

**REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, SEPTEMBER 13, 2017
7:30 PM
CITY COMMISSION ROOM
151 MARTIN STREET, BIRMINGHAM**

- A. Roll Call
- B. Review and Approval of the Minutes of the regular meeting of **August 23, 2017**
- C. Chairpersons' Comments
- D. Review of the Agenda

- E. Old Business
 - 1. **34965 Woodward – Mixed Use Building (former Peabody's Restaurant)**
 - Request for approval of the Preliminary Site Plan to allow a new five story mixed use building to be constructed (**Postponed from August 23, 2017**).

- F. Rezoning Request
 - 1. **191 N. Chester – First Church of Christ, Scientist** – Request for rezoning from TZ1 to TZ2 (Transitional Zoning) to allow the adaptive reuse of the existing building for office use.

- G. Study Sessions
 - 1. **Economic Development Liquor License Boundaries**
 - 2. **Bistro Regulations**
 - 3. **Renovation and New Construction of Commercial and Mixed Use Buildings**

- H. Miscellaneous Business and Communications:
 - a. Communications
 - b. **Administrative Approval** Correspondence
 - c. Draft Agenda for the next Regular Planning Board Meeting (**September 27, 2017**)
 - d. Other Business

- I. Planning Division Action Items
 - a. Staff Report on Previous Requests
 - b. Additional Items from tonight's meeting

- J. Adjournment

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**CITY OF BIRMINGHAM
PLANNING BOARD ACTION ITEMS
OF WEDNESDAY, AUGUST 23, 2017**

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<p>OLD BUSINESS Preliminary Site Plan Review</p> <p>1. 2010 Cole St. New mixed-use building (partially demolished building) Request for Preliminary Site Plan Review to allow the construction of a new three-story mixed-use building (postponed from July 26, 2017)</p> <p>Motion by Mr. Share Seconded by Mr. Koseck to approve the Preliminary Site Review for 2010 Cole St. including setting the front setback to match the front setback of the adjacent pre-existing building to the east, subject to the following conditions:</p> <p>1) The applicant provide a floor plan indicating the number of rooms within the two residential units to ensure all density requirements have been met; 2) The applicant verify that the first story floor-to-ceiling finished height is at least 12 ft. or obtain a variance from the Board of Zoning Appeals; 3) The applicant submit rooftop plans and specification sheets for all proposed rooftop mechanical units and screening at Final Site Plan; 4) The applicant submit a detailed landscape plan with the size of all plant material at the time of planting to verify size requirements have been met including landscaping on the east parking lot; 5) The applicant add two street trees and four street lights or obtain a variance from the Board of Zoning Appeals; 6) The applicant submit a photometric plan and specification sheets for all proposed light fixtures at Final Site Plan Review; 7) The applicant provide a full list of building and screenwall materials and specifications sheets, as well as glazing calculations at Final Site Plan Review; 8) The applicant comply with the requirements of all City Departments; and 9) The applicant add bike parking to the site.</p> <p>Motion carried, 4-2.</p> <p>2. 34965 Woodward Ave. (former Peabody's Restaurant) Request for approval of the Preliminary Site Plan to allow a new five-story mixed-use building to be constructed (postponed from July 26, 2017)</p>	<p>2</p> <p>4</p> <p>5</p> <p>6</p>

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<p>Motion by Mr. Share Seconded by Mr. Williams to postpone the application for Preliminary Site Plan for 34965 Woodward Ave. to September 13, 2017 and to suspend the rules to hear a site plan at that meeting.</p>	11
<p>Motion carried, 7-0.</p>	11
<p>FINAL SITE PLAN AND DESIGN REVIEW</p>	
<p>1. 277 Pierce St. (former Varsity Shop) Request for approval of a five-story mixed-use building with first-floor retail</p>	11
<p>Motion by Mr. Koseck Seconded by Mr. Boyle to approve the Final Site Plan and Design Review for 277 Pierce St. subject to the following conditions: 1) The applicant provide noise and vibration mitigation strategies prior to obtaining a Building Permit; 2) The applicant obtain a variance from the BZA to allow a commercial use above a residential use or eliminate the residential use in the lower level of the building; 3) Comply with the requests of all City Departments; and 4) The applicant reduce the light levels 5 ft. out from the property lines along Pierce and Merrill Sts. and obtain administrative approval, or obtain a variance from the BZA.</p>	13
<p>Motion carried, 7-0.</p>	13
<p>2. 344 Hamilton Row (Seven Greens Salad Co.) Final Design Review for approval of an outdoor dining platform in the street</p>	13
<p>Motion by Ms. Whipple-Boyce Seconded by Mr. Williams to approve the Final Design Review application for 344 Hamilton Row with the following conditions: 1) The applicant must receive a variance from the BZA in order to extend beyond their own storefront, or cut the platform back to be only in front of their storefront for administrative approval; 2) The applicant must provide a trash receptacle in the outdoor dining area; and 3) Address the issues raised by City Departments.</p>	14

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sessions.	
Motion carried, 7-0.	15

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, AUGUST 23, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on August 23, 2017. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Vice- Chairperson Gillian Lazar, Janelle Whipple-Boyce, Bryan Williams; Alternative Board Member Daniel Share

Absent: Alternate Board Members Lisa Prasad; Student Representatives Ariana Afrakhteh, Isabella Niskar

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

08-159-17

**APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING
OF AUGUST 9, 2017**

Ms. Whipple-Boyce made a change:
Page 9 - Second paragraph, third sentence, replace "to not allow" with "to allow."

Motion by Ms. Lazar

Seconded by Mr. Koseck to approve the Minutes of the Regular Planning Board Meeting of August 9, 2017 as amended.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Abstain: None

Absent: None

08-160-17

CHAIRPERSON'S COMMENTS (none)

08-161-17

APPROVAL OF THE AGENDA (no change)

08-162-17

OLD BUSINESS

Preliminary Site Plan Review

1. 2010 Cole St.

New mixed-use building (partially demolished building)

Request for Preliminary Site Plan Review to allow the construction of a new three-story mixed-use building (postponed from July 26, 2017)

Ms. Lazar recused herself due to a familial relationship. Chairman Clein recused himself from this and the next item on the agenda for business reasons. Mr. Share joined the board.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Koseck for Mr. Boyle to take the gavel as acting chairman.

Motion carried, 6-0.

VOICE VOTE

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

Nays: None

Absent: Prasad

Ms. Ecker described the subject site as a 0.77 acre parcel. The applicant has demolished a portion of an existing commercial building and is proposing to expand the first story and construct two additional stories above. The proposed first story of the building will consist of retail, fitness, and enclosed private residential parking spaces; the second story will be office space; and the third story will contain two residential units, giving the proposed building a grand total of 25,603 sq. ft.

On April 26, 2017, the applicant appeared before the Planning Board for a CIS and Preliminary Site Plan review. A motion to accept the CIS for 2010 Cole St. was made and passed with seven conditions. At this time the applicant has submitted soil boring information at the specific locations requested by the Planning Division, but none of the other six conditions of approval have been met regarding the CIS.

The board postponed the Preliminary Site Plan based on concerns about vehicle circulation in the parking lots (dead end lots causing cars to reverse back out onto Cole St.) and a request from the Planning Board that the longer side of the building be rotated to run along Cole St. instead of facing the parking lot on the east portion of the property. The site as proposed does not provide adequate parking for a restaurant. The applicant stated that a restaurant will not occupy the first floor of the development.

On June 28, 2017, the applicant appeared before the Planning Board with a revised site plan that provided two turnaround areas for vehicles at the south end of each of the parking lots to address the circulation issues raised by the Planning Board. Board members discussed the proposed changes and several members expressed a desire to have full circulation around the south end of the building to ensure that drivers would not have to back up through the parking lots to get back to Cole St. Also they felt that vehicles would end up parking in the turnaround area. Board members also expressed concern again about the orientation of the building towards the interior of the lot, and not along the street frontage. The board advised that they needed to hear a strong financial justification as to why they should approve the proposed orientation of the building which is not as recommended in the Eton Rd. Corridor Plan. After much discussion, the matter was postponed to August 23, 2017. There have been no revisions to the plan since last time. The owner is present to provide some financial justification as to why the changes, at least as to the orientation of the building, cannot be physically supported.

Mr. Share was concerned that all the parking lot landscaping is on the west side and there is none on the east side.

Mr. Jason Krieger with Krieger Klatt Architects was present along with Mr. Mark Mitchell, the owner and developer of the property. Mr. Krieger noted they tried to design the building in order to minimize any disturbance on the site because of the contaminants. They feel their plan is the best suited design for this site and to make the project financially feasible.

Mr. Mark Mitchell, 102 Pierce, said he bought the site in order to develop it and make Cole St. look a little better. The current building has been sealed from contaminants. Turning the building around would require a substantial environmental cleanup that would cost \$1 million or more. It would be difficult to get a return on that. He also would like to have the parking go around the back of the building but when he takes three stories off the building the economics just don't work. He is happy to take a couple more parking spots out to create a turn around so that cars pulling in don't have to back out.

Mr. Mitchell noted for Mr. Share that all of the contamination is currently encapsulated. They would re-encapsulate it again to make all the levels the same for the proposed structure. Also, they can modify the site plan to include some landscaping on the east side of the parking lot. Mr. Krieger replied to Ms. Whipple-Boyce's inquiry by saying the parking on the east side of the building will likely be for employees or guests. The primary parking for the public will be on the west side.

Mr. Koseck was concerned with the safety aspect of the parking and turnaround. Mr. Mitchell replied that the economic cleanup of taking 8 ft. off the rear wall of the building would cost several hundred thousand dollars. Tenants would already have to pay \$255/sq. ft. as the building currently sits. Then there would be the economics of not having the additional retail space or the office on the first and second floors. Mr. Koseck noted the driveway on the east side is right up against the building and doors exit out from the building directly onto the driveway.

The Acting Chairman called for comments from the audience at 8 p.m.

Mr. Greg Bogart, Sr. Vice-President of Colliers International, stated that if any more economic changes are made, this project will not make any sense. Once people see this building, he thinks it will spur other development in the area.

Mr. Jeffares expressed his thought that although this proposal is not absolutely the panacea of what they are looking for, it seems to make sense for the site.

Ms. Whipple-Boyce said she would love to see this development happen in this part of town; but she is disappointed that the building wasn't moved up to the street. However as a compromise she can accept the placement of the building. Nonetheless, she is struggling with the circulation of the traffic. She genuinely doesn't believe that the hatched lines will work as a place for people to turn around safely and get back out. What she does believe is that people will park in the hatched spots when they can't find anything else and vehicles will have no alternative other than to back out that long distance. What she would really like to see is the back end of the building shaved off so cars can drive behind it. She cannot support the creation of an unsafe condition on the south side.

Mr. Share recognized that with environmentally challenged sites like this, if development is to occur compromises will have to be made.

Motion by Mr. Share

Seconded by Mr. Koseck to approve the Preliminary Site Review for 2010 Cole St. including setting the front setback to match the front setback of the adjacent pre-existing building to the east subject to the following conditions:

- 1) The applicant provide a floor plan indicating the number of rooms within the two residential units to ensure all density requirements have been met;**
- 2) The applicant verify that the first story floor-to-ceiling finished height is at least 12 ft. or obtain a variance from the Board of Zoning Appeals;**
- 3) The applicant submit rooftop plans and specification sheets for all proposed rooftop mechanical units and screening at Final Site Plan;**
- 4) The applicant submit a detailed landscape plan with the size of all plant material at the time of planting to verify size requirements have been met including landscaping on the east parking lot;**
- 5) The applicant add two street trees and four street lights or obtain a variance from the Board of Zoning Appeals;**
- 6) The applicant submit a photometric plan and specification sheets for all proposed light fixtures at Final Site Plan Review;**
- 7) The applicant provide a full list of building and screen wall materials and specifications sheets, as well as glazing calculations at Final Site Plan Review;**
- 8) The applicant comply with the requirements of all City Departments; and**
- 9) The applicant add bike parking to the site.**

There were no comments from members of the public.

Mr. Koseck announced he cannot support the motion. There has been significant development in the Rail District and it has complied with the Zoning Ordinance. The

fundamental thing is that the safety issue scares him. The only argument he hears about taking any square footage off the building is financial.

Acting Chairman Boyle noted the board cannot verify the developer's financial statement and they have to take his word. Also, there is the concern that the building as configured may result in a circulation challenge that is certainly not satisfying to board members.

Mr. Mitchell stated he cannot take a slice off the rear to provide circulation that goes one way around the building. He said it would take \$32,400 off the rental income and that doesn't calculate in the increased environmental costs because of disturbing the ground. They are currently dealing with parking without the 8 ft. being taken off the building and there is no way to turn around. There is a utility easement that prevents a driveway easement from looping around the back of the adjacent building to the south.

Mr. Krieger explained the driveway to the west is over 22 ft. and easy to back out of. The spaces would be signed and policed by building management. In order to make a one-way drive, 10 ft. would have to come off the back of the building. The only issue with one-way is they would have to move their dumpsters to the east or the west and that would take out more parking.

Motion carried, 4-2.

ROLLCALL VOTE

Yeas: Share, Williams, Boyle, Jeffares

Nays: Koseck, Whipple-Boyce

Recused: Clein, Lazar

Absent: Prasad

Acting Chairman Boyle asked the applicant to spend quite a lot of time looking at the site plan and thinking about how they might use the three extra spaces to reach some of the challenges that Mr. Koseck has correctly raised about the safety and circulation.

08-163-17

Vice-Chairperson Lazar rejoined the board and took over the gavel.

2. 34965 Woodward Ave. (former Peabody's Restaurant) Request for approval of the Preliminary Site Plan to allow a new five-story mixed-use building to be constructed (postponed from July 26, 2017)

Mr. Baka explained the petitioner has submitted an application for Preliminary Site Plan Review to construct a five-story building in the B4/D4 Zoning District. The property is located on the west side of Woodward Ave. on Peabody St. at the former location of Peabody's Restaurant and the former Art & Frame Station.

On July 26, 2017 the Planning Board reviewed the CIS & Preliminary Site Plan application for 34965 Woodward Ave. At that time, the board requested that the applicant provide additional information regarding the interfacing of the proposed

building with the two existing buildings on each side and how they will abut. Also, the board requested that the applicant provide additional renderings of the new building in context with the adjacent buildings. In addition, postponement was granted to provide the applicant time to engage with the neighboring property owners in light of the public comments made at the meeting. The applicant has now provided new details and renderings in addition to the previously submitted plans in order to supply additional information for the Planning Board to consider.

Design Review

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

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

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

Motion by Mr. Williams

Seconded by Mr. Jeffares to receive and file the following correspondence:

- **E-mail dated August 17 from Christopher Longe with attachments;**
- **E-mail dated August 22 from Richard Rassel;**
- **E-mail dated August 23 from Clinton Baller;**
- **Letter dated August 21 addressed to Patti Owens from Bailey Schmidt. LLC;**
- **Letter dated August 21 addressed to Patti Owens from Aura Pinkster;**
- **Letter dated August 22 from Hobbs & Black Architects;**
- **Letter dated August 22 from Alan M. Greene, Dykema Gossett PLLC;**
- **Letter dated August 23 from Timothy Currier, Beier Howlett.**

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Recused: Clein

Absent: Prasad

Mr. Chris Longe, Architect for the redevelopment of the Peabody site, came forward. He showed their building in context with the entire block. Also, he showed how their building would interface with both the north and the south facades of the adjacent buildings. The buildings roughly equate in terms of their overall height and floor height. The earth retention system tiebacks into the Peabody property that were used for construction of the Greenleaf Trust Building were depicted. The intention with their

building is that someone can walk from Woodward Ave. through a leased space all the way to Peabody St. He included a number of pictures showing local conditions where buildings are abutting.

Mr. Longe noted they made efforts to meet with their neighbors as suggested at the last meeting. They have done that to the extent of meeting with the Balmoral folks, but because of scheduling issues there has not been a meeting with the people from the Catalyst building to the north.

Vice Chairperson Lazar called for comments from the public at 8:35 p.m.

Mr. Steve Simona, 32820 Woodward Ave., Suite 240, Royal Oak, was present on behalf of the Balmoral ownership. He observed they built something of the highest quality that they felt the City envisioned and required of them. They want to see the Peabody site developed, but not to their detriment. As currently proposed, the south wall would block fifty windows and light and air to their building. They feel what the applicant is proposing is not compatible with their building nor consistent with what was required of the Balmoral Building, or what the Zoning Ordinance requires. They will not allow trespass onto their property for maintenance.

Mr. Jason Novotny, Tower Pinkster, Architects, spoke on behalf of Catalyst Development and the Greenleaf Trust Building. When they brought the Greenleaf Trust Building to the board in 2008, it was viewed as one of two buildings that would be the crown jewel on the east entry to Downtown, following the principles that were laid out in the Master Plan. Between the two tower buildings the Master Plan calls for a two or three story parking structure. They worked towards developing an attractive, four-sided building. A blank wall would not fly. He is sure the Balmoral had the same discussions with their north elevation. Some of the things he sees that would have a significant impact to either the north or south sites are:

- Lighting;
- Glazing calculations do not play out.

Mr. Tom Phillips, Hobbs & Black Architects, 100 N. State St., Ann Arbor, said the Balmoral Building has much the same story. In designing the building they worked carefully with the City and were encouraged to develop the north side because it was a gateway and a key visual element on the drive south along Woodward Ave. Both of the buildings offer the applicant a unique site in that the occupants are not looking at blank walls. They are looking at two expensive, high quality elevations. By stepping back four or five feet from the property line, the applicant would provide a reasonable amount of light between the buildings as they face each other all the way up. As it exists the applicant's design offers no opportunity to maintain their exterior walls without trespassing.

Mr. Alan Greene, 3955 Woodward Ave., Dykema Gossett, PLLC, represented Woodward Brown Associates, the developer and owner of the Balmoral Building. Mr. Greene noted they have a very valuable building with a facade of 50 windows, made of stone, with balustrades. Tenants look for a space that has windows, but with the proposed building they will look straight into a brick wall. Further, the interior design is built around the windows. The real estate developer for Balmoral has submitted a letter

saying that the proposed building as currently designed and set will greatly diminish the value of the two buildings. The loss of investment on the walls, the impact on the tenants, the ability to rent the spaces, and how much they can be rented for will all contribute to diminished value. These two buildings were not built as if they were going to be blocked by other buildings. He urged the board to either deny the site plan or give guidance to the developer as to what they might like to see so they can come back with something better.

Mr. Clinton Ballard, 388 Greenwood, said the developer wants to maximize his floor area but is constrained by height. As the City has already zoned for seven to nine story buildings right across the street, it would be very interesting to have the infill building go seven to nine stories, provided adequate setbacks are respected. This would leave the developer with an equitable amount of leasable space and room for parking, and all three developers would enjoy access to light and views.

In response to Mr. Share, Mr. Baka explained that if windows are within 5 ft. of the property line they must be fire rated. Mr. Longe verified for Mr. Share that the view of the facade travelling up and down Woodward Ave. would not be materially different if the building was on the lot line or 5 ft. off. He added that it is an odd feature to not have the buildings touch. Mr. Tom Phillips said the 5 ft. setback would double the visual access to light and air - a 10 ft. view shed.

Mr. Novotny pointed out for Mr. Share why he thinks the design of the infill building is incompatible with the adjacent buildings. Their buildings have primarily punched window openings on a masonry facade and the proposed building has glass strip windows across the front.

Mr. Share received clarification from Mr. Novotny that if the building is built to the lot line, it is a problem for all three buildings with regard to maintenance issues. One building will have to flash into the other building so that water will not enter. Mr. Phillips explained these are not abutting buildings in the sense that they can be flashed together. So the applicant's building on a zero lot line would have an exterior wall facing the lot line and open to the weather with no way to maintain it without trespassing onto Balmoral property,

Mr. Novotny explained for Mr. Share that the first floor of both the Balmoral and Greenleaf Trust buildings abut the lot line. Beyond that, both buildings are set back 5 ft. Greenleaf's situation differs from Balmoral's in that the fifth story balconies would abut one another from the Greenleaf Trust Building to the Peabody Building. He does not believe the Balmoral has that same circumstance with outdoor spaces that are side-by-side. Mr. Longe noted there is a demising wall between them. Mr. Novotny added another difference between the Balmoral and Greenleaf buildings is the glass that is currently abutting the lot line for the Greenleaf building is fire rated so that it has the potential to be a zero lot line material.

Mr. Share queried how interior lighting on the north and south elevations is handled on the Peabody Building. Mr. Longe responded that there is natural light that comes in from the glazing on the other two facades.

Mr. Koseck thought that maximizing square footage area creates a little bit of "B" type of space. If they could pull the walls in on the upper floors by creating light wells and windows it would make the building even better in terms of marketability and lease rates. Further, he thought that architectural compatibility is the next step in review and not for this evening. Mr. Longe responded that it is an odd condition to have buildings not meet. The two buildings chose on their own to make their facades that face inwards towards Peabody's something nicer than they had to be. As any architect will tell you, one has to prepare for eventualities.

Mr. Share and Mr. Williams were in agreement that a lot of information came in today and it requires more study. Mr. Williams said he was not prepared to take any action on the proposal tonight.

Mr. Rick Rassel, Williams Williams Rattner & Plunkett, PC, 380 N. Old Woodward Ave., the legal counsel to Alden Development Group, the applicant, spoke about the importance of perspective:

- Mr. Currier and the planning staff are aligned on the questions that have been posed in Mr. Greene's letter;
- The proposal is consistent with the Master Plan and with the Zoning Ordinance;
- They are in a zero lot line infill district;
- The proposed parking and height of the building is consistent with the Zoning Ordinance;
- Mr. Currier has opined that the construction impact and future maintenance issues are not concerns for the Planning Board to be taking into account at this stage of the Preliminary Site Plan approval;
- The question comes down to a couple of things. Mr. Currier has observed in his letter that the zero lot line construction as proposed is consistent with the Zoning Ordinance and has been used in many parts of Downtown Birmingham. The owners of the Balmoral and Catalyst buildings installed fire related glass windows facing the former Peabody's lot in anticipation of potential zero lot line construction;
- Peabody's granted Catalyst an easement to construct sun shades; the sunshades to be taken down in the event of future construction of the Peabody building;
- The argument about incompatibility is really about economic harm as a result of this building being built to the lot lines which Balmoral and Catalyst absolutely knew of and agreed not to contest. Incompatibility is not about design review standards or architecture.

It is important that this process move along this evening.

Mr. Alan Greene stated that there are no fire rated windows on the north elevation of Balmoral. The compatibility is related to the nature of the construction. The things they did on their elevation were encouraged by the City. To not require the same here is where it is incompatible in his view. Additionally, Standard 7.27 (3) states that the location, size, and height of the building shall not diminish the value of neighboring property. They believe that the way it is being done now it will. What the board has before it reflects not a single change as a result of their meetings with Mr. Shifman.

Mr. Williams indicated that he would like information about the City's encouragement of construction on the south and north sides respectively as preserved in the record at both the Preliminary and Final Site Plan Reviews for both buildings. It is important that the board understand that issue. Mr. Boyle added that the board's perspective on development has changed since construction of the Balmoral and Catalyst buildings. He agreed with Mr. Williams that the board needs to see what they actually talked about at that time.

Ms. Whipple-Boyce said she had hoped that the developers would meet and come up with a great plan for all properties. Unfortunately, it doesn't sound like that will happen. She believes that as Staff and the City Attorney have advised, the Peabody proposal satisfies the requirements of the Zoning Ordinance. It will be tricky and complicated getting the building up and maintaining it. There seems to be a lot of good reasons to re-look at what is being proposed.

Mr. Jeffares said he always assumed that another building would be built on this site. To him, by this building being a little different, the other two buildings pop.

Motion by Mr. Share

Seconded by Mr. Williams to postpone the application for Preliminary Site Plan for 34965 Woodward Ave. to September 13, 2017 and to suspend the rules to hear a site plan at that meeting.

There were no comments on the motion from members of the public.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Recused: Clein

Absent: Prasad

08-164-17

FINAL SITE PLAN AND DESIGN REVIEW

Chairman Clein rejoined the board and Mr. Share, the alternate board member, left.

1. 277 Pierce St. (former Varsity Shop)

Request for approval of a five-story mixed-use building with first-floor retail

Ms. Ecker advised the subject parcel is currently the site of the Varsity Shop, and has a total land area of .111 acres. It is located on the northeast corner of Pierce St. and E. Merrill St.

The applicant is proposing to demolish the existing 8,387 sq. ft. two-story building to construct a 27,000 sq. ft., five-story mixed-use building. The building will provide a lower level recreation area for the residential unit, first floor retail, second floor retail or

commercial, third and fourth floor office use, and fifth floor residential use. Parking for the residential unit will be provided at grade in a two car garage adjacent to the public alley located on the east side of the building.

As the proposed site is located within the Central Business Historic District, the applicant was required to obtain approval from the Historic District Commission (“HDC”) to demolish the existing building, and approval for the construction of the new mixed-use building. Demolition approval was granted in 2016, and approval for construction of the new five-story building was obtained by the HDC at their meeting on July 19, 2017.

CIS

The applicant was also required to prepare a Community Impact Study (“CIS”) in accordance with Article 7, section 7.27(E) of the Zoning Ordinance as they are proposing a new building containing more than 20,000 sq. ft. of gross floor area. On May 24, 2017, the Planning Board reviewed and accepted the CIS with six conditions. All of the information has now been provided except that no information has yet been provided on proposed mitigation strategies for the control of noise or vibration during construction.

Site Plan

On May 24, 2017 after accepting the CIS, the Planning Board reviewed the Preliminary Site Plan for 277 Pierce, and after much discussion, voted to approve the site plan with several conditions.

The applicant has now provided a photometric plan and specification sheets for the proposed lighting; has verified that the rooftop screening is sufficient to screen the proposed rooftop mechanical units; and they have obtained approval from the HDC; and have provided material and color samples for review. The applicant has also provided contextual renderings as requested by the Planning Board.

Design Review

The applicant has submitted design materials for review. The proposed plans for the five-story, mixed-use building indicate the following materials:

- Flash Red Velour Brick on all facades;
- Flashed Manganese Velour accenting brick;
- Buff limestone for the base and caps of the building;
- Leathered Cambrian Black granite below ground floor windows;
- Aluminum building panels for the third floor façade;
- Metal coping along the parapet;
- Aluminum windows and doors;
- Stainless steel cladding entry canopies with laminated and frosted glass; and
- Extensive window glazing (clear glass) on all facades.

A materials board was passed around.

Ms. Ecker advised that the development conforms to the building standards envisioned in the Downtown Birmingham 2016 Plan, as it is designed with high quality materials, is built to the property lines, and has pedestrian scale details including steel and glass canopies, extensive window glazing, stainless steel cladding, and tasteful streetscape landscaping.

In accordance with the Planning Board's comments about the blank wall that was proposed on the north elevation, the wall has now been differentiated by the addition of four recessed panels of different colored brick along with six fire rated glass windows.

Mr. Victor Saroki, Architect, was present along with Ms. Evan Yaldo, Project Architect from his office; Mr. Tony Antone, Vice-President for Kojaian Management; and Mr. Jim Butler, PEA, Civil Engineer. Mr. Saroki indicated they intend to satisfy all of the issues in the report. They are of the opinion that the Building Code allows one stairway as opposed to two for the one residential unit at the top. They intend to demonstrate that to the Building Official in order to get his approval.

With regard to noise and vibration controls, they will work with the owner's construction manager to come up with some strategies for review with staff prior to submitting for a Building Permit. Their intention is to appear before the BZA to request a variance for a residential use as an amenity on the lower level below a commercial use.

Motion by Mr. Koseck

Seconded by Mr. Boyle to approve the Final Site Plan & Design Review for 277 Pierce St. subject to the following conditions:

- 1) The applicant provide noise and vibration mitigation strategies prior to obtaining a Building Permit;**
- 2) The applicant obtain a variance from the BZA to allow a commercial use above a residential use or eliminate the residential use in the lower level of the building;**
- 3) Comply with the requests of all City Departments; and**
- 4) The applicant reduce the light levels 5 ft. out from the property lines along Pierce and Merrill Sts. and obtain administrative approval, or obtain a variance from the BZA.**

Mr. Koseck observed the use of the lower level is unique and no ordinance could have contemplated that. He thinks the applicant has a case to be made to the BZA.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Prasad

08-165-17

2. 344 Hamilton Row (Seven Greens Salad Co.)

Final Design Review for approval of an outdoor dining platform in the street

Mr. Baka advised the building is located on the south side of Hamilton Row between Ferndale Ave. and Park St. The applicant proposes to construct an outdoor dining deck utilizing one existing parallel parking space and a "no parking" space. The applicant was approved for the use of one on-street parking space by the Parking Advisory Committee on April 5, 2017.

The tables and chairs proposed for the outdoor dining platform are synthetic teak outdoor/indoor furniture with black frames. No umbrellas are proposed at this time. The location of the platform allows for the required 5 ft. pedestrian path to be maintained on the sidewalk.

The parallel parking space that the dining platform was approved to use extends in front of the neighboring property at 360 Hamilton Row, which is currently occupied by Luxe Homes. The plans as submitted depict the dining platform extending in front of that storefront as well for the length of the parking space. However, as indicated in Article 4.0, section 4.44, (A), 7 (c), the platform is not permitted to extend in front of the neighboring storefront as it is not vacant. ***Accordingly, the applicant will need to receive a variance from the Board of Zoning Appeals to extend in front of the neighboring property.***

Design

The applicant intends to construct the deck of the platform with six adjoining "TREX" decking platforms. The deck is proposed to be enclosed by a 42 in. high aluminum railing on all four sides with a 5 ft. opening in front of the restaurant. Sample material and color selections were not provided. The applicant must indicate what color the material will be for the decking and railing.

Ms. Kelly Schafer, the restaurant owner, said the railings will be black aluminum and the Trex decking is brownish and matches the chairs.

There was no audience present to comment.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Williams to approve the Final Design Review application for 344 Hamilton Row with the following conditions:

- 1) The applicant must receive a variance from the BZA in order to extend beyond their own storefront, or cut the platform back to be only in front of their storefront for administrative approval;**
- 2) The applicant must provide a trash receptacle in the outdoor dining area; and**
- 3) Address the issues raised by City Departments.**

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Prasad

08-166-17

MISCELLANEOUS BUSINESS AND COMMUNICATIONS

a. Communications

- Ms. Ecker explained the property owner of 191 N. Chester, The First Church of Christ Scientist has submitted an application for rezoning from TZ-1 to TZ-2. The applicant will be out of the country on September 27 so they ask if it is possible to add them to the study session meeting on September 13 because otherwise they would have to wait until the end of October.

Motion by Mr. Williams

Seconded by Mr. Jeffares to consider an application for the rezoning of 191 N. Chester on September 13, 2017 and to waive the rules as to study sessions.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Prasad

b. Administrative Approval Correspondence

- 602 Riverside, Unit #6, Riverside Place Condominium - Revision to the site plan to adjust the location of the rear retaining walls.
- 300 Strathmore, Big Beaver and Adams Replace - Project consists of the installation and operation of antennas and associated equipment cabinet(s) for Verizon Wireless Telecommunications Network. A total of six antennas, 12 remote jack in heads and one Ray cap mounted on an existing monopole and cabinet(s) are proposed at the site.
- 999 Haynes - Moving Dumpster enclosure.

c. Draft Agenda for the Regular Planning Board Meeting on September 13, 2017

- 34965 Woodward Ave., Preliminary Site Plan Review;
- 191 N. Chester, Application for Rezoning from TZ-1 to TZ-2;
- Bistro Requirements study session;
- Economic Development Licenses expansion of boundaries study session;
- DRB and Planning Board Review process study session

d. Other Business (none)

08-167-17

PLANNING DIVISION ACTION ITEMS

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

08-168-17

ADJOURNMENT

No further business being evident, the Chairman adjourned the meeting at 10:39 p.m.

Jana Ecker
Planning Director

DRAFT



MEMORANDUM

Community Development

DATE: September 8, 2017

TO: Planning Board Members

FROM: Matthew Baka, Senior Planner

APPROVED: Jana Ecker, Planning Director

SUBJECT: 34965 Woodward Avenue – Preliminary Site Plan Review

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

On July 26, 2017 the Planning Board reviewed the CIS & Preliminary Site Plan application for 34965 Woodward. At that time, the Planning Board decided to accept the Community Impact Statement but postponed the Preliminary Site Plan review. The Board requested that the applicant provide additional information regarding the interfacing of the proposed building with the two existing buildings on each side and how they will abut. Also, the Board requested that the applicant provide additional renderings of the new building in context with the adjacent buildings. In addition, the postponement was granted to provide the applicant time to engage with the neighboring property owners in light of the public comments made at the meeting. In response to this discussion the applicant provided new details and renderings in addition to the previously submitted plans in order to provide additional information for the Planning Board to consider at the August 23rd Planning Board Meeting.

On August 23, 2017 the Planning Board reviewed the proposed project again and held further discussions with the applicant and representatives for the neighboring properties. Many of the challenges of constructing the proposed building were discussed as well as the ancillary effects of the proposal on the neighboring buildings. As a result of this discussion, the Planning Board postponed the review to the meeting of September 13th and requested that staff provide the minutes from the previous Planning Board meetings when both 34901 Woodward and 34977 Woodward were reviewed. The stated intent of providing this information is to determine if the buildings to the north and south of the subject site were encouraged or required to provide windows that abut the shared property lines of 34965 Woodward. Accordingly, the staff reports for the Final Site Plan reviews for both buildings have been attached which include all minutes from previous meetings for each site respectively. A thorough review of the minutes and staff report revealed no encouragement or requirements by the Planning Board or staff to install windows on the property lines abutting the 34965 Woodward site. The only comments made by staff regarding this issue were by the Building Department. For the Catalyst Building the

Building Department indicated that windows were not permitted on the property line. This was later resolved through the use of fire rated glass. Similar comments were provided for the proposed windows on the north elevation of the Balmoral Building.

1.0 Land Use and Zoning

- 1.1. Existing Land Use – The previous land uses on the site were a vacant two-story commercial building and a one story shop. The buildings were demolished in March, 2017 to allow construction of the proposed five story mixed use building.
- 1.2 Zoning – The property is zoned B-4 Business-Residential, and D-4 in the Downtown Overlay District. The proposed retail, office, commercial and residential uses, and surrounding uses appear to conform to the permitted uses of the zoning district, including the off street parking facility in the form of two levels of parking decks below the development.
- 1.3 Summary of Adjacent Land Use and Zoning - The following chart summarizes existing land use and zoning adjacent to and/or in the vicinity of the subject site, including the 2016 Regulating Plan

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

1. Setback and Height Requirements

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

3.0 Screening and Landscaping

- 3.1 Dumpster Screening – The applicant is proposing to store all trash inside the building envelope along the north side on a mechanical platform. The plans indicate trash chutes on all levels that lead to a trash compactor accessible via

the entry drive, but this is not clearly illustrated on the plans. **The applicant must clarify how the trash will be stored on this platform on the plans.**

- 3.2 Parking Lot Screening – Two levels of proposed parking will be placed underground with eleven (11) angled parking spaces in the right of way on Woodward. No parking lot screening is required.
- 3.3 Mechanical Equipment Screening – A rooftop plan has been submitted indicating six (6) roof top units to be located within a decorative stainless steel metal grate screen wall. **The applicant will be required to provide specification sheets on mechanical equipment and verify that the screen wall is tall enough to sufficiently screen the proposed units at Final Site Plan.**
- 3.4 Landscaping – The Downtown Overlay District requires that one street tree be provided for every 40' of street frontage. This development is required to have 5 trees along Peabody Street, and 4 trees along Woodward Avenue. The current plans depict two (2) trees on Peabody. **The applicant will be required to submit plans with 9 total trees, or get a waiver from the Staff Arborist.** Parking lot landscaping requirements do not apply in the Downtown Overlay District.
- 3.5 Streetscape Elements – The applicant will be expected to reconstruct the streetscape to the current streetscape standards which would include brushed concrete walking path with exposed aggregate border and pedestrian scale street lights along Peabody. The street lights are typically required every 40'. The frontage along Peabody is approximately 200' requiring five (5) lights. Sheet SD.3 appears to show five (5) street lights proposed however, they only two of the lights are clearly labeled. **The number of lights must be clarified by the applicant.** The Planning Board may also wish to require benches and trash/recycling receptacles to the streetscape if they deem fit.

4.0 Parking, Loading and Circulation

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

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

- 4.2 Loading – In accordance with Article 4, section 4.24 C (2) of the Zoning Ordinance, developments with over 50,000 ft² of office space require 2 usable off-street loading spaces, and commercial uses from 5,001 to 20,000 ft² require 1 usable off-street loading space. The plans do not display any off-street loading spaces. **The applicant will need to submit plans demonstrating the size and location of 3 usable off-street loading spaces, or obtain a variance from the Zoning Board of Appeals.**
- 4.3 Vehicular Circulation and Access – Access to the underground parking garage will be via a garage door on the southwest corner of the building, along Peabody Street. Access to the 11 on street parking spaces will be along a one way pull-off from southbound Woodward Avenue.
- 4.4 Pedestrian Circulation and Access –The applicant is proposing pedestrian entrances at three points of the building. The primary entrance to the retail space will front onto Peabody St. at the center of the façade. An additional entrance is proposed along the Woodward frontage, also centrally located. Along Peabody St. there is a proposed entrance to the elevator lobby that will provide access to the residential units. All entrances are accessible from a City sidewalk.

5.0 Lighting

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

6.0 Departmental Reports

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

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

Further, the writer indicates that "the study assumes that possibility to be both viable and successfully completed..." The Board is cautioned that the parking structure was not designed with the intention that it could be expanded in the upward direction to create additional capacity, and that this assumption should not be figured into the study. Further, while the parking system is ready and able to operate rooftop valet assist programs to add

capacity during peak hours in its other four structures, no such plan is in place at the Peabody St. Structure.

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

2. The preliminary site plans show the building frontage is proposed set back off the property line on the Peabody St. frontage of the building. The owner will be required to sign a recordable ingress/egress easement for the public to use this area as a public sidewalk, prior to the issuance of a building permit.
3. The following permits will be required from the Engineering Dept. for this project:
 1. Sidewalk/Drive Approach Permit (for all pavement installed in the right of way).
 2. Right-of-Way Permit (for excavations in the right-of-way).
 3. Street Obstruction Permit (for partial obstructions of the City sidewalk or alley).

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

6.2 Department of Public Services – DPS has no concerns.

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

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

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

7.0 Design Review

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

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

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

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

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

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

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

8.0 Approval Criteria

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

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

neighborhood and will not be contrary to the spirit and purpose of this chapter.

- (6) The location, shape and size of required landscaped open space is such as to provide adequate open space for the benefit of the inhabitants of the building and the surrounding neighborhood.

9.0 Recommendation

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

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

10.0 Sample Motion Language

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

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

OR

Motion to DENY the Preliminary Site Plan for 34965 Woodward

OR

Motion to POSTPONE the Preliminary Site Plan for 34965 Woodward.

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

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

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

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

Administration: Matthew Baka, Sr. Planner

Jana Ecker, Planning Director

Carole Salutes, Recording Secretary

07-144-17

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

**34965 Woodward Ave. (former Peabody's Restaurant)
Request for approval of the CIS to allow a new five-story mixed-use building to be constructed**

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

CIS

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

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

An abbreviated Phase 2 Environmental Site Assessment ("ESA") dated August 5, 2016 was also submitted by the applicant as a part of the CIS. Phase 2 involved the collecting and analyzing of 13 soil samples and two groundwater samples by SME. The results of SME's sampling were supplemented by a previous Phase 2 ESA conducted by McDowell & Associates on April 26th, 2015 where 12 soil samples were collected and analyzed.

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

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

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

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

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

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

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

Ms. Ecker stated the applicant has the right to build on their property. There would be some logistical issues to work out but the Building and Engineering Depts. would work with the applicant on those. Depending on where the windows were built, there was never an

expectation that they would remain unblocked. A developer can either set back the windows a certain distance from the property line, or keep them there and use fire rated glass. In many cases when windows are constructed closer than would be permitted, there is a signed agreement by the owners saying they understand those windows could be covered up if the property next door gets developed to its potential.

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

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

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

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

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

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

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

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

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

Motion by Mr. Boyle

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

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

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

Motion carried, 4-0.

ROLLCALL VOTE

Yeas: Boyle, Koseck, Lazar, Whipple-Boyce

Nays: None

Absent: Clein, Jeffares, Williams

Preliminary Site Plan

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

Design Review

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

- Stone panels along the lower level of all façades;
- Masonry veneer along the upper levels of all façades;
- Stone for the base of the building;

- Steel window and door system;
- Extensive window glazing on all facades.

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

Mr. Chris Longe said his building will have a significant entrance off of Woodward Ave. and off of Peabody St. He went through a PowerPoint and described the exterior elevation and interior layout along with the proposed materials. The building goes to the property line but the actual first floor steps back on both the Woodward Ave. and Peabody St. sides. The reason for that is there is only 5 ft. of sidewalk there. They will internally brace the building because of the configuration of the site. Ten residential units are anticipated and 15 parking spaces are allowed for them. They would be open to putting windows on the side of their building, but didn't think it would be proper to do considering their proximity to the north and south neighbors.

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

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

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

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

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

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

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

Motion carried, 4-0.

VOICE VOTE

Yeas: Boyle, Koseck, Lazar, Whipple-Boyce

Nays: None

Absent: Clein, Jeffares, Williams

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, AUGUST 23, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on August 23, 2017. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Vice-Chairperson Gillian Lazar, Janelle Whipple-Boyce, Bryan Williams; Alternative Board Member Daniel Share

Absent: Alternate Board Members Lisa Prasad; Student Representatives Ariana Afrakhteh, Isabella Niskar

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

08-163-17

Vice-Chairperson Lazar rejoined the board and took over the gavel.

**2. 34965 Woodward Ave. (former Peabody's Restaurant)
Request for approval of the Preliminary Site Plan to allow a new five-story mixed-use building to be constructed (postponed from July 26, 2017)**

Mr. Baka explained the petitioner has submitted an application for Preliminary Site Plan Review to construct a five-story building in the B4/D4 Zoning District. The property is located on the west side of Woodward Ave. on Peabody St. at the former location of Peabody's Restaurant and the former Art & Frame Station.

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

Design Review

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

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

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

Motion by Mr. Williams

Seconded by Mr. Jeffares to receive and file the following correspondence:

- **E-mail dated August 17 from Christopher Longe with attachments;**
- **E-mail dated August 22 from Richard Rassel;**
- **E-mail dated August 23 from Clinton Baller;**
- **Letter dated August 21 addressed to Patti Owens from Bailey Schmidt. LLC;**
- **Letter dated August 21 addressed to Patti Owens from Aura Pinkster;**
- **Letter dated August 22 from Hobbs & Black Architects;**
- **Letter dated August 22 from Alan M. Greene, Dykema Gossett PLLC;**
- **Letter dated August 23 from Timothy Currier, Beier Howlett.**

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Recused: Clein

Absent: Prasad

Mr. Chris Longe, Architect for the redevelopment of the Peabody site, came forward. He showed their building in context with the entire block. Also, he showed how their building would interface with both the north and the south facades of the adjacent buildings. The buildings roughly equate in terms of their overall height and floor height. The earth retention system tiebacks into the Peabody property that were used for construction of the Greenleaf Trust Building were depicted. The intention with their building is that someone can walk from Woodward Ave. through a leased space all the way to Peabody St. He included a number of pictures showing local conditions where buildings are abutting.

Mr. Longe noted they made efforts to meet with their neighbors as suggested at the last meeting. They have done that to the extent of meeting with the Balmoral folks, but because of scheduling issues there has not been a meeting with the people from the Catalyst building to the north.

Vice Chairperson Lazar called for comments from the public at 8:35 p.m.

Mr. Steve Simona, 32820 Woodward Ave., Suite 240, Royal Oak, was present on behalf of the Balmoral ownership. He observed they built something of the highest quality that they felt the City envisioned and required of them. They want to see the Peabody site developed, but not to their detriment. As currently proposed, the south wall would block fifty windows and light and air to their building. They feel what the applicant is proposing is not compatible with their building nor consistent with what was required of the Balmoral Building, or what the Zoning Ordinance requires. They will not allow trespass onto their property for maintenance.

Mr. Jason Novotny, Tower Pinkster, Architects, spoke on behalf of Catalyst Development and the Greenleaf Trust Building. When they brought the Greenleaf Trust Building to the board in 2008, it was viewed as one of two buildings that would be the crown jewel on the east entry to Downtown, following the principles that were laid out in the Master Plan. Between the two tower buildings the Master Plan calls for a two or three story parking structure. They worked towards developing an attractive, four-sided building. A blank wall would not fly. He is sure the Balmoral had the same discussions with their north elevation. Some of the things he sees that would have a significant impact to either the north or south sites are:

- Lighting;
- Glazing calculations do not play out.

Mr. Tom Phillips, Hobbs & Black Architects, 100 N. State St., Ann Arbor, said the Balmoral Building has much the same story. In designing the building they worked carefully with the City and were encouraged to develop the north side because it was a gateway and a key visual element on the drive south along Woodward Ave. Both of the buildings offer the applicant a unique site in that the occupants are not looking at blank walls. They are looking at two expensive, high quality elevations. By stepping back four or five feet from the property line, the applicant would provide a reasonable amount of light between the buildings as they face each other all the way up. As it exists the applicant's design offers no opportunity to maintain their exterior walls without trespassing.

Mr. Alan Greene, 3955 Woodward Ave., Dykema Gossett, PLLC, represented Woodward Brown Associates, the developer and owner of the Balmoral Building. Mr. Greene noted they have a very valuable building with a facade of 50 windows, made of stone, with balustrades. Tenants look for a space that has

windows, but with the proposed building they will look straight into a brick wall. Further, the interior design is built around the windows. The real estate developer for Balmoral has submitted a letter saying that the proposed building as currently designed and set will greatly diminish the value of the two buildings. The loss of investment on the walls, the impact on the tenants, the ability to rent the spaces, and how much they can be rented for will all contribute to diminished value. These two buildings were not built as if they were going to be blocked by other buildings. He urged the board to either deny the site plan or give guidance to the developer as to what they might like to see so they can come back with something better.

Mr. Clinton Ballard, 388 Greenwood, said the developer wants to maximize his floor area but is constrained by height. As the City has already zoned for seven to nine story buildings right across the street, it would be very interesting to have the infill building go seven to nine stories, provided adequate setbacks are respected. This would leave the developer with an equitable amount of leasable space and room for parking, and all three developers would enjoy access to light and views.

In response to Mr. Share, Mr. Baka explained that if windows are within 5 ft. of the property line they must be fire rated. Mr. Longe verified for Mr. Share that the view of the facade travelling up and down Woodward Ave. would not be materially different if the building was on the lot line or 5 ft. off. He added that it is an odd feature to not have the buildings touch. Mr. Tom Phillips said the 5 ft. setback would double the visual access to light and air - a 10 ft. view shed.

Mr. Novotny pointed out for Mr. Share why he thinks the design of the infill building is incompatible with the adjacent buildings. Their buildings have primarily punched window openings on a masonry facade and the proposed building has glass strip windows across the front.

Mr. Share received clarification from Mr. Novotny that if the building is built to the lot line, it is a problem for all three buildings with regard to maintenance issues. One building will have to flash into the other building so that water will not enter. Mr. Phillips explained these are not abutting buildings in the sense that they can be flashed together. So the applicant's building on a zero lot line would have an exterior wall facing the lot line and open to the weather with no way to maintain it without trespassing onto Balmoral property,

Mr. Novotny explained for Mr. Share that the first floor of both the Balmoral and Greenleaf Trust buildings abut the lot line. Beyond that, both buildings are set back 5 ft. Greenleaf's situation differs from Balmoral's in that the fifth story balconies would abut one another from the Greenleaf Trust Building to the Peabody Building. He does not believe the Balmoral has that same circumstance with outdoor spaces that are side-by-side. Mr. Longe noted there is a demising wall between them. Mr. Novotny added another difference between

the Balmoral and Greenleaf buildings is the glass that is currently abutting the lot line for the Greenleaf building is fire rated so that it has the potential to be a zero lot line material.

Mr. Share queried how interior lighting on the north and south elevations is handled on the Peabody Building. Mr. Longe responded that there is natural light that comes in from the glazing on the other two facades.

Mr. Koseck thought that maximizing square footage area creates a little bit of "B" type of space. If they could pull the walls in on the upper floors by creating light wells and windows it would make the building even better in terms of marketability and lease rates. Further, he thought that architectural compatibility is the next step in review and not for this evening. Mr. Longe responded that it is an odd condition to have buildings not meet. The two buildings chose on their own to make their facades that face inwards towards Peabody's something nicer than they had to be. As any architect will tell you, one has to prepare for eventualities.

Mr. Share and Mr. Williams were in agreement that a lot of information came in today and it requires more study. Mr. Williams said he was not prepared to take any action on the proposal tonight.

Mr. Rick Rassel, Williams Williams Rattner & Plunkett, PC, 380 N. Old Woodward Ave., the legal counsel to Alden Development Group, the applicant, spoke about the importance of perspective:

- Mr. Currier and the planning staff are aligned on the questions that have been posed in Mr. Greene's letter;
- The proposal is consistent with the Master Plan and with the Zoning Ordinance;
- They are in a zero lot line infill district;
- The proposed parking and height of the building is consistent with the Zoning Ordinance;
- Mr. Currier has opined that the construction impact and future maintenance issues are not concerns for the Planning Board to be taking into account at this stage of the Preliminary Site Plan approval;
- The question comes down to a couple of things. Mr. Currier has observed in his letter that the zero lot line construction as proposed is consistent with the Zoning Ordinance and has been used in many parts of Downtown Birmingham. The owners of the Balmoral and Catalyst buildings installed fire related glass windows facing the former Peabody's lot in anticipation of potential zero lot line construction;
- Peabody's granted Catalyst an easement to construct sun shades; the sunshades to be taken down in the event of future construction of the Peabody building;
- The argument about incompatibility is really about economic harm as a result of this building being built to the lot lines which Balmoral and

Catalyst absolutely knew of and agreed not to contest. Incompatibility is not about design review standards or architecture. It is important that this process move along this evening.

Mr. Alan Greene stated that there are no fire rated windows on the north elevation of Balmoral. The compatibility is related to the nature of the construction. The things they did on their elevation were encouraged by the City. To not require the same here is where it is incompatible in his view. Additionally, Standard 7.27 (3) states that the location, size, and height of the building shall not diminish the value of neighboring property. They believe that the way it is being done now it will. What the board has before it reflects not a single change as a result of their meetings with Mr. Shifman.

Mr. Williams indicated that he would like information about the City's encouragement of construction on the south and north sides respectively as preserved in the record at both the Preliminary and Final Site Plan Reviews for both buildings. It is important that the board understand that issue. Mr. Boyle added that the board's perspective on development has changed since construction of the Balmoral and Catalyst buildings. He agreed with Mr. Williams that the board needs to see what they actually talked about at that time.

Ms. Whipple-Boyce said she had hoped that the developers would meet and come up with a great plan for all properties. Unfortunately, it doesn't sound like that will happen.

She believes that as Staff and the City Attorney have advised, the Peabody proposal satisfies the requirements of the Zoning Ordinance. It will be tricky and complicated getting the building up and maintaining it. There seems to be a lot of good reasons to re-look at what is being proposed.

Mr. Jeffares said he always assumed that another building would be built on this site. To him, by this building being a little different, the other two buildings pop.

Motion by Mr. Share

Seconded by Mr. Williams to postpone the application for Preliminary Site Plan for 34965 Woodward Ave. to September 13, 2017 and to suspend the rules to hear a site plan at that meeting.

There were no comments on the motion from members of the public.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Recused: Clein

Absent: Prasad



Jana Ecker <jecker@bhamgov.org>

Fwd: Peabody site

1 message

Jana Ecker <jecker@bhamgov.org>
To: "Baka, Matthew" <MBaka@bhamgov.org>

Thu, Aug 17, 2017 at 1:22 PM

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

From: **Christopher Longe** <cjlonge@cjlongeaia.com>
Date: Thu, Aug 17, 2017 at 12:04 PM
Subject: Peabody site
To: Jana Ecker <jecker@bhamgov.org>

Hi Jana,

In response to the concerns voiced by some members of the Planning Board about the Redevelopment of the Peabody property, I am submitting additional materials (attached documents and email, below) for the Planning Board's use for their meeting on August 23rd.

We believe that our project will be an important addition to the fabric of the City, adding another signature element to the gateway to Birmingham, and further activating this important location.

We believe that acknowledgment of the context in which the building will function is important, but were surprised by the representations from the representatives of the adjacent buildings that they did not envision that such a project could be constructed. In the case of the Greenleaf Building, the attached documents executed between Peabody and Catalyst, and signed by Patti Owens, clearly acknowledge this eventuality and pledge their cooperation and support.

These documents include the original ERS (earth retention system) and Easement agreements. The ERS agreement mirrors the recorded Easement language.

Also attached are two more recent 'First Amendments' which affirm and strengthen the previous agreements.

Additionally, the email below from Patti Owens dated November 28, 2016 email reflect her initial enthusiasm with our building design.

Her last email of August 4, 2017 reflects her diminished enthusiasm.

As we agreed to do, we have solicited appointments with Patti Owens on several occasions. She has not been available to meet when I/we are available. We will continue to try.

We have met with and are continuing to talk to the Balmoral representatives. As with Catalyst, we contacted them immediately following the initial Peabody Planning Board meeting. We meet last Thursday and are proceeding as we discussed at that time (sharing documents, talking to their architect at Hobbs/Black, reviewing engineering & construction limitations, etc.).

Thank you,
Chris

From: Patti Owens [<mailto:powens@catalystdevco.com>]
Sent: Monday, November 28, 2016 3:11 PM

To: Richard Zussman; Gary Shiffman; 'Matthew Shiffman'; Samuel Schiffer
Cc: Jordan Schau (jordan@kzoolawfirm.com)
Subject: Birmingham - Catalyst Development/Peabody Property

Good afternoon, all. Congratulations on a very handsome design for your new development. It's absolutely beautiful.

I wonder if you might be willing to share with me all elevations of the building as well as a site plan? We are probably going to consider some work on our south façade (windows) as it appears your building is either built to the lot line or very close to it. We always anticipated this would occur, and just want to be sensitive to our tenants.

Please advise. Thank you very much.

Patti Owens
Vice President & Managing Director
<image003.jpg>
100 West Michigan Avenue, Suite 300
Kalamazoo, Michigan 49007
269.492.6810 p
269.492.6811 f
269.998.7665 c
powens@catalystdevco.com

"The best way to predict your future is to create it." Abraham Lincoln

On Aug 4, 2017, at 1:12 PM, Patti Owens <powens@catalystdevco.com> wrote:

Good afternoon, Matt, and thank you for your note.

The development, as proposed, is not acceptable to us. The needs of our building have not been taken into consideration in the current design. That you have not shared your design intent with your neighbors before going to the City for approval of your site plan is a disappointment and leaves us with very little time to react and respond.

It is my intent to protect and preserve our asset.

I'm planning to be in Birmingham next Wednesday for other meetings, if you'd like to talk in person in my offices at the Greenleaf Trust Building. If Wednesday doesn't work, I would be open to meeting with you and your team in my office in Kalamazoo. Please let me know what might be convenient for you.

(I have not received anything from your architect as of this writing.)

Thank you.

Patti Owens
Vice President & Managing Director

100 West Michigan Avenue, Suite 300
Kalamazoo, Michigan 49007
269.492.6810 p

269.492.6811 f
269.998.7665 c
powens@catalystdevco.com

"The best way to predict your future is to create it." Abraham Lincoln

Christopher J. Longe AIA, Architecture & Interiors

124 Peabody, Birmingham, MI 48009
P 248.258.6940 C 248.330.9595
cjlonge@cjlongeaia.com

Christopher J. Longe AIA, Architecture & Interiors

124 Peabody, Birmingham, MI 48009
P 248.258.6940 C 248.330.9595
cjlonge@cjlongeaia.com

--
Jana L. Ecker

*Planning Director
City of Birmingham
248-530-1841*

4 attachments



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262K



ERSDocument[3].pdf
9470K



First Amendment to Memorandum of Agreement (ExecutedRecorded)-3115503-2[4][1].pdf
3292K



First Amendment to Earth Retention System and Construction Barricade Agr...[3][1].pdf
220K

Zoning Compliance Summary Sheet

Preliminary Site Plan Review

34965 Woodward

Existing Site: 34965 Woodward Avenue, vacant land formerly Peabody's Dining and Spirits and the Art & Frame Station

Zoning: B-4 Business Residential, D-4 Downtown Overlay District
Land Use: Vacant Lot

Existing Land Use and Zoning of Adjacent Properties:

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

Land Area: existing: 21,510 ft²
proposed: Same as existing

Minimum Lot Area per unit: required: N/A
proposed: N/A

Minimum Floor Area: required: N/A
proposed: N/A

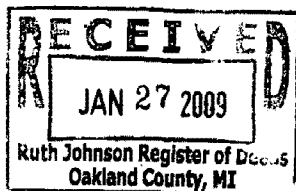
Maximum Total Floor Area: required: N/A
proposed: N/A

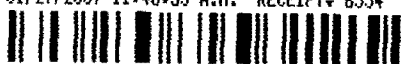
Minimum Open Space: required: N/A
proposed: N/A

Maximum Lot Coverage: required: N/A
proposed: N/A

Front Setback:	required:	0 ft.
	proposed:	0 ft.
Side Setbacks:	required:	0 ft.
	proposed:	0 ft.
Rear Setback:	required:	Equal to that of the adjacent building
	proposed:	Equal to that of the adjacent building
Max. Bldg. Height:	permitted:	80 ft. and 4 or 5 stories
	proposed:	80 ft. and 5 stories
Parking:	required:	15 off-street spaces
	proposed:	90 off-street spaces, 11 on-street parking spaces
Loading Area:	required:	3
	proposed:	0
Screening:		
Buffer to abutting Single-family:	required:	N/A
	proposed:	N/A
<u>AC/Mech. units:</u>	required:	Screening to compliment the building or landscaping.
	proposed:	The HVAC units located on the roof of the building are proposed to be screened by a decorative stainless steel metal grate.
Any additional mechanical units not specified on the plans must be screened in accordance with the requirements of the Zoning Ordinance.		
<u>Dumpster:</u>	required:	6 ft. masonry screen wall with gate
	proposed:	Dumpster area will in the building envelope and screened by the building

LIBER 40847 PG 546



12320
LIBER 40847 PAGE 546
\$22.00 MISC RECORDING
\$4.00 REMONUMENTATION
01/27/2009 11:46:35 A.M. RECEIPT# 6554

PAID RECORDED - OAKLAND COUNTY
RUTH JOHNSON, CLERK/REGISTER OF DEEDS

MEMORANDUM OF AGREEMENT

Catalyst Development Co. 8, L.L.C., a Michigan limited liability company of 100 W. Michigan Avenue, Suite 300, Kalamazoo, Michigan 49007 ("Catalyst") and Peabody Family, LLC, a Michigan limited liability company of 34965 Woodward Avenue, Birmingham, Michigan 48009 ("Peabodys") enter into this Memorandum of Agreement on the date set forth below to record notice of the Earth Retention System and Construction Barricade Agreement entered into by Catalyst and Peabodys dated November 21, 2008 (the "ERS Agreement"), relating to the parcel owned by Catalyst located in the City of Birmingham, Oakland County, Michigan, described on Exhibit A attached hereto (the "Catalyst Parcel"), and the adjacent parcel owned by Peabodys located immediately to the north of the Catalyst Parcel, described on Exhibit B attached hereto (the "Peabody Parcel"). As of the date of this Memorandum of Agreement, Catalyst intends to build a five-story, mixed-use building on the Catalyst Parcel (the "Building"). A business named Peabody's Restaurant is located on the Peabody Parcel. The ERS Agreement sets forth certain rights and obligations relating to the Building, the Catalyst Parcel and the Peabody Parcel, including certain rights and obligations which may extend beyond the term of the ERS Agreement.

Specifically, the Building will include sunshades (metal outriggers and blades) that extend out over each of the Building's windows, including those windows facing south looking out over the Peabody Parcel. The sunshades on the windows on the south side of the Building will extend out approximately twelve inches (12") over the Peabody Parcel. Peabody hereby grants to Catalyst an easement for the air rights occupied by the sunshades, provided that in the event the Peabody Parcel is later developed in a manner that requires the removal of the sunshades on the south side of the Building, Catalyst agrees, upon written notice from Peabodys, to remove the sunshades on the south side of the Building within sixty (60) days after receipt of written notice, at its own cost. Catalyst agrees that other than the air rights for sunshades described herein, Catalyst makes no claim or assertion of air rights or similar "sun" or "view" rights relating to the Peabody Parcel. Catalyst further agrees that it will not object to Owner or its successor's construction of a building of similar height to the Building on or near the lot line between the Catalyst Parcel and the Peabody Parcel, and further that Catalyst shall make whatever modifications (e.g., fire rated windows) to the Building that may be required so that the Building is in compliance with all applicable laws and regulations in light of the construction of such a building on the Peabody Parcel.

5P
R

O.K. - KB

LIBER 40847 PC547

The rights and obligations described in this Memorandum of Agreement shall run with the land and shall be binding upon and inure to the benefit of Catalyst, Peabody, their assigns and successors.

CATALYST DEVELOPMENT CO. 8, L.L.C.

Dated: December 12, 2008.By: P. Owens
Patti Owens

Its: Managing Director

STATE OF MICHIGAN)
KALAMAZOO COUNTY)

Acknowledged before me in Kalamazoo County, Michigan on December 12, 2008, by Patti Owens, as Managing Director on behalf of Catalyst Development Co. 8, L.L.C.

/s/ Vicky Duncan
Notary public, State of Michigan, County of Kalamazoo.
My commission expires: 01/31/14
Acting in Kalamazoo County, Michigan.

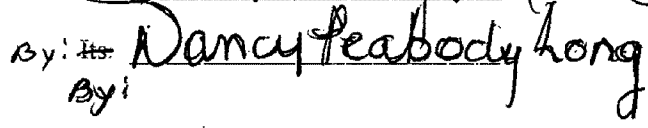
VICKY DUNCAN
Notary Public - State of Michigan
County of Kalamazoo
My Commission Expires 01/31/2014
Acting in the County of Kalamazoo

-2-

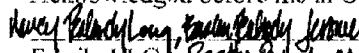
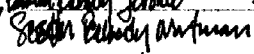
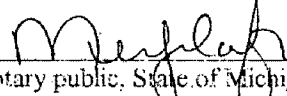
LIBER 40847 PG 548

PEABODY FAMILY, LLC

Dated: December 31, 2008.

By: By: 

By:

STATE OF MICHIGAN)
OAKLAND COUNTY)Acknowledged before me in Oakland County, Michigan on December 31, 2008, by
 as _____ on behalf of Peabody
Family LLC. /s/ 
Notary public, State of Michigan, County of Oakland.
My commission expires: 11/25/11
Acting in Oakland County, Michigan.BERNARD H. SCHNEPP
NOTARY PUBLIC, STATE OF MI
COUNTY OF MACOMB
MY COMMISSION EXPIRES NOV 25, 2011
ACTING IN COUNTY OF OAKLAND

Drafted by and when recorded return to:

Jordan R. Schau (P49881)
Lake, Stever & Schau, PLC
141 E. Michigan Avenue, Suite 600
Kalamazoo, Michigan 49007
(269) 382-5440

-3-

LIBER 40847 PG 549

EXHIBIT AThe Catalyst Parcel

Located in the City of Birmingham, County of Oakland, State of Michigan, and is described as:

3062

Lots 5 and 6, also the East 4 feet of Lot 7 of HUNTER'S EASTERN ADDITION, according to the plat thereof recorded in Liber 3 of Plats, page 6B of Oakland County Records, EXCEPT that part deeded to the City of Birmingham by Deed recorded in Liber 5600, page 330 more fully described as follows: Portions of Lot 5, 6 and 7 of HUNTER'S EASTERN ADDITION, City of Birmingham, Oakland County, Michigan, the first of two portions being described as follows: Beginning at the Southeast corner of Maple Avenue and Brownell Street 50 feet wide; said corner also being on the Northerly line of said Lot 7, 4 feet, more or less, Westerly from the Northeast corner of said Lot 7, thence South 01 degrees 09 minutes East, 104.15 feet more or less along the Easterly line of Brownell Street to a point on the south line of said Lot 7; thence North 88 degrees 30 minutes, East 4.00 feet, along said South line of Lot 7 to a point, thence North 01 degrees 09 minutes, West 34.58 feet, more or less, along a line 4.00 feet Easterly of and parallel to said Easterly line of Brownell Street to a point; thence on a curve to the right with a long chord bearing North 43 degrees 40 minutes 30 seconds East a long chord distance of 98.69 feet; a radius of 70.00 feet, a central angle of 89 degrees 39 minutes and an arc distance of 109.53 feet, to a point on the Northerly line of said Lot 5 and the Southerly line of said Maple Avenue; thence South 88 degrees 30 minutes West 73.57 feet, along said Southerly line of Maple Avenue and the Northerly line of said Lots 5, 6 and 7 to the point of beginning of the first portion, and the second of two portions being described as follows: Beginning at the Northeast corner of said Lot 5, said corner also being the Southwest corner of said Maple Avenue and Hunter Boulevard (US-10), 200 feet wide; thence South 88 degrees 30 minutes West 20.00 feet along the Northerly line of said Lot 5 and the Southerly line of said Maple Avenue to a point; thence South 54 degrees 54 minutes, East 32.11 feet to a point on the Easterly line of said Lot 5 and the Westerly line of said Hunter Boulevard; thence North 18 degrees 18 minutes, West 20.00 feet along said Easterly line of Lot 5 and said Westerly line of Hunter Boulevard to the point of beginning of the second portion.

Commonly known as 34977 Woodward Avenue
Tax ID No. 19-36-207-001

LIBER 40847 PG 550

EXHIBIT BThe Peabody Parcel

Land situated in the City Birmingham, Oakland County, State of Michigan, described as:

Lots numbered Ten (10), Eleven (11), and Twelve (12) and North 25 feet of Lot numbered Thirteen (13), except the Westerly 69.99 feet thereof, BROWNELL SUBDIVISION in the Village of Birmingham, Oakland County Michigan, being a part of the West half of Northeast quarter of Section 36, Town 2 North, Range 10 East, as recorded in Liber 4, Page 35 of Plats Oakland County Records,

More commonly known as: 34965 Woodward Avenue

19-36-207-008

4035

EARTH RETENTION SYSTEM AND CONSTRUCTION BARRICADE AGREEMENT

This Earth Retention System and Construction Barricade Agreement (the "Agreement") is made this 21st day of November, 2008, by and between Catalyst Development Co. 8, L.L.C., a Michigan limited liability company, whose address is 100 W. Michigan Avenue, Suite 300, Kalamazoo, MI 49007 ("Catalyst") and Peabody Family, LLC, whose address is 34965 Woodward Avenue, Birmingham, Michigan 48009 (the "Owner").

RECITALS

- A. Catalyst is the owner of the property located at 34977 Woodward Avenue, Birmingham, Michigan (the "Catalyst Parcel"), upon which it is constructing a five story mixed use building that will include one underground parking level, street level retail space, second and third floor office space, and fourth and fifth floor residential space (the "Building"). The Catalyst Parcel's southern border abuts the northern border of a parcel owned by Owner and upon which Peabody's of Birmingham, Inc. operates a business commonly known as Peabody's Restaurant (the "Peabody Parcel"). The legal description of the Catalyst Parcel is attached as Exhibit A, and the legal description of the Peabody Parcel is attached as Exhibit B.

The northern section of the Peabody's Restaurant building is located on the northern border of the Peabody Parcel, immediately adjacent to the Catalyst parcel, and occupies approximately one-third of the length of the border, from the east. The remaining portion of the Peabody Parcel that abuts the Catalyst Parcel consists of a parking lot and related improvements.

- B. In connection with the construction of the Building, Catalyst must place concrete construction barricades with four foot (4') fencing on top of the barricades around the perimeter of the Catalyst Parcel to establish a Construction Work Area ("CWA"). The barricade and fencing will extend ten (10) feet into the parking lot of the Peabody Parcel. The fencing along the Peabody Parcel shall include fabric screening material to act as a visual barrier. No portion of the Peabody Parcel, either inside or outside of the CWA, will be used for construction staging activities, including the storage of construction material and/or equipment, without Owner's prior consent.
- C. After the CWA has been established and the barricade has been installed, Catalyst must install an earth retention system ("ERS") around the perimeter of the Catalyst Parcel that will prevent the surrounding soils from caving into the excavated areas. The depth of the excavated area will be approximately fifteen feet (15') below grade level. The ERS will consist of vertical steel soldier beams and horizontal wood lagging and will be supported by tie-backs (see Recital D, below). The vertical steel soldier beams will extend to a depth of approximately 5' – 10' below the floor of the excavated area, making them 20'-25' below grade level, and will be secured by concrete footings. The top of the ERS will be approximately one foot (1') below finished grade level. The location of the ERS will extend approximately three feet (3') into the Peabody Parcel's parking lot and also underneath the northern part of the Peabody's restaurant building. The portion of the

ERS under Peabody's restaurant building will not use vertical steel soldier beams. Instead, concrete underpinning columns will be installed pursuant to Section 4 of this Agreement, and these columns shall serve as the vertical beams that support the horizontal wood lagging beneath the building.

The ERS will be in use from approximately November 10, 2008 until May 15, 2009. After the Building's foundation walls are installed and secure, the ERS will remain in place and will be buried approximately four feet (4') below grade level.

The Building's foundation will be approximately four inches (4") north of the property line, and Catalyst shall perform those surveys described in Section 3 of this Agreement to ensure that no portion of the Building encroaches on or over the Peabody Parcel (except the sunshades as provided in Section 13 of this Agreement).

- D. The ERS will include support structures known as tie-backs, which are cables and/or bars in concrete casing under tension that connect to the walls of the ERS and extend back beneath the Peabody Parcel into the ground at a downward angle. After construction of the Building has commenced and additional support is provided to the foundation walls, the tie-backs will no longer be required and they will be abandoned along with the other components of the ERS. After abandonment, the tie-backs and other ERS components may be disturbed or removed during subsequent construction or excavation activities on the Peabody Parcel. Owner, its successors, and their contractors, subcontractors and agents shall have no liability for any damage done to the Building or related components as a result of the disturbance or removal of the abandoned tie-backs or other ERS components.
- E. After the ERS is abandoned, Catalyst will return the disturbed portion of the surface of the Peabody Parcel to a "like-new" condition (*i.e.*, a parking lot).
- F. In connection with the construction of the Building, Catalyst will require certain additional rights provided in this Agreement relating to the use of the Peabody Parcel and the removal, relocation, replacement and/or reinforcement of certain components of the improvements located on the Peabody Parcel, *i.e.*, exterior stairs, gas meter, FDC, screen wall.
- G. The parties now desire to enter into this Agreement to set forth their respective rights and obligations.

THEREFORE, the Parties agree as follows:

- 1. Recitals. The Recitals above are hereby incorporated into and made a part of this Agreement.
- 2. Construction Staging Area and Construction Fencing. Owner agrees that Catalyst may use ten feet (10') of its parking lot along the northern border of the Peabody Parcel to place concrete construction barricades and fencing (with fabric screening) to establish

and secure the CWA, provided, however, that no construction staging activities, including the storage of construction materials and/or equipment, shall be permitted on any part of the Peabody Parcel, whether inside or outside the CWA without Owner's prior consent. In addition to the barricades and fencing, as the Building is constructed, Catalyst shall maintain netting or some other appropriate type of screening on the southern face of the Building to prevent construction debris from falling onto the Peabody Parcel; provided that the parties acknowledge that it will be necessary to remove the netting to permit installation of metal studs and densglass, and further provided that after the southern face of the Building is enclosed, no netting will be required. The approximate location of the Construction Work Area and construction barricade and fencing is shown on Exhibit C, attached hereto. The parties acknowledge that the parking lot pavement within the CWA will be removed pursuant to this Agreement. However, the cut-through pedestrian opening in the masonry wall located at the northwest corner of the Peabody Parcel will not be disturbed and will remain open for pedestrian use. Catalyst shall take all necessary precautions to protect all other improvements and any existing utility lines on the Peabody Parcel, and shall be responsible for any damage to such improvements or utility lines and the cost of immediate repair.

3. Installation of the Earth Retention System (ERS). Subject to the terms and conditions of this Agreement, Owner hereby grants to Catalyst the right to encroach onto and beneath and use that portion of the Peabody Parcel shown on Exhibit C for purposes of installing the ERS and the associated tie-backs. The location and depth of the tie-backs shall be consistent with Exhibit D. Catalyst may install the ERS and related components anytime on or after October 15, 2008.

To ensure that the Building's foundation does not encroach on the Peabody Parcel, Catalyst shall obtain from a licensed surveyor or civil engineer the following surveys during the installation of the ERS: (1) a survey locating the inner face (Catalyst side) of the soldier piles installed as a component of the ERS; and (2) a survey locating the final position of the ERS wall prior to the start of foundation construction. Catalyst shall review the survey results with Owner and make any necessary modifications to the ERS to ensure that the ERS and resulting foundation wall are located per the plans and that the foundation wall will not encroach on the Peabody Parcel. Upon completion of construction of the Building, Catalyst shall also provide Owner an "As-Built" survey of the Building showing its location on the Catalyst Parcel.

4. Additional Concrete Underpinning Columns and Support For Peabody Building. The northern section of the Peabody Restaurant Building that abuts the border with the Catalyst Parcel consists of a one-story structure, with certain mechanicals on the roof, that is built on a concrete slab (this portion of the Peabody Restaurant Building hereinafter shall be called the "Peabody Extension"). The northern edge of the concrete slab has a lip that extends approximately four feet (4') into the ground. The excavation of the Catalyst Parcel and the installation of the ERS will expose the northern edge of the concrete slab and will require the installation of additional concrete underpinning columns to provide additional support to the slab. Owner hereby authorizes Catalyst to install such additional concrete underpinnings beneath the northern edge of the concrete slab as necessary to provide appropriate additional support. Catalyst shall provide such

additional support to the Peabody Extension, and relocate, modify, connect, disconnect, repair and/or replace, as circumstances may require, any utilities, sewer lines or other functional components discovered beneath the Peabody Extension during the excavation so that the Peabody Extension may at all times remain fully in use by Owner. Catalyst shall be responsible for any and all damage to the existing Peabody structures caused by the excavation or installation of the ERS and additional underpinnings.

Catalyst shall also consult with appropriate engineering professionals and/or governmental authorities to determine whether any additional support is required for the Peabody building due to the threat of additional snow accumulation on the roof of the Peabody building caused by the construction of the Building. Catalyst shall keep Owner informed of the results of such consultations and if required, Catalyst shall install, at its own cost, such additional support to the Peabody building in a good and workman-like manner consistent with the use and aesthetics of the existing building.

5. Temporary Use of Airspace Above the Peabody Extension. Because the Peabody Extension immediately abuts the southern border of the Catalyst Parcel, the CWA cannot include that portion of the Peabody Parcel. As a consequence, certain construction activities must be performed from building supported mast climbing work platforms (MCWP) extending over the roof of the Peabody Extension. The MCWP are basically platforms upon which workers can stand while working that will be suspended from the steel girders of the Building. The MCWP will be suspended above, but will not touch, the Peabody's restaurant building. All MCWP that extend over the Peabody Parcel shall include netting to catch any debris that may fall from the platform. Air flow allowing adequate ventilation for all HVAC units on the Peabody building shall be maintained at all times. Owner shall provide Catalyst a description and schedule of the ordinary maintenance required for the HVAC units, and should any HVAC units require additional maintenance as a result of debris, dust, or dirt or other disturbances from Catalyst's construction activities, Catalyst shall reimburse Owners for the reasonable cost of such additional maintenance or repairs.
6. Removal of North Mechanical Screen Wall. A screening fence runs along the northern edge of the roof of the Peabody Extension to screen the mechanicals located on the roof. To permit Catalyst to install and use the MCWP, Owner consents to Catalyst removing the screening fence along the northern edge of the roof; provided, however, that Catalyst shall provide any required additional support and finishing to the sections of the screening fence (and the railing on the west side) that remain in place. In the event the City of Birmingham requires that the screening fence along the northern edge of the roof be reinstalled, or in the event Catalyst determines that it desires to reinstall the screening fence along the northern edge of the roof, Catalyst shall, at its own cost, install the screening fence after it no longer interferes with the construction of the Building.
7. Removal of Stairs Attached to Gas Station Building. A stairway is located immediately behind and is attached to the back wall of the gas station building that is currently located on the Catalyst Parcel. The stairway provides access from the parking area behind the Peabody Extension to the roof of the Peabody Extension. In order to demolish the gas station building, it will be necessary to detach the stairway from the gas station building

and provide alternative support. In order to construct the Building, it will be necessary temporarily to remove the stairway (1) when the soldier piles for the ERS are installed (approximately one week); and (2) during installation of the stone veneer on the Building (approximately 2-4 weeks). Owner agrees that during these periods, Catalyst may remove the stairway, provided that after each period, Catalyst shall, at its own cost, reinstall the stairway and provide any additional required support for the stairway, and further provided that Catalyst shall pay the cost of any signage or internal modifications to the Peabody building required by the City of Birmingham to accommodate the use of alternate fire escape routes when the stairs are not available for use.

8. Alternate Parking Spaces. During the period of this Agreement, and until that portion of the Peabody Parcel that will be used by Catalyst pursuant to this Agreement is returned to Owner and available for parking, Catalyst shall provide alternative parking for Peabody Restaurant patrons. Initially, Catalyst will obtain the right to use and make available for parking by Peabody restaurant customers the lot immediately to the south of Peabody's existing parking lot (the Blackward parcel). The lot shall be fenced, paved and striped, with appropriate signage, and shall provide not fewer than fourteen (14) parking spaces. In the event use of the Blackward parcel becomes unavailable prior to the time Owner is able to resume use of the affected parking spaces on the Peabody Parcel, Catalyst shall provide, at its own expense, during Peabody Restaurant's business hours, valet parking services for Peabody Restaurant patrons whereby such vehicles shall be parked at the nearby public parking facility.
9. Snow Removal. Catalyst shall retain Central Park Properties/MTS Construction, at Catalyst's sole cost, to provide snow removal services during the term of this Agreement for the parking area of the Peabody Parcel and for the alternate parking lot provided pursuant to Section 8 above. Snow shall be removed each day prior to the opening of Peabody's Restaurant at 11:00 a.m. and at such other times as snow accumulates. To keep as many parking spaces available as possible, accumulated snow will be removed from the site and not piled on the Peabody Parcel.
10. Review of Parking. Within thirty (30) days after the CWA is constructed, at Owner's request, the parties shall meet and review the parking situation for Peabody's restaurant. Catalyst and Owner shall consider whether any improvements or changes to parking can reasonably be made.
11. Relocation of Gas Meter and Fire Department Connection. The gas meter for the Peabody Restaurant Building is currently connected to the back of the gas station building located on the Catalyst Parcel. The parties acknowledge and agree that it will be necessary to relocate the gas meter to accommodate the demolition of the gas station and the construction of the Building. Catalyst shall work with the utility company to relocate the gas meter to the location shown on Exhibit E, attached hereto. Catalyst shall pay all costs associated with the relocation of the gas meter, including repairs to any damage to the parking lot caused by said relocation of the gas meter. The Fire Department Connection ("FDC") must also be relocated. Catalyst shall pay all costs associated with the relocation of the FDC, including design and installation.

12. Access to Trash Dumpster Enclosure. Catalyst shall ensure that access to and use of the existing trash dumpster enclosure will remain available. Catalyst may make minor modifications to the enclosure, provided that such modifications do not materially adversely affect use of the dumpsters. Catalyst shall also ensure that the construction fence and CWA shall be located and coordinated so as to not unreasonably interfere with the delivery of products to Peabody's Restaurant.

13. Air Rights for Sunshades. The Building will include sunshades (metal outriggers and blades) that extend out over each of the Building's windows, including those windows facing south looking out over the Peabody Parcel. The sunshades on the windows on the south side of the Building will extend out approximately twelve inches (12') over the Peabody Parcel. Owner hereby grants to Catalyst an easement for the air rights occupied by the sunshades, provided that in the event the Peabody Parcel is later developed in a manner that requires the removal of the sunshades on the south side of the Building, Catalyst agrees to remove the sunshades on the south side of the Building at its own cost. Catalyst agrees that other than the air rights for sunshades described herein, Catalyst shall make no claim or assertion of air rights or similar "sun" or "view" rights relating to the Peabody Parcel. Catalyst further agrees that it will not object to Owner or its successor's construction of a building of similar height to the Building on or near the lot line between the Catalyst Parcel and the Peabody Parcel, and further that Catalyst shall make whatever modifications (e.g. fire-rated windows) to the Building may be required so that the Building is in compliance with all applicable laws and regulations in light of the construction of such a building on the Peabody Parcel. Owner and Catalyst agree to execute an appropriate agreement in recordable form that sets forth the several rights created in this section.

14. Condition of Peabody Parcel At Expiration of Agreement. Unless otherwise agreed by the parties, at the conclusion of the term of this Agreement, Catalyst shall remove all fencing, signs, equipment, construction materials, and debris from the Peabody Parcel. The parties agree and acknowledge that the ERS will not be removed, but will be buried approximately four feet (4') below finished grade level of the parking area and beneath the northern section of the Peabody Extension. In addition, the parties agree and acknowledge that the tie-backs will not be removed. Owner and its successors shall have no continuing obligation to protect or preserve the ERS or tie-backs, and after the termination of this Agreement, the ERS and tie-backs may be disturbed or removed from beneath the Peabody Parcel without Catalyst's prior notice or consent. Owner, its successors, and their contractors, subcontractors and agents shall have no liability for any damage done to the Building or related components as a result of the disturbance or removal of the abandoned tie-backs or other ERS components. Catalyst agrees that it will reconstruct and re-stripe the disturbed portion of the parking area of the Peabody Parcel at its own cost and return it to "like new" condition.

15. Term of Agreement. This Agreement shall commence on November 21, 2008, provided, however, that Catalyst shall notify Owner not less than seven (7) days in advance of the date when Catalyst intends to commence use of the CWA. This

Agreement shall terminate upon completion of construction of the Building, or on May 31, 2010, whichever occurs first, subject to an automatic extension of up to 90 days upon written notice from Catalyst not less than thirty days prior to termination date that an extension is necessary in order to complete the Project.

16. Insurance. Catalyst, its Contractor and all subcontractors shall name Owner and Peabody's of Birmingham, Inc. as an insured or additional insured on a general liability insurance policy to be obtained and maintained by Catalyst and/or Catalyst's contractor and subcontractors for the construction of the Building providing coverage of not less than \$5,000,000.00 per occurrence for property damage and not less than \$3,000,000.00 per occurrence for injury to persons, and providing that such coverage may not be terminated or altered without at least 30 days prior written notice to Owner. All such insurance shall include business interruption coverage. Catalyst shall provide copies of the certificates of insurance to Owner. Catalyst, its contractors and subcontractors shall also maintain auto liability insurance in an amount not less than \$1,000,000.00.
17. Noise Monitoring; Pre-Construction Survey and Inspection. Prior to the commencement of construction activities, Catalyst shall, at its own expense, obtain a pre-construction survey of the improvements, mechanicals and personal property located on the Peabody Parcel, which shall include inspection by a structural engineer, for the purpose of documenting the original condition of the Peabody Parcel and improvements. A similar post-construction survey shall be conducted by Catalyst, at its own expense, to identify any damage to said property caused by Catalyst's construction activities. Owner shall provide Catalyst reasonable access to the Peabody Parcel for such purposes, and Catalyst shall share the results of both surveys with Owner. Catalyst shall also monitor the condition of the Peabody Parcel at appropriate times during construction when construction activities pose a greater risk of damage to the Peabody Parcel and improvements (e.g., during excavation and underpinning under the Peabody Extension). Catalyst shall comply with all applicable noise ordinances and shall maintain noise monitoring devices at appropriate location(s) at the worksite.
18. Subsequent Use of the Building's Southern Foundation Wall for Temporary Support Purposes In Connection with New Construction on the Peabody Parcel. In the event Owner or its successors-in-title of the Peabody Parcel desires to construct a new building or other improvement on the Peabody Parcel ("New Construction"), Catalyst hereby grants to Owner, for no additional consideration, the right to use the Building's south foundation wall (facing the Peabody Parcel) for purposes of providing temporary support in connection with the construction of any below grade component of the New Construction, including but not limited to its foundation; provided, however, that (1) in no event shall any permanent component of the New Construction encroach onto Catalyst's Parcel; (2) no damage shall be done to the Building or its foundation; and (3) the parties shall enter into a written agreement providing reasonable assurances, protections and indemnifications to Catalyst similar to those provisions found in this Agreement.

19. Repair of Damage; Hold Harmless and Indemnification. Catalyst shall be liable for the reasonable cost of repair or replacement, and any associated loss of business damages, resulting from any damage to any improvements or personal property located on the Peabody parcel related to or arising from the construction of the Building or Catalyst's use of the Peabody Parcel pursuant to this Agreement. Catalyst shall defend, indemnify and hold harmless Owner from and against all claims, judgments, losses, damages, demands, payments, recoveries, legal proceedings, and decrees of every nature, and expenses for damage or injury to persons or property, arising from or related to Catalyst's construction activities or its use of the Peabody Parcel pursuant to this Agreement.
20. Consideration. In addition to the rights and obligations set forth herein, as additional consideration for the rights granted to Catalyst under this Agreement, Catalyst shall pay Owner \$100,000.00, and Catalyst shall also reimburse Owner for attorney fees in connection with its review of this Agreement in an amount not to exceed \$5,000.00.
21. Interpretation. This Agreement shall be construed and interpreted under the laws of the State of Michigan. This Agreement contains the entire agreement between the parties as to its subject matter and may not be modified or amended except in writing signed by both parties. The captions are for reference only and shall play no part in the interpretation of this Agreement. The Recitals and any attached exhibits, however, are an integral part of this Agreement.
22. Binding Effect/Third Parties. This Agreement is binding on and shall inure to the benefit of the parties to this Agreement and their respective successors, but it may not be assigned by any party without the prior written consent of the other party, which shall not be unreasonably denied. The parties do not intend to confer any benefits on any person, firm, corporation, or other entity which is not a party to this Agreement.
23. Notices. All notices and other communications required or permitted under this Agreement shall be in writing and shall be deemed given when delivered personally, or one (1) day after being sent by overnight courier, or three (3) days after being mailed by registered mail, return receipt requested, to the following address (or any other address that is specified in writing by either party):

If to Catalyst: Patti Owens
Catalyst Development Co. 8, L.L.C.
100 W. Michigan Ave., Suite 300
Kalamazoo, MI 49007
Tel.: (269) 492-6810

with copy to: Jordan R. Schau
Lake Stover & Schau, P.L.C.
141 E. Michigan Avenue, Suite 600
Kalamazoo, Michigan 49007
Tel. (269) 382-5440

If to Owner: SOSAN PEABODY
PEABODY FAMILY, LLC
34965 WOODWARD AVE
WARREN, MI, 48091

with copy to: JEFF RAFF
JEFF RAFF HUBER & WEISS
AMERICAN CENTER, SUITE 2500
SOUTHFIELD, MI

IN WITNESS WHEREOF, the parties, by their respective authorized representatives,
enter into this Agreement effective on the date above written.

CATALYST DEVELOPMENT CO. 8, L.L.C.

By: Patt Owens
Patti Owens

Its: Managing Director

Dated: November 21, 2008

OWNER

Peabody Family, LLC

By: Susan Peabody Warten

Its: Member

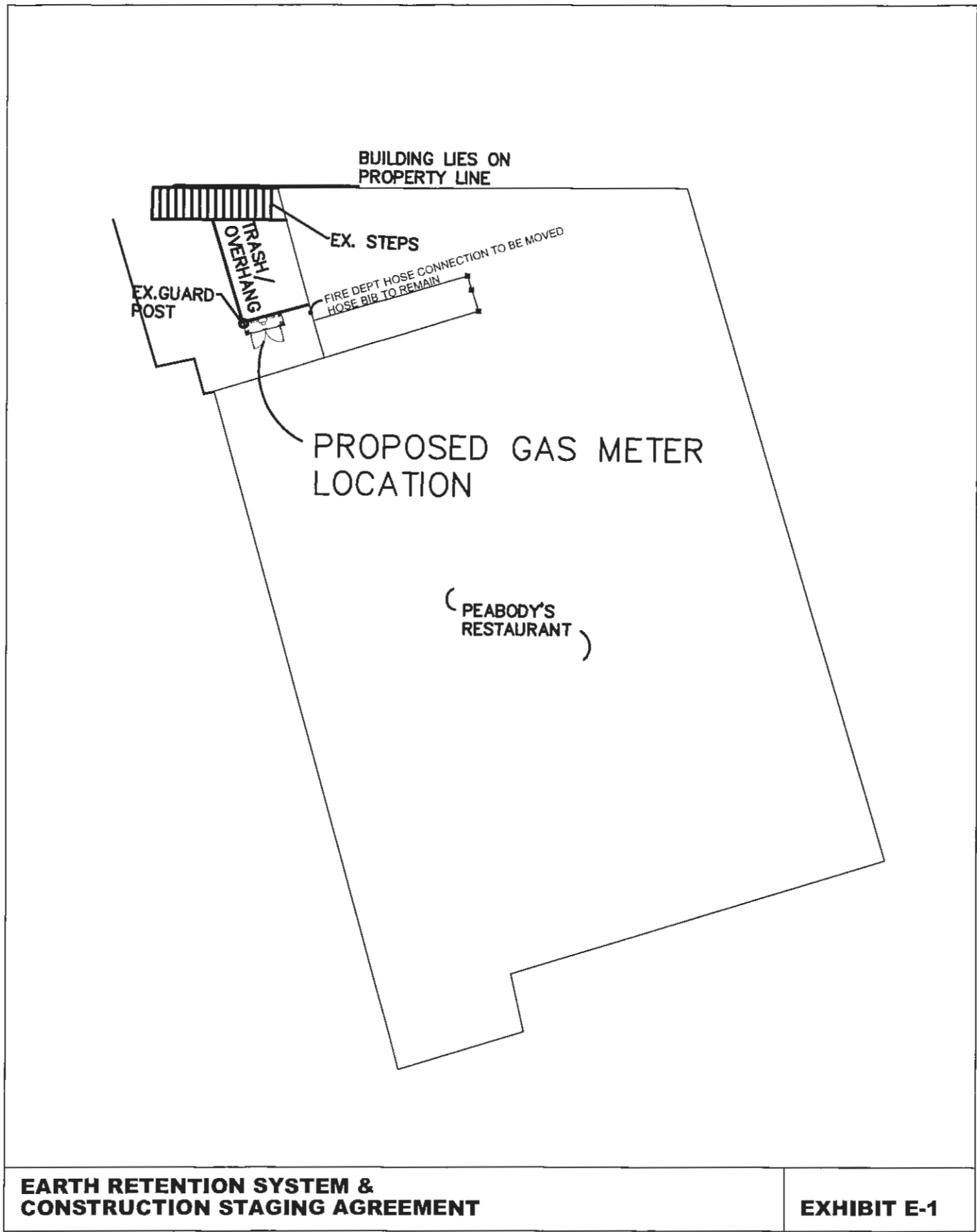
Dated: 11/21, 2008

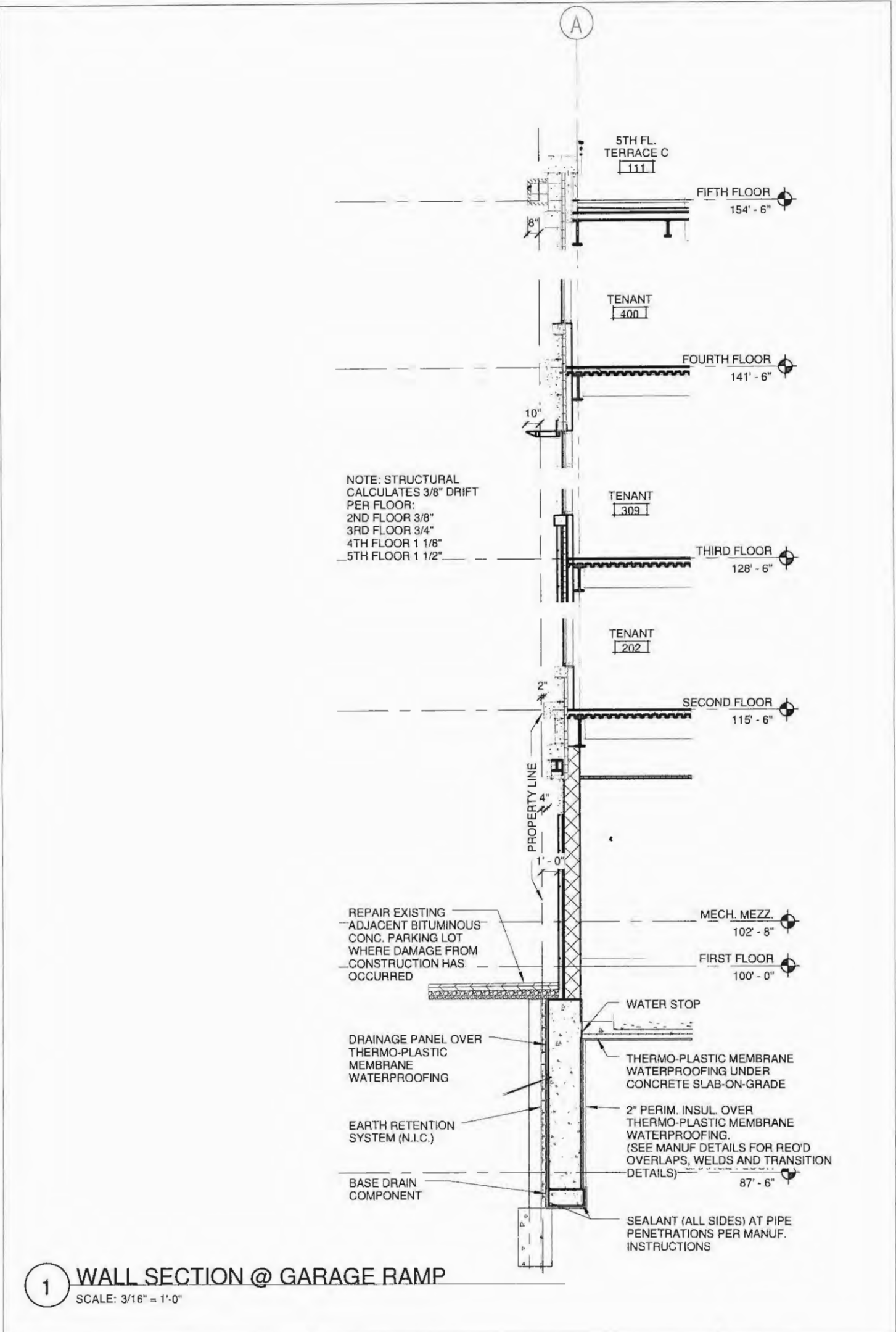
EXHIBIT A

A parcel of land containing approximately 0.341 acres located at T2N, R10E, Section 36,
Hunter's Eastern Addition, Lots 5 and 6, and also the East 4 feet of Lot 7

EXHIBIT B

T2N, R10E, SEC 36 BROWNELL SUB LOTS 10, 11 & 12, ALSO PART OF LOT 13
DESC AS BEG AT NE LOT COR, TH S 15-43-00 E 26.46 FT ALG ELY LOT LINE, TH S
69-45-15 W 72.82 FT, TH N 20-05-00 W TO N LOT LI, TH NELY ALG SD LINE TO BEG





ERS AND CONSTRUCTION STAGING AGREEMENT	3/16" = 1'-0"	Exhibit F
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- LEGEND**
- 780 EXISTING GRADE ELEVATION
 - 765 BOTTOM OF EXCAVATION ELEVATION
 - 10 SOLDIER BEAM NO.
 - 1 DRILLED-IN SOLDIER BEAM
 - PROPOSED STRUCTURES
 - EXISTING STRUCTURE
 - 64 SOIL BORING LOCATION AND NUMBER
 - A CROSS SECTION REFERENCE SHEET NUMBER
 - UNDERPINNING PIT NO.
 - ONE TIE TIEBACK

CAUTION!!
GAS LINE
INSTALL W/IN EX. 12" SANITARY SEWER

UTILITY LOCATING REQUIREMENTS
FOR MICHIGAN, CALL MISS DIG SYSTEM (800) 482-7171 AT LEAST 48 HOURS BEFORE ANY EXCAVATION OR DRILLING, BUT NOT MORE THAN 14 DAYS PRIOR TO STARTING WORK. RELOCATES MUST BE REQUESTED IF LOCATION MARKS BECOME OBLISCURED.
DATE CALLED: BY: REFERENCE #:

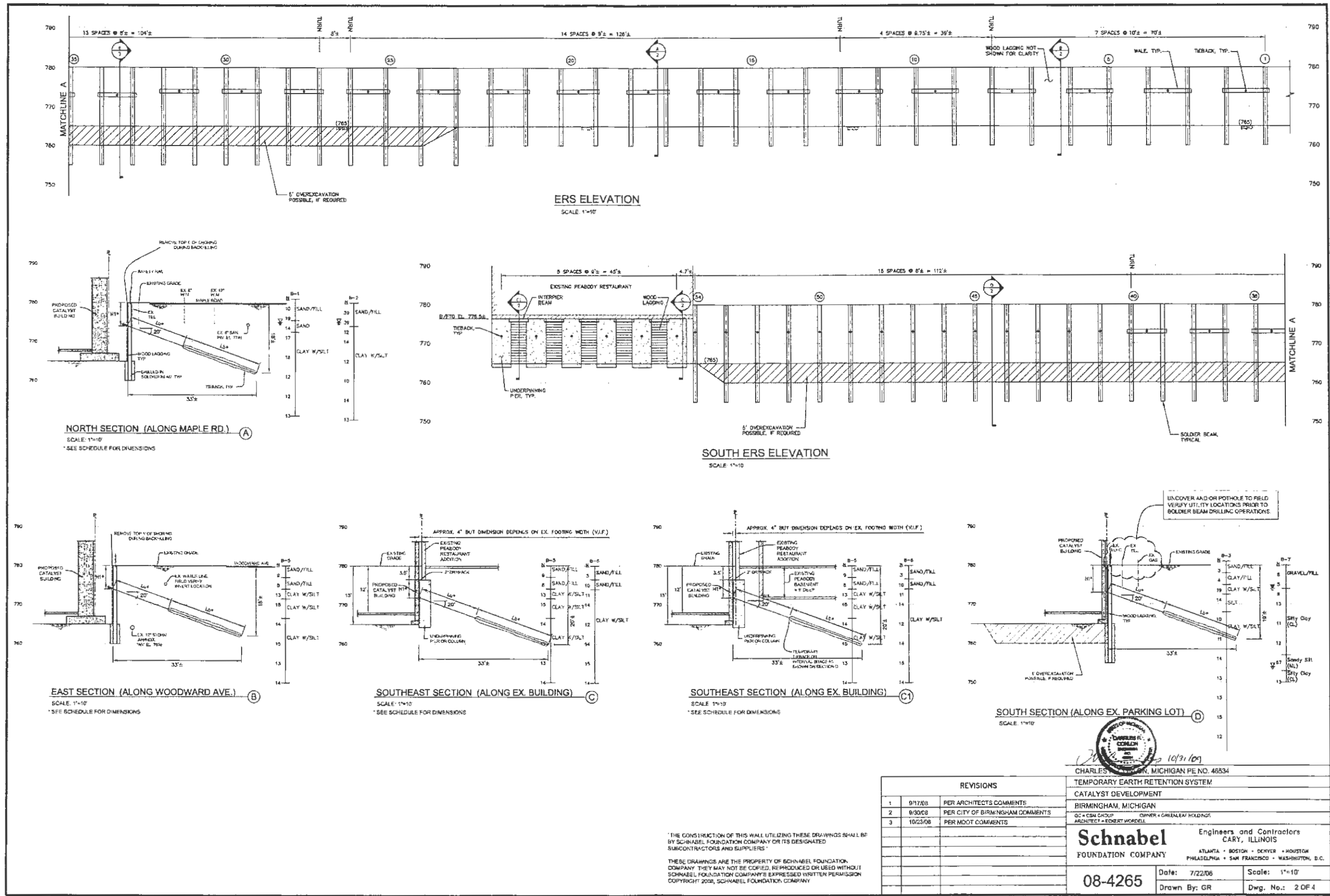
ERS PLAN
SCALE: 1"=10'

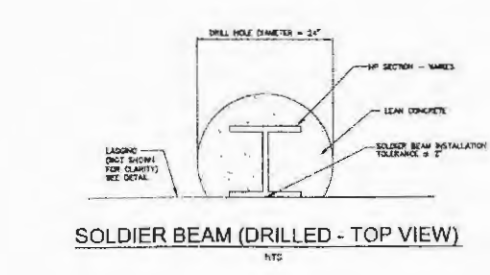
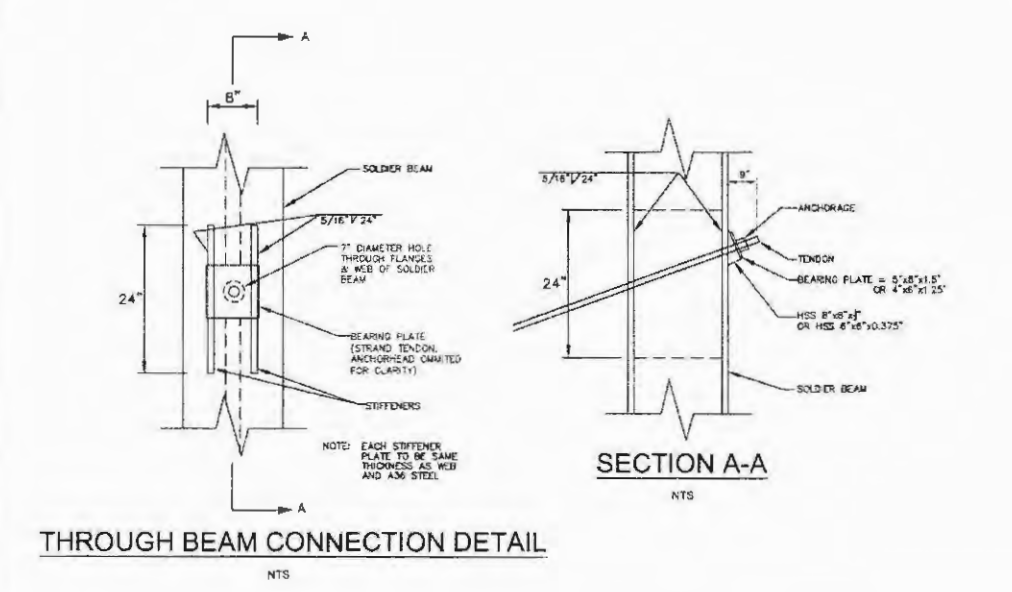
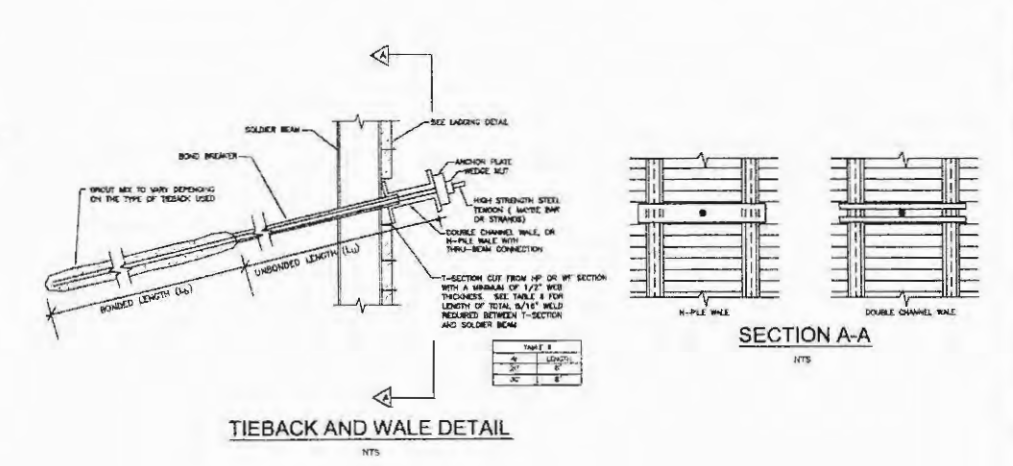
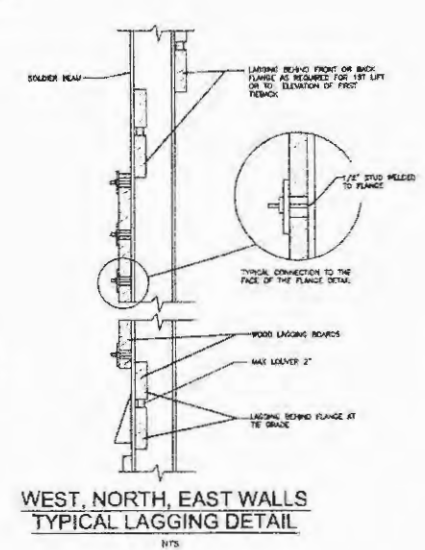
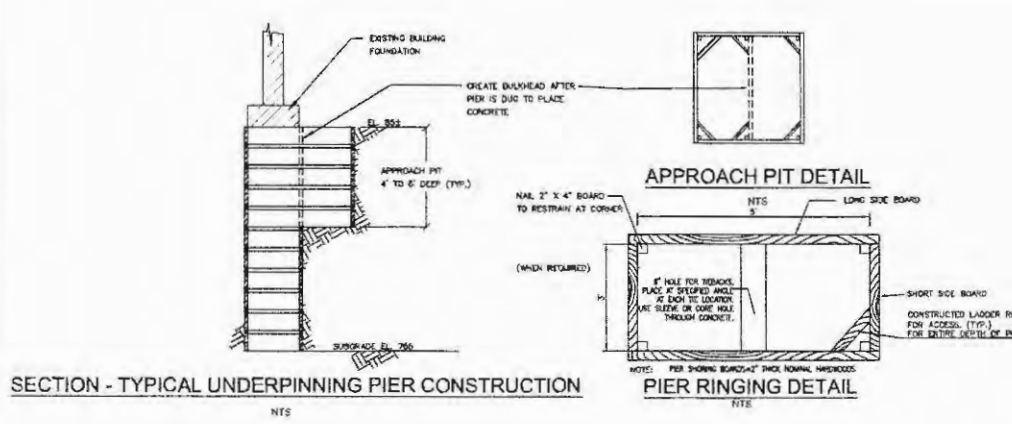
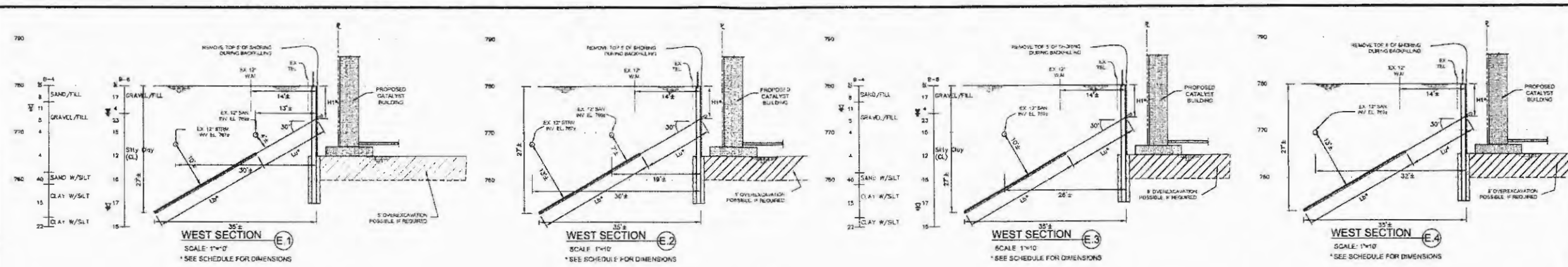
SOLDIER BEAM, TIEBACK AND WALE SCHEDULE (revised 9/17/08)													
SOLDIER BEAM NO.	Beam Grade Elevation	Beam Length (feet)	TIEBACKS				WALS						
			Top (ft)	Bot (ft)	Length (ft)	Grade (ft)	Top (ft)	Bot (ft)	Length (ft)	Grade (ft)			
1-12	778.5	20	778.5	768.5	10	778.5	778.5	10	778.5				
13-24	778.5	20	778.5	768.5	10	778.5	778.5	10	778.5				
25-36	778.5	20	778.5	768.5	10	778.5	778.5	10	778.5				
37-48	778.5	20	778.5	768.5	10	778.5	778.5	10	778.5				

REVISIONS

NO.	DATE	DESCRIPTION
1	9/17/08	PER ARCHITECTS COMMENTS
2	9/30/08	PER CITY OF BIRMINGHAM COMMENTS
3	10/23/08	PER MDOT COMMENTS

CHARLES R. CONLON, MICHIGAN PE NO. 48534
TEMPORARY EARTH RETENTION SYSTEM
CATALYST DEVELOPMENT
BIRMINGHAM, MICHIGAN
GC - CDA GROUP OWNER - GREENLEAF HOLDINGS
ARCHITECT - BUCKHART WOODRILL
Schnabel
FOUNDATION COMPANY
Atlanta • Boston • Denver • Houston
Philadelphia • San Francisco • Washington, D.C.
08-4265 Date: 7/22/08 Scale: 1"=10'
Drawn By: GR Dwg. No.: 1 OF 4





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REVISIONS			TEMPORARY EARTH RETENTION SYSTEM	
1	9/17/08	PER ARCHITECTS COMMENTS	CATALYST DEVELOPMENT	
2	8/30/08	PER CITY OF BIRMINGHAM COMMENTS	BIRMINGHAM, MICHIGAN	
3	10/23/08	PER MDOT COMMENTS	GE = GSI GROUP, OWNER = GREENLEAF HOLDINGS, ARCHITECT = ECKERT WOODHEAD	
			Schnabel Engineers and Contractors FOUNDATION COMPANY CARY, ILLINOIS ATLANTA • BOSTON • CHICAGO • HOUSTON PHILADELPHIA • SAN FRANCISCO • WASHINGTON, D.C.	
			08-4265	Date: 7/22/08 Drawn By: GR Scale: AS NOTED Dwg. No.: 3 OF 4

GENERAL NOTES

This set of plans describes the temporary earth retention system for construction of the Catalyst Development Building in Birmingham, Michigan. Only that information necessary to accomplish this work is shown.

TEMPORARY SOLDIER PILE AND LAGGING INSTALL PROCEDURES

1. Prior to earth retention work, call Miss Dig System (800) 482-7171 and MDOT.
2. Excavate and grade to top of soldier beam elevation (by others). Locate existing utilities and structures (by others) and modify soldier beam layout as required. Remove existing manmade obstructions (by others), if necessary, to install soldier beams.
3. Install soldier beams at locations shown on plans. Install soldier beams by pile drilling methods. See Soldier Beam Schedule for soldier beam size and length. A 50-foot-wide bench shall be maintained (by others) for safe soldier beam drilling operations.
4. Excavate (by others) and lag to approximately 2 feet below tieback elevation using lagging details shown on plans. Excavation shall proceed in approximately five (5)-foot lifts, or less, if soil will not stand open, as directed by Schnabel's foreman.
5. Install tiebacks as described in Tieback Installation Procedures below. No further excavation shall proceed below tieback elevation at the perimeter until tiebacks are tested.
6. Continue excavation and lagging to subgrade.
7. Soldier beams, tiebacks and lagging shall be left in place. The top 5 feet of soldier beams and lagging will be removed once backfill has been placed within 7 feet of the top of shoring.
8. Equivalent members may be substituted for those shown. Used material may be used.

TIEBACK INSTALLATION PROCEDURE

- A. Construct and maintain (by others) a 30-foot-wide bench approximately 2 feet below tieback elevation to allow for safe tieback operations. Tieback Schedule indicates tieback angle, tendon size, grade, length and tieback design load. If admixtures are used in the cement, procedures below shall be modified to suit properties of the admixture.
- B. Either of the tieback installation methods, or a combination of the tieback methods, described below may be used on this project.

Pressure Injected Tiebacks

1. Drill (with water) or drive a minimum 4-inch-diameter casing at tieback locations shown on the plans. After the casing has been installed to the desired length, insert tendon and knock off the bit. Inject cement grout along bond length with a minimum pressure of 100 psi as casing is extracted. After the bond length has been grouted, extract remaining casing with no pressure exerted on the grout.
2. Allow grout to harden a minimum of 72 hours, then tension each tieback in accordance with the Tieback Testing Procedures.

Regroutable Tiebacks

1. Drill approximately a 6-inch diameter hole to the lengths shown on the Tieback Schedule. Tieback locations and elevations are shown on plan and elevations. (A smaller diameter hole will be drilled if the holes must be cased.) Tremie grout the tieback hole. Insert tendon after the tieback hole is filled with grout.
2. Regrout the bond length as necessary to develop the required tieback capacity.
3. Allow grout to harden a minimum of five (5) days, then tension each tieback in accordance with the Tieback Testing Procedures.

UNDERPINNING PROCEDURES

1. Demolish structures (if req'd) in preparation for underpinning and remove obstructions prior to installing underpinning. Install soldier beams and lagging (as required) prior to start of underpinning work.
2. Verify the footing elevations of the existing buildings, then excavate (by others) to the bottom of footings. Review existing building foundations and modify the underpinning design as required.
3. Excavate for piers to the dimensions shown. Place pile sheeting as required to maintain soil. After each pier is installed, fill with the required concrete to within 2" of the footing. Drypack the pier the following day. Work no closer than 15 feet on center until adjacent underpinning pier(s) have been drypacked.
4. The size of the underpinning pit and minimum tip elevation are given in appropriate sections and details.
5. After all the underpinning piers have been drypacked, excavate and lag between underpinning piers to 2 feet below tieback grade.
6. Install tiebacks as described in Tieback Installation Procedures. No further excavation shall proceed below tieback elevation at the perimeter until tiebacks are tested and locked-off.
7. Continue excavation and install wales, braces and lagging to subgrade.

MATERIALS

STEEL	ASTM A992 (50 ksi yield strength) for soldier beams and wales.
WOOD LAGGING	3" nominal thick, mixed hardwoods (untreated).
TENDON	High tensile steel bars, 150 ksi grade, conforming to ASTM A-722; or high tensile steel strand, 0.6-inch-diameter, 7-wire, 270 ksi grade, conforming to ASTM A-416.
GROUT	Neat cement grout consisting of Portland Cement Type I, II or III conforming to ASTM C-150 mixed with potable water.
WELDS	E70XX weld strength level.

TIEBACK TESTING PROCEDURES

Performance Test: Five (5) percent of the tiebacks or a minimum of three (3) tiebacks, whichever is greater, shall be performance tested in accordance with the following procedures. The remaining tiebacks shall be tested in accordance with the proof test procedures.

The performance test shall be made by incrementally loading and unloading the tieback in accordance with the following schedule. The load shall be raised from one increment to another immediately after recording the tieback movement. The tieback movement shall be measured and recorded to the nearest 0.001 inches with respect to an independent fixed reference point at the alignment load and at each increment of load. The alignment load is a nominal load maintained on the tieback to keep the testing equipment in position. The load shall be monitored with a pressure gauge. A reference pressure gauge shall be placed in series with the pressure gauge during the performance test. If the load determined by the reference pressure gauge and the load determined by the pressure gauge differ by more than ten (10) percent, the jack, pressure gauge and reference pressure gauge shall be recalibrated. At load increments other than the maximum test load, the load shall be held just long enough to obtain the movement reading.

Performance Test Schedule	
Load	Load
AL	0.25DL
0.25DL*	0.50DL
AL	0.75DL
0.25DL	1.00DL
0.50DL*	1.25DL*
AL	0.25DL
0.25DL	0.50DL
0.50DL*	0.75DL
AL	1.00DL
0.25DL	1.25DL
0.50DL	1.50DL*
0.75DL	1.75DL*
1.00DL*	Reduce to Lock-off Load(0.75DL)

Where: AL is the alignment load
DL is the tieback design load

The maximum test load in a performance test shall be held for ten (10) minutes. The jack shall be re-pumped as necessary in order to maintain a constant load. The load-hold period shall start as soon as the maximum test load is applied and the tieback movement, with respect to a fixed reference, shall be measured and recorded at 1 minute, 2, 3, 4, 5, 6 and 10 minutes. If the tieback movement between one (1) minute and ten (10) minutes exceeds 0.04 inches, the maximum test load shall be held for an additional 50 minutes. If the load hold is extended, the tieback movement shall be recorded at 15 minutes, 20, 25, 30, 45, and 60 minutes.

Plot the tieback movement versus load for each load increment marked with an asterisk (*) in the performance test schedule and plot the residual movement of the tendon at each alignment load versus the highest previously applied load.

Proof Test: The proof test shall be performed by incrementally loading the tieback in accordance with the following schedule. The load shall be raised from one increment to another immediately after recording the tieback movement. The tieback movement shall be measured and recorded to the nearest 0.001 inches with respect to an independent fixed reference point at the alignment load and at each increment of load. The alignment load is a nominal load maintained on the tieback to keep the testing equipment in position. The load shall be monitored with a pressure gauge. All load increments other than the maximum test load, the load shall be held just long enough to obtain the movement reading.

The maximum test load in a proof test shall be held for 10 minutes. The jack shall be re-pumped as necessary in order to maintain a constant load. The load-hold period shall start as soon as the maximum test load is applied and the tieback movement, with respect to a fixed reference, shall be measured and recorded at 1 minute, 2, 3, 4, 5, 6 and 10 minutes. If the tieback movement between 1 minute and 10 minutes exceeds 0.04 inches, the maximum test load shall be held for an additional 50 minutes. If the load hold is extended, the tieback movements shall be recorded at 15 minutes, 20, 25, 30, 45 and 60 minutes.

Proof Test Schedule	
Load	Load
AL	1.00DL
0.25DL	1.25DL
0.50DL	1.50DL
0.75DL	1.75DL
	Reduce to Lock-off Load(0.75DL)

Where: AL is the alignment load
DL is the tieback design load

Plot the tieback movement versus load for each load increment in the proof test.

Tieback Load Test Acceptance Criteria

A performance- or proof-tested tieback with a 10 minute load hold is acceptable if:

1. The tieback carries the maximum test load with less than 0.04 inches of movement between 1 minute and 10 minutes; and
2. The total movement at the maximum test load exceeds 80 percent of the theoretical elastic elongation of the unbonded length.

A performance- or proof-tested tieback with a 60 minute load hold is acceptable if:

1. The tieback carries the maximum test load with a creep rate that does not exceed 0.08 inches/log cycle of time; and
2. The total movement at the maximum test load exceeds 80 percent of the theoretical elastic elongation of the unbonded length.

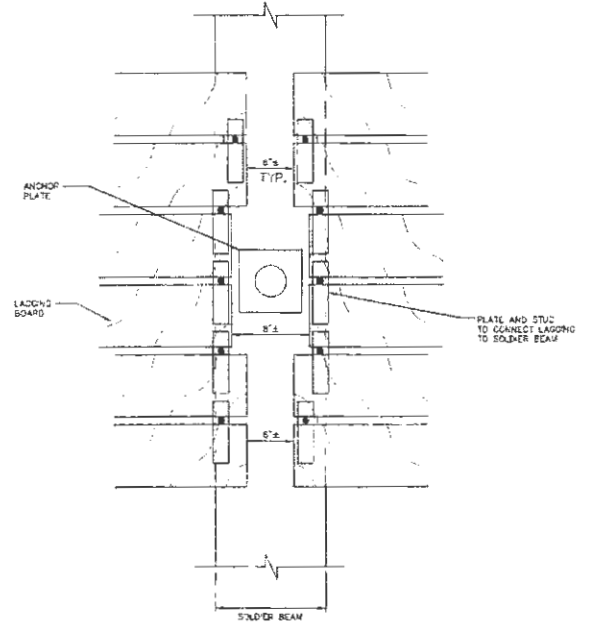
Tiebacks which have a creep rate greater than 0.08 inches/log cycle of time can be incorporated in the finished work at a load equal to one-half its failure load. The failure load is the load carried by the tieback after the load has been allowed to stabilize for ten (10) minutes.

When a tieback fails, the design and/or the construction procedures may be modified. These modifications may include, but are not limited to, installing replacement tiebacks, reducing the design load by increasing the number of tiebacks, modifying the installation methods, increasing the bond length or changing the tieback type.

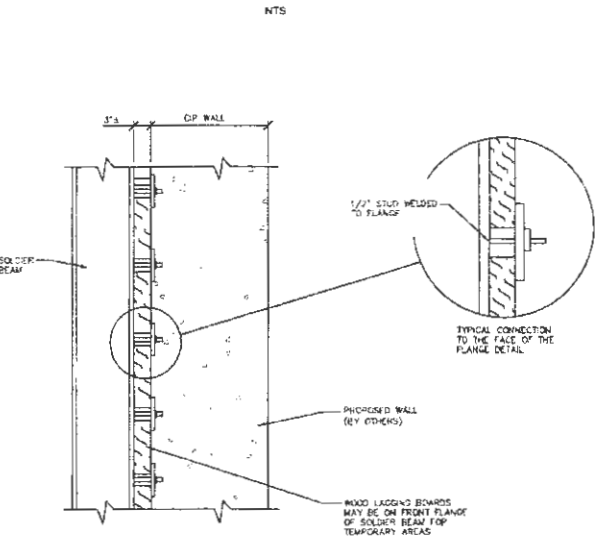
Lock-off: Upon completion of the tieback test, the load shall be reduced to the lock-off load indicated on the Performance and Proof Test Schedules and transferred to the anchorage device. The tieback may be completely unloaded prior to lock-off. After transferring the load and prior to removing the jack, a lift-off reading shall be made. The lift-off reading shall be within 10 percent of the specified lock-off load. If the load is not within 10 percent of the specified lock-off load, the anchorage shall be reset and another lift-off reading shall be made.

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LAGGING DETAIL AT TIEBACK CONNECTION



SOUTHWALL TYPICAL LAGGING DETAIL

REVISIONS			CHARLES R. CONLON, MICHIGAN PE NO. 46534	
1 9/17/06 PER ARCHITECT'S COMMENTS			TEMPORARY EARTH RETENTION SYSTEM	
2 9/30/06 PER CITY OF BIRMINGHAM COMMENTS			CATALYST DEVELOPMENT	
3 10/23/06 PER MDOT COMMENTS			BIRMINGHAM, MICHIGAN	
			GC - CSI GROUP OWNER - GHEDELL HOLDINGS	
			ARCHITECT - ECKERT WICKBELL	
			Schnabel Engineers and Contractors	
			FOUNDATION COMPANY CARY, ILLINOIS	
			ATLANTA • BOSTON • DENVER • HOUSTON	
			PHILADELPHIA • SAN FRANCISCO • WASHINGTON, D.C.	
			Date: 7/22/06 Scale: AS NOTED	
			08-4265 Drawn By: GR Dwg. No.: 4 OF 4	

RECEIVED
OAKLAND COUNTY
REGISTER OF DEEDS

2015 MAY 28 AM 11:58

107862
LIBER 48221 PAGE 656
\$25.00 MISC RECORDING
\$4.00 REMONUMENTATION
05/28/2015 12:03:11 P.M. RECEIPT# 61016
PAID RECORDED - OAKLAND COUNTY
LISA BROWN, CLERK/REGISTER OF DEEDS

FIRST AMENDMENT TO MEMORANDUM OF AGREEMENT

This First Amendment to Memorandum of Agreement ("First Amendment") is entered into and executed by and between Catalyst Development Co. 8, L.L.C., a Michigan limited liability company of 100 W. Michigan Avenue, Suite 300, Kalamazoo, Michigan 49007 ("Catalyst") and Peabody Family, LLC, a Michigan limited liability company of 34965 Woodward Avenue, Birmingham, Michigan 48009 ("Peabody").

RECITALS:

- A. On November 21, 2008, Catalyst and Peabody entered into and executed an agreement titled EARTH RETENTION SYSTEM AND CONSTRUCTION BARRICADE AGREEMENT ("ERS Agreement").
- B. During the month of December 2008, Catalyst and Peabody entered into and executed a MEMORANDUM OF AGREEMENT ("Memorandum") which Memorandum was recorded January 27, 2009 in Liber 40847, Page 546 Oakland County Records.
- C. Making reference to the ERS Agreement in the Memorandum, the parties acknowledged and agreed that the ERS Agreement set forth certain rights and obligations relating to the Building (as said term is defined in the ERS Agreement), the Catalyst Parcel (as said term is defined in the ERS Agreement and more particularly described on Exhibit "A" attached hereto and made a part hereof) and the Peabody Parcel (as said term is defined in the ERS Agreement and more particularly described on Exhibit "B" attached hereto and made a part hereof), including certain rights and obligations which extended beyond the term of the ERS Agreement (as set forth in paragraph fifteen (15) of the ERS Agreement).
- D. Catalyst and Peabody desire to acknowledge and agree that in addition to the provision set forth in the Memorandum, which specifically references the survival and extension of

paragraph thirteen (13) of the ERS Agreement beyond the term of the ERS AGREEMENT, the terms and conditions set forth in paragraphs fourteen (14) and eighteen (18) of the ERS Agreement are also specifically intended to, and do, survive and extend beyond the term of the ERS Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Catalyst and Peabody agree as follows:

1. The Memorandum and the ERS Agreement shall be, and hereby are, amended such that in addition to the specific survival and extension of paragraph thirteen (13) of the ERS Agreement beyond the term of the ERS Agreement, the terms and conditions set forth in paragraphs fourteen (14) and eighteen (18) of the ERS Agreement also are specifically intended to, and do, survive and extend beyond the term of the ERS Agreement and that the rights and obligations described in this First Amendment (specifically those rights and obligations set forth in paragraphs thirteen (13), fourteen (14) and eighteen (18) of the ERS Agreement) remain in full force and effect, shall run with the land and shall be binding upon, and shall inure to the benefit of and burden, the Catalyst Parcel and the Peabody Parcel and Catalyst and Peabody, and their successors and assigns, as set forth therein.
2. Except as specifically amended by this First Amendment, all of the terms and conditions set forth in the Memorandum shall remain in full force and effect.
3. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one instrument.

(Signatures are set forth on the following pages)

(The remainder of this page is intended to be blank)

IN WITNESS WHEREOF, the undersigned have entered into and executed this First Amendment on the dates hereinafter set forth. This First Amendment shall be effective for all purposes as of May 19, 2015.

Dated May 19, 2015.

**CATALYST DEVELOPMENT CO. 8,
L.L.C.,**

a Michigan limited liability company


By: 
Patti Owens

Its: Managing Director

STATE OF MICHIGAN

COUNTY OF Kalamazoo

Acknowledged before me in Kalamazoo County, Michigan on May 19, 2015 by Patti Owens, as Managing Director, on behalf of CATALYST DEVELOPMENT CO. 8, L.L.C., a Michigan limited liability company.


Notary Public, State of Michigan, County of Kalamazoo
My Commission Expires: _____
Acting in Kalamazoo County, Michigan

(Signatures are continued on the following page)

SUSAN L. ESMAN
Notary Public - State of Michigan
County of Kalamazoo
My Commission Expires 11/07/2019
Acting in the County of Kalamazoo

Dated May 15, 2015.

PEABODY FAMILY, LLC,
a Michigan limited liability company

By: Susan Peabody Wortman
Name: Susan Peabody Wortman
Its: Manager

By: Nancy Peabody Long
Name: Nancy Peabody Long
Its: Manager

By: Barbara Peabody Jerome
Name: Barbara Peabody Jerome
Its: Manager

STATE OF MICHIGAN
COUNTY OF Oakland

Acknowledged before me in Oakland County, Michigan on May 15, 2015 by Susan Peabody Wortman, Nancy Peabody Long and Barbara Peabody Jerome, as Managers, on behalf of PEABODY FAMILY, LLC, a Michigan limited liability company.

Allison M. Everett
Notary Public, State of Michigan, County of Oakland
My Commission Expires: 2 Mar 2017
Acting in Oakland County, Michigan

ALLISON M. EVERETT
NOTARY PUBLIC - MICHIGAN
OAKLAND COUNTY
MY COMMISSION EXPIRES MAR. 2, 2017
ACTING IN OAKLAND COUNTY

Drafted by and when recorded return to:

A. Jeffrey Bean, Esq.,
8218 Hendrie Blvd.,
Huntington Woods, Michigan 48070

EXHIBIT A

Land in the City of Birmingham, County of Oakland, State of Michigan, described as:

Lots 5 and 6, also the East 4 feet of Lot 7 of HUNTER'S EASTERN ADDITION, according to the plat thereof recorded in Liber 3 of Plats, page 6B of Plats, Oakland County Records, EXCEPT that part deeded to the City of Birmingham by Deed recorded in Liber 5600, page 330 more fully described as follows: Portions of Lot 5, 6 and 7 of HUNTER'S EASTERN ADDITION, City of Birmingham, Oakland County, Michigan, the first of two portions being described as follows: Beginning at the Southeast corner of Maple Avenue and Brownell Street 50 feet wide; said corner also being on the Northerly line of said Lot 7, 4 feet, more or less, Westerly from the Northeast corner of said Lot 7; thence South 01 degrees 09 minutes East 104.15 feet more or less along the Easterly line of Brownell Street to a point on the south line of said Lot 7; thence North 88 degrees 30 minutes East 4.00 feet, along said South line of Lot 7 to a point, thence North 01 degrees 09 minutes West 34.58 feet, more or less, along a line 4.00 feet Easterly of and parallel to said Easterly line of Brownell Street to a point; thence on a curve to the right with a long chord bearing North 43 degrees 40 minutes 30 seconds East a long chord distance of 98.69 feet; a radius of 70.00 feet, a central angle of 89 degrees 39 minutes and an arc distance of 109.53 feet, to a point on the Northerly line of said Lot 5 and the Southerly line of said Maple Avenue; thence South 88 degrees 30 minutes West 73.57 feet, along said Southerly line of Maple Avenue and the Northerly line of said Lots 5, 6 and 7 to the point of beginning of the first portion, and the second of two portions being described as follows: Beginning at the Northeast corner of said Lot 5, said corner also being the Southwest corner of said Maple Avenue and Hunter Boulevard (US-10), 200 feet wide; thence South 88 degrees 30 minutes West 20.00 feet along the Northerly line of said Lot 5 and the Southerly line of said Maple Avenue to a point; thence South 54 degrees 54 minutes East 32.11 feet to a point on the Easterly line of said Lot 5 and the Westerly line of said Hunter Boulevard; thence North 18 degrees 18 minutes West 20.00 feet along said Easterly line of Lot 5 and said Westerly line of Hunter Boulevard to the point of beginning of the second portion.

Commonly known as 34977 Woodward Avenue

Parcel Identification No. 19-36-207-001

EXHIBIT B

Land Situated in the City of Birmingham in the County of Oakland in the State of Michigan

Lots 10, 11, and 12 and North 25 feet of Lot 13, except the Westerly 69.99 feet thereof.
BROWNELL SUBDIVISION, as recorded in Liber 4, Page 35 of Plats, Oakland County
Records.

Commonly known as 34965 Woodward Avenue

Parcel Identification No. (4035)19-36-207-008

FIRST AMENDMENT TO EARTH RETENTION SYSTEM AND CONSTRUCTION BARRICADE AGREEMENT

THIS FIRST AMENDMENT TO EARTH RETENTION SYSTEM AND CONSTRUCTION BARRICADE AGREEMENT (this "Amendment") is made and entered into as of November 18, 2015, by and between Catalyst Development Co. 8. L.L.C., a Michigan limited liability company with an address at 100 W. Michigan Avenue, Suite 300, Kalamazoo, Michigan 49007 ("**Catalyst**"), and Peabody Family, LLC, a Michigan limited liability company with an address at 34965 Woodward Avenue Birmingham, Michigan 48009 ("**Owner**").

RECITALS

A. On November 21, 2008, Catalyst and Owner entered into and executed an agreement titled EARTH RETENTION SYSTEM AND CONSTRUCTION BARRICADE AGREEMENT ("ERS Agreement").

B. During the month of December 2008, Catalyst and Owner entered into and executed a MEMORANDUM OF AGREEMENT, which Memorandum was recorded January 27, 2009 in Liber 40847, Page 546, Oakland County Records, and was amended pursuant to a First Amendment to Memorandum of Agreement, dated May 19, 2015, and recorded on May 28, 2015, in Liber 48221, Page 656, Oakland County Records (collectively, the "Amended Memorandum").

C. Certain portions of the ERS Agreement have terminated in accordance with their terms; however, Paragraphs 13, 14 and 18 of the ERS Agreement expressly survived such termination, remain in full force and effect, and run with the Peabody Parcel and Catalyst Parcel, as more fully described in the Amended Memorandum.

D. Catalyst and Owner have mutually agreed to amend the ERS for the purpose of clarifying certain terms thereof, all as more particularly described herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Catalyst and Owner agree as follows:

1. All capitalized terms used in this Amendment but not otherwise defined in this Amendment shall have the meanings set forth in the ERS Agreement.

2. The fourth and fifth sentences of Paragraph 14 of the ERS Agreement are deleted in their entirety and replaced with the following:

"Owner and its successors and assigns shall have no continuing obligation to protect or preserve the ERS, tie-backs or other components or aspects of the ERS including, without limitation, tie-rods, soldier piles, associated concrete and other components related

thereto, and after the termination of this Agreement, the ERS, tie-backs and other components and aspects of the ERS including, without limitation, tie-rods, soldier piles, associated concrete and other components related, may be disturbed and/or removed from beneath the Peabody Parcel without Catalyst's prior notice or consent. Further, Owner, and its successors and assigns, and their respective contractors, subcontractors and agents shall have no liability for any damage done to the Catalyst Parcel, Building or related components thereof, as a result of the disturbance and/or the removal of the ERS, tie-backs or other components or aspects of the ERS including, without limitation, tie-rods, soldier piles, associated concrete and other components related thereto."

3. Before Owner, or any successor in title to the Peabody Parcel, commences the construction of a new building or other improvements on the Peabody Parcel which will involve the removal or material disturbance of the ERS, tie-backs and other components and aspects of the ERS including, without limitation, the tie-rods, soldier piles, associated concrete and other components (the "ERS Work"), the Owner, or such successor in title, shall furnish Catalyst with its plans for the ERS Work for review and comment. Provided Catalyst notifies the Owner, or such successor in title, of any concerns or objections to such plans within seven (7) days after receipt thereof, Owner, or such successor in title, will work in good faith with Catalyst to address any such concerns and objections in a commercially reasonable manner.

4. Notwithstanding that the Amended Memorandum was executed and recorded prior to the date of this Amendment, Owner and Catalyst acknowledge and confirm that Paragraph 14 of the ERS Agreement, as amended hereby, remains in full force and effect, and runs with the Peabody Parcel and Catalyst Parcel, in accordance with the terms of the Amended Memorandum.

5. This Amendment shall be binding on and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

6. In the event of any conflict between the provisions of this Amendment and the provisions of the ERS Agreement, the provisions of this Amendment shall prevail.

7. Except as expressly modified by the terms of this Amendment, those portions of the ERS Agreement that survived the termination thereof remain in full force and effect, and all of the terms and conditions of such surviving portions of the ERS Agreement are hereby ratified and confirmed, subject to the modifications set forth in this Amendment.

8. This Amendment may be executed and delivered in two or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement. A facsimile of this document bearing a party's signature or a printed copy of the original, signed document scanned in .pdf or .tiff format shall have the same legal force and effect as an original of such signature and shall be treated as an original document for evidentiary purposes.

[Signature Page Follows]

[Signature Page to First Amendment to Earth Retention System and
Construction Barricade Agreement]

IN WITNESS WHEREOF, the parties have executed this Amendment as of the day and
year first above written.

OWNER:

PEABODY FAMILY, LLC, a
Michigan limited liability company

By: [Signature]
Name: SUSAN PEABODY
Its: manager

By: [Signature]
Name: Barbara Peabody Deramo
Its: manager

By: [Signature]
Name: Nancy Peabody Long
Its: manager

CATALYST:

CATALYST DEVELOPMENT CO. 8, L.L.C., a
Michigan limited liability company

By: [Signature]
Patti Owens, Managing Director



MEMORANDUM

Community Development Department

DATE: December 27, 2013

TO: Planning Board

FROM: Jana L. Ecker, Planning Director

SUBJECT: 34901 – 34953 Woodward – The Balmoral Building
(Proposed 2014 changes in blue type)

Introduction

The subject site, 34901 & 34953 Woodward, was formerly the site of two vacant one story commercial buildings, and is a total of 0.52 acres in size. It is located on the northeast corner of Peabody and Brown Street. The property has a new owner who purchased the property from a bank after it went into foreclosure. A previous applicant had demolished the existing buildings and surface parking lot, and received approval to construct a five story building. The new owner proposes to maintain the footprint of the previously approved building.

History of Approvals (Previous Property Owner)

The applicant appeared before the Historic District and Design Review Commission on August 4, 1999 requesting approval for numerous design and signage changes to the existing building on the site of 34901 Woodward. At that time, the owner explained it was his intention to eventually build a 5-story building with underground parking. The 5-story building would have first floor partial retail, second and third floor offices, and the fourth and fifth floors would be residential. There would be one floor of underground parking for about 24 cars.

On October 1, 2003, the applicant again appeared before the Historic District and Design Review Commission requesting approval for numerous design and signage changes to the existing building on the site at 34901 Woodward. The applicant's architect questioned the Commission at that time as to how they would feel about a multi-story building on the site if the other boards and commissions were not in favor of the current proposal. The HDDRC advised that the Planning Board would discuss this during their review of the project.

On September 8, 2004, the applicant appeared before the Planning Board for a

pre-application discussion and presented plans to develop a 5-story building on the site at 34901 Woodward with a drive-through bank on the first floor, a health club, offices and residential loft units on the top floor. The board advised at that time that the proposed building was appropriately sized for the context along Woodward.

On December 8, 2004, the applicant also appeared before the Planning Board for another pre-application discussion after purchasing adjacent property and presented similar plans to develop a five story building with a drive-through bank on the first floor, a health club, office and residential loft units on the top floor on both sites. The board advised that the larger building was closer to the scale and massing that the board was looking for in accordance with the 2016 Plan.

On September 27, 2006, the applicant appeared before the Planning Board seeking Preliminary Site Plan Review for a one story bank drive-through facility on the 34901 Woodward site only. Preliminary Site Plan approval was denied, based on concerns regarding vehicular circulation and integration with pedestrian traffic.

On November 14, 2006, the applicant appealed to the Board of Zoning Appeals for a reversal of the Planning Board's denial of the Preliminary Site Plan for 34901 Woodward Avenue. The Board of Zoning Appeals referred the matter back to the Planning Board for a review of the traffic and circulation issues that were stated as the basis for denial. The Board of Zoning Appeals further allowed the applicant to submit all information on traffic and circulation to the Planning Board for consideration.

On December 13, 2006 the applicant again appeared before the Planning Board seeking review of a new traffic study and a full discussion of traffic and circulation issues as directed by the Board on Zoning Appeals. The applicant brought a new site plan concept for 34901 Woodward to the Planning Board for their review as well. The Planning Board did not pass a motion to either approve the original or amended version of the Preliminary Site Plan for the site.

On January 9, 2007, the applicant again appealed the decision of the Planning Board to the Board of Zoning Appeals. The Board of Zoning Appeals denied the appeal on the original site plan submitted in September 2006 and referred the amended site plan, submitted to the Planning Board on December 13, 2006, back to the Planning Board for a full review and analysis.

On February 28, 2007, the applicant appeared before the Planning Board and indicated his desire to abandon the amended site plan submitted to the Planning Board on December 13, 2006, and submitted a new application for Preliminary Site Plan Review of a three story mixed use building on both 34901 and 34953 Woodward Avenue. As the proposed building exceeded 20,000 sq.ft. in area, the applicant was required to prepare a Community Impact Study for the review

and approval of the Planning Board. At this meeting, the applicant was granted approval for the Community Impact Study and the Preliminary Site Plan Review with the following conditions:

1. The applicant resolve all traffic issues with the Planning Division prior to Final Site Plan;
2. The applicant install a screen wall along the frontage line of the western elevation where the first floor building façade is not located on the frontage line, or obtain a variance from the BZA;
3. The parking screen wall increase to 32 in. be noted on the plans at final site plan and design review;
4. Specification sheets on all rooftop mechanical equipment and a roof plan be provided at final site plan and design review;
5. An elevation drawing of the transformer screen wall and a material sample be provided at final site plan and design review;
6. The applicant provide a detailed landscape plan identifying all proposed species to be planted at final site plan review;
7. The applicant increase the width of the proposed loading spaces to 12 ft. or obtain a variance from the BZA;
8. The applicant provide a photometric plan and specification sheets for all light fixtures at final site plan review; and
9. The applicant provide information regarding the percentage of glazing on each elevation and provide a section drawing that demonstrates that the finished floor to finished ceiling height of the interior space is at least 10 ft. in height on the first level.

On April 25, 2007, the applicant received Final Site Plan and Design Review from the Planning Board for a three story building containing 84,420 sq. ft. of office space, with a drive-through bank facility on the first floor, a health club on the second floor, and general office on the third floor. The Final Site Plan and Design was approved with the following conditions:

1. The applicant increase the width of the loading spaces to the required 12 ft. width;
2. Obtain a variance from the BZA for the ornamental wrought iron gate to be used as screening. Alternative design per the discussion this evening can be submitted for administrative approval or brought back to the Planning Board;
3. Provide proof of common ownership of the property;
4. Successful resolution of all traffic issues with the City's traffic consultant;
5. Execute a streetscape agreement with the City, including the removal of the cobra fixture on the corner of Brown and Peabody Streets, provision of City standard flower pots, street lights, hanging basket systems, benches, and trash receptacles;
6. Amend the south elevation to provide 70 percent glazing on the first floor or obtain a variance from the BZA; and

7. Identify exterior lighting precedent or examples from other buildings in the Downtown and apply similar foot candle conditions to the southwest and southeast corners of the building for administrative approval.

The applicant received a variance for the proposed transformer screening / street wall from the Board of Zoning Appeals as it is not a solid wall, but an ornamental wrought iron gate on September, 11, 2007.

The applicant returned to the Planning Board on September 26, 2007 proposing a 4-story building – the first story to be utilized as a bank and a restaurant, the second story as a fitness facility and the top two stories as office space. The Downtown Overlay District D-4 regulations only allow two stories of office space if there is a 5th story of residential in the building. The applicant appeared before the Board of Zoning Appeals on October 9, 2007 in an effort to obtain a variance to allow two stories of office use, at which time they were denied the variance.

On December 12, 2007, the previous applicant received Revised Final Site Plan and Design approval for a five story building. The proposed development at that time contained 105,457 sq. ft. of office space, a drive-through bank facility, a residential unit, and a recreational club, along with one level of underground parking. The Planning Board granted approval with the following conditions:

- 1) Execute a streetscape agreement with the City, including the removal of the cobra fixture on the corner of Brown and Peabody, provision of City standard flower pots, street lights, hanging basket systems, benches, and trash receptacles;
- 2) Complete an administrative approval form for the outstanding outdoor dining requirements; and
- 3) Comply with City department requirements.

On December 12, 2008, the previous applicant received a one year extension on the approved Final Site Plan for 34901 – 34953 Woodward Avenue.

Current Property Owner

The current owner of the property acquired the land in 2009, and pulled a foundation permit prior to December 12, 2009, thus protecting his rights under the site plan approved in 2007.

On August 11, 2010, the new owner appeared before the Planning Board for revised final site plan approval to construct a larger 5 story building, both in terms of square footage and height, than was previously approved. After much discussion, the Planning Board postponed a decision on the matter pending the outcome of a hearing at the BZA on the mix of uses within the building with the following changes to be made:

- No loading or unloading on Peabody;
- Provision of the hours of operation of the drive-through;

- Valet parking shown on the plans; where it is going to be and how it is going to work;
- Whether there will be an ATM on Woodward Ave.; and
- Revised plans showing the correct square footage of each use and run it through the trip generation model and provide to Birmingham's traffic consultant.

On October 12, 2010, the applicant appeared before the Board of Zoning Appeals regarding the use of the fourth floor for office, and the additional height to allow the chimney pots. The Board of Zoning Appeals did not grant either of the requested variances.

As a result, the applicant has revised the plan again back to the previously approved 4.5 story building. Pursuant to the Planning Board's direction on August 11, 2010, the applicant has indicated that an ATM is proposed for the Woodward elevation, and it is marked accordingly on the plans. No valet parking accommodation is shown on the latest plans, thus it is safe to assume that none is requested. The applicant has not submitted the drive through hours as requested, nor have the plans been corrected with regards to the correct square footage of each use. The trip generation model has not been updated accordingly. The applicant submitted amended plans and an updated traffic study to address these issues.

The applicant appeared again before the Planning Board on December 8, 2010 and the Planning Board approved the Revised Final Site Plan and Design with the following conditions:

- 1) No valet parking is permitted;
- 2) The applicant must provide drive through hours subject to planning department approval;
- 3) The Planning Board approves wall mounted fixtures which are not cut off;
- 4) Execute streetscape agreement;
- 5) Administrative approval for approved photometric plan;
- 6) Add 1 street tree on Brown;
- 7) Look into Woodward parking and consider parallel parking for administrative approval;
- 8) Provide 14' clear in drive-through;
- 9) Add stop signs at Peabody and Brown (3) and add crosswalks and ramps;
- 10) All ramps must be ADA compliant.

At this time, the applicant is requesting approval of design and material changes for the proposed building. The approved footprint of the building is proposed to remain as approved. The following design changes to the previously approved Final Site Plan and Design Review are proposed:

- **Revising the 2nd floor building line from 118'-7" to 116'-2";**
- **Moving the loading space from the bank drive through area to the**

- Woodward Ave parking area (for use in off hours only as discussed at the Planning Board in 2010);
- Extending the elevator and stair to the 5th floor to provide access for the residential unit;
 - Replacing prefinished metal storefront canopies with prefinished metal sun screens;
 - Replacing main entry revolving doors with glass storefront doors;
 - Removal of fire rated glass windows on the north elevation in the stair tower, cover openings with recessed cast stone and decorative metal grille panels;
 - Replace granite pavers at first floor entries with masonry pavers;
 - Reduce number of lower level parking spaces from 29 to 23 (only 2 parking spaces are required on site for residential unit);
 - Replace precast concrete building facades with unit cast stone masonry (12" by 24" units, mounted in high running bond) in similar limestone color;
 - Reconfigure rooftop mechanical and screening; and
 - Relocate residential unit on 4th and 5th floors from the NE corner of the building to the SE corner of the building.

Please find attached elevations and plans showing the proposed design changes and floor plan changes to the building. Also attached are before (as previously approved) and after (as proposed at this time) renderings for your review and consideration.

I. Community Impact Study

As none of the proposed design changes will affect the intensity or use of mixes proposed in the building, an update of the previously approved Community Impact Study is not required.

II. Revised Final Site Plan and Design

1.0 Land Use and Zoning

- 1.1 Existing Land Use – The existing site is currently vacant, with temporary parking for Peabody's and construction traffic from the Greenleaf Building.
- 1.2 Zoning – The site is zoned B-4, Business Residential, and is zoned D-4 in the Downtown Overlay District. The applicant is required to develop the site under the Overlay District regulations. The existing use and surrounding uses appear to conform to the permitted uses of the Zoning District.

- 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 proposed 2016 Regulating Plan zones.

	North	South	East	West
Existing Land Use	Retail / Commercial, Peabody Restaurant	Office, Commercial	Hotel and Commercial	Public Parking Deck
Existing Zoning District	B-4, Business Residential	B-2, General Business	B-2 General Business	PP, Public Property
Downtown Overlay Zoning District	D-4	D-4	MU-7-	P - Parking

2.0 Use of Site

The previous applicant was required to develop the property utilizing the Overlay District standards (which are now mandatory) to construct a drive-through bank on this site as drive-through facilities are not permitted in the regular B-4 zone district, with or without a Special Land Use Permit. The second, third and fourth stories are proposed to be utilized as office. **A portion of the fourth and fifth story are proposed to include a residential unit. However, the fifth floor clearly shows the floor plan for one unit, while the fourth floor plan shows 2300 sq.ft. of open space for residential use. The applicant should clarify if there will be a second residential unit proposed on the fourth level. One level of underground parking is proposed. All of the proposed uses are permitted by the Zoning Ordinance, however office use is limited to two stories in the Downtown Overlay District. A variance request for the use of an additional office floor was denied by the BZA on October 12, 2010.**

3.0 Setback and Height Requirements

The attached summary analysis provides the required and proposed bulk, area, and placement regulations for the proposed project. **No changes are proposed at this time to the previously approved building footprint.** The applicant meets most of the bulk, area and placement requirements for the D-4 Overlay District zoning. However, the revised building height exceeds the 80' maximum height due to the addition of the decorative chimney pots. In addition, the revised

eave height is 4" above the maximum 58' eave height. The applicant will be required to comply with these height requirements or apply for a variance from the Board of Zoning Appeals. ***A variance request for the additional height was denied by the BZA on October 12, 2010. The applicant has now amended the plans by reverting back to the previously approved four and a half story building. The eave height is now 58' and the building height is 80', including the chimney pots. Based on the latest proposed design changes to the building, the maximum height of the building will be 75.5' in height, with a 58' eave line, thus meeting the maximum height requirements of the D-4 Downtown Overlay classification.***

Finally, a variance was previously obtained from the Board of Zoning Appeals on July 10, 2007 to allow the use of a wrought iron gate as screening material along the frontage line of the western elevation where the first floor building façade is not located on the frontage line.

4.0 Screening and Landscaping

- 4.1 Dumpster Screening – The applicant is proposing to store all trash and recyclable materials within the proposed building. A private collection service will be utilized.
- 4.2 Parking Lot Screening – All parking is fully contained within the building in the underground parking level.
- 4.3 Mechanical Equipment Screening – The applicant is proposing to house the mechanical equipment on the rooftop. Rooftop screening is required for all proposed rooftop mechanical units. Article 04, 4.51 (C)(8) of the Zoning Ordinance requires that all rooftop mechanical equipment must be obscured by a screen wall constructed of materials compatible with the materials used on the building, that provides an effective permanent visual barrier that minimizes the visual impact of the equipment from other points of observation and that:
 - (a) The screen walls must be less than 10 feet in height; and
 - (b) The screen walls shall, to the best extent possible, not extend above the top edge of an imaginary plane extending upward no more than 45 degrees from the eave line.

The proposed screen walls will extend past an imaginary 45 degree plane from the eave line, however they have been integrated into the design of the building to give the building a more substantial presence. ***The applicant has now provided a roof plan and cut sheets on the proposed rooftop mechanical equipment to verify that they will be fully screened. A 17' enclosed rooftop mechanical room is proposed to fully screen two Cooling Towers and Boilers, and the 13'8" high parapet/residential wall will also be sufficient to screen***

the proposed Energy Recovery Ventilators. The configuration of the rooftop mechanical equipment has changed based on the relocation of the fifth floor residential unit and the Code requirement for stair and elevator access. Accordingly, all rooftop HVAC equipment and generators are clustered towards the center of the rooftop and screened by metal panel screen walls as required. Enclosed mechanical and electrical rooms will also be provided at the north end of the roof level.

One electrical transformer is proposed along the western property line adjacent to an existing DTE switch gear box that must remain along the western property line. The applicant is proposing to house this equipment in a recessed portion of the building and to utilize a 6.5' height ornamental wrought iron gate as a screen wall and to act as a street wall in this area where the building façade is not on the property line. On July 10, 2007 the applicant obtained a variance for the use of this gate from the Board of Zoning Appeals, as it does not fully screen the mechanical equipment, and it does not provide a continuous solid street wall as required.

- 4.4 Landscaping – The current applicant is proposing three landscape islands along Woodward, and one large planting bed along Brown Street between Peabody and Woodward. ***The Engineering Department has expressed concern about the cluster of trees on the north side of Brown Street and has requested that the street trees be spread out to ensure street lighting provides acceptable light levels for pedestrians. Please see attached sketch from the Engineering Department for review.***
- 4.5 Streetscape - The City will require the execution of a streetscape agreement outlining all required improvements in the right-of-way, including new sidewalks, curbs, tree wells etc. The applicant was previously proposing to add 4 flower pots in the right-of-way, with two flanking each of the corner entrances. These flower pots were proposed to be the City standard planters, ***but have now been removed from the plan.*** Eight street trees and 5 pedestrian-scale street lights were previously proposed in accordance with the City's streetscape requirements. One of the new street lights will have an outlet for holiday lighting. One City standard hanging basket system should be placed on each street light. ***Two of the previously proposed street trees have been removed from the plan. Four are now proposed along Brown, and two on Woodward at the north end of the site. The Planning Division suggests the addition of a street tree to the landscape area on Woodward at the southeast corner of the site. The applicant has advised they will add this tree. See comments in Landscaping section above for concerns***

with proposed street trees. The applicant is also proposing a 5' pedestrian sidewalk with sawcut joints and a broom finish. Exposed aggregate sidewalk was previously proposed along the building and along the curb in accordance with the City's streetscape standards. ***The exposed aggregate sidewalk has now been removed from the plans, but is required in accordance with the downtown streetscape standards. The applicant has submitted amended plans to address this issue.*** The Planning Division also recommends the addition of two City benches flanking each of the corner entrances and one trash receptacle in the vicinity of the street lights near each of the corner entrances.

Finally, given the addition of new pedestrian scale lighting, the Planning Division continues to recommend the removal of the existing cobra head fixture at southwest corner of the site. The existing cobra head fixture will not be aesthetically compatible with the pedestrian scale lighting, and sufficient lighting will exist at this corner with the proposed new lighting. ***Both cobra head fixtures have been removed from the plans.***

5.0 Parking, Loading and Circulation

- 5.1 Parking – As the subject site is located within the Parking Assessment District no on site parking is required for the commercial uses. Article 04, section 4.44 requires 1.5 parking spaces for each of the proposed residential units. The applicant is proposing 10 residential units on the fifth floor of the building (thus, 15 parking spaces are required), and 40 parking spaces are proposed in an underground parking facility to be used exclusively by tenants of the building. The applicant may apply to the City Commission for permission to count the eight spaces in the right-of-way along Woodward Avenue towards their total parking given the improvements they are proposing in the MDOT right-of-way. However, all parking requirements have been met. **The applicant is now proposing to reduce the on-site parking contained in the underground parking level from 29 spaces previously approved to 23 spaces. However, only one residential unit is now proposed on the fourth and fifth levels of the building, and thus only 2 parking spaces are required on site. Even with the proposed parking reduction all parking requirements have been met.**
- 5.2 Loading – In accordance with Article 4, section 4.21 of the Zoning Ordinance, 3 loading spaces (12' by 40' by 14' in height) are required on site, as the proposed development exceeds 50,000 sq ft in area. The applicant has provided room for 3 loading spaces

underneath the building in the drive-through facility. The height of this area is 14' at the lowest point, thus meeting the 14' height requirement for loading spaces. ***However, the photometric plan indicates the height of the proposed drive-through fixtures to be mounted at a minimum height of 11.5'. A minimum 14' clear drive-through area must be maintained if the proposed loading spaces are considered within the drive-through. The applicant has submitted amended plans to demonstrate that there will be a 14' clearance height for loading purposes.*** The applicant has provided that loading and unloading will be scheduled during the off hours of the drive-through facility. **The applicant is now proposing to provide loading spaces off-hours in the service drive on the west side of Woodward Avenue. This was discussed at a previous Planning Board meeting and the applicant agreed to sign the space accordingly.**

- 5.3 Vehicular Circulation and Access – The proposed development includes the relocation of one curb cut along Peabody Street to the north, further from the corner of Peabody and Brown Streets, and a new curb cut off of the access and parking drive on the west side of Woodward Avenue. The layout illustrates vehicles entering the bank drive-through off of Peabody traveling east, and exiting onto the Woodward Avenue access drive. The proposed drive-through lane widths are adequate for proper maneuvering as only one way traffic is permitted. The layout also includes an additional curb cut on Peabody to allow tenants access to the private parking facility proposed on the lower level of the building. The proposed aisle widths in the parking level range from 12' to 17' for one way traffic aisles, and 19' wide for two way traffic aisles, and are sufficient for adequate maneuvering with the parking area. Access to this area will be controlled through the use of a garage door and opener system that will only be provided to the users of the parking facility. Vehicular flow along Woodward and the Woodward access drive will remain as is. A permit from MDOT will be required for improvements in the right-of-way along Woodward. The applicant has met with a representative from MDOT who did not express any significant concerns with the current proposal to redevelop the site.

The proposal eliminates the northern most lane of west bound traffic on Brown. This was previously proposed to allow for additional space to accommodate an outdoor café area along Brown Street. The traffic study originally prepared by Birchler Arroyo and updated by Bergmann Associates for the new mix of uses both indicate that this change will not adversely affect the flow of traffic at signalized intersections within the study area.

- 5.4 Pedestrian Circulation and Access – The applicant has provided pedestrian entrances directly from the public sidewalks in the right-of-way at the corner of Peabody and Brown Streets, and at the corner of Brown and Woodward for full pedestrian access to the bank and the building lobby. These entrances are not located on the frontage lines as required by the Zoning Ordinance. However, the City Attorney has advised that this provision is in conflict with the Michigan Building Code, and that state law supersedes our local ordinance. Accordingly, the requirement that the doorway be located “on the frontage line” cannot be enforced. As such, the City Attorney has advised that a variance is not required. There is good pedestrian access to the site and the plans submitted indicate that a different treatment will be used on the concrete in front of the three access drives that will provide a clear and distinctive pedestrian path. ***The Planning Division recommended that signage be installed at the exits of the access driveways warning vehicles exiting to be aware of pedestrians. The applicant has submitted amended plans to address this issue.*** No changes are proposed with regards to pedestrian circulation.

6.0 Lighting

The applicant has provided a photometric plan and specification sheets for all proposed light fixtures. Eight vertical wall sconces from the Metro series manufactured by Visa in antique bronze are proposed to be mounted on the building. These sconces are 47.75” in vertical length, and will utilize 80 watt lamps. ***These wall sconces are not cutoff fixtures. Translucent white acrylic lenses are proposed to reduce glare and eliminate visibility of the lamps.*** However, Article 4, section 4.21 LT-01(D)(1) of the Zoning Ordinance does provide the Planning Board with authority to approve non-cutoff fixtures if the light is controlled through shielding, is neither obtrusive nor distracting, will not create a traffic hazard, is consistent with all master plans, its design will enhance the site, is used for architectural enhancement, and does not create a light trespass or nuisance violations.

Fourteen fluorescent standard industrial fixtures manufactured by Lithonia (Model DM/DMW) are proposed to be mounted on the ceiling of drive through lane. These fixtures are 50” long, by 8.12” wide and will utilize 58 watt fluorescent lamps. ***The photometric plan now shows the proposed installation of 13 City standard pedestrian street lights along Peabody, Brown and Woodward. Only 5 of these street lights are shown on the site plan. The applicant has submitted amended plans to address this issue.***

No lighting is proposed for the undersides of the metal canopies on the east, west and southern building elevations. No upper level lighting is provided on the photometric for terrace exits, or to enhance the

architecture of the building.

The applicant had previously submitted a photometric plan which showed high light levels (14.5 fc – 21.2 fc) around the existing City cobra fixture at the southwest corner of the site. As stated above, the Planning Division recommends the removal of this fixture. The photometric plan also shows light levels in the range of (11.5 fc – 18 fc) at the southeast corner of the site. As this corner faces Woodward, the existing lighting on Woodward has contributed to this level.

The most recent photometric plan to be submitted appears to have been calculated without the existing Cobra fixtures, and with the addition of the pedestrian scaled light fixtures as required. The data on the photometric indicates a range of foot-candle levels from 2.8 to 4.4 in the areas accented with down lights. The remaining sidewalk areas around the site have a foot-candle range from 0.9 to 2.1. IESNA recommended practice states that minimum fc levels for a pedestrian walkway should be in the range of 5/0.5 foot-candles.

An updated photometric plan has not been provided at this time. However, on December 8, 2010, the Planning Board specifically approved the use of non-cut off fixtures on the building, and allowed the applicant to submit a revised photometric plan for administrative approval.

7.0 Departmental Reports

7.1 Engineering Division – The Engineering Division has reviewed the plans dated July 23, 2010, for the above project. The following comments are offered:

1. Being in the downtown area, the owner will be required to sign a Streetscape Agreement, agreeing to pay for all costs necessary to finish the public street frontages of the property with the City's standard streetscape consisting of exposed aggregate sidewalk, landscaping, street lights, etc. The agreement must be signed prior to the issuance of a construction permit.

It should be noted that the sidewalk design as presented on this plan is considered conceptual only. Details of the joint pattern concept will need to be presented in better detail prior to the issuance of a construction permit. The City is attempting to construct sidewalks with a consistent design element throughout the downtown area. The sidewalks shall be designed to match the scheme previously constructed immediately west of this site. The designer is strongly encouraged to contact the Engineering Dept to discuss this issue prior to spending time detailing this plan.

2. It is assumed that the existing parking area within the Woodward Ave. right-of-way will suffer significant damage as a part of this proposed construction. The construction plans will need to indicate replacement of the concrete in this area accordingly.
3. The applicant will need to consider pedestrian and vehicular traffic issues while this project is being constructed. Three lanes of traffic will be maintained on Peabody St. at all times, and a minimum of one westbound and two eastbound lanes shall be maintained on E. Brown St. A sidewalk shed shall be provided on the W. Brown St. frontage of the building to maintain pedestrian flow in this area. An alternative to this option would be to install the proposed three-way STOP signage at the intersection of Peabody St. and Brown St. (thereby allowing a safe crosswalk across Brown St. to the west of the intersection), prior to construction. Permanent ramps and striping would be required as a part of this work prior to the closure of the Brown St. sidewalk. Closure of the sidewalk on the Woodward Ave. side would be subject to MI Dept. of Transportation (MDOT) requirements.
4. The plans as submitted designate an outdoor dining area on Brown St. It is not clear if the enclosed area would be adjacent to the building or to the street. The Engineering Dept. requests that the area be established adjacent the street, providing adequate space in between the building and the dining area for the public sidewalk. To do otherwise would force through pedestrians to take a circuitous route. The ADA requires that design of public spaces be done so with the handicapped in mind, creating the shortest path possible for those who find walking difficult.
5. When plans for footing and basement construction were being detailed for the previously approved building on this site, it became evident that the existing sanitary sewer in the Peabody St. right-of-way would be severely damaged as a part of this excavation, due to its close proximity. The previous applicant's engineer determined that the most cost efficient means of addressing this problem would be to abandon the sewer on the entire block, which the City approved. The applicant is advised to be prepared to address this issue as a part of the construction plan approval process.
6. During the review process of the previously approved building, it was made clear that the proposed two driveways on Peabody St. would present left turn lane conflicts with the ongoing operation of the Peabody St. Parking Structure. As the department charged with the efficient and effective operation of the City's parking structures, our office is very concerned about the negative impact that these

conflicts could potentially cause on the operation of the parking structure. It is discouraging to see the new building plans continuing with these same problems unabated. The Planning Board is asked to allow a full review of the plans and traffic impact statement by the City's traffic consultant, and to consider their recommendations carefully.

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

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

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

The Engineering Department has expressed concern about the clustering of street trees on the north side of Brown Street adjacent to the building. Please see attached sketch of preferred layout as submitted by the Engineering Department for review and discussion.

7.2 Department of Public Services – DPS has no concerns.

7.3 Fire Department - The Fire Department has no concerns at this time.

7.4 Police Department – The Police Department has no concerns.

- 7.5 Building Division – The Building Department has provided their standard comments, as well as the following:
- 1. The maximum building height cannot exceed 80 feet measured from average grade as defined within the zoning ordinance.
 - 2. Allowable openings in the north elevation cannot exceed the requirements of Chapter 7 of the building code.

8.0 Design Review

The applicant has provided elevations depicting the design of the proposed mixed use building, and photos documenting all surrounding structures. The elevations for the proposed building are provided on sheets A004 and A005. The materials proposed by the applicant for the building are as follows:

- Cast stone panels in “Light Buff” with a smooth face for the façade and for architectural details (lintels, cornice, medallions) and with an ***exposed aggregate finish*** for the first course at the base of the building; **The applicant is now proposing to replace the cast stone panels with cast stone masonry units 12” by 24” in size, laid in a high running bond. The proposed color will be similar to warm limestone. Material samples will be provided at the Planning Board meeting on January 8, 2014.**
- ***Pre-finished metal standing seam roof in Antique Bronze;***
- ***Copper for the roof of the awnings and awning soffits; The applicant is now proposing to replace the storefront awnings with prefinished metal sun screens.***
- Clear glass windows with Low E coating and doors in aluminum frames on the first and second level;
- Tinted glass windows (***Solargray 31% tint***) with Low E coating in aluminum frames on upper levels;
- **Removal of windows on north elevation in stairwell, to be replaced with recessed cast stone masonry units and decorative metal grille.**
- Clear glass guardrail in clear anodized aluminum framing upper floors; **No glass guardrails are proposed at this time, and all upper floor guard rails are constructed of prefinished metal.**
- Prefinished brown chimney pots; **All chimney pots have been removed in the proposed new design.**
- ***Prefinished decorative metal railing on first floor and around transformer.***

The plans as submitted show a cast stone or granite base for the knee wall of the building. The applicant should clarify which material will be used. The applicant has advised that all proposed material samples will be submitted for review at the Planning Board meeting on January 8, 2013.

The applicant has stated that the building will be designed with as many sustainable materials and systems as is practical.

The proposed building meets the architectural standards set out in Article 3, Overlay District, of the Zoning Ordinance as it is at least 90% of the exterior finish of the building is stone and glass, the first floor storefronts are directly accessible from the sidewalk, vehicular openings are less than 25’ in width, the windows are vertically proportioned, no blank walls face a public street, the storefront windows have mullion systems, with doorways and signage integrally designed, and the main entries incorporate canopy features to add architectural interest. In addition, a minimum of 70% of the first level is glazing between 1’ and 8’ above grade, and less than 35%

of the upper floors are glazed, as required by the Downtown Overlay District. ***However, the third, fourth and fifth floor windows are proposed to be tinted grey, and glass balcony railings are proposed for the fifth floor terraces. The applicant has submitted amended plans showing a precise base with prefinished metal rails.***

The primary building color and cast stone facades are compatible with the character of the surrounding area, as is the darker grey standing seam metal roof. Overall, the Planning Division finds that the proposed massing, design and materials for the new mixed use building are compatible with adjacent structures, and in keeping with the character of downtown Birmingham. **The proposed design changes at this time alter the style of the building by creating a more contemporary design with clean lines as opposed to the traditional style of the previously approved building. All pedestrian scale design features remain, as do the design features that create a terminating vista at the corner of Brown and Peabody Streets.** The applicant will be required to obtain sign approval from the Design Review Board for all proposed signage as this is not within the jurisdiction of the Planning Board.

10.0 Master Plan Compliance: 2016 Plan

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

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

The proposed development implements some of the recommendations contained in the 2016 Plan as the applicant is proposing a mixed use building with first floor retail space, and the applicant has provided significant architectural elements at the corner of Brown and Peabody to

create a terminating vista as recommended in the 2016 Plan. 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 and awnings (**now sun screens**), large storefront windows, and pedestrian entrances from all adjacent streets. Finally, the entry and exit openings for the drive-through are less than 25' wide as required, and have glass overhead doors that will be closed when the drive-through facility is not in use. The proposed building utilizes traditional materials such as stone and glass to reflect the materials used historically throughout downtown.

In addition, the DB 2016 Report encourages four or five story buildings along Woodward Avenue and 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". The Planning Division finds that the proposed **four and a half** story building does meet the spirit and intent of the 2016 Plan as it does provide for significant massing at this prominent corner and provides the mass and architectural details required for a site identified as a terminating vista under the 2016 Plan. The proposed architecture, streetscape elements and plant material at the southwest corner also provide greater interest and prominence for this corner.

Finally, Appendix C-7 of the 2016 Plan suggests intersection improvements for the intersection of Woodward and Brown/Forest. The relevant recommendations for the west side of Woodward at Brown include altering the lane configuration to provide one lane of traffic in each direction on Brown, with on-street parking on the south side of Brown, thus eliminating the second eastbound lane that currently exists. Appendix C-7 also recommends allowing on-street parking on the north side of Forest east of Woodward, which has been implemented.

11.0 Approval Criteria

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

- (1) The location, size and height of the building, walls and fences shall be such that there is adequate landscaped open space so as to provide light, air and access to the persons occupying the structure.
- (2) The location, size and height of the building, walls and fences shall be such that there will be no interference with adequate light, air and

access to adjacent lands and buildings.

- (3) The location, size and height of the building, walls and fences shall be such that they will not hinder the reasonable development of adjoining property nor diminish the value thereof.
- (4) The site plan, and its relation to streets, driveways and sidewalks, shall be such as to not interfere with or be hazardous to vehicular and pedestrian traffic.
- (5) The proposed development will be compatible with other uses and buildings in the neighborhood and will not be contrary to the spirit and purpose of this chapter.
- (6) The location, shape and size of required landscaped open space is such as to provide adequate open space for the benefit of the inhabitants of the building and the surrounding neighborhood.

12.0 Recommendation

The Planning Division recommends that the Planning Board APPROVE the Revised Final Site Plan and Design for 34901 & 34953 Woodward as it meets the requirements established in Article 7, section 7.27 of the Zoning Ordinance, with the following conditions:

- 1) No valet parking is permitted to serve this site;
- 2) Applicant provide drive-through hours before implementing subject to the approval of the Planning Division;
- 3) Planning Board approves the use of the wall mounted fixtures which are not cut-off fixtures;
- 4) Applicant execute a streetscape agreement with the City, including the removal of the cobra fixture on the corner of Brown and Peabody, provision of City standard flower pots, street lights, hanging basket systems, benches, and trash receptacles;
- 5) Applicant provide four street trees on Brown in the layout prepared by the Engineering Department;**
- 6) Administrative approval of an amended photometric plan;
- 7) Parking changes along Woodward Ave. are permitted but not required, subject to administrative approval.
- 8) Applicant provide 14 ft. clear height for the loading area;
- 9) Applicant add one stop sign at the location of Brown and Peabody along with sidewalks and ramps;
- 10) Applicant ensure ADA compliance with barrier-free ramps at Woodward Ave. and Brown;
- 11) Clarify the use of the fourth floor space marked on the floor plan for residential use; and**

- 12) Identify the proposed material for the first floor building knee wall.**

13.0 Sample Motion Language

Motion to APPROVE the Revised Final Site Plan and Design for 34901 & 34953 Woodward as it meets the requirements established in Article 7, section 7.27 of the Zoning Ordinance, with the following conditions:

- 1) No valet parking is permitted to serve this site;
- 2) Applicant provide drive-through hours before implementing subject to the approval of the Planning Division;
- 3) Planning Board approves the use of the wall mounted fixtures which are not cut-off fixtures;
- 4) Applicant execute a streetscape agreement with the City, including the removal of the cobra fixture on the corner of Brown and Peabody, provision of City standard flower pots, street lights, hanging basket systems, benches, and trash receptacles;
- 5) Applicant provide four street trees on Brown in the layout prepared by the Engineering Department;**
- 6) Administrative approval of an amended photometric plan;
- 7) Parking changes along Woodward Ave. are permitted but not required, subject to administrative approval.
- 8) Applicant provide 14 ft. clear height for the loading area;
- 9) Applicant add one stop sign at the location of Brown and Peabody along with sidewalks and ramps;
- 10) Applicant ensure ADA compliance with barrier-free ramps at Woodward Ave. and Brown;
- 11) Clarify the use of the fourth floor space marked on the floor plan for residential use; and**
- 12) Identify the proposed material for the first floor building knee wall.**

OR

Motion to DENY the Revised Final Site Plan and Design for 34901 & 34953 Woodward.

OR

Motion to POSTPONE the Revised Final Site Plan and Design for 34901 & 34953 Woodward.

**HDDRC Minutes
August 4, 1999**

08-109-99

DESIGN REVIEW

34901 – 34935 Woodward- Blackward Office Building – Design Review

Mr. Sabo explained the petitioner is proposing an exterior facade sign and design plan for the office/retail building.

The building was painted by the petitioner's tenant in 1997 without approval from this Commission. They came back and received approval. At that time, the Commission requested a sign and design plan from Mr. Blackward. Since that time, staff has been working with the petitioner and hence the submittal this evening.

The Commission agreed the submittal is not sufficient enough for it to act upon this evening; complete drawings with dimensions have to be submitted.

Motion by Ms. Rowbottom

Supported by Mr. McKeon to table this petition until the petitioner can meet with Mr. Sabo and organize a better presentation.

Motion carried 6-0

Mr. Blackward explained it is his intention to eventually build a 5-story building with underground parking. He approached the city a couple of years ago with a 7-story proposal on the site; it could not be approved because of its height. The 5-story building would have first floor partial retail, second and third floor offices, and the fourth and fifth floors would be residential. There would be one floor of underground parking for about 24 cars. He has been working with Yamasaki Architects.

**HDDRC Minutes
October 1, 2003**

10-130-03

DESIGN REVIEW

34901 - 34935 Woodward - Woodward Office Development -

Mr. Sabo explained the proposal as outlined in the staff report dated September 25, 2003. The applicant proposes new exterior design treatments along all building elevations and the addition of floor area for a bank at the southern tenant space. They are also applying for a Special Land Use Permit (SLUP) for the installation of drive-thru banking islands. The SLUP procedure requires review and recommendation by the Planning Board to the City Commission. The north two tenant spaces are not part of the SLUP. This Commission is to review the entire building from a design perspective.

Mr. Sabo explained that the proposal is to abandon the existing brick façade and reface the entire building. Mr. Sabo distributed a color rendering and brick sample for the proposed façade. He said the two southern tenant spaces would become one space. The petitioner is also proposing a new sign band along the front façade. Brick screenwalls will be constructed to screen the drive-through equipment. The petitioner is also proposing clear glazing for all the windows. The parking lot will be reconfigured for traffic flow. The Historic District and Design Review Commission may wish to require the petitioner to conceal the installation of any pneumatic drive-through system in the canopy support columns or below grade.

Mr. Sabo said gooseneck lighting fixtures are proposed for each new post-sign area. The petitioner is required to provide specifications for the proposed light fixtures and wattage specifications. No new signage is proposed at this time.

The Planning Division finds the proposal to be consistent with the recommendations of the 2016 plan as well as the urban design guidelines. It is a favorable update to a reasonably dated façade.

The Planning Division recommends that the Commission consider a motion to approve subject to the provisions addressing the pneumatic service from an aesthetic standpoint, specifications for the light fixtures and wattage amounts and returning for any sign review permit.

Mr. Sabo said the trash area currently exists in the northwest corner of the site. Ms. Rowbottom asked how the trash area is screened presently. She is looking at walls on three sides but doesn't know if it is brick, wood, etc. Mr. Sabo said this is a Planning Board issue.

Mr. Sadowski asked if the petitioner was going to install gutters which might change the look; he didn't see any drainage plan on the drawings. Mr. Jickling said it is a flat roof and is internally drained.

Ms. Rowbottom noted the wrought-iron work of the gooseneck lamps comes quite a bit above the roof level. She thought the petitioner might want the goosenecks to be quite flush and quite down to the level of the roofline. The framework on Brown Street is not appealing with those protrusions. Mr. Sabo explained the design of that particular fixture and said there are other type fixtures that could be used. Mr. Jeff Dawkins, Architect with Christopher J. Longe, AIA, said they would not be opposed to entertaining other lighting fixtures. He said they could do some three-dimensional drawings of eye level/car level looking up toward the building.

As far as the location of the two columns, Mr. Dawkins said they are probably 15 feet from the property line. They are shown as circles when in actuality they would be rectangles. Mr. Dawkins said they would have no problem having all pneumatic tubes below ground. Also, he said that they would clarify the route cars will be taking. Mr. Dawkins said they are not opposed to building a wall, if the city didn't object, to block the headlights. Mr. Sabo said this is a Planning Board issue. Mr. Dawkins said the area would be bricked to match the building. The refuse area will have a taller brick wall in order to screen the trash and the transformer. The grease pit will be removed altogether. Mr. Sabo said the Planning Board would address the landscaping plan for the parking lot.

Mr. Jickling said there is a blind exit onto the street, both for pedestrian and vehicular traffic. There is no place to stack cars waiting to get to the island. Mr. Jickling expressed concern about the traffic flow out of the parking lot. Ms. Rowbottom said the Commission is concerned about the screenwall next to Brown Street; the fact that there should be landscaping on the property owner's side, and that there should be some type of landscaping or softening on the pedestrian side next to the sidewalk. Mr. Dawkins said they would explore two things; one is the possibility of moving the exit further west, and also moving the wall in to soften it with some ground flowers and grass.

Ms. Rowbottom suggested an angular traffic pattern for the automated teller area. Mr. Jickling thought that would almost be impossible to do with the space there is. He said Standard Federal on Woodward gave up the idea of having drive-up windows at all.

Ms. Rowbottom said the Commission also discussed lowering the brackets for the gooseneck lighting. She referred to the cut sheets for the lighting and thought it was a great look.

Mr. Dawkins explained their plan for roof and draining equipment and said it would be internal. It would be screened by the height of the building. Mr.

Dawkins said they would like to have a system in place in case the drains got plugged and the roof started flooding, the water would have an exit--not a major design element, something like a small trough. Mr. Jickling said the roof could be sloped away from the street, toward the back alley side. Mr. Dawkins said the system, "cow tongues," would be put on the backside of the building. They are not proposing any downspouts, etc.

Mr. Jickling thought the Commission should look at this again because of the changes being made. Mr. Sabo said the Planning Board would go over in detail the circulation patterns and what happens on the site.

Ms. Rowbottom referred to the front of the building--the corner that is not square that is Woodward and Brown. Mr. Dawkins explained it is currently just a brick wall. They are proposing to have more windows to match the others; it would have more of the sign band wrapping around; it would have the brick and limestone caps, and a sill below the sign band.

Ms. Rowbottom referred to the awnings/canopies that are straight across the windows. Mr. Dawkins said there are two; one is approximately 8 inches below the sign band, and above each door there would be one that would give some recognition to the door. Mr. Sabo explained these are specifically canopies which are almost always perpendicular to the building. Ms. Rowbottom said canopies are always metal. Mr. Dawkins said the proposed canopies allow the water/snow to go right through and that is what is allowing them to put them horizontal. They would have a metal frame. Ms. Rowbottom said the Commission would need to see how it is attached to the building and what it looks like and what the grid pattern is, and how it is drained. Mr. Dawkins said they don't serve a functional purpose in terms of shelter from the rain; it's more a design element.

The petitioner will bring back what kind of lighting will be needed for the signage and the number of the goosenecks. Signage and signage lighting will be reviewed at another time; they are not being approved this evening.

Ms. Maylie requested a drawing of the design element.

Mr. Dawkins said he would like to go to the Planning Board with some sort of approval from this Commission. He suggested reviewing signage, sign lighting and design element/canopy all at the same time. Mr. Dawkins said that after this meeting, they would be applying to the Planning Board. He said he wouldn't mind coming back to this Commission before going to the Planning Board. Mr. Sabo suggested that the petitioner come back to this Commission on November 5, 2003 with their changes. They will be applying to the Planning Board for their November 26, 2003 meeting which is the Wednesday before Thanksgiving. The November 26th meeting will probably be cancelled and possibly be held December 3, 2003.

Ms. Rowbottom said that if the petitioner came back November 5, 2003, they would have information on the lighting, the design element, signage--everything that is façade related.

Mr. Sabo recapped the action taken: 1) Landscaping is requested against the parking lot side of the screenwall as well as the right-of-way side of the screenwall, width to be determined, 2) No downspouts or gutters on the exterior, "cow tongues" on the back of the building only--petitioner to return with designs, 3) Section plan views of the canopy design element, 4) Design details for exterior light fixtures and sign band area, and sign package to be reviewed at a later meeting, 5) Indicate the vehicular circulation of the banking lanes, and 6) the windows will be clear glass. The petitioner has indicated that they will conceal the installation of any pneumatic drive-through system in the canopy support columns or below grade.

Mr. Sadowski asked the petitioner if they had this three-dimensionally that could be put on a laptop. Mr. Dawkins said if they brought in a laptop, they might be able to walk the Commission around the building. Mr. Sabo thought perhaps they could get it in the virtual reality model for November.

Motion by Mr. Sadowski

Seconded by Mr. Jickling to postpone the petition to the November 5, 2003 meeting.

Yeas: Messrs. Bluth, Dow, Jickling, Sadowski, Ms. Rowbottom

Nays: None

Absent: Mr. Deyer and Ms. Stephenson

Motion carried 5-0.

Mr. Dawkins asked the Commission how they would feel about a multi-story building on the site if the other boards and commissions were not in favor of the current proposal. Ms. Rowbottom said this Commission would not be asked until the Planning Board decided whether they would want a multi-story building on the site because it is new construction. This Commission would review it for the facade because it is in a historic district.

Ms. Rowbottom asked if there is a new drainage system for the parking lot; she recalled the drains backing up in the wintertime and the area flooding. Mr. Harry Blackward, the owner of the building said that has not been addressed yet. He said his biggest concern is the traffic flow in and out of the parking lot. It was suggested that he meet with the Traffic and Safety Board.

**Planning Board Minutes
September 8, 2004**

09-198-04

**Pre-Application Discussion
34901 Woodward Avenue – mixed-use development**

Mr. Chad Grinwis with AZD Associates, Inc. spoke to represent the property owner, Mr. Harry Blackward. Mr. Jim Pullman, Health Club Design Specialist, also appeared before the Board.

Their project is located at the northwest corner of Woodward and Brown. They propose a five-story structure developed as a D-4 in the Overlay District. They are also looking at some underground parking. Residential on the fifth floor will require the Planning Board's permission. They propose to push the mechanical behind the mezzanine on the fifth floor so that it is the mechanical screen while at the same time serving the function of loft space. The fifth floor would be set back 10 ft. The first floor would be retail/commercial, the second and third floors would contain a health club, the fourth floor would be office, and the fifth floor would have 13 residential units.

Mr. Blackward advised that when they were previously before the Planning Board they did not have the Workbench site next door. Now that has been added and the project has become twice as big. Additionally, before they had planned to utilize an existing building but now they propose to demolish all of the existing buildings.

Mr. Harry Blackward said he currently has the Workbench store under contract. He plans to bring the loft design, 1,200 sq. ft. residential units in at around \$500,000. This would open up the ability to reach a large group of potential buyers. Two parking spaces underground at \$70,000 impact the cost of a unit. The amount of glazing on the second and third floors for the health club is very important to them and requires a variance. The mezzanine would be essential to the residential units. It allows them to make the units slimmer and put the bedroom upstairs, pulling it back away from the glass.

Ms. Ecker clarified the glazing requirement for the upper floors. The Overlay provisions specify that upper floors should be no more than 35 percent glass. Mr. Grinwis said they would be over the requirement on the second and third floors.

Chairman Thal inquired if they ever had discussions with the Peabody Family and Mr. Ted Fuller in terms of coordinating their efforts. Mr. Blackward said two years ago he spoke to both Susan Peabody and Ted Fuller but could not get everybody on board at that time.

Mr. Jim Pullman went on to explain that prime time at the health club would be from 5 p.m. to 8 p.m. Also, people will come in before work and during lunch. He estimated 200 - 300 cars would be parking in the Peabody structure during the evening prime time. He described the difference between their proposed facility and Oakland Athletic Club. He believes their health club will bring cutting edge fitness to the table because they have the freedom to build it right from the beginning.

Discussion followed about the drive-through for the bank. Mr. Nickita noted that in order to allow the access in they would lose a couple of parking spaces. The access would be just south of Peabody's access. Mr. Blackward indicated that Flagstar Bank really wants the space.

Mr. Nickita cautioned he thinks the glass issue is a real question and it would need a variance. The other issue is the height. Mr. Nickita stated they have not adhered to the viewing angle and have gone beyond what is allowed. The significant overhang does not make it any easier. This is an appropriate sized building for the context along Woodward. However, he suggested they be more sensitive to what has just been discussed and try to make the building fall within the envelope that is being created with the change in the ordinance. He suggested they refine the roof to fit. The height allowance is 58 ft. to the eave and then a 45 degree angle back.

The excess window area was discussed. Mr. Blackward indicated they could minimize the glazing for the second and third floors on the back of the structure. Mr. Nickita recalled that the percentages came from an analysis of the noted historic buildings in downtown. That became the guideline that was applied to the 2016 Plan to be carried through in new projects. He feels that it really is aligned to the interior of the downtown, rather than on Woodward which is a different condition. Therefore, there may be some arguable flexibility in that approach. Therefore, the façade may be treated differently on the east than on the west, where there is a very different condition.

Chairman Thal observed that another couple of parking spaces might disappear because of the entrance into the loading area. Mr. Boyle said he sees no coherence between the plan and the interior layout of the building. Mr. Blackward said the fact of having a drive-through compromises the site. Nothing works, because the bank must be aligned with the drive-through. For the retail component, he contemplates a tenant with low parking requirements. The Board concluded that parking is certainly an issue.

**Planning Board Minutes
December 8, 2004**

12-254-04

**PRE-APPLICATION DISCUSSION
34901 - 34935 Woodward**

Mr. Ken Neuman of Neuman Smith Associates, the architect, was present with his client, Mr. Harry Blackward. Mr. Neuman showed four pictures of what they would like to develop on their parcel of land at the corner of Brown and Woodward. The site has doubled since the last time they were before the Planning Board because of the addition of a furniture store. Underground, parking will be available for 55 cars. The first floor lobby will provide access to other uses above, and a drive-up banking facility entering from Woodward and exiting onto Peabody. Trash and some mechanicals will be contained within the building. The next two floors would become a health club, above that an office level, and then at the top a series of loft-type residential units with balconies that afford clear views in all directions. The plan is to tuck the mechanical in a well in the center of the building. They think they can make this into a building that will be an asset to the community.

Mr. Neuman indicated that the site is 22,500 sq. ft. The basement parking is 22,500 sq. ft.; the first floor has 11,000 sq. ft. of usable space; floors 2, 3 and 4 each contain 22,500 sq. ft. and the top floor measures 18,400 sq. ft. including mezzanines. The entrance to the underground parking comes in off of Peabody.

Mr. Neuman noted the peak traffic for the health club occurs at 6 a.m. and after 5 p.m. Therefore they believe that is a consistent use with the office space and the other uses on the site. Mr. Sabo indicated the argument could be made that the two floors of health club are a similar type use to office. Mr. Neuman felt the Ordinance allows two floors of office and four stories with the exception of a residential bonus floor if it is set back. They believe that the health club would not be counted as an office use so that they would only need a single floor of residential.

Mr. Potts said his preference is to see the mechanical recessed between the two residential components on the top floor. He questioned the resulting sound issues. Mr. Neuman explained how their sound transmission would be isolated. They would meet the code requirements for sound transmission.

Eliminating the drive-through was discussed and Mr. Neuman said the bank is not in favor of the site without a drive-through. Mr. Boyle thought the bank would have more of an urban feel without a drive-through. The bank customers could park very close, but they would need to exit their car. Mr. Neuman explored alternative ways the drive-through space could be reduced. Vice-Chairman Blaesing thought a smaller entrance would be an enhancement and then the

space could open up inside for people to talk to the tellers. He was also in support of recessing the mechanical in a well in the center of the building.

Mr. Dilgard said he would have serious issues with the health club given the layout of Peabody. Therefore, he is not sure if a health club is a viable situation. The Peabody Garage is pretty close to being full, especially mid-afternoon. However, he was not in favor of entering the underground parking from the Woodward side. Additionally, the traffic flow from the bank will exit onto Peabody as well.

Mr. Blackward said that if office is put on the second, third, and fourth floors, it is more parking intense than a health club. The health club members are staggered over 14 hours of the day. Not everyone who goes to the health club will drive there and that will lessen the intensity of parking.

Vice-Chairman Blaesing encouraged Mr. Blackward to work with staff to try and figure out if this plan actually meets the Ordinance. His personal point of view is that he likes the overall project. This plan is certainly bigger and with the apartments on top it gets closer to what the board is looking for in the downtown in terms of the 2016 Plan. The banking on the first floor and the underground parking are all pluses.

In response to a question from Mr. Dilgard, Mr. Blackward said it would be hard to go to a second floor of underground parking because it would add so much to the cost of a unit.

**Planning Board Minutes
September 27, 2006**

09-175-06

PRELIMINARY SITE PLAN REVIEW

34901 Woodward Ave.

LaSalle Bank

Construction of new drive-through bank facility

Ms. Ecker advised the subject site currently contains a vacant one-story commercial building and is a total of .28 acres in size. It is located on the northeast corner of Peabody and Brown Street. The site is zoned B-4 in the Underlay and D-4 in the Overlay District. By having a drive-through facility, the applicant is electing to develop under the Overlay because it is the only way they can have a drive-through at this location. At this time, the applicant is proposing to demolish the existing building and surface parking lot to construct a one-story bank drive-through facility. The proposed development will consist of one building containing 7,383 sq. ft. of office space, including a bank, a wealth management office, an additional space for lease or future bank expansion, and a covered drive-through teller area and ATM.

On September 8, 2004, the applicant appeared before the Planning Board for a pre-application discussion and presented plans to develop a five-story building with a drive-through bank on the first floor, a health club, offices and residential loft units on the top floor. The board advised the proposed building was appropriately sized for the context along Woodward.

On December 8, 2004, the applicant appeared before the Planning Board for another pre-application discussion after purchasing adjacent property and presented similar plans to develop a five-story building with a drive-through bank on the first floor, a health club, office and residential loft units on the top floor. The board advised that the larger building was closer to the scale and massing that the board was looking for in accordance with the 2016 Plan.

Mr. Haberman noted he finds an inherent conflict and a dangerous situation with bank drive-throughs entering and egressing across sidewalks. He feels it is incompatible with a walkable community. Mr. Potts was not too concerned about that because cars would be driving quite slowly.

Mr. Dilgard observed that the exit is very close to the intersection. **In response to Mr. Dilgard's question, Ms. Ecker advised the City Police Department had no traffic concerns with the proposed project.** Mr. Nickita agreed there are definitely concerns about the traffic relationship. He noted that potential stacking would go into a usable lane along Woodward Ave. It is a very tight, and

he thinks problematic, circulation system.

Mr. Michael Beaujolo, the architect, said the lobby will also be open on Saturday at this location and it will take some traffic off of the drive-through area on that day. LaSalle Bank feels there is adequate stack-up for the drive-up business that they project for this facility without interfering with the traffic on Woodward Ave. He described their plans to increase the safety when cars are exiting the area.

In terms of the architecture, even though the building is one story, they tried to make it appear as a two-story building. Mr. Beaujolo went on to describe the architecture and explained they have incorporated some traditional details that they feel are consistent with many buildings in Downtown Birmingham.

Mr. Potts received clarification that the bank could sub-lease 1,000 sq. ft. of space along Woodward Ave.

Mr. Beaujolo explained there are plans for a drop-off and walk-up ATM. There would be some parking on-site. The ceiling in the vestibules will be about 20 ft. high. The windows are clear vision.

Mr. Harry Blackward, the property owner, said he would like to develop the adjacent Workbench site, but it would be contingent on what parking is available.

Mr. Nickita thought that whole block would ultimately be developed in some manner. He has some concerns that the drive-through and the taxing of this corner has a direct effect on the adjacent properties and their potential for development. Mr. Potts did not think anything will happen with respect to the properties to the north in the foreseeable future, nor can anybody reasonably project what is going to happen there. This building seems to be an excellent use of this land and a perfect terminus for whatever happens to the north.

Mr. Blaesing thought the block should be developed as a whole, and not in little pieces. This site begs for a tall building, and begs for some unified structure with multiple uses. Therefore, he feels this single-purpose use on the corner that breaks up the rest of the block is a step in the wrong direction.

Motion by Mr. Dilgard

Seconded by Mr. Potts to continue the meeting to 11:20 p.m.

A vote was not taken on the motion.

Mr. Dilgard observed that if the whole block were to be developed there would have to be some dramatic underground parking to handle the situation. He indicated support for the project.

The chairman called for comments from the audience at 11 p.m.

Mr. Blackward said he has plans for a five-story building on the site, but he cannot make it work without parking. Chairman Boyle asked that Mr. Blackward design the building so that additional stories could be added.

Mr. Nickita pointed out this would be the only bank site that is bounded by three major streets. The vehicular circulation and the integration with pedestrian traffic is far too problematic for him to feel comfortable in supporting the plans.

Motion by Mr. Nickita

Seconded by Mr. Blaesing to deny the Preliminary Site Plan for 34901 Woodward, LaSalle Bank, based on problems with vehicular circulation and integration with pedestrian traffic.

There were no comments from the public at 11:14 p.m.

Motion to deny carried, 5-2.

ROLLCALL VOTE

Yeas: Nickita, Blaesing, Boyle, Haberman, Lazar

Nays: Dilgard, Potts

Absent: None

**Board of Zoning Appeals Minutes
November 14, 2006**

11-91-06

**34901 WOODWARD AVE.
(Appeal 06-44)**

- A. The owners of the property located at 34901 Woodward Ave. are appealing a decision of the Planning Board to deny preliminary site plan approval on September 27, 2006, per Chapter 126, Article 07, 7.31.

The property is zoned B-4 Business-Residential in the underlying zoning and D-4 in the Overlay District.

Chairman Lillie advised that the appeal is based on the record, with no new testimony.

Ms. Robinson explained the existing site currently contains a one-story building on a .3 acre parcel on the northeast corner of Peabody and Brown St. The applicant appeared before the Planning Board on September 27 proposing to demolish the existing building and surface parking lot and to develop a one-story bank drive-through with office facilities. The Planning Board voted 5-2 to deny the preliminary site plan based on problems associated with pedestrian and traffic circulation.

In response to questions, Ms. Robinson went on to say the intent of the Overlay Zone, which is what the applicant is developing under, was to encourage taller, bigger buildings. So, developing a one-story building does not necessarily agree with the intent of the Overlay Zone. The Overlay Zone does not mandate a taller building. No traffic studies were done and no City departments presented any comments referencing any traffic considerations.

Kingsley Cotton, Attorney, appeared on behalf of the petitioner, Mr. Harry Blackward, who was present with his wife. Also present was the project architect, Mr. Michael Boggio. Mr. Cotton said that under Michigan statute, the Planning Board is required to grant site plan approval if the proposal is in compliance with the Zoning Ordinance. Therefore, he felt the Planning Board abused its discretion by denying preliminary site plan approval that, according to the written report presented by staff, is in complete compliance with the Zoning Ordinance and is compatible with nearby buildings. The Planning Board Minutes show that there was a clear preference for a four or five story building. In fact, Mr. Blackward would prefer to build a four or five story building there, but his fear was that there is no place to park. Even the Advisory Parking Committee ("APC") has acknowledged that problem.

Accordingly, Mr. Blackward has been paying taxes on this property and he is unable to use it to try and recover some of his costs. Therefore, he went to a one-story building which fits the zoning, because he wants to improve the property in order to receive some return on his investment. Because the Planning Board was so interested in having something else on that site, it denied site plan approval. There was no reason given when the motion was made, so essentially there is no reason to deny site plan approval. Mr. Cotton pointed out that the mention of traffic and pedestrian safety in the motion is not borne out by the record. Every department in the City passed on this project but the Planning Board chose to deny site plan approval.

Therefore, Mr. Cotton suggested that the BZA reverse the Planning Board's decision, and grant preliminary site plan approval in accordance with the City's own recommendation and subject to the conditions that the City imposed in its own report.

Efforts were made by the applicant to consider the Planning Board's concern about the height of the building. Mr. Cotton explained how they took some steps to make the building bigger than it needed to be on the site. The roofline is at 25 ft. and the corners are at 30 ft. They would like to have a bigger building, but they would also like to have their tenants have a place to park. They cannot wait for another parking structure and they don't know what will happen with the other property on this block. There are two other owners of property on that block and it has been impossible to work together and develop it as one block.

Mr. Judd noted that the Planning Board has the power of discretion. They addressed their concern for traffic, pedestrians and safety in several places in the Minutes. He was not convinced the Planning Board abused their discretion. Mr. Cotton replied there was no evidence before them of pedestrian problems or traffic problems. Because the Planning Board wants a taller building, and they throw out a few platitudes about pedestrians and traffic, is not a legal basis to deny site plan approval without any evidence.

Mr. Jones asked Mr. Cotton whether he thinks the Planning Board is permitted under their own personal experience to discuss something and take it into account pursuant to

Article 7.24 (B) (4) of the Ordinance. Mr. Cotton responded that in their experience they can judge such things as surfaces, colors and the compatibility of the height of a building in relation to its surrounding buildings. But on something as technical as traffic and pedestrian safety, they cannot go just on their own opinion. Those types of issues require expert investigation. When there is no contrary evidence before the board from City departments, it seems to him that Mr. Blackward is entitled to rely upon the recommendation of the Police Dept. and the City Planner in that regard.

Mr. Lyon considered whether the BZA needs to overrule the decision of the

Planning Board or whether it should require a more positive traffic study that indicates why traffic would not be a problem. Mr. Cotton noted the Police Dept. and everyone else did not require a traffic study and the reason is because it is self-evident according to the City's experts that it is a non-issue there. Further, when Mr. Blackward on two occasions went to pre-application discussions with the Planning Board to present a four-story building and a three-story building, no one was concerned about traffic or safety. Now, when Mr. Blackward came in with a one-story building, all of a sudden there were all of these concerns about traffic and safety. He thinks that the Planning Board is very well intentioned in wanting a development there, but they overstepped their authority by denying a completely legitimate project and one that will be an asset to the community and one where the developer took extra steps to try to meet some of the Planning Board's concerns.

In response to questions, Ms. Robinson explained the intent of the D-4 Overlay Ordinance is to encourage mixed-use buildings so that the Downtown would not be overrun with offices. Mr. Lyon said if the intent was to build big buildings, then the Ordinance should have been written to allow only big buildings. He indicated that he is struggling with where the Ordinance actually says that big buildings are not allowed.

Mr. Hughes' view of the situation was whether this appeal should be sent back to the Planning Board for reconsideration, but without granting preliminary site plan approval, so that an appropriate record could be made, either to support Mr. Nickita's motion or to support the applicant's position. At this point, he didn't think the record is adequate for that purpose. Mr. Cotton stated the only implication about traffic and safety concerns at the Planning Board meeting was from board members and they are not entitled to testify. They are there to judge the record before them. That record consists of information provided by the applicant and the information gathered by City administration. Mr. Lyon countered that Planning Board members are experts in their fields and as such are allowed to present testimony.

Motion by Mr. Judd

Seconded by Mr. Lyon in reference to Appeal 06-44, 34901 Woodward Ave., he feels that, after reading the Minutes and discussing this with the counsel for the appellant and the other board members, the motion that was framed by the Planning Board on September 27, 2006 is defective. He says this because specifically City Code Chapter 7, section 27 (b) has six enumerated sub-sections. It has always been his position that the Planning Board in framing a motion for site plan approval should address each and every one of those sections.

In this particular motion in the Minutes, sub-sections 1, 2, 3, 5, and 6 were ignored. As such, Mr. Judd feels that this board can interpret that the Planning Board did not have a particular problem with those. However, the

Planning Board did focus upon subsection 4 which states the site plan in its relation to streets, driveways, and sidewalks shall be such as not to interfere with or be hazardous to vehicular or pedestrian traffic. This became the peg that they hung their hat upon. However, it has been pointed out that this may have been trial by ambush. And, as Mr. Cotton has pointed out, it is rather difficult to prove a negative at the last minute. Mr. Judd has also reviewed all of the documentation and this one did seem to be a concern that came out of nowhere. That being the case, he feels that the Planning Board has abused its discretion insofar as it did not provide the proper form or explanation for their motion.

He would move that this matter be returned to the Planning Board at their next meeting to revisit this particular issue and to explain the specificity, the reasoning, and the evidence that they utilized in determining that traffic and safety was the paramount issue here. They will then make a determination as to site plan approval based upon that one issue. Mr. Judd notes that from prior legal opinions the BZA will maintain control over this since it has in this circumstance become the Planning Board. So, this is not a request on this board's part; this is an instruction to a sister board to follow suit.

Amended by Mr. Hughes

And agreed to by the makers of the motion that the applicant in this matter shall be permitted to present to the Planning Board whatever studies it deems necessary to support its position with respect to compliance with Section 7.27 (B) (4) of the Zoning Ordinance and they have that opportunity prior to and at the convenient re-hearing or reconsideration of this issue by the Planning Board.

Discussion summarized that the direction is to return this preliminary site plan to the Planning Board at their next regularly scheduled meeting for them to describe or justify their rejection on the basis of traffic or pedestrian problems. The petitioner has the opportunity to submit any reports or any other evidence that it wants to prior to that hearing and the Planning Board is to take that information into consideration in making its findings, limited solely to Section 7.27 (B) (4).

Motion carried, 6-0.

VOICE VOTE

Yeas: Judd, Lyon, Hughes, Jones, Lewand, Lillie

Nays: None

Absent: Betanzos, Conlin, Koseck

**Planning Board Minutes
December 13, 2007**

12-206-06

PRELIMINARY SITE PLAN REVIEW

34901 Woodward

LaSalle Bank

Proposed one-story bank drive-through (referred from the Board of Zoning Appeals (“BZA”) for review of traffic and circulation issues only)

Kingsley Cotton, Attorney with Freeman, Cotton & Norris, P.C., who are the attorneys for Mr. Harry Blackward and Blackward Properties, LLC, submitted an explanation regarding the November 14, 2006 ruling of the BZA.

The ruling of the BZA essentially concluded that the requirements of subsections 1, 2, 3, 5, and 6 of Chapter 7, Section 27 (B) have been satisfied. The ruling returned this matter to the Planning Board for reconsideration of subsection 4, directing the Planning Board to “revisit this particular issue and to explain the specificity, the reasoning, and the evidence that they utilized in determining that traffic and safety was the paramount issue” in denying the Preliminary Site Plan approval. The ruling indicated that the Planning Board “will then make a determination as to site plan approval based upon that one issue.”

The BZA allowed the applicant “to present to the Planning Board whatever studies it deems necessary to support its position with respect to compliance with Section 7.27 (B) (4) of the Zoning Ordinance.”

Accordingly, the applicant has commissioned and submitted to the Planning Board a Traffic Impact Study (“TIS”) specific to this site and this proposed project prepared by Birchler Arroyo Associates, Inc. The study did not find any interference or hazards to vehicular and pedestrian traffic.

The drive-through at this site is similar to other banks in the City, except that it is entered from a parking aisle, not a street, provides internal queuing, and has a greater capacity than Franklin Bank. Therefore, it is reasonable to conclude this drive-through is just as safe as other drive throughs in the City

In his letter, Mr. Cotton suggested that with the additional data and conclusions from the TIS, the conditions of subsection 4 of section 7.27 are satisfied and Preliminary Site Plan approval should be granted.

Ms. Ecker advised that Mr. Michael Labadie with Tetra Tech, Inc., the City’s traffic engineer, is here to discuss his review of the TIS for the proposed LaSalle Bank development prepared by Birchler Arroyo Associates, Inc.

In response to a question by Mr. Dilgard, Ms. Ecker said her interpretation is that the BZA is sending this item back to the Planning Board to review and to explain specifically, the reasoning and the evidence that was utilized in determining that traffic and safety was a paramount issue; and then to make a determination as to Preliminary Site Plan approval based upon that one issue. Of course, the applicant is always free to go back to the BZA and appeal tonight's decision as well, if they are not successful. If the Planning Board votes to approve this plan, they will not need to go back to the BZA and will move on to seek Final Site Plan approval.

Mr. Cotton thought if this board makes a motion tonight to grant Preliminary Site Plan approval then the BZA would have no further interest in the issue of Preliminary Site Plan approval. With him tonight was Mr. Rod Arroyo who submitted the TIS. Also, Mr. Michael Boggio, the project architect, was present. Design changes have been made to the building to address the traffic issues that were raised by Mr. Labadie. The applicant submitted a revised site plan to the Planning Board. They propose to recess the automobile exit from the bank 4.5 ft. back to improve site lines on Peabody. Now they have merged down the exits so only one car at a time will leave the building. Mr. Cotton concluded that overall, there is very little traffic impact with this project. He suggested everyone keep in mind that this board desires a more intense development there which would have greater traffic impact. So, it stands to reason that this one-story project should not be of great concern to the board in terms of traffic. Because of the tightness of the schedule they have did submit the modifications to the site plan prior to the meeting.

Mr. Nickita questioned the process. Some of the concerns brought up by staff were addressed in the site plan, but the board has not seen the new site plan. Chairman Boyle was inclined to continue with the discussion. The petitioner has made modifications to the site plan on issues the board has identified.

Mr. Potts did not think the Planning Board is limited by anything the BZA asks it to do. Mr. Cotton responded that the BZA has a quasi-judicial function that this board does not. A citizen can appeal to the BZA for a ruling on decisions of a number of other City boards. To that extent, he thinks the BZA has the last word. He feels their remand to the Planning Board was very conciliatory. The applicant has picked up that flavor by trying to respond to what they think the issues are.

Mr. Rod Arroyo, Birchler Arroyo Associates, Inc. addressed the concerns that were raised in Tetra Tech's review. He handed out a letter from LaSalle Bank containing an overview of their operation.

Trip generation: It is believed by the applicant that the Wealth Management and Home Lending Offices will function more like traditional office space and have separate hours of operation. The portion that is truly dedicated to the bank will

have the trip generation that is more associated with a bank. They have calculated traffic based upon these anticipated functions.

Queue Analysis: They have addressed this through some modifications to the site plan. The new plan is based on three lanes and shows the ability to provide for stacking of eleven vehicles without spilling out into the sidewalk area along the frontage on Woodward.

Driveway to Peabody: It has been narrowed down from two lanes to one. Additionally, there is now a wider space of over ten ft. to get out into the exiting lane.

Site Distance: The ability for exiting motorists to see has been enhanced. They believe it meets the spirit and intent of providing for adequate site distance in an urban setting. The building has been moved back. Further, the setback meets the same type of standard that the City has imposed for the Peabody Parking Structure, and it is consistent with what has happened in other locations in town.

Driveway Queue Storage: Their analysis shows an average p.m. peak-hour delay for outbound vehicles exiting to Peabody of 13 seconds (Level of Service B) and a 95th percentile queue of 7 ft. They do not anticipate substantial delays for motorists exiting the facility.

In summary, they believe that the revised plan with the minor modifications shows an improved design, and it addresses the comments of the City's traffic engineer, Tetra Tech, with reasonable and context-appropriate solutions.

In response to a request from Ms. Ecker, Mr. Arroyo pointed out how the sidewalk now traverses through the site. Ms. Ecker noted that now the building is 4.5 ft. off the property line. However, there is a setback requirement in the Overlay that it be located at or on the frontage line. A variance would be required for that.

Mr. Boggio clarified that the north side of the northern drive-through island shares an ATM and a drive-through window. The ATM will be open 24 hours. In addition, there will now be a walk-up ATM on Woodward Ave. Mr. Arroyo explained that lane would only function for drive-through operations at a point that the bank was so busy it needed to address queuing. Therefore, ATM customers generally would not have to wait for drive-through transactions to be completed.

In response to a question from Mr. Potts, Mr. Arroyo noted that in theory there would be no difference between pulling into the bank queuing lane and pulling into Peabody's Restaurant parking lot. He explained that people who make appointments will be advised to park in the parking structure.

Mr. Nickita asked about peak hours of operation. Mr. Arroyo said the peak hour of a typical week-day occurs between 5 and 6 p.m. There are only four chances in one hundred thousand the queue will be more than eleven vehicles. Mr. Nickita said one of his concerns at the last meeting was the potential for any cars parked north of the building to be caught in a stacking situation and blocked from exiting. The response was that two more vehicles could stack without blocking the aisle that runs parallel to Woodward.

Mr. Boggio said there is a combination night depository and ATM on the Woodward elevation. In discussing the right-of-way, Ms. Ecker said any changes would be subject to review and approval by M-DOT. The applicant would have to apply for administrative approval from the planning division if changes are required by M-DOT.

Mr. Labadie of Tetra Tech, Inc. spoke to Mr. Arroyo's findings.

Trip Generation: The conservative approach is to assume this is a bank and to forecast trips based on this being a bank operation versus a bank/office operation. Therefore, they forecast there will be more trips. However, he doubted there would be more cars going through the drive-through, so it may be a moot point.

Queue Analysis: The queuing won't operate as though it has three queuing lanes the way they describe. The question is, with three lanes processing through and blending into one lane going out, can this cause a back-up. Gaps in the traffic out on Peabody during the peak time may also cause a delay.

Driveway to Peabody: Regarding the concern about a parked car being able to exit when cars are in the queuing lane, it will be tight, but it is probably okay.

Site Distance: The site distance analysis performed for the driveway onto Peabody St. was not performed in accordance with American Association of State Highway and Transportation Official ("AASHTO") requirements. The AASHTO method of sight distance evaluation has the recommended distance between the edge of the traveled way and the driver's eye as 14.5 ft., which is nearly double the distance that is referenced within the report. Therefore, he recommended they maximize the distance as best they can and get some site distance that can be acceptable. There are places all over the City where site is restricted. Should another similar place be approved? That is up to the board.

Mr. Labadie's big issue was the outlet onto Peabody. A motorist cannot see well enough. If the driver pulls up to where he can see, in this situation he may hit someone if he is not careful.

Chairman Boyle noted Peabody doesn't have parking, and therefore would have a relatively efficient flow of traffic along the street.

In closing, Mr. Labadie explained when they know there are developments that are going to come on line within the time frame a project is going to be built, they are added to the study on top of assuming some percentage growth.

Mr. Haberman pointed out that on a day the bank is short-handed, they may only have one drive-through open. In that case, there will be more stacking.

Mr. Blaesing noted that all of the issues have been addressed by the applicant and the board has re-evaluated all of the traffic and circulation concerns as it is supposed to do. Ms. Ecker thought the BZA was looking for this board to review all of the traffic and circulation issues and to make a finding as to whether that standard has been met.

Mr. Potts did not feel constrained to be limited by the suggestion by the BZA. Ms. Ecker noted the BZA sent the plan back asking for the reasons as to why the Planning Board rejected it on the basis of traffic and safety concerns, but then at the same time they said the applicant could submit new information. Now the Planning Board is not just going back and verbalizing its prior opinions, because the applicant has amended their plan and added new information from the traffic engineer.

Mr. Nickita was concerned that the board has received a new submittal this evening which it has not had a chance to review. Mr. Dilgard felt the traffic issues could be addressed at Final Site Plan review.

Motion by Mr. Dilgard

Seconded by Mr. Potts to approve the Preliminary Site Plan review for 34901 Woodward Ave. subject to the following conditions:

- 1. The approved plan is the one shown this evening with only one exit;**
- 2. The applicant is required to get a variance from the BZA for the setback from the front property line on Peabody;**
- 3. The applicant provide specification sheets on all rooftop mechanical equipment;**
- 4. The applicant provide an elevation drawing of the transformer enclosure gate and material sample;**
- 5. The applicant provide a detailed landscape plan identifying all proposed species to be planted;**
- 6. The applicant provide a photometric plan and specification sheets for all light fixtures; and**
- 7. The applicant provide information regarding the percentage of glazing on each elevation, the finish floor to ceiling height of the interior space, and the average grade for the site.**

There were no members of the public who wished to comment on the motion at

9:30 p.m.

Chairman Boyle summed up his understanding is that the board is voting on an amended site plan that it has seen elements of tonight. The changes include modification for the positioning of the building, the narrowing of the exit onto Peabody, the modification to the site lines along Peabody, questions about stacking which have not been resolved, an ATM added to the Woodward Ave. façade, and signage indicating which lanes would be open to incoming drivers.

Mr. Cotton believed the BZA was being differential to the Planning Board by sending the site plan back to allow the board to put more of its thoughts on the record concerning traffic and pedestrians. They could have granted site plan approval if they chose to. Secondly, the Planning Board has a great deal of discretion as to what it can consider at Final Site Plan review. Most of these items are capable of being considered then if they are not already worked out administratively. However, he would hate to see this board deny Preliminary Site Plan approval because the applicant attempted to address the concerns of the City's traffic consultant. They did that in the utmost good faith in a short period of time. He asked the Planning Board to grant site plan approval for a perfectly legitimate building on this site.

Mr. Nickita thought the plan is probably the best it can be, given the circumstances.

Mr. Blaesing thanked the applicant, Mr. Arroyo, and Mr. Labadie for taking the board step-by-step through all of the traffic concerns related to the site. However, he is concerned that in trying to exit this site drivers will need to be very cautious about someone coming around the corner from Brown St. at 30 mph. That will continue to be particularly hazardous for bank customers.

Motion failed, 3-4.

VOICE VOTE

Yeas: Dilgard, Potts, Nickita

Nays: Boyle, Blaesing, Haberman, Lazar

Absent: None

The board took a short recess at 9:45 p.m.

Board of Zoning Appeals Minutes
January 9, 2007
01-02-07

34901 Woodward Ave.
LaSalle Bank
(Appeal 06-47)

The owners of the property located at 34901 Woodward Ave. are appealing a decision of the Planning Board to deny preliminary site plan approval on December 13, 2006, per Chapter 126, Article 07, 7.31.

This property is zoned B-4, Business-Residential and D-4 in the Overlay District.

The chairman advised there will be no new evidence or public comment on this appeal because it is an appeal from the decision of another board. Michigan Statute MCL 125.585 authorizes the BZA to review decisions of other boards. Section 8.01 (f) of the City Ordinance also authorizes the BZA to review decisions of other boards.

Chairman Lillie recalled that at the November BZA meeting the petitioner asked the board to overturn the September 13, 2006 decision of the Planning Board. The BZA referred this back to the Planning Board for an explanation of why they did not approve the preliminary site plan for traffic and safety problems. In its motion, the BZA also authorized the petitioner to conduct a traffic study, if they wished, for submittal. The petitioner prepared a traffic study and then went ahead and changed the site plan.

Kingsley Cotton, Attorney, appeared on behalf of the petitioner, Mr. Harry Blackward, who was present with his wife. Mr. Cotton stated the petitioner accepted the board's offer to submit additional material. They did, therefore, commission a traffic study. About four days before the Planning Board meeting, the City's traffic consultant, Mr. Mike Labadie, furnished them with a critique of their traffic study. Mr. Cotton said he then had two choices, one was to ignore it and the other choice was to prepare a response to the critique. So to do that, they gave the critique to their traffic consultant, Mr. Rod Arroyo, who prepared a memorandum that responded to Mr. Labadie's concerns. At the same time they had their architect tweak the design so that it would also address Mr. Labadie's concerns. They brought that modified site plan to the meeting, but unfortunately that second site plan caused some confusion with the Planning Board. They had not submitted the second site plan to the City for review ahead of time because of the time lines.

Mr. Cotton said his position this evening is that they are entitled to approval of their originally submitted site plan in September, regardless of their attempts to address the criticisms of Mr. Labadie. He said that he considers the statements

of Mr. Labadie and of Mr. Arroyo to be essentially quibbling between two consultants over diminutive issues. Just because there was disagreement on certain parts of the report doesn't mean that their plan would interfere with or be hazardous to vehicular and pedestrian traffic, which is the burden that the Planning Board had to demonstrate.

Mr. Cotton emphasized they have not submitted a modified site plan, but what he is hearing is that they are going to be penalized for addressing Mr. Labadie's critique.

Ms. Ecker said it is up to the BZA to determine at this point which plan it is they want to approve. The BZA has all of the powers of the Planning Board in an appeal situation like this. She offered to walk the board through the differences between the two plans.

Mr. Judd said the jurisdictional problem is what bothers him. The Planning Board said there are sizable changes and this should be considered a new plan. So what comes to this board now is a different plan than was sent there. His concern is that the plan that came before the BZA in November is gone. Ms. Ecker said she shared the same concerns and that is why she was not going to accept the letter received last week from Mr. Cotton for this appeal. However, they met with the city attorney and it was agreed to allow this hearing to proceed on the basis of the second plan or the first plan.

Mr. Cotton felt this board should not penalize them for being prepared to present to the Planning Board a response to Mr. Labadie's critique. They came to the meeting with alternate plans in order to show that Mr. Labadie's concerns could be addressed. Mr. Cotton does not agree that the BZA can grant site plan approval on either plan. He thinks they are bound by the original site plan. What they brought to the Planning Board for illustrative purposes was never submitted to the City, hasn't gone through reviews, and it requires a variance. They didn't ask for that plan to be approved that night. As Mr. Dilgard has said at the Planning Board, they could work with the City to resolve their concerns at final site plan review. Therefore, they are prepared to go forward on the original site plan this evening.

Ms. Ecker indicated it is very common for applicants when they are seeking preliminary or final site plan approval to come in with plans that address some of the issues. They are not always submitted ahead of time. The Planning Board does not like to see them for the first time on the night of the hearing. But generally they proceed on the revised site plan, or if they were to approve it would approve it with conditions. It is true, they do generally see some of the issues worked out at or before final site plan review.

She disagreed with Mr. Cotton's comments that traffic and safety concerns were not stated. Mr. Labadie had noted several concerns, and the most troubling to

him was the site distance issue turning out of the drive-through, both on the revised plan and the original plan. He was also concerned with the queuing and the back-up that occurred as a result of the three lanes coming down into one and exiting onto Peabody St. Further, he was disturbed by the trip generation that was prepared by the applicant's expert because they classified some of the regular office space within the facility as non-banking space. Under the traffic engineering standards there are fewer trip generations for a regular office use than there are for a bank use.

The Planning Board also addressed the safety of the pedestrian; the location of the sidewalk; they questioned the ATM that was added on the front along Woodward Ave.; and she had brought up the fact that the building was shifted back off the sidewalk. That is a violation of the setback requirement which is at or on the property line.

Mr. Conlin thought that petitioners should be required to go through the process in order to have a site plan submittal.

Ms. Ecker noted the traffic and safety issues were less on the second plan. However, other issues come up. It was her feeling that everybody on the Planning Board felt the second plan was better from a traffic and circulation standpoint, but still not acceptable.

Mr. Jones inquired if it is a fair statement from the City's standpoint that there was a discussion of traffic issues on both perceived plans. Ms. Ecker responded she thinks that is fair to say.

Ms. Ecker said the Planning Board members had extensive discussion about traffic and circulation issues and she thought it was clear that is why they didn't approve the plan. Mr. Hughes said he could not find a specific statement relating to that issue. He noted that Mr. Nickita voted against the plan the first time around but supported it the second time.

Mr. Hughes inquired to what extent the Planning Board would again consider the traffic flow and circulation and perhaps suggest other changes at final site plan review. Ms. Ecker provided an example of a traffic and circulation issue that the applicants for the Ashton Building at 856 N. Old Woodward Ave. left to be resolved later. However in this case it is a little more than they would usually work out between preliminary and final site plan reviews with respect to traffic and circulation. The queuing, stacking up, and being pushed into one lane to come out cannot really be changed. There is nothing that can be done to address that in a minor way. The same with the site distance issues. On the north there is a transformer which can have no other location. The building can be set back to allow more site distance, but no further than the applicant has offered at this point. So, in her opinion the issues are a little more serious in nature than they would normally resolve between preliminary and final.

Ms. Ecker advised that there was a full and complete discussion of the traffic study at the Planning Board meeting because the traffic consultants for both the City and the applicant were present and made their arguments. The board members generally defer to the traffic engineers to be the expert on this matter.

In response to a question from Chairman Lillie as to which site plan he wanted the board to deal with, Mr. Cotton asked the board to just deal with the original September site plan. Mr. Cotton went on to indicate that Mr. Labadie properly did not suggest that this project is hazardous to pedestrians, and he did not use anything close to the language in the Ordinance about what has to be established to deny site plan approval. Mr. Cotton felt that Mr. Blackward is being penalized because he is not building a structure big enough to satisfy the Planning Board's vision for that site.

Mr. Cotton said his position is that the Planning Board absolutely failed to do what the BZA directed them to do when they denied site plan approval in December. Further, they did not state their reasons for denial on the record. Secondly, the applicant is entitled to approval of the original site plan that was recommended and approved by the City because it is clear that the denial is a pretext because the Planning Board wants a taller building there. When the applicant was talking about a four or five story building which included a drive-in bank, the Planning Board didn't care about the traffic. So now when the applicant comes in with a one-story bank because there is no parking available, all of a sudden there are traffic problems.

Mr. Judd asked Mr. Cotton how the Planning Board allegedly abused its discretion. Mr. Cotton answered that they ignored this board's directive; and further, they didn't give any reasons for their denial of the site plan on September 27. The applicant should not have to guess the reasons for the votes. That is a denial of due process and that is why they are entitled to relief from the BZA. Mr. Cotton went on to say that no other bank in Birmingham has been subjected to the scrutiny that has been required from this petitioner at this site, despite the fact they have more queuing space than any other bank. This petitioner is being subjected to undue scrutiny about traffic and safety because he has come in with a one-story proposal that meets the zoning requirements. The boards did not order them to get a traffic study, but that is obviously the consequence of what has gone on so far.

In conclusion Mr. Cotton stated that Mr. Blackward has owned this piece of property for a long time and he has paid a lot of taxes. He just wants to build something that will go there. He has tried to please the Planning Board on numerous occasions, and he can't build a taller building because of the parking problem.

Chairman Lillie took exception to Mr. Cotton's statement that every board

member has to say why they voted one way or the other. Not everybody speaks up to say why they are voting for or against a motion. The person making the motion states the facts why they are making the motion either in favor or against the appeal. Then some people may want to make a comment and others don't. Then the vote is taken. Mr. Cotton countered that a public board has to give a reason for its decision and there was no reason given and the BZA asked for one. He thinks the public is entitled to better.

Mr. Jones was concerned as to where the abuse of discretion and/or the great weight of the evidence was abused by the Planning Board. Mr. Cotton replied the standard is not great weight of the evidence, it is abuse of discretion. One way to abuse your discretion is to vote against the great weight of the evidence. Given the situation, he thinks there was an abuse of discretion in denying the appeal. In his opinion the basis for the Planning Board not stating the reason is because traffic was not the issue for a negative vote.

Ms. Ecker assisted the BZA in their review of the facts. She stated that Mr. Blackward's earlier plans for a four or five-story building never went through a full formal site plan review. There were only informal pre-application discussions with the Planning Board. The Planning Board gave some feed-back but there was no thorough review of the issues of the site such as the traffic, the circulation, the setbacks, the design, or of the function of the site. So she did not think it is fair to say the Planning Board had loved all of the plans for taller buildings and didn't find any traffic problems. They didn't get into that in-depth of a discussion about the plans.

Secondly, she did not think it is fair to say that this site was required to do a traffic study. The City did not ask them to do a traffic study. When they came to the BZA they had a traffic study done before, but they hadn't offered it into evidence at the preliminary site plan hearing in September. The BZA allowed them to submit any further information that they wanted and they did, and one item was the traffic study.

She feels the Planning Board absolutely did what the BZA asked because they fully discussed traffic and circulation. They did not state their reasons for denying the site plan in September because the applicant came forward with a revised plan and said it is what they wanted to go with to accommodate the traffic consultant's concerns. She was troubled about the introduction of a new plan but she talked to the city attorney and he said he would allow it.

Mr. Jones inquired from the petitioner what other traffic information they could have brought forward were it not for the time constraints. Mr. Cotton thought the obvious response is a traffic study. He maintained they were blind-sided by the Planning Board on September 27 with traffic. They had no choice. There was no indication from the City's recommendation that traffic was an issue.

Chairman Lillie mentioned two quotes from the transcript where the Planning Board addressed the BZA's request.

The board took a short recess at 9:20 p.m.

Mr. Cotton said he conferred with his clients during the break. Mr. Blackward and his wife want to build a bank in this City. If this board believes that the second plan that was before the Planning Board is the more appropriate way to go, or the appropriate starting point, they clearly want to work with the City to make that happen. He thinks there is adequate evidence in the record that they are entitled to site plan approval. Mr. Blackward has a \$10 million signed lease for the property and stands to lose it if mistakes are made about his right to build there. The applicants will do what it takes to work with the City to put their one-story bank there. There is clearly evidence in the record that this plan is not hazardous, which is really what was supposed to be considered last time. Mr. Cotton thought Mr. Blaesing's statement at the Planning Board that cars will go 30 mph around that corner was out of order and extremely unrealistic.

Mr. Hughes thought it would be appropriate to adjourn this proceeding to allow the applicant to develop a more formal plan, together with the appropriate drawings, and meet with the City Planning Department to go through an actual review.

Mr. Judd was not opposed to Mr. Hughes' suggestion. However, he thought this board still has to make a determination on the September 27 plan and decide whether or not there was an abuse of discretion.

Mr. Cotton said they are convinced that they will not ever persuade the Planning Board to give them site plan approval. This board can remove the issue from the Planning Board and designate the City administration and their traffic consultant to work with the petitioner to resolve the issues that have been raised. They would like to see some closure and they don't have anyplace else to go.

Mr. Judd did not feel that the Planning Board did abuse their discretion. He does not want to count the Planning Board out on this particular matter. Mr. Hughes said his suggestion does not entail any criticism, direct or implied, of the Planning Board. It is just an alternative to making a decision on one plan or the other at the present time.

Chairman Lillie's thought was that the applicant could re-submit their second plan or make some further modifications, plus they should try to get M-Dot approval before going before the Planning Board. That way everybody would have a chance to look at it. Then if he didn't get approval it would support his position that he couldn't get it without constructing a multi-story building.

Mr. Cotton noted the whole site plan is within BZA jurisdiction so there is no

obligation to return any of it to the Planning Board.

After considerable dialogue Chairman Lillie suggested the BZA first deal with the plan that was submitted in September.

Motion by Mr. Judd

Seconded by Mr. Jones in regard to Appeal 06-47 with respect to with 34901 Woodward Ave., LaSalle Bank, dealing with the issue as to whether or not the Planning Board abused its discretion in its decision on September 27, 2006, as discussed and augmented in the December 13, 2006 board meeting, he would move to uphold the Planning Board and find that they did not abuse their discretion. In doing so, he would state specifically that the BZA did send this matter back to them for review and a specific finding as to traffic problems. The board has spent many hours tonight discussing the transcript provided from Mr. Labadie and the board members commenting on traffic and as he noted before, while it's not perfect, he thinks it certainly did address in a good faith manner the instructions that the BZA gave to them. For that reason, he would uphold the decision and find that they did not abuse their discretion.

Mr. Conlin asked why that motion is necessary. Mr. Judd explained it came to the BZA to make a determination as to the process that was presented on September 27, 2006 by the Planning Board, and whether or not they did in fact abuse their discretion. There is no reason to have that hanging around. If the petitioner wishes to proceed on the December 13, 2006 plan, the motion does not affect that.

Mr. Conlin indicated he would vote against the motion because he did not think it was necessary to have it. Chairman Lillie thought the motion cuts down on the confusion.

Motion carried, 5-1.

ROLLCALL VOTE

Yeas: Judd, Jones, Hughes, Lewand, Lillie

Nays: Conlin

Absent: Koseck, Lyon

Mr. Hughes made a motion with respect to the action taken by the Planning Board on December 13, 2006, specifically the motion made by Mr. Dilgard, that this board hold that matter in abeyance until such time as the applicant has the opportunity to take a look at the plan submitted at that time (Plan B) and work with the Planning Department and the city traffic engineer to perhaps further modify his proposal for a bank. When it is ready, send it on to the Planning Board for preliminary site plan approval.

Chairman Lillie felt that procedurally this matter can't just be held in abeyance. Further dialogue considered the procedure and how the motion should be worded.

Mr. Hughes withdrew his motion.

Motion by Mr. Judd

Seconded by Mr. Jones in regards to what has become known as Plan B, the December 12, 2006 version, that this matter be referred to Planning for a complete and thorough processing and review and that upon completion of that review the plans will be returned to the Planning Board for their consideration, in that the BZA feels that the hearing of December 13, 2006 was not a clear and cohesive review. Specifically, no prepared drawings or plans were really submitted, but from the record it appears to have been somewhat last minute and "slapdash." This board wants to make sure that the petitioner has an ample opportunity to make a full and complete presentation in the review process and to the Planning Board. It should also be noted that the BZA will maintain jurisdiction over this matter pending that review process and the re-submission to the Planning Board. Respectfully submitted, the BZA.

Discussion explored trying to get the petitioner onto the Planning Board's agenda as soon as they are ready with their plan and the City has reviewed it. Ms. Ecker explained the Planning Board's next scheduled site plan review meeting is at the end of February. Normally the first meeting in February is for study session reviews only. However, they may be willing to suspend their rules of procedure and allow this appeal to be heard at the first meeting in February.

Mr. Conlin commented that he believes all boards, particularly this board and the Planning Board, can do better by articulating for the petitioners why they may have been opposed to something.

Motion carried, 6-0.

ROLLCALL VOTE

Yeas: Judd, Jones, Conlin, Hughes, Lewand, Lillie

Nays: None

Absent: Koseck, Lyon

**Planning Board Minutes
February 28, 2007**

02-40-07

PRELIMINARY SITE PLAN REVIEW

34901 and 34953 Woodward Ave.

Revised preliminary site plan review and Community Impact Study ("CIS") for construction of three-story mixed-use building with a bank drive-through facility on the ground level.

CIS

Ms. Ecker advised that the subject site currently contains a vacant one-story commercial building and is a total of .52 acres in size. It is located on the northeast corner of Peabody and Brown Street. The site is zoned B-4 in the Underlay and D-4 in the Overlay District. The applicant has elected to develop under the Overlay standards. At this time, the applicant is proposing to demolish the existing buildings and surface parking lot to construct a three-story bank drive-through facility. The proposed development will consist of one building containing 65,247 sq. ft. of office space, with a drive-through bank facility on the first floor, a health club on the second floor, and general office on the third floor.

The applicant had indicated his desire to abandon the amended site plan submitted to the Planning Board on December 13, 2006, and has come forward with a new application for preliminary site plan review of a three-story, mixed-use building on both 34901 and 34953 Woodward Ave. As the proposed building now exceeds 20,000 sq. ft. in area, the applicant is required to prepare a CIS for the review and approval of the Planning Board.

Currently, Harry Blackward, LLC is the owner of 34901 Woodward Ave. and Harry Blackward and D'Anne Kleinsmith are the owners of 34953 Woodward Ave. At this time the applicant has advised that they will provide a letter indicating an agreement between all owners to develop the site jointly and form a partnership, joint venture, etc. at a later date.

The applicant meets the majority of the bulk, height, area, and placement requirements for the D-4 Overlay District zoning. ***However, the applicant will be required to install a screenwall along the frontage line of the western elevation where the first-floor building façade is not located on the frontage line, or obtain a variance from the Board of Zoning Appeals ("BZA").***

The current plans show a width of 10 ft. for the loading spaces. The applicant has advised that this width will be increased to 12 ft. to meet the required standard. ***The applicant will be required to provide a revised drawing***

showing the correct loading space dimensions, or seek a variance from the BZA.

Mr. Michael Boggio, the architect, said in response to a question from Mr. Dilgard that while LaSalle Bank is not the owner of this proposed building, they are the major tenant and their policy has been to build LEED certified green buildings. Mr. Blackward has expressed interest in including as many certified LEED items as are economically feasible. They plan to discuss those things at final site plan approval.

Ms. Ecker expressed her opinion that the applicant is pretty close to having the CIS completed. The only major outstanding issue at this point is the traffic study and she thinks it can be resolved at final site plan approval. She recommended that the board could consider moving on to preliminary site plan review. The only outstanding items would be for the applicant to provide information on the design and materials used on surrounding buildings; and secondly, reaching consensus on the traffic study between the traffic consultants.

Motion by Mr. Potts

Seconded by Mr. Nickita to accept the CIS with all of the information that has been brought forward and with the assumption that the traffic details would be completed between the petitioner and the planning staff.

Public comment was called for at 9:43 p.m.

Mr. Charles Sauer clarified where on the site the soil borings were taken.

Motion carried, 6-0.

VOICE VOTE

Yeas: Potts, Nickita, Boyle, Blaesing, Dilgard, Lazar

Nays: None

Absent: Haberman

Preliminary Site Plan Review

Ms. Ecker felt the applicant has done a lot to address the concerns of the board with the last proposal in regard to traffic circulation. The entrance is now off of Peabody and it eliminates a lot of the conflict issues between cars and pedestrians. The exit will be out to Woodward Ave. Additionally, the applicant has moved their drive-through entrance even further away from the corner of Brown, which is also a safer condition. They decided to eliminate an exit from the parking area into the drive-through facility, which would have caused a lot of circulation concerns and conflicts with vehicles and pedestrians.

The 2016 Plan calls out for buildings ranging from two to four stories Downtown. Improvements have been made to the plan since the last time the applicant was before the board with a proposal for a one-story bank drive-through at this location.

Mr. Boggio discussed how the trash would be handled. They plan to utilize a compactor that would feed a 2 cu. yd. dumpster that is 6 ft. long x 40 in. wide. Also, there will be a 6 ft. long x 30 in. wide container for recyclables. Both of those will be on wheels and the compactor will be stationary. They plan a show window, rather than looking into the parking garage on the Peabody elevation. Chairman Boyle said the window strikes him as a piece of the façade that may not be maintained over the years.

Mr. Nickita received confirmation as to why the building is set back 2 – 3 ft. off the property line. Mr. Boggio explained there is currently only a 5 ft. sidewalk along Woodward Ave. So, with the overhang of the cars they will effectively end up with a 5 ft. walk with the setback. Also, they set the façade back to have some depth for the columns and some interest in the elevation. In the final drawings the columns will set on the property line. In response to another question, Mr. Boggio indicated the lease space is approximately 1,100 sq. ft. It will serve as additional general office space for the bank, or it will be sub-leased to another tenant.

With respect to exterior walks and ramps, Mr. Boggio said it has been his experience that in addition to the Zoning Ordinance, barrier free ADA Standards require 5 ft. clear.

Mr. Dilgard asked the applicant how many people are expected in the health club during peak hours. Mr. Harry Blackward answered they project 1,500 members. Most of the usage will occur before 9 a.m. and after 4 p.m. The Peabody Parking Structure will be pretty much vacant during those hours. At the worst-case scenario they expect 400 people a day. Mr. Dilgard said that currently the Peabody Structure has a waiting list for permits of 128. Mr. Blackward replied he has observed 150 – 200 available spaces in that structure at 10 a.m. Right now there is capacity in that structure.

Mr. Boggio explained the health club is located on the second floor because it is easier to get to as opposed to the third floor. They will have to construct the floor in a way that will guarantee there will be no vibration for the bank space below. The second-floor health club takes 25 – 30 percent more HVAC equipment than a conventional office type of a situation. The majority of their mechanical equipment such as air handlers will be contained in a mezzanine space between the garage floor and the second floor. Only one or two cooling towers will be located on the roof.

Chairman Boyle commented that he feels the proposal for this site is moving in

the direction of what the Planning Board and the City are seeking. He is pleased with the massing; they have accommodated the use of the bank; and the traffic considerations are being worked out. Perhaps it would help to reconsider the traffic signage around Peabody and Brown Sts.

He called for comments from members of the public at 10:28 p.m.

Ms. Susan Peabody of Peabody's Restaurant was glad that Mr. Dilgard raised the concerns about parking because she has great concerns about the parking. The competition for spaces is going to be fierce. She requested that the time limitation on the meters along Woodward Ave. remain at one hour.

Motion by Mr. Blaesing

Seconded by Mr. Dilgard to approve the preliminary site plan for the Blackward/LaSalle Bank Building at 34901 and 34953 Woodward Ave. with the contingencies to be worked out with staff as follows:

- 10. The applicant install a screenwall along the frontage line of the western elevation where the first floor building façade is not located on the frontage line, or obtain a variance from the BZA;**
- 11. The parking screenwall increase to 32 in. be noted on the plans at final site plan and design review;**
- 12. Specification sheets on all rooftop mechanical equipment and a roof plan be provided at final site plan and design review;**
- 13. An elevation drawing of the transformer screenwall and a material sample be provided at final site plan and design review;**
- 14. The applicant provide a detailed landscape plan identifying all proposed species to be planted at final site plan review;**
- 15. The applicant increase the width of the proposed loading spaces to 12 ft. or obtain a variance from the BZA;**
- 16. The applicant provide a photometric plan and specification sheets for all light fixtures at final site plan review; and**
- 17. The applicant provide information regarding the percentage of glazing on each elevation and provide a section drawing that demonstrates that the finished floor to finished ceiling height of the interior space is at least 10 ft. in height on the first level.**

Mr. Blaesing was very impressed with all of the work that has gone on since the applicants were previously before the Planning Board. A number of the circulation and pedestrian concerns that he had have been eliminated. This building as proposed is a big step forward from what the board previously saw.

Mr. Potts hoped this project is a catalyst for other development moving north along Woodward Ave. Mr. Nickita was encouraged by the change of access from the east to the west side for the drive-through, and the capacity of the drive-through. He was also encouraged by the potential of this project affecting the Ring Road. The Ring Road clearly is a significant problem in the Downtown.

Additional development will impede cars from speeding through town and violating walkability.

Ms. Lazar commended the applicant on a wonderful job.

Motion carried, 6-0.

ROLLCALL VOTE

Yeas: Blaesing, Dilgard, Boyle, Lazar, Nickita, Potts

Nays: None

Absent: Haberman

Mr. Charles ~~Sauer~~ **Sower** expressed appreciation to the Planning Board and applicants for their great input. Mr. Blackward thanked the Planning Board for making him do the right thing. He would have been very unhappy with a one-story building, had it gone forward.

BIRMINGHAM PLANNING BOARD PROCEEDINGS

REGULAR MEETING OF WEDNESDAY, APRIL 25, 2007

ACTION ITEMS

04-86-07

FINAL SITE PLAN REVIEW

34901-34953 Woodward Ave.

Construction of a three-story, mixed-use building

Ms. Ecker advised that the subject site currently contains 2 vacant one-story commercial buildings and is a total of .52 acres in size. It is located on the northeast corner of Peabody and Brown Streets. The site is zoned B-4 in the Underlay and D-4 in the Overlay District. The applicant has elected to develop under the Overlay standards. At this time, the applicant is proposing to demolish the existing buildings and surface parking lot to construct a three-story bank drive-through facility. The proposed development will consist of one building containing 84,420 sq. ft. of office space, with a drive-through bank facility on the first floor, a health club on the second floor, and general office on the third floor.

On February 28, 2007, the applicant indicated his desire to abandon the amended site plan submitted to the Planning Board on December 13, 2006, and came forward with a new application for preliminary site plan review of a three-story, mixed-use building on both 34901 and 34953 Woodward Ave. As the proposed building now exceeds 20,000 sq. ft. in area, the applicant was required to prepare a CIS for the review and approval of the Planning Board. The applicant was granted approval of the CIS and the Preliminary Site Plan with several conditions.

Since preliminary site plan review, the applicant has resolved all of the traffic concerns and has revised the plans by removing the first-floor parking, thus eliminating the requirement for a screenwall. The applicant has also provided an elevation drawing of the screening for the transformer, provided a roof plan and specification sheets on the proposed mechanical equipment, provided a landscape and photometric plan with specification sheets on the proposed light fixtures, and has provided the required glazing calculations for each façade facing a street. However, the applicant has not increased the width of the loading spaces to the required 12 ft. width, and the proposed transformer screening/street wall will require a variance from the Board of Zoning Appeals ("BZA") as it is not a solid wall, but an ornamental wrought iron gate.

The applicant meets the majority of the bulk, height, area, and placement requirements for the D-4 Overlay District zoning. ***However, the applicant will***

be required to install a screenwall along the frontage line of the western elevation where the first-floor building façade is not located on the frontage line, or obtain a variance from the BZA.

The current plans show a width of 10 ft. for the loading spaces. The applicant has advised that this width will be increased to 12 ft. to meet the required standard. ***The applicant will be required to provide a revised drawing showing the correct loading space dimensions, or seek a variance from the BZA.***

The proposed building does not meet all of the architectural standards set out in Article 3 of the Zoning Ordinance, as only 69 percent glazing is proposed on the first floor of the south elevation, and a minimum of 70 percent is required. ***The applicant has advised that they will adjust the elevation to meet the glazing requirement. If they are unable to do so, a variance will be required from the BZA.***

The applicant will be required to obtain sign approval from the Design Review Board for all proposed signage, as this is not within the jurisdiction of the Planning Board.

Ms. Ecker explained that significant changes have been made to the building since the applicant was last before this board. They have provided a ramp down below the building and are now proposing one level of underground parking with 47 parking spaces. Access will be provided with a garage door opener system that will be given to the office tenants that lease the spaces. The applicant has expressed concerns about the parking situation in this area on numerous occasions.

Currently, Harry Blackward, LLC is the owner of 34901 Woodward Ave. and Harry Blackward and D'Anne Kleinsmith are the owners of 34953 Woodward Ave. At this time the applicant has provided a letter indicating an agreement between all owners to develop the site jointly and form a partnership, joint venture, etc. at a later date. The document is in the process of being recorded.

The applicant has supplied a list of LEED certified materials and processes the applicant proposes to use.

Mr. Nickita asked about the City streetscape standard. Ms. Ecker said Mr. O'Meara is putting together a memo outlining the standard and will provide it to board members. According to the Engineering Dept., this plan meets their standard streetscape design. Mr. Nickita indicated his desire to get the standard nailed down. With respect to the transformer, DTE wants clear access from the street.

Acting Chairman Blaesing spoke about the cobra head light that staff has

recommended to be removed on Peabody St. at Brown. He doesn't know if it is appropriate to put the burden on the applicant rather than requesting DTE to remove it.

With respect to several aspects of the traffic study, Ms. Ecker proposed that it should be left to the traffic experts to resolve. The city traffic consultant has stated he is comfortable seeing the updated analysis and believes he will be able to accept the traffic study if they provide additional analysis to reflect the current condition and are willing to provide signage for a right turn only in and out of the bank drive through off Peabody.

Mr. Dilgard questioned what type of assurance the City will get from DTE that the desired type of lighting will be installed around the LaSalle Bank site. DTE now realizes that the City wants the opaque external lenses, cream-colored bulbs internally, and whatever diffuser is appropriate. It would be nice to get a definitive letter from DTE outlining what they will provide, which is exactly what they installed at the Burton-Katzman site. Mr. Dembiec thought DTE has stuck by their standards and they continue to recommend the ones that they had. He doesn't know if the City has necessarily resolved the options.

Mr. O'Meara expressed his understanding that on the Burton-Katzman Building and any others that are coming in the future they are getting the opaque lens. He doesn't believe there is a diffuser inside. He will provide an answer as to the type of bulb to be used.

Mr. Michael Boggio, the project architect, affirmed the width of the loading spaces will be increased to 12 ft. along the entire area. They will provide flower pots, hanging baskets and benches in the right-of-way as proposed by staff. If City streetscape standards are changed during construction, they would be most happy to comply with the new streetscape standards. They will work with the City to get the cobra head fixture removed. With regard to the mandated percentage of glazing on the south elevation, they can get to the 70 percent requirement. They have shown additional electric outlets built into the façade of the building to accommodate holiday lighting.

With respect to the switch and transformer, DTE will allow them to paint the equipment in a color to match the brick. They proposed some metal gates which will allow access to the equipment and screen it to an extent. They have changed the drive from 14 ft. wide to 22 ft. wide to access the lower level parking. King-size brick will be used that will be in scale with the size of the building.

Mr. Nickita thought the gates are less than ideal. He described how the transformer could be accessed off the internal opening in the building. Mr. Boggio agreed that would be possible. Mr. Nickita believes a better solution than the gates would be to use translucent glass to screen the equipment.

Mr. Dilgard thought the lighting is excessive. Mr. Boggio explained the lighting is the brightest at the two corners. They wanted to call attention to those two areas at night. However, they could go to a lesser wattage fixture and cut the foot candle level down to 12 or 15. That will maintain pretty much the same effect but it just won't be quite as bright. As far as the spotlights, Mr. Dilgard thought that 22 - 70 watt metal halides would be a lot of light. Mr. Boggio explained they wash the façade of the two terminated vistas. They will take a look at the intensity again and cut it down if they think it is too bright. Mr. Nickita thought the design intent of illuminating the corners in the evening is appropriate. The concern is just the level of lighting. Maybe the applicant can identify the levels of lighting used on the Palladium, McCann Erickson, Birmingham Place and a couple of other buildings that are illuminated at night, and find an appropriate level that is consistent.

Acting Chairman Blaesing asked for audience participation at 9:20 p.m.

Mr. Tom Haury and his wife, Jill, tenants in the building next door, said they own the Great Frame-Up on Peabody St. Their customers will now have to cross the street between two sets of oncoming traffic, from Peabody's as well as the bank drive-through. Another issue they have is the gas meter located on the south side of their building at the front. That meter is going to be directly adjacent to the drive-through. Additionally, Mr. Haury noted the Peabody St. Garage is currently under renovation. Also, Mr. Fuller will be building a parking facility on his vacant lot on Peabody St. Then, there is this project. If the Planning Board okays three concurrent construction projects in one city block, no one will come down that street to go to their store. If the Planning Board could work out these construction projects so they are not all going on at once, it would be a lot less of a burden on their business and on Peabody's Restaurant as well.

Ms. Haury described traffic back-ups along Peabody St. Cars go out around and over the sidewalk. With another drive-through people will just weave in and out of the traffic. Ms. Haury noted that the speed limit is not posted on Peabody St. People know that and rip down that street. Where are customers going to park if they cannot cross the street?

Acting Chairman Blaesing did not think the board can control when projects start and stop. Ms. Ecker said she would pass along the concern about the speed limit to the Police Dept.

Mr. Blackward indicated he hopes to start construction in August or September. Mr. O'Meara said the Peabody Parking Structure refurbishment will be completed in July.

Chairman Blaesing noted that several traffic studies have been done and counts have been taken. They now have enough traffic data to show it will not be a

major concern in terms of this building. The drive-through on Peabody will be in-bound to the bank. Cars won't be coming out that way. Ms. Haury was concerned with the number of accidents that have occurred along there within the last year. This project will add to the traffic and cause still more accidents.

Motion by Mr. Nickita

Seconded by Mr. Williams to approve the Final Site Plan for 34901 and 34953 Woodward Ave. as it meets the requirements established in Article 7, section 7.27 of the Zoning Ordinance, with the following conditions:

- 8. The applicant increase the width of the loading spaces to the required 12 ft. width;**
- 9. Obtain a variance from the BZA for the ornamental wrought iron gate to be used as screening. Alternative design per the discussion this evening can be submitted for administrative approval or brought back to the Planning Board;**
- 10. Provide proof of common ownership of the property;**
- 11. Successful resolution of all traffic issues with the City's traffic consultant;**
- 12. Execute a streetscape agreement with the City, including the removal of the cobra fixture on the corner of Brown and Peabody Streets, provision of City standard flower pots, street lights, hanging basket systems, benches, and trash receptacles;**
- 13. Amend the south elevation to provide 70 percent glazing on the first floor or obtain a variance from the BZA; and**
- 14. Identify exterior lighting precedent or examples from other buildings in the Downtown and apply similar foot candle conditions to the southwest and southeast corners of the building for administrative approval.**

No one from the public wished to address the motion at 9:46 p.m.

Motion carried, 5-0.

ROLLCALL VOTE

Yeas: Nickita, Williams, Blazing Dilgard, Lazar

Nays: None

Absent: Boyle, Haberman

**BIRMINGHAM PLANNING BOARD PROCEEDINGS
REGULAR MEETING OF WEDNESDAY, SEPTEMBER 26, 2007**

09-206-07

REVISED FINAL SITE PLAN REVIEW

34901-34953 Woodward Ave.

LaSalle Bank Building

Request to add one additional story to previously approved three-story mixed-use building

Mr. Baka advised the subject site was formerly the site of two vacant one-story commercial buildings and is .52 acres in size. It is located on the northeast corner of Peabody and Brown Street. At this time the applicant has demolished the buildings and surface parking lot to construct a four-story building. The proposed development will consist of one building containing 105,457 sq. ft. of office space, a drive-through bank facility, a restaurant, and a recreational club. The applicant is also proposing one level of underground parking.

At the February 28, 2007 Planning Board meeting, the applicant was granted approval for the Community Impact Study and the preliminary site plan review with conditions.

Since the building exceeds the maximum eave height of 58 ft., the applicant will be required to meet the eave requirements or obtain a variance from the BZA. The applicant obtained a variance from the BZA on July 10, 2007 to allow the use of a wrought iron gate screening material along the frontage line of the western elevation where the first floor building façade is not located on the frontage line. A variance was also granted to allow the applicant to use the metal gate as screening for mechanical equipment.

Design Review for outdoor café

The applicant is proposing seven square patio tables with four seats each and two tables with two seats at each. The total outdoor seating capacity will be 32. The proposed outdoor dining area will maintain a 5 ft. minimum width of unobstructed pedestrian access in the public right-of-way. The outdoor dining area is not immediately adjacent to any single-family zoned property.

The applicant will be required to obtain sign approval from the Design Review Board ("DRB") for all proposed signage as this is not within the jurisdiction of the Planning Board.

Mr. Haberman inquired whether there is a precedent for the planned closing of one lane on Brown St. for the purpose of outdoor dining. Ms. Ecker said it has been discussed with the Engineering Dept. and the traffic engineer and they

don't have a problem with it. They will require additional pavement markings, & the two east-bound lanes will remain along with one west-bound lane.

Mr. Michael Boggio, the architect, discussed the changes since their last site plan approval. They have gotten DTE to allow them to place the transformer inside the building. Now all that is being screened with the wrought iron gate is existing equipment that cannot be moved. The loss of one lane of traffic allows them to widen the sidewalk to a more appropriate dimension for a four-story building. They have redone the lighting and cut the foot candle level around the building in half. The number of parking spaces in the basement has been increased to 50. They feel this taller, more impressive building will fit better into the downtown area and that it is a much improved project from the three-story building that was previously approved.

Mr. Dilgard noted a variance of 12 ft. in height and another floor of office would put an extra 70 parking spaces on the system and he didn't buy it. Mr. Boggio indicated the Peabody Parking Structure usage is down from what it was. They are confident that the amount of parking for the building including the 50 spaces within the building will be adequate.

Mr. Blaesing commented the applicants have come back with something that looks great but doesn't fit the zoning. They are too high and they are not residential. If this board starts to approve buildings under the Overlay that are all office and four-story with no residential, it has violated the Overlay Zoning. Then the board has no basis to deal with the next applicant who comes along with a building and wants all office and no residential in the Overlay. He felt the applicants are putting the board on the spot to approve something that might work well but doesn't fit the Zoning Code and puts a burden on the parking.

Mr. Boggio observed that in terms of usage and parking if this building had a fifth story of residential it could have the two floors of office, and it would have more of an impact on the parking but it would meet the Zoning Ordinance. They figured doing the fourth floor justified the expense of the streetscape.

Mr. Blaesing recalled all of the work this board did over the years trying to develop ordinances that would encourage residential in downtown Birmingham. Now, six or eight years later, people still want more office but they don't want to provide the residential. Mr. Boggio said they thought by putting in another 20,000 sq. ft. of office it puts another 70 people on the streets of Birmingham every day, feeding the Birmingham businesses.

Chairman Boyle opened up discussion to members of the public at 10:17.

Ms. Kathleen Schwartz, 582 Henrietta, said as a taxpayer she wonders if the applicant is either going to lease or purchase the traffic lane. It seems to her that lane is needed. Ms. Ecker noted that whenever outdoor dining is proposed in the

public right-of-way they are required to enter into a license agreement with the City and they do pay rent for the use of that right-of-way space.

Mr. Bill Duffy, 653 Pierce, agreed that taking out one lane would create a bottleneck.

Ms. Ann Honhart, 197 E. Frank St., hoped if the board considers this as a possibility it would first send it to the Advisory Parking Committee ("APC").

Ms. Susan Peabody from Peabody's Restaurant echoed the sentiments of Mr. Dilgard and Ms. Honhart. If a lane is getting closed for outdoor seating for potentially a bistro, maybe the lane should be closed for parking and something designed into the building that provides open air seating.

Ms. Dorothy Conrad said she too is concerned regarding the parking.

Mr. Harry Blackward, 841 Covington Rd., the developer, noted when this board approved the three-story building there were 13 parking spaces on the first floor and no parking below grade. He has added 50 spaces below grade at a cost of almost \$2 million. The health club patrons will use the parking structure mostly at night. On another note, Bank of America will be taking over LaSalle Bank. They are thinking about taking more space in this building.

Mr. Nickita commented that an individual who works for Mr. Ted Fuller has observed there has been no issue with parking in the Peabody Parking Structure, even with their people using it during construction. Therefore, he feels this situation can be accommodated.

Motion by Mr. Nickita

Seconded by Mr. Williams to approve the revised Final Site Plan at 34901 and 34953 Woodward Ave. as it meets the requirements established in Article 7, section 7.27 of the Zoning Ordinance, with the following conditions:

- 1) The applicant agree to provide an acceptable surface treatment at all access points to distinguish them to pedestrians and motorists;**
- 2) Successful resolution of all traffic issues with the City's traffic consultant;**
- 3) Comply with the D-4 eave requirements of 58 ft. or obtain a variance from the BZA; and**
- 4) Execute a streetscape agreement with the City, including the removal of a cobra fixture on the corner of Brown St. and Peabody, provision of City standard flower pots, street lights, hanging basket systems, benches, and trash receptacles; and**
- 5) Complete an administrative approval application for the outstanding outdoor dining requirements.**

Motion carried, 4-2.

ROLLCALL VOTE

Yeas: Nickita, Williams Boyle, Haberman

Nays: Blaesing, Dilgard

Absent: Lazar

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, OCTOBER 9, 2007**

10-76-07

**34901-34953 WOODWARD AVE.
(Appeal 07-31)**

The owners of the property known as 34901-34953 Woodward Ave. request the following variances:

- A. A use variance to permit two stories of the proposed building to be used as office space, in lieu of the requirement in Chapter 126, Article 03, section 3.04 (C) (9) of the Zoning Ordinance that allows two stories of office use only when the Planning Board permits a fifth story to be used as residential;
- B. A dimensional variance of 10 ft. 6 in. to allow an eave height of 69 ft. 6 in. in lieu of the maximum allowed eave height of 58 ft. in Chapter 126, Article 03, section 3.04 (A) (3) (a) of the Zoning Ordinance.

This property is zoned B-4 Business-Residential, and D-4 in the Overlay District.

Ms. Robinson explained the existing site is currently vacant. The applicant received revised final site plan approval from the Planning Board on September 26 for a four-story building with underground parking to accommodate 50 cars. They are proposing to use the building as a bank with a drive-through facility and a restaurant on the ground level, along with office space and a health club on the upper floors. The plan includes changing how Brown St. operates by eliminating one west-bound lane in order to widen the sidewalk to accommodate a restaurant with a sidewalk café.

Mr. Michael Boggio, Architect for the project, spoke for the petitioner, Mr. Harry Blackward. He went through a review of how the project has come before this board again. They felt there were some items in the building that could be improved that would provide additional benefits to the surrounding area, and allow the building to become larger. The owner has decided to construct a basement with 50 parking spaces to provide additional parking for this building and take some of the load off of the Peabody Parking Structure.

They feel there are some practical difficulties that justify not providing residential on the top floor. Approximately half of the units would have a view of the Peabody Parking Structure. Further, an excess amount of parking would be required for the residential uses, and along with that the market for housing is

presently down. The Planning Board approved the project as proposed.

As part of their development they propose to do a number of streetscape improvements and amenities that are spoken to by the 2016 Plan, and which Mr. Boggio illustrated. Another item they feel is important is that the additional floor of office will bring more people onto the street helping to support the retail businesses and restaurants within the downtown area.

Mr. Boggio spoke to the height requirements for the building. Because of their three street frontages, there is no alley. Further, because the site slopes, their solution was to provide loading within the building at the highest point on the site. The Zoning Ordinance requires that a loading space be 14 ft. high. Therefore, they automatically start out with 14 ft. of ceiling height. That requires a street-to-floor height of about 22 ft. on the Brown St. side, which is much higher than normal. Secondly, additional height is needed for the health club on the second floor, so they have 18 ft. floor-to-floor. The next two floors are proposed to have 15 ft. height each to accommodate Class A office space. When they couple the use in the building and the fact that the loading is at the high point of the site, the building eave is 69 ft. 6 in. at the lowest point of the grade. They also have additional parapet walls and mechanical screens. In summary, the practical difficulty with the height is due to the slope of the land, the height required for the loading, and the health club.

Mr. Chuck Sower, Realtor, observed there has been a significant change in the economy. At the same time there has been a major change in the demographics which was not anticipated by the 2016 Plan. He raised the question of why residential in this market in this economy would be practical in that spot. Presently there are 250 homes and condominiums in this defined area available for sale. With the use of office there is a greater net gain of people in town, which was one of Duany's objectives. Presently there is no new Class A office space available in town. It is easy to conclude there is a massive supply of residential and a very low demand. Conversely, there is an almost non-existent supply of Class A office space and a sizeable demand. Therein is the logic that he would put forth as to why this building should be approved as they have requested.

The discussion turned to parking. Mr. Boggio noted the owner has done a number of daily counts in the Peabody Parking Structure because if parking is not available the project will not be successful. The result of his counts is that the actual usage of the parking deck is down from what it has been. Therefore, they are confident that there is enough parking in the area to justify this building. They are also confident that the 22 spaces that would be used for residential would be better used for the office tenants in the building. It is their position that the property can still be used if the variance for the additional floor is not granted. He went on to describe how the parking load for the various uses in the building will be spread out over the day. If they take the 22 parking spaces away from the

office and develop the residential at the top, their ratio would be one parking space for 1,500 sq. ft., which is a strain on the Peabody Parking Structure.

Mr. Jones said he understands how the height differential comes with the site itself. But he had difficulty hearing from a zoning standpoint why a financial decision equates to a hardship, when in fact the health club they are proposing could be office space as an alternative. Mr. Boggio explained the 2016 Plan highlights this site for destination uses.

Additionally the health club takes some of the parking load off of the Peabody Parking Structure. The maximum parking load for a health club is before 9 a.m. and after 5 p.m. They believe this is an excellent mix to provide a large, intense building, but minimize the load on parking.

Mr. Lyon pointed out that if everybody in the City has the same problem with the general economic conditions, then this particular property is not unique. So he was back to why the fifth floor of residential could not be added, other than an economic condition that is unique to this property. Mr. Boggio replied they feel the parking situation is unique to this site, and the addition of the parking component that the residential would cause a hardship for this development.

Mr. Conlin said he does not see how much parking usage there is on a daily basis. Why wouldn't the developer use the objective data from the City, as opposed to going over and counting cars? Ms. Ecker indicated that detailed parking records are available for that structure.

Mr. Lewand said it is not entirely clear to him why all 14 ft. of the loading space must fall within the first story of the building as opposed to having a two-story section in that loading area and thus reducing the mass of the building. Additionally they could step the floor level down on the second floor to conform to the topography so that it isn't exacerbated by the time it reaches the south. Mr. Boggio answered that would require eliminating 4 to 5 thousand sq. ft. of second floor space. They would have to take a look at whether that would be feasible. Mr. Lewand said it does speak to the self-created issue.

Chairman Lillie asked for audience comment at 10 p.m.

Mr. Bill Duffy, 653 Pierce, felt that taking off one lane of Brown St. would cause traffic to back-up.

Mr. Jones indicated he struggles to find a hardship.

Motion by Mr. Jones

Seconded by Mr. Betanzos as it relates to Appeal 07-31, 34901-34953 Woodward Ave. to the (A) portion as to the use variance, he would move to deny because he is not convinced there was sufficient hardship as

discussed for the uniqueness of this land. In that such use variance effectively is contrary to the existing Ordinance, he does not feel a hardship has been met.

The chairman indicated his intention to support the motion. In this case, based on the information presented, it is clear the property can be used for the purposes permitted. The problem is not unique to the circumstances peculiar to the property, but rather the general conditions of the neighborhood, and the problem is self-created. If the board were to grant the use variance, it would be basically taking the Overlay Ordinance and throwing it out the window.

Mr. Lyon said the fact the property can be used as permitted almost enjoins him from allowing the variance to go through.

Mr. Conlin did not think the appellant has met the criteria for a variance in front of this board for use.

Motion carried, 6-0.

ROLLCALL VOTE

Yeas: Jones, Betanzos, Conlin, Lewand, Lillie, Lyon

Nays: None

Absent: Hughes, Judd, Koseck

The board took a short recess at 10:07 p.m.

**Planning Board Minutes
December 12, 2007**

REVISED FINAL SITE PLAN AND DESIGN REVIEW

34901-34953 Woodward Ave.

LaSalle Bank Building

Request to add one additional story to previously approved four-story, mixed-use building

Ms. Robinson advised the subject site was formerly the site of two vacant one-story commercial buildings and is .52 acres in size. It is located on the northeast corner of Peabody and Brown Street in the B-4 Business Residential Zone, and is zoned D-4 in the Downtown Overlay District. The applicant has elected to develop the site under the Overlay District regulations.

At this time the applicant is proposing to demolish the existing buildings and surface parking lot to construct a five-story building. The proposed development will consist of one building containing 105,457 sq. ft. of office space, a drive-through bank facility, a residential unit, and a recreational club. The applicant is also proposing one level of underground parking.

At the February 28, 2007 Planning Board meeting, the applicant was granted approval for the Community Impact Study and the preliminary site plan review with conditions.

The applicant returned to the Planning Board on September 26, 2007 proposing a four-story building, the first story to be utilized as a bank and a restaurant, the second story as a health facility, and the top two stories as office space. The Downtown Overlay District D-4 regulations only allow two stories of office space if there is a fifth story of residential in the building. The applicant appeared before the Board of Zoning Appeals ("BZA") on October 9, 2007 in an effort to obtain a variance to allow two stories of office use, at which time they were denied the variance. The applicant is now proposing a five-story building with a residential component on the fifth floor. A restaurant with an outdoor patio is proposed along Brown St. All other uses are proposed to remain the same. The height of the building has been brought down to meet the height requirements in the D-4 Overlay District.

Ms. Robinson read an e-mail into the record voicing opposition to the proposed five-story building.

Mr. Michael Boggio, the architect, said they feel that a larger building is justified on this corner to be in keeping with the 2016 Plan and the Zoning Ordinance. The residential unit will be a two-story for lease townhouse on top of the building that will have access at the fourth floor from an elevator that is common to the office use. In addition, they have re-designed the windows to add a more vertical

look. Completion of the upper floors justifies the additional cost that will be required to redevelop the north side of Brown St. with a wider walk area, outdoor café area, and more landscaping. They plan to start construction on the building by springtime. The large restaurant space was achieved by rearranging the lobby, but not taking away from the square footage allotted to the bank. The 47 underground parking spaces will be used for tenants only. A drive-through ATM is planned as well as a walk-up combination night drop and ATM along Woodward Ave.

Mr. Nickita commented he is encouraged that what the board had envisioned for the site has finally made it there.

Motion by Mr. Williams

Seconded by Ms. Lazar to approve the revised Final Site Plan for 34901-34953 Woodward Ave., LaSalle Bank Building, as it meets the requirements established in Article 7, section 7.27 of the Zoning Ordinance, with the following conditions:

- 4) Execute a streetscape agreement with the City, including the removal of the cobra fixture on the corner of Brown and Peabody, provision of City standard flower pots, street lights, hanging basket systems, benches, and trash receptacles;**
- 5) Complete an administrative approval form for the outstanding outdoor dining requirements; and**
- 6) Comply with City department requirements**

No one from the public wished to comment at 8:55 p.m.

Motion carried, 7-0.

ROLLCALL VOTE

Yeas: Williams, Lazar, Blaesing, Boyle, Haberman, Nickita, Whipple-Boyce

Nays: None

Absent: None

The board took a brief recess at 8:58 p.m.

**Planning Board Minutes
December 10, 2008**

12-200-08

FINAL SITE PLAN REVIEW

34901-34953 Woodward Ave.

LaSalle Bank Building

Request for extension of final site plan approval for one year

One piece of correspondence in opposition was received by the Planning Division.

Mr. Michael A. Boggio, Architect for the project, asked for a one-year extension from December 12, 2007 when their plan was approved.

Mr. Boggio explained that as the economy became continually worse, financing became impossible. Bank of America is still committed to the site and hopes to occupy the building by 2010.

Motion by Mr. Williams

Seconded by Mr. Blaesing to grant a one-year extension of final site plan approval for 34901-34953 Woodward Ave., LaSalle Bank Building.

Motion carried, 6-0.

VOICE VOTE

Yeas: Williams, Blaesing, Boyle, Haberman, Lazar, Whipple-Boyce

Nays: None

Absent: Nickita

**Planning Board Minutes
August 11, 2010**

08-143-10

REVISED FINAL SITE PLAN REVIEW, CIS AND DESIGN REVIEW

34901-34953 Woodward Ave.

Revision to previously approved Final Site Plan for new construction of a five-story, mixed-use building with a bank drive-through

Ms. Ecker discussed the history of the subject site which was formerly the site of two one story commercial buildings, and is a total of 0.52 acres in size. It is located on the northeast corner of Peabody and Brown St. The project has been before the board and various other City boards since 1999 in various iterations. At this time, the property has a new owner who purchased the property from a bank after it went into foreclosure. A previous applicant had demolished the existing buildings and surface parking lot, and received approval to construct a five-story building in 2007. The new owner proposes to maintain the footprint of the previously approved building, and to add additional floor space to the upper level to accommodate ten residential units, as opposed to the one that was previously approved split between the 4th and 5th floors. The proposed development will now consist of one building containing 96,540 sq ft, including three floors of office space, a drive-through bank facility, and ten residential units. An additional 26,425 sq. ft. underground will provide on-site parking for 40 vehicles.

CIS

The City's traffic consultant has not signed off on the Traffic Study because the trip generation estimate used in the report cannot be accepted due to conflicting information associated with the square footage for the usage within the building. The applicant has come with corrected numbers this evening and they will be plugged into the model to make sure the trip forecast and trip generation are acceptable. Once the traffic consultant sees the accurate numbers they can accept the study.

Final Site Plan

The applicant has an issue with regard to the Overlay in that they are proposing an extra floor of office use. They are asking for three floors of office and they are only allowed to have two. ***Therefore, a variance from the Board of Zoning Appeals ("BZA") will be needed for the extra floor of office.***

The maximum building height permitted in the D-4 Zoning District is 80 ft. The building itself complies with the 80 ft. but the chimney pots extend above that. ***The applicant likes the chimney pots and therefore they are contemplating going to the BZA for a variance to keep the chimney pots.***

The eave height is 4 in. higher than what is allowed, which is 58 ft. ***So, the applicant will either need to get a variance from the BZA for eave height or lower it.***

The applicant will be required to obtain sign approval from the Design Review Board (“DRB”) for all proposed signage.

Mr. Williams pointed out that three floors of office is inconsistent with what the Planning Board required for the Greenleaf Building where they have two vacant floors of residential. Ms. Ecker said the D-4 Overlay ordinance mandates that the fifth floor must be residential. That entitles the developer to another floor of office which results in two floors of office, but not three floors of office. The ordinance does not say that the fourth floor has to be residential; however, it cannot be office. Mr. Williams replied he is not in favor of any proposal which doesn't comply with the ordinance unless he knows first that the BZA is going to grant a variance for three floors of office. He would like the Planning Board to consider the D-4 classification and change it to two or three office floors. In these times requiring two floors of residential does not make sense.

Mr. DeWeese was also concerned with proceeding without a variance from the BZA because the Planning Board is under a mandate to follow its rules and regulations. Secondly, the entry to the drive-through is only 12 ft. and 14 ft. is required. That needs to be addressed. Third, he has not heard where the building materials and supplies will be kept to minimize the negative impact on the surrounding neighbors.

Ms. Lazar was concerned that loading and unloading might take place on Peabody if the drive-through doors are not open. That would create a really congested spot.

Mr. Tom Phillips from ~~Hobbsen~~ and Black Architects said there has been no change to the drive-through from what was previously approved. Trash will be wheeled out to the street. Loading would take place during off hours and raising and lowering the door will be part of the building's operation process. They will accommodate the 14 ft. clearance for the loading dock. They expect to have an ATM off of Woodward Ave. for walk-up traffic. Parking on the lower level will accommodate 40 cars and the trip generation on those is very small. The impact on the traffic in general is not considered to be noteworthy by the consultants on either side. The plan has been reduced to a 5,000 sq. ft. bank and a 3,000 sq. ft. financial office. That has a significant effect on the trip generation in the Traffic Study and the new numbers will square up the trip generation totals.

Mr. Phillips advised that the guardrails on the balconies are metal. The landscape plan is identical. Subdued light fixtures with acrylic white lenses are proposed to keep the building's façade from being dark under the canopy. Concealed low level lighting is planned for under the canopy. A small punched in

drop-off on Brown for the valet is being considered. Screening on the roof and eave elevations will be brought into compliance. They like the look of the chimney pots and plan to go to the BZA and ask for a variance for them. The doors on the drive-through will be transparent and aesthetically pleasant.

Mr. Clein requested that the applicant contact the Woodward Ave. Action Association to coordinate their streetscape amenity plan for the corner. He fears the façade of the building will be destroyed by the retention of seven parking spaces along Woodward Ave. Mr. DeWeese noted they are right across from a parking structure that offers two hours of free parking. Ms. Ecker advised that changes to the curb line along Peabody for the valet would have to go through review and approval by the Planning Board.

Mr. Harvey Weiss of Weiss Properties, the building owner, spoke about the building use and financing. They are currently negotiating with various lending institutions. He is fairly certain there will be a bank with a drive-through as shown on the plans this evening. Further they are engaging in discussion with numerous restaurants. The main level will be a few retailers as well as a restaurant. With regard to the second through fourth floors they have engaged a marketing firm and are trying to secure one or two large tenants. They are in the process of completing a commitment letter with their lenders.

Ms. Whipple-Boyce suggested that the applicant consider increasing the amount of residential units on the fifth floor by decreasing the size and cost of each unit in exchange for the extra floor of office below. In response to Ms. Whipple-Boyce, Mr. Weiss explained they have been exploring the potential of more, less expensive residential units for the fifth floor, but the two floor residential component of this building scares them very much in these times. Therefore they would prefer to seek a variance for three floors of office as opposed to just two. Mr. Weiss went on to say it would be a severe hardship to remove the convenient parking spaces in front of their building.

Chairman Boyle opened discussion to members of the public at 8:32 p.m.

Mr. Tom Harvey with the Great Frame Up at 215 Peabody noted there is a permanent easement for the gas meter on the southwest corner of their building. That needs to be accommodated in the plans and the fence around it replaced. He observed that people do not like to cross Peabody from the parking structure. Construction of the building will certainly impact their business and they almost went under when the Greenleaf Building was built.

Ms. Susan Peabody from Peabody's Restaurant encouraged the Planning Board to take a close look at not putting the valet along Peabody. The street has become a loading dock for everybody. There are trucks on it all the time.

Ms. Patti Owens from the Greenleaf Trust Building asked if they have considered

possibly putting the valet at night and loading early in the day on Woodward Ave. as opposed to Peabody.

Ms. Ecker read a letter into the record that opposed the proposed plan that includes a drive-through bank. A drive-through would be detrimental to both traffic flow and pedestrian use and is no longer appropriate for new construction in Birmingham.

Mr. Williams likes the building. However, the issues of valet, loading and the issue that the Frame Shop has raised about access to their business during construction are all legitimate concerns. He feels the Planning Board needs to begin a process to change the ordinance because three floors of office in this case is appropriate and will be appropriate as long as the housing market remains depressed. Additionally, if the space is not marketable, that shows a hardship. He will not vote in favor of this proposal tonight, but if the BZA finds a hardship and determines that the fourth floor can be dedicated to office, he may decide differently as long as the other concerns are resolved. He reminded everyone that what these applicants are asking the Planning Board to do is exactly what they did not do in the context of the Greenleaf Building.

Mr. DeWeese reiterated that this board needs to follow the Code and ordinances and it has to be consistent – no exceptions. The variance request relates to the very core of whether this building will be economically viable or not. He cannot in good conscience go against the board's responsibilities tonight and approve the plans.

Mr. Koseck advised that the BZA looks for guidance from this board. He would make the case for this building. The fact that it looks over a parking structure is a practical difficulty. At Woodward Place it was harder to sell the condominiums on the east side that overlook Woodward Ave.

Ms. Lazar voiced her continuing concerns about deliveries and whether a truck can turn into the drive-through with the obstruction of the garbage. Loading and unloading on Peabody may cause a very significant traffic issue unless there are signs specifying no loading or unloading off that street. Further, the truck route and staging of equipment must be considered.

Motion by Mr. Williams

Seconded by Mr. DeWeese that the Planning Board postpone a decision on this application until September 22 pending a hearing at the BZA regarding the use on the fourth floor. If successful, this proposal would come back with the following items noted on a revised site plan:

- **No loading or unloading on Peabody;**
- **The hours of operation of the drive-through;**
- **Valet parking shown on the plans; where it is going to be and how it is going to work;**

- **Whether there will be an ATM on Woodward Ave.; and**
- **Revise the square footage of uses and run it through the trip generation model and provide to Birmingham's traffic consultant.**

Mr. Phillips announced they are not affecting anything to do with loading or the drive-through, or the geometry; all that has already been approved.

There were no final comments from members of the public at 9:13 p.m.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: None

**BOARD OF ZONING APPEALS MINUTES
OCTOBER 12, 2010**

10-44-10

**34901-34953 WOODWARD AVE.
Weiss Properties
(Appeal 10-13)**

The owners of the property known as 34901-34953 Woodward Ave. request variances to construct a new building:

- A. A dimensional variance for one additional floor of office for the proposed new building located on the vacant lot located at 34901-34953 Woodward Ave. Office use is limited to two floors for a five-story building in the DB 2016 Overlay Zone District as required by Article 03, section 3.04 C 9 (b) of the Zoning Ordinance.
- B. A dimensional variance for 5 ft. 6 in. of additional height to exceed the maximum overall height of 80 ft. as allowed in B-4/D-4 Zones per Article 03, section 3.04 A 3 (c) of the Zoning Ordinance.

This property is zoned B-4 Business/Residential and D-4 in the DB 2016 Regulating Plan. The applicant is required to develop the property using the D-4, DB 2016 Overlay Zone provisions.

Mr. Baka explained that variance (B) allows for chimney pots to be located on the roof of the building. The plan originally received Final Site Plan approval from the Planning Board in 2008. The project went into receivership and a new owner purchased the property along with the rights to the site plan.

The applicant appeared before the Planning Board in August and the Planning Board decided they should be heard for their variances before granting Final Site Plan approval. The Planning Board voiced support for the scale and massing of the building because this is an area where a significant building should be located.

Mr. Thom Phillips, Vice-President, Hobbs + Black Architects, spoke on behalf of the petitioner, Weiss Samona Land Development. He explained the site is on the perimeter of the business district along Woodward Ave. He addressed the issue of the height (variance B). The loading zone is located inside the building and that 14 ft. height requirement establishes the second floor and compresses the second through fifth floors. This was approved under the original site plan. They are asking for an additional 4 ft. for the chimney pots because the rest of the building pushes up against the 80 ft. maximum overall height, figuring they want to get at least 9 ft. ceilings in floors two through five.

With respect to variance A, the additional floor of office, Mr. Phillips indicated there is a market hardship. The broker community feels that three floors of office will offer the opportunity for this project to succeed; whereas a single floor of non-office commercial has a low chance of succeeding on the second floor, given the current state of the market and the location of the site. There is no primary exposure to the site except for Woodward Ave. Another option is a second floor of residential and there is compelling evidence that will not be successful.

Their submission demonstrates the practical difficulties caused by the unique features of the property: its location within the city, size and shape and relationship with adjoining structures including the parking structure. This results in their being unable to utilize the property for permitted purposes. Enforcing the Zoning Ordinance would result in unnecessary hardship.

In response to questions from the chairman, Mr. Phillips explained that the extra 4 ft. of height is needed because the 14 ft. high loading zone is located on the high part of the site. The 80 ft. measurements are taken from average grade.

The chairman commented on the argument for uniqueness of the site. Anyone who is trying to use the D-4 Zoning has the same problems. They would like to have three floors office rather than the two that are allowed by the Ordinance.

Mr. Phillips commented that the D-4 Ordinance requires pedestrian uses, regardless of the fact this is really not a pedestrian site, with a parking garage on one side, zero lot line and across the street an evening restaurant and a car wash.

In response to Mr. Conlin, Mr. Phillips explained that a chimney pot (variance B) is purely a decorative feature and not a functional part of the building. Mr. Conlin explained that economic hardship (variance A) is not something the BZA deals with. Granting a third floor of office would in his mind basically be spot zoning and it is outside the purview of this board. Mr. Phillips answered it is a unique practical difficulty when there is a high level of certainty that the zoning is inconsistent with making the project successful.

Mr. Baka established that if the City Commission wanted to change this Ordinance it might take years, even in an expedited fashion.

Mr. Jones could not understand where the requested variances fit into the criteria set forth for the BZA that says the property must be effectively unique. Any other building within this zoning shares the same economic practical difficulty and would be more viable in this economy if it had more commercial space and less residential.

Mr. Lyon explained his calculations from the drawing indicate the petitioner

needs 2 ft. 10 in. for the chimney pots and not the full 4 ft. Mr. Phillips said they would not object to 2 ft. 10 in. Mr. Lyon suggested an interior courtyard on the residential floors would allow more light. Mr. Phillips responded this is a small site and adding a light well would reduce the usable floor area of their building.

Mr. Judd noted that financing for this project really isn't one of the board's issues. Mr. Phillips replied he brought that up as an example, but not as a central point to the argument. He reiterated that a second floor of residential is a challenge on this site based on its location and its associated views, along with potential noise from the parking deck. A non-office commercial floor would not work well for basically the same reasons. That is where the practical difficulty comes into play.

No one in the audience wished to speak to this appeal at 9:13 p.m.

Motion by Mr. Miller

Seconded by Mr. Conlin concerning Appeal 10-13, 34901-34953 Woodward Ave., Weiss Properties, to approve variance A. He believes that this site with Woodward Ave. on one side, a parking deck directly across the street on the other side, and zero lot line on the third side, makes it a very unique site. Also the shape; it is a very condensed square shape which does not condone itself to developing residential. With residential use for every bedroom, there must be a certain size window for emergency escape, plus the living room. This site does not allow the amount of perimeter that one would like to develop residential.

So, Mr. Miller believes that this problem was not self created; it is unique to this site and unique to the circumstances of this site. He believes that it would do substantial justice to the sense of the planning of the area that a building of this massing and of this use fits in with the overall intent of planning and he believes that to try to conform to the letter of the zoning would be unnecessarily burdensome in this case. The motion is tied to the plans submitted.

Chairman Lillie indicated his intention to oppose the motion even though he is sympathetic to the plan. Another floor of commercial could be put in, rather than residential. He doesn't think there is anything really unique to this property in the sense that everybody in the D-4 District faces a similar problem. This board is not in the business of legislating; that is a problem that has to be solved by the Planning Board and the City Commission.

Mr. Jones also could not support the motion, although he would love to do so. Supporting the motion would put the BZA in the business of spot zoning. This is a legislative issue. The zoning exists and has gone through a very extensive process by the City of Birmingham to have this type of zoning ordinance.

Mr. Lyon said he shares similar thoughts and cannot support the motion. What

he sees is basically spot zoning. There are some difficulties with this site; however there are potentially more creative things that could be done with the extra floor that would allow the project to go forward. Maybe now is the time for the Planning Board to expedite an ordinance change if in fact the economy cannot support it. Further, an extra floor of office would increase the parking load in that quadrant significantly over residential.

Mr. Conlin said he seconded the motion in order to get it on the table. He is sympathetic to the developer and the building on the site but he is uncomfortable going with it.

Motion failed, 1-6.

VOICE VOTE

Yeas: Miller

Nays: Conlin, Hughes, Jones, Judd, Lillie, Lyon

Absent: Lewand

Motion by Mr. Conlin

Seconded by Mr. Judd with respect to Appeal 10-13, 34901-34953

Woodward Ave., Weiss Properties, to deny variance B, the 4 ft. additional height as requested, per the plans.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Lewand

**Planning Board Minutes
December 8, 2010**

REVISED FINAL SITE PLAN REVIEW

34901-34953 Woodward Ave.

Balmoral Building

Request for approval for revisions to previously approved five-story mixed-use building

Ms. Ecker offered background. The subject parcel, 34901 & 34953 Woodward, was formerly the site of two vacant one-story commercial buildings, and is a total of 0.52 acres in size. It is located on the northeast corner of Peabody and Brown St. The previous property owner appeared before City boards since August 1999 with various design plans to develop a building on the site.

At this time, the parcel has a new owner who purchased the property from a bank after it went into foreclosure. The previous applicant had demolished the existing buildings and surface parking lot, and received approval to construct a five-story building. The new owner proposes to maintain the footprint of the previously approved building with four full floors plus a portion of the fifth floor to accommodate a two-story residential unit. The proposed development will now consist of one building containing one floor of retail such as banking and restaurant; two floors of office space, one floor of commercial, and one residential unit. An additional 26,425 sq. ft. underground will provide on-site parking for 40 vehicles.

The current owner of the property acquired the land in 2009, and pulled a foundation permit prior to December 12, 2009, thus protecting his rights under the site plan approved by the Planning Board in 2007.

On August 11, 2010, the new owner appeared before the Planning Board for revised final site plan approval to construct a larger five-story building than was previously approved. After much discussion, the Planning Board postponed a decision on the matter pending the outcome of a hearing at the Board of Zoning Appeals ("BZA") on the mix of uses within the building.

On October 12, 2010, the applicant appeared before the BZA regarding the use of the fourth floor for office, and the additional height to allow the chimney pots. The Board of Zoning Appeals did not grant either of the requested variances.

As a result, the applicant has revised the plan again back to the previously approved 4.5 story building that is below 80 ft. in height. Pursuant to the Planning Board's direction on August 11, 2010, the applicant has indicated that an ATM is proposed for the Woodward Ave. elevation, and it is marked accordingly on the plans. No valet parking accommodation is shown on the latest plans, thus it is safe to assume that none is requested. The previous traffic study showing 15

units of residential and three floors of office is still being used, because it is an absolute worst case scenario. There are now 14 less residential units, two floors of office, and one floor of commercial rather than three floors of office. Therefore, there will now be fewer cars coming and going from the site.

Overall the building is basically the same as the one approved by the Planning Board in 2007, but it has been upgraded in terms of design and materials.

Any designs for signs for tenants in the building will have to go before the Design Review Board for approval.

Ms. Ecker read into the record the definition of "Commercial Use" from the Ordinance.

Mr. Thom Phillips, Vice-President, Hobbs & Black Architects, announced that they have no issues with any if the Planning Division's recommendations. Their proposed use for the fourth floor is office, which is consistent with the Ordinance. There is no right-of-way for the gas meter. It appears that the meter is located on this applicant's parcel but this can be worked out with the adjacent neighbor. Off-hour deliveries will be made through the drive-through before the bank opens at 9 a.m. A transparent rolling grill will be used at the entrance. The applicant is currently negotiating with several banks for the space.

Their feeling remains that the angled parking along Woodward Ave. is vital to the required retail tenant on the first floor. The fixtures on the roof at less than 17 ft. in height will not be higher than the screening. They show a total of eight street trees.

Mr. Harvey Weiss, Weiss Properties, 32820 Woodward Ave., the applicant, indicated their financing is not 100 percent in place. They must first define the scope of the project.

There were no questions or comments from the public at 8:20 p.m.

Motion by Mr. DeWeese

Seconded by Mr. Koseck to approve the Revised Final Site Plan for 34901-34953 Woodward Ave. as it meets the requirements established in Article 7, section 7.27 of the Zoning Ordinance, with the following conditions:

- 13) No valet parking is permitted to serve this site;**
- 14) Applicant provide drive-through hours before implementing subject to the approval of the Planning Division;**
- 15) Planning Board approves the use of the wall mounted fixtures which are not cut-off fixtures;**
- 16) Applicant execute a streetscape agreement with the City, including the removal of the cobra fixture on the corner of Brown and**

- Peabody, provision of City standard flower pots, street lights, hanging basket systems, benches, and trash receptacles;**
- 17) Applicant add one more tree on Brown that is not shown on the plans;**
 - 18) Administrative approval of an amended photometric plan;**
 - 19) Parking changes along Woodward Ave. are permitted but not required, subject to administrative approval.**

Amended by Mr. Clein

And accepted:

- 20) Applicant provide 14 ft. clear height for the loading area;**
- 21) Applicant add one stop sign at the location of Brown and Peabody along with sidewalks and ramps; and**
- 22) Applicant ensure ADA compliance with barrier-free ramps at Woodward Ave. and Brown.**

There were no further comments from the public at 8:25 p.m.

Motion carried, 5-0.

ROLLCALL VOTE

Yeas: DeWeese, Koseck, Clein, Lazar, Whipple-Boyce

Nays: None

Absent: Boyle, Williams



Jana Ecker <jecker@bhamgov.org>

Peabody project

1 message

Clinton Baller <cmballer@avidpays.com>

Wed, Aug 23, 2017 at 11:35 AM

To: Jana Ecker <Jecker@bhamgov.org>

Regarding the Peabody site, as a resident of Birmingham keenly interested in urban planning and our downtown in particular, please accept the following observations/ideas:

** The adjacent building owners must have known that the Peabody site would eventually be developed. Isn't there some formal, written acknowledgement of this, given that one or both must have had to encroach temporarily on the Peabody property to build their buildings? I am surprised that they would deny the Peabody developer the same rights they have enjoyed. So while I sympathize with the fact that their views might be obstructed, such circumstances are an unhappy fact of life in an urban setting. I have stayed in many a hotel in many a city where the view out the window was the building next door. The view was certainly obstructed, and light diminished, but there was no affect on air.*

** I propose a modest solution that might satisfy all parties. As the city has already zoned for 7- to 9-story buildings in the Triangle District across the street, and as a taller building on the Peabody site would, in the opinion of some, increase the visual interest of the line of buildings that we are discussing (I think you call that "massing"), and as the city has a parking problem, how about this: Either through the zoning process, a SLUP or the BZA, the Peabody developer is granted permission to go 7-9 stories, provided that adequate setbacks are respected, those setbacks are devoted to public space, and that some of the additional building space is devoted to public parking. Presumably, the developer would be left with tan equitable amount of leasable space, all three developers would enjoy access to light and views, and the public would gain a better skyline, some "public" passageways between the buildings and, most important, some much-needed parking.*

Clinton Baller
388 Greenwood

August 23, 2017

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

Re: 34965 Woodward Ave. – Request for Preliminary Site Plan Approval

Dear Ms. Ecker:

You have forwarded to me Mr. Alan M. Greene's letter of August 22, 2017 for review. In Mr. Greene's letter, on behalf of his client, he objects to "the proposed preliminary site plan" which he contends 1) "violates the requirements of Section 7.27 of the zoning ordinance, 2) is inconsistent with the City's Downtown Birmingham 2016 Master Plan; and, 3) cannot be constructed as proposed without material change to the existing Balmoral Agreement Trust Buildings without trespassing under those properties."

The purpose of this general review is to advise us as to whether there are any legal impediments for the Planning Board to consider the request for preliminary site plan approval as submitted. By way of background, I have also reviewed the 2016 Plan, and this particular lot was part of an integrated mixed use development which was to encompass the whole block. As proposed, it is consistent with the Master Plan.

The zero lot line construction, as proposed, is also consistent with the zoning ordinance for this area, and has been used in many parts of downtown Birmingham. By way of interest, the owners of the Balmoral Building and Catalyst Building were required to install fire rated glass windows facing the former Peabody's lot in anticipation of the potential zero lot line construction. This they did when those buildings were constructed. It is also interesting to note that they have used zero lot line provision in the construction of their buildings.

This letter also raised that the parking was insufficient for the building proposed. The zoning ordinance requires that they provide onsite parking for the residential component of the project. The residential component would require 15 onsite parking spaces. A review of the proposed site plan, there is approximately 90 parking spaces on site, which far exceed the required minimum. In addition, this building is located within the parking assessment district which satisfies the parking requirement. Where these cars would be parked in the City would be subject to further discussion with the administration.

Beier Howlett

Ms. Jana Ecker
August 23, 2017
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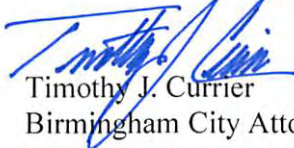
The question as to trespass during construction was also raised. The means and method of construction have not yet been determined, but as such it is not a component reviewed by the Planning Board.

Although, I had a brief time to review this material, I believe there is no legal impediment for the Planning Board to consider the proposed preliminary site plan as submitted.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

BEIER HOWLETT, P.C.



Timothy J. Currier
Birmingham City Attorney

TJC/jc

cc: Mr. Joseph A. Valentine, City Manager
City of Birmingham



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

WWW.DYKEMA.COM

Tel: (248) 203-0700

Fax: (248) 203-0763

Alan M. Greene

Direct Dial: (248) 203-0757

Direct Fax: (855) 236-1206

Email: AGreene@dykema.com

August 22, 2017

Via Hand Delivery

Ms. Jana Ecker
Planning Director
City of Birmingham
151 Martin Street
Birmingham, MI 48009-3368

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

Dear Ms. Ecker:

I represent Woodward Brown Associates, the developer and owner of the Balmoral Building, and Catalyst Development Company, the developer and owner of the Greenleaf Trust Building. Both Woodward Brown and Catalyst strongly object to the proposed new building at 34965 Woodward (the "Project") as currently proposed and respectfully ask that the Planning Board deny the applicant's request for preliminary site plan approval. As explained further below and in separate letters submitted by design professionals, the proposed preliminary site plan (1) violates the requirements of Section 7.27 of the Zoning Ordinance, (2) is inconsistent with the City's Downtown Birmingham 2016 Master Plan (the "Master Plan"), and (3) cannot be constructed as proposed without material damage to the existing Balmoral and Greenleaf Trust Buildings and without trespassing onto those properties, which the owners will never permit.

A. Background

The Planning Board is familiar with the properties at issue. The Balmoral Building was completed in 2015 and is located to the south of the Project. The Building was constructed as a stand-alone building and was intended to be a major landmark along the Woodward Avenue (or Hunter Road) corridor. All four facades were designed to enhance the aesthetics of the corridor and maintain and promote the economic vitality of the City. The Building includes significant architectural details to provide interest and prominence to the location of the Building at one of the key entry points to downtown Birmingham. The northern façade (which abuts the proposed new Project) is constructed with cast stone and has 50 windows, with decorative iron balustrades. (See north elevation, **Attachment 1.**) Indeed, even the mechanical penthouse on the north elevation contains decorative windows. The façade is not planar in that it has insets for the

windows and other architectural features to create a distinctive and attractive viewpoint for southbound traffic on Woodward, as desired and requested by the City in the planning and design process. The Building is 100% occupied with tenants primarily focused on financial services, including Morgan Stanley, The Private Bank and PNC Bank. Indeed, PNC Bank has signage on the north façade of the Building as approved by the City.

The Greenleaf Trust Building located at the corner of Maple and Woodward was completed in 2010. This Building was also constructed as a stand-alone structure with significant architectural design features and windows on all 4 facades. (See south elevation façade, **Attachment 2**.) As the Planning Department stated in its May 22, 2008 recommendation for site plan approval, “The proposed development implements the recommendations contained in the 2016 Plan as the applicant is proposing a mixed use building with the physical qualities necessary to enhance the architecture of existing buildings downtown, to create a focal point for the entrance to downtown, and is built to all property lines to continue the pedestrian –oriented character of downtown to the west of the site.” (**Attachment 3**, at page 2.) The design of the Greenleaf Trust Building was carefully scrutinized by the Planning Board because it was considered a critical gateway into downtown Birmingham. On the other hand, the current record reveals minimal scrutiny of the current proposal.

Like the Balmoral, the south façade of the Greenleaf Trust Building, which abuts the proposed new Project contains architecturally significant features, has a variety of setbacks and is not planar, includes 25 windows, and comprised of Mankato stone. Greenleaf Trust has both residential occupants with windows facing south and the following business tenants with space on the south side of the building: Ogletree Deakins Law Firm and Finnea Group.¹

Both buildings, with the encouragement and approval of the City, established the character of the corridor. They were designed to present high quality architectural facades facing the Peabody’s property that would not only enhance the value of the Peabody’s property but provide an attractive and valuable adjacent facades if the Peabody’s property was ever to be redeveloped.

Unlike the Balmoral and Greenleaf Trust buildings (and every other significant building on the west side of Woodward adjacent to downtown (such as 555 and Birmingham Place), the proposed Project has windows on only two sides of the building. The north and south elevations of the Project are proposed as 5 story block masonry facades with no architectural character whatsoever. They will block and render useless the south elevation windows and architectural

¹ Catalyst entered into an agreement with the former owners of the Peabody property which covers certain aspects of the relationship of the Greenleaf Trust Building to a potential future re-development of the Peabody’s property. But that agreement did not waive the obligation of the applicant here to comply with the requirements of the Zoning Ordinance with respect to appropriate design and other standards as described in part C below or Catalyst’s right to object to same.

details of Greenleaf Trust and the north elevation of the Balmoral Building. The proposed Project will block light and air to existing tenant spaces and render it nearly impossible for any building to make proper repairs, clean windows and otherwise maintain the facades. The Project replaces an existing land use that had adequate parking for the business located on the site, with one for which no adequate parking is available (See Part C below.) And the Project eliminates all existing pedestrian access from Woodward (Hunter) to Peabody. For the reasons described below, the site plan should be denied.

B. The Project Is Not Consistent With The Master Plan

The Master Plan does not and never did envision a single large block of new, attached high rise buildings running continuously from Maple to Brown along Woodward. Indeed, when the Greenleaf Trust Building was approved, the Master Plan envisioned that the Peabody's site would one day be acquired by the City for a new parking garage. "Appendix G-9 also recommends the use of the entire Peabody's restaurant site and the Great Frame Up for use as a parking deck." (**Attachment 3** at p. 3.) Moreover, when the Balmoral and Greenleaf Trust Buildings were being evaluated, the developers and City had to consider the existing conditions, which included an adjacent restaurant operation that could have remained forever. Thus, both projects spent a great deal of money on the facades adjacent to the restaurant, which enhanced the aesthetics views of the owners of the Peabody property and the value of that property. Now, according to the City standards discussed below, the re-developers of the Project need to consider the existing conditions of the adjacent buildings in connection with their proposed development. The character of the corridor has now been established as high quality and architecturally significant stand-alone buildings.

C. There Is No Parking Available To Accommodate The Project

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

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

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

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

(See Planning Department Report dated August 7, 2017) No solutions have been proposed by the applicant or the City. The prospect that the City will approve a massive redevelopment project utilizing every square inch of the property knowing that there is absolutely no parking available to serve the future business tenants of the Project is somewhat mind-boggling, particularly to the extent that it would harm the business operations of other existing businesses and tenants in this corridor. At the very least, the subject merits consideration and scrutiny in connection with any consideration of approving a site plan containing a proposed building constructed to the very maximum limit of height and square footage that one might squeeze onto this redevelopment property.

D. The Project Does Not Comply With Article 7 of the Zoning Ordinance

The City's Zoning Ordinance contains much flexibility for development in the downtown area. But along with that flexibility, the Ordinance has important requirements that are being completely ignored here. Section 7.27 requires that:

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

This provision is clearly violated by the current proposed design, which will significantly interfere with adequate light and air to existing facades of the adjacent buildings. This provision

relates to existing structures. This is not a greenfield site where the relationship to existing structures is irrelevant. Moreover, we ask the Planning Department to not lose sight of the fact that the interior designs of the Balmoral and Greenleaf Trust Buildings were based on the existence of the window areas and the light from those windows. While the Zoning may permit zero lot line setbacks, those setbacks (which set the maximum amount of development that may be permitted) are not appropriate in all cases and do not trump the standards to be met in the Ordinance. Most zero lot line buildings are designed and constructed on both sides to be connected from the start and there are no gaps or issues involving light and air or ongoing maintenance. This part of the Woodward corridor is very different from the core downtown shopping district along Maple and Old Woodward that contains historic zero lot line buildings constructed as zero lot line structures.

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

This provision is also plainly violated. The covering up and essential destruction of the façades of 25% of each building, blocking light and air from extensive windows, clearly diminishes the value of both the Greenleaf Trust and Balmoral Buildings. While we have not had an opportunity to complete appraisals at this time, informal discussions with competent appraisers have verified the logic of this observation. Again, this is ironic because the construction of the Balmoral and Greenleaf Trust Buildings, particularly in light of the buildings and uses that previously surrounded the old Peabody's restaurant greatly enhanced the value and marketability of the Peabody's parcel. The applicant should not now be permitted to implement a design that would materially devalue its neighbors' properties.

(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.

This provision is also violated in that the Project is not compatible with other buildings in the neighborhood. While the Balmoral and Greenleaf Trust Buildings have facades on the north and south that include significant architectural details, windows and a variety of textures and masses, the north and south facades of the Project are five-story feature-less block, planar facades. There is nothing compatible about the design.

E. The Project Cannot Be Constructed Without Damage To And Trespass Onto Adjacent Properties.

The Planning Board should reasonably consider constructability of the Project in connection with site plan approval. If the Project cannot be constructed (or maintained for that matter) without

Ms. Jana Ecker
August 22, 2017
Page 6

damaging the foundations, structure or other elements of the existing, neighboring buildings or without trespassing onto adjacent property, the site plan should be denied. As explained in the accompanying letters from the architect, there is no way that the proposed Project, with 2 levels of excavated underground parking, can be constructed without damage to and trespassing onto neighboring properties. Both the ownership of the Balmoral and Greenleaf Trust Buildings will not allow the applicant to trespass on their properties in any respect for the construction of the current design. Moreover, as noted before, the existing buildings were not designed or constructed as if there would be a single line of buildings attached by a common straight wall. Thus, no matter what the design, there are still setback variations for windows and other features and there will be gaps. We question how repairs to the walls, foundations or other features could ever be made or how windows can be cleaned, trash removed or water infiltration prevented under the design plans currently proposed by applicant. The current proposal is a recipe for significant ongoing future maintenance and repair issues.

F. Conclusion

We appreciate your consideration of our position in this matter. The owners of the Balmoral and Green Leaf Trust Buildings are not arguing that there should be no building on the former Peabody's restaurant site or that they are entitled to unlimited view sheds. We believe that a more creative and compatible design and location of the south and north elevations would be mutually beneficial to everyone. In fact, the loss of some building square footage by a more appropriate design could easily be made up by creating more valuable space. While it is certainly not our intent to design our neighbor's building, having no windows on two facades of such a large building is extremely limiting for future tenants and residents of the building. For these reasons, we respectfully request that the Planning Board either deny preliminary site plan approval or table it for further study and submission of a revised plan that addresses the Ordinance requirements discussed above.

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

Sincerely,

DYKEMA GOSSETT PLLC



Alan M. Greene

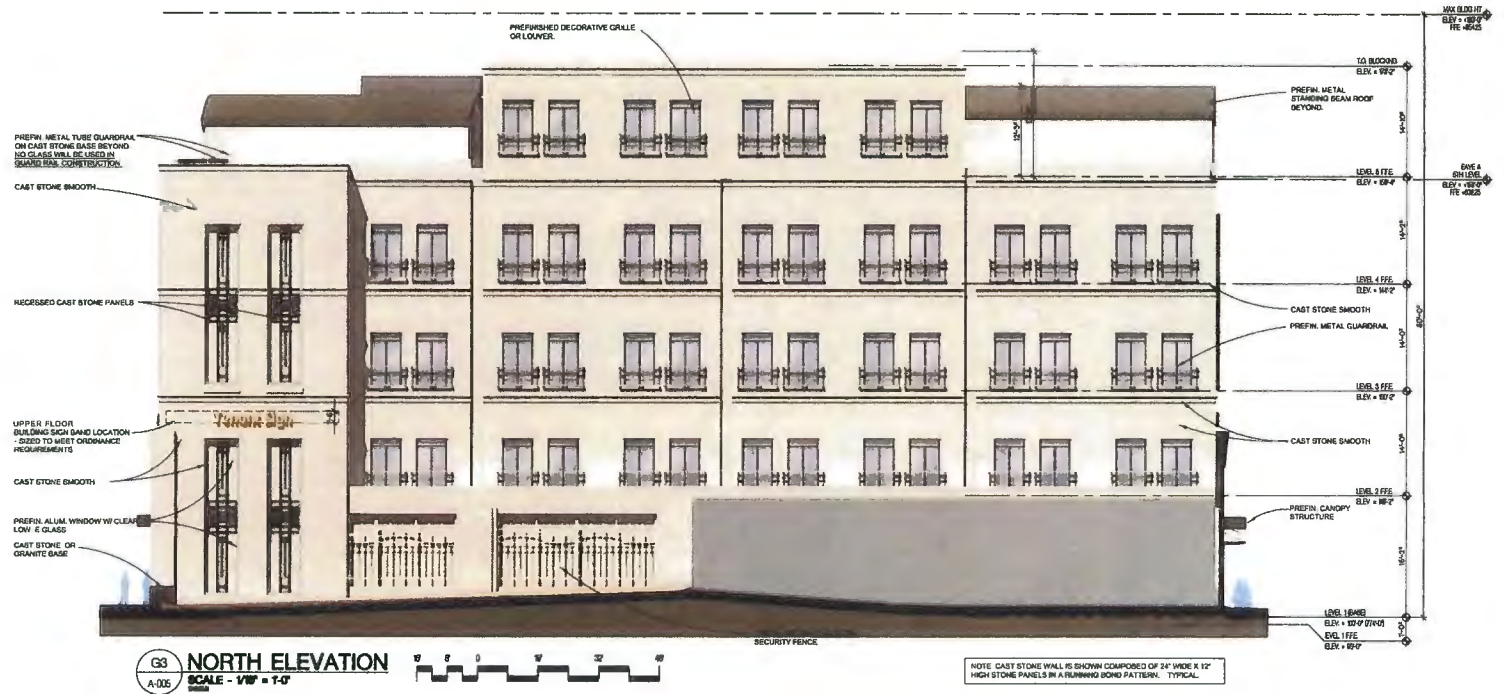
Enclosures



Ms. Jana Ecker
August 22, 2017
Page 7

Cc: Harvey Weiss
Patti Owens
Steve Samona
Najib Samona

ATTACHMENT 1



SCALE ELEVATION

03/26/2014





ATTACHMENT 2





ATTACHMENT 3

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

Date: May 22, 2008

To: Planning Board Members

From: _____
Jana L. Ecker, Planning Director

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

Community Impact Study

I. INTRODUCTION

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

II. COMMUNITY IMPACT STUDY

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

A. Planning & Zoning Issues:

Use

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

parking facility are permitted principal and/or accessory uses in the B-4 and D-4 zone district in accordance with Article 2, section 2.37 of the Zoning Ordinance (B-4) and Article 3, section 3.04(C) (D-4).

Overlay District Compliance

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

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

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

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

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

Master Plan Compliance: 2016 Plan

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

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

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

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

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

Soil and Contamination Issues

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

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

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

a building permit.

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

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

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

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

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

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

C. Utilities, Noise and Air Issues:

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

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

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

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

D. Environmental Design and Historic Values:

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

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

E. Refuse, Sewer and Water:

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

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

F. Public Safety:

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

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

G. Transportation Issues:

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

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

H. Parking Issues:

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

I. Natural Features:

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

J. Departmental Reports

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

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

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

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

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

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

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

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

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

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

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

K. Summary of CIS:

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

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

L. Suggested Action:

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

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

Or

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

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

Or

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

Preliminary Site Plan Review

III. Preliminary Site Plan Review

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

1.0 Introduction

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

2.0 Land Use and Zoning

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

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

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

3.0 Use of Site

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

4.0 Setback and Height Requirements

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

5.0 Screening and Landscaping

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

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

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

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

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

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

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

6.0 Parking, Loading and Circulation

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

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

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

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

7.0 Lighting

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

8.0 Departmental Reports

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

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

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

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

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

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

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

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

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

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

9.0 Design Review

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

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

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

10.0 Downtown Birmingham 2016 Overlay District

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

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

11.0 Approval Criteria

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

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

12.0 Recommendation

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

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

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

13.0 Sample Motion Language

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

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

OR

Motion to DENY the Preliminary Site Plan for 34977 Woodward.

OR

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

August 21, 2017

Patti Owens, Vice President
Catalyst Development
277 South Rose St, Suite 200
Kalamazoo, MI 49007

Re: Impact study of proposed development at 34965 Woodward, Birmingham MI

Dear Patti:

On behalf of TowerPinkster, we have reviewed the documentation pertaining to the proposed development of 34965 Woodward, referred to hereafter as the Peabody site, and past information prepared for the review and approval of the Greenleaf Trust building at 34977 Woodward. We offer up the following observations and concerns regarding Master Plans, submittals and documentation pertaining to the overall East Gateway entry zone to Downtown Birmingham.

I. Downtown Birmingham 2016, a Master Plan for the City of Birmingham, Michigan, authored by Andres Duany and Elizabeth Plater-Zyberk- c. 1996

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

The graphics and narrative also illustrate that the development to the south of the Gateway should be deferential in scale to the corner buildings, to create hierarchy. Furthermore, there are suggestions to the development of parking infill in the location of the Peabody site to support the growth of the downtown area, and do not prescribe necessarily further retail development, as illustrated on page 131. Without further parking provisions in the area beyond those currently available, the service of parking availability to downtown visitors once a larger, multi-story building is contemplated will be compromised.

II. 34977 Woodward- Greenleaf Trust Building CIS and Planning review- c. 2008

Specific and essential to the development of the building design in 2008 of the Greenleaf Trust Building was the concept that the Building become one of the two "Gateway" elements, of particularly high design and quality materials to announce the entry and terminate the vista from the east approach to downtown. Materials were carefully chosen, and were considered with a later abandoned development planned to the north in order to harmonize and create the unique gateway feature. This approach was taken at the initial suggestion of the Birmingham planning department, and became one of the signature themes of future design. Creation of a timeless, expressive building to anchor the

Southwest corner became a driving factor. The City expressed a strong desire in the architectural review of the project to have a building with four distinct and attractive elevations, including the south elevation adjacent to the Peabody site. The articulation, detailing and materials used on this façade were identical in quality to that of the other elevations, as there is no uncertainty that a simple masonry wall to the south with no windows would not have been acceptable in site plan review.

It was always considered, and even discussed in workshops, that the potential for infill structures at the Peabody site and further would step down in scale, perhaps to structured parking or secondary liner buildings. In the CIS narrative by staff, it notes "The 2016 Plan further recommended that the City attempt to secure and hold this site, and the additional parcels to the south, to construct a substantial new parking deck". Considerations for the future potential development south of the Greenleaf site were incorporated into the building, anticipating perhaps a 2-3 story parking structure, especially on the South façade, where the building was inset to create a light well should future building to the South be developed.

III. 34965 Woodward- Peabody Redevelopment Site Plan and CIS Planning review- c. 2017

In review of the initial submittal for CIS for the Peabody site, a number of items of concern can be seen that should be further considered in the design and implementation of the overall design of the building, in order to truly meet the requirements of the CIS submittal, as well as to attempt to follow the Master Plan 2016 goals. Areas of concern include the following;

- A lack of study of the relative floor heights relative to the developments to the north and south to understand the coordination of openings and elements. The project is an infill project and should be designed with some intention of harmonious contextual language with the neighboring structures. The design as presented is overly modern, and detracts from the architectural languages of both the Greenleaf and Balmoral buildings.
- A lack of submittal of the Building and Site exterior lighting concepts, fixtures and an understanding of the implication to the neighboring sites. This was indicated as completed on the applicants checklist but no document in the set exists to show locations, footcandle levels, or the detrimental impact these might have on the previously developed adjacent sites. Both the Greenleaf and Balmoral projects were required to undertake this effort.
- A potential overuse of glass/glazing based upon allowable percentages for the upper floors of the development based upon code requirements for openings. Both the Greenleaf and Balmoral Buildings were designed with the required level of first floor openness, and then switch to more conventional masonry and punched openings to keep the differentiation of first floor Retail and upper floor Office/Residential in place. The proposed Peabody redevelopment does not illustrate that care in detailing, and instead proposes larger expanses of glass with a far more foreign, contemporary look than the surroundings.
- No discussions to date about the potential logistics of constructing a zero lot line building with neighboring sites. Without careful engineering study and coordination with the neighboring properties, building a building directly against another structure offers serious challenges in both the support of the structure and the method of construction employed. During the construction of the Greenleaf Building, this process was not only undertaken very early on in the design phase, but was also a part of the CIS submittal, to satisfy concerns of both the City and the neighbors at the Peabody site. The level of design care to ensure no disruption to both the restaurant in 2008 and its patrons was heroic, and carefully discussed by the Construction Manager to minimize debris and noise/vibration.

- To date, the Peabody redevelopment project has provided no such information, nor conversations to either the property owners of the Greenleaf and Balmoral Buildings, nor the City as part of their submittals to address concerns of constructability, disruption of operations, or impact on neighboring sites. This shows a disregard for the tenants and visitors of the two currently occupied buildings, and their established place within downtown Birmingham, instead choosing to value the potential of the next project.
- A false statement, to the effect of the applicant indicating how the proposed structure has been studied to impact, block or degrade views, or create a new focal point. There is no supporting evidence in any of the submittals indicating the impacted neighboring buildings based upon the proposed massing. This omission on the part of the submitter shows a lack of careful design consideration, for the sake of maximizing footprint and rentable areas. The City of Birmingham had strongly encouraged this study during the original Greenleaf Building, and provided suggestions and guidance on creating an iconic structure anchoring the corner of Maple and Woodward.
- A lack of acknowledgement to the interference or impairment of ambient conditions necessary to enjoy the physical environment, which is yet another item indicated as provided in the CIS submittal, but not visible in the packet submitted. This opportunity exists to coordinate the architecture of the Peabody site with the two existing structures, to create something unified and more than just three buildings that end at the lot line into each other. Instead, the redevelopment creates solid walls to its neighbors to the North and South, blocking windows and views without grace or concern. Furthermore, the interior spaces created on these windowless areas create deep floor plates lacking natural light from 2 sides. By simply pulling inwards these two walls on floors 3-5, much of this could be avoided, and natural daylighting provided to both the Peabody and 2 existing buildings. To date, this conversation with the neighboring property owners has not been initiated.

We understand the importance of well-considered planning and design in Birmingham and feel that with some coordinated effort among stakeholders in this area, and a more inclusive process with the immediate neighbors, a more successful outcome may occur that leaves all parties with a sense of creating a more vibrant block in Birmingham. If the developer was not fixed on developing nearly 100% of the entirety of the footprint on every available floor, there likely could be a far more graceful, harmonious, and neighborly design solution that could be arrived at. This will require a commitment of time, some concessions of space and use, and ultimately funds in order to foster the best outcome.

Sincerely,

TowerPinkster



Jason B. Novotny, AIA LEED AP
Senior Principal Director of Design

Bailey Schmidt LLC

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

August 21, 2017

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

RE: The Greenleaf Trust Building, Birmingham, MI

Dear Patti:

As an active commercial and residential broker in Birmingham and as the leasing agent for your building for the past six years, you asked me to review the plans for the proposed five story Peabody, mixed-use development south of your building. In particular, you asked me to review the block wall the developer plans to construct along your southern property to within, I believe, approximately a foot or so of the southern side of your building. You asked me to opine on the possible impact this wall may have on the rental rates you may be able to achieve once the wall is constructed and as a result the corresponding effect on your property's value.

As a preamble to my comments on the impact the proposed wall will have on your property, it is necessary to reiterate that the Greenleaf Trust Building is among the finest mixed-use properties in Birmingham or all of Michigan for that matter. This market position has been attained by virtue of your building's outstanding design features and high quality construction materials. Your building was placed in service in 2010 or so in the aftermath of the recession of 2008. Birmingham, like most of Michigan, was experiencing difficult times. None the less, you developed a Class A project and spared no expense to construct a magnificent mixed-use building. In fact, your building has attained record rental rates for its five apartments that surpass over 99% of apartment rents ever attained anywhere in the state of Michigan. This trend has proven to be durable and continues to this day. That is quite an accomplishment which could only be attained as a result of the significant capital, design and planning investment you made with the goal of constructing one of the finest properties in Birmingham and all of Michigan for that matter.

And what effect has your building had on the City of Birmingham? It led the way to Birmingham's commercial property recovery. It has lifted all properties by virtue of its success. All property owners have benefitted from your

foresight and investment. I, for one, am very grateful for what you have done for our community.

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

Of the four apartments which currently have windows on the southern side of your building, three have kitchens which will have a view of the block wall once constructed. Bedrooms, libraries and bathrooms will also be adversely impacted.

Based upon the meaningful deterioration of these views, I estimate an approximately 25% reduction in rent will be required for the four apartments affected by the wall. For instance, one of the penthouse units which is currently leased for \$14,000 per month in the future, after the wall is built, may require a monthly rent reduction to \$10,000 or so per month rent. This is a significant possible loss of rental income. Similar reductions may likely be required on the other three effected apartment units as well.

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

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

Further, it is possible that the affected portion of your building may require significant, future interior modifications as a possible remedy to mitigate the adverse rental impact in the event rental losses turn out to be catastrophic (say, over 25% reduction). There is no way of knowing at this time if future modifications will be required. If modifications in the future are required, the impact could be significant. For example, three of the four apartments have high-

Ms. Patti Owens
Page 3 of 3
August 21, 2017

end kitchens which will lose all or a portion of their views. A possible remedy may be to re-locate the kitchens elsewhere within the premises. I can only imagine how much re-designing and re-configuring these luxury apartment interiors would cost. In addition, this type of remedy would also require the abandonment of the remaining useful life of the existing high-end improvements previously made at a significant investment.

I am sorry to say that, in my opinion, the wall on your southern property line will have a significant, adverse effect on your property. At this time I can only guess as to what extent. I know your building as well as anyone. I have personally leased all of the space. I know the discerning tastes of your clientele. I have met them and I can say that once the wall is built the affected areas of your building will surely be met with market resistance.

Sincerely yours,
Bailey Schmidt Inc.

Drew J. Schmidt

Drew J. Schmidt
President

HOBBS + BLACK ARCHITECTS

ARCHITECTURE | ENGINEERING | INTERIOR DESIGN

August 22, 2017

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

RE: 34965 Woodward Avenue (former Peabody's Restaurant)
Request for Preliminary Site Plan Approval

Dear Jana:

I am writing this letter in regard to the proposed mixed use building to be located on the former Peabody's Restaurant site, adjacent to The Balmoral's north boundary. We concur with the stated findings of the Dykema letter dated August 22, 2017 and the Tower Pinkster letter dated August 21, 2017. The intent of this letter is not to restate those points, but to provide supplemental technical comments relative to The Balmoral.

ENVIRONMENTAL IMPACT AND CONSTRUCTABILITY

In our professional opinion, the applicant's design ignores the opportunities presented by The Balmoral and will present concerns that will negatively impact our building during construction and over time:

- I. Construction an exterior south wall without trespassing on our site will cause the applicant significant expense using "blind construction" methods to construct the structure from the interior of the site. Their south wall is different than typical urban infill abutting wall construction because those walls are enclosed so no longer exposed to weather after construction is completed. In this case, the applicant's south wall would about the Balmoral's 5 foot setback (above the 1st floor) so will be exposed to weather and deterioration over time. When the wall cracks or suffers sealant joint failure over time, there will be no practical way to repair it without trespassing on our site. If the wall is set back 5 to 10 feet, the wall will be more economical to construct and maintain over time.
- II. By it's nature, heavy construction is an imprecise process and damage to the Balmoral will be practically unavoidable. We hope the damage will be cosmetic rather than structural, but both are not uncommon. A video survey should be made in advance of construction to confirm the current state and condition of the Balmoral structure as a means to evaluate any future concerns or claims.
- III. The foundations supporting areas of the north wall bear higher than normal structural loads as 4 stories are supported across the 40 foot span of the drive thru. The applicant proposes to excavate 2 stories of parking below grade immediately adjacent to these heavy foundations, which will require some form of support during construction to prevent undermining our structure. While not the only method, permanent foundation underpinning below our foundations may be the most economical approach. Such a design would require careful coordination and cooperation of the parties to implement successfully.
- IV. Flashing between the Drive-thru roof and Frame Shop will need to be reworked to flash across the space and to their new wall.
- V. The grade slopes from north to south along Woodward. We request assurances that storm water within the site is properly contained.

C:\BALMORAL_PEABODY LETTER_HOBBS+BLACK_08222017.docx

HOBBS+BLACK ASSOCIATES INC ARCHITECTS | ENGINEERS | INTERIOR DESIGNERS
P.734.663.4189 F.734.663.1770 100 N. State Street Ann Arbor, Michigan 48104 www.hobbs-black.com

ANN ARBOR | LANSING | PHOENIX

DESIGN APPROACH

The requirement for architects to design new structures that are compatible with neighboring properties is a common theme throughout the City's Master Plan and Zoning Ordinance. Such compatibility is also synergistic with economic value, resulting in projects that are successful and continue to maintain the City of Birmingham's success as an urban destination over the decades.

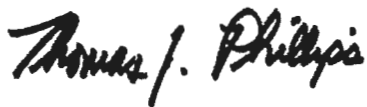
As a firm with more than 50 years of experience, we acknowledge that the nature of "value" is an important topic and significant driver of building design. While maximizing square footage is one approach to optimize value, our experience shows that in some circumstances, providing tenants greater access to air and daylight can add more value to the building than the square footage required to do so.

In this case, the Peabody site offers the applicant a unique opportunity because, at the urging of the City, both the Balmoral and Green Leaf Trust were designed with detailed, high quality elevations facing their property lines, as opposed to blank concrete walls that anticipated typical urban infill structures. Specifically, these elevations feature decorative cast stone walls, sculptural metal panels and windows with custom designed metal rails.

This suggests that with relatively minor setbacks along their north and south property lines above the 1st floor, the applicant could support more economical construction and maintenance of their building envelope, while providing air and daylight to office and residential tenants occupying the 2nd, 3rd, 4th and 5th floors. We suggest that such a benefit will provide building occupants with a nicer environment and Ownership with higher rents and asset value over time while creating a more harmonious urban setting.

Thank you in advance for your consideration and please contact Alan Greene or myself with any questions or if we could provide any additional information or clarification.

Sincerely,
HOBBS+BLACK ASSOCIATES, INC.

A handwritten signature in black ink that reads "Thomas L. Phillips". The signature is written in a cursive, flowing style.

Thomas L. Phillips
Vice President LEED AP

Cc: Harvey Weiss, Patti Owns, Steve Samona, Najib Samona, Alan Greene, File

**CITY OF BIRMINGHAM
PLANNING BOARD ACTION ITEMS
OF WEDNESDAY, JANUARY 8, 2014**

Item	Page
FINAL DESIGN REVIEW 34901 - 34953 Woodward Ave. The Balmoral Request for design changes to the previously approved five-story mixed-use building	2
<p style="padding-left: 40px;">Motion by Mr. DeWeese</p> <p>Seconded by Mr. Koseck to approve the Revised Final Site Plan and Design for 34901 - 34953 Woodward Ave., The Balmoral, as it meets all the requirements established in Article 7, section 7.27 of the Zoning Ordinance, with the following conditions:</p> <ol style="list-style-type: none"> 1) No valet parking is permitted to serve this site; 2) Applicant provide drive-thru hours before implementation subject to the approval of the Planning Division; 3) Planning Board approves the use of the wall mounted fixtures which are not cut-off fixtures; 4) Applicant execute a streetscape agreement with the City, including the removal of the cobra fixture on the corner of Brown and Peabody, provision of City standard flower pots, street lights, hanging basket systems, benches, and trash receptacles; 5) Applicant provide four street trees on Brown in the layout prepared by the Engineering Dept.; 6) Administrative approval of an amended photometric plan; 7) Parking changes along Woodward Ave. are permitted but not required, subject to administrative approval. 8) Applicant provide 14 ft. clear height for the loading area; 9) Applicant add one stop sign at the location of Brown and Peabody along with sidewalks and ramps; 10) Applicant ensure ADA compliance with barrier-free ramps at Woodward Ave. and Brown; 11) Applicant meet Engineering Dept. requirements not otherwise specified by Planning Board; 12) Applicant meet all Fire Dept. requirements. 	3
Motion carried, 7-0.	4

Item	Page
STUDY SESSION	4
Transitional Zoning	
Motion by Mr. DeWeese	6
Seconded by Ms. Lazar to set a public hearing on this matter for Wednesday, February 26.	
Motion carried, 7-0.	7

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, JANUARY 8, 2014
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held January 8, 2014. Chairman Robin Boyle convened the meeting at 7:30 p.m.

Present: Chairman Robin Boyle; Board Members Carroll DeWeese, Scott Clein, Bert Koseck, Gillian Lazar, Janelle Whipple-Boyce, Bryan Williams

Absent: Student Representative Arshon Afrakhteh

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

01-01-14

**APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING
HELD DECEMBER 11, 2013**

Mr. Williams:

Page 1 - Voice vote Yeas, delete "Clein" and insert "Williams."

Page 3 - Voice vote Yeas, add "DeWeese, Boyle, Lazar."

Motion by Mr. DeWeese

Seconded by Mr. Williams to accept the Minutes of the Regular Planning Board Meeting of December 11, 2013 as revised.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

01-02-14

CHAIRPERSON'S COMMENTS

The chairman announced that tonight will be a blended meeting where the board reviews a Final Design Plan and then holds a study session to consider administrative policies.

01-03-14

APPROVAL OF THE AGENDA (no change)

01-04-14

FINAL DESIGN REVIEW

34901 - 34953 Woodward Ave.

The Balmoral

Request for design changes to the previously approved five-story mixed-use building

Ms. Ecker explained the current applicant has only owned the property since 2010. A previous owner had demolished the existing buildings and surface parking lot and received approval to construct a five-story building. The new owner proposes to maintain the site plan and footprint as previously approved. At this time, they are requesting approval of design and material changes for the proposed building. Ms. Ecker went on to highlight the requested changes before and after:

- Revising the 2nd floor building line from 118 ft. 7 in. to 116 ft. 2 in.;
- Moving the loading space from the bank drive-thru area to the Woodward Ave. parking area (for use in off hours only as discussed at the Planning Board in 2011);
- Extending the elevator to the 5th floor to provide access for the residential unit;
- Replacing pre-finished metal storefront canopies with pre-finished metal sun screens;
- Replacing main entry revolving doors with glass storefront doors;
- Removal of fire rated glass windows on the north elevation in the stair tower, cover openings with recessed cast stone and decorative metal grille panels;
- Replacing granite pavers at first floor entries with masonry pavers;
- Reducing number of lower level parking spaces from 29 to 23 (only 2 parking spaces are required on site for residential unit);
- Replacing pre-cast concrete building facades with unit cast stone masonry (12 in. by 24 in. units, mounted in high running bond) in similar limestone color;
- Reconfiguring rooftop mechanical and screening; and
- Relocating residential unit on 4th and 5th floors from the NE corner of the building to the SE corner of the building.

Both the Building Dept. and the Fire Dept. have indicated there needs to be an additional exit from the residential unit. The Engineering Dept. had some concerns with the streetscape and the layout of the trees because they will block off light from the street fixtures. Further, M-DOT has indicated they do not want striping included on the plan where the drive-thru comes out onto the Woodward Ave. service drive. Normally, the concrete of the sidewalk continues along so that there is a clear demarcation

between the drive and the sidewalk for pedestrians. Also, it is M-DOT's decision as to whether loading and unloading can occur within the Woodward Ave. service drive.

Mr. Tom Phillips, Hobbs & Black Architects, was present with Mr. James Sharba, their director of design; and the owner, Mr. Ed Janisette.

Mr. Sharba spoke about the changes, before and after, from a design standpoint. The cast stone product allows more control on the color of the panels and it can be hand laid to provide detail. They have added interest by creating shadow play along the facade of the building. Moving the residential unit from the NE corner to the SE corner increases its value because that location is near the elevator and provides a better view with more sunlight.

Mr. Phillips noted the building now has a more contemporary elevation which puts it in better context with the surrounding area. Mr. Sharba explained the base will be limestone which will not be damaged by salt. The change in the awnings to metal and glass adds a nice geometric element above the windows.

Mr. Phillips responded to inquiries from board members:

- There will be two exits for the residential unit which will be worked out with the building official;
- The elevator will have a prox reader system that will take the resident only to the fourth and fifth floors;
- The pavers will be granite chips on a concrete base;
- Screenwalls will be tall enough to hide rooftop mechanical;
- They have no objections to the Engineering Dept.'s design for placement of the street trees;
- Trash is wheeled on the public sidewalk over to the rubbish area. Mr. Koseck was surprised it is not collected inside the building. Ms. Lazar said that is a busy street and the plan for trash collection should be revised. Mr. Williams noted this development adds huge volume to that area.
- There is a tenant commitment for a bank with a drive-thru on the first floor. A restaurant and another small tenant will complete that level. The uses being pursued for the other floors are within the context of zoning requirements.
- They will revise the photometric plan to show the cut-off lighting.

There were no comments from members of the public at 8:20 p.m.

Motion by Mr. DeWeese

Seconded by Mr. Koseck to approve the Revised Final Site Plan and Design for 34901 - 34953 Woodward Ave., The Balmoral, as it meets all the requirements established in Article 7, section 7.27 of the Zoning Ordinance, with the following conditions:

- 1) No valet parking is permitted to serve this site;**
- 2) Applicant provide drive-thru hours before implementation subject to the approval of the Planning Division;**

- 3) Planning Board approves the use of the wall mounted fixtures which are not cut-off fixtures;
- 4) Applicant execute a streetscape agreement with the City, including the removal of the cobra fixture on the corner of Brown and Peabody, provision of City standard flower pots, street lights, hanging basket systems, benches, and trash receptacles;
- 5) Applicant provide four street trees on Brown in the layout prepared by the Engineering Dept.;
- 6) Administrative approval of an amended photometric plan;
- 7) Parking changes along Woodward Ave. are permitted but not required, subject to administrative approval.
- 8) Applicant provide 14 ft. clear height for the loading area;
- 9) Applicant add one stop sign at the location of Brown and Peabody along with sidewalks and ramps;
- 10) Applicant ensure ADA compliance with barrier-free ramps at Woodward Ave. and Brown;
- 11) Applicant meet Engineering Dept. requirements not otherwise specified by Planning Board;
- 12) Applicant meet all Fire Dept. requirements.

Mr. Koseck thought this is as good, if not better, than the earlier project.

There were no final comments from members of the public.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

01-05-14

STUDY SESSION

Transitional Zoning

The chairman announced this is a continuing study session and the next stage will be a public hearing.

Mr. Baka drew attention to the key changes that were discussed at the November 11 public hearing. Two parcels were identified as being unique from the other transition parcels due to their location and/or existing zoning and uses. The board was not sure whether they fit within the zones that have been developed:

- Adams Square, 555-775 S. Adams;
- Parcels at the corner of Woodward Ave. and Quarton.

It was felt these could handle a little more density than the rest of the transitional sites.

The other sites are currently zoned for residential uses:

- The multi-family parcel next to the Post Office;
- The single-family parcels on Fourteen Mile Rd. west of Woodward Ave.;
- Multi-family parcels just north of W. Maple Rd. on N. Eton.

The board discussed the parcels along the east side of Adams between Adams Square and Lincoln. A 20 ft. rear setback on a 40 ft. wide lot would render the third parcel which is currently zoned O-2 unbuildable. The 20 ft. setback can only work if the three lots are developed as one and they front Adams. If the Transition Overlay is not made mandatory, the lots are not penalized if they can do in the future what they can do now. *It was concluded that in all areas a rear yard setback adjacent to single-family residential should be 20 ft. If it is a side yard adjacent to single-family, developed individually, the setback is 10 ft.*

Board members agreed that rebuild of single-family should follow the underlying zoning. If anything else is built, follow the overlay. This is confirmed in the draft ordinance, Section 3.19, Permitted Uses and Use Regulations (D) which should be moved to Section 3.8, Applicability (5) for additional clarity.

The board considered a sliver of land at Woodward Ave. and Quarton. The sliver is cut out of the R-1 Residential parcel, zoned Parking and owned by The Sign of the Beefcarver. The Parking Zone allows residential. *It was concluded that the existing house should be left as-is and removed from the Overlay.*

The group looked at Adams Square and decided it should be left out of Transitional Zoning and dealt with separately because it is the largest underdeveloped parcel left in the City.

Mr. Clein was bothered that the board has looked at certain Multi-Family Residential properties and not others. Either include them all or don't. *The board decided that to maintain consistency, to take out those properties currently zoned Multi-Family Residential from Transitional Zoning. Therefore, the Post Office can stay in, but the Multi-Family next to it is left as-is.*

It was further agreed to take out the R-8 parcels on Southfield Rd. north of Fourteen Mile Rd.; Multi-Family at Pierce and Fourteen Mile Rd. next to the gas station; Parcel at Fourteen Mile Rd. and Woodward Ave. next to the FedEx building; R-7 parcel next to Eton St. Plaza.

Board Members favored taking Adams Square out as part of the transition zoning for now, but it could be added in the future.

With respect to naming the zones the board's consensus was to call them TZ 1 through 4. Further, the requirements of the Transition Overlay don't address the desire to provide a transition rather than being compatible in scale and massing to adjacent uses.

The group decided to look carefully at the definitions of TZ 1, 2, 3, and 4 in line with the discussion.

Under Section 3.20, Height and Placement Requirements (K, Buffer Requirements) remove "The Planning Board may waive the two (2) feet of landscaping if it can be demonstrated that the additional space gained from the landscaping will allow for the fulfillment of the on-site parking requirement."

Section 3.21, Commercial/Mixed-Use Architectural Requirements (4) should read "Doors for vehicular access shall not be permitted in a front facade."

The board discussed Section 3.19, Permitted Uses and Use Regulations - Land Use Matrix. The idea is to get compatible neighborhood uses. It was recommended that institutional uses be SLUPs. Recreational uses except parks can be SLUPs. Also, food and drink establishments as well as drycleaners are SLUPs. Change "Child Care Center" to "Family Day Care Home."

The chairman called for comments from the public at 10 p.m.

Mr. Vince Pangel, Strategic Property Services, Troy, said that his clients have engaged his firm to redevelop their property known as the Cranbrook Auto Care Center at Maple Rd. and Cranbrook for a new financial institution. They like the concept of Transitional Zoning; however it doesn't allow them to have a drive-thru. The existing B-1 Zoning doesn't work for them either. Mr. Pangel would like to see bank drive-thrus included in the Transitional Zone. Ms. Ecker explained the zoning requirement will depend on the date plans are submitted. The board's suggestion was to permit Bank without drive-thru in MU-2 and MU-3. Banks with drive-thrus should only be permitted with SLUP in MU-2 and MU-3.

The board recommended the following notification process for the public hearing:

Properties within 300 ft. will be sent a post card to the effect that the City is considering changing the zoning on selected sites located within 300 ft. of their property. The intent is to create buffers in transition zones. This may have an impact on their neighborhood. For further details the recipients are directed to a web site that contains a map with further information. The owners of record of properties under consideration should be given a different notice informing them that their property is being considered for rezoning.

It was noted that correspondence received from Chuck DiMaggio, Brad Host, and Alice Thimm was considered in tonight's discussion.

Motion by Mr. DeWeese

Seconded by Ms. Lazar to set a public hearing on this matter for Wednesday, February 26.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

01-06-14

MEETING OPEN TO THE PUBLIC FOR ITEMS NOT ON THE AGENDA (none)

01-07-14

MISCELLANEOUS BUSINESS AND COMMUNICATIONS

a. Communications (none)

b. Administrative Approvals

- 34745 Woodward Ave., Jax Car Wash - Damaged east wall of car wash. In lieu of repairing, enlarge existing overhead 10 ft. door to a 16 ft. door and move the east main door to the north side of the building. All would be done within the current footprint of the building.
- 210 S. Old Woodward Ave. - Installation of exhaust fan for new kitchen hood at new roof location.

Ms. Ecker noted a request for administrative approval for Bella Piati. They want to place a trellis type system over their deck with a canopy and have the ability to hang sides down on it. The consensus was this is a SLUP amendment and the applicant should come before the Planning Board.

c. Draft Agenda for the Regular Planning Board Meeting on January 22, 2014

- Study session items to be determined.

d. Other Business

- It was discussed that consideration should be given to amending the Bistro Ordinance in order to stop plastic enclosures.
- The Long-Range Planning Meeting will be held on February 1.
- Ms. Lazar noticed there are three "No Left Turn" signs at Pierce and Maple Rd. Something should be done about removal.

01-08-14

PLANNING DIVISION ACTION ITEMS

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

01-09-14

ADJOURNMENT

No further business being evident, board members motioned to adjourn at 10:30 p.m.

Jana Ecker
Planning Director

Preliminary Site Plan & CIS Review
34977 Woodward – Catalyst Development
June 25, 2008

Date: June 16, 2008

To: Planning Board Members

From: _____
Jana L. Ecker, Planning Director

**Re: 34977 Woodward – Catalyst Development
Final Site Plan & Design Review**

1.0 Introduction

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

The applicant appeared before the Planning Board on May 28, 2008, at which time the Planning Board accepted the Community Impact Study, and approved the Preliminary Site Plan with the following conditions:

- 1) Provision of specification sheets for the residential condensing units prior to final site plan and design review;
- 2) Provision of details on the size, location and required screening for all transformers prior to final site plan and design review;
- 3) Identify a loading space on northbound Peabody to be included in the final site plan; and obtain a variance from the BZA.
- 4) Preparation of a streetscape plan with all required Downtown streetscape elements prior to final site plan and design review;
- 5) Provision of a photometric plan and specification sheets for all light fixtures;
- 6) Provision of information regarding the percentage of glazing on each elevation prior to final site plan and design review; and
- 7) Adjustment of the building footprint and planters along Woodward Ave. to provide a 10 ft. clear pedestrian walking

- path on the property that will be subject to the long-term lease, and a 5 ft. clear path east of Woodward Ave.
- 8) The preliminary site plan would exclude the one street tree on Maple Rd. closest to Woodward Ave.

The applicant has now provided the required specification sheets for the residential condensing units and wall sconces, a photometric plan, and has altered their site plan to show one loading space on Peabody, removed one street tree along Maple Road, and has shown all appropriate streetscape elements in accordance with Downtown Birmingham standards. **The applicant has also provided all glazing percentages, and will be required to obtain a variance from the Board of Zoning Appeals for the first level of the west elevation along Peabody Street. The applicant will also be seeking a variance for the required loading spaces.**

The applicant has not yet determined where the transformer will be located, but has advised that negotiations continue with Peabody's to locate the transformer next door. If this option does not work out, the applicant intends to locate the transformer in the underground parking level of the building. Finally, the footprint of the building was not shifted to the south as requested by the Engineering Department, however, the applicant has shifted the street trees along Maple and adjusted the depth of the planter boxes to maximize the sidewalk width along Maple, and they have added a concrete pad for public art at the southeast corner of Maple and Peabody as requested by the Planning Board at Preliminary Site Plan Review.

2.0 Land Use and Zoning

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

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

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

3.0 Use of Site

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

4.0 Setback and Height Requirements

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

5.0 Screening and Landscaping

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

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

5.3 Mechanical Equipment Screening – The applicant is proposing to house the mechanical equipment on the rooftop. Rooftop screening is required for all proposed rooftop mechanical units. Article 04, 4.49 (C)(8) of the Zoning Ordinance requires that all rooftop mechanical equipment must be obscured by a screen wall constructed of materials compatible with the materials used on the building, that provides an effective permanent visual barrier that minimizes the visual impact of the equipment from other points of observation and that:

- (a) The screen walls must be less than 10 feet in height; and
- (b) The screen walls shall, to the best extent possible, not extend above the top edge of an imaginary plane extending upward no more than 45 degrees from the eave line.

The applicant is proposing to screen all rooftop mechanical units with 10' high screen walls around all of the proposed rooftop mechanical equipment. The proposed screen walls will not extend past an imaginary 45 degree plane from the eave line, and they have been integrated into the design of the building to give the building a more substantial presence. The applicant has provided dimensions and specification sheets for all of the proposed rooftop mechanical equipment. Four RTU's are proposed between 6'4" in height and 9'10" in height. One MUA is proposed at 5' in height, along with 10 residential condensers at 3' in height. As the largest rooftop mechanical unit is 9' 10" in height, all units will be fully screened by the proposed screen wall.

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

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

320' of street frontage, and thus 8 street trees are required. Eight are proposed. Specifically, two "Princeton Sentry" Ginkgo street trees with tree grates are proposed on Peabody, three "Princeton Sentry" Ginkgo trees are proposed on Maple with tree City approved "Ginkgo" tree grates from East Jordan Iron Works, and three "Skyline" Honey Locust trees are proposed on Woodward, to be surrounded by grass in the MDOT right-of-way. A permit from MDOT will be required for changes in the right-of-way along Woodward.

6.0 Parking, Loading and Circulation

- 6.1 Parking – The subject site is located within the Parking Assessment District and thus no parking is required for the retail or office uses. A maximum of five residential units are proposed, and thus 8 on-site parking spaces are required. The applicant is proposing 10 parking spaces in the underground parking level.
- 6.2 Loading – In accordance with Article 4, section 4.21 of the Zoning Ordinance, 1 loading space is required for the restaurant use (less than 20,000 sq.ft.), and 1 is required for the office use (less than 50,000 sq.ft.). Due to the constraints of the site, the applicant is not able to provide any loading spaces on site, and intends to apply to the Board of Zoning Appeals for the required variance. At Preliminary Site Plan Review, the Planning Board expressed their support for loading on the east side of Peabody, just south of Maple. **The applicant has now submitted plans showing the on-street loading area on Peabody as recommended by the Planning Board, and will appear before the Board of Zoning Appeals on July 8, 2008 to seek a variance for the required loading spaces.** It was previously determined that on-street loading would occur at off-peak hours (before 7:00 a.m. and after 5:00 p.m.), and that parking meters would be installed to allow on-street parking during the daytime hours. **The applicant is requesting to maintain the loading area as such at all times to provide maximum flexibility for deliveries, loading and to allow for people to be dropped off or picked up. The City's traffic consultant has expressed concern about the safety and feasibility of a valet service at this location. The Engineering Department has also indicated their preference for metered parking so that the public use of the street is maximized.**
- 6.3 Vehicular Circulation and Access – The proposed development includes the removal of two curb cuts along Woodward, and the removal of one curb cut on Maple. The existing curb cut on Peabody will be reconfigured, but vehicular access to the site will continue off of Peabody at the southwest corner of the site. There

will be private access only to the underground parking level, which only contains 10 parking spaces. A permit from MDOT will be required for changes in the right-of-way along Woodward.

- 6.4 Pedestrian Circulation and Access – The applicant has provided pedestrian entrances directly from the public sidewalks at the corner of Maple and Peabody to the office and restaurant lobby, which is accessible directly from Maple, and directly from Peabody. Pedestrian entry to the residential lobby has been provided on the Maple elevation towards the center of the building. Secondary pedestrian access to the building has also been provided off of Woodward at the southeast corner of the site. **These entrances are not located on the frontage lines as required by the Zoning Ordinance. However, the City Attorney has advised that this provision is in conflict with the Michigan Building Code, and that state law supercedes our local ordinance. Accordingly, the requirement that the doorway be located “on the frontage line” cannot be enforced. As such, the City Attorney has advised that a variance is not required.**

At Preliminary Site Plan Review, the Engineering Department expressed concern with the width of the sidewalk on the west end of the site along Maple (previously shown as 8.3'), in the area to be leased from the City. The Engineering Department has requested a minimum 10' wide sidewalk in this area. The width of the sidewalk as currently proposed from the face of the curb is:

- 13.66' at northwest corner (lobby);
- 9.47' at the northwest pier along Maple;
- 9.01' at the northeast pier along Maple; and
- 8.81' at the northeast corner of the planting bed.

In accordance with the Zoning Ordinance, the minimum width of the pedestrian path is 5' clear. At the narrowest point of the sidewalk along Maple, the pedestrian path is 5.845' in width from the face of the building to the edge of the hole in the proposed tree grates, which are ADA compliant. **Thus, the proposed sidewalk widths exceed the minimum requirements contained in the Zoning Ordinance.**

The applicant has shifted the Woodward Avenue crosswalk to the south as requested by the Engineering Department to reduce the distance for pedestrians to cross the southbound lanes of Woodward. The applicant has also shown the proposed Maple Road crosswalk on the plan from the southwest corner of Maple and Peabody to the northwest corner of Maple and Park. The

application states that the proposed Maple Road crosswalk is not contained within the scope of the project, and is not recommended by their traffic consultant given the potential to cause traffic back ups onto Woodward Avenue. **However, the Engineering Department has requested that this crosswalk be included within the scope of the project to ensure that safe and efficient access is provided along Maple during construction of this building, as the entire south side of Maple sidewalk will have to be closed to accommodate construction.**

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

The applicant is currently proposing the use of the downtown standard furnishings in Birmingham Green, as required. The proposed location of benches and trash receptacles as shown on the plan will add to the pedestrian experience and create intimate public gathering spaces.

As discussed above, the City is recommending installation of two parking meters on the east side of Peabody in the area of the proposed on-street loading area. The Engineering Department is also requesting that the installation of the proposed Maple crosswalk be included within the scope of this project to ensure adequate pedestrian circulation around the site during construction. **The City will require the execution of a streetscape agreement outlining all required improvements in the right-of-way, including new sidewalks, curbs, tree wells etc.**

7.0 Lighting

The applicant is proposing 25 custom sconce light fixtures to be affixed to the façade of the building on three sides at a height of 6.75' above grade. The south side of the building abuts the property line of the property to the south, no lighting is proposed for this elevation.

The vertical wall mounted lights will be 30" in length 13" wide and 4" deep. The fixture will be fitted with two 39 watt fluorescent twin tube T5 bulbs. The sconce shroud will be a custom design of a fabricated aluminum grill over a translucent white acrylic enclosure. In addition, the applicant is proposing six (6) pedestrian scale street lights in the downtown Birmingham style, four along E. Maple and two on Peabody. Additional fixtures are proposed for the upper level terraces as required by Code; these lights should not have a significant effect on the lighting at the street level.

A photometric plan and specification sheets for all light fixtures have been provided by the applicant. **The light levels and variation ratios in the right of way abutting and adjacent to the building are in compliance with section 4.21 LT-01 of the zoning ordinance.**

Sign lighting will also be proposed for signage to be determined at a later date. The applicant will be required to appear before the Design Review Board for approval of all signage and sign lighting.

8.0 Departmental Reports

8.1 Engineering Department - The Engineering Division has reviewed the plans dated June 8, 2008, for the above project. The following comments are offered:

1. If the building is to be constructed as shown, the City will need to enter into a long-term lease with the building owner to allow use of the publicly owned land southeast of the Maple Rd./Peabody St. intersection. In our attempt to create a pedestrian-friendly environment, the City should avoid overly narrow City sidewalks, particularly where vehicle traffic levels are as high as they are here. The thirty foot long section just east of the Maple Rd. lobby door is proposed such that the excessively narrow sidewalk is being extended further to the west than necessary (i.e.: an 8 ft. wide sidewalk would be provided for the public when in fact a larger section of public property exists for this purpose today). The Engineering Dept. recommends that no less than ten foot sidewalks be provided along Maple Rd. for that portion where a lease to private use is being entertained.

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

Noting the modifications to the plan in this area, we offer the following:

- a. The bumpout as designed seems excessively large. The City cannot approve dimensions of this nature if the space provided for trucks to make a right turn from Peabody St. to Maple Rd. is not provided.
- b. The excess space being taken up in the right-of-way will

benefit the tenants of this building, as well as the neighboring buildings, significantly more, if the loading zone is allowed to be used as such until 9 AM in the morning. After that time, it will be of much better use to the public marked as two metered parking spaces. We see no reason such a large area of valuable public right-of-way would be granted to the exclusive use of this property owner without any consideration for the other uses this area can provide.

4. Notes on the plan indicate that negotiations are underway to install a transformer for this building on adjacent private property. Should these negotiations not materialize, the applicant needs to be aware that installing the transformer on public right-of-way is not an option.
5. Being in the downtown area, the owner will be required to sign a Streetscape Agreement, agreeing to pay for all costs necessary to finish the E. Maple Rd. and Peabody St. frontages of the property with the City's standard streetscape consisting of exposed aggregate sidewalk, landscaping, etc. The sidewalk on the Woodward Ave. frontage shall have the small sawcut pattern to carry this design theme on this side of the building as well. The agreement must be signed prior to the issuance of a construction permit.

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

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

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

- 8.2 Department of Public Services – DPS has no concerns.
- 8.3 Fire Department - The Fire Department has no concerns, as the required FDC connection has been added on the north end of the east elevation of the building and a fire hydrant was added to the plan along Woodward Avenue.
- 8.4 Police Department – The Police Department has no concerns.

- 8.5 Building Division – The City of Birmingham may be enforcing the 2006 Building Codes when application for building permit is made. The proposed plan has an exiting issue with the stairwells located in the South-West corner of the proposed building. Discussions have been had with the architect on this issue. **No window openings are allowed for the proposed zero property line setbacks on the south elevation of the proposed building.** This applies only to the area not abutting the building towards the south in accordance with a State of Michigan Construction Code Commission ruling.

9.0 Design Review

The applicant has submitted full elevation drawings on sheets A-7 and A-8, along with three dimensional illustrations on sheet G1. The applicant is proposing to utilize the following materials:

- Mankato Stone in honed Golden Amber and Golden Buff;
- Indiana Limestone with a sugar cube finish and a bush-hammered finish;
- Bronze finish aluminum windows and doors;
- 1" bronze tint insulated glass windows and doors with Low-E coating;
- ACM Centria metal panels with a Kynar finish to match the Indiana limestone and the bronze aluminum finish of the windows for the mechanical screen walls, cornices, and other architectural accent details;
- Custom bronze painted aluminum canopies and sunshades;
- Custom bronze painted aluminum solid panel for the dumpster screening;
- Custom bronze painted aluminum open panels for the parking access doors;
- Custom painted aluminum scones in Pewter;
- Custom steel railings in Pewter to surround all of the outdoor terraces; and
- Medium bronze door hardware.

The applicant has stated that the building will be designed with as many LEED certified materials and processes as is practical, and that the building will be energy efficient and will respect the environment. **No details on the LEED certified materials or processes have been provided at this time.**

The five-story mixed use building will provide a substantial presence for the gateway to downtown, and extensive detailing has been provided to create a vertically-proportioned façade that is suitable for a terminating

vista location. In addition, particular care has been given to providing pedestrian scale architectural details on the first floor, and to creating a pedestrian friendly streetscape on this site. The use of terraces on levels 2, 4 and 5 maximize outdoor living area for tenants, and will add interest and life to the building.

The proposed building meets most of the architectural standards set out in Article 3, Overlay District, of the Zoning Ordinance as it is at least 90% of the exterior finish of the building is Mankato stone, limestone, metal, wood and glass, the first floor storefronts are directly accessible from the sidewalk, vehicular openings are less than 25' in width, the windows are vertically proportioned, no blank walls face a public street, the storefront windows have mullion systems, with doorways and signage integrally designed, all glass is lightly tinted or clear, balconies and railings are made of metal, and the main entries incorporate canopy features to add architectural interest on a pedestrian scale.

However, the proposed building does not meet all of the architectural standards set out in Article 3 of the Zoning Ordinance, as only 33% glazing is proposed on the first floor of the west elevation (Peabody), and a minimum of 70% is required. This particular parcel fronts on three streets, and thus has no opportunity for providing basic trash and loading services from the rear, and thus the Peabody side has been selected as the best choice for the service-oriented operations of the building, which do not allow for the 70% glazing requirement to be met. **The applicant is scheduled to have their variance request considered by the Board of Zoning Appeals on July 8, 2008.**

The primary building colors and materials of natural colored limestone and Mankato stone are compatible with the character of the surrounding area. Overall, the Planning Division finds that the proposed massing, design and materials for the new mixed use building are compatible with adjacent structures, and in keeping with the character of downtown Birmingham. **The applicant will be required to obtain sign approval from the Design Review Board for all proposed signage as this is not within the jurisdiction of the Planning Board.**

10.0 Overlay District Compliance

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

- (a) Encourage and direct development within the boundaries of the Overlay Zoning District and implement the 2016 Plan;
- (b) Encourage a form of development that will achieve the physical qualities necessary to maintain and enhance the

- economic vitality of downtown Birmingham and to maintain the desired character of the City of Birmingham as stated in the 2016 Plan;
- (c) Encourage the renovation of buildings; ensure that new buildings are compatible with their context and the desired character of the city; ensure that all uses relate to the pedestrian; and, ensure that retail be safeguarded along specific street frontages; and
 - (d) Ensure that new buildings are compatible with and enhance the historic districts which reflect the city's cultural, social, economic, political, and architectural heritage.

The proposed development implements some of 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 provided significant architectural elements at the corner of Maple and Woodward to create a terminating vista as recommended in the 2016 Plan. 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, planters, and pedestrian entrances from all adjacent streets.

In addition, the DB 2016 Report encourages four or five story buildings along Woodward Avenue and 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". The Planning Division finds that the proposed five story building does meet the spirit and intent of the 2016 Plan as it does provide for significant massing at this prominent corner and provides the mass and architectural details required for a site identified as a terminating vista under the 2016 Plan. The proposed streetscape elements and plant material at the northwest corner of the site also provide greater interest and prominence. The proposed development also adds two floors of residential units, and provides retail uses on the ground floor along both Maple and Woodward as required.

In addition to these general goals and objectives, the 2016 Plan also contained specific recommendations for this area, named the "Maple Road Gateway". The 2016 Plan states that the Maple Road entry to downtown is currently flanked by two gasoline stations, both of which still exist today, but are vacant. The Plan states that portions of both of these sites as a pair could form a significant gateway to downtown and should share a similar height, massing and, as much as possible, architectural

syntax. Previously, a five story mixed use building was approved for the northwest corner of Maple and Woodward. This building was similar in height and massing to the proposed Catalyst development. It was also similar in terms of the design and materials, from the use of stone, to metal panels to screen the rooftop mechanical. However, the site plan for the northwest corner of Woodward and Maple has since expired. No new concepts have been proposed at this time. Accordingly, the Catalyst building will be the first one of the twin buildings to be constructed, and should be used as a model for the height, scale and design of the building that will ultimately be constructed on the northwest corner, in accordance with the recommendations of the 2016 Plan.

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

Finally, Appendix G-11 provides a rendering of the conceptual build-out of the portion of Maple Road from Park Street to Woodward Avenue. The rendering illustrates a substantial mass of building on the northern half of the subject site, to be matched in scale, mass and architecture to another twin building on the north side of Maple. As discussed above, the Catalyst building, if approved, will be the first of the two gateway buildings to be constructed, and any proposals for a building on the northwest corner of Maple and Woodward will be required to mirror the height, scale and design of this building. The illustrations contained in the 2016 Plan recommend five story buildings on both of the Maple gateway sites, which is the height proposed by Catalyst at this time. However, the rendering also shows sloped roofs on both twin buildings. Catalyst is proposing a flat roof building which is compatible with other buildings in the vicinity. Finally, the 2016 Plan recommends that any proposed development at the Maple Road gateway should be carefully scrutinized at the time of development given its prominence as a gateway to the downtown core of Birmingham. The northeast corner of the site also provides a terminated vista with a vertical tower element, which contains distinct and prominent architectural features of enhanced character and visibility to provide a positive visual landmark.

11.0 Approval Criteria

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

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

12.0 Recommendation

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

1. Approval by the City Commission of a lease for the portions of City property proposed for use by the applicant on the southeast corner of Maple and Peabody, and the southwest corner of Maple and Woodward Avenue;
2. The applicant must provide details on the size, location and required screening for all transformers and submit same for Administrative Approval prior to installation;
3. Obtain a loading space variance from the Board of Zoning Appeals;
4. Obtain a variance from the Board of Zoning Appeals for the 33% proposed first floor glazing along Peabody;

5. Provision of documentation demonstrating the capacity of the Peabody and Maple intersection to accommodate 40' long truck turning movements; and
6. Execution of a Streetscape Agreement with all required Downtown streetscape elements, including the relocation of the southbound Woodward crosswalk and the Maple Road crosswalk west of Park/Peabody and the installation of two new parking meters on Peabody.

13.0 Sample Motion Language

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

1. Approval by the City Commission of a lease for the portions of City property proposed for use by the applicant on the southeast corner of Maple and Peabody, and the southwest corner of Maple and Woodward Avenue;
2. The applicant must provide details on the size, location and required screening for all transformers and submit same for Administrative Approval prior to installation;
3. Obtain a loading space variance from the Board of Zoning Appeals;
4. Obtain a variance from the Board of Zoning Appeals for the 33% proposed first floor glazing along Peabody;
5. Provision of documentation demonstrating the capacity of the Peabody and Maple intersection to accommodate 40' long truck turning movements; and
6. Execution of a Streetscape Agreement with all required Downtown streetscape elements, including the relocation of the southbound Woodward crosswalk and the Maple Road crosswalk west of Park/Peabody and the installation of two new parking meters on Peabody.

OR

Motion to DENY the Final Site Plan & Design for 34977 Woodward.

OR

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

**Planning Board Minutes
May 28, 2008**

**PRELIMINARY SITE PLAN AND COMMUNITY IMPACT STUDY (“CIS”)
REVIEW**

**34977 Woodward Ave.
Catalyst Development**

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

Due to the constraints of the site, the applicant is not able to provide any loading spaces on site, and intends to apply to the Board of Zoning Appeals for the required variance. The Engineering Dept. has advised that the loading for the site should occur from the Woodward Ave. right-of-way due to potential traffic conflicts on Peabody.

CIS

The applicant intends to seek financing through the Brownfield Redevelopment Authority to assist them in paying for the clean-up of this site, which has potential contamination due to its long-term use as a gasoline service station and auto repair shop. Also there is potential migration from the site to the north and also from the site to the southwest of this property that may have leached onto this site and contributed to additional contamination levels.

The applicant's traffic study by Birchler-Arroyo Associates, Inc. concluded that traffic levels in the area have gone down, so there is ample capacity there to handle any additional traffic from this development. Ten spaces are proposed in the underground parking level to provide parking for the residential component on the upper level. Most of the people using this building will use public parking facilities.

The letter received today from Wells & Associates, the City's traffic consultant, noted several general data questions. With regard to walking and transit trips, the applicant showed that approximately 10 percent of people arriving at this site would do so on foot or by transit. Therefore they were able to reduce their

anticipated trip generation by ten percent. The report should either provide support for the application of the 10 percent reduction related to Downtown Birmingham or remove it from the analysis to provide a conservative capacity analysis.

The applicant's traffic study made reference to the pedestrian cross-walk that the City has been considering implementing at the intersection of Maple Rd./Peabody St./Park St. The Birchler-Arroyo study recommends that it is doubtful that such a crosswalk would be feasible but the report does not present the information on which they relied in coming to that decision.

Further, Wells & Associates had concerns with regard to the evaluation methods and the traffic simulation models that were used.

Mr. Rod Arroyo with Birchler-Arroyo Associates, Inc. said he feels confident they can address all of the traffic review concerns that have been raised by the City's traffic consultant. A lot of it is a matter of clarifying some of the information they have already provided plus running the simulation a little longer.

They are looking at some alternatives in terms of signal timing for the pedestrian crossing of Maple Rd. at Peabody. Because Peabody is so close to Woodward Ave., you do not want to have a situation where traffic is backing up onto Woodward Ave. because signal timing is being taken away. They are proposing at the moment that the signaling situation, other than timing, would be the same.

Mr. Bruce Browning with Eckert Wordell Architects, LLC said they always have envisioned that there would be three lanes at that intersection, one headed south, one headed north, and a center left lane being unused. For off hours a truck could park in the right-hand lane for temporary loading, still maintaining the center lane which was not being used as the right turn lane. Also, there would be a single right turn off of Maple Rd. onto Peabody. Mr. Nickita suggested taking the right lane and making it a turn-out for loading, leaving one lane going north and one going south.

Mr. Arroyo indicated the reconfiguration of lanes would not have a substantial impact on volumes and backing up.

Mr. Blaesing asked how they will accommodate loading for offices and other features of the building if their only loading is off of northbound Peabody. Mr. Browning replied the entrance point to the restaurant and all of the offices is at the corner of Maple Rd. and Peabody. Ms. Ecker thought that Peabody is the best location for loading because it is the least heavily traveled.

On another subject, Mr. Browning said because they are building up to the lot line they have been in contact with a foundation retaining specialist as to how to

seal off the site to construct the sub-level. Mr. Jason Novotny with Eckert Wordell added they plan an integrated approach with the construction of the building as well as the excavation and support system. They anticipate going down 12 ft. 6 in. from grade.

Mr. Dan Cassidy with Soil and Materials Engineers, Inc. spoke about what he knows is there and how they intend to deal with it. With the proposed 12 ft. excavation all of the fill material and water will be removed and the building on native clays.

Mr. Tim Akney with the CSM Group, Construction Manager, explained they are in the preliminary stages of sorting out what type of engineered system will be used for this site, depending on the amount of contaminated water that is found and that will need to be treated.

Chairman Boyle emphasized they look to the applicant to put together a team that will ensure that whatever happens on this site is not going deleteriously affect the building immediately to the south, or any other facilities immediately in that area.

There was no public comment at 9:58 p.m.

Motion by Mr. Blaesing

Seconded by Mr. Nickita to accept the CIS for 34977 Woodward Ave, Catalyst Development, with the following conditions:

- 1) The applicant coordinate with the City and the utility companies to determine the location of any utility easements;**
- 2) Approval of the traffic study by the City's traffic consultant, Wells & Associates; and**
- 3) The applicant supply all of the requested information to satisfy the concerns of the City's traffic consultant.**

Mr. Blaesing commented that traffic levels are down. Even in the worst-case condition there doesn't seem to be a traffic problem that would be initiated by this project.

Motion carried, 7-0.

ROLLCALL VOTE

Yeas: Blaesing, Nickita, Boyle, Haberman, Lazar, Whipple-Boyce, Williams

Nays: None

Absent: None

Mr. Blaesing could not understand why the board only received the letter from the City's traffic consultant at the beginning of this meeting. The four page letter ends with the conclusion that the board should deny approval, yet the board

members had no time to review it. In the past when an applicant submitted this kind of data at the last minute the board would not consider it. He wanted to prevent this from happening in the future. Ms. Ecker was not sure what happens at the traffic consultant's end in terms of the delay, but she assured that as soon as the City receives the CIS study from the applicant it is sent by currier, next day delivery, or they pick it up. The study went to them at least three weeks ago and she just received the final draft of their response this afternoon.

Mr. Blaesing encouraged Ms. Ecker to talk to them and also asked that she mention this to Mr. Markus. He is not happy they are providing the City with this kind of service. It is not the first time this has happened; in fact, it has become almost a regular occurrence. Mr. Nickita agreed. The same standard should be expected from people who work with the board as is expected from applicants.

Ms. Ecker indicated the city attorney has advised this will be a long-term lease situation between the applicant and the City with regard to the applicant using City property to redefine the boundaries of their parcel. It will require approval by the City Commission.

Preliminary Site Plan Review

Discussion centered around the sidewalk widths.

Mr. Browning explained that they virtually achieve 10 ft. sidewalk width for the corners along Woodward Ave. It is just for the three bays in between that the sidewalk would be slightly under 10 ft. in width.

Mr. Williams suggested the applicant could relieve some of the congestion at the northeast corner by eliminating one of the trees. That would improve site lines there.

Mr. Blaesing said to the extent that the applicant is asking the City for additional land at that corner, the City certainly has a good negotiating tool to come back and ask them to take the building in a foot and a half or more to make sure there are adequate sidewalks along Maple Rd. There needs to be space for trees and space for people, and if that has an impact on the building, so be it.

Mr. Browning talked about the proposed building. The design team has decided to shoot for a LEED silver certification. They have tried to give the building some architectural balance and style. The restaurant will feature modern Italian-style dining where the chef will show the preparation of different types of featured dishes.

Ms. Patti Owens, Catalyst Development, estimated that 100 new jobs will be created as a result of the business they will be bringing. The restaurant will probably employ anywhere from forty to fifty people.

Ms. Ecker indicated the building height to the eave line is 54.6 ft. It conforms to the Zoning Ordinance.

Mr. Blaesing felt that buildings of this nature and larger have the responsibility to provide some amenities to the City of Birmingham. The City has strived over the last 20 years to introduce sculpture into as many locations as possible. Therefore, one of things he usually asks developers of significant buildings is whether or not they can find a place to locate some kind of public art which would be a gift to the citizens of Birmingham. He looks forward to the applicants coming back at final site plan review with something to offer.

Mr. Nickita asked the applicants to continue to consider outdoor dining within a niche of their building.

Chairman Boyle took the discussion to members of the public at 10:53 p.m.

Mr. Carroll DeWeese, 932 Purdy, cautioned there may not be enough capacity in the parking garage to serve the building adequately. Even with valet parking for the restaurant, where will they park? It is in the applicant's self interest to have an answer that is clear to everyone because they are talking anywhere from one hundred to two hundred additional vehicles at any given peak point in time.

Mr. Williams noted that an additional parking garage across the street in the Triangle District may be something for the City to consider, particularly as this corner becomes more developed.

Mr. Nickita said that given the complexity of the tight site, the applicant should think about incorporating the third lane along Peabody into the site plan as a loading/service zone. Chairman Boyle agreed, and urged the applicant to consider that space for circulation and for loading, perhaps using different textures, signage, and lighting.

Motion by Mr. Blaesing

Seconded by Mr. Williams to extend the meeting 15 minutes to 11:15 p.m.

Motion carried, 7-0.

VOICE VOTE

Yeas: Blaesing, Williams, Boyle, Haberman, Lazar, Nickita, Whipple-Boyce

Nays: None

Absent: None

Motion by Mr. Blaesing

Seconded by Mr. Williams to approve the preliminary site plan for 34977 Woodward Ave., Catalyst Development, subject to the following conditions:

- 9) **Provision of specification sheets for the residential condensing units prior to final site plan and design review;**
- 10) **Provision of details on the size, location and required screening for all transformers prior to final site plan and design review;**
- 11) **Identify a loading space on northbound Peabody to be included in the final site plan; and/or obtain a variance from the BZA.**
- 12) **Preparation of a streetscape plan with all required Downtown streetscape elements prior to final site plan and design review;**
- 13) **Provision of a photometric plan and specification sheets for all light fixtures;**
- 14) **Provision of information regarding the percentage of glazing on each elevation prior to final site plan and design review; and**
- 15) **Adjustment of the building footprint and planters along Woodward Ave. to provide a 10 ft. clear pedestrian walking path on the property that will be subject to the long-term lease, and a 5 ft. clear path east of Woodward Ave.**
- 16) **The preliminary site plan would exclude the one street tree on Maple Rd. closest to Woodward Ave.**

Mr. Nickita explained the idea is to have one southbound lane, one northbound lane and then the third lane being incorporated into some type of service situation along Peabody.

Chairman Boyle thought that with some modifications to the northwest corner the applicant could satisfy condition (7) without moving the building.

Mr. Williams thought it is possible to reduce the sidewalk below 10 ft. on the property at the northwest corner that the applicant will lease from the City. The City Commission may recognize that this plan can be accomplished with less than 10 ft. of sidewalk.

Motion carried, 7-0.

ROLLCALL VOTE

Yeas: Blaesing, Williams, Boyle, Haberman, Lazar, Nickita, Whipple-Boyce

Nays: None

Absent: None

Ms. Patti Owens pointed out this building has been under design for almost two years. A lot of time and money went into the project. It is a big deal to change a building that has been designed as far as this one has. Therefore, she does not want to change the footprint of the building; it very small as it is.

Motion by Mr. Haberman

Seconded by Ms. Whipple-Boyce to extend the meeting 5 minutes to 11:20 p.m.

Preliminary Site Plan & CIS Review
34977 Woodward – Catalyst Development
June 25, 2008

Motion carried, 7-0.

VOICE VOTE

Yeas: Haberman, Whipple-Boyce, Blaesing, Boyle, Lazar, Nickita, Williams

Nays: None

Absent: None

**CITY OF BIRMINGHAM
PLANNING BOARD ACTION ITEMS
OF WEDNESDAY, JUNE 25, 2008**

Item	Page
FINAL SITE PLAN REVIEW Woodward Ave. Catalyst Development New construction of a five-story, mixed-use building containing retail, office, structured parking, and two floors of residential units	2
Motion by Mr. Haberman Seconded by Mr. Williams to approve the Final Site Plan for 34977 Woodward Ave. subject to the following conditions: 1) Approval by the City Commission of a lease for the portions of City property proposed for use by the applicant on the southeast corner of Maple Rd. and Peabody, and the southwest corner of Maple Rd. and Woodward Ave.; 2) The applicant must provide details on the size, location, and required screening for all transformers and submit same for administrative approval prior to installation; 3) Obtain a loading space variance from the BZA; 4) Obtain a variance from the BZA for the 33 percent proposed first-floor glazing along Peabody; 5) Execution of a Streetscape Agreement with all required Downtown streetscape elements, including the re-location of the southbound Woodward Ave. crosswalk and the Maple Rd. crosswalk west of Park/Peabody.	5
Amended by Ms. Whipple-Boyce And accepted: Item (2) will state that the transformer will be located in the basement level.	5
Amended by Mr. Nickita And accepted: 6) The applicant is required to have clear glazing at the retail level of the building. Add to the end of Item (5) "conditioned upon M-Dot approval."	5
Motion carried, 7-0.	5

<u>Item</u>	<u>Page</u>
FINAL SITE PLAN REVIEW	6
117 Willits	
Mitchell's Fish Market	
Request for outdoor dining	
Motion by Ms. Whipple-Boyce	7
Seconded by Mr. Blaesing to approve the Final Site Plan for 117 Willits, subject to the following conditions:	
1) The applicant comply with the requirements of Article 04, section 4.41 OD-01 of the Zoning Ordinance as they relate to licensing and insurance requirements for the use of the public right-of-way;	
2) The applicant works with the Dept. of Public Works to locate a suitable location for the City bench currently located adjacent to the building;	
3) The applicant remove or adjust the two-top table along the west end of the café and rotate the planter to create a better enclosure for the café;	
4) The applicant comply with requests from City Departments;	
5) The applicant provide a detail of how they plan to address the door and the step on the northeast corner; and	
6) Tree grates are required on the trees on either side of the dining area.	
Motion carried, 6-1.	8

**CITY OF BIRMINGHAM
PLANNING BOARD PROCEEDINGS OF
WEDNESDAY, JUNE 25, 2008**

Minutes of the Joint meeting of the City of Birmingham Planning Board held June 25, 2008. Chairman Robin Boyle convened the meeting at 7:35 p.m.

Present: Chairman Robin Boyle; Board Members Brian Blaesing, Sam Haberman, Gillian Lazar, Mark Nickita, Janelle Whipple-Boyce, Bryan Williams; Student Representative Cole Fredrick

Absent: None

06-23-08

Approval of the Minutes of the Planning Board Meeting held June 11, 2008

Postponed.

06-24-08

Chairperson's Comments

The chairman commented that the projects being considered this evening are strong buildings that people will want to look after far into the future.

06-25-08

Approval of the Agenda

Ms. Ecker informed everyone that Elie's has decided to withdraw their proposal to add an elevated outdoor dining platform in addition to their existing café, in light of the City Commission's decision with respect to "Toast" not to allow extra outdoor dining on the sidewalk. The review for 122 E. Brown St. and 503-511 Pierce St. is postponed awaiting the determination of the City Commission on July 14, 2008 with regard to that parcel's zoning overlay status. The review for the former Barclay Inn site at 500 E. Maple has been postponed because they are having issues with providing the required parking on-site.

06-26-08

SPECIAL LAND USE PERMIT ("SLUP") REVIEW

**263 Pierce St
Elie's Bistro**

FINAL SITE PLAN REVIEW

**263 Pierce St
Elie's Bistro**

Withdrawn by the applicant.

06-27-08

FINAL SITE PLAN REVIEW

**34977 Woodward Ave.
Catalyst Development**

New construction of a five-story, mixed-use building containing retail, office, structured parking, and two floors of residential.

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

The applicant appeared before the Planning Board on May 28, 2008, at which time the Planning Board accepted the Community Impact Study, and approved the Preliminary Site Plan with several conditions. They are still in negotiations with the property owner to the south (Peabody's Restaurant) for an easement or a lease of property to locate the transformer. If they are unsuccessful they will put it within the building on the underground parking level beneath the dumpster area.

Ms. Ecker advised that the applicant has improved the situation for pedestrians along Woodward Ave. but they still don't provide a 10 ft. clear pedestrian walking path on the property that will be subject to a long-term lease from the City. The Engineering Dept.'s feeling is if they are leasing the property from the City they should provide more than the required 5 ft. clear pedestrian right-of-way. Mr. Bruce Browning from Eckert Wordell, LLC, the project architect, explained at its narrowest point the proposed sidewalk measures 8.81 ft. At the lobby area they provide 13.6 ft. Largely there is about an 8 ft. stretch where they are not in compliance with the Engineering Dept.'s suggestions.

Ms. Ecker advised that the applicant's consultant and the City's traffic consultant have worked out all of the details of the traffic study and the City's traffic consultant is now satisfied.

The applicant has proposed 33 percent glazing, with a minimum of 70 percent required, for the first level of the west elevation along Peabody St., and will be required to obtain a variance from the Board of Zoning Appeals ("BZA").

The applicant is required to have two loading spaces on-site and they are proposing one, but it is in the public right-of-way. The applicant will also be seeking a variance for the required loading spaces. The Engineering Dept. would like to see the area along Peabody also used for two public parking meters during peak hours of the day, so that it is not an exclusive use by this property owner of the public right-of-way. The applicant has stated in their application that they intend to limit loading to off-peak hours.

The project is scheduled to go before the BZA for the glazing and loading space variances on July 8, 2008.

The applicant will be required to obtain sign approval from the Design Review Board for all proposed signage as this is not within the jurisdiction of the Planning Board.

It was discussed that the terraces on the south side of the building could potentially be blocked by a building that may be constructed to the south. Ms. Ecker advised it is not a residential unit, and therefore the terrace is not really necessary for quality of life for someone living there. Mr. Browning explained the current plan is to use a system that has been tested UL for fire ratings. A one hour rating fits the requirement.

Mr. Blaesing verified that trucks will be able to make a 90 degree right turn onto Maple Rd. from Peabody.

Ms. Ecker passed around the materials that have been proposed for the building. Mr. Novotny pointed out where each material is used relative to the elevation. He agreed to use clear glass everywhere on the building, rather than the tinted glazing that had been originally proposed.

On another subject Mr. Novotny said the design team feels it is preferential not to have parking meters in the loading area in order to open up traffic flow through the City. The architectural design on the corner of the building is planned to be integrated into the window system. Ms. Patti Owens of Catalyst Development Co. explained it is part of the logo for Greenleaf Trust, the major tenant in the building. The design is repeated on the scone shroud. She went on to advise they are scheduled to close with the current owners of the parcel on July 2, 2008 and they are presently in negotiations for the lease of City property. The City Commission still has to grant approval.

Mr. Nickita felt that if both parking entrance and exit doors were set in it would help to articulate that wall to some degree, and it would be consistent with other conditions throughout town. The architect did not think they would be opposed to doing that, as long as there is a way to ensure that cars are not picking up speed as they come out. He went on to explain the doors will be constructed of a segmented metal grid.

The canopy design will contain a slim line tube section rail with a glass infill and a steel tieback, painted to match the window frames.

They are hoping to begin work in the fall. Mr. Tim Aiken of the CSN Group advised that the haul route will turn right off of Peabody onto Maple Rd. to Woodward Ave. Mr. Browning described the dumpster enclosure which will be carried to a height of 7 ft. At the street level one would not recognize it as a dumpster.

The chairman called for comments from the public at 8:41 p.m.

Mr. Carroll DeWeese, 932 Purdy, thought it would be appropriate to keep the loading zone continuous all day, rather than blocking the space with two parking meters.

Mr. Scott Wertman, 5562 Langley Ct., said his biggest issue is access around the building. People will be required to navigate Peabody within three 10 ft. 2 in. driving lanes. Further, he is concerned with putting a loading dock in the public right-of-way. He doesn't understand why it could not be placed within the building. He questioned why two ramps are needed for a parking garage that holds only eight to ten cars. A loading dock could be put into one of the ramps.

Ms. Ecker verified there is not a requirement to have two ramps. With regard to the driving lanes, the Engineering Dept. and the city traffic consultant studied the width of Peabody in great detail and they determined it would be best to have the three lanes south of Maple on Peabody to accommodate turning movements into and out of the various developments and particularly the City parking garage. Mr. Wertman agreed that there should not be parking meters placed at the loading dock. Deliveries occur at all times of the day. The loading space measures only 40 ft. A 50 ft. truck requires a ramp that would stick out beyond the truck. Lastly, he noted most waste pick up companies require that the dumpster be rolled out to the street.

Ms. Owens said they have had no trouble with their waste management people rolling carts out. The architect explained why maneuvering a semi into a loading dock within the building would tend to block up traffic much more than they are proposing with on-street loading.

Ms. Susan Peabody of Peabody's Restaurant said she and Ms. Owens have decided it is best to keep their transformer on their property and not compromise the integrity of Peabody's property. She asked how the construction would get staged and in what area. Ms. Ecker described the permits that are required to construct on a site. Ms.

Owens indicated they are working on a staging area and they want to be good neighbors.

Mr. Fredrick inquired if there is a Health Dept. issue regarding the transporting of food through an enclosed dumpster area. Mr. Browning replied they have not found anything that would restrict them from doing so.

Mr. Haberman announced this is a significant and architecturally pleasing building and he thanked Catalyst for proposing to make this substantial investment in Birmingham on a key intersection.

Motion by Mr. Haberman

Seconded by Mr. Williams to approve the Final Site Plan for 34977 Woodward Ave. subject to the following conditions:

- 1) Approval by the City Commission of a lease for the portions of City property proposed for use by the applicant on the southeast corner of Maple Rd. and Peabody, and the southwest corner of Maple Rd. and Woodward Ave.;**
- 2) The applicant must provide details on the size, location, and required screening for all transformers and submit same for administrative approval prior to installation;**
- 3) Obtain a loading space variance from the BZA;**
- 4) Obtain a variance from the BZA for the 33 percent proposed first-floor glazing along Peabody;**
- 5) Execution of a Streetscape Agreement with all required Downtown streetscape elements, including the re-location of the southbound Woodward Ave. crosswalk and the Maple Rd. crosswalk west of Park/Peabody.**

Amended by Ms. Whipple-Boyce

And accepted: Item (2) will state that the transformer will be located in the basement level.

Amended by Mr. Nickita

And accepted:

- 6) The applicant is required to have clear glazing at the retail level of the building.**

Add to the end of Item (5) "conditioned upon M-Dot approval."

Mr. Blaesing agreed that loading docks should be located on the building site. However, if the loading dock is difficult to get into, trucks won't use it and will stop in the middle of the street. Therefore, it is practical to provide a place to pull off the street so as not to block traffic.

There were no members of the public who wished to comment on the motion at 9:18 p.m.

Motion carried, 7-0.

ROLLCALL VOTE

Yeas: Haberman, Williams, Blaesing, Boyle, Lazar, Nickita, Whipple-Boyce

Nays: None

Absent: None

The board took a short recess at 9:20 p.m.

06-28-08

FINAL SITE PLAN REVIEW

117 Willits

Mitchell's Fish Market

Request for outdoor dining

Ms. Robinson reported that the subject site is located on the south side of Willits and the east side of Bates St. The parcel is zoned B-4 Business-Residential and D-4 in the Downtown Overlay District. The applicant is proposing to add an outdoor café adjacent to the building in the right-of-way along the corner of Willits and Bates. The proposed outdoor café will be located on the City sidewalk. The outdoor café is a permitted accessory use in the B-4 Zoning District per Article 04, Section 4.44 OD-O1.

The applicant has proposed one new trash receptacle within the outdoor dining area, as required by Article 04, section 4.41 OD-O1 of the Zoning Ordinance. The trash receptacle will be held within a wooded outdoor service station which will be painted black. In addition, the café enclosure will be created with 13 planters made of black painted metal at the top of a railing system. The outdoor café and enclosure are proposed to follow the curvature of the building along the corner. The applicant is proposing five 36 in. x 36 in. square teak tables, seven 24 in. x 30 in. teak tables, and 34 teak arm chairs with silver metal frames.

The proposed outdoor dining area will maintain a 5 ft. minimum width of unobstructed pedestrian access adjacent to the café enclosure in the public right-of-way. The Planning Division recommends that the two-top table located on the west end of the outdoor café be removed or adjusted and that the planter be shifted to set perpendicular to the storefront in order to create a better enclosure.

The site is located in a Historic District, and thus approval of the Historic District Commission ("HDC") is required.

There are four designated valet parking spaces east of the café. Ms. Robinson read a couple of letters into the record. One letter was against approval of the outdoor dining, and the other questioned how the compound use of outdoor dining and valet parking is appropriate or acceptable.

Mr. Nickita suggested there would be a lot more space for outdoor seating if it were across the pedestrian path rather than up against the building. This would help the pedestrian flow. Ms. Ecker explained that, given the location of the existing doors, the proposal is to have them open directly into the dining area.

Mr. John Carlin, attorney for the applicant, said they agree to move the table and turn the corner on the west end. They also agree with the enclosure, and don't think that the valet is really an issue because it is far enough away. There will be no music, so the only noise would be from conversation. Because of the location of the doors, the delivery of food service is a lot easier if the café is against the building. There is quite a bit of room for pedestrian traffic flow.

Mr. Keith Joseph with Mitchell's Fish Market said they had considered moving the seating out away from the building. However it would not be conducive to the traffic flow of pedestrians if their patrons and servers were criss-crossing pedestrian traffic back and forth. That would make it cumbersome and very challenging to maintain the level of service and security that they would like to provide for everybody.

Ms. Whipple-Boyce pointed out that the east door needs a step that would protrude out into the walkway in the winter months. Mr. Joseph said they will add a step that can be removed. He agreed to put grates around the City trees.

Chairman Boyle pointed out that the City reviews outdoor dining every year. Whatever the board does this evening will be viewed as an experiment to see how it works for the restaurant and how it works for pedestrians. Mr. Williams noted that the current process doesn't ensure this will come back to the Planning Board. Mr. Haberman thought this is a good, simple plan and the board should just move on and approve it. Mr. Nickita said that outside seating becomes an impediment in the pedestrian flow if the board is not careful. He does not want to approve something that he thinks is fundamentally less than ideal.

Ms. Whipple-Boyce thought that placing grates on the trees on either side of the dining may help to clear up obstacles.

Chairman Boyle called for public comments at 10:08 p.m.

Mr. Carroll DeWeese thought the board should pay particular attention to Mr. Nickita's comments. As a pedestrian he has always felt more comfortable walking between the building and the outdoor café.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Blaesing to approve the Final Site Plan for 117 Willits, subject to the following conditions:

- 1) The applicant comply with the requirements of Article 04, section 4.41 OD-01 of the Zoning Ordinance as they relate to licensing and insurance requirements for the use of the public right-of-way;
- 2) The applicant works with the Dept. of Public Works to locate a suitable location for the City bench currently located adjacent to the building;
- 3) The applicant remove or adjust the two-top table along the west end of the café and rotate the planter to create a better enclosure for the café;
- 4) The applicant comply with requests from City Departments;
- 5) The applicant provide a detail of how they plan to address the door and the step on the northeast corner; and
- 6) Tree grates are required on the trees on either side of the dining area.

Motion carried, 6-1.

ROLLCALL VOTE

Yeas: Whipple-Boyce, Blaesing, Boyle, Haberman, Lazar, Williams

Nays: Nickita

Absent: None

06-29-08

PRELIMINARY SITE PLAN AND COMMUNITY IMPACT STUDY ("CIS") REVIEW

122 E. Brown St. and 503-511 Pierce St.

New construction of a two-story retail and office building and a four-story residential building with associated parking

Request by applicant for postponement to July 23, 2008.

06-30-08

PRELIMINARY SITE PLAN AND COMMUNITY IMPACT STUDY ("CIS") REVIEW

500 E. Maple Rd. (former Barclay Inn)

Hampton Inn and Suites

Demolition of existing buildings and construction of an eight-story mixed-use building containing retail, office, structured parking, a bistro, and a Hampton Inn and Suites

Request by the applicant for postponement to July 23, 2008.

06-31-08

Meeting Open to the Public for Items Not On the Agenda (none)

06-32-08

Miscellaneous Business and Communications

Communications (none)

Administrative Approvals

- 588 S. Old Woodward Ave., Phoenicia Restaurant –
 - 1) Change details of planters. Planter boxes attached steel 20 ft. x 20 ft. square to railing. (previously approved clay pots.)
 - 2) Specification sheet for trash can.
- 735 Forest Ave., Forest Ave. Development –
 - 1) Approval of street lights.
 - 2) Approval of tree and tree grate locations.
 - 3) Approval of exposed aggregate sidewalks.
- 260 N. Old Woodward Ave., Chen Chow – Added trash receptacle.
 - 1) Re-do outdoor seating area.
- Ms. Ecker advised that the Dept. of Public Service wants to add a plaque to the Rotary Garden at the corner of Merrill St. and Pierce St. No one objected.
- New public art locations have been determined:
 - The wall of the North Old Woodward Ave. Parking Deck;
 - A sculpture at the east entrance of City Hall; and
 - Relocate the Dancing Fish from the Library over by Quarton Lake south of the waterfall.
- Chocolat would like to add three tables and six chairs of outdoor dining in the indentation of their building. All were in agreement to allow administrative approval.

Draft Agenda for the next Regular Planning Board Meeting of July 9, 2008

There are two public hearings set, one for the Michigan Zoning Enabling Act changes and one for the uses and regulations in the O-1 and O-2 Zoning Districts.

Other Business

Ms. Ecker explained with respect to wayfinding that the City Commission had approved up to \$12,500. However the vendor that quoted that amount is no longer willing to do it for that. The City Manager has requested that this be brought back before the City Commission on July 14, 2008.

Holy Name Church will be back before the Planning Board on July 25, 2008 for the Rectory and for extension of their parking lot. Ms. Ecker agreed to consult the City Attorney prior to the hearing with respect to the issue of conflicts.

06-33-08

Planning Division Action Items

Staff report on previous requests

Ms. Ecker indicated that the building at Forest and Elm has not submitted options for their bricked up windows.

Additional items from tonight's meeting (none)

06-34-08

Adjournment

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

Respectfully submitted,

Jana Ecker
Planning Director



MEMORANDUM

Planning Division

DATE: September 6, 2017

TO: Planning Board Members

FROM: Nicholas Dupuis, Planning Intern

APPROVED: Jana L. Ecker, Planning Director

SUBJECT: Rezoning Request for 191 N. Chester – The First Church of Christ, Scientist

The property owner (Parcel Number 1925356023) of 191 N. Chester (The First Church of Christ, Scientist), is requesting that the Planning Board to consider the rezoning of the property from TZ-1 (Transitional Zone 1) to TZ-2 (Transitional Zone 2). The applicant is proposing to keep the building as-is on site while renovating the inside to suit an office use.

The subject site is located on the west side of N. Chester, with single family homes to the north and office/commercial buildings to the south (Integra Building) and east (McCann Worldgroup Building). The area of the site is .40 acres, the building is 16,000 sq. ft. in size. A copy of the Certified Land Survey for the property is attached. The subject property is in the Downtown Overlay District and is zoned C - Community Use, due to its former use as a Church.

The applicant is seeking a rezoning as they would like to convert the former Church building into an office use. In the current TZ1 zoning district, office uses are not permitted. When the property was last rezoned from R4, the TZ2 zone did not exist. The only other option at the time was TZ3, whose wide commercial uses could have damaged the intended buffer between residential and commercial uses. Thus, the property was rezoned TZ1 to keep the sensitive buffer zone intact. The applicant states that with the City's adoption of TZ2 into the Zoning Ordinance, the TZ2 classification would be better suited for the following reasons:

- The building is no longer suitable for a Church or other religious use. The applicant has marketed the property with a reputable religious broker in the area, which proved that there is no market for a 16,000 sq. ft. facility, especially with the amount of expense that the building would require to stay operational, before even considering rent. Therefore, keeping a Church as a legal non-conforming use is off the table.
- While the building is in good condition, it is not suitable to be converted into residential. Unlike the loft style renovations of old warehouses in Pontiac and Detroit into apartments/condominiums, which are easy to do because of the wide-open, box type nature of those structures, this building has 6 different levels, along with a very complicated configuration/load bearing walls with corridors, etc., that does not lend itself to adaptive reuse as a residential development.
- By keeping this property as TZ1, the landlord is in essence forced to tear the building down as it cannot be converted to residential. This building has been in the community

for over 90 years, and has historical significance. There are very few heritage type buildings left in town, and it would be a shame to demolish a structure that lends itself well to an adaptive reuse.

- The neighbors and community are used to the building. During a meeting held with the surrounding neighbors on Willits back in March of 2017, the applicant presented the idea of converting the building to an office, which was widely accepted and well received as everyone is already familiar with the mass and scale of the existing building.
- The applicant is looking to simply preserve and restore the outside of the building, and renovate the inside for office use.
- The building is also well short of the zero lot line. If the applicant were to tear the building down and build residential to fit the current zoning, the development would be maximized to cover as much height and surface area as possible. This along with the extra traffic trips taken by residential (nights, weekends, multiple trips per day) would be more disruptive to the neighborhood as opposed to simply leaving what is already there, which sits well within the property line threshold.
- Although the building is part of the Parking Assessment District and is very close to the Chester Street Deck, there will be onsite parking which will not impact the parking shortage that the city currently faces.
- The building is already surrounded by commercial uses and does not have very good views for a residential apartment/condo complex, without increasing the height of the building.

History of Property

The First Church of Christ, Scientist was originally built in 1926 and has been used as such ever since. In 2015, the property was rezoned from R4 to TZ1. In the Downtown Overlay Zoning District, the property is zoned C, Community Use. In 2016, the church was relocated and the building at 191 N. Chester was sold. The only physical modification done to the building was in 1956, when an addition was added to the existing Church. The Church building is still present today, and in fair condition.

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 subject property was purchased because of the desire to enjoy and preserve the current building, the Christian Science Church, which is currently, and has been, situated on the same piece of land for over 90 years. The first option considered was whether or not the building could

continue to be used for religious purposes, thus being able to preserve and enjoy it. Over the last 14 months, Surnow has marketed the property with a reputable religious broker in the area, and has proved there is no market for a 16,000 sq. ft. facility, especially with how large it is and the amount of expense that the building would require to stay operational (CAM, Insurance, Taxes, etc.) before even considering rent. Due to a market that is non-existent, it was concluded that the building is no longer suited for a religious use.

- With the current zoning being TZ1, the Surnow Company has invested significant resources in determining whether or not the Christian Science Church could be converted to a residential building, with the goal of preserving what is currently there. Based on the following reasons, it was found that having a residential use while also preserving the Church was simply not feasible.
 - The lack of feasibility in converting the church to a residential structure had to do with multiple issues, including the lack of glass and views. Most residential units demand plenty of windows as well as a surrounding view of the neighborhood for the residents to enjoy. The Church has a very limited amount of glass windows, and approximately two thirds of the glass is currently located in areas that are undesirable for views. The building is mainly surrounded by massive office structures, with the McCann Worldgroup building to the east, and the Integra building to the south. That only leaves one side view of Willits to the north, which would potentially require the landlord to punch out and destroy the brick to allow for large glass openings.
 - Converting the Church to a residential structure was also compared to the loft-style renovations of old warehouses in Pontiac and Detroit into apartments/condominiums. The loft-style conversions lend themselves to a residential use because of the wide open, box-type nature of those structures. The Church building has 5 or 6 different levels, at least two of which a person cannot even stand in, and the building also has a very complicated configuration with multiple corridors, etc. Almost all of these hallways and rooms are entirely supported by load bearing walls, and with very tight and awkward configurations. This would require a significant amount of demolition and construction to the point where it doesn't make sense to keep the building for creating a residential environment. With an office development, however, we can utilize those areas for storage, copy machine/office supply areas, janitorial closets, HVAC equipment, utility/phone/data rooms, small conference rooms, or small executive offices. Because of the demand for open areas and view with residential, economically it would make more sense to completely demolish the current building and build residential from the ground up. Of course having new construction still does not negate the fact that the building would still be surrounded by commercial office as well as the restricted views.

- Therefore, with the lack of a religious market, along with the fact that the building is not able to be converted into a residential use, the current residential zoning ordinance essentially forces the landlord to demolish the current building. This action would then prevent the preservation of the building and enjoyment of the rights of usage commonly associated with owning this property.

2. An explanation of why the existing zoning classification is no longer appropriate

Applicant response:

- The existing zoning classification of TZ1 is no longer appropriate because demolishing the current building and replacing with new construction will heavily impact and change the feeling of the neighborhood. In March of 2017, a meeting was held between the Surnow Company and the neighborhood surrounding the Church. The feedback received was that this building has been part of the community for over 90 years. The neighbors like the building, are used to the building, and they would prefer to keep it since they feel it is a historically significant structure.
- If the Church was to be torn down for new residential construction, the development would be maximized to cover as much of the height and surface area as possible. A new building would require a much greater footprint on the land, as the church is currently well short of the zero lot line. With a residential development, the landlord would have to decrease the setbacks in order to maximize what is allowed. Also, as the property is in the D4 overlay, the landlord can build higher with multiple stories, thus also changing the low-rise nature of the Church. See Exhibit A for the current property line and building, the proposed office development, and the massing study shown for what could built for residential. This would not only greatly impact the neighborhood due to scale and visibility, but a vital piece of Birmingham's history would essentially be eliminated by replacing the structure with a new building.
- In addition to having the impact to the neighborhood associated with a new structure, the neighborhood will also be impacted due to the extra traffic trips taken by residential compared to office. With onsite parking for residential, there are extra trips taken on nights, weekends, holidays, etc., as well as multiple trips per day. With office, tenants typically arrive once at 9 AM, and depart once at 5PM when leaving. Although the building is part of the Parking Assessment District and is very close to the Chester Street Deck, there will be onsite parking sufficient to accommodate the office tenants, which not only make the building more attractive to high profile tenants, but will also not impact the parking shortage that the city currently faces. The Surnow Group believes that this is a win-win situation, and they have already started ideas with the engineering department to control the flow of traffic properly. These conversations are necessary whether we keep the building or go residential.

- Despite the negative effects of changing the look and feel of the neighborhood, it would be a shame to demolish a structure that lends itself so well to an adaptive reuse. At the neighbor meeting, it was concluded that there are very few heritage type buildings left in town, and that keeping the current structure has the least amount of impact on the community, including scale, visibility, and traffic.

3. An explanation of why the proposed rezoning will not be detrimental to the surrounding properties.

Applicant response:

- The proposed zoning change from TZ1 to the TZ2 classification will not be detrimental to the surrounding properties, because the Surnow Company is keeping exactly what is there today. One of the other projects that the Surnow Company completed in 2011 was the renovation of the Birmingham Post Office building. While the inside of the building was completely updated to a modern, Class A office environment as well as brought to code, the outside of the building was completely preserved to keep the original look and feel of the historic structure. The project ended up being so low impacts to the surrounding properties and the neighborhood that even to this day, almost 7 years later, individuals enter multiple times a week looking to mail an envelope or package, still thinking it is a post office.
- Similar to the Post office project, the Surnow Company is looking to restore the outside of the current Church building, which will greatly minimize the impact to the surrounding properties. While the inside will be remodeled to the same standards as other Surnow buildings in town, the company will only be fixing or replacing, not changing, the exterior windows, limestone and masonry detail, as well as any other exterior repairs needed to maintain what is original.
- As discussed in our March 2017 meeting with neighbors on Willits, the only potential impact would be the traffic impact of offsite parking for the office tenants. However, the onsite parking required with the construction of new residential units would have a heavier impact to the neighborhood, as mentioned above. It is also noted that only one side of the building faces the Willits neighborhood, the other sides of the building are surrounded by commercial.
- To put it simply, what is seen today will be seen tomorrow. For the reasons above, the Surnow Company believes the proposed rezoning will not be detrimental to the surrounding properties.

Article 7, section 7.02 of the Zoning Ordinance further states:

Applications for amendments that are intended to change the zoning classification of a particular property shall be accompanied by a plot plan. (See attached)

Information required on plot plans shall be as follows:

1. Applicant's name, address and telephone number.
2. Scale, north point, and dates of submission and revisions.
3. Zoning classification of petitioner's parcel and all abutting parcels.
4. Existing lot lines, building lines, structures, parking areas, driveways, and other improvements on the site and within 100 feet of the site.
5. Existing use of the property.
6. Dimensions, centerlines and right-of-way widths of all abutting streets and alleys.
7. Location of existing drainage courses, floodplains, lakes, streams, and wood lots.
8. All existing easements.
9. Location of existing sanitary systems and or septic systems.
10. Location and size of existing water mains, well sites and building service.
11. Identification and seal of architect, engineer, land surveyor, or landscape architect who prepared the plans. If any of the items listed above are not applicable to a particular plot plan, the applicant must specify in the plot plan which items do not apply and, furthermore, why the items are not applicable.

A land survey was provided by the applicant and submitted to the Planning Board (see attached) that includes all of the required elements.

Article 7 section 7.02 of the Zoning Ordinance further states:

The Planning Board shall hold at least one public hearing on each application for amendment at such time and place as shall be established by the Planning Board.

The Planning Board shall make findings based on the evidence presented to it with respect to the following matters:

- a. The objectives of the City's then current master plan and the City's 2016 plan.
- b. Existing uses of property within in the general area of the property in question.
- c. Zoning classification of property within the general area of the property in question.
- d. The suitability of the property in question to the uses permitted under the existing zoning classification.
- e. The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.

Planning Division Analysis

A. The objectives of the City's then current master plan and the City's 2016 Plan

The City's current master plan is The Birmingham Future Land Use Plan ("Master Plan") which was the last comprehensive plan done for the entire City in 1980. The residential area to the north and west of 191 N. Chester is not identified in the Master Plan as a

sensitive residential area. It is identified as the edge of the CBD. Commercial Development Policy 4 in the Master Plan states:

Whenever possible, commercial areas in close proximity to residential development should be restricted to office and low-intensity commercial uses.

As the western edge of the CBD is in close proximity to residential development, the proposed office use would comply with Policy 4 in the Master Plan.

The Downtown Birmingham 2016 Plan focuses on retaining and enhancing the character and vitality of Downtown Birmingham. The subject property, existing in a sensitive transitional zone between commercial and residential, aims to accomplish the intent of the Downtown Birmingham 2016 Plan (2016 Plan), retaining the character of the area through adaptive reuse. In accordance with the 2016 Plan vision statement (pg. 181), the proposed development can certainly add to the economic viability of the Downtown business community and ensure good land use transitions and structural compatibility in form and mass to the traditional, residential neighborhoods surrounding Downtown.

The intersections at Chester and Maple Road (nearby intersection), as well as Chester and Willits (subject property at this intersection), were specifically targeted for improvements in the 2016 Plan. The improvements were envisioned to enhance local access and circulation in the downtown and improve the ease of pedestrian crossing at these intersections. Although unrelated to circulation, the subject properties proposed renovation will not change the dynamic of the intersections by demolishing the existing structure and rebuilding residential units. The intersections will remain improved and viable throughout the rehabilitation.

Section 1.04 of the Birmingham Zoning Ordinance states: the purpose of the Zoning Ordinance is to guide the growth and development of the City in accordance with the goals, objectives and strategies stated within the Birmingham Future Land Use Plan and the Downtown Birmingham 2016 Plan. A review of both plans reveals that the proposal to rezone the subject property to a TZ2 District meets the spirit and intent of the ordinance. The adaptive reuse of a vacant historic building would not only support growth and development, but also keep the character of the neighborhood intact.

Rezoning the subject property from TZ1 to TZ2 will support the intent of the City's Master Plan, the Downtown Birmingham 2016 Plan and uphold the purpose of the Birmingham Zoning Ordinance.

B. Existing uses of property within the general area of the property in question

North of the subject site across Willits Street there are single family homes. The west side of the property, behind the building, also abuts single family homes. To the east of the property, the McCann Worldgroup office/commercial building resides. Lastly, the Integra Building (office/commercial) is to the south.

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	Single Family Residential	Office, Commercial	Office, Commercial	Single Family Residential
Existing Zoning	R2, Single Family Residential	TZ3, Transitional Zone 3	B-4, Business-Residential	R-2, Single Family Residential
Overlay Zoning	N/A	D4	D4	N/A

C. Zoning classification of property within the general area of the property in question

The general area, aside from the immediate properties in relation to the subject property described above, are zoned R6 – Multi Family Residential and PP – Public Property. Public property includes the nearby Chester Street Parking Deck, Booth Park, and the Birmingham Historical Museum and Park.

D. The suitability of the property in question to the uses permitted under the existing zoning classification.

Under the current zoning, the building would be useless unless torn down and the land newly constructed upon. The TZ1 district does not permit a church, but the building is currently a legal non-conforming use. As described above, it is not economically feasible to convert the existing building to residential use, which is the only use permitted in the TZ1 zoning classification. Thus, if the community desires to preserve the existing structure, residential uses are not suitable.

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 subject property is located along the outer edge of the Downtown Overlay District. The majority of adjacent properties are also in the Overlay District, except the residential properties to the north and west. The Integra Building to the south was built to its final form in 2016 having added a lobby to an existing 3-story office building. The McCann Worldgroup building was completed in 2005. Being such an old building, the subject property has watched Downtown Birmingham change and grow from the start to what it is today. Aside from the residential sections on two sides, development has been toward office/commercial uses in that corridor. The proposed rezoning would continue the trend of office/commercial uses.

Departmental Reports

1. Engineering Division – No concerns were reported.
2. Department of Public Services – No concerns were reported.
3. Fire Department – The Fire Department has no concerns with this site plan at this time.

One note: the parking area will require fire suppression.

4. Police Department – The Police Department does not have any concerns.
5. Building Department – No comments were received.

Planning Department Findings

Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable master plan documents, current zoning and recent development trends in the area, the Planning Department finds that the applicant meets the established ordinance requirements to qualify for a rezoning of the property from TZ1 (Transitional Zone 1) to TZ2 (Transitional Zone 2) to permit the adaptive reuse of the building for office/commercial use. Given the recommendations of the Master Plan and the 2016 Plan, the existing mix of uses in the immediate neighborhood and given the age and character of the building, the proposal to adaptively reuse the building is appropriate and compatible with the area. The following sample motions with attached conditions have been provided in the event that the Planning Board deems it appropriate to send a recommendation of approval forward to the City Commission.

Sample Motion Language

Based on a review of the rezoning request and supporting documentation submitted by the applicant, a review of the applicable master plan documents and the development trends in the area, the Planning Board recommends APPROVAL to the City Commission for the rezoning of 191 N. Chester from TZ1 (Transitional Zone 1) to TZ2 (Transitional Zone 2).

OR

Motion to recommend POSTPONEMENT of the applicant's request for the rezoning of the property at 191 N. Chester from TZ1 (Transitional Zone 1) to TZ2 (Transitional Zone 2), pending review and approval of the following:

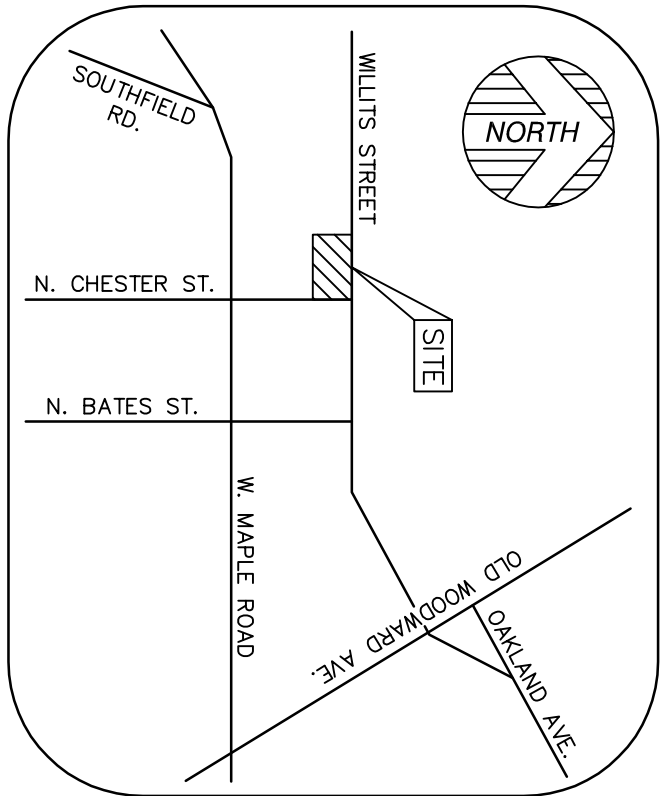
1. A site plan and elevation drawings detailing the proposed development of the property for office/commercial use.

OR

Motion to recommend DENIAL to the City Commission of the applicant's request for the rezoning of the property at 191 N. Chester from TZ1 (Transitional Zone 1) to TZ2 (Transitional Zone 2), for the following reasons:

1. _____
2. _____
3. _____

ALTA/NSPS LAND TITLE SURVEY



VICINITY MAP
(NOT TO SCALE)

PARKING

NO ON SITE MARKED PARKING.

PARCEL AREA

17,370± SQUARE FEET = 0.40± ACRES

BASIS OF BEARING

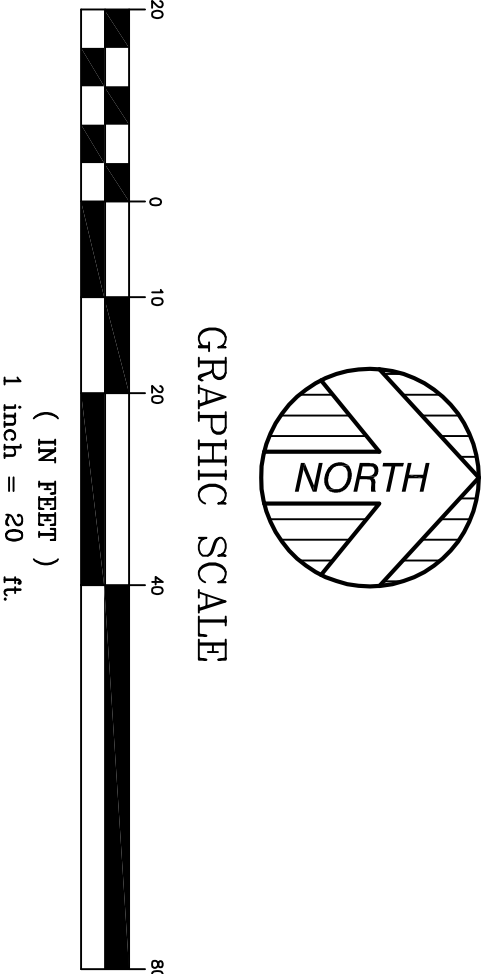
NORTH 87°08'28" EAST BEING THE ASSUMED BEARING
ON THE SOUTHERLY RIGHT OF WAY LINE OF WILLETS
STREET

SURVEYOR'S NOTE

THE UNDERGROUND UTILITIES SHOWN HAVE BEEN LOCATED FROM FIELD
SURVEY INFORMATION AND EXISTING DRAWINGS. THE SURVEYOR MAKES
NO GUARANTEES THAT THE UNDERGROUND UTILITIES SHOWN COMPRISE
ALL UTILITIES THAT MAY BE PRESENT. THE SURVEYOR FURTHER DOES NOT WARRANT THAT THE UNDERGROUND
UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED ALTHOUGH HE
HAS EXERCISED REASONABLE CARE AND DILIGENCE IN LOCATING THE UTILITIES
AND HAS NO KNOWLEDGE OF ANY OTHER UTILITIES LOCATED THE UNDERGROUND UTILITIES OTHER THAN THE STRUCTURE
INVENTORY SHOWN HEREON.

LEGEND

- SET 1/2" REBAR WITH CAP P.S. 47976
- (R&M) FOUND MONUMENT (AS NOTED)
- (R) RECORD AND MEASURED DIMENSION
- (M) MEASURED DIMENSION
- Ⓢ ELECTRIC MANHOLE
- Ⓣ TRANSFORMER
- GAS METER
- Ⓢ UTILITY POLE
- Ⓢ GAS VALVE
- Ⓢ PUBLIC LIGHTING MANHOLE
- Ⓢ TELEPHONE SIGNAL MANHOLE
- Ⓢ SANITARY MANHOLE
- Ⓢ SQUARE CATCH BASIN
- Ⓢ DRAIN
- Ⓢ STORM DRAIN MANHOLE
- Ⓢ CLEANOUT
- Ⓢ FIRE HYDRANT
- Ⓢ WATER GATE MANHOLE
- Ⓢ UNKNOWN MANHOLE
- BOLLARD
- ☆ LIGHTPOST/LAMP POST
- PARKING METER
- SINGLE POST SIGN
- PARCEL BOUNDARY LINE
- PLATTED LOT LINE
- BUILDING
- BUILDING OVERHANG
- CONCRETE CURB
- PARKING
- EDGE OF CONCRETE (CONC.)
- EDGE OF ASPHALT (ASPH.)
- FENCE OF BRICK
- FENCE (AS NOTED)
- WALL (AS NOTED)
- OVERHEAD UTILITY LINE
- GAS LINE
- SANITARY LINE
- D STORM LINE
- W WATER LINE



PROPERTY DESCRIPTION

LAND SITUATED IN THE CITY OF BRIMMINGHAM, COUNTY OF OAKLAND, STATE
OF MICHIGAN, DESCRIBED AS FOLLOWS:
THE NORTH 96.50 FEET OF LOTS 14, 15 AND 16 OF WILLETS ADDITION TO
THE CITY OF BRIMMINGHAM ACCORDING TO THE PLAT THEREOF AS RECORDED
IN LIBER 3 OF PLATS, PAGE 6, OAKLAND COUNTY RECORDS.

TITLE REPORT NOTE

ONLY THOSE RECORDS CONTAINED WITHIN THE TITLE REPORT ILLU-
STRATED HEREON HAVE BEEN REVIEWED BY THE SURVEYOR. OTHER
COMMITMENT NO. 1013-57239 DATED FEBRUARY 2, 2015, AND RELEAS-
ED BELOW WERE CONSIDERED FOR THIS SURVEY. NO OTHER RECORDS RESEARCH
WAS PERFORMED BY THE CERTIFYING SURVEYOR.
NO SPECIFIC EASEMENTS LISTED

SURVEYOR'S CERTIFICATION

I, CHESTER STREET PARTNERS, LLC, AND ASSOCIATES, INC., TITLE
SURVEYOR, LICENSE NO. 47976, DO HEREBY CERTIFY THAT THIS
SURVEY WAS PREPARED BY ME OR UNDER MY CLOSE PERSONAL
SUPERVISION AND THAT I AM A MEMBER IN GOOD STANDING OF THE
MICHIGAN SURVEYORS ASSOCIATION. I HAVE NOT BEEN DIS-
CIPLINED BY THE MICHIGAN SURVEYORS BOARD OR THE MICHIGAN
SURVEYORS ASSOCIATION. I HAVE NOT BEEN CONVICTED OF A
CRIME INVOLVING FRAUD, PERJURY, OR A CRIME INVOLVING
THE OBTAINING OF MONEY OR PROPERTY BY FRAUD OR
THE OBTAINING OF MONEY OR PROPERTY BY THE USE OF
FALSE INFORMATION. I HAVE NOT BEEN CONVICTED OF A
CRIME INVOLVING THE OBTAINING OF MONEY OR PROPERTY
BY THE USE OF FALSE INFORMATION. I HAVE NOT BEEN
CONVICTED OF A CRIME INVOLVING THE OBTAINING OF
MONEY OR PROPERTY BY THE USE OF FALSE INFORMATION.
DATE OF PLAT OR MAP: 11/29/2016

ANTHONY T. STOKO, JR., P.S.
PROFESSIONAL SURVEYOR
MICHIGAN LICENSE NO. 47976



PREPARED FOR: CHESTER STREET PARTNERS, LLC

DATE: NOVEMBER 29, 2016 JOB #: 16-0432

SCALE: 1" = 20' SHEET: 1 OF 1

DRAWN BY: JA REV:

August 29, 2017

City Commission
151 Martin Street
Birmingham, MI 48009

RE: Rezoning of 191 N. Chester Street (First Church of Christ, Scientist)

Dear Commissioners:

The First Church of Christ, Scientist was originally owned and built in 1926 by the Christian Science congregation. For over 90 years, the Christian Science group occupied and maintained this building until they vacated in December of 2016 due to lack of funding. It was one of the longest tenancies in the history of Birmingham. The building's Greek revival architecture is almost identical to the Christian Science churches built throughout the country during that time in the early 1900's. While now vacant, the building is in good working order as well as structurally sound. Almost everything is in original condition, although there was an add-on done to the building in the late 60's.

In September of 2015, the property was rezoned from R4 to TZ1. Unfortunately, the only other zoning option at the time of the rezoning was TZ3, which has a wide variety of commercial uses and would have prevented the intended buffer between reasonable commercial uses and single family residential. As TZ2 was subsequently adopted in 2017 as part of the city's zoning ordinance, we believe that this is the appropriate classification for 191 N. Chester, specifically so we can keep the structure by converting it to a Class A office building and have onsite parking. Please refer to the below responses that justify the rationale for this proposed zoning change from TZ1 to TZ2:

An explanation of why the rezoning is necessary for the preservation and enjoyment of the rights of usage commonly associated with property ownership:

- The subject property was purchased because of the desire to enjoy and preserve the current building, the Christian Science Church, which is currently and has been situated on the same piece of land for over 90 years. The first option we considered was whether or not the building could continue to be used for religious purposes, thus being able to preserve and enjoy it. Over the last 14 months, Surnow has marketed the property with a reputable religious broker in the area, and has proved there is no market for a 16,000 sq ft facility, especially with how large it is and the amount of expense that the building would require to stay operational (CAM, Insurance, Taxes) before even considering rent. Due to a market that is non-existent, it was concluded that the building is no longer suitable

for a religious use.

- With the current residential zoning being TZ1, The Surnow Company has invested significant resources in determining whether or not the Christian Science Church could be converted to a residential building, with the goal of preserving what is currently there. Based on the following reasons, it was found that having a residential use while also preserving the Church was simply not feasible.
- The lack of feasibility in converting the church to a residential structure had to do with multiple issues, including the lack of glass and views. Most residential units demand plenty of windows as well as a surrounding view of the neighborhood for the residents to enjoy. The Church has a very limited amount of glass windows, and approximately two thirds of the glass is currently located in areas that are undesirable for views. The building is mainly surrounded by massive office structures, with the Mcann Worldgroup Building to the east, and the Integra Building to the south. That only leaves one side view of Willits to the north, which would potentially require the landlord to punch out and destroy the brick to allow for large glass openings.
- Converting the Church to a residential structure was also compared to the loft style renovations of old warehouses in Pontiac and Detroit into apartments/condominiums. The loft style conversions lend itself to a residential use because of the wide-open, box-type nature of those structures. The Church building has 5 or 6 different levels, at least two of which a person cannot even stand in, and the building also has very complicated configuration with multiple corridors, etc. Almost all of these hallways and rooms are entirely supported by load bearing walls, and with very tight and awkward configurations. This would require a significant amount of demolition and construction to the point where it doesn't make sense to keep the building for creating a residential environment. With an office development, however, we can utilize those areas for storage, copy machine/office supply areas, janitorial closets, HVAC equipment locations, utility/phone/data demark rooms, small conference rooms, or small executive offices. Because of the demand for open areas and view with residential, economically it would make more sense to completely demolish the current building and build residential from the ground up. Of course having new construction still does not negate the fact that you are surrounded by commercial office as well as the restricted views.
- Therefore, with the lack of a religious market, along with the fact that the Building is not able to be converted to a residential unit, the current residential zoning ordinance essentially forces the landlord to demolish the current building.

This action would then prevent the preservation of the Building and enjoyment of the rights of usage commonly associated with owning this property.

An explanation of why the existing zoning classification is no longer appropriate:

- The existing zoning classification of TZ1 is no longer appropriate because demolishing the current building and replacing with new construction will heavily impact and change the feeling of the neighborhood. In March of 2017, a meeting was held between the Surnow Company and the neighborhood surrounding the Church. The feedback received was that this building has been

part of the community for over 90 years. The neighbors like the building, are used to it, and they would prefer to keep it since it is a historically significant structure.

- If the Church was to be torn down with new residential, the development would be maximized to cover as much height and surface area as possible. A new building would require a much greater footprint on the land, as the Church is currently well short of the zero-lot line. With a residential development, the landlord would have to decrease the setbacks in order to maximize what is allowed. Also, as the property is in the D4 overlay, where the landlord can build higher with multiple stories, thus also changing the low-rise nature of the church. See Exhibit A for the current property line and building, the proposed office development, and the massing study shown for what we would build for residential. This would not only greatly impact the neighborhood due to scale and visibility, but a vital piece of Birmingham's history is essentially eliminated by replacing the structure with a new building.
- In addition to having the impact to the neighborhood associated with a new structure, the neighborhood will also be impacted due to the extra traffic trips taken by residential compared to office. With onsite parking for residential, there are extra trips taken on nights, weekends, holidays, etc, as well as multiple trips per day. With office, tenants typically arrive once at 9am, and depart once at 5pm when leaving. Although the building is part of the parking assessment district and is very close to the Chester Street Deck, there will be onsite parking sufficient to accommodate the office tenants, which not only makes the building more attractive to high profile tenants, but will also not impact the parking shortage that the city currently faces. To us that is a win-win situation, and we have already started ideas with the engineering department to control the flow of traffic properly. These conversations are necessary whether we keep the building or go residential.
- Despite the negative effects of changing the look and feel of the neighborhood, it

would be a shame to demolish a structure that lends itself so well to an adaptive re-use. At the neighbor meeting, it was then concluded that there are very few heritage type buildings left in town, and that keeping the current structure has the least amount of impact on the community, including scale, visibility, and the traffic.

An explanation of why the proposed rezoning will not be detrimental to the surrounding properties:

- The proposed zoning change from TZ1 to the TZ2 classification will not be detrimental to the surrounding properties, because we are keeping exactly what you see today. One of the other projects that our company completed in 2011 was the renovation of the Birmingham Post Office Building. While the inside of the building was completely updated to a modern, Class A office environment as well as brought to code, the outside of the building was completely preserved to keep the original look and feel of the historic structure. The project ended up being so low impact to the surrounding properties and neighborhood, that even to this day, almost 7 years later,

individuals enter multiple times a week looking to mail an envelope or package, still thinking it's a post office.

- Similarly to the Post Office project, our organization is looking to restore the outside of the current Church building, which will greatly minimize the impact to the surrounding properties. While the inside will be remodeled to the same standards as the other Surnow buildings in town, we will only be fixing or replacing, not changing, the exterior windows, limestone and masonry detail, as well as any other exterior repairs needed to maintain what is original.
- As discussed in our March 2017 meeting with the neighbors on Willits, the only potential impact would be the traffic impact of onsite parking for the office tenants. However, the onsite parking required with the construction of new residential units would have a heavier impact to the neighborhood, as mentioned above. It's also noted that only one side of the building faces the Willits neighborhood, the other sides of the building are surrounded by commercial.
- Put it simply, what you see today, will be what you see tomorrow. For these reasons, we believe that the proposed rezoning will not be detrimental to the surrounding properties.

As with the Post Office, School Administration, and the recently completed Woodward

Building, The Surnow Company has a proven track record of preserving and renovating historically significant structures, and converting them into beautiful, contemporary buildings. While we are open to the idea of demolishing the building and developing the lot into a residential use, we believe it would be a shame to lose one of the city's oldest gems that the neighborhood has enjoyed for over 90 years. Our organization strongly desires to continue the positive impact we've created in the community by moving this project forward, and would greatly appreciate the opportunity for our family company to put the same passion and creativity into the Christian Science Church as we have with our other Birmingham developments. Thank you for your time and consideration.

Sincerely,

Sam Surnow
President

PROPOSED RENOVATION OF THE FIRST CHRIST SCIENTIST CHURCH

191 N CHESTER ST, BIRMINGHAM MI



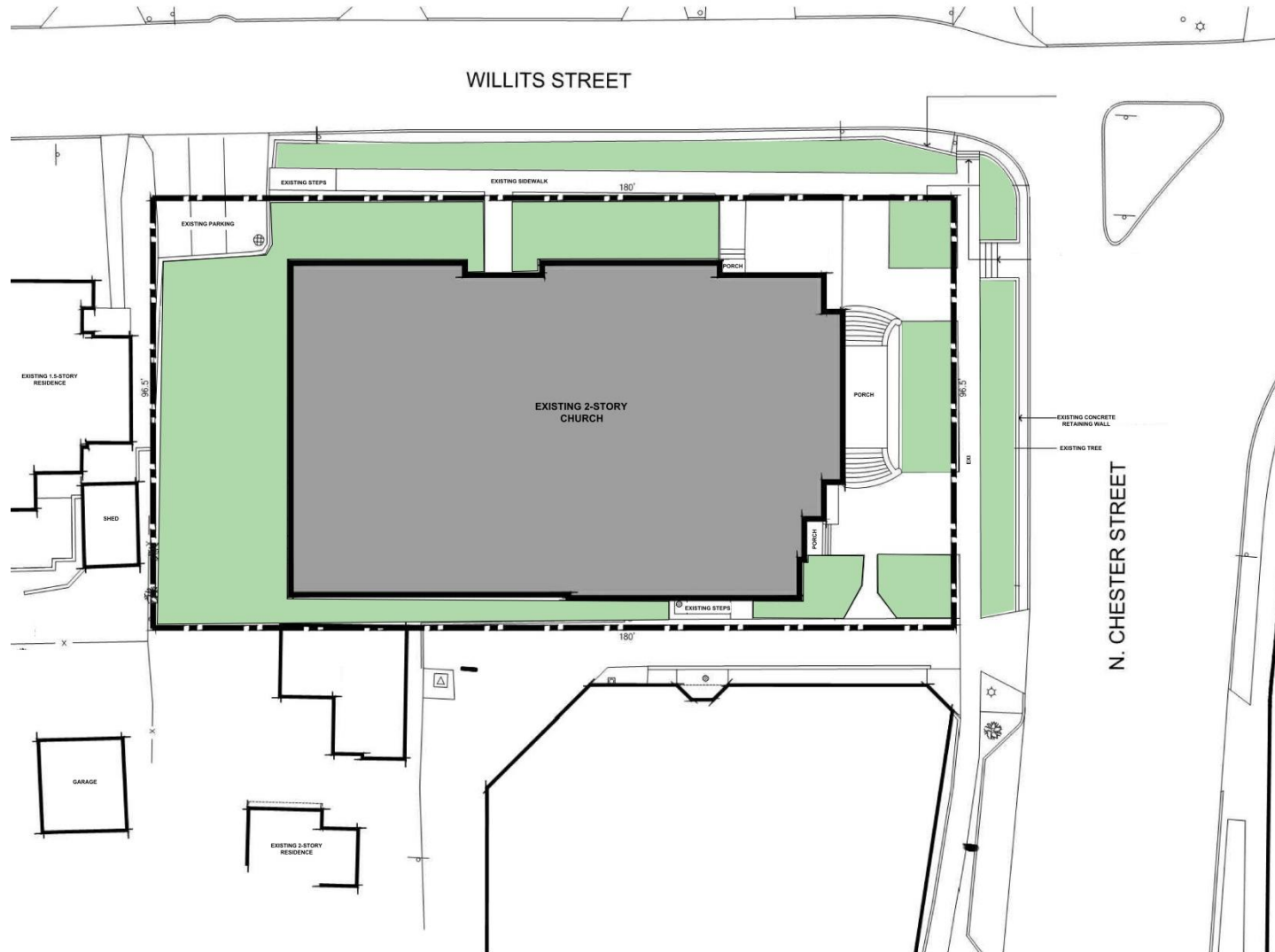
BIDDISON
ARCHITECTURE



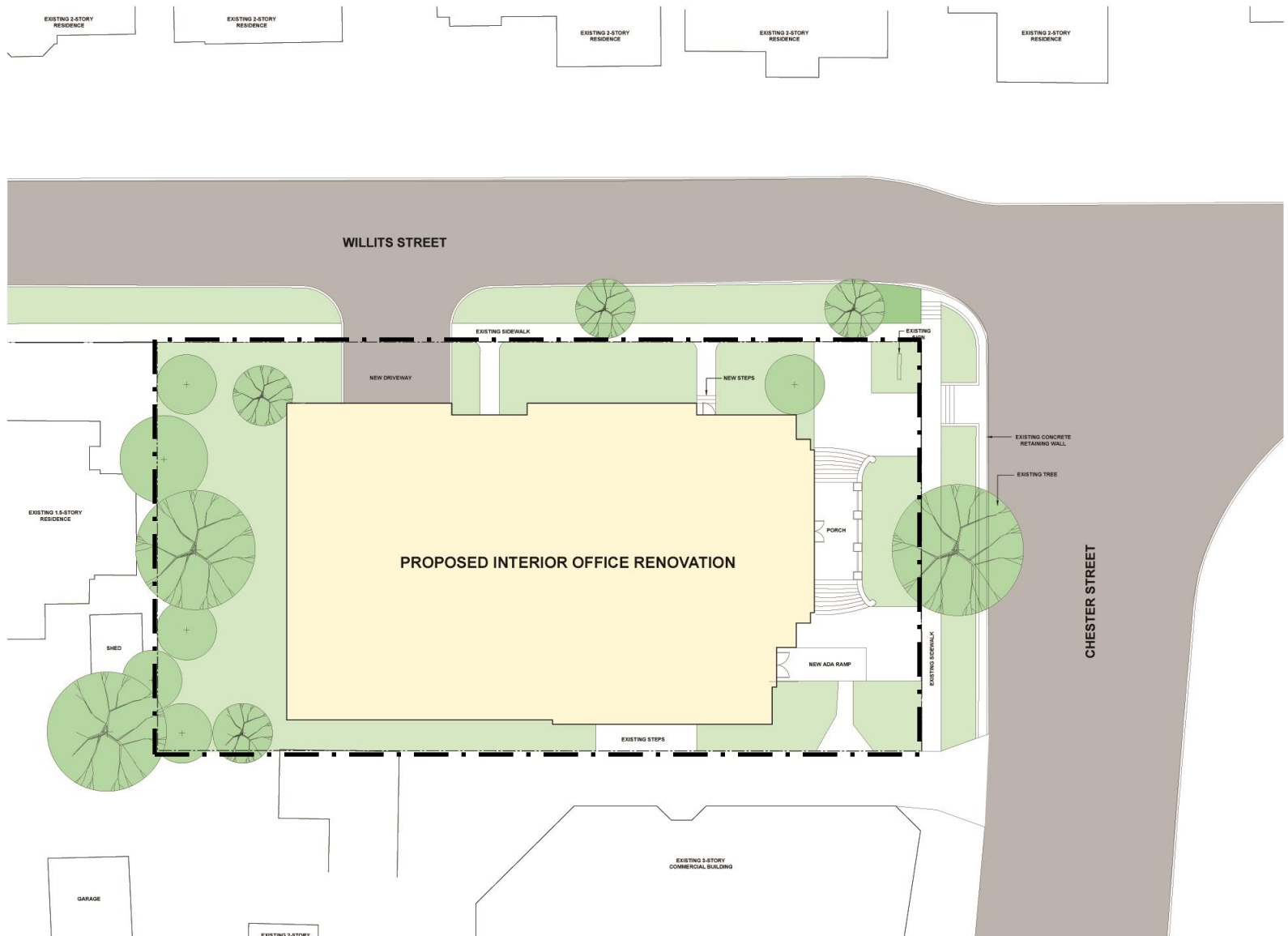
SITE LOCATION



EXISTING STREET VIEWS

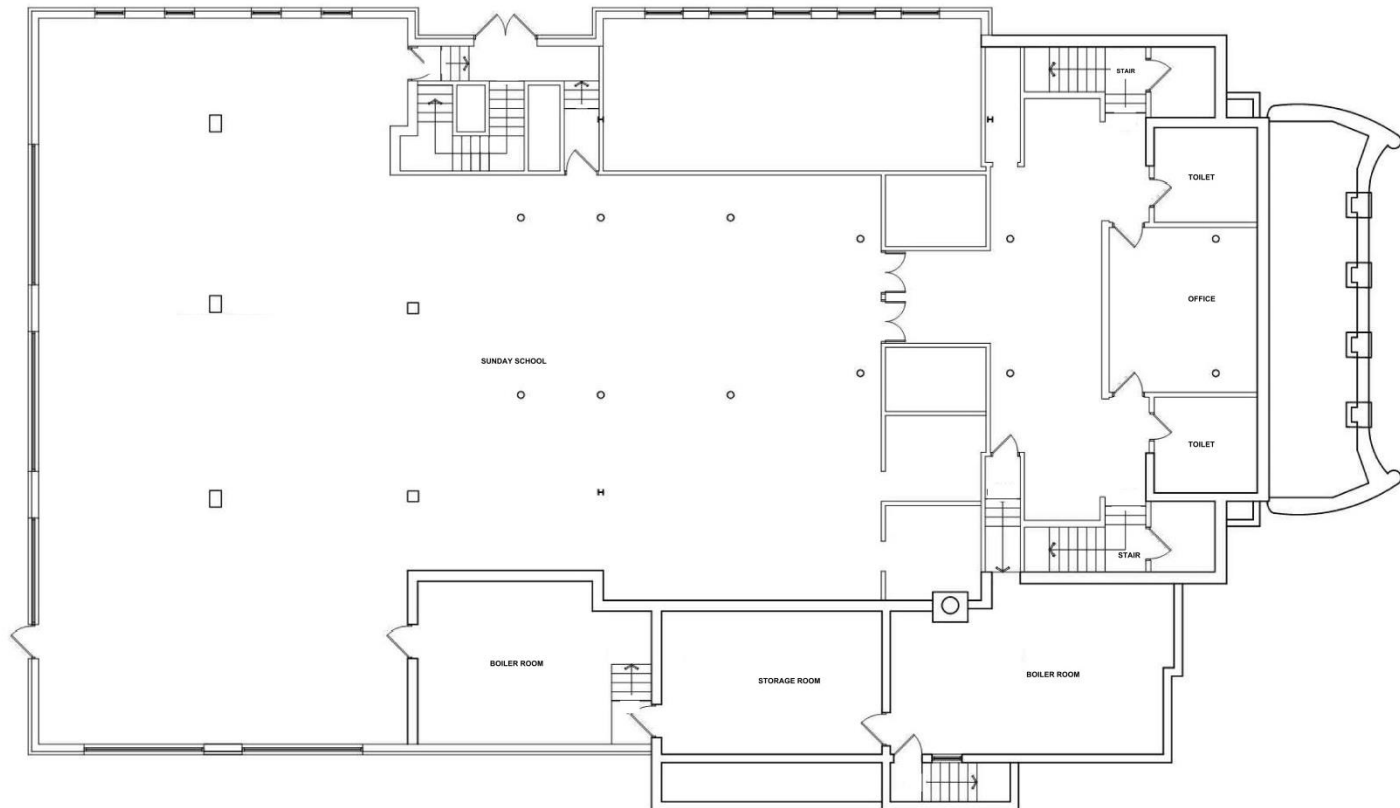


EXISTING SITE PLAN



PROPOSED SITE PLAN

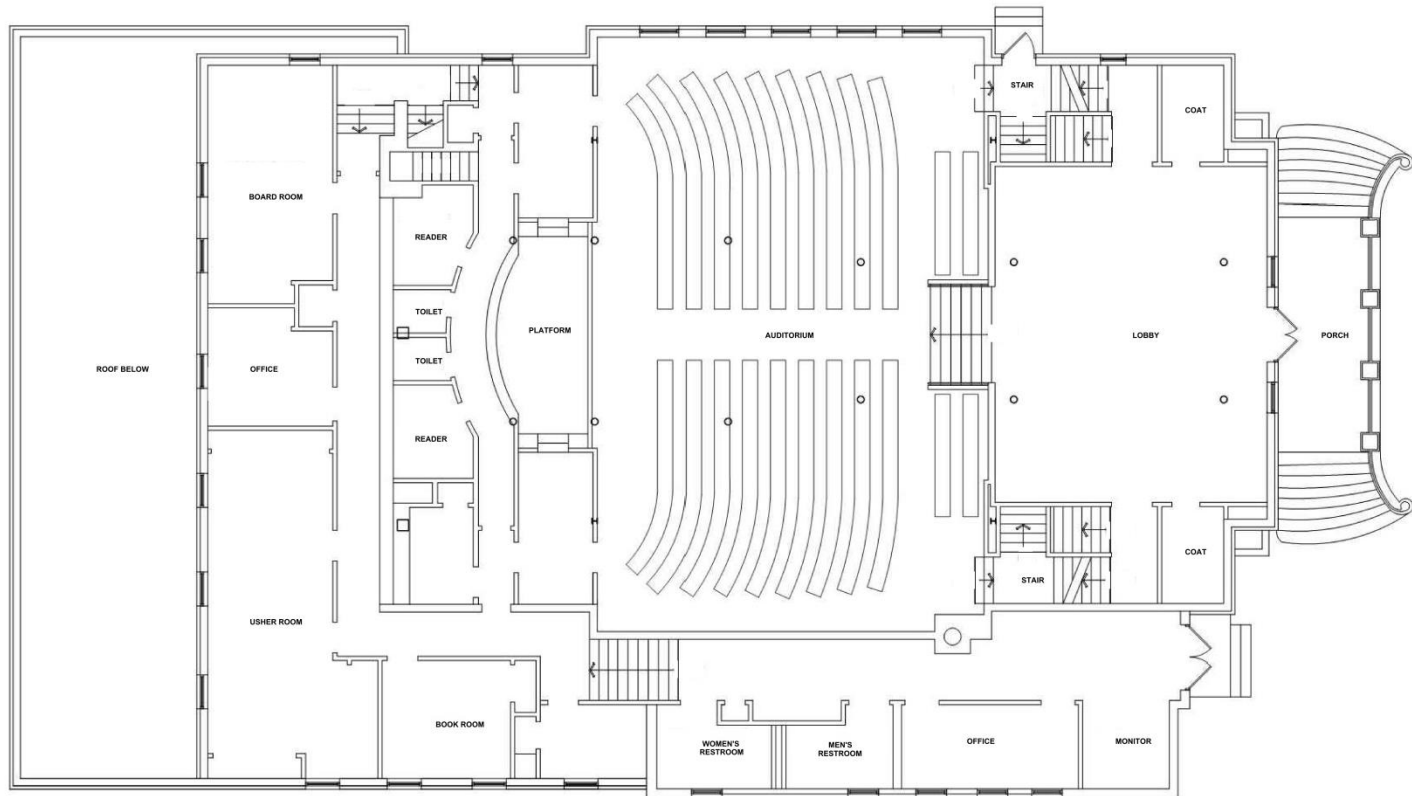
EXISTING LOWER LEVEL PLAN



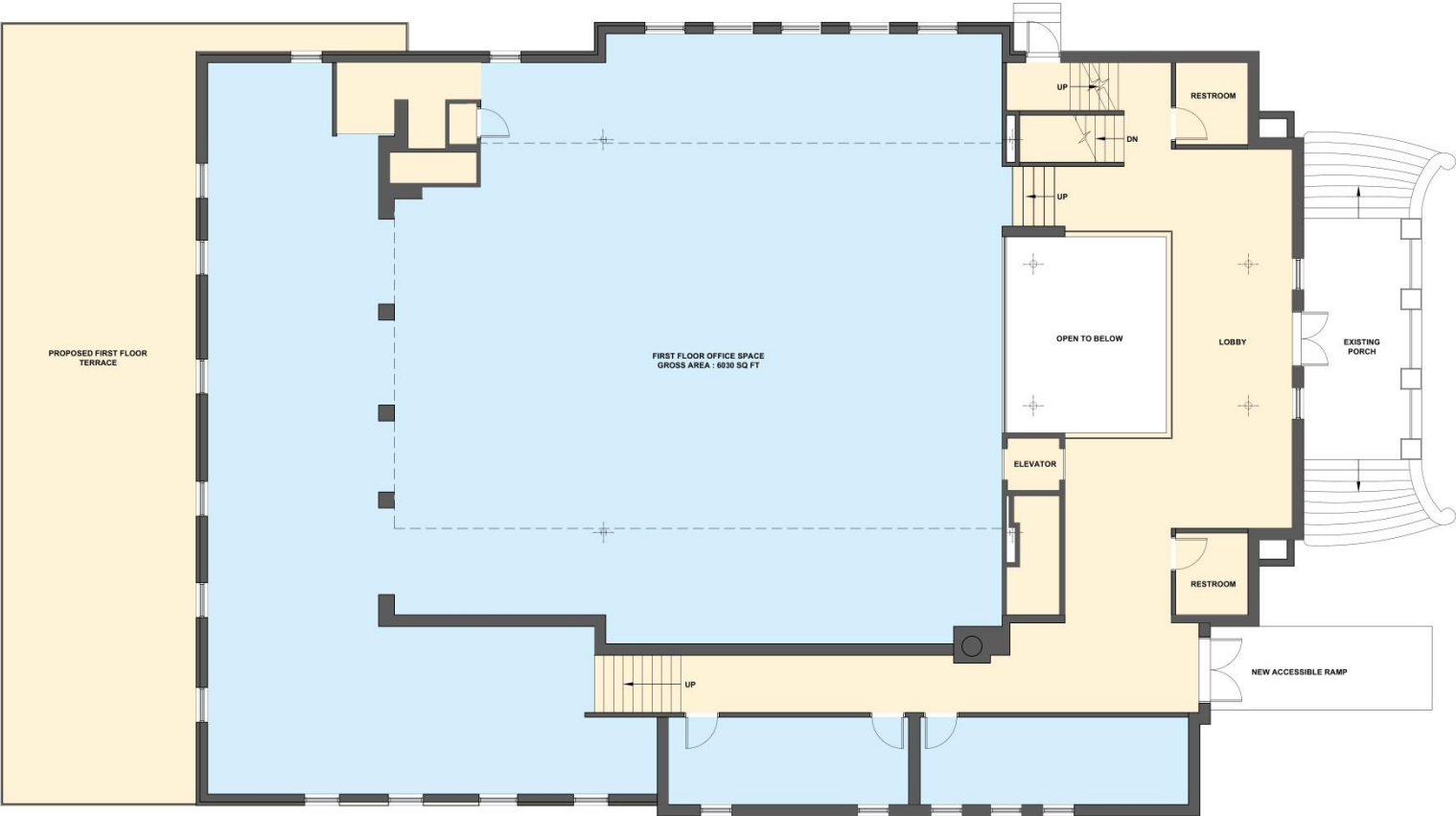
PROPOSED LOWER LEVEL PLAN



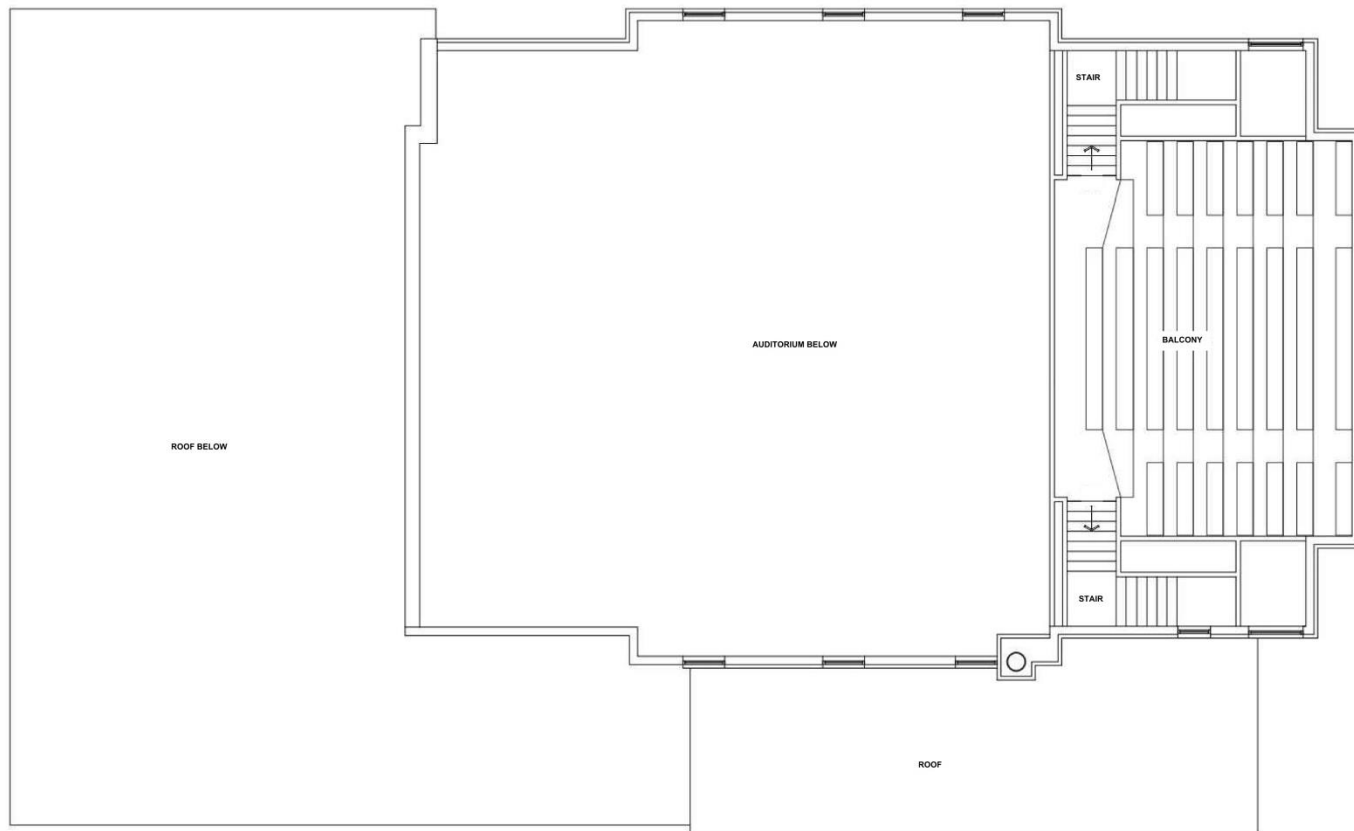
EXISTING FIRST FLOOR PLAN



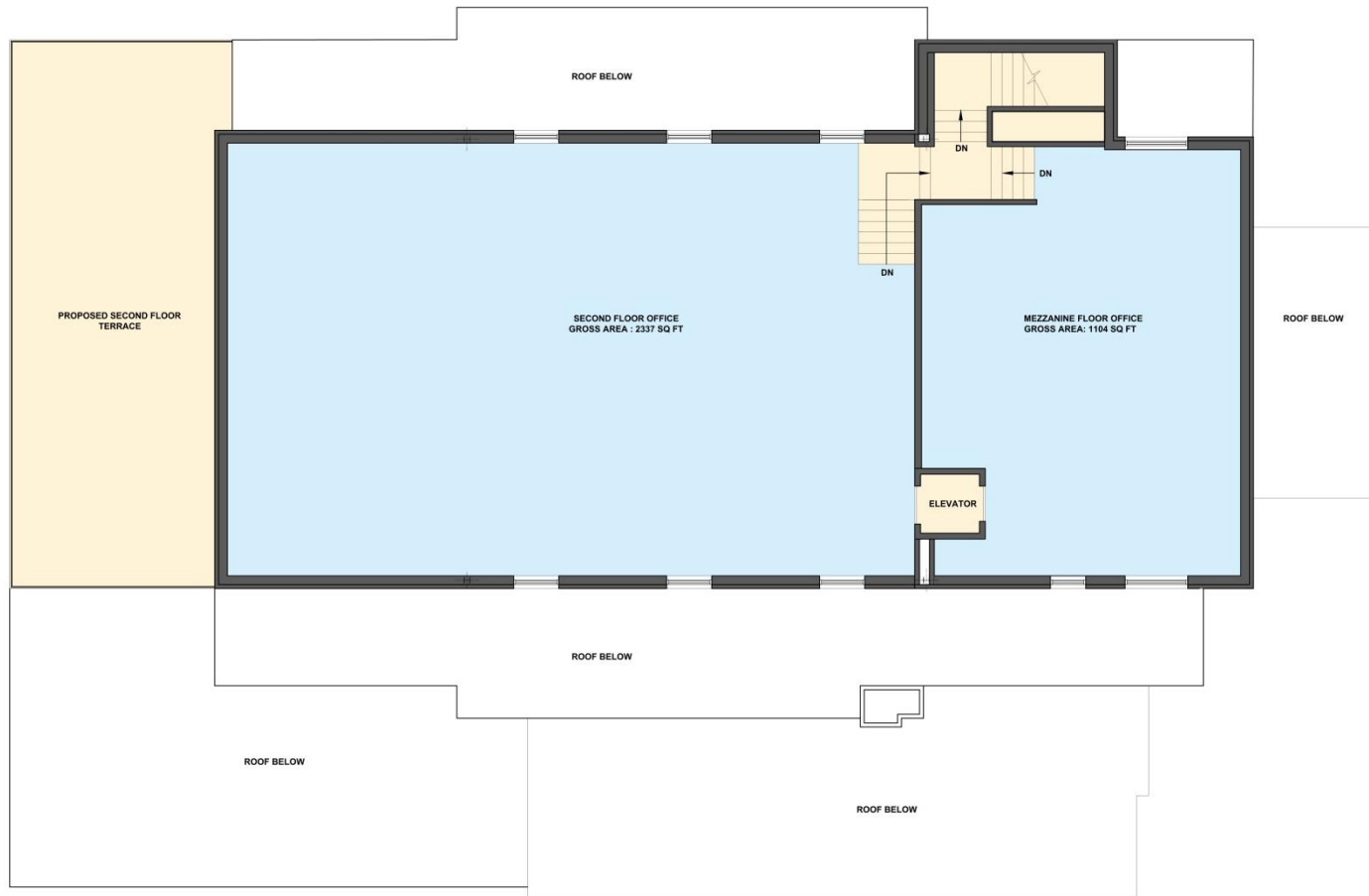
PROPOSED FIRST FLOOR PLAN

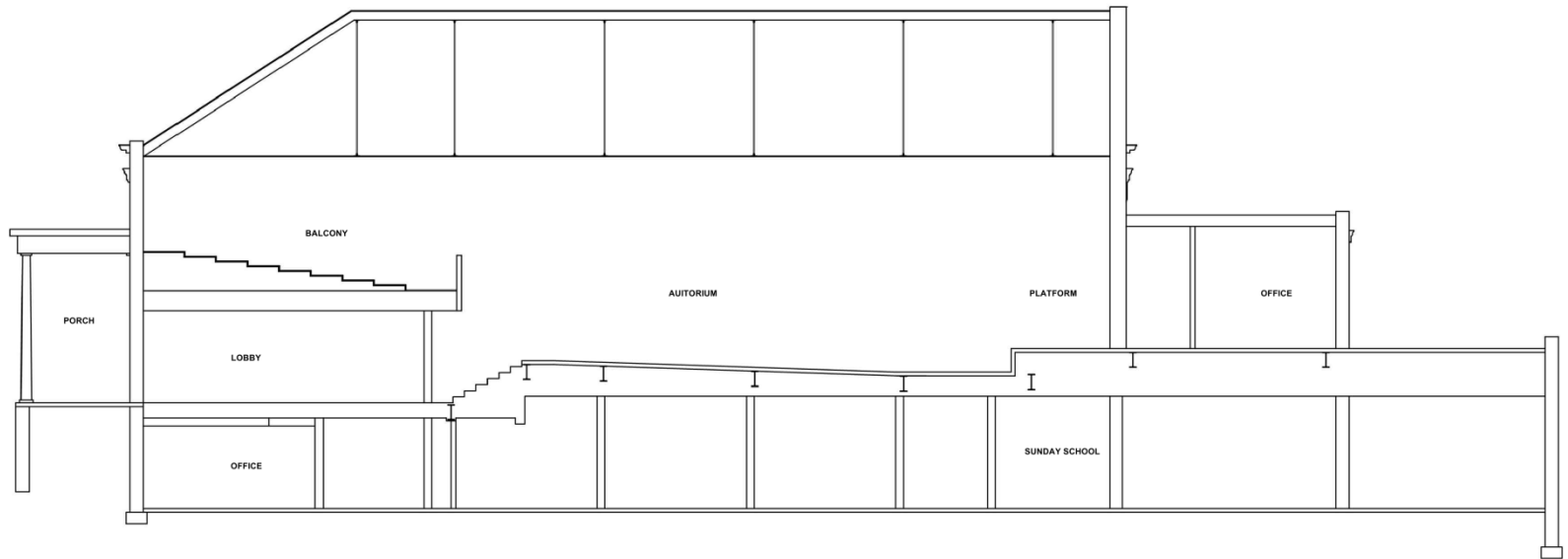


EXISTING SECOND FLOOR PLAN

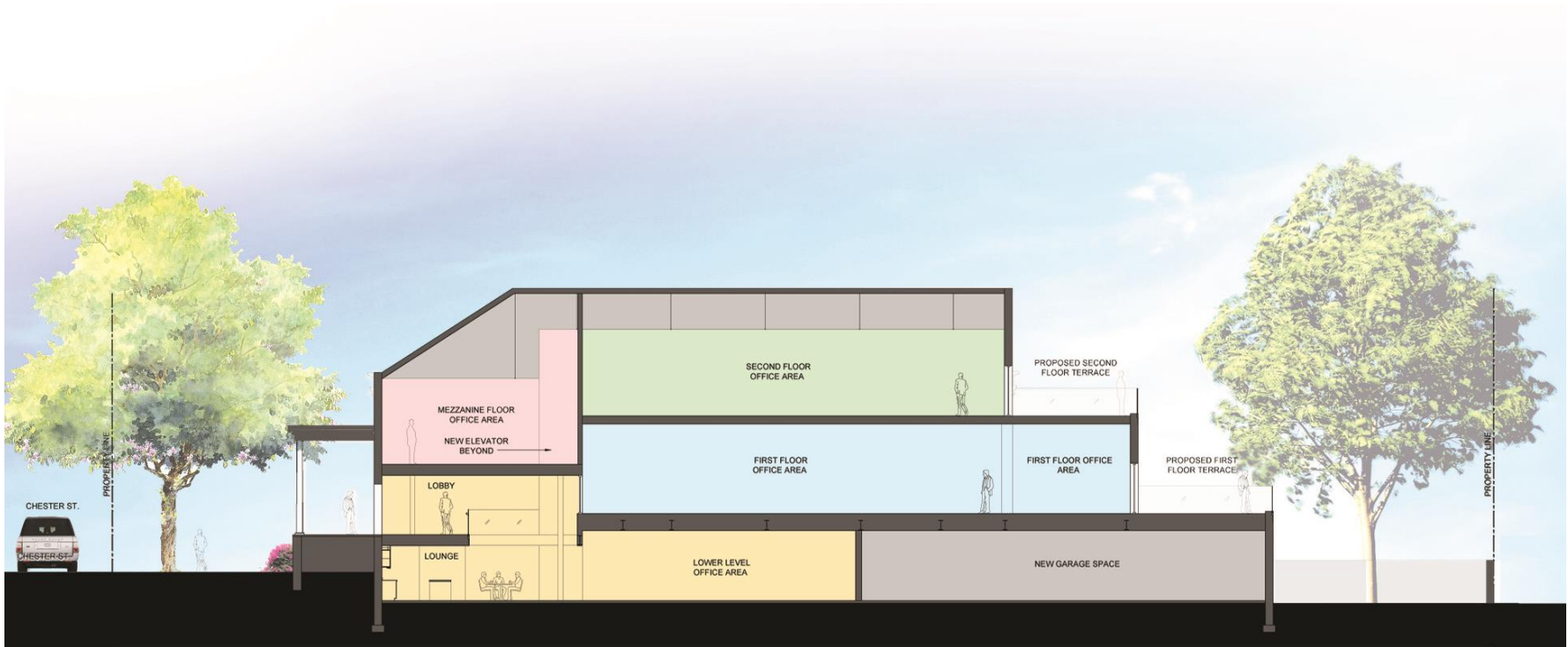


PROPOSED SECOND FLOOR PLAN



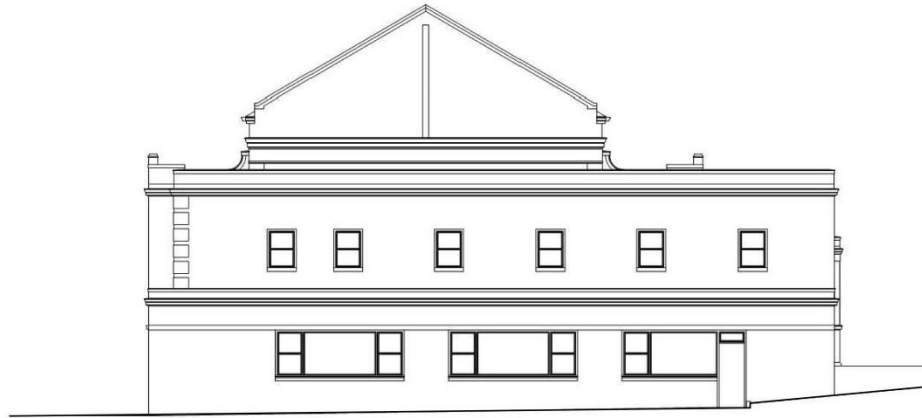


EXISTING SCHEMATIC BUILDING SECTION



PROPOSED SCHEMATIC BUILDING SECTION

EXISTING ELEVATIONS



201.01
A.201
EXISTING WEST ELEVATION
SCALE: 3/16"=1'-0"

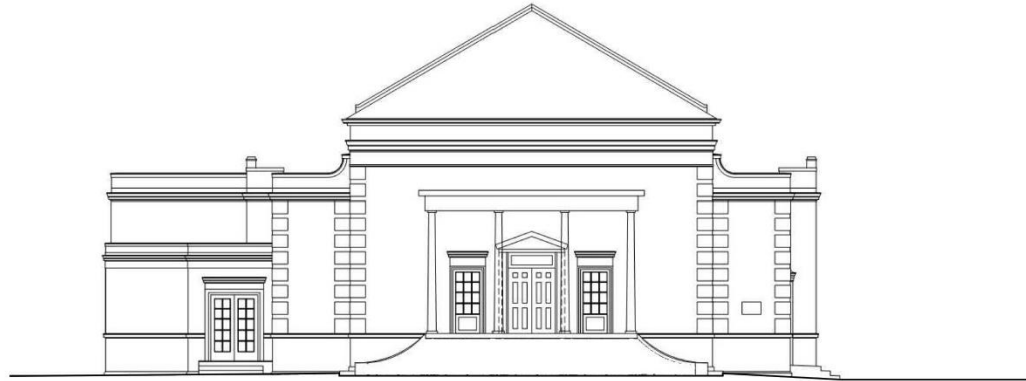


201.02
A.201
EXISTING SOUTH ELEVATION
SCALE: 3/16"=1'-0"

PROPOSED NORTH ELEVATION

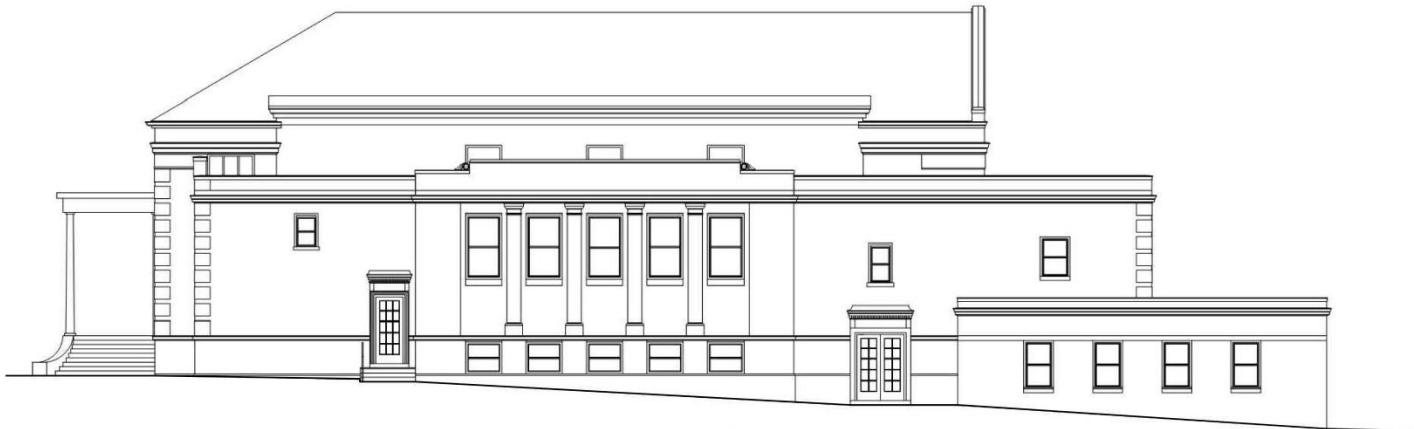


EXISTING ELEVATIONS



202.01
A.202

EXISTING EAST ELEVATION
SCALE: 3/16"=1'-0"



202.02
A.202

EXISTING NORTH ELEVATION
SCALE: 3/16"=1'-0"

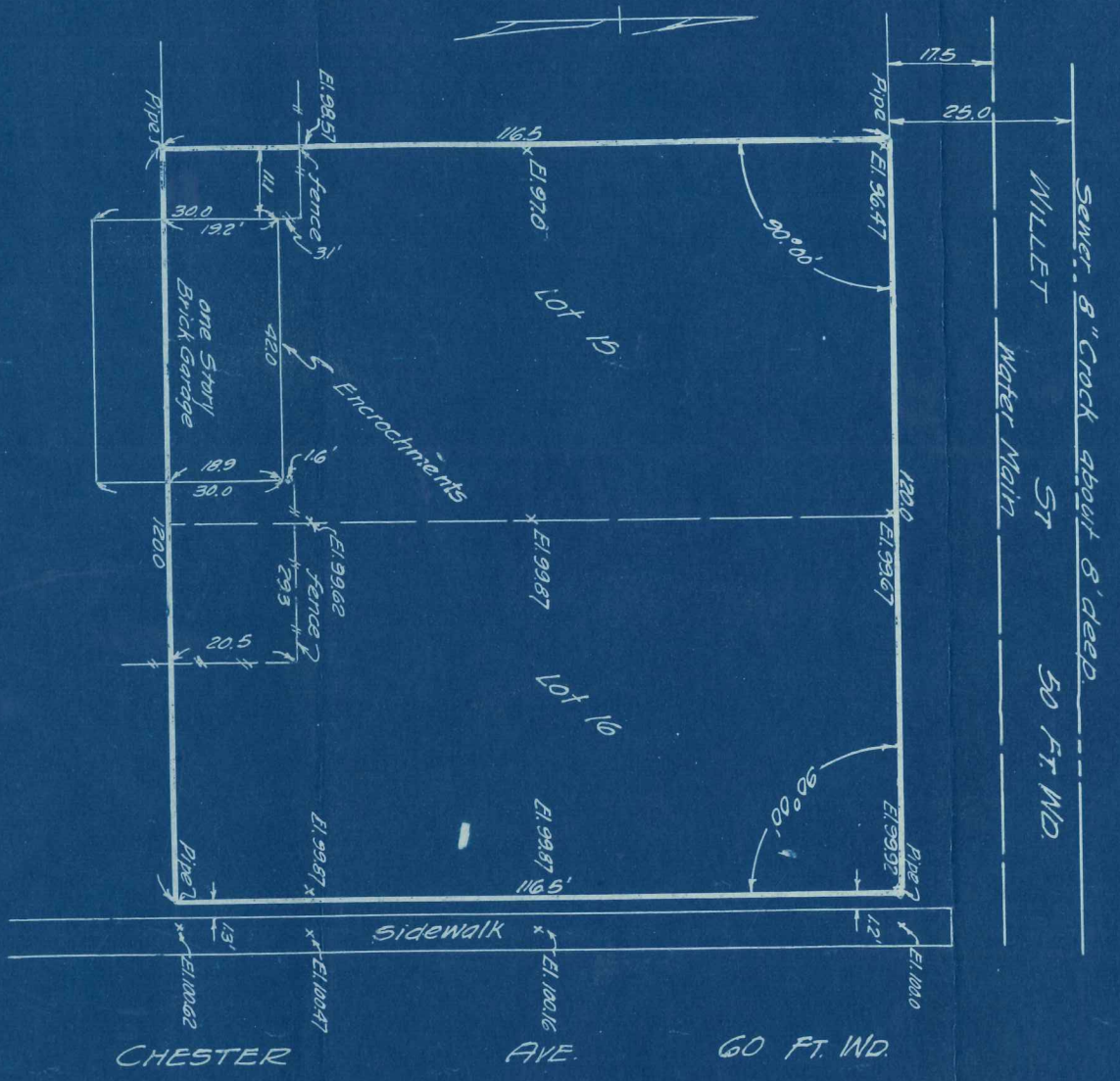
PROPOSED EAST ELEVATION





OPTIONAL RESIDENTIAL MASSING

PLAT OF SURVEY of Lots 15 & 16 of Willett Plat. For Frank E. Carter.



Date Feb 9, 1926

Scale 1" = 30'

Survey No. 5788

WE SURVEY
THE EARTH

Cad. 6013-3508

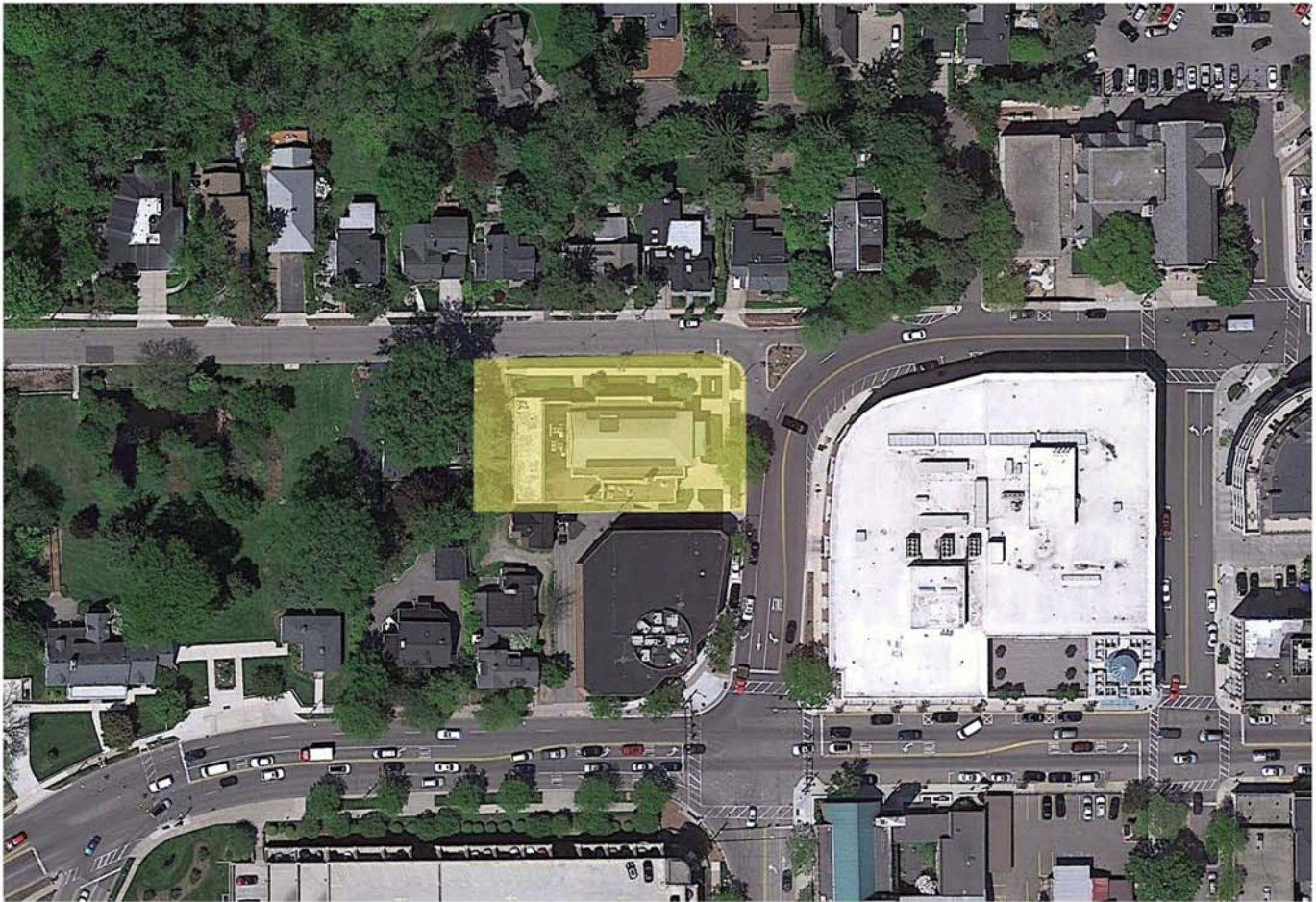
1015 Lafayette Building

Detroit

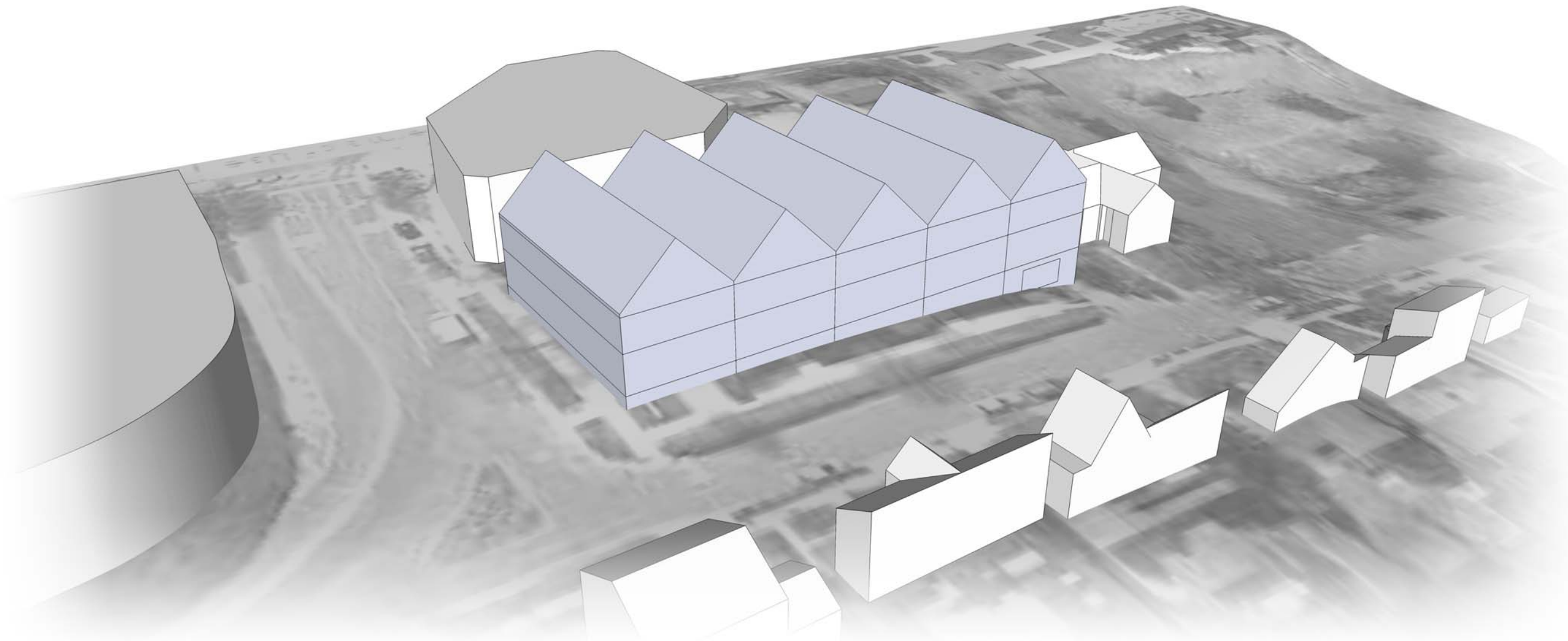
A. MALKIN, INC.
CIVIL ENGINEERS AND SURVEYORS
Registered

BE SURE OF
YOUR GROUND









Massing Study
NE Perspective
SCALE: NTS



SAROKI
ARCHITECTURE
430 N. OLD WOODWARD
BIRMINGHAM, MI 48009
P. 248.258.5707
F. 248.258.5515
SarokiArchitecture.com

Project:
SURNOW BUILDING
191 N Chester
Birmingham, Michigan

Date: **Issued For:**
2017-03-27 NEIGHBORHOOD MEETING

Sheet No.:
A500
MASSING STUDY

**CITY OF BIRMINGHAM
PLANNING BOARD ACTION ITEMS
OF WEDNESDAY, MAY 10, 2017**

Item	Page																				
<p>PUBLIC HEARING</p> <p>1. An ordinance to amend Chapter 126, Zoning, of the Code of the City of Birmingham as follows:</p> <p>1. AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM AS FOLLOWS:</p> <p>TO AMEND ARTICLE 2, SECTION 2.43, TZ-2 (TRANSITION ZONE 2) DISTRICT INTENT, PERMITTED USES, AND SPECIAL USES TO ADD THE TZ-2 ZONING CLASSIFICATION;</p> <p>TO AMEND ARTICLE 2, SECTION 2.44, TZ2 DEVELOPMENT STANDARDS TO ADD STANDARDS FOR THE TZ-2 DISTRICT;</p> <p>TO MOVE THE EXISTING TZ-3 (TRANSITION ZONE 3) ZONING CLASSIFICATION, DISTRICT INTENT, PERMITTED USES, AND SPECIAL USES TO ARTICLE 2, SECTION 2.45 WITH NO CHANGES;</p> <p>TO MOVE THE EXISTING TZ-3 (TRANSITION ZONE 3) ZONING CLASSIFICATION, DEVELOPMENT STANDARDS TO ARTICLE 2, SECTION 2.46 WITH NO CHANGES;</p> <p>TO AMEND ARTICLE 5, SECTION 5.15, USE SPECIFIC STANDARDS, TO ADD USE SPECIFIC STANDARDS FOR THE TZ-2 ZONE DISTRICT;</p> <p style="text-align: center;">AND</p> <p>TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM, ARTICLE 4, ALL SECTIONS NOTED BELOW, TO APPLY EACH SECTION TO THE NEWLY CREATED TZ-2 ZONE DISTRICTS AS INDICATED:</p> <table border="1"> <thead> <tr> <th><u>Ordinance Section Name</u></th><th><u>Section Number</u></th></tr> </thead> <tbody> <tr> <td>Accessory Structures</td><td>4.02</td></tr> <tr> <td>Standards (AS)</td><td>4.04</td></tr> <tr> <td>Essential Services</td><td>4.09</td></tr> <tr> <td>Standards (ES)</td><td></td></tr> <tr> <td>Fence Standards (FN)</td><td>4.10</td></tr> <tr> <td>Floodplain Standards (FP)</td><td>4.13</td></tr> <tr> <td>Height Standards (HT)</td><td>4.16</td></tr> <tr> <td></td><td>4.18</td></tr> <tr> <td>Landscaping Standards (LA)</td><td>4.20</td></tr> </tbody> </table>	<u>Ordinance Section Name</u>	<u>Section Number</u>	Accessory Structures	4.02	Standards (AS)	4.04	Essential Services	4.09	Standards (ES)		Fence Standards (FN)	4.10	Floodplain Standards (FP)	4.13	Height Standards (HT)	4.16		4.18	Landscaping Standards (LA)	4.20	2
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Item		Page
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		4.22
	Loading Standards (LD)	4.24
	Open Space Standards (OS)	4.30
	Outdoor Dining Standards (OD)	4.44
	Parking Standards (PK)	4.45
		4.46
		4.47
		4.53
	Screening Standards (SC)	4.54
		4.59
	Setback Standards (SB)	4.65
	Street Standards (ST)	4.73
	Structure Standards (SS)	4.74
	4.83	
Temporary Use Standards (TU)	4.84	
Utility Standards (UT)	4.88	
Vision Clearance Standards (VC)	4.89	
Window Standards (WN)	4.90	
<p>Motion by Mr. Jeffares</p> <p>Seconded by Mr. Boyle to accept as pointed out in the packet:</p> <p>An Ordinance to amend Chapter 126 Zoning of the Code of the City of Birmingham, to add Article 02 District Intent, Permitted Uses, and Special Uses, Section 2.43 TZ-2 (Transition Zone) District to create the TZ-2 Zoning Classification.</p> <p>An Ordinance to amend Chapter 126 Zoning of the Code of the City of Birmingham, to add Article 02 Development Standards, Section 2.44 TZ-2 (Transition Zone) to adopt the following development standards for the TZ-2 Zone District, as in the packet.</p> <p>An Ordinance to amend Chapter 126 Zoning of the Code of the City of Birmingham, to renumber the existing TZ-3 (Transition Zone 3) Zoning Classification, District Intent, Permitted Uses, and Special Uses to Article 2, Section 2.45 with no changes.</p> <p>An Ordinance to amend Chapter 126 Zoning of the Code of the City of Birmingham, to renumber the existing TZ-3 (Transition Zone 3) Zoning Classification, Development Standards to Article 2, Section 2.46 with no changes.</p>		4

Item	Page
<p>An Ordinance to amend Chapter 126 Zoning of the Code of the City of Birmingham, to add Article 5, Section 5.15, Use Specific Standards, to add Use Specific Standard for the TZ-2 District, as in the packet.</p> <p>Ms. Ecker added a friendly amendment and it was accepted by the makers of the motion:</p> <p>An Ordinance to amend Chapter 126 Zoning of the Code of the City of Birmingham, to update the following sections in Article to add TZ-2 as a zone district to which they apply: 4.02, 4.04, 4.09, 4.10, 4.13, 4.16, 4.18, 4.20, 4.21, 4.22, 4.24, 4.30, 4.44, 4.45, 4.46, 4.47, 4.53, 4.54, 4.59, 4.65, 4.73, 4.74, 4.83, 4.84, 4.88, 4.89, 4.90.</p> <p>Motion carried, 7-0.</p>	<p>5</p>
<p>STUDY SESSION ITEMS</p>	<p>5</p>
<p>1. Window Tinting</p> <p>Motion by Mr. Williams</p> <p>Seconded by Mr. Jeffares that the Planning Board set a public hearing for June 14, 2017 to allow the public to comment on these proposed changes and for the Planning Board to make a recommendation to the City Commission on these issues.</p>	<p>7</p>
<p>Motion carried, 7-0.</p>	<p>7</p>

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, MAY 10, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on May 10, 2017. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Vice Chairperson Gillian Lazar, Janelle Whipple-Boyce, Bryan Williams; Student Representative Isabella Niskar

Absent: Student Representative Ariana Afrakhteh

Alternates: Lisa Prasad and Dan Share were not asked to attend

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

05-86-17

**APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING
OF MARCH 29, 2017**

Motion by Mr. Williams

**Seconded by Ms. Whipple-Boyce to approve the Planning Board Minutes of
March 29, 2017 as presented.**

Motion carried, 5-0.

VOICE VOTE

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

Nays: None

Abstain: Koseck, Lazar

Absent: None

**APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING
OF APRIL 26, 2017**

Mr. Jeffares noted with respect to 2010 Cole St. that the CIS was accepted by the board and the Preliminary Site Plan Review was postponed, correction on pages 2 and 11.

Motion by Mr. Koseck

Seconded by Mr. Jeffares to approve the Planning Board Minutes of April 26, 2017 as amended.

Motion carried, 5-0.

VOICE VOTE

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

Nays: None

Abstain: Williams, Boyle

Absent: None

05-87-17

CHAIRPERSON'S COMMENTS (none)

05-88-17

APPROVAL OF THE AGENDA (no change)

05-89-17

PUBLIC HEARING

1. An ordinance to amend Chapter 126, Zoning, of the Code of the City of Birmingham as follows:

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

TO AMEND ARTICLE 2, SECTION 2.43, TZ-2 (TRANSITION ZONE 2) DISTRICT INTENT, PERMITTED USES, AND SPECIAL USES TO ADD THE TZ-2 ZONING CLASSIFICATION;

TO AMEND ARTICLE 2, SECTION 2.44, TZ2 DEVELOPMENT STANDARDS TO ADD STANDARDS FOR THE TZ-2 DISTRICT;

TO MOVE THE EXISTING TZ-3 (TRANSITION ZONE 3) ZONING CLASSIFICATION, DISTRICT INTENT, PERMITTED USES, AND SPECIAL USES TO ARTICLE 2, SECTION 2.45 WITH NO CHANGES;

TO MOVE THE EXISTING TZ-3 (TRANSITION ZONE 3) ZONING CLASSIFICATION, DEVELOPMENT STANDARDS TO ARTICLE 2, SECTION 2.46 WITH NO CHANGES;

TO AMEND ARTICLE 5, SECTION 5.15, USE SPECIFIC STANDARDS, TO ADD USE SPECIFIC STANDARDS FOR THE TZ-2 ZONE DISTRICT;

AND

TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM, ARTICLE 4, ALL SECTIONS NOTED BELOW, TO

APPLY EACH SECTION TO THE NEWLY CREATED TZ-2 ZONE DISTRICTS AS INDICATED:

<u>Ordinance Section Name</u>	<u>Section Number</u>
Accessory Structures Standards (AS)	4.02 4.04
Essential Services Standards (ES)	4.09
Fence Standards (FN)	4.10
Floodplain Standards (FP)	4.13
Height Standards (HT)	4.16 4.18
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Temporary Use Standards (TU)	4.84
Utility Standards (UT)	4.88
Vision Clearance Standards (VC)	4.89
Window Standards (WN)	4.90

The Chairman opened the public hearing at 7:35 p.m.

Mr. Baka stated that the City Commission and Planning Board have held a number of meetings relating to this issue. On March 29, 2017, the Planning Board held a study session to further discuss the TZ-2 Zone. After much discussion the Planning Board set a public hearing for May 10th, 2017 to consider the adoption of the TZ-2 Zoning District and all of the additional provisions associated with the creation of this new zone. In addition to setting the hearing the board also requested some minor changes to the existing draft ordinance that would make it consistent with the TZ-3 Zone in regards to permitted uses. However, at this time the Planning Board is not considering applying the new zone to any specific properties. Accordingly, the Planning Division has revised

the draft ordinance language in accordance with the comments of the Planning Board. He highlighted the standards as they are currently proposed.

Discussion concluded that "hours of operation" includes when employees are present and not just when business is being conducted. If an extension is needed those affected can apply to have that made a condition of the SLUP.

No comments from the public were heard at 7:48 p.m.

Mr. Williams noted it needs to be explained to the City Commission that the distinction between TZ-2 and TZ-3 has more to do with massing and less to do with types of uses. It was discussed that the cost to obtain a SLUP is \$2,800.

Motion by Mr. Jeffares

Seconded by Mr. Boyle to accept as pointed out in the packets:

An Ordinance to amend Chapter 126 Zoning of the Code of the City of Birmingham, to add Article 02 District Intent, Permitted Uses, and Special Uses, Section 2.43 TZ-2 (Transition Zone) District to create the TZ-2 Zoning Classification.

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An Ordinance to amend Chapter 126 Zoning of the Code of the City of Birmingham, to add Article 5, Section 5.15, Use Specific Standards, to add Use Specific Standard for the TZ-2 District, as in the packet.

Ms. Ecker added a friendly amendment and it was accepted by the makers of the motion:

An Ordinance to amend Chapter 126 Zoning of the Code of the City of Birmingham, to update the following sections in Article to add TZ-2 as a zone district to which they apply: 4.02, 4.04, 4.09, 4.10, 4.13, 4.16, 4.18, 4.20, 4.21, 4.22, 4.24, 4.30, 4.44, 4.45, 4.46, 4.47, 4.53, 4.54, 4.59, 4.65, 4.73, 4.74, 4.83, 4.84, 4.88, 4.89, 4.90.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

Chairman Clein closed the public hearing at 7:57 p.m.

05-90-17

OLD BUSINESS

1. 225 E. Maple Rd., Social Kitchen

Request for Special Land Use Permit ("SLUP") Amendment and Revised Final Site Plan to allow construction of a glass enclosure system around the existing outdoor dining in the via, and to allow a new canopy on the rooftop
(postponed from March 22, 2017)

The applicant was not present.

Ms. Ecker said the applicant met with the Building Official as the Planning Board had asked; however the Building Official requested them to send a letter outlining all of their arguments as to why the glass enclosure system is not a permanent structure and an interior space with over 65 seats. The Building Official has not received anything back from them.

Board members noted it was not part of their original contemplation for bistros that there would be such large facilities all year around.

No one motioned to postpone, so the matter died.

05-91-17

STUDY SESSION ITEMS

1. Window Tinting

Mr. Baka stated that the City Commission has held a public hearing and the Planning Board has held several study sessions to discuss the issue of window standards and examine potential changes to the Ordinance to address the concerns of the City Commission. As a result of those discussions, a general consensus was reached that prohibiting the tinting of windows would promote the intent of creating a pedestrian friendly interactive condition in the commercial areas of the City.

With regards to the treatment of glazing in passageways and vias, the Planning Board decided not to recommend a required amount of glazing in these spaces as it might impede important "back of house" functions and have a negative impact on businesses. Presently, the Via Activation Overlay Standard does indicate a requirement for windows

but does not set a specific percentage that is required. As currently written, this provision allows the Planning Board to evaluate projects on a case-by-case basis but does not provide a baseline or minimum amount of glazing that is required in these spaces.

Discussions have concluded that clear glass must have a visual transmission level of at least 80%. Further, not less than 70% visual transmission qualifies as lightly tinted. (The lower the percentage, the darker the tint.)

On March 29, 2017, the Planning Board reviewed draft ordinance language and requested that it be revised to include definitions for clear glazing and lightly tinted glazing that have specific percentages of visual transmittance. Accordingly, those definitions have been drafted and are now incorporated. This draft language also includes the original ordinance amendments that were recommended to the City Commission in July of 2016.

Chairman Clein made a change to 4.90 WN-01 (2) to say "Only clear glazing is permitted on storefront facades . . ."

Discussion from the public was taken at 8:15 p.m.

Mr. Steve Kalczynski from the Townsend Hotel said that regarding their second-story bakery it was strongly suggested they take the blinds down, so they put curtains up because of the need to block the sun.

Ms. Ecker suggested inserting the following provision to the Downtown Overlay Standard 3.04 prior to setting a public hearing: " First floor windows shall not be blocked with opaque materials or furniture, products, signs, blank walls, or the back of shelving units. This language could be added for purposes of discussion at the public hearing. It can always be taken out.

Mr. Koseck indicated his view is to have clear glass throughout the first floor of the City with a visual transmission level of 80%. If the sun is blazing in he is okay with a blind because it might go away, the use might change, etc. Further, above the first floor, blinds may be permitted.

Motion by Mr. Williams

Seconded by Mr. Jeffares that the Planning Board set a public hearing for June 14, 2017 to allow the public to comment on these proposed changes and for the Planning Board to make a recommendation to the City Commission on these issues.

There were no comments from the public at 8:30 p.m.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

05-92-17

2. Definition of Retail

Ms. Ecker advised that last week Planning Staff was directed by the City Manager to come up with a temporary ordinance amendment that would halt the conversion of first-floor retail space to quasi office/quasi retail uses. The City Commission talked about that on May 8 and in the end they voted in favor of directing the Planning Board to bring back to them by July 24 an ordinance amendment that would be a temporary measure of relief until the board's overall discussion of retail is completed. Further, they have asked the board to consider an ordinance amendment that would temporarily stop personal services and community uses from being on first-floor retail space Downtown while the board studies the full issue. They want personal services to be defined.

After researching the subject, Ms. Ecker thought the best example of defining Personal Services came from the City of Bremerton, Washington:

Personal Service Business means an establishment engaged primarily in providing services involving the care of a person or apparel, such as: shoe repairs, laundry and dry cleaning, beauty and barber shops, clothing/costume rental, tanning, other personal grooming facilities and domestic assistance services. This does not include massage parlors, health care services, exercise establishments, nor funeral services.

At their meeting on May 8 it seemed the majority of Commission members appeared to value the beauty services as something that drives activity Downtown.

Mr. Boyle noted this is the fundamental problem of a form based code. It is not easy to take that form and assume you will get what you want in it.

Ms. Lazar observed the board needs to remember that offices like McCann Erickson that have moved into town have increased foot traffic, which also helps the retail. Chairman Clein said this board can either craft a measure for the presumed short term that solves a policy issue that the City Commission has already come to a conclusion on, and then come back and try and make it right; or they can continue to spin until the joint meeting.

Board members decided to add personal services to the definition of retail and to add a definition personal service that includes retail bank branches. Then in the Downtown Overlay, community uses should not be considered retail, but personal services should be allowed.

Consensus was to send this matter back to Staff for due consideration and they will bring back appropriate definitions to the next meeting. Also, invite the BSD Director to that meeting. The board can talk about scheduling a public hearing at that time.

05-93-17

3. Parking Requirements for all uses

Ms. Ecker noted the Planning Board was asked to study the current parking requirements for all uses within the City.

At the March 29, 2017 Planning Board meeting, the board discussed the complex issue of parking throughout the City. After much discussion, the board requested additional information on options that reduce demand, including a sample Transportation Demand Model ("TDM") report to show how developers were designing to reduce reliance on automobiles.

Mr. Boyle suggested taking the Community Impact Study ("CIS") model and tweaking it to include certain elements that will or will not affect parking. Chairman Clein said it seems to him many of the complaints about the parking problem are between 11 a.m. and 2 p.m. when all of the offices are full and people have come into town for lunch. Now there are offices in the Parking Assessment District that were not anticipated and they are being given "free" parking. Mr. Williams noted that the perceived 11 a.m. to 2 p.m. parking problem results from the growth of the restaurant business combined with daytime office uses.

Ms. Ecker said the Ad Hoc Parking Development Committee did a parking study and they found the single biggest problem is that more people are being housed in smaller amounts of space.

Mr. Jeffares observed that offices in the absence of affordable housing provide the density required to have retail work.

Ms. Whipple-Boyce thought that asking a potential developer for the added information about how they plan to handle parking for their employees is not about being able to tell an applicant whether or not they can build a building because they cannot accommodate the people who will be in the building. But, asking for the added information will help the Planning Board manage the way they help the building evolve.

Ms. Ecker said that looking at what extra information can be added as part of the CIS is an option. Also, mandating that every new development incorporate bike parking, and having designated ride-share spots in the parking decks or in a private development may be options.

Ms. Whipple-Boyce encouraged the board to take a look at the terms of the Parking Assessment District and identify some of the things they see from the work they do that are contributing to the problem.

Ms. Ecker noted the difficulty is that the parking problem is Downtown where everyone has paid into the Parking Assessment District and there is no parking requirement for most of the uses that cause the problem. Mr. Williams added they can't quantify the extent of the problem. It is not known how many people don't come now to shop in Birmingham because they can't park.

Chairman Clein said there is data that suggests two parking decks within Downtown are at least near capacity during key summer hours. So there is a demand problem there. But if the City doesn't change the processes moving forward there will just be more demand problems. In his view the 2016 Plan has not been successful with Downtown residential. So perhaps this board could offer opinions to the Commission that they not only need to attack the current demand, but immediately move toward with reviewing the Parking Assessment District to determine whether or not they need to make some shifts in the current ordinance that says you get an extra floor of office if you add a fifth floor of residential.

Mr. Boyle said he has had thoughts about asking the Planning Dept. if they would consider organizing a parking workshop. They could invite several people to speak about the current situation, and what other cities are doing. Have open discussion about the current parking situation in Birmingham and the likely changes that will occur based upon the pipeline of development.

Chairman Clein asked staff to bring back to the next study session a bulleted list of problems inside or outside of the scope of the Planning Board. Make a recommendation to the City Manager that a workshop be held and present the key issues, many of which are not under the Planning Board's jurisdiction.

05-94-17

MISCELLANEOUS BUSINESS AND COMMUNICATIONS

- a. Communications (none)
- b. Administrative Approval Correspondence
 - 2100 E. Maple Rd., Whole Foods – Approval of two raceway mounted and one individually mounted channel letter signs, and one ground sign.
 - 2075 E. Fourteen Mile Rd. - Application to locate two (2) A/C condensers 10 ft. south of N/E corner, screened by 4 ft. tall hedge of Hicks Yews.
 - 2200 Holland, Mercedes Benz Storage Facility - To remove Mercedes Benz emblems on the building.
 - 2400 E. Lincoln, The Sheridan at Birmingham – Temporary Use Permit to allow a temporary sales trailer.
- c. Draft Agenda for the Regular Planning Board Meeting on May 24, 2017
 - 298 S. Old Woodward Ave, CIS and Preliminary Site Plan;
 - 2010 Cole, Preliminary Site Plan;
 - 277 Pierce (Varsity Shop), CIS and Preliminary Site Plan;
 - Definition of Retail, Study Session.

- d. Other Business (none)

05-95-17

PLANNING DIVISION ACTION ITEMS

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

05-96-17

ADJOURNMENT

No further business being evident, the Chairman adjourned the meeting at 9:50 p.m.

Jana Ecker
Planning Director



MEMORANDUM

Planning Division

DATE: September 6, 2017

TO: Planning Board

FROM: Jana L. Ecker, Planning Director

SUBJECT: Economic Development Liquor License Boundaries

In 2009, the City Commission approved the creation of an Economic Development Liquor License as an incentive to encourage development in certain areas of the City. The properties that are eligible for this incentive are identified on the map in Exhibit 1 of Appendix C of the Zoning Ordinance. These properties are predominately located on or near Woodward Avenue.

On February 13th, 2017, the owners of the Whole Foods property at 2100 E. Maple requested that the City either expand the Rail District boundary to include the Whole Foods property so that a bistro license could be approved or expand the boundaries of the Economic Development License area along Woodward to allow Whole Foods to qualify for an Economic Development Liquor License. The City Commission reviewed both options, and voted to include Whole Foods within the Rail District to allow use of a bistro license, and decided not to expand the Economic Development Boundaries at that time.

On June 19, 2017 at the joint meeting, both the City Commission and the Planning Board discussed the expansion of the Economic Development License area to include a larger area of the City, perhaps including the Triangle District and/or the Rail District.

On July 10, 2017, the City Commission amended the Planning Board's Action List to include a review of the Economic Development License boundaries as the third priority. Accordingly, the Planning Board began discussions again regarding the expansion of the Economic Development Liquor License areas to include the Triangle and/or Rail District(s) or other areas of the City.

On August 9, 2017, the Planning Board discussed the expansion of the Economic Liquor License areas, specifically to expand the opportunities in the Triangle District, and to allow such licenses in the Rail District. Board members discussed several options, and ultimately directed staff to come back to the board with revised ordinance language and a revised map to include all of the Triangle District, with the exception of the single family residential area at the north end, all of the Rail District, with the exception of the Crosswinds development, and parcels along the east side of Adams adjacent to the Triangle District which do not abut single family residential zoned parcels.

Please find attached draft ordinance language that expands the boundaries established in Exhibit 1 of Appendix C to include all of the Rail District, with the exception of the Crosswinds development, and the remainder of the Triangle District, with the

exception of the single family residential area (zoned R2, single family residential, and ASF-3, attached single family residential), and those parcels on the east side of Adams adjacent to the Triangle District which do not abut single family residential zoned properties.

Suggested Action:

To set a public hearing for **October 25, 2017** to consider the following ordinance amendments to allow the use of Economic Development Liquor Licenses in an expanded area as shown on the attached map:

- a) Article 2, Section 2.27, District Intent, Permitted Uses and Special Uses to amend the uses requiring a Special Land Use Permit in the B1 (Neighborhood Business) zone district;
- b) Article 2, Section 2.29, District Intent, Permitted Uses and Special Uses to amend the uses requiring a Special Land Use Permit in the B2 (General Business) zone district;
- c) Article 2, Section 2.31, District Intent, Permitted Uses and Special Uses to amend the uses requiring a Special Land Use Permit in the B2B (General Business) zone district;
- d) Article 2, Section 2.39, District Intent, Permitted Uses and Special Uses to amend the uses requiring a Special Land Use Permit in the MX (Mixed Use) zone district;
- e) Article 3, Section 3.08, District Intent, Permitted Uses and Special Uses to amend the uses requiring a Special Land Use Permit in the MU-3, MU-5 and MU-7 (Mixed Use) zone districts; and
- f) Appendix C, Exhibit 1, Economic Development Licenses Map to expand the number of parcels which may qualify for the use of an Economic Development Liquor License.

**ECONOMIC DEVELOPMENT OPTION
ORDINANCE NO. _____**

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

TO AMEND 2.27, B1 (Neighborhood Business) DISTRICT INTENT, PERMITTED USES, AND SPECIAL USES TO AMEND THE USES REQUIRING A SPECIAL LAND USE PERMIT.

Section 2.27, B1 (Neighborhood Business) District Intent, Permitted Uses, and Special Uses

Accessory Permitted Uses

- Alcoholic beverage sales*
- Kennel*
- Laboratory – medical/dental*
- Loading facility – off-street*
- Outdoor cafe*
- Outdoor display*
- Parking facility – off-street*
- Sign

Uses Requiring a Special Land Use Permit

- Alcoholic beverage sales (off-premise consumption)
- Alcoholic beverage sales (on-premise consumption)
- Child care center
- Continued care retirement community
- Independent hospice facility
- Drive-in facility*
- Gasoline full service station*
- Skilled nursing facility
- **Establishments operating with a liquor license obtained under Chapter 10, Alcoholic Liquors, Article II, Division 3, Licenses for Economic Development (only permitted on those parcels identified on Exhibit 1; Appendix C)**

ORDAINED this _____ day of _____, 2017 to become effective 7 days after publication.

Mark Nickita, Mayor

Cherilynn Mynsberge, City Clerk

**ECONOMIC DEVELOPMENT OPTION
ORDINANCE NO. _____**

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

TO AMEND 2.29, B2 (General Business) DISTRICT INTENT, PERMITTED USES, AND SPECIAL USES TO AMEND THE USES REQUIRING A SPECIAL LAND USE PERMIT.

Section 2.29, B2 (General Business) District Intent, Permitted Uses, and Special Uses

Accessory Permitted Uses

- Alcoholic beverage sales(off-premise consumption) *
- Kennel*
- Laboratory – medical/dental*
- Loading facility – off-street*
- Outdoor cafe*
- Outdoor display*
- Outdoor storage*
- Parking facility – off-street*
- Retail fur sales cold storage facility
- Sign

Uses Requiring a Special Land Use Permit

- Alcoholic beverage sales (on-premise consumption)
- Assisted living
- Auto laundry
- Auto sales agency
- Bistro (only permitted in Triangle District or Rail District)*
- Bus/train passenger station and waiting facility
- Continued care retirement community
- Display of broadcast media devices (only permitted in conjunction with a gasoline service station)
- Drive-in facility
- Establishments operating with a liquor license obtained under Chapter 10, Alcoholic Liquors, Article II, Division 3, Licenses for Economic Development (only permitted on those parcels ~~within the Triangle District and on Woodward Avenue~~ identified on Exhibit 1; Appendix C)
- Funeral home

- Gasoline full service station*
- Gasoline service station
- Independent hospice facility
- Independent senior living
- Skilled nursing facility
- Trailer camp

Uses Requiring City Commission Approval

- Regulated uses*

ORDAINED this _____ day of _____, 2017 to become effective 7 days after publication.

Mark Nickita, Mayor

Cherilynn Mynsberge, City Clerk

**ECONOMIC DEVELOPMENT OPTION
ORDINANCE NO. _____**

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

TO AMEND 2.31, B2B (General Business) DISTRICT INTENT, PERMITTED USES, AND SPECIAL USES TO AMEND THE USES REQUIRING A SPECIAL LAND USE PERMIT.

Section 2.31, B2B (General Business) District Intent, Permitted Uses, and Special Uses

Accessory Permitted Uses

- Alcoholic beverage sales(off-premise consumption) *
- Kennel*
- Laboratory – medical/dental*
- Loading facility – off-street*
- Outdoor cafe*
- Outdoor display*
- Outdoor storage*
- Parking facility – off-street*
- Sign

Uses Requiring a Special Land Use Permit

- Alcoholic beverage sales (on-premise consumption)
- Assisted living
- Auto laundry
- Bistro (only permitted in Triangle District or Rail District)*
- Bus/train passenger station and waiting facility
- Continued care retirement community
- Display of broadcast media devices (only permitted in conjunction with a gasoline service station)
- Drive-in facility
- Establishments operating with a liquor license obtained under Chapter 10, Alcoholic Liquors, Article II, Division 3, Licenses for Economic Development (only permitted on those parcels ~~within the Triangle District and on Woodward Avenue~~ identified on Exhibit 1; Appendix C)
- Funeral home
- Gasoline full service station*
- Gasoline service station

- Independent hospice facility
- Independent senior living
- Skilled nursing facility
- Trailer camp

Uses Requiring City Commission Approval

- Regulated uses*

ORDAINED this _____ day of _____, 2017 to become effective 7 days after publication.

Mark Nickita, Mayor

Cherilynn Mynsberge, City Clerk

**ECONOMIC DEVELOPMENT OPTION
ORDINANCE NO. _____**

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

TO AMEND 2.39, MX (Mixed Use) DISTRICT INTENT, PERMITTED USES, AND SPECIAL USES TO AMEND THE USES REQUIRING A SPECIAL LAND USE PERMIT.

Section 2.39, MX (Mixed Use) District Intent, Permitted Uses, and Special Uses

Accessory Permitted Uses

- Alcoholic beverage sales*
- Dwelling – accessory*
- Garage – private
- Greenhouse – private
- Home occupation
- Loading facility – off-street*
- Outdoor café*
- Outdoor display*
- Outdoor storage*
- Parking facility – off-street*
- Parking structure*
- Renting of rooms*
- Sign
- Swimming pool - private

Uses Requiring a Special Land Use Permit

- Alcoholic beverage sales (on premise consumption)
- Bistros operating with a liquor license granted under the authority of chapter 10, Alcoholic Liquors, Division 4 – Bistro Licenses
- Uses with expanded hours past 7 a.m. to 11 p.m.
- Church
- College
- Dwelling – first floor with frontage on Eton Road
- Outdoor storage*

- Parking structure (not accessory to principle use)
- Religious institution
- School – private
- School – public
- Residential use combined with permitted nonresidential use with frontage on Eton Road
- Any permitted principal use with a total floor area greater than 6,000 sq. ft.
- **Establishments operating with a liquor license obtained under Chapter 10, Alcoholic Liquors, Article II, Division 3, Licenses for Economic Development (only permitted on those parcels identified on Exhibit 1; Appendix C)**

Used Requiring City Commission Approval

- Assisted living
- Continued care retirement community
- Independent hospice facility
- Independent senior living
- Regulated uses*
- Skilled nursing facility

ORDAINED this _____ day of _____, 2017 to become effective 7 days after publication.

Mark Nickita, Mayor

Cherilynn Mynsberge, City Clerk

**ECONOMIC DEVELOPMENT OPTION
ORDINANCE #: _____**

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

**TO AMEND SECTION 3.08, MU-3 (MIXED USE) DISTRICT INTENT,
PERMITTED USES, AND SPECIAL USES TO AMEND THE USES REQUIRING A
SPECIAL LAND USE PERMIT.**

Section 3.08, MU-3 (Mixed Use) District Intent, Permitted Uses, and Special Uses

Accessory Permitted Uses

- Alcoholic beverage sales*
- Alcoholic beverage sales (off-premise consumption)*
- Any use incidental to principal use
- Retail fur sales cold storage facility
- Sign
- Parking – off-street

Uses Requiring a Special Land Use Permit

- Alcoholic beverage sales (on premise consumption)
- Bank (with drive-through facilities)
- Bistro
- Drive-in facility accessory to a permitted retail business, excluding restaurants
- Funeral home
- Church
- Parking structure
- Religious institution
- Social club
- **Establishments operating with a liquor license obtained under Chapter 10, Alcoholic Liquors, Article II, Division 3, Licenses for Economic Development (only permitted on those parcels identified on Exhibit 1; Appendix C)**

ORDAINED this _____ day of _____, 2017 to become effective 7 days after publication.

Mark Nickita, Mayor

Cherilynn Mynsberge, City Clerk

**ECONOMIC DEVELOPMENT OPTION
ORDINANCE #: _____**

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

**TO AMEND SECTION 3.08, MU-5 (Mixed Use) DISTRICT INTENT,
PERMITTED USES, AND SPECIAL USES TO AMEND THE USES REQUIRING A
SPECIAL LAND USE PERMIT.**

Section 3.08, MU-5 (Mixed Use) District Intent, Permitted Uses, and Special Uses

Accessory Permitted Uses

- Alcoholic beverage sales*
- Alcoholic beverage sales (off-premise consumption)*
- Any use incidental to principal use
- Retail fur sales cold storage facility
- Sign
- Parking – off-street

Uses Requiring a Special Land Use Permit

- Alcoholic beverage sales (on premise consumption)
- Auto sales agency
- Auto show room
- Bank (with drive-through facilities)
- Bistro
- Drive-in facility accessory to a permitted retail business, excluding restaurants
- Funeral home
- Gasoline full-service station
- Gasoline service station
- Church
- Religious institution
- **Establishments operating with a liquor license obtained under Chapter 10, Alcoholic Liquors, Article II, Division 3, Licenses for Economic Development (only permitted on those parcels identified on Exhibit 1; Appendix C)**

ORDAINED this_____day of_____, 2017 to become effective 7 days after publication.

Mark Nickita, Mayor

Cherilynn Mynsberge, City Clerk

**ECONOMIC DEVELOPMENT OPTION
ORDINANCE NO. _____**

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

**TO AMEND SECTION 3.08, MU-7 (Mixed Use) DISTRICT INTENT,
PERMITTED USES, AND SPECIAL USES TO AMEND THE USES REQUIRING A
SPECIAL LAND USE PERMIT.**

Section 3.08, MU-7 (Mixed Use) District Intent, Permitted Uses, and Special Uses

Accessory Permitted Uses

- Alcoholic beverage sales*
- Alcoholic beverage sales (off-premise consumption)*
- Any use incidental to principal use
- Retail fur sales cold storage facility
- Sign
- Parking – off-street

Uses Requiring a Special Land Use Permit

- Alcoholic beverage sales (on premise consumption)
- Auto sales agency
- Auto show room
- Bank (with drive-through facilities)
- Bistro
- Drive-in facility accessory to a permitted retail business, excluding restaurants
- Funeral home
- Gasoline full-service station
- Gasoline service station
- Church
- Religious institution
- **Establishments operating with a liquor license obtained under Chapter 10, Alcoholic Liquors, Article II, Division 3, Licenses for Economic Development (only permitted on those parcels identified on Exhibit 1; Appendix C)**

ORDAINED this _____ day of _____, 2017 to become effective 7 days after publication.

Mark Nickita, Mayor

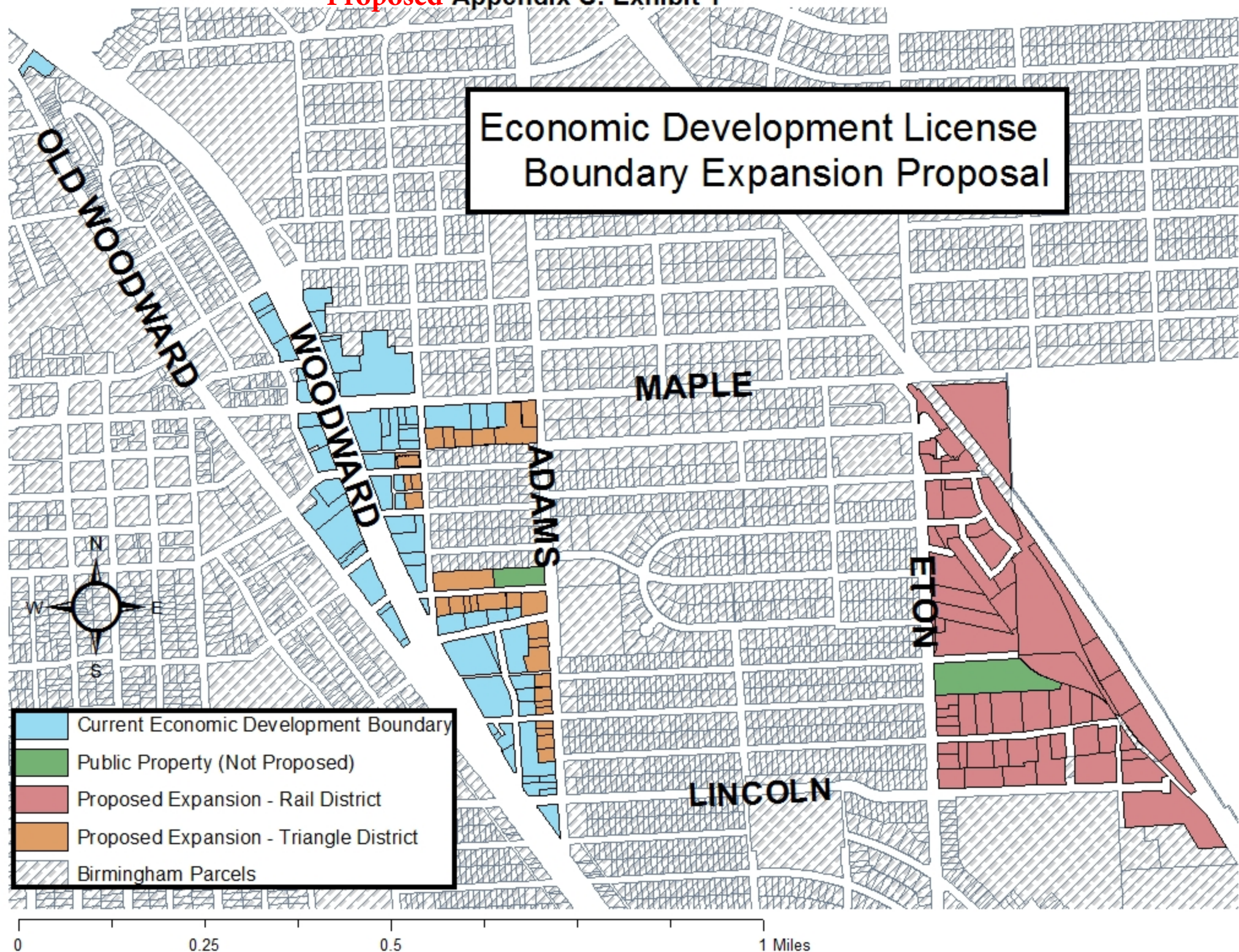
Cherilynn Mynsberge, City Clerk

Existing Appendix A, Exhibit 1

Exhibit 1

Appendix C





BIRMINGHAM CITY COMMISSION MINUTES
FEBRUARY 13, 2017
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Mark Nickita called the meeting to order at 7:31 PM.

II. ROLL CALL

ROLL CALL:	Present,	Mayor Nickita Commissioner Bordman Commissioner Boutros Commissioner DeWeese Mayor Pro Tem Harris Commissioner Hoff Commissioner Sherman
	Absent:	None

Administration: City Manager Valentine, City Attorney Currier, Acting Clerk Arft, City Planner Ecker, Deputy Treasurer Klobucar, Building Director Johnson, Police Chief Clemence

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

02-23-17: APPOINTMENTS TO THE BOARD OF REVIEW – ALTERNATE POSITIONS

MOTION: Motion by DeWeese:

To appoint Jason Monahan to the Board of Review as an alternate member to serve a three year term to expire December 31, 2019.

MOTION: Motion by Boutros:

To appoint Jill Stress to the Board of Review as an alternate member to serve a three-year term to expire December 31, 2017.

Commissioner Hoff noted that the Commission sometimes will wait to appoint when applicants are not able to be present for a meeting; however, in this situation, she explained that the Board of Review must meet in March, and training for the Board is this month. She suggested that the Commission move forward with the appointments this evening.

Vote on Jason Monahan:

VOTE: Yeas, 7
Nays, None
Absent, None

Vote on Jill Stress:

VOTE: Yeas, 7
Nays, None

Absent, None

Mr. Monahan and Ms. Stress were appointed to the Board of Review as alternate members.

02-24-17: APPOINTMENT TO THE BOARD OF ZONING APPEALS – ALTERNATE MEMBERS

MOTION: Motion by Bordman:

To appoint Jason Canvasser to the Board of Zoning Appeals as an alternate member to serve a three-year term to expire on February 17, 2020.

MOTION: Motion by Hoff:

To appoint Kristen Baiardi to the Board of Zoning Appeals as an alternate member to serve a three-year term to expire on February 17, 2020.

MOTION: Motion by Harris:

To appoint Cynthia Grove to the Board of Zoning Appeals as an alternate member to serve a three-year term to expire on February 17, 2020.

Vote on Jason Canvasser:

VOTE: Yeas, 7
Nays, 0
Absent, None

Vote on Kristen Baiardi:

Yeas, 4
Nays, 3
Absent, None

Jason Canvasser and Kristen Baiardi were appointed to the Board of Zoning Appeals as alternate members.

The Acting Clerk administered the oath of office to the appointed Board members.

IV. CONSENT AGENDA

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

02-25-17: APPROVAL OF CONSENT AGENDA

The following items were removed from the Consent Agenda:

- Item E (Minutes of January 28, 2017), by Commissioner Bordman
- Item K (Resignation of Phyllis Klinger from the Public Arts Board), by Commissioner Bordman
- Item L (Resignation of Maggie Mettler from the Public Arts Board), by Commissioner Bordman
- Item D (Minutes of January 23, 2017), by Commissioner Hoff
- Item G (Warrant List of January 25, 2017), by Commissioner Hoff

MOTION: Motion by Sherman, seconded by Boutros:

To approve the Consent Agenda containing Items A, B, C, F, H, I, J, M, and N.

- A. Approval of City Commission minutes (amended) of December 5, 2016.
- B. Approval of City Commission minutes (amended) of December 12, 2016.
- C. Approval of City Commission minutes (amended) of January 9, 2017.
- F. Approval of City Commission Special Meeting minutes of February 2, 2017.
- H. Approval of warrant list, including Automated Clearing House payments, of February 1, 2017 in the amount of \$1,705,620.55.
- I. Approval of warrant list, including Automated Clearing House payments, of February 8, 2017 in the amount of \$923,117.63.
- J. Resolution approving a request submitted by the Birmingham Bloomfield Chamber to hold the Village Fair in the Shain Park area, May 31 – June 4, 2017, including the private party, 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.
- M. Resolution approving the application and permit submitted by CenturyLink Communications, LLC, and authorizing the Mayor to sign the Right-of-Way Telecommunications Permit on behalf of the City.
- N. Resolution setting Monday, March 13, 2017 at 7:30 PM for a public hearing to consider amendments to Chapter 126, Zoning, Article 04, Structure Standards, Section 4.75 SS-02, to create limitations on the allowable size of dormers on single family homes; and Article 09, definitions, section 9.02, to add a definition of "Attic" and to amend the definitions of "Habitable attic" and "Story" for consistency with the Michigan Residential Code.

ROLL CALL: Yeas, Commissioner Sherman
 Commissioner Boutros
 Commissioner Hoff
 Mayor Nickita
 Mayor Pro Tem Harris
 Commissioner Bordman
 Commissioner DeWeese

Nays, None
 Absent, None

V. UNFINISHED BUSINESS

VI. NEW BUSINESS

02-26-17: PUBLIC HEARING TO CONSIDER THE PROPOSED REZONING OF 412-420 E. FRANK

Mayor Nickita opened the Public Hearing at 8:50 PM.

City Planner Ecker explained described the current location and zoning classification of each of the three parcels as complicated. The three parcels have been the subject of Commission discussions relative to Transitional Zoning previously, and no action was taken at the time, and the parcels have retained their existing zoning.

She explained that currently a house is located on the corner of Frank and Ann which is being used as an office. The center parcel is Frank Street Bakery, which has been a commercial use for many years. The third property on the east is vacant, and is open area and was parking at

one time. She said the applicant is asking that all three of the parcels be rezoned to TZ1, Transitional Zoning, which would allow residential uses only.

City Planner Ecker said the western portion of the property (corner of Frank and Ann) is currently zoned R3, Single Family Residential. From 1935 – 1960, that portion of the lot was zoned R6. In 1960, the homeowners asked the City to rezone to B1, Neighborhood Business, because they were operating a custom drapery shop out of the home while they were living in the home. The City granted the rezoning. In 1980, the City adopted the Master Plan, and it was determined that most of the area was a sensitive residential neighborhood. Planner Ecker said while it is difficult to see exactly where the line was drawn, it looked like the westernmost parcel was included in the sensitive residential area. The City then down-zoned the parcel from B1 to R3, Single Family Residential. A lawsuit against the City was initiated by the property owner but was later dropped. In 1995, a descendant of the family that owned the property initiated a rezoning process, but did not follow through and nothing changed. In 2013, the current property owner, who is not the applicant on this rezoning request tonight, applied for a rezoning to have all three parcels rezoned to B2B to match the easternmost parcel. B2B is seen along Old Woodward. The neighbors at the time did not want to see commercial uses. There were several postponements, and the applicant eventually dropped the rezoning request.

The Planning Board has discussed transitional zoning, and originally thought TZ1 would be the best use for the parcels; however, the neighbors expressed support for the bakery there. The Planning Board changed their recommendation to TZ2, which would allow some commercial uses. The City Commission took no action on that recommendation.

The center parcel was zoned R6 until 1960. The lot was split and was rezoned to B1, Neighborhood Business. Prior to Frank's Bakery, there was a vintage resale shop, which was not a legal use, and had to go to the Board of Zoning Appeals for a use variance. That use continued until 2007.

In February 2016, the property owner requested a change to B2B again for the whole site. The Planning Board recommended denial of the rezoning because while B2B was consistent for the eastern side of the lot, it did not provide the transitional feel that the Planning Board recommended. Therefore, the commercial building is still on the site and is zoned B1.

City Planner Ecker said the eastern-most parcel was also zoned R6 from 1935 until 1960, so presumably all three lots were all one lot at one time. In 1960, the property owner successfully applied for the B2B, which is zoned that way today.

City Planner Ecker explained what the applicant must prove when submitting a request for a rezoning. The applicant tonight is not the current property owner, but has the consent of the property owner to apply for the rezoning.

City Planner Ecker explained that an applicant for a rezoning must show why the rezoning is necessary for the preservation and enjoyment of the rights of usage commonly associated with property ownership. She noted that the applicant has indicated that the subject property is surrounded by properties with different uses, some consistent with existing zoning classifications, and many in variance with the existing zoning. The Subject Property is bordered on the east side by an office building and parking lot which fronts on Old Woodward and is in the B2B zoning district. The property adjacent on the north side of Frank Street is a CVS drug store and surface parking lot which fronts on Old Woodward. While the properties to the west

and south are in the R-3 (Single Family Residential) zoning district, the home directly west of the Subject Property at the south west corner of Ann Street and Frank Street currently has a multi-family use with three families occupying it. The three buildings on the west side of Ann Street immediately to the south of this corner home are all multi-family properties with 4 units, 24 units and 4 units respectively. The building on the west side of Ann Street, two houses to the north of the intersection of Ann and Frank, is being used as an office building with an adjacent parking lot containing 22 parking spots. Directly to the north of this property on the west side of Ann Street is an 8 unit multi-family building. One block to the west at the intersection of Frank and Purdy is a building with 3 commercial offices, and directly to the north is a 23 unit multi-family property. Other than this last property, all of the other multi-family and commercial properties west of the Subject Property have a non-conforming use in the R-3 Single Family Residential zoning district.

City Planner Ecker said the applicant must provide an explanation of why the existing zoning classification is no longer appropriate. The applicant has noted that the parcel is made up of three contiguous lots with three different zonings (R-3, B-1, and B-2B). Given the current mix of uses on the three parcels, the subject parcel is a transitional property. The very limited areas of the three individual parcels would make it difficult to develop anything consistent to each of the parcel's current zoning. She said the applicant also noted that the B-2B eastern piece is only 32 feet in width. Further, Frank Street from Woodward to Ann has been widened and on-street metered parking added, with the effect of extending the Woodward business district along Frank Street, which along with the CVS plaza on the north side of Frank, with its large surface parking lot visible from the windows of any structure facing Frank Street from the subject property, makes this an undesirable site for single family homes.

City Planner Ecker said the applicant must explain why the proposed rezoning will not be detrimental to surrounding properties. The applicant requests that the Subject Property be rezoned to the transitional zoning classification of TZ-1. This request is consistent with the intent of the City's transitional zoning. The applicant intends to develop the property as multi-family with no commercial component to the project. Given the very close proximity of a half dozen or more multi-family properties, this rezoning and use would provide a good transition from B-2B General Business and D-2 in the Downtown Birmingham Overlay to the north and east, and would not change the character of the neighborhood.

City Planner Ecker said the applicant has provided all required documentation. The Planning Board held a Public Hearing on the application. The Planning Board found that the entire parcel at 412 – 420 E. Frank Street is clearly a transitional property that separates the commercial areas to the north and east from the residential area to the west. The use of the property for low density multiple family use acts as a transition and buffer, and is entirely consistent with recent rezonings in similar transitional locations around the downtown. The proposed multiple-family residential development will also add to the diversity of housing options available, and is similar to those already found in the surrounding area. The proposed request to rezone the entire property to TZ1 Transition Zone and limit the use to residential use only is very appropriate in such a transition zone. Accordingly, the Planning Division found that the proposed rezoning of the Subject Property from R-3 (Single-Family Residential), B-1 (Neighborhood Business), and B-2B (General Business) to TZ1 (Transition Zone) should be recommended for approval.

City Planner Ecker noted that the applicant provided some development options under current zoning conditions to the Planning Board to demonstrate the feasibility of the options under current zoning conditions.

City Planner Ecker reviewed the uses under the current zoning classifications and the permitted uses under the proposed TZ1 zoning classification. She noted it is a down zoning, since the commercial uses are eliminated on the middle parcel and the one to the east. It does allow multi-family residential up to 5 units for the parcel as a whole.

Mayor Nickita said transitional zoning has been discussed for some time. This site has been of some concern because of the three zoning classifications on the small site. The Planning Board has recommended TZ1. Mayor Nickita would like to keep the discussion on the actual zoning and not the proposed project.

Commissioner Hoff agreed and noted that apparently there have been presentations to the Planning Board. City Planner Ecker said there have been discussions with the Planning Board about what the applicant is planning with the rezoning, and emphasized that tonight the Commission is considering the rezoning, and not the site plan. She added that some Planning Board members wanted to see what the options are for the site. Any development proposed hereafter if the rezoning is approved, would have to go through site plan review.

City Planner Ecker confirmed for Commissioner Hoff that previously, the Commission did not create TZ2 or rezone these parcels to TZ2. She explained that TZ1 allows residential uses only. She added that TZ2 allows some small scale commercial uses, but they are limited in size. She said the Planning Board originally felt TZ1 was the correct zoning, but the neighbors were in favor of retaining the bakery there. The Planning Board then changed its recommendation to TZ2, which went to the City Commission. The Commission was concerned about the commercial uses, and ultimately, TZ2 was not created.

Mayor Nickita noted that currently, the parcels are being used as TZ2, because there is a commercial component. This is really about going forward.

Commissioner Boutros asked City Planner Ecker about the parking lot there now and the proposed rezoning. She responded that if the TZ1 rezoning was approved tonight, the site plan review would determine where the parking would be located. She added that parking would be reduced in TZ1, because only five residential units would be allowed, and only ten parking spaces would be needed on site.

Commissioner DeWeese said the complaints received about transitional zoning classifications had to do with uses. This rezoning would be the most minimal use.

D'Angelo Espree commented on the current zoning condition, population density in this area, and residential uses as TZ1.

City Planner Ecker said that the Planning Board considered the maximum number of units that would be permitted, and felt the maximum of five units would be suitable there from the overlay to the single family neighborhood there.

Eric Morganroth commented that he supports the proposed plan especially as it relates to parking. He added that he prefers keeping the R3 designation, and down-zoning the other two commercial parcels to TZ1.

Ron Fry owns a single family home directly to the west on Ann. He commented he is not against good development. He asked for the setbacks of TZ1 as opposed to R3. City Planner Ecker said the minimum front yard setback (on Frank) would be 0-5 feet, the rear yard minimum when it abuts single family would be 20 feet, side setback would be 0 feet from an interior side lot line, and 10 feet from a side street. Mr. Fry commented on two front yard setbacks on a corner lot. He said he had to conform to very strict zoning rules on his property in order to build a single family home.

Eric Wolfe commented he is in favor of the proposed project. He hoped the Commission would take into consideration the project.

Commissioner Hoff said the Commission is not considering the proposed development, only the proposed rezoning to TZ1.

Mayor Nickita commented that the proposed project is an example of what can be done with the subject properties, and the Commission is not approving the project, and it is not on the table this evening.

Commissioner DeWeese asked what classification would be needed in order for the project to be built in the way the residents favor. Mayor Nickita said the project would be possible in the TZ1 classification. Commissioner DeWeese clarified that the project would require that all three parcels would have to be rezoned to TZ1.

Commissioner Sherman said the City does not use contract zoning. The City has used conditional zoning where the City takes an offer from a developer and the City approves it or does not approve it, and the property stays as it is.

City Attorney Currier said the developer must submit a written, non-negotiable offer as to the zoning; it is voted on up or down by the Commission, has a specified time to build, and if it is not built, the property goes back to the former zoning. He said there is no contract zoning provision in the zoning enabling statute.

Commissioner Boutros asked to see the example.

Commissioner Bordman said she agrees with Mr. Wolfe that the Commission would not be discussing this if the request to rezone was not accompanied by the project. She added it seems illogical not to look at the project. In view of the City's use of conditional zoning recently, she thinks that since there is substantial support of community, it should be considered by the Commission. She is supportive of letting the petitioner address the Commission and considering his proposal.

Mayor Pro Tem Harris said for the purposes of our decision tonight, he would like to see the project tonight. He said although conditional zoning has not been sent to us, if we want to entertain that idea, he asked if we are able to do that tonight, or would that come back to us later after the zoning decision has been made.

City Manager Valentine said that process would be initiated as a separate process. Commissioner Sherman said if a developer is interested in conditional zoning, he would have to propose it. If that is the case, it should be proposed before we review any plans.

Mayor Nickita said it is important to distinguish what is before the Commission today, which is a zoning clarification of a complex site. To tie it to an approval of a project is not on the table tonight.

Commissioner Hoff commented that we should rezone a property because it is the right thing to do, not because there is a project to be accommodated.

Mayor Nickita said the idea of creating transitional zoning was to clarify and clean up areas along the perimeter of the downtown area. He added that we do not zone to accommodate a project, and if a project falls in line with the zoning that the Commission has determined is appropriate, it can move forward in the process of approval. He said the question is whether TZ1 is appropriate zoning for this site. The project is an example of what could be done under transitional zoning, and nothing the Commission might approve today, ties that project to this zoning condition.

Commissioner Bordman said we know there is a petitioner with a specific project. She asked the City Attorney that if we know that is true, and we also know from reading the Planning Board minutes that the petitioner has already suggested that he would be amenable to conditional zoning, could we table the zoning request today, and have the petitioner proceed with the conditional zoning process, and then bring this back at that time.

City Attorney Currier said that is up to the developer to propose it in writing to the City Commission. He added that Section 125.3405 of the Zoning Enabling Act has specific requirements. City Planner Ecker commented that the developer submitted a statement to the Planning Board, and added she does not know what the specific format must be. City Attorney Currier responded that the developer is required to put in writing the conditions he wants, and added that the developer may have stated them at the Planning Board meeting, but a separate letter to the Commission is needed including a time frame for completion.

Mayor Nickita clarified that a formal request to the Commission must be submitted. City Attorney Currier responded that the formal request would then be referred to the Planning Board. Mayor Nickita added that we do not have such a request from the developer tonight.

Commissioner Sherman commented that the petitioner could ask for a continuance of the hearing.

Mayor Nickita said this is the hearing on the rezoning to TZ1.

Commissioner Sherman said the petitioner could ask for this hearing to be postponed to a date certain, or he could withdraw his petition, or continue with the hearing right now.

Commissioner Boutros asked if the petitioner could go back after this hearing, and then ask for conditional zoning. City Attorney Currier said he needs to do research on that question, and added that there is a time limitation. The same request by the same petitioner cannot be submitted for a year, if the Commission has acted on the request. It can be a different request for a rezoning or a different petitioner for a rezoning.

Commissioner Sherman clarified that if the Commission makes a decision tonight and if it is not what the petitioner wants, he might have to wait a year before submitting again.

Mayor Nickita commented that if the Commission rezones this to TZ1 tonight, then the petitioner can submit for site plan approval, which is the process we typically follow.

Commissioner Hoff asked if City Planner Ecker knows why the home on the corner is facing Frank and not Ann, when all the others are facing Ann. City Planner Ecker said the records do not reflect that information.

Commissioner Hoff asked about the property owner. City Planner Ecker explained that the applicant for this rezoning is not the owner, but has provided paperwork to the Planning Department that indicates the property owner is aware of the request. The property owner has submitted rezoning requests for the three parcels previously.

Mayor Nickita commented that there are two considerations tonight. One is that we look at the zoning specifically for a rezoning to TZ1, allowing the applicant to then go through the typical process of getting a project approved and built. On the other hand, if the applicant has an interest in conditional zoning, we could consider that.

John Sherkerjian, representing the applicant, asked the City Attorney if proceeding with a written request to the City Commission would constitute a substantive change so the applicant would not be forced to wait a year before resubmitting the application. City Attorney Currier said it is a procedural change as to how the same issue is being approached. Mr. Sherkerjian said he would be getting to the same result, but with voluntarily offering a condition. City Attorney Currier said it would take a year.

Mayor Pro Tem Harris suggested that the scenario Mr. Sherkerjian discussed assumes that the Commission makes a substantive decision tonight. Mayor Nickita said, to be clear, if the Commission votes on what is on the table tonight, that is definitive, and Mr. Sherkerjian can submit his project under that zoning. Mr. Sherkerjian added that the residents may not be as comfortable with that because they want to see his plan versus the unknown.

Mayor Nickita suggested another option would be to consider a conditional zoning application. It would require a formal request, a public hearing at the Planning Board and thereafter, the City Commission.

Commissioner Bordman asked to make clear the Commission is not asking the applicant to do that. Mr. Sherkerjian said they met with the neighbors and came to the conclusion to voluntarily offer conditional zoning. He understands that the offer does not meet the requirements of the City.

City Attorney Currier said the conditional zoning request would begin at the Planning Board and make its way to the City Commission, which would likely take until May or possibly June.

Mr. Sherkerjian said he would be unable to keep his contract with the seller with that long a delay. He has no issue with conditional zoning, but the timing is an issue for him.

Commissioner DeWeese confirmed that Mr. Sherkerjian's plan will meet the requirements of a TZ1 classification with no variances needed.

Mr. Sherkerjian said the R3 parcel which seems to be the issue with everyone, is inconsistently zoned, is an anomaly, and totally unusual with respect to the other R3 properties. He added that this lot is the only lot not facing Ann, the only lot facing the parking lot, and is the only lot that is not 123 feet deep like the others, so a garage cannot be built.

Mr. Sherkerjian described the proposed plan.

Mayor Nickita said an applicant is interested in developing this property, and is ready to proceed subsequent to the rezoning tonight. He added that the Commission is not approving the project shown tonight, but rather a zoning change because of inconsistencies and which will align with transitional zoning.

Commissioner Hoff said she is unclear about neighbors' opinions. She thought she heard they want to keep an R3 zoning on the single parcel, but also want this development. Mayor Nickita stated if the R3 zoning remains, the proposed development the applicant discussed could not happen. It also would be inconsistent with creating a transitional zoning. It would create an R3 parcel next to a transitional zoning. The resident clarified his objection.

Mayor Pro Tem Harris said he detected some equivocation in the applicant's interest in applying for conditional zoning if the Commission does not make a decision this evening, and asked for clarification by the applicant.

Mr. Sherkerjian said his concern was with the timing of the request for conditional zoning, and felt that it would not work.

Eric Wolfe commented that the Planning Board was in favor of the project subject to conditional zoning, and was told by the Planning Board Chairman the Board did not have the authority to do that. He added he does not understand why this has to go back to the Planning Board to come back to the Commission.

City Attorney Currier said the ordinance requires that at least one public hearing be conducted before the Planning Board specifically addresses the request for conditional zoning of the parcels.

The Public Hearing was closed at 9:37 PM.

MOTION: Motion by Hoff, seconded by Bordman:

To approve the proposed rezoning of 412 - 420 E. Frank Street from R3 (Single-Family Residential), B1 (Neighborhood Business), and B2B (General Commercial) to TZ1 (Transitional Zoning) for all three parcels.

VOTE: Yeas, 7
 Nays, 0
 Absent, None

**02-27-17: PUBLIC HEARING TO CONSIDER AMENDING CHAPTER 126,
 ZONING – RAIL DISTRICT BISTROS**

City Planner Ecker explained that the owner of the Whole Foods property at 2100 E. Maple is looking for zoning ordinance amendments that would create boundaries of the Rail District and include the Whole Foods site at 2100 E. Maple into the district, and also allow a Bistro to be applied for at that location. Alternatively, the owner is requesting that the Economic Development map be amended in the zoning ordinance to include the 2100 E. Maple site as one of the properties in the Economic Development district, enabling Whole Foods to apply for an Economic Development license.

Mayor Nickita opened the Public Hearing at 9:39 PM.

City Planner Ecker explained that if the Commission chooses to allow a Bistro license to be used at 2100 E. Maple, the Commission should codify the Rail District boundaries. The Commission would also need to amend the ordinance to change the development standards in Article II, Section 2.29 and 2.31 to allow Bistro licenses to be used in the defined Rail District.

City Planner Ecker said the second option of an Economic Development license would require the Commission to amend the Economic Development map in the Zoning Ordinance to include the 2100 E. Maple property, and also to amend the B2 zoning district to allow the use of an Economic Development license with a Special Land Use permit.

City Planner Ecker noted that both the Rail District option and the Economic Development option would require a Special Land Use Permit.

Commissioner Bordman asked City Attorney Currier if the Bistro license application submitted by Whole Foods to the City in October 2016 is sufficient or will they have to re-apply. City Attorney Currier said the prior application is sufficient.

City Planner Ecker noted that all three bistro license applicants have submitted Special Land Use permit applications to the Planning Board and will be considered at the February 22, 2017 Planning Board meeting. What happens tonight with the Whole Foods request for a zoning amendment will be considered at that meeting.

Mayor Nickita said the Commission has two things to consider, which are to create the Rail District boundaries, or expand the Economic Development map to include 2100 E. Maple.

Commissioner Hoff said we have approved liquor licenses in the Rail District. There is an application currently for a bistro license in the district.

City Manager Valentine noted that we have bistros in MX district. The Rail District has yet to be defined formally. That is part of what the Commission is being asked to do this evening.

Commissioner Hoff suggested that it is easiest to draw the Rail District boundaries and include the Whole Foods site.

Commissioner DeWeese said having the boundary defined makes sense. He said Whole Foods is right next to the railroad and is part of the Rail District. He added that he thinks the Economic Development area should be focused along Woodward.

Ms. Kelly Allen, representing Whole Foods, suggested that the Rail District boundary be defined by the Commission. She added that she believes that Whole Foods should have an Economic

Development license. She said the Bistro license was designed more for small, eclectic restaurants in certain areas of the City. Whole Foods meets the Economic Development criteria on every element. She thinks the City may be inclined to give the Bistro licenses to the more traditional type of restaurant, whereas there are only two or three Economic Development licenses with specific requirements as to investment, which Whole Foods meets.

In response to Commissioner Hoff's question, Ms. Allen responded that since the City does not have any quota licenses available, Whole Foods must obtain an escrowed license from the State to transfer in to the City. Ms. Allen added that there is no cost for a Bistro or Economic Development license. It qualifies the user/applicant to be licensed in the City. The user/applicant then has to purchase a license to transfer into the City.

Commissioner Hoff noted that a Bistro license has many more restrictions than an Economic Development license. Ms. Allen said that just because Whole Foods qualifies for an Economic Development license, the plans call for a small restaurant doing business in conjunction with the grocery store.

Mayor Pro Tem Harris asked if the City adjusts its Economic Development map to include Whole Foods, would Whole Foods then withdraw its application for a Bistro license. Ms. Allen confirmed it would.

Mayor Nickita closed the Public Hearing at 9:55 PM.

Mayor Nickita suggested that the Commission has to be careful of the reality of what is being presented vs. what the Commission created these for. They were intended to be generators of opportunity, not necessarily accommodating for something that has already happened. We have a development that has already happened. The intention of the Economic Development was to create incentive for things to happen. He said that is not congruent with the intent of the Economic Development license, and he is more in favor of clarifying the Rail District to include Whole Foods.

Commissioner Sherman expressed concern that expanding the Economic Development corridor will create a hodge-podge effect and that was never the idea. He agreed that we were looking to develop a certain area and use the license as an incentive. He prefers to correct the map and ordinances.

MOTION: Motion by Sherman, seconded by Hoff:

To amend Chapter 126, Zoning, as follows to establish the boundaries of the Rail District and to allow bistros in B2 and B2B zone districts located within the Rail District with an approved Special Land Use Permit:

- (a) Article 02, section 2.29 (General Business), to allow bistros in the Rail District as a use requiring a Special Land Use Permit;
- (b) Article 02, section 2.31 (General Business), to allow bistros in the Rail District as a use requiring a Special Land Use Permit; and
- (c) Article 09, section 9.02 (Definitions), to add a definition for Rail District.

VOTE: Yeas, 7
Nays, 0
Absent, None

Commissioner Hoff said the Commission has received communications from residents in the area about their traffic concerns. She commented that the Commissioners are definitely looking at those issues. She does not think this action creates any greater hardship.

City Manager Valentine added that there are initiatives to improve pedestrian flow as well as vehicular movements throughout the corridor as part of the Ad Hoc Rail District study recently accepted by the Commission. After reviews and studies are conducted by the Multi-Modal Transportation Board and the Planning Board, their recommendations will be returned to the Commission for possible action.

Commissioner Hoff wanted to assure the people in that area that the City is listening to them. As a result of the meeting the City Manager had with residents recently, the City is going to do some things in the interim until those formal, permanent solutions can be reviewed and acted upon, to try to address the residents' concerns with more intermediary measures.

Mayor Nickita said the City is making plans on how to achieve some gains in that area.

02-28-17: PUBLIC HEARING TO CONSIDER AMENDING CHAPTER 126, ZONING – LIQUOR LICENSES IN THEATERS AND CHAPTER 10, ALCOHOLIC LIQUORS, LICENSES FOR THEATERS

The Mayor opened the public hearing at 10:01 PM.

City Planner Ecker explained that the owner of the Birmingham Theater submitted an application to allow a new category of liquor licenses for theaters. This request impacts Chapter 126 of the Zoning Ordinance, and also Chapter 10, Alcoholic Liquors in the City Code. The Planning Board recommended the Commission consider adding a new division in Chapter 10 of the City Code. A Public Hearing at the Planning Board for the addition to Chapter 10 of the City Code was not required, but it was decided to take it through the public hearing process as well. Additionally, the Board recommended the Commission consider an amendment to the Zoning Ordinance to allow a new category of liquor license to be used in a theater with a Special Land Use Permit in the B4 District only.

City Planner Ecker described the definition of a theater as a building, or a part of a building for housing dramatic presentations, stage entertainments, or motion picture shows. She described the extensive amount of information that must accompany the application.

City Planner Ecker said the ordinance amendment would give the Commission up to two theater licenses per year. She added that this license cannot be transferred without Commission approval, and the theater would have to enter into a contract with the City.

City Planner Ecker noted that an owner of a theater license could apply for an Entertainment, Dance or Additional bar permit, but not seek any permit endorsements from the Liquor Control Commission, or seek any change in license status or class without City permission.

Commissioner Bordman said liquor licenses are a trend in the theater business, and in general, is in support of this, so we keep the theater in town and viable. She expressed concern about our definition of theaters. For example, we do not say what type of movies fall into the motion picture shows. She is also concerned what dramatic presentations could qualify, and what kind of presentation. She believes the definition should be tightened up for the future as well.

City Planner Ecker said adult entertainment movies would fall under the regulated use category. Mayor Nickita said given the City's history with entertainment and the strong interest in liquor licenses, will there be an opportunity for someone to misrepresent what they are doing. He concurs with Commissioner Bordman that our definition of theater is not clear enough and defined enough where we cannot see the potential for misuse.

Commissioner Hoff expressed concerns about the entertainment aspect of the definition, and the type of crowds that might be attracted. She added that the Birmingham Theater is an important landmark in downtown and the City wants it to be successful. She agrees we have to have some restrictions for the future when ownership may change.

Commissioner Sherman noted that everything comes to the Commission. The Special Land Use Permit will define what can and cannot occur at the property. He suggested the ordinance be drafted with some flexibility, because we do not know the type of situation in the future.

Mayor Pro Tem Harris agreed with Commissioner Sherman, and is comfortable with the ordinance. He noted that the City conducts an annual review for every liquor license, and believes there is adequate protection built into the proposed ordinance.

Commissioner Boutros commented on the importance of keeping this landmark, and agrees that the Commission is the decision maker.

Commissioner DeWeese supports this, and sees the value in some flexibility.

Bruce Thal commented about intention to include Village Players. City Manager Valentine said it was contemplated, but the group has not come forward expressing interest, but the flexibility is there to incorporate them at the time they wish to pursue this.

Kelly Allen, representing the theater, said the Birmingham Theater complies with the ordinance. She said significant improvements have been made already, and that this ordinance will be the first step in solidifying the theater's existence.

The Mayor closed the Public Hearing at 10:20 PM.

MOTION: Motion by Boutros, seconded by DeWeese:

To amend Chapter 126, Zoning, Article 2, Section 2.37, B-4 Business Residential, to allow the use of liquor license in theaters in the B-4 zoning district, and to consider the associated amendments to Chapter 10, Alcoholic Liquors, Article II, to add a Division 5, Licenses for Theaters.

Commissioner Bordman said she is reassured and will support the motion.

Mayor Nickita said he was concerned as well and it was important to have the discussion. He is comfortable moving forward.

VOTE: Yeas, 7
 Nays, 0
 Absent, None

**BIRMINGHAM CITY COMMISSION /
PLANNING BOARD JOINT WORKSHOP SESSION MINUTES
JUNE 19, 2017
DPS FACILITY, 851 SOUTH ETON
8:00 P.M.**

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Mark Nickita called the meeting to order at 8:00 PM.

II. ROLL CALL

PRESENT: Mayor Nickita
Mayor Pro Tem Harris
Commissioner Bordman
Commissioner Boutros
Commissioner DeWeese
Commissioner Hoff
Commissioner Sherman

Scott Klein, Planning Board Chairman
Stuart Jeffares, Member
Bert Koseck, Member
Janelle Whipple-Boyce, Member
J. Bryan Williams, Member

ABSENT: Robin Boyle, Member
Gillian Lazar, Member
Lisa Prasad, Member
Daniel Share, Member

ADMINISTRATION: City Manager Valentine, City Attorney Studt, Deputy Clerk Arft, Building
Planning Director, Ecker, Director Johnson

III. ITEMS FOR DISCUSSION

Mayor Nickita explained that this is a workshop session to discuss and evaluate various planning issues, with the intent to create an Action List for the Planning Board. City Manager Valentine added that more discussion will be needed on each item by the City Commission. The priorities will be determined by the Commission at a future meeting.

A. RENOVATION OF COMMERCIAL PROPERTIES

Planning Director Ecker explained that there are three boards that review building improvements consisting of the Planning Board, the Design Review Board and the Historic District Commission. The Zoning Ordinance establishes the review process for new construction and renovation of existing buildings. However, the Zoning Ordinance is not clear as to the extent an existing building can be renovated before it is deemed new construction, and the ordinance is not clear as to what specific changes trigger site plan review. Site plan reviews go to the Planning Board. If the building is in the historic district, it will also go to the Historic District Commission. If it is a design change only to an existing building, it would go to the Design Review Board. This issue came up particularly with the Audi building because they had not changed the footprint, it went to the Design Review Board. The question is should there be

a clarification made to some of the ordinance language to determine how much of a renovation to an existing building is a renovation, or when it becomes new construction or a new building. She noted that this is not the first time for this issue.

She also suggested clarifying what exactly is a design change vs. a site plan change. In the past, a site plan change has been interpreted as a change in the footprint in the building or square footage, but it is unclear in the ordinance. Would the City like to see the review procedures amended for new construction and/or the renovation of existing buildings, both in terms of which boards review those actions and also whether there needs to be clarification on what constitutes renovation of an existing building, and where the line is drawn between that and new construction. Also, does the Commission wish to see a distinction or clear definition as to what constitutes a site plan change and what constitutes a design change.

Commissioner Sherman suggested it would be wise to have more of a review than what we have now.

Mr. Jeffares asked about dramatic changes in use. Ms. Ecker responded that would require an application for an occupancy permit and any building permits needed. The Building Department would route the plans to the other departments. The Planning Department would look at the use to confirm it is an approved use, and at parking to confirm it met the parking requirements. If there are no exterior changes to the building, it does not need to go to a board for planning review, according to the current ordinances.

Mr. Koseck asked if the Design Review Board look at things such as site issues, pedestrian flow, trash, pickup, access, etc. Ms. Ecker said the DRB focuses more heavily on the design and the signage than the site issues. They do discuss the site issues, but not as much detail as the Planning Board and have input.

Mayor Pro Tem Harris asked for specific examples when the ordinance did not require a site plan review and the project later was thought to have needed to have site plan review. Ms. Ecker said the Audi building was an example of one that had concern expressed as to whether it needed a site plan review as well, but no changes were made to the layout of the site, access, etc. The Wachler building and the McCann building were other examples. A site on Cole Street was required to also go for site plan review, because changes were proposed to the parking lot and dumpster.

Commissioner DeWeese said the difference between design review and site plan review is not understood, and thinks it would be useful to have those defined and explained. He said that is also true of renovation and new construction. He added that site plan review considers internals, layout of other buildings around to see the interconnections between them, while Design Review does not look at as much, and so at a certain scale, it becomes important for site plan review.

Mayor Nickita said this is most evident in downtown overlay where we have specific requirements. The Surnow building is an example where we need the expertise of the Planning Board and the review that deals with specifics for a project of that sort. Maybe during the process, a recognition of the extent is clear, and if it is very minor and not much change, then it can be overlooked because we do not want to create difficulties when they are not there. We do not always know in the beginning of a project how big it might become. He thinks the

Planning Board should have some type of review to be certain the project adheres to the City's guidelines.

Commissioner Bordman expressed concern about what happens when a project turns out to be more involved than originally thought. She is unsure that our ordinance could even address a situation like that without causing problems for the builder.

Ms. Boyce said it becomes more of a planning issue when an extensive renovation matched with a change in use occurs. She would like the Planning Board to have the opportunity to review it to make sure all of the issues are addressed.

Mayor Nickita said there seems to be solid support for reviewing this further and identifying a plan of action to address having a further review than we have done in the past. The intention is not to create another level of regulation, but we have to make sure we have the proper checks and balances.

Mr. Valentine said this issue will be added and brought back to the Commission.

B. COMMERCIAL PROJECTIONS ONTO PUBLIC PROPERTY/ ARCHITECTURAL ALLOWANCES

Ms. Ecker explained that Chapter 98 implies that awnings, balconies, marquees, and canopies are permitted to project over the public right-of-way, but does not clearly state that they are permitted. They are to comply with Chapter 22, which are the Building Code regulations. The question has that arisen is should it be clarified in the Zoning Ordinance which, if any projections are permitted, and to address the height, projection or permitted materials for architectural features projecting into the public right of way.

Mayor Nickita added that the property line is the building face, so anything that projects beyond the building face is technically over City property. When the projections are a bit atypical or if they take on other forms, it becomes more difficult. Ms. Ecker said while we have a review process, we do not have a hard and fast regulation as to how far it can project.

In response to Commissioner Hoff, Ms. Ecker said we could potentially determine a size of how many inches a projection could protrude into the right of way, and if the location on the building would impact how far it could protrude.

Commissioner DeWeese said some of these projections are pleasing to the eye and are pedestrian-friendly, so the key may not be to define exactly how much, but maybe a minimum which would trigger a review standard.

Mr. Koseck said it is worth more study and investigation and development of some criteria or measurement.

Mayor Nickita said this issue is worthy of another layer of review to incorporate clear guidelines.

C. RAIL DISTRICT BOUNDARY REVIEW

Ms. Ecker explained that recently the Rail District boundaries were created and defined by the City Commission. The question has come up whether some other properties on the west side of S. Eton and/or the North Eton Plaza on N. Eton should be added to the district. The district

allows Bistro establishments to be operated on any of the properties with a Special Land Use Permit.

Commissioner Hoff noted that both of the properties mentioned are transitional zones, and are close to residential. She suggested that they could be classified in a transitional zone.

Mr. Koseck noted that the Rail District is not a zoning district, and a transitional zone is a zoning classification. Ms. Ecker agreed, and compared it to an overlay district. The Rail District is a map that is incorporated into the Zoning Ordinance that delineates where the Rail District is. She added that all of the properties in the district do not share the same zoning.

Ms. Boyce commented that this issue does not seem to be a priority.

In response to Mayor Nickita's question, Ms. Ecker said she has not seen any requests or interest from the areas for inclusion in the district. Mayor Nickita added that all commercial or non-residential in the area is in the rail district, except for the two areas.

Mayor Pro Tem Harris asked if there have been any inquiries from the properties to apply for a Bistro license. Ms. Ecker said there have been none.

Commissioner Bordman suggested that the properties could be zoned transitional within the Rail District since there are various zoning classifications within the district. The parcel north of Maple is on Eton, and is in the same position relative to residential that the rest of the Rail District as outlined is in relation to residential. She does not like to see the parcels in question have no identity.

Mr. Williams noted that the Whole Foods area was made part of the Rail District at a later time, which enabled Whole Foods to apply for a Bistro license.

Commissioner Sherman suggested this is a low priority to move forward. It is something that could move forward at a later date if we see there is going to be some type of marketing program or a possibility of developing the properties to conform with the properties in the area.

Mayor Nickita said it is unusual that the two properties are not included, but the consensus is that it can be considered at a lower level. It is something to consider in the future.

D. ECONOMIC DEVELOPMENT LICENSE BOUNDARY REVIEW

Ms. Ecker explained that this issue came up over the past year. The Economic Development License boundary includes mostly properties along the Woodward corridor that the Commission at the time felt were the properties that needed a push forward in order to see some redevelopment occur. The area also now includes Maple Road just to the east of Woodward. The Stand and Triple Nickel have been developed as a result of the district. We have had interest from others who do not fall in the district at this point. She asked if there is interest in changing the boundaries for this district or not. Ms. Ecker added the benefit of being included in the district is the ability to transfer a liquor license from another municipality.

Mr. Jeffares is in favor of looking at this.

Commissioner Hoff said the Economic Development license does not have as many restrictions as the Bistro license, and because of that, she is not in favor of expanding the Economic

Development license boundary. By expanding the area, it would bring it closer to residential, areas she feels would be better suited for a Bistro license.

Commissioner DeWeese feels we need more control of it. Currently, we are seeing Bistros getting out of hand. He agrees with Commissioner Hoff, and suggested there maybe is an intermediate step.

Commissioner Sherman said the City does have control, as a Special Land Use Permit is required. This may be another tool to encourage something that would not otherwise be done.

Commissioner DeWeese clarified that his concern is about size, scale, and appropriateness.

Mayor Pro Tem Harris asked how challenging is it for a business to obtain a liquor license if it is not in an area for a Bistro license or economic development license. Ms. Ecker does not have the specifics on that, but the owner would have to obtain an existing quota license, which are rarely for sale, and are expensive.

City Manager Valentine clarified that the investment triggers the ability to obtain the license, then the applicant must purchase the license.

Commissioner Boutros said he thinks it is worth consideration.

Mayor Nickita suggested that a revision is in need of further review to see if it has merit. There are areas in the Triangle District that could use some incentive for development.

E. BISTRO ALLOWANCES AND RESTRICTIONS

Ms. Ecker said there has been concern expressed over the size of Bistros recently. She explained that a Bistro is defined as a restaurant with 65 seats or less, with no more than 10 of them at a bar, with a full service kitchen, low key entertainment, tables that must line the storefront, and outdoor dining. The biggest issue has been how much is too much outdoor dining. The intent when Bistros was started was to encourage outdoor dining, but it was not apparent at the time how far owners would look for creative opportunities to expand the outdoor dining. She suggested clarifications as to maximums, location, enclosures and the building code issues such as energy code, fire suppression might be needed. Parking needs are also a big concern.

Mayor Nickita added that the original concept for Bistros was just in the downtown area and that has changed. Once the area expanded to the Triangle area and Rail District, it changed the circumstance because of parking and available outdoor space.

Commissioner Bordman suggested considering different rules for different areas. The needs are different. Perhaps part of the study should be whether to have the exact same requirements in each of our districts.

Commissioner DeWeese suggested we need an intermediate level that applies in different situations. He considers this a high priority issue.

Mr. Koseck suggested that we should study the materials used and also the intent.

City Commission Minutes
July 10, 2017

07-196-17 2017 – 2018 PLANNING BOARD ACTION LIST

City Planner Ecker presented the Draft Planning Board Action List for 2017-2018 based on the June 19, 2017 Joint Planning Board/City Commission Meeting. Each Commissioner noted their preference for priority projects, taking into account how quickly an item could be completed, which items might bog down progress because they will require more effort, input and time, and which items are issues the Commission is currently facing.

City Planner Ecker explained the Planning Board addresses 5 study items at each study session, so that 5 issues are being worked on concurrently. She estimated any zoning ordinance amendment takes a minimum of 3 - 6 months to go through the planning and public hearing process to reach the point of adoption. A change in wording of the Specific Direction/Problem Definition for Definition of Retail – Short Term Study was requested to be consistent with City Manager Valentine's June 30, 2017 memo to the Planning Board: "review the Redline Retail Area as prescribed by the Downtown Birmingham 2016 Report for background on the intent for retail in the downtown". With regard to the issue of renting properties, which City Planner Ecker noted is not within the scope of the Planning Board, City Manager Valentine indicated he presented the issue at the joint meeting as something to keep an eye on. He believes it important to monitor pending legislation and plan for appropriate language in case the legislation doesn't pass.

The Commission requested that City Planner Ecker provide more clarity and detail for 2 items: (1) "Consider looking at principal uses allowed and add flexibility ("and other similar uses")" and (2) "Potential residential zoning changes; MF & MX garage doors".

Mayor Nickita asked for a timely update on the Planning Board's progress, and City Manager Valentine suggested a progress report be given at the next Joint Planning Board/City Commission Meeting.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner DeWeese:

To approve the Planning Board 2017 Action List as amended:

1. Definition of Retail – Short Term Study
2. Bistro Parameters
3. Economic Development License Boundary Review
4. Renovation of Commercial Properties
5. Commercial Projections onto Public Property / Architectural Allowances
6. Definition of Retail – Long Term Study
7. Shared Parking
8. Consider looking at principal uses allowed and add flexibility ("and other similar uses")

9. Potential residential zoning changes; MF & MX garage doors
10. Rail District Boundary Review
11. Sustainable Urbanism (Green building standards, pervious surfaces, geothermal, native plants, low impact development, etc.)
12. Additional Items to be Considered during Master Plan Process

VOTE: Yeas, 7
Nays, 0
Absent, 0



MEMORANDUM

Planning Division

DATE: September 8, 2017

TO: Planning Board

FROM: Matthew Baka, Senior Planner

APPROVED: Jana Ecker, Planning Director

SUBJECT: Bistro Allowances and Restrictions

In 2007 the City of Birmingham amended the Zoning Ordinance to create the bistro concept that allows small eclectic restaurants to obtain a liquor license. Bistros are defined in Article 09 of the Zoning Ordinance as restaurants with a full service kitchen with interior seating for no more than 65 people and additional seating for outdoor dining. Bistros are permitted in certain zone districts with a valid Special Land Use Permit with the following conditions:

- No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats;
- Alcohol is served only to seated patrons, except those standing in a defined bar area;
- No dance area is provided;
- Only low key entertainment is permitted;
- Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
- A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;
- All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
- 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 the bistro concept has evolved over the past 10 years, new applicants have sought creative ways to make the establishments distinctive from other restaurants and bistros in the City, and to increase the number of seats through the use of all season outdoor dining. There have been several issues raised:

- **Use of Eisenglass** – extends the time period outdoor dining areas are in operation which increases the number of seats for restaurant as a whole for a majority of the year;
- **On-street Dining/Rooftop Dining** – the use of on-street parking spaces and rooftops in addition to the sidewalk area allows the addition of larger outdoor dining areas;
- **Parking Needs** – the expansion of outdoor dining increases the number of people dining at the restaurant, which increases parking demand;
- **Building Code Requirements** – the enclosure of outdoor dining areas triggers Building Code regulations such as Energy Code compliance, fire suppression requirements, fire separation distances and exterior wall fire resistive ratings.

At the joint City Commission/Planning Board meeting of June 19th, 2017 the issue of clarifying bistro regulations was discussed at length. There seemed to be consensus that a review of the Bistro requirements and how they relate to the various areas in which they are permitted is warranted. Additionally, Commission members saw good reason to potentially regulate bistros differently depending on the district in which they are located. On July 24th, 2017 the City Commission moved the review of bistros up to ____ Priority on the Planning Boards Action List. Accordingly, the Planning Division is now requesting that the Planning Board begin discussions on how these concerns should be addressed. The relevant minutes from the joint meeting are attached for your review.

On August 9, 2017 the Planning Board held a study session to begin to consider addressing the issues of parking, outdoor dining and eisenglass enclosures. Based on previous discussion at the joint meeting and the Planning Board the Planning Division presented some sample draft ordinance language to initiate discussion. The draft language provided limits on the number of outdoor dining seats, restricted the use of eisenglass or vinyl enclosures and required additional parking for the outdoor dining areas. The discussion revealed that the Planning Board did not support regulating the number of outdoor dining seats, or requiring additional parking for such outdoor dining areas. There was unanimous support for restricting the use of enclosures on outdoor dining to ensure that Outdoor Dining is truly seasonal. Accordingly the draft language has been revised to provide options that would eliminate the ability to utilize enclosures year round. The language is now silent on the issues of limiting the number of outdoor seat and requiring additional parking for those seating areas.

Two additional points that were raised by the Planning Board were whether or not the 65 seat limit should be revisited and whether rooftop dining should be encouraged. It was suggested that perhaps each of the three areas that permit bistros (DB Overlay, Triangle, and Rail Districts) could establish different standards for maximum seating based on location. However, although there was some support for this approach, there was not a consensus on this point so it was not incorporated into the draft language at this time. If the Planning Board is interested in further discussing a tiered system of capacity for bistros based on location, the Planning Division would request that the Board provide some direction as to the scale at which the maximum seating in each area could be increased. In regards to rooftop dining, there is nothing prohibiting rooftop dining at this time and the Bistro Social Kitchen currently does offer seating on the roof. If the Planning Board does feel it would be beneficial to explicitly encourage rooftop dining then language could be added to the definition or the use specific standards to do so.

CITY OF BIRMINGHAM

ORDINANCE NO. __

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

TO AMEND SECTION 3.04, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

3.04 Specific Standards

C. Building Use

- 10. Bistros:** Bistros are permitted with a valid Special Land Use Permit with the following conditions:
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 - 2.** Alcohol is served only to seated patrons, except those standing in a defined bar area;
 - 3.** No dance area is provided;
 - 4.** Only low key entertainment is permitted;
 - 5.** Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
 - 6.** A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;
 - 7.** All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
 - 8.** 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.
- 9. Permanent enclosures shall not be permitted for outdoor dining areas.**
- 10. Weather proof enclosures facilitating year round dining outdoors are not permitted.**
- 11. Outdoor dining is not permitted between November 16 and March 31.**
- 12. The use of any type of enclosure system (including but not limited to fabric, eisenglass, vinyl panels, drapes, plant material) shall not be permitted for Outdoor Dining areas.**

ORDAINED this _____ day of _____, 2017 to become effective 7 days after publication.

Mark Nickita, Mayor

Cherilynn Brown, City Clerk

CITY OF BIRMINGHAM

ORDINANCE NO. __

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

TO AMEND SECTION 5.06, 01 – OFFICE DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

5.06 01 District

A. Bistros: Bistros are permitted with a valid Special Land Use Permit with the following conditions:

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- 3.** No dance area is provided;
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- 5.** Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
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- 12. The use of any type of enclosure system (including but not limited to fabric, eisenglass, vinyl panels, drapes, plant material) shall not be permitted for Outdoor Dining areas.**

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

TO AMEND SECTION 5.07, 02 – OFFICE DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

5.07 02 District

A. Bistros: Bistros are permitted with a valid Special Land Use Permit with the following conditions:

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- 3.** No dance area is provided;
- 4.** Only low key entertainment is permitted;
- 5.** Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
- 6.** A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;
- 7.** All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
- 8.** 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.
- 9. Permanent enclosures shall not be permitted for outdoor dining areas.**
- 10. Weather proof enclosures facilitating year round dining outdoors are not permitted.**
- 11. Outdoor dining is not permitted between November 16 and March 31.**
- 12. The use of any type of enclosure system (including but not limited to fabric, eisenglass, vinyl panels, drapes, plant material) shall not be permitted for Outdoor Dining areas.**

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

TO AMEND SECTION 5.08, P – PARKING DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

5.08 P District

A. Bistros: Bistros are permitted with a valid Special Land Use Permit with the following conditions:

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- 5.** Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
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- 11. Outdoor dining is not permitted between November 16 and March 31.**
- 12. The use of any type of enclosure system (including but not limited to fabric, eisenglass, vinyl panels, drapes, plant material) shall not be permitted for Outdoor Dining areas.**

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Cherilynn Brown, City Clerk

CITY OF BIRMINGHAM

ORDINANCE NO. __

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

TO AMEND SECTION 5.10, B2 – GENERAL BUSINESS DISTRICT, B2B – GENERAL BUSINESS DISTRICT, B2C – GENERAL BUSINESS DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

5.10 B2 District, B2B District, B2C District

- A. Bistros:** Bistros are permitted with a valid Special Land Use Permit with the following conditions:
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 - 2.** Alcohol is served only to seated patrons, except those standing in a defined bar area;
 - 3.** No dance area is provided;
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THE CITY OF BIRMINGHAM ORDAINS: AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND SECTION 5.11, B3 – OFFICE-RESIDENTIAL DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

5.11 B3 District

- A. Bistros:** Bistros are permitted with a valid Special Land Use Permit with the following conditions:
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Mark Nickita, Mayor

Cherilynn Brown, City Clerk

CITY OF BIRMINGHAM

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

TO AMEND SECTION 5.12, B4 – BUSINESS-RESIDENTIAL DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

5.12 B4 District

B. Bistros: Bistros are permitted with a valid Special Land Use Permit with the following conditions:

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- 4.** Only low key entertainment is permitted;
- 5.** Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
- 6.** A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;
- 7.** All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
- 8.** 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.
- 9. Permanent enclosures shall not be permitted for outdoor dining areas.**
- 10. Weather proof enclosures facilitating year round dining outdoors are not permitted.**
- 11. Outdoor dining is not permitted between November 16 and March 31.**
- 12. The use of any type of enclosure system (including but not limited to fabric, eisenglass, vinyl panels, drapes, plant material) shall not be permitted for Outdoor Dining areas.**

ORDAINED this _____ day of _____, 2017 to become effective 7 days after publication.

Mark Nickita, Mayor

Cherilynn Brown, City Clerk

CITY OF BIRMINGHAM

ORDINANCE NO. __

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

TO AMEND SECTION 5.13, MX – MIXED USE DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

5.13 MX District

- A. Alcoholic Beverage Sales:** Alcoholic beverage sales for consumption off the premises in conjunction with grocery stores, drugstores, party stores and delicatessens is permitted.
- B. Bistros:** Bistros are permitted with a valid Special Land Use Permit with the following conditions:
- 1. No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats;**
 - 2. Alcohol is served only to seated patrons, except those standing in a defined bar area;**
 - 3. No dance area is provided;**
 - 4. Only low key entertainment is permitted;**
 - 5. Bistros must have tables located in the storefront space lining any street, or pedestrian passage;**
 - 6. A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;**
 - 7. All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and**
 - 8. 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.**
 - 9. Permanent enclosures shall not be permitted for outdoor dining areas.**
 - 10. Weather proof enclosures facilitating year round dining outdoors are not permitted.**
 - 11. Outdoor dining is not permitted between November 16 and March 31.**

12. The use of any type of enclosure system (including but not limited to fabric, eisenglass, vinyl panels, drapes, plant material) shall not be permitted for Outdoor Dining areas.

- C. Automobile Rental Establishment:** An automobile rental establishment is permitted provided all vehicles are stored in a public or private parking garage
- D. Dwelling - Accessory:** Residential units located in accessory structures are permitted provided that the residential units meet the minimum unit requirements identified in each two-page layout in Article 2. Where there is a conflict between this provision and the requirements of Section 4.02, this section shall take precedent.
- E. Family Day Care Home:** Family day care home shall be state licensed and meet the following family day care home provisions:
 - 1.** All family day care homes must be licensed with the city. Application for a family day care home shall be made to the City Clerk on such forms as shall be provided. An application fee as established by the City Commission and set forth in Appendix C shall be payable upon submitting an application for a family day care home. See Chapter 26 of the Birmingham City Code for licensing procedures.
 - 2.** Only the care provider and his/her immediate family shall reside in the home.
 - 3.** The maximum number of children permitted in a family day care home shall not exceed that permitted by the state.
 - 4.** All outdoor play areas shall be enclosed with a fence of no less than 4 feet nor more than 6 feet in height, capable of containing the children within the play area.
 - 5.** Children not related to the care provider shall not be dropped off or picked up between the hours of 8:00 p.m. and 7:00 a.m.
 - 6.** There shall be no signs for the family day care home.
 - 7.** No family day care home shall be located closer than 750 feet from another family day care home or foster care facility except as permitted as follows:
 - a.** The Board of Zoning Appeals may approve the location of a family day care home within 750 feet of another family day care home or foster care facility if the Board of Zoning Appeals finds that the concentration of uses will not generate traffic, noise or other nuisances in a volume greater than would normally be expected in a residential neighborhood. The applicant is required to provide the following information to the Board of Zoning Appeals for all family day care homes within 750 feet of another family day care home or foster care facility:
 - i.** Location of parking for parents/guardians and caregivers.
 - ii.** Hours of operation.
 - b.** If the Board of Zoning Appeals gives approval to an additional family day care home within 750 feet of another family day care home or foster care facility, such approval is valid for 2 years from the date of approval.

- c. Any family day care home licensed by the state at the time this section becomes effective and located within 750 feet of another state-licensed family day care home or foster care facility shall be permitted to continue in operation subject to its compliance with the other provisions of this section and the Zoning Ordinance.

8. Family day care homes shall operate Monday through Saturday only.

- F. Food or Drink Establishment:** A food or drink establishment is permitted excluding drive-in facilities.
- G. Kennel:** A kennel is permitted when completely enclosed within a building.
- H. Loading Facility:** A loading facility is permitted accessory to the principal use.
- I. Parking Facility:** A parking facility is permitted accessory to the principal use.
- J. Parking Structure:** A parking structure is permitted accessory to the principal use.
- K. Regulated Uses:** Regulated uses are permitted if located more than 1,000 feet from any lot for which a certificate of occupancy has been issued for another regulated use, and shall be limited to a maximum floor area of 6,000 square feet. The City Commission shall hear and deny, approve or approve with conditions all requests for permission to carry on a regulated use where a regulated use is permitted, in accordance with Article 7.
- L. Renting of Rooms:** The renting of rooms is permitted to not more than 2 roomers or boarders per dwelling unit.

ORDAINED this _____ day of _____, 2017 to become effective 7 days after publication.

Mark Nickita, Mayor

Cherilynn Brown, City Clerk

**BIRMINGHAM CITY COMMISSION /
PLANNING BOARD JOINT WORKSHOP SESSION MINUTES
JUNE 19, 2017
DPS FACILITY, 851 SOUTH ETON
8:00 P.M.**

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Mark Nickita called the meeting to order at 8:00 PM.

II. ROLL CALL

PRESENT: Mayor Nickita
Mayor Pro Tem Harris Commissioner
Bordman Commissioner Boutros
Commissioner DeWeese
Commissioner Hoff Commissioner Sherman
Scott Clein, Planning Board Chairman
Stuart Jeffares, Member
Bert Koseck, Member
Janelle Whipple-Boyce, Member
J. Bryan Williams, Member

ABSENT: Robin Boyle,
Member Gillian Lazar, Member Lisa Prasad,
Member Daniel Share, Member

ADMINISTRATION: City Manager Valentine, City Attorney Studt, Deputy Clerk Arft,
Planning Director, Ecker, Building Official Johnson

III. ITEMS FOR DISCUSSION

Mayor Nickita explained that this is a workshop session to discuss and evaluate various planning issues, with the intent to create an Action List for the Planning Board. City Manager Valentine added that more discussion will be needed on each item by the City Commission. The priorities will be determined by the Commission at a future meeting.

E. BISTRO ALLOWANCES AND RESTRICTIONS

Ms. Ecker said there has been concern expressed over the size of Bistros recently. She explained that a Bistro is defined as a restaurant with 65 seats or less, with no more than 10 of them at a bar, with a full service kitchen, low key entertainment, tables that must line the storefront, and outdoor dining. The biggest issue has been how much is too much outdoor dining. The intent when Bistros was started was to encourage outdoor dining, but it was not apparent at the time how far owners would look for creative opportunities to expand the outdoor dining. She suggested clarifications as to maximums, location, enclosures and the building code issues such as energy code, fire suppression might be needed. Parking needs are also a big concern.

Mayor Nickita added that the original concept for Bistros was just in the downtown area and that has changed. Once the area expanded to the Triangle area and Rail District, it changed the circumstance because of parking and available outdoor space.

Commissioner Bordman suggested considering different rules for different areas. The needs are different. Perhaps part of the study should be whether to have the exact same requirements in each of our districts.

Commissioner DeWeese suggested we need an intermediate level that applies in different situations. He considers this a high priority issue.

Mr. Koseck suggested that we should study the materials used and also the intent.

Commissioner Hoff agreed it is time to review the Bistro ordinance. It has developed differently than what was planned.

Mayor Nickita commented that it is time to review the ordinance.

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, JULY 12, 2017
City Commission Room**

151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Planning Board held on July 12, 2017. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Vice Chairperson Gillian Lazar, Janelle Whipple-Boyce, Bryan Williams; Alternate Board Member Lisa Prasad; Student Representative Ariana Afrakhteh

Absent: Board Member Bert Koseck; Alternate Board Member Daniel Share; Student Representative Isabella Niskar

Administration: Matthew Baka, Sr. Planner
Jana Ecker, Planning Director

Carole Salutes, Recording Secretary

07-134-17

4. Bistro Regulations

Mr. Baka recalled that In 2007 the City of Birmingham amended the Zoning Ordinance to create the bistro concept that allows small eclectic restaurants to obtain a liquor license if they have no more than 65 seats, including 10 at a bar, and low key entertainment only. Mr. Baka observed that as the bistro concept has evolved over the past 10 years, new applicants have sought creative ways to make their establishments distinctive from other restaurants and bistros in the City, and to increase the number of seats through the use of all season outdoor dining. The following issues have been raised:

- Use of Eisenglass – extends the time period outdoor dining areas are in operation which increases the number of seats for restaurant as a whole for a majority of the year;
- On-street Dining/Rooftop Dining – the use of on-street parking spaces and rooftops in addition to the sidewalk area allows the addition of larger outdoor dining areas;
- Parking Needs – the expansion of outdoor dining increases the number of people dining at the restaurant, which increases parking demand;
- Building Code Requirements – the enclosure of outdoor dining areas triggers Building Code regulations such as Energy Code compliance, fire suppression requirements, fire separation distances and exterior wall fire resistive ratings.

At the joint City Commission/Planning Board meeting of June 19, 2017 this issue was discussed at length. There seemed to be consensus that a review of the bistro requirements and how they relate to the various areas in which they are permitted is warranted. Accordingly, the Planning Division is now requesting that the Planning Board begin discussions on how these concerns should be addressed.

Mr. Williams indicated he never envisioned 10 years ago that some of the sites would be so disproportionately large based on outdoor dining. Ms. Whipple-Boyce said the bistros should be looked at from the standpoint of their locations in different districts throughout the City. Chairman Clein thought there is a need to study the general parking requirement in the MX District based on the number of outdoor dining seats. Mr. Boyle added that bistros might be incentivized there by allowing more seating outside. Further, also consider that the Triangle District is different.

Mr. Williams noted the single biggest thing the board never anticipated was the extent to which Eisenglass would provide for almost four season use.

Ms. Ecker added maybe the board doesn't mind having Eisenglass on a rainy day but they don't want to see it extend the season past November 1st through March 31st. There are two issues: the look of it, and whether it changes the character of use from seasonal to permanent.

There was consensus to look at including the opportunity for rooftop dining for bistros.

Ms. Lazar agreed the larger spaces, particularly in the MX District, might be increased. But, the neighbors may be upset if they feel there will be increased intrusion into the neighborhoods as a result. Maybe some type of parking requirement might have to be imposed. Chairman Clein thought that Residential Permit Parking might be needed in that case.

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, AUGUST 9, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on August 9, 2017. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Vice- Chairperson Gillian Lazar, Janelle Whipple-Boyce, Bryan Williams; Alternate Board Member Daniel Share; Student Representative Ariana Afrakhteh

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

Administration: Matthew Baka, Sr. Planner

Jana Ecker, Planning Director

Carole Salutes, Recording Secretary

08-153-17

STUDY SESSIONS

1. Bistro Regulations

Mr. Baka noted that in 2007 the City of Birmingham amended the Zoning Ordinance to create the bistro concept that allows small eclectic restaurants to obtain a Liquor License. Bistros are permitted in certain zone districts with a valid Special Land Use Permit ("SLUP") under several conditions. As the bistro concept has evolved over the past ten years, new applicants have sought creative ways to make their establishments distinctive from the other restaurants and bistros in the City, and to increase the number of seats through the use of all season outdoor dining.

At the joint City Commission/Planning Board meeting of June 19, 2017 the issue of clarifying bistro regulations was discussed at length. There seemed to be consensus that a review of the bistro requirements and how they relate to the various areas in which they are permitted is warranted. Additionally, Commission members saw good reason to potentially regulate bistros differently depending on the district in which they are located.

The Planning Division would like to begin to consider addressing the issues of **parking**, **outdoor dining** and **Eisenglass enclosures** via ordinance language changes. The following examples of potential ordinance language changes are based on two methods of regulating bistros. The thinking is that current bistros would not be impacted by what is being proposed.

The first option would be to amend Chapter 126, Zoning, to universally create development standards for bistros that would apply to all zoning districts that permit bistros. Universal regulation would ensure that the dining experience in one bistro (outside of menu, service, theme etc.) is the same as dining in any other bistro. This could mean putting a limit on outdoor seating of 40 seats for all districts, even if there is room (public property or private property) for more. Eisenglass or vinyl enclosures could be prohibited entirely as to not abuse the outdoor dining season limit set forth by the City (April-November). As for parking, requiring all bistros to include their outdoor dining square footage in parking requirements could make sure that there will be enough parking for all of those extra seats. Creating extra parking requirements, though, could also discourage outdoor seating and counteract a key intent of the Bistro Ordinance.

The second approach to clarifying bistro regulations would be to amend Chapter 126, Zoning, to create separate bistro standards depending on the bistro's location in the Downtown, Triangle or Rail Districts. In doing so separately, the City can take into account the different space and parking conditions present in different districts. Adding parking requirements, like including outdoor dining area square footage in the parking calculation, to the conditions of certain bistro location districts could help alleviate parking issues. Outdoor dining maximums are a reasonable consideration Downtown because there is less space for a large outdoor dining area. In the Rail and Triangle Districts where street frontage is typically larger, outdoor dining maximums of 40 or 60 seats could be appropriate. Finally, Eisenglass or vinyl enclosures might be considered in some areas along the Woodward Ave. frontage of the Triangle District to alleviate the noise pollution patrons receive from the major road.

Mr. Williams thought the major focus should be that one size doesn't fit all. Mr. Jeffares commented that it would be interesting to find out how much of the lunch crowd consists of office users who are already parked in town. It was consensus that there should not be an enclosure that allows bistros to extend their outdoor dining season. The bistro concept is being pushed beyond its original boundaries.

Mr. Boyle thought they should be discussing the issue of 65 indoor seats. The board needs to review that and consider the possibility that number could go up. Then bistros could rely less on large outdoor seating and have a stronger business that doesn't tie them to 65 indoor seats.

Ms. Whipple-Boyce thought there could be implications to allowing more indoor seating. They don't want Birmingham to become an all restaurant city. She doesn't think parking is that much of a concern because when the offices clear out the restaurants become busy. Don't forget that there are many local residents who walk from their homes to the Downtown bistros. She does not want to encourage a bistro model behind the building. She likes the outdoor seating in the front of buildings to activate the sidewalk space. Look at each bistro independently and see what makes sense, rather than putting a number to it. Also, consider opportunities for rooftop dining. Maybe the districts need be viewed differently because they are different and because some of the parking situations are different.

Mr. Koseck said in his opinion the bistros are working. The intent was to attract small scale, unique establishments with a variety of different food types. Why treat the districts differently? Forty outdoor seats is fine and he doesn't want to get caught up in parking for outdoor dining. He totally thinks the outdoor dining should not be enclosed. Pick half of the number of interior

seating for outdoor dining; 40 seats is fine. He would rather see three small bistros in the Rail District than one that has 150 seats.

Mr. Williams echoed that and added if seating is outdoor, it shouldn't be enclosed. The total seating ought be the combination of both indoor and outdoor. Parking generally works and the only time it doesn't is the 10 a.m. to 12 p.m. window. Lunch is problematic in the Downtown area.

Chairman Clein observed he doesn't think including parking in the count really matters. To him the issue is not so much the size of the bistros; it is that they are allowed to be wrapped in plastic and located in places the board doesn't like. Perhaps some incentives could be put forth for establishments to meet if they want to increase their outdoor dining.

Mr. Boyle hoped to find a way to make the industrial land use in the Rail District work for bistros.

Mr. Baka summarized that the board is divided on whether or not there should be a limit on the number of outside seats. Board members stated they were definitely not in favor of outdoor dining enclosures, and most of the board is leaning against adding additional parking requirements for outdoor dining seats. Nearly everyone wants to keep the districts separate. Mr. Williams added they need to look at the parking, but not Downtown.

No one from the public wanted to comment at 10:10 p.m.



MEMORANDUM

Planning Divisions

DATE: August 2, 2017

TO: Planning Board Members

FROM: Matthew Baka, Senior Planner

APPROVED: Jana L. Ecker, Planning Director

SUBJECT: Renovation of Commercial properties

Background:

Questions have been posed recently as to the procedure for determining what level of board review is required for the renovation of an existing building or construction of a new building. The Zoning Ordinance establishes the review process for new construction and renovation of existing buildings. However, the Zoning Ordinance is not clear as to the extent an existing building can be renovated before it is deemed new construction, and the ordinance is not clear as to what specific changes trigger site plan review. There are three boards that review building improvements: the Planning Board, the Design Review Board and the Historic District Commission.

Article 7, Section 7.25 of the Zoning Ordinance establishes the reviewing board for site plan reviews as follows:

For properties located within historic districts designated under Chapter 62 of the Birmingham City Code, Site Plan Reviews will be conducted by the Historic District Commission and the Planning Board. Site Plan Reviews by the Planning Board are required for non-historic properties and the following types of developments:

- A. Single-family cluster developments.*
- B. Accessory building in all zoning district except single-family.*
- C. Attached Single-Family Residential (R8).*
- D. Two-Family Residential (R4).*
- E. Multiple-Family Residential (R5, R6, R7).*
- F. Neighborhood Business (B1).*
- G. General Business (B3, B2B, B2C).*
- H. Office/Residential (B3).*
- I. Business/Residential (B4).*
- J. Office (O1).*
- K. Office/Business (O2).*

- L. Parking (P) and all off-street parking facilities in any zoning district except in a district zoned single-family residential when the area thereof accommodates three or less vehicles.*
- M. Mixed Use (MX).*

Thus, Article 7, section 7.25 provides for site plan review for new development of all historic properties by the Historic District Commission and the Planning Board, and for site plan review for new development of non-historic properties by the Planning Board.

Article 7, section 7.08 of the Zoning Ordinance establishes the review procedure for design reviews for all building renovation and construction activities as follows:

All Design Review plans for new non-historic construction also requiring Site Plan Review will be submitted to and reviewed by the Planning Board. All plans, not requiring Site Plan Review or Historic District Review, for new construction, the alteration or painting of the exterior of any building and/or the addition of any lighting, signs, equipment or other structures which substantially alter the exterior appearance as determined by the City Planner shall be submitted to the Design Review Board for review. All plans for additions or alterations to historic structures or structures within a historic district shall be submitted to the Historic District Commission in addition to any required Site Plan Review. For uses requiring a special land use permit, Design Review of such uses shall be undertaken by the City Commission with recommendations from the Planning Board pursuant to Section 7.26. Those items not requiring Design Review by the Design Review Board are as follows:

- A. Single-family residential buildings and structures not located within a cluster development.*
- B. Items such as gutters, downspouts, door and window replacement when similar materials are used, antennas, roof vents and small mechanical equipment not readily visible to the public, painting to a similar color, and items of ordinary repair and maintenance.*

Thus, Article 7, section 7.08 states that for all new non-historic construction projects the Planning Board is responsible for conducting both the site plan review and design review. All plans for projects not requiring site plan review or HDC review such as exterior alternations, lighting, signs, equipment or other structures that substantially alter the exterior appearance of the building shall be reviewed by the DRB. Finally, Article 7, section 7.08 states that all Special Land Use Permit reviews will be conducted by the City Commission, with recommendations from the Planning Board. The Design Review Board is responsible for conducting design reviews for new construction and the alteration of existing buildings when no site plan review is required. However, it is not explicitly delineated when a design review is required or when a site plan review is required. City policy for many years has been to require proposals that add square footage to a building or make changes to a site that would affect vehicle or circulation patterns to obtain site plan approval. Proposals that are limited to modifying the exterior of the building but do not expand the building or alter the site are required to obtain design review.

Some recent examples of projects that have been reviewed by the Design Review Board exclusively include the following:

- Lavery Audi dealer – 34602 Woodward
- Meadowbrook Urgent Care – 33722 Woodward
- OWC wine shop – 912 S. Old Woodward
- Holiday Market select – 1740 W. Maple

On June 19, 2017 the City Commission and the Planning Board held a joint study session to discuss current planning issues in the City. When discussing the existing regulations regarding the renovation of existing buildings several deficiencies and/or ambiguities were identified in the Zoning Ordinance. Specifically, the question was raised as to what triggers a site plan review as opposed to a design review. There was a general consensus among the group that these issues should be studied by the Planning Board with the goal of providing recommendations to the City Commission for ordinance amendments that will clarify which type of reviews are required.

In an attempt to create objective criteria to delineate between what requires site plan review and what requires design review the Planning Staff has provided draft ordinance language which would codify the existing City policy as described above. If the Planning Board feels that additional or altered regulations should be applied then the Planning Staff can take the feedback and provide revised draft language at a future meeting.

The issue was brought to the Planning Board meeting on August 9th, 2017. The meeting reaffirmed the distinction that that right now there is no distinction between minor renovations and major re-builds of commercial buildings in Birmingham, and the possibility of a threshold being introduced to determine which board (DRB or PB) will perform the review. Members of the Planning Board agreed that the ordinance language should be clarified. Accordingly, the Planning Division is once again providing the draft ordinance language for comment by the Planning Board.

THE CITY OF BIRMINGHAM ORDAINS:

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

TO AMEND ARTICLE 07 PROCESSES, PERMITS AND FEES, SECTION 7.25, REVIEW TO CLARIFY REQUIREMENTS FOR SITE PLAN REVIEW.

Article 07, Section 7.25 shall be amended as follows:

7.25 Review

For properties located within historic districts designated under Chapter 62 of the Birmingham City Code, Site Plan Reviews will be conducted by the Historic District Commission and the Planning Board. Site Plan Reviews by the Planning Board **only** are required for non-historic properties. ~~and the~~ **The new construction or expansion of the** following types of developments **shall require site plan review:**

- A. Single-family cluster developments.
- B. Accessory building in all zoning district except single-family.
- C. Attached Single-Family Residential (R8).
- D. Two-Family Residential (R4).
- E. Multiple-Family Residential (R5, R6, R7).
- F. Neighborhood Business (B1).
- G. General Business (B3, B2B, B2C).
- H. Office/Residential (B3).
- I. Business/Residential (B4).
- J. Office (O1).
- K. Office/Business (O2).
- L. Parking (P) and all off-street parking facilities in any zoning district except in a district zoned single-family residential when the area thereof accommodates three or less vehicles.
- M. Mixed Use (MX).

For the purposes of this section new construction shall include the partial demolition and reconstruction of an existing building where 25% or more of the exterior elevations are demolished. The addition of square footage to any development shall be considered an expansion which requires site plan review. Any alteration which significantly alters the traffic or pedestrian circulation functions on a site as determined by the City Planner shall also require site plan review.

ORDAINED this _____ day of _____, 2017 to become effective 7 days after publication.

Mark Nickita, Mayor

Cherilynn Brown, City Clerk

THE CITY OF BIRMINGHAM ORDAINS:

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

TO AMEND ARTICLE 07 PROCESSES, PERMITS AND FEES, SECTION 7.08,
REQUIREMENTS TO CLARIFY REQUIREMENTS FOR SITE PLAN REVIEW.

Article 07, Section 7.08 shall be amended as follows:

7.25 Review

All Design Review plans for new non-historic construction also requiring Site Plan Review will be submitted to and reviewed by the Planning Board. All plans, not requiring Site Plan Review or Historic District Review, for ~~new construction~~, the alteration or painting of the exterior of any building and/or the addition of any lighting, signs, equipment or other structures which substantially alter the exterior appearance as determined by the City Planner shall be submitted to the Design Review Board for review. All plans for additions or alterations to historic structures or structures within a historic district shall be submitted to the Historic District Commission in addition to any required Site Plan Review. For uses requiring a special land use permit, Design Review of such uses shall be undertaken by the City Commission with recommendations from the Planning Board pursuant to Section 7.26. Those items not requiring Design Review by the Design Review Board are as follows:

- A. Single-family residential buildings and structures not located within a cluster development.
- B. Uses requiring a special land use permit. Design Review of such uses shall be undertaken by the City Commission with recommendations from the Planning Board pursuant to Section 7.26
- C. Items such as gutters, downspouts, door and window replacement when similar materials are used, antennas, roof vents and small mechanical equipment not readily visible to the public, painting to a similar color, and items of ordinary repair and maintenance.

ORDAINED this _____ day of _____, 2017 to become effective 7 days after publication.

Mark Nickita, Mayor

Cherilynn Brown, City Clerk

BIRMINGHAM CITY COMMISSION /
PLANNING BOARD JOINT WORKSHOP SESSION MINUTES JUNE 19, 2017
DPS FACILITY, 851 SOUTH ETON

8:00 P.M.

1 CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Mark Nickita called the meeting to order at 8:00 PM.

2 ROLL CALL

PRESENT: Mayor Nickita
Mayor Pro Tem Harris
Commissioner Bordman
Commissioner Boutros
Commissioner DeWeese
Commissioner Hoff
Commissioner Sherman
Scott Clein, Planning Board Chairman
Stuart Jeffares, Member
Bert Koseck, Member
Janelle Whipple-Boyce, Member
J. Bryan Williams, Member

ABSENT: Robin Boyle, Member Gillian Lazar, Member Lisa Prasad, Member Daniel Share, Member

ADMINISTRATION: City Manager Valentine, City Attorney Studt, Deputy Clerk Arft, Building Planning Director, Ecker, Director Johnson

3 ITEMS FOR DISCUSSION

Mayor Nickita explained that this is a workshop session to discuss and evaluate various planning issues, with the intent to create an Action List for the Planning Board. City Manager Valentine added that more discussion will be needed on each item by the City Commission. The priorities will be determined by the Commission at a future meeting.

3.8 RENOVATION OF COMMERCIAL PROPERTIES

Planning Director Ecker explained that there are three boards that review building improvements consisting of the Planning Board, the Design Review Board and the Historic District Commission. The Zoning Ordinance establishes the review process for new construction and renovation of existing buildings. However, the Zoning Ordinance is not clear as to the extent an existing building can be renovated before it is deemed new construction, and the ordinance is not clear as to what specific changes trigger site plan review. Site plan reviews go to the Planning Board. If the building is in the historic district, it will also go to the Historic District Commission. If it is a design change only to an existing building, it would go to the Design Review Board. This issue came up particularly with the Audi building because they had not changed the footprint; it went to the Design Review Board. The question is should there be a clarification made to some of the ordinance language to determine how much of a renovation to an existing building is a renovation, or when it becomes new construction or a new building. She noted that this is not the first time for this issue.

She also suggested clarifying what exactly is a design change vs. a site plan change. In the past, a site plan change has been interpreted as a change in the footprint in the building or square footage, but it is unclear in the ordinance. Would the City like to see the review procedures amended for new construction and/or the renovation of existing buildings, both in terms of which boards review those actions and also whether there needs to be clarification on what constitutes renovation of an existing building, and where the line is drawn between that and new construction. Also, does the Commission wish to see a distinction or clear definition as to what constitutes a site plan change and what constitutes a design change.

Commissioner Sherman suggested it would be wise to have more of a review than what we have now.

Mr. Jeffares asked about dramatic changes in use. Ms. Ecker responded that would require an application for an occupancy permit and any building permits needed. The Building Department would route the plans to the other departments. The Planning Department would look at the use to confirm it is an approved use, and at parking to confirm it met the parking requirements. If there are no exterior changes to the building, it does not need to go to a board for planning review, according to the current ordinances.

Mr. Koseck asked if the Design Review Board look at things such as site issues, pedestrian flow, trash, pickup, access, etc. Ms. Ecker said the DRB focuses more heavily on the design and the signage than the site issues. They do discuss the site issues, but not as much detail as the Planning Board and have input.

Mayor Pro Tem Harris asked for specific examples when the ordinance did not require a site plan review and the project later was thought to have needed to have site plan review. Ms. Ecker said the Audi building was an example of one that had concern expressed as to whether it needed a site plan review as well, but no changes were made to the layout of the site, access, etc. The Wachler building and the McCann building were other examples. A site on Cole Street was required to also go for site plan review, because changes were proposed to the parking lot and dumpster.

Commissioner DeWeese said the difference between design review and site plan review is not understood, and thinks it would be useful to have those defined and explained. He said that is also true of renovation and new construction. He added that site plan review considers internals, layout of other buildings around to see the interconnections between them, while Design Review does not look at as much, and so at a certain scale, it becomes important for site plan review.

Mayor Nickita said this is most evident in downtown overlay where we have specific requirements. The Surnow building is an example where we need the expertise of the Planning Board and the review that deals with specifics for a project of that sort. Maybe during the process, a recognition of the extent is clear, and if it is very minor and not much change, then it can be overlooked because we do not want to create difficulties when they are not there. We do not always know in the beginning of a project how big it might become. He thinks the Planning Board should have some type of review to be certain the project adheres to the City's guidelines.

Commissioner Bordman expressed concern about what happens when a project turns out to be more involved than originally thought. She is unsure that our ordinance could even address a situation like that without causing problems for the builder.

Ms. Boyce said it becomes more of a planning issue when an extensive renovation matched with a change in use occurs. She would like the Planning Board to have the opportunity to review it to make sure all of the issues are addressed.

Mayor Nickita said there seems to be solid support for reviewing this further and identifying a plan of action to address having a further review than we have done in the past. The intention is not to create another level of regulation, but we have to make sure we have the proper checks and balances.

Mr. Valentine said this issue will be added and brought back to the Commission.

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, AUGUST 9, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on August 9, 2017. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Vice- Chairperson Gillian Lazar, Janelle Whipple-Boyce, Bryan Williams; Alternate Board Member Daniel Share; Student Representative Ariana Afrakhteh

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

Administration: Matthew Baka, Sr. Planner

Jana Ecker, Planning Director

Carole Salutes, Recording Secretary

08-154-17

2. Renovation and New Construction of Commercial and Mixed-Use Buildings

Mr. Baka advised that questions have been posed recently as to the procedure for determining what level of board review is required for the renovation of an existing building or construction of a new building. The Zoning Ordinance establishes the review process for new construction and renovation of existing buildings. However, the Zoning Ordinance is not clear as to the extent an existing building can be renovated before it is deemed new construction, and the ordinance is not clear as to what specific changes trigger site plan review. There are three boards that review building improvements: the Planning Board, the Design Review Board ("DRB") and the Historic District Commission ("HDC").

Article 7, section 7.25 provides for site plan review for new development of all historic properties by the HDC and the Planning Board, and for site plan review for new development of non-historic properties by the Planning Board.

Article 7, section 7.08 of the Zoning Ordinance establishes the review procedure for design reviews for all building renovation and construction activities. For all new non-historic construction projects the Planning Board is responsible for conducting both the Site Plan Review and Design Review. All plans for projects not requiring Site Plan Review or HDC review such as exterior alternations, lighting, signs, equipment or other structures that substantially alter the exterior appearance of the building shall be reviewed by the DRB.

Finally, Article 7, section 7.08 states that all Special Land Use Permit ("SLUP") reviews will be conducted by the City Commission, with recommendations from the Planning Board.

The DRB is responsible for conducting design reviews for new construction and the alteration of existing buildings when no site plan review is required. However, it is not explicitly delineated when a design review is required or what necessitates a site plan review. City policy for many years has been to require proposals that add square footage to a building or make changes to a site that would affect vehicle or circulation patterns to obtain site plan approval. Proposals that are limited to modifying the exterior of the building but do not expand the building or alter the site are required to obtain design review only.

On June 19, 2017 the City Commission and the Planning Board held a joint study session to discuss current planning issues in the City. When discussing the existing regulations regarding the renovation of existing buildings, several deficiencies and/or ambiguities were identified in the Zoning Ordinance. Specifically, the question was raised as to what triggers a Site Plan Review as opposed to a Design Review. There was a general consensus among the group that these issues should be studied by the Planning Board with the goal of providing recommendations to the City Commission for ordinance amendments that will clarify which type of reviews are required.

Ms. Ecker explained that right now there is no distinction between minor renovation and major re-build. Mr. Baka said the DRB did the Design Review for the Fred Lavery building. No one knew that he was going to tear half of his building down but use the same footings and foundation. Mr. Lavery didn't anticipate how much of his building would have to come down until they were into construction. The question is how to handle that sort of situation.

Ms. Ecker maintained that if nothing else, the board should define what a site plan change is. Applicants are still appearing before a board, unless the change is so minor that it can receive administrative approval. Mr. Baka thought if a threshold is set where a project requires site plan review, but there are larger buildings that might not be making significant changes, they shouldn't be required to have a site plan review.



Jana Ecker <jecker@bhamgov.org>

Fwd: Urban retail defined - example

1 message

Joe Valentine <jvalentine@bhamgov.org>

Thu, Aug 10, 2017 at 5:21 PM

To: "Andrew M. Harris" <aharris@bhamgov.org>, Carroll DeWeese <cdeweese@bhamgov.org>, Mark Nickita <mnickita@bhamgov.org>, Patty Bordman <pbordman@bhamgov.org>, Pierre Boutros <pboutros@bhamgov.org>, Racky Hoff <rackyhoff@hotmail.com>, Stuart Sherman <ssherman@bhamgov.org>, Tim Currier <tcurrier@bhlaw.us.com>
Cc: Jana Ecker <Jecker@bhamgov.org>, Bruce Johnson <Bjohnson@bhamgov.org>, Ingrid Tighe <itighe@bhamgov.org>

FYI

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

From: **Mark Nickita** <mnickita@bhamgov.org>

Date: Thu, Aug 10, 2017 at 3:25 PM

Subject: Urban retail defined - example

To: Joe Valentine <jvalentine@bhamgov.org>

FYI

In study of info on Downtown ground floor retail definitions, I came across this.

I am assuming that Their term "**High Activity Zone**" is the same as our "**red line retail**"

Urban Retail: Towards a Balanced Approach

Historic mixed use buildings with ground floor retail in Port Townsend, Washington.

Mixed use downtowns were the hearts of our cities for centuries. Early 20th century reformers, emboldened by their successes in zoning dirty industrial uses away from residential areas, decided that commerce was also an unhealthful influence on neighborhoods and began to outlaw the mixing of uses in early zoning ordinances. As the auto age ramped up, commerce often came hand-in-hand cars and traffic, so the urge to separate retail from homes grew stronger. The mixing of retail and residential uses was prohibited in most urban areas for a long time, and it was one of the factors in the long decline of American downtowns.

Jane Jacobs broke with the conventional wisdom and advocated for mixed uses in the 1960s, but it took planners a while to listen. By the 1990s and 2000s urban revitalization professionals realized that mixed use development was something to be embraced. They saw that vibrant downtowns and urban neighborhoods had mixed uses, and that the most fun, active streets were the ones that had shops on the ground floors. Unfortunately, some cities went overboard and required ground floor retail *everywhere*. Many of the mandated retail spaces sat vacant, because the population of the area just couldn't support them.

We need a sensible approach to mixed use that reflects realities and limitations of retail, while also maintaining a commitment to vibrant streetlife. To be successful we need to redefine retail and deploy it in a very strategic way.

STEP 1: REDEFINE RETAIL

A [colleague](#) of mine recently pointed out that every project rendering seems to show an Old Navy in it. We are obsessed with getting mall-style retail into our downtowns, and we need to get over it. Successful downtowns aren't always going to be places where you can do back to school shopping. [It's great when it happens](#), but it is difficult and [rare](#). Generally, [America is over-retailed](#), and online shopping is shrinking the need for [brick-and-mortar](#) shops.

Dining, entertainment, and personal services are areas in which downtowns and other walkable urban neighborhoods can thrive, and malls and the internet typically cannot. We need to expand our definition of retail to include restaurants, bars, coffee houses, nightclubs, salons, theaters, live music venues, and similar uses. The focus should be on businesses that generate and benefit from high levels of foot traffic throughout the day and week. Until somebody comes up with something catchier, I suggest that we call this expanded concept *Retail+*.



This is the dream, apparently.
(Photo source: [ucr.com](#))



I think this is pretty good, too.

STEP 2: SITE RETAIL STRATEGICALLY

When creating zoning codes for downtowns and walkable neighborhoods, we need to think like mall designers and retailers. We need to pull people through areas strategically based on the [science of what motivates people to walk into some shops and not others](#). Overall, our focus should be on lining sidewalks with active ground floor uses and avoiding dead blank walls.

Here is my suggestion for how planners should code for retail. After [struggling](#) for years with ground floor vacancies in Downtown Redwood City, we finally settled on a strategy similar to this, and [it worked](#). We need to think of ground floor uses in terms of three distinct zones:

High Activity Zone: Retail+ uses need to be clustered together in the most visible, accessible, central, and dense part of the neighborhood, which is where they can be most successful. We need to engineer the hustle and bustle that retail+ thrives on and that people love to see on their main streets.

- Location. Traditionally, retail clustered on the busiest streets, because that's where the customers were. [I think that's where we need to put it today](#), too. Unless a retail area is already well-established on a side street, focus your efforts on major streets where the most paths cross. These are areas of pooled use as Jane Jacobs called them, and it is where retail+ will generally be most successful.
- Permitted Ground Floor Uses. Retail+ uses as described above are the only uses that should be allowed on the ground floor in the High Activity Zone. The only exception should be lobbies for upstairs offices, apartments, and hotel rooms. I don't typically like to regulate land use too tightly, but allowing other uses to intrude into this zone will diminish its success.

Mark Nickita, FAIA, CNU, APA
 Mayor
 City of Birmingham, MI

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Mark Nickita

Twitter

@MarkNickita

--

Joseph A. Valentine

City Manager

City of Birmingham

151 Martin Street

Birmingham, MI 48009

(248) 530-1809 Office Direct

(248) 530-1109 Fax

jvalentine@bhamgov.org

Twitter: @JoeValentine151

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By KIM PETERSON / MONEYWATCH / March 9, 2015, 5:43 AM

Companies are packing workers in like sardines

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Feel like you have less personal space at work? You're not alone.

The amount of office space per worker is dwindling as companies look to save some money, real estate experts say. By 2017, North American offices will average 151 square feet per worker, **according to** real estate data provider CoreNet Global. That's down from 176 square feet in 2012 and 225 square feet in 2010.

Blame a prolonged economic recession as the main reason companies are reducing office space. A stumbling, unstable recovery didn't help either, leaving bosses anxious to save money in literally every corner.

But there's also a move to so-called smarter workplaces that encourage employees to interact and collaborate. For many companies, that means taking away individual offices and asking employees to work in closer proximity.

Individual desks are also going away. Instead, companies are adopting open floor plans where employees use unassigned desks instead of their own permanent space, according to CoreNet Global.



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Sharing office space latest trend for new business

common area.

In the 1970s, companies aimed for a palatial 500 to 700 square feet per employee for the ideal office, The Los Angeles Times **reports**. That's because in those days it was the norm for people to come to the office every day and work at their desks.

Today, many workers telecommute or take their laptops to the nearby coffee shop. They're working unusual hours and taking advantage of flex time. When bosses walk around the office, empty desks are a more common sight than before. Smart managers -- and smart companies -- understand that there are enormous benefits to giving workers flexibility in where they work.

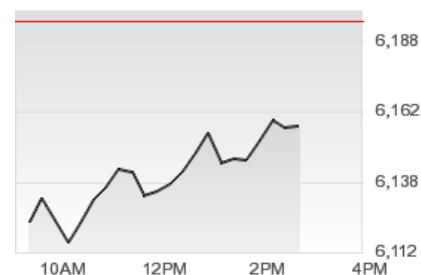
It isn't just nimble startups that are reducing their footprint. Tech giant Intel (**INTC**) has slimmed down its employee workstations to 48 square feet, from 72

Market Data

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NASDAQ: Jun 15, 2017



Symbol	Last	Change	% Change
DOW	21,353.33	-21.23	-0.10%
NASDAQ	6,157.89	-37.00	-0.60%
S&P 500	2,431.02	-6.90	-0.28%

Take Tumblr, the blogging platform owned by Yahoo (**YHOO**). It had 180 employees in its New York City headquarters last year, with the office offering about 144 square feet per worker, **according to** Commercial Observer. The office has conference rooms and teleconferencing phone booths.

At online retailer Zappos, the CEO doesn't even have an office. The company encourages workers to use their laptops anywhere, from sofas placed around the campus to shared tables in the



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square feet, CNN **reports**. Cubicles at many Fortune 500 companies are being cut back to 5-by-5 feet instead of the former standard of 8-by-10 feet.

And how is this all sitting with the average worker? Just fine, according to workplace experts. In fact, the newest generation of millennial workers actually like the cramped conditions. "They don't aspire to the big corner office," one real estate consultant **told** USA Today. "They don't even want it."



Where do germs flourish in your office? Study reveals dirtiest surfaces

Instead of placing framed photos at their desks, younger workers have digital pics on their phones. Instead of needing tall cubicle walls to help them focus, workers listen to music on earbuds.

"It's the umbilical cord just being untethered by technology," one architect told USA Today. "We were all tethered to the wires [before], and now you are seeing the strength and flexibility of WiFi."

But the corporate infatuation with open offices may have peaked. Some architects say companies

are starting to recognize that private space can be important for workers. "There needs to be a period when people go back and develop ideas -- alone," one architect **told** The Boston Globe.

And then there's the oversharing that inevitably comes when you pack employees too closely. "We had one person who listened to everyone's conversations and would inevitably get herself involved in some way, whether it was professional or personal," one interior designer told The Globe. "There was a lot of running outside to your car to make a phone call or doctor's appointment. Scheduling a mammogram is not something I needed my co-workers to know about."

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Kim Peterson

Kim Peterson is a financial journalist covering business and the economy. She has written for several online and print publications, including MSN Money and The Seattle Times.

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- 3:00 PM Designer Pierre Cardin skips US fashion show after accident
- 2:58 PM Portugal hoping Ronaldo can continue his good form in Russia
- 2:51 PM Israel's prime minister: Med pipeline would be 'revolution'
- 2:50 PM Skidding tech and retail companies send US stocks lower
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Jun 15, 2017

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KO	45.31	+0.01	+0.02%
WMT	79.14	-0.76	-0.95%
XOM	82.09	+0.02	+0.02%
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Birmingham sets Aug. 9 public hearing to define retail

uses

Jay Grossman, hometownlife.com Published 7:00 a.m. ET July 21, 2017 | Updated 5:39 p.m. ET July 25, 2017

In an ever-evolving retail market, city officials in Birmingham are trying to nail down the definition of personal services ([/story/news/local/birmingham/2017/07/07/birmingham-officials-want-true-definition-retail/454728001/](http://story/news/local/birmingham/2017/07/07/birmingham-officials-want-true-definition-retail/454728001/)).



(Photo: Photo: David Bloom)

That issue is the main topic of an Aug. 9 public hearing before the Birmingham Planning Board, as the city works to maintain a vibrant shopping experience in the downtown's Redline Retail District.

"What I'm most concerned about ... is when our storefronts become desktops with purses and lunches next to them," planning board member Janelle Boyce said at a study session last Wednesday. "It's not real retail. Sure, you can get your taxes done, but is that what we really want to see happen in our Main Street?"

Fellow board member Robin Boyle, on the other hand, has no problem seeing a few web designers and medical suites fill the first-floor storefronts on Main Street.

"If someone leases a storefront and conducts business with an individual customer, whether it's a bank or a tax preparer, I'm fine with it," he said.

The city's current definition of retail use includes commercial uses — and commercial uses includes personal services as a permitted use. However, personal services are not defined in the zoning ordinance, and that's where a debate takes places.

For the public hearing, the board agreed to the following definition:

"An establishment that is open to the public and engaged primarily in providing services directly to an individual consumer, including but not limited to personal care services, care of apparel and other personal items, and not including business to business services, medical, dental and/or mental health services."

Several building landlords spoke in favor of leaving the ordinance flexible and open-ended, as the retail market has evolved considerably over the last 10 years. Existing merchants in the downtown want to see more of an emphasis on retail uses to encourage foot traffic.

More: [From Baghdad to Birmingham, retail director has storied background \(/story/news/2017/05/24/baghdad-birmingham-retail-director-has-storied-background/341450001/\)](/story/news/2017/05/24/baghdad-birmingham-retail-director-has-storied-background/341450001/)

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More: [Farmington DDA Director: 'We want everyone to succeed' \(/story/news/local/farmington/2017/06/22/farmington-dda-director-we-want-everyone-succeed/419309001/\)](/story/news/local/farmington/2017/06/22/farmington-dda-director-we-want-everyone-succeed/419309001/)

Board member Stuart Jeffares admits there's a lot of gray area when in trying to pinpoint a definition for personal services.

"To me, the core of the business needs to be business to consumer," Jeffares said. "We see businesses where retail used to be, and they're business to business. Yeah, technically you could walk in there and maybe they would do your web site. But is that their primary business? No."

Board member Lisa Prasad believe there should be some balance when figuring out the right mix for the downtown.

"I wouldn't want to see a beauty salon on every corner, for example, which is what we're seeing now," she said at the study session. "So, having this definition might solve one problem, but I do think it creates another problem because we are looking at it in a very short-term nonstrategic way."

With that in mind, board member Bryan Williams said for the public hearing he wants to know how many vacancies currently exist in the Redline Retail District, and the current mix of businesses in the downtown.

The Aug. 9 hearing begins 7:30 p.m. and takes place at Birmingham City Hall, 151 Martin Street.

In the long run, city officials hope to answer the question of personal uses and other related issues by updating the city's master plan. The plan was last updated in 1996.

As every shop owner knows, 21 years is a long time to go without updating the merchandise.

jgrossman@hometownlife.com

586-826-7030

Twitter: @BhmEccentric

U.S. Census Bureau News

U.S. Department of Commerce • Washington, D.C. 20233

FOR IMMEDIATE RELEASE
TUESDAY, MAY 16, 2017, AT 10:00 A.M. EDT

Data Inquiries Economic Indicators Division, Retail Indicator Branch: (301) 763-2713

CB17-71

Media Inquiries Public Information Office: (301) 763-3030

QUARTERLY RETAIL E-COMMERCE SALES 1st QUARTER 2017

Notice of Revision: Quarterly retail e-commerce estimates were revised based on the results of the 2015 Annual Retail Trade Survey. Not adjusted estimates and corresponding adjusted estimates were revised for the fourth quarter 1999 through fourth quarter 2016.

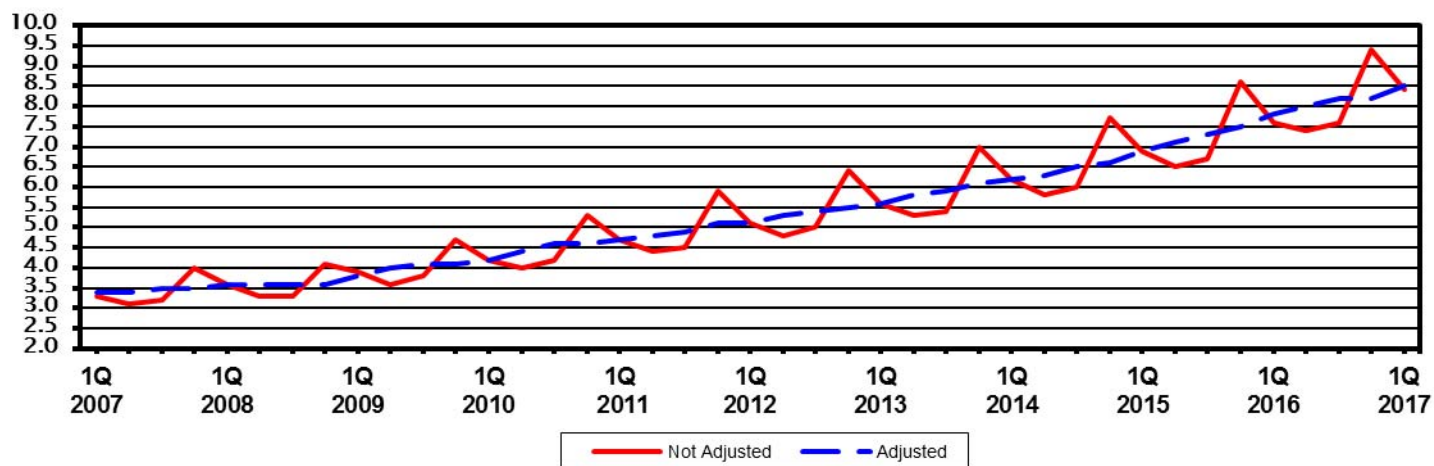
Announcement: In an effort to respond to data user needs, later this Spring the Census Bureau is releasing a new supplemental table leveraging data from the Annual Retail Trade Survey (ARTS), which will provide information on Total and E-commerce Sales by Primary Business Activity for Electronic Shopping and Mail Order Houses (NAICS 4541) for 2011-2015.

The Census Bureau of the Department of Commerce announced today that the estimate of U.S. retail e-commerce sales for the first quarter of 2017, adjusted for seasonal variation, but not for price changes, was \$105.7 billion, an increase of 4.1 percent ($\pm 0.7\%$) from the fourth quarter of 2016. Total retail sales for the first quarter of 2017 were estimated at \$1,250.0 billion, an increase of 1.0 percent ($\pm 0.4\%$) from the fourth quarter of 2016. The first quarter 2017 e-commerce estimate increased 14.7 percent ($\pm 1.9\%$) from the first quarter of 2016 while total retail sales increased 5.1 percent ($\pm 0.5\%$) in the same period. E-commerce sales in the first quarter of 2017 accounted for 8.5 percent of total sales.

On a not adjusted basis, the estimate of U.S. retail e-commerce sales for the first quarter of 2017 totaled \$98.1 billion, a decrease of 20.0 percent ($\pm 0.7\%$) from the fourth quarter of 2016. The first quarter 2017 e-commerce estimate increased 14.8 percent ($\pm 1.9\%$) from the first quarter of 2016 while total retail sales increased 3.7 percent ($\pm 0.5\%$) in the same period. E-commerce sales in the first quarter of 2017 accounted for 8.4 percent of total sales.

Estimated Quarterly U.S. Retail E-commerce Sales as a Percent of Total Quarterly Retail Sales: 1st Quarter 2007 – 1st Quarter 2017

Percent of Total



The Quarterly Retail E-Commerce sales estimate for the second quarter of 2017 is scheduled for release on August 17, 2017 at 10:00 A.M. EDT.

For information, including estimates from 4th quarter 1999 forward, visit the Census Bureau's Web site at <http://www.census.gov/retail>. For additional information about Census Bureau e-business measurement programs and plans visit <http://www.census.gov/estats>.

* The 90% confidence interval includes zero. The Census Bureau does not have sufficient statistical evidence to conclude that the actual change is different from zero.

Table 1. Estimated Quarterly U.S. Retail Sales: Total and E-commerce¹

(Estimates are based on data from the Monthly Retail Trade Survey and administrative records. Unless otherwise specified, all estimates are revised based on the 2015 Annual Retail Trade Survey.)

Quarter	Retail Sales (millions of dollars)		E-commerce as a Percent of Total	Percent Change From Prior Quarter		Percent Change From Same Quarter A Year Ago	
	Total	E-commerce		Total	E-commerce	Total	E-commerce
Adjusted ²							
1st quarter 2017(p)	1,250,023	105,740	8.5	1.0	4.1	5.1	14.7
4th quarter 2016	1,237,663	101,606	8.2	1.7	1.7	3.8	14.2
3rd quarter 2016	1,216,913	99,870	8.2	0.9	3.7	2.1	15.4
2nd quarter 2016	1,205,936	96,283	8.0	1.4	4.4	2.2	15.5
1st quarter 2016	1,189,262	92,182	7.8	-0.2	3.6	2.5	14.7
Not Adjusted							
1st quarter 2017(p)	1,163,840	98,058	8.4	-10.5	-20.0	3.7	14.8
4th quarter 2016	1,299,699	122,515	9.4	6.5	32.2	3.6	14.0
3rd quarter 2016	1,220,051	92,644	7.6	-0.1	2.5	2.2	15.5
2nd quarter 2016	1,220,714	90,397	7.4	8.8	5.8	2.2	15.6
1st quarter 2016	1,122,389	85,431	7.6	-10.5	-20.5	3.5	14.6

(p) Preliminary estimate.

¹ E-commerce sales are sales of goods and services where the buyer places an order, or the price and terms of the sale are negotiated over an Internet, mobile device (M-commerce), extranet, Electronic Data Interchange (EDI) network, electronic mail, or other comparable online system. Payment may or may not be made online.

² Estimates are adjusted for seasonal variation, but not for price changes. Total sales estimates are also adjusted for trading-day differences and moving holidays.

Note: Table 2 provides estimated measures of sampling variability. For information on confidentiality protection, sampling error, nonsampling error, sample design, and definitions, see http://www.census.gov/retail/mrts/how_surveys_are_collected.html.

Table 2. Estimated Measures of Sampling Variability for Quarterly U.S. Retail Sales Estimates: Total and E-commerce

(Estimates are shown as percents and are based on data from the Monthly Retail Trade Survey.)

Quarter	Coefficient of Variation (CV)		Standard Error ¹ (SE) for E-commerce as a Percent of Total	SE for Percent Change From Prior Quarter		SE for Percent Change From Same Quarter A Year Ago	
	Total	E-commerce		Total	E-commerce	Total	E-commerce
1st quarter 2017(p)	0.6	1.7	0.1	0.2	0.4	0.3	1.1
4th quarter 2016(r)	0.5	1.4	0.1	0.1	0.5	0.4	1.0
3rd quarter 2016	0.5	1.7	0.1	0.2	0.6	0.4	1.1
2nd quarter 2016	0.5	1.6	0.1	0.2	0.5	0.3	1.0
1st quarter 2016	0.4	1.7	0.1	0.2	0.5	0.2	1.0

(p) Preliminary estimate. (r) Revised estimate. (Z) Estimate is less than 0.05%.

¹Standard errors may be larger than those previously published because the estimated totals used to produce the percent changes are derived from different samples.

Note: Estimated measures of sampling variability are based on data not adjusted for seasonal variation, trading-day differences, or moving holidays, and are used to make confidence statements about both adjusted and not adjusted estimates. For information on confidentiality protection, sampling error, nonsampling error, sample design, and definitions, see http://www.census.gov/retail/mrts/how_surveys_are_collected.html.

Table 3. Estimated Quarterly U.S. Retail Sales (Adjusted¹): Total and E-commerce²

(Estimates are based on data from the Monthly Retail Trade Survey and administrative records. Unless otherwise specified, all estimates are revised based on the 2015 Annual Retail Trade Survey.)

Quarter	Retail Sales (millions of dollars)		E-commerce as a Percent of Total	Percent Change From Prior Quarter		Percent Change From Same Quarter A Year Ago	
	Total	E-commerce		Total	E-commerce	Total	E-commerce
1st quarter 2017(p)	1,250,023	105,740	8.5	1.0	4.1	5.1	14.7
4th quarter 2016	1,237,663	101,606	8.2	1.7	1.7	3.8	14.2
3rd quarter 2016	1,216,913	99,870	8.2	0.9	3.7	2.1	15.4
2nd quarter 2016	1,205,936	96,283	8.0	1.4	4.4	2.2	15.5
1st quarter 2016	1,189,262	92,182	7.8	-0.2	3.6	2.5	14.7
4th quarter 2015	1,192,078	88,968	7.5	0.0	2.8	1.7	14.4
3rd quarter 2015	1,191,536	86,569	7.3	1.0	3.8	2.0	14.1
2nd quarter 2015	1,179,653	83,370	7.1	1.6	3.8	1.6	13.5
1st quarter 2015	1,160,693	80,344	6.9	-1.0	3.3	2.4	14.0
4th quarter 2014	1,172,007	77,755	6.6	0.3	2.5	4.2	14.0
3rd quarter 2014	1,168,593	75,883	6.5	0.7	3.3	4.5	15.3
2nd quarter 2014	1,160,673	73,480	6.3	2.4	4.2	4.7	14.9
1st quarter 2014	1,133,491	70,492	6.2	0.8	3.4	2.3	13.7
4th quarter 2013	1,124,565	68,179	6.1	0.6	3.6	3.2	12.8
3rd quarter 2013	1,117,793	65,804	5.9	0.9	2.9	4.1	13.1
2nd quarter 2013	1,108,338	63,949	5.8	0.1	3.1	4.1	14.1
1st quarter 2013	1,107,777	62,025	5.6	1.7	2.6	3.7	13.0
4th quarter 2012	1,089,625	60,439	5.5	1.5	3.9	4.0	14.1
3rd quarter 2012	1,073,438	58,157	5.4	0.8	3.7	4.3	16.3
2nd quarter 2012	1,064,966	56,067	5.3	-0.3	2.1	4.3	15.1
1st quarter 2012	1,068,607	54,896	5.1	2.0	3.6	6.3	17.0
4th quarter 2011	1,047,272	52,984	5.1	1.8	6.0	6.7	17.6
3rd quarter 2011	1,028,864	49,985	4.9	0.8	2.6	8.0	14.9
2nd quarter 2011	1,021,096	48,696	4.8	1.6	3.8	7.6	17.9
1st quarter 2011	1,004,961	46,908	4.7	2.4	4.1	7.7	19.4
4th quarter 2010	981,545	45,064	4.6	3.1	3.6	6.8	18.3
3rd quarter 2010	952,428	43,507	4.6	0.4	5.3	4.4	16.4
2nd quarter 2010	949,018	41,308	4.4	1.7	5.1	6.4	17.1
1st quarter 2010	933,469	39,291	4.2	1.5	3.1	5.0	15.1
4th quarter 2009	919,395	38,106	4.1	0.8	1.9	1.0	15.3
3rd quarter 2009	912,479	37,391	4.1	2.3	6.0	-8.6	3.1
2nd quarter 2009	891,993	35,279	4.0	0.3	3.3	-11.8	-3.4
1st quarter 2009	889,045	34,145	3.8	-2.4	3.3	-11.7	-5.2
4th quarter 2008	910,527	33,045	3.6	-8.8	-8.9	-10.3	-7.7
3rd quarter 2008	998,437	36,282	3.6	-1.3	-0.6	-0.3	4.2
2nd quarter 2008	1,011,353	36,513	3.6	0.4	1.4	1.7	9.0

NA Not available. (p) Preliminary

¹ Estimates are adjusted for seasonal variation, but not for price changes. Total sales estimates are also adjusted for trading-day differences and moving holidays.

² E-commerce sales are sales of goods and services where an order is placed by the buyer or price and terms of sale are negotiated over an Internet, extranet, Electronic Data Interchange (EDI) network, electronic mail, or other online system. Payment may or may not be made online.

Note: For information on confidentiality protection, sampling error, nonsampling error, sample design, and definitions, see http://www.census.gov/retail/mrts/how_surveys_are_collected.html.

Table 4. Estimated Quarterly U.S. Retail Sales (Not Adjusted): Total and E-commerce¹

(Estimates are based on data from the Monthly Retail Trade Survey and administrative records. Unless otherwise specified, all estimates are revised based on the 2015 Annual Retail Trade Survey.)

Quarter	Retail Sales (millions of dollars)		E-commerce as a Percent of Total	Percent Change From Prior Quarter		Percent Change From Same Quarter A Year Ago	
	Total	E-commerce		Total	E-commerce	Total	E-commerce
1st quarter 2017(p)	1,163,840	98,058	8.4	-10.5	-20.0	3.7	14.8
4th quarter 2016	1,299,699	122,515	9.4	6.5	32.2	3.6	14.0
3rd quarter 2016	1,220,051	92,644	7.6	-0.1	2.5	2.2	15.5
2nd quarter 2016	1,220,714	90,397	7.4	8.8	5.8	2.2	15.6
1st quarter 2016	1,122,389	85,431	7.6	-10.5	-20.5	3.5	14.6
4th quarter 2015	1,254,530	107,433	8.6	5.1	34.0	1.9	14.1
3rd quarter 2015	1,193,669	80,198	6.7	-0.1	2.5	2.0	14.3
2nd quarter 2015	1,194,448	78,212	6.5	10.1	4.9	1.5	13.7
1st quarter 2015	1,084,780	74,572	6.9	-11.9	-20.8	2.2	13.7
4th quarter 2014	1,230,611	94,167	7.7	5.2	34.3	4.4	13.9
3rd quarter 2014	1,170,221	70,139	6.0	-0.6	2.0	4.7	15.6
2nd quarter 2014	1,177,298	68,762	5.8	10.9	4.8	4.9	15.2
1st quarter 2014	1,061,310	65,614	6.2	-9.9	-20.6	2.0	13.2
4th quarter 2013	1,178,337	82,659	7.0	5.4	36.3	3.3	12.7
3rd quarter 2013	1,117,728	60,653	5.4	-0.4	1.6	4.8	13.4
2nd quarter 2013	1,121,963	59,686	5.3	7.8	3.0	4.0	14.3
1st quarter 2013	1,040,422	57,952	5.6	-8.8	-21.0	2.4	12.6
4th quarter 2012	1,141,081	73,312	6.4	6.9	37.1	4.0	14.2
3rd quarter 2012	1,067,024	53,467	5.0	-1.1	2.4	3.9	16.2
2nd quarter 2012	1,078,487	52,220	4.8	6.2	1.4	4.2	15.3
1st quarter 2012	1,015,637	51,475	5.1	-7.4	-19.9	7.6	16.6
4th quarter 2011	1,097,172	64,224	5.9	6.8	39.6	6.5	18.2
3rd quarter 2011	1,027,251	46,001	4.5	-0.7	1.6	8.0	14.8
2nd quarter 2011	1,034,750	45,298	4.4	9.6	2.6	7.7	17.7
1st quarter 2011	943,779	44,150	4.7	-8.4	-18.7	7.7	19.2
4th quarter 2010	1,030,175	54,324	5.3	8.3	35.5	6.6	18.6
3rd quarter 2010	950,860	40,077	4.2	-1.1	4.2	4.3	16.2
2nd quarter 2010	960,992	38,473	4.0	9.7	3.8	6.1	16.9
1st quarter 2010	876,021	37,047	4.2	-9.4	-19.1	5.7	14.8
4th quarter 2009	966,768	45,808	4.7	6.1	32.8	1.0	15.7
3rd quarter 2009	911,464	34,492	3.8	0.7	4.8	-8.8	3.0
2nd quarter 2009	905,562	32,924	3.6	9.3	2.0	-11.9	-3.9
1st quarter 2009	828,677	32,283	3.9	-13.4	-18.4	-12.8	-5.8
4th quarter 2008	957,207	39,580	4.1	-4.3	18.2	-9.7	-6.1
3rd quarter 2008	999,824	33,484	3.3	-2.7	-2.3	0.0	3.5
2nd quarter 2008	1,028,016	34,260	3.3	8.2	0.0	1.4	8.5

NA Not available. (p) Preliminary

¹ E-commerce sales are sales of goods and services where an order is placed by the buyer or price and terms of sale are negotiated over an Internet, extranet, Electronic Data Interchange (EDI) network, electronic mail, or other online system. Payment may or may not be made online.

Note: For information on confidentiality protection, sampling error, nonsampling error, sample design, and definitions, see http://www.census.gov/retail/mrts/how_surveys_are_collected.html.

Survey Description

Retail e-commerce sales are estimated from the same sample used for the Monthly Retail Trade Survey (MRTS) to estimate preliminary and final U.S. retail sales. Advance U.S. retail sales are estimated from a subsample of the MRTS sample that is not of adequate size to measure changes in retail e-commerce sales.

A stratified simple random sampling method is used to select approximately 10,000 retail firms excluding food services whose sales are then weighted and benchmarked to represent the complete universe of over two million retail firms. The MRTS sample is probability based and represents all employer firms engaged in retail activities as defined by the North American Industry Classification System (NAICS). Coverage includes all retailers whether or not they are engaged in e-commerce. Online travel services, financial brokers and dealers, and ticket sales agencies are **not** classified as retail and are **not** included in either the total retail or retail e-commerce sales estimates. Nonemployers are represented in the estimates through benchmarking to prior annual survey estimates that include nonemployer sales based on administrative records. E-commerce sales are included in the total monthly sales estimates.

The MRTS sample is updated on an ongoing basis to account for new retail employer businesses (including those selling via the Internet), business deaths, and other changes to the retail business universe. Firms are asked each month to report e-commerce sales separately. For each month of the quarter, data for nonresponding sampling units are imputed from responding sampling units falling within the same kind of business and sales size category or based on historical performance of that company. Responding firms account for approximately 72 percent of the e-commerce sales estimate and about 71 percent of the estimate of U.S. retail sales for any quarter.

For each month of the quarter, estimates are obtained by summing weighted sales (either reported or imputed). The monthly estimates are benchmarked to prior annual survey estimates. Estimates for the quarter are obtained by summing the monthly benchmarked estimates. The estimate for the most recent quarter is a preliminary estimate. Therefore, the estimate is subject to revision. Data users who create their own estimates using data from this report should cite the Census Bureau as the source of the input data only.

Adjusted Estimates

This report publishes estimates that have been adjusted for seasonal variation and holiday and trading-day differences, but not for price changes. We used quarterly e-commerce sales estimates for 4th quarter 1999 to the current quarter as input to the X-13ARIMA-SEATS program to derive the adjusted estimates. For sales, we derived quarterly adjusted estimates by summing adjusted monthly sales estimates for each respective quarter. Seasonal adjustment of estimates is an approximation based on current and past experiences.

The X-13ARIMA-SEATS software improves upon the X-12 ARIMA seasonal adjustment software by providing enhanced diagnostics as well as incorporating an enhanced version of the Bank of Spain's SEATS (Signal Extraction in ARIMA Time Series) software, which uses an ARIMA model-based procedure instead of the X-11 filter-based approach to estimate seasonal factors. The X-13ARIMA-SEATS and X-12 ARIMA software produce identical results when using X-13ARIMA-SEATS with the X-11 filter-based adjustments. The X-13ARIMA-SEATS software and additional information on the X-13ARIMA-SEATS program may be found at <http://www.census.gov/srd/www/x13as/>.

Note that the retail estimates continue to be adjusted using the X-11 filter-based adjustment procedure.

Reliability of Estimates

Because the estimates in this report are based on a sample survey, they contain sampling error and nonsampling error.

Sampling error is the difference between the estimate and the result that would be obtained from a complete enumeration of the population conducted under the same survey conditions. This error occurs because only a subset of the entire population is measured in a sample survey. Standard errors and coefficients of variation, as given in Table 2 of this report, are estimated measures of sampling variation.

The margin of error, as used on page 1, gives a range about the estimate which is a 90 percent confidence interval. If, for example, the estimated percent change is -11.4% and its estimated standard error is 1.2%, then the margin of error is $\pm 1.753 \times 1.2\%$ or 2.1%, and the 90 percent confidence interval is -13.5% to -9.3%. Confidence intervals are computed based on the particular sample selected and canvassed. If one repeats the process of drawing all possible samples and forming all corresponding confidence intervals, approximately 90 percent of these individual confidence intervals would contain the estimate computed from a complete enumeration of all units on the sampling frame. If the confidence interval contains 0%, then one does not have sufficient evidence to conclude at the 90 percent confidence level that the change is different from zero.

Nonsampling error encompasses all other factors that contribute to the total error of a sample survey estimate. This type of error can occur because of nonresponse, insufficient coverage of the universe of retail businesses with e-commerce sales, mistakes in the recording and coding of data, and other errors of collection, response, coverage, or processing. Although not directly measured, precautionary steps are taken to minimize the effects of nonsampling error.

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3 Experiential Retail Drivers Lenders Will Queue Up To Get Behind

July 20, 2017 | KeyBank | Alec Berkman, Bisnow National



Brick-and-mortar retail may not be doomed. Some conventional retailers are in decline, but others can evolve to adapt to shifting shopper preferences.

The widespread idea that the embattled market segment is stagnating may be unwarranted and **misaligned with the data-informed forecasts of experts** and analysts, who are

bullish on experiential concepts.

KeyBank Real Estate Capital surveyed retail real estate owners, developers and investors at the 2017 International Council of Shopping Centers RECon, the largest annual gathering of retail real estate, to gauge retail's growth prospects.

According to Norm Nichols, head of KeyBank's Income Property Group, over 40% of industry pros projected their deal volume would increase between 11% and 20%, while another 30% anticipated increases of 5% to 10%. The majority's outlook was somewhat optimistic or more confident despite wariness that e-commerce could cut into tenant demand, even though most (60%) named e-commerce the biggest obstacle confronting retail.

In a number of widely publicized legacy retail failures, e-commerce has outcompeted some retailers, prompting them to shutter multiple locations. But e-commerce still only represents around 10% of total retail volume, and opportunities for innovative and nontraditional concepts abound.

Since physical stores cannot match online prices, inventory or convenience, they must entice shoppers with a combination of experience, expertise and exclusivity. These three hallmarks of experiential retail signal long-term viability to lenders.

1. Stimulating



The ability to delight the five senses is something e-commerce will likely not be able to effectively replicate in the near future.

Stores that can titillate, but not overwhelm, shoppers with sensory stimuli, using perfumes and novel aromas, fun music, aesthetically pleasing design and, when appropriate, great food can engender a truly pleasant, highly differentiated shopping experience.

One store particularly **competent in this realm** is Anthropologie, which uses its mood lighting, relaxing music and symmetrically arrayed, warm, earthy displays with artistic elements to instill a sense of peace and well-being in shoppers.

2. Fun



Online shopping is practical and expedient, and even addictive according to some neuroscientists. It is not typically fun.

Art installations, concert stages, a cinema, an art incubator, an indoor skate park and more wild amusements intersect at the **House of Vans** in Brooklyn and a 30K SF facility in London. It is an exciting locus of activity and smacks of skating culture. Its appeal transcends the transaction, and although most of its attractions are income-generating, the concrete bowl is free to use and open to those as young as 5 years old. Destinations like this engender positive brand sentiment and loyalty.

3. Technologically Immersive



Augmented and virtual reality technologies are becoming increasingly prevalent in stores. Retailers that can afford to invest in them and pioneer ways to use them to draw in customers will enjoy increased traffic and conversions.

Lowe's leverages VR to power its interactive tutorials, which can simulate a number of home improvement projects and give step-by-step direction to DIYers. The **Holoroom How To** experience is unique to Lowe's and provides instruction for projects to inspire confidence. Haptic feedback can mimic the vibration of the drill for an intensely real experience. If the Holoroom leaves lingering questions, store reps are nearby to address them. Shoppers are likely to leave feeling empowered with bags brimming with supplies.

The technology's potential applications in retail and real estate mean it has helped many CRE pros close deals without leaving their offices using virtual tours, and let future owners personalize their spaces remotely with remodels, furniture selection and finish customization.

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Is Retail Really 'F*cked'? 28 Global CRE Leaders Speak Out

June 18, 2017 | Bisnow Staff

The refrain of doomsday headlines are endless: “Retail Is Dead,” “Inside The Retail Apocalypse,” “Is Retail Coming Back From The Dead?” “The Retail Bloodbath Continues” and our favorite, “Retail Is F*cked.” To be sure, brick-and-mortar retail is in the throes of a seismic shift fueled by the rise of e-commerce and the changing needs of modern shoppers who demand a fresh experience — and need a very good reason to power down their computers.



There have been winners and losers during the sea change, as evidenced by the 300-plus retail bankruptcies filed this year. The Limited's stores are gone. Payless is closing hundreds of locations. HhGregg is gone. RadioShack may take its final breath this year. But is retail dead? Dying? Doomed? It depends on how you look at it.

We spoke to 28 commercial real estate leaders across North America to ask them a simple question: Is retail really f*cked? Here are their answers:

NAME: Gar Herring

TITLE: President and CEO

COMPANY: The MGHerring Group

CITY: Dallas

“Is Retail Doomed?” articles are primarily click-bait used by media to virally circulate sensational negative headlines that are based on lazy math and ignorance to claim that the internet is killing all retail. Retail is being transformed by multiple and complex issues that are causing the regular, annual demise of many retailers. These issues are also creating incredible new opportunities for operators and developers. Change can be expensive and painful, but the adaptors will survive and thrive. The shopping center industry will always have the entrepreneurs that will persevere through change to provide shopping experiences that are engaging to consumers. Just because that experience will be much different than what is has been in the past in no way means that “retail is doomed.”

NAME: Greg Maloney
TITLE: CEO of Retail in the Americas
COMPANY: JLL
CITY: Atlanta

A lot of ink has been spilled (or I guess server space taken) about the fate of physical retail — or more accurately, its demise. In my perspective, the majority of it is grossly overstated. It is clear that physical retail is in a state of flux — but this is the natural progression of the industry. Physical retail is evolving to meet the demands of a new, and dynamic, on-demand consumer paradigm — and evolution can be painful, but calling it doomed is a bridge too far. For those of us who have been in this industry for some time, we have seen other cycles where physical retail was supposedly “dead.” While today’s marketplace is like nothing we have witnessed before, neither were those of the past at the time — and when the dust settled physical retail had evolved and came out stronger. **So, if you want to say the retail landscape of the 1980s, 1990s and early 2000s is dead, you will get no argument from me. That landscape is changing based on myriad external pressures and influences, but it is rising to meet the challenges those influences have presented. That is something that should be celebrated, not feared.**

NAME: Sean Selby
TITLE: Principal Architect
COMPANY: Arrowstreet
CITY: Boston

Automobiles were the technological “disrupter” of the 1950s and 1960s as they facilitated a shift in population centers from the inner cities to the suburbs. While downtowns across the country suffered, larger living spaces and backyards transformed American life in more ways than could ever have been imagined. The retail landscape transformed in lockstep with this shift, with the invention of regional malls and neighborhood retail centers to accommodate it. Retail didn't die; it transformed. Today, online shopping is the agent of change, and it is disrupting retail with as much (or more) force as the car did. **The key**

and it is disrupting retail with as much (or more) force as the car did. **THE KEY is not to give into the misplaced headline that retail is dying.**

Outdated retail concepts are dying, but innovative retail is thriving and expanding. Think of newer concepts like Warby Parker, Bonobos or other digitally native brands. Even Amazon is building stores. We're not buying less stuff but we are changing where we shop to include the virtual, online world. Back on Earth, we're building retail with more choices and more experiences than ever before, with food, activities, sports and countless other uses.



NAME: Melina Cordero

TITLE: Head of Retail Research in the Americas

COMPANY: CBRE

CITY: Washington, D.C.

There is definitely a big disconnect between what headlines are saying and what's happening on the ground. **It's been a challenge for a lot of people working day-to-day in the industry because they're having to say, "no, it's not the end, it's not death."** **The narrative that it's the apocalypse or the end of the world or that e-commerce is taking over brick-and-mortar, that's not really what's happening.** But what's interesting is everyone thinks that the e-commerce sales are all going to pure-play internet players and that they're stealing shares from brick-and-mortar. What's actually happening is that a big majority, over 50%, of online sales are actually going to brick-and-mortar brands. When you shop online at a brick-and-mortar store that's technically an online purchase going to a brick-and-mortar brand. E-commerce is taking over brick-and-mortar, but increasingly brick-and-mortar is also taking over e-commerce because we're seeing a growing share of brick-and-mortar revenue coming from online. Retailers are investing more in their online platforms, they're becoming more omnichannel and they're relying on e-commerce more and more. **There's this misconception that online is countering brick-and-mortar, when actually what's happening is online is going to brick-and-mortar.**

NAME: Garrick Brown

TITLE: Vice President of Retail Research for the Americas

COMPANY: Cushman & Wakefield

CITY: San Francisco

Is retail really f*cked? Well, I suppose that depends on your definition of f*cked. Seriously, though, the idea that retail itself is in jeopardy is simply a ridiculous one. Retail hasn't gone away and it certainly isn't going to go away in the new commerce age. But in this new era, the rules will be a little different. Mastery of omnichannel will be a given. Save for a few rare retailers and/or categories, concepts that don't have a seamless omnichannel platform will die. The silos between retail and industrial real estate will increasingly be breaking down. Location will simultaneously be nothing (due to the seamless integration of omnichannel) and everything because fewer actual locations for the lighter footprint retailers that will dominate the future will mean that those physical locations are actually more important than ever. The old rules of consumer engagement will be updated with a digital face. It will no longer matter where you make the sale — so long as you make the sale. Of course, all of this is radically changing the way that we approach retail real estate and will continue to do so. In the new commerce era, the user segregation that has dominated retail space usage will be going away. Neighborhood/community centers will no longer be the nearly exclusive domain of grocery stores. Power centers will no longer be the nearly exclusive domain of big-box stores, discounters and off-price apparel. Regional malls will no longer be the nearly exclusive domain of apparel and department stores. **All of the old rules of space usage are going to be revised as the marketplace adjusts to these evolutionary changes. And during this period of flux, there will be no room for mediocrity in American retail.**

NAME: Jim Dillavou

TITLE: Co-founder and Principal

COMPANY: Paragon Commercial Group

CITY: El Segundo, California

“Retail is dead!” Sure, this is a compelling sound bite. And sound bites are alive and well. They generate clicks. They generate revenue. They are easy to recall. They are easy to repeat. But they are typically generalizations that create misconceptions. For retail investors willing to be granular, today's retail environment is an opportunity. The last century of retail adapted to consumer demands through the advent (and demise) of

retail adapted to consumer demands through the advent (and demise) of departments stores, mail-order catalogues and the “Walmart effect.” Now e-commerce will force further evolution. This is healthy. This is not cataclysmic. **There is no doubt that the United States has more retail than it needs. This market correction is overdue and it is indeed time to be vigilant.** However, for the patient and well-capitalized retail investor insulated from short-term sound bites and headline risk, the fear in today’s retail marketplace has created a great opportunity to acquire quality retail assets.

NAME: Craig Patterson
TITLE: Editor-in-Chief
COMPANY: Retail Insider
CITY: Toronto

Retail certainly isn't “dying,” at least not in Canada. Canada's top malls continue to see exceptional productivity, and some retailers are seeing record sales in their stores. **In 2017, Canada will see more international entrants than in 2016.** E-commerce sales are growing faster than brick-and-mortar retail sales, but e-commerce still represents 5% to 6% of Canadian retail sales. Retail is changing, for sure, and retailers and malls that have engaging products and experiences will drive consumers — and those that are mediocre risk dying (Sears Canada). **“Retailtainment” is the way of the future and I predict 2018 will be the “year of the pop-up” in Canada.**



NAME: Brad Hutensky
TITLE: Founder and CEO
COMPANY: Hutensky Capital Partners
CITY: Hartford, Connecticut

Since the beginning of time retailers with flawed product offerings or capital structures have been closing their doors. That is the natural evolution of the business, and we are seeing some of that now. However, many retailers are using the internet and technological advances to better serve their customer. These retailers are showing increased sales and profitability and are

opening new locations that other retailers have vacated. **Retail in jeopardy? Just ask TJX, Ross Stores or Dick's Sporting Goods, who are all going strong.**

NAME: Joel Murphy

TITLE: CEO

COMPANY: New Market Properties

CITY: Atlanta

Retail is a very short word that has a very wide spectrum of meaning. What type of retail? If it is a retailer that sells a fungible product and that isn't investing significant capital into its omnichannel platform to make its brick-and-mortar stores work seamlessly with its online presence then, yes, that retailer is in jeopardy. But if they sell perishable items, the quality of which means something to their customers, and they are investing capital in online capabilities, or if they are healthcare, fitness, service, and restaurant operators whose internet-resistant businesses are convenient to their customers, then not only are they not in jeopardy they have an enormous opportunity.

NAME: Lindsay Bayer Shipp

TITLE: Retail Brand Strategist

COMPANY: Bayer Properties

CITY: Dallas

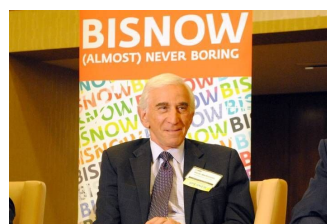
The retail industry will continue to grow and evolve, as it always has. Store footprints will be smaller and retailers will have fewer brick-and-mortar locations, but strong retailers will continue to thrive both online and offline. **The smart retailers will focus on creating experiences for shoppers, and will choose locations that are natural extensions of their brands.**

NAME: Peter Borzak
TITLE: Co-founder and principal
COMPANY: Pine Tree
CITY: Chicago

It is a validation of the brick-and-mortar model that companies like Amazon are launching physical grocery stores and bookstores — because they recognize that they need a presence in people's lives beyond the virtual.

NAME: Mark Toro
TITLE: Managing Partner
COMPANY: North American Properties
CITY: Atlanta

There is no question that there is a sea change underway in traditional retail. B and C regional malls will soon cease to exist, leaving only the best located fortress malls. Necessity retail (grocery, services, etc.) will likely survive, as will experiential retail. **Today's consumer seeks an opportunity to add to their "Rolodex of experiences," demanding to be entertained and served in a setting that is both remarkable and memorable.** A mix of uses devised to bring human energy onto a property at all times to work, live, shop, dine, stay and play will be a significant success factor going forward. **The "shopping trip" has gone the way of the Triceratops and the department store, but retail is not dead. It's just one part of the puzzle.**



NAME: Herb Weitzman
TITLE: Executive Chairman
COMPANY: Weitzman
CITY: Dallas

Retail doesn't die. it evolves. **One indicator of health**

can be seen in actual market performance. Our major Texas markets all post healthy 90 percent-plus occupancy rates, which are at or near historic highs. We lead the nation in population and job growth, and that drives retail demand. Also, retail construction remains at near-historic lows, driving demand into existing retail centers. There are closings, no doubt, but many are concentrated in secondary and tertiary markets and centers. Grocers, restaurants, fitness, beauty, medical, services — they are all adding new stores.

NAME: Stephen Coslik

TITLE: The Woodmont Co.

COMPANY: Chairman

CITY: Fort Worth

Are we watching retail's wake or its rebirth? The answer depends if you believe the glass is half full or half empty. For me it is the rebirth of retail. But in order for there to be rebirth, one has to be prepared for those retailers who are not willing or able to jettison their old ways of doing to die, that in turn, gives room to those retailers who can offer the consumer three important components. First, continued innovation of design and presentation of its product or service. Second, ability to bring to the market new concepts/designs in weeks and not months or years. **Third, and most importantly, creating the experience that will bring the consumers in and back. However be aware, the retailer and property owner cannot rest on their laurels — the "experience" also needs to evolve and change and not become stale.** Finally, embrace change, embrace competition and know that you need not worry about today if you are prepared and have a strategy for tomorrow and the ever-changing demand needs of the consumer.

NAME: Terry Montesi

TITLE: Founder and CEO

COMPANY: Trademark Property

CITY: Fort Worth

I believe the rapid change of the past few years will likely continue for the foreseeable future. **E-commerce won't kill brick-and-mortar retail, but it will put pressure on the retailers and centers that refuse to evolve.** Shopping centers must cater to the emotions and the unconscious mind of tomorrow's customer. This will be done through focusing on the senses, delivering an authentic place that considers the community, educates and inspires, offers the unexpected, and cares more about a diversity of uses than size.

NAME: MaryAnne Gilmartin
TITLE: President/CEO
COMPANY: Forest City Ratner
CITY: New York

The future of retail is not in jeopardy — it is in dramatic transformation. **The internet, our membership economy and the advent of hospitality services in every aspect of our lives means business as usual in the retail sector won't fly.** In the end, we are all consumers. How we consume, what we consume and where we consume is a next level experience. The industry must follow!



NAME: Adelaide Polsinelli
TITLE: Senior Managing Director and Principal
COMPANY: Eastern Consolidated
CITY: New York

Retail is not fu*d, but some owners might be.** We had a run up in the high street retail locations caused by inflated rents based on side deals, concession packages, free rent, upfront cash payments, etc. Some owners bought properties hoping the rent frenzy would continue. However, now that the music has stopped, those without tenants are having real problems.

Retail is definitely evolving, as it always has and always will.

NAME: Bill Miller
TITLE: Principal
COMPANY: Miller Walker
CITY: Washington, D.C.

Brick-and-mortar retail is changing just like almost every business sector due to the internet. No one should find that alarming or shocking. We have seen it coming for years at this point. **Simply put, what people are leaving home to buy is changing, but people are certainly leaving home and spending money.** They are prepared to leave home for food, grocery, fast casual and full service dining, they also are looking for experiential entertainment experiences, like Artechouse. **It is a brave new world our industry is entering, but one of many that are changing so fast it is hard to fathom: self-driving cars, homes controlled by voice recognition, etc. We aren't the only industry that has to be on its toes about what the future will bring.** I believe it will be an opportunity for retailers and developers that are nimble and are smart about watching how all of our habits are changing. We will always leave home to spend money, but our industry needs to create places and reasons for people to do so.

NAME: Henry Fonvielle
TITLE: President
COMPANY: Rappaport
CITY: McLean, Virginia

Retail is alive and kicking and occupancy is at an all-time high. At least in the Washington, D.C., area, some categories are experiencing record sales, but that does not apply to all sectors of retail. Go to Victor Albisu's Taco Bamba if you need proof. **The 1897 quote by Mark Twain, "The report of my death was an exaggeration," is certainly applicable. Any big box that becomes available is gobbled up quickly. Retail is a fast-paced business and the public is very fickle. A store today can be a has-been next week without reinvention, so retailers need to constantly innovate. Legacy brands, like Sears, JCPenney and RadioShack, sit on their past success for years without paying attention to the**

changes going on around them. The CEO of a well-respected restaurant company recently told me, “It takes a long time to go out of business.” Low rental rates from old leases and squeezing expenses can go a long way in propping up a company in decline, but in the end, the inevitable will occur without revolutionary changes. The most amazing trend is the way we are eating healthy, freshly prepared food. This is common sense, but we had gotten used to crummy, unhealthy food. When was the last time you ate a can of condensed soup? Now we talk about how many Brussels sprouts, kale or quinoa salads we had last week. Online shopping will continue to change the landscape and there will be improvements to delivery systems of all kinds of goods, but there will always be traditional shopping centers and mixed-use environments that feed the need of communities to gather, socialize and enjoy life.



NAME: Faith Hope Consolo
TITLE: Chairman, The Retail Group
COMPANY: Douglas Elliman
CITY: New York

The future goes in one direction: forward. The future of brands and consumers is very strong. The future of e-commerce will be fantastic, and, I'm happy to tell you, the future of stores is actually looking better than ever. Why? Because the brands with something to say will create beautiful, exciting stores where we can experience what they dreamed up for us. **Shopping is still America's favorite pastime, and we're hopeful that all of our favorite companies use this time to really improve how they deliver that to us and that our landlords keep a flexible mindset as to which companies can best harness the traffic at their buildings to present their wares.**

NAME: Nadeem Meghji
TITLE: Head of Americas for Real Estate
COMPANY: Blackstone Group
CITY: New York

The mall sector faces serious secular headwinds because of e-commerce and the pace of change is accelerating. Retail goods are increasingly being sold through warehouses as opposed to malls. **U.S. malls are too exposed to fashion, and department stores and occupancy costs are generally too high. Regional malls are also incredibly capital intensive and the market doesn't appreciate that.** Blackstone doesn't own any regional malls in the U.S. and instead favors open air retail, in particular infill grocery-anchored centers.

NAME: Fred Bruning

TITLE: CEO

COMPANY: CenterCal Properties

CITY: El Segundo, California

The face of retail is always evolving, and the effects of the expansion of the internet is just the latest change in the direction of the river of commerce that has been flowing for millennia. At its heart, shopping is a social experience, and while technology will make internet sales easier and more fulfilling, the social component of the art of selling should not be underestimated. Retail centers that are still thriving pay attention to that sense of place that is often missing in today's society. **As this constantly evolving retail landscape continues to bring new concepts forward, some older paradigms will have trouble adapting to the current trends. One example is the traditional mall, which owes its existence to the powerful attraction of anchor departments stores, which defined the retail landscape in the last generation, and which is handicapped by the functional limits of traditional mall design. In many cases, these venerable institutions have failed to keep up with changes in customer preferences and lifestyle, and they are no longer the efficient customer traffic producers that they once were.** This may leave a traditional mall, designed to take advantage of this anchor store presence, unable to recapture the sense of place and excitement that once was so important to their success, while newer concepts like town centers and high streets with multiple activities and a more appealing sense of place will emerge and take precedence. These malls will have to take significant steps to remain relevant, and will have to reimagine new place-making strategies to win back their place in the hearts and minds of their customers.

NAME: John Sechser

TITLE: Senior Vice President and Director of Retail Properties

COMPANY: Transwestern

CITY: San Francisco Bay Area

Store closures are the biggest contributor to increased vacancy around the country. The number of closures [is] reaching a level we haven't seen since 2009. When we take all that into consideration and we take closures and overall net absorptions, there is a statement that can be made. ICSC said that mall productivity has remained steady and rose 0.7% in the last year. Retail experienced 105M SF of net absorption representing a growth in occupancy of nearly 1%. When you start looking at all this, retail is still thriving. But it is survival of the fittest. A lot of retailers are having issues. Some of them need to reinvent themselves. Sears has attempted to reinvent themselves over the last five to 10 years, but at a slower pace than what they should have done. Look at what Target and Walmart have done. Target does a supreme job of merchandising. Their ads are probably the most catchy, colorful and the most cerebral. Anchor vacancies in the malls are seen now as potential replacements for multifamily, medical office and entertainment. **When larger retailers go dark, opportunities to increase critical mass through vertical residential exists. There will be a demise in some of the boxes, but the market has these replacement components to enhance the existing retail.**



NAME: Patrick Donahue

TITLE: Chairman and CEO

COMPANY: Donahue Schriber Realty Group

CITY: Costa Mesa, California

Our portfolio is 97% leased, and we renewed 87% of our expiring leases at over a 10% increase. Of course, there are issues with department stores and overbuilding in certain markets, but there are always issues to deal with in retail. **I have seen it both ways, and I would much rather have a negative narrative and strong fundamentals versus the other way around. Good retail centers operated by well capitalized,**

strategic owners will continue to thrive.

NAME: Tim Milazzo

TITLE: CEO and Co-founder

COMPANY: StackSource

CITY: New York

Every major wave of disruption can be viewed as a challenge or as an opportunity. **Take Amazon, for instance, which may be viewed as the villain by some in the brick-and-mortar world. Amazon is investing in its own physical retail experiments from bookstores to groceries, playing to their strength in purchase behavior data to bring a new shopper experience to life.** Adapting to the shifting market is key. Retail won't find its new footing by standing still, but there are certainly opportunities for the bold and innovative in the industry.

NAME: Angela Fox

TITLE: CEO and President

COMPANY: Crystal City Business Improvement District

CITY: Crystal City, Virginia

There is no question that retail is changing. Whether that change constitutes a crisis or an opportunity depends on your outlook. Retailers or property owners stuck in the conventional status quo economy will indeed face challenges. Those with the foresight and vision to embrace the change and differentiate themselves from their competition stand to win big.

NAME: Ron Cohen

TITLE: Chief Sales Officer

COMPANY: The Besen Group

CITY: New York

The media is promulgating the notion that retail is doomed, and adding to anxiety on the subject. While there's no denying retail is facing serious challenges, I would argue that it is a time of reinvention. From our vantage point, selling vacant retail property at a projected 4 percent cap isn't happening right now. We have witnessed disruptors in many industries, like taxi transport, music, media — and perhaps shopping is the biggest of all. E-commerce has clearly taken a large bite out of consumer spending, and rents have reached higher heights. Middle-of-the-road chains with stale, undifferentiated concepts are losing their place. Experiential tenants are growing in popularity. **Everyone has to embrace the omnichannel approach, and now there are case studies of clicks-to-bricks models in companies like Warby Parker, Bonobos and now even Amazon. Guess what? J. Crew started out as purely a mail order catalogue.** It does feel like Amazon is taking over the world. There is an aspect of time will tell, as Amazon announced a \$13B acquisition of Whole Foods and Walmart is playing catch up with recent acquisitions of jet.com and Bonobos. It boils down to everyone has to step up their game. **Landlords need to calibrate rents so retailers can survive, and retailers themselves have to ensure their products, service and experience make it worth the trip.** Fundamentals like site selection are even more critical as there's less margin for error. The game is changing, but it isn't game over.

NAME: John Nicolopoulos

TITLE: Partner and Retail & Restaurant Sector Leader

COMPANY: RSM

CITY: Chicago

Has the death of brick-and-mortar been greatly exaggerated? We're seeing a greater dependency on technology by the vast majority of shoppers, especially the millennial generation. They rely heavily on technology in their retail buying decisions, but millennials and other consumers aren't necessarily buying online. They're still going to the stores to do that. However, consumers are more savvy, looking for good deals. They want quality, a personalized experience — and that's where brick-and-mortar retailing really is transforming. **Consumers don't want a homogenous shopping experience from their brick-and-mortar. They frequently expect a more customer-centric and**

individualized interaction that provides quality, value and convenience.

See Also: [Experiential Retail Reinvigorates Malls](#)

How Will We Keep Motorists Informed?

For up-to-date information on this project, go to www.michigan.gov/drive or download the free Mi Drive app from iTunes and Google Play.

Follow MDOT's Metro Region on Twitter at: www.twitter.com/MDOT_MetroDet.

For More Information

Call the Oakland
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Visit MDOT's Website at:
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M-1 (Woodward Avenue) Improvements

City of Birmingham
Bloomfield Township

**Construction and Motorist
Information**

2017-2018



Oakland Transportation Service Center
800 Vanguard Drive
Pontiac, MI 48341



What Is Being Done?

The Michigan Department of Transportation (MDOT) is performing capital preventive maintenance on 2.3 miles of M-1 (Woodward Avenue) from 14 Mile Road to Quarton Road/Big Beaver Road in the city of Birmingham and Bloomfield Township. This work will be coordinated with the City of Birmingham's Old Woodward Avenue reconstruction project, and will be split into two construction seasons to minimize impacts on motorists.

In fall 2017, work includes concrete patching, drainage structure repairs and minor drainage improvements. In spring 2018, work will include milling and asphalt resurfacing, reconstructing sidewalk ramps, relocating crosswalks, and modernizing the signal at Oak Avenue.

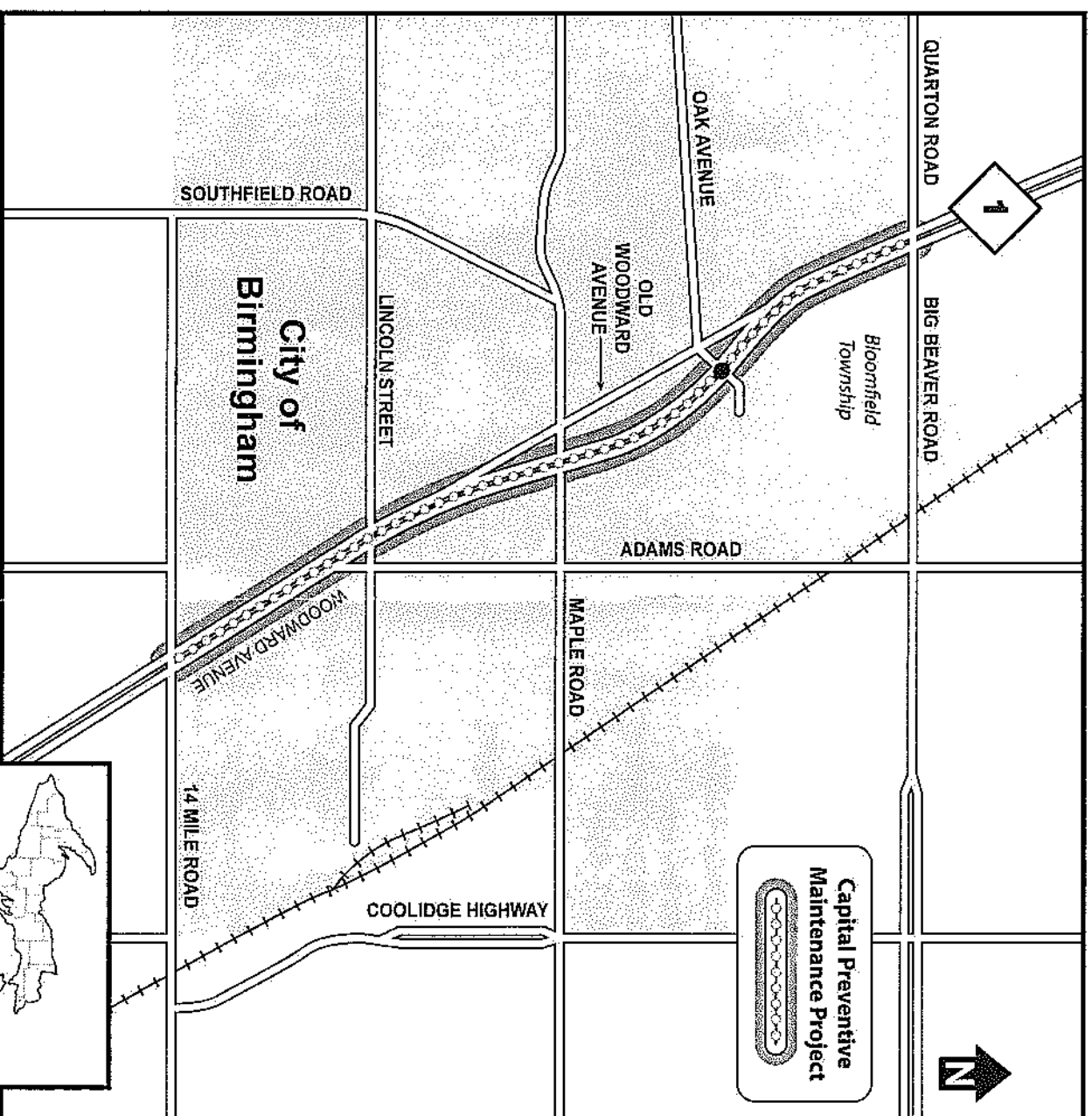
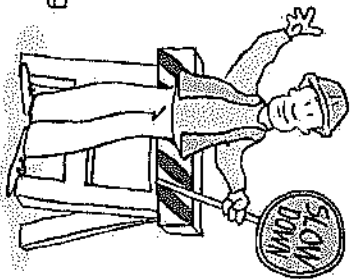
When Will This Be Done?

Work in 2017 will begin in September and is expected to be complete in October. The 2018 improvements will begin in April and are expected to be complete in August.

How Will Traffic Be Affected?

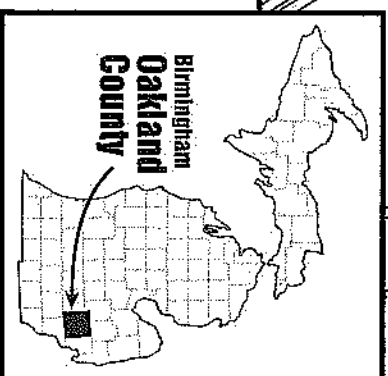
The fall 2017 work will be performed mostly on weekends. At least one lane will remain open in each direction at all times. Pavement saw cutting may occur 6 p.m. - 6 a.m. during the weekdays. Pouring of the concrete patches may occur at night.

The spring 2018 work will be performed under a variety of lane closures and work hours, including weekday daytime single-lane closures, weekend lane closures, and nighttime lane closures. It is anticipated most paving will occur at night.



Safety Benefits

This project will result in a smoother driving surface, improved drainage, and safer crossings for pedestrians. MDOT reminds motorists to drive like you want to make it home tonight.



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8:30 A.M. ET Empire State factory index throttles to highest in nearly three years

8:30 A.M. ET U.S. import prices minus fuel dip 0.1% in July

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Retail sales strengthened in April, brightening economic outlook

17 **Aa**



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By Greg Robb and Andrea Riquier

Published: May 12, 2017 9:37 a.m. ET



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Consumers continue to shift shopping habits to online



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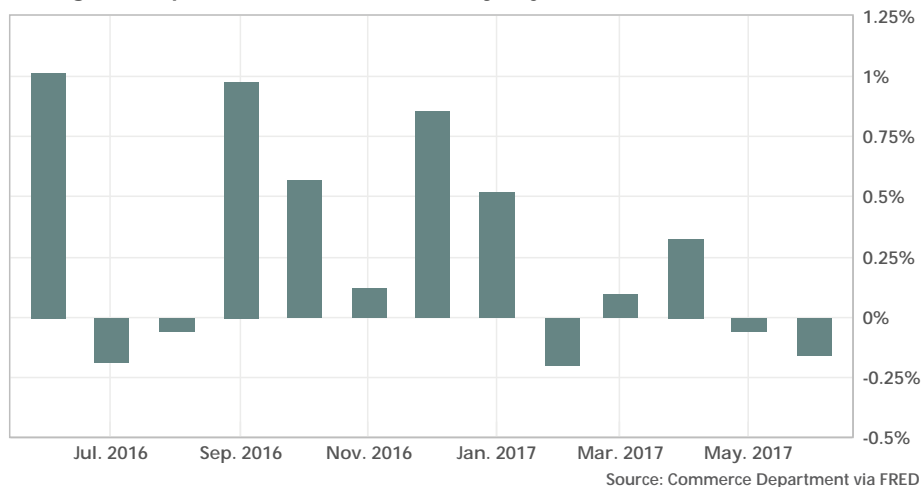
People walk through a nearly empty shopping mall on March 28, 2017, in Waterbury, Conn.

Sales at U.S. retailers rose in April, and March sales were stronger than originally estimated, painting a stronger picture of American consumers than previously reported.

Retail sales increased 0.4%, the Commerce Department said Friday, and were 4.5% higher compared to a year ago. A 0.2% monthly decline for March was revised up to show a 0.1% increase.

Retail sales

Change from previous month, seasonally adjusted



Sales have risen in three of the first four months of 2017. Stronger March data than originally reported may help boost U.S. GDP, which showed a 0.7% pace of growth in the government's first estimate.

With motor vehicles and gas stripped out, sales were up 0.3%, after a 0.4% increase in March.

Sales at gasoline stations were 12.3% higher in April than a year ago, as the cost of oil strengthened.



17 Aa ch had forecast a 0.5% increase during the month.



Watch



Brick and mortar retailers including Sears **SHLD, -3.04%** and Macy's **M, -1.31%** have struggled to find a foothold as consumers shift shopping patterns online. For the first four months of the year, online retail sales were 10.7% higher than during the same period last year, while sales at department stores were 5.2% lower. Online retail sales were up 1.4% during the month.

Read: [Retail stocks rocked as Macy's casts pall on sector](#)

But monthly spending patterns were mixed. Sales at furniture and home furnishings stores dipped 0.5%, while building materials and garden equipment sales rose 1.2%. Food and beverage store sales were down 0.3%. Health and personal care store sales increased 0.8%.

Steve Blitz, chief U.S. economist for TS Lombard, wrote Friday that he forecasts spending by 25- to 34-year-olds "increasingly tilts toward age-appropriate behavior. This means more money going into homes and the stuff we put in them."

Adjusted for inflation, sales of household items are even stronger, Blitz noted.

All that household spending has been good for a few companies. Online home furnishings shop Wayfair **W, +1.61%** posted results that beat estimates earlier this week, [sending the stock up 20%](#). Shares of paint retailer Sherwin-Williams **SHW, +1.70%** have surged 25% so far in 2017.

Read: [Amazon makes bigger push into furniture, among the fastest-growing online categories](#)

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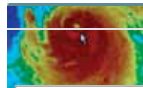
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NEWEST OLDEST

Lively Being

May 12, 2017

The word "mall" has an old cliché feel to it.

Like someone said it is a great place for people who have oodles of children and teens to drop off while the parents go do what ever they do.

The rest are old folks who don't know any better.

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Ted Karlson

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Women are back to wasting money on more garbage.

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Gosh....consumers buying junk they don't need brightens the economic outlook! Here's something that should really brighten the economic outlook:

\$19,000,000,000,000 of debt...!

Way to go, Washington!

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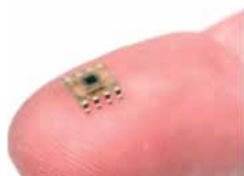
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PSQ (/publicsquare)



Rome street glows with streetlights in early evening, packed with people walking and eating at sidewalk cafes. Photo by Steve Mouzon.

COMMUNITY (/PUBLICSQUARE/CATEGORY/COMMUNITY)

Sidewalk cafes: Silver bullets for walkable places

When someone walks along a street, they're gone in a moment. But when they sit down to a meal, they might be there for an hour or more. Because of this, the sidewalk cafe is the most powerful tool to enhance people's desire to walk in a place.

STEVE MOUZON (/node/5558) JUN. 21, 2017



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The most important thing about building a place with high Walk Appeal (<http://www.originalgreen.org/blog/walk-appeal.html>) isn't anything we build, nor is it about walking. Of all the factors that entice us to walk in a place, the strongest one is likely the presence of other people. When someone walks along a street, they're there for a moment, and then they're gone. But when they sit down to a meal, they might be there for an hour or more. Because of this, the sidewalk cafe is the single most powerful tool we can use to enhance people's desire to walk in a place.

Interestingly, the sidewalk cafe is both cause and effect of places we want to walk. It never occurs in unwalkable places, and its chance of thriving increases as the place becomes more appealing. Because it is fueled by the appeal it creates, the sidewalk cafe can be considered the “turbo-charger of walking.” Here are some sidewalk cafe design considerations:

Traffic Speed



Ocean Drive traffic moving so slowly that people can hold conversations with drivers

The slower the traffic speed, the easier it is to do a good sidewalk cafe. The ideal traffic speed is walking speed... whether it is cars driving or people walking. Ocean Drive on South Beach regularly sees cars traveling at walking speed, and it has the most thriving sidewalk cafe scene in all of South Beach. As travel speed increases, protective measures to assure the safety of those dining must increase as well. Top speed for a thoroughfare adjacent to a good sidewalk cafe is 35–40 miles per hour, because nobody wants to have lunch alongside an expressway. Protective measures include the following:

Bollards



The bollard is the first line of defense against moving vehicles. A simple thin metal bollard such as the one shown here provides protection against cars traveling between walking speed and running speed (about 15 miles per hour). Above that, the bollards need to get heavier and closer together in order to make the patrons feel safe.

Please note that there are two factors in play here: actual physical safety, and the perception of safety. It is not enough to provide actual physical safety; the patrons must feel safe as well, otherwise they won't eat there.

Bollards can take many forms beyond the simple metal pipe bollard shown here. They can be made of iron, and cast into countless ornamental forms. Concrete bollards are necessarily heavier than thin pipes, and are often chosen for faster vehicular speeds, but bollards can be made of stone as well. For added protection, a heavy chain can be attached to the tops of a row of bollards.

Planters



Tactical Urbanism (<http://localhost/book/tactical-urbanism>) has popularized the use of planters as protective measures. Planters have several benefits. First, a planter can be really big and heavy without looking as clunky as some concrete bollards. And the plants planted within them can provide blooms, enclosure, and even shade if the planters contain trees.

On-street parking

Parked cars provide the greatest degree of protection, and should therefore be used along higher-speed thoroughfares. Actually, there are many benefits of on-street parking (<http://www.originalgreen.org/blog/the-importance-of-on-street.html>), so it can be paired with sidewalk cafes anywhere cars are still necessary... in other words, almost anywhere in the US. Above speeds where cars and bikes can ride comfortably together (about 25 miles per hour) on-street parking becomes the protective method of choice.

Parking may be either parallel or diagonal, and there are benefits of each. On the one hand, a traveling car striking a parallel-parked car is less likely to push the parked car onto the sidewalk because it will most likely be a glancing blow. On the other hand, most drivers slow down on streets with diagonally-parked cars because of the risk of someone backing out into traffic without seeing them at first. Also, diagonally parked cars put about eighteen feet of metal between the travel lanes and the sidewalk, whereas parallel parked cars are no more than eight feet wide.



We'll revisit sidewalk cafes soon, because there are several other factors important to their success beyond protective measures for vehicular traffic. We'll talk about comfort issues like shade and rain protection, breezes, and warmth on a cold day. We'll also look at servicing and walking path issues. What am I missing? What other sidewalk cafe issues should we be talking about?



Steve is a principal in Mouzon Design that is based in South Beach, Florida, and he is a co-founder of the New Urban Guild.

(/steve-mouzon)

6 Comments CNU

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**Sharon Marlene Woods** • 3 days ago

Cafes are great, but can we break down the barriers a bit more by also providing clusters of seating and social places for shoppers that don't need a meal or a drink? Cafes are exclusive: you basically have to pay for the right to sit. Let's make sure that anyone and everyone has access to places where they can gather, mingle, and socialize, and without having to pay for that right. And, dare I say that park benches are nice for a quick rest - but isolated benches scattered along the street (but not clustered or facing each other) do not really create social places. That is why I love free (and yes, pet-friendly!) parklets and pocket parks. We need more and more of those!

^ | v • Reply • Share ›

**Bob Ransford** • 11 days ago

Ocean Drive in South Beach is the first place I ever saw the sidewalk cafes set up with tables both on the inside portion of the sidewalk (against the building) and on the outside portion of the sidewalk (aligning with the curb next to the street) with pedestrian traffic travelling between. I like it because it allows the pedestrians to feel the vibe of each cafe they walk past. We still haven't seen this evolve in Vancouver because of City regulations that require a certain width of free pedestrian travel. All tables are required to be within a certain distance of the building.

^ | v • Reply • Share ›

**Brett Akkeren** • 11 days ago

One of my favorite examples of relatively new construction that has done this well is Bethesda Row in Be



see more

^ | v • Reply • Share ›

**Brett Akkeren** • 11 days ago

Looking forward to future posts on this. With regard to your comment related to the fact that they never occur in unwalkable places. This is a link to an image of "sidewalk dining" next to an out parcel of a big box shopping center. <https://www.flickr.com/photos/...> An exception that proves the rule. Very interested in your thoughts on whether the tables should be on the dooryard side or the street furniture side of the sidewalk. I prefer the later because when combined with large windows of the actual restaurant you feel like you are walking through the space and can see and be seen. I'm sure the wait staff prefers dooryard side because there are fewer conflicts with through pedestrians.

^ | v • Reply • Share ›

**Greg Manter** • 2 months ago

Good topic. Outdoor dining is wildly popular here in Knoxville. Market Square has 15 places to eat in just one block, and all offer outdoor seating. A pedestrian-only environment like that is the ideal for dining al fresco.

People fill the outdoor seating whenever the temperature is between 60 and 85. A few places have heaters in colder weather but crowds don't appear until the weather is good. Shade is critical for summer daytime use (most of our restaurants use awnings instead of umbrellas for better coverage). The tables stay full late into the evening, and are well used even at odd times of the day like 3 in the afternoon.

Something you didn't mention is people with dogs. Folks here bring their dog downtown with them, but of course the dog can't go in a restaurant. So the people sit outside with their dog by their feet. It's very common; there are almost always some dogs at the sidewalk tables on Market Square.

^ | v • Reply • Share ›

**stevemouzon** → Greg Manter • 2 months ago



Excellent point on dogs, Greg! We have 3 mini doxies and are always looking for sidewalk cafes while traveling. At home in South Beach, many places are so dog-friendly that you can take them inside!

^ | v • Reply • Share ›

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Stores closing at a record pace

Lindsey Rupp, Lauren Coleman-Lochner and Nick Turner, Bloomberg News 3:15 p.m. ET April 7, 2017



(Photo: Spencer Platt / Getty Images)

The battered American retail industry took a few more lumps this week, with stores at both ends of the price spectrum preparing to close their doors.

At the bottom, the seemingly ubiquitous Payless Inc. shoe chain filed for bankruptcy and announced plans to shutter hundreds of locations. Ralph Lauren Corp., meanwhile, said it will close its flagship Fifth Avenue Polo store — a symbol of old-fashioned luxury that no longer resonates with today's shoppers.

And the teen-apparel retailer Rue21 Inc. could be the next casualty. The chain, which has about 1,000 stores, is preparing to file for bankruptcy as soon as this month, according to people familiar with the situation. Just a few years ago, it was sold to private equity firm Apax Partners for about a billion dollars.

"It's an industry that's still in search for answers," said Noel Hebert, an analyst at Bloomberg Intelligence. "I don't know how many malls can reinvent themselves."

The rapid descent of so many retailers has left shopping malls with hundreds of slots to fill, and the pain could be just beginning. More than 10 percent of U.S. retail space, or nearly 1 billion square feet, may need to be closed, converted to other uses or renegotiated for lower rent in coming years, according to data provided to Bloomberg by CoStar Group.

The blight also is taking a toll on jobs. According to Labor Department figures released on Friday, retailers cut around 30,000 positions in March. That was about the same total as in February and marked the worst two-month showing since 2009.

Urban Outfitters Chief Executive Officer Richard Hayne didn't mince words when he sized up the situation last month. Malls added way too many stores in recent years — and way too many of them sell the same thing: apparel.

"This created a bubble, and like housing, that bubble has now burst," he said. "We are seeing the results: Doors shuttering and rents retreating. This trend will continue for the foreseeable future and may even accelerate."

Year-to-date store closings are already outpacing those of 2008, when the last U.S. recession was raging, according to Credit Suisse Group AG analyst Christian Buss. About 2,880 have been announced so far this year, compared with 1,153 for this period of 2016, he said in a report.

Extrapolating out to the full year, there could be 8,640 store closings in 2017, Buss said. That would be higher than the 2008 peak of about 6,200.

Retail defaults are contributing to the trend. Payless is closing 400 stores as part of a bankruptcy plan announced on Tuesday. The mammoth chain had roughly 4,000 locations and 22,000 employees — more than it needs to handle sluggish demand.

HHGregg Inc., Gordmans Stores Inc. and Gander Mountain Co. all entered bankruptcy this year. RadioShack, meanwhile, filed for Chapter 11 for the second time in two years.

Other companies are plowing ahead with store closures outside of bankruptcy court. Sears Holdings Corp., Macy's Inc. and J.C. Penney Co. are shutting hundreds of locations combined, reeling from an especially punishing slump in the department-store industry.

Others are trying to re-emerge as e-commerce brands. Kenneth Cole Productions said in November that it would close almost all of its locations. Bebe Stores Inc., a women's apparel chain, is planning to take a similar step, people familiar with the situation said last month.

"Today, convenience is sitting at home in your underwear on your phone or iPad," Buss said. "The types of trips you'll take to the mall and the number of trips you'll take are going to be different."

But even brands moving aggressively online have struggled to match the growth of market leader Amazon.com Inc.

The Seattle-based company accounted for 53 percent of e-commerce sales growth last year, with the rest of the industry sharing the remaining 47 percent, according to EMarketer Inc.

While high-end malls continue to perform well, the exodus away from brick-and-mortar stores is taking a toll on so-called C- and D-class shopping centers, according to Oliver Chen, an analyst at Cowen & Co. There are roughly 1,200 malls in the U.S., and those classes represent about 30 percent of the total, he said.

The glut of stores is far worse in the U.S. than in other countries.

“Retail square feet per capita in the United States is more than six times that of Europe or Japan,” Urban Outfitters’ Hayne said last month. “And this doesn’t count digital commerce.”

Still, the Class A malls continue to thrive, Chen said. And most Americans continue to do shopping in person: Customers prefer physical stores 75 percent of the time, according to Cowen research.

The key is creating the right experience, whether it’s online or off.

Retailers should “refocus on customers,” Chen said. “Management needs to be fixated on speed of delivery, speed of supply chain, and be able to test read and react to new and emerging trends.”

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What in the World Is Causing the Retail Meltdown of 2017?

In the middle of an economic recovery, hundreds of shops and malls are shuttering. The reasons why go far beyond Amazon.



Mark Blinch / Reuters

DEREK THOMPSON

APR 10, 2017 | BUSINESS

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From rural strip-malls to Manhattan's avenues, it has been a disastrous two years for retail.

There have been nine retail bankruptcies in 2017—as many as all of 2016. J.C. Penney, RadioShack, Macy's, and Sears have each announced more than 100 store closures. Sports Authority has [liquidated](#), and Payless has [filed for bankruptcy](#). Last

week, several apparel companies' stocks hit new multi-year lows, including Lululemon, Urban Outfitters, and American Eagle, and Ralph Lauren [announced](#) that it is closing its flagship Polo store on Fifth Avenue, one of several brands to abandon that iconic thoroughfare.

A deep recession might explain an extinction-level event for large retailers. But GDP has been growing for eight straight years, gas prices are low, unemployment is under 5 percent, and the last 18 months have been [quietly excellent years for wage growth](#), particularly for middle- and lower-income Americans.

So, what the heck is going on? The reality is that overall retail spending continues to grow steadily, if a little meagerly. But several trends—including the rise of e-commerce, the over-supply of malls, and the surprising effects of a restaurant renaissance—have conspired to change the face of American shopping.

Here are three explanations for the recent demise of America's storefronts.

1. People are simply buying more stuff online than they used to.

The simplest explanation for the demise of brick-and-mortar shops is that Amazon is eating retail. Between 2010 and last year, Amazon's sales in North America quintupled from \$16 billion to \$80 billion. Sears' revenue last year was about \$22 billion, so you could say Amazon has grown by three Sears in six years. Even more remarkable, according to [several reports](#), half of all U.S. households are now Amazon Prime subscribers.

But the full story is bigger than Amazon. Online shopping has done well for a long time in media and entertainment categories, like books and music. But easy return policies have made online shopping cheap, easy, and risk-free for consumers in apparel, which is now [the largest e-commerce category](#). The success of start-ups like Casper, Bonobos, and Warby Parker (in beds, clothes, and glasses, respectively) has forced physical-store retailers to offer similar deals and convenience online.

What's more, mobile shopping, once an agonizing experience of typing private credit-card digits in between pop-up ads, is getting easier thanks to apps and mobile wallets. Since 2010, mobile commerce has grown from 2 percent of digital spending to 20 percent.

The Growth of Mobile Shopping



Cowen and Company

People used to make several trips to a store before buying an expensive item like a couch. They would go once to browse options, again to narrow down their favorites, and again to finally pull the trigger on a blue velvet love seat. On each trip, they were likely to make lots of other small purchases as they wandered around. But today many consumers can do all their prep online, which means less ambling through shopping centers and less making incidental purchases at adjacent stores (“I’m tired, let’s go home ... oh wait, there’s a DSW right there, I need new sneakers”).

There will always be a place for stores. People like surveying glitzy showrooms and running their fingers over soft fabrics. But the rise of e-commerce not only moves individual sales online, but also builds new shopping habits, so that consumers

gradually see the living room couch as a good-enough replacement for their local mall.

2. America built way too many malls.

There are about 1,200 malls in America today. In a decade, there might be about 900. That's not quite the "[the death of malls.](#)" But it is decline, and it is inevitable.

The number of malls in the U.S. grew more than twice as fast as the population between 1970 and 2015, according to Cowen and Company's research analysts. By one measure of consumerist plentitude—shopping center “gross leasable area”—the U.S. has 40 percent more shopping space per capita than Canada, five times more than the U.K., and 10 times more than Germany. So it's no surprise that the Great Recession provided such a devastating blow: Mall visits declined 50 percent between 2010 and 2013, according to the real-estate research firm Cushman and Wakefield, and they've kept falling every year since.

Shopping Space per Person, by Country



Cowen and Company

In a long and detailed paper this week on the demise of stores, Cowen and Company research analysts offered several reasons for the “structural decay” of malls following the Great Recession. First, they said that stagnating wages and

rising health-care costs squeezed consumer spending on fun stuff, like clothes. Second, the recession permanently hurt logo-driven brands, like Hollister and Abercrombie, that thrived during the 1990s and 2000s, when coolness in high-school hallways was defined by the size of the logo emblazoned on a polo shirt. Third, as consumers became bargain-hunters, discounters, fast-fashion outlets, and club stores took market share from department stores, like Macy's and Sears.

Finally, malls are retail bundles, and when bundles unravel, the collateral damage is massive. (For example, look at pay TV, where ESPN has bled millions of subscribers in the last few years as one of its key demographics, young men, abandon the cable bundle that is critical to ESPN's distribution.) In retail, when anchor tenants like Macy's fail, that means there are fewer Macy's stragglers to amble over to American Eagle. Some stores have "co-tenancy" clauses in malls that give them the right to break the lease and leave if an anchor tenant closes its doors. The failure of one or more department stores can ultimately shutter an entire mall.

3. Americans are shifting their spending from materialism to meals out with friends.

Even if e-commerce and overbuilt shopping space conspired to force thousands of retail store closings, why is this meltdown happening while wages for low-income workers are [rising faster than any time since the 1990s](#)?

First, although rising wages are obviously great for workers and the overall economy, they can be [difficult for low-margin companies that rely on cheap labor](#)—like retail stores. Cashiers and retail salespeople are the two largest job categories in the country, with more than 8 million workers between them, and the median income for both occupations is less than [\\$25,000](#) a year. But recently, new minimum-wage laws and a tight labor market have pushed up wages for the poorest workers, squeezing retailers who are already under pressure from Amazon.

Second, clothing stores have declined as consumers shifted their spending away from clothes toward traveling and dining out. Before the Great Recession, people bought a lot of stuff, like homes, furniture, cars, and clothes, as retail grew

dramatically in the 1990s. But something big has changed. Spending on clothes is down—its share of total consumer spending has declined by 20 percent this century.

What's up? Travel is booming. Hotel occupancy [is booming](#). Domestic airlines have flown more passengers each year since 2010, and last year U.S. airlines set a record, with [823 million passengers](#). The rise of restaurants is even more dramatic. Since 2005, sales at “food services and drinking places” have grown [twice as fast as all other retail spending](#). In 2016, for the first time ever, Americans spent [more money in restaurants and bars](#) than at grocery stores.

Non-Food Retail vs. Restaurants and Bars: 1992-2016



St Louis Fed

There is a social element to this, too. Many young people are driven by the experiences that will make the best social media content—whether it's a conventional beach pic or a well-lit plate of glistening avocado toast. Laugh if you want, but these sorts of questions—“what experience will reliably deliver the most popular Instagram post?”—really drive the behavior of people ages 13 and up. This is a big deal for malls, says Barbara Byrne Denham, a senior economist at Reis, a

real-estate analytics firm. Department stores have failed as anchors, but better food, entertainment, and even fitness options might bring teens and families back to struggling malls, where they might wander into brick-and-mortar stores that are currently at risk of closing.

* * *

There is no question that the most significant trend affecting brick-and-mortar stores is the relentless march of Amazon and other online retail companies. But the recent meltdown for retail brands is equally about the legacy of the Great Recession, which punished logo-driven brands, put a premium on experiences (particularly those that translate into social media moments), and unleashed a surprising golden age for restaurants.

Finally, a brief prediction. One of the mistakes people make when thinking about the future is to think that they are watching the final act of the play. Mobile shopping might be the most transformative force in retail—today. But self-driving cars could change retail as much as smartphones.

Once autonomous vehicles are cheap, safe, and plentiful, retail and logistics companies could buy up millions, seeing that cars can be stores and streets are the ultimate real estate. In fact, self-driving cars could make shopping space nearly obsolete in some areas. CVS could have hundreds of self-driving minivans stocked with merchandise roving the suburbs all day and night, ready to be summoned to somebody's home by smartphone. A new luxury-watch brand in 2025 might not spring for an Upper East Side storefront, but maybe its autonomous showroom vehicle could circle the neighborhood, waiting to be summoned to the doorstep of a tony apartment building. Autonomous retail will create new conveniences and traffic headaches, require new regulations, and inspire new business strategies that could take even more businesses out of commercial real estate. The future of retail could be even weirder yet.

Related Video:

ABOUT THE AUTHOR



DEREK THOMPSON is a senior editor at *The Atlantic*, where he writes about economics, labor markets, and the media. He is the author of the book *Hit Makers*.

 [Twitter](#)



Jana Ecker <jecker@bhamgov.org>

Fwd: First Floor Space should remain traditional retail

1 message

Joe Valentine <jvalentine@bhamgov.org>
To: Jana Ecker <Jecker@bhamgov.org>

Wed, Aug 23, 2017 at 11:06 AM

Please share accordingly.

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

From: **Joe Valentine** <jvalentine@bhamgov.org>
Date: Wed, Aug 23, 2017 at 11:06 AM
Subject: Re: First Floor Space should remain traditional retail
To: James Remski <info@rsol.us>

Mr. and Mrs. Remski,

Thank you for your email message sharing your perspective on retail spaces in the downtown. I will share them with those that are deliberating on this issue so they can be considered in their deliberations.

Best Regards,
Joe Valentine

On Wed, Aug 23, 2017 at 7:40 AM, James Remski <info@rsol.us> wrote:
Mr. Valentine,

As 29 year residents of Birmingham, our family has enjoyed living in Birmingham and all it has to offer. My children attended Birmingham Public Schools for their entire academic career: we have seen our neighborhoods flourish; and we have witnessed an evolution in the shopping district.

Our great neighborhoods, our highly ranked schools, and our vibrant downtown community all make Birmingham truly special and a model for other communities around the country.

As the city debates "retail/service" language, we would like to share our strong opinion with you that first floor space in the PSD should remain pure retail. We feel that there should be an understanding that local and national retailers have committed their business to a **retail shopping district**. We should acknowledge and respect the commitments retailers have made to our downtown district and support them in any way possible. It is our feeling that supporting these retailers would mean that we ask landlords to lease first floor space to traditional retailers and ask other non-retail/service based businesses to lease space other than first floor space.

Jim and Kathy Remski

Kathy Remski
remski@me.com

--
Joseph A. Valentine
City Manager
City of Birmingham
151 Martin Street
Birmingham, MI 48009
(248) 530-1809 Office Direct

8/23/2017

City of Birmingham MI Mail - Fwd: First Floor Space should remain traditional retail

(248) 530-1109 Fax
jvalentine@bhamgov.org
Twitter: @JoeValentine151

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Joseph A. Valentine
City Manager
City of Birmingham
151 Martin Street
Birmingham, MI 48009
(248) 530-1809 Office Direct
(248) 530-1109 Fax
jvalentine@bhamgov.org
Twitter: @JoeValentine151

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