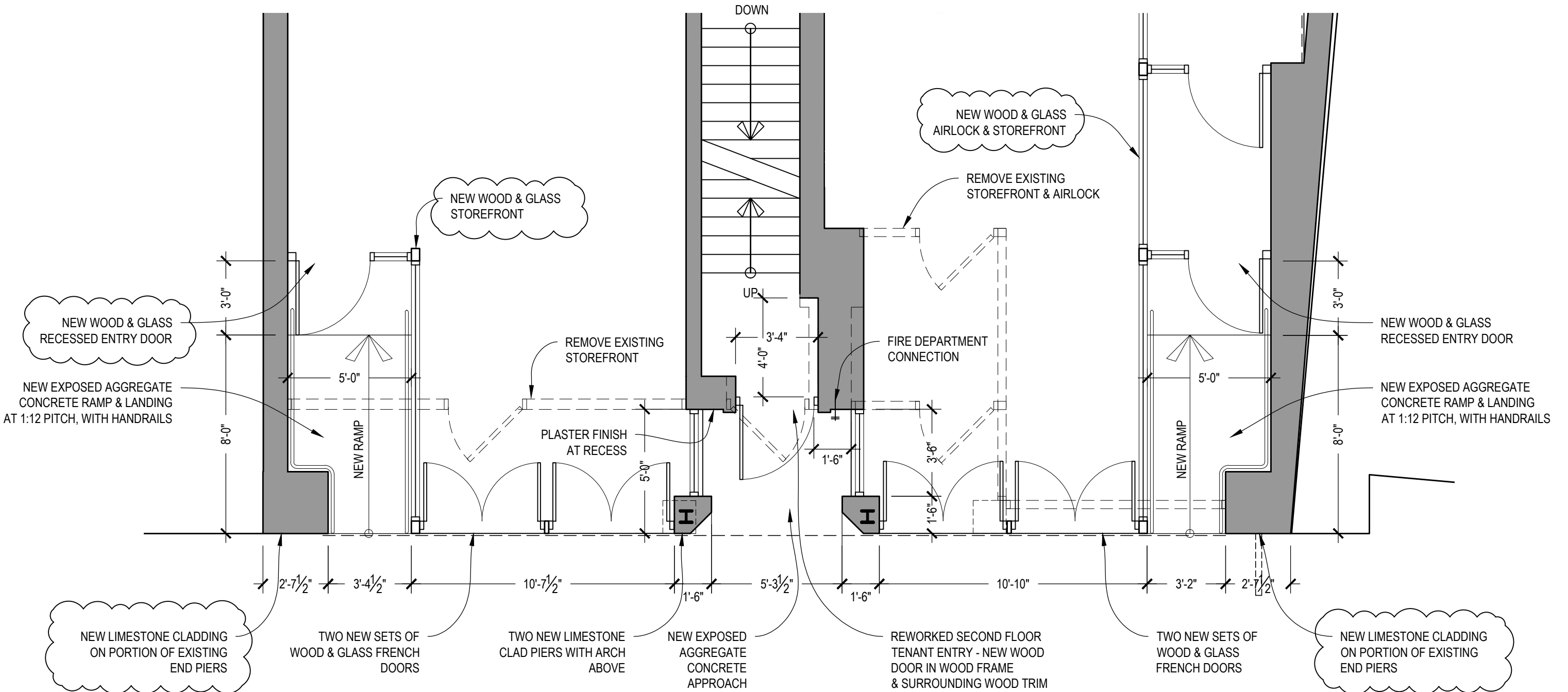
The U. S. secretary of the interior standards for rehabilitation are as follows:

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.
6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.
7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
8. Significant archaeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.



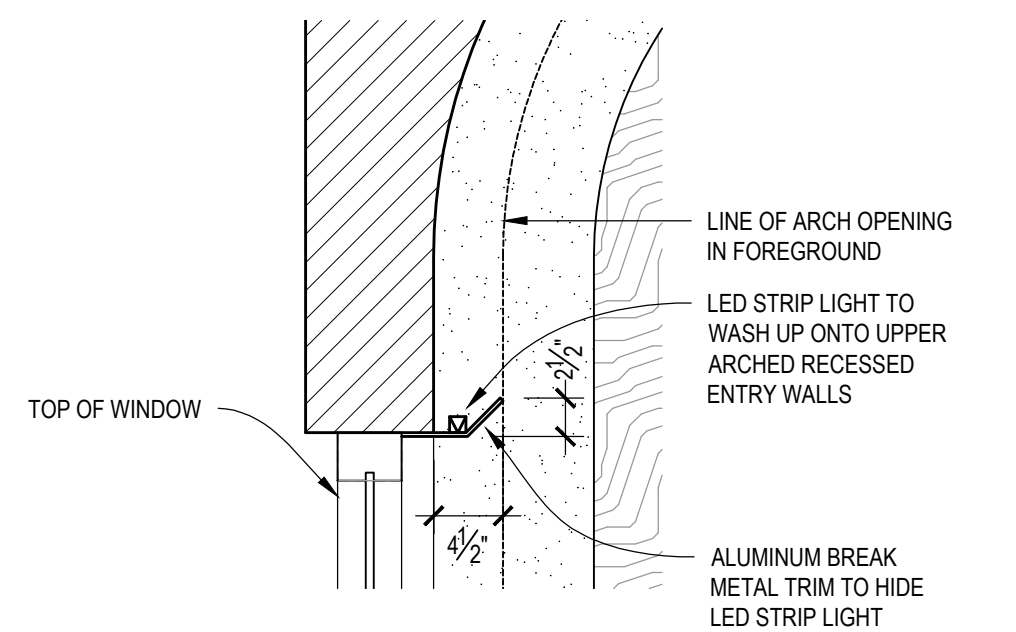
3 NEW STOREFRONT REFLECTED CEILING PLAN DETAIL

scale: 1/4" = 1'-0"



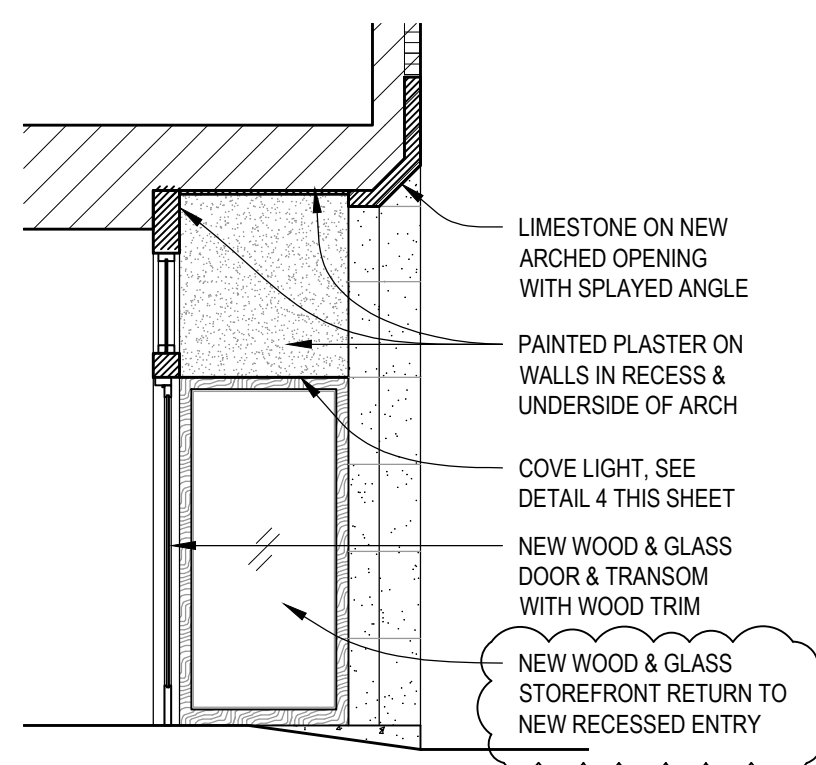
2 NEW STOREFRONT PLAN DETAIL

scale: 1/4" = 1'-0"



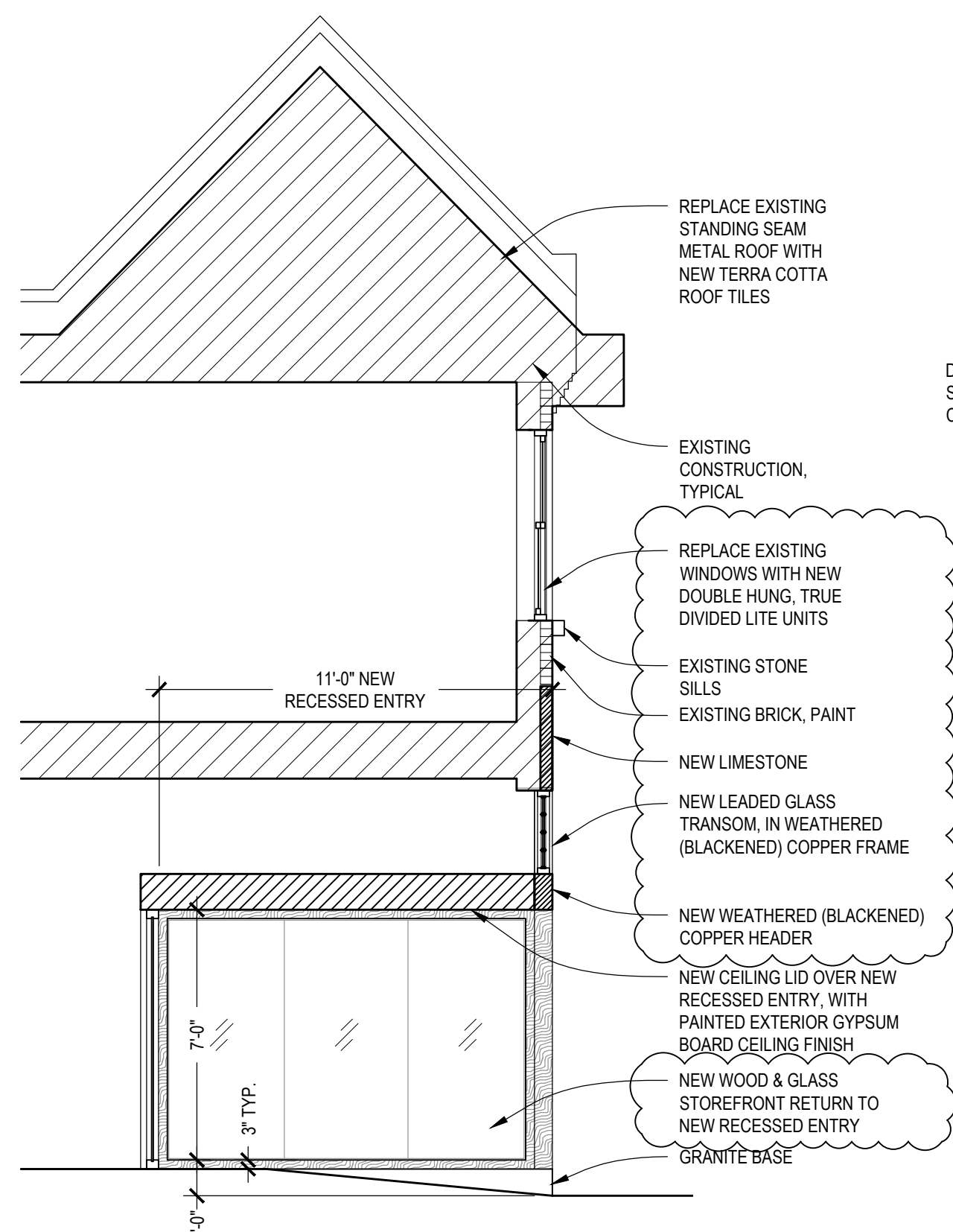
4 SECTION AT COVE LIGHT

SCALE: 1" = 1'-0"



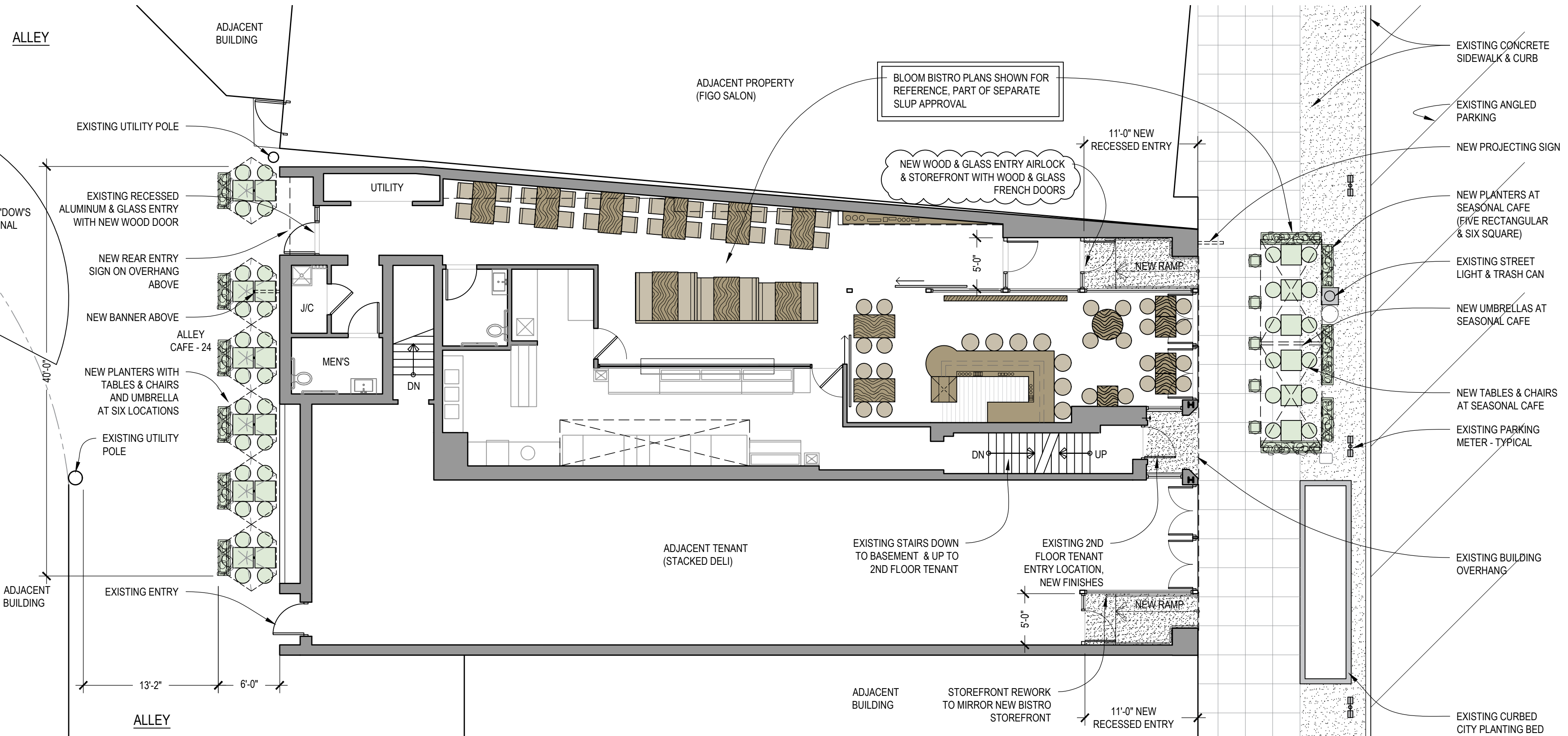
5 SECTION AT 2ND FLOOR ENTRY

SCALE: 1/4" = 1'-0"



6 SECTION AT 1ST FLOOR ENTRY

SCALE: 1/4" = 1'-0"



1 MAIN LEVEL FLOOR PLAN

scale: 1/8" = 1'-0"

Project:

HUSTON BUILDING
RENOVATION OF AN EXISTING BUILDING
233-239 N. OLD WOODWARD AVE., BIRMINGHAM, MI 48009

Seal:

Issue Date:

HISTORIC REVIEW 5/25/21

HDC REVISION 6/28/21

Sheet Title:

FLOOR PLANS

Sheet Number:

A-1

4 EXISTING ELEVATION
SCALE: 1/4" = 1'-0"

3 NEW STOREFRONT ELEVATION
SCALE: 1/4" = 1'-0"

2 REAR ALLEY ELEVATION
SCALE: 1/4" = 1'-0"

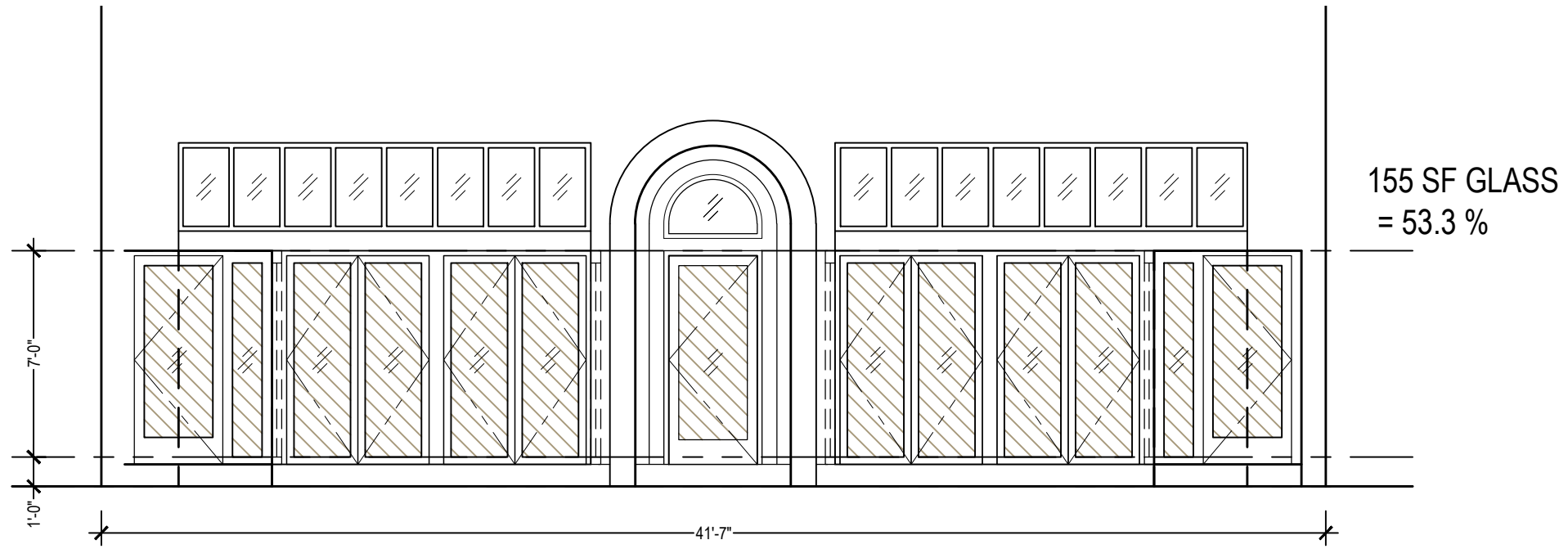
1 FRONT ELEVATION
SCALE: 1/4" = 1'-0"

* BLOOM BISTRO IMPROVEMENTS SHOWN FOR REFERENCE,
PART OF SEPARATE BISTRO SLUP *

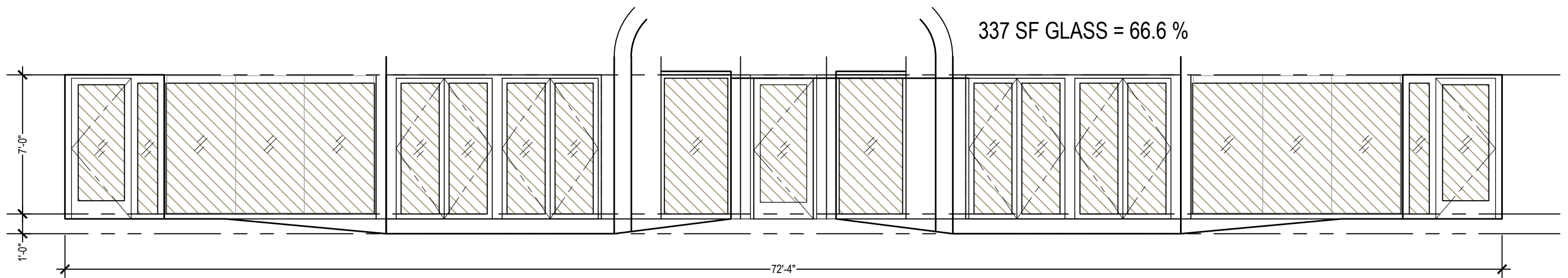
* BLOOM BISTRO IMPROVEMENTS SHOWN FOR REFERENCE,
PART OF SEPARATE BISTRO SLUP *



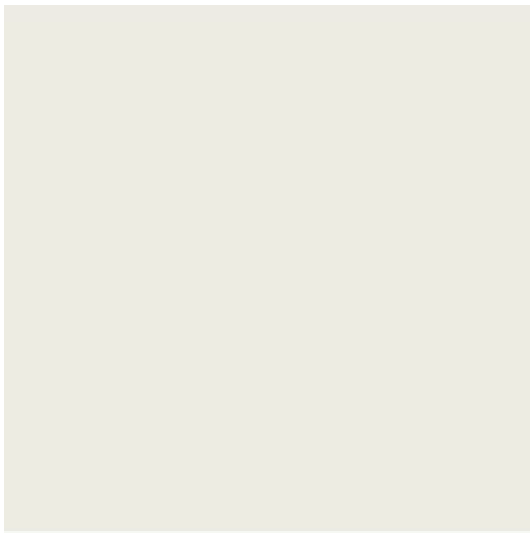




HUSTON BUILDING -
GLAZING % (TRUE ELEVATION)



HUSTON BUILDING -
GLAZING % (DEVELOPED ELEVATION)



WHITE PAINT COLOR
SHERWIN WILLIAMS "GLACIER WHITE" OC-37



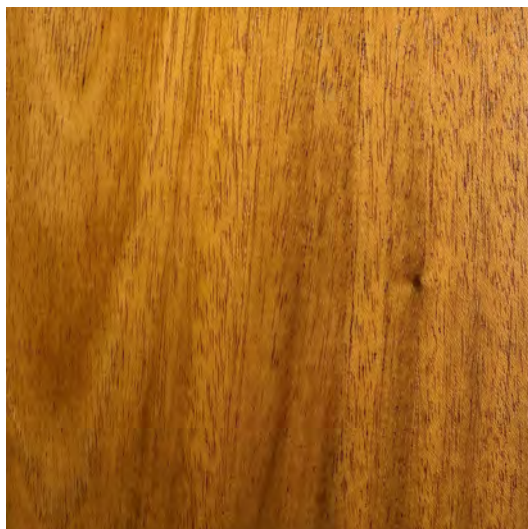
BLKACK PAINT COLOR ON DOORS
SHERWIN WILLIAMS "CAVIAR" 6990



WHITE PAINTED CONCRETE
MASONRY UNITS, ON ALLEY ELEVATION



EXISTING IVY ON REAR ALLEY WALL



STAINED & VARNISHED WOOD DOOR, TRIM
& TRANSOM AT SECOND FLOOR ENTRY



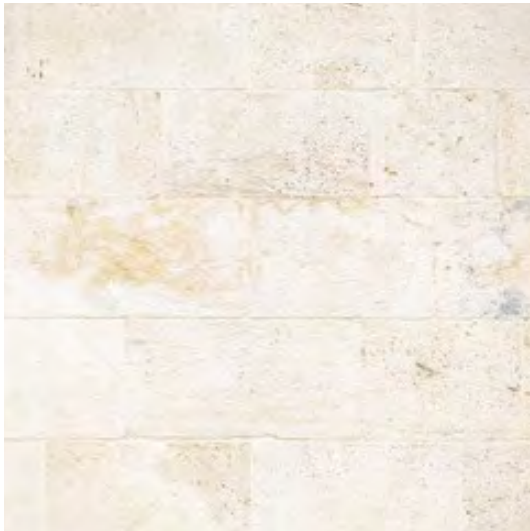
EXPOSED AGGREGATE CONCRETE RAMPS,
LANDING & APPROACHES AT
OLD WOODWARD STOREFRONTS



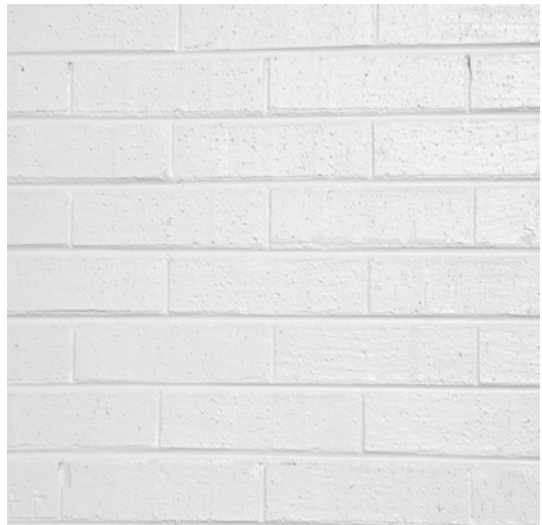
SLATE COLORED LUDOWICI
TERRA COTTA ROOF TILES



OVERSIZED COPPER GUTTER
AND DOWNSPOUTS



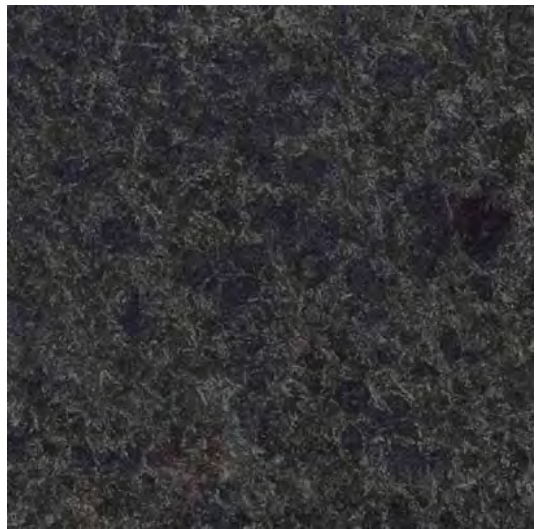
LIMESTONE ON FRONT FACADE



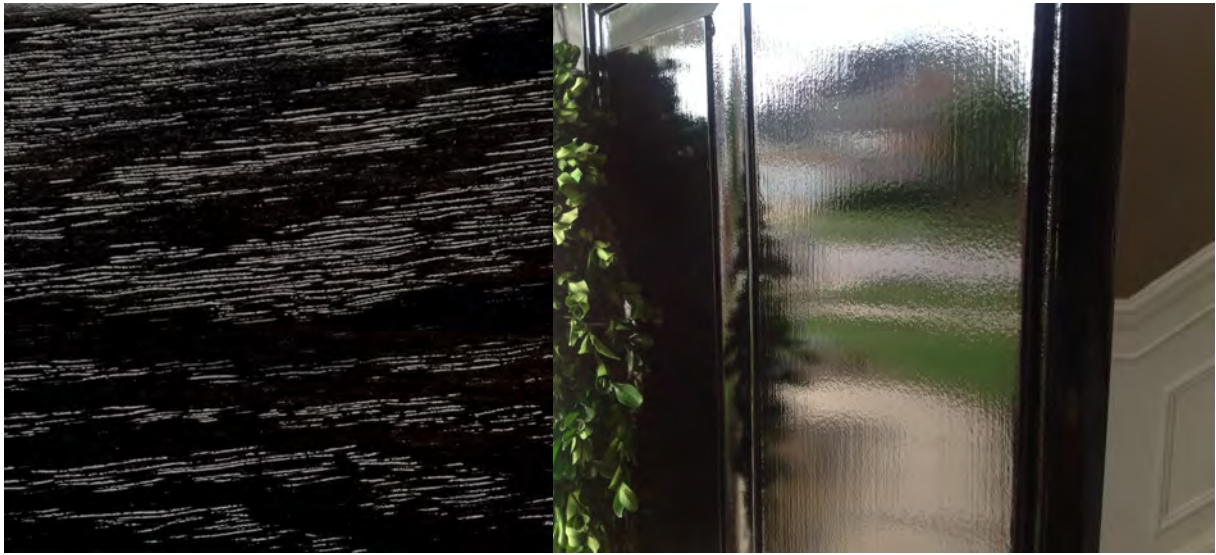
WHITE PAINTED BRICK



BLACKENED METAL FINISH ON
HEADER PANEL & TRANSOM WINDOWS



GRANITE BASE



BLACK GLOSS PAINTED WOOD DOORS &
FRAMES AT NEW STOREFRONT

Huston Building

CITY OF BIRMINGHAM

Date 06/10/2021 10:23:57 AM

Ref 00180723

Receipt 578309

Amount \$100.00

CITY OF BIRMINGHAM

Date 06/10/2021 10:23:57 AM

Ref 00180722

Receipt 578309

Amount \$400.00



City of Birmingham

A Worldly Community

Preliminary or Final Historic Sign/Design Review Application Historic District Commission Planning Division

Form will not be processed until it is completely filled out.

1. Applicant

Name: Roman Bonislavski, Ron & Roman, Inc.

Address: 275 E. Frank St.
Birmingham MT 48099

Phone Number: 248-723-5790

Fax Number:

Email address: romen@ronandroman.com

2. Property Owner

Name: Oxford Land LLC

Address: P.O. Box 414
Troy, MI 48099

Phone Number: 248-362-2870

Fax Number: 248-362-3011

Email address: Darlen@atesian.net

3. Applicants Attorney/Contact Person

Name: same as applicant

Address:

Phone Number:

Fax Number:

Email address:

4. Project Designer/Developer

Name: same as applicant

Address:

Phone Number:

Fax Number:

Email address:

5. Required Attachments

- Required fee (see Fee Schedule for applicable amount)
- Two (2) folded copies of scaled plans including color elevations showing all materials and an itemized list of all changes for which approval is requested with changes marked in color.
- Certified land survey
- Landscape plan showing all existing and proposed elements
- Photographs of existing site and/or building.
- Current aerial photos of the subject site, including all adjacent properties within 200 ft.

- Warranty Deed with legal description of property.
- Samples of all materials to be used
- Catalog sheets for all proposed lighting, mechanical equipment and outdoor furniture.
- Completed Checklist.
- Digital copy of plans.
- Any new structures or additions will require a signed letter from DTE approving the location of all electrical transformers and electrical equipment.
- Additional information as required.

6. Project Information

Address/Location of the property: 233-239

N. Old Woodward Ave.

Name of development: Huston Building

Sidwell #:

Current Use: mixed use, restaurant / office

Proposed Use:

Area of Site in Acres:

Current zoning: B-4

Zoning of Adjacent Properties: B-4

Name of Historic District Site is Located in: Downtown

Date of Application for Preliminary Historic Design Review:

Date of Preliminary Historic Design Review Approval:

6.16.21 (tentative)

Date of Planning Board Approval: 5.26.21 (tentative)

Date of Application for Preliminary Site Plan:

Date of Preliminary Site Plan Approval:

Date of Application for Final Site Plan:

Date of Final Site Plan 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 Nature of Work Proposed (attach separate sheet if necessary)

(Please specifically list all materials and colors to be used)

Store front plan rework w/ new recessed entries, french doors, transom windows in anodized aluminum & glass; granite base; wood & glass entry doors; new limestone cladding at lower level, new aluminum & glass windows in existing openings on front elevation; new terra cotta roof tiles; new copper gutter; paint all existing brick new color

8. Buildings and Structures

Number of Buildings on Site: 1

Height of Buildings & # of Stories: 2 stories + basement

Use of Buildings:

Height of Rooftop Mechanical Equipment: 7-5'

9. Additions (in Square Feet)

Proposed Use: none

Number of Floors:

Number of Sq. Ft. on Each Floor:

Height:

Total Floor Area:

Retail Space:

Assembly Space:

Office Space:

Industrial Space:

Seating Capacity:

10. Required and Proposed Parking

Required number of parking spaces: none

Typical angle of parking spaces:

Typical width of maneuvering lanes:

Location of parking on site:

Location of parking off site:

Number of light standards in parking area:

Screenwall material:

Proposed number of parking spaces:

Typical size of parking spaces:

Number of spaces < 180 sq. ft.:

Number of handicap spaces:

Shared parking agreement?

Height of light standards in parking area:

Height of screenwall:

11. Landscaping

Location of landscape areas: none

Proposed landscape material:

12. Building Lighting

Number of light standards on building: (4) existing

Size of light fixtures (L•W•H):

Maximum wattage per fixture:

Light level at each property line:

Type of light standards on building: glass globe

Locations in alley

Height from grade:

Proposed wattage per fixture:

13. Maximum Signage Allowance Calculation

Building Frontage (in feet): 41'-7"

Maximum Sign Area Allowed: 41.5 sf

Sign Area Proposed: 41.5 sf (includes Bistro)

Maximum Sign Area = 1 square foot (1.5 for Woodward addresses) per each linear foot of principal building frontage.

14. Location of Proposed Signs

(1) relocated wall sign @ front elevation; Bistro signage under separate application

15. Number of Sign(s)

Wall: (1)
Ground: _____
Projecting (Blade): _____

Canopy: _____
Building Name: _____
Post-Mounted Projecting: _____

16. Sign Size, Material & Content

Sign #1

Type of Sign: wall sign
Width: _____
Depth: _____
Height: _____
Total Square Feet: _____
Height of Lettering: _____
Height from Grade: _____

Projection from Wall: _____
Sign Reads: "Stacked Deli"

Sign Materials: _____

Sign Color(s) (including PMS color #): _____

Sign #2

Type of Sign: _____
Width: _____
Depth: _____
Height: _____
Total Square Feet: _____
Height of Lettering: _____
Height from Grade: _____

Projection from Wall: _____
Sign Reads: " _____ "

Sign Materials: _____

Sign Color(s) (including PMS color #): _____

Sign #3

Type of Sign: _____
Width: _____
Depth: _____
Height: _____
Total Square Feet: _____
Height of Lettering: _____
Height from Grade: _____

Projection from Wall: _____
Sign Reads: " _____ "

Sign Materials: _____

Sign Color(s) (including PMS color #): _____

17. Existing Signs Located on Property

Number of Signs: 3
Sign Type(s): _____

Square Feet per Sign: _____
Total Square Feet of Existing Signage: _____

18. Sign Lighting

Type of Lighting Proposed: _____
Size of Light Fixtures (LxWxH): _____
Maximum Wattage per Fixture: _____
Location: _____

Number Proposed: _____
Lighting Height from Grade: _____
Proposed Wattage per Fixture: _____
Style (include specifications): _____

19. Landscaping (ground signs only)

Location of Landscape Areas: none

Proposed Landscape Material: _____

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.

Signature of Owner: [Signature] Date: 5-25-21

Print Name: Darren Atkinson

Signature of Applicant: [Signature] Date: 5.25.21

Print Name: Roman Bonislowski

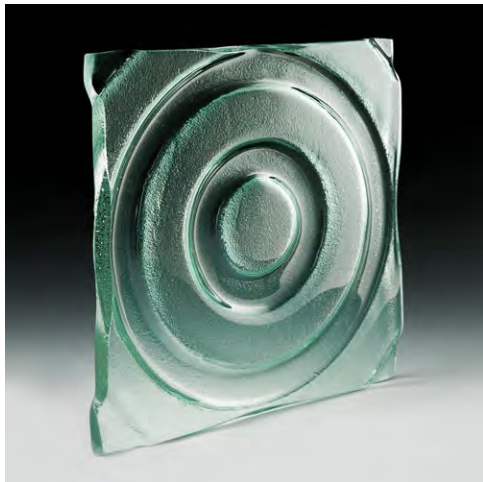
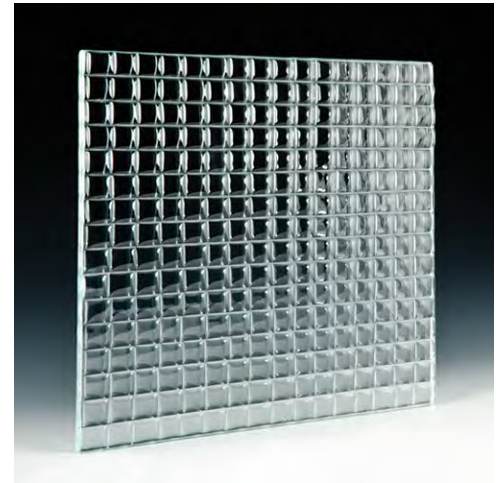
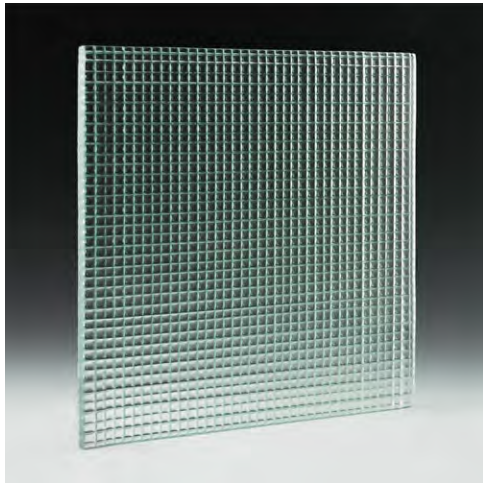
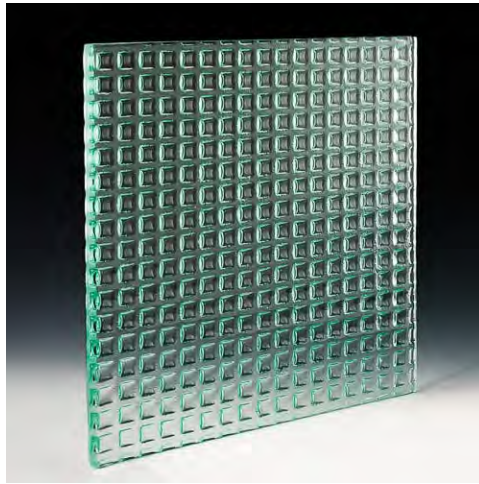
Signature of Architect: [Signature] Date: 5.25.21

Print Name: Roman Bonislowski

Office Use Only

Application #: _____ Date Received: _____ Fee: _____

Date of Approval: _____ Date of Denial: _____ Accepted by: _____







Huston Building - 1923

Elmer Huston had this building constructed with two stores on the ground level and apartments above in 1923. It housed the post office and a variety store from 1924 to 1928. In 1929, the Mulholland Dry Goods Company moved into both spaces. The original building had a decorative transom with prismatic glass panes above the display windows, which was typical of the early 20th century storefronts. The building has retained its steep side gable roof and the original configuration of the symmetrical second floor windows.

Mr. Simlik explained that the goal was to maintain as much of the original cedar boards on the exterior as possible, but said that given the extent of the water, rodent and ant damage he wanted to be realistic about how many boards may need to be removed. He stated that he sent out a sample of the cedar board to get replacement cedar boards with the same dimensions.

Chair Henke asked Mr. Simlik to provide CP Dupuis with a sample of the new boards to verify that they will replicate the existing boards appropriately.

Chair Henke also noted that the applicant has been diligent in working with the HDC and said he believed they would try to maintain as many of the original boards as possible.

Motion by Ms. Debbrecht

Seconded by Mr. Deyer to approve the Historic Design Review application and issue a Certificate of Appropriateness for 743 W. Frank – King-Argus House. The work as proposed meets the Secretary of the Interior's Standards for Rehabilitation standard numbers 1, 2, 5, and 6. The HDC also requested periodic updates on the repairs to the exterior as part of the approval.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Debbrecht, Deyer, Henke, Dukas, Lang, Lemberg, Kolo

Nays: None

The HDC also confirmed that the applicant could move forward with using the paint colors proposed in the evening's agenda packet.

B. 239 N. Old Woodward – Bloom Bistro and Huston Building

CP Dupuis presented the item.

Ron Rea and Nicole Adler were present on behalf of the application.

After HDC discussion, CP Dupuis noted that the applicant could either pursue a contemporary redesign of the front of the building or an accurate historical restoration.

It was noted by a number of HDC members that the plans as proposed seemed more to imitate a historical style not accurate to the original building, which is not permitted under the Secretary of the Interior's Standards for Rehabilitation.

There was a general consensus among the HDC members that it would be better to undertake a historical restoration of the building.

Chair Henke listed the limestone cladding, elevation of the limestone sill, the transom windows and the signage issues as some of the aspects the applicants should reassess in their proposal.

Motion by Mr. Deyer

Seconded by Ms. Debbrecht to postpone the historic design review for 239 N. Old Woodward – Bloom Bistro and Huston Building to give the applicant a chance to integrate the HDC's comments into their plans.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Deyer, Debbrecht, Henke, Dukas, Lang, Lemberg, Kolo

Nays: None

06-060-21

5) Sign Review

None.

06-061-21

6) Study Session

A. NAPC CAMP Commissioner Training

Ms. Dukas said she would rather present this item during a meeting with a lighter agenda. As a result, the item was postponed.

06-062-21

7) Miscellaneous Business and Communication

A. Pre-Application Discussions

1. 100 N. Old Woodward – Parks/Wooster Building

Kristine Kidorf, consultant for the project, reviewed her memorandum to the HDC.

Ron Boji, owner, Victor and Alex Saroki, architects, and John Hindo, attorney, were also present on behalf of the project.

After discussion, Chair Henke summarized that the HDC would prefer to see the building restored to its 1889 appearance. He said that going back to the March 17, 2021 proposal offered by the applicant would be more appropriate in that case.

In reply to Mr. Kolo, Mr. Boji confirmed he would also be interested in restoring the building to its 1889 appearance.

There was discussion about the possibility of awnings or structural metal canopies. A number of HDC expressed initial skepticism about structural metal canopies. Two members of the HDC said they would be more interested in canvas awnings.

DATE: July 8, 2021

TO: Thomas M. Markus, City Manager

FROM: James J. Surhigh, Consulting City Engineer
Mary Kucharek, City Attorney

SUBJECT: Evergreen-Farmington Sanitary Drainage District
Chapter 20 Section 471 Agreement

INTRODUCTION:

The Oakland County Water Resources Commissioner (WRC) will be renewing the agreement for the Evergreen Farmington Sewage Disposal System with the 15 communities that the system provides regional sanitary service to, which includes the City of Birmingham. The new service agreement will replace the 1989 Inter-municipal Agreement (Act 342) with a Chapter 20 Drain, to be established under Section 471 of the State of Michigan Drain Code. The new agreement includes an apportionment of costs for certain initial projects, and any future projects would be required to follow the process allowed under Chapter 20 of the Drain Code. WRC is asking all communities to approve the new agreement before the August 2021 Drain Board Meeting.

BACKGROUND:

The Evergreen Farmington Sanitary Drain (E-F Drain) provides an outlet for City sewers located in the approximate western half of the City. The flows in the City combined sewers that drain to the Birmingham CSO Retention Treatment Facility (at Linden Park), Bloomfield Village Retention Treatment Facility (at Lincoln Hills Golf Course), and the Acacia Park CSO Retention Treatment Facility (in Beverly Hills, at Evergreen & Beverly Road) discharge to the Evergreen Farmington Drain through regulated connections. A small number City sanitary sewers discharge directly to the Evergreen Farmington Sanitary Drain. In addition, a small number of individual private buildings have service connections to the E-F Drain. Flows in the E-F Drain continue south of the City through Beverly Hills and Southfield, eventually connecting to the Great Lakes Water Authority (GLWA – formerly known as DWSD) sewer system in Detroit, where they are treated at the GLWA Wastewater Treatment Plant along the Detroit River.

The current agreement between WRC and the City was from 1989, and established contractual “town outlet capacities” that the City and other communities were to adhere to. The CSO Abatement Program that the City participated in in the mid-1990’s, where the retention treatment facilities were constructed, were designed to meet the City’s contractual capacity requirement. The retention treatment facilities are owned and operated by the WRC, and the City is responsible for an apportionment of costs to operate and maintain the facilities. As part of the WRC’s wet-weather operation of these facilities, they routinely restrict flows from entering the E-F Drain to help manage stress on the

sanitary system and reduce the risk of basement flooding throughout this portion of the Drain District.

As part of the new agreement, certain projects are being planned for that will improve the outlet capacity for the E-F Drain, which benefits all of the communities in the Drain District during “wet-weather” conditions. The costs for these projects will be apportioned to the communities based on “wet-weather” contributions to the E-F Drain. Because flows from the retention treatment facilities are reduced by WRC during “wet-weather”, the City’s apportionment percentage is only 0.11%, even though by land area, Birmingham comprises approximately 2.5% of the Drainage District. The total estimated project costs are \$72,700,000, and the apportionment cost to the City for these projects is estimated to be \$79,970. Other costs to the City for routine sewage treatment and disposal will continue by the “rolling three-year average” method that WRC has used for several years.

The new service agreement presented at this time is the culmination of a review process that has occurred over the past several months. City Attorney Kucharek, Finance Director Gerber, and Consulting City Engineer Surhigh have been part of the review process, and City Manager Markus has been updated as necessary over that time. WRC is asking community approval of the agreement before their August Drain Board meeting (scheduled for late August), to allow time for the necessary bond sales to fund the proposed “outlet capacity improvement projects” included in the agreement.

LEGAL REVIEW:

The attached Evergreen-Farmington Sanitary Drainage District Chapter 20 Section 471 Agreement was prepared by the Oakland County Water Resources Commissioner legal staff, and was subject to a number of revisions during the community review process. The attached version is considered to be the final agreement. The City Attorney has reviewed the document with respect to form, and no changes were required.

FISCAL IMPACT:

The City’s responsibility to the Evergreen-Farmington Sanitary Drain Drainage District for initial capital improvement projects as part of this agreement is \$79,970.00, which is less than the amount anticipated and included in the fiscal 2021-2022 budget. WRC provides projections for sewage treatment rates, which have been considered in development of the City’s sewer rates. The Finance Department reviewed the proposed cost apportionment breakdown and had no objections.

PUBLIC COMMUNICATIONS:

WRC’s steering committee meetings that discussed the proposed projects and agreement were open to the public. City Manager, Finance Director, City Attorney, and City Engineer have been regular participants in these meetings.

ATTACHMENTS:

- Evergreen-Farmington Sanitary Drain Drainage District Chapter 20 Section 471 Agreement (27 pages)
- Select pages from WRC presentation to E-F Steering Committee on April 30, 2020 (8 pages)
- Select pages from WRC presentation to City Manager & City Engineer on February 1, 2021 (13 pages)

SUGGESTED RESOLUTION:

To approve the Chapter 20 Section 471 Agreement with the Evergreen-Farmington Sanitary Drain Drainage District, agreeing to pay the City's share of apportioned costs related to the capital improvements described in said agreement. The total amount of the City's share of the cost is \$79,970: to be charged to 590-536.001-981.0100, Sewer Fund, Public Improvements. Also, to direct the Mayor to sign the agreement on behalf of the City.

EVERGREEN-FARMINGTON SANITARY DRAIN DRAINAGE DISTRICT
CHAPTER 20 SECTION 471 AGREEMENT

This Agreement, dated the ____ day of _____, 2021, by and among the Drainage Board for the Evergreen Farmington Sanitary Drain Drainage District (the “Drainage Board”), the City of Auburn Hills, the Village of Beverly Hills, the Village of Bingham Farms, the City of Birmingham, the Charter Township of Bloomfield, the City of Bloomfield Hills, the City of Farmington, the City of Farmington Hills, the Village of Franklin, the City of Keego Harbor, the City of Lathrup Village, the City of Orchard Lake Village, the City of Southfield, the City of Troy and the Charter Township of West Bloomfield (each, a “Public Corporation” and collectively, the “Public Corporations”). The Drainage Board and the Public Corporations are sometimes referred to each as a “Party” and collectively as the “Parties.”

WHEREAS, by Resolution No. 7674, adopted September 2, 1976, and pursuant to the provisions of Act No. 342 of the Public Acts of Michigan of 1939, as amended (“Act 342”), the County of Oakland (the “County”) established the Evergreen-Farmington Sewage Disposal System (the “EFSDS” or the “System”) and designated and appointed the Oakland County Drain Commissioner, now the Oakland County Water Resources Commissioner, as the “county agency” for the System pursuant to Act 342 (the “County Agency”), with all the powers and duties with respect to the acquisition, construction and financing of facilities for the System as are provided by law especially Act 342; and

WHEREAS, Section 3 of Act 342 authorizes the County Agency to make and execute proposed alterations, changes, and extensions of the improvements, facilities, or services authorized herein; to locate, acquire, purchase, construct, alter, repair, maintain, and operate the improvements, facilities, and services authorized herein and enter into and execute contracts therefor; and

WHEREAS, the County Agency and the Public Corporations serviced by the EFSDS entered into the Evergreen and Farmington Sewage Disposal Systems Intermunicipal Contract Concerning Wastewater Treatment and Pollution Control Projects, dated September 30, 1989 (the “342 Agreement”); and

WHEREAS, certain of the Public Corporations petitioned for the location, establishment and construction of an intra-county drain project consisting of the sewage disposal system previously known as the EFSDS and all improvements necessary or prudent to bring the EFSDS into compliance with Administrative Consent Order 04995 entered by the State of Michigan Department of the Environment, Great Lakes, and Energy on August 14, 2019 (the “ACO”); and

WHEREAS, the Drainage Board named said drain project the Evergreen-Farmington Sanitary Drain (the “Drain”, and the improvements to be undertaken to comply with the ACO also referred to herein as the “Project”) and named the drainage district composed of the Public Corporations the Evergreen-Farmington Sanitary Drain Drainage District (the “Drainage District”) composed of the Public Corporations to be assessed for the Drain, pursuant to Chapter 20 of the Michigan Drain Code, Act No. 40 of the Public Acts of Michigan of 1956, as amended (the “Drain Code”) and issued its Final Order of Determination as executed by the Chairperson of the Drainage Board on November 17, 2020 (the “Final Order of Determination”); and

WHEREAS, as provided in the petitions, the issuance of bonds to finance the Project is contingent upon the Public Corporations and the Drainage District entering into an agreement as provided by law setting forth the services and operations of the Drainage District and to provide for methods of addressing and apportioning future improvements to the Drainage District; and

WHEREAS, Section 471 of the Drain Code authorizes the Drainage Board to contract with any public corporation including any agency thereof, including the Public Corporations and the County Agency; and

WHEREAS, the Drainage Board and the Public Corporations acknowledge that the underlying purpose of this Agreement, entered into pursuant to the authority provided in Section 471 of the Drain Code, is to fully satisfy the terms of the petitions and allow for the issuance of bonds to finance the Project; supersede and replace the Act 342 Agreement; provide for the operations, maintenance, and administration of the Project and the Drainage District by the Drainage Board; acknowledge responsibilities with respect to outstanding debt obligations issued to finance EFSDS improvements; and promote communication by and among the Drainage Board and the Public Corporations; and

WHEREAS, it is understood and agreed that the entire cost of the Project and the entire cost for the operations, maintenance, and administration of the Drainage District is to be assessed against the Public Corporations pursuant to Chapter 20 of the Drain Code.

NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS.

AGREEMENT

1. **Evergreen-Farmington Sanitary Drain Drainage District.** The Parties acknowledge the legal establishment of the Drain and the Drainage District pursuant to the Final Order of Determination and in accordance with applicable law including, but not limited to Chapter 20 of the Drain Code. The Parties acknowledge that the Project is to provide improvements necessary or prudent to bring the EFSDS, now the Drainage District, into compliance with the ACO.

2. **Town Outlet Capacity.** The Parties acknowledge that each Public Corporation's respective ability to discharge to the Drain is limited to that provided in the Town Outlet Capacities attached as **Exhibit 1 (Town Outlet Capacities)**. The Town Outlet Capacities provided herein will not be available until after the full completion of the project described in this Agreement. After a Public Corporation reaches its Town Outlet Capacity, that Public Corporation shall have the right to contract for any additional needed capacity outside of the Drain, but it shall retain its obligation to deliver its Town Outlet Capacity to the Drain. The Drainage District agrees that each Public Corporation shall retain the right to deliver wastewater in the amount as set forth for its respective Town Outlet Capacity, to the Drain subject to the terms and conditions of this Agreement, including any extension thereof, so long as each Public Corporation shall continue to pay the amount specified herein for its respective assessment of the cost of the Project, the operation, maintenance and improvement, and administration of the Drainage District, and any additional facilities of the Drainage District as provided herein. No Public Corporation shall have the right unilaterally to terminate or reduce such payments, but if any such Public Corporation

shall breach such obligation, the Drainage District shall be authorized to terminate or reduce such delivery rights or to transfer such delivery rights to other public corporations, whether a party hereto or not. The discharge of wastewater into the Drain from any Public Corporation whether a Party or not, shall not exceed the Town Outlet Capacity of such public corporation. Responsibility and authority will be vested with the Drainage District to oversee and regulate the discharge of wastewater from each Public Corporation and take appropriate actions to protect the rights of the Drainage District to promote each Public Corporations to discharge up to but not in excess of its respective Town Outlet Capacity. The Drainage District acknowledges that exceedances may occur from time to time. If a Public Corporation exceeds their respective Town Outlet Capacity, all Public Corporations tributary to that location will meet with the Drainage District to discuss the reasons for non-compliance. Public Corporations found by the Drainage District to be in exceedance of their respective Town Outlet Capacity can be required by the Drainage District to develop and implement a written corrective action plan acceptable to the Drainage District within 90 days of the Drainage District's finding or as otherwise agreed. A written corrective action plan shall be consistent with the Evergreen-Farmington Sanitary Drain Cohesive Operating Protocol or successor protocol, plan, or document. In the event it becomes necessary or prudent to install meters to monitor the flow of wastewater into the Drain, the costs for installation and operation of such meters shall be borne by all Public Corporations as a general system cost and shall be assessed or otherwise be obligated to be paid in accordance with Chapter 20 of the Drain Code.

3. **EFSDS Transfer And Legal Title.** The Parties acknowledge that the EFSDS is hereby transferred to and established as the Drain in accordance with law and the ACO notice provisions. The Drainage Board shall be responsible for the operations, maintenance, and administration of the Drainage District in accordance with Chapter 20 of the Drain Code.

4. **EFSDS Outstanding Debt Obligations.** The Parties acknowledge that there are outstanding debt obligations issued by the County for improvements to the EFSDS, attached as **Exhibit 2 (Index of Outstanding EFSDS Bonds)**. The Parties hereby covenant and agree that, so long as any such bonds or other debt obligations remain outstanding and unpaid, the provisions of this Agreement shall not impair the security for the bonds or other obligations or the prompt payment of principal or interest thereon. The Public Corporations, the Drainage Board, and the County Agency further covenant and agree that they will comply with their respective duties and obligations under the terms of this Agreement promptly, and will not suffer to be done any act which would in any way impair bonds or other debt obligations, the security therefor, or the prompt payment of interest thereon. The Parties acknowledge that such outstanding debt obligations will continue to be serviced in the manner that they are currently being serviced, and that the County Agency shall continue to pay the County of Oakland the amounts necessary to meet all such bond payments, debt service, and obligations until and unless otherwise agreed between the Drainage District and the County. The Parties further acknowledge that with respect to any debt issued pursuant to Act 342, the Oakland County Water Resources Commissioner will continue in the capacity as County Agency, as designated and appointed by the County for the EFSDS for carrying out the purposes of and exercising the powers and duties vested in any contract entered into by and among the County and any of the Public Corporations pursuant to Act 342 (any such contract referred to herein as an "Act 342 Contract"). Any Party that is party to an Act 342 Contract ratifies and confirms its obligations under any such Act 342 Contract and agrees to continue to carry out its obligations under such Act 342 Contract, including the payment of amounts required to be paid by any Public Corporation to the County Agency for the payment of debt service and any County

Agency administrative expenses, as provided in the Act 342 Contract. To the extent there is any inconsistency between an Act 342 Contract and this Agreement, the terms of the Act 342 Contract will prevail.

5. **Drainage District Operations.** The Drainage District shall operate in accordance with accepted public utility operational procedures. The Drainage District shall not be liable to any Public Corporation, or any individual user therein, for any interruption in service. The Public Corporations agree to comply with their respective administrative consent orders. A list of the Public Corporation's Administrative Consent Orders is provided in **Exhibit 3 (Public Corporation Administrative Consent Orders)**.

6. **Public Corporation Consent To Location of Drainage District.** The Public Corporations, by way of compliance with Section 29, Article VII, Michigan Constitution of 1963, consent and agree to the establishment and location of the Drain and of other extension, improvement or enlargement thereof, within their corporate boundaries and to the use by the Drainage District of their streets, highways, alleys, lands, rights-of-way or other public places for the purpose and facilities of the Drain and any improvement, enlargement or extension thereof. The Public Corporations further agree that in order to evidence and effectuate the foregoing agreement and consent, they will execute and deliver to the Drainage District such grants of easement, right-of-way, permit or consent as may be requested by the Drainage District. Each Public Corporation agrees to transmit to the Drainage District wastewater collected within its respective boundary or otherwise provided by contract up to its Town Outlet Capacity, at reception points designated by the Drainage District, and the Drainage District agrees that the Drainage District shall accept and dispose of such wastewater for treatment.

7. **Public Corporation Wastewater.** Each Public Corporation shall be responsible at its own expense to properly operate and maintain its respective sewer system to collect and deliver wastewater flow to the Drain. The Drainage District shall have no responsibility for the Public Corporations' sewer systems. The Public Corporations shall be responsible for the character of their respective wastewater flows and shall comply with standards, rules, and regulations controlling the transportation and discharge of wastewater to the Drain. Each Public Corporation by the adoption of appropriate ordinances or rules or regulations shall enforce all legal requirements and Drainage District requirements including those relating to industrial pretreatment. Each Public Corporation shall not deliver wastewater to the Drain in violation of applicable standards, rules, and regulations, causes physical damage to the Drain, or contributes to an event of noncompliance to the Drainage District's permit or other regulatory requirements.

8. **Service Area.** The service area of the Drain is depicted in **Exhibit 4 (Service Area Map)** which service area consists of the EFSDS interceptor system as configured as of the date of establishment of the Drain and Drainage District by execution of the Final Order of Determination, and includes areas served pursuant to existing service agreements of certain Public Corporations with other municipalities outside of the Drainage District as listed in **Exhibit 5 (Index of Public Corporation Agreements to Accept Wastewater From Other Municipalities)**. The Parties understand that the Drainage District is currently subject to the contract between the EFSDS (and as anticipated to be transferred and assigned to the Drainage District) and the Detroit Water And Sewerage Department (as has been assigned to the Great Lakes Water Authority). The Parties also understand that the Drainage District is currently negotiating a new contract with the Great Lakes

Water Authority. No Public Corporation that is a party to this contract shall divert flow that is presently tributary to the Drain to another sewage treatment plant or facility or construct or permit the construction of any new sewage treatment plant or facility within the Drainage District without the approval of the Drainage Board.

9. **Assessments of Public Corporations For the Payment Of Project Costs.** The Parties acknowledge and approve the Project and the preliminary plans and cost estimates for the Project attached as **Exhibit 6 (Project Preliminary Plans And Cost Estimates)**. The Project is limited to those improvements described in the petitions of the Charter Township of West Bloomfield dated July 13, 2020 and the City of Southfield dated July 20, 2020 and the Final Order of Determination of the Drainage Board dated November 17, 2020. The Public Corporations acknowledge and agree to pay the Drainage District for all Project costs, including the acquisition, construction, and financing of the Project in accordance with the approved Final Order of Apportionment, executed by the Chairperson of the Drainage Board on June 22, 2021, establishing the assessment percentages as described in **Exhibit 7 (Final Order of Apportionment Assessment Percentages)**. All matters relating to engineering plans and specifications, together with the making and letting of final contracts for acquisition and construction of the Project, the approval of the work and materials therefor, and construction supervision, shall be under the exclusive control of the Drainage Board. The Drainage Board shall maintain appropriate insurance coverage for the Project. The insurance premiums for policies secured by the Drainage Board for the Project shall become a Project cost. In the event the amount of any judgment, arbitration award or settlement, including litigation costs, are payable by the Drainage Board, such amount shall be a Project cost. It is specifically recognized by all Public Corporations that the Drainage Board may issue bonds on behalf of the Drainage District in anticipation of the collection of assessments or other payments required to be made by the Public Corporations under the provisions of Chapter 20 of the Drain Code and as described in this Agreement, and the Public Corporations covenant and agree that they will make all required payments to the Drainage Board promptly and at the times specified herein.

10. **Assessments and Charges to Public Corporations For The Payment Of Drainage District Operations, Maintenance, and Administration Costs.** The Public Corporations shall pay the Drainage Board for the operation, maintenance, and administration of the Drain and related wastewater services at such amounts as the Drainage Board may establish from time to time based on the aggregate quantity of wastewater on a multi-year rolling average method entering the Drain attributable from the Public Corporations or any other method as determined by the Drainage Board, based on the benefits that accrue to each Public Corporation and the extent to which each Public Corporation contributes to the conditions that make the Drainage District necessary. At least annually, representatives of the Drainage Board shall offer to meet with the Public Corporations and discuss the method of assessment of operation, maintenance, and administration of the Drain. The Parties acknowledge that amounts charged by the Drainage Board to each Public Corporation will include all applicable costs and expenses associated with financing, administration, operation and maintenance, sewage disposal charges or other applicable expenses as determined by the Drainage Board, and will include an allocable share of debt service owed on outstanding bonds and other obligations issued by the County for improvements to the EFSDS. In the event that the Drainage District is billed directly by the Great Lakes Water Authority for charges associated with high strength and industrial wastewater flows, such charges may be invoiced directly to the responsible Public Corporation(s) as determined by

the Drainage Board. Each of the Public Corporations reserves the right to establish the manner in which it assesses and charge properties within the Public Corporation benefiting especially from the Drain or otherwise provide for the amounts needed to pay for the Drainage District assessments, in accordance with the Drain Code and other applicable law. Operation, maintenance, and administrative expenses shall include, but not be limited to, such amounts as in the judgment of the Drainage Board to pay for any losses or legal expenses arising from the operation, maintenance and improvement, and administration of the Drain and the repair and replacement of the Drainage District's administrative facilities, equipment, accessories, or appurtenances as may be reasonably necessary or prudent. If the character of wastewater transmitted from any Public Corporation is in violation of applicable standards, rules, and regulations, causes physical damage to the Drain, or contributes to an event of noncompliance to the Drainage District's permit or other regulatory requirements, the Drainage Board may apply an additional assessment to the respective Public Corporation and, if necessary or prudent, the Drainage Board shall have the right for the protection of the Drainage System and the public health or safety, to deny discharge of wastewater to the Drainage District.

11. **Administration, Auditing, Financial Services, and Other Overhead Expenses.**

The Drainage Board is authorized, but not required, to use the Oakland County Water Resources Commissioner, the County of Oakland, or third party personnel, equipment, or services for the operations, maintenance, or administration of the Drain. The Public Corporations agree that the costs of contract, administration, auditing, financial services, and other overhead expenses are part of the Drain costs whether provided by County personnel or third parties. This includes allocable share of reasonable personnel cost, salary, and fringe benefits as determined by the Drainage Board.

12. **Billing.** The assessments and charges as herein provided shall be billed on either a monthly or quarterly basis by the Drainage Board to the Public Corporations. It is understood and agreed, that the payment of charges for services as provided herein for each Public Corporation shall be the general obligation of such Public Corporation, and the Drainage Board shall have the right to utilize any method permitted by law for the collection of such charges due to the Drainage Board under this contract.

13. **Nonassignment.** A Public Corporation shall not assign any claim, right, or privilege it may have under this Agreement or under law from or against the Drainage District to any other Public Corporation, person, or entity whatsoever without the prior written approval of the Drainage Board.

14. **Drainage District Rules And Regulations.** The Drainage Board may establish general rules and regulations for the Drainage District consistent with applicable law, rules, and regulations controlling the quantity and quality of the discharge of the users to the Drain. Nothing herein shall prohibit the Drainage Board from establishing rules and regulations more stringent than those required by applicable law, rules, and regulations, if, in the judgment of the Drainage Board stricter rules and regulations are necessary or prudent to protect the integrity of the Drainage District. Further, each Public Corporation agrees to enforce such rules and regulations as the Drainage Board adopts from time to time.

15. **No Territorial Change of Public Corporation.** No change in the jurisdiction over territory in any Public Corporation shall in any manner impair the obligations of this Agreement, supplement or amendment. In the event all or any part of the territory of a Public Corporation is incorporated as a new city or is annexed to or becomes a part of the territory of another Public Corporation or another public corporation, the Public Corporation or public corporation into which such territory is incorporated or to which such territory is annexed, shall assume the proper proportionate share of the contractual obligations and rights in the Drainage District of the Public Corporation from which territory is taken and such a Public Corporation shall become a Public Corporation in this Agreement, based upon a division determined by the Drainage Board in its sole discretion.

16. **Term.** This Agreement shall remain in full force and effect for an initial term of thirty (30) years from the Effective Date as provided in Section 26, and shall be automatically extended for an addition ten (10) year term beyond the initial term and thereafter automatically extended for ten (10) year intervals unless terminated by the Parties as provided herein; provided that, in no event shall this Agreement be terminated if any bonds, notes or other debt of the Drainage District remain outstanding. It is understood that this Agreement shall automatically and without further action of the Parties, be extended to such date beyond the initial term and any extension thereto to coincide with the date on which all of the principal of and interest on any such bonds, notes or other debt have been fully paid. Expiration or termination of this Agreement shall not impact in any way the Parties rights, duties and obligations and the Drainage Board's rights and obligations to the continued operation, maintenance and improvement, and administration of the Drain under Chapter 20 of the Drain Code.

17. **Termination.** Following the initial term or the full payment of the principal of, and interest on, any and all bonds, notes or other debt of the Drainage District, whichever is later, this Agreement may be terminated by any Party upon a minimum of 365 calendar days written notice to each of the other Parties to this Agreement. The written notice shall state the effective date of the termination.

18. **Governing Law.** This Agreement is made and entered into in the state of Michigan and shall be interpreted, enforced, and governed under the laws of the state of Michigan. The language of this Agreement is intended to be construed as a whole according to its fair meaning and not construed strictly for or against any Party.

19. **Lawsuits or Claims.** The Parties agree that the costs and expenses of any lawsuits, disputes, or claims of any kind arising directly or indirectly out of this Agreement to the extent such costs and expenses are chargeable against the Drainage District shall be deemed to constitute part of the cost of the Drain and shall be paid by the Public Corporations in the same manner as other costs of the Drain.

20. **Third Party Beneficiaries.** There are no intended third party beneficiaries to this Agreement.

21. **Government Function.** This Agreement does not, and is not intended to, impair, divest, delegate, or contravene any constitutional, statutory, or other legal right, privilege power,

obligation, duty, or immunity of the Parties. The obligations in this Agreement are in the exercise or discharge of a governmental function.

22. **Notices.** Notice of a legal nature shall be sent by certified first class mail, return receipt requested or by personal delivery as follows:

Drainage District:

Oakland County Water Resources Commissioner
One Public Works Drive, Building 95-West
Waterford, Michigan 48328

Public Corporation:

Authorized representative for such Public Corporation

All Notices shall be considered delivered to a Party on the date of receipt as represented by the return receipt or by proof of personal service. Any Notice given must be signed by an authorized representative.

23. **Entire Agreement, Amendment, Counterparts, and Enforceability.** This Agreement sets forth the entire understanding of the Parties concerning its subject matter and specifically supersedes and replaces the Act 342 Agreement. The terms and conditions are contractual and not mere recital. This Agreement may be amended by a writing executed by all Parties with persons with legal authority to bind the respective Party. This Agreement may be executed in several counterparts, each of which shall be considered an original, but all of which shall constitute one and the same instrument. The recital and whereas provisions of this Agreement are considered an integral part of this Agreement. If any provision of this Agreement is judicially determined to be invalid or unenforceable, the remainder of this Agreement (other than those found to be invalid or unenforceable) is not affected and is enforceable, provided that the invalid or unenforceable provision does not substantially alter the Agreement or make execution impractical.

24. **Public Purpose.** The Drainage Board and the Public Corporations enter this Agreement to serve the public health and welfare of the people of the state of Michigan, especially in the Drainage District.

25. **Successor and Assigns.** This Agreement is binding on, and for the benefit of, the Parties and their respective their successors and assigns, subject to the provisions of this Agreement precluding assignment.

26. **Existing Rights.** Nothing in this Agreement shall impact the existing rights or obligations of any Party.

27. **Effective Date.** This Agreement shall become effective as of the date first written above.

[Signatures on next page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed effective as of the date and year first above written.

**EVERGREEN-FARMINGTON SANITARY
DRAIN DRAINAGE DISTRICT**

By: _____

Its: _____

COUNTY OF OAKLAND

By: _____

Its: County Agency, pursuant to Act No. 342 of the
Public Acts of Michigan, 1939, as amended

CITY OF AUBURN HILLS

By: _____

Its: _____

And: _____

Its: _____

VILLAGE OF BEVERLY HILLS

By: _____

Its: _____

And: _____

Its: _____

VILLAGE OF BINGHAM FARMS

By: _____

Its: _____

And: _____

Its: _____

CITY OF BIRMINGHAM

By: _____

Its: _____

And: _____

Its: _____

TOWNSHIP OF BLOOMFIELD

By: _____

Its: _____

And: _____

Its: _____

CITY OF BLOOMFIELD HILLS

By: _____

Its: _____

And: _____

Its: _____

CITY OF FARMINGTON

By: _____

Its: _____

And: _____

Its: _____

CITY OF FARMINGTON HILLS

By: _____

Its: _____

And: _____

Its: _____

VILLAGE OF FRANKLIN

By: _____

Its: _____

And: _____

Its: _____

CITY OF KEEGO HARBOR

By: _____

Its: _____

And: _____

Its: _____

CITY OF LATHRUP VILLAGE

By: _____

Its: _____

And: _____

Its: _____

CITY OF ORCHARD LAKE VILLAGE

By: _____

Its: _____

And: _____

Its: _____

CITY OF SOUTHFIELD

By: _____

Its: _____

And: _____

Its: _____

CITY OF TROY

By: _____

Its: _____

And: _____

Its: _____

**CHARTER TOWNSHIP OF WEST
BLOOMFIELD**

By: _____

Its: _____

And: _____

Its: _____

INDEX OF EXHIBITS

1. Exhibit 1 (Town Outlet Capacities). Para 2.
2. Exhibit 2 (Index of Outstanding EFSDS Bonds). Para 4.
3. Exhibit 3 (Public Corporation Administrative Consent Orders). Para 5
4. Exhibit 4 (Service Area Map). Para 8.
5. Exhibit 5 (Index of Public Corporation Agreements to Accept Wastewater From Other Municipalities). Para 8.
6. Exhibit 6 (Project Preliminary Plans And Cost Estimates). Para 9.
7. Exhibit 7 (Final Order of Apportionment Assessment Percentages). Para 9.

EXHIBIT 1

TOWN OUTLET CAPACITIES

DRAFT

Exhibit 1
Evergreen-Farmington Sanitary Drain
Town Outlet Capacities

Meter	Most Downstream Public Corporation	Town Outlet Capacity* (cfs)	Tributary Public Corporations																		
			AHC	BFV	BHC	BHV	BIC	BLT	FAC	FHC	FRV	KHC	LVC	OLC	SOC	TRC	WBT	AP	BV	Birm	EFSD
3460	AHC	2.72	✓						✓												✓
3707	BFV	2.63		✓							✓										✓
3390	BHC	15.19	✓		✓				✓												✓
3510	BHC	0.29																			✓
3240	BHV	54.08	✓	✓	✓	✓	✓	✓							✓	✓		✓	✓	✓	✓
3230	BHV	2.26																			✓
3340	BLT	6.67		✓		✓		✓		✓						✓					✓
3320	BLT	26.34	✓		✓			✓	✓								✓			✓	✓
3500	BLT	11.48			✓			✓								✓					✓
3530	BLT	0.17						✓													✓
3450	BLT	0.18						✓													✓
3440	BLT	4.19	✓		✓			✓													✓
3430	BLT	2.30			✓			✓													✓
3420	BLT	1.91						✓													✓
3640	BLT	2.89			✓			✓													✓
3630	BLT	0.91			✓			✓													✓
3610	BLT	0.33			✓			✓													✓
3470	BLT	0.49						✓													✓
4840	BLT	6.88						✓									✓				✓
4810	BLT	8.67						✓									✓				✓
4920	FAC	7.30							✓	✓											✓
4930	FHC	2.23								✓											✓
4940	FHC	4.09								✓											✓
4000	FHC	76.16						✓	✓	✓		✓		✓			✓				✓
3910	FHC	8.07						✓		✓		✓		✓			✓				✓
4050	FHC	32.00						✓		✓		✓		✓			✓				✓
4500	FHC	23.97								✓							✓				✓
3753	FRV	0.51									✓										✓
3763	FRV	0.15									✓										✓
4130	KHC	3.48										✓		✓			✓				✓
3100	LVC	2.66											✓								✓
3130	LVC	6.05											✓								✓
4110	OLC	0.49												✓			✓				✓
4121	OLC	4.93												✓							✓
4125	OLC	0.51												✓							✓
3003	SOC	195.51	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
3260	SOC	2.34													✓						✓
3700	SOC	18.26		✓							✓				✓						✓
3800	SOC	9.88						✓		✓		✓		✓	✓		✓				✓
3900	SOC	9.69						✓		✓		✓		✓	✓		✓				✓
3520	TRC	7.86						✓								✓					✓
3540	TRC	1.02						✓									✓				✓
4541	WBT	3.07								✓								✓			✓
4560	WBT	2.08																✓			✓
4580	WBT	2.82																✓			✓
4600	WBT	4.33																✓			✓
4140	WBT	1.55																✓			✓
4100	WBT	13.19										✓		✓				✓			✓
4801	WBT	2.98						✓										✓			✓
4820	WBT	0.74						✓										✓			✓
4850	WBT	2.96																✓			✓
4860	WBT	1.00																✓			✓
4870	WBT	0.82						✓										✓			✓
4804+4806	WBT	12.63						✓		✓								✓			✓

Each Public Corporation's Town Outlet Capacity is limited to the particular flow from the respective meter, irrespective of whether the flow rates listed were derived from flow generated from multiple Public Corporations including tributary portion(s) of each Public Corporation. Corrective action by a Public Corporation may be required by the Drainage District because of flow generated from a tributary Public Corporation contributing to a flow rate that is greater than a Town Outlet Capacity.

* As measured on a rolling hourly average as defined as the average of uniform time step data across any 60 minute period where each 60 minute average shifts one time step.

EXHIBIT 2

INDEX OF OUTSTANDING EFSDS BONDS

<u>Name of Bonds</u>	<u>Original Principal Amount</u>	<u>Issue Date</u>	<u>Maturity Dates</u>
Evergreen-Farmington Sewage Disposal System 8 Mile Road Pumping Station Bonds, Series 2012	\$2,415,000	4/10/2012	10/1/2013-2032
Evergreen and Farmington Sewage Disposal Systems Middlebelt Transport and Storage Tunnel Bonds, Series 2014	\$36,855,000	9/17/2014	10/1/2017-2036
Evergreen and Farmington Sewage Disposal Systems North Evergreen Interceptor Bonds, Series 2015	\$3,700,000	10/13/2015	10/1/2016-2027, 2029, 2031, 2033, 2035
Evergreen and Farmington Sewage Disposal Systems North Evergreen Interceptor Bonds, Series 2017	\$4,805,000	5/31/2017	3/1/2018-2037
Evergreen and Farmington Sewage Disposal Systems Middlebelt Transport and Storage Tunnel Bonds. Series 2017	\$995,000	9/28/2017	Mandatory redemption 9/1/2018-2027
Evergreen-Farmington Sewage Disposal System Refunding Bonds. Series 2018	\$3,065,000	2/28/2018	4/1/2019-2031

<u>Name of Bonds</u>	<u>Original Principal Amount</u>	<u>Issue Date</u>	<u>Maturity Dates</u>
Evergreen and Farmington Sewage Disposal System Capital Improvement Bonds. Series 2018A	\$8,300,000	9/20/2018	4/1/2019-2033
Evergreen and Farmington Sewage Disposal System Capital Improvement Bonds. Series 2020A	\$3,910,000	3/26/2020	7/1/21-2029

EXHIBIT 3

PUBLIC CORPORATION ADMINISTRATIVE CONSENT ORDERS

Community	ACO #
Beverly Hills	AFO-SW-09-002
Bloomfield Hills	AFO-SW-09-004
Bloomfield Township	AFO-SW-09-003
Farmington	ACO-SW-05-005
Farmington Hills	ACO-SW-05-006
Lathrup Village	AFO-SW-09-007
Troy	AFO-SW-09-006
West Bloomfield Township	AFO-SW-09-005

EXHIBIT 4

SERVICE AREA MAP

DRAFT

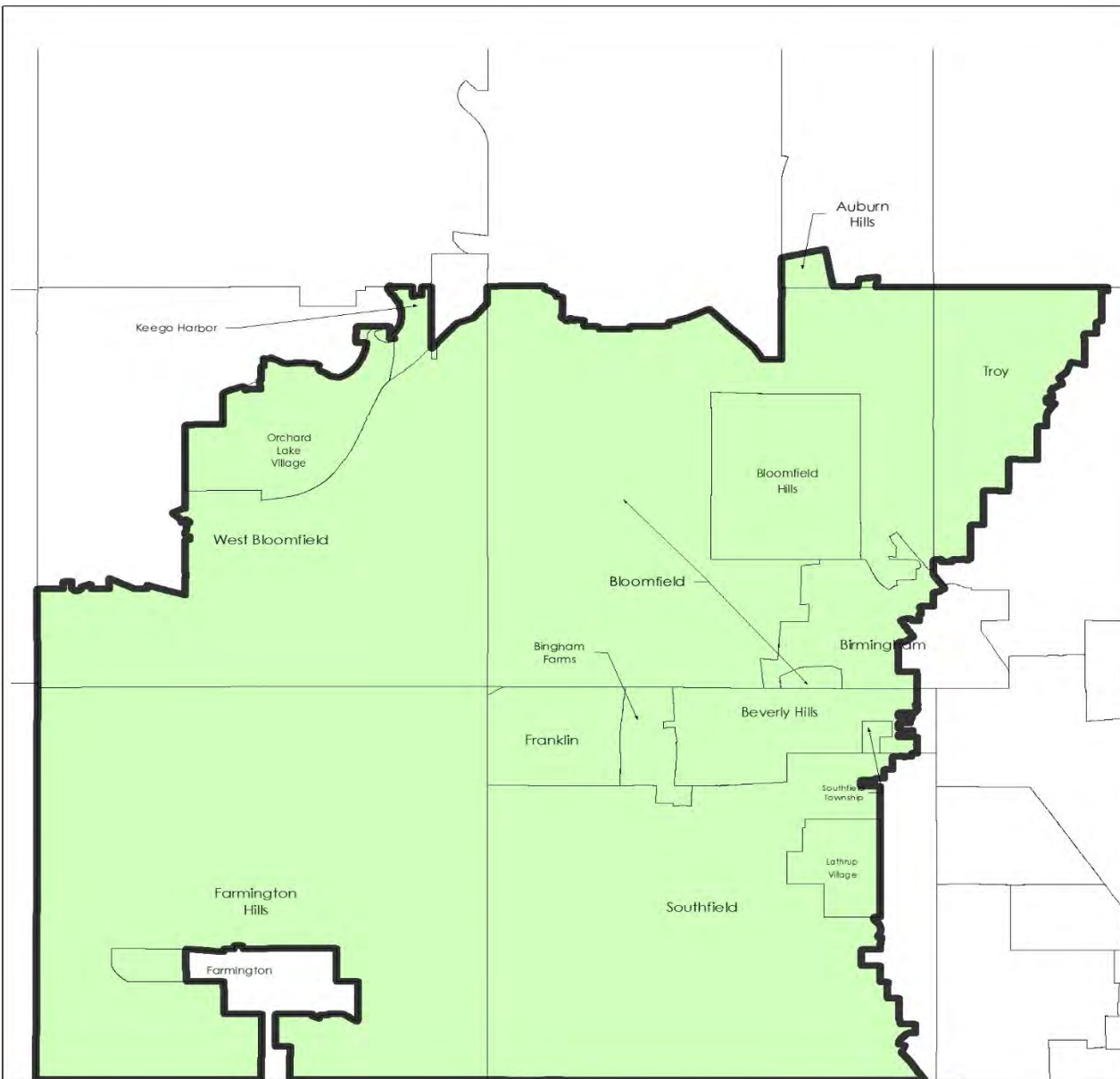


EXHIBIT B EVERGREEN-FARMINGTON AREA TO BE SERVED

Legend

- Municipal District
- Evergreen Farmington Sanitary Drain

Disclaimer: The information provided in this system has been compiled from recorded deeds, plats, tax maps, surveys and other public records and data. It is not a legally recorded map or survey and is not intended to be used as one. Users of this data are hereby notified that the information sources mentioned above should be consulted for verification of the information.



Revised: June 16, 2021
City of Farmington and City of Farmington Hills, Michigan
City of Farmington and City of Farmington Hills, Michigan

EXHIBIT 5

**INDEX OF PUBLIC CORPORATION AGREEMENTS TO ACCEPT
WASTEWATER FROM OTHER MUNICIPALITIES**

1. That certain Letter Agreement between the Township of West Bloomfield and the City of Sylvan Lake dated circa December 24, 1963 and countersigned on January 8, 1964 respecting the Sylvan Manor Arm.

EXHIBIT 6

PROJECT PRELIMINARY PLANS AND COST ESTIMATES

Overall Project Preliminary Plans and Cost Estimates

Total Estimated Project Cost: \$72,700,000

The Total Estimated Project Cost is \$72,700,000.00. This includes the 4 component projects described below including the following: (1) Great lakes Water Authority (“GLWA”) Capacity Purchase Project; (2) 8 Mile Road Outlet Conveyance Project; (3) Evergreen Road Conveyance, Walnut Lake Pump Station #1 Project; and (4) Lathrup Village Sanitary Retention Tank Improvements. The preliminary plans including the basis of design and other projects documents are on file with the Water Resources Commissioner’s office and have been the subject of monthly meetings of the Corrective Action Plan Steering Committee of the EFSD since 2019 and presented and discussed at the public meetings of the EFSD.

Project Name: GLWA Capacity Purchase

Owner: Evergreen-Farmington Sanitary Drain

Location: Various

Engineer of Record: Applied Science, Inc.,

Estimated Purchase Capacity: \$33,000,000

Total Estimated Project Cost: \$34,130,000

Tentative Purchase Date: December 2021-January 2022

The existing contractual outlet capacity pursuant to the August 29, 1984 Detroit-Oakland Agreement for the Use of Certain Detroit Sewers for the Evergreen – Farmington District is a maximum rate of discharge of 170 cubic feet per second (cfs). The contractual agreement includes provision for increasing the maximum rate of discharge as may be agreed to by the parties. A proposed increase in the EFSD maximum rate of discharge of 57 cfs, for a revised total contractual capacity of 227 cfs is tentatively agreed to among parties. In order to accept this additional flow, GLWA must remove offsetting flow from the system. Two projects are requested for GLWA to meet these EGLE requirements, the DWSD West Warren Sewer Separation Project and the GLWA West Warren Outfall project. The purchase capacity cost is guided by but not tied directly to the anticipated project costs from these two projects. The engineer for the GLWA Purchase Capacity is Applied Science, Inc. The anticipated negotiated purchase capacity is \$33,000,000. The cost for the corrective action plan and coordination with EGLE, GLWA and DWSD is anticipated to be \$1,250,000. Evergreen-Farmington Sanitary Drain anticipates purchasing the capacity in the last part of 2021 or early 2022.

Project Name: 8 Mile Road Outlet Conveyance

Owner: Evergreen Farmington Sanitary Drain

Location: 8 Mile Pump Station and along 8 Mile Road in Southfield, Michigan

Engineer of Record: Fishbeck

Engineer’s Estimate of Construction Cost: \$18,610,000

Total Estimated Project Cost: \$32,060,000

Tentative Bid Date: Spring of 2022

The project to allow more flow to be conveyed involves modifications to the 8 Mile Pump Station and existing discharge piping by slip lining approximately 3,800 feet of the downstream 60-inch I.D. South Evergreen Interceptor to a 54-inch diameter sewer. In addition, modifications will be made to the pump station pumping capacity to help control the water levels upstream of the 8 Mile Pump Station. A new tributary collector sewer will be constructed to capture and convey flows from areas disconnected from the newly lined section of the South Evergreen Interceptor. In addition, the 8 Mile Drain at the Evergreen Emergency SSO Chamber will be modified.

Project Name: Lathrup Village Sanitary Retention Tank Improvements

Owner: Lathrup Village

Location: 19600 Sunnybrook Avenue, Lathrup Village, Michigan

Engineer of Record: Hubbell, Roth & Clark, Inc.

Engineer's Estimate of Construction Cost: \$520,000

Total Estimated Project Cost: \$1,030,000

Tentative Bid Date: Spring of 2022

The project involves improvements and modifications to the Lathrup Sanitary Retention Basin. The major work items include electrical and mechanical improvements to the SRT heating, influent pumping and dewatering systems; structural restoration to the roof and walls; upgraded instrumentation and controls; SCADA improvements; piping and valve system changes; and revised operational controls. The improvements will allow Lathrup Village to discharge its town outlet capacity during wet weather when the Evergreen Interceptor levels are elevated. A cost sharing agreement for the design and construction will be utilized on this project between Lathrup Village and the Evergreen Farmington Sanitary Drain.

Project Name: Evergreen Road Conveyance Project – Walnut Lake Pump Station #1 Corrective Action Plan

Owner: Evergreen-Farmington Sanitary Drain

Location: Evergreen Road 8 Mile to 14 Mile

Engineer of Record: Applied Science, Inc.

Engineer's Estimate of Construction Cost: \$2,900,000

Total Estimated Project Cost: \$5,480,000

Tentative Bid Date: January-February 2022

The project will increase Evergreen Interceptor operating levels and coordinated operations of facilities in the EFSDS and customer communities to avoid SSOs through certain modifications to Walnut Lake Pump Station #1 for continued operations during wet weather. This may include grade separation stations, sealed manholes, and other system improvements.

Below is a chart of the estimated cost for the respective Public Corporation.

Public Corporation	Peak Share			Total Estimated Cost
Auburn Hills	0.460%			334,420
Bingham Farms	0.690%			501,630
Bloomfield Hills	1.440%			1,046,880
Beverly Hills	5.750%			4,180,250
Birmingham	0.110%			79,970
Bloomfield Twp	9.540%			6,935,580
Farmington	0.340%			247,180
Farmington Hills	28.290%			20,566,830
Franklin	0.210%			152,670
Keego Harbor	0.320%			232,640
Lathrup Village	3.060%			2,224,620
Orchard Lake Village	0.370%			268,990
Southfield	38.170%			27,749,590
Troy	3.150%			2,290,050
West Bloomfield Twp	8.100%			5,888,700
Total	100.000%			72,700,000



EXHIBIT 7

FINAL ORDER OF APPORTIONMENT ASSESSMENT PERCENTAGES

City of Auburn Hills	0.46%
Village of Beverly Hills	5.75%
Village of Bingham Farms	0.69%
City of Birmingham	0.11%
Charter Township of Bloomfield	9.54%
City of Bloomfield Hills	1.44%
City of Farmington	0.34%
City of Farmington Hills	28.29%
Village of Franklin	0.21%
City of Keego Harbor	0.32%
City of Lathrup Village	3.06%
City of Orchard Lake Village	0.37%
City of Southfield	38.17%
City of Troy	3.15%
Charter Township of West Bloomfield	<u>8.10%</u>
	100%

Evergreen Farmington Quarterly Technical Committee Meeting

April 30, 2020



Steering Committee

- Subgroup of EFSDS Community representatives, WRC and consultants
- Current and upcoming topics
 - Chapter 20 Drain
 - EFSDS New Service Agreement
 - 4 CAP project updates
- Open to anyone who is interested
 - Next meeting June 1st 1:30-3pm



New Service Agreement

- A new service agreement is needed to:
 - Establish new capacities needed to end community ACOs
 - Provide a contract beyond 2029 to exceed the life of the bond to complete the Corrective Action Plan
- Several ways to contract and bond
 - Act 34: New service agreement, County full faith & credit
 - Act 342: New agreement and CVT full faith & credit
 - Chapter 20: Petition and new service agreement, county full faith
- Chapter 20 drain for EFSDS is best way to proceed



Chapter 20 Drain Mechanics

- What is a Chapter 20 county drain and how does it function?
 - Three board members
 - Regularly-scheduled public meetings
 - Approves invoices and awards contracts
- What does a conversion to a drain entail?
 - Petition to establish a county drain by two or more affected public corporations
 - No change in operation and maintenance allocations
 - Bonded projects are apportioned by the Board per WRC recommendation
 - New service agreement

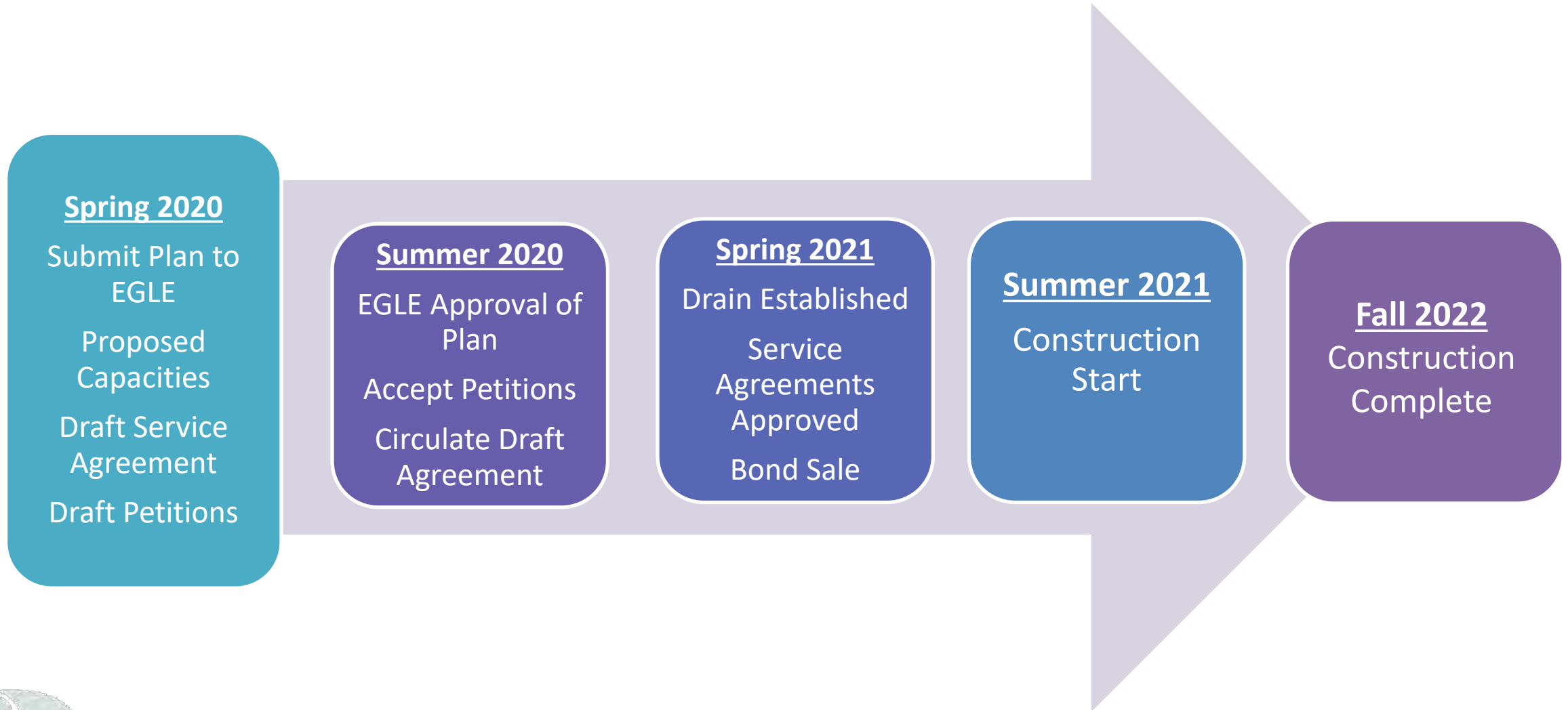


Why Convert EFSDS to a Drain?

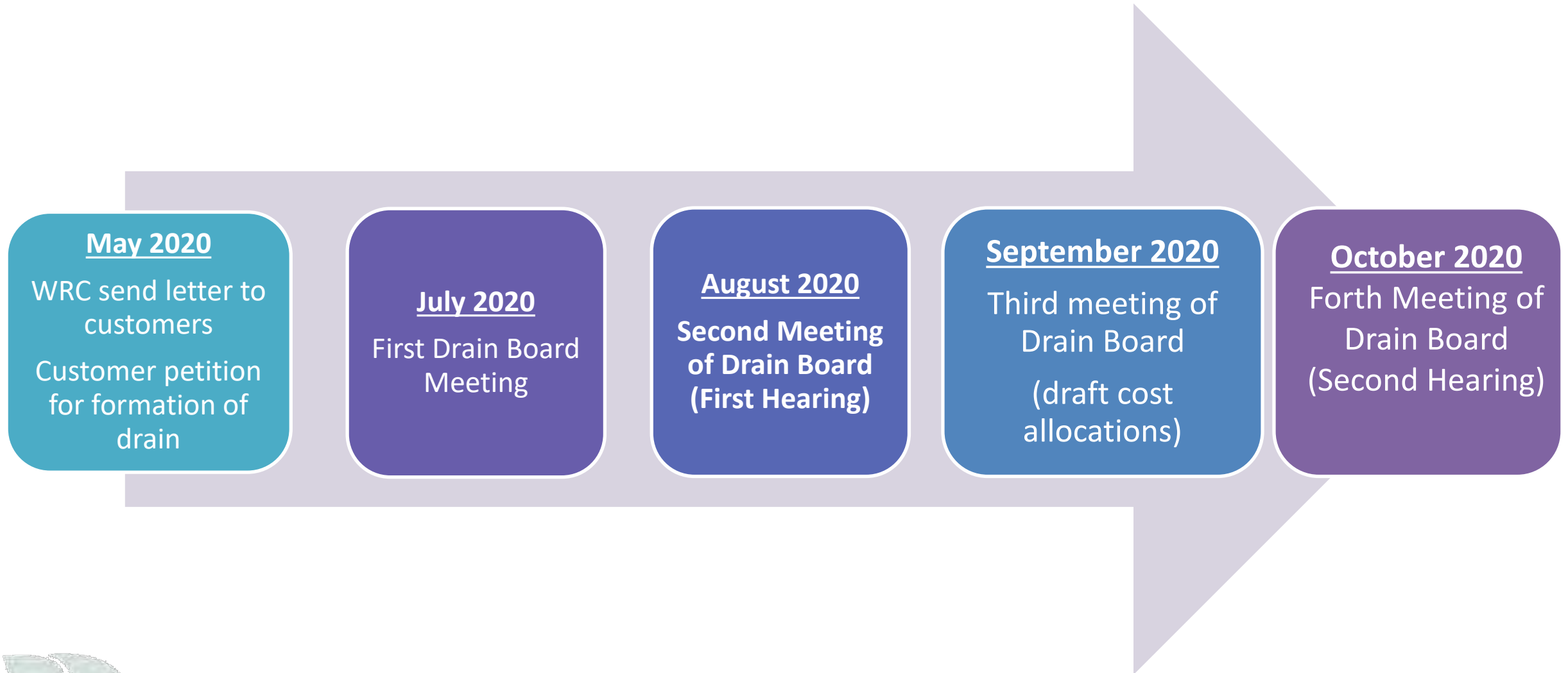
- Governance by a Drain Board
 - Open meetings/Transparency
 - Meeting minutes and formal documentation
 - Approves invoices and awards contracts
- Eliminates the need for communities to:
 - Seek full faith and credit resolutions from Boards/Councils
 - Approve 342 agreement for new projects



CAP Schedule



Preliminary Drain Schedule



Next Steps

WRC

- ☐ Send letter communication to customer communities
- ☐ Attorneys draft petition
- ☐ Develop proposed capacities for community review
- ☐ Attorneys draft new service agreement

Communities

- ☐ Consider presenting petition to your council/board
- ☐ Review proposed service agreement



Oakland County Water Resources Commissioner

Evergreen-Farmington Sanitary Drain Overview

February 1, 2021

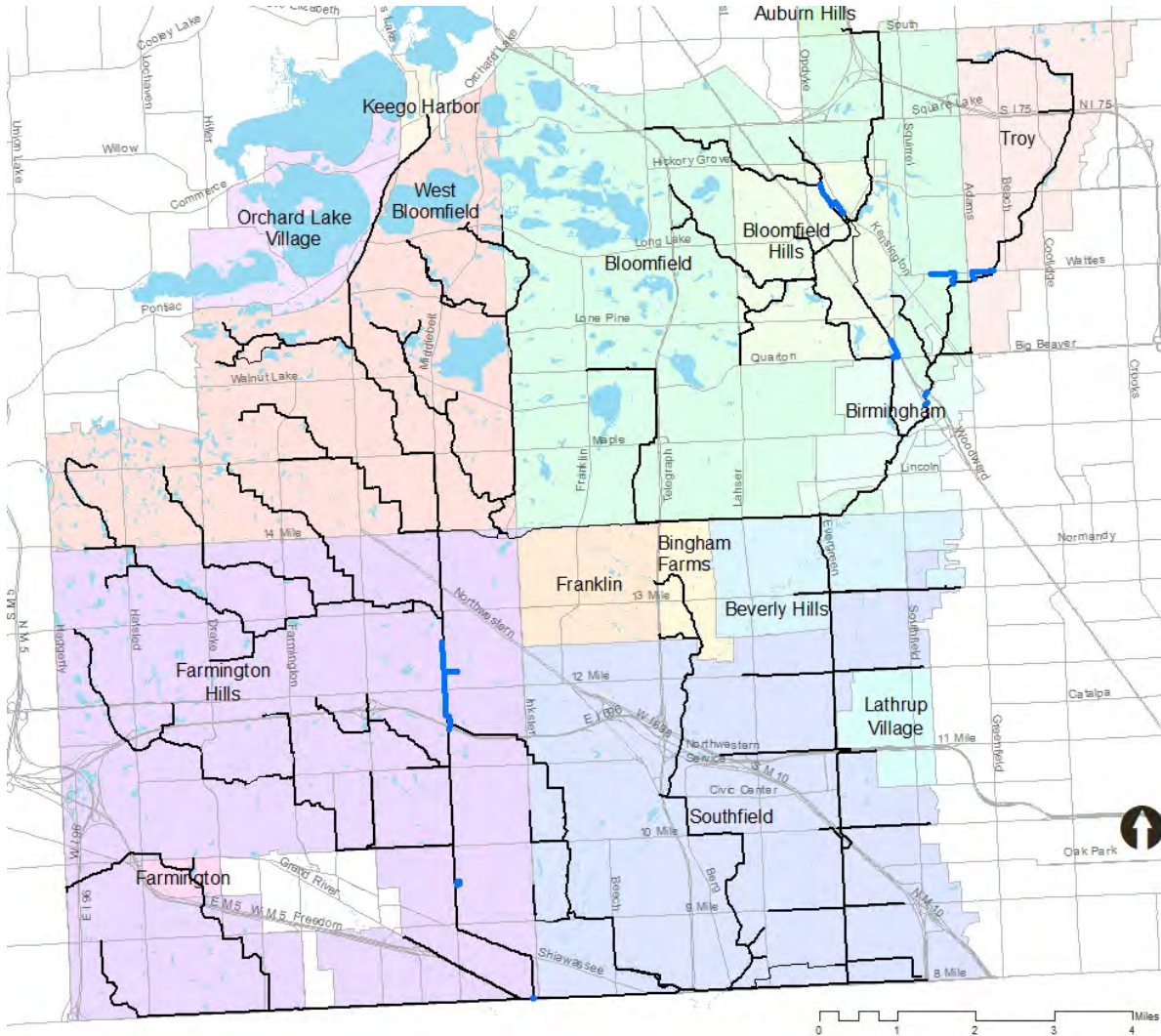


Evergreen-Farmington Sanitary Drain

Corrective Action Plan Overview



Customer Communities



- City of Auburn Hills
- Village of Bingham Farms
- City of Bloomfield Hills
- Village of Beverly Hills
- City of Birmingham
- Bloomfield Township
- City of Farmington
- City of Farmington Hills
- Village of Franklin
- City of Keego Harbor
- City of Lathrup Village
- City of Orchard Lake Village
- City of Southfield
- City of Troy
- West Bloomfield Township

Historical Milestones (1960s to 1980s)

Early 1960s: Original construction was completed

1960s and 1970s:

- Significant system growth
- Sources of non sanitary flow impacting capacity of system

1980s:

- Wet weather capacity issues identified throughout the system
- Wet weather sanitary sewer overflows occur

1988: Michigan Department of Environmental Quality Abatement Orders

1989: Intermunicipal Contract



Historical Milestones (1990s to 2020)



1990s:

- Abatement Order construction projects completed
- Sanitary sewer overflows continue to occur

2004: MDEQ Administrative Consent Order

2004 to 2018:

- Short-Term Corrective Action Plan projects completed
- Long-Term Corrective Action Plan Phase 1 completed

2019: EGLE 4th Amended Administrative Consent Order

- Provision to increase outlet capacity
- Modified Corrective Action Plan schedule

Looking to the Future

2021:

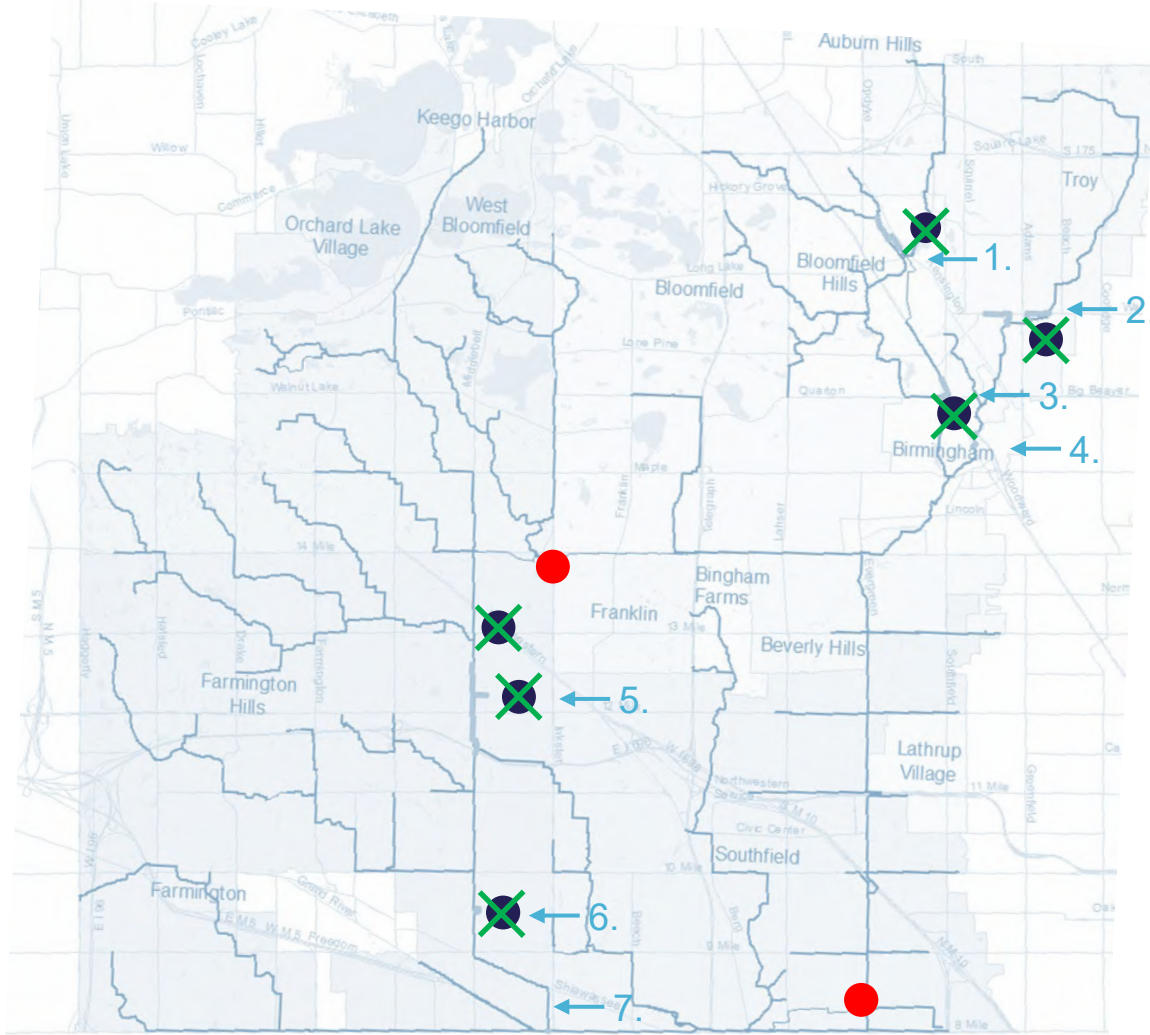
- Refinement of Corrective Action Plan
- Community approvals of new Intermunicipal Service Agreement
- First bond sale for Corrective Action Plan outlet capacity

2022 to 2023:

- Second bond sale for Corrective Action Plan improvement projects
- Construction of Corrective Action Plan improvement projects

2024: Administrative Consent Orders Expire



Long-Term Corrective Action Plan - Phase 1



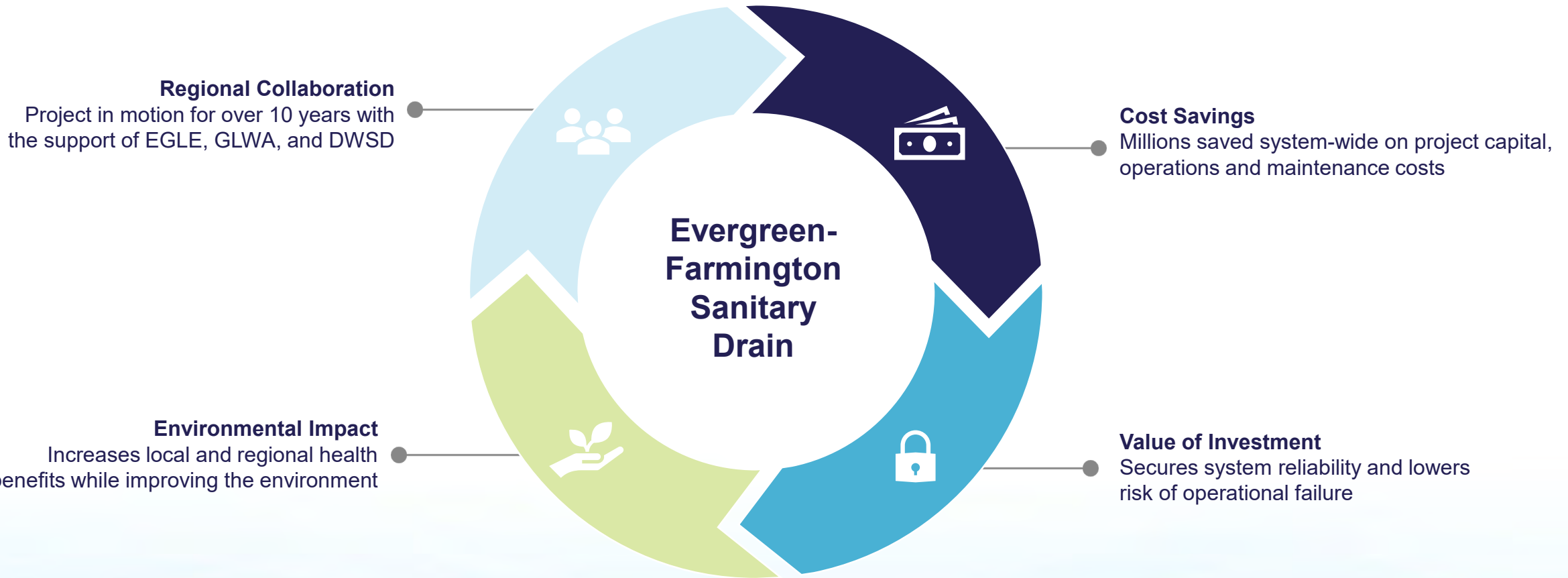
\$63 Million Invested in System

Projects Recently Constructed

1. Stonycroft Relief and Amy Pump Station upgrades
2. Wattles Road Storage
3. Quarton Road Storage
4. North Evergreen Interceptor Hydraulic Improvements
5. Middlebelt Tunnel with Utley Connection
6. Eldon Street Grade Protection Station
7. Farmington Interceptor Partial Bulkhead Removal

-  Sanitary sewer overflows addressed
-  Sanitary sewer overflows remaining

Corrective Action Plan Development













Corrective Action Plan – Project Selection Scorecard

1) Add System Storage

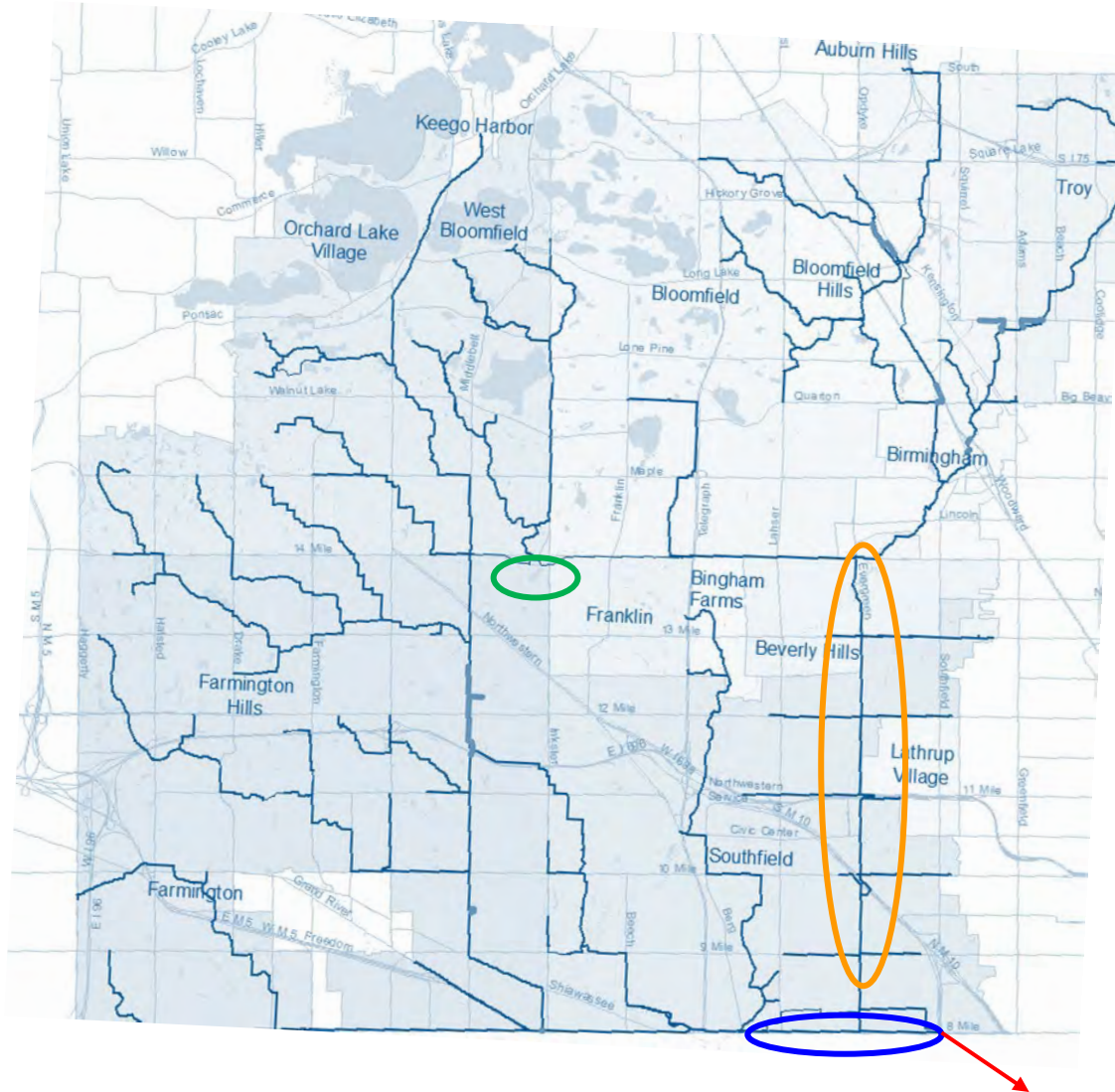
- Stores wet weather flow during large storm. After the storm, the flow is slowly released back into the system.





2) Additional Outlet Capacity

- System improvement projects to transport wet weather flow through the system during the storm.

Project	Addresses Sanitary Sewer Overflows	Environmental and Public Health Benefit	Value of Investment: Capital Cost	Value of Investment: Operations and Maintenance Cost	Reliability: Risk of Operational Failure
1					
2					

Outlet Capacity Improvement Projects



-  Modify Walnut Lake Pump Station #1
-  Evergreen Interceptor
-  8 Mile Road
-  Purchase additional GLWA outlet capacity

Cost Allocation

Community	Project Cost Allocation (%) ^{1, 2, 3}
City of Auburn Hills	0.46%
Village of Bingham Farms	0.69%
City of Bloomfield Hills	1.44%
Village of Beverly Hills	5.75%
City of Birmingham	0.11%
Bloomfield Township	9.54%
City of Farmington	0.34%
City of Farmington Hills	28.29%
Village of Franklin	0.21%
City of Keego Harbor	0.32%
City of Lathrup Village	3.06%
City of Orchard Lake Village	0.37%
City of Southfield	38.17%
City of Troy	3.15%
West Bloomfield Township	8.10%



Allocations based on a method that was agreed upon by each community and was developed as a group.

Estimated Project Cost – City of Birmingham

Project Description	Total Project Cost	Cost Allocation	Payment Options	Estimated Community Cost
Purchase Outlet Capacity From GLWA (First Bond Sale - Fall 2021)	\$33M	0.11%	One-Time Lump Sum*	\$36,000
			Annual Bond Payments*	\$2,300
System Improvement Projects (Second Bond Sale - June 2022)	\$35M	0.11%	One-Time Lump Sum*	\$38,000
			Annual Bond Payments*	\$2,500

**One-Time Lump Sum or Annual Bond Payments*

Service Agreement

- Provides authority for regional operations
- Replaces 1989 intermunicipal agreement
- Requires approval of all customer communities
- Establishes new community capacities
- Includes apportionment assessments (project cost allocation percentages)
- Includes preliminary improvement plan and cost estimates
- Current rate methodology will not change
- Timeline
 - Community engagement: February to April 2021
 - Community approval: April to June 2021



MEMORANDUM

Police Department

DATE: June 24, 2021

TO: Thomas M. Markus, City Manager

FROM: Scott Grewe, Operations Commander

SUBJECT: Parking Structure Repairs

INTRODUCTION:

Structural assessments have been completed at all five of the City's parking structures by Wiss, Janney, Elstner Associates, Inc. (WJE). As part of a previously approved contract, not to exceed \$392,480, WJE has provided structural repair recommendations over a five-year plan. WJE has completed the work under budget by approximately \$50,000.

The scope of work under the previous contract covered only the structural assessment and repair recommendation. As the City moves forward to address the repair recommendations, a new agreement is required for specific design of the repairs and preparation of bid documents.

BACKGROUND:

At the October 28, 2019 City Commission meeting, the Commission approved a contract with WJE to conduct assessments of the City's five parking structures. This work has been completed and came in under budget. Repair recommendations were broken down into three categories:

1. Immediate Recommendations (within 1 year)
2. Near -Term Repair Recommendations (within 1 to 2 years)
3. Long-Term Repair Recommendations (within 3 to 5 years)

The repair recommendations for each structure includes estimated costs (see attached). Now that the assessments are complete, the City can begin to address the needed repairs. In discussions with WJE, there were no noted emergency repairs at this time requiring completion before any other. However, there are several items with asterisks in the recommendations that WJE suggests addressing as soon as possible to prevent further deterioration.

Additionally, the surface lot at the North Old Woodward (NOW) Structure has been scheduled for repair and funds have been allocated in the 2021-2022 fiscal year to complete this work. Due to this, it would be beneficial to complete as much work as possible at this structure prior to the open lot repaving to reduce the risk of damaging the new surface.

WJE has recommended \$2 million in repairs to be completed this construction season. The vast majority of the proposed work is to be completed at the NOW structure. The proposed work also includes addressing all of the asterisk items at Park, Peabody and Chester structures. However,

the design of this work is outside the scope of the existing contract. Now that WJE has extensive knowledge of the City's structures and has designed and inspected repair work previously for the City (NOW Façade removal and repairs), staff recommends entering into a new professional services agreement with WJE for the design and bid preparation services to expedite the process allowing the City to move forward with repairs this construction season.

LEGAL REVIEW:

The City attorney has reviewed and approved the attached proposal and prepared the addendum to the parking structural assessment program with WJE that is also attached.

FISCAL IMPACT:

The original contract with WJE for the structural assessments was for \$392,480.00 and the work has been completed approximately \$50,00.00 under budget. WJE advised they can complete the proposed work for the design and bid preparation staying within the previously approved contract not to exceed the \$50,000.00 remaining balance.

SUMMARY:

WJE has finished the structural assessment of all structures and have provided repair recommendations. They have finished this work under budget and suggested that sufficient funds remain from the previously approved contract to cover the cost for them to prepare the documents required to for the 2021 construction season. However, the design of repairs is outside the scope of the existing contract.

Staff recommends amending the existing agreement for professional services to include the work proposed in the attached proposal from WJE to continue this work by designing the repairs and preparing the required construction documents to take this work out to bid. Due to WJE's extensive knowledge of the City's structures and completed repair recommendations it is not recommended to go to bid for this portion of the work as it would potentially result in a delay of work performed as a new consultant reviews reports and completes their own inspections for repairs.

The repair recommendations for the 2021 construction season is to complete as much work as the season permits at the NOW structure and multiple asterisk items at other structures to prevent further deterioration.

ATTACHMENTS:

1. Proposal from WJE for engineering services for design documentation of repairs.
2. Addendum to the Agreement to include construction designs and document preparation.
3. Memo to Commission for Structural Assessment Program dated October 2, 2019
4. Original signed contract, October 2019
5. Structure Assessment Repair Recommendations (1 to 5 years)

SUGGESTED RESOLUTION:

To approve the addendum to the Parking Structural Assessment Program with Wiss, Janney, Elstner Associates, Inc. (WJE) to include the design and bid documentation preparation of parking structure repairs to take place during the 2021 construction season. Furthermore, to authorize the Mayor and City Clerk to sign the contract on behalf of the city.



Wiss, Janney, Elstner Associates, Inc.
30700 Telegraph Road, Suite 3580
Bingham Farms, Michigan 48025
248.593.0900 tel
www.wje.com

June 9, 2021

Mr. Scott Grewe
Operations Commander - Birmingham Police Department
City of Birmingham
151 Martin Street
Birmingham, Michigan 48025

Birmingham Parking Structures

2021 Repairs
WJE No. 2019.6318

Dear Mr. Grewe:

Wiss, Janney, Elstner Associates, Inc. (WJE) is pleased to provide this proposal to perform engineering services relating to repairs and improvements at the following parking structures in Birmingham, Michigan:

- N. Old Woodward (NOW) Parking Structure located at 333 N Old Woodward Avenue
- Park Street Parking Structure located at 333 State Park Street
- Peabody Parking Structure located at 222 Peabody Street
- Chester Parking Structure located at 180 Chester Street

Please refer to our assessment reports issued in the month of May 2021 for descriptions of the structures, a summary of our assessment findings, and our provided recommendations.

Based on our recent discussions and meetings, the intent of the WJE scope of services presented herein is to develop construction documents and provide bidding assistance services for the scope of construction work presented in Appendix A. The work items listed in Appendix A are intended to be completed during the remaining 2021 construction season and include work identified as higher priority within the "Near-Term Recommendations" category of our assessment reports, as well as additional items at the NOW structure, per your request. The remaining work items recommended in our reports will be completed in subsequent years, and WJE will prepare separate proposals to provide engineering and construction period services for those projects when appropriate.

SCOPE OF SERVICES

Based on our understanding of the project objectives and our experience with the City of Birmingham (Birmingham) parking structures, as well as similar parking structure repair projects, we will provide the following Scope of Services with respect to the scope of 2021 construction work (Appendix A):

Phase 1 - Construction Document Development

We will develop construction documents consisting of technical drawings and project specifications for the proposed 2021 scope of work (Appendix A). Bid form(s) will also be provided for Birmingham's use in

obtaining competitive bids from qualified concrete restoration contractors. The bid forms will be tailored to provide Birmingham with flexibility regarding the final approved scope and schedule based on received bids.

For the purposes of this proposal, WJE assumes Birmingham will incorporate our technical repair drawings, specifications, and bid form(s) into Birmingham's 'front end specifications' (Division 00 and 01 specification sections), and that Birmingham will issue the documents for bidding. If requested, WJE can provide front end specifications and contract services under separate authorization.

Phase 2 - Bidding Assistance

WJE will lead a pre-bid meeting(s) to review the project scope with the bidding contractors and Birmingham representatives. During the bidding period, WJE will address relevant technical or scoping questions that may arise for incorporation into Birmingham's Addendum response. After the bidding period, WJE will review and analyze the provided bids (tabulated by others) to assist Birmingham with selecting a restoration contractor and finalizing the scope of work.

PROPOSED SCHEDULE

We understand that Birmingham would like to complete as many repairs as feasible during the 2021 construction season. To accommodate this request, we propose the schedule of milestones provided in Table 1 below, assuming WJE receives formal authorization to proceed by June 14, 2021.

Table 1. Proposed Schedule	
DATE	TASK
June 14, 2021	WJE commences with developing the construction documents
July 23, 2021	WJE issues construction documents for 95% "Owner Review"
July 30, 2021	WJE finalizes documents, documents are issued for bidding
August 6, 2021	Pre-bid meeting/walkthrough
August 11, 2021	Deadline for technical questions
August 13, 2021	Addendum issued, if necessary
August 20, 2021	Bidding Deadline
August 20 - September 3, 2021	Birmingham and restoration contractor execute contract
September 13, 2021	Construction Kick-off

CLOSING

Based on our preliminary cost estimates and our current progress under our existing contract with the City of Birmingham (dated October 28, 2019), we feel comfortable adding the above proposed Phase 1 and Phase 2 services to the scope of our existing contract and will utilize the remaining funds under that contract to complete the work.

Please note that this proposal **does not** include construction administration or construction period services which will be required during the construction work period. Such services may include, but not be limited to: progress meetings, construction observations, site visit reports, submittal reviews, material testing, payment application certification, and contract administration. WJE will issue a separate proposal to perform these services for the 2021 construction work once the final scope of work and awarded contractor are known.

We look forward to the opportunity to continue working with the City of Birmingham. Please feel free to contact Matthew Lewis at (248) 593-0900 if you have any questions regarding this proposal.

Sincerely,

WISS, JANNEY, ELSTNER ASSOCIATES, INC.

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

Matthew E. Lewis, P.E.
Senior Associate and Project Manager

Enclosure: Appendix A

APPENDIX A - PROPOSED SCOPE OF 2021 CONSTRUCTION WORK

North Old Woodward Parking Structure				
Item Description	Est. Qty.	Units	Unit cost	Est. Cost
Loose concrete removal	2	work day	\$ 1,000	\$ 2,000
Replace damaged/missing drain covers	24	each	\$ 350	\$ 8,400
Reset displaced and loose stair tower metal cover plates	10	each	\$ 200	\$ 2,000
Partial-depth topside slab concrete repairs*	5,000	SF	\$ 45	\$ 225,000
Partial-depth underside slab concrete repairs*	4,500	SF	\$ 100	\$ 450,000
Rout and seal cracks and joints in slab	25,000	LF	\$ 6	\$ 150,000
Traffic bearing membrane on Level 5 and ramp leading to Level 5	41,000	SF	\$ 5	\$ 205,000
Inspect and clean drain lines	1	each	\$ 15,000	\$ 15,000
Concrete wall repairs	60	SF	\$ 100	\$ 6,000
Replace sealant at cove seal joints	1,000	LF	\$ 6	\$ 6,000
Replace concrete masonry units at stair towers	50	SF	\$ 20	\$ 1,000
Localized repointing of clay masonry veneer	20	SF	\$ 20	\$ 400
North Old Woodward Parking Structure - Subtotal				\$ 1,070,400
Chester Parking Structure				
Item Description	Est. Qty.	Units	Unit cost	Est. Cost
Replace pre-molded expansion joint seals (Tier A through Tier 3), including expansion joints near stairs	1,200	LF	\$ 125	\$ 150,000
Replace control joint sealant at intermediate PT anchorages (N-S joints)	2,000	LF	\$ 6	\$ 12,000
Rout and seal cracks in elevated slab and replace failed sealant at isolated	750	LF	\$ 6	\$ 4,500
Replace deteriorated horizontal lines at floor drains and associated	150	LF	\$ 90	\$ 13,500
Inspect and clean drain lines as part of repair effort	1	LS	\$ 15,000	\$ 15,000
Remove loose brick coping fragments and verify all brick coping units are secure (not loose)	1	LS	\$ 1,500	\$ 1,500
Chester Parking Structure - Subtotal				\$ 196,500
Peabody Parking Structure				
Item Description	Est. Qty.	Units	Unit cost	Est. Cost
Investigation and repair of two Lower Level columns**	1	LS	\$ 50,000	\$ 50,000
Replace construction joint sealant	1,500	LF	\$ 6	\$ 9,000
Rout and seal cracks in elevated slabs and replace failed sealant at isolated	500	LF	\$ 6	\$ 3,000
Replace expansion joint seals	150	LF	\$ 125	\$ 18,750
Inspect and clean drain lines	1	LS	\$ 15,000	\$ 15,000
Peabody Parking Structure - Subtotal				\$ 95,750
Park Parking Structure				
Item Description	Est. Qty.	Units	Unit cost	Est. Cost
Replace construction joint sealant	900	LF	\$ 6	\$ 5,400
Repair column stiffener and moment connection plates	24	EA	\$ 1,000	\$ 24,000
Inspect and clean drain lines	1	LS	\$ 15,000	\$ 15,000
Park Parking Structure - Subtotal				\$ 44,400
All - Subtotal				\$ 1,407,050
General Conditions, Overhead and Profit (15%)				\$ 211,058
Project Contingency (15%)				\$ 211,058
Engineering/Testing/Construction Period Services (10%)				\$ 211,058
All - Total				\$ 2,040,223

*Quantities are increased to account for full-depth repairs where required.

**Pending further analysis during repair design phase; includes engineering, shoring, and masonry allowances.


**ADDENDUM TO THE AGREEMENT FOR PARKING GARAGE
STRUCTURAL ASSESSMENT PROGRAM DATED OCTOBER 28, 2019**

THIS ADDENDUM to the Agreement for Parking Garage Structural Assessment Program dated October 28, 2019 by and between the **CITY OF BIRMINGHAM**, having its principal municipal office at 151 Martin Street, Birmingham, MI and **WJE ENGINEERS AND ARCHITECTS, P.C.**, having its principal office at 30700 Telegraph Road, Suite 3580, Bingham Farms, MI 48025, does hereby amend its Agreement to include the attached Scope of Services and Bidding Assistance.

All other provisions of the Agreement for Parking Garage Structural Assessment Program dated October 28, 2019 shall remain in full force and effect.

IN WITNESS WHEREOF, the said parties have caused this Addendum to be executed on this 17th day of JUNE, 2021.

WITNESSES:



DEREK HIBNER

**WJE ENGINEERS AND ARCHITECTS,
P.C.**

By: 

Its: SENIOR ASSOCIATE

STATE OF MICHIGAN)
) ss:
COUNTY OF OAKLAND)

On this 17th day of JUNE, 2021, before me personally appeared Matthew Lewis, who acknowledged that with authority on behalf of **WJE ENGINEERS AND**

ARCHITECTS, P.C. to do so he/she signed this Agreement.



Diana A. Izzard
Notary Public
MACOMB County, Michigan
Acting in OAKLAND County, Michigan
My commission expires: 8-15-2022

CITY OF BIRMINGHAM

By: _____
Pierre Boutros, Mayor

By: _____
Alexandria D. Bingham, Clerk

Approved:

Thomas M. Markus
Thomas M. Markus, City Manager
(Approved as to substance)

Mark Gerber
Mark Gerber, Director of Finance
(Approved as to financial obligation)

M. H. Clemence
Mark H. Clemence, Chief of Police
(Approved as to substance)

Mary M. Kucharek
Mary M. Kucharek, City Attorney
(Approved as to form)



MEMORANDUM

Office of the City Manager

DATE: October 2, 2019

TO: Joseph A. Valentine, City Manager

FROM: Tiffany J. Gunter, Assistant City Manager

SUBJECT: Structural Assessment Program – Engineering Firm Recommendation

INTRODUCTION:

The City, in an on-going effort to ensure, the highest level of safety and integrity of our existing parking structures is planning to conduct structural assessments at each of the five sites over the next year. The Advisory Parking Committee at its' September 4 meeting approved the release of an RFP to solicit for these engineering evaluation services on September 6. On October 2, 2019, the APC made a recommendation to select an engineering firm to conduct the full structural assessments of the five parking garages.

BACKGROUND:

The RFP for services was uploaded to the Michigan Intergovernmental Trade Network on September 6 and there were thirty-three (33) document request from various engineering firms that were primarily Michigan based. However, there was only one bid received by the deadline. The bid received was from WJE Engineers and Architects, PC. The total bid amount was provided with two options based on the time of the day that the City would prefer the work to be performed. The recommendation of the APC was to proceed with a cost not to exceed for the higher of the two options and decide at a later date the most optimal times to perform the work.

Option 1: Monday – Friday 8:00 am to 5:00 pm for a total cost of **\$349,530**

Option 2: Monday – Friday 5:00 pm to 10:00 pm (and weekends) for a total cost of **\$392,480.**

Staff highly recommends taking advantage of the evening and weekend Option to ensure minimal disruption to the downtown during the busy holiday season. Conducting the assessments after regular business hours will ensure sufficient capacity in the garages to handle parking demand.

The 2019-2020 budget was prepared in anticipation of this work at four of the five garages. A portion of the funding that was set-aside in the budget for the proposed parking mitigation plan for the N. Old Woodward project can be allocated to pay for the assessment at N. Old Woodward. The average cost per deck is roughly \$70,000 to complete the full assessment. A preliminary fee breakdown for each garage is included in Appredix D of the proposal received from WJE Engineers and Architects, PC.

The estimated time to complete the evaluation of all five structures is 120 days from the date of the notice to proceed. Staff has confirmed with WJE that they will be ready to mobilize during the month of November. Recognizing that this is the beginning of the holiday season and consistent with the APC's goal to support downtown businesses, staff believes that the proposal to complete the work on the evenings and weekends, while more expensive will be worth the benefit to the merchants during this critical time.

No other proposals were received for this work. Staff has reached out to a few of the (33) vendors on the list obtained from MITN and that have worked with the City in the past and learned that project timing issues, required staffing, and the level of expertise involved with elevated parking structures prevented their firms from bidding on the proposal. Specifically, staff spoke with David Rich of Rich and Associates. He graciously agreed to allow us to share his comments for the record. Mr. Rich shared with us that their firm could not commit the time and staffing necessary to complete the assessment given other current obligations. He indicated that the construction and engineering fields are experiencing issues with labor shortages given so much building activity is happening throughout the nation. Mr. Rich also added that he referred the RFP document over to WJE Engineers and Architects, PC because their firm specializes in structural assessments and he spoke highly of their reputation.

LEGAL REVIEW:

The proposed contract with WJE was reviewed and approved by the City Attorney.

FISCAL IMPACT:

The Automobile Parking System (APS) budget for Fiscal Year 2019-2020 included the costs to complete the assessments, as proposed. The N. Old Woodward Garage was not included in the original budget. However, a portion of the funds that were set-aside for the parking mitigation plan had the garage been demolished can be reallocated to complete the full structural assessment of all five structures.

PUBLIC COMMUNICATIONS:

N/A

SUMMARY:

The repair and rehabilitation program at each garage has been consistent and routine over the years. However, as the infrastructure ages, it has been observed that a routine repair cycle may not be sufficient to meet our maintenance needs into the future. Therefore, staff is recommending that the City conduct a full structural and safety assessment of the five parking structures with a comprehensive report that outlines a repair and rehabilitation program that is consistent with the existing conditions in the garage. The report will provide cost estimates for each garage and recommended timing for repairs. The Advisory Parking Committee reviewed the proposal that was received to complete the work and has recommended that the Commission approve the proposed contract for a cost not to exceed \$392,480 with WJE Engineers and Architects, PC.

ATTACHMENTS:

Proposed Contract for Professional Engineering Services

Advisory Parking Committee Memo – October 2, 2019
RFP Parking Garage Structural Assessment Program – September 6, 2019
WJE Proposal – September 27, 2019

SUGGESTED RESOLUTION:

To approve the agreement with WJE Engineers and Architects, P.C. (WJE) for professional engineering services to conduct full structural assessments of the five parking garages in downtown Birmingham for an amount not to exceed \$392,480 from account #585-538.001-811.0000 for Fiscal Year 2019-2020. Further, direct the Mayor and City Clerk to sign the agreement on behalf of the City.

ATTACHMENT A - AGREEMENT
For PARKING GARAGE STRUCTURAL ASSESSMENT PROGRAM

This AGREEMENT, made this 18th day of October, 2019, by and between CITY OF BIRMINGHAM, having its principal municipal office at 151 Martin Street, Birmingham, MI (hereinafter sometimes called "City"), and WJE Engineers and Architects, PC, having its principal office 30700 Telegraph Road, Suite 3580, Bingham Farms, MI 48025(hereinafter called "Contractor"), provides as follows:

WITNESSETH:

WHEREAS, the City of Birmingham has heretofore solicited for quotes for the procurement and performance of services required to perform professional engineering services to conduct a full structural safety assessment of the five parking garages contained within the Parking Assessment District, which includes certain instructions to firms regarding specifications, terms and conditions.

WHEREAS, the Contractor has professional qualifications that meet the project requirements and have offered a quote in accordance with such the request to perform the requested parking professional engineering services as described in the scope of work.

NOW, THEREFORE, for and in consideration of the respective agreements and undertakings herein contained, the parties agree as follows:

1. It is mutually agreed by and between the parties that the documents consisting of the Request for Proposals to perform professional engineering services to conduct a structural assessment of each of the five parking garages in downtown Birmingham dated Oct 1, 2019 shall be incorporated herein by reference and shall become a part of this Agreement, and shall be binding upon both parties hereto. If any of the documents are in conflict with one another, this Agreement shall take precedence, then the RFP.
2. The City shall pay the Contractor for the performance of this Agreement in an amount not to exceed \$392,480, as set forth in the Contractor's Oct 1, 2019 proposal.
3. This Agreement shall commence upon execution by both parties, unless the City exercises its option to terminate the Agreement in accordance with the Request for Proposal.
4. The Contractor shall employ personnel of good moral character and fitness in performing all services under this Agreement.
5. 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 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.

6. 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.

7. 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.

8. 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.

9. This Agreement shall be binding upon the successors and assigns of the parties hereto, but no such assignment shall be made by the Contractor without the prior written consent of the City. Any attempt at assignment without prior written consent shall be void and of no effect.

10. 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.

11. The Contractor shall not commence work under this Agreement until it has, at its sole expense, obtained the insurance required under this paragraph. All coverages shall be with insurance companies licensed and admitted to do business in the State of Michigan. All coverages shall be with carriers acceptable to the City of Birmingham.

12. The Contractor shall maintain during the life of this Agreement the types of insurance coverage and minimum limits as set forth below:

- A. Workers' Compensation Insurance: Contractor shall procure and maintain during the life of this Agreement, Workers' Compensation Insurance, including Employers Liability Coverage, in accordance with all applicable statutes of the State of Michigan.
- B. Commercial General Liability Insurance: Contractor shall procure and maintain during the life of this Agreement, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than \$1,000,000 per occurrence combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent; (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable.
- C. Motor Vehicle Liability: Contractor shall procure and maintain during the life of this Agreement Motor Vehicle Liability Insurance, including all applicable no-fault coverages, with limits of liability of not less than \$1,000,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- D. Additional Insured: Commercial General Liability and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following shall be *Additional Insureds*: The City of Birmingham, including all elected and appointed officials, all employee and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof. This coverage shall be primary to any other coverage that may be available to the additional insured, whether any other available coverage by primary, contributing or excess.
- E. Professional Liability: Professional liability insurance with limits of not less than \$1,000,000 per claim if Contractor will provide service that are customarily subject to this type of coverage.
- F. Cancellation Notice: Workers' Compensation Insurance, Commercial General Liability Insurance and Motor Vehicle Liability Insurance (and Professional Liability Insurance, if applicable), 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: Finance Director, City of Birmingham, PO Box 3001, 151 Martin Street, Birmingham, MI 48012-3001.

G. Proof of Insurance Coverage: Contractor shall provide the City of Birmingham at the time the Agreement is returned for execution, Certificates of Insurance and/or policies, acceptable to the City of Birmingham, 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;
- 5) If so requested, Certified Copies of all policies mentioned above will be furnished.

H. 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 of Birmingham at least (10) days prior to the expiration date.

I. Maintaining Insurance: Upon failure of the Contractor to obtain or maintain such insurance coverage for the term of the Agreement, the City of Birmingham may, at its option, purchase such coverage and subtract the cost of obtaining such coverage from the Agreement amount. In obtaining such coverage, the City of Birmingham shall have no obligation to procure the most cost-effective coverage but may contract with any insurer for such coverage.

13. To the fullest extent permitted by law, the Contractor and any entity or person for whom the Contractor is legally liable, agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the City of Birmingham, its elected and appointed officials, employees and volunteers and others working on behalf of the City of Birmingham against any and all claims, demands, suits, or loss, including all costs and reasonable attorney fees connected therewith, and for any damages which are asserted, claimed or recovered against or from and the City of Birmingham, its elected and appointed officials, employees, volunteers or others working on behalf of the City of Birmingham, by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, to the extent caused by Contractor's negligent or wrongful conduct in performing 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 of Birmingham.

14. 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 the Contractor, the City shall have the right to terminate this Agreement without further liability to the Contractor if the disqualification

has not been removed within thirty (30) days after the City has given the 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.

15. If Contractor fails to perform its obligations hereunder, the City may take any and all remedial actions provided by the general specifications or otherwise permitted by law.

16. All notices required to be sent pursuant to this Agreement shall be mailed to the following addresses:

CITY OF BIRMINGHAM
Ms. Tiffany J. Gunter
Assistant City Manager
151 Martin Street
Birmingham, MI 48009
Phone: 248.530.1827

CONTRACTOR
Matthew E. Lewis, PE
Senior Associate and Project Manager
Wiss, Janney, Elstner Associates, Inc.
30700 Telegraph Road – Suite 3580
Bingham Farms, MI 48025
Phone: 248.593.0900

17. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled either by commencement of a suit in Oakland County Circuit Court, the 48th District Court or by arbitration. If both parties elect to have the dispute resolved by arbitration, it shall be settled pursuant to Chapter 50 of the Revised Judicature Act for the State of Michigan and administered by the American Arbitration Association with one arbitrator being used, or three arbitrators in the event any party's claim exceeds \$1,000,000. Each party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Such arbitration shall qualify as statutory arbitration pursuant to MCL§600.5001 et. seq., and the Oakland County Circuit Court or any court having jurisdiction shall render judgment upon the award of the arbitrator made pursuant to this Agreement. The laws of the State of Michigan shall govern this Agreement, and the arbitration shall take place in Oakland County, Michigan. In the event that the parties elect not to have the matter in dispute arbitrated, any dispute between the parties may be resolved by the filing of a suit in the Oakland County Circuit Court or the 48th District Court.

18. 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 said parties have caused this Agreement to be executed as of the date and year above written.

WITNESSES:



CONTRACTOR

By: Matthew E. Lewis, PE

Its: Senior Associate





CITY OF BIRMINGHAM

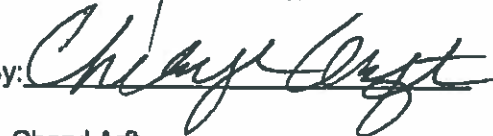
By: _____


~~Patricia Boudreau~~

Its: Mayor ~~Pro Tem~~



Pierre Boutros

By: _____


Cheryl Arft

Its: City Clerk

Approved:


Tiffany J. Gunter, Assistant City Manager
(Approved as to substance)


Timothy J. Currier, City Attorney
(Approved as to form)


Mark Gerber, Director of Finance
(Approved as to financial obligation)


Joseph A. Valentine., City Manager
(Approved as to substance)



City of Birmingham
Parking Garage Structural Assessment Program
North Old Woodward Parking Structure

APPENDIX B. OPINION OF PROBABLE COSTS

Immediate Recommendations (within 1 year)				
Item Description	Est. Qty.	Units	Unit cost	Est. Cost*
Loose concrete removal	2	work day	\$ 1,000	\$ 2,000
Replace damaged/missing drain covers	24	each	\$ 350	\$ 8,400
Reset displaced and loose stair tower metal cover plates	10	each	\$ 200	\$ 2,000
Immediate Recommendations Subtotal				\$ 12,400
Near-Term Repair Recommendations (within 1 to 2 years)				
Item Description	Est. Qty.	Units	Unit cost	Est. Cost*
Concrete				
Partial-depth topside slab concrete repairs	5,000	SF	\$ 45	\$ 225,000
Partial-depth underside slab concrete repairs	4,500	SF	\$ 100	\$ 450,000
Waterproofing and Drainage Improvements				
Rout and seal cracks and joints in slab	25,000	LF	\$ 6	\$ 150,000
Traffic bearing membrane on Level 5	41,000	SF	\$ 5	\$ 205,000
Inspect and clean drain lines	1	each	\$ 15,000	\$ 15,000
Masonry Repairs				
Replace concrete masonry units at stair towers	50	SF	\$ 20	\$ 1,000
Subtotal				\$ 1,046,000
General Conditions, Overhead and Profit (15%)				\$ 156,900
Project Contingency (15%)				\$ 156,900
Engineering/Testing/Construction Period Services (10%)				\$ 104,600
Near-Term Recommendations Total				\$ 1,464,400
Long-Term Repair Recommendations (within 3 to 5 years)				
Item Description	Est. Qty.	Units	Unit cost	Est. Cost*
Concrete				
Partial-depth topside slab concrete repairs	5,000	SF	\$ 45	\$ 225,000
Partial-depth underside slab concrete repairs	4,500	SF	\$ 100	\$ 450,000
Concrete column repairs	150	SF	\$ 110	\$ 16,500
Concrete wall repairs	60	SF	\$ 100	\$ 6,000
Waterproofing Improvements				
Traffic bearing membrane on Level 2, 3, and 4	123,000	SF	\$ 5	\$ 615,000
Replace sealant at cove seal joints	1,000	LF	\$ 6	\$ 6,000
Masonry Repairs				
Localized repointing of clay masonry veneer	100	SF	\$ 20	\$ 2,000
Replacement of clay brick masonry units	60	EA	\$ 15	\$ 900
Steel lintel clean and coat	40	LF	\$ 350	\$ 14,000
Subtotal				\$ 1,335,400
General Conditions, Overhead and Profit (15%)				\$ 200,310
Project Contingency (15%)				\$ 200,310
Engineering/Testing/Construction Period Services (10%)				\$ 133,540
Long-Term Recommendations Total				\$ 1,869,560
Grand Total				\$ 3,346,360
*Prices based on current (2021) dollars and do not include increases for inflation (recommended 3 percent per year)				



APPENDIX B. OPINION OF PROBABLE COSTS

Immediate Recommendations (within 1 Year)				
Item Description	Est. Qty.	Units	Unit cost	Est. Cost**
Investigation and repair of two Lower Level columns ‡	1	LS	\$ 50,000	\$ 50,000
Immediate Recommendations Total				\$ 50,000
Near-Term Recommendations (within 1 to 2 Years)				
Item Description	Est. Qty.	Units	Unit cost	Est. Cost**
Localized concrete repairs in slabs, full depth	300	SF	\$ 80	\$ 24,000
Localized concrete repairs in slabs, partial depth topside	500	SF	\$ 45	\$ 22,500
P/T slab tendon splice and materials - allowance	1	LS	\$ 50,000	\$ 50,000
Replace construction joint sealant*	1,500	LF	\$ 6	\$ 9,000
Rout and seal cracks in elevated slabs and replace failed sealant at isolated cracks	500	LF	\$ 6	\$ 3,000
Replace expansion joint seals*	150	LF	\$ 125	\$ 18,750
Install traffic bearing membrane at construction joints, occupied areas, and vehicle entrance lanes	25,000	SF	\$ 5	\$ 125,000
Apply concrete sealer at all elevated levels	147,500	SF	\$ 0.40	\$ 59,000
Inspect and clean drain lines*	1	LS	\$ 15,000	\$ 15,000
Subtotal				\$ 326,250
General Conditions, Overhead and Profit (15%)				\$ 48,938
Project Contingency (15%)				\$ 48,938
Engineering/Testing/Construction Period Services (10%)				\$ 32,625
Near-Term Recommendations Total				\$ 456,750
Long-Term Recommendations (within 3 to 5 Years)				
Item Description	Est. Qty.	Units	Unit cost	Est. Cost
Concrete Structure Repairs				
Localized concrete repairs in slabs, full depth	150	SF	\$ 80	\$ 12,000
Localized concrete repairs in slabs, partial depth	100	SF	\$ 45	\$ 4,500
P/T slab tendon splice and materials - allowance	1	LS	\$ 25,000	\$ 25,000
Partial depth concrete repairs at beams, columns, foundation walls, and stairs and isolated crack repairs at beam-column intersections	1,000	SF	\$ 90	\$ 90,000
Waterproofing Repairs				
Install traffic bearing membrane at drains and concrete repairs	2,500	SF	\$ 8	\$ 20,000
Replace cove sealant at roof level, install cove sealant at other isolated locations	2,500	LF	\$ 6	\$ 15,000
Modify stair tower roof downspouts	1	LS	\$ 2,500	\$ 2,500
Facade, Stair Tower, and Miscellaneous Repairs				
Repair brick masonry cladding - allowance	1	LS	\$ 250,000	\$ 250,000
Repair stairwell storefront assemblies	1	LS	\$ 50,000	\$ 50,000
Stairwell handrail repairs, clean and paint metal surfaces	1	LS	\$ 150,000	\$ 150,000
Subtotal				\$ 619,000
General Conditions, Overhead and Profit (15%)				\$ 92,850
Project Contingency (15%)				\$ 92,850
Engineering/Testing/Construction Period Services (10%)				\$ 61,900
Total				\$ 866,600
* Highest priority of near-term repair items.				
** Prices based on current (2021) dollars, and do not include increases for inflation (recommended 3% per year).				
‡ Pending further analysis during repair design phase; includes engineering, shoring, and masonry allowances.				



City of Birmingham
Parking Garage Structural Assessment Program
Chester Parking Structure

APPENDIX B. OPINION OF PROBABLE COSTS

Near-Term Recommendations (within 1 to 2 Years)				
Item Description	Est. Qty.	Units	Unit cost	Est. Cost**
Localized concrete repairs in slab, full depth	1,500	SF	\$ 80	\$ 120,000
Localized concrete repairs in slab, partial depth	500	SF	\$ 45	\$ 22,500
P/T slab tendon repairs - allowance	1	LS	\$ 75,000	\$ 75,000
Replace pre-molded expansion joint seats (Tier A through Tier 3), including expansion joints near stairs*	1,200	LF	\$ 125	\$ 150,000
Replace control joint sealant at intermediate PT anchorages (N-S joints)*	2,000	LF	\$ 6	\$ 12,000
Rout and seal cracks in elevated slab and replace failed sealant at isolated cracks	750	LF	\$ 6	\$ 4,500
Install traffic bearing membrane at control joints, expansion joints, and PT tendon repair areas	36,000	SF	\$ 5	\$ 180,000
Apply concrete slab sealer on elevated levels	195,000	SF	\$ 0.40	\$ 78,000
Install waterproofing and flashing improvements at pedestrian bridges	2	LS	\$ 8,000	\$ 16,000
Replace deteriorated horizontal lines at floor drains and associated components*	150	LF	\$ 90	\$ 13,500
Inspect and clean lines as part of repair effort*	1	LS	\$ 15,000	\$ 15,000
Remove loose brick coping fragments and verify all brick coping units are secure (not loose)*	1	LS	\$ 1,500	\$ 1,500
Repair brick distress within east stair towers (vertical cracking and outward displacement). Coordinate with waterproofing efforts at pedestrian bridges.	2	LS	\$ 24,000	\$ 48,000
Subtotal				\$ 736,000
General Conditions, Overhead and Profit (15%)				\$ 110,400
Project Contingency (15%)				\$ 110,400
Engineering/Testing/Construction Period Services (10%)				\$ 73,600
Total				\$ 1,030,400
Long-Term Recommendations (within 3 to 5 Years)				
Item Description	Est. Qty.	Units	Unit cost	Est. Cost**
Structural Repairs				
Localized concrete repairs in slab, full depth	250	SF	\$ 80	\$ 20,000
Localized concrete repairs in slab, partial depth	100	SF	\$ 45	\$ 4,500
Partial depth concrete repair at beams, columns, walls, spandrels	1,000	SF	\$ 90	\$ 90,000
Repair composite steel decking and supporting steel framing elements	1	LS	\$ 7,500	\$ 7,500
Waterproofing Repairs				
Replace winged expansion joints at Tier 4 (roof)	275	LF	\$ 125	\$ 34,375
Install traffic bearing membrane outside elevators at Tier 1 and at column bases at inclined columns (small areas)	700	SF	\$ 8	\$ 5,600
Install traffic bearing membrane at drains (small areas)	350	SF	\$ 8	\$ 2,800
Replace remaining joint sealant on elevated levels, including perimeter cove seal.	5,000	LF	\$ 6	\$ 30,000
Crack repairs at foundation walls and perimeter walls where active water infiltration is present	150	LF	\$ 35	\$ 5,250
Add drain in region of standing water on northeast end of Tier 1	1	LS	\$ 4,000	\$ 4,000
Facade, Stairwell and Miscellaneous Repairs				
Replace deteriorated brick coping units in-kind †	900	LF	\$ 100	\$ 90,000
Repoint deteriorated brick mortar	900	SF	\$ 50	\$ 45,000
Clean efflorescence (including exterior facade access)	1	LS	\$ 4,000	\$ 4,000
Rout and seal cracks on slab on ground and replace failed joint sealant (Tier B)	1,500	LF	\$ 6	\$ 9,000
Subtotal				\$ 352,025
General Conditions, Overhead and Profit (15%)				\$ 52,804
Project Contingency (15%)				\$ 52,804
Engineering/Testing/Construction Period Services (10%)				\$ 35,203
Total				\$ 492,835
* Highest priority of near-term repair items.				
**Prices are based on current (2021) dollars.				
† See report discussion for alternative repair options.				



City of Birmingham
Parking Garage Structural Assessment Program
Park Street Parking Structure

OPINION OF PROBABLE COSTS

Near-Term Recommendations (within 1 to 2 Years)				
Item Description	Est. Qty.	Units	Unit cost	Est. Cost**
Replace construction joint sealant*	900	LF	\$ 6	\$ 5,400
Repair column stiffener and moment connection plates*	24	EA	\$ 1,000	\$ 24,000
Inspect and clean drain lines*	1	LS	\$ 15,000	\$ 15,000
Traffic bearing membrane - complete replacement or new installation	142,000	SF	\$ 4	\$ 568,000
Traffic bearing membrane - add'l top coat only	72,000	SF	\$ 2.50	\$ 180,000
Rout and seal cracks in elevated slabs	1,500	LF	\$ 6	\$ 9,000
Replace expansion joint seals at stair towers	100	LF	\$ 125	\$ 12,500
Localized concrete repairs in slab, partial depth topside	2,500	SF	\$ 45	\$ 112,500
Localized concrete repairs in slab, full depth	11,000	SF	\$ 80	\$ 880,000
P/T slab tendon and anchor repair - allowance, approx. 50 repairs	1	LS	\$ 250,000	\$ 250,000
			Subtotal	\$ 2,056,400
			General Conditions, Overhead and Profit (15%)	\$ 308,460
			Project Contingency (15%)	\$ 308,460
			Engineering/Testing/Construction Period Services (10%)	\$ 205,640
			Near-Term Recommendations Total	\$ 2,878,960
Long-Term Recommendations (within 3-5 Years)				
Item Description	Est. Qty.	Units	Unit cost	Est. Cost**
Concrete Structure Repairs				
Localized concrete repairs in slab, partial depth topside	100	SF	\$ 45	\$ 4,500
Localized concrete repairs in slab, full depth	150	SF	\$ 80	\$ 12,000
Structural Steel Repairs				
Repair column base plates and/or anchorages	10	EA	\$ 250	\$ 2,500
Repair exterior pipe column bases	44	EA	\$ 750	\$ 33,000
Repair beam-to-column shear connections	70	EA	\$ 500	\$ 35,000
Repair intermediate vehicle barrier post connections, properly clean and paint	115	EA	\$ 250	\$ 28,750
Replace intermediate vehicle barrier post connections, in-kind	50	EA	\$ 500	\$ 25,000
Repair intermediate vehicle barrier post bases ‡	18	EA	\$ 10,000	\$ 180,000
Replace vehicle barriers, in kind	5	EA	\$ 400	\$ 2,000
Facade Repairs				
Replace facade panels and posts impacted by vehicles	1	LS	\$ 5,000	\$ 5,000
Replace missing anchors at facade base plates	1	LS	\$ 2,500	\$ 2,500
Reattach facade panel tie-backs ‡	1	LS	\$ 200,000	\$ 200,000
Miscellaneous				
Repair stair landings, tread/risers, CMU walls, and brick headers	1	LS	\$ 20,000	\$ 20,000
			Subtotal	\$ 550,250
			General Conditions, Overhead and Profit (15%)	\$ 82,538
			Project Contingency (15%)	\$ 82,538
			Engineering/Testing/Construction Period Services (10%)	\$ 55,025
			Long Term Recommendations Total	\$ 770,350
			Grand Total	\$ 3,649,310
* Highest priority of near-term repair items.				
** Prices based on current (2021) dollars, and do not include increases for inflation (recommended 3% per year).				
‡ Pending further analysis during repair design phase.				

MEMORANDUM

DATE: July 8, 2021

TO: Thomas M. Markus, City Manager and City Commission

FROM: Mary M. Kucharek

SUBJECT: Closed session on July 12, 2021 to discuss written attorney-client privileged communication

INTRODUCTION:

- This matter involves discussion of privileged communications.

LEGAL REVIEW:

- I am requesting closed session on July 12, 2021 pursuant to MCL § 15.268 Sec. 8(h) of the Open Meetings Act to discuss the privileged communications.

FISCAL IMPACT:

- To be discussed in closed session.

ATTACHMENTS:

- Open Meetings Act (Excerpt) Act 267 of 1976, MCL § 15.268 Closed sessions; permissible purposes

RECOMMENDED RESOLUTION:

- To meet in closed session to discuss a written Attorney/Client Privilege communications pursuant to MCL § 15.268(h) of the Open Meetings Act.

applicable. Nothing in this section bars a public body from meeting in emergency session in the event of a severe and imminent threat to the health, safety, or welfare of the public when 2/3 of the members serving on the body decide that delay would be detrimental to efforts to lessen or respond to the threat. However, if a public body holds an emergency public meeting that does not comply with the 18-hour posted notice requirement, it shall make paper copies of the public notice for the emergency meeting available to the public at that meeting. The notice shall include an explanation of the reasons that the public body cannot comply with the 18-hour posted notice requirement. The explanation shall be specific to the circumstances that necessitated the emergency public meeting, and the use of generalized explanations such as "an imminent threat to the health of the public" or "a danger to public welfare and safety" does not meet the explanation requirements of this subsection. If the public body directly or indirectly maintains an official internet presence that includes monthly or more frequent updates of public meeting agendas or minutes, it shall post the public notice of the emergency meeting and its explanation on its website in the manner described for an internet posting in subsection (4). Within 48 hours after the emergency public meeting, the public body shall send official correspondence to the board of county commissioners of the county in which the public body is principally located, informing the commission that an emergency public meeting with less than 18 hours' public notice has taken place. The correspondence shall also include the public notice of the meeting with explanation and shall be sent by either the United States postal service or electronic mail. Compliance with the notice requirements for emergency meetings in this subsection does not create, and shall not be construed to create, a legal basis or defense for failure to comply with other provisions of this act and does not relieve the public body from the duty to comply with any provision of this act.

(6) A meeting of a public body may only take place in a residential dwelling if a nonresidential building within the boundary of the local governmental unit or school system is not available without cost to the public body. For a meeting of a public body that is held in a residential dwelling, notice of the meeting shall be published as a display advertisement in a newspaper of general circulation in the city or township in which the meeting is to be held. The notice shall be published not less than 2 days before the day on which the meeting is held, and shall state the date, time, and place of the meeting. The notice shall be at the bottom of the display advertisement, set off in a conspicuous manner, and include the following language: "This meeting is open to all members of the public under Michigan's open meetings act".

(7) A durational requirement for posting a public notice of a meeting under this act is the time that the notice is required to be accessible to the public.

History: 1976, Act 267, Eff. Mar. 31, 1977;—Am. 1978, Act 256, Imd. Eff. June 21, 1978;—Am. 1982, Act 134, Imd. Eff. Apr. 22, 1982;—Am. 1984, Act 167, Imd. Eff. June 29, 1984;—Am. 2012, Act 528, Imd. Eff. Dec. 28, 2012.

15.266 Providing copies of public notice on written request; fee.

Sec. 6. (1) Upon the written request of an individual, organization, firm, or corporation, and upon the requesting party's payment of a yearly fee of not more than the reasonable estimated cost for printing and postage of such notices, a public body shall send to the requesting party by first class mail a copy of any notice required to be posted pursuant to section 5(2) to (5).

(2) Upon written request, a public body, at the same time a public notice of a meeting is posted pursuant to section 5, shall provide a copy of the public notice of that meeting to any newspaper published in the state and to any radio and television station located in the state, free of charge.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.267 Closed sessions; roll call vote; separate set of minutes.

Sec. 7. (1) A 2/3 roll call vote of members elected or appointed and serving is required to call a closed session, except for the closed sessions permitted under section 8(a), (b), (c), (g), (i), and (j). The roll call vote and the purpose or purposes for calling the closed session shall be entered into the minutes of the meeting at which the vote is taken.

(2) A separate set of minutes shall be taken by the clerk or the designated secretary of the public body at the closed session. These minutes shall be retained by the clerk of the public body, are not available to the public, and shall only be disclosed if required by a civil action filed under section 10, 11, or 13. These minutes may be destroyed 1 year and 1 day after approval of the minutes of the regular meeting at which the closed session was approved.

History: 1976, Act 267, Eff. Mar. 31, 1977;—Am. 1993, Act 81, Eff. Apr. 1, 1994;—Am. 1996, Act 464, Imd. Eff. Dec. 26, 1996.

15.268 Closed sessions; permissible purposes.

Sec. 8. A public body may meet in a closed session only for the following purposes:

(a) To consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought

against, or to consider a periodic personnel evaluation of, a public officer, employee, staff member, or individual agent, if the named individual requests a closed hearing. An individual requesting a closed hearing may rescind the request at any time, in which case the matter at issue must be considered after the rescission only in open sessions.

(b) To consider the dismissal, suspension, or disciplining of a student if the public body is part of the school district, intermediate school district, or institution of higher education that the student is attending, and if the student or the student's parent or guardian requests a closed hearing.

(c) For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement if either negotiating party requests a closed hearing.

(d) To consider the purchase or lease of real property up to the time an option to purchase or lease that real property is obtained.

(e) To consult with its attorney regarding trial or settlement strategy in connection with specific pending litigation, but only if an open meeting would have a detrimental financial effect on the litigating or settlement position of the public body.

(f) To review and consider the contents of an application for employment or appointment to a public office if the candidate requests that the application remain confidential. However, except as otherwise provided in this subdivision, all interviews by a public body for employment or appointment to a public office must be held in an open meeting pursuant to this act. This subdivision does not apply to a public office described in subdivision (j).

(g) Partisan caucuses of members of the state legislature.

(h) To consider material exempt from discussion or disclosure by state or federal statute.

(i) For a compliance conference conducted under section 16231 of the public health code, 1978 PA 368, MCL 333.16231, before a complaint is issued.

(j) In the process of searching for and selecting a president of an institution of higher education established under section 4, 5, or 6 of article VIII of the state constitution of 1963, to review the specific contents of an application, to conduct an interview with a candidate, or to discuss the specific qualifications of a candidate if the particular process of searching for and selecting a president of an institution of higher education meets all of the following requirements:

(i) The search committee in the process, appointed by the governing board, consists of at least 1 student of the institution, 1 faculty member of the institution, 1 administrator of the institution, 1 alumnus of the institution, and 1 representative of the general public. The search committee also may include 1 or more members of the governing board of the institution, but the number does not constitute a quorum of the governing board. However, the search committee must not be constituted in such a way that any 1 of the groups described in this subparagraph constitutes a majority of the search committee.

(ii) After the search committee recommends the 5 final candidates, the governing board does not take a vote on a final selection for the president until at least 30 days after the 5 final candidates have been publicly identified by the search committee.

(iii) The deliberations and vote of the governing board of the institution on selecting the president take place in an open session of the governing board.

(k) For a school board to consider security planning to address existing threats or prevent potential threats to the safety of the students and staff. As used in this subdivision, "school board" means any of the following:

(i) That term as defined in section 3 of the revised school code, 1976 PA 451, MCL 380.3.

(ii) An intermediate school board as that term is defined in section 4 of the revised school code, 1976 PA 451, MCL 380.4.

(iii) A board of directors of a public school academy as described in section 502 of the revised school code, 1976 PA 451, MCL 380.502.

(iv) The local governing board of a public community or junior college as described in section 7 of article VIII of the state constitution of 1963.

(l) For a county veteran services committee to interview a veteran or a veteran's spouse or dependent regarding that individual's application for benefits or financial assistance and discuss that individual's application for benefits or financial assistance, if the applicant requests a closed hearing. This subdivision does not apply to a county veteran services committee voting on whether to grant or deny an individual's application for benefits or financial assistance. As used in this subdivision, "county veteran services committee" means a committee created by a county board of commissioners under section 1 of 1953 PA 192, MCL 35.621, or a soldiers' relief commission created under section 2 of 1899 PA 214, MCL 35.22.

History: 1976, Act 267, Eff. Mar. 31, 1977;—Am. 1984, Act 202, Imd. Eff. July 3, 1984;—Am. 1993, Act 81, Eff. Apr. 1, 1994;—Am. 1996, Act 464, Imd. Eff. Dec. 26, 1996;—Am. 2018, Act 467, Eff. Mar. 27, 2019;—Am. 2021, Act 31, Imd. Eff. June 24, 2021.



B I R M I N G H A M R O A S T

To our fellow City Commissioners,

My name is Jesse Dhillon, proud owner at Birmingham Roast, and I am reaching out on behalf of our establishment. We are grateful to be able to serve this community and represent it with true pride and honor. I am aware of the recent changes being implemented with the removal of extended dining and temporary structures by the deadline of July 14th, 2021. It is my ask, to be heard at this Monday's meeting for the following reasons:

1. When we went through the process initially, it was our goal to make an investment in something that we were proud of and would be able to keep for seasons to come in beautiful Birmingham. During this process we did not expand on our footprint for our patio nor have we added any seating in addition to what was already authorized. We simply made our outdoor area tolerable in the frigid Michigan winters and barrable in the blistering Michigan summers (more so rain as of late)
2. The existing structure is standalone, well-engineered, and nicely designed to fit within the already approved patio footprint, and its sole purpose provides shade and comfort no matter what season is upon us
3. Our awning has received various compliments from customers within our community, other local businesses & property owners. In addition, it has allowed a unique outdoor dining experience that our city has not offered in the past

It was a big undertaking at the time of implementation and I am currently in the process of filling out the proper paperwork to have this reviewed with the Planning Division for long term placement. My ask to our community leaders and fellow commissioners is; may I please be granted a review period while I navigate through the proper channels to achieve a long-term solution for keeping our awning in place.

It is not feasible for us as a small business to tear down this awning and then re-set it up without causing additional time, resources, cost, and most importantly damage to the existing infrastructure. I am committed to achieving the proper long-term approval and in doing so please allow me adequate time with the structure in place and I will deliver on everything that is needed on my end as a small business owner. Please consider my request and I am very appreciative of everyone's understanding and hard work/efforts in these times. I look forward to seeing you all on Monday!

Regards,

Jesse Dhillon

Jesse Dhillon
Birmingham Roast
info@birminghamroast.com
248-342-5876



NOTICE OF INTENTION TO APPOINT TO THE ADVISORY PARKING COMMITTEE

At the regular meeting of Monday, August 23, 2021, the Birmingham City Commission intends to appoint three regular members to the Advisory Parking Committee to serve three-year terms expiring September 20, 2024 (a BSD member, a resident, and a small retail owner), and the City Commission intends to appoint one regular member to serve the remainder of a three year term expiring September 4, 2023 (a restaurant owner).

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, August 18, 2021. 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 voter on appointments.

Committee Duties

The Advisory Parking Committee shall provide guidance to the City Commission in the management of Birmingham's Auto Parking System. The Committee shall recognize parking requirements of the CBD and fairly assess the costs to users. It will provide for attractive, maintained and safe facilities.

Criteria/Qualifications of Open Position	Date Applications Due (by noon)	Date of Interview
<p>The majority of the members shall be residents.</p> <ul style="list-style-type: none">• One member shall be a large retail representative in parking assessment district.• One member shall be a downtown employee member.• One member shall be a restaurant owner within the parking assessment district.• The alternate members shall own property, own a business or work in the parking assessment district.	08/18/2021	8/23/2021

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.

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

794 OLD WOODWARD, LLC, a Michigan
limited liability company, and WINESENSE
d/b/a BIRMINGHAM WINE SHOP, LLC, a
Michigan limited liability company,

Appellants,

V

CITY OF BIRMINGHAM and CITY OF
BIRMINGHAM BOARD OF ZONING
APPEALS,

Appellees.

Case No. 2021-186823-AA

Judge Shalina Kumar

GREGORY K. NEED, ESQ. (P28993)
ADKISON NEED ALLEN
& RENTROP, PLLC
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BEIER HOWLETT, PC
Attorney for Appellees
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Troy, MI 48084-3103
(248) 645-9400
mkucharek@bhlaw.us.com

CONSENT JUDGMENT

AT A SESSION of said Court held in the Courthouse in the
City of Pontiac, County of Oakland, State of Michigan, on
6/29/2021

PRESENT: SHALINA KUMAR
CIRCUIT COURT JUDGE

INFORMATION ONLY

Recitals

- A. This Consent Judgment pertains to property located at 798 N. Old Woodward, Suite B, Birmingham, Michigan (the “Subject Property”);
- B. Appellants 794 Old Woodward, LLC (“794”) and Winesense, LLC d/b/a Birmingham Wine Shop (“Birmingham Wine”) filed an application with the City of Birmingham Board of Zoning Appeals (“BZA”) on January 12, 2021, requesting a use variance for the Subject Property.
- C. Birmingham Wine is currently leasing the Subject Property from 794. The lease currently has a termination date of February 28, 2025, and includes two 5-year renewal options (the “Lease”);
- D. The requested use variance would allow continuation of the existing use of the Subject Property as a retail business selling alcoholic beverages to the public for off-premise consumption (the “Retail Use”);
- E. The Subject Property is a portion of the building located at 798 N. Old Woodward, Birmingham, Michigan (the “798 Building”). The legal description of the Subject Property is attached as Exhibit “A”;
- F. On February 9, 2021, the BZA heard Appellants’ appeal. A motion to approve a use variance with conditions was defeated;
- G. The minutes of the February 9, 2021 BZA meeting were approved by the BZA on March 9, 2021;

H. Appellants timely filed a Claim of Appeal with this Court on March 10, 2021, appealing the denial of the use variance; and

I. The parties wish to resolve the appeal on the terms and conditions found in this Consent Judgment.

The Court noting approval by the parties to entry of the Consent Judgment and otherwise being fully advised,

IT IS ORDERED and ADJUDGED as follows:

1. Appellants shall be allowed to use the Subject Property for the Retail Use as defined in Recital C, subject to the conditions found in this Consent Judgment.

2. By entry of this Consent Judgment the Retail Use shall be deemed to have all permits and approvals as required by applicable City ordinances to operate. The City shall issue an occupancy permit and merchant license to Birmingham Wine conditioned upon compliance with the terms of this Consent Judgment.

3. The rights granted by this Consent Judgment and the continued operation of the Retail Use are subject to the following:

(a) The rights granted are for the 798 Building only and cannot be transferred to any other location within the City.

(b) This Consent Judgment applies only to operation of the Retail Use by Winesense, LLC. No assignment of the rights under this Consent Judgment shall be permitted, without the written consent of the City, which approval may be denied by the City in its discretion for any reason.

- (c) The Retail Use shall not be physically expanded beyond its current location within 798 N. Old Woodward, Suite B.
- (d) The Subject Property shall remain in its current configuration and shall not be remodeled without the written consent of the City, approval for which may be denied by the City for any reason. Notwithstanding the preceding sentence, Appellants may perform standard repair and maintenance work within the Subject Property, including without limitation refinishing the floor, painting the walls, renovating the existing back deck, replacing the sink, updating lighting, and replacing the front door.
- (e) Hélène Fertal shall remain the majority member of Winesense, LLC, and may not sell or assign her interests in the LLC to any other individuals or entity, except that an assignment of any or all of her membership interest to her father, Jean-Jacques Fertal, shall be permitted. In the event of any such assignment, Jean-Jacques Fertal shall be bound by all the terms and provisions of this Consent Judgment.
- (f) Birmingham Wine shall, at all times, hold any and all licenses required under the Michigan Liquor Control Code, as may be amended in the future, for the Retail Use.
- (g) The Retail Use shall continue, as primarily a retail business selling wine to the general public, essentially as it exists as of the date of entry of this Consent Judgment, except that Birmingham Wine shall be allowed in the

future to sell food items for off-premise consumption such as would typically be allowed within an establishment selling alcoholic beverages.

- (h) This Consent Judgment shall expire upon the termination of the Lease and any extensions. Upon termination, this Consent Judgment shall be of no further force and effect

4. This Consent Judgment is intended to resolve a disputed claim and to avoid the costs and uncertainties of litigation. By entering into this Consent Judgment neither party is making any admission or agreement as to claims and defenses raised, or which may have been raised, by the other party.

5. Nothing in this Consent Judgment shall preclude Appellants, or either of them, from applying to the City for rezoning or conditional use approval for any other uses within the 798 Building.

6. This Consent Judgment constitutes the entire agreement between the parties, integrating all terms and conditions set forth herein and superseding all negotiations or previous agreements between the parties.

7. This Consent Judgment shall be construed according to the laws of the State of Michigan, with enforcement proceedings brought only in this court. The prevailing parties in any such proceeding shall be entitled to recover all costs, attorney fees, and necessary disbursements incurred in connection with the litigation.

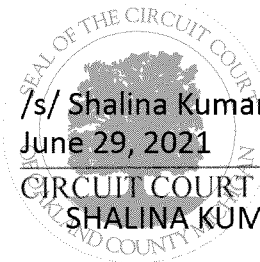
8. This Consent Judgment is binding on the parties, their heirs, successors, and any permitted assigns, and may only be amended by mutual consent.

9. A copy of this Consent Judgment shall be recorded at the office of the Oakland County Register of Deeds.

10. The Court shall retain jurisdiction of this matter for the sole purpose of enforcing compliance.

11. Except as provided in paragraph 7, each party shall bear its own attorney fees and court costs for this litigation.

12. Pursuant to MCR 2.602, this Consent Judgment resolves the last pending claim and closes the case.



LL

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794 N. Old Woodward, LLC and
Winesense, LLC d/b/a Birmingham Wine Shop
v City of Birmingham Board of Zoning Appeals
Case No. 2021-186823-AA
Consent Judgment
Page 7

Winesense, LLC
d/b/a Birmingham Wine Shop

By: Helene Fertal
Its: Sole Member

Jean-Jacques Fertal

794 Old Woodward, LLC

By: Hunter Korth
Its: Manager



Parking reform could reenergize downtowns – here’s what happened when Buffalo changed its zoning rules

June 10, 2021 6:36am EDT

Surface parking in downtown San Jose, California. Image: Ben/SHUTTERSTOCK.COM

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130

For urban planners, parking rules established decades ago have become a contentious 21st-century challenge. Parking takes up about one-third of land area in U.S. cities; nationwide, there are an estimated eight parking spaces for every car.

In 2017 Buffalo, New York, became the first U.S. city to stop requiring development projects to include at least a minimum amount of parking. Other cities followed, including Hartford, Connecticut, and Santa Monica, California. Many cities are now considering reforms, and a bill pending before the California Legislature would remove minimums for new buildings near public transportation across the Golden State.

But despite growing support for parking reform, there is little data showing how such changes affect urban development. As part of our work on urban planning, we quantified changes in construction during the first two years after Buffalo adopted its new “Green Code,” repealing minimum parking requirements citywide.

We found that the Green Code is changing Buffalo’s urban form in ways that had been difficult, if not impossible, under former zoning rules. As local leaders seek to reenergize the urban core and spark a post-industrial renaissance, public transit is now a priority. Inactive storefronts, underutilized historic structures and former industrial buildings are being rehabilitated, and vacant parcels are being developed in fragmented neighborhoods.

We bring the expertise of academics to the public.

About our team

With rapid post-World War II development and an explosion in car ownership, cities and towns across the U.S. introduced minimum parking requirements during the 1950s. These zoning ordinances required new buildings to include off-street parking lots. The mandates remain nearly universal across America, raising real estate prices, bringing more cars into cities, increasing air pollution and carbon emissions and lowering use of public transportation.

Parking standards were created arbitrarily, without adequate data. Zoning laws usually require one parking space per apartment, one per 300 square feet of commercial development and one per 100 square feet for restaurants. For context, a parking space measures 160 square feet on average, plus additional area for driveways and driving lanes, so an eatery’s parking lot may be three times the size of its dining area.

Since the 2005 publication of UCLA urban planning scholar Donald Shoup’s “The High Cost of Free Parking,” many people have begun to question the amount of precious urban land currently used for storing cars. Planners, developers, urbanists and nonprofits are now offering market-driven strategies to realign off-street parking supply and demand.

Prioritizing cars limits space for housing, businesses, parks and other land uses that benefit citizens and contribute to local tax bases. It also increases construction costs, which are then passed on to tenants and buyers. In Los Angeles, for example, each parking space costs developers at least US\$50,000 – a price tag that has scuttled some development projects.

In San Jose, California, repealing minimum parking requirements is expected to lower real estate prices, bringing more cars into cities, increasing air pollution and carbon emissions and lowering use of public transportation.

Parking standards were created arbitrarily, without adequate data. Zoning laws usually require one parking space per apartment, one per 300 square feet of commercial development and one per 100 square feet for restaurants. For context, a parking space measures 160 square feet on average, plus additional area for driveways and driving lanes, so an eatery’s parking lot may be three times the size of its dining area.

Authors



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 Adjunct Assistant Professor, Department of Urban and Regional Planning, University at Buffalo

Disclosure statement

The authors do not work for, consult, own shares in or receive funding from any company or organization that would benefit from this article, and have disclosed no relevant affiliations beyond their academic appointment.

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We believe in the free flow of information

Since the 2005 publication of UCLA urban planning scholar Donald Shoup's "[The High Cost of Free Parking](#)," many people have begun to question the amount of precious urban land currently used for storing cars. Planners, developers, urbanists and nonprofits are now offering [market-driven](#) strategies to [realign off-street parking supply and demand](#).

Prioritizing cars limits space for housing, businesses, parks and other land uses that benefit citizens and contribute to local tax bases. It also increases construction costs, which are then passed on to tenants and buyers. In [Los Angeles](#), for example, each parking space costs developers at least [US\\$40,000](#) – a price tag that has scuttled some development projects.

In 2016 Portland, Oregon, [waived parking requirements](#) for affordable housing developments, showing how zoning changes could make urban housing [more available and affordable](#).



Buffalo's natural experiment in parking reform

Buffalo's long-standing zoning code, [established in 1953](#), reflected the emergence and dominance of the automobile as America's transportation mode of choice. Inflexible minimums ensured plentiful parking at bowling alleys, dance halls and skating rinks. The code did not ease parking provisions for mixed-use development or offer flexibility to reduce parking at small businesses providing neighborhood necessities.

The result: Nearly half of downtown Buffalo was converted to parking lots. Locals joked about parking: "If the goal was to destroy downtown, we only halfway succeeded."

Our review of the Green Code's initial effects found that from April 2017 to April 2019, the amount of off-street parking included in new building projects varied widely. Developers of 14 sites mixing retail space and residential units incorporated 53% fewer parking spaces than required under previous zoning. Four added no parking, opting instead to [share parking](#) with other properties.





Main Street in Buffalo, New York, with light rail running down the center. [David Housh/istockphoto](#). CC BY

In contrast, many single-use developers maintained or exceeded former parking requirements. Despite city leaders' ambitions for more accessible transportation options, the car remains king in development plans for office buildings and townhomes, hampering reform in a region characterized by [suburban sprawl](#) and travel habits based on car ownership.

Despite these challenges, we found that developers of 36 major projects – including two large housing complexes targeted to graduate students, with over





Main Street in Buffalo, New York, with light rail running down the center. [Source: UrbanismLab](#)  

In contrast, many single-use developers maintained or exceeded former parking requirements. Despite city leaders' ambitions for more accessible transportation options, the car remains king in development plans for office buildings and townhomes, hampering reform in a region characterized by [suburban sprawl](#) and travel habits based on car ownership.

Despite these challenges, we found that developers of 36 major projects – including two large housing complexes targeted to graduate students, with over 200 units apiece – included 47% fewer parking spaces than previous zoning required. One-third of the developments in our study made parking an amenity, charging user fees rather than bundling it into rent or purchase prices. Overall, **Rethinking urban landscapes**

Zoning is just [one piece of a larger urban design puzzle](#) that also must factor in location, market demand for parking and land use priorities. Good public transportation is also key to eliminating parking capacity. The Biden administration has signaled a [commitment to public transportation](#).

Though development slowed during the COVID-19 pandemic, the desire for livable urban places has not. Nor has the need for affordable housing. U.S. Rep. Alexandria Ocasio-Cortez has introduced a bill that highlights the need for [equitable development](#) to address the nation's affordable housing crisis. It would withhold funds from development in areas that require parking minimums.

Meanwhile, parking reform is gaining momentum. In May 2021 Minneapolis struck down [minimum parking requirements for new development](#) as part of its climate and greenhouse gas emission goals. From [San Diego](#) and [Salt Lake City](#) to [Raleigh, North Carolina](#), and [Richmond, Virginia](#), cities are considering similar changes. In the future, U.S. cities could look quite different, designed for citizens rather than parked cars.

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Joel Abrams
Manager of Outreach



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**STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION
NOTICE OF HEARING
FOR THE ELECTRIC CUSTOMERS OF
DTE ELECTRIC COMPANY
CASE NO. U-20866**

CITY CLERK
CITY OF BIRMINGHAM
P.O. BOX 3001, 151 MARTIN STREET
BIRMINGHAM, MI 48012

- DTE Electric Company requests Michigan Public Service Commission's approval of the Reconciliation of its Energy Waste Reduction Plan Expenses for the Plan Year 2020.
- The information below describes how a person may participate in this case.
- You may call or write DTE Electric Company, One Energy Plaza, 570 SB, Detroit, MI 48226, (800) 477-4747, for a free copy of its application. Any person may review the documents at the offices of DTE Electric Company.
- A pre-hearing will be held:

DATE/TIME: Tuesday, July 20, 2021 at 10:00 AM

BEFORE: Administrative Law Judge Dennis Mack

LOCATION: Video/Teleconferencing

PARTICIPATION: Any interested person may participate. Persons needing any assistance to participate should contact the Commission's Executive Secretary at (517) 284-8090, or by email at mpscdockets@michigan.gov in advance of the hearing.

The Michigan Public Service Commission (Commission) will hold a pre-hearing to consider DTE Electric Company's (DTE Electric) May 28, 2021 application requesting the Commission to: 1) determine that DTE Electric's reconciliation for its 2020 Energy Waste Reduction (EWR) plan year is just and reasonable, and that it meets all relevant requirements of Act 295 as amended by Act 342; 2) approve DTE Electric's reconciliation for the 2020 EWR plan year, the performance incentives, and the associated proposed tariffs; 3) approve the necessary accounting authority as proposed by DTE Electric; and 4) grant such other and further relief.


INFORMATION ONLY

All documents filed in this case shall be submitted electronically through the Commission's E-Dockets website at: michigan.gov/mpscedockets. Requirements and instructions for filing can be found in the User Manual on the E-Dockets help page. Documents may also be submitted, in Word or PDF format, as an attachment to an email sent to: mpscedockets@michigan.gov. If you require assistance prior to e-filing, contact Commission staff at (517) 284-8090 or by email at: mpscedockets@michigan.gov.

Any person wishing to intervene and become a party to the case shall electronically file a petition to intervene with this Commission by July 13, 2021. (Interested persons may elect to file using the traditional paper format.) The proof of service shall indicate service upon DTE Electric Company's attorney, David S. Maquera, One Energy Plaza, Detroit, MI 48226.

The prehearing is scheduled to be held remotely by video conference or teleconference. Persons filing a petition to intervene will be advised of the process to participate in the hearing.

Any person wishing to participate without intervention under Mich Admin Code, R 792.10413 (Rule 413), or file a public comment, may do so by filing a written statement in this docket. The written statement may be mailed or emailed and should reference Case No. **U-20866**. Statements may be emailed to: mpscedockets@michigan.gov. Statements may be mailed to: Executive Secretary, Michigan Public Service Commission, 7109 West Saginaw Hwy., Lansing, MI 48917. All information submitted to the Commission in this matter becomes public information, thus available on the Michigan Public Service Commission's website, and subject to disclosure. Please do not include information you wish to remain private. For more information on how to participate in a case, you may contact the Commission at the above address or by telephone at (517) 284-8090.

Requests for adjournment must be made pursuant to Michigan Office of Administrative Hearings and Rules R 792.10422 and R 792.10432. Requests for further information on adjournment should be directed to (517) 284-8130.

A copy of DTE Electric Company's application may be reviewed on the Commission's website at: michigan.gov/mpscedockets, and at the office of DTE Electric Company. For more information on how to participate in a case, you may contact the Commission at the above address or by telephone at (517) 284-8090.

Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; 1919 PA 419, as amended, MCL 460.54 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; 2008 PA 295, MCL 460.1001 et seq., and Parts 1 & 4 of the Michigan Office of Administrative Hearings and Rules, Mich. Admin Code, R 792.10106 and R 792.10401 through R 792.10448.