

REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, DECEMBER 12, 2018
7:30 PM
151 MARTIN STREET, CITY COMMISSION ROOM, BIRMINGHAM, MI

- A. Roll Call
- B. Review and Approval of the Minutes of the regular meeting of **November 28, 2018**
- C. Chairpersons' Comments
- D. Review of the Agenda

- E. Rezoning Request
 - 1. **469 – 479 S. Old Woodward (former Mountain King & Talmer Bank)** – Request to reconsider application in light of new information to be presented to rezone from B3 and D4 to B3 and D5 to allow a nine story mixed use building (**Postponed from November 14, 2018**).

- F. Community Impact Study & Preliminary Site Plan Review
 - 1. **35001 Woodward (Hunter House & vacant parking lot)** – Request for approval of new five story mixed use building with hotel, retail and residential uses.

- G. Study Session Items

Rules of Procedure for Study Sessions: Site Plan and Design Review, Special Land Use Permit Review and other review decisions will not be made during study sessions; Each person (member of the public) will be allowed to speak at the end of the study session; Each person will be allowed to speak only once; The length of time for each person to speak will be decided by the Chairman at the beginning of the meeting; Board members may seek information from the public at any time during the meeting.

 - 1. **Rooftop Uses**

- H. Pre-application Discussion
 - 1. 34000 Woodward

- I. Miscellaneous Business and Communications:
 - a. Communications
 - b. **Administrative Approval** Correspondence
 - c. Draft Agenda for the next Regular Planning Board Meeting (**January 9, 2019**)
 - d. Other Business

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

- K. Adjournment

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(Title VI of the Civil Rights Act of 1964).

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

Item	Page
E. PRELIMINARY SITE PLAN REVIEWS	
1. 361 E. Maple Rd. (Historic Resource - Hawthorne Building) Addition of four stories on top of the existing one-story historic resource (postponed from November 14, 2018)	2
Motion by Mr. Williams Seconded by Mr. Koseck that the Preliminary Site Plan Review for 361 E. Maple Rd. (Historic Resource - Hawthorne Building) be postponed to January 9, 2019.	2
Motion carried, 7-0.	2
2. 695 W. Brown St. (formerly 525 Southfield Rd.), The West Brown Preliminary Site Plan Review of Phase 2	3
Motion by Mr. Williams Seconded by Mr. Share to receive and file the following:	3
<ul style="list-style-type: none"> • Letter dated November 25, 2018 from Martin and Colleen McGough; • Letter undated from Jeff and Jill Sesplankis; • Seven pages of partially signed petitions. 	
Motion carried, 7-0.	3
Motion by Mr. Williams Seconded by Mr. Koseck that 695 W. Brown St. (formerly 525 Southfield Rd.), The West Brown, Preliminary Site Plan Review of Phase 2 be postponed without a date certain with the requirement that the City provide notice the next time it comes before the Planning Board.	5
Motion failed, 2-5.	5
Motion by Mr. Williams Seconded by Ms. Whipple-Boyce that 695 W. Brown St. (formerly 525 Southfield Rd.), The West Brown, Preliminary Site Plan Review of Phase 2 be postponed until January 23, 2019.	5
Motion carried, 7-0.	5
F. STUDY SESSION ITEMS	

Item	Page
2. Planning Board Action List	6
Motion by Mr. Jeffares	7
Seconded by Mr. Williams to ask the City Manager if we can investigate ordinance amendments (a) to permit glass railings; (b) to permit metal panels as exterior veneer; and (c) to expand dumpster enclosure materials.	
Motion carried, 7-0.	7
3. Planning Board Rules of Procedure	8
Motion by Mr. Share	
Seconded by Mr. Williams to approve the Planning Board's Rules of Procedure as presented.	8
Motion carried, 7-0.	8

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

Minutes of the regular meeting of the City of Birmingham Planning Board held on November 28, 2018. Chairman Scott Clein convened the meeting at 7:30 p.m.

A. ROLL CALL

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Daniel Share, Janelle Whipple-Boyce, Bryan Williams

Also Present: Alternate Board Member Jason Emerine

Absent: Alternate Board Member Nasseen Ramin; Student Representatives Madison Dominato, Sam Fogel, Ellie McElroy

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

11-186-18

**B. APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD
MEETING OF OCTOBER 24, 2018**

Mr. Share made the following change:

Page 3 - Second full paragraph, replace "no matter how many" with "if fewer."

Motion by Mr. Boyle

Seconded by Ms. Whipple-Boyce to approve the minutes of the Regular Planning Board Meeting of October 24, 2018 as amended.

Motion carried, 6-0.

VOICE VOTE

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

Nays: None

Abstain: Williams

Absent: None

11-187-18

C. CHAIRPERSON'S COMMENTS

Chairman Clein stated that the board has a mixed meeting this evening with site plan reviews along with study session items.

11-188-18

D. APPROVAL OF THE AGENDA (no change)

E. PRELIMINARY SITE PLAN REVIEWS

11-189-18

**1. 361 E. Maple Rd. (Historic Resource - Hawthorne Building)
Addition of four stories on top of the existing one-story historic resource
(postponed from November 14, 2018)**

Mr. Baka advised that the applicant was scheduled to appear before the Historic District Commission ("HDC") on November 7, 2018. However, the applicant requested postponement in order to consider the comments contained in the staff report. Based on the current design, the proposed addition does not conform to the guidelines provided by the National Park Service. The Planning Dept. feels that this proposal exceeds what is acceptable for an addition to this historic building. In addition, the proposed changes to the façade of the historic building dramatically change the character by eliminating the storefront window system and pressed metal storefront.

Mr. Chris Longe, Architect, 461 E. Maple Rd., said he understands that the HDC may alter what they are proposing to do. He would like the opportunity to overcome those obstacles in front of the HDC prior to a full review by the Planning Board.

Motion by Mr. Williams

Seconded by Mr. Koseck that the Preliminary Site Plan Review for 361 E. Maple Rd. (Historic Resource - Hawthorne Building) be postponed to January 9, 2019.

There were no comments from the public on the motion at 7:35 p.m.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

11-190-18

**2. 695 W. Brown St. (formerly 525 Southfield Rd.), The West Brown
Preliminary Site Plan Review of Phase 2**

Motion by Mr. Williams

Seconded by Mr. Share to receive and file the following:

- Letter dated November 25, 2018 from Martin and Colleen McGough;
- Letter undated from Jeff and Jill Sesplankis;
- Seven pages of partially signed petitions.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

Ms. Ecker explained the portion of the site under review currently as Phase 2 is the southern 0.24-acre portion of the 0.829-acre parcel confined by Southfield Rd. to the west, Brown St. to the north, and Watkins St. to the east in the R-8 Zoning District. The entire parcel was previously home to a wellness center and parking lot, but a portion of the site is currently under construction with an eight-unit attached single-family development that was approved with all units facing W. Brown St. (Phase 1).

The applicant went before the Planning Board on February 28, 2018 for a Final Site Plan and Design Review for the initial eight units (Phase 1). The final site plan was approved with several conditions.

Phase 2

The applicant is currently proposing the addition of two attached single-family homes on a portion of the site facing Watkins, which is currently open green space (Phase 2). Attached single-family residential units are permitted in the R-8 Zoning District, and are defined in Article 9, section 9.02.

Each attached single-family unit is proposed to be separated from the adjoining unit by a wall extending from the basement floor to the roof, with each separating wall to meet or exceed an STC rating of 70. Each residential unit has its own stairway and individual front door that leads directly into each unit, and thus are permitted within the existing R-8 zoning. Two parking spaces are proposed for each of the units and five additional spaces are provided for guest parking.

However, during the review and approval process for Phase 1, the applicant stated they had plans to develop Phase 2 along Watkins as a single-family home. Several Planning Board members agreed that they would prefer to see a single-family home facing Watkins in Phase 2.

At this time the applicant has not provided a detailed existing conditions plan including the subject site in its entirety, including all property lines, buildings, structures, curb cuts, sidewalks, drives, ramps and all parking on site and on the street(s) adjacent to the site, and showing the same detail for all adjacent properties within 200 ft. of the subject sites property lines. This is now required for all site plan applications. With regard to placement on the lot, they meet the side and rear yard setbacks for the units. However, there is an issue with the distance between structures with the single-family attached unit on the south and its distance to the existing home along Watkins to the south. They would have to be 41 ft. from that home and the distance is only 20 ft.

In response to questions from Mr. Share and Chairman Clein, Ms. Ecker said currently this is submitted as all one parcel and all of the calculations have been based on the entire parcel. However, the applicant could apply for a lot split and divide the parcel into two lots: Phase 1 and Phase 2, which would then trigger different requirements.

Mr. Williams clarified that tonight's review is for an amendment to the original site plan.

Mr. Chris Longe, architect for the project, said they can supply all of the information that has been requested. Their conundrum is whether to split the lot off as a 60 ft. wide R-8 lot or go to the Board of Zoning Appeals ("BZA") for a variance to allow them to front on Watkins with greater setbacks than if the property was R-2. The benefit to the neighbor to the south is they would get an additional 2 ft. of setback if they are successful.

Chairman Clein pointed out it was presented to the Planning Board on at least two occasions that the applicant was going to build a single-family house. His conundrum is that he feels kind of duped. He asked for help in understanding why the two attached units are not something he should be worried about.

Mr. Longe replied there was no intent to bait and then switch.

Mr. Chris Brokavich, 115 Maxwell, Royal Oak, the developer, said they planned a single-family home but as they have progressed people purchasing the town homes have had a concern about having only five guest parking spaces for all of the units on the site. So with this proposal they can get nine or twelve parking spots. Also, the plan would create just one driveway to the two new residences on Watkins.

Mr. Koseck stated this use is allowed by right. It doesn't comply with the ordinance relative to setbacks. Therefore, the applicant will have to go to the BZA and make their case for the setback. The consensus was that the information submitted does not have the details needed and does not reflect the current configuration of the parcels.

Ms. Whipple-Boyce said that when the applicant comes back they should consider going back to their original single-family suggestion. There is no other condition along the south side of Brown St. where attached living units have come around the corner and into the neighborhoods.

Mr. Williams suggested that the applicant should meet with the neighbors before coming back to show them exactly what the proposal will look like facing Watkins.

The Chairman took comments from the public at 8:17 p.m.

Ms. Maria VanNeese who lives on the Southfield side was opposed to adding more impervious surface for parking.

Ms. Anita Rigalotto, 952 Watkins, felt she was duped into thinking a single-family home would be built on her street. There are enough condos along Brown St. and she doesn't want to see more on Watkins.

Mr. Martin LeGoff, 543 Watkins right across the street, said it is terrible that townhouses will start encroaching down Watkins.

Mr. Paul Reagan, 997 Purdy, who is the president of the Central Birmingham Residents Assoc., spoke against turning the corner onto Watkins with condos.

Motion by Mr. Williams

Seconded by Mr. Koseck that 695 W. Brown St. (formerly 525 Southfield Rd.), The West Brown, Preliminary Site Plan Review of Phase 2 be postponed without a date certain with the requirement that the City provide notice the next time it comes before the Planning Board.

No one from the public wanted to comment on the motion at 8:25 p.m.

Motion failed, 2-5.

VOICE VOTE

Yeas: Williams, Koseck

Nays: Boyle, Clein, Jeffares, Share, Whipple-Boyce

Absent: None

Motion by Mr. Williams

Seconded by Ms. Whipple-Boyce that 695 W. Brown St. (formerly 525 Southfield Rd.), The West Brown, Preliminary Site Plan Review of Phase 2 be postponed until January 23, 2019.

There were no comments from members of the public at 8:26 p.m.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

F. STUDY SESSION ITEMS

11-191-18

1. Projections into the Right-of-Way

Mr. Baka advised that as requested by the Planning Board at their meeting on November 14, 2018, Planning staff has provided draft language that includes an intent section and also makes recommendations for further restrictions beyond what is permitted by the Building Code. Staff has intentionally allowed for flexibility within the standards to give the reviewing body discretion on a case-by-case basis without the need for the applicant to obtain a variance.

Mr. Jeffares indicated he would like to see a maximum allowable encroachment onto the sidewalk rather than two-thirds which may be excessive in some cases. Mr. Koseck added that a unique use such as the Birmingham Theatre might require a higher level of review. Further, the requirement that permanent architectural features such as windows, balconies, and overhangs cannot extend more than 18 in. into the right-of-way should require a little more study.

Referring to D(4)(c)(iii), Permanent encroachments that create usable space, Ms. Whipple-Boyce suggested that the bump out on the new Peabody site building be added to the other three examples.

Mr. Share asked for elimination of "said this" or "said that." Additionally, think about different percentages of allowable projection for different streets.

Mr. Boyle suggested under D(1) reverse "light, space" so that it reads "space, light."

Mr. Share said to mention something about not interrupting the flow of people on the street and that the pedestrian path needs to be maintained unobstructed.

Chairman Clein said in D(4)(b) and (c) note with consistency who is authorized to approve above grade encroachments. Also, review the proposed ordinance to ensure it meets the requirements of the Building Code.

Mr. Boyle hoped to see some schematic drawings included in the Ordinance. It was thought that perhaps Mr. Koseck could help with that.

Staff agreed to bring back the suggested changes.

11-192-18

2. Planning Board Action List

Ms. Ecker recalled that on November 12, 2018, the City Commission reviewed a revised draft of the Planning Board's 2018-2019 Action List based on the items discussed at the joint meetings held earlier this year. The City Commission voted to approve the Revised Draft Planning Board Action List 2018 – 2019. In addition, the City Commission also approved a formal process for amendments to the Planning Board's Action List between Annual Report submissions.

Since then the Commission approved the vast majority of Item 1, Bistro Standards, except for definition of Bistro and that will be back to them on Monday, December 3, 2018.

Item 2, Definition of Retail - Long Term Study only received one bidder and the Commission decided to re-bid the RFP. Therefore, staff is in the process of making changes in accordance with Commission comments and re-issue it.

Item 3, Amend Cost of Parking Space for payment-in-lieu of parking was recently approved by the City Commission.

Item 4, Overlay Signage Standards will need to go to the Design Review Board when a quorum is present and then move on to the City Commission.

The Planning Board is presently considering Item 5, Commercial Projections onto Public Property.

Board members decided to cross out Item 13, Additional Items to be Considered during Master Plan Process because it is covered in the RFP and the proposal that was received for the Master Plan.

Consensus was to take up glass railings and dumpster enclosures. The City Manager will make the decision as to whether the Board can review them quickly and easily, or whether they should go to the City Commission for a revision to the Action List.

Motion by Mr. Jeffares

Seconded by Mr. Williams to ask the City Manager if we can investigate ordinance amendments (a) to permit glass railings; (b) to permit metal panels as exterior veneer; and (c) to expand dumpster enclosure materials.

No one from the public wished to speak about the motion.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

11-193-18

3. Planning Board Rules of Procedure

Ms. Ecker stated that on May 9, 2018, the Planning Board discussed amending the Rules of Procedure to comply with the new site plan submittal requirements approved by the City Commission. The Board approved provisions that incorporated new submittal requirements (the requirement that all property lines, buildings and structures on adjacent properties within 200 ft. of a subject site be marked on the site plan).

Given the length of time since the last review of the Rules of Procedure, the Planning Board also verified that all references to the Open Meetings Act remained correct, and revised the third clause in Article VI – Code of Ethics, to require compliance with the City's Ethics Ordinance which was not in place when the Rules were last updated.

At this time, the Planning Board has expressed a desire to amend the Rules of Procedure to establish a procedure for the review of Regulated Uses by the Planning Board. Previously, Regulated Uses were reviewed by the City Commission only. At least five votes are required for the Planning Board to amend the Rules of Procedure.

Chairman Clein noted that some of the Board's motions are rather short and they should be clarified in terms of compliance with ordinance requirements. He added that under Article II - Meetings (B) the last paragraph, insert Regulated Uses where needed. He further added that the appropriateness of the Regulated Use, the SLUP, the Site Plan, and the CIS will be reviewed by the Planning Board and then sent as one package to the City Commission.

Motion by Mr. Share

Seconded by Mr. Williams to approve the Planning Board's Rules of Procedure as presented.

Motion carried, 7-0.

ROLLCALL VOTE

Yeas: Share, Williams, Boyle, Klein, Jeffares, Koseck, Whipple-Boyce
Nays: None
Absent: None

11-194-18

MISCELLANEOUS BUSINESS AND COMMUNICATIONS

- a. Communications (none)
- b. Administrative Approval Requests (none)
- c. Draft Agenda for the next Regular Planning Board Meeting of December 12, 2018
 - 469-479 S. Old Woodward Ave., rezoning hearing;
 - 35001 Woodward Ave., Hunter House site, revised plan for a five-story hotel building with the Hunter House incorporated. CIS and Preliminary Site Plan Review;
 - Projections into the right-of-way;
 - Rooftop uses.
- d. Other Business
 - In response to Mr. Boyle, Ms. Ecker said she will verify if Toast continues to violate their SLUP by not serving dinner, or if this has been corrected.

11-195-18

PLANNING DIVISION ACTION ITEMS

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

11-196-18

ADJOURNMENT

No further business being evident, the Chairman adjourned the meeting at 9:15 p.m.

Jana L. Ecker
Planning Director



MEMORANDUM

Planning Division

DATE: November 9, 2018

TO: Planning Board

FROM: Jana L. Ecker, Planning Director

SUBJECT: Rehearing of Rezoning Request for 469 – 479 S. Old Woodward

On June 27, 2018, the Planning Board reviewed a rezoning request 469 – 479 S. Old Woodward (former Mountain King and Talmer Bank sites) to rezone the site from B3/D4 to B3/D5. This request was made pursuant to Article 7, section 7.02, of the Zoning Code. After much discussion, the Planning Board voted to recommend denial of the rezoning request to the City Commission for 469 – 479 S. Old Woodward.

The City Commission then set a public hearing date for August 13, 2018 to review the rezoning request.

On August 13, 2018, the applicant submitted a letter requesting that the City postpone the public hearing at the City Commission that was previously set to allow the applicant to present new information to the Planning Board for their review and consideration. Accordingly, the City Commission cancelled the public hearing and the matter was sent back to the Planning Board for reconsideration.

Section 7.02(6) of the Zoning Ordinance states:

If the City Commission denies the application, no application shall be reheard for at least one year, unless there have been substantial changes in the facts, evidence, and/or conditions demonstrated by the applicant. The determination of whether there have been such changes shall be made by the Planning Board at the time the application is submitted for processing.

Accordingly, section 7.02(6) of the Zoning Ordinance allows a rehearing on a rezoning request where there is a substantial change in the evidence that was previously presented even after the City Commission has issued a denial of the request. In this case, the City Commission did not hear the request, and thus did not issue an approval or denial. They did however send the matter back to the Planning Board to determine if there has been a substantial change in the evidence, and if so, to conduct a rehearing on the rezoning request previously considered.

Please find attached the applicant's letter that outlines the substantial change in the evidence that was previously presented to the Planning Board on June 27, 2018, and requests a rehearing of the rezoning request.

On September 12, 2018, the applicant appeared before the Planning Board and outlined the substantial change in the evidence that was previously presented to the board. In addition, an attorney speaking in opposition to the rezoning request also raised new information that had not been previously presented or discussed by the board. Board members had additional questions as to why the subject parcel was not put into the Parking Assessment District when the district was created, and whether or not the owner of the subject property is permitted to apply for rezoning to the new D5 zoning classification in the Downtown Birmingham Overlay District. After much discussion, the Planning Board voted to postpone consideration of the public hearing to October 10, 2018 with the condition that the Board receive the legal opinion of counsel to the City of Birmingham in writing as to whether the proposed site (former Mountain King and Talmer Bank) is eligible to be rezoned to the D-5 category.

Please find attached two letters from the City Attorney, one addressing the eligibility of the subject site to be rezoned to the D-5 category, and one addressing Parking Assessment District records regarding the creation of the district.

On October 10, 2018, the applicant appealed to the Planning Board for a rehearing based on new facts or evidence. After much discussion, the Board made a motion finding that there were substantial changes from the evidence previously presented at the rezoning hearing on June 27, 2018, and thus voted to grant a rehearing of the rezoning request for 469 – 479 S. Old Woodward. The rehearing was scheduled for November 14, 2018.

As the Planning Board accepted that the applicant has proven a substantial change in the evidence and that a rehearing should occur, all of the previous application documents, plans and reports are provided for your review and consideration. An updated staff report is also attached for your review.

DATE: November 8, 2018

TO: Planning Board

FROM: Jana Ecker, Planning Director

SUBJECT: Rezoning Request for 469-479 S. Old Woodward – Project M1

The applicant for 469-479 S. Old Woodward (Parcel Numbers 1936208011 and 1936208012 respectively) requested that the Planning Board hold a public hearing to consider the rezoning of the property from B-3 (Office Residential) and D-4 (Downtown Overlay) to B-3 (Office Residential) and D-5 (Downtown Overlay). The applicant is seeking the rezoning to allow for the construction of a nine-story mixed use building in between the Birmingham Place and the 555 building. The maximum height allowed in the D-4 zoning district is 4-5 stories. In the D-5 zoning district, developers may build as high, but no higher than the adjacent buildings which are located in the D-5 zone.

The 0.423 acre subject site spans Hazel Street from S. Old Woodward to Woodward. The site currently contains two vacant single-story commercial buildings (formerly Mountain King Chinese Restaurant and First Place Bank). The applicant is proposing to demolish the present buildings for the construction of a nine-story mixed use building with three levels of underground parking.

On June 27, 2018, the Planning Board reviewed a rezoning request 469 – 479 S. Old Woodward (former Mountain King and Talmer Bank sites) to rezone the site from B3/D4 to B3/D5. This request was made pursuant to Article 7, section 7.02, of the Zoning Code. After much discussion, the Planning Board voted to recommend denial of the rezoning request to the City Commission for 469 – 479 S. Old Woodward.

On September 12, 2018, the applicant appeared before the Planning Board requesting a rehearing on the rezoning of 469 – 479 S. Old Woodward and outlined the substantial changes in the evidence that was previously presented to the board. In addition, an attorney speaking in opposition to the rezoning request also raised new information that had not been previously presented or discussed by the board. Board members had additional questions as to why the subject parcel was not put into the Parking Assessment District when the district was created, and whether or not the owner of the subject property is permitted to apply for rezoning to the new D5 zoning classification in the Downtown Birmingham Overlay District. After much discussion, the Planning Board voted to postpone consideration of the public hearing to October 10, 2018 with the condition that the Board receive the legal opinion of counsel to the City of Birmingham in writing as to whether the proposed site (former Mountain King and Talmer Bank) is eligible to be rezoned to the D-5 category.

On October 10, 2018, the Planning Board continued discussion and deliberations on the question of whether a rehearing should be held based on new facts or evidence. After much discussion, the Board made a motion finding that there were substantial changes from the evidence previously presented at the rezoning hearing on June 27, 2018, and thus voted to grant a rehearing of the rezoning request for 469 – 479 S. Old Woodward. The rehearing was scheduled for November 14, 2018.

History of Property

Information gathered by PM Environmental for a Phase 1 Environmental Site Assessment on the property history revealed that 469 S. Old Woodward was home to various occupants since around 1937, including many auto sales companies and most recently the First Place Bank, which closed in 2014. The one story commercial building has since been vacant. 479 S. Old Woodward has been home to a few restaurants, most recently Mountain King (1998-2014). Similarly, the one story commercial building has also been vacant since its last tenant in 2014.

The applicant has noted that historically, Birmingham's buildings zoning permitted the height of the 555 building and the Birmingham Place in the late 1960's and early 1970's. When the zoning was changed in the 1970's, the two buildings were designated to a legal nonconforming use. Ultimately, the zoning was changed to D-4 in 1996 by the adoption of the 2016 Plan and the Downtown Overlay. In 2016, a new D5 zone was created. The properties known as the 555 Building, the Merrillwood Building and Birmingham Place were then rezoned to the new D5 zoning classification. The subject property is located between Birmingham Place and the 555 Building, both of which are zoned D5 currently.

Requirements for Rezoning

The requirements for a request for the rezoning of a property are set forth in Article 07, section 7.02 of the Zoning Ordinance as follows:

Each application for an amendment to change the zoning classification of a particular property shall include statements addressing the following:

- 1. An explanation of why the rezoning is necessary for the preservation and enjoyment of the rights of usage commonly associated with property ownership.**

Applicant response:

- Rezoning of the subject property is necessary to preserve the applicants enjoyment of rights associated with ownership of a property zoned for mixed uses. Because of the size and corner configuration of the parcel, it will not support street-level retail, residential, and parking for residents in the same manner as the neighboring properties. The 2016 Plan clearly anticipates mixed use developments. Such planning requires space to design and locate mixed uses within a given structure. Without the ability to go higher with a new building than current zoning allows, the applicant will not have the required area within which to locate a mix of uses, or otherwise to be able to enjoy all of the allowed uses that would commonly be associated the design of such a modern, mixed use building. Furthermore, the D-5 Ordinance, at Section 3.04-4-b, anticipates that the subject property and those similarly situated may enjoy the same rights of usage through an extension of height as other existing tall buildings already enjoy in the D-5 Overlay District.

- 2. An explanation of why the existing zoning classification is no longer appropriate**

Applicant response:

- The existing D-3 zoning classification is no longer appropriate for the subject property. The subject property is surrounded by the Birmingham Place, a 10-story building on the north side and the 555 Buildings, a 15-story building on the south side. This height is an established pattern in this area of the City. This rezoning request is actually an “infill” rezoning to bring the entire area into architectural and design harmony with surrounding buildings. It is reasonable for the subject property to share the same zoning classification as its surrounding neighbors. This would allow development of the property in a manner consistent with the existing structures from Brown Street south to Haynes Street. It will create a more unified block and enhance the character of the gateway area to Downtown Birmingham. The rezoning of the subject property would restore the property to a zoning classification this area of the City once enjoyed, as the Planning Board has done for with Birmingham Place and the 555 Buildings. Hence, given the location of the subject property sandwiched between two properties in the D-5 Zone, the D-3 Zone is no longer appropriate.

3. An explanation of why the proposed rezoning will not be detrimental to the surrounding properties.

Applicant response:

- The proposed rezoning of the subject property is not detrimental to surrounding property owners. Note that the proposed rezoning does not extend the D-5 classification further to the north or south of the current D-5 Zoning, but actually fills in the one gap in the streetscape that is noticeably out of place and anachronistically remains in the D-3 Zone. The surrounding properties to the north and south are already in the D-5 zone. When these neighboring properties were rezoned the Planning Board anticipated that eventually the subject property also may be rezoned for the reasons stated in this letter. Placing the subject property in the D-5 Zone will be placing it on equal footing with the surrounding properties from a structural, use and design perspective. The proposed rezoning will enhance the entire area by allowing it to be developed as an attractive part of the South Old Woodward gateway and bring that area into compliance with the spirit and intent of the 2016 Master Plan.

Article 7, section 7.02 of the Zoning Ordinance further states:

Applications for amendments that are intended to change the zoning classification of a particular property shall be accompanied by a plot plan. (See attached)

Information required on plot plans shall be as follows:

1. Applicant's name, address and telephone number.
2. Scale, north point, and dates of submission and revisions.
3. Zoning classification of petitioner's parcel and all abutting parcels.
4. Existing lot lines, building lines, structures, parking areas, driveways, and other improvements on the site and within 100 feet of the site.
5. Existing use of the property.
6. Dimensions, centerlines and right-of-way widths of all abutting streets and alleys.
7. Location of existing drainage courses, floodplains, lakes, streams, and wood lots.

8. All existing easements.
9. Location of existing sanitary systems and or septic systems.
10. Location and size of existing water mains, well sites and building service.
11. Identification and seal of architect, engineer, land surveyor, or landscape architect who prepared the plans. If any of the items listed above are not applicable to a particular plot plan, the applicant must specify in the plot plan which items do not apply and, furthermore, why the items are not applicable.

A land survey was provided by the applicant and submitted to the Planning Board (see attached).

Article 7 section 7.02 of the Zoning Ordinance further states:

The Planning Board shall hold at least one public hearing on each application for amendment at such time and place as shall be established by the Planning Board.

The Planning Board shall make findings based on the evidence presented to it with respect to the following matters:

- a. The objectives of the City's then current master plan and the City's 2016 plan.
- b. Existing uses of property within in the general area of the property in question.
- c. Zoning classification of property within the general area of the property in question.
- d. The suitability of the property in question to the uses permitted under the existing zoning classification.
- e. The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.

Planning Division Analysis & Findings

In accordance with Article 7 of the Zoning Ordinance, the Planning Board is required to conduct a public hearing on an application for rezoning, and to make a recommendation on the rezoning to the City Commission.

Article 7, section 7.0(B)(5) of the Zoning Ordinance states:

The Planning Board shall make written findings of fact and transmit same, together with its recommendation, to the City Commission. The City Commission may hold additional hearings if the City Commission considers it necessary. The Planning Board shall make findings based on the evidence presented to it with respect to the following matters:

- a. The objectives of the City's then current master plan and the City's 2016 Plan.
- b. Existing uses of property within the general area of the property in question.
- c. Zoning classification of property within the general area of the property in question.
- d. The suitability of the property in question to the uses permitted under the existing zoning classification.
- e. The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.

Accordingly, the Planning Division has reviewed the evidence presented with respect to the matters listed in Article 7, section 7.0(B)(5) of the Zoning Ordinance as noted below.

A. The objectives of the City's then current master plan and the City's 2016 Plan

Section 1.04 of the Birmingham Zoning Ordinance states: the purpose of the Zoning Ordinance is to guide the growth and development of the City in accordance with the goals, objectives and strategies stated within the Birmingham Future Land Use Plan and the Downtown Birmingham 2016 Plan. A review of both plans reveals that the proposal to rezone the subject property to the D-5 Zoning District meets the spirit and intent of the ordinance. The 2016 Plan recommends specific building heights and massing that appropriately defines the public street and are harmonious with existing buildings. The 2016 further requires first floor retail along Old Woodward and encourages a mix of uses within buildings to support an active live, work and play environment for downtown. A proposed building under the D5 would allow for mixed uses and a scale that will match the adjacent buildings, meanwhile supporting the improvement of the streetscape along S. Old Woodward, Hazel and Woodward by building to the frontage line as required by the 2016 Plan.

The 2016 Plan also recommends that the City should encourage future buildings to front Woodward to project a positive image of the City and to hold Woodward areas to the same standards of quality and design as the best areas of Birmingham. The proposed building will project a strong image of the City towards Woodward with consistent architectural details and similar massing to the adjacent buildings.

B. Existing uses of property within the general area of the property in question

As mentioned above, the Birmingham Place and 555 Buildings are located to the north and south of the subject site, respectively. Both buildings contain a mix of retail, commercial and residential uses. The subject property is located on Woodward Avenue, which has a 200' wide right of way. The southbound lanes of Woodward lie directly east of the property, and South Old Woodward lies to the west. Across Woodward to the east is the Audi dealership, and across S. Old Woodward to the west is a commercial center with both retail and commercial uses, including a drugstore, a drycleaners and a clothing store.

The following chart summarizes the land uses and zoning districts adjacent to and in the vicinity of the subject site.

	North	South	East	West
Existing Land Use	Retail/ Commercial / Residential	Retail/ Commercial / Residential	Retail / Commercial/ Parking	Commercial/ Parking
Existing Zoning	B-3, Office Residential	B-3, Office Residential	B-2, General Business	B-2B, General Business
Overlay Zoning	D-5	D-5	MU-5	D-2

C. Zoning classification of property within the general area of the property in question.

The properties immediately north and south of the subject site are zoned B3 and D5, which allow a mix of residential, retail and commercial uses, and buildings over 5 stories in height up to a maximum height of 180'. The property to the east across Woodward Avenue is

zoned MU5 which also allows a mix of residential, retail and commercial uses and allows buildings up to 6 stories and 78' in height. The property to the west across S. Old Woodward is zoned B2-B and D2, also allowing a mix of residential, retail and commercial uses and buildings up to 3 stories and 56' in height.

D. The suitability of the property in question to the uses permitted under the existing zoning classification.

Under the current zoning, all of the same uses are permitted as those under the D5 zoning classification. However, given the size of the parcel and the fact that the property is not located in the Parking Assessment District, the applicant argues that they would be unable to develop an appropriately designed five story mixed use building under the current zoning. In addition, even if the property were developed to include a five story or less building under the current zoning of D4, the building would be completely inconsistent and dominated by the height of the adjacent Birmingham Place and 555 Buildings.

E. The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.

In the immediate Southern Woodward Gateway area, there have been no new buildings recently constructed, however, the 555 Building was recently renovated extensively. Three existing buildings were rezoned in 2017 to D5 under the Downtown Overlay (Merrillwood Building, the 555 Building and Birmingham Place) to permit buildings over 5 stories in height (up to 180') so long as they are compatible with adjacent buildings. There have been no new buildings constructed under the D-5 Overlay zoning classification.

Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable master plan documents, current zoning and recent development trends in the area, the Planning Department finds that the applicant meets the established Zoning Ordinance requirements in Article 7, section 7.02(B)(5) to qualify for a rezoning of the property from D-4 to D-5 in the Downtown Overlay district for the purpose of building as high, but no higher than, adjacent buildings. Given the recommendations of the 2016 Plan, the existing mix of uses in the immediate area and given the size and quality of the building, the proposal to rezone to D5 for the purpose of building to nine stories is appropriate and compatible with both the zoning and height of properties within the general area. In addition, a rezoning to D5 is consistent with recent zoning changes from D4 to D5 for adjacent properties within the Downtown Overlay district.

Departmental Reports

1. Engineering Division – The Engineering Department has no concerns with the rezoning application at this time.
2. Department of Public Services –The Department of Public Services has no concerns at this time.
3. Fire Department – The Fire Department has no concerns with the rezoning at this time.
4. Police Department – The Police Department has no concerns with the rezoning application.
5. Building Department – No comments were provided from the Building Department on the rezoning application.

Sample motions with attached conditions have been provided in the event that the Planning Board deems it appropriate to send a recommendation of approval forward to the City Commission. Should additional information be presented at the public hearing not contained within this staff report, the Planning Board should add any findings related to such information to the motion language provided below.

Suggested Action:

Based on a review of the rezoning request and supporting documentation submitted by the applicant, a review of the applicable master plan documents and the development trends in the area, the Planning Board adopts the findings of fact contained in the staff report dated November 8, 2018 and recommends **APPROVAL** to the City Commission for the rezoning of 469 - 479 S. Old Woodward from D-4 to D-5 in the Downtown Overlay.

OR

Based on a review of the rezoning request and supporting documentation submitted by the applicant, a review of the applicable master plan documents and the development trends in the area, the Planning Board recommends **DENIAL** to the City Commission of the applicant's request for the rezoning of the property at 469 - 479 S. Old Woodward from D-4 to D-5 in the Downtown Overlay for the following reasons:

1. _____
2. _____
3. _____

OR

Motion to recommend **POSTPONEMENT** of the applicant's request for the rezoning of the property at 469 - 479 S. Old Woodward from D-4 to D-5 in the Downtown Overlay, pending receipt and review of the following information:

1. _____
2. _____
3. _____

**City Commission Minutes
February 13, 2017**

02-29-17: PUBLIC HEARING TO CONSIDER AMENDMENTS TO CHAPTER 126, ZONING, TO CREATE NEW D5 ZONE

Mayor Nickita opened the Public Hearing at 10:22 PM.

City Planner Ecker explained the history of this zoning ordinance amendment request by the owners of the 555 Building. The amendment would allow buildings to be considered either legal and conforming, or legal non-conforming, but have the ability to add on in some way. The amendments have to do with height, number of stories, and setbacks. The Planning Board looked at several options. The Board came up with a fairly simple method, by changing Section 6.02 to allow all buildings to be improved in some way if they are non-conforming, or to consider the creation of a D5 zone, defined as over five stories. The impact of the amendments would make the three buildings legal conforming buildings, and they would be allowed to be extended or enlarged with a Special Land Use Permit. If a new building was constructed, it could match the height of the existing building with a Special Land Use Permit. The new category would deal with existing buildings located in the D5 zone. This change enables applicants to obtain funding for significant renovations or improvements as a legal conforming building. The second part allows expansion with the restriction to meet the overlay.

City Planner Ecker explained for Commissioner Boutros that the 555 site has room where a new building could be constructed.

City Planner Ecker explained that none of the three buildings can be any higher or add any extra stories under the ordinance amendment.

Mayor Pro Tem Harris asked about maintenance and repair under the current ordinance.

City Planner Ecker said an interpretation is required in every case currently. Under the ordinance amendment, maintenance and repair would be permitted.

Commissioner Hoff asked if Birmingham Place or Merrillwood could buy the adjacent structures and then build in the space.

City Planner Ecker said they could not, because the properties next door would not have the D5 zoning classification.

Commissioner Hoff asked how the determination is made as to an enlargement and an addition.

City Planner Ecker said the enlargements or extensions are an absolute right if the regular overlay standards are met. If it is an addition or new construction which would exceed the D4 requirements, it can be done with a Special Land Use Permit.

Mr. Rick Rattner addressed the Commission and said with the ordinance amendment, the 555 Building would be in compliance allowing the owners to move forward to make the changes and renovations to keep it an iconic building.

Mayor Nickita closed the Public Hearing at 10:40 PM.

MOTION: Motion by DeWeese, seconded by Boutros:

To amend Chapter 126, Zoning, Article 3, Downtown Birmingham Overlay District, Section 3.04, to create a new D5 Zone and to establish development standards for this district, and Article 6, Nonconformances, Section 6.02, to allow for the extension and/or enlargement of existing legal, non-conforming commercial buildings;

AND

To approve the rezoning of the following properties:

- (a) 555 S. Old Woodward (555 Office and Residential Buildings) from D4 in the Downtown Overlay to D5 in the Downtown Overlay;**
- (b) 411 S. Old Woodward (Birmingham Place) from D4 in the Downtown Overlay to D5 in the Downtown Overlay; and**
- (c) 225 E. Merrill (Merrillwood Building) from D4 in the Downtown Overlay to D5 in the Downtown Overlay.**

City Planner Ecker confirmed for Commissioner Hoff that the ordinance amendment would allow the 555 Building to build an addition as tall as it is only with a Special Land Use Permit approved by the Commission. She added that a new building to the south could be built that meets the D4 standards as of right. The setbacks will basically be the same.

VOTE: Yeas, 7

Nays, 0

Absent, None

Planning Board Minutes
June 27, 2018

REZONING APPLICATION

1. 469-479 S. Old Woodward Ave. (former Mountain King) - Request to rezone from B-3 and D-4 to B-3 and D-5 to allow a nine-story mixed-use building

Chairman Clein said that judging from all of the letters that have been received related to this project, it is very clear that the residents of Birmingham Place oppose the rezoning. All of the letters will be added to the record.

Ms. Ecker explained the applicant for 469-479 S. Old Woodward is requesting that the Planning Board hold a public hearing to consider the rezoning of the property from B-3 (Office Residential) and D-4 (Downtown Overlay) to B-3 (Office Residential) and D-5 (Downtown Overlay). The applicant is seeking the rezoning to allow for the construction of a nine-story mixed-use building with three levels of underground parking in between the Birmingham Place and the 555 Building. The maximum height allowed in the D-4 Zoning District is 4-5 stories. In the D-5 Zoning District, developers may build as high, but no higher than the adjacent buildings which are located in the D-5 Zone. The 0.423 acre subject site spans Hazel St. from S. Old Woodward Ave. to Woodward Ave. The site currently contains two vacant single-story commercial buildings (formerly Mountain King Restaurant and Talmer Bank). The applicant is proposing to demolish the present buildings for the construction of a ten-story mixed-use building.

The applicant has noted that when the zoning was changed down to one or two floors in the 1970s, the 555 Building and Birmingham Place were designated to a legal non-conforming use because their height was not allowable. Ultimately, the zoning was changed to D-4 in 1996 by the adoption of the 2016 Plan and the Downtown Overlay that raised the height up to a maximum of five stories Downtown. In 2017, a new D-5 Zone was created to bring the 555 Building, the Merrillwood Building and Birmingham Place into a legal conforming status. The subject property is located between Birmingham Place and the 555 Building, both of which are zoned D-5 currently.

Ms. Ecker went through the three items that the applicant must demonstrate for the rezoning of a property and the applicant's reasons as to how they feel they have met them.

Ms. Ecker then went through the planning analysis based on the evidence provided by the application. Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable Master Plan documents, current zoning and recent development trends in the area, the Planning Dept. finds that the applicant meets the established ordinance requirements to qualify for a rezoning of the property from D-4 to D-5 in the Downtown Overlay District for the purpose of building as high, but no higher than, the building to the north, Birmingham Place.

Answering Mr. Boyle, Ms. Ecker said the Master Plan which dates back to 1980 did not give specific height requirements like the 2016 Plan recommended. Under the 2016 Plan the recommended height in the Downtown was a maximum of five stories. The 555 Building submitted an application to the City and to the Planning Board to consider creating a new category that would make them a legal and conforming building that would allow them to receive financing to renovate the building and bring it up to current standards in the marketplace. The D-5 Ordinance was crafted by the Planning Board as a result of that application and included the other two buildings in a similar situation.

Mr. Rick Rattner, Attorney, Williams, Williams, Rattner & Plunkett, PC, emphasized that in the D-5 going above five stories subjects the property to a Special Land Use Permit ("SLUP") which is different than just building as of right. Secondly, in 2016 Andres Duany commented favorably on the 555 Building and on Birmingham Place.

He presented a PowerPoint that went to four issues that have to do with rezoning:

- Rezoning Amendment - Sec. 7.02 (B) (2) (b) (i)-(iii) requires that as part of an application for rezoning, the petitioner should address certain issues to be considered by the Planning Board and the City Commission.
- Sec. 7.02 (B) (2) (b) (i) - An Explanation of Why the Rezoning is Necessary for the Preservation and Enjoyment of the Rights and Usage Commonly Associated with Property Ownership. Without the ability to go higher with a new building than the zoning allows, the applicant will not have the required area within which to locate a mix of uses that would commonly be associated with the design of a modern, mixed-use building.
- Sec. 7.02 (B) (2) (b) (ii) - An explanation of Why the Existing Zoning Classification is No Longer Appropriate. It is reasonable for the subject property to share the same zoning classification as its surrounding neighbors. Given the location of the subject property sandwiched between two properties in the D-5 Zone, the D-4 Zone is no longer appropriate.
- Sec. 7.02 (B) (2) (b) (iii) - An Explanation of Why the Proposed Zoning will not be Detrimental to the Surrounding Properties. The proposed rezoning will enhance the entire area by allowing it to be developed as an attractive part of the S, Old Woodward gateway and bring that area into compliance with the spirit and intent of the 2016 Plan.

Mr. Rattner concluded by asking the Planning Board to favorably recommend that they are able to use their property and preserve their rights of usage, fit into the streetscape, fit the Master Plan and fit all elements of this Ordinance because they meet every single one of them.

At 8:45 p.m. the Chairman opened the meeting to public comments.

Ms. Susan Friedlander, 1564 Henrietta, attorney for Birmingham Place Residential Condominium Association, made the following points:

- The City created the D-5 District for a singular and special purpose which was to bring several buildings into conforming status.
- The proposed building is not sandwiched between the 10-story Birmingham Place and the 15-story 555 Building - there is Hazel, a 50 ft. right-of-way that provides a proper transition between buildings. There is not even a height difference, because the building that is immediately adjacent to Hazel is 77 ft. tall. So if this proposed building went up to 80 ft, which it is allowed to do under D-4 it would be very consistent with the building right across the street. There would be a perfect transition. It would only be 34 ft. shorter than Birmingham Place.
- If the proposed building is zoned D-5, what about the building on the north, the Powerhouse Building, Jax Car Wash or the Varsity Building. Why shouldn't they get the D-5 Zoning as well?
- There is a process that must be followed so that property is not rezoned on an ad hoc and an arbitrary basis.

Mr. Tom Lasky, 2006 Cole, spoke in support of the rezoning request. This is the face of new Birmingham and will be done responsibly.

Mr. Mike Humphrey, who lives in Birmingham Place, said there is nothing in the record that shows that the D-5 Overlay was created to do anything other than to make the three tall existing buildings legal and conforming. The developer bought the property knowing how it was zoned; but now

they say that they cannot develop a four or five-story mixed-use building there. If the City is going to change the Master Plan, go for it, but do it with professional study and community involvement; not a piece at a time.

Mr. David Nykian, 40700 Woodward Ave., said he represents some of the owners in the Birmingham Place Condominium. He believes the facts lead to the conclusion that the D-4 Zoning is actually clearly appropriate for this property:

- The D-5 District was created just to address the non-conformities of three buildings. So the City has already made the decision in the past as to what zoning is appropriate for this site.
- Nothing about the property has changed since then that should cause the City to alter its conclusion about what the appropriate height is.
- The height of the 555 Building on the north is 77 ft. So if the subject site were developed today under D-4, it could be taller than the 555 Building.
- Breaking up the building heights would provide more of an architectural character to the City than one monolithic height across the entire street.
- There is nothing under the D-4 Zoning classification that that would prohibit the developer from developing a mixed-use development.
- The only things that would change by amending the classification from D-4 to D-5 are the height of the building and the profit margin of the developer.

Mr. Mickey Schwartz, 411 Old Woodward Ave., stated that infill has nothing to do with height equality. So he thinks the developer has to have a better excuse for building a 10-story building. The small town feeling is what is unique about Birmingham. Deny the rezoning request.

Dr. Cynthia Neil, a resident of Birmingham Place, said she was deeply offended by the petitioner's statement that the development would not adversely affect the residents. From her balcony she would be able to bounce a tennis ball against the wall of the proposed building.

Mr. Chris Jonna, C&P Real Estate Group, spoke in support of the project. The applicant builds nothing but first-class buildings. Increasing the zoning classification will be a tremendous benefit to Downtown Birmingham by bringing in more people to the area.

Mr. Lewis Rockind, a resident of Birmingham Place, emphasized that the zoning has to be contemplated in the context of what is intended to be developed. As a resident of Birmingham Place he is looking at the detrimental effect on the surrounding properties of increased vehicle and pedestrian traffic.

Mr. Daniel Jacob, 261 E. Maple Rd., said he is 100% in support of the project. The intended use of the property is much needed and would be a huge benefit to the City. Birmingham is changing and this project moves with the times.

Mr. Joseph Shalala, 255 S. Old Woodward Ave., spoke in support of the proposed building. It will support all of the small businesses by bringing in people such as office, residential, and hotel users. All of those things combined will help Birmingham.

Ms. Tony Schwartz, 411 Old Woodward Ave., maintained that it is the height of the building that is in question here, not its quality. Secondly, traffic is a big problem on that corner. There is a new hotel that is starting to be built on the corner of Brown and Old Woodward which will add more traffic to that corner. She understands there may be a pool deck on the top floor of the proposed building - who is going to control music and noise and parties. She lives right across on the tenth floor.

Chairman Clein advised that concerns related to traffic and noise are not part of a rezoning but would be handled under a Site Plan Review, and should this be moved forward to a rezoning the applicant would be required to obtain a Special Land Use Permit ("SLUP") which allows the City Commission to put additional restriction on the uses of the building.

Mr. Duraid Markus, one of the partners in the ownership entity for 469-479 S. Old Woodward Ave. (former Mountain King and Talmer Bank), said if this happened in New York, Chicago or LA there would not be a single skyscraper built. He noted that everybody who opposes this is only one contingent, and it has not been the entire City that comes in to support or not support.

It makes sense to build where the project is harmonious and fits in with the rezoning proposal. For those reasons he asked the board to consider all of the comments and make the decision to allow them to rezone the parcel.

Ms. Wilma Thelman who lives in Birmingham Place said none of them have heard why a conforming building cannot be built on that site.

Mr. Jeffares noted that things change and now Birmingham holds 21 thousand people. Secondly he recalled that the Board did discuss rezoning the subject property; however there was nobody from there to make their case so the Board just rezoned the existing buildings.

Mr. Koseck advised that D-4 Zoning allows a building to be built to 80 ft. So it will already block six floors of Birmingham Place. He did not believe the applicant's contention that they cannot make a five-story building work. He thought that a five-story could be a successful mixed-use building. In some ways it might even fit the form and the transition better and the upper three floors of Birmingham Place will not be affected.

Ms. Whipple-Boyce said when the Board established the D-5 Zoning Classification she felt it applied to three specific buildings. In her mind it had to do with bringing non-conforming buildings into conformity so that they could qualify for financing and improve their properties. Thinking about some of the other properties that could be affected down the road that are adjacent to other properties like this is an unanswered question for her. It causes her to hesitate tonight on recommending the rezoning to D-5.

Mr. Boyle made the following points:

- The Master Plan is meant to have the ability to adapt to changing circumstances. Similarly, zoning is powerful when it is able to adapt. So, change is normal; it is not frequent, but it is usual.
- He was positive about the potential impact on the City as a whole of rezoning this property.
- The potential impact of rezoning on the contiguous properties will affect a number of people. The Board is here to determine who has the weight in this particular discussion, the entire City or the adjacent neighbors.
- There are checks and balances built into the system. If the rezoning were to be approved, the community would have two elements to be brought to the table. One would be the Site Plan Review process, and secondly the height would kick in the SLUP where the Planning Board can recommend controlling modifications to the City Commission who will hold a public hearing on the proposal.
- At the end of the day he is of a mind to approve the rezoning because overall he sees the benefits for the City and for this particular area. However, he does not underestimate the cost for the immediate residents in the contiguous building.

Ms. Ramin stated one of the burdens the applicant must carry to justify rezoning is an explanation of why the existing D-4 classification is no longer appropriate.

Mr. Duraid Markus said they cannot get in a hotel concept on this little parcel so they have to go vertical by a couple of floors. He has to be honest, it is the economics. He cannot get a development off the ground. They are not in the Parking Assessment District and are therefore limited by the required parking for an office building or a restaurant.

Answering Mr. Emerine, Ms. Ecker explained that anyone on any site on any site can apply for a rezoning to any of the existing zoning classifications.

Chairman Clein commented that rezoning is the most difficult thing the Board has to do - balancing the rights of adjacent land owners. To Ms. Ramin's point, the burden has not been met as to why a five-story building will not work. The answer that was given was economics, which has no place in a rezoning discussion. Therefore, he is not supportive of the rezoning.

Mr. Jeffares said he cannot come up with a reason for the height of the proposed building to be lower.

Ms. Whipple-Boyce indicated she has no problem with the subject building being built as high as Birmingham Place. But she doesn't think the applicant has made the case that they deserve to be rezoned and that the current zoning classification is no longer appropriate. She was appalled to hear the applicant say they bought this property and the only thing that will work there is a ten-story hotel and it should be rezoned because that is what they want to build. Therefore she doesn't think the applicant has proved their case.

Mr. Rattner noted that maybe the best thing for them to do is to ask for postponement so they can come back with a different plan. Chairman Clein stated that for him postponing would just be kicking the can down to another meeting. Mr. Boyle said he is in favor of not accepting that proposal and actually making a motion this evening.

Motion by Mr. Boyle

Seconded by Mr. Jeffares that based on a review of the rezoning request and supporting documentation submitted by the applicant, a review of the applicable Master Plan documents and the development trends in the area, the Planning Board recommends APPROVAL to the City Commission for the rezoning of 469-479 S. Old Woodward Ave. from D-4 to D-5 in the Downtown Overlay.

There were no comments from the public on the motion at 10 p.m.

Motion failed, 2-5.

ROLLCALL VOTE

Yeas: Boyle, Jeffares

Nays: Clein, Koseck, Emerine, Ramin, Whipple-Boyce

Absent: Share, Williams

Motion by Ms. Whipple-Boyce

Seconded by Mr. Koseck to recommend DENIAL to the City Commission of the applicant's request for the rezoning of the property at 469-479 S. Old Woodward Ave. from D-4 to D-5 in the Downtown Overlay.

Motion carried, 5-2.

ROLLCALL VOTE

Yeas: Whipple-Boyce, Koseck, Klein, Emerine, Ramin

Nays: Jeffares, Whipple-Boyce

Absent: Share, Williams

**Planning Board Minutes
September 12, 2018**

REZONING APPLICATION

**1. 469-479 S. Old Woodward Ave. (former Mountain King and Talmer Bank)
Request to reconsider application in light of new information to be presented to rezone
from B-3 and D-4 to B-3 and D-5 to allow a nine-story mixed-use building**

Chairman Clein recalled that on June 27, 2018, the Planning Board reviewed a rezoning request for 469 – 479 S. Old Woodward Ave. (former Mountain King and Talmer Bank sites) to rezone from B-3/D-4 to B-3/D-5. This request was made pursuant to Article 7, section 7.02 of the Zoning Code. After much discussion, the Planning Board voted to recommend denial of the rezoning request to the City Commission for 469 – 479 S. Old Woodward Ave. The City Commission then set a public hearing date for August 13, 2018 to review the rezoning request.

On August 13, 2018, the applicant submitted a letter requesting that the City postpone the public hearing that was previously set at the City Commission to allow the applicant to present new information to the Planning Board for their review and consideration. Accordingly, the City Commission cancelled the public hearing and the matter was sent back to the Planning Board for reconsideration.

Therefore, the Board's next step is to enter into a discussion of whether or not the application for 469-479 S. Old Woodward Ave. should receive a re-hearing. If they decide that there is substantial new evidence or new facts under section 7.02 (6) to warrant a re-hearing, the Board will at that point decide on the next steps.

Motion by Mr. Williams

Seconded by Mr. Koseck to include the following correspondence into the official record:

- Letter dated September 11, 2018 from Susan K. Friedlaender, Attorney with Friedlaender, Nykanen, Rogowski, PLC;
- Letter dated September 10, 2018 from B. Geiger, Unit 623, 411 S. Old Woodward Ave;
- Letter dated September 11, 2018 from Timothy J. Currier, Beier Howlett, City Attorney, dealing with the process of rezoning application before the Planning Board.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Share

Mr. Williams pointed out the Planning Board has opinions of opposing counsel dealing with the issue as to whether the D-5 Ordinance can in fact apply to the two properties in question (former Mountain King and Talmer Bank sites). That is a legal question for the City Attorney to decide.

The second issue is whether the two parcels are or are not in the Parking Assessment District. It is important to know from the City's standpoint why this property is or is not in the Parking Assessment District based on the records of the City at the time the Parking Assessment District was created. Further, if they are in the Parking Assessment District, then the analogies to the other five-story buildings in the City in Downtown which are in the Parking Assessment District and don't have to provide on-site parking is relevant. If they are not in the Parking Assessment District and the applicant is required to provide on-site parking, then that is a different conclusion. He wants the opinion of the City Attorney before proceeding because if the conclusion is that the properties are not eligible for D-5 zoning then having a hearing is a waste of time.

Mr. Williams further noted that Ms. Friedlaender's letter questions what the City Commission intended by approving the D-5 category. He would like the opinion of the City Attorney on that narrow question and whether these two parcels are eligible to be rezoned into the D-5 category based on all the evidence to date.

Chairman Clein thought the question before the Board is whether there will be a rehearing; or since they are all present, whether they feel they have enough information to have that conversation tonight on the very narrow basis of whether there is new information that wasn't brought up at the original hearing.

Mr. Rick Rattner, Attorney, 380 N. Old Woodward Ave., was present to represent the applicant. They believe this site not only is eligible for D-5 Zoning, but they also think that they have new information. Further, they accept that the site is not in the Parking Assessment District. They feel they have enough information to go forward at this time and also believe their position relative to the eligibility and the new information is solid.

Ms. Ecker recommended that the Board should stick to the first question of whether there is new information that wasn't considered before that is brought forward now and thus warrant a rehearing.

Mr. Williams pointed out that the CIS contained a reference that this particular property is in the Parking Assessment District. So, the information from the City that was provided at the time of the hearing was incorrect. Therefore, the record needs to be corrected. He didn't think the Board should start down that road until they receive Mr. Currier's opinion.

Mr. Rattner indicated they have no objection, if that is what the Board decides.

Chairman Clein opened up public comment at 8:15 p.m.

Ms. Susan Friedlaender, Attorney representing Birmingham Place Residential Condominium Assoc., corrected that the applicant actually mentioned during the hearing that they are not in the Parking Assessment District and that is one reason they were asking for the rezoning, and one reason why they needed to be rezoned because they cannot meet the needs of a hotel in four stories.

Mr. Michael Schwartz, 411 S. Old Woodward Ave., Birmingham Place asked the Board to consider once they have a legal opinion, if it is that the process should move forward. Possibly decide that in October and then have the hearing for the project itself at future meeting.

Motion by Mr. Williams

Seconded by Ms. Whipple-Boyce to postpone consideration of the public hearing which was scheduled for tonight to October 10, 2018 with the condition that the Board receive

the legal opinion of counsel to the City of Birmingham submitted to the Planning Board in writing as to whether the proposed site (former Mountain King and Talmer Bank) is eligible to be rezoned to the D-5 category.

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

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Share

Planning Board Minutes
October 10, 2018

REZONING APPLICATION

1. 469-479 S. Old Woodward Ave. (former Mountain King and Talmer Bank)
Request to reconsider application in light of new information to be presented to
rezone from B-3 and D-4 to B-3 and D-5 to allow a nine-story mixed-use building

Chairman Clein recalled that on June 27, 2018, the Planning Board reviewed a rezoning request for 469 – 479 S. Old Woodward Ave. (former Mountain King and Talmer Bank sites) to rezone from B-3/D-4 to B-3/D-5. After much discussion, the Planning Board voted to recommend denial of the rezoning request to the City Commission for 469 – 479 S. Old Woodward Ave. The City Commission then set a public hearing date for August 13, 2018 to review the rezoning request.

Prior to the City Commission taking any action the applicant submitted a letter requesting that the City postpone the public hearing that was previously set at the City Commission to allow the applicant to present new information to the Planning Board for their review and consideration. Accordingly, on August 13 the City Commission cancelled the public hearing and sent the matter back to the Planning Board for reconsideration.

Section 7.02(6) of the Zoning Ordinance allows a rehearing on a rezoning request where there is a substantial change in the evidence that was previously presented even after the City Commission has issued a denial of the request. In this case, the City Commission did not hear the request, and thus did not issue an approval or denial. They did however send the matter back to the Planning Board to determine if there has been a substantial change in the evidence, and if so, to conduct a rehearing on the rezoning request previously considered.

On September 12, the Planning Board decided to postpone consideration. They were looking for additional information from the City Attorney as to 1) whether the applicant has the right to apply for rezoning under D-5; and 2) some of the facts behind the reasons why this property may or may not have been put in the PAD.

As to why this property may or may not have been put in the PAD, the City Attorney has written a letter stating there is no record from the 1960s. With regard to the legal question as to whether or not the applicant has the right to apply for rezoning to the D-5 category, the City Attorney responded they do have the legal right to apply for rezoning to this zoning classification.

Chairman Clein stated that the first thing the Board will do this evening is to discuss whether the new information being presented warrants a rehearing.

Mr. Rick Rattner, Attorney, 380 N. Old Woodward Ave., was present to represent the applicant. In a PowerPoint presentation he outlined the substantial change in the evidence that was previously presented to the Planning Board on June 27, 2018 and requested a rehearing of the rezoning request based on the following:

- There was a mistake in the CIS that was included in the packet that indicated this property is in the PAD. This property is not.
- The ordinance states pursuant to 7.02 (B) (5) (a-e) that the Planning Board should make findings of fact. There was no presentation of a finding of fact as it was presented to the City Commission.

- The D-5 Zone was enacted and at that time, three buildings were rezoned to D5, but the ordinance itself is clear and unambiguous. It provides language that indicates there are going to be different buildings put into the D-5 Zone.
- The fact that the property sits outside of the PAD should be looked at because of the potential five or six types of structures that could be built under the D-4 Ordinance. That is what is new to their rezoning argument. If a mixed-use building is constructed in D-4, it must have 288 parking spaces on-site. That requires their building to be accompanied by nine underground parking levels. That is a major change in the way the Planning Board might look at this for rezoning.

Mr. Rattner hoped the Board will take this seriously and give them a chance for a rehearing based on all of this context, so that a good and fair decision can be made.

Mr. Williams received confirmation from Ms. Ecker that there are no other commercial properties which are currently zoned D-4 and allow a mix of commercial and residential uses that are not located in the PAD.

Responding to Mr. Boyle, Ms. Ecker gave a brief history of the PAD and why it was created. She named the Brookside Terrace and the old school district building as being properties that bought into the PAD after it was formed. They both about the PAD. The City Engineer and the Finance Director figure out what the buy-in amount is and then it goes to the City Commission who makes the determination as to whether a property will be added or not.

Chairman Clein opened discussion from the public at 8:07 p.m.

Ms. Susan Friedlander, Attorney representing Birmingham Place Residential Condominium Assoc., noted that at the September 12 hearing she talked about the intent of the D-5 Ordinance and whether it was intended for rezoning for a multitude of properties that don't fit the non-conforming status. The history of the ordinance cannot be clearer. It was drafted because the 555 Building had space on its site.

Another issue is whether there has been new evidence submitted that justifies a rehearing. The only thing that was raised is that there was a mistake in the CIS report that said 469-479 S. Old Woodward Ave. is in the PAD. However, the CIS was specifically put aside at the hearing because the Planning Board was looking at rezoning and not the site plan or the CIS. It is on the record, on the video and in the minutes that the applicant said he can't build anything else because the property is not in the PAD.

Ms. Friedlander stated that in the example of what can be built, it is erroneous to say that parking must be on site if you are not in the PAD. The Zoning Ordinance clearly allows many of the mixed uses that are allowed in the D-4 District other than residential to have parking 100 ft. away. Ms. Friedlander said she is trying to wrap her head around the fact that because they are not in the PAD they want to have a use with an even greater parking need than they might be able to build under D-4. So, they haven't presented any new information.

The ordinance does not say that the Planning Board has the authority to rehear an application that it has denied when the City Commission has not heard it and denied it. It says the same application shall not be brought back within the same year unless there has been substantial change in conditions which the applicant can present to the Planning Board upon reapplication. That is not what happened here.

Ms. Friedlander stated that the City Commission speaks through its resolutions. The Commission's resolution says to cancel the public hearing to consider approval of the rezoning of 469-479 S. Old Woodward Ave. from B-3/D-4 to B-3/D-5 and refer the matter back to the Planning Board. It doesn't say to refer the matter back to the Planning for a rehearing and reconsideration of this rezoning request.

Mr. Clinton Ballard, 388 Greenwood, said he cares very much how this City is developed. He thinks this property should be zoned to D5 the same as the adjacent properties.

Motion by Mr. Boyle

Seconded by Mr. Share to receive and file a letter from Honigman Miller Schwartz and Cohn, LLP dated October 10, 2018 that says they represent the Condominiums at Birmingham Place Association.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Ramin

After a brief evacuation of the building because the fire alarm sounded, the meeting reconvened.

In response to Mr. Williams, Ms. Ecker said a letter was received from the City Attorney prior to the September 12 meeting indicating what the process would be and that it is the Board's responsibility to determine if there is new information; and to make a decision on that first; and then if the determination is made there is new information, to conduct a rehearing.

Several Board members indicated they were aware that this property was not in the PAD but several others were not. Chairman Clein did not believe it was ever discussed.

Ms. Whipple-Boyce said in all of her time on this board she can never remember seeing a rezoning application followed by a site plan for the same property on the same night. The applicant may not have touched on not being in the PAD in the first part of their presentation because they expected to be presenting that in the second part of their presentation. She finds that to be new evidence because the Board didn't give the applicant the opportunity to present their Site Plan. Therefore she leans toward voting in favor of the applicant tonight.

Mr. Koseck said he always wants to look at a proposed design along with a rezoning application. It is the applicant's job to make their case and he doesn't think there has been a change of facts to the degree that would make him have a different opinion.

Chairman Clein noted he is hard pressed to say that the news that the property is not in the PAD is a substantial change in facts, evidence, or condition. Therefore, he cannot support a rehearing.

Mr. Williams said his understanding is that the Board didn't go beyond the three properties which were non-conforming because no other properties were before them. It is clear to him that the written record of the CIS was incorrect. The record should be clear that the property is not within the PAD. Also, he doesn't think the Planning Board complied with the ordinance in its

findings. He added that it would be inappropriate to go forward with a rehearing tonight because there is a counsel of record who can't be present who said he represents a certain party that is not here. Everybody should be given an opportunity to be heard.

Mr. Share indicated his strong recollection is that when the Planning Board adopted the D-5 Zoning it was not exclusive to the three properties. It was open to other places but it was inappropriate for the Board to rezone a property without them being there to request it. Based on what he saw in the minutes and what he has heard from his colleagues, there has not been a substantial change in the evidence that would justify a rehearing

Motion by Mr. Share

Seconded by Mr. Koseck to RECOMMEND DENIAL of the applicant's request for a rehearing the property at 469-479 S. Old Woodward Ave.

There were no public comments related to the motion at 8:55 p.m.

Motion failed, 3-4.

ROLLCALL VOTE

Yeas: Share, Koseck, Clein

Nays: Boyle, Jeffares, Whipple-Boyce, Williams

Absent: Ramin

Motion by Ms. Whipple-Boyce that the Planning Board finds that there have been substantial changes in the evidence previously presented at the rezoning hearing on June 27, 2018, and thus grants a rehearing of the rezoning request for 469-479 S. Old Woodward Ave.

Motion carried, 4-3.

ROLLCALL VOTE

Yeas: Jeffares, Whipple-Boyce, Boyle, Williams

Nays: Koseck, Share, Clein

Absent: Ramin

At 9 p.m. there were no comments from the audience.

Motion by Mr. Williams

Seconded by Mr. Boyle that the re-hearing that has been approved by the Planning Board be held on Wednesday, November 14, 2018.

There was no discussion from members of the public at 9:05 p.m.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Ramin

CITY OF BIRMINGHAM
Date 05/07/2018 10:31:32 AM
Ref 00148181
Receipt 426908
Amount \$1,550.00

APPLICATION FOR ZONING MAP OR ORDINANCE CHANGE
Birmingham, Michigan

TO THE CITY COMMISSION:

The undersigned hereby makes application to the City Commission to:

1. Zoning Map Change:

Change premises described as:

479 South Old Woodward Avenue

No. Street
Tax ID #: 19-36-208-012; see documents for more information

Legal Description
_____ from its present zoning

classification of B3/D4 to B3/D5.

A sealed land survey showing location, size of lot and placement of building (if any) on the lot to scale must be attached.

Statements and reason for request or other data have a direct bearing on the request.

2. Change premises described as:

No. Street
Legal Description
_____ from its present zoning

classification of _____ to _____.

A sealed land survey showing location, size of lot and placement of building (if any) on the lot to scale must be attached.

Statements and reasons for request or other data have a direct bearing on the request.

Signature of Applicant: 

Print Name: Christopher J. Longe

Name of Owner: Birmingham Tower Parters, LLC

Address and Telephone Number: 251 East Merrill Street, Suite 205

Birmingham, Michigan 48009

CITY OF BIRMINGHAM
Date 05/07/2018 10:31:32 AM
Ref 00148182
Receipt 426908
Amount \$100.00

APPLICATION FOR ZONING MAP OR ORDINANCE CHANGE
Birmingham, Michigan

A letter of authority, or power of attorney, shall be attached in case the appeal is made by a person other than the actual owner of the property.

Date Received: _____ Received By: _____

Resolution No. _____ Approved/Denied _____

Application Fee: \$1,500.00 Receipt Number _____

The petitioner shall be responsible for any costs incurred by consultant, including but not limited to traffic and environmental, contracted by the city to review the proposed site plan and/or community impact study as determined by the city planner.

ZONING MAP OR ORDINANCE AMENDMENT PROCEDURE

Procedure to be followed on all applications for Zoning Map or Ordinance amendments.

1. Preliminary discussion with the Community Development Director or City Planner.
2. Formal application to City Commission with the following information:
 - a) Change requested
 - b) Signature and name of persons requesting change
 - c) Reasons for requested change
3. City Commission will refer request to the Planning Board for recommendation and final report.
4. Planning Board will hold a public hearing prior to which a notice will be published in an official paper or a paper of general circulation not less than fifteen (15) days prior to the hearing.
5. At the conclusion of a public hearing, the Planning Board will forward a recommendation of the Zoning Map or Ordinance amendment request. The City Commission may, by ordinance, change the Zoning Map or Ordinance only after the Planning Board had held at least one (1) public hearing regarding the proposed amendment and has reported to the City Commission thereon. The City Commission may hold additional public hearings as it deems necessary.
6. Upon the presentation of protest petition meeting the requirements listed below, an amendment to the Zoning Map or Ordinance which is the object of the petition shall be passed only by a three-fourths (3/4) vote of the City Commission. The protest petition shall be presented to the City Commission before final action on the amendment, and shall be signed by one (1) of the following:
 - a) The owners of at least twenty percent (20%) of the area of land included in the proposed change.
 - b) The owners of at least twenty percent (20%) of the area of the land included within an area extending outward one hundred (100) feet from any point on the boundary of the land included in the proposed change.

For the purpose of calculating the twenty percent (20%) requirement, publicly-owned land shall be excluded.

7. The City Commission will then take action on the application upon review of the Planning Board's recommendation and approved minutes of the Public Hearing.
8. Following adoption of a Zoning Map or Ordinance change by the City Commission, one (1) notice of adoption shall be published in the newspaper of general circulation in the City within fifteen (15) days after adoption.

CITY OF BIRMINGHAM
Date 05/07/2018 10:31:32 AM
Ref 00148179
Receipt 426908
Amount \$1,550.00

APPLICATION FOR ZONING MAP OR ORDINANCE CHANGE
Birmingham, Michigan

TO THE CITY COMMISSION:

The undersigned hereby makes application to the City Commission to:

1. Zoning Map Change:

Change premises described as:

469 South Old Woodward Avenue

No. Street
Tax ID #: 19-36-208-011; see documents for more information

Legal Description
_____ from its present zoning

classification of B3/D4 to B3/D5.

A sealed land survey showing location, size of lot and placement of building (if any) on the lot to scale must be attached.

Statements and reason for request or other data have a direct bearing on the request.

2. Change premises described as:

No. Street
Legal Description
_____ from its present zoning

classification of _____ to _____.

A sealed land survey showing location, size of lot and placement of building (if any) on the lot to scale must be attached.

Statements and reasons for request or other data have a direct bearing on the request.

Signature of Applicant: 

Print Name: Christopher J. Longe

Name of Owner: Birmingham Tower Parters, LLC

Address and Telephone Number: 251 East Merrill Street, Suite 205

Birmingham, Michigan 48009

CITY OF BIRMINGHAM
Date 05/07/2018 10:31:32 AM
Ref 00148180
Receipt 426908
Amount \$100.00

APPLICATION FOR ZONING MAP OR ORDINANCE CHANGE
Birmingham, Michigan

A letter of authority, or power of attorney, shall be attached in case the appeal is made by a person other than the actual owner of the property.

Date Received: _____ Received By: _____

Resolution No. _____ Approved/Denied _____

Application Fee: \$1,500.00 Receipt Number _____

The petitioner shall be responsible for any costs incurred by consultant, including but not limited to traffic and environmental, contracted by the city to review the proposed site plan and/or community impact study as determined by the city planner.

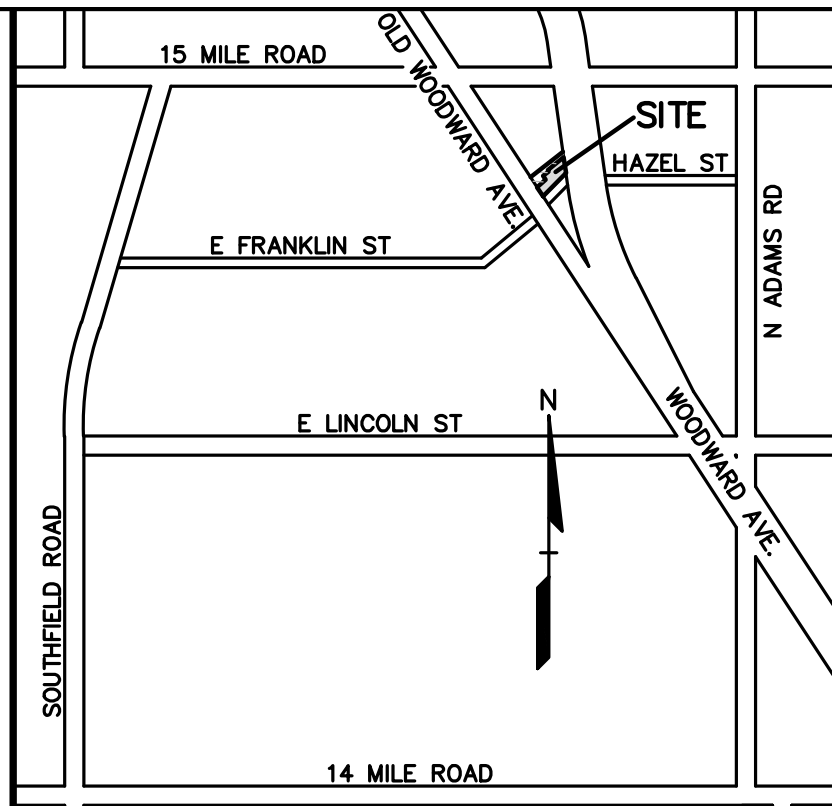
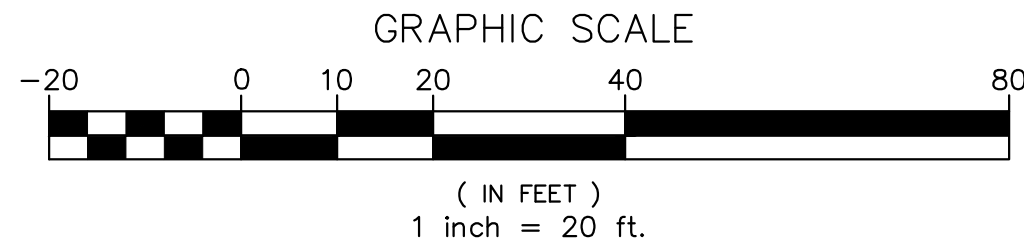
BENCHMARKS:
(GPS DERIVED - NAVD88)

BM #300
BENCH TIE IN NORTH FACE OF
U-POLE, SOUTHWEST CORNER HAZEL
STREET AND WOODWARD AVENUE
(HUNTER BOULEVARD)
ELEV. = 765.98

BM #301
TOP OF NORTHEAST ANCHOR BOLT
OF LIGHT POLE BASE, NORTHEAST
CORNER OF HAZEL STREET AND OLD
WOODWARD AVENUE
ELEV. = 766.58

FLOOD PLAN:

BY GRAPHICAL PLOTTING, SITE IS WITHIN ZONE "X",
AREA DETERMINED TO BE OUTSIDE OF THE 0.2%
ANNUAL CHANCE FLOODPLAIN PER FLOOD INSURANCE
RATE MAP NUMBER 26125C0537F (PANEL 537 OF 704),
DATED SEPTEMBER 29, 2006.



LOCATION MAP - NOT TO SCALE

NO.	DATE	REV.	BY	DESCRIPTION
1	04/15/2017	01	AL	ISSUED FOR PERMITS

REVISIONS

CAUTION!!
THE LOCATIONS AND ELEVATIONS OF EXISTING
UNDERGROUND UTILITIES AS SHOWN ON THIS
DRAWING ARE ONLY APPROXIMATE. NO GUARANTEE IS
GIVEN BY THE SURVEYOR FOR THE ACCURACY OF THE
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ELEVATIONS PRIOR TO THE START OF CONSTRUCTION.

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CONTRACTOR SHALL BE RESPONSIBLE FOR ASSUMING SOLE
AND COMPLETE RESPONSIBILITY FOR JOB SET
CONNECTIONS DURING THE COURSE OF CONSTRUCTION
OF THE PROJECT, INCLUDING SAFETY OF ALL PERSONS
AND PROPERTY. THAT THE REQUIREMENT SHALL BE
MADE TO APPLY CONTINUOUSLY AND NOT BE LIMITED
TO NORMAL WORKING HOURS AND CONSTRUCTION
CONTRACTOR FURTHER AGREES TO DEFEND, INDEMNIFY
AND HOLD DESIGN PROFESSIONAL HARMLESS FROM ANY
AND ALL LIABILITY, REAL OR ALLEGED, IN CONNECTION
WITH THE PERFORMANCE OF WORK ON THIS PROJECT
EXCEPTING LIABILITY ARISING FROM THE SOLE
NEGLECTANCE OF THE DESIGN PROFESSIONAL.

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MARKUS ASSOCIATES, LLC BIRMINGHAM, MI 48009	TOPOGRAPHIC & ALTA/NSPS LAND			
	TITLE SURVEY-HAZEL ST./WOODWARD			
	PART OF THE NE 1/4 OF SECTION 36, T. 02N., R. 10E., CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN			
	DES.	DN.	DL/CSD	JPB
		SUR.	RS	P.M.
S:\PROJECTS\2017\2017-093 HAZEL STREET & WOODWARD AVE - PEA\SURVEY-DEPT\T02N10E\TA17093A.DWG				

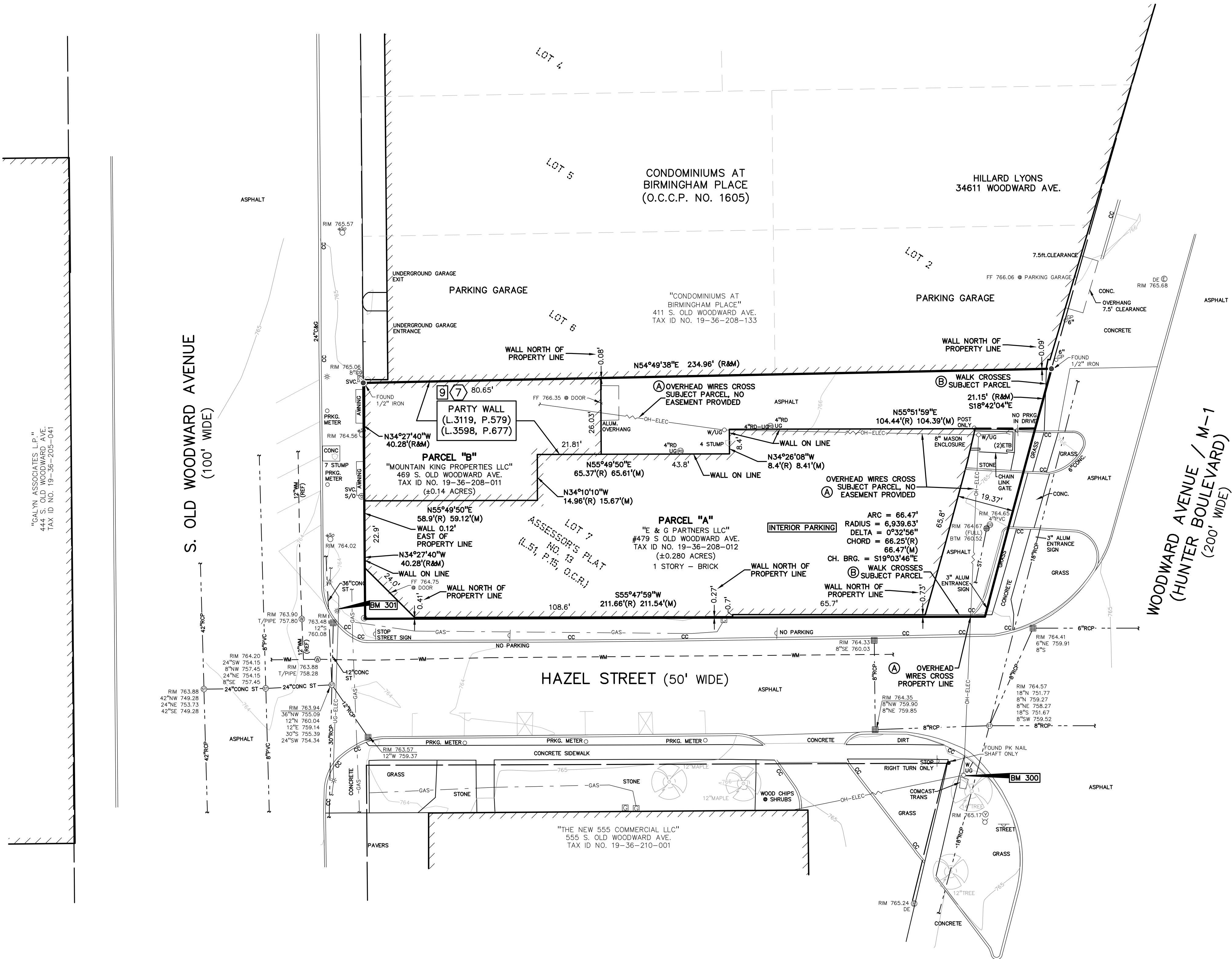
ORIGINAL ISSUE DATE:
APRIL 15, 2017

PEA JOB NO. 2017-093

SCALE: 1" = 20'

DRAWING NUMBER:

1 OF 2



PARCEL "A" LEGAL DESCRIPTION

(per Fidelity National Title Insurance Company, Commitment No. 17–110744, dated January 5, 2017)

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

South part of Lot 7 of ASSESSOR'S PLAT NO. 13, City of Birmingham, according to the plat thereof, as recorded in Liber 51 of Plats, Page 15, Oakland County Records, described as beginning at Southwest corner Lot 7; thence Northerly on West line said Lot, 40.28 feet; thence Easterly 58.9 feet; thence Northerly at right angle 14.96 feet; thence Easterly at right angle 65.37 feet; thence Northerly at right angle 8.4 feet; thence Easterly at right angle 104.44 feet to East line said Lot; thence Southerly along East lot line, 66.25 feet to Southeast corner said Lot; thence Westerly along South lot line 211.66 feet to point of beginning.

PARCEL "A" SURVEYOR'S NOTES:

- A

Overhead wires run through the subject parcel and cross the property lines as shown, no easement provided.

B

Walk runs through the subject parcel and cross the property lines as shown.

C

Property line matches existing exterior walls and interior party walls on the north side of the subject parcel.

D

Parking on the subject parcel is enclosed in the existing building, no access available at the time of the survey.

E

The current zoning classification was not provided by the client, as item 6(a) in table a of the "minimum standard detail requirements for ALTA/NSPS land title surveys," states.
- PARCEL "A" SCHEDULE BII EXCEPTIONS
- (per Fidelity National Title Insurance Company, Commitment No. 17–110744, dated January 5, 2017)
- 1

Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.

2

Standard exceptions set forth in jacket.

3

Taxes and/or assessments which become a lien or become due and payable subsequent to the effective date herein.

4

No liability is assumed by the Company for tax increase occasioned by retroactive revaluation or change in land usage status for the Land.

5

Rights of tenants under unrecorded leases and any and all parties claiming by, through and thereunder.

6

Rights of the public to any portion of the Land lying within the bounds of any street, road, alley or highway.

7

Possible deficiencies in the creation, organization or authority of the Insured or its agent to acquire or hold the Title.

8

Railroad line, switches and spur tracks, if any, and all rights therein. [No Railroad line, switches & spur tracks observed at the time of the survey.]

9

An instrument entitled Party Wall Agreement, Recording No: Liber 3119, Page 579 and re–recorded in Liber 3598, Page 677. [As plotted.]
- PARCEL "B" LEGAL DESCRIPTION
- (per First American Title Insurance Company, Commitment No. TC13–69882, dated February 9, 2017)
- Land situated in the City of Birmingham, County of Oakland, and State of Michigan, described as:
- The Northerly part of Lot 7 of ASSESSOR'S PLAT NO. 13, according to the plat thereof recorded in Liber 51 of Plats, page 15, Oakland County Records, City of Birmingham, Oakland County, Michigan, described as beginning at the Northwesterly corner of said Lot 7 on the Easterly line of 100 foot Woodward Avenue; thence Easterly along Northerly line of said Lot, a distance of 234.96 feet to the Westerly line of 200 foot Hunter Blvd. of the Northeast corner of said Lot 7; thence Southerly along the Westerly line of said Hunter Blvd. or Easterly line of said Lot 7, a distance of 21.15 feet to extension of North face of wall of garage building located on Southerly part of said Lot 7; thence Westerly along said extension of North face of wall and along said North face of wall 104.44 feet to a corner of said garage building; thence Southerly at right angles along Westerly face of wall of said garage building 8.40 feet to a corner of said garage building; thence Westerly at right angles along North face of wall of said garage building 65.37 feet to a corner of said garage building; thence Southerly at right angles along West face of wall of said garage building 14.96 feet to a corner of said garage building; thence Westerly at rights angles along North face of wall of said garage building and extension of same 58.90 feet to Westerly line of said Lot 7; thence Northerly along said Westerly line 40.28 feet to the point of beginning.
- PARCEL "B" SURVEYOR'S NOTES:
- A

Overhead wires run through the subject parcel and cross the property lines as shown, no easement provided.

B

Walk runs through the subject parcel and cross the property lines as shown.

C

Property line matches existing exterior walls and interior party walls on the south side of the subject parcel.

D

The current zoning classification was not provided by the client, as item 6(a) in table a of the "minimum standard detail requirements for ALTA/NSPS land title surveys," states.

PARCEL "B" SCHEDULE BII EXCEPTIONS

(per First American Title Insurance Company, Commitment No. TC13–69882, dated February 9, 2017)

1

The Company does not make any representation as to the value of the property.

2

Rights of the public and any governmental unit in any part of the land taken, deeded or used for street, road or highway purposes.

3

Any provisions contained in any instruments of record which provisions pertain to the transfer of divisions under Section 109(2) of the Subdivision Control Act of 1967, as amended.

4

Taxes which are a lien pursuant to Public Act 143 of 1995 and any other taxes and/or assessments which become a lien or become due and payable subsequent to the date of the commitment, including all assessments for weed cutting, grass cutting or any other matters for which City services were provided but not assessed against the tax rolls prior to the effective date of the Commitment.

5

This Policy does not insure against any delinquent or current water charges pertaining to the subject matter property as the parties failed to produce a final meter reading and/or final paid water bill prior to Closing.

6

Rights of tenants under any unrecorded leases, as to tenants only.

7

Terms and conditions of Party Wall Agreement as disclosed by instrument recorded in Liber 3119, page 579 and re–recorded in Liber 3598, page 677, Oakland County Records. [As plotted.]

CAUTION!!
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MARKUS ASSOCIATES, LLC BIRMINGHAM, MI 48009	TOPOGRAPHIC & ALTA/NSPS LAND TITLE SURVEY-HAZEL ST./WOODWARD			
	PART OF THE NE 1/4 OF SECTION 36, T. 12N., R. 10E., CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN			
	DES.	DN.	DLC/CS	SUR.
	JPB	RS	RS	P.M.

ORIGINAL ISSUE DATE: APRIL 15, 2017
PEA JOB NO. 2017-093
SCALE: 1" = 20'
DRAWING NUMBER: 2 OF 2

CERTIFICATE OF SURVEY

To: First American Title Insurance Company
Title Connect, L.L.C.
Markus Associates, LLC

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 2, 3, 4, 5, 7(a), 8, 10(a), 11, and 13 of Table A thereof. The fieldwork was completed on March 24, 2017.

Daniel Cole, PS No. 59791
Agent for PEA, Inc.

C-3.0

FLOODPLAIN NOTE:
BY GRAPHICAL PLOTTING, SITE IS WITHIN ZONE "X", AREA
DETERMINED TO BE OUTSIDE OF THE 0.2% ANNUAL CHANCE
FLOODPLAIN PER FLOOD INSURANCE RATE MAP NUMBER
26125C0537F (PANEL 537 OF 704), DATED SEPTEMBER 29, 2006.

PROPOSED SPOT GRADE ELEVATION. ADD 700 TO
4-DIGIT ELEVATIONS TO OBTAIN ACTUAL ELEVATION \times 64.50

PROPOSED CONTOUR LINE — 764 —

ABBREVIATIONS USED, IF REQUIRED FOR CLARITY:
 TOP OF CURB = T/C
 GUTTER GRADE = G
 TOP OF PAVEMENT = T/P
 TOP OF SIDEWALK = T/S
 RIM = RIM ELEVATION OF STRUCTURE
 FINISH GRADE = F.G.

THESE NOTES APPLY TO ALL CONSTRUCTION ACTIVITIES ON THIS PROJECT

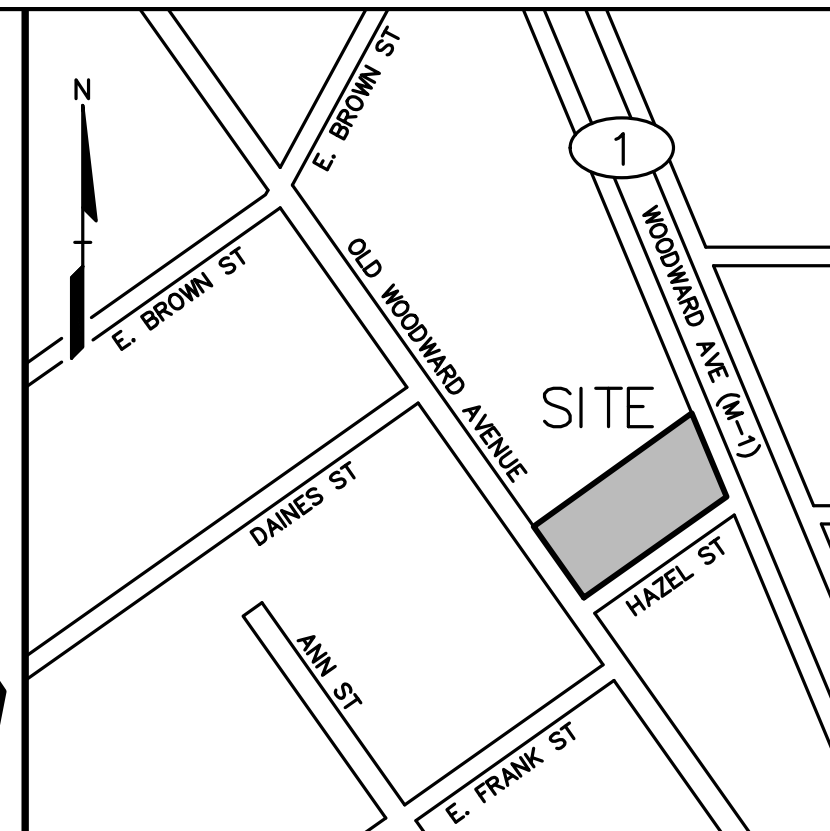
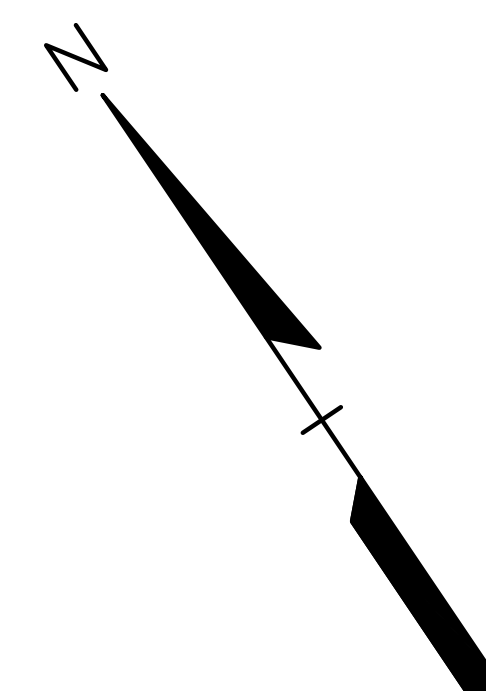
1. CONTRACTOR TO FIELD VERIFY ALL EXISTING TREES AND BRUSH AND REMOVE ALL THAT ARE NECESSARY TO GRADE SITE.
2. ALL GRADES ARE TO TOP OF PAVEMENT UNLESS OTHERWISE NOTED.
3. ALL SOIL EROSION AND SEDIMENTATION CONTROL MEASURES SHALL MEET THE REQUIREMENTS OF THE CITY OF BIRMINGHAM AN EROSION CONTROL PERMIT MUST BE SECURED FROM THE CITY PRIOR TO CONSTRUCTION.
4. ALL EARTHWORK AND GRADING OPERATIONS SHALL BE PERFORMED IN ACCORDANCE WITH THE FORTHCOMING SOILS INVESTIGATION AND REPORT.
5. SEE ADDITIONAL GRADING AND EARTHWORK NOTES ON DETAIL SHEET C-8.1
6. REFER TO CONSTRUCTION PLANS FOR ALL SOIL EROSION AND SEDIMENTATION CONTROL MEASURES AND NOTES.
7. ALL DISTURBED AREAS SHALL BE SEEDED AND MULCHED OR SODDED IN ACCORDANCE WITH THE LANDSCAPE PLANS. PROVIDE A MINIMUM OF 3" OF TOPSOIL IN THESE AREAS UNLESS OTHERWISE NOTED.
8. THE CONTRACTOR SHALL NOTE EXISTING UNDERGROUND UTILITIES WITHIN AND ADJACENT TO THE SITE. ALL EXISTING UTILITY TRENCHES SHALL BE REMOVED AND CRITICAL AREAS WHERE TRENCHES FOUND TO HAVE SOFT, UNSTABLE OR UNSUITABLE BACKFILL MATERIAL, IN THE OPINION OF THE GEOTECHNICAL ENGINEER, THAT ARE TO BE WITHIN THE ZONE OF INFLUENCE OF PROPOSED PAVEMENT OR PAVEMENT SHALL BE COMPLETELY EXCAVATED AND BACKFILLED WITH SUITABLE MATERIAL.

SIDEWALK RAMP 'TYPE D'	(D)
SIDEWALK RAMP 'TYPE R'	(R)
CURB DROP ONLY	(X)

THE CONTRACTOR SHALL BE RESPONSIBLE FOR IMPORTING OR EXPORTING ALL MATERIALS AS REQUIRED TO PROPERLY GRADE THIS PROJECT TO THE FINISHED ELEVATIONS SHOWN ON THE APPROVED PLANS. THE CONTRACTOR SHALL MAKE THEIR OWN DETERMINATION OF CUT AND FILL QUANTITIES AND ALLOW FOR REMOVAL OF EXCESS OR IMPORTATION OF ADDITIONAL MATERIAL AT NO ADDITIONAL COST TO THE OWNER.

A horizontal number line with tick marks at -10, 0, 5, 10, 20, and 4. The line is divided into segments by these tick marks. The segments are colored as follows: from -10 to 0, the squares alternate black and white starting with black; from 0 to 5, the squares are all black; from 5 to 10, the squares are all white; from 10 to 20, the squares are all black; and from 20 to 4, the squares are all white.

(IN FEET)
1 inch = 10 ft.



LOCATION MAP – NOT TO SCALE

NOTE:
ALL WORK WITHIN THE OLD WOODWARD AVENUE
RIGHT-OF-WAY IS UNDER THE JURISDICTION OF
THE CITY OF BIRMINGHAM AND REQUIRES A PERMIT

PROVIDE INTEGRAL CURB AT EDGE
OF NEW SIDEWALK IF THE EXISTING
SIDEWALK CURB IS OF INSUFFICIENT
HEIGHT FOR REVISED GRADING.
REFER TO INTEGRAL SIDEWALK
CURB DETAIL ON SHEET C-8.1

FIRST FLOOR LOBBY
F.F. 764.90

**FIRST FLOOR
PARKING AREA**
F.F. VARIES

OLD SOUTH WOODWARD
9-STORY WITH TWO-FLOOR
BASEMENT PARKING
114,670 SQ.FT.
F.F. 764.90

**FIRST FLOOR
PARKING AREA**
F.F. VARIES

SHADING INDICATES AREA OF BUILDING WHERE EXTERIOR FINISH GRADE IS ABOVE FINIS FLOOR ELEVATION, TYP..

MECHANICAL ROOM
F.F. 765.50

OVERHEAD ACCESS DOOR
TO MECHANICAL ROOM.

THERE IS A PROPOSED 3" HIGH RAMP WITHIN THE BUILDING TO TRANSITION FROM THE ENTRY GRADE AT 764.65 TO THE FINISH FLOOR ELEVATION OF 764.90. REFER TO ARCHITECTURAL PLANS FOR ADDITIONAL DETAILS

DASHED LINE IS THE
PROPERTY BOUNDARY, TYP.

ENTRANCE TO FIRST FLOOR
AND UNDERGROUND PARKING

NOTE:
ALL WORK WITHIN THE WOODWARD AVENUE
(M-1) RIGHT-OF-WAY IS UNDER THE
JURISDICTION OF THE MICHIGAN DEPARTMENT
OF TRANSPORTATION AND REQUIRES A PERMIT

NOTE:
THE AREA TO BE PAVED WITH EXPOSED AGGREGATE CONCRETE BETWEEN THE PROPOSED SIDEWALK AND THE PROPOSED CURB AND GUTTER WILL VARY IN CROSS-SLOPE AND MAY EXCEED THE CROSS-SLOPE ALLOWED FOR AN ACCESSIBLE ROUTE UNDER A.D.A. GUIDELINES. IT IS CONSIDERED A 'TRANSITION' BETWEEN THE PEDESTRIAN ROUTE (SIDEWALK) AND THE STREET CURB LINE.

NOTE:
ALL WORK WITHIN THE HAZEL STREET
RIGHT-OF-WAY IS UNDER THE JURISDICTION OF
THE CITY OF BIRMINGHAM AND REQUIRES A PERMIT

NOT FOR CONSTRUCTION

[illegible]

CAUTION!!
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MARKUS MANAGEMENT GROUP, LLC
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 BIRMINGHAM, MICHIGAN 48009

GRADING PLAN

SOUTH OLD WOODWARD
 OLD WOODWARD AVENUE AT HAZEL STREET
 CITY OF BIRMINGHAM, OKLAHOMA COUNTY, MICHIGAN, 48009

DES.	PB	DN	SR	DLC	P.M.	JPB
VIAO ERTS ON VOT 17-00 JUNE - SURFET + FODDERM AFE = 480' (NORTH SIDE) / 150' (SOUTH SIDE)						

ORIGINAL ISSUE DATE: MARCH 6, 2017
PEA JOB NO. 2017-093
SCALE: 1" = 10'
DRAWING NUMBER: C-4.1

XREF: S:PROJECTS\2017\2017093\DWG\17093-TOPOBASE.DWG
XREF: S:PROJECTS\2017\2017093\DWG\SITE PLAN\CBASE-17093.DWG
XREF: S:PROJECTS\2017\2017093\DWG\SITE PLAN\TBK-17093.DWG

1. ALL CONSTRUCTION AND MATERIALS SHALL BE IN ACCORDANCE WITH THE CURRENT STANDARDS AND SPECIFICATIONS OF THE CITY OF BIRMINGHAM AND M.D.O.T.
2. THE CONTRACTOR MUST CONTACT THE ENGINEER SHOULD THEY ENCOUNTER ANY DESIGN ISSUES DURING CONSTRUCTION. IF THE CONTRACTOR MAKES DESIGN MODIFICATIONS WITHOUT THE WRITTEN DIRECTION OF THE DESIGN ENGINEER, THE CONTRACTOR DOES SO AT HIS OWN RISK.
3. ALL NECESSARY PERMITS, TESTING, BONDS AND INSURANCES ETC., SHALL BE PAID FOR BY THE CONTRACTOR. THE OWNER SHALL PAY FOR ALL CITY INSPECTION FEES.
4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR DUST CONTROL DURING THE PERIODS OF CONSTRUCTION. THIS SHALL BE CONSIDERED INCIDENTAL TO THE JOB.
5. THE CONTRACTOR SHALL NOTIFY MISS DIG (811) AND REPRESENTATIVES OF OTHER UTILITIES IN THE VICINITY OF THE WORK A MINIMUM OF 72 HOURS PRIOR TO START OF CONSTRUCTION (EXCLUDING WEEKENDS AND HOLIDAYS) FOR LOCATION AND STAKING OF ON-SITE UTILITY LINES. IF NO NOTIFICATION IS GIVEN AND DAMAGE RESULTS, SAID DAMAGE WILL BE REPAIRED AT SOLE EXPENSE OF THE CONTRACTOR. IF EXISTING UTILITY LINES ARE ENCOUNTERED THAT CONFLICT IN LOCATION WITH NEW CONSTRUCTION, THE CONTRACTOR SHALL NOTIFY THE DESIGN ENGINEER SO THAT THE CONFLICT MAY BE RESOLVED.
6. CONTRACTOR TO VERIFY THAT THE PLANS AND SPECIFICATIONS ARE THE VERY LATEST PLANS AND SPECIFICATIONS AND FURTHERMORE, VERIFY THAT THESE PLANS AND SPECIFICATIONS HAVE BEEN APPROVED. ALL ITEMS CONSTRUCTED BY THE CONTRACTOR PRIOR TO RECEIVING FINAL APPROVAL, HAVING TO BE RE-CONSTRUCTED AT THE RISK OF THE CONTRACTOR. IF THE CONTRACTOR SHOULD THE CONTRACTOR ENCOUNTER A CONFLICT BETWEEN THESE PLANS AND/OR SPECIFICATIONS, THEY SHALL SEEK CLARIFICATION IN WRITING FROM THE ENGINEER BEFORE COMMENCEMENT OF CONSTRUCTION. FAILURE TO DO SO SHALL BE AT SOLE EXPENSE TO THE CONTRACTOR.
7. ALL PROPERTIES OR FACILITIES IN THE SURROUNDING AREAS, PUBLIC OR PRIVATE, DESTROYED OR OTHERWISE DISTURBED DUE TO CONSTRUCTION, SHALL BE REPLACED AND/OR RESTORED TO THE ORIGINAL CONDITION BY THE CONTRACTOR.
8. MANHOLE, CATCH BASIN, GATE VALVES AND HYDRANT FINISH GRADES MUST BE CLOSELY CHECKED AND APPROVED BY THE ENGINEER BEFORE THE CONTRACTOR'S WORK IS CONSIDERED COMPLETE.
9. CONTRACTOR SHALL REMOVE AND DISPOSE OF OFF-SITE ANY TREES, BRUSH, STUMPS, TRASH OR OTHER UNDESIRED DEBRIS AT THE OWNER'S DIRECTION, INCLUDING OLD BUILDING FOUNDATIONS AND FLOORS. BURNING OF TRASH, STUMPS OR OTHER DEBRIS SHALL NOT BE PERMITTED.
10. THE CONTRACTOR SHALL PROVIDE ALL NECESSARY BARRICADING, SIGNAGE, LIGHTS AND TRAFFIC CONTROL DEVICES TO PROTECT THE WORK AND SAFELY MAINTAIN TRAFFIC IN ACCORDANCE WITH LOCAL REQUIREMENTS AND THE MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES (LATEST EDITION). THE DESIGN ENGINEER, OWNER, CITY AND STATE SHALL NOT BE HELD LIABLE FOR ANY CLAIMS RESULTING FROM ACCIDENTS OR DAMAGES CAUSED BY THE CONTRACTOR'S FAILURE TO COMPLY WITH TRAFFIC AND PUBLIC SAFETY REGULATIONS DURING THE CONSTRUCTION PERIOD.
11. ALL EXCAVATIONS SHALL BE SLOPED, SHORED OR BRACED IN ACCORDANCE WITH MI-OSHA REQUIREMENTS. THE CONTRACTOR SHALL PROVIDE AN ADEQUATELY CONSTRUCTED AND BRACED SHORING SYSTEM FOR EXPOSED TREES WORKING IN AN EXCAVATION THAT MAY EXPOSE EMPLOYEES TO THE DANGER OF MOVING GROUND.

1. ALL WORKMANSHIP AND MATERIALS SHALL BE IN ACCORDANCE WITH THE CURRENT STANDARDS AND SPECIFICATIONS OF THE CITY OF BIRMINGHAM AND M.D.O.T.
2. IN AREAS WHERE NEW PAVEMENTS ARE BEING CONSTRUCTED, THE TOPSOIL AND SOIL CONTAINING ORGANIC MATTER SHALL BE REMOVED PRIOR TO PAVEMENT CONSTRUCTION.
3. ON-SITE FILL CAN BE USED IF THE SPECIFIED COMPACTION REQUIREMENTS CAN BE ACHIEVED. IF ON-SITE SOIL IS USED, IT SHOULD BE CLEAN AND FREE OF FROZEN SOIL, ORGANICS, OR OTHER DELETERIOUS MATERIALS.
4. THE FINAL SUBGRADE/EXISTING AGGREGATE BASE SHOULD BE THOROUGHLY PROOFOILLED USING A FULLY LOADED TANDEM AXLE TRUCK OR FRONT END LOADER UNDER THE OBSERVATION OF A GEOTECHNICAL/PAVEMENT ENGINEER. LOOSE OR YIELDING AREAS THAT CANNOT BE MECHANICALLY STABILIZED SHOULD BE REINFORCED USING GEOTEXTILES OR REMOVED AND REPLACED WITH ENGINEERED FILL OR AS DICTATED BY FIELD CONDITIONS.
5. SUBGRADE UNDERCUTTING, INCLUDING BACKFILLING SHALL BE PERFORMED TO REPLACE MATERIALS SUSCEPTIBLE TO FROST HEAVING AND UNSTABLE SOIL CONDITIONS. ANY EXCAVATIONS THAT MAY BE REQUIRED BELOW THE TOPSOIL IN FILL SECTIONS OR BELOW SUBGRADE IN CUT SECTIONS, WILL BE CLASSIFIED AS SUBGRADE UNDERCUTTING.
6. SUBGRADE UNDERCUTTING SHALL BE PERFORMED WHERE NECESSARY AND THE EXCAVATED MATERIAL SHALL BECOME THE PROPERTY OF THE CONTRACTOR. ANY SUBGRADE UNDERCUTTING SHALL BE BACKFILLED WITH SAND OR OTHER SIMILAR APPROVED MATERIAL. BACKFILL SHALL BE COMPACTED TO 95% OF THE MAXIMUM UNIT WEIGHT (PER ASTM D-1557) UNLESS OTHERWISE SPECIFIED.
7. BACKFILL UNDER PAVED AREAS SHALL BE AS SPECIFIED ON DETAILS.
8. ANY SUB-GRADE WATERING REQUIRED TO ACHIEVE REQUIRED DENSITY SHALL BE CONSIDERED INCIDENTAL TO THE JOB.
9. FINAL PAVEMENT ELEVATIONS SHOULD BE SO DESIGNED TO PROVIDE POSITIVE SURFACE DRAINAGE. A MINIMUM SURFACE SLOPE OF 1.0 PERCENT IS RECOMMENDED.
10. CONSTRUCTION TRAFFIC SHOULD BE MINIMIZED ON THE NEW PAVEMENT. IF CONSTRUCTION TRAFFIC IS ANTICIPATED ON THE PAVEMENT STRUCTURE, THE INITIAL FILL THICKNESS COULD BE INCREASED AND PLACEMENT OF THE FINAL FILL COULD BE DELAYED UNTIL THE MAJORITY OF THE CONSTRUCTION ACTIVITIES WERE COMPLETED. THIS ACTION WILL ALLOW REPAIR OF LOCALIZED FAILURE, IF ANY DOES OCCUR, AS WELL AS REDUCE LOAD DAMAGE ON THE PAVEMENT SYSTEM.

11. ALL WORKMANSHIP AND MATERIALS SHALL BE IN ACCORDANCE WITH THE STANDARDS AND SPECIFICATIONS OF THE CITY OF BIRMINGHAM.
12. ALL TRENCHES UNDER OR WITHIN THREE (3) FEET OR THE FORTY-FIVE (45) DEGREE ZONE OF INFLUENCE LINE OF EXISTING AND/OR PROPOSED PAVEMENT, BUILDING PAD OR DRIVE APPROACH SHALL BE BACKFILLED WITH SAND COMPACTED TO AT LEAST NINETY-FIVE (95) PERCENT OF MAXIMUM UNIT WEIGHT (ASTM D-1557). ALL OTHER TRENCHES TO BE COMPACTED TO 90% OR BETTER.
13. WHENEVER EXISTING MANHOLES OR SEWER PIPE ARE TO BE TAPPED, DRILL HOLES 4" CENTER TO CENTER, AROUND PERIPHERY OF OPENING TO CREATE A PLANE OF WEAKNESS JOIN BEFORE BREAKING SECTION OUT.
14. THE LOCATIONS AND DIMENSIONS SHOWN ON THE PLANS FOR EXISTING UTILITIES ARE IN ACCORDANCE WITH AVAILABLE INFORMATION WITHOUT UNCOVERING AND MEASURING. THE DESIGN ENGINEER DOES NOT GUARANTEE THE ACCURACY OF THIS INFORMATION OR THAT ALL EXISTING UNDERGROUND FACILITIES ARE SHOWN. CONTRACTOR TO FIELD VERIFY UTILITIES.
15. THE CONTRACTOR MUST COORDINATE TO ENSURE ALL REQUIRED PIPES, CONDUITS, CABLES AND SLEEVES ARE PROPERLY PLACED FOR THE INSTALLATION OF GAS, ELECTRIC, PHONE, CABLE, IRRIGATION, ETC. IN SUCH A MANNER THAT WILL FACILITATE THEIR PROPER INSTALLATION PRIOR TO THE PLACEMENT OF THE PROPOSED PAVEMENT AND LANDSCAPING.
16. REFER TO CITY OF BIRMINGHAM, STANDARD DETAILS FOR PIPE BEDDING DETAILS.
17. REFER TO CITY OF BIRMINGHAM STANDARD DETAIL SHEETS FOR ADDITIONAL INFORMATION.

1. ALL STORM SEWER 12" AND LARGER SHALL BE RCP CLASS IV UNLESS OTHERWISE NOTED. REFER TO CITY STANDARD DETAILS SHEETS FOR STANDARD BEDDING DETAILS.
2. JOINTS FOR ALL STORM SEWER 12" AND LARGER SHALL BE MODIFIED TONGUE AND GROOVE JOINT WITH RUBBER GASKETS UNLESS SPECIFIED OTHERWISE (ASTM C-443)
3. ALL STORM SEWER LEADS SHALL BE CONSTRUCTED OF PVC SCHEDULE 40 PIPE AT 1.00% MINIMUM SLOPE WITH GULVED JOINTS, UNLESS OTHERWISE NOTED.

1. ALL WATER MAIN SHALL BE INSTALLED WITH A MINIMUM COVER OF 5.5' BELOW FINISH GRADE. WHEN WATER MAINS MUST DIP TO PASS UNDER A STORM SEWER OR SANITARY SEWER, THE SECTIONS WHICH ARE DEEPER THAN NORMAL SHALL BE KEPT TO A MINIMUM LENGTH BY THE USE OF VERTICAL TWENTY TWO AND A HALF (22.5") DEGREE BENDS. PROPERLY ANCHORED.
2. ALL TEE'S, BENDS, CONNECTIONS, ETC. ARE CONSIDERED INCIDENTAL TO THE JOB.
3. PHYSICAL CONNECTIONS SHALL NOT BE MADE BETWEEN EXISTING AND NEW WATER MAINS UNTIL TESTING IS SATISFACTORILY COMPLETED.
4. MAINTAIN 10' HORIZONTAL CLEARANCE BETWEEN OUTER EDGE OF WATERMAIN AND ANY SANITARY SEWER OR STRUCTURE.
5. ALL WATER MAIN SHALL BE DUCTILE IRON CLASS 54 WITH POLYETHYLENE WRAP.

1. DOWNSPOUTS, WEEP TILE, FOOTING DRAINS OR ANY CONDUIT THAT CARRIES STORM OR GROUND WATER SHALL NOT BE ALLOWED TO DISCHARGE INTO A SANITARY SEWER.
2. ALL SANITARY LEADS SHALL BE CONSTRUCTED OF PVC SDR 23.5 AT 1.00% MINIMUM SLOPE.
3. JOINTS FOR P.V.C. SOLID WALL PIPE SHALL BE ELASTOMERIC (RUBBER GASKET) AS SPECIFIED IN A.S.T.M. DESIGNATION D-3212.



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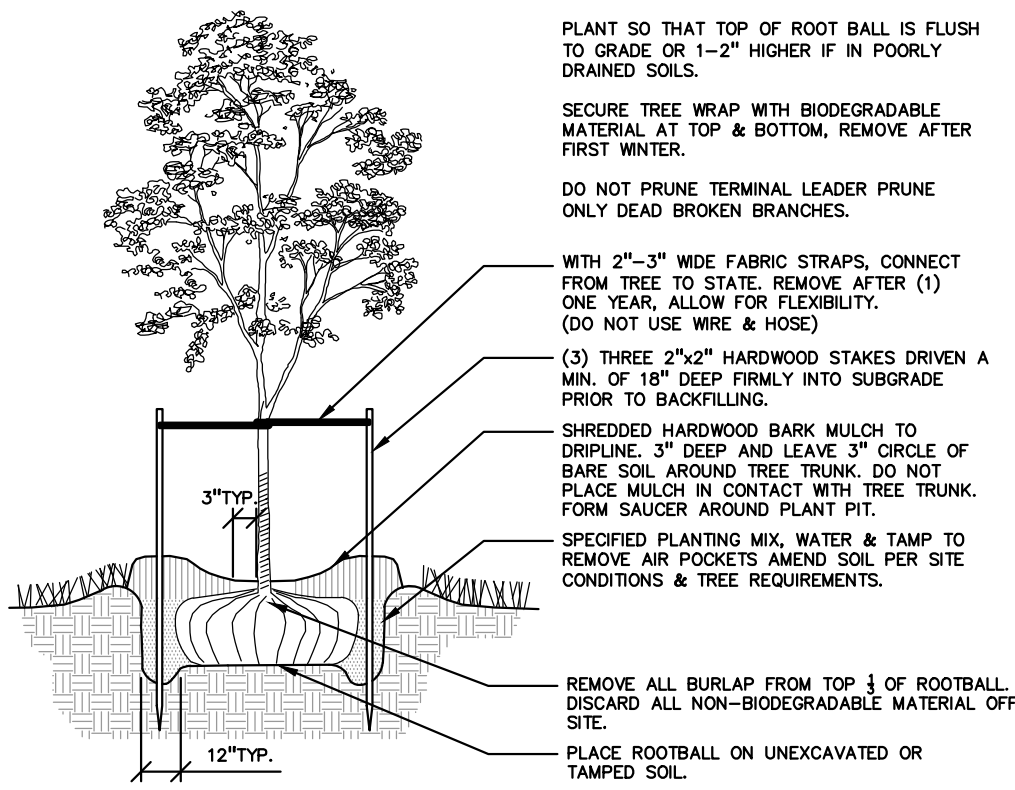
DES	PR	DN	PR	SIIR	DIC	PM	IPR
CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN, 48009							

ORIGINAL ISSUE DATE: MARCH 6, 2017
PEA JOB NO. 2017-093
SCALE: NONE
DRAWING NUMBER:

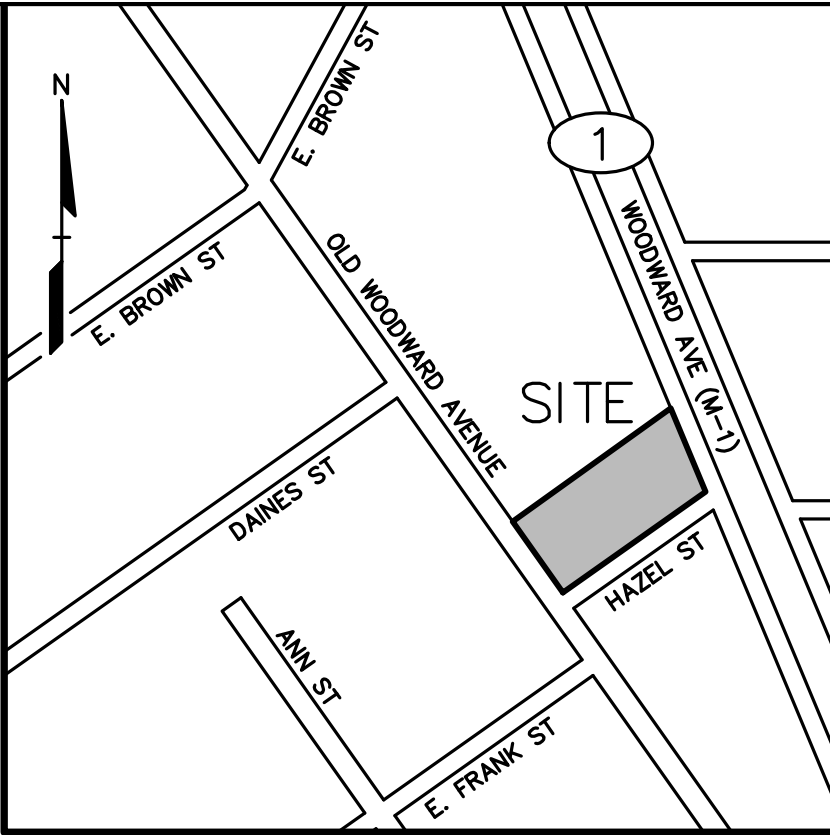
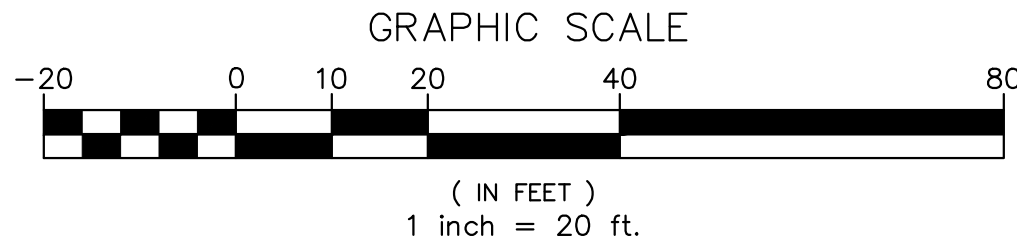
C-8.

NOT FOR CONSTRUCTION

XREF: S:PROJECTS\2017\2017093\DWG\17093-TOPOBASE.DWG
XREF: S:PROJECTS\2017\2017093\DWG\SITE PLAN\CBASE-17093.DWG
XREF: S:PROJECTS\2017\2017093\DWG\SITE PLAN\TBLK-17093.DWG



DECIDUOUS TREE PLANTING DETAIL
NOT TO SCALE



LOCATION MAP - NOT TO SCALE

TREE PLANT LIST:					
QUANTITY	KEY SYMBOL	COMMON NAME	SCIENTIFIC NAME	SIZE	SPEC
2	PJ3	Jack Select Pear	<i>Pyrus calleryana 'Jazzam'</i>	3" Cal.	B&B
1	QS3	Streetspire Oak	<i>Quercus alba 'JFS-KW1QX' (columnar)</i>	3" Cal.	B&B

LANDSCAPE REQUIREMENTS PER CITY OF BIRMINGHAM:

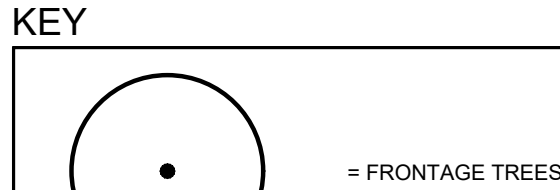
STANDARD LANDSCAPE REQUIREMENTS
PER 4.20 LA-01 B3.-FOR PARKING 20 OR MORE SPACES
PER 4.20 LA-01 F.-FOR PARKING LOTS 7500 SF OR GREATER
5% OF INTERIOR PARKING LOT AREA SHALL BE LANDSCAPED WITH 1 TREE/150 SF OF REQ.D AREA

PROPOSED:
PARKING AREA IS LESS THAN 20 CARS, THEREFORE REQUIREMENTS ABOVE ARE NOT APPLICABLE.

FRONTAGE TREES:
1 TREE PER 40 LF OF FRONTAGE REQUIRED

S. OLD WOODWARD AVENUE: 81 LF/40 = 2 TREES
HAZEL STREET: 212 LF/40 = 5 TREES
WOODWARD AVENUE: 88 LF/40 = 2 TREES

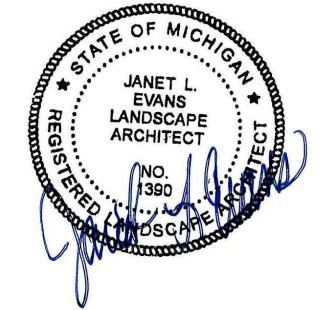
PROPOSED:
S. OLD WOODWARD AVENUE: 2 TREES
HAZEL STREET: 0 TREES DUE TO LACK OF SPACE
WOODWARD AVENUE: 1 TREES DUE TO LACK OF SPACE



= FRONTAGE TREES

GENERAL PLANTING NOTES:

- LANDSCAPE CONTRACTOR SHALL VISIT SITE, INSPECT EXISTING SITE CONDITIONS AND REVIEW PROPOSED PLANTING AND RELATED WORK. IN CASE OF DISCREPANCY BETWEEN PLAN AND PLANT LIST, PLAN SHALL GOVERN QUANTITIES. CONTACT LANDSCAPE ARCHITECT WITH ANY CONCERNS.
- CONTRACTOR SHALL VERIFY LOCATIONS OF ALL ON SITE UTILITIES PRIOR TO BEGINNING CONSTRUCTION ON HIS/HER PHASE OF WORK. ELECTRIC, GAS, TELEPHONE, CABLE TELEVISION MAY BE LOCATED BY CALLING MISS DIG 1-800-482-7171. ANY DAMAGE OR INTERRUPTION OF SERVICES SHALL BE THE RESPONSIBILITY OF CONTRACTOR. CONTRACTOR SHALL COORDINATE ALL RELATED ACTIVITIES WITH OTHER TRADES ON THE JOB AND SHALL REPORT ANY UNACCEPTABLE JOB CONDITIONS TO OWNER'S REPRESENTATIVE PRIOR TO COMMENCING.
- ALL PLANT MATERIAL TO BE PREMIUM GRADE NURSERY STOCK AND SHALL SATISFY AMERICAN ASSOCIATION OF NURSERYMEN STANDARD FOR NURSERY STOCK. ALL LANDSCAPE MATERIAL SHALL BE NORTHERN GROWN, NO. 1, GRADE.
- CONTRACTOR IS RESPONSIBLE FOR VERIFYING ALL QUANTITIES SHOWN ON LANDSCAPE PLAN PRIOR TO PRICING THE WORK.
- THE OWNER'S REPRESENTATIVE RESERVES THE RIGHT TO REJECT ANY PLANT MATERIAL NOT MEETING SPECIFICATIONS.
- ALL SINGLE STEM SHADE TREES TO HAVE STRAIGHT TRUNKS AND SYMMETRICAL CROWNS.
- ALL SINGLE TRUNK SHADE TREES TO HAVE A CENTRAL LEADER; TREES WITH FORKED OR IRREGULAR TRUNKS WILL NOT BE ACCEPTED.
- ALL MULTI STEM TREES SHALL BE HEAVILY BRANCHED AND HAVE SYMMETRICAL CROWNS. ONE SIDED TREES OR THOSE WITH THIN OR OPEN CROWNS SHALL NOT BE ACCEPTED.
- ALL EVERGREEN TREES SHALL BE HEAVILY BRANCHED AND FULL TO THE GROUND, SYMMETRICAL IN SHAPE AND NOT SHEARED FOR THE LAST FIVE GROWING SEASONS.
- ALL TREES TO HAVE CLAY OR CLAY LOAM BALLS, TREES WITH SAND BALLS WILL BE REJECTED.
- NO MACHINERY IS TO BE USED WITHIN THE DRIP LINE OF EXISTING TREES. HAND GRADE ALL LAWN AREAS WITHIN THE DRIP LINE OF EXISTING TREES.
- ALL TREE LOCATIONS SHALL BE STAKED BY LANDSCAPE CONTRACTOR AND ARE SUBJECT TO THE APPROVAL OF THE LANDSCAPE ARCHITECT PRIOR TO INSTALLATION OF THE PLANT MATERIAL.
- IT IS MANDATORY THAT POSITIVE DRAINAGE IS PROVIDED AWAY FROM ALL BUILDINGS.
- ALL PLANTING BEDS SHALL RECEIVE 3" SHREDED HARDWOOD BARK MULCH WITH PRE EMERGENT, SEE SPECIFICATIONS. SHREDED PALETTE AND DYED MULCH WILL NOT BE ACCEPTED.
- ALL LANDSCAPED AREAS SHALL RECEIVE 3" COMPACTED TOPSOIL.
- SEE SPECIFICATIONS FOR ADDITIONAL COMMENTS, REQUIREMENTS, PLANTING PROCEDURES AND WARRANTY STANDARDS.
- FOR NON-LAWN SEED MIX AREAS, AS NOTED ON PLAN, BRUSH MOW ONCE SEASONALLY FOR INVASIVE SPECIES CONTROL.



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PRELIMINARY LANDSCAPE PLAN
SOUTH OLD WOODWARD
OLD WOODWARD AVENUE AT HAZEL STREET
CITY OF BIRMINGHAM, OKLAHOMA COUNTY, MICHIGAN 48009

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ORIGINAL ISSUE DATE:
MARCH 6, 2017

PEA JOB NO. 2017-093

SCALE: 1" = 20'

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May 17, 2018

Richard D. Rattner
rdr@wwrplaw.com

City of Birmingham
City Commission
151 Martin St.
Birmingham, MI 48009

Re: Application to include 469 and 479 S. Old Woodward, Birmingham, MI
("Subject Property") in the D5 Downtown Birmingham Overlay District
Zone ("Application")

Dear Members of the Planning Board and City Commission:

Please accept this letter from the property owner ("Property Owner") of 469 and 479 S. Old Woodward ("Property") as a Supplement to the referenced rezoning Application file to rezone the Subject Property from the D-3 Zone to the D-5 Overlay Zone in the Downtown Birmingham Overlay District.

Executive Summary

The Subject Property is a former single-story restaurant building and bank that sits between two existing tall buildings in the City. Birmingham Place is located to the north and the 555 Buildings are located to the south. The placement of the buildings is not only inconsistent with a cohesive and harmonious streetscape in that area but is contrary to the intent of the Master Plan. This inconsistent height results in a streetscape along South Old Woodward that appears to have a "missing tooth."

If the Subject Property is rezoned to D-5, there is an excellent opportunity for the Subject Property, Birmingham Place and the 555 Buildings to create an impressive southern gateway to Downtown Birmingham. It is therefore reasonable that the Subject Property, sitting directly between the 555 Buildings and Birmingham Place, be included in the same zoning district, that is as part of the D-5 Overlay District, as those neighboring two buildings.

Rezoning the Subject Property to the same classification as the buildings immediately to the north and south will enhance and complete the streetscape of these important two blocks of Downtown Birmingham. Inclusion of the Subject Property in the D-5 Overlay Zone is consistent with the 2016 Master Plan. Moreover, it will allow the Subject Property to enjoy the same development regulations as the neighboring properties.

The Subject Property and the Master Plans

A review of the history surrounding the zoning of this area of Downtown is instructive. The minutes of the City Commission during the late 1960s and early 1970s, reveals that the height of the buildings in this area of Downtown were historically zoned for the height of the 555 Buildings and Birmingham Place. However, the zoning ordinance was amended in the 1970's after the construction of those buildings to a maximum of four stories. Therefore, for several years, the taller buildings in the City were burdened with the status of legal nonconforming uses.

In 2016, the City corrected this down zoning for the 555 Building to the south and Birmingham Place to the north, with the creation of the D-5 Zone to allow for existing heights (in the case of the 555 Buildings and Birmingham Place) and to allow for new construction to a height up to the same height of an immediately adjacent or abutting building (see Ordinance 3.04-4-b). While the 555 Building and Birmingham Place are now at allowable heights, sitting in between them, the Subject Property is the only building in that streetscape that cannot be constructed to a height that is consistent to its neighbors. This inconsistency creates an obvious gap in the street's architecture which is not harmonious with the overall downtown design and longer-range plan for that part of South Old Woodward.

The Birmingham of 2016

In 1996, the City Commission adopted the Downtown Birmingham 2016 Plan ("2016 Plan") and amended the Zoning Ordinance to include the Downtown Birmingham Overlay District. The Subject Property is located in the D-3 Zone, sitting between two tall buildings in the City that have been rezoned to the D-5 zone. These multi-story buildings are the established character of this particular area of the City. Placing the Subject Property in the D-5 zone would allow development of the Subject Property to be at a similar height to the buildings directly to the north and south. The Applicant desires to develop the Subject Property in a manner that completes the block between Brown and Hazel while adding to the cohesiveness of the South Old Woodward southern gateway area.

The Birmingham Zoning Ordinance at Sec. 1.04 provides that the purpose of the Zoning Ordinance is to "...guide the growth and development of the City in accordance with the goals, objectives and strategies stated within the Birmingham Master Plan ("Birmingham Plan"), and Downtown Birmingham 2016 Plan. A review of the Birmingham Plan (1980) and the Downtown Birmingham 2016 Plan (1996) reveals that this application to include the Subject Property in a D-5 Overlay District meets the spirit and intent of the ordinance as well as the 2016 Plan. It will allow for mixed uses and add to the vitality of the modern streetscape envisioned for this part of town by the 2016 Plan. With rezoning, the Subject Property can become that desired mixed-use space for retail, residential and hotel, and bring new life to the South Old Woodward area.

Any redevelopment of the Subject Property in compliance with its current zoning classification would result in a building with frontage dwarfed by the existing neighboring structures. Therefore, by rezoning the Subject Property to the D-5 overlay, a new building could be built to a similar height as the neighboring buildings, and effectively complete an otherwise missing piece of the streetscape.

In summary, it is clear that the intent of the 2016 Plan includes development of this southern area of the Downtown Overlay District as a gateway to Downtown through enhancing the character of buildings and providing our City with an active, pedestrian-friendly, urban streetscape.

Rezoning Amendment – Sec. 7.02 (B)(2)(b)(i)-(iii)

The Zoning Ordinance at Sec. 7.02 requires that as part of an application for rezoning, the petitioner should address certain issues to be considered by the Planning Board and the City Commission. Please consider the following comments with respect to these issues.

7.02(B)(2)(b)(i) - An Explanation of Why the Rezoning is Necessary for the Preservation and Enjoyment of the Rights and Usage Commonly Associated with Property Ownership

Rezoning of the Subject Property is necessary to preserve the Applicant's enjoyment of rights associated with ownership of a property zoned for mixed uses. Because of the size and corner configuration of the parcel, it will not support street-level retail, residential, and parking for residents in the same manner as the neighboring properties. The 2016 Plan clearly anticipates mixed use developments. Such planning requires space to design and locate mixed uses within a given structure. Without the ability to go higher with a new building than current zoning allows, the Applicant will not have the required area within which to locate a mix of uses, or otherwise to be able to enjoy all of the allowed uses that would commonly be associated the design of such a modern, mixed-use building. Furthermore, the D-5 Ordinance, at section 3.04-4-b, anticipates that the Subject Property and those similarly situated may enjoy the same rights of usage through an extension of height as other existing tall buildings already enjoy in the D-5 Overlay District.

Sec. 7.02(B)(2)(b)(ii) - An Explanation of Why the Existing Zoning Classification is No Longer Appropriate

The existing D-3 zoning classification is no longer appropriate for the Subject Property. The Subject Property is surrounded by the Birmingham Place, a ten-story building on the north side and the 555 Buildings, a fifteen-story building on the south side. This height is an established pattern in this area of the City. This rezoning request is actually an "infill" rezoning to bring the entire area into architectural and design harmony with surrounding buildings. It is reasonable for the Subject Property to share the same zoning classification as its surrounding neighbors. This would allow development of the property in a manner consistent with the

existing structures from Brown Street south to Haynes Street. It will create a more unified block and enhance the character of the gateway area to Downtown Birmingham. The rezoning of the Subject Property would restore the property to a zoning classification this area of the City once enjoyed, as the Planning Board has done for with Birmingham Place and the 555 Buildings. Hence, given the location of the Subject Property sandwiched between two properties in the D-5 Zone, the D-3 Zone is no longer appropriate.

Sec. 7.02(B)(2)(b)(iii) - An Explanation of Why the Proposed Zoning will not be Detrimental to the Surrounding Properties

The proposed rezoning of the Subject Property is not detrimental to surrounding property owners. Note that the proposed rezoning does not extend the D-5 classification further to the north or south of the current D-5 Zoning, but actually fills in the one gap in the streetscape that is noticeably out of place and anachronistically remains in the D-3 Zone. The surrounding properties to the north and south already are in the D-5 Zone. When these neighboring properties were rezoned, the Planning Board anticipated that eventually the Subject Property also may be rezoned for the reasons stated in this letter. Placing the Subject Property in D-5 Zone will be placing it on equal footing with the surrounding properties from a structural, use and design perspective. The proposed rezoning will enhance the entire area by allowing it to be developed as an attractive part of the South Old Woodward gateway and bring that area into compliance with the spirit and intent of the 2016 Master Plan.

Conclusion

The Applicant respectfully requests that the City Commission rezone the Subject Property from the D-3 to the D-5 Zone as discussed in this letter.

Very truly yours,

WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, P.C.

A handwritten signature in black ink, appearing to read "Richard D. Rattner", written in a cursive style.

Richard D. Rattner

RDR/cmc



Richard D. Rattner
rdr@wwrplaw.com

August 13, 2018

City of Birmingham
City Commission
Planning Board
151 Martin St.
Birmingham, MI 48009
Attention: Ms. Jana Ecker

Re: Request for Re-Hearing on Application to include 469 and 479 S. Old Woodward, Birmingham, MI ("Subject Property") in the D5 Downtown Birmingham Overlay District Zone ("Application")

Dear Members of the City Commission, Planning Board and Ms. Ecker:

Please accept this letter from the property owner ("Property Owner") of 469 and 479 S. Old Woodward ("Property") as a Request for Re-Hearing of the Property Owner's rezoning Application to rezone the Subject Property from the D-4 Overlay Zone to the D-5 Overlay Zone in the Downtown Birmingham Overlay District.

The information set forth in this letter supplements the information set forth in the Application and the undersigned's letter of May 17, 2018. Please recall that the subject Property is a former single-story restaurant building and drive-through bank that sits between two existing D-5 zoned buildings in the City. The Property is in the B-3 Office-Residential Zone and the D-4 Overlay Zone.

Summary

The Application was considered by the Planning Board at its meeting on June 27, 2018 and the Planning Board denied the Application. The Applicant requests that the Planning Board rehear the Application due to consideration of new information not reviewed and to correct certain factual inaccuracies or errors in the record that quite likely prevented the Planning Board from affording this Application a full and fair hearing. Without such a full consideration of all of these new and pertinent factors, the Board will be in the position of recommending denial of a petition without the opportunity of hearing all of the important issues related to the intent, purpose and consequences of such a zone, and without the advantage of putting those issues in perspective when considering a zoning ordinance that is a crucial part of the Birmingham Downtown Overlay District plan.

The D-5 ordinance is one of the most carefully drafted ordinances produced by the City. It is the subject of over two years of study and research. Multiple alternative drafts were proposed by the City Planning Department over the years, and every section has been fully discussed and vetted by the City Commission and the Planning Board. This D-5 ordinance was recognized as being an integral part of the Downtown Birmingham Overlay District by the City. When the ordinance was passed it was heralded as not only solving existing problems but it fit into the fabric of the Overlay District's plan to encourage mixed use buildings in the Downtown Overlay (especially in the South Old Woodward area) so that our city can maintain a vibrant, pedestrian friendly attractive live, work and entertainment district. It was enacted as part of the City's modern plan to create a sustainable, vibrant downtown.

To mischaracterize this ordinance as a mere correction of nonconformity for three buildings is not only erroneous, but does disservice to the hard work done by the City Commission, Planning Board and Administration. Most importantly, such an analysis does not comply with the spirit, intent and vision exhibited in theory and practice in the Downtown Birmingham Overlay District. Said simply, such an interpretation ignores and discredits all of the good faith hard work that went into the creation of not only the Ordinance, but the master plan process for the future of our growing and vibrant downtown.

The Property is *not* within the Parking Assessment District, Contrary to Information Presented in the Board's Packet

This Property is *not* within the parking assessment district. This is a serious flaw in any zoning analysis and must be corrected in order for the public record of the Board's action and recommendation on the Application to properly reflect the realities of this matter. Correcting this fact leads to new information about the Property and the plan for development of the Property that is central to the question of rezoning pursuant to the Zoning Enabling Act. The Board has not had an opportunity to review this new information in the first instance. The new information significantly changes the analysis of rezoning under Article 7.02B2b and 7.02B5 of the Zoning Ordinance.

Contrary to what was assumed by the Planning Board, because the Property is not in the Parking Assessment District (Parking Assessment District Map is enclosed for your reference at **Exhibit A**), it currently has no possibility of providing off-street parking on the premises. In fact, it is currently non-conforming and cannot comply with Article 4.46 of the Zoning Ordinance (Off-Street Parking Spaces Required).

The Planning Department's Memorandum submitted to the Planning Board, dated May 18, 2018, regarding the Community Impact Statement of the Property's redevelopment, erroneously provides, "The subject Property is in the Parking Assessment District." And not only is the subject Property not in the Parking Assessment District, contrary to what was reported to the Planning Board, but we understand that this Property is the only D-4 zoned property in the

City not included in the Parking Assessment District.

Zoning Analysis – Revisited

Whether or not the Property is within the Parking Assessment District makes a significant difference in terms of the analysis under Sec. 7.02(B)(2)(b)(i-iii), Zoning Amendments. Section 7.02(B) requires the Applicant to provide certain explanations about the rezoning to be considered by the Planning Board and the City Commission. Please consider the following new information regarding the effects of the Parking Assessment District on this analysis, which was not reviewed by the Board.

- **Sec. 7.02(B)(2)(b)(i) - An Explanation of Why the Rezoning is Necessary for the Preservation and Enjoyment of the Rights and Usage Commonly Associated with Property Ownership**

The issue of location outside of the Parking Assessment District provides new information about the necessity of rezoning the Property to preserve the Applicant's enjoyment of rights associated with ownership. Because of the size and narrow corner configuration of the Property, it will not support street-level retail, residential, *and the required parking for those uses*. The off-street parking requirements for this Property make the engineering and design of a mixed-use D-4 seriously impractical if not impossible. The 2016 Plan promotes mixed use developments. Such planning requires space to design and locate mixed uses within a given structure. Not only will the Applicant lack the required area within which to locate all of the mixed uses with a first-floor retail mandate, the Applicant also is absolutely hamstrung by the off-street parking requirements for this site. The maximum use of the underground area will not yield enough parking spaces for a building designed to current zoning. Rezoning the Property to the D-5 Zone will allow more vertical space within which to accommodate a mixed-use building together with the required parking for all permitted uses.

- **Sec. 7.02(B)(2)(b)(ii) - An Explanation of Why the Existing Zoning Classification is No Longer Appropriate**

The Applicant provided information that the current zoning was no longer appropriate at the June 27, 2108 meeting. However, the Board inadvertently coalesced around a discussion and conclusion that the Applicant had not shown that a "D-4 building would not work" at the site (Mr. Koseck and Ms. Whipple-Boyce at hearing time 2:20:15). But this is not the requirement set forth in the ordinance. Further, the Board denied discussion about the development plan for the Property, until after the Applicant obtained rezoning. The Board applied a standard of proof that is not part of the ordinance, but rather more aptly applies to considering whether the rezoning depended on whether the Applicant can use the property as zoned. This is not the standard under the ordinance. Such a standard is often heard in a discussion of whether the property has been inversely condemned by the application of the ordinance. It is unfair to hold the applicant to a

standard that requires proof that the property cannot be used as zoned rather than the “appropriateness” of current zoning. When properly analyzed in the context of the Master Plan, which is the standard of the Birmingham ordinances, it is appropriate for the subject Property to share the same zoning classification as its immediate neighbors. As will be demonstrated in the next paragraph, the Property is incapable of supporting a structure built to current D-4 or B-3 zoning requirements.

The Property consists of two lots -- 469 and 479 -- which front Old Woodward and Woodward Avenue. The lots are in the “retail/red-line district” and under current zoning, each lot is severely restricted.

469 S. Old Woodward

The 469 lot width narrows as it extends east and has approximately 21 feet of Woodward Avenue frontage. The site has an existing 1 story, 2,900 square feet building, formerly used as a restaurant. Should this parcel be re-used, its only use (by necessity) would need to be a ‘nonconforming’ restaurant, since any change in use without a parking assessment district designation would require it to provide onsite parking for the new intended uses. However, since the restaurant has been closed for more than six months, it would not be eligible to continue as a nonconforming use!

Given the parcel’s narrow configuration, the only onsite parking that could be provided to satisfy the ordinance is two (2) spaces off of Woodward Avenue. Only two onsite parking spaces would limit the building footprint to approximately 300 to 600 square feet, depending on the permitted use. There is no practically feasible way to provide greater parking spaces.

479 S. Old Woodward

The 479 parcel has 211 feet of frontage on Hazel and approximately 40 feet of frontage on Old Woodward. This lot expands as it extends east to approximately 66 feet of Woodward Avenue frontage. The lot has an existing one-story, 11,826 square foot enclosure of which a small portion is a finished bank building. The balance is dedicated to a drive-thru lane for a drive-thru bank. Should this parcel be re-used, its only use (by necessity) must be a ‘nonconforming’ drive-thru bank since any change in use under the Ordinance would trigger onsite parking requirements for the new intended use. Also, drive-thru banks are specifically prohibited in the downtown Birmingham Overly District. See ordinance at Article 3(4)(C)(2)(b): “The following uses are prohibited...Drive-in facilities or any commercial use that encourages patrons to remain in their automobiles while receiving goods or services.”

Given lot 479’s configuration, the only onsite parking that would be practically feasible is approximately 13 spaces to be entered off of Woodward Avenue or Hazel. Thirteen onsite parking spaces would limit the building footprint to not more than from 1,950 square feet to

approximately 3,900 square feet, depending on the permitted use. It is possible for a new building to be multiple stories and this may allow for greater area on the ground floor for parking spaces. At most with a 2200 square foot ground floor, 27 parking spaces could be fit to the site. However, the building would be limited to approximately two stories and would not be contextual to the neighborhood. In essence, the lot would be converted partially to a surface parking lot.

Combined Lots

Seemingly, the combination of the two parcels would create greater opportunity to develop a project conforming to the Master Plan and the 2016 Downtown Plan goals for the B3/D4 zoning. Unfortunately, the combined parcel cannot meet the Master Plan and 2016 Downtown Plan goals of mixed uses and first floor retail without both onsite parking and underground parking. The Ordinance mandates main level retail (20' minimum in depth) on Old Woodward. Of course, onsite parking must be provided for any additional uses. This forces redevelopment toward uses with minimal parking requirements, such as hotels, which is what the Applicant proposes. As stated elsewhere in this letter, there are serious difficulties with building an underground garage within the D-4 design parameters that is deeper than two levels. Clearly, the current zoning unfairly forces the owner into an unreasonable position when considering the parcel's potential use and its place in the Downtown Overly District. Consequently, any such garage is limited to approximately 60 parking spaces.

To discuss these difficulties in a vacuum is not the intention of the Zoning Enabling Act. The Act at MCL 125.3203 provides that zoning must be determined according to a plan. Here, the Applicant attempted to explain to the Board that the site plan is impacted by the fact that the Property is not within the Parking Assessment District. Unfortunately, the Board refused to consider any site plan and its conformance to the 2016 Plan, putting such review off until the Applicant obtained rezoning. This placed the Applicant in a double-bind. He could not demonstrate the inappropriateness of current zoning without an analysis of how the Parking Assessment District, or lack thereof, affects the site plan design. Had the Applicant been allowed to at least discuss a site plan design in relation to the rezoning analysis, he would have demonstrated that there is no feasible option to develop the Property within the current zoning classifications outside of the Parking Assessment District. This would have been a valuable discussion of new information that should have at least been heard by the Planning Board.

Mischaracterization that the D-5 Ordinance was Passed Only to Make Three Properties Conforming

Two attorneys from the same law firm, as representatives of the residents of Birmingham Place, each separately addressed the Board during the June 27th hearing. The main thrust of their argument to the Board was that the only reason the D-5 Zone was added to the ordinance was in order to correct the non-conformity of the 555 Building, Merrill Wood and Birmingham

Place. They argued that the new Zone did not apply to any other properties. This assertion ignores the very careful hard work of the City Commission, the Planning Board, and the Administration. This claim is also clearly contrary to the history of the D-5 ordinances and to its plain language.

The history of the Planning Board's consideration of the D-5 Zone was outlined in detail by Ms. Ecker at the June 27th meeting. The Planning Board studied and considered the revisions to the ordinance for the South Old Woodward area for two years prior to adopting the D-5 Zone. In the Planning Department's Memorandum to the Planning Board, dated September 22, 2016, submitted to the Board for its September 28, 2016 study session, Ms. Ecker wrote: "The consensus of the Board was to allow additional height for new buildings in the D-5 zone district to match existing adjacent buildings, if the new building was constructed under the provisions of a SLUP."

During the June 27, 2018 hearing, Chairman Clein expressed (at time 2:10:25 of the hearing video), that during consideration of the new D-5 Zone, the Board considered the entire southern area of Downtown and positively did discuss the subject Property for potential property rezoning. However, the Board did not include the Property initially because no applicant or interested owner had come forward at that time. Mr. Jeffares also reiterated the same point (at time 1:48:30 of the hearing video). Ms. Ecker clearly stated (at video time 2:09:00) that the new D-5 Zone is a zoning classification that is not limited to the three non-conforming buildings (555 Building, Merrill Wood and Birmingham Place).

Despite clear evidence to the contrary, the mischaracterizations assumed in this hearing were espoused by Ms. Whipple-Boyce who indicated that she understood the D-5 Zone only applied to the three properties, and was not available for the Applicant's Property. These misrepresentations had a direct bearing on consideration of the Applicant's explanation of why the rezoning will not be detrimental to surrounding properties.

Sec. 7.02(B)(2)(b)(iii) - An Explanation of Why the Proposed Zoning will not be Detrimental to the Surrounding Properties

Both the adjacent and abutting properties are in the D-5 Zone. These misrepresentations that the D-5 is closed to other buildings led the Board to bypass the Applicant's D-5 site plan design. Instead the Board envisioned the abutment of a D-5 structure next to the Birmingham Place and the impact of such on the Birmingham Place residents. However, it is clear that when these neighboring properties were rezoned to D-5, the Planning Board anticipated that eventually the owner of the subject Property would apply to be rezoned for the reasons stated in this letter. The idea that an ordinance is created for only a few buildings, when the ordinance itself states otherwise, is unsupportable and unreasonable. Rezoning the subject Property to a D-5 Zone will be putting this parcel on equal footing with the surrounding properties from a structural, use and design perspective. The proposed rezoning will enhance the entire area by allowing it to be

developed as an attractive part of the South Old Woodward gateway and, most importantly, bring that area into compliance with the spirit and intent of the 2016 Master Plan. Many of the condominium owners from Birmingham Place who spoke out against the rezoning, as did their attorneys, will lose their views to the south even with a development compliant with current zoning. Please see the attached depiction of the D-4 height overlaid against the Birmingham Place (**Exhibit B**). However, the Board seemed to acknowledge the mootness of the alleged detriment to Birmingham Place given the potential impact of a conforming D-4 structure, and yet at least one member, Ms. Whipple-Boyce, still maintained that the D-5 Zone was intended to correct the non-conformance of only three properties.

The Board Failed to Make Required Findings of Fact under Ordinance Sec. 7.02(B)(5)

In making its decision on June 27th, the Board denied the Application based on Ordinance Sec. 7.02(B)(2)(b) and the required explanations imposed on the Applicant. As a result of its misunderstanding of the analysis required by the Zoning Amendments section of the Ordinance, the Board committed error in basing its decision on Sec. 7.02(B)(2)(b) rather than on the findings of fact required by Sec. 7.02(B)(5). Section 7.02(B)(5)(a-e) lists five findings the Board must make regarding the Application when making its recommendation to the City Commission. Without these findings by the Planning Board, the recommendation to the City Commission does not give the commission sufficient information to understand why this rezoning Application was denied.

- ***Sec. 7.02(B)(5)(a) - The objectives of the City's then current master plan and the City's 2016 Plan.***

The Board made no findings of fact with respect to the objectives of the City's current master plan and the City's 2016 Plan. A simple motion to deny a recommendation of rezoning was made "to recommend DENIAL to the City Commission of the applicant's request for the rezoning of the property at 469-479 S. Old Woodward Ave. from D-4 to D-5 in the Downtown Overlay." (See **Exhibit C**, June 27, 2018 meeting minutes, at p.10).

The Applicant, however, in its May 17, 2018 letter to the Board, submitted significant information relating to the conformance of D-4 to D-5 rezoning of the Property with the goals of the 2016 Master Plan to promote mixed uses and consistency in architectural details and massing to neighboring structures.

- ***Sec. 7.02(B)(5)(b) - Existing uses of the property within the general area of the property in question.***

The Board made no finding of fact with respect to uses of property within the area of the Property, although the Board acknowledged the D-5 zone to the immediate north and south of the Property. And as stated above, the Board coalesced around the conclusion that the Applicant had not "shown a D-4 building could not work."

In his May 17, 2018 supplemental letter to the Board, the Applicant explained the proposed mix-use of the development as retail, hotel and residential, all uses consistent with surrounding properties.

- ***Sec. 7.02(B)(5)(c) - Zoning classification of the property within the general area of the property in question.***

The Board acknowledged that the entire southern area of Birmingham has been studied for change in zoning possibly to a gateway district due to the established heights of the iconic 555 Building and the Birmingham Place Building. The Board acknowledged the recent rezoning of the abutting and adjacent properties to the D-5 Zone and the current zoning classifications of nearby properties. The Board did not make any findings that addressed the fact that the subject Property is not only located in the area of the D-5 zone, but actually is situated between two D-5 zoned parcels. The adjacent and abutting properties are zoned D-5.

- ***Sec. 7.02(B)(5)(d) - The suitability of the property in question to the uses permitted under the existing zoning classification.***

The Board made no findings of fact regarding the suitability of the Property in question to the uses under the existing zoning classification. The Board's discussion centered on the height of the proposed development under the D-5 versus the D-4. There was no finding or discussion of suitability to permitted uses. The Applicant directs the Board's attention here because the Property sits outside of the Parking Assessment District. The Board failed to engage with this fact and its implications on the Applicant's site plan, which has a significant negative impact on the Applicant's ability to use the Property within the uses promoted by the 2016 Plan. Again, without a factual finding, the Board concluded that the Applicant had not proven that a D-4 building would not work at the Property (June 27, 2018 hearing video, Chairman Clein, starting at video time 2:10:25).

- ***Sec. 7.02(B)(5)(e) - The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.***

There was little discussion of the trend of development in the general area, other than the discussion of the historical development of the 555 Building and Birmingham Place prior to their down-zoning in later amendments to the Ordinance. Again, the Board acknowledged the recent changes in zoning to the 555 Building and Birmingham Place, as well as a mention of a zoning variance obtained for the development of the Pearl property. However, the Board did not make a finding of fact regarding the trend of development and its relationship to its decision to deny the Applicant's request.

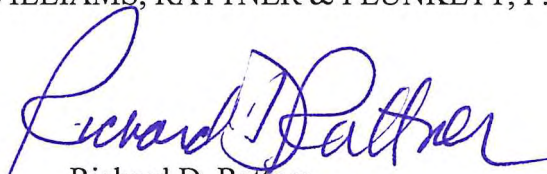
Conclusion

Applicant respectfully requests that this matter be referred back to the Planning Board to allow full consideration of the following:

- Report of the Planning Department concluding that the Petitioner had satisfied all of the ordinance requirements of Sec. 7.02(B)(5)(a-e). No contrary findings of fact were made by the Planning Board.
- The Property is the only D-4 property in the City *not* in the Parking Assessment District. The report in the Planning Department's packet to the Planning Board with regard to the CIS mistakenly stated that the Property was in the Parking Assessment District. This new fact is crucial to an accurate analysis of the rezoning request.
- The purpose of the D-5 ordinance was mischaracterized as merely an ordinance to correct only three buildings in the City. The ordinance clearly states otherwise, and there was much discussion during the years of meetings about the area of the City that should be considered for the D-5 zone.
- The standard used for the discussion of rezoning the Property was not a requirement of the zoning ordinance. An applicant must present facts that support the ordinances in Sec. 7.02(B)(5)(a-e) as well as Sec. 7.02(B)(2)(b)(i-iii). None of those ordinance sections requires the Applicant show that the Property cannot be used as zoned, contrary to what was discussed in the public hearing.

Very truly yours,

WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, P.C.



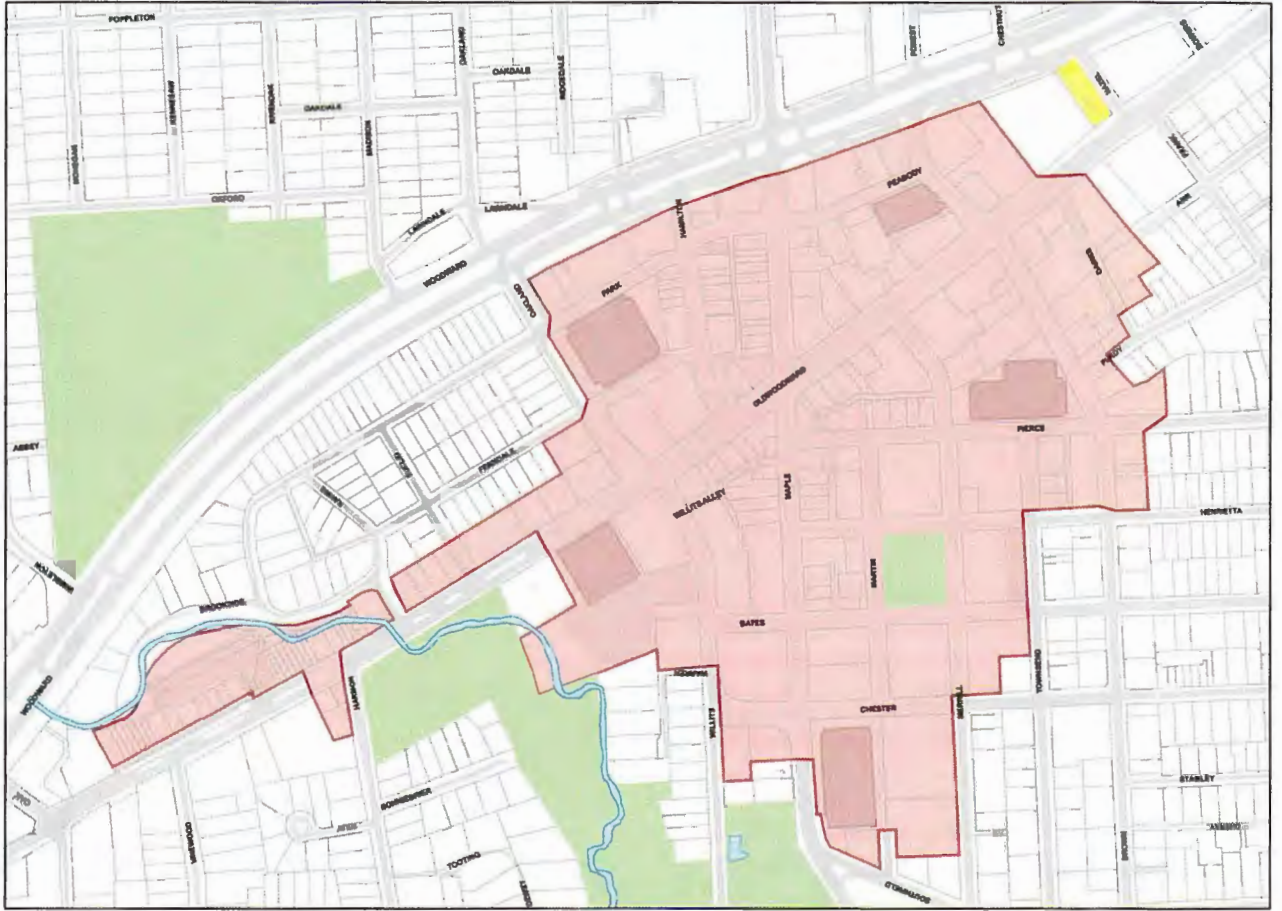
Richard D. Rattner

RDR/gsm

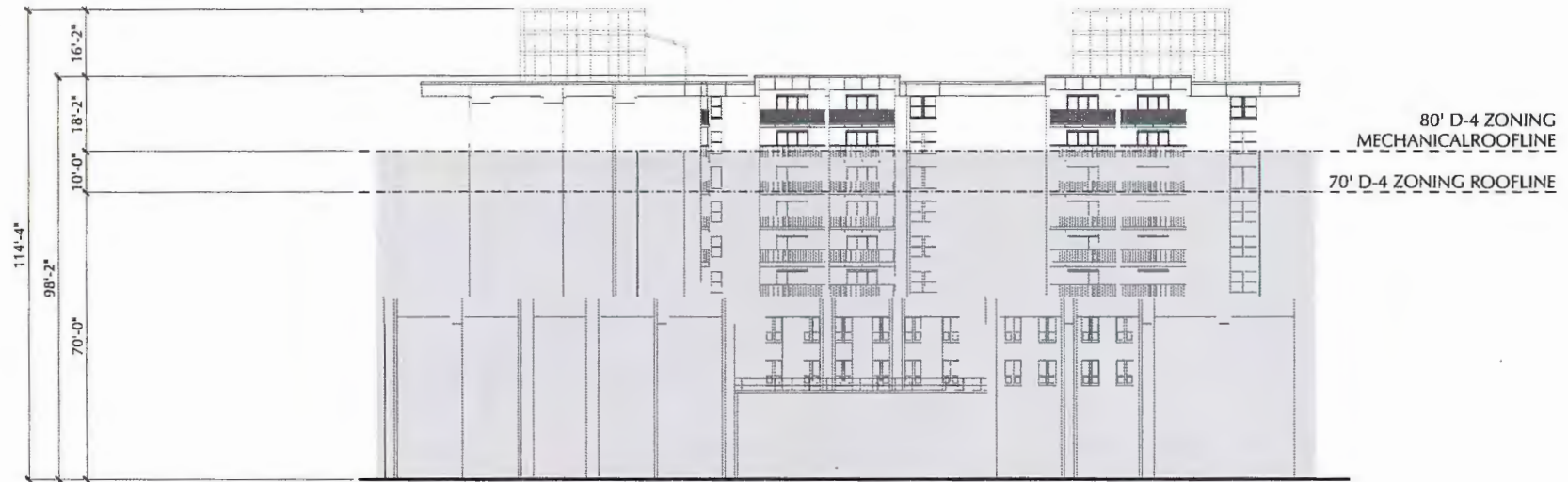
CITY OF BIRMINGHAM
DOWNTOWN PARKING ASSESSMENT DISTRICT



0 150 300 600 900 Feet



Project M1 - The Hazelton
 Birmingham Tower Partners, LLC
 469 + 479 South Old Woodward
 Birmingham, Michigan 48009



BIRMINGHAM PLACE HEIGHT COMPARISON DIAGRAM

CHRISTOPHER J LONGE AIA
 ARCHITECTURE
 INTERIORS
 124 Peabody, Birmingham, Michigan 48029 248.258.6943



**CITY OF BIRMINGHAM
PLANNING BOARD ACTION ITEMS
OF WEDNESDAY, JUNE 27, 2018**

Item	Page
SPECIAL LAND USE PERMIT ("SLUP") AMENDMENT REVISED FINAL SITE PLAN AND DESIGN REVIEW	
1. 260 N. Old Woodward Ave., The Morrie - Application for Special Land Use Permit ("SLUP") Amendment to allow the addition of a dance floor to the previously approved restaurant	2
Motion by Ms. Whipple-Boyce	2
Seconded by Mr. Koseck to recommend APPROVAL to the City Commission of the Final Site Plan and SLUP Amendment for 260 N. Old Woodward Ave., The Morrie, to add a dance floor to the previously approved plans with the condition that the applicant comply with Chapter 50, Noise, Division 4.	
Motion carried, 7-0.	2
2. 2010 Cole St. (currently vacant) - Application for Final Site Plan and Design Review to renovate the existing building and expand the parking lot	3
Motion by Mr. Jeffares	5
Seconded by Mr. Koseck to recommend APPROVAL of the Final Site Plan and Design Review for 2010 Cole St. subject to the following conditions:	
1. Applicant submit a signed letter from DTE approving the location of all electrical transformers;	
2. Applicant install City standard bike racks, benches and trash receptacles as required in the Rail District;	
3. Applicant submit all signage details to the Planning Division for approval, including specifications on any wall signs, canopy signs or address signs;	
4. Applicant add pedestrian striping on the west side of the building leading to the west entrance of the building.	
5. Applicant move the arborvitae screening to the north with Administrative Approval from the Planning Dept.	
6. Applicant comply with the requests of all City Departments.	
Motion carried, 7-0.	
REZONING APPLICATION	5
1. 469-479 S. Old Woodward Ave. (former Mountain King) - Request to rezone from B-3 and D-4 to B-3 and D-5 to allow a nine-story mixed-use building	

Item	Page
<p>Motion by Mr. Boyle</p> <p>Seconded by Mr. Jeffares that based on a review of the rezoning request and supporting documentation submitted by the applicant, a review of the applicable Master Plan documents and the development trends in the area, the Planning Board recommends APPROVAL to the City Commission for the rezoning of 469-479 S. Old Woodward Ave. from D-4 to D-5 in the Downtown Overlay.</p> <p>Motion failed, 2-5.</p> <p>Motion by Ms. Whipple-Boyce</p> <p>Seconded by Mr. Koseck to recommend DENIAL to the City Commission of the applicant's request for the rezoning of the property at 469-479 S. Old Woodward Ave. from D-4 to D-5 in the Downtown Overlay.</p> <p>Motion carried, 5-2.</p> <p>PRELIMINARY SITE PLAN REVIEW AND COMMUNITY IMPACT STUDY ("CIS")</p> <p>1. 469-479 S. Old Woodward Ave. (former Mountain King) - Application for Preliminary Site Plan and CIS to permit new construction of a nine-story mixed-use building</p> <p>Motion by Mr. Boyle</p> <p>Seconded by Ms. Whipple-Boyce to postpone this application to August 22, 2018 following the consideration of this rezoning application at the City Commission.</p> <p>Motion carried, 7-0.</p>	<p>5</p> <p>11</p> <p>11</p> <p>11</p> <p>11</p> <p>12</p> <p>12</p> <p>12</p>

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, JUNE 27, 2018**

City Commission Room
151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Planning Board held on June 27, 2018. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Janelle Whipple-Boyce; Alternate Board Members Jason Emerine, Nasseem Ramin

Absent: Board Members Daniel Share, Bryan Williams; Student Representatives Madison Dominato, Sam Fogel, Ellie McElroy

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

06-108-18

APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING OF JUNE 13, 2018

Mr. Jeffares made a correction:

Page 8 - Fourth paragraph from the bottom insert after "of," "office use for business to business."

Motion by Mr. Koseck

Seconded by Mr. Boyle to approve the Minutes of the Regular Planning Board Meeting of June 13, 2018.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Abstain: Emerine

Absent: Share, Williams

06-109-18

CHAIRPERSON'S COMMENTS (none)

06-110-18

APPROVAL OF THE AGENDA (no change)

06-111-18

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

1. 260 N. Old Woodward Ave., The Morrie - Application for Special Land Use Permit ("SLUP") Amendment to allow the addition of a dance floor to the previously approved restaurant

Mr., Baka recalled that this application has already been approved by the Planning Board and the applicant is coming back for one change. On May 14th, 2018, the applicant went before the City Commission and indicated that they were also proposing to move tables to clear a dance area when needed. The City Commission determined that a dancing area was not in the original scope or shown on the plans; therefore it must be re-reviewed by the Planning Board.

The applicant has submitted a SLUP Amendment application with associated site plans depicting the location and size of a dancing area proposed in their dining room. The dance floor measures 10 ft. by 38 ft. and is located in front of the raised booth seating area.

At 7:32 p.m., there were no comments from the audience on the proposal.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Koseck to recommend APPROVAL to the City Commission of the Final Site Plan and SLUP Amendment for 260 N. Old Woodward Ave., The Morrie, to add a dance floor to the previously approved plans with the condition that the applicant comply with Chapter 50, Noise, Division 4.

Motion carried, 7-0.

There were no comments from the public on the motion at 7:35 p.m.

VOICE VOTE

Yeas: Whipple-Boyce, Koseck, Boyle, Clein. Emerine, Jeffares, Ramin

Nays: None

Absent: Share, Williams

06-112-18

2. 2010 Cole St. (currently vacant) - Application for Final Site Plan and Design Review to renovate the existing building and expand the parking lot

Mr. Baka advised the subject property, located in the Rail District, is a 0.77 acre site currently containing a single-story commercial building and a parking lot. The applicant is proposing to renovate the existing building to allow for three tenant spaces consisting of retail, fitness and potentially storage uses. The existing parking lot is proposed to be expanded, while the landscaping and streetscape will also be improved. The building is proposed to receive new

paint, awnings, lighting and architectural detail. Also, the applicant would like to screen the loading space with arborvitae.

The applicant engaged in a pre-application discussion with the Planning Board on May 23, 2018. At that time the applicant described the plan to beautify and fill the current building to bring the site back into function while the property owners work on a plan to redevelop the entire property in the future. Planning Board members asked the owners to provide active first-floor uses to activate the street, as well as add glazing and architectural details to break the monotony of the existing blank walls.

The submitted site plan shows a new electrical transformer adjacent to the dumpster enclosure at the southeast corner of the property that is screened with arborvitae. The applicant has noted that DTE has been contacted regarding the transformer location and that DTE approval will be acquired in regards to the location. The applicant must still submit a signed letter from DTE approving the location of all electrical transformers.

The applicant is proposing to expand and rework the existing parking lot to a 38 space lot containing both additional landscaping and two ADA parking spaces. The parking requirement for the three tenants is 12 spaces.

Design Review

The applicant is proposing new renovations that include new paint, awnings, lighting and architectural details including new windows and doors along the north and west elevations. Eight new door/window installations with dark bronze metal frames are proposed along the north and west elevations. Four open-ended canvas awnings are also proposed over the new window/door installations. The doors, windows and awnings help to break up the vast blank space that currently exists on the walls.

Article 4, section 4.90 of the Zoning Ordinance requires buildings in the MX Zoning District to provide a minimum of 70% glazing on any ground floor façade that faces a street or parking area.

Signage: The applicant has indicated that the northern portion of the wall on the west elevation will be a potential location for tenant signage. The applicant is also proposing to place their address sign on the parking lot screen wall in front of the building. The applicant must submit all signage details to the Planning Dept. for approval, including specifications on any wall signs, canopy signs or address signs. The applicant has now submitted material samples of each newly proposed material (including new glass, awning fabric, patio pavers) to complete the Design Review.

In response to Mr. Koseck, Ms. Ecker explained the City is in the process of figuring out the street lighting in the Rail District. DTE has installed three different types of lights with three different types of globes, along with different fixtures throughout the Rail District and none of them are correct since the first installation at Armstrong White on E. Lincoln. Basically the negotiations with DTE to correct the problem are down to cost right now.

Mr. Boyle noticed that the plans do not show a safe pedestrian zone through the parking lot. Further, Mr. Boyle noted on the west facade of the building there are grey awnings with small windows underneath; but no windows on the large section that is adjacent to the patio.

Mr. Koseck pointed out that the plans show the driveway bisects the sidewalk. Mr. Baka replied that the Engineering Dept. has stated that the sidewalk must maintain its current configuration by placing it through the driveway approach.

Mr. Baka agreed with Mr. Emerine that clarification is needed because the applicant is required to have six trees in the parking lot and ten are shown in the site plan.

Mr. Jason Krieger, Krieger Klatt Architects, was present with Mr. Tom Lasky and Mr. Andy Petcoff from the ownership, along with Mr. Brian Kowalski, the project architect. Mr. Krieger said the site plan is correct regarding the trees. The windows on the west elevation are up high because a fitness center is proposed and they tried to maintain as much wall space as possible for them. They are trying to add more fenestrations and glass. Windows have been added on the southwest corner of the building. On the north elevation the windows have been lowered down to the ground to create more of a storefront feel.

Their proposal is to basically clean up the building, paint it, improve it, and then occupy it. They will comply with City standards for lights, trash cans, and benches. With regard to the parking lot, they hope to keep as much as they can and add on to it in compliance with City engineering standards. Personally, he would rather see more screening closer to Cole St., behind the retaining wall, and not right at the loading area where it might get hit. Then, just leave the loading zone as a striped area. Mr. Koseck agreed, because typically there is no truck parked in the loading space. He suggested that Mr. Krieger could work with staff to shift the arborvitae to the north where it wouldn't be hit. Additionally, Mr. Koseck thought it would be nice to have some planter boxes in the patio area just to soften it. Mr. Krieger agreed that the patio should be broken up a little with some greenery.

Mr. Krieger explained that tenant to the north is a cabinet shop and the south tenant space is vacant.

Responding to Mr. Boyle, Mr. Krieger said did not see a problem with putting in a pedestrian safety path through the parking lot to the entrance of the center. However they might lose one parking space.

No one from the public cared to comment on the proposal at 8:01 p.m.

Motion by Mr. Jeffares

Seconded by Mr. Koseck to recommend APPROVAL of the Final Site Plan and Design Review for 2010 Cole St. subject to the following conditions:

- 1. Applicant submit a signed letter from DTE approving the location of all electrical transformers;**
- 2. Applicant install City standard bike racks, benches and trash receptacles as required in the Rail District;**
- 3. Applicant submit all signage details to the Planning Division for approval, including specifications on any wall signs, canopy signs or address signs;**
- 4. Applicant add pedestrian striping on the west side of the building leading to the west entrance of the building.**
- 5. Applicant move the arborvitae screening to the north with Administrative Approval from the Planning Dept.**
- 6. Applicant comply with the requests of all City Departments.**

At 8:05 p.m. there were no comments on the motion from members of the audience.

Motion carried, 7-0.

VOICE VOTE

Yeas: Jeffares, Koseck, Boyle, Emerine, Klein, Ramin, Whipple-Boyce

Nays: None

Absent: Share, Williams

06-113-18

REZONING APPLICATION

1. 469-479 S. Old Woodward Ave. (former Mountain King) - Request to rezone from B-3 and D-4 to B-3 and D-5 to allow a nine-story mixed-use building

Chairman Clein said that judging from all of the letters that have been received related to this project, it is very clear that the residents of Birmingham Place oppose the rezoning. All of the letters will be added to the record.

Ms. Ecker explained the applicant for 469-479 S. Old Woodward is requesting that the Planning Board hold a public hearing to consider the rezoning of the property from B-3 (Office Residential) and D-4 (Downtown Overlay) to B-3 (Office Residential) and D-5 (Downtown Overlay). The applicant is seeking the rezoning to allow for the construction of a nine-story mixed-use building with three levels of underground parking in between the Birmingham Place and the 555 Building. The maximum height allowed in the D-4 Zoning District is 4-5 stories. In the D-5 Zoning District, developers may build as high, but no higher than the adjacent buildings which are located in the D-5 Zone. The 0.423 acre subject site spans Hazel St. from S. Old Woodward Ave. to Woodward Ave. The site currently contains two vacant single-story commercial buildings (formerly Mountain King Restaurant and Talmer Bank). The applicant is proposing to demolish the present buildings for the construction of a ten-story mixed-use building.

The applicant has noted that when the zoning was changed down to one or two floors in the 1970s, the 555 Building and Birmingham Place were designated to a legal non-conforming use because their height was not allowable. Ultimately, the zoning was changed to D-4 in 1996 by the adoption of the 2016 Plan and the Downtown Overlay that raised the height up to a maximum of five stories Downtown. In 2017, a new D-5 Zone was created to bring the 555 Building, the Merrillwood Building and Birmingham Place into a legal conforming status. The subject property is located between Birmingham Place and the 555 Building, both of which are zoned D-5 currently.

Ms. Ecker went through the three items that the applicant must demonstrate for the rezoning of a property and the applicant's reasons as to how they feel they have met them.

Ms. Ecker then went through the planning analysis based on the evidence provided by the application. Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable Master Plan documents, current zoning and recent development trends in the area, the Planning Dept. finds that the applicant meets the established ordinance requirements to qualify for a rezoning of the property from D-4 to D-5 in the Downtown Overlay District for the purpose of building as high, but no higher than, the building to the north, Birmingham Place.

Answering Mr. Boyle, Ms. Ecker said the Master Plan which dates back to 1980 did not give specific height requirements like the 2016 Plan recommended. Under the 2016 Plan the recommended height in the Downtown was a maximum of five stories. The 555 Building submitted an application to the City and to the Planning Board to consider creating a new category that would make them a legal and conforming building that would allow them to receive financing to renovate the building and bring it up to current standards in the marketplace. The D-5 Ordinance was crafted by the Planning Board as a result of that application and included the other two buildings in a similar situation.

Mr. Rick Rattner, Attorney, Williams, Williams, Rattner & Plunkett, PC, emphasized that in the D-5 going above five stories subjects the property to a Special Land Use Permit ("SLUP") which is different than just building as of right. Secondly, in 2016 Andres Duany commented favorably on the 555 Building and on Birmingham Place.

He presented a PowerPoint that went to four issues that have to do with rezoning:

- Rezoning Amendment - Sec. 7.02 (B) (2) (b) (i)-(iii) requires that as part of an application for rezoning, the petitioner should address certain issues to be considered by the Planning Board and the City Commission.
- Sec. 7.02 (B) (2) (b) (i) - An Explanation of Why the Rezoning is Necessary for the Preservation and Enjoyment of the Rights and Usage Commonly Associated with Property Ownership. Without the ability to go higher with a new building than the zoning allows, the applicant will not have the required area within which to locate a mix of uses that would commonly be associated with the design of a modern, mixed-use building.
- Sec. 7.02 (B) (2) (b) (ii) - An explanation of Why the Existing Zoning Classification is No Longer Appropriate. It is reasonable for the subject property to share the same zoning classification as its surrounding neighbors. Given the location of the subject property sandwiched between two properties in the D-5 Zone, the D-4 Zone is no longer appropriate.
- Sec. 7.02 (B) (2) (b) (iii) - An Explanation of Why the Proposed Zoning will not be Detrimental to the Surrounding Properties. The proposed rezoning will enhance the entire area by allowing it to be developed as an attractive part of the S, Old Woodward gateway and bring that area into compliance with the spirit and intent of the 2016 Plan.

Mr. Rattner concluded by asking the Planning Board to favorably recommend that they are able to use their property and preserve their rights of usage, fit into the streetscape, fit the Master Plan and fit all elements of this Ordinance because they meet every single one of them.

At 8:45 p.m. the Chairman opened the meeting to public comments.

Ms. Susan Friedlander, 1564 Henrietta, attorney for Birmingham Place Residential Condominium Association, made the following points:

- The City created the D-5 District for a singular and special purpose which was to bring several buildings into conforming status.
- The proposed building is not sandwiched between the 10-story Birmingham Place and the 15-story 555 Building - there is Hazel, a 50 ft. right-of-way that provides a proper transition between buildings. There is not even a height difference, because the building that is immediately adjacent to Hazel is 77 ft. tall. So if this proposed building went up to 80 ft, which it is allowed to do under D-4 it would be very consistent with the building right across the street. There would be a perfect transition. It would only be 34 ft. shorter than Birmingham Place.

- If the proposed building is zoned D-5, what about the building on the north, the Powerhouse Building, Jax Car Wash or the Varsity Building. Why shouldn't they get the D-5 Zoning as well?
- There is a process that must be followed so that property is not rezoned on an ad hoc and an arbitrary basis.

Mr. Tom Lasky, 2006 Cole, spoke in support of the rezoning request. This is the face of new Birmingham and will be done responsibly.

Mr. Mike Humphrey, who lives in Birmingham Place, said there is nothing in the record that shows that the D-5 Overlay was created to do anything other than to make the three tall existing buildings legal and conforming. The developer bought the property knowing how it was zoned; but now they say that they cannot develop a four or five-story mixed-use building there. If the City is going to change the Master Plan, go for it, but do it with professional study and community involvement; not a piece at a time.

Mr. David Nykian, 40700 Woodward Ave., said he represents some of the owners in the Birmingham Place Condominium. He believes the facts lead to the conclusion that the D-4 Zoning is actually clearly appropriate for this property:

- The D-5 District was created just to address the non-conformities of three buildings. So the City has already made the decision in the past as to what zoning is appropriate for this site.
- Nothing about the property has changed since then that should cause the City to alter its conclusion about what the appropriate height is.
- The height of the 555 Building on the north is 77 ft. So if the subject site were developed today under D-4, it could be taller than the 555 Building.
- Breaking up the building heights would provide more of an architectural character to the City than one monolithic height across the entire street.
- There is nothing under the D-4 Zoning classification that that would prohibit the developer from developing a mixed-use development.
- The only things that would change by amending the classification from D-4 to D-5 are the height of the building and the profit margin of the developer.

Mr. Mickey Schwartz, 411 Old Woodward Ave., stated that infill has nothing to do with height equality. So he thinks the developer has to have a better excuse for building a 10-story building. The small town feeling is what is unique about Birmingham. Deny the rezoning request.

Dr. Cynthia Neil, a resident of Birmingham Place, said she was deeply offended by the petitioner's statement that the development would not adversely affect the residents. From her balcony she would be able to bounce a tennis ball against the wall of the proposed building.

Mr. Chris Jonna, C&P Real Estate Group, spoke in support of the project. The applicant builds nothing but first-class buildings. Increasing the zoning classification will be a tremendous benefit to Downtown Birmingham by bringing in more people to the area.

Mr. Lewis Rockind, a resident of Birmingham Place, emphasized that the zoning has to be contemplated in the context of what is intended to be developed. As a resident of Birmingham Place he is looking at the detrimental effect on the surrounding properties of increased vehicle and pedestrian traffic.

Mr. Daniel Jacob, 261 E. Maple Rd., said he is 100% in support of the project. The intended use of the property is much needed and would be a huge benefit to the City. Birmingham is changing and this project moves with the times.

Mr. Joseph Shalala, 255 S. Old Woodward Ave., spoke in support of the proposed building. It will support all of the small businesses by bringing in people such as office, residential, and hotel users. All of those things combined will help Birmingham.

Ms. Tony Schwartz, 411 Old Woodward Ave., maintained that it is the height of the building that is in question here, not its quality. Secondly, traffic is a big problem on that corner. There is a new hotel that is starting to be built on the corner of Brown and Old Woodward which will add more traffic to that corner. She understands there may be a pool deck on the top floor of the proposed building - who is going to control music and noise and parties. She lives right across on the tenth floor.

Chairman Clein advised that concerns related to traffic and noise are not part of a rezoning but would be handled under a Site Plan Review, and should this be moved forward to a rezoning the applicant would be required to obtain a Special Land Use Permit ("SLUP") which allows the City Commission to put additional restriction on the uses of the building.

Mr. Duraid Markus, one of the partners in the ownership entity for 469-479 S. Old Woodward Ave. (former Mountain King and Talmer Bank), said if this happened in New York, Chicago or LA there would not be a single skyscraper built. He noted that everybody who opposes this is only one contingent, and it has not been the entire City that comes in to support or not support.

It makes sense to build where the project is harmonious and fits in with the rezoning proposal. For those reasons he asked the board to consider all of the comments and make the decision to allow them to rezone the parcel.

Ms. Wilma Thelman who lives in Birmingham Place said none of them have heard why a conforming building cannot be built on that site.

Mr. Jeffares noted that things change and now Birmingham holds 21 thousand people. Secondly he recalled that the Board did discuss rezoning the subject property; however there was nobody from there to make their case so the Board just rezoned the existing buildings.

Mr. Koseck advised that D-4 Zoning allows a building to be built to 80 ft. So it will already block six floors of Birmingham Place. He did not believe the applicant's contention that they cannot make a five-story building work. He thought that a five-story could be a successful mixed-use building. In some ways it might even fit the form and the transition better and the upper three floors of Birmingham Place will not be affected.

Ms. Whipple-Boyce said when the Board established the D-5 Zoning Classification she felt it applied to three specific buildings. In her mind it had to do with bringing non-conforming buildings into conformity so that they could qualify for financing and improve their properties. Thinking about some of the other properties that could be affected down the road that are adjacent to other properties like this is an unanswered question for her. It causes her to hesitate tonight on recommending the rezoning to D-5.

Mr. Boyle made the following points:

- The Master Plan is meant to have the ability to adapt to changing circumstances. Similarly, zoning is powerful when it is able to adapt. So, change is normal; it is not frequent, but it is usual.
- He was positive about the potential impact on the City as a whole of rezoning this property.
- The potential impact of rezoning on the contiguous properties will affect a number of people. The Board is here to determine who has the weight in this particular discussion, the entire City or the adjacent neighbors.
- There are checks and balances built into the system. If the rezoning were to be approved, the community would have two elements to be brought to the table. One would be the Site Plan Review process, and secondly the height would kick in the SLUP where the Planning Board can recommend controlling modifications to the City Commission who will hold a public hearing on the proposal.
- At the end of the day he is of a mind to approve the rezoning because overall he sees the benefits for the City and for this particular area. However, he does not underestimate the cost for the immediate residents in the contiguous building.

Ms. Ramin stated one of the burdens the applicant must carry to justify rezoning is an explanation of why the existing D-4 classification is no longer appropriate.

Mr. Duraid Markus said they cannot get in a hotel concept on this little parcel so they have to go vertical by a couple of floors. He has to be honest, it is the economics. He cannot get a development off the ground. They are not in the Parking Assessment District and are therefore limited by the required parking for an office building or a restaurant.

Answering Mr. Emerine, Ms. Ecker explained that anyone on any site on any site can apply for a rezoning to any of the existing zoning classifications.

Chairman Clein commented that rezoning is the most difficult thing the Board has to do - balancing the rights of adjacent land owners. To Ms. Ramin's point, the burden has not been met as to why a five-story building will not work. The answer that was given was economics, which has no place in a rezoning discussion. Therefore, he is not supportive of the rezoning.

Mr. Jeffares said he cannot come up with a reason for the height of the proposed building to be lower.

Ms. Whipple-Boyce indicated she has no problem with the subject building being built as high as Birmingham Place. But she doesn't think the applicant has made the case that they deserve to be rezoned and that the current zoning classification is no longer appropriate. She was appalled to hear the applicant say they bought this property and the only thing that will work there is a ten-story hotel and it should be rezoned because that is what they want to build. Therefore she doesn't think the applicant has proved their case.

Mr. Rattner noted that maybe the best thing for them to do is to ask for postponement so they can come back with a different plan. Chairman Clein stated that for him postponing would just be kicking the can down to another meeting. Mr. Boyle said he is in favor of not accepting that proposal and actually making a motion this evening.

Motion by Mr. Boyle

Seconded by Mr. Jeffares that based on a review of the rezoning request and supporting documentation submitted by the applicant, a review of the applicable Master Plan documents and the development trends in the area, the Planning Board

recommends APPROVAL to the City Commission for the rezoning of 469-479 S. Old Woodward Ave. from D-4 to D-5 in the Downtown Overlay.

There were no comments from the public on the motion at 10 p.m.

Motion failed, 2-5.

ROLLCALL VOTE

Yeas: Boyle, Jeffares

Nays: Clein, Koseck, Emerine, Ramin, Whipple-Boyce

Absent: Share, Williams

Motion by Ms. Whipple-Boyce

Seconded by Mr. Koseck to recommend DENIAL to the City Commission of the applicant's request for the rezoning of the property at 469-479 S. Old Woodward Ave. from D-4 to D-5 in the Downtown Overlay.

Motion carried, 5-2.

ROLLCALL VOTE

Yeas: Whipple-Boyce, Koseck, Clein, Emerine, Ramin

Nays: Jeffares, Whipple-Boyce

Absent: Share, Williams

06-114-18

PRELIMINARY SITE PLAN REVIEW AND COMMUNITY IMPACT STUDY ("CIS")

1. 469-479 S. Old Woodward Ave. (former Mountain King) - Application for Preliminary Site Plan and CIS to permit new construction of a nine-story mixed-use building

Motion by Mr. Boyle

Seconded by Ms. Whipple-Boyce to postpone this application to August 22, 2018 following the consideration of this rezoning application at the City Commission.

There was no discussion from the public on the motion at 10:02 p.m.

Motion carried, 7-0.

VOICE VOTE

Yeas: Boyle, Whipple-Boyce, Clein, Emerine, Jeffares, Koseck, Ramin

Nays: None

Absent: Share, Williams

06-115-18

MISCELLANEOUS BUSINESS AND COMMUNICATIONS

a. Communications (none)

b. Administrative Approval Requests

- 2211 Cole, Cole II - Approval for screening of two rooftop units.
- East of Woodward Ave. and north of Bennaville, parking lot - Renovate existing parking lot to increase number of parking spots, install new screen wall per code.
- Mr. Baka brought forward a request from a resident of Crosswinds to add to their outdoor deck motorized screening that rolls up and down. It is fastened to the building and would need a permit. The neighbor put one up too. Ms. Ecker said it is a design change from what was approved for the deck and there was not a Building Permit issued. Consensus was they should come to the Planning Board for approval and that Board members should visit the site.

c. Draft Agenda for the next Regular Planning Board Meeting of July 11, 2018

- Bistro Regulations;
- Ongoing discussion of first-floor retail;
- Discussion on parking.

d. Other Business

- Ms. Ecker noted the SLUP request for 191 N. Chester was approved at the City Commission to allow the office use in the old Church of Christ Scientist Bldg.
- The Hazel, Ravines, Downtown SLUP was also approved.
- Also, the Commission established the Master Plan Selection Committee.

06-116-18

PLANNING DIVISION ACTION ITEMS

Staff report on previous requests (none)

Additional items from tonight's meeting (none)

06-117-18

ADJOURNMENT

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

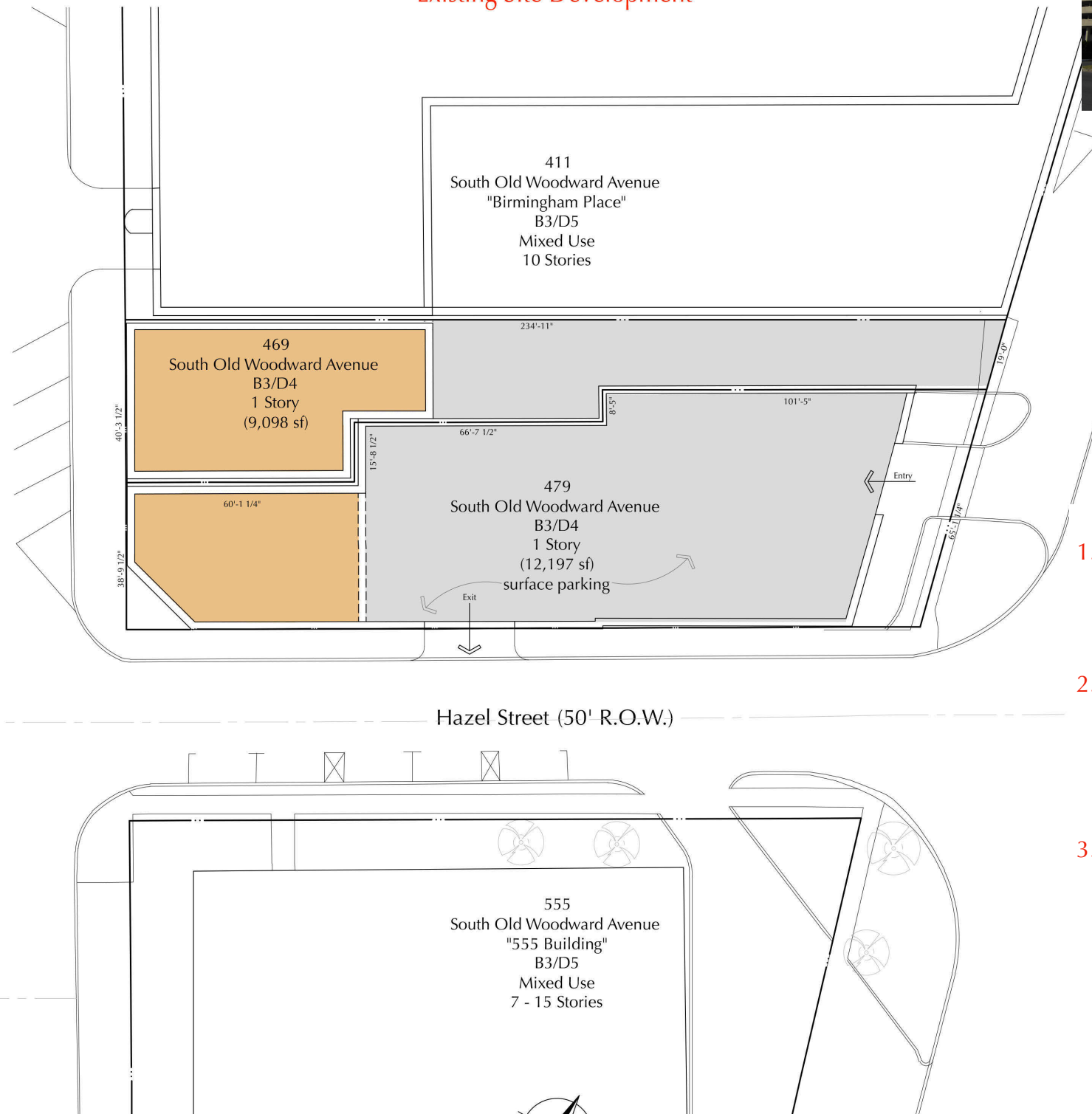
**Jana L. Ecker
Planning Director**



Project M1

Markus Management Group LLC
469 + 479 South Old Woodward Avenue
Birmingham, MI 48009

Existing Site Development



Use and Parking Data

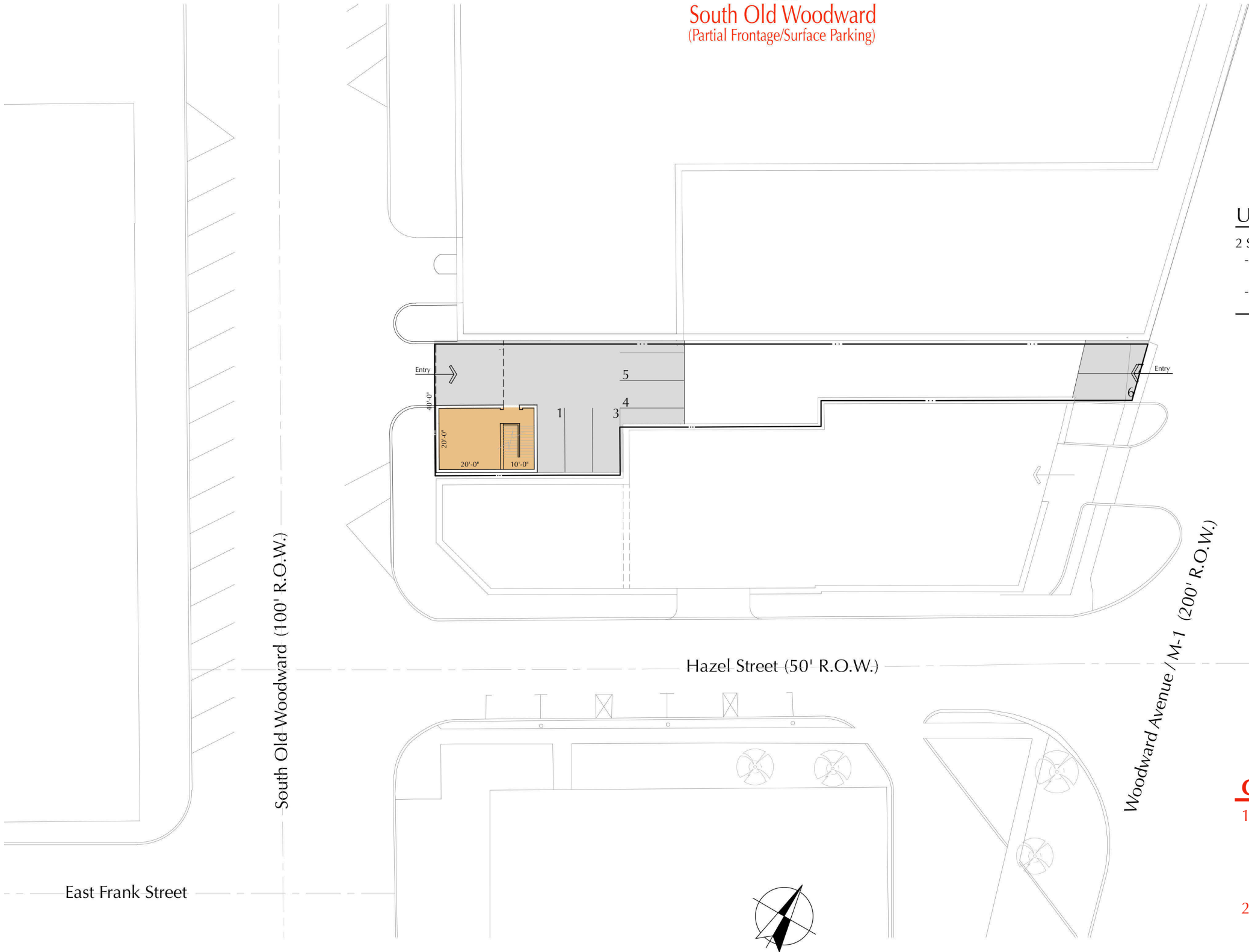
Current Use	
- 469 2,516 sf Restaurant / 75 =	39 Spaces
- 479 1,873 sf Bank / 150 =	16 Spaces
Total Required	55 Spaces

1. Cannot redevelop either site with the same use or building size and provide adequate parking
2. Cannot redevelop either site with a single-story building (required to meet the 'Downtown Birmingham Overlay Ordinance').
3. Combined sites have 3 separate frontages that are required to meet the 'Downtown Birmingham Overlay Ordinance'.



Project M1
Markus Management Group LLC
469 + 479 South Old Woodward Avenue
Birmingham, MI 48009

469
South Old Woodward
(Partial Frontage/Surface Parking)



Use and Parking Data

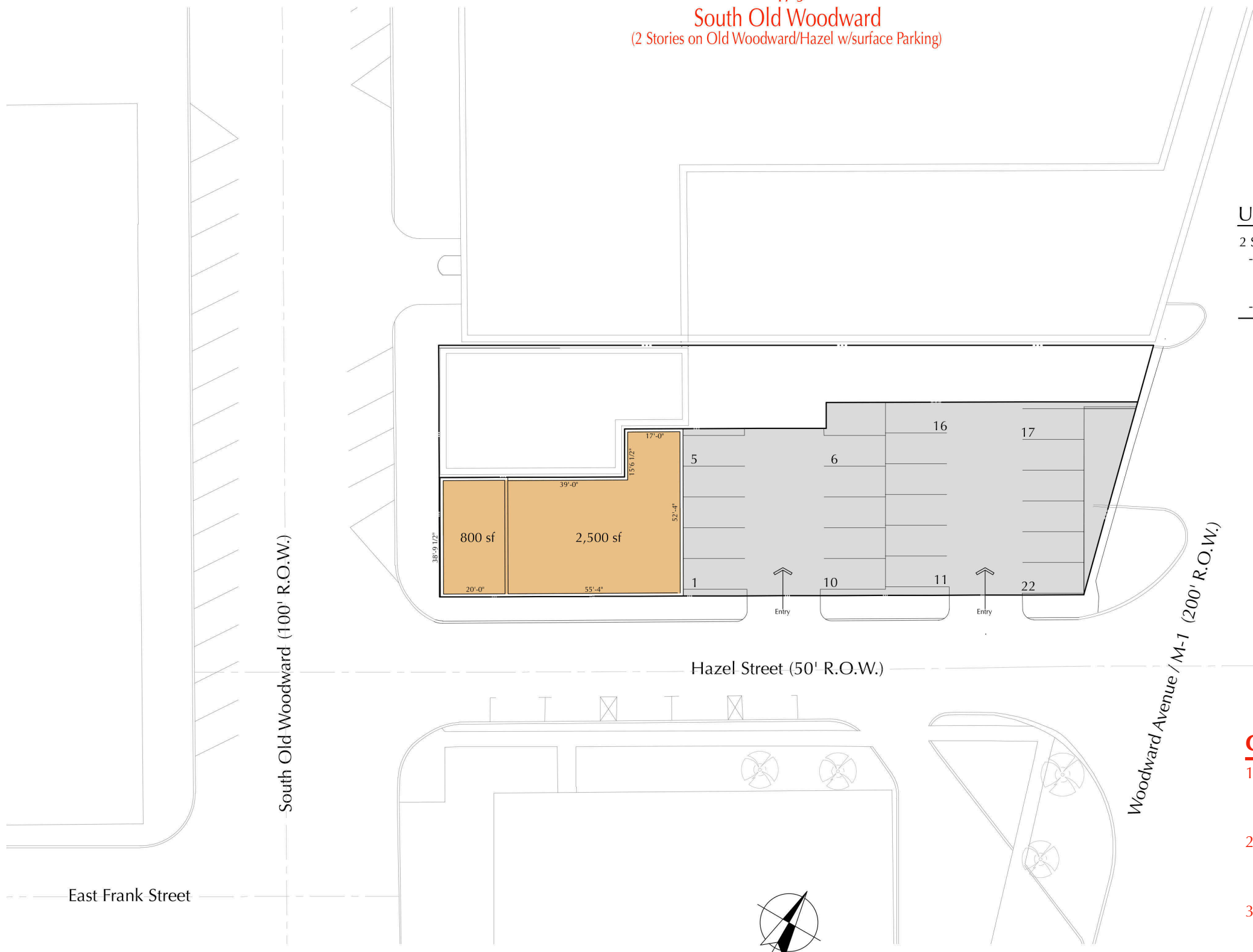
2 Story Building		
-	600 sf Retail (1st) / 300 =	2 Spaces
-	800 sf Office (2nd) / 150 =	5.3 Spaces
Total Required		7.3 Spaces
Total Provided		7 Spaces

Comments

1. Provides 1,400 square feet of 2 story mixed-use building with surface parking.
2. Leaves 5,750 sf of undeveloped property

Project M1
Markus Management Group LLC
469 + 479 South Old Woodward Avenue
Birmingham, MI 48009

479
South Old Woodward
(2 Stories on Old Woodward/Hazel w/surface Parking)



Use and Parking Data

2 Story Building	
- 800 sf x 2 = 1,600 sf	
Retail (1st & 2nd) / 300 =	5.3 Spaces
- 2,500 sf Office (1st) / 150 =	16.7 Spaces
Total Required	22 Spaces
Total Provided	22 Spaces

Comments

1. Provides 2 story frontage (retail) on South Old Woodward
2. Provides 1 story office partially on Hazel
3. Surface parking occupies all of Woodward Avenue and most of Hazel



Project M1
Markus Management Group LLC
469 + 479 South Old Woodward Avenue
Birmingham, MI 48009

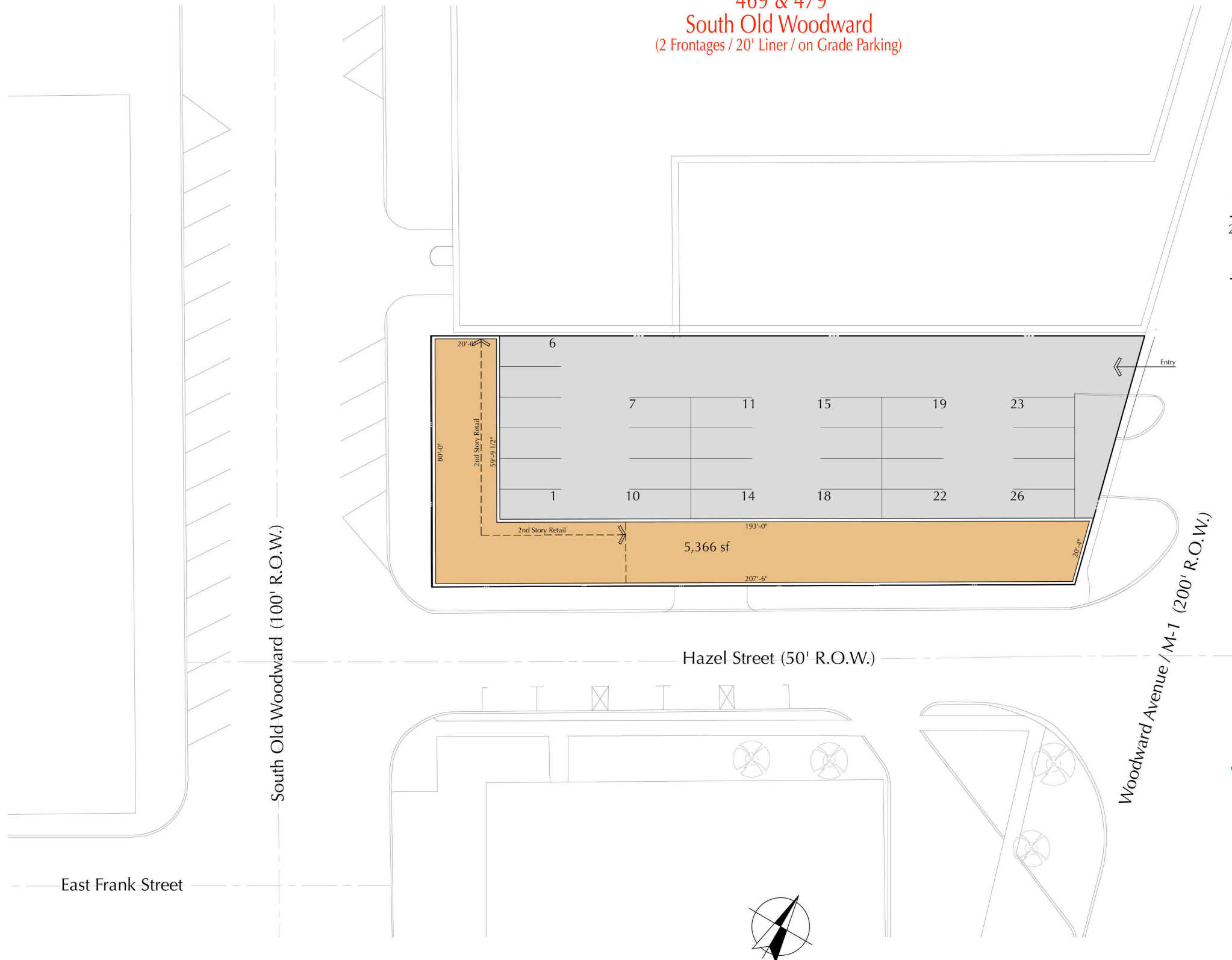
469 & 479
South Old Woodward
(2 Frontages / 20' Liner / on Grade Parking)

Use and Parking Data

2 Story Building (Retail)

-	5,366 sf Retail (1st) / 300 =	17.9 Spaces
-	2,434 st Retail (2nd) / 300 =	8.1 Spaces

Total Required	26 Spaces
Total Provided	26 Spaces

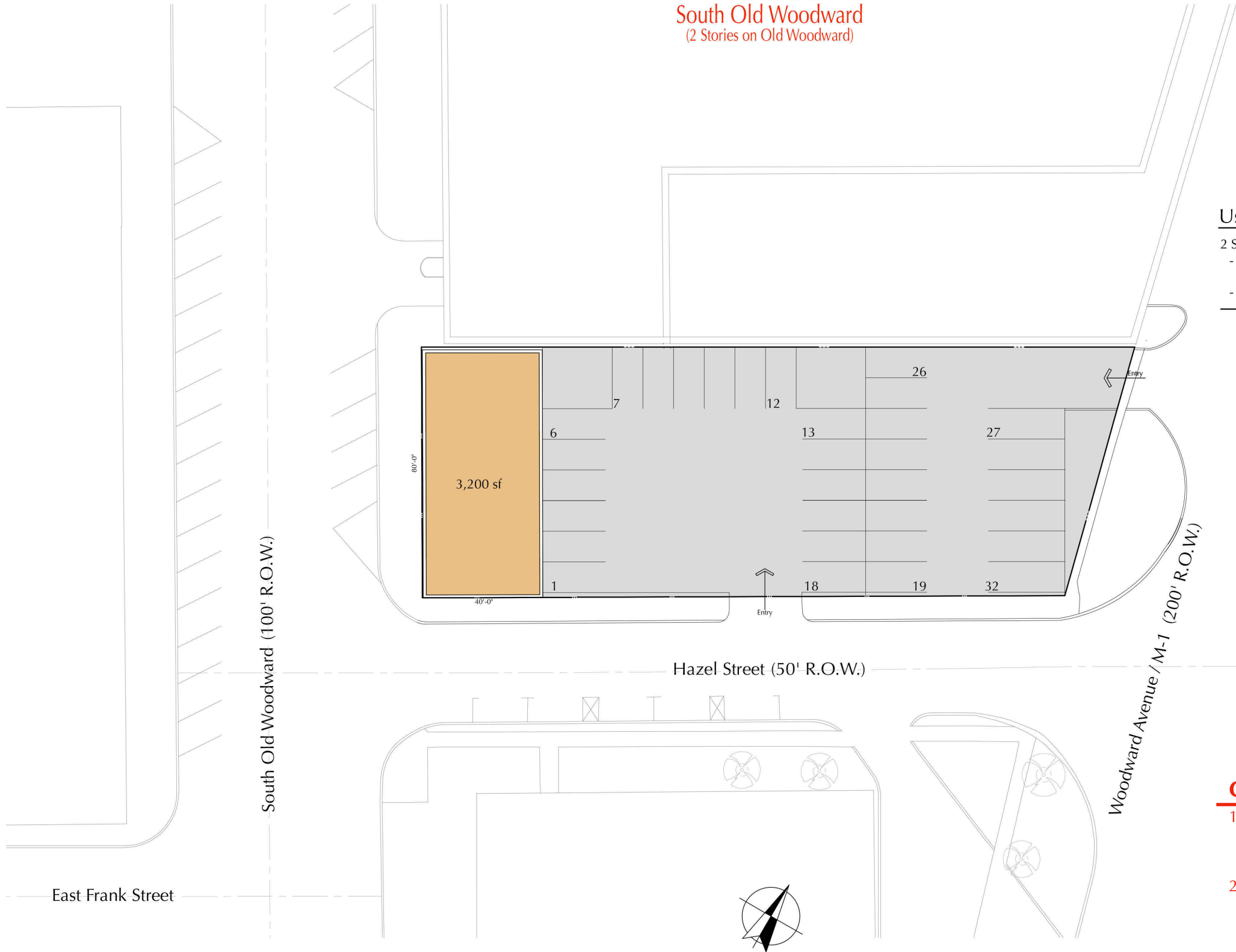


Comments

1. Provides 2 story/single-use (retail) on south Old Woodward
2. Provides 2 story/single-use (retail) partially on Hazel
3. Surface parking occupies most of Woodward Avenue

Project M1
Markus Management Group LLC
469 + 479 South Old Woodward Avenue
Birmingham, MI 48009

469 & 479
South Old Woodward
(2 Stories on Old Woodward)

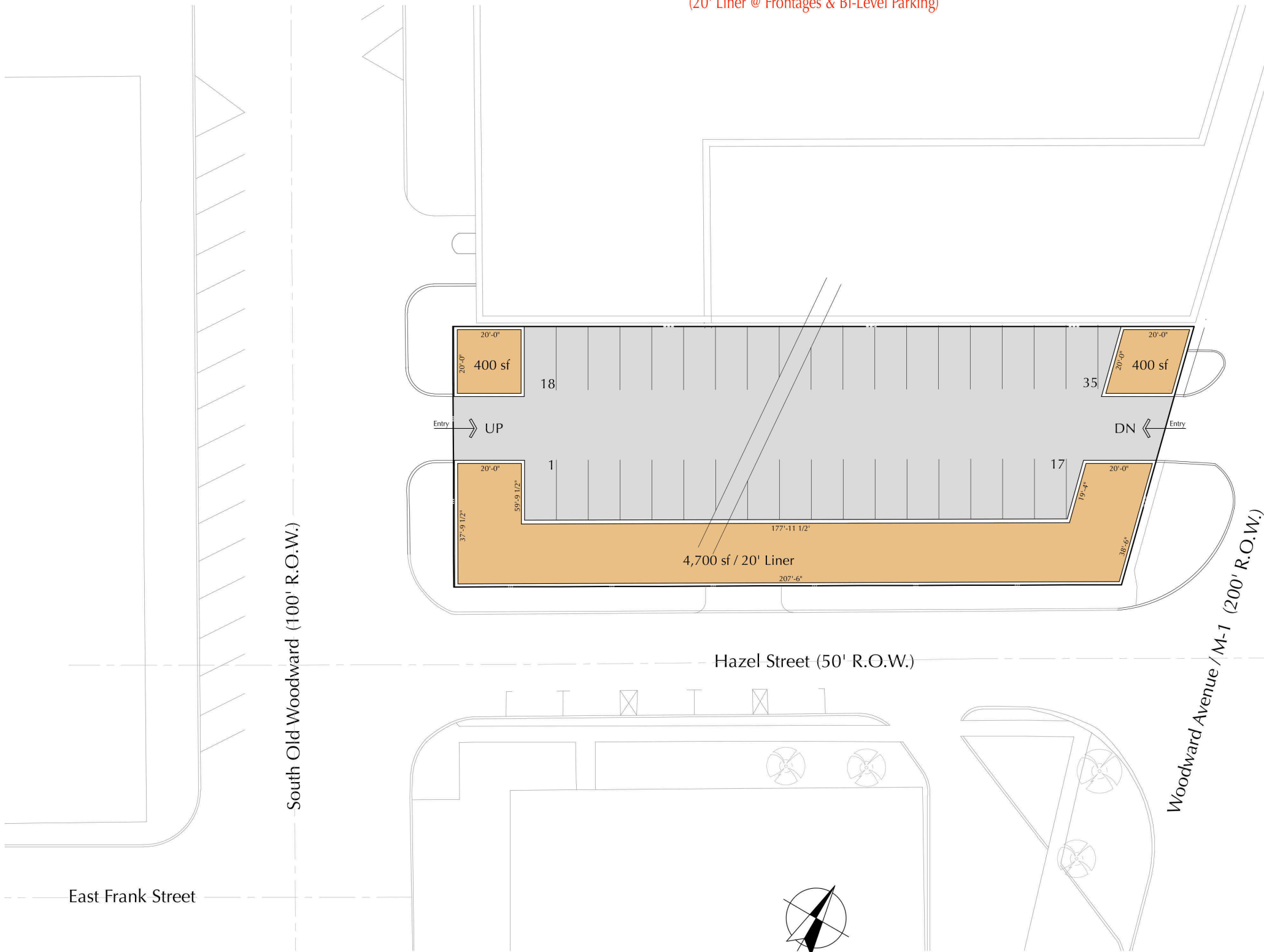


Use and Parking Data	
2 Story Building	
- 3,200 sf Retail (1st) / 300 =	10.7 Spaces
- 3,200 sf Office (2nd) / 150 =	21.3 Spaces
Total Required	32 Spaces
Total Provided	32 Spaces

- Comments**
- Provides 2 story/mixed-use (retail/office) on South Old Woodward
 - Surface parking on both Hazel and Woodward Avenue (2 curb cuts)

Project M1
Markus Management Group LLC
469 + 479 South Old Woodward Avenue
Birmingham, MI 48009

469 & 479
South Old Woodward
(20' Liner @ Frontages & Bi-Level Parking)



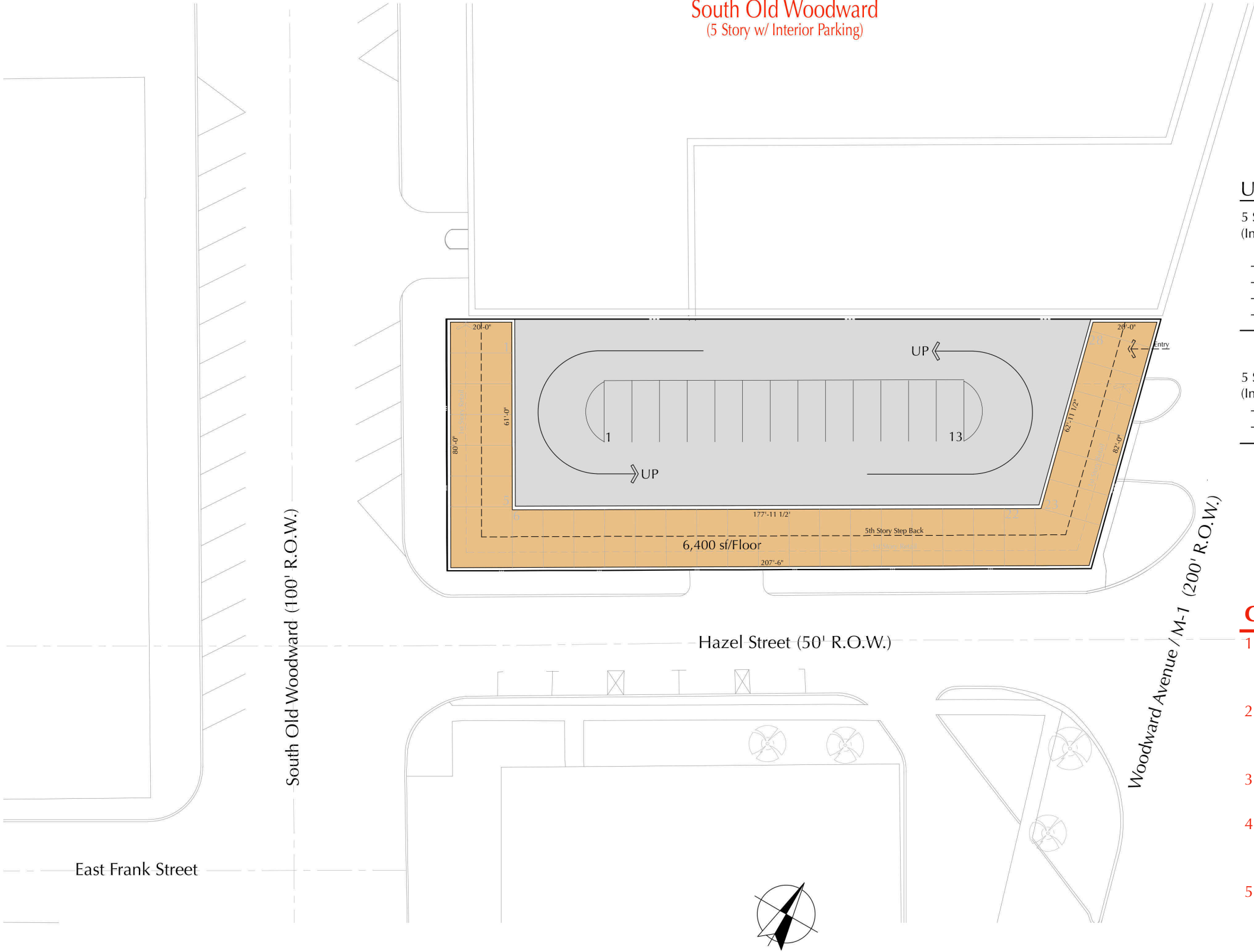
Use and Parking Data

3 Story Building	
- 5,500 sf Retail (1st) / 300 =	18.3 Spaces
- 5,500 sf Office (2nd) / 150 =	36.4 Spaces
- 8 Residences (3rd) x 1.5 =	12 Spaces
Total Required	67 Spaces
Total Provided	70 Spaces

Comments

1. Provides 3 story building/mixed-use building on all 3 frontages
2. Provides a 'ramp over ramp' hybrid internal parking w/2 curb cuts
3. Provides 8 residences

469 & 479
South Old Woodward
(5 Story w/ Interior Parking)



Use and Parking Data

5 Story Building w/ 20' Liner on all frontages
(Interior Parking)

- 6,000 sf Retail (1st) / 300 = 20 Spaces
- 6,400 sf Office (2nd/3rd) / 150 = 85 Spaces
- Parking (4th)
- 5 Units Residential (5th)/ 1.5 = 7.50 Spaces

Total Required 113 Spaces

5 Story Building w/ 20' Liner on all frontages
(Interior Parking)

- 1st, 2nd, 3rd Stories @ +/- 13 ea. 39 Spaces
- 4th Story 41 Spaces

Total Provided 80 Spaces

Comments

1. Provides 5 story building/mixed-use building on all 3 frontages
2. Provides internal parking ramp on 1st, 2nd and 3rd floors
3. Provides parking on entire 4th floor
4. Provides a 20' liner on 1st, 2nd and 3rd floors
5. Provides 5 residential units on 5th floor



Beier Howlett

ATTORNEYS AND COUNSELORS

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

October 1, 2018

Ms. Jana L. Ecker and
Planning Board Members
City of Birmingham
151 Martin Street, P.O. Box 3001
Birmingham, MI 48012

Re: Parking Assessment District- 469-479 S. Old Woodward

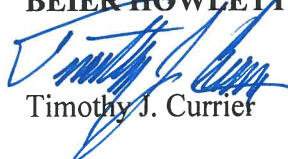
Dear Members of the Board:

The Board has asked if we have any information as to why the above properties were not included in the Parking Assessment District when they were first created and any explanation as to the City's reasoning at that time. We do not have any files or documents that can assist you in this regard.

If you have any additional questions, please do not hesitate to contact me.

Very truly yours,

BEIER HOWLETT, P.C.



Timothy J. Currier

TJC/jc

Beier Howlett

ATTORNEYS AND COUNSELORS

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

October 1, 2018

Ms. Jana L. Ecker and
Planning Board Members
City of Birmingham
151 Martin Street, P.O. Box 3001
Birmingham, MI 48012

Re: Legal Opinion Regarding Rezoning Application for 468-479 S. Old Woodward

Dear Members of the Board:

The Board has requested a legal opinion in connection with the following question:

Is the owner of the property located 469-479 S. Old Woodward (currently zoned D4 in the Downtown Overlay District) legally permitted to apply for rezoning to the newly created D5 zone district in the Downtown Overlay District?

ANSWER: YES.

If you have any additional questions, please do not hesitate to contact me.

Very truly yours,

BEIER HOWLETT, P.C.



Timothy J. Currier

TJC/jc

ORDINANCE NO. _____

THE CITY OF BIRMINGHAM ORDAINS:

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

TO AMEND ARTICLE 03, DOWNTOWN BIRMINGHAM OVERLAY DISTRICT, SECTION 3.04, TO CREATE A NEW D5 ZONE AND TO ESTABLISH DEVELOPMENT STANDARDS FOR THIS DISTRICT.

Article 03 shall be amended as follows:

Section 3.04 Specific Standards

- A. Building Height, Overlay: The various elements of building height shall be determined as follows for the various zones designated on the Regulating Plan:
1. D2 Zone (two or three stories):
 - a. Eave line for sloped roofs shall be no more than 34 feet.
 - b. Peak or ridge of any sloped roof shall be no more than 46 feet as measured to the average grade.
 - c. Maximum overall height including the mechanical and other equipment shall be no more than 56 feet.
 - d. A third story is permitted if it is used only for residential.
 - e. All buildings in D2 Zone containing a third story should be designed harmoniously with adjacent structures in terms of mass, scale and proportion, to the best extent possible.
 - f. A third story shall continue in a different plane, beginning at the eave line, not greater than 45 degrees measured to the horizontal or setback 10 feet from any building facade.
 - g. All buildings constructed in the D2 Zone must have a minimum eave height or 20 feet.
 2. D3 Zone (three or four stories):
 - a. Eave line for sloped roofs shall be no more than 46 feet.
 - b. Peak or ridge of any sloped roof shall be no more than 58 feet as measured to the average grade.
 - c. Maximum overall height including the mechanical and other equipment shall be no more than 68 feet.
 - d. A fourth story is permitted if it is used only for residential.
 - e. All buildings in D3 Zone containing a fourth story should be designed harmoniously with adjacent structures in terms of mass, scale and proportion, to the best extent possible.

- f. The fourth story shall continue in a different plane, beginning at the eave line, no greater than 45 degrees measured to the horizontal or setback 10 feet from any building facade.
 - g. All buildings constructed in a D3 Zone must contain a minimum of 2 stories and must have a minimum eave height of 20 feet.
- 3. D4 Zone (four or five stories):
 - a. Eave line shall be no more than 58 feet.
 - b. Peak or ridge of any sloped roof shall be no more than 70 feet as measured to the average grade.
 - c. Maximum overall height including mechanical and other equipment shall be no more than 80 feet.
 - d. The fifth story is permitted if it is used only for residential.
 - e. All buildings containing a fifth story should be designed harmoniously with adjacent structures in terms of mass, scale and proportion, to the best extent possible.
 - f. The fifth story shall continue in a different plane, beginning at the eave line, no greater than 45 degrees measured to the horizontal or set back 10 feet from any building facade.
 - g. All buildings constructed in the D4 Zone must contain a minimum of 2 stories and must have a minimum eave height of 20 feet.
- 4. **D5 Zone (over 5 stories)**
 - a. **All existing buildings located in the D5 Zone on November 1, 2016 are deemed legal, conforming buildings with regards to setbacks, number of stories and height.**
 - b. **All existing buildings located in this zone district on November 1, 2016 may be extended or enlarged only if the property owner elects to develop the extended or enlarged portion of the building under the provisions of the Downtown Overlay and the extension or enlargement meets all of the requirements of the Downtown Birmingham Overlay District and the D4 Zone.**
 - c. **New buildings constructed or additions to existing buildings in the D5 Zone must meet the requirements of the Downtown Birmingham Overlay District and the D4 Zone, except that the height of any addition and new construction in the D-5 Zone may be over the maximum building height up to, but not exceeding, the height of an existing building in the D-5 to which they are immediately adjacent or abutting if the property owner agrees to the construction of the building under the provisions of a Special Land Use Permit.**
- 4.5 C and P Zones: Downtown Birmingham Overlay District building height shall comply with the underlying height restrictions listed in each two-page layout in Article 2 of the Zoning Ordinance, but may be negotiated by the Planning Board.
- ~~5.6.~~ Stories at sidewalk level shall be a minimum of 10 feet in height from finished floor to finished ceiling. The Planning Board may reduce this standard for renovations to existing buildings that do not meet this standard.

~~6-7~~.A transition line shall be provided between the first and second stories. The transition shall be detailed to facilitate an awning.

~~7-8~~The maximum width of all dormers per street elevation on buildings may not exceed 33% of the width of the roof plane on the street elevation on which they are located.

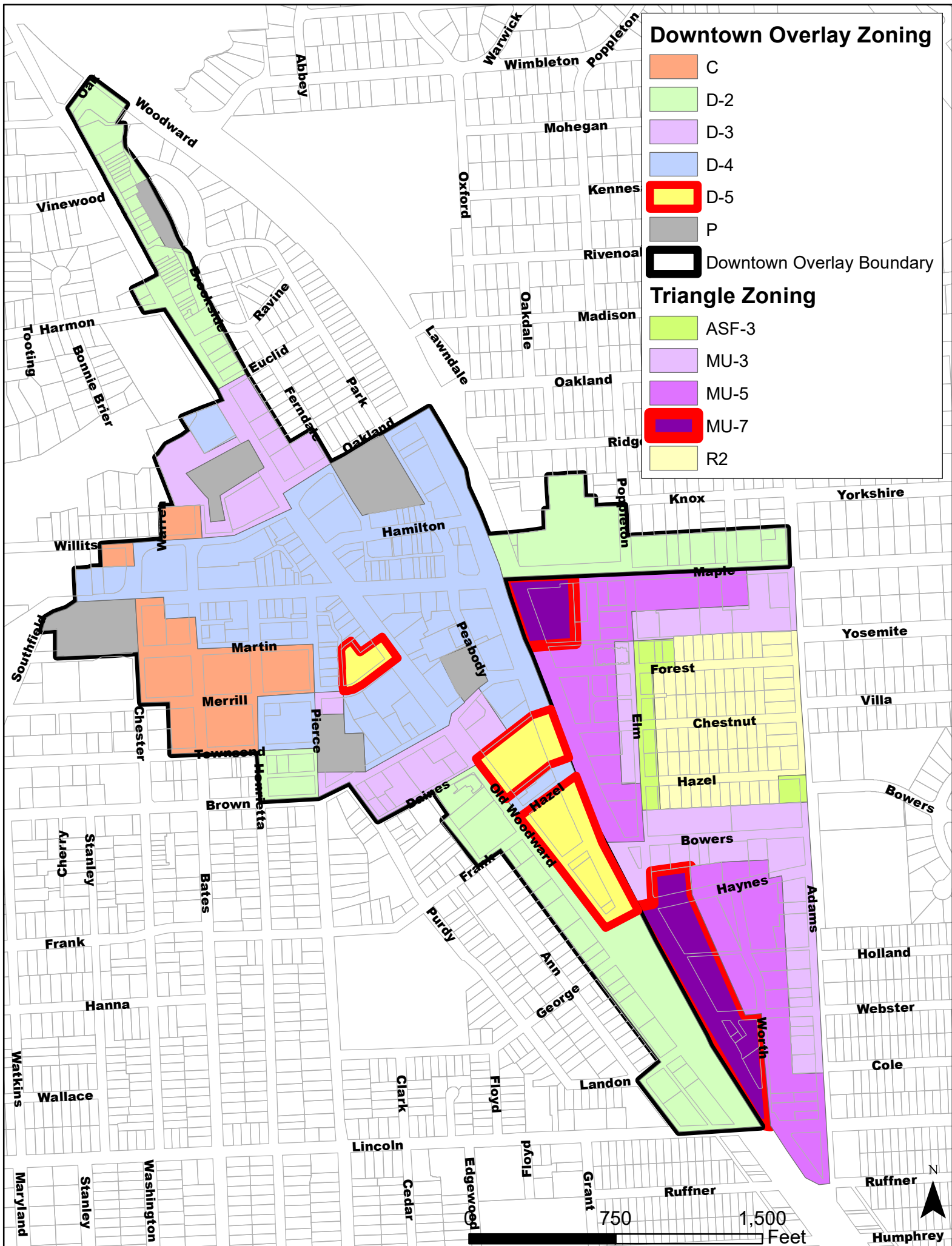
B. Building placement. Buildings and their elements shall be placed on lots as follows:

1. Front building facades at the first story shall be located at the frontage line, except the Planning Board may adjust the required front yard to the average front setback of any abutting building.
2. In the absence of a building facade, a screenwall shall be built along the frontage line and aligned with the adjacent building facade. Screenwalls shall be between 2.5 and 3.5 feet in height and made of brick, stone or other masonry material matching the building. Upon approval by the Planning Board, screen- walls may be a continuous, maintained evergreen hedge or metal fencing. Screenwalls may have openings a maximum of 25 feet to allow vehicular and pedestrian access.
3. Side setbacks shall not be required.
4. A minimum of 10 foot rear yard setback shall be provided from the midpoint of the alley, except that the Planning Board may allow this setback to be reduced or eliminated. In the absence of an alley, the rear setback shall be equal to that of an adjacent, preexisting building.
5. First-floor awnings may encroach upon the frontage line and public sidewalk, but must avoid the street trees; provide at least 8 feet of clearance above the sidewalk; and be set back a minimum of 2 feet from the road curb.
6. Upper-floor awnings shall be permitted only on vertically proportioned windows, provided that the awning is only the width of the window, encroaches upon the frontage line no more than 3 feet, and is not used as a backlit sign.
7. Loading docks and service areas shall be permitted only within rear yards. Doors for access to interior loading docks and service areas shall not face a public street.
8. All buildings shall have their principal pedestrian entrance on a frontage line.

ORDAINED this _____ day of _____, 2017 to become effective 7 days after publication.

Mark Nickita, Mayor

Cheryl Arft, City Clerk



411 S. Old Woodward Ave., Unit 1018
Birmingham, MI 48009
May 16, 2018

VIA HAND DELIVERY

Ms. Jana Ecker, Director
City of Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Development")
Request to Rezone from B3/D4 to B3/D5 Filed by Christopher Long
on Behalf of Birmingham Tower Partners, LLC (the "Applicant")
Hearing Scheduled for Wednesday, May 23, 2018 (the "Hearing")

Dear Ms. Ecker:

I request that the Hearing be rescheduled for two (2) reasons. First, I received notice of the Hearing by mail on May 8, 2018 and visited the City Planning Office on Friday, May 11, 2018 to review the application. As of that date, the Applicant had not filed the statements required under subsection 7.02 B.2.b of the Rezoning Amendments (i.e., explanations of why rezoning is necessary, of why the existing zoning classification is no longer appropriate, and of why the proposed rezoning will not be detrimental to the surrounding properties). I suggest that failure to timely file those explanations caused the notice of the Hearing not to meet the fifteen (15) day advance notification required under subsection 7.02 B.4.a.i of the Rezoning Amendments.

Second, as a Birmingham resident living adjacent to the Proposed Development, I would appreciate time to review the very extensive documents filed by the Applicant. I suggest that public input is critical on a project that seeks to permission to erect the first building greater than five (5) stories to be built in downtown Birmingham in decades, which could well set a precedent for continuing development of high rise structures in our beautiful community. Substantial additional time will be required for myself and the many other Birmingham residents who are affected by the Proposed Development to adequately review and to respond to these filings.

Please contact me at the above address, via email to mickeyschwartz@gmail.com, or at telephone numbers (248) 229-9989 or (248) 593-3155 with any questions or further requirements and in any event with the new hearing date. Thank you for your time and attention.

Yours very truly,

A handwritten signature in blue ink, appearing to read "Michael Schwartz", is written over the typed name.

Michael Schwartz, MD

xc: Applicant (via email to dsmarkus@yahoo.com)
Planning Board Members (via separate emails)

Eric and Janis Sterling
411 S. Old Woodward Avenue, Unit 615
Birmingham, MI 48009

June 7, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project ")

Ladies and Gentlemen:

We are residents of the City of Birmingham and are writing to express our deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. We believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

The city's 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest. Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population.

The Proposed Project is also esthetically displeasing. Instead of enhancing the Woodward corridor with an attractive entrance, it presents only a blank wall to the passing public. It would also create the hostile appearance of blocking off much of South Old Woodward and beyond by erecting a virtual wall of buildings running from the south end of the 555 residential units through the north end of Birmingham Place, reminiscent of medieval walls built around cities to keep people out, not to invite them in.

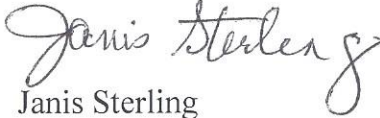
In addition, we have serious safety and other concerns, including:

1. Birmingham firefighting capability is limited to 7 stories. This would leave most of the back of the Proposed Project and virtually all of the south end of Birmingham Place with inadequate or no fire protection.
2. We also suggest that the Proposed Project would unduly burden our city's already hard-pressed police and public safety/rescue facilities.
3. Hazel Street is already a busy connector between Woodward and Old Woodward, especially at rush hour times. The Proposed Project would literally clog this small street with excess traffic, especially if the "four stack" valet service recommended by the developer's own traffic study is implemented and if the current four on-street parking spaces are included in the Proposed Project's plan for adequate parking, as Christopher Longe recently stated to the Planning Board would be the case. We note that the City's own traffic advisor, Fleis & Vandenbrink, also finds considerable fault with the developer's traffic study.
4. The demolition and construction time of the Proposed Project would be finite, but during that time, the heavy equipment needed for a project this size would cause construction damage to Hazel Street, Old Woodward and Woodward. Depending on the timing, this could result in at least the repaving work already planned for Old Woodward south having to be redone at a very substantial cost.
5. The Proposed Project will require deep excavation ("digging half way to China," as Mr. Longe recently expressed to the Planning Board) and heavy equipment and materials, which could seriously jeopardize the structural integrity of Birmingham Place. The developer has not adequately addressed this and has not made provision to repair, or more importantly to prevent, any damage to Birmingham Place.

Thank you for your time and attention, and for, we sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,


Eric Sterling


Janis Sterling



Jana Ecker <jecker@bhamgov.org>

Fwd: 469-479 S. Old Woodward Ave. (the " Proposed Project") Objection

1 message

Stuart Jeffares <stuartjeffares@gmail.com>
To: Jana Ecker <jecker@bhamgov.org>

Wed, Jun 13, 2018 at 9:52 PM

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

From: Alice Lezotte <zareyskid@gmail.com>
Date: Sun, Jun 10, 2018, 12:53 PM
Subject: Fwd: [469-479 S. Old Woodward Ave.](#) (the " Proposed Project") Objection
To: <stuartjeffares@gmail.com>

Sent from my iPad

Begin forwarded message:

From: Alice Lezotte <zareyskid@gmail.com>
Date: June 10, 2018 at 12:47:33 PM EDT

Subject: [469-479 S. Old Woodward Ave.](#) (the " Proposed Project") Objection

[411 S. Old Woodward. #511](#)

[Birmingham, MI. 48000](#)

June 8, 2018

Mr. Jeffares, I am a city of Birmingham constituent. I would like to express my disapproval and opposition to the request for rezoning and to the Proposed Project itself.

The Birmingham city code has many statements to keep in mind when considering a new city project (I paraphrase):

1. Regulation and control of a project should promote the public health, safety, and general welfare of the city
2. Provide orderly growth and HARMONIOUS development
3. Secure adequate traffic circulation and "lessen" congestion on our streets
4. Ensure adequate provisions for water drainage, sanitary sewer facilities, and other health requirements
5. Achieve the maximum utility and "livability" of a project
6. Natural features must be preserved and changes should "add" to the attractiveness and "value" of the neighborhood
7. Any Proposed project should take into consideration as to the impact on adequate supply of light and air to adjacent properties and

the capacity of essential public facilities, such as police and fire protection, drainage structures, municipal water, sanitary sewers, and refuse disposal
Wise decisions have been made in the past (e.g., Forefront, Bristol,etc.) in accordance with The city's 2016 Master Plan and our Building Codes.

6/19/2018

City of Birmingham MI Mail - Fwd: 469-479 S. Old Woodward Ave. (the " Proposed Project") Objection

It is my hope similar consideration will prevail and this proposal will be denied.

Maple Road and Woodward on the south east corner would be an ideal location for this proposed project.

We want to keep our "Walkable" community as safe and pleasant as possible.

Best regards,

Alice Lezotte



Jana Ecker <jecker@bhamgov.org>

Fwd: Proposal for a 9 story building on S. Old Woodward, Birmingham

1 message

Stuart Jeffares <stuartjeffares@gmail.com>
To: Jana Ecker <jecker@bhamgov.org>

Wed, Jun 13, 2018 at 9:52 PM

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

From: Julie Wolfe <julie@moosejaw.com>
Date: Sun, Jun 10, 2018, 1:08 PM
Subject: Proposal for a 9 story building on S. Old Woodward, Birmingham
To: Julie Wolfe <julie@moosejaw.com>

From: Julie Wolfe
[411 S. Old Woodward #1021](#)
[Birmingham, MI 48009](#)

6/10/18

Birmingham City Commission
Birmingham Planning Board
[151 Martin Street](#)
[Birmingham, MI 48009](#)

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project ")

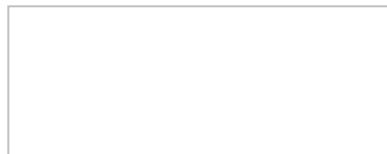
Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally **not** zoned as D5, despite being located between two of the D5 buildings.

I believe that a nine story building on this 0.41 acre parcel would be totally out of place, would violate the 2016 Master Plan and would be inconsistent with the small town downtown concept I firmly believe is very important to maintaining the character and long-standing plan for this beautiful city. I respectfully ask that you stay the course that has been followed and has been successful for so long. More construction to this area is very disturbing and frustrating. The city has been torn up enough.

Thank you.

Julie Wolfe



2 attachments



image001.png
6K



image003.png
7K

Edwin B. and Felicia P. Shaw
411 South Old Woodward Ave. Unit #910
Birmingham, Michigan 48009

June 12 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

We are residents of the City of Birmingham and are writing to express our deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. We believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

The city's 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest. Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population.


The Proposed Project is also esthetically displeasing. Instead of enhancing the Woodward corridor with an attractive entrance, it presents only a blank wall to the passing public. It would also create the hostile appearance of blocking off much of South Old Woodward and beyond by erecting a virtual wall of buildings running from the south end of the 555 residential units through the north end of Birmingham Place, reminiscent of medieval walls built around cities to keep people out, not to invite them in.

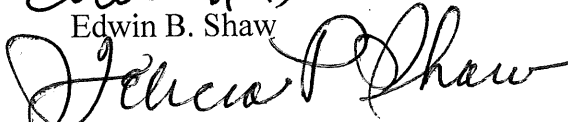
In addition, we have serious safety and other concerns, including:

1. Birmingham firefighting capability is limited to 7 stories. This would leave most of the back of the Proposed Project and virtually all of the south end of Birmingham Place with inadequate or no fire protection.
2. We also suggest that the Proposed Project would unduly burden our city's already hard-pressed police and public safety/rescue facilities.
3. Hazel Street is already a busy connector between Woodward and Old Woodward, especially at rush hour times. The Proposed Project would literally clog this small street with excess traffic, especially if the "four stack" valet service recommended by the developer's own traffic study is implemented and if the current four on-street parking spaces are included in the Proposed Project's plan for adequate parking, as Christopher Longe recently stated to the Planning Board would be the case. We note that the City's own traffic advisor, Fleis & Vandenbrink, also finds considerable fault with the developer's traffic study.
4. The demolition and construction time of the Proposed Project would be finite, but during that time, the heavy equipment needed for a project this size would cause construction damage to Hazel Street, Old Woodward and Woodward. Depending on the timing, this could result in at least the repaving work already planned for Old Woodward south having to be redone at a very substantial cost.
5. The Proposed Project will require deep excavation ("digging half way to China," as Mr. Longe recently expressed to the Planning Board) and heavy equipment and materials, which could seriously jeopardize the structural integrity of Birmingham Place. The developer has not adequately addressed this and has not made provision to repair, or more importantly to prevent, any damage to Birmingham Place.

Thank you for your time and attention, and for, we sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,


Edwin B. Shaw


Felicia P. Shaw



June 21, 2018

*The Elia Group, LLC
Real Estate & Development Services*

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members:

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

The project that has been proposed for this in-fill site should be approved because it would be appropriate for this parcel of land. If allowed to be built, the project would:

1. Be in harmony with the pattern of the neighboring buildings by filling in the noticeable 'gap' between them, which can be seen from both South Old Woodward and Woodward Avenue.
2. Be consistent with the building heights, uses, and character of Birmingham Place and the 555 Building.
3. Increase the walkability of this area by providing retail at the street level, and by strengthening the retail connection between Birmingham Place and the 555 Building.
4. Add foot traffic (shopper & travelers) to the south end of the city by encouraging foot traffic from the downtown to continue on the completed blocks.
5. Activate Hazel Street in perpetuity – while currently busy with construction bypass traffic, Hazel is an otherwise dormant street (which is vacated on the east side of Woodward Avenue).
6. Adhere to the spirit and intent of both the 2016 Master Plan and the D5 zoning overlay.
7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

The Elia Group, LLC

Zaid D. Elia, President



Phone: 586-268-3200 | Fax: 586-268-3224
7096 E 14 Mile Rd Warren, MI 48092
andiamoitalia.com

June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

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9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

Joseph P. Vicari
7096 E. 14 Mile Rd.
Warren, MI 48092





June 21, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

Jonna Construction is a builder and investor in Downtown Birmingham.

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

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9. Contribute to the economic vitality of the City of Birmingham.



For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Frank Jonna', is written over the printed name.

Frank G. Jonna
6200 2nd Ave., Suite D-102
Detroit, MI 48202



June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

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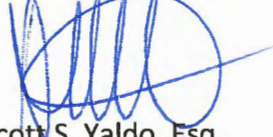
500 S. Old Woodward Ave., Second Floor, Birmingham, MI 48009

Phone: (248)645-5300 Fax: (248)645-5301

www.yaldolaw.com

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Scott S. Yaldo', is written over a light blue rectangular background.

Scott S. Yaldo, Esq.



June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete and old one-story buildings that sit between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

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7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.
10. This project would continue to make the City of Birmingham the premier city to live and shop

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

A handwritten signature in black ink, appearing to be 'KD' or 'Kevin Denha', written in a cursive style.

Kevin Denha
40700 Woodward Ave Suite 125
Bloomfield Hills, MI. 48304

ISHBIA & GAGLEARD, P.C.
ATTORNEYS AND COUNSELORS
MERRILLWOOD BUILDING
251 MERRILL STREET, SUITE 212
BIRMINGHAM, MICHIGAN 48009

JEFFREY A. ISHBIA
MICHAEL A. GAGLEARD *
MARK W. CHERRY
DAVID N. ZACKS **

PHILIP CWAGENBERG
FRANK J. LAROCCA
MICHAEL J. WEISBERG **
SARA E. ROHLAND

ISIDORE B. TORRES, OF COUNSEL
C. GILES SMITH, JR., OF COUNSEL

(248) 647-8590
(800) 647-6269

FAX (248) 647-8596

* ALSO ADMITTED IN CALIFORNIA
** ALSO ADMITTED IN FLORIDA

June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

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For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

ISHBIA & GAGLEARD, P.C.

Jeffrey A. Ishbia



June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

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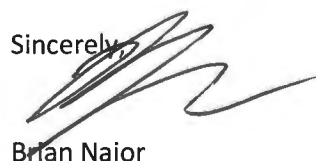
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For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,



Brian Najor
Najor Companies
600 N. Old Companies, Ste 100
Birmingham, MI 48009



JONNA

luxury homes

6/20/18

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

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For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,



Joseph Jonna, Jonna Luxury Homes

LAW OFFICES OF
RANDAL TOMA & ASSOCIATES, P.C.
500 S. OLD WOODWARD AVENUE, SECOND FLOOR
BIRMINGHAM, MICHIGAN 48009
OFFICE (248) 948-1500
FAX (248) 948-1501

June 21, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

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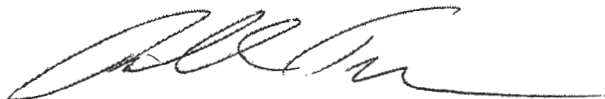
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For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Very truly yours,
RANDAL TOMA & ASSOCIATES, P.C.



Randal S. Toma
Attorney at Law

Lexi Drew
152 N Old Woodward
Birmingham, MI 48009
248.220.1731

Date 6/20/2018
Birmingham City Commission & Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue
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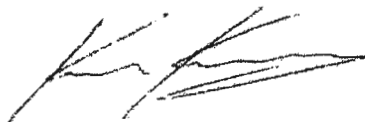
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For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin Kejbou', with a stylized, sweeping flourish at the end.

Kevin Kejbou
152 N Old Woodward
Birmingham MI 48009



2000 Town Center
Suite 2200
Southfield, MI 48075

248 353 5400 Tel
248 353 8134 Fax

June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

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Sincerely,

David Hesano
First Vice President
David.hesano@cbre.com

DJ MARLUC HOLDINGS LLC

6632 Telegraph Rd. #359
Bloomfield Hills, MI 48301

6/18/2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

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Sincerely,



John Kello



DETROIT ATLANTA CHICAGO CLEVELAND DALLAS HOUSTON LOS ANGELES MIAMI NEW YORK SAN FRANCISCO SOUTH JERSEY WASHINGTON DC

June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which is 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

The project that has been proposed for this in-fill site should be approved because it would be appropriate for this parcel of land. If allowed to be built, the project would:

1. Be in harmony with the pattern of the neighboring buildings by filling in the noticeable 'gap' between them, which can be seen from both South Old Woodward and Woodward Avenue.
2. Be consistent with the building heights, uses, and character of Birmingham Place and the 555 Building.
3. Increase the walkability of this area by providing retail at the street level, and by strengthening the retail connection between Birmingham Place and the 555 Building.
4. Add foot traffic (shopper & travelers) to the south end of the city by encouraging foot traffic from the downtown to continue on the completed blocks.
5. Activate Hazel Street in perpetuity – while currently busy with construction bypass traffic, Hazel is an otherwise dormant street (which is vacated on the east side of Woodward Avenue).
6. Adhere to the spirit and intent of both the 2016 Master Plan and the D5 zoning overlay.
7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony Toma".

Anthony Toma
CEO & Founder
Nine9
2653 Industrial Row Dr.
Troy, MI 48084



June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

RE: Proposed Project at 469-479 S Old Woodward Avenue

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9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

Gregg Speaks
Managing Director
CIBC Bank USA
34901 Woodward Avenue, Suite 200
Birmingham, MI 48009



MIDWEST HOSPITALITY GROUP INC.

June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

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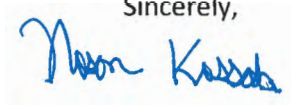
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For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,



Nason Kassab
35270 Woodward Ave
Birmingham, MI 48009



2941 Mediterranean

street food

June 21, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which is 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

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9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

Jacques Van Staden - Founder & CEO
176 S. Old Woodward Ave
Birmingham, MI 48009

David Breedlove
85 Tradd Street
Charleston, SC. 29401

June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

I am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project referenced above. I am no longer a resident of Birmingham but maintain a condominium in Birmingham. Birmingham has been my home for most of my 70 years since my parents bought their first home on Villa in 1949. I remember visiting Pearls for a nice Chinese dinner. So, I know the area well. And while we moved from our home on Lincoln to warmer weather after retirement, Birmingham will always be home. I have watched how the character of the town has changed over the last 65 years. I was sad when the City allowed 555 to be built. I will always believe it was a mistake. We do not need another mistake.

I was encouraged when the City leaders realized they needed to protect the character and feel of the city. There was no place for skyscrapers in Birmingham. The city's 2016 Master Plan recognized the need to control the height of new buildings in the city center. I think they have done an excellent job over the last twenty years.

I have watched in my new home, Charleston, as real estate investors have tried to come in and build one more hotel and destroy what makes Charleston attractive. It is an on-going battle. You are faced with the same economic pressures and arguments I hear in Charleston. It is just one more hotel. There are already buildings of similar height in town. The city needs more hotel rooms. It will generate more business in town. The arguments are always the same and unfortunately, so are the results. The town becomes more impersonal. Small businesses are replaced by those that cater to the transient visitors. Residents must go elsewhere to shop.

As city commissioner, you must protect what you have today and what makes Birmingham so attractive as a place to live, work and raise a family. It is unique place in southeast Michigan, beautiful neighborhoods surrounding a friendly and inviting downtown.

I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept I firmly believe is very important to

maintaining the character and long-standing plan for this beautiful city. If someone wants to build a 9 or 10 story hotel, let them go to Troy or Southfield.

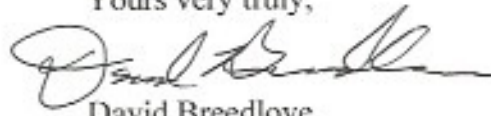
The city's 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest. Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population. Approving a change to the zoning will open the door for the next developer to come in and argue for a similar change. What is the argument against building a high rise on the North side of Birmingham Place? Across the street?

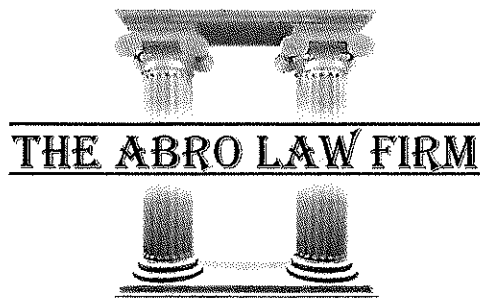
I cannot assess the technical implications of the proposal such as traffic, impact on city services, disruption of business during construction and impact on surrounding structures. I leave that to the Commissioners and their technical experts. The parties who purchased the reference property knew the zoning at the time. They are calculating they can change the City Commissioner's minds. They are not concerned with the long term implications to the city but only how to maximize return on their investment. I sincerely hope their calculations are wrong. Another high rise in the southern end of town will ruin the neighborhood feel and open the door for more rezoning requests.

Thank you for your time and attention, and for, I sincerely hope, your vote to preserve what is a beautiful and people friendly city.

Yours very truly,

A handwritten signature in dark ink, appearing to read "David Breedlove", written in a cursive style.

David Breedlove



Phone: (248) 723-4545
Fax: (248) 598-4049
E-Mail: gus@abrolaw.com

500 S. Old Woodward
Second Floor, Suite 200
Birmingham, Michigan 48009

ATTORNEYS AND COUNSELORS AT LAW

June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

RE: *Proposed Project at 469-479 S. Old Woodward Avenue*

Dear City Commission and Planning Board Members,

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For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Thank you for your attention herein. As always, should you have any question or require any additional information, please do not hesitate to call me directly. I remain,

Very truly yours,

THE ABRO LAW FIRM

Gus J. Abro, Esq.



GA/gja



CITY OF BIRMINGHAM FIRE DEPARTMENT

572 SOUTH ADAMS • BIRMINGHAM, MICHIGAN 48009 • 248.530.1900 Fax 248.530.1950

June 22, 2018

Jana Ecker, Planning Director
City of Birmingham (MI)
151 Martin St.
P.O. Box 3001
Birmingham, MI 48012-3001

Dear Jana:

I am following up on our communications in regards to residents at 411 S. Old Woodward known as Birmingham Place and their concerns with fire protection. The proposed project at 469-479 S. Old Woodward is potentially going to be a nine story building, built very close to the South side of Birmingham Place. Their concern is the fire department's ability to fight a fire at Birmingham Place if the proposed project does not allow aerial operations on the South side of the building.

Though we would not deploy our aerial truck for operations on the South side of the building, we do have access from both the East and West sides of the building. Our aerial truck has an extended 100' ladder which would reach approximately six to seven stories based on the distance the aerial is positioned, due to this most high rise fires are fought from the inside of a high rise building. The Birmingham Place has a fire pump to increase pressure to upper floors, fire suppression sprinklers that when activated would extinguish a fire or contain the spread of the fire, standpipes at each floor allowing firefighters to connect hose lines to fight a fire and a fire alarm which would alert residents of the building. The exterior of the building is of a material that is non-combustible and smoke alarms throughout the building. Our officers and firefighters are well trained to aggressively attack a fire in a high rise building. There should be no concerns that the proposed project would hinder fire operations in the Birmingham Place.

I hope this letter will help ease the concerns of our residents as the Planning Board and other stakeholders discuss the proposal and the future of the site. Please let me know if I can assist you in any other way.

Sincerely,

John M. Connaughton, Fire Chief

Corrected
May 17, 2018

Richard D. Rattner
rdr@wwrplaw.com

City of Birmingham
City Commission
151 Martin St.
Birmingham, MI 48009

Re: Application to include 469 and 479 S. Old Woodward, Birmingham, MI
("Subject Property") in the D5 Downtown Birmingham Overlay District
Zone ("Application")

Dear Members of the Planning Board and City Commission:

Please accept this letter from the property owner ("Property Owner") of 469 and 479 S. Old Woodward ("Property") as a Supplement to the referenced rezoning Application file to rezone the Subject Property from the **D-4 Zone** to the **D-5 Overlay Zone** in the Downtown Birmingham Overlay District.

Executive Summary

The Subject Property is a former single-story restaurant building and bank that sits between two existing tall buildings in the City. Birmingham Place is located to the north and the 555 Buildings are located to the south. The placement of the buildings is not only inconsistent with a cohesive and harmonious streetscape in that area but is contrary to the intent of the Master Plan. This inconsistent height results in a streetscape along South Old Woodward that appears to have a "missing tooth."

If the Subject Property is rezoned to D-5, there is an excellent opportunity for the Subject Property, Birmingham Place and the 555 Buildings to create an impressive southern gateway to Downtown Birmingham. It is therefore reasonable that the Subject Property, sitting directly between the 555 Buildings and Birmingham Place, be included in the same zoning district, that is as part of the D-5 Overlay District, as those neighboring two buildings.

Rezoning the Subject Property to the same classification as the buildings immediately to the north and south will enhance and complete the streetscape of these important two blocks of Downtown Birmingham. Inclusion of the Subject Property in the D-5 Overlay Zone is consistent with the 2016 Master Plan. Moreover, it will allow the Subject Property to enjoy the same development regulations as the neighboring properties.

The Subject Property and the Master Plans

A review of the history surrounding the zoning of this area of Downtown is instructive. The minutes of the City Commission during the late 1960s and early 1970s, reveals that the height of the buildings in this area of Downtown were historically zoned for the height of the 555 Buildings and Birmingham Place. However, the zoning ordinance was amended in the 1970's after the construction of those buildings to a maximum of four stories. Therefore, for several years, the taller buildings in the City were burdened with the status of legal nonconforming uses.

In 2016, the City corrected this down zoning for the 555 Building to the south and Birmingham Place to the north, with the creation of the D-5 Zone to allow for existing heights (in the case of the 555 Buildings and Birmingham Place) and to allow for new construction to a height up to the same height of an immediately adjacent or abutting building (see Ordinance 3.04-4-b). While the 555 Building and Birmingham Place are now at allowable heights, sitting in between them, the Subject Property is the only building in that streetscape that cannot be constructed to a height that is consistent to its neighbors. This inconsistency creates an obvious gap in the street's architecture which is not harmonious with the overall downtown design and longer-range plan for that part of South Old Woodward.

The Birmingham of 2016

In 1996, the City Commission adopted the Downtown Birmingham 2016 Plan ("2016 Plan") and amended the Zoning Ordinance to include the Downtown Birmingham Overlay District. The Subject Property is located in the **D-4**

Zone, sitting between two tall buildings in the City that have been rezoned to the D-5 zone. These multi-story buildings are the established character of this particular area of the City. Placing the Subject Property in the D-5 zone would allow development of the Subject Property to be at a similar height to the buildings directly to the north and south. The Applicant desires to develop the Subject Property in a manner that completes the block between Brown and Hazel while adding to the cohesiveness of the South Old Woodward southern gateway area.

The Birmingham Zoning Ordinance at Sec. 1.04 provides that the purpose of the Zoning Ordinance is to "...guide the growth and development of the City in accordance with the goals, objectives and strategies stated within the Birmingham Master Plan ("Birmingham Plan"), and Downtown Birmingham 2016 Plan. A review of the Birmingham Plan (1980) and the Downtown Birmingham 2016 Plan (1996) reveals that this application to include the Subject Property in a D-5 Overlay District meets the spirit and intent of the ordinance as well as the 2016 Plan. It will allow for mixed uses and add to the vitality of the modern streetscape envisioned for this part of town by the 2016 Plan. With rezoning, the Subject Property can become that desired mixed-use space for retail, residential and hotel, and bring new life to the South Old Woodward area.

Any redevelopment of the Subject Property in compliance with its current zoning classification would result in a building with frontage dwarfed by the existing neighboring structures. Therefore, by rezoning the Subject Property to the D-5 overlay, a new building could be built to a similar height as the neighboring buildings, and effectively complete an otherwise missing piece of the streetscape.

In summary, it is clear that the intent of the 2016 Plan includes development of this southern area of the Downtown Overlay District as a gateway to Downtown through enhancing the character of buildings and providing our City with an active, pedestrian-friendly, urban streetscape.

Rezoning Amendment – Sec. 7.02 (B)(2)(b)(i)-(iii)

The Zoning Ordinance at Sec. 7.02 requires that as part of an application for rezoning, the petitioner should address certain issues to be considered by the Planning Board and the City Commission. Please consider the following comments with respect to these issues.

7.02(B)(2)(b)(i) - An Explanation of Why the Rezoning is Necessary for the Preservation and Enjoyment of the Rights and Usage Commonly Associated with Property Ownership

Rezoning of the Subject Property is necessary to preserve the Applicant's enjoyment of rights associated with ownership of a property zoned for mixed uses. Because of the size and corner configuration of the parcel, it will not support street-level retail, residential, and parking for residents in the same manner as the neighboring properties. The 2016 Plan clearly anticipates mixed use developments. Such planning requires space to design and locate mixed uses within a given structure. Without the ability to go higher with a new building than current zoning allows, the Applicant will not have the required area within which to locate a mix of uses, or otherwise to be able to enjoy all of the allowed uses that would commonly be associated the design of such a modern, mixed-use building. Furthermore, the D-5 Ordinance, at section 3.04-4-b, anticipates that the Subject Property and those similarly situated may enjoy the same rights of usage through an extension of height as other existing tall buildings already enjoy in the D-5 Overlay District.

Sec. 7.02(B)(2)(b)(ii) - An Explanation of Why the Existing Zoning Classification is No Longer Appropriate

The existing **D-4** zoning classification is no longer appropriate for the Subject Property. The Subject Property is surrounded by the Birmingham Place, a ten-story building on the north side and the 555 Buildings, a fifteen-story building on the south side. This height is an established pattern in this area of the City. This rezoning request is actually an "infill" rezoning to bring the entire area into architectural and design harmony with surrounding buildings. It is reasonable for the Subject Property to share the same zoning classification as its surrounding neighbors. This would allow development of the property in a manner consistent with the

existing structures from Brown Street south to Haynes Street. It will create a more unified block and enhance the character of the gateway area to Downtown Birmingham. The rezoning of the Subject Property would restore the property to a zoning classification this area of the City once enjoyed, as the Planning Board has done for with Birmingham Place and the 555 Buildings. Hence, given the location of the Subject Property sandwiched between two properties in the D-5 Zone, the **D-4** Zone is no longer appropriate.

Sec. 7.02(B)(2)(b)(iii) - An Explanation of Why the Proposed Zoning will not be Detrimental to the Surrounding Properties


The proposed rezoning of the Subject Property is not detrimental to surrounding property owners. Note that the proposed rezoning does not extend the D-5 classification further to the north or south of the current D-5 Zoning, but actually fills in the one gap in the streetscape that is noticeably out of place and anachronistically remains in the **D-4** Zone. The surrounding properties to the north and south already are in the D-5 Zone. When these neighboring properties were rezoned, the Planning Board anticipated that eventually the Subject Property also may be rezoned for the reasons stated in this letter. Placing the Subject Property in D-5 Zone will be placing it on equal footing with the surrounding properties from a structural, use and design perspective. The proposed rezoning will enhance the entire area by allowing it to be developed as an attractive part of the South Old Woodward gateway and bring that area into compliance with the spirit and intent of the 2016 Master Plan.

Conclusion

The Applicant respectfully requests that the City Commission rezone the Subject Property from the **D-4** to the D-5 Zone as discussed in this letter.

Very truly yours,

WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, P.C.


Richard D. Rattner *by [signature]*

RDR/cmc

June 25, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

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I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

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For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,



Derek Dickow
211 E Merrill St., 504
Birmingham, MI 48009

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project ")

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

The city's 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest. Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population.

The Proposed Project is also esthetically displeasing. Instead of enhancing the Woodward corridor with an attractive entrance, it presents only a blank wall to the passing public. It would also create the hostile appearance of blocking off much of South Old Woodward and beyond by erecting a virtual wall of buildings running from the south end of the 555 residential units through the north end of Birmingham Place, reminiscent of medieval walls built around cities to keep people out, not to invite them in.

In addition, I have serious safety and other concerns, including:

1. Birmingham firefighting capability is limited to 7 stories. This would leave most of the back of the Proposed Project and virtually all of the south end of Birmingham Place with inadequate or no fire protection.

2. I also suggest that the Proposed Project would unduly burden our city's already hard-pressed police and public safety/rescue facilities.
3. Hazel Street is already a busy connector between Woodward and Old Woodward, especially at rush hour times. The Proposed Project would literally clog this small street with excess traffic, especially if the "four stack" valet service recommended by the developer's own traffic study is implemented and if the current four on-street parking spaces are included in the Proposed Project's plan for adequate parking, as Christopher Longe recently stated to the Planning Board would be the case. We note that the City's own traffic advisor, Fleis & Vandenbrink, also finds considerable fault with the developer's traffic study.
4. The demolition and construction time of the Proposed Project would be finite, but during that time, the heavy equipment needed for a project this size would cause construction damage to Hazel Street, Old Woodward and Woodward. Depending on the timing, this could result in at least the repaving work already planned for Old Woodward south having to be redone at a very substantial cost.
5. The Proposed Project will require deep excavation ("digging half way to China," as Mr. Longe recently expressed to the Planning Board) and heavy equipment and materials, which could seriously jeopardize the structural integrity of Birmingham Place. The developer has not adequately addressed this and has not made provision to repair, or more importantly to prevent, any damage to Birmingham Place.

Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,
Victoria Shounieya
Victoria Shounieya
Unit #514

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

The city's 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest. Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population.

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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,


Alex Shoenberger

514

411 S. Old Woodward, Suite 603
Birmingham, MI 48009

June 8, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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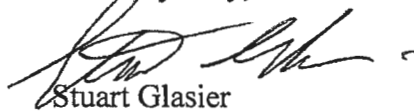
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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

A handwritten signature in black ink, appearing to read "Stuart Glasier", written over a horizontal line.

Stuart Glasier

2400 East Lincoln Street, Unit 425
Birmingham, MI 48009

June 8, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project ")

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411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally *not* zoned as D5, despite being located between two of the D5 buildings.

I believe that a nine story building on this 0.41 acre parcel would be totally out of place, would violate the 2016 Master Plan and would be inconsistent with the small town downtown concept I firmly believe is very important to maintaining the character and long-standing plan for this beautiful city. I respectfully ask that you stay the course that has been followed and has been successful for so long. Thank you.

Yours very truly,

Alice Legatte #511

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Yours very truly,


Ted Elsholz

ADDRESS: ~~411~~ 411 S. Old Woodward, #1029
DATE: 6/7/2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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Yours very truly,


Nikole Fine
Unit #521

ADDRESS:

DATE:

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Yours very truly,

A handwritten signature in cursive script, reading "Brenda Knight". The signature is written in dark ink and is positioned above two vertical pink lines that serve as a signature line.

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Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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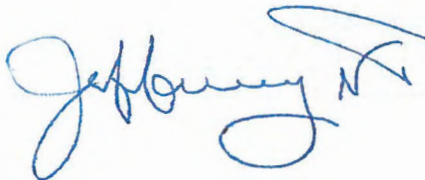
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Yours very truly,

 955 Bud Birmingham, HI
48009

ADDRESS:

DATE:

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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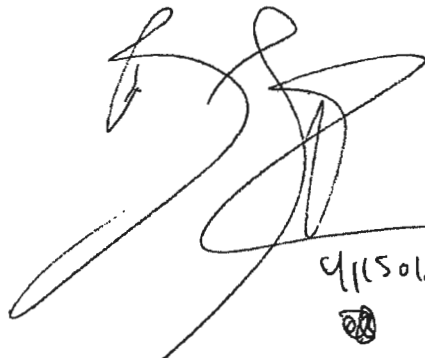
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Yours very truly,



4115 Old Woodward
Unit 624
Birmingham, AL

UNIT #806

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Yours very truly,

Michael C. Schwartz
Voni Schwartz

411 S. Old Woodward
#1018

B'ham 38009

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project ")

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

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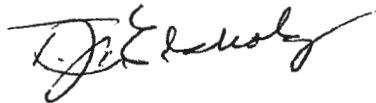
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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

T. J. ELSHOLTZ



E. A. ELSHOLTZ



411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project ")

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Yours very truly,

Sigina Tellman

Unit 606

*411 S. Old Woodward Ave
Birmingham, MI 48009*

411 S. Old Woodward, Suite 902
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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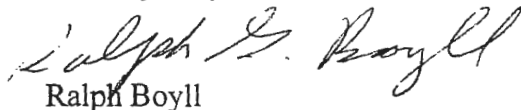
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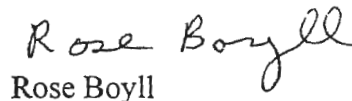
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Yours very truly,


Ralph Boyll


Rose Boyll

06/08/18

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Eunice Galperin

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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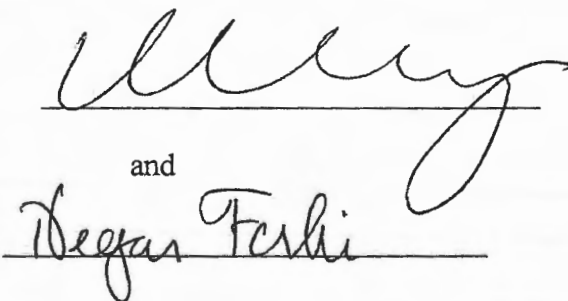
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Yours very truly,

Vandad Raofi

and

Negar Farhi

The block contains two handwritten signatures. The first signature, for Vandad Raofi, is written in dark ink and is quite stylized, with a long, sweeping horizontal stroke at the end. The second signature, for Negar Farhi, is also in dark ink and is more legible, showing the first letters of the first and last names. Both signatures are placed over horizontal lines.

Unit # 703

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Yours very truly,

A handwritten signature in black ink, appearing to read "Arthur Longe". The signature is fluid and cursive, with a large, stylized initial "A".

Birmingham, MI 48009

June 16, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Yours very truly,

Debra J. Elsholz


411 S. Old Woodward, Suite 729
Birmingham, MI 48009

June 8, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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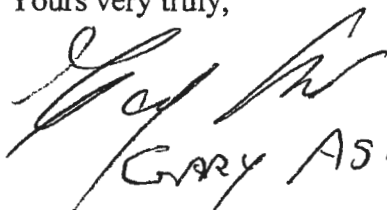
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Yours very truly,


Gary Askeir
305 Purdy

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

Carol Kozlow

A handwritten signature in cursive script that reads "Carol Kozlow". The signature is written in dark ink and is positioned below the printed name.

ADDRESS: 411 S. Old Woodward # 1028
Birmingham Mi
DATE: 6-9-2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

We are residents of the City of Birmingham and are writing to express our deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally *not* zoned as D5, despite being located between two of the D5 buildings.

We believe that a nine story building on this 0.41 acre parcel would be totally out of place, would violate the 2016 Master Plan and would be inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city. We respectfully ask that you stay the course that has been followed and has been successful for so long. Thank you.

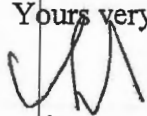
Yours very truly,


Bev Ross

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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,


Lewis P. Rucklidge
Birmingham Place
Unit 510

Birmingham, MI 48009

June 18, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

1034 Waterfall Court
Birmingham MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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Yours very truly,

Judge Susan D. Borman (Retired)

Susan Borman

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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Yours very truly,

A handwritten signature in black ink, appearing to read "Erin Mellett". The signature is written in a cursive, flowing style with some capitalization and a distinct ending flourish.

ADDRESS:

DATE:

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

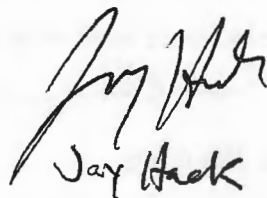
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Yours very truly,



1276 Smith Ave.

Birmingham MI 48009

411 S. Old Woodward
Birmingham, MI 48009

June 19, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project ")

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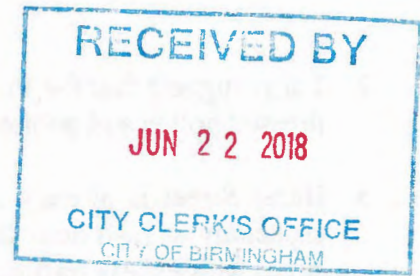
Yours very truly,

A handwritten signature in dark ink, appearing to read 'Dana Bassipour', with a stylized, flowing script.

Dana Bassipour

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018



Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

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The Proposed Project is also esthetically displeasing. Instead of enhancing the Woodward corridor with an attractive entrance, it presents only a blank wall to the passing public. It would also create the hostile appearance of blocking off much of South Old Woodward and beyond by erecting a virtual wall of buildings running from the south end of the 555 residential units through the north end of Birmingham Place, reminiscent of medieval walls built around cities to keep people out, not to invite them in.

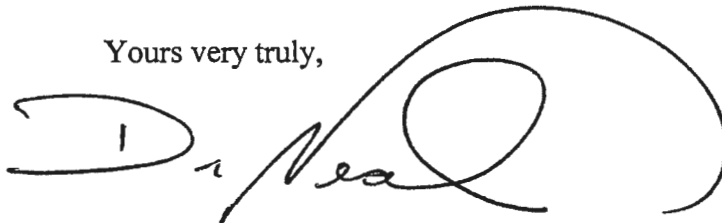
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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

A handwritten signature in black ink, appearing to read "Dr. Neal". The signature is stylized with a large, sweeping loop at the end.

411 S. Old Woodward, Suite 1012
Birmingham, MI 48009

June 14, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

The city's 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest. Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

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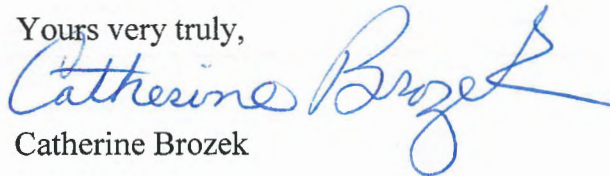
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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,



Catherine Brozek

MICHAEL D. UMPHREY. ESQ.
411 S. Old Woodward Ave., Unit 618
Birmingham, MI 48009-6647
(248) 339-7708 – Telephone
(248) 528-5129 – Facsimile

June 27, 2018

VIA HAND DELIVERY

John M. Connaughton, Fire Chief
572 South Adams
Birmingham, MI 48009

Re: Proposal to Rezone 469-479 S. Old Woodward Avenue

Dear Chief Connaughton:

I am writing, individually and as an officer and director of the Birmingham Place Residential Condominium Association, in response to your letter of June 22 Jana Ecker. A number of residents here discussed this matter with Joel Campbell and wish we had been sent a copy of the letter, but at least we got it as part of the agenda for tomorrow night's Planning Board hearing.

In any event, we have some serious concerns with this situation in general and with your letter in particular, which include:

1. The proposed new building is *not* planned to be built "very close to the South Side of Birmingham Place" but rather is proposed to literally abut the southerly walls of Birmingham Place. This may not have a direct bearing on fire issues, but it does raise other issues and should, in any event, be stated accurately.
2. We understand that the fire equipment currently has some, albeit limited, access to Birmingham Place from Hazel Street. Your letter correctly states that you "... would not deploy our aerial truck for operations on the South Side of the building," but it fails to note that the proposed building, which would be 22 feet taller than Birmingham Place, completely eliminates whatever access is currently available from Hazel Street.
3. Your letter also states "... we do have access from both the East and West sides of the building." If the proposed building is built, a review of the drawings makes it clear that there would, in fact, be no fire equipment access whatsoever to most, if not all, of the residential and office units on the southerly part of Birmingham Place from the east side and only limited access to these units from the west side.

John M. Connaughton, Fire Chief

June 27, 2018

Page 2

4. Current access from the west side also includes an alley running from Woodward Avenue to the rear of 469 S. Old Woodward. While this alley might well not accommodate larger fire trucks, it certainly provides some access to some equipment, which would be completely cut off by the proposed building.
5. We agree completely with the balance of the second paragraph regarding fighting "high rise" fires from within the building and also detailing the helpful fire fighting fixtures and equipment in Birmingham Place. Nevertheless, the simple fact remains that fire protection for Birmingham Place (and more importantly, the people who live and work here) will be less than it was if the proposed building is built as planned.

Our bottom line, so to speak, is that fire protection to at least the southerly portion of Birmingham Place would be reduced if the proposed building were allowed, and we have to ask you, as Fire Chief, how much increased risk for the sake of new development that hopes to maximize and increase the currently allowable building size is acceptable. The increased risk can easily be avoided by the City denying the rezoning request and maintaining the status quo. The value of adding several stories to a building pales in comparison to any increased risk to the health, safety and welfare of the Birmingham Place residents and occupants as well as the firefighters tasked with protecting the residents and occupants.

We request that you very seriously reconsider your position on this matter and advise both the Planning Board and the City Commission of the same, preferably before the meeting tonight but in any event at your first opportunity. Thank you for your time and attention. Best regards.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Michael D. Umphrey", with a stylized, sweeping flourish extending to the right.

Michael D. Umphrey

xc: All Birmingham Planning Board Members (via hand delivery)
All Birmingham City Commissioners (via hand delivery)

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally *not* zoned as D5, despite being located between two of the D5 buildings.

I believe that a nine story building on this 0.41 acre parcel would be totally out of place, would violate the 2016 Master Plan and would be inconsistent with the small town downtown concept I firmly believe is very important to maintaining the character and long-standing plan for this beautiful city. I respectfully ask that you stay the course that has been followed and has been successful for so long. Thank you.

Yours very truly,

Margie White
#505

June 19, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

I am writing, as the owner of a residential comdo unit in Birmingham Place, to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

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Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population.

The Proposed Project is also esthetically displeasing. Instead of enhancing the Woodward corridor with an attractive entrance, it presents only a blank wall to the passing public. It would also create the hostile appearance of blocking off much of South Old Woodward and beyond by erecting a virtual wall of buildings running from the south end of the 555 residential units through the north end of Birmingham Place, reminiscent of medieval walls built around cities to keep people out, not to invite them in.

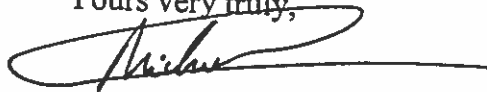
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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

A handwritten signature in black ink, appearing to read "Michael Hanna", written over a horizontal line.

Michael Hanna

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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Yours very truly,

Valerie Foley
411 S. Old Woodward Ave
Unit 508
Birmingham AL
35209

June 19, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

I am writing, as the owner of three residential condo units in Birmingham Place, to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

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The Proposed Project is also esthetically displeasing. Instead of enhancing the Woodward corridor with an attractive entrance, it presents only a blank wall to the passing public. It would also create the hostile appearance of blocking off much of South Old Woodward and beyond by erecting a virtual wall of buildings running from the south end of the 555 residential units through the north end of Birmingham Place, reminiscent of medieval walls built around cities to keep people out, not to invite them in.

In addition, I have serious safety and other concerns, including:

1. Birmingham firefighting capability is limited to 7 stories. This would leave most of the back of the Proposed Project and virtually all of the south end of Birmingham Place with inadequate or no fire protection.

2. I also suggest that the Proposed Project would unduly burden our city's already hard-pressed police and public safety/rescue facilities.
3. Hazel Street is already a busy connector between Woodward and Old Woodward, especially at rush hour times. The Proposed Project would literally clog this small street with excess traffic, especially if the "four stack" valet service recommended by the developer's own traffic study is implemented and if the current four on-street parking spaces are included in the Proposed Project's plan for adequate parking, as Christopher Longe recently stated to the Planning Board would be the case. We note that the City's own traffic advisor, Fleis & Vandenbrink, also finds considerable fault with the developer's traffic study.
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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Doris Hanna", written over a horizontal line.

Doris Hanna

June 19, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

I am writing, as the owner of one or more residential condo units in Birmingham Place, to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

The city's 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest. Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

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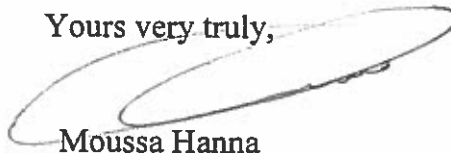
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Yours very truly,

A handwritten signature in dark ink, appearing to read "Moussa Hanna", written over a horizontal line.

Moussa Hanna

ADDRESS:

DATE:

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

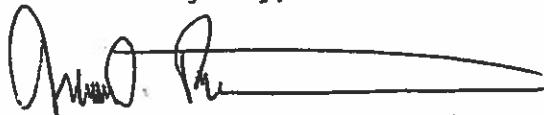
Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

We are residents of the City of Birmingham and are writing to express our deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally *not* zoned as D5, despite being located between two of the D5 buildings.

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Yours very truly,



Mark D. Rubinstein
268 Pilgrim
6/23/18

Arlene R. Rubinstein
268 Pilgrim
6/23/18

Birmingham, MI 48009

June 16, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project ")

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

Mike Galperin
460 Park

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

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Yours very truly,

Gavin Butler
411 S. Old Woodward Ave
Unit 508
Birmingham Michigan

411 S. Old Woodward, Suite 631
Birmingham, MI 48009

June 26, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,



Dennis W. Liu

ADDRESS:

DATE:

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

We are residents of the City of Birmingham and are writing to express our deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally *not* zoned as D5, despite being located between two of the D5 buildings.

We believe that a nine story building on this 0.41 acre parcel would be totally out of place, would violate the 2016 Master Plan and would be inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city. We respectfully ask that you stay the course that has been followed and has been successful for so long. Thank you.

Yours very truly,

Jackie Piceu
642 Oak Ave
Birmingham 48009

ADDRESS

DATE

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 460-179 S Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen

We are residents of the City of Birmingham and are writing to express our deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally *not* zoned as D5, despite being located between two of the D5 buildings.

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Yours very truly,

P. Steven Warren
1296 Stanley Blvd
Birmingham, Mich
48009

ADDRESS:

319 GREENWOOD
BIRMINGHAM, MI 48009

DATE:

JUNE 19, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

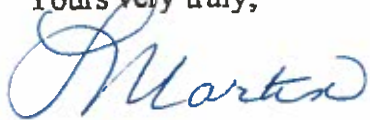
Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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Yours very truly,



LISA A. MARTIN

Birmingham, MI 48009

June 16, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

Leslie Rolden
687 Vinewood

PETER R. SOBELTON
420 HARMON
BIRMINGHAM, MI 48009
248-433-5200



June 27, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin St
Birmingham, MI 48009

I am writing to express my strong support for the Re-Zoning request for the mixed use project being proposed for 469-479 S. Old Woodward Ave.

The proposed project will fit in nicely with its neighbors on either side, bearing in mind, each of which are 9 and 15 stories in height. With this development, rather than the present one story buildings, we will now have a building matching the scale, character and use of those buildings on either side.

Additionally, the proposed project would most certainly attract a greater amount of people to the south end of town, and no doubt also throughout the town, while adding retail shopping, thus tying into the already existing retail in the two neighboring buildings. Perhaps one of the most advantageous parts of the project, will be the alleviation of the necessity to accommodate parking on the street, as a result of the parking that will be provided on site.

This project is a win-win, and should be approved for re-zoning in the most hasty of manners, continuing Birmingham's lead in cutting edge developments, as we continue to see the increasing competition for tenancy from our neighboring cities.

Sincerely,



Peter R. Sobelton

411 S. Old Woodward Avenue
Birmingham, MI 48009

June 27, 2018



Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

A handwritten signature in black ink, appearing to read "Tom Longe". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

411 S. Old Woodward, Suite # 725
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009



Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

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Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population.

The Proposed Project is also esthetically displeasing. Instead of enhancing the Woodward corridor with an attractive entrance, it presents only a blank wall to the passing public. It would also create the hostile appearance of blocking off much of South Old Woodward and beyond by erecting a virtual wall of buildings running from the south end of the 555 residential units through the north end of Birmingham Place, reminiscent of medieval walls built around cities to keep people out, not to invite them in.

In addition, I have serious safety and other concerns, including:

1. Birmingham firefighting capability is limited to 7 stories. This would leave most of the back of the Proposed Project and virtually all of the south end of Birmingham Place with inadequate or no fire protection.

2. I also suggest that the Proposed Project would unduly burden our city's already hard-pressed police and public safety/rescue facilities.
3. Hazel Street is already a busy connector between Woodward and Old Woodward, especially at rush hour times. The Proposed Project would literally clog this small street with excess traffic, especially if the "four stack" valet service recommended by the developer's own traffic study is implemented and if the current four on-street parking spaces are included in the Proposed Project's plan for adequate parking, as Christopher Longe recently stated to the Planning Board would be the case. We note that the City's own traffic advisor, Fleis & Vandenbrink, also finds considerable fault with the developer's traffic study.
4. The demolition and construction time of the Proposed Project would be finite, but during that time, the heavy equipment needed for a project this size would cause construction damage to Hazel Street, Old Woodward and Woodward. Depending on the timing, this could result in at least the repaving work already planned for Old Woodward south having to be redone at a very substantial cost.
5. The Proposed Project will require deep excavation ("digging half way to China," as Mr. Longe recently expressed to the Planning Board) and heavy equipment and materials, which could seriously jeopardize the structural integrity of Birmingham Place. The developer has not adequately addressed this and has not made provision to repair, or more importantly to prevent, any damage to Birmingham Place.

Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

Rose M. Boyle
Ralph S. Boyle

411 S. Old Woodward, Suite ~~#~~ 901
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

The city's 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest. Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population.

The Proposed Project is also esthetically displeasing. Instead of enhancing the Woodward corridor with an attractive entrance, it presents only a blank wall to the passing public. It would also create the hostile appearance of blocking off much of South Old Woodward and beyond by erecting a virtual wall of buildings running from the south end of the 555 residential units through the north end of Birmingham Place, reminiscent of medieval walls built around cities to keep people out, not to invite them in.

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Yours very truly,

Helen O. Kane
OWNER

411 S. Old Woodward, Suite 529
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

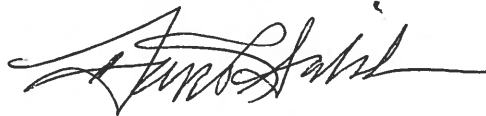
Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally *not* zoned as D5, despite being located between two of the D5 buildings.

I believe that a nine story building on this 0.41 acre parcel would be totally out of place, would violate the 2016 Master Plan and would be inconsistent with the small town downtown concept I firmly believe is very important to maintaining the character and long-standing plan for this beautiful city. I respectfully ask that you stay the course that has been followed and has been successful for so long. Thank you.

Yours very truly,

A handwritten signature in black ink, appearing to read "David Saliba", with a stylized flourish at the end.

DAVID SALIBA
Unit 529

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

Ronnie M. Schibb

Birmingham Place, unit #529



Jana Ecker <jecker@bhamgov.org>

Rezoning issue

1 message

Clinton Baller <cmballer@avidpays.com>
To: Jana Ecker <Jecker@bhamgov.org>

Fri, Jun 22, 2018 at 10:17 AM

Jana,

Could you please let the Planning Board know my thoughts on the rezoning request for the former Franklin/First Place/Talmer bank building and Chinese restaurant on Woodward/Old Woodward?

I don't know why that property was not included in the D5 rezoning that occurred several months ago, but it should have been. Birmingham Place is nine stories, and the 555 building is 15. I can't imagine that the city would not allow something of similar height and mass to occupy the space between these two projects.

Beyond that, I think the city ought to insist on a project that brings some vitality to Old Woodward and the side street (Hazel), which are now dead zones. Either that, or just vacate Hazel insist on a use that is advantageous to the city.

My two cents, which are worth at least a nickel, I think.

Cheers!

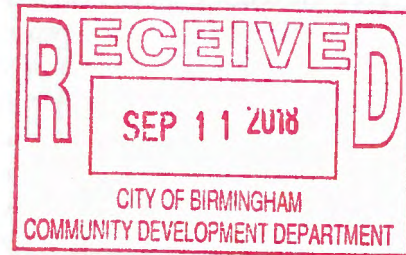
Clint



Susan K. Friedlaender
Direct: (248) 406-6088
sfriedlaender@fnrplc.com

September 11, 2018

City of Birmingham
Planning Board
151 Martin St.
Birmingham, MI 48009
Attention: Ms. Jana Ecker



Re: Request for Re-Hearing on Application to include 469 and 479 S. Old Woodward
in the D5 Downtown Birmingham Overlay District Zone

Dear Members of the Planning Board and Ms. Ecker:

We are writing this letter on behalf of the Birmingham Place Residential Condominium Association. The Association opposes the rehearing and rezoning of the Applicant's property to the D5 overlay zone for many reasons as detailed in this letter. The dispositive reason to again deny recommendation of the rezoning is because the D5 ordinance was never intended to be applied in the manner requested.

Introduction

It is first baffling to the Association that the Applicant was able to obtain a rehearing of this Board's decision at the June 27, 2018 public hearing to deny the Applicant's request for a tabling of its the rezoning request. The Applicant apparently was able to defy this Board's denial of the tabling request and come back again with the exact same rezoning request. The Applicant's latest submission not only fails to demonstrate any substantial change in facts, evidence or conditions but is also fails to show that the Planning Board made any mistake, failed to consider any relevant facts or was misled by alleged mischaracterizations regarding the clear, history, intent and purpose of the D5 Ordinance. A close examination of the Applicant's rehearing request reveals inconsistencies, fallacies, erroneous assumptions, unsupported assertions, and mischaracterizations of the record and history of the D5 ordinance. The intention of this letter is to provide that closer examination which should leave no doubt that the Planning Board should not change its original vote to deny a positive rezoning recommendation.

There Has Been No Mischaracterization of the Intent of the D5 Ordinance and its Inapplicability to the Applicant's Property.

It is impossible to read through the history of the D5 ordinance and arrive at a good faith conclusion that Birmingham Place or any Planning Board member has mischaracterized the purpose of the D5 ordinance enactment. The facts and history of the D5 ordinance, and its plain language, leave no doubt that the final product was concerned only with existing buildings which were non-conforming due to height over 5 stories and setbacks. The following is a summary of the history of the D5 ordinance. However, attached as Exhibit A, is a detailed timeline with references to the relevant public records which supports the statements made in this summary.

The 555 Building proposed the first draft of the D5 ordinance as the means to renovate and expand its existing non-conforming buildings and develop a new building on the southern portion of its site. The owners could not make those changes under the City's then existing ordinances that governed the renovation and expansion of nonconforming property. Although the Planning Board discussed several different approaches to help the 555 Building overcome its nonconforming status, which included taking a broader look at the Southern Gateway area, the Planning Board ultimately decided to deal only with three nonconforming taller buildings: The 555 Building, Birmingham Place and Merrillwood. It settled on dealing only with nonconforming commercial buildings over 5 stories because there was no consensus on how to address the development of other parcels on the West side of Woodward that did not have the height nonconformity. Moreover, the only direction that the City Commission gave the Planning Board regarding the drafting of a new overlay ordinance was (1) to find a way to make those taller buildings legally conforming structures and (2) draft language that would allow the reasonable renovation and expansion of other commercial nonconforming buildings throughout the City. The City Commission did not direct the Planning Board to draft a new overlay ordinance that allowed any building *under* 5 stories to obtain greater height because located adjacent to a building that was over 5 stories. The Applicant's representations to the contrary are simply opportunistic.

The above conclusion is amply supported by a memorandum from Planning Director Jana Ecker to the Planning Board dated September 22, 2015 (sic) that was included in the City Commission's February 13, 2017 packet.¹ The City Commission voted to approve the D5 ordinance at that February meeting. (Memorandum attached as Exhibit B)

Ecker discusses in the memorandum that the Planning Board faced a dilemma regarding how to deal with the 555 Building. While the Planning Board recognized the importance of the 555 Building, it was hesitant to create "a new classification around a specific building." (Ecker Memorandum, p. 1) The memorandum details the failed attempts to devise a way to not only address the 555 Building but also the future development of several other parcels, including parcels that did not share the height nonconformity. The Planning Board was unable to draft an ordinance regarding the future development of other parcels because *"there were varying viewpoints on whether a new overlay should be created that included multiple properties along Woodward, and if so, which properties to include. No consensus was reached."* (Ecker Memorandum, pp. 2-3) (Emphasis added) The Planning Board considered several options to allow changes to legal non-conforming commercial buildings.² The Planning Board considered drafting two new overlay ordinances, one of which could be applied even to conforming property on the west side of Woodward, which would allow building heights that matched the allowable height east of Woodward in the Triangle District. (*Id.* at p. 5) Ecker suggested amending the B-3 ordinance to allow the same development rights that existed when the 555 Building was constructed under that ordinance. Although no consensus could be reached regarding application of the ordinance to the future development of existing properties, there was consensus with the blessing of the City

¹ The contents of the memorandum suggest that the date contains a typographical error because the timeline discussed within the memo extends to setting the December 14, 2016 public hearing.

² The Zoning Ordinance already contained a provision that allowed the limited expansion of nonconforming residential buildings. See Section 6.02

Commission that the improvement and expansion of legal nonconforming buildings should be studied. (*Id.* at p. 3) The decision was made therefore only to deal with the nonconformity issue in the new D5 overlay district.

Thus, although Planning Board members correctly remember discussing additional properties in the Southern Gateway during the D5 drafting process, those discussions did not bear fruit or any action because of a lack of consensus. It was not because the Mountain King owners were not before the Board. It was because the Planning Board could not reach a consensus other than allowing valuable buildings such as the 555 Building, Birmingham Place and Merrillwood the greater right to renovate or expand without the disability of being a non-conforming property because of height and setback.

The Applicant was not prejudiced by the Planning Department's Mistaken Statement in its Review of the Community Impact Statement and Preliminary Site Plan

The Applicant claims that this Board made its rezoning recommendation based upon the mistaken assumption that the Property is located within the Parking Assessment District (PAD) and that it allegedly was prejudiced by the asserted mistaken assumption.

First, it is true that the Planning Department's review of the Applicant's Community Impact Statement (CIS) and Preliminary Site Plan review erroneously stated that the Applicant's property was within the PAD. The Planning Department's mistake, however, did not prejudice the Planning Board's review of the rezoning request for several reasons. First, the mistake regarding the PAD was in the Planning Department's CIS and Preliminary Site Plan review and the Planning Board did not consider the CIS or site plan at the rezoning hearing.

Second, the Planning Board did not prevent the Applicant from explaining how the parking requirements impacted its ability to develop the land under the D4 ordinance. The record shows that the Applicant discussed the fact that the property is not in the PAD. (Video of hearing at 2:07:56) In answer to the question why the property could not be developed under the D4 overlay ordinance, the Applicant claimed that it could not develop the Property under D4 because it was not in the PAD.

Owner: "But office building, to put a . . . I don't have the parking for it. *I'm not in the Parking Assessment District*, so I'm limited by parking. I can't put a restaurant there, because I . . . you know . . . I, I, don't have the parking to park it. The only thing I can really put there at the end of the day is a hotel. I mean that's the only thing that makes it work. *And again, to make it work as a hotel, I need to fit everything into this package that the hotel wants.*" (emphasis added)

Third, if the Applicant believed that not being part of the PAD was crucial to its rezoning request nothing prevented the Applicant from discussing that fact when initially addressing the standards for the rezoning. The fact that the Applicant made no mention of the PAD in its initial written rezoning request belies its post hoc argument that the issue was so crucial to its request.

Moreover, if parking is the issue as the Applicant now claims that it is, the remedy is not to develop a project that has even greater parking requirements than is required under the existing ordinance. The rezoning is not necessary to meet the parking requirements when the possibility of

variances for parking can resolve parking related problems.

Finally, the Applicant stated that it was its understanding that it is the only D4 site that is not in the PAD. That understanding appears to be wrong. If the GIS website is up to date, it appears that there are two other parcels that also are zoned D4 but shown as outside of the PAD. The parcels are 484 W. Maple and 460 W. Maple. (See Exhibit C, Map with Overlay District and PAD Map)

The Applicant Has not Demonstrated That the Applicable Parking Requirements Prevent Development Under the D4 Overlay Ordinance

The Applicant's supplemental explanation under Section 7.02(B)(2)(b)(i) of "why the rezoning is necessary for the preservation and enjoyment of the rights and usage commonly associated with property ownership" is that it cannot meet the parking requirements if developed under the D4 overlay ordinance. The Applicant asserts that it needs more vertical height for a mixed use project and to meet parking requirements. As discussed below, the Applicant has failed to support this claim. It is hard to determine whether the Applicant claims that the property cannot be used as it currently exists because of the inability to meet parking requirements or that it cannot be redeveloped physically for any purpose under the current zoning classification because of its configuration coupled with the D4/B-3 mixed use and parking requirements.

The Applicant makes the following assertions regarding parking requirements:

Contrary to what was assumed by the Planning Board, because the Property is not in the Parking Assessment District ... it currently has no possibility of providing off-street parking on the premises. In fact, it is currently non-conforming and cannot comply with Article 4. 46 of the Zoning Ordinance (Off-Street Parking Spaces Required) Letter, p. 2

The off-street parking requirements for this Property make the engineering and design of a mixed-use D-4 seriously impractical if not impossible. Letter, p.3

Not only will the Applicant lack the required area within which to locate all of the mixed uses with a first-floor retail mandate, the Applicant also is absolutely hamstrung by the off-street parking requirements for this site. The maximum use of the underground area will not yield enough parking spaces for a building designed to current zoning. Rezoning the Property to the D-5 Zone will allow more vertical space within which to accommodate a mixed-use building together with the required parking for all permitted uses. Letter, p. 3

There are serious difficulties with building an underground

garage within the D-4 design parameters that is deeper than two levels....Consequently , any such garage is limited to approximately 60 parking spaces. Letter, p. 5

Based upon the first quote above, the Applicant appears to be stating that the property as it currently exists cannot support any or very limited off-street parking. Even if that is true, under Section 4.45 (G) 2 and 4 of the zoning ordinance, off-street parking can be provided within 100 feet of the site or via shared parking arrangements. The Applicant claimed in its CIS that it has an agreement with the 555 Building for the use of 45 parking spaces. The Applicant could also apply for parking variances. If the application of the parking provision of the zoning ordinance prevents the property from being used, the likelihood of necessary variances is extremely high.

The next four quotes appear to be referring to a redevelopment under the D4 overlay district requirements. The Applicant essentially makes the logically challenged argument that because it is outside of the PAD it needs to develop a project that requires even more parking to meet the off street parking requirements. The Applicant's proposed use shows a three level underground parking facility with 100 spaces and an agreement with the 555 Building for 45 more spaces.³ The Applicant does not explain the discrepancy between its proposed plan and its new claim that any underground garage is limited to approximately 60 parking spaces because of D4 design regulations. However, the same D4 design regulations that would apply to an underground garage in the D4 district also apply in the D5 district. The D5 zone does not provide any relief from the design issue. The Applicant, however, asserts that it could meet the parking requirements if it could construct a 9 story building but it cannot meet the parking requirements if it constructs a 5 story building. If the site can only accommodate 60 parking spaces rather than the 100 spaces that the Applicant originally represented, it defies explanation how a taller building is better able to meet even greater parking requirements. Moreover, if there is a design requirement which hampers providing more onsite parking, that is a variance and not a zoning issue.

The Applicant also does not explain whether it means that if restricted to five stories, it cannot develop its preferred 98 hotel units, 29 residential units and a first floor coffee shop/ hotel lobby. The Applicant asserts that it needs more height because it cannot possibly fit mixed uses and meet parking requirements on its site if limited to 5 stories. According to its proposed plan, however, it can fit approximately 21-26 hotel rooms per floor and 13 residential units per floor. It is unclear if the Applicant is now claiming that it can only build a two level underground parking garage rather than a three level underground garage. In either case, it does not affect the above ground height of the building. The Applicant likely could develop a 5 story mixed use building with for example 70 hotel units, 13 residential units and the same size lobby/coffee shop as proposed. A 5 story development with these specifications might require 73 parking spaces for the hotel, approximately 13-16 spaces for the residential uses (depending on the number of rooms) and 12 spaces for the lobby/coffee shop. Even if the Applicant could only fit 60 spaces onsite, it

³ The Applicant appears to have made some mistakes in its parking analysis. For example the residential parking requirement under B-3 is 1 space for a 2 room dwelling and 1.25 spaces for a dwelling that has more than 3 rooms. The Applicant claimed that it needed 1.25 spaces for 26 apartments and 1.5 spaces for 3 apartments for a total of 37 spaces. The actual requirement is 29.75 spaces for 29 units.

could provide 105 spaces with the 555 Building parking agreement for 45 spaces.

The Applicant also has not explained whether it has explored the possibility of parking variances. A good argument exists that it should not have to provide any parking spaces for the lobby/coffee shop. The users of those retail spaces will likely be hotel guests or neighboring occupants who can easily walk to the coffee shop. The coffee shop likely will not be a destination spot for the motoring public. It is also likely that the hotel would not always be at full capacity which could provide a basis for obtaining additional parking variances. The City also is in the process of reviewing parking requirements for residential uses and possibility eliminating them for a site such as the Applicant's property.

Therefore, the answer to not being in the PAD is not to create taller buildings with higher density that requires more parking. The more reasonable solution is developing at lower densities with lower parking requirements and applying for any needed variances.

The Planning Board Appropriately Decided to Table Consideration of the CIS and Preliminary Site Plan Review

The Applicants second supplemental explanation under Sec. 7. 02(B){2}(b)(ii) of "why the existing zoning classification is no longer appropriate" essentially contains a confused diatribe regarding the Planning Board's decision to table consideration of the CIS and preliminary site plan review until after the City Commission acted on the rezoning request. It also discusses the ability to develop and use the property under the existing classification, which was addressed above in this letter. The Applicant also claims under this section that the Board was misled to believe that the D5 overlay zone only applies to existing buildings taller than five stories. That issue has also been addressed earlier in this letter.

First, the Planning Board correctly voted not to review the CIS or proposed site plan until and unless the rezoning was granted. There is no legal or factual basis for the CIS and preliminary site plan review until the petitioner secures the rezoning necessary to develop the property as proposed. In fact, it is an elementary zoning and planning principle that neither a planning board or legislative body should ever consider a particularized site plan at the rezoning stage unless the rezoning is conditional or part of a planned unit development. The reason is that the municipality is supposed to be making the rezoning decision based upon whether the general zoning classification is appropriate for the property and not whether any specific proposed plan is appropriate for the property. Another reason is because once the land is rezoned, the land owner cannot be tied to any specific site plan. The owner is free to develop the land under any provision of the new zoning classification. It would have been an error if the Planning Board had recommended rezoning based upon the CIS or site plan or had been unduly influenced by the proposed use for the site in making a decision.

Second, the Applicant's assertion that the Michigan Zoning Enabling Act, MCL 125.3101, et seq ("MZEA") requires that rezoning decisions be made according to a *site plan* is inaccurate and nonsensical. The MZEA provides that a *zoning ordinance* must be "based on a plan designed to promote the public health, safety and general welfare..." (emphasis added) This means that the zoning ordinance itself and any amendments to it must be based - not on a site plan for the particular use of a single parcel of property - but upon a general land use plan, like the 2016 Birmingham Plan. The MZEA does not require site plans for *rezoning* property. It does require

site plans for the approval of special land uses and planned unit developments. A site plan ensures that property is developed consistent with ordinance requirements. The Planning Board did not prejudice the Applicant in any way by not reviewing a proposed site plan for a zoning that did not exist for the site. The rezoning of property is a legislative rather than administrative act and depends on the implementation and furtherance of general policies. It does not depend on a site plan for a single parcel of property.

**The Applicant Failed to Support that the Rezoning Will Not Be Detrimental to
Surrounding Properties**

The Applicant's supplemental explanation of why the proposed rezoning will not be detrimental to surrounding properties relies on its factually inaccurate statement that the City intended that the D5 overlay zone apply to the Applicant's property and that the Birmingham Place owners will not be harmed by the rezoning.

First, as previously discussed, the history of the D5 zone indisputably supports that the clear intent of the D5 zone is only to apply to existing buildings taller than five stories. It should be noted here however that the Applicant's Letter very misleadingly takes Ms. Ecker's comment regarding new construction in the D5 zone completely out of context. All the participants in the D5 ordinance amendment process understood that the new construction provision was added for the benefit of the 555 Building. The language regarding new construction was not meant for property that had no existing height nonconformity that the D5 ordinance amendment was addressing.

Second, the Birmingham Place owners maintain their position that the proposed rezoning will be detrimental to the use and enjoyment of their property. A vast majority of the residential condominium owners, even those whose views will not be impacted, are opposed to the proposed development for many reasons that will be brought to the Board's and Commission's attention.

**The Board Did Not Fail to Make Required Findings of Fact or Misapply the Rezoning
Standards**

The Applicant further claims that the Planning Board failed to make the required findings under Ordinance Section 7.02(B)(5). Its primary complaint is that the ordinance allegedly does not require the Planning Board to determine whether the property can be used as zoned. This is splitting hairs.

Section 7.02(B)(5) (d) of the zoning ordinance requires that the Planning Board make findings of fact regarding "[t]he suitability of the property in question to the uses permitted under the existing zoning classification." Asking the Applicant why it cannot use the property as zoned is simply a way of determining whether the property is suitable for the uses permitted under the existing zoning ordinance.

Second, the Applicant claims that the Planning Board should have examined the appropriateness of the current zoning and not whether the Applicant could develop under this category. Again this is splitting hairs because it is the same question. The zoning may be inappropriate as applied to this site if the Applicant cannot develop or use its property under this classification. If the property can be used and the zoning classification still furthers master plan

goals and the public interest then it remains appropriate. The only difference between the D4 and D5 overlay zones is building height. The uses are the same. The Applicant's only argument that conditions changed is the rezoning of Birmingham Place and the 555 Building. However that rezoning has not changed any existing land use patterns. The rezoning recognized existing land uses that had become nonconforming because of building height policies that changed after those taller buildings were constructed. Birmingham Place is as tall now as it was when it was rezoned to D5. The rezoning merely normalized the existing heights of the affected buildings.

A community generally should preserve its master plan and existing zoning unless the zoning classification no longer furthers the master plan goals or is no longer suitable for the site because of changed conditions and development patterns. The City certainly can adopt new master plan goals but should not make sweeping changes to the City's land use plan through its zoning ordinances alone without first studying the issue of increasing building heights. The planning study is supposed to precede such zoning changes because the Zoning Enabling Act mandates that zoning be based on a plan. There has been no official study or public notice of any plan to allow more than 5 stories on the West side of Woodward. Moreover, the City weakens its master plan and its ability to defend it in court when it approves rezoning that is inconsistent with the plan. The proposed rezoning was not consistent with the 2016 Plan which reflects a policy decision to limit the height of buildings in the Downtown Overlay Zone to five stories. It is true that the City has since allowed taller buildings in the Triangle District but that new zoning was accomplished according to the Triangle District Plan. Therefore, when asked to depart from the 2016 Plan as it applies to the West side of Woodward, the City is well within its rights to require that the proponent demonstrate that the property cannot physically or viably be developed as zoned. To suggest otherwise ignores established zoning law and planning principles.

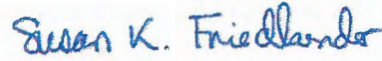
CONCLUSION

The Applicant has not provided any new information that should change the Planning Board's original and correct recommendation to rezone the property to the D5 overlay classification. It is beyond dispute that the D5 ordinance was meant only to apply to existing buildings over 5 stories or existing sites that contained buildings over 5 stories. The Planning Board determined when it drafted the D5 ordinance that it would not address the future development of any other parcels in the Southern Gateway. It would be unfair and a failure of process for the Planning Board to ignore that history because the public will then have been misled by the process to enact the D5 ordinance. It is customary for the City to involve the public in any study to raise building heights as it did in the Triangle District.

Moreover, the Applicant made no effort to demonstrate that the D4 ordinance is unreasonable or unworkable as applied to its property. It has not made any credible case to support the rezoning request. At the June 27, 2018 hearing, the Applicant claimed that he could only make the site work with a hotel and in order to develop a hotel *"I need to fit everything into this package that the hotel wants."* (emphasis added) This is the very reason why the City cannot rezone property based upon a proposed use. The issue is not what this particular hotel wants and the City cannot guarantee by rezoning the property that the hotel will even go through with the development. The issue is what does the existing zoning allow and can any of the allowable uses be reasonably developed consistent with the City's land use policies as reflected in the 2016 Plan and its zoning ordinance.

The Planning Board, therefore, must recommend a denial of this opportunistic and improper rezoning request.

Very truly yours,



Susan K. Friedlaender

EXHIBIT A

TIMELINE AND SUPPORTING MATERIALS REGARDING THE EVOLUTION OF THE INTENT AND PURPOSE OF THE D5 OVERLAY ORDINANCE

INTRODUCTION

It is impossible to read through the history of the D5 ordinance and arrive at a good faith conclusion that Birmingham Place has mischaracterized the purpose of its enactment. The facts and history of the D5 ordinance, and its plain language, leave no doubt that the final and enacted draft was concerned only with existing buildings which were non-conforming due to height over 5 stories and setbacks. In fact, the only direction that the City Commission gave the Planning Board regarding the drafting of a new overlay ordinance was to find a way to allow the renovation and expansion of legal nonconforming commercial buildings. Although the Planning Board discussed several different approaches to help the 555 Building overcome its nonconforming status, which included taking a broader look at the Southern Gateway area, the Planning Board ultimately decided to deal only with three nonconforming taller buildings: The 555 Building, Birmingham Place and Merrillwood. It settled on dealing only with nonconforming commercial buildings over 5 stories because there was no consensus on how to address the development of other parcels on the West side of Woodward that did not have the height nonconformity. This is why it would be completely improper to rezone the Applicant's property to D5. The rezoning would pose a serious question regarding whether the Planning Board properly notified the public and City Commission regarding the intent and application of the D5 ordinance.

June 10, 2015 Planning Board Study Session

In the spring of 2015 the owners of the 555 Building submitted a request to amend the zoning ordinance and create a new D5 overlay district for buildings over five stories. The owners proposed the ordinance after the building department found "that any changes to the existing legal non-conforming building would increase the nonconformity, and thus be prohibited unless numerous variances were approved." (2015-06-10 Minutes from Planning Board Study Session)

When first presented with several different drafts of the proposed D5 ordinance, **the Planning Board discussed that the proposed amendment "should be viewed not only as to how it applies to 555 S. Old Woodward Ave., but possibly to other properties as well." *Id.*** The reason for this cautious approach was to counter any charges of spot zoning or undue favoritism. The dilemma that emerged, however, was the valid concern about applying the ordinance to other properties without further study: (Emphasis added)¹

Mr. Koseck noted there are all kinds of non-conforming buildings in the City and he doesn't think the goal is that they should all go away and become conforming. That is why the Board of Zoning

¹ Please note that the reason for the inconsistency of referring to the "D-5" and "D5" overlay zone throughout this letter is because while the Zoning Ordinance uses the "D5" appellation, the minutes and other writers often use "D-5" designation. This writer chooses to use the official Zoning Ordinance version.

Appeals exists. He is in favor of improvements being made to the building, but as the applicant makes enhancements he (page 7) hopes they would go further to be more in compliance with D-4, D-3, D-2, and D-1. It scares him to expand D-5 beyond the limits of this property without further study.” *Id.*

Chairman Clein thought of this as an opportunity to take a look at this building along with several parcels in the context of future development. If Bruce Johnson, Building Official, and Tim Currier, City Attorney, would come to a Planning Board meeting and are on board, he would be in favor of providing some relief in a unique situation; but he just doesn't want to do it capriciously. The Ordinance standards were put in place for a reason and he would be supportive of fitting them into the context of a building that obviously is not going away, in order to help make it better.

Ms. Whipple-Boyce was also in support of helping to make this Gateway building better looking. She thought also that it would be helpful to have Messrs. Johnson and Currier come to a Planning Board meeting. She could not imagine why the Planning Board could not somehow help the applicant to get their building re-skinned in some other way. Further, the ordinance proposal should not include some of the things that the board does not want to have in the City.

Ms. Lazar was in full support, as well, of trying to do something with the building. However, she didn't see how this board could whip up a new ordinance in a short period of time. It concerns her that what might be applied to this building could become applicable to some other sites which would not be appropriate. She would rather try to help the applicant get to where they need to be with this building” *Id.*

July 7, 2015 Planning Board Study Session

At the next study session, the Planning Board continued discussions regarding whether to target a larger area between Hazel and Brown or limit the application of the new ordinance to the 555 Building.

Mr. Williams summed up the discussion by saying the board wants to go the conforming route and use the SLUP process to do it. Maybe the applicant won't get everything but they can probably get a substantial achievement through the combination of the new MU classification plus SLUP exceptions for what they get as of right and what they get as a bonus. Ms. Ecker noted that is consistent with what the City does in other districts and what has been approved by the City Commission. This is a methodology that gives the Planning Board flexibility. It was the consensus that staff should work on

crafting something to that effect, taking the 555 Bldg. separately so that it gets through the City Commission.

September 9, 2015 Study Session

At the next study session, Ms. Ecker summarized the process as follows:

The applicant is seeking to rezone the 555 S. Woodward Ave. properties from the existing D-4 Overlay zoning classification to the proposed D-5 Overlay zoning classification, which would essentially render the existing building as a legal, conforming building that could then be renovated and expanded.” (2015-09- 09 Minutes, p. 9)

The Planning Board continued to ponder the scope of the work and whether it should go beyond dealing only with the 555 Building. Mr. Williams suggested creating a D5 district for the 555 Building and a D-6 District for other locations which might be nine stories. *Id.* at p. 10.

The Planning Board failed to reach a consensus or agreement with Mr. Williams suggestion.

September 30, 2015 Planning Board Study Session

At the next study session, the purpose of the proposed ordinance was characterized as follows:

Ms. Ecker explained that in order to renovate and expand the existing building, the owners of the 555 S. Old Woodward Building are requesting a Zoning Ordinance amendment to create a new D-5: Downtown Gateway Over Five Stories zoning classification in the Downtown Birmingham Overlay District. The proposal then is to seek rezoning of the 555 S. Woodward Ave. property from the existing D-4 Overlay zoning classification to the proposed D-5 Overlay zoning classification, which would essentially render the existing building as a legal, conforming building that could then be renovated and expanded.” (2015-09-30 Minutes, pp 10-11)

The Planning Board again discussed creating two new overlay zones to address not only the nonconformity issue but also to address other property in the Southern Gateway area. The Planning Board continued to debate the expanded approach and could not reach a consensus.

Ms. Whipple-Boyce said it is important to try to help the applicant have some sort of zoning classification so they can move on with their project. However, she also does not want to see 168 ft. up and down Woodward Ave. **She is not sure that looking at the whole area is even appropriate. So maybe just work with this building and give them a zoning classification.** Steer the applicant toward having their building conform with the sort of downtown standards that the board hopes to have; which for example, isn't the garden level. If they want to continue to have these when they come forward with a new plan that is when they can go to the BZA. (Emphasis Added)

Mr. Share was in favor of having the applicant first exhaust their remedies. If the BZA doesn't provide them with the relief they need and this board concludes that it is really critical, then maybe the board changes the ordinance, takes the heat for it, and tells everyone it is because they don't want the building to fall down.

Chairman Clein said he is not hearing any clear direction so the board needs to bring this back because it is a complicated issue.
(Emphasis Added)

The Owner's attorney assured the Planning Board that providing the 555 Building with relief would not be spot zoning.

January 17, 2016 Planning Board Study Session

At the opening of the study session, Ms. Ecker recounted the history of the ordinance amendment and rezoning request. She explained that the 555 Building not only wanted to renovate the existing building **but the owners also wanted to add "an addition to the south of the existing residential tower for new retail space and residential units."** (Emphasis Added)

In order to renovate and expand the existing building, the owners of the 555 S. Old Woodward Building are requesting a Zoning Ordinance amendment to create a new D- 5: Downtown Gateway Over Five Stories zoning classification in the Downtown Birmingham Overlay District which would essentially render the existing building as a legal, conforming building that could then be renovated and expanded." (2016-01-17 Minutes, pp 3-4)

Ms. Ecker also recounted that as of the last study session the Planning Board could not reach a consensus regarding whether to deal only with the 555 Building or look at properties along Woodward north to Brown Street:

There was no consensus on whether only the 555 S. Old Woodward Ave. property should be placed in a new overlay classification or whether this should extend north to Brown St. along Woodward Ave.

The minutes from the study session show that the Planning Board continued to debate whether to include properties other than the 555 Building in the proposed overlay district:

Mr. Share thought there are two separate questions. One relates to the 555 Building and whether or not it ought to be allowed to become conforming; separately, there is a question about general planning principles.

Mr. Boyle's opinion was there are three issues: the building itself; the corridor; and thirdly how to move forward with the details on S. Old Woodward Ave.

Mr. Williams stated the board should focus on the 555 Building and come up with a practical solution. The problem is that the building isn't right and it needs to be improved.

Ms. Whipple-Boyce said the question is whether a new zoning classification needs to be created, or can the applicant go through the variance process and achieve the same result.

Understandably, the owners of the 555 Building wanted to move forward with their request. The owners' attorney reiterated that the Owner was requesting that "the Zoning Ordinance be amended to accommodate their building; and second that the zoning map include the petitioner's property." (Emphasis added) The attorney did not believe that accommodating the building would be spot zoning, meaning that the Planning Board did not have to concern itself with anything other than moving forward on an ordinance that would apply only to the 555 Building.

Additionally, he [Mr. Rattner, the attorney] emphasized this is certainly not spot zoning. The idea is to modify the ordinance to make a nonconforming building one that should obviously be conforming in order to allow the owner to make improvements. Mr. Rattner requested that the proposed ordinance be moved forward to a public hearing.

The Planning Board was persuaded and concluded that it needed to focus on the 555 Building and leave discussion of the corridor for another day.

Chairman Clein summarized that the board has come to the conclusion that it needs to focus on the 555 Building. The rest of the corridor is a different discussion. The board concluded that a sub-committee consisting of Ms. Ecker, Mr. Rattner, the City Attorney, and two board members could have a discussion on this in an open meeting forum. Mr. Share and Mr. Koseck volunteered to represent the Planning Board in the deliberations.

There was one public comment which shows that this member of the public understood that the Planning Board would not be making any new and sweeping changes but only be focusing on how to help the 555 Building.

Mr. Paul Reagan, 997 Purdy, said he is encouraged by the discussion. No one wants the building to deteriorate. **He is glad that the Planning Board is not going beyond what was asked for, which is to restore the building. That is about how far it should go.** Right now there is real competition for parking on S. Old Woodward Ave. Imagine what expanding the density of that building would do to the neighborhood. Lastly, he was shocked to

hear the petitioner had a hand in drafting ordinance language for rezoning. (Emphasis Added)

The Planning Board decided to establish a sub-committee to work on the new ordinance amendment. The sub-committee did not present its findings and proposals until September 2016. In the interim however the Planning Board obtained direction from the City Commission regarding dealing with the important issue of nonconforming commercial buildings.

June 20, 2016 Joint Session with City Commission

The Planning Board presented several land use items to the City Commission at the joint session with the understanding that if the City Commission wanted further discussion the matter would be submitted at a subsequent meeting for more formal direction to further study and address the issue. (See 2016-06-13 Memo from J.A. Valentine to City Commission.) Mr. Valentine also submitted a more detailed memo to the City Commission dated June 14, 2016 which in part described the issue of "Existing Commercial Non-Conforming Buildings" and asked the Commission whether the issue merited further discussion. (See June 14, 2016 Valentine Memo.)

The representation made to the City Commission was that the Planning Board wanted to address the 555 Building and other existing non-conforming buildings like Birmingham Place and Merrillwood. There was no representation that the Planning Board would address extending the proposed new overlay ordinance to buildings like the Applicant's building that was not in danger of losing substantial value like the 555 Building if forced to redevelop only by losing substantial building height.

July 25, 2016 City Commission Meeting

Ms. Ecker attended the City Commission meeting to get the Commission's formal direction on how the Planning Board should proceed on the planning issues raised at the joint meeting.

Ms. Ecker represented to the Commission that the Board was only looking for ways to deal with existing nonconforming commercial buildings and not to create a new ordinance that would allow existing sites without any height non-conformity to construct new buildings under the proposed zoning district. The ordinance was not intended to deal with new development that could conform to the existing zoning classification. Ms. Ecker stated:

if a review of all the buildings in town was done, one would find something slightly non-conforming on many of the buildings that were built, especially if they were built prior to the sixty's when the zoning ordinance came into effect. She noted specifically buildings such as the Merrillwood Building, Birmingham Place, and the 555 building in regards to the height and bulk of the buildings. She explained that the discussion at the workshop was that there should be some regulation in the zoning ordinance that allows for some maintenance or renovation to those types of buildings when they are already nonconforming. (Minutes, p. 6)

Mayor Pro Tem Nickita stated that this was an issue that the Commission wanted to address.

He questioned if the City is looking at identifying a district or a series of buildings throughout the City. Ms. Ecker explained that this is to establish a procedure where if there was a nonconforming building in the City and whichever way it is non-conforming, it would give the owner a way to make changes to modernize that building. (Minutes, p. 6) (emphasis added)

The City Commission gave the following direction to the Planning Board:

MOTION: Motion by DeWeese, seconded by Bordman: To review the non-conformance provisions pertaining to commercial buildings to provide specific requirements, considering a new zoning category or categories, that allow for changes to non-conforming buildings for the maintenance and renovation of existing buildings consistent with those permitted for residential buildings and structures. (*Id.*)

The City Commission's specific directive relative to any new zoning category was to allow for changes to non-conforming buildings and for their renovation and maintenance. It was not to create a new overlay district that allowed any property the option to build taller than 5 stories.

August 10, 2016 Planning Board Meeting

Ms. Ecker briefed the Planning Board on the City Commission's directives regarding the planning issues addressed at the joint meeting. She reported that that the Commission directed the Planning Board as follows:

3) Existing Commercial Non-Conforming Buildings - to review the non-conformance provisions pertaining to commercial buildings to provide specific requirements considering creating a new zoning category or categories to allow for changes to nonconforming buildings for maintenance and renovation consistent with those permitted for residential buildings and structures. (Minutes, p.5)

Ms. Ecker suggested creating a win-win situation by offering the ability to renovate or to add an addition, but the City would get something in return. Ms. Whipple-Boyce said it would be nice to have this in place ahead of time for buildings like 555 Woodward and Merrillwood. **Chairman Clein thought the board could consider new zoning categories if there are specific areas that need it; but they can also consider generic language changes. Look at the non-conforming buildings first.** (*Id.*)(Emphasis added)

September 14, 2016 Planning Board Meeting

At this meeting, the Planning Board resumed the discussion of non-conforming building regulation under the City Commission's parameters which did not include allowing sites with buildings under 5 stories the ability to go higher than 5 stories.

Ms. Ecker, along with the attorney for the 555 Building, suggested that instead of creating a new overlay district, the Planning Board could recommend amendments to the B-3 zoning ordinance that would render not only the 555 Building but also Birmingham Place as conforming buildings.

It was during the discussion to amend the B-3 ordinance that the only reference to Mountain King is recorded in any public document concerning the D5 zoning amendment:

Ms. Ecker stated that the 555 Building, Birmingham Place and Mountain King were the only properties in the City zoned B-3 in the underlying D-4 Zone. She suggested an option that would amend the regulations for height and setback similar to what they were when the buildings were approved. **Mr. Williams wanted to limit the focus on just the 555 Woodward Bldg. as he thinks it needs to be approved.** (Minutes, p. 5) (Emphasis added)

Ms. Ecker noted this option would allow the applicant to have a conforming status and apply for financing to do an expansion and improvement on the building. It would allow them to do an addition to the south and come to zero setback, and to go up to match the height of the building that is there. What it would not do is force them to address the issue of the garden level or the dead zone along Woodward Ave. However, it would permit them to address that. *Id.*

Ecker was mistaken regarding the number of parcels zoned B-3. The Power House Gym property is also zoned B-3. Regardless, it should be clear that the only reason Ecker mentioned Mountain King was to promote the idea that changing the B-3 zoning would alleviate any concern about spot zoning and at the same time would not open the door to many other parcels being able to take advantage of the amended ordinance. However, there was no support for the B-3 amendment option.

Mr. Koseck was in favor of allowing the building to continue to be updated but that doesn't mean it should be permitted to grow. Any add-on to the south would have to meet the current Ordinance."

Discussion concerned whether B-3 zoning that allows Birmingham Place and Mountain King to reach 168 ft. in height would be a hard sell to the public. The conclusion was they could not sell it on more than one piece of property. Mr. Williams proposed they go back to a previous zoning for the 555 Building that existed 45 years ago. He didn't think it should include any other

property. Because of that they would not be making a special case for this building in the form of spot zoning. The legal argument is that it would be remedying a wrong. (2016-09-14 Minutes, p. 5)(Emphasis added) (Minutes, p. 5) (Emphasis added)

September 28, 2016 Planning Board Meeting

Ms. Ecker provided background information including that at the last study session the Planning Board “resumed their discussion regarding legal nonconforming buildings.” The result was that “after much consideration” the Board directed the Planning Staff to meet with the 555 Building applicant to draft proposed ordinance language that addressed “the improvement of commercial buildings throughout the City, and also specifically addresses the legal, non-conforming status of three buildings downtown.” (2016-09-28 Minutes, p. 3) ²

It is clear that by this meeting the Planning Board was only discussing a draft of the D5 overlay ordinance that gave the 555 Building, Birmingham Place and Merrillwood conforming status and nothing more. According to the minutes, the approach, with which the 555 Building applicant agreed, “was first to create a D-5 Zone, and second to recommend rezoning of one or more properties into the new D-5 category. This would allow the board to have further discussion on whether they want it to be the 555 Building property, or include the Birmingham Place and the Merrillwood Building, which are also non-conforming with regard to height.” (*Id.* at p. 5.)

It is also very clear that the Planning Board intended that the D5 language regarding new development in the D5 zone was for the benefit of the 555 Building owners, who expressed throughout the process that they wanted the right to use their vacant property for a new building that could be built as tall as the 555 Building. The only issue was whether building higher than 5 stories would require a special land use permit.

Chairman Clein summarized that the language would make any property that is put into the D-5 Zone legal and conforming as to height and setback. It would allow expansions as part of building maintenance. Undeveloped portions of the property could be built upon so long as it meets the D-4 Overlay standards. The south side of the 555 Building still needs to be resolved.” (*Id.*)

Mr. Williams did not agree with limiting the south side to five stories. However, anything built above five stories would require a Special Land Use Permit ("SLUP"). Mr. Share was in favor of tying all of the expansions to a SLUP. Chairman Clein felt the D-4 controls are in place and any expansion must conform. Mr. Share thought the City should have some control over how changes get made. Mr. Koseck liked the SLUP because it allows the City to control the design to meet the spirit and intent of the D-4 Zone. Mr. Jeffares agreed. (*Id.*)

² As stated, the Planning Board also amended Section 6.02 so that it applied to nonconforming commercial and residential buildings.

The 555 Building owner's Attorney responded to the discussion as follows:

Mr. Richard Rattner, Attorney, represented the applicant. He said they are almost there with allowing the 555 Building to be conforming in all respects. Secondly, the proposed expansion language is fine. Third, they would like to see the height of a new building being constructed in the D-5 Zone be up to but not exceeding the height of the building immediately adjacent or abutting it. That means the south building cannot be any higher than the 555 Building. They would like to do that without a SLUP. (*Id.*) (Emphasis added)

October 28, 2016 Planning Commission Meeting

At this meeting, the Planning Board set a public hearing for making a recommendation on the amendment of the D5 ordinance and the proposed rezoning of the 555 Building to the new zoning overlay district category.

First, Ms. Ecker provided a recap which reiterated that the proposed D5 classification would accomplish two goals: (1) render 555 S. Old Woodward a legal conforming structure and (2) allow a new addition at the south end of the building that could be built as tall as the adjacent structure. (2016-10-26 Minutes, p. 4)

Ms. Ecker also suggested that the Board should recommend rezoning Birmingham Place and Merrillwood to the D5 classification because they were also nonconforming in building height. The consensus was to contact the owners before including them. There was no suggestion that they contact the owner of the Mountain King property or include that property in the rezoning because the Mountain King property did not contain an existing building over 5 stories.

The decision to include Merrillwood in the rezoning further establishes that the City did not intend the D5 Overlay ordinance as part of any general development incentive for the South Woodward Gateway as the Applicant has represented to the Board. Merrillwood is not located in the South Woodward Gateway. The Planning Board included Birmingham Place and Merrillwood because the only purpose of the D5 overlay district is to provide legal conforming status to existing buildings over 5 stories.

December 14, 2016 Planning Commission Meeting

At this meeting, the Planning Board held a public hearing on the proposed D5 amendment and the rezoning of the three nonconforming buildings. Ms. Ecker explained that the Planning Board set the public hearing "with the goal of bringing several non-conforming buildings in Birmingham into compliance. The proposed ordinance amendments would add a new D-5 classification to the Downtown Overlay Zone which would allow buildings that are currently non-conforming to be considered legal in regards to setbacks, number of stories, and height. The new

D-5 zone would also allow additions or new construction in the D-5 to match the height of abutting or adjacent buildings.” (2016-12-14 Minutes, p. 3) (Emphasis added)³

It should be obvious that Ms. Ecker would have notified the public that the new D5 classification could be applied to any property in the City whether or not it was nonconforming in height if that was the intent of the new ordinance. The failure to notify the public of that intent is another reason why the Planning Board must again deny recommendation of the rezoning request. In fact, a resident, who was concerned about the impact on parking demand commented that he did not believe that residents really understood what was being considered. If what was being proposed was other than what has been represented as the goal of the amendment, there has been a serious breach of the public trust.

February 13, 2017 City Commission Public Hearing

At this meeting, the City Commission held a public hearing on the D5 ordinance amendment and rezoning. The planning department briefed the City Manager prior to the hearing.

In a Memorandum dated February 6, 2017 from Senior Planner Matthew Baka he reminded the City Manager that the Planning Board and City Commission discussed the issue of legal non-conforming commercial buildings at the June 2016 joint meeting.

The Memo further provides that the Planning Board held a public hearing

to consider Zoning Ordinance amendments **with the goal of bringing several non-conforming buildings in Birmingham into compliance**. The proposed ordinance amendments would add a new D-5 classification to the Downtown Overlay Zone which would allow buildings that are currently nonconforming to be considered legal in regards to setbacks, number of stories, and height. The new D-5 zone would also allow additions or new construction in the D-5 to match the height of abutting or adjacent buildings. (Memo, p. 1.) (emphasis added)

The Memo advised only that the goal of the zoning ordinance amendment was to render several buildings legally conforming structures. The Memo would have alerted the City Manager if the intention was to allow new construction on sites that did not already contain a building greater than 5 stories.

The minutes from the February 13, 2017 public hearing show that City Planner Ecker advised the Commission that with respect to the new D5 classification and rezoning of the three buildings:

[The impact of the amendments would make the three buildings legal conforming buildings, and they would be allowed to be

³ As stated, the Planning Board also recommended amending Article 6, Nonconformances, Section 6.02 by removing the limitation that the extension or expansion of nonconforming property applied only to residential property.

extended or enlarged with a Special Land Use Permit. If a new building was constructed, it could match the height of the existing building with a Special Land Use Permit.

The new category would deal with existing buildings located in the D5 zone. This change enables applicants to obtain funding for significant renovations or improvements as a legal conforming building. The second part allows expansion with the restriction to meet the overlay. (Minutes, p. 15)

First, Ms. Ecker unmistakably represented to the City Commission that the proposed D5 ordinance would apply to taller existing buildings, like the 555 Building, Birmingham Place and Merrillwood, and allow improvements and expansions of those buildings or sites.

Second, Ms. Ecker also led the Commissioners to believe that only the 555 Building would be eligible to build a new taller building in the D5 district because of the vacant land on its site. **Ecker advised Commissioner Boutros that the language regarding new construction of a building as tall as an adjacent building was inserted because “the 555 site has room where a new building could be constructed.” (Id.)**

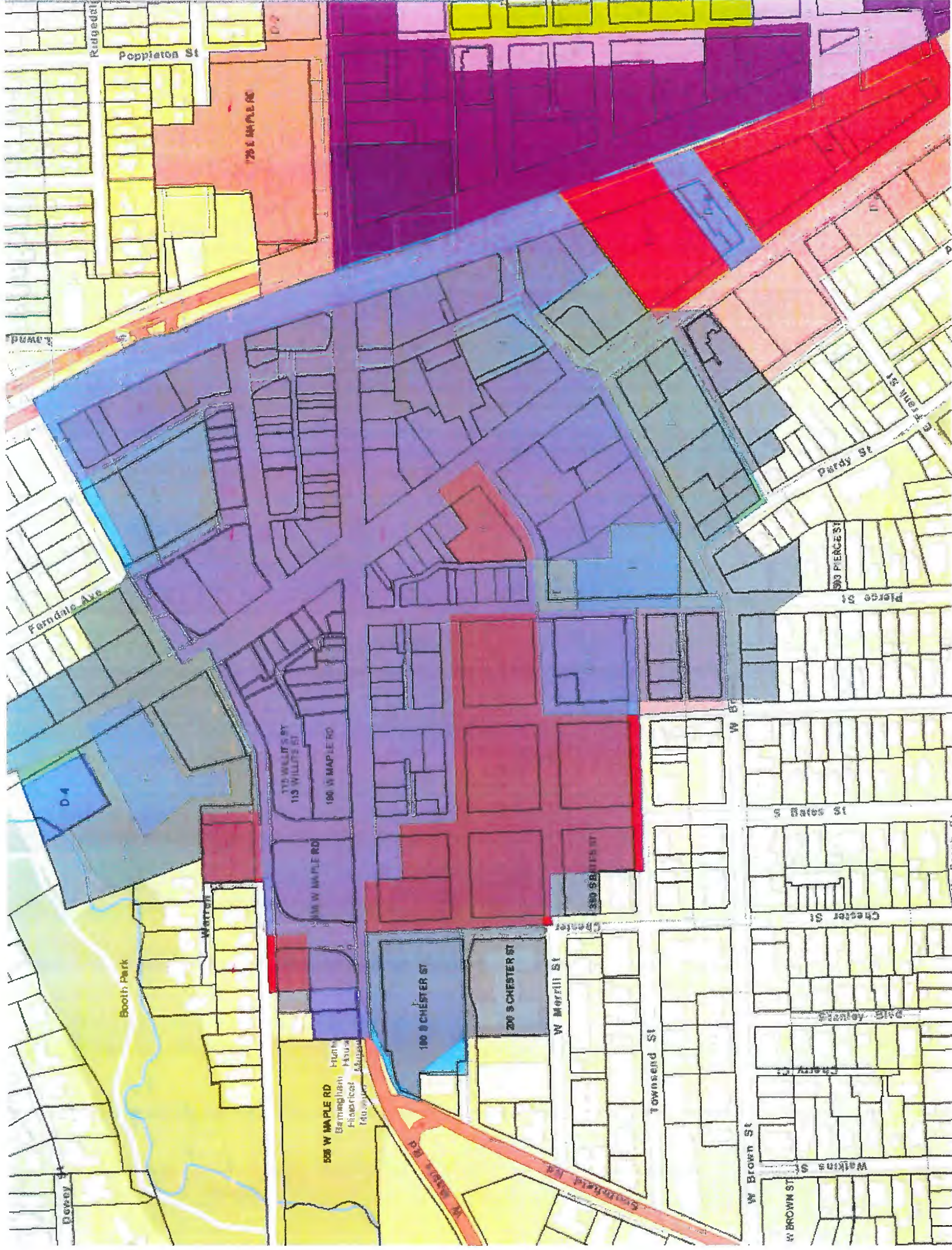
Ecker also assured Commissioner Hoff as follows:

Commissioner Hoff asked if Birmingham Place or Merrillwood could buy the adjacent structures and then build in the space. City Planner Ecker said that they could not, because the properties next door would not have the D5 zoning classification.”

The clear inference is that neither Merrillwood or Birmingham Place could build new taller buildings by simply buying the next door parcels because those parcels would not have been eligible to be part of the D5 district. The 555 Building could construct a new building because its entire site would be zoned D5.

CONCLUSION

The history of the D5 overlay ordinance should clear up any misconception or unsupported assertions by the Applicant that Birmingham Place, its attorneys or any Planning Board member mischaracterized the intent and purpose of the D5 ordinance. The facts show that the only intent was to allow the renovation and expansion of existing buildings taller than 5 stories. It was also to allow the 555 Building the option to build on its vacant property that also was zoned D5. There was no intent that the City apply the ordinance to property like the Applicant’s property which can be redeveloped under the D4 ordinance and not lose any preexisting height. As a nonconforming building for reasons other than being taller than 5 stories, the Applicant can seek permission to renovate or expand its existing buildings under Article 6, Section 6.02.





MEMORANDUM

Community Development Department

DATE: September 22, 2015

TO: Planning Board Members

FROM: Jana L. Ecker, Planning Director

SUBJECT: Study Session on Legal Non-conforming Buildings

Last year, the owners of the 555 S. Old Woodward building applied to the Planning Board to amend the Zoning Ordinance to allow the renovation of the existing building, the addition of new residential units along S. Old Woodward, as well as an addition to the south of the existing residential tower for new retail space and residential units. The Building Official had previously ruled that some changes to the existing legal non-conforming building may be permitted. However, the scale and scope of the changes that the property owner sought to implement would exceed what would be permitted as maintenance and thus were not permitted in accordance with the legal non-conforming regulations contained in the Zoning Ordinance.

In order to renovate and expand the existing building, the owners of the 555 S. Old Woodward building requested a Zoning Ordinance amendment to create a new D-5: Downtown Gateway Over Five Stories zoning classification in the Downtown Birmingham Overlay District. The proposal was then to seek rezoning of the 555 S. Old Woodward properties from the existing D-4 Overlay zoning classification to the proposed D-5 Overlay zoning classification, which would essentially render the existing building at 555 S. Old Woodward as a legal, conforming building that could then be renovated and expanded in accordance with new D5 development standards.

On May 13, 2015, the Planning Board began discussing the applicant's proposal to create a new D-5: Downtown Gateway (Over Five Stories) zoning classification in the Downtown Birmingham Overlay District. Planning Board members discussed the desire to review the proposed amendment within the spirit, vision and context of the entire downtown, and not to create a new zoning classification around a specific building. The Planning Board did, however, recognize the importance of the 555 S. Old Woodward building and the need to allow renovations and additions to improve its presence at the south end of Downtown Birmingham. Specific concerns raised regarding the existing 555 S. Old Woodward building were the unwelcome facades of the Woodward elevation, the split level concept on the S. Old Woodward elevation, and the exposed structured parking.

At subsequent Planning Board meetings on June 10th, 2015 and July 8th, 2015 the Planning Board further discussed the ways that the building could be modified and improved as a conforming structure and not through the use of variance requests. The Planning Board indicated that they would like to craft a zoning classification or overlay expansion that allows

the 555 Building to be renovated but also mirrors the development standards in the Triangle District across Woodward, which allows a maximum of 9 stories. Board members discussed taking a look at the 555 building along with several other parcels in the context of future development. It was suggested that this could be accomplished through a combination of a new zoning district and a Special Land Use Permit (SLUP) or the addition of a D6 zone as well, to differentiate permitted height north of Bowers, and south of Bowers along Woodward. The board reviewed multiple examples of similar "gateway corridor" districts in other cities (see attached), along with highlights, notes and sample ordinance language from other cities that were relevant. There were varying viewpoints on whether a new overlay should be created that included multiple properties along Woodward, and if so, which properties to include. No consensus was reached.

On September 9, 2016, the board reviewed a revised draft of the proposed D5 zone. Board members discussed the appropriate height for buildings along the west side of Woodward adjacent to the Triangle District. Some board members felt that the allowable height in a new D5 or D6 zone should mirror the 9 stories permitted in the Triangle District on the east side of Woodward. Other board members felt that additions should be permitted to match the height of existing non-conforming buildings. The board was unable to reach consensus on how to proceed, and requested additional information and direction from the City Attorney on potential options to provide exemptions for non-conforming buildings. The City Attorney's response letter dated September 29, 2016 is attached for your review.

On June 20, 2016 the issue of legal non-conforming commercial buildings was discussed at a joint meeting of the City Commission and Planning Board. The 555 S. Old Woodward building, the Merrillwood Building and Birmingham Place were referenced due to their non-conformity with regards to their height and bulk, and the desire to allow improvements or changes to these buildings. While no action was taken at the joint meeting, there was consensus that the issue of the improvement or expansion of legal non-conforming buildings should be studied.

On July 25, 2016, the City Commission again discussed the issue of legal, non-conforming commercial buildings and directed the Planning Board to review the non-conformance provisions pertaining to commercial buildings to provide specific requirements, considering a new zoning category or categories, that allow for changes to non-conforming buildings for the maintenance and renovation of existing buildings consistent with those permitted for residential buildings and structures.

On September 14, 2016, the Planning Board resumed their discussion regarding legal non-conforming buildings. Specifically, the Planning Board discussed the following options to allow changes to legal non-conforming buildings for maintenance, renovation and/or expansion:

1. Allow Maintenance and Renovation Only of Existing Legal, Non-conforming Commercial Buildings

Article 6, Section 6.02 of the Zoning Ordinance could be amended as follows:

6.02 Continuance of Nonconformity

- A. Limitations: Any nonconforming building or use existing at the time of enactment or amendment of this Zoning Ordinance may be continued if maintained in good condition, but:
1. The use shall not be changed to another nonconforming use except as permitted by the Board of Zoning Appeals.
 2. The use shall not be reestablished after discontinuance for 6 months.
 3. The use or building shall not be extended or enlarged except as herein provided. Nonconforming ~~residential~~ buildings may be extended or enlarged, provided that the extension or enlargement does not itself violate any provision of the Zoning Ordinance. Where the extension or enlargement will violate any provision of the Zoning Ordinance, application for a variance shall be made to the Board of Zoning Appeals pursuant to Section 8.01(F).

The amendment noted above would allow for the maintenance, extension or enlargement of an existing legal, non-conforming building so long as the addition meets the current zoning standards for the existing zone district. This amendment would allow both commercial and residential legal non-conforming buildings to be expanded using a consistent approach. As an example, this approach would allow a 10 story legal non-conforming building in a 5 story zone district (building that is non-conforming for height only) to construct an addition. However, the addition could not be 10 stories in height to match the existing building, but could be built up to a maximum of 5 stories as currently allowed in the zone district.

2. Allow the Expansion of Existing Legal, Non-conforming Buildings To Match Existing Non-conforming Conditions

Article 6, Section 6.02 of the Zoning Ordinance could be amended as follows:

6.02 Continuance of Nonconformity

- A. Limitations: Any nonconforming building or use existing at the time of enactment or amendment of this Zoning Ordinance may be continued if maintained in good condition, but:
1. The use shall not be changed to another nonconforming use except as permitted by the Board of Zoning Appeals.
 2. The use shall not be reestablished after discontinuance for 6 months.
 3. The use or building shall not be extended or enlarged except as herein provided. Nonconforming ~~residential~~ buildings may be extended or enlarged, provided that the extension or enlargement does not itself **increase the degree of the dimensional nonconformance, nor** violate any provision of the Zoning Ordinance. Where the extension or enlargement will violate any provision of the Zoning Ordinance, application for a variance shall be made to the Board of Zoning Appeals pursuant to Section 8.01(F).

OR

Section 6.02 Continuance of Nonconformity

- A. Limitations: Any nonconforming building or use existing at the time of enactment or amendment of this Zoning Ordinance may be continued if maintained in good condition, but:
1. The use shall not be changed to another nonconforming use except as permitted by the Board of Zoning Appeals.
 2. The use shall not be reestablished after discontinuance for 6 months.
 3. The use or building shall not be extended or enlarged except as herein provided. ~~Nonconforming residential buildings may be extended or enlarged, provided that the extension or enlargement does not itself violate any provision of the Zoning Ordinance. Where the extension or enlargement will violate any provision of the Zoning Ordinance, application for a variance shall be made to the Board of Zoning Appeals pursuant to Section 8.01(F).~~ **A legally nonconforming structure may expand its square footage provided that the expansion does not exceed the extent of the height and/or setback in nonconformance. All other development standards must be met in the expansion.**
 - a. **A vertical expansion of a nonconforming building or structure which is legally nonconforming as to one or more setback requirements is a permitted expansion of that nonconformity.**
 - b. **A horizontal expansion of a nonconforming building or structure which is legally nonconforming as to one or more height requirements is a permitted expansion of that nonconformity.**

Both of the amendments noted above would allow for the maintenance, extension or enlargement of an existing legal, non-conforming building up to, but not exceeding, the existing non-conforming dimension. The first option listed above is more general in nature, and could include the expansion of any type of non-conformity (height, setbacks, FAR, density, lot coverage etc.). The second option listed above is limited to expanding only height and/or setback non-conformities. As an example, this approach would allow a 10 story legal non-conforming building in a 5 story zone district (building that is non-conforming for height or setbacks) to construct an addition up to 10 stories in height to match the existing building height and setbacks.

3. Convert Existing Legal, Non-conforming Buildings to Conforming Using a Special Land Use Permit

Another option to consider may be to convert buildings or structures in Downtown Birmingham that are legal non-conforming with regards to height into conforming buildings through the use of a Special Land Use Permit. An amendment to Article 3, Overlay Districts, or to Article 6, Nonconformances, could be proposed as follows:

Conversion of Non-conforming Status: A building in the Downtown Birmingham Overlay District that is a legal non-conforming building or structure with regards to height may be deemed a conforming building or structure with regards to height if the property owner agrees to specific conditions to control the future extension, enlargement or renovation of the building or structure and said conditions are approved by the City Commission under the provisions of a Special Land Use Permit.

This approach would allow for the extension or enlargement of existing legal, non-conforming buildings downtown on a case by case basis as negotiated by the City Commission. The amendment noted above would provide flexibility for different site conditions and would provide control over the parameters of future expansion based on site and neighborhood context. As an example, a 10 story legal non-conforming building in a 5 story zone district could be deemed conforming if placed under the provisions of a SLUP that establish the specific conditions for maximum extension or enlargement of the building in the future.

4. Re-establish the Zoning District(s) in effect when Building Permits were Issued for Buildings in Excess of 5 Stories (or amend the B3 Zoning District) to render existing buildings conforming

Another option to consider may be to re-establish the former zoning classification(s) in place in the 1970's when several buildings were legally constructed greater than 5 stories in height, and to rezone properties with non-conforming buildings with regards to height back to this classification. Thus, any extension or enlargement of an existing legal, non-conforming building so rezoned would be permitted as anticipated at the time of construction. As an example, a 10 story building constructed in 1975 under a classification that permitted 11 stories in height could be extended or enlarged up to 11 stories in height.

5. Create a New Zoning District(s)

Another option to consider is to create a new zoning classification(s) that would permit additional building height and rezoning certain properties to this classification, thus rendering legal non-conforming buildings or structures conforming buildings with regard to height. This approach has been discussed by the Planning Board over the past year, and amendments have been drafted to create two new classifications under the Downtown Overlay, D5 and D6, to attempt to address the non-conforming heights of several buildings downtown. The Planning Board has also discussed using this approach to address sites along the west side of Woodward to allow additional height even for existing conforming buildings along the corridor to match the height permitted on the east side of Woodward in the Triangle District. The latest version of

the draft previously discussed by the Planning Board is attached and highlighted to indicate areas noted for further discussion. As an example using this approach, an existing 10 story legal non-conforming building in a 5 story zone district could be rezoned to a new zoning classification to be created that would allow 10 story buildings as of right.

At the Planning Board meeting on September 14, 2016, board members agreed that the improvement and maintenance of existing legal, non-conforming commercial buildings should be permitted, and expansion of such buildings should also be permitted consistent with regulations for residential buildings. Board members also discussed at length the issue of several legal, non-conforming buildings in the Downtown Overlay District, and the desire to allow improvements to those buildings as well. After much discussion, the Planning Board directed Planning staff to meet with the applicant for the 555 Building to craft ordinance language that would make existing buildings downtown conforming with regards to both height and setbacks, and to allow future expansion that would comply with the standards of the D4 Overlay.

On September 28, 2016, the Planning Board discussed draft ordinance language that proposed to create a D5 zone district that would render existing buildings legal and conforming with regards to setback and height. Board members agreed that additions or renovations should be permitted to existing buildings. With regards to the construction of new buildings in the proposed D5 zone district, there was much discussion as to whether such buildings should meet the 5 story maximum height in the D4 zone district, or should be allowed to match the height of the existing adjacent buildings. The consensus of the board was to allow additional height for new buildings in the D5 to match existing adjacent buildings, if the new building was constructed under the provisions of a SLUP. At the end of the discussion, the applicant asked if the Planning Board could simply waive certain requirements in the D5 zone instead of requiring a SLUP. Staff agreed to discuss this with the City Attorney.

Since the September 28, 2016 Planning Board meeting, City staff has met with the applicant to refine the draft ordinance language. Accordingly, please find attached draft ordinance language for your review based on the Planning Board's direction from the last meeting that addresses the improvement of commercial buildings throughout the City, and also specifically addresses the legal, non-conforming status of buildings downtown.

The applicant has also provided another version of a draft ordinance for the Planning Board's discussion as well based on their desire to construct a new building that exceeds the height of the existing 555 building, but maintains the same number of stories. The applicant's revised draft is also attached for your review.

Finally, City staff has reviewed the applicant's request as to whether the Planning Board can simply waive certain requirements in the D5 zone with both the City Manager and the City Attorney. Although it was unclear as to whether there was a legal question, the City Manager directed the City Attorney to respond. The City Attorney has advised that the question of whether the Planning Board can waive specific requirements is not a legal question, but rather a

policy question. Ultimately, the City Commission has the sole authorization to pass zoning legislation, with or without waivers, so long as they remain in compliance with the Michigan Zoning Enabling Act.

Should the Planning Board wish to recommend the attached ordinance amendments, the board may also wish to consider proposing a rezoning of the 555 Building, Birmingham Place and/or the Merrillwood Building to the proposed D5 Zone (over 5 stories).

Suggested Action:

To set a public hearing for December 14, 2016 to consider the following amendments to Chapter 126 Zoning:

- (a) Article 3, Downtown Birmingham Overlay District, Section 3.04, to create a new D5 Zone and to establish development standards for this district;
- (b) Article 6, Nonconformances, Section 6.02, to allow for the extension and/or enlargement of existing legal, non-conforming commercial buildings;

AND

To set a public hearing for December 14, 2016 to consider the rezoning of the following properties:

- (d) **555 S. Old Woodward** (555 Office and Residential Buildings) from D4 in the Downtown Overlay to D5 in the Downtown Overlay;
- (e) **411 S. Old Woodward** (Birmingham Place) from D4 in the Downtown Overlay to D5 in the Downtown Overlay; and
- (f) **225 E. Merrillwood** (Merrillwood Building) from D4 in the Downtown Overlay to D5 in the Downtown Overlay.

September 11, 2018

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

Re: Rezoning Application Before the Planning Board

Dear Ms. Ecker:

This letter is in response to your request to clarify the procedure by which applications for rezoning and determinations of rezoning are made. The Zoning Ordinance states in Section 7.02 B.2. *Application for Rezoning*, as follows:

"2. Application for Rezoning.

1. *Persons Entitled to Seek Rezoning.* Only a person who has a fee interest in a piece of property, or a contractual interest which may become a fee interest in a piece of property, may seek an amendment in the zoning classification of that property under this section.
2. *Application for Rezoning.*
 - a. An application for an amendment to change the zoning classification of a particular property must be filed with the Building Official on such forms and accompanied by such fees as may be specified by the City Commission. The application and any supporting documentation shall be forwarded by the City Building Department to the Planning Board for study and recommendation.
 - b. Each application for an amendment to change the zoning classification of a particular property shall include statements addressing the following:
 - i. An explanation of why the rezoning is necessary for the preservation and enjoyment of the rights of usage commonly associated with property ownership.
 - ii. An explanation of why the existing zoning classification is no longer appropriate.
 - iii. An explanation of why the proposed rezoning will not be detrimental to surrounding properties.
 - c. Applications for amendments that are intended to change the zoning classification of a particular property shall be accompanied by a plot plan. The plot plan shall be drawn to a scale of not less than one inch equals 50 feet for a property of less than 3 acres and one inch equals 100

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Ms. Jana Ecker, Planning Director
September 11, 2018
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feet for property of 3 acres or more in size. Information required on plot plans shall be as follows:

- i. Applicant's name, address and telephone number.
- ii. Scale, north point, and dates of submission and revisions.
- iii. Zoning classification of petitioner's parcel and all abutting parcels.
- iv. Existing lot lines, building lines, structures, parking areas, driveways, and other improvements on the site and within 100 feet of the site.
- v. Existing use of the property.
- vi. Dimensions, centerlines and right-of-way widths of all abutting streets and alleys.
- vii. Location of existing drainage courses, floodplains, lakes, streams, and wood lots.
- viii. All existing easements.
- ix. Location of existing sanitary systems and/or septic systems.
- x. Location and size of existing water mains, well sites and building service.
- xi. Identification and seal of architect, engineer, land surveyor, or landscape architect who prepared the plans.

If any of the items listed above are not applicable to a particular plot plan, the applicant must specify in the plot plan which items do not apply, and, furthermore, why the items are not applicable."

The foregoing is the information that is to be provided by the applicant to provide the materials to assist the Planning Board in making its findings of fact. It does not set the criteria by which findings of fact or recommendations should be made. Those are set forth in Section 7.02 B.5, which reads as follows:

"5. Findings of Fact and Recommendation of the Planning Board. The Planning Board shall make written findings of fact and transmit same, together with its recommendation, to the City Commission. The City Commission may hold additional hearings if the City Commission considers it necessary. The Planning Board shall make findings based on the evidence presented to it with respect to the following matters:

- a. The objectives of the City's then current master plan and the City's 2016 Plan.
- b. Existing uses of property within in the general area of the property in question.
- c. Zoning classification of property within the general area of property in question.
- d. The suitability of the property in question to the uses permitted under the existing zoning classification.

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Ms. Jana Ecker, Planning Director
September 11, 2018
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- e. The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.

The foregoing Section 7.02 B.5. sets forth the criteria upon which the Planning Board makes written findings of fact. Thereafter, the findings of fact, together with its recommendations, are sent to the City Commission to determine possible rezoning of the subject property.

* * * * *

I have also been asked to outline the procedure for the Board to consider a petition by the applicant for rehearing of the rezoning application. The instant case involves 469-479 South Old Woodward. The first matter the Planning Board should consider is whether they will grant the rehearing of this matter to the applicant. If they believe there is not sufficient information to grant a rehearing, it could be denied at that time and no rehearing will be granted.


Second, if the Planning Board believes a rehearing should be granted, then a ruling granting the rehearing should be entered, followed by a rehearing on the substance of the matter before the Board. At such time, the Planning Board can take into account such additional information that is submitted by the applicant or by any person opposing the application. This will create an additional record upon which the Planning Board will then make its findings of fact and recommendation pursuant to 7.02 B.5.

A rehearing does not automatically grant the request of the applicant, nor does it automatically deny it. The Planning Board is free to make whatever decision it deems appropriate based on the material and the facts placed before it by the applicant and those in opposition.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

BEIER HOWLETT, P.C.


Timothy J. Currier
Birmingham City Attorney

TJC/jc

Via E-Mail and US Mail

October 10, 2018

Mr. Timothy J. Currier
Beier Howlett, P.C.
3001 W. Big Beaver Road
Suite 200
Troy, Michigan 48084

***Re: Opposition to Rezoning of Property located at 469 and 479 S. Old Woodward,
Birmingham, Michigan (the "Property")***

Mr. Currier:

We attempted to reach you by phone earlier today. We are contacting you to inform you, and the others copied on this letter, that our Firm has been engaged by Condominiums at Birmingham Place Association (the "Association") to work along with counsel for the Birmingham Place Residential Condominium Association. The Association is the so-called Master Association for the Birmingham Place development.

Please be advised that the Association opposes the application to rezone the Property to the D-5 Overlay Zone and fully supports the position of the Birmingham Place Residential Condominium Association. We understand the rezoning application is "back" on the Planning Board's agenda for its meeting tonight. Unfortunately, we will not be available to participate in the meeting tonight, but we wanted you to be aware of our involvement and our client's position.

As you might expect, we have recently become involved and have not had the opportunity to thoroughly review all of the extensive information and voluminous documents. However, even based on our limited review, we do not understand how (or why) this matter finds itself back before the Planning Board. In addition, even if the application is properly back before the Planning Board, we also do not see how (or why) any of the so-called "new" information or positions could possibly justify a change to the Planning Board's previous decision.

In any case, please be aware that if the Planning Board elects to reconsider the rezoning application based on so-styled "new" information, and/or if the Planning Board changes from its previous position of recommending denial of the rezoning application, our Firm will continue forward and complete our thorough review of all of the information and will join in also

HONIGMAN

Honigman Miller Schwartz and Cohn LLP
Attorneys and Counselors

J. Patrick Lennon

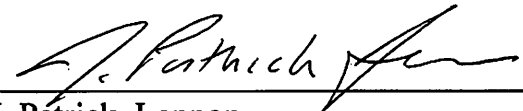
(269) 337-7712
Fax: (269) 337-7713
Lennon@honigman.com

advising the Association of its legal rights and remedies along with the Residential Condominium Association's counsel.

Thank you for your time and attention to this matter. As always, please feel free to contact me with any questions or comments.

Very truly yours,

HONIGMAN MILLER SCHWARTZ AND COHN LLP

By: 
J. Patrick Lennon

cc: Ms. Michele Prentice
Ms. Jana L. Ecker
Ms. Susan K. Friedlander
Mr. Richard D. Rattner



MEMORANDUM

Planning Division

DATE: November 27th, 2018

TO: Planning Board Members

FROM: Nicholas J. Dupuis, Planning Intern

APPROVED: Jana Ecker, Planning Director

SUBJECT: 35001 & 35075 Woodward – The Maple – Community Impact Study & Preliminary Site Plan Review

Community Impact Study

I. INTRODUCTION

The subject site, 35001 - 35075 Woodward Avenue, is currently home to the Hunter House restaurant and vacant land currently leased to the city for public parking, and has a total land area of 0.5 acres. The property is located on the west side of Woodward (southbound), and surrounded by four streets: Maple, Park, Hamilton Row, and Woodward.

The applicant is proposing to construct a five-story mixed use building. The building will provide two levels of underground off-street parking, first floor commercial and parking, second to fourth floor hotel, and a fifth floor with residential units. Parking for the residential units, and parking for a portion of the retail area and hotel units will be provided below grade in the two level underground parking garage. Additional parking is provided on the first level for the Hunter House restaurant. However, as the building is located within the Parking Assessment District, no on-site parking is required for retail, commercial or office uses.

The Downtown Birmingham 2016 Master Plan suggests several specific projects for Birmingham's Downtown, including the Maple Gateway. The Maple Gateway, which was formerly a pair of gas filling stations, was recommended to contain two reciprocal buildings of similar height and massing, and to achieve architectural syntax to complete a gateway to the Central Business District. The proposed development would complete the Maple Gateway.

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.

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 property is currently zoned B-4 and D-4 in the Overlay District. The proposed commercial, hotel, and residential uses are permitted principal uses in the B-4 and D-4 zone districts.

Master Plan Compliance: Downtown Birmingham 2016 Plan

Article 3, section 3.01 of the Zoning Ordinance states that the purposes of the Downtown Birmingham 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 many 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 is congruent with Article 3, section 3.04(A) which states that “All buildings containing a fifth story should be designed harmoniously with adjacent structures in terms of mass, scale and proportion, to the best extent possible.” The new structure will link together with the Greenleaf Trust building, filling a void of unused space, which will solidify the Maple Gateway envisioned in Specific Project 8 of the 2016 Plan.

In addition, the DB 2016 Report encourages four or five story buildings in this

part of the Overlay District 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 create a continuous and harmonious façade along Woodward Avenue and Maple, creating the Maple Gateway. The proposed development also provides retail on the ground floor with access from Woodward and Park.

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 adjacent streets. The 2016 Plan encourages proper building mass and scale to create an environment that is more comfortable to pedestrians creating a walkable downtown. The proposed development will help improve the visual appearance of the area, by creating a denser, more compact development with enough height to create a street wall along Woodward. The main entry to the building is located on Park.

In addition, the 2016 Plan encourages pedestrian-scale features which should be incorporated on the first floor of buildings and at entrances to help relate buildings to the streetscape. The plan for the proposed building includes canopies, quality stone façades, and extensive storefront glazing.

The proposed development is also located at a terminating vista as outlined by the 2016 Plan and Article 3, Section 3.04 (E) of the Zoning Ordinance which states that any building that terminates a view, as designated on the Regulating Plan, shall provide distinct and prominent architectural features of enhanced character and visibility, which reflect the importance of the building's location and create a positive visual landmark. The building provides several architectural variations that are unique in character, but also complements the Greenleaf Trust building located at the opposite corner.

Streetscape components are an integral part of the 2016 Plan. The applicant is required to maintain the pedestrian scale street lighting and street trees along all adjacent roadways. The Planning Board may wish to recommend the addition of benches and/or trash receptacles in the public right-of-way. The applicant has not yet provided a streetscape plan. **All streetscape plans should incorporate the proposed changes to E. Maple in Phase II of the Downtown project.** A full design review will be conducted at the time of Final Site Plan and Design Review.

B. Land Development Issues:

The applicant has noted that there are no major land development issues present for the site, as there are no sensitive soils and the site is flat. The impervious area of the site will be increased, but only just, as the southern

portion of the site was used as a gravel parking lot, thus the soil is highly compacted and not conducive to permeability.

The applicant has submitted an environmental site assessment report for the proposed development site dated May 4th, 2018 by PM Environmental (PM). The investigation was performed to assess and document soil concentrations in the area of former automotive service operations as a part of soil removal and disposal planning. It was noted in the report that the site is a closed Leaking Underground Storage Tank (LUST) site based on a 1996 release identified during a subsurface investigation. Site investigation and targeted soil removal were completed between 1996 and 2010 when the closure report was completed. On April 17th, 2018, PM completed five soil borings to further evaluate the site for volatile organic compounds (VOC's) and polychlorinated biphenyls (PCB's). PM concluded that soil analysis did not identify any concentrations of VOC's or PCB's exceeding method detection limits.

The CIS has indicated that roughly 12,000 cubic yards of in-place soils will be removed from the site for the construction of the new building with underground parking. The applicant has submitted a haul map indicating a route exiting the site onto Hamilton Row and continuing onto southbound Woodward.

Finally, the applicant has stated that there are no potential hazards or nuisances that may be created by the proposed development. However, it is generally understood that the demolition, excavation, and construction associated with the proposed development may produce excess dust/debris, noise and other nuisances that must be mitigated throughout the development process. **The applicant must provide measures to mitigate such nuisances throughout the duration of construction.**

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. Thus, **the applicant will be required to bury all utilities on the site.** The applicant has indicated which utility companies are available to service the site: electricity from DTE, natural gas from Consumers Energy and telephone/cable from AT&T/Comcast.

The site plans submitted show existing 12 in. and 8 in. public water mains within the Maple right-of-way along the southern frontage of the proposed development. The applicant has not indicated which public utilities they will be utilizing and whether or not they will be sufficient in providing for the proposed development with no capacity issues. **The applicant must gain approval from the City Engineer prior to site plan approvals.**

A noise study for the site was prepared by Kolano and Saha Engineers, Inc. dated November 21st, 2018. Measurements were taken using a calibrated Bruel & Kjaer 2270 environmental noise analyzer for a continuous period for the day of May 16th, 2018 at 4:30 pm through May 17th, 2018 at 3:45 pm. The equipment

was placed on the west side of Woodward, approximately 28 ft. from the center of the right turn lane and 40 ft. from the center of the nearest through lane. The data gathered a DNL, or day-night sound level average of 75 dB. HUD determined that a level of 65 dB is a desirable goal for residential land use. HUD considers the measured level on this site as “normally unacceptable” for residential use. Kolano and Saha Engineers recommend designing the façade of the hotel units to isolate the noise from entering the indoor living spaces to meet HUD’s noise standards.

The Noise Impact Assessment noted that the only noise that will emanate from the proposed new development will come from building wide heating and cooling mechanical systems, exhaust fans, emergency power generator, delivery vehicles, and parking garage exhaust fans.

The noise study provides that the project site will likely comply with the City’s noise limits for commercial developments. Specification sheets for all mechanical equipment will be reviewed at Final Site Plan Review for noise output to ensure that the City’s noise limits for commercial property will be met.

The applicant has stated in the CIS that the proposed development is located in the Southeast Michigan Air Quality District. The monitoring station is located in Oak Park, and there are no air quality violations in this attainment area. The proposed development use is identical to its surrounding uses and will not establish any trend of air quality standards. HVAC equipment will have filters and will meet all code requirements.

D. Environmental Design and Historic Values:

The applicant has indicated that the small building and parking lots will be demolished. The site survey provided by the applicant shows that there are 11 trees on site, which the landscape plan proposes to replace along the streetscape as required street trees, along with two more for 13 total proposed trees. The proposed building will be similar in size, material and scale to the neighboring 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 located in a local historic district. The CIS states that there are no properties or elements within the site plan boundaries that are historic. No adjacent properties are on the Historic Register.

E. Refuse, Sewer and Water:

The CIS describes a refuse storage area on the Park (west) side of the building, which will be accessible via the entry drive to the underground parking levels. This refuse area will be used for the hotel and retail space, which covers a majority of the site. A second refuse area is denoted due north of the former, which will be utilized by the Hunter House restaurant, and is accessible through

an entry drive on Hamilton Row. The CIS indicates that the solid waste generated from the building will be standard and can easily be handled by local waste management companies. **The applicant has not indicated in the CIS or on the proposed site plans if there will be separate recycling storage facilities on site.**

The CIS further indicates that the planned sewer service basis of design, and the capacity of the combined sewer has been reviewed and confirmed by the City Engineer and is not anticipated to exceed the limits of the municipal combined sewer. Similarly, the CIS states that the existing water main will adequately supply the proposed development, and there are no apparent water quality issues. The Engineering Department has provided comments below regarding water improvements needed.

F. Public Safety:

The applicant has stated that the proposed development and its location on four surrounding streets (Woodward, Maple, Park, Hamilton Row) allows for direct access on all sides for emergency personnel. The CIS also states that several emergency friendly features are proposed, such as access to commercial and residential space at-grade on either side of the building, elevators that can accommodate a stretcher, and a fire command center adjacent to the main entry.

The applicant has not provided information on a fire suppression system or a Knox Box. The Police and Fire Departments will require further information to ensure that all life safety issues have been addressed. The applicant has indicated that there will be a security system on the property, but no details have been submitted. **Details of the proposed security system must be provided and approved by the Police Department.**

G. Transportation Issues:

The applicant has provided a transportation study prepared by Stonefield Engineering. The City's traffic engineer approved the use of Form A – Traffic Study Questionnaire in lieu of a full Form B – Transportation Study, given the size of the proposed building.

The Traffic Study produces several findings and conclusions:

1. The hotel is projected to generate 59 trips during the weekday morning peak hour and 75 trips during the weekday evening peak hour, and the Hunter House restaurant is projected to generate 25 and 28, respectively.
2. Traffic for the hotel would generally arrive to and depart from the driveway along Park Street. Traffic for the Hunter House restaurant will utilize the full movement driveway along Hamilton Row and the right-

turn egress-only driveway along Woodward Avenue.

3. The site is located in the Downtown Parking Assessment District; thus no parking is required for the development. However, the site will provide 81 spaces in an off-street, underground parking garage as well as 14 ground-level spaces for the Hunter House restaurant for a total of 95 spaces.
4. Several aspects of the proposed development will support the City's Multi Modal Transportation Plan such as improving the urban character of the block, expanding the downtown footprint, removing surface parking lots that do not encourage pedestrian travel, and the completion of a sidewalk network along Woodward.
5. A valet lane is proposed along Park that can accommodate three vehicles comfortably, and one queued in the taper.
6. There are no gated entries proposed to any of the parking areas.
7. Based on a level of service and volume capacity analysis, the proposed development would not have a significant impact on the traffic operations of the roadway network during the weekday morning and weekday evening peak hours.
8. No traffic infrastructure improvements are warranted by the proposed development; however, the analysis does consider the proposed two-way operation of Park approved by the City.

In regards to the third conclusion/observation made by Stonefield, the applicant IS required to provide parking for the fifth floor residential units, and the total parking provided is 85 spaces, not 95 spaces. A full parking analysis is provided in the Preliminary Site Plan review below. The CIS also concluded that bicycle, pedestrian and transit connections with the neighborhoods, downtown Birmingham and the region will be present. The applicant has also noted that bike racks will be provided for occupants and guests.

The City's transportation consultant has been given a copy of the traffic study to review, and will provide comments by the time of the meeting.

H. Parking Issues:

The CIS indicates that the proposed development will have a two-level underground parking garage that will contain 71 spaces and an at-grade lot within the building envelope containing 14 spaces for a combined 85 spaces provided on-site. There is no required parking for the commercial portions of the development because the proposed project is within the Parking Assessment District. However, parking is required for the residential units on the fifth floor. A thorough discussion of the parking requirements is contained in the attached Preliminary Site Plan report.

I. Natural Features:

The applicant has indicated that there will be little impact on natural features or

bodies of water as a result of the proposed development, as the site is currently 100% impervious surface. There are no ponds or streams near the project. The CIS indicates that there are no natural features that will be disturbed or isolated, and there exists no natural wildlife habitats.

J. Departmental Reports

1. Engineering Division – The Engineering Division has provided the following comments:

CIS

#22. Relative to the question that all required utility easements have been secured for necessary private utilities, the CIS has indicated to refer to the enclosed utility plan. However, the site plan that has been submitted has no information relative to how any utilities are being handled. Specifically, with respect to private utilities, it is noted that existing overhead wiring currently crossing the middle of the site clearly needs to be relocated. With respect to the overhead electrical extending from the Hamilton Alley to the west, it is our understanding that a significant steel pole will need to be installed on line with the alley to transition and guy the overhead wires from the west to underground, where it will be directed north to Hamilton Ave. The current large driveway located directly across from the alley on Park St. does not provide any opportunity for the installation of such a pole, therefore, it is unclear how this issue will be addressed.

#49. The CIS has indicated that the existing water main will adequately supply the proposed domestic and fire suppression systems. The owner is advised that the existing water system has a “missing link” in the master plan for the water system across the Woodward Ave. frontage of this site. It is expected that as a part of the site development, that a 12-inch diameter public water main will be constructed from Hamilton Ave. to Maple Rd. on the Woodward Ave. right-of-way adjacent to the building. The developer will then be encouraged to construct their own building connection to this new section of public water main. No reference to this work is currently on the site plan.

#70. The answer provided relative to an increase in impervious surface is not correct or complete. The proposed plan as compared to the existing conditions will increase the impervious surface on the site, thereby requiring the approval of a Storm Water Detention permit for the project. The engineer will be required to calculate a volume of on-site storm water detention for the site, and provide space for said detention on the property, as a part of the final site plan approval process. The plans do not currently provide any such reference to storm water detention.

TRAFFIC STUDY

The traffic analysis portion of the CIS refers to a valet queuing area, with for three vehicles at one time. It is noted that the valet will not be in a position to fail, wherein vehicles are arriving faster than they can be processed. Vehicles standing at the intersection of Maple Rd. and Park St., particularly during the peak hour, will quickly cause queuing to extend into Woodward Ave., where the potential for crashes is significant. Further, disruption of westbound Maple Rd. traffic will cause the level of service for the Woodward Ave. & Maple Rd. intersection to fall even further than it already is, impacting a large number of motorists. Any adjustments that can be made to the site plan to provide additional queuing space for the valet is strongly recommended.

2. Department of Public Services – The Department of Public Services has provided the following comments:
 - Forestry has reviewed the proposed tree species and is satisfied.
 - Tree wells, landscape beds and lawn areas are to be irrigated.
 - Waste Receptacles - enclosure area(s) must have adequate storage space for solid waste and recycling containers, such cases may warrant a compactor in addition to recycling carts/containers inside of the building.
3. Fire Department – The Fire Department has commented that they have one concern with this CIS at this time, which is the possible, proposed, 10 feet wide lanes. The International Fire Code requires a minimum lane width of 20 feet for fire vehicle access.
4. Police Department – The Police Department has no concerns at this time.
5. Building Division – The Building Division comments will be provided at the time of the meeting.

K. Summary of CIS:

The following issues remain outstanding with regards to the CIS:

- 1) Applicant must provide mitigation strategies for control of noise vibration and dust;
- 2) Applicant will be required to bury all utilities on the site;
- 3) Applicant must distinguish an area for the separation and storage of recycling;
- 4) Applicant must conform to the streetscape design as outlined in the new E. Maple streetscape project;
- 5) 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 Department; and
- 6) Applicant must address the concerns of the Engineering Department.

L. Suggested Action:

1. To **ACCEPT** the Community Impact Study as provided by the applicant for the proposed development at 35001 & 35075 Woodward – The Maple – with the following conditions:
 - 1) Applicant must provide mitigation strategies for control of noise vibration and dust;
 - 2) Applicant will be required to bury all utilities on the site;
 - 3) Applicant must distinguish an area for the separation and storage of recycling;
 - 4) Applicant must conform to the streetscape design as outlined in the new E. Maple streetscape project;
 - 5) 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 Department; and
 - 6) Applicant must address the concerns of the Engineering Department.

OR

2. To **POSTPONE** action on the Community Impact Study as provided by the applicant for the proposed development at 35001 & 35075 Woodward – The Maple – allowing the applicant the opportunity to address the issues raised above.

OR

3. To **DECLINE** the Community Impact Study as provided by the applicant for the proposed development at 35001 & 35075 Woodward – The Maple.

Preliminary Site Plan Review

III. Preliminary Site Plan Review

The applicant has submitted an application for Preliminary Site Plan review to construct a five story building in the B-4/D-4 zoning district. The property is located on the west side of Woodward Avenue and bordered by three other streets: Maple, Park and Hamilton Row. The site is currently home to the Hunter House restaurant and a parking lot.

The applicant is proposing two levels of underground parking, first floor commercial/parking, second-fourth floor hotel and a fifth floor of residential.

1.0 Land Use and Zoning

1.1 Existing Land Use – The site is currently used as commercial and parking, and contains the Hunter House restaurant (and its associated parking) and a gravel parking lot.

1.2 Zoning – The property is zoned B-4 Business-Residential, and D-4 in the Downtown Overlay District. The proposed residential, retail and commercial uses, and their 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	Commercial/ Office	Mixed Use	Commercial	Commercial/ Office
Existing Zoning District	B-4, Business - Residential	B-4, Business - Residential	B-2, General Business	B-4, Business - Residential
Downtown Overlay Zoning District	D-4	D-4	D-2	D-4

2.0 Setback and Height Requirements

The attached summary analysis provides the required and proposed bulk, area, and placement regulations for the proposed project. The following issues are outstanding in regards to zoning compliance:

- Not all of the units meet the minimum floor area required per unit. The applicant must submit plans showing a fifth floor with a number of units that comply with the minimum floor area;
- The applicant must submit plans showing a fifth floor with units that comply with the minimum floor area or obtain a variance from the Board of Zoning Appeals;
- The applicant must submit revised plans with no parking within 20 ft. of the frontage line, or obtain a variance from the Board of Zoning Appeals;
- The applicant must submit plans showing 3 off-street loading spaces with the required dimensions, or obtain a variance from the Board of Zoning Appeals; and
- The applicant has not submitted a rooftop plan showing any proposed RTU's and the required screening.

3.0 Screening and Landscaping

3.1 Dumpster Screening – The applicant is proposing to store all refuse inside the building envelope in two separate areas:

- Refuse Area 1: The hotel and retail uses will utilize a refuse area located just inside the entryway for the underground parking facilities on the west side of the building off of Park. The proposed site plans show a service elevator accessible to all levels of the building, including the ground level where the refuse is proposed to be stored close by. **Although the refuse area is proposed to be within the building envelope, the refuse area is not fully screened from public view due to its proximity to three large clear glass garage doors that are proposed over the opening.**
- Refuse Area 2: The Hunter House restaurant will utilize a separate refuse area, which is located in their parking area on the north west side of the building. The refuse area, as shown on the proposed site plans, is within the building envelope and shows a solid wall on three sides, and a gate across the front of the refuse area. Because the refuse area can similarly be seen from two similar clear glass garage doors on the north and east elevations, **the applicant must confirm the presence of a gate to ensure that the refuse area is fully screened from public view.**

- 3.2 Parking Lot Screening – The applicant is proposing two levels of underground parking containing 71 parking spaces, and a ground level parking lot for the Hunter House restaurant containing 14 spaces. The two underground levels will be fully screened within the building envelope. The 14 ground level spaces will also be fully screened by the building.
- 3.3 Mechanical Equipment Screening – The applicant has not submitted a rooftop plan for the proposed development. **The applicant must submit a rooftop plan showing the location of all proposed rooftop units (RTU) and the proposed screening.** In addition, if any RTU's are proposed, **the applicant must submit specification sheets on all of the proposed RTU's and material/dimensional information on the screenwall to ensure full screening.**

The site plans show two ground mounted mechanical units at the northwest corner of the property that are proposed to be screened with landscaping elements: Ten, 5 ft. tall Grey Gleam Junipers and five, 6 ft. tall Emerald Green Arborvitaes. **The applicant must submit specification sheets for the proposed ground mounted mechanical units to ensure full screening.**

- 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 6 trees along Woodward, 6 trees along Park, 2 trees along Maple, and 2 trees along Hamilton Row for a total of 16 trees. The applicant has proposed 5 street trees along Woodward, 3 trees along Park, 3 trees along Maple, and 2 trees along Hamilton Row for a total of 13 trees. **The applicant must add the correct number of street trees to each frontage, or obtain a waiver from the Staff Arborist.**

The applicant is also proposing several planting areas around the building that contain shrubs and perennials that are not on the City's list of prohibited species.

- 3.5 Streetscape Elements – The applicant will be expected to design the streetscape with reference to the E. Maple streetscape project. The applicant is proposing several benches, trash receptacles and bike racks along the streetscapes.

4.0 Parking, Loading and Circulation

- 4.1 Parking – The proposed development and its commercial and residential uses are located in the Downtown Parking Assessment District; thus no parking is required on site for the *commercial* uses. The fifth floor

residential units, however, require parking on-site. The proposed site plan has not indicated the number of rooms per unit required to calculate the on-site parking. **The applicant must submit a 5th floor plan showing each unit and its number of rooms per unit for an accurate parking calculation.** The applicant is proposing 2 levels of underground parking with 71 spaces, and a ground level parking area with 14 spaces for a total of 85 spaces on site. All parking spaces meet the minimum size requirement of 180 square feet. The proposed parking areas show only one handicap accessible space on the ground level lot serving the Hunter House.

The Downtown Overlay Zoning Ordinance states that off-street parking contained in the first story shall not be permitted within 20 feet of any building façade on a frontage line, or between the building facade and the frontage line. The at-grade parking that is proposed to service the Hunter House restaurant impedes upon the first 20 ft. along the frontage line on Woodward. **The applicant must submit plans showing no parking within 20 ft. of the building façade on the frontage line, or obtain a variance from the Board of Zoning Appeals.**

- 4.2 Loading – In accordance with Article 4, section 4.24 C (2) of the Zoning Ordinance, developments with over 50,000 sq. ft. of commercial space require 3 usable off-street loading spaces measuring 40 x 12 x 14 ft. in area. The applicant is proposing 3 loading spaces within the building envelope measuring 40 x 9, 29 x 9, and 40 x 9. The applicant has not submitted the height of the proposed spaces. **The applicant must submit plans showing three usable off-street loading spaces measuring 40' x 12' and 14' in height, or obtain a variance from the Board of Zoning Appeals.**
- 4.3 Vehicular Circulation and Access – Entry and exit from the underground parking garage is proposed to be accessed via a garage door on the west side of the building, along Park Street. Entry to the 14 at grade parking spaces will be via a garage door on the north side of the building off of Hamilton Row, and the exit accessed via a garage door on the east side of the building along Woodward.
- 4.4 Pedestrian Circulation and Access –The applicant is proposing pedestrian entrances at three points of the building. Two of the entrances are proposed along Park at the southwest corner of the building and will service the hotel lobby and the proposed restaurant space. The other entrance, for the Hunter House restaurant, is proposed along Hamilton Row at the northeast corner of the building. The applicant is also proposing to complete the sidewalk along Woodward, making the sidewalk accessible on all four sides of the building.

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 to determine compliance with the Zoning Ordinance lighting standards.**

6.0 Departmental Reports

6.1 Engineering Division – The following comments are provided relative to the plans dated November 28, 2018, and undated CIS:

PLANS

1. The project as designed will require the use of City-owned property currently located between the west property line of the subject property and the east edge of the Park St. right-of-way. A successful lease agreement between the owner and the City will be required to be prepared before issuance of a building permit.
2. As referenced in more detail below, no information has been provided on the site plan relative to how utility connections or relocations will be handled. The following concerns are noted:
 - a. The developer will be required to extend a new public 12-inch diameter water main across the Woodward Ave. frontage of the site.
 - b. A Storm Water Detention Permit will be required to be issued for the project as a part of the building permit process, to address the planned increase in impervious surface.
3. As noted several times in the CIS, the City is planning to convert Park St. to two-way traffic as a part of the reconstruction of Maple Rd. in this immediate area, currently planned for construction in 2020. The following must be considered:
 - a. As shown in the traffic study portion of the CIS, a final conceptual plan of how the Maple Rd. and Park St. intersection will be constructed has been finalized. The site plan and landscape plan must be revised to reflect the additional streetscape space that will be available for redevelopment.
 - b. If for some reason the City's construction plans for Maple Rd. are postponed such that this building project is opening in advance of the Maple Rd. project completion, then the owner of the building project will be expected to implement the changes to Park St. and the Maple Rd. intersection as a part of their project, and fund such changes accordingly.
 - c. The site plan must indicate the pavement markings proposed for Park St. once it is designed for two-way traffic. Since on-street parking was planned for the easterly northbound lane, and a valet

queuing lane is now proposed, the engineer is encouraged to consider how eliminating on-street parking in the area of the valet station can allow the opportunity to narrow the proposed widening accordingly (see additional comments below).

4. Relative to the sidewalk/streetscape design:

- a. The large Park St. driveway/valet queuing area must be revised to better consider the pedestrian environment on Park St. The driveway is in excess of the generally approved maximum of 30 ft. wide. An exception to this maximum will be required from the Planning Board.
- b. The sidewalk narrows to an inadequate width south of the Park St. driveway. As noted above, opportunities exist to narrow the queuing lane in such a way to help relieve this problem.
- c. Once a maximum width of the driveway has been determined, the paving pattern must be redesigned to extend the sidewalk through the driveway, encouraging use of the area by pedestrians. The same consideration will also apply to the other driveways on the site as well.
- d. The jointing pattern must be modified in certain areas to consider the proposed streetscape design to be implemented on the Maple Rd. frontage, as well as to eliminate areas where the main pedestrian path will cross exposed aggregate sidewalk sections. A meeting between the engineer, landscape architect, and the Engineering Dept. is strongly recommended to discuss in greater detail prior to redesigning.
- e. In areas where public sidewalk is proposed on private property, an ingress/egress easement shall be provided by the owner to the City to allow for future access and maintenance.

PERMITS

The following permits will be required from the Engineering Dept. as a part of this project:

1. Right-of-way Permit (for excavations in the right-of-way.
2. Sidewalk/Drive Approach Permit
3. Street Obstruction Permit (during construction)
4. Storm Water Detention Permit

In addition, a permit will be required from the Michigan Dept. of Transportation for all work within the Woodward Ave. right-of-way.

6.2 Department of Public Services – The Department of Public Services has provided the following comments:

- Forestry has reviewed the proposed tree species and is satisfied.
- Tree wells, landscape beds and lawn areas are to be irrigated.

- Waste Receptacles - enclosure area(s) must have adequate storage space for solid waste and recycling containers, such cases may warrant a compactor in addition to recycling carts/containers inside of the building.

6.3 Fire Department – The Fire Department has provided the following comments:

- This building will need to comply with the high rise provisions by MBC, and IFC, for fire protection, and life safety codes.
- This building will need to comply with NFPA 13- 2013 Edition, and NFPA 72- 2013 Edition.
- This building will need to have a minimum of a 6-inch water supply for the fire suppression system.
- The FDC will need to be a 2 1/2 "Y" with Detroit threads.
- The FDC cannot be obstructed by trees, shrubbery, or any other features. There must be clear access.
- A temporary stairwell, and temporary standpipe system, for fire department use, will need to be installed, before work begins at 40 feet above ground level.
- Supplied floor plans will need to include calculated egress travel distances.

6.4 Police Department – The Police Department expressed a concern about parking, but has no other comments at this time.

6.5 Building Division – The Building Division comments will be provided at the time of the meeting.

7.0 Design Review

The proposed building façade will contain elements of brick, limestone, metal paneling, and clear glazing. The applicant has also indicated that there will be at least one sign for the Hunter House facility. A full design review will be completed at Final Site Plan, where **the applicant must submit material samples, colors, and specifications as well as details on any proposed signage.**

The applicant has submitted glazing calculations for the proposed development, which are as follows:

ELEVATION	MATERIAL AREA (SQ. FT.)	
	SOLID	GLASS
EAST (1' – 8')	572	1,330
% OF TOTAL	30%	70%
REQUIRED %	30% MAX	70% MIN
EAST (UPPER)	10,417	5,610
% OF TOTAL	65%	35%
REQUIRED %	65% MIN	35% MAX
WEST (1' – 8')	1,289	842
% OF TOTAL	56%	44%
REQUIRED %	30% MAX	70% MIN
WEST (UPPER)	7,653	5,019
% OF TOTAL	65%	35%
REQUIRED %	65% MIN	35% MAX
SOUTH (1' – 8')	490	296
% OF TOTAL	62%	37%
REQUIRED %	30% MAX	70% MIN
SOUTH (UPPER)	4,235	1,650
% OF TOTAL	70%	28%
REQUIRED %	65% MIN	35% MAX
NORTH (UPPER)	614	132
% OF TOTAL	79%	17%
REQUIRED %	30% MAX	70% MIN
NORTH (UPPER)	4,309	1,195
% OF TOTAL	71%	20%
REQUIRED %	65% MIN	35% MAX

The applicant must submit glazing calculations that meet the ordinance, or obtain a variance from the Board of Zoning Appeals.

In relation to the glazing standards, buildings located within the B-4 zoning district may not contain blank walls of longer than 20 ft. facing a public street. The proposed building has several blank walls longer than 20 ft. that are facing a public street. **The applicant must submit plans showing building elevations that contain no walls greater than 20 ft. facing a public street, or obtain a variance from the Board of Zoning Appeals.**

As mentioned in the CIS, the proposed development is also located at a Terminating Vista as described in the 2016 Plan, which states that any building that terminates a view, as designated on the Regulating Plan, shall provide distinct and prominent architectural features of enhanced character and visibility, which reflect the importance of the building's location and create a positive visual landmark. The proposed building consists of several high quality materials such as brick and limestone, and provides several distinct architectural features that are appropriate for its location as a terminating vista.

There are a few architectural features, however, that project into the right-of-way along Maple, Park, and potentially Woodward including building façade and canopies. In addition, the proposed underground parking levels also extend past the property line. The City Engineer has determined that a successful lease agreement between the owner and the City will be required to be prepared before issuance of a building permit for the use of City property in the underground parking deck.

As mentioned above, the proposed metal canopies, one on the Park side over the hotel lobby and restaurant entries, and one wrapping the corner at Woodward and Hamilton Row over the Hunter House entrance are projecting past the property line into the right-of-way. Article 3, Section 3.04 (B)(5) states that first-floor awnings may encroach upon the frontage line and public sidewalk, but must avoid the street trees; provide at least 8 feet of clearance above the sidewalk; and be set back a minimum of 2 feet from the road curb. Both canopies are proposed to be 13 ft. 8 in. above grade, but the canopy for the hotel entrance protrudes from the building and extends 3 ft. over the curb along the proposed valet lane curb. **The applicant must submit plans showing a canopy that is set back a minimum of 2 ft. from the road curb, or obtain a variance from the Board of Zoning Appeals.**

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 **POSTPONE** the Preliminary Site Plan for 35001 & 35075 Woodward – The Maple – pending receipt of the following:

- 1) Confirm the presence of a gate to ensure that the refuse area 2 is fully screened from public view;
- 2) Submit a rooftop plan showing the location of all proposed rooftop units and the proposed screening;
- 3) Submit specification sheets on all of the proposed rooftop units and material/dimensional information on the screenwall to ensure full screening;
- 4) Submit specification sheets for the proposed ground mounted mechanical units to ensure full screening;
- 5) Add the correct number of street trees to each street frontage, or obtain a waiver from the Staff Arborist;
- 6) Submit a 5th floor plan showing each unit and the number of rooms per unit for an accurate parking calculation;
- 7) Submit plans showing no parking within 20 ft. of the building façade on the frontage line, or obtain a variance from the Board of Zoning Appeals;
- 8) Submit plans showing three usable off-street loading spaces measuring 40 x 12 x 14, or obtain a variance from the Board of Zoning Appeals;
- 9) Submit a photometric plan and specifications on all proposed lighting;
- 10) Submit material samples, colors, and specifications as well as details on any proposed signage;
- 11) Submit glazing calculations that meet the ordinance, or obtain a variance from the Board of Zoning Appeals;
- 12) Submit plans showing building elevations that contain no walls greater than 20 ft. facing a public street, or obtain a variance from the Board of Zoning Appeals;
- 13) Submit plans showing a canopy that is set back a minimum of 2 ft. from the road curb, or obtain a variance from the Board of Zoning Appeals;
- 14) Applicant comply with the requests of all City Departments.

10.0 Sample Motion Language

Motion to **POSTPONE** the Preliminary Site Plan for 35001 & 35075 Woodward – The Maple – pending receipt of the following:

- 1) Confirm the presence of a gate to ensure that the refuse area 2 is fully screened from public view;
- 2) Submit a rooftop plan showing the location of all proposed rooftop units and the proposed screening;
- 3) Submit specification sheets on all of the proposed rooftop units and material/dimensional information on the screenwall to ensure full

screening;

- 4) Submit specification sheets for the proposed ground mounted mechanical units to ensure full screening;
- 5) Add the correct number of street trees to each street frontage, or obtain a waiver from the Staff Arborist;
- 6) Submit a 5th floor plan showing each unit and its number of rooms per unit for an accurate parking calculation;
- 7) Submit plans showing no parking within 20 ft. of the building façade on the frontage line, or obtain a variance from the Board of Zoning Appeals;
- 8) Submit plans showing three usable off-street loading spaces measuring 40 x 12 x 14, or obtain a variance from the Board of Zoning Appeals;
- 9) Submit a photometric plan and specifications on all proposed lighting;
- 10) Submit material samples, colors, and specifications as well as details on any proposed signage;
- 11) Submit glazing calculations that meet the ordinance, or obtain a variance from the Board of Zoning Appeals;
- 12) Submit plans showing building elevations that contain no walls greater than 20 ft. facing a public street, or obtain a variance from the Board of Zoning Appeals;
- 13) submit plans showing a canopy that is set back a minimum of 2 ft. from the road curb, or obtain a variance from the Board of Zoning Appeals;
- 14) Applicant comply with the requests of all City Departments.

OR

Motion to **APPROVE** the Preliminary Site Plan for 35001 & 35075 Woodward – The Maple – with the following conditions:

- 1) Confirm the presence of a gate to ensure that the refuse area 2 is fully screened from public view;
- 2) Submit a rooftop plan showing the location of all proposed rooftop units and the proposed screening;
- 3) Submit specification sheets on all of the proposed rooftop units and material/dimensional information on the screenwall to ensure full screening;
- 4) Submit specification sheets for the proposed ground mounted mechanical units to ensure full screening;
- 5) Add the correct number of street trees to each street frontage, or obtain a waiver from the Staff Arborist;
- 6) Submit a 5th floor plan showing each unit and its number of rooms per unit for an accurate parking calculation;
- 7) Submit plans showing no parking within 20 ft. of the building façade on the frontage line, or obtain a variance from the Board of Zoning Appeals;
- 8) Submit plans showing three usable off-street loading spaces measuring 40 x 12 x 14, or obtain a variance from the Board of Zoning Appeals;
- 9) Submit a photometric plan and specifications on all proposed lighting;
- 10) Submit material samples, colors, and specifications as well as details on any proposed signage;

- 11) Submit glazing calculations that meet the ordinance, or obtain a variance from the Board of Zoning Appeals;
- 12) Submit plans showing building elevations that contain no walls greater than 20 ft. facing a public street, or obtain a variance from the Board of Zoning Appeals;
- 13) submit plans showing a canopy that is set back a minimum of 2 ft. from the road curb, or obtain a variance from the Board of Zoning Appeals;
- 14) Applicant comply with the requests of all City Departments.

OR

Motion to **DENY** the Preliminary Site Plan for 35001 & 35075 Woodward – The Maple – for the following reasons:

1. _____
2. _____
3. _____

**Zoning Compliance Summary Sheet
Final Site Plan Review
35001 & 35075 Woodward – The Maple**

Existing Site: Hunter House restaurant and surface parking lots

Zoning: B-4 (Business Residential) and D-4 (Downtown Overlay)

Land Use: Commercial

Existing Land Use and Zoning of Adjacent Properties:

	North	South	East	West
Existing Land Use	Commercial/ Office	Mixed Use	Commercial	Commercial/ Office
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	D-2	D-4

Land Area: Existing: 0.5 acres
Proposed: 0.5 acres

Dwelling Units: Existing: 0 units
Proposed: 24 units

Not all of the units meet the minimum floor area required per unit. The applicant must submit plans showing a fifth floor with a number of units that comply with the minimum floor area, as well as provide kitchen facilities.

Minimum Lot Area/Unit: Required: N/A
Proposed: N/A

Min. Floor Area /Unit:	Required:	600 sq. ft. (efficiency or one bedroom) 800 sq. ft. (two bedroom) 1,000 sq. ft. (three or more bedroom)
	Proposed:	Smallest unit – 300 sq. ft.
		The applicant must submit plans showing a fifth floor with units that comply with the minimum floor area or obtain a variance from the Board of Zoning Appeals.
Max. Total Floor Area:	Required:	N/A
	Proposed:	N/A
Min. Open Space:	Required:	N/A
	Proposed:	N/A
Max. Lot Coverage:	Required:	N/A
	Proposed:	N/A
Front Setback:	Required:	0 ft.
	Proposed:	0 ft.
Side Setbacks	Required:	0 ft.
	Proposed:	0 ft.
Rear Setback:	Required:	A minimum of 10 ft. rear yard setback shall be provided from the midpoint of the alley. In the absence of an alley, the rear setback shall be equal to that of an adjacent, preexisting building
	Proposed:	0 ft., equal to the Greenleaf Trust building
Min. Front+Rear Setback	Required:	N/A
	Proposed:	N/A
Max. Bldg. Height:	Permitted:	80 ft., 5 stories
	Proposed:	80 ft., 5 stories
Max Eave Height:	Required:	58 ft.
	Proposed:	56 ft.
Floor-Ceiling Height:	Required:	N/A
	Proposed:	N/A
Principal Ped. Entry:	Required:	On a frontage line
	Proposed:	Three entrances, two on Park Street frontage line and one on Woodward frontage line

Absence of Bldg. Façade:	Required:	N/A
	Proposed:	N/A
Opening Width:	Required:	25 ft. maximum
	Proposed:	Largest opening: 19 ft.
Parking:	Required:	36 spaces
	Proposed:	85 spaces
Min. Parking Space Size:	Required:	180 sq. ft.
	Proposed:	180 sq. ft.
Parking in Frontage:	Required:	Off-street parking contained in the first story shall not be permitted within 20 feet of any building façade on a frontage line or between the building facade and the frontage line.
	Proposed:	There is parking within 20 ft. of the building façade on the Woodward frontage line at the northeast corner of the building.
		The applicant must submit revised plans with no parking within 20 ft. of the frontage line, or obtain a variance from the Board of Zoning Appeals.
Loading Area:	Required:	3 off-street loading spaces (40' x 12' and 14' in height)
	Proposed:	3 off-street loading spaces (40' x 9', 29' x 9', 40' x 9', no heights provided).
		The applicant must submit plans showing 3 off-street loading spaces with the required dimensions, or obtain a variance from the Board of Zoning Appeals.
Required Retail Depth:	Required:	20 ft. minimum (on Maple only)
	Proposed:	Restaurant use along the entirety of the Maple frontage at the required depths
Screening:		
	<u>Parking:</u>	
	Required:	32 in. capped masonry screenwall
	Proposed:	Fully screened by the building
	<u>Loading:</u>	
	Required:	Fully screened from public view
	Proposed:	Fully screened by the building
<u>Rooftop Mechanical:</u>	Required:	Fully screened from public view

Proposed: **The applicant has not submitted a rooftop plan showing any proposed RTU's and the required screening.**

Elect. Transformer: Required: Fully screened from public view
Proposed: 5 ft. and 6 ft. landscaping elements

Dumpster: Required: 6 ft. capped masonry screenwall
Proposed: All refuse areas are proposed within the building envelope.

However, full screening from public view is not maintained due to large glass garage doors proposed adjacent to the refuse area.

CITY OF BIRMINGHAM
Community Development – Building Department
151 Martin Street, Birmingham, MI 48009

December 7, 2018

RE: Preliminary Site Plan Review Comments
35001 Woodward, The Maple

As requested, the Building Department has examined the plans for the proposed project referenced above. The plans were provided to the Planning Department for site plan review purposes only and present conceptual elevations and floor plans. Although the plans lack sufficient detail to perform a code review, the following comments are offered for Planning Design Review purposes and applicant consideration:

Applicable Building Codes:

- **2015 Michigan Building Code.** Applies to all buildings other than those regulated by the *Michigan Residential Code*.
- **2015 Michigan Residential Code.** Applies to all detached one and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height with a separate means of egress and their accessory structures.
- **2015 Michigan Mechanical Code.** (Residential requirements for mechanical construction in all detached one and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height with a separate means of egress and their accessory structures are contained in the Michigan Residential Code)
- **2015 Michigan Plumbing Code.** (Residential requirements for plumbing construction in all detached one and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height with a separate means of egress and their accessory structures are contained in the Michigan Residential Code)
- **2014 National Electrical Code *along with the Michigan Part 8 Rules*.** (Residential requirements for electrical construction in all detached one and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height with a separate means of egress and their accessory structures are contained in the Michigan Residential Code)

Review Comments:

1. Per sec 508.1.3 2015 IFC and 911.1.3 2015 MBC, The fire command center shall not be less than 200 sq.ft and 10 feet in 1 dimension.
2. Exit doors from lower level 1 and 2 and north stair levels 2,3,4, must swing in direction of egress per 1010.1.2.1 2015 MBC.
3. Per 1026.1 2015 MBC, not more than half of required exits can be horizontal exits. 1 stair must exit directly to the outside.

CITY OF BIRMINGHAM
Community Development – Building Department
151 Martin Street, Birmingham, MI 48009

4. Rooms 2 and 3 on floors 2,3,4 exceed the allowed common path of travel of 75 ft. per table 1006.2.1 5015 MBC.
5. Per table 1106.1 2015 MBC at least 3 accessible parking spaces are required for lower level 1 and lower level 2 combined. 1 space must be van accessible.
6. The service elevator on the fifth floor does not line up with the service elevator on the lower floors.
7. Main level parking area requires 2 egress compliant doors.
8. Per sec. 1028, 2015 MBC, exit discharge from interior stairway must be free unobstructed readily visible and identifiable from the termination of the enclosure.



MEMORANDUM

Planning Division

DATE: December 12th, 2018

TO: Planning Board

FROM: Brooks Cowan, City Planner

SUBJECT: Rooftop Use and Occupation in the MX District

A number of new mixed use and multi-family developments throughout the country have included rooftop amenities such as recreation spaces, terraces, patios, gardens or pools. Providing rooftop amenities allows building owners to maximize space. The view that rooftop amenities provide is often cited as one of the biggest benefits for patrons of such spaces. The use of rooftops for building amenities has been on the rise in recent years. Examples in Birmingham include the All Seasons in the Triangle District and Social Kitchen in the Downtown District. Rooftop amenities and recreational uses are currently permitted on buildings built to their maximum height in all zoning districts except in the MX District.

Article 4.18 of the Zoning Ordinance contains a section for structures excluded from height limits in Article 2, but it does not apply to the MX District.

4.18 HT-03

This Height Standards section applies to the following districts:

O1 O2 P B1 B2 B2B B2C B3 B4 TZ1 TZ3

The following height standard applies:

- A. Structures Excluded: The maximum height limits set forth in the two-page layout in Article 2 shall not apply to any penthouses, rooftop screening, rooftop mechanical equipment and/or other rooftop mechanical appurtenances, providing they are screened in accordance with Section 4.54.

Article 4.19 of the Zoning Ordinance contains height standards for the Mixed Use (MX) District, which provides as follows:

4.19 HT-04

This Height Standards section applies to the following district:



The following height standards apply:

A. Roofs:

1. Flat roofs shall be no more than 45 feet.
2. Eave line for sloped roofs shall be no more than 40 feet.
3. Peak or ridge of any sloped roof shall be no more than 50 feet as measured to the average grade at the sidewalk at the frontage line.
4. Maximum overall height including the mechanical and other equipment shall be no more than 50 feet.
5. Sloped roofs no greater than 45 degrees measured to the horizontal shall be permitted for the screening of mechanical and other equipment.
6. Any other use or occupancy above 40 feet shall be prohibited.
7. Maximum of 4 stories.

B. Structures Along Eton Road: The minimum eave height for a 1 story building along Eton Road shall be 18 feet.

If a property owner in the MX District constructs a building to the maximum height of four stories with a roof height of 40' or above, no recreational rooftop amenities can be provided based on Section 4.19(A)(6) which prohibits any use above 40'. The MX District is the only zoning district that prohibits such rooftop uses. The District Lofts at the northwest corner of Villa and Eton and the Sheridan senior living center are two presently built properties that are currently prohibited from having uses or occupancy on the roof based on section 4.19 of the Zoning Ordinance.

Also, if a flat roof building is built to the maximum height of 45', Section 4.19(A)(4) restricts the maximum overall height including mechanical equipment to 50' which only allows 5' of height for structural amenities such as stair enclosures or elevator lobbies that provide access to the rooftop.

This matter was discussed at the joint meeting of the City Commission and the Planning Board on October 15, 2018. After much discussion, the consensus of the City Commission was to consider ordinance amendments to allow rooftop uses and occupation in the MX District so that such uses are permitted in all zone districts that allow mixed use buildings. In addition, the City Commission also expressed a desire to allow small lobbies or area of enclosed space around elevators that extend up to rooftops.

On October 24th, 2018 the Planning Board considered draft ordinance language that eliminated line 6 of Section 4.19(A) "Any other use or occupancy above 40 feet shall be prohibited." There was consensus that the Board wanted more in depth review of ordinance language in relation to rooftop uses before making any definitive decisions. It was suggested to look into cities such as Denver, CO and Portland, OR. Relevant ordinance language from both cities is attached. Each has an ordinance with a designated section for exceptions to the building height regulations.

Section 7.3.7 *Design Standard Exceptions* of Denver's Zoning Ordinance states:

A. Intent:

To allow building features to exceed maximum height for utility purposes and/or limited recreation or building amenities in the higher intensity zone districts/larger forms.

B. Applicability and standards:

1. *The following building features are allowed to exceed height in feet, stories, bulk plane and upper story setbacks as described in the table below, subject to the standards in this section 7.3.7.1.B.*
2. ***Unoccupied elevator penthouses, stair enclosures, and enclosed or unenclosed mechanical equipment including vertical or sloped screen walls for such equipment granted an exception for height in stories shall only be as large as necessary to achieve the intended function of the feature and shall not exceed the minimum required dimensions defined in the Denver Building and Fire Code.***
3. ***An elevator lobby granted an exception for height in stories shall be no larger in area than the area of the elevator shaft which it abuts, measured to the exterior walls.***
4. ***Unoccupied building features shall not include space for living, sleeping, eating, cooking, bathrooms, toilet compartments, closets, halls, storage, or similar space.***
5. *Where a building feature exceeds the maximum height in feet or the maximum height in stories as allowed in this section, all standards for the applicable feature in the table below shall apply.*
(Please see attachment for table)

As an example, the table for Denver's Zoning Ordinance Section 7.3.7.1 *Height Exceptions* indicates that Mixed Use buildings up to three stories may exceed the permitted building height by 12' for elevator lobbies and open structures.

Chapter 33.120.215 *Height* of the Portland, Oregon Zoning Ordinance States:

C. ***Exceptions.*** *Exceptions to the base height, step-down height, and bonus height limits are stated below:*

1. *Projections allowed. Chimneys, vents, flag poles, satellite receiving dishes, and other similar items that are attached to a building and have a width, depth, or diameter of 5 feet or less may extend 10 feet above the height limits, or 5 feet above the highest point of the roof, whichever is greater. Items that are greater than 5 feet in width, depth, or diameter are not allowed to project above the base, step-down, or bonus height limits.*
2. *Parapets and railings. In the CM1, CM2, CM3, CE and CX zones, parapets and rooftop railings may extend 4 feet above the height limits.*
3. *Walls and fences. In the CM1, CM2, CM3, CE and CX zones, walls or fences located between individual rooftop decks may extend 6 feet above the height limits if the visual screen is set back at least 4 feet from the edges of the roof.*
4. ***Rooftop equipment. In the CM1, CM2, CM3, CE and CX zones, rooftop mechanical equipment and stairwell enclosures that provide rooftop access may extend above the height limits as follows, provided that the equipment and enclosures are set back at least 15 feet from all roof edges on street facing facades:***
 - a. ***Elevator mechanical equipment and stairwell enclosures may***

extend up to 16 feet above the height limits; and

- b. Other mechanical equipment that cumulatively cover no more than 10 percent of the roof area may extend up to 10 feet above the height limits.***
- 5. Antennas and mounting devices, utility power poles, and public safety facilities are exempt from the height limits.*
- 6. Small wind turbines are subject to the standards of Chapter 33.299.*
- 7. Roof mounted solar panels are not included in height calculations and may exceed the maximum height limits if the following are met:*
 - a. For flat roofs or the horizontal portion of mansard roofs, the solar panel may extend up to 5 feet above the top of the highest point of the roof; and*
 - b. For pitched, shed, hipped, or gambrel roofs, the solar panel must be mounted no more than 12 inches from the surface of the roof at any point, and may not extend above the ridgeline of the roof. The 12 inches is measured from the upper side of the solar panel.*
- 8. High ceilings. In the CM1, CM2, CM3, CE and CX zones outside the Central City plan district, base height, step-down height, and bonus height may be increased by 5 feet when at least 75 percent of the ground floor has at least 15 feet between the floor and the bottom of the structure above. The bottom of the structure above includes supporting beams.*

Portland, Oregon's Zoning Ordinance allows rooftop mechanical equipment and stairwell enclosures that provide rooftop access to exceed the height limit by 16' as long as it is set back at least 15' from all street facing facades. This is 4' higher than the example provided from Denver for buildings of similar size and use. A suggested issue for discussion is the setback requirement for rooftop uses and equipment which is addressed in the proposed language for Section 4.19(A)(8).

Accordingly, please find attached draft ordinance language for your review to consider the first issue of removing a prohibition on rooftop use and occupation in the MX District to allow rooftop uses and amenities that are currently permitted in other mixed use zoning districts in the City.

CITY OF BIRMINGHAM
ORDINANCE NO.

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

TO AMEND ARTICLE 4, SECTION 4.18(A), HEIGHT STANDARDS, TO REGULATE ROOFTOP USE AND AMENITIES.

This Height Standards section applies to the following districts:

O1, O2, P, B1, B2, B2B, B2C, B3, B4, TZ1, TZ3, **MX**

The following height standard applies:

A. Structures excluded:

1. The maximum height limit set forth in the two-page layout in Article 2 shall not apply to any penthouses, **stair enclosures, elevator shafts**, rooftop screening, rooftop mechanical equipment and/or other rooftop mechanical appurtenances, providing they are screened in accordance with Section 4.54.
2. **An elevator lobby may exceed the height limit provided it is no larger in area than the area of the elevator shaft which it abuts, measured to the exterior walls.**
3. **Any structure excluded from height requirements may be no more than 12' above the maximum height of the roof in each district.**

B. Rooftop Uses:

1. **Limited recreational use above the height limit set forth in the two-page layout in Article 2 shall be permitted.**
2. **Permanent building features for eating, cooking, and storage are not permitted on rooftops.**
3. **All rooftop building features must be unoccupied and shall not include space for living, sleeping, bathrooms, toilet compartments, closets, halls, or similar space.**

ORDAINED this _____ day of _____, 2018 to become effective 7 days after publication.

Andrew Harris, Mayor

Cherilynn Mynsberge, City Clerk

CITY OF BIRMINGHAM
ORDINANCE NO.

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

TO AMEND ARTICLE 4, SECTION 4.19(A), HEIGHT STANDARDS, TO ALLOW ROOFTOP USE AND AMENITIES IN THE MX ZONE DISTRICT.

The following height standards apply:

- A. Roofs:
1. Flat roofs shall be no more than 45 feet.
 2. Eave line for sloped roofs shall be no more than 40 feet.
 3. Peak or ridge of any sloped roof shall be no more than 50 feet as measured to the average grade at the sidewalk at the frontage line.
 4. Maximum overall height including the mechanical and other equipment shall be no more than ~~50 feet~~ **57 feet**.
 5. Sloped roofs no greater than 45 degrees measured to the horizontal shall be permitted for the screening of mechanical and other equipment.
 6. ~~Any other use or occupancy above 40 feet shall be prohibited.~~
 7. Maximum of 4 stories.
 8. **Rooftop structures 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 facing the street front.**

ORDAINED this _____ day of _____, 2018 to become effective 7 days after publication.

Andrew Harris, Mayor

Cherilynn Mynsberge, City Clerk

DATE: October 17, 2018

TO: Planning Board

FROM: Jana Ecker, Planning Director

SUBJECT: Rooftop Use and Occupation in the MX District

Many new buildings, especially mixed use and multi-family developments, have rooftop amenities such as recreation spaces, terraces, patios, gardens or pools. Providing rooftop amenities allows building owners to maximize space. The view that rooftop amenities provide is often cited as one of the biggest benefits for patrons of such spaces. The use of rooftops for building amenities has been on the rise in recent years. Most new buildings built in Downtown Birmingham or the Triangle District include such rooftop uses and amenities. Rooftop amenities are currently permitted on buildings in all zone districts that are built to the allowable number of stories, except in the MX District.

Article 4.19 of the Zoning Ordinance contains height standards for the Mixed Use (MX) District, which provides as follows:

Height Standards (HT)

**Article
04**

4.19 HT-04

This Height Standards section applies to the following district:



The following height standards apply:

A. Roofs:

1. Flat roofs shall be no more than 45 feet.
2. Eave line for sloped roofs shall be no more than 40 feet.
3. Peak or ridge of any sloped roof shall be no more than 50 feet as measured to the average grade at the sidewalk at the frontage line.
4. Maximum overall height including the mechanical and other equipment shall be no more than 50 feet.
5. Sloped roofs no greater than 45 degrees measured to the horizontal shall be permitted for the screening of mechanical and other equipment.
6. Any other use or occupancy above 40 feet shall be prohibited.
7. Maximum of 4 stories.

B. Structures Along Eton Road: The minimum eave height for a 1 story building along Eton Road shall be 18 feet.

Thus, if a property owner in the MX District constructs a building to the maximum height of four stories with a roof height of 40' or above, no rooftop amenities can be provided based on Section 4.19(A)(6) which clearly prohibits any use above 40'. The MX District is the only zoning district that prohibits such rooftop uses. The District Lofts at the northwest corner of Villa and Eton and the Sheridan senior living center are two presently built properties that are currently prohibited from having uses or occupancy on the roof based on section 4.19 of the Zoning Ordinance.

This matter was discussed at the joint meeting of the City Commission and the Planning Board held on October 15, 2018. After much discussion, the consensus of the City Commission was to consider ordinance amendments to allow rooftop uses and occupation in the MX District so that such uses are permitted in all zone districts that allow mixed use buildings. In addition, the City Commission also expressed a desire to allow small lobbies or area of enclosed space around elevators that extend up to rooftops.

Accordingly, please find attached draft ordinance language for your review to consider the first issue of removing a prohibition on rooftop use and occupation in the MX District to allow rooftop uses and amenities that are currently permitted in other mixed use zoning districts in the City.

CITY OF BIRMINGHAM
ORDINANCE NO.

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

TO AMEND ARTICLE 4, SECTION 4.19(A), HEIGHT STANDARDS, TO ALLOW ROOFTOP USE AND AMENITIES IN THE MX ZONE DISTRICT.

The following height standards apply:

B. Roofs:

9. Flat roofs shall be no more than 45 feet.
10. Eave line for sloped roofs shall be no more than 40 feet.
11. Peak or ridge of any sloped roof shall be no more than 50 feet as measured to the average grade at the sidewalk at the frontage line.
12. Maximum overall height including the mechanical and other equipment shall be no more than 50 feet.
13. Sloped roofs no greater than 45 degrees measured to the horizontal shall be permitted for the screening of mechanical and other equipment.
14. ~~Any other use or occupancy above 40 feet shall be prohibited.~~
15. Maximum of 4 stories.

ORDAINED this _____ day of _____, 2018 to become effective 7 days after publication.

Andrew Harris, Mayor

Cherilynn Mynsberge, City Clerk

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

Minutes of the regular meeting of the City of Birmingham Planning Board held on October 24, 2018. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Daniel Share, Janelle Whipple-Boyce, Bryan Williams

Also Present: Alternate Board Member Jason Emerine

Absent: Alternate Board Member Nasseem Ramin; Student Representatives Madison Dominato, Sam Fogel, Ellie McElroy

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

10-182-18

5. Rooftop Usage in the MX District

Mr. Baka reported that many new buildings, especially mixed-use and multi-family developments, have rooftop amenities such as recreation spaces, terraces, patios, gardens or pools. Providing rooftop amenities allows building owners to maximize space and is often cited as one of the biggest benefits for patrons of such spaces. Most new buildings built in Downtown Birmingham or in the Triangle District include such rooftop uses and amenities. Rooftop amenities are currently permitted on buildings in all zone districts that are built to the allowable number of stories, except in the MX District.

Thus, if a property owner in the MX District constructs a building to the maximum height of four stories with a roof height of 40 ft. or above, no rooftop amenities can be provided based on Section 4.19 (A) (6) which clearly prohibits any use above 40 ft. The District Lofts at the northwest corner of Villa and Eton and the Sheridan senior living center are two presently built properties that are currently prohibited from having uses or occupancy on the roof based on section 4.19 of the Zoning Ordinance.

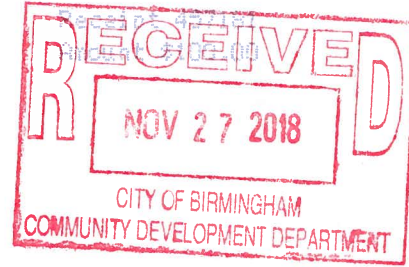
This matter was discussed at the joint meeting of the City Commission and the Planning Board held on October 15, 2018. After much discussion, the consensus of the City Commission was to consider ordinance amendments to allow rooftop uses and occupation in the MX District so that such uses are permitted in all zone districts that allow mixed-use buildings. In addition, the City Commission also expressed a desire to allow small lobbies or areas of enclosed space around elevators that extend up to rooftops.

Accordingly draft ordinance language was presented for review to consider the first issue of removing a prohibition on rooftop use and occupation in the MX District to allow rooftop uses and amenities that are currently permitted in other mixed-use zoning districts in the City.

Ms. Ecker advised this is phase 1 of the discussion on rooftop uses. The draft language would allow rooftop uses in the MX District but it wouldn't allow a closed space around an elevator or other additions. That is another discussion.

Chairman Clein was concerned this would open the door for people to do whatever they want on the roof without any regulations. He worried about the proximity to residential. Ms. Ecker noted they haven't heard any concerns about rooftop uses in the other districts.

It was decided to tell the City Commission that the Planning Board is concerned about doing what looks to be a simple easy fix, and the Board wants to know whether to go further into the study first.



Administrative Approval Application Planning Division

Form will not be processed until it is completely filled out

1. Applicant

Name: FLS Properties #5, LLC
Address: 2950 Walnut Lake Road
W. Bloomfield, MI 48323
Phone Number: 248-680-1401
Fax Number: 248-720-0293
Email: fsimon@simonattys.com

Property Owner

Name: Frank R. Simon/FLS Properties #5, LLC
Address: 2950 Walnut Lake Road
W. Bloomfield, MI 48323
Phone Number: 248-790-9500
Fax Number: 248-720-0293
Email: fsimon@simonattys.com

2. Applicant's Attorney/Contact Person

Name: Frank R. Simon
Address: 2950 Walnut Lake Road
W. Bloomfield, MI 48323
Phone Number: 248-790-9500
Fax Number: 248-720-0293
Email: fsimon@simonattys.com

Project Designer John Marusich
Name: MARUSICH ARCHITECTURE
Address: 30820 WOODWARD
AVE B. HILLS
Phone Number: 313 462 0645
Fax Number: _____
Email: johnm.marusicharchitecture@gmail.com

3. Project Information

Address/Location of Property: 856 N. Old Woodward
Birmingham, MI
Name of Development: The Pearl
Parcel ID #: 1925328001
Current Use: vacant land
Area in Acres: _____
Current Zoning: O2/D2

Name of Historic District site is in, if any: --
Date of HDC Approval, if any: --
Date of Application for Preliminary Site Plan: 9/4/15
Date of Preliminary Site Plan Approval: _____
Date of Application for Final Site Plan: 7/14/16
Date of Final Site Plan Approval: 7/26/16
Date of Revised Final Site Plan Approval: _____

4. Attachments

- Warranty Deed with legal description of property
- Authorization from Owner(s) (if applicant is not owner)
- Completed Checklist
- Six (6) folded copies of plans including an itemized list of all changes for which administrative approval is requested, with the changes marked in color on all elevations

5. Details of the Request for Administrative Approval

PLANNING DEPT IS TO REVIEW THE MOST
RECENT PERMIT SET FOR SITE PLAN
APPROVAL COMPLIANCE
EXTERIOR - GLAZING, ETC SEE PLANS

The undersigned states the above information is true and correct, and understands that it is the responsibility of the applicant to advise the Planning Division and / or Building Division of any additional changes to the approved site plan.

Signature of Applicant: [Signature] Date: 11/27/2018

Office Use Only			
Application #: <u>18-0193</u>	Date Received: <u>11/27/18</u>	Fee: <u>\$100.00</u>	
Date of Approval: <u>11/29/18</u>	Date of Denial: <u>N/A</u>	Reviewed by: <u>[Signature]</u>	



CONSENT OF PROPERTY OWNER

I, Frank R. Simon, OF THE STATE OF Michigan AND COUNTY OF
(Name of property owner)

Oakland STATE THE FOLLOWING:

1. That I am the owner of real estate located at 856 N. Old Woodward, Birmingham, MI;
(Address of affected property)
2. That I have read and examined the Application for Administrative Approval made to the City of Birmingham by:
FLS Properties #5, LLC;
(Name of applicant)
3. That I have no objections to, and consent to the request(s) described in the Application made to the City of Birmingham.

Dated: 11/27/2018

Frank R. Simon
Owner's Name (Please Print)


Owner's Signature



H/A

ADMINISTRATIVE APPROVAL APPLICATION CHECKLIST – PLANNING DIVISION

Applicant: _____ Date: _____

Address: _____ Project: _____

All site plans and elevation drawings prepared for administrative approval shall be prepared in accordance with the following specifications and other applicable requirements of the City of Birmingham. If more than one page is used, each page shall be numbered sequentially. All plans must be legible and of sufficient quality to provide for quality reproduction or recording.

Administrative Approval of Design Changes

- _____ 1. Name and address of applicant and proof of ownership;
- _____ 2. Name of Development (if applicable);
- _____ 3. Address of site and legal description of the real estate;
- _____ 4. A separate location map;
- _____ 5. Legend and notes, including a graphic scale, north point, and date;
- _____ 6. A list of all requested design changes;
- _____ 7. Elevation drawings with all requested design changes marked in color;
- _____ 9. A list of all new materials to be used, including size specifications, color and the name of the manufacturer.

Administrative Approval of Site Plan Changes

A full site plan detailing the proposed changes for which administrative approval is requested shall be drawn at a scale no smaller than 1” = 100’ (unless the drawing will not fit on one 24” X 36” sheet) and shall include:

- _____ 1. Name and address of applicant and proof of ownership;
- _____ 2. Name of Development (if applicable);
- _____ 3. Address of site and legal description of the real estate;
- _____ 4. Name and address of the land surveyor;
- _____ 5. Legend and notes, including a graphic scale, north point, and date;
- _____ 6. A separate location map;
- _____ 7. A map showing the boundary lines of adjacent land and the existing zoning of the area proposed to be developed as well as the adjacent land;
- _____ 8. A list of all requested changes to the site plan;
- _____ 9. All changes requested marked in color on the site plan and on all elevations of any building(s);
- _____ 10. A chart indicating the dates of approval of the Preliminary Site Plan, Final Site Plan; Revised Final Site Plans, and any dates of approval by the Historic District Committee (“HDC”);
- _____ 11. Existing and proposed layout of streets, open space and other basic elements of the plan;
- _____ 12. Existing and proposed easements and their purpose;

- _____ 13. Location of natural streams, regulated drains, 100-year flood plains, floodway, water courses, marshes, wooded areas, isolated preservable trees, wetlands, historic features, existing structures, dry wells, utility lines, fire hydrants and any other significant feature(s) that may influence the design of the development;
- _____ 14. General description of, location of, and types of structures on the site;
- _____ 15. Details of existing or proposed lighting, signage, landscaping, and other pertinent development features;
- _____ 16. Any other information requested in writing by the Planning Division, the Planning Board, or the Building Official deemed important to the development.

PLEASE NOTE: All requests for administrative approval must comply with Ordinance No. _____, which outlines the terms and conditions under which administrative approval may be granted.

H/A



Fee Schedule

Administrative Approval	\$100.00
Board of Zoning Appeals*	
• Single Family Residential	\$310
• All Others	\$510
Community Impact Study Review*	\$2,050
Design Review*	\$350
Lot Division*	\$200 / parcel affected
Historic District Review*	
• Single Family Residential District	No charge
• All other zone districts	\$350
Public Notice Sign	\$100 / refundable deposit \$50 fee
Site Plan Review*	
• R4 through R8 zone district	\$850 plus \$50 per dwelling unit
• Nonresidential districts	\$1050 plus \$50 per acre or portion of acre
Special Land Use Permit*	\$800
• Plus Site Plan Review	\$1050
• Plus Design Review	\$350
• Plus Publish of Legal Notice	\$450
• Plus sign rental and deposit	\$150
	Total fee: \$2800
Special Land Use Permit Annual Renewal Fee	\$200.00
Temporary Use Permit	\$100
Zoning Compliance Letter	\$50
Zoning Ordinance Amendment Hearing (Rezoning)*	\$1500

*Require public notice sign to be posted (\$150 – rental fee & deposit)

The fees for design review, site plan review, historic district review and special land use permits shall be double the listed amounts in the even the work is commenced prior to the filing of an application for review by the City of Birmingham.

Ordinance No. 1751 (Appendix A, Section 7.38 of the Birmingham City Code)

MEMORANDUM

Date: June 27th, 2018

To: Jeff Zielke, Plans Examiner

From: Nicholas Dupuis, Planning Department

Re: 856 N. Old Woodward – The Pearl – Building Plan Review

Description: New Commercial
Project Number: JCB16-0005

Approved: _____ Date: _____

Not Approved: Nicholas Dupuis Date: 06/27/2018

Comments:

Please be advised that I have reviewed the building plans submitted for 856 N. Old Woodward – The Pearl. After a thorough review, the following notes are provided:

“BP” refers to the building plans submitted on June 20th, 2018

“AA” refers to a combination of administratively approved plans as of July 19th, 2017 and May 23rd, 2018, serving as the most recent set of approved plans on file with the Planning Department

- Lower Level/Parking (A.100)
 - 45 spaces are present in the BP, matching the 45 spaces in the approved AA plans.
 - Parking area is configured differently in the BP, including the directionality of the vehicular maneuvering lanes. Driver must now turn left from the ramp and circle around clockwise. The AA plans show a counterclockwise path.
 - There are no ADA spaces denoted on the BP as are denoted in the AA.
- First Floor Plan (A.101)
 - There are 19 spaces in the BP, where there are 20 spaces in the AA.
 - It appears as though the missing space has been hashed out on the BP, possibly to make room for ADA spaces. However, similar to the lower level plan, the ADA spaces are not denoted on the BP.
- Second Floor Plan (A. 102)
 - The size of many of the units have changed on the BP, however Article 2, Section 2.24 of the Zoning Ordinance does not require buildings in the O2 district to match minimum floor areas per unit.

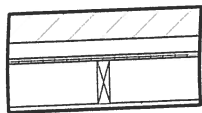
	BP sq. ft.	AA sq. ft.
Unit – 1 bedroom	1174	1159
Unit – 2 bedroom	1320	1367

- On the 2nd floor, a pair of openings has been added to a previously blank area. The space appears to be part of a balcony. No glass/glazing is apparent.
 - On the 3rd floor, a set of doors/windows has been flip-flopped.
 - On the 4th floor, several doors/windows have changed locations.
- The exterior lighting schedules do not match. The AA shows 22 residential light sconces (“L1”), whereas the BP shows only 18.
- The horizontal metal guardrails present in the AA have been changed to metal cable guardrails in the BP.
- 4th floor façade material changed from coat stucco to fiber cement board.
- Building material placed along a vertical “stripe” above the main entrance to the 4th floor has changed from metal panels to fiber cement board.
- Exterior Elevations – North Elevations (A. 201)
 - Balcony railing changes similar to the west elevation.
 - Several instances of architectural detail appear to be removed on the BP. The window accent detail constructed from cast stone or limestone in a number of locations which have been removed entirely in the BP.
 - Façade material changes similar to previous elevation.
 - A window/door has been added on the 2nd and 3rd floor balconies.
- Exterior Elevations – East Elevation (A. 203)
 - Door and window layouts have changed similar to previous elevations.
 - Balcony railing changes similar to previous elevations.
 - Architectural detail changes similar to previous elevations.
 - Façade material changes similar to previous elevations.
 - Metal parking fence present along all openings on the left side of the east elevation (first level & lower level) in the AA plans. The metal parking fence is removed from 7 of the openings in the BP.
- Exterior Elevations – South Elevation (A. 203)
 - Façade material changes similar to previous elevations.
 - Balcony railing changes similar to previous elevations.
 - Architectural detail changes similar to previous elevations.
 - Metal parking fence changes similar to that on the east elevation.
 - The granite base along the southern façade wrapped around from the front of the building in the AA plans has been changed to brick in the BP.

Because of the several unapproved changes to the building design present on the building plans submitted, the Planning Department **DOES NOT APPROVE** the building plans for 856 N. Old Woodward – The Pearl. The applicant must submit site plans for administrative approval to approve the changes described above, or submit building plans that match the most recent set of approved plans on file with the City.

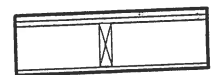
Core & Shell Wall Legend ☒

1



EXTERIOR WALL ASSEMBLY '1'
BRICK FACADE W/GRANITE
BASE ON 2" AIR SPACE ON
WEATHER BARRIER ON 7/16"
OSB SHEATHING ON 2x6
WOOD STUDS W/ R-19 BATT
INSUL. (U.N.O.) ON 5/8" GYP.
BRD.

2



EXTERIOR WALL ASSEMBLY '2'
FIBER CEMENT WALL PANEL
WITH DRAINAGE CHANNELS
ON WEATHER BARRIER ON
7/16" OSB SHEATHING ON 2x6
WOOD STUDS W/ R-19 BATT
INSUL. (U.N.O.) ON 5/8" GYP.
BRD.

4



EXTERIOR WALL ASSEMBLY '4'
FIBER CEMENT WALL PANEL ON
TYVEK WRAP ON 7/16" OSB
SHEATHING ON 2x6 WOOD
STUD @ 16" O.C. ON 5/8"
DENSGLOSS ON TYVEK WRAP
ON SELF-FURRING METAL LATH
ON FIBER CEMENT

5



EXTERIOR WALL ASSEMBLY '5'
BRICK FACADE ON 2" AIR GAP
ON 10" CMU

EXTERIOR WALL ASSEMBLY '6'



**MARUSICH
ARCHITECTURE**

36880 WOODWARD AVENUE
SUITE 100, BLOOMFIELD HILLS
MICHIGAN 48304 - 0920

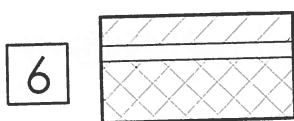
PHONE: (248) 839 5807
johnm@marusicharchitecture.com

Client:

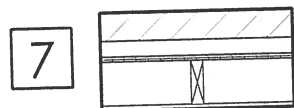
FLS Properties #5 LLC
2950 Walnut Lake Road,
West Bloomfield, MI 48323

Project:

The Pearl - Core & Shell
856 Old North Woodward



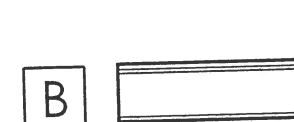
EXTERIOR WALL ASSEMBLY '6'
BRICK FACADE ON 2" AIR GAP
ON 8" CMU



EXTERIOR WALL ASSEMBLY '1'
BRICK FACADE W/GRANITE
BASE ON 2" AIR SPACE ON
WEATHER BARRIER ON 7/16"
OSB SHEATHING ON 2x6
WOOD STUDS W/ R-19 BATT
INSUL. (U.N.O.) ON 5/8" GYP.
BRD.



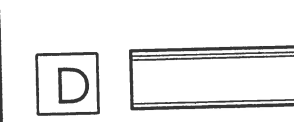
TYP. UNIT PARTITION 'A'
5/8" GYP. BOARD ON 2X4
WOOD STUD ON 5/8" GYP.
BRD. (MARKED ON INT. DESIGN
PLANS)



DEMISING WALL ASSEMBLY 'B'
(2) 5/8" SHEETROCK FIRECODE
"C" GYP. BOARD ON 2X6
WOOD STUD W/3" FIBERGLASS
BATT INSULATION ON (2) 5/8"
SHEETROCK FIRECODE "C" GYP.
BRD.



CORRIDOR WALL ASSEMBLY 'C'
5/8" GYP. BOARD ON 2X6
WOOD STUD W/3" FIBERGLASS
BATT INSULATION ON 5/8" GYP.
BRD.



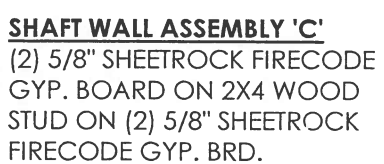
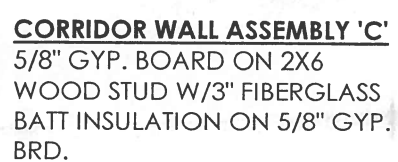
FALSE WALL ASSEMBLY 'D'
5/8" GYP. BOARD ON 2X6
WOOD STUD W/ 3" FIBERGLASS
BATT INSULATION



CMU PARTITION 'E1'
8" FIRE RATED CMU-Z

856 Old North Woodward

[illegible]

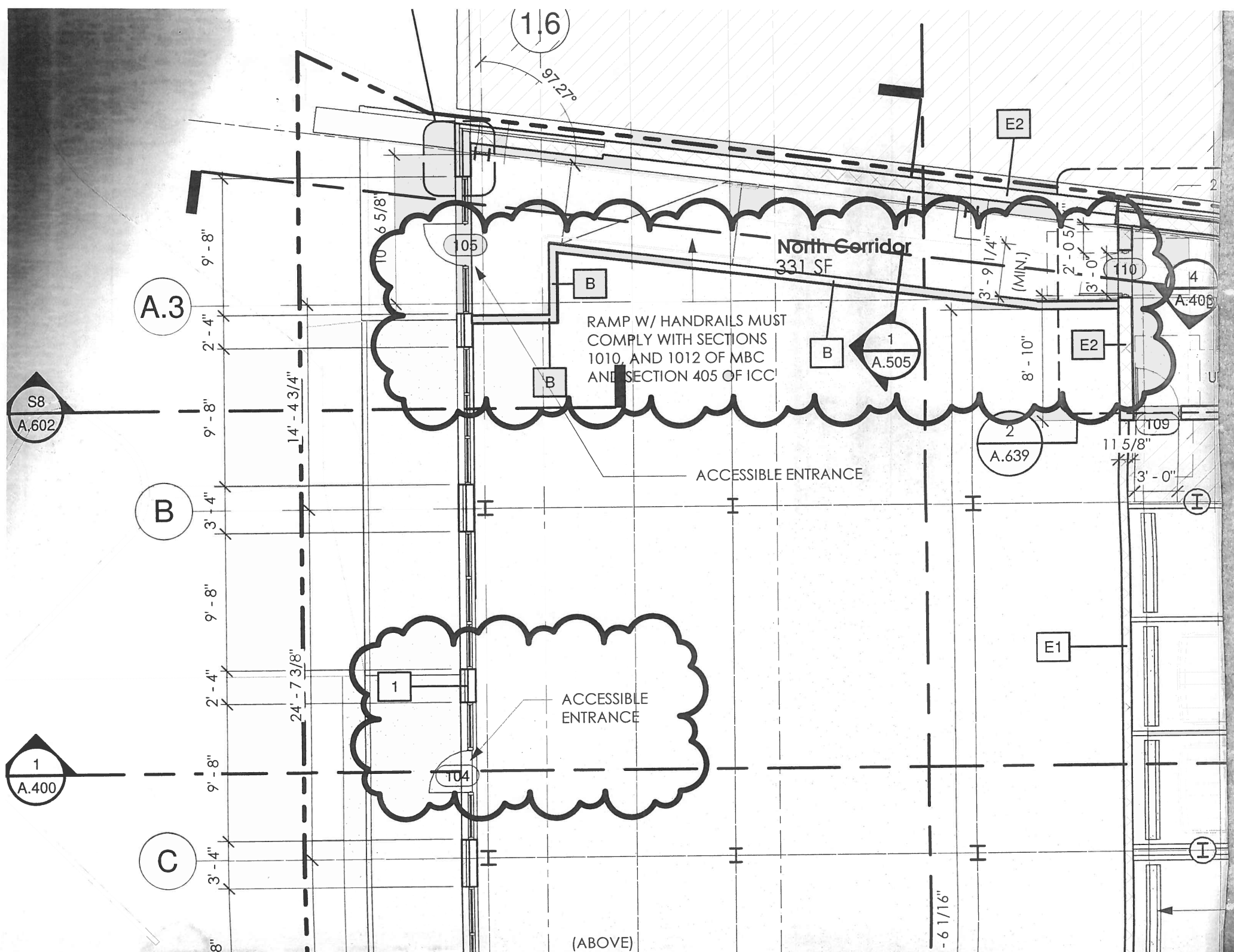


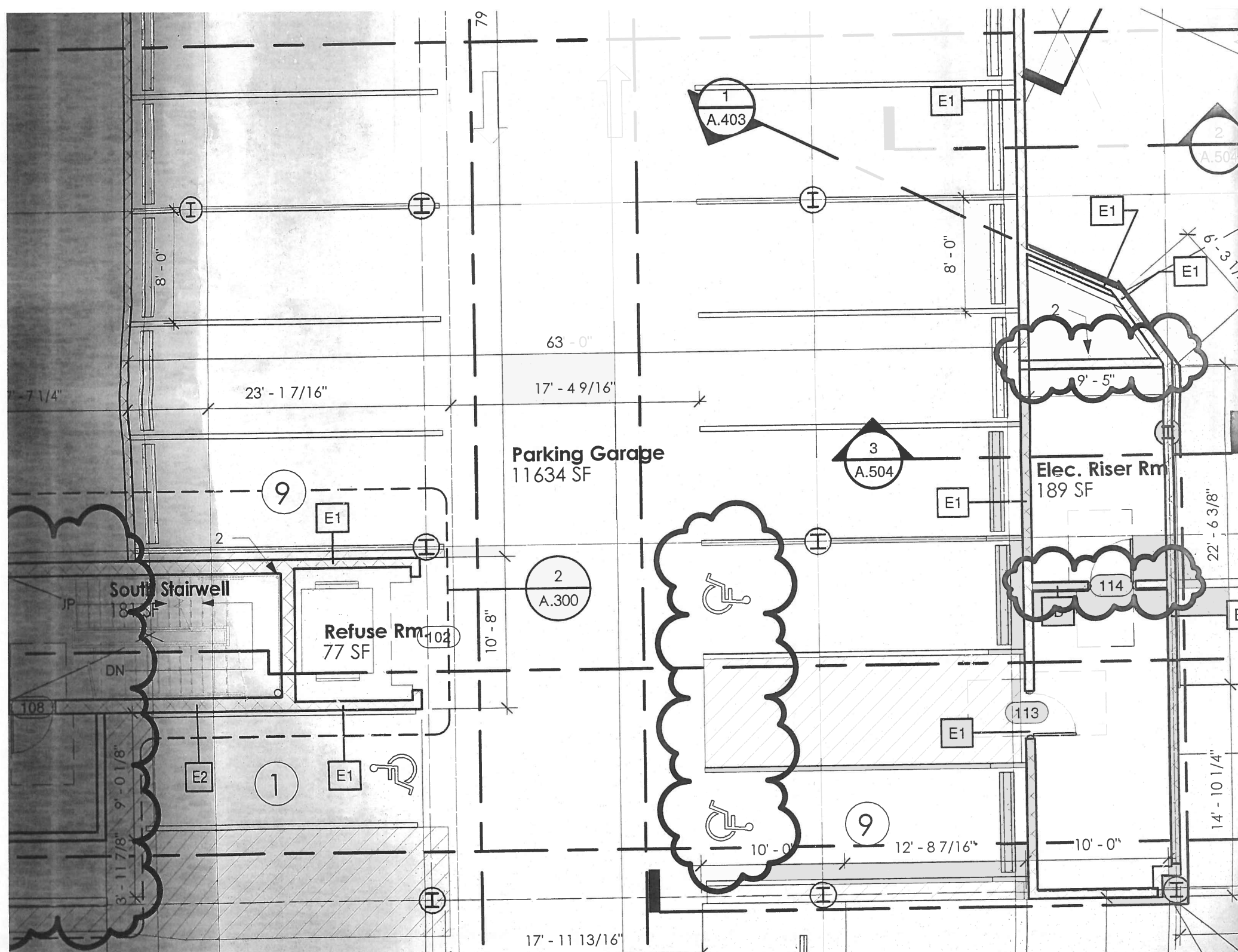
1. NO CONCRETE SEALING ON GARAGE AND BASEMENT SLAB
2. 2" DIA. VAPOR MITIGATION PIPE SPECS TO BE PROVIDED BY PM ENVIRONMENTAL. LOCATION TO BE APPROVED BY PM ENVIRONMENTAL AND BUILDING OFFICIAL.

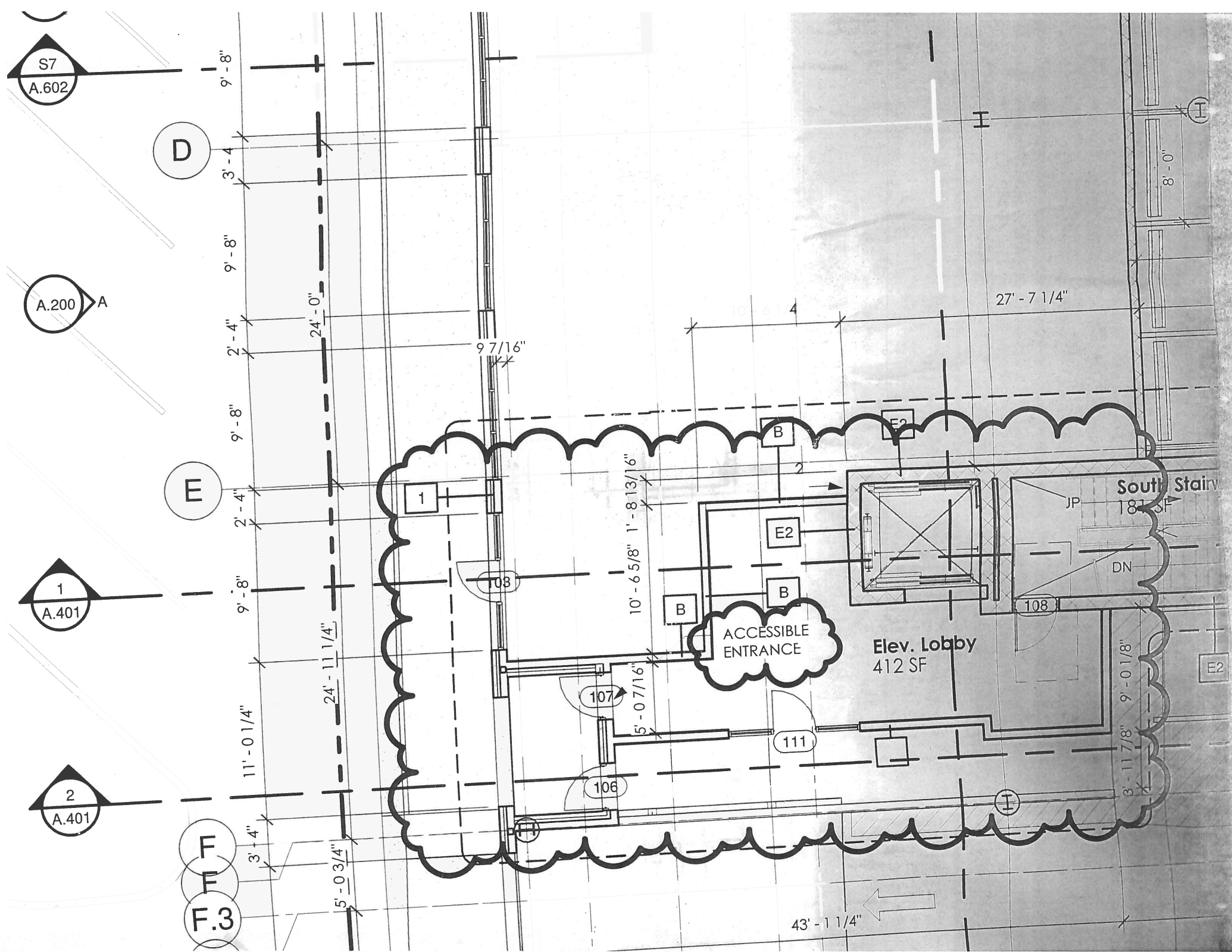
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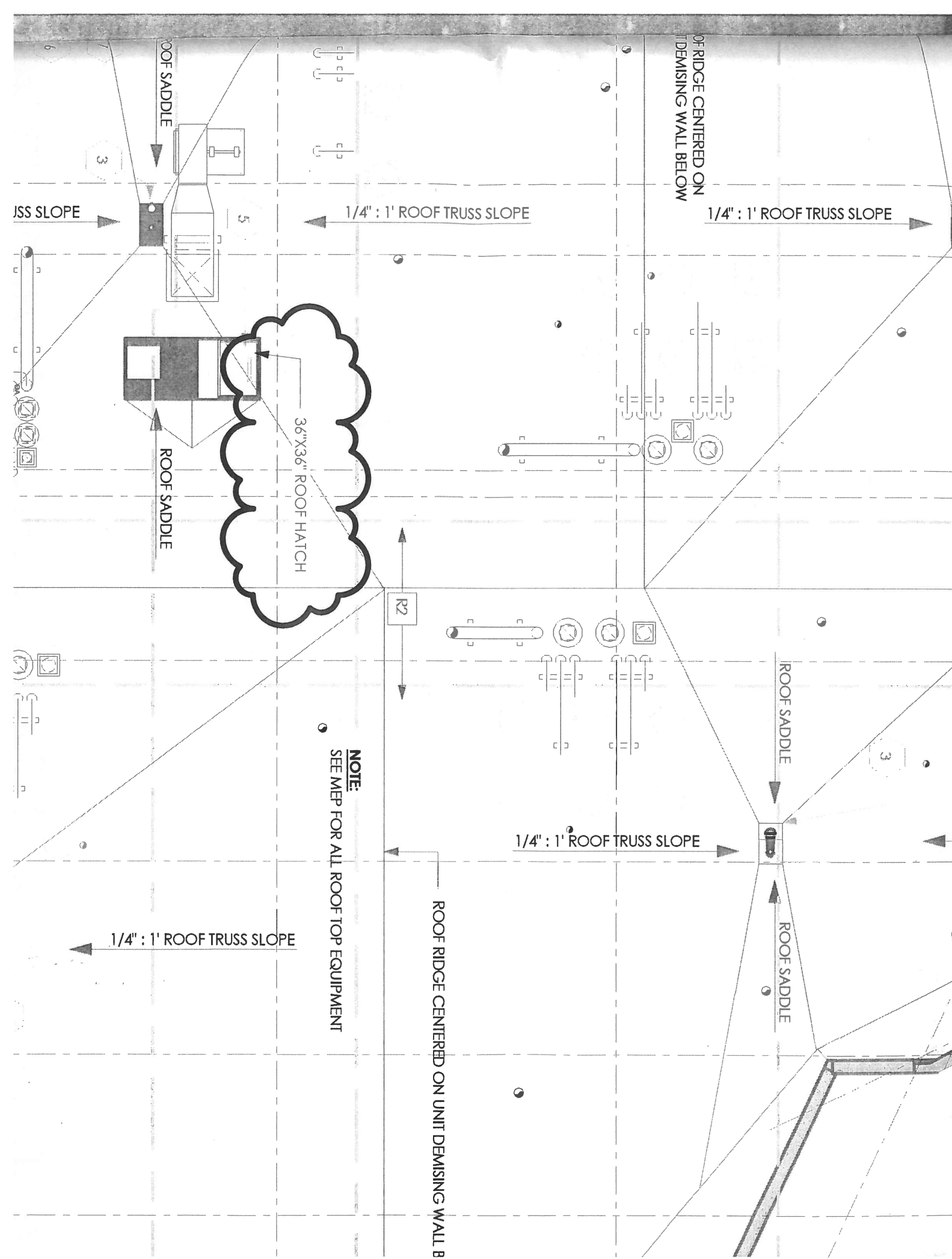
A circular professional seal for the State of Michigan. The outer ring contains the text "STATE OF MICHIGAN" at the top and "LICENSED ARCHITECT" at the bottom, separated by two stars. The center of the seal contains the name "JOHN EDWARD MARUSICH", the title "ARCHITECT", and the license number "No. 35747". Below the seal, the expiration date "5.19.12" is handwritten. The seal is heavily crossed out with multiple diagonal and horizontal lines.

Do not scale drawings. Use
calculated dimensions only.









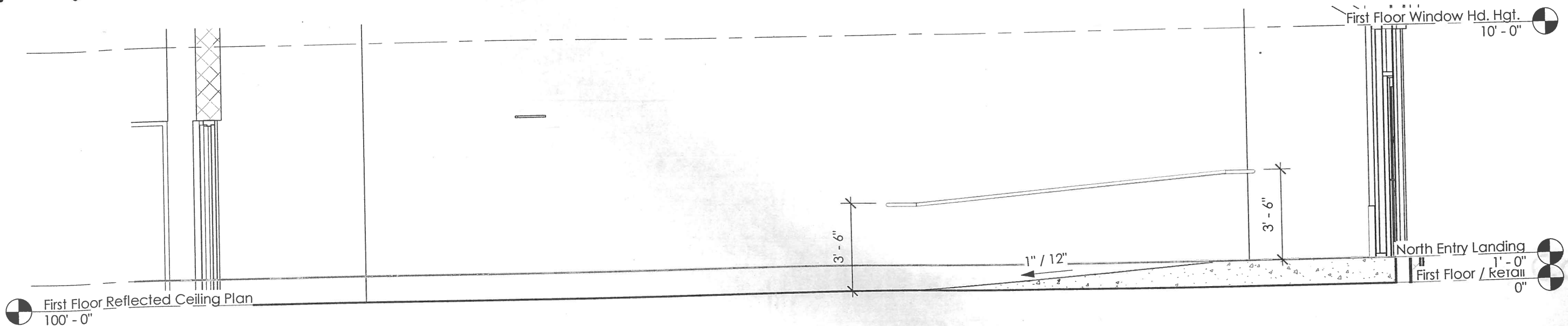
Lower Residential Parking
88'-8"

Lower Residential Parking
88'-8"

1
A.100

Ramp Section

1/4" = 1'-0"



4
A.101

North Corridor Ramp Section

1/4" = 1'-0"

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

CATALYST DEVELOPMENT CO. 8, LLC
and WOODWARD BROWN ASSOCIATES, LLC

Plaintiffs/Appellants/Counter-Defendants,

Case No. 18-163449-CB

v

Hon. Wendy Potts

CITY OF BIRMINGHAM and CITY OF
BIRMINGHAM BOARD OF ZONING APPEALS,

Defendants/Appellees,

and

ALDEN DEVELOPMENT GROUP, LLC, and
PEABODY OWNER, LLC,

Defendants/Counter-Plaintiffs.

_____ /

OPINION AND ORDER

At a session of Court
Held in Pontiac, Michigan
On

DEC 03 2018

This matter is before the Court on Plaintiffs' appeal from the November 14, 2017
decision of the City of Birmingham Board of Zoning Appeals (BZA) denying Plaintiffs' appeal

from the Planning Board's grant of preliminary site plan approval, and from the June 12, 2018 decision of the BZA denying Plaintiffs' appeal of the Planning Board's grant of final site plan approval, to Alden Development Group for a five-story, mixed-use residential and commercial development at 34965 Woodward Avenue. Plaintiffs, who own the buildings on each side of the proposed development, argue that the BZA's decision should be reversed because the BZA failed to undertake any meaningful review of the Planning Board's decisions to approve the preliminary and final site plans. Plaintiffs argue that the evidence shows that the proposed development fails to meet three of the six requirements for site plan approval set forth in Section 7.27 of the City's Zoning Ordinance and further fails to satisfy the mandatory additional standards for site plan approval in the City's Master Plan.

This Court's standard of review of the BZA's decision is set forth in MCL 125.3606, which provides:

- (1) Any party aggrieved by a decision of the zoning board of appeals may appeal to the circuit court for the county in which the property is located. The circuit court shall review the record and decision to ensure that the decision meets all of the following requirements:
 - (a) Complies with the constitution and laws of the state.
 - (b) Is based upon proper procedure.
 - (c) Is supported by competent, material, and substantial evidence on the record.
 - (d) Represents the reasonable exercise of discretion granted by law to the zoning board of appeals.

A decision is supported by substantial evidence if a "reasonable mind would accept [that evidence] as adequate to support a decision[.]" *Vanzandt v State Employees Retirement Sys*, 266 Mich App 579, 584; 701 NW2d 214 (2005) (citation and quotation marks omitted). "Substantial

evidence" is "more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence." *Leahy v Orion Twp*, 269 Mich App 527, 529-530; 711 NW2d 438 (2006) (citation omitted). On appeal, the factual findings of the ZBA are to be accorded deference. *Hughes v Almena Twp*, 284 Mich App 50, 60; 771 NW2d 453 (2009) (citations omitted). A reviewing court "may not set aside findings merely because alternative findings also could have been supported by substantial evidence on the record." *Edw C Levy Co v Marine City Zoning Bd of Appeals*, 293 Mich App 333, 341; 810 NW2d 621 (2011). This Court may affirm, reverse, or modify the decision of the ZBA, or it "may make other orders as justice requires." MCL 125.3606(4).

Plaintiffs first argue that the BZA's decisions should be reversed because the BZA failed to properly review the record to determine whether the Planning Board's decision was supported by competent, material and substantial evidence, but simply adopted the Board's unsupported findings and applied improper and widely varying standards of review in both rounds of appeals. Plaintiffs noted comments of certain BZA members at the hearings, indicating that the members believed that they were reviewing the Planning Board's decision under a clearly erroneous standard. Citing *Hessee Realty v Ann Arbor*, 61 Mich App 319, 335; 232 NW2d 695 (1975), Plaintiffs argue that the BZA's duty was to scrutinize the record to determine if the evidence supported the grant or denial of the site plan approval. In *Hessee Realty*, the court concluded that a city council's review of a planning commission's decision to approve a site plan was limited to determining "if the planning commission has correctly applied the relevant standards and the site plan satisfies those standards." *Id.* at 325. A decision approving or denying a site plan that is not supported by competent and material evidence constitutes an abuse of discretion. *Id.* at 326-327. While Plaintiffs have noted isolated instances in which certain members

referenced a clearly erroneous standard, the transcript of the BZA's May 8, 2018 meeting indicates that the BZA considered the evidence presented by the parties and concluded that the Planning Board "correctly applied the relevant standards and the site plan satisfies those standards." *Id.*

Plaintiffs next argue that the BZA's decisions were not supported by competent, material, and substantial evidence because the BZA concluded that the site plan requirements were satisfied even though Plaintiffs presented evidence to the contrary and Defendants presented no evidence at all with respect to those requirements. Initially, this Court notes that, as the party challenging the Planning Board's decision before the BZA, Plaintiffs had the burden of demonstrating error in the Planning Board's decision. See, generally *Menard, Inc v City of Escanaba*, 315 Mich App 512, 521 n 3; 891 NW2d 1 (2006) ("On appeal, in order for the appellant to receive relief, it has the burden to demonstrate that the lower court erred as governed by the relevant standard of review."); *Three Lakes Ass'n v Whiting*, 75 Mich App 564, 579; 255 NW2d 686 (1977) (it is an appellant's burden to establish error requiring relief on appeal). Further, while Plaintiffs contend that the evidence they presented to the BZA was uncontroverted, the BZA was free to reject the evidence presented by Plaintiffs. In addition, a review of the record shows that the BZA had substantial evidence on which to base its decisions, including the site plans, applications, affidavits, transcripts, letters, and memoranda.

Plaintiffs first argue that the record did not contain competent, material, and substantial evidence that the proposed development meets the requirements of Zoning Ordinance Section 7.27(2), which requires that "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." Plaintiffs assert that the only competent and substantial evidence in the record

concerning this standard is the affidavits of Thomas Phillips and Jason Novotny, both of whom concluded that the proposed development deprives Plaintiffs of light, air, and access. In response, Defendants note the evidence in the record that the upper floors of the Balmoral and Catalyst buildings are set back, allowing room for light and air. Further, this Court notes that both Thomas Phillips' and Jason Novotny's affidavits were executed before Defendants filed their final site plan, which incorporated changes such as setbacks above the first floor and the addition of windows on the north and south façade of the proposed building. Moreover, in discussing this requirement, the BZA noted that the requirement is for "adequate" light and air, and further noted that the ordinance does not guarantee that there will be no change in the amount of light and air. In light of the evidence that the upper floors of the Balmoral and Catalyst buildings are set back to allow for light and air, and that the proposed development also provides setbacks to allow for light and air, this Court cannot conclude that the determination that the proposed development meets the standard in Section 7.27(2) is not based on competent, substantial, and material evidence.

Plaintiffs next argue that the record did not contain competent, material, and substantial evidence that the proposed development meets the requirements of Zoning Ordinance Section 7.27(3), which requires that 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." Plaintiffs argue that the only evidence in the record with respect to this requirement was Plaintiff's evidence in the form of a professional opinion from commercial/residential broker and valuation consultant Drew Schmidt, who opined that the proposed development would result in the Catalyst Building being diminished in value by \$1 million, as a conservative estimate, and that he would expect similar negative impacts on the

value of the Balmoral Building. In response, Defendants argue that the Drew Schmidt's opinion, which is dated October 9, 2017, was based on the preliminary site plan and did not consider the changes made in the final site plan, which included four-foot setbacks of the walls above the first floor. Plaintiffs did not present evidence that the final site plan would diminish the value of adjoining property. Furthermore, the minutes of the May 8, 2018 meeting show that the BZA evaluated and discussed this requirement in the context of the evidence in the record. Specifically, the BZA noted that any diminishment in value that may result to the adjacent buildings was caused by Plaintiffs' decisions to build to the lot line, at least on the first floor, and to install windows and balconies, with knowledge that the zoning of the property at issue also permitted building to the lot line. Essentially, Plaintiffs could have foreseen that the property at issue would be developed in the same manner that Plaintiffs' buildings were developed. Thus, any diminishment in value would not be caused by the proposed development, which complies with all dimensional requirements, but would be self-created by Plaintiffs. The site plans and the zoning ordinance itself constituted competent, material, and substantial evidence for the BZA's conclusions. Accordingly, Plaintiffs have not shown error in the BZA's decision.

Plaintiffs next argue that the record does not contain competent, substantial, and material evidence that the proposed development meets the requirements of Birmingham Zoning Ordinance Section 7.27(5), which requires that the proposed development be "compatible with other uses and buildings in the neighborhood and that the proposed development not be contrary to the spirit and purpose of this chapter." Plaintiffs argue that this standard is not met where the final site plan shows that (1) the proposed development will entirely block eight windows in the Balmoral Building, (2) the entire middle portion of the northern façade will be built to the property line, directly abutting the residential balconies in the Catalyst Building, (3) the floor

elevations in the final site plan were not accurately rendered and were not compatible with the adjacent Balmoral Building, and (4) the proposed development cannot be constructed or maintained without damaging and trespassing on the adjacent buildings. Plaintiffs again rely on the affidavits of Thomas Phillips, the lead project manager for the construction of the Balmoral Building, and Jason Novotny, the design architect for the Catalyst Building, indicating that the design of the proposed development is inconsistent and incompatible with the Balmoral Building and the Greenleaf Trust Building. Thomas Phillips' affidavit cites the "complete lack of windows, and absence of any setback distance on the north and south elevations" as the reasons for the lack of compatibility. Again, because changes made to the final site plan added windows and setbacks, the affidavit does not provide support for Plaintiffs' arguments. Further, Defendants argue that Plaintiffs concede in their own brief that development meets the compatibility requirement because they admit that the subject property will be exactly the same as their "five-story mixed-use residential and commercial development." Because the final site plan itself supports the BZA's conclusions, this Court cannot conclude that the determination that the proposed development meets the standard in Section 7.27(5) is not based on competent, substantial, and material evidence

Finally, Plaintiffs challenge the conclusion that the proposed development, which is located in the D-4 zone of the Downtown Birmingham Overlay District, meets the additional requirements in Section 3.04(3), that the site plan be consistent with the City's Master Plan and that the proposed development "shall be designed harmoniously with adjacent structures in terms of mass, scale and proportion to the best extent possible." Plaintiffs again rely on the affidavits of Thomas Phillips and Jason Novotny, as well as evidence that the Master Plan once envisioned the City constructing a parking structure on the site of the proposed development. Plaintiffs'

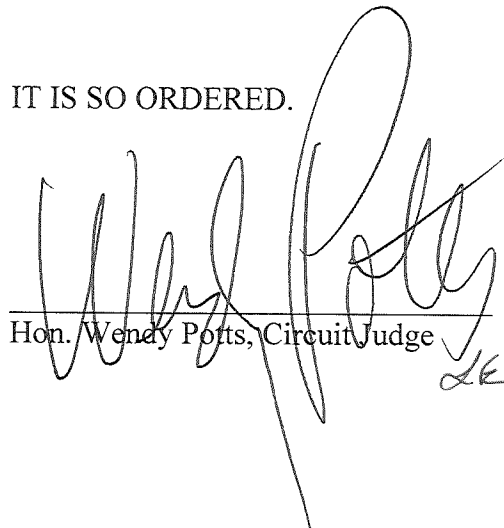
evidence simply does not show any error in the ZBA's decision. Again, because the BZA could have concluded, based on the final site plan alone, that the requirements of Section 3.04(3) were satisfied, this Court cannot conclude that the BZA's decisions were not based on competent, material and substantial evidence.

Based on its review of the record, this Court concludes that Plaintiffs have not shown that the BZA's decisions denying Plaintiffs' appeals and approving the preliminary and final site plans were not supported by competent, material and substantial evidence.

WHEREFORE, IT IS HEREBY ORDERED that Plaintiffs' appeal of the BZA's November 14, 2017 decision denying Plaintiffs' appeal from the Planning Board's grant of preliminary site plan approval, and the BZA's June 12, 2018 decision denying Plaintiffs' appeal of the Planning Board's grant of final site plan approval is denied, and the BZA's decisions are AFFIRMED.

IT IS SO ORDERED.

DEC 03 2018


Hon. Wendy Potts, Circuit Judge

November 25, 2018

543 Watkins Street
Birmingham, Michigan 48009

Birmingham Planning Board,

We have lived at 543 Watkins for over 20 years. We voted for and helped pay for new curbs and the narrowing of our street to maintain the neighborhood feel. We also supported the new townhouses at 553 and 559 Brown that are contiguous with our property and we overall supported the West Brown project. However, we strongly oppose the proposed townhouses that would be located directly across the street from our house. We are zoned R-2, as are the properties directly to the south and all homes on Watkins. Therefore, these townhouses would front a narrow residential street with only single-family homes.

We have very legitimate concerns about traffic flow and parking. The original plan as approved by the Planning Department February 28, 2018 for 695 Brown, had a single family house in the proposed location, in keeping with the neighborhood. We expressed concerns at the February meeting about the traffic and parking issues that 8 new townhouses would bring, given the narrowness of our street and that parking is allowed only on one side of Watkins. Two new residences in this space only exacerbates our existing traffic and parking issues. It is noted a 5 car parking pad is proposed; but this only brings more concerns, e.g. loss of greenspace, loss of proposed trees and landscaping, and additional loss of neighborhood feel with another "parking lot" in addition to the 4-car parking pad already approved with phase one. That means 29 cars could be parked on this parcel, all coming and going off Watkins.

As previously noted, our home is directly across from the proposed town houses. Even though our property line is exactly across the street and the same distance from Brown, we are zoned single family. We are concerned how this development will negatively affect the property values of all single-family residences on the north end of Watkins. If approved, this will set a zoning standard that could be applied to every north/south street along Brown.

We strongly oppose the proposed townhouse development fronting Watkins. We ask the Planning Board to reject this request and keep in place the plan as originally approved February 28, 2018 and construct a single-family home on this site. Please respect our neighborhood.

Sincerely,



Martin and Colleen McGough

Birmingham Planning Board

151 Martin

Birmingham, MI 48009

Re: Disapproval of 2 unit attached townhomes to front Watkins St

To Whom It May Concern,

We are proud residents and grateful we selected Birmingham as our residence when we relocated to Michigan six years ago. We are fortunate to have lived in one of the top rated cities in the world and appreciate the work the Birmingham Planning Board and entire city planning commission to do keep our city as one of the most sought after in all of Michigan. Thank you for your time and dedication to the residents of Birmingham.

This letter is also to express our disapproval to the change of plans from one single family house to a two unit attached townhome to front Watkins Street. To us, this is a matter of principle as well as regard for the look and feel of our family oriented street that the Watkins residents desire and appreciate.

In principle, it is important to note the degree of detail that we were all given in regards to the plans before the project was officially approved with the original plans. The realtor and builder went door to door to seek support and spent a lot of time showing us the plans for the single family home on our street. The realtor went into great detail about how this single family home was a key part of the plans to act as a buffer as he recognized the importance to our street of single family homes. He elaborated further about how this was so important to all of us but especially the families at the top of the street. It felt sincere, though we have learned to be cautious with the many realtors and builders in town. The change of plans is unfortunately not surprising as the lack of staying true to any plans or principle seems to be difficult in this town. What is more frustrating is that the city planning board has put this on notice rather than just denying the change.

In regards to the townhomes, the street of Watkins is a family single house vibe and having a tall structure with adjoined townhomes at the top of the street will diminish the look and feel of our quaint street.

Once again, we request that ONLY a single family home that is suitable for the neighborhood and parking situation on Watkins street.

Regards,
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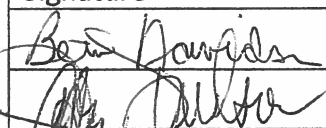
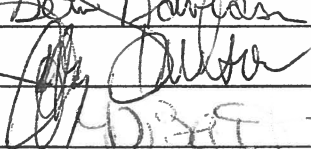
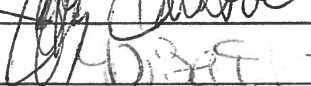
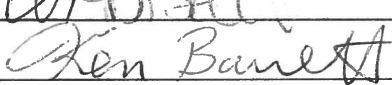
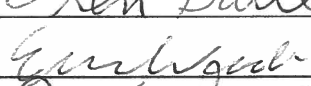
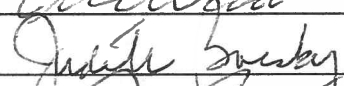
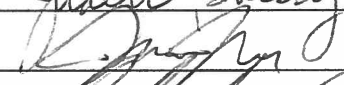
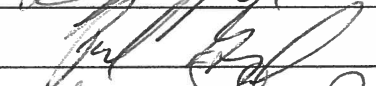
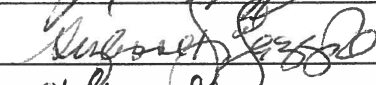
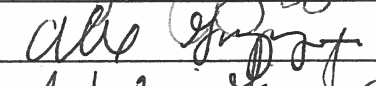
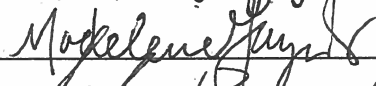

Petition

for Birmingham Planning Board to Reject Plans for Double Townhouses on Watkins St.

We, the undersigned, request the Birmingham Planning Board NOT approve Plans for a two-unit attached townhouses on the open lot immediately south of the WestBrown development at Southfield and Brown street for the following reasons:

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	11/18	Kenneth Barrett	611 Watkins St
	11/18	Ene a Wides	617 Watkins St
	11/18	Judith Boesty	614 Watkins
	11/18	Jeff Johnson	617 Watkins
	11/18	Paul Gizzol	550 Watkins
	11/18	Suzanne Gazzolo	550 Watkins St
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[illegible]

315-4170

RECEIVED

NOV 27 2018

Townhouses on Watkins St.

CITY OF BIRMINGHAM

COMMUNITY DEVELOPMENT DEPARTMENT

Improve Plans for a two-unit

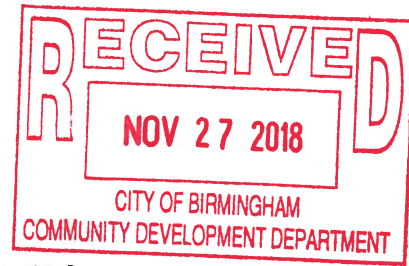
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[illegible]

November 27, 2018

Birmingham Planning Board
151 Martin St.
Birmingham, MI 48009



Re: Disproval of Proposed 2 Town homes on Lot facing Watkins

To Whom It May Concern:

I would respectfully request your consideration of the negative impact the proposed town homes facing Watkins St. will have on the residents of Watkins but also on the residents of the other single family homes on Southfield.

We live at 547 Southfield Road that ***directly abuts*** the West Brown Street Town Homes and the proposed 2 family town home facing Watson Street. While we have enjoyed living in Birmingham for over six years, we purchased our home on Southfield Road early last year. At the time we purchased our home, the plans approved for the West Brown Street Town Homes on file with the Birmingham Panning Department only included parking in the garages under the town homes and green space between the town homes and our property. After our purchase, a four car parking area was added to the plans. This new parking lot extends beyond the front of our house, so that the view from our home will now includes a 5 foot wall on our lot line and an adjacent parking lot. Clearly this will be unsightly and depreciate the value of our home.

In speaking with the owner of the property, he explained to me how much green space would border our property, importantly our backyard where our boys play and our covered back porch. He assured me our view would be trees and nice landscaping. He walked the sidewalk with me on Watkins, explaining that there would be a \$3M home built on that site, noting that the driveway would be next to the West Brown Street Town Homes. In addition to discussing landscaping, he promised to confer with me about a the selection of a decorative fence that would adjoin the backyard of the Watkins street home along the entire back half of our property (from the end of our house and our entire back yard). At no time did we discuss a brick wall as he knew such a wall would be unattractive and close in our property.

As mentioned by the rest of my neighbors on Watkins St, a single family home was part of the approval of the 8 Town homes on West Brown Street and promised by the owner of the property to gain approval. **A single family home on this lot was a critical consideration in the purchase of our home.**

This new proposed plan provides my family a view of a 4 plus space parking lot with another large brick wall from our side windows, back windows, covered back porch and entire back yard. No green space, no decorative fence. Just parking lots in the

front and back of our property. In addition to the appalling aesthetics of the view of parking lots from all sides of our property, instead of the green space as promised, the additional noise of cars and families in this space will all decrease the value of our home and the homes of all of the neighbors on our block and hinder any resale.

We pay over \$27,000 in property taxes to the City of Birmingham based on the value of our home. We purchased our home to raise our boys based on plans that included only green space, trees and landscaping between our home and the West Brown Street Town Homes as well as a \$3m home at the corner of our property. At the time of purchase, there was no brick wall and parking lot at the front of our home and there was no consideration of any parking lot and brick wall all along the rest of our property. As a resident raising a family here, we expect that the plans approved at the time of our purchase would be honored by the city. As such, we respectfully request that this newly proposed 2 family town home be rejected.

Additionally, before construction of the additional parking lot for the West Brown Street Town Homes that borders our property directly, we respectfully request a review of the existence and placement of this parking lot. I am asking this because the wall and parking lot as added will severely change the look and feel of our home and the value we expect to maintain. Please feel free to call us at 303-408-3548.

Thank you very much for your consideration.

Handwritten signature of Robert VanHees in blue ink.

Robert and Maria VanHees

November 25, 2018

543 Watkins Street
Birmingham, Michigan 48009

Birmingham Planning Board,

We have lived at 543 Watkins for over 20 years. We voted for and helped pay for new curbs and the narrowing of our street to maintain the neighborhood feel. We also supported the new townhouses at 553 and 559 Brown that are contiguous with our property and we overall supported the West Brown project. However, we strongly oppose the proposed townhouses that would be located directly across the street from our house. We are zoned R-2, as are the properties directly to the south and all homes on Watkins. Therefore, these townhouses would front a narrow residential street with only single-family homes.

We have very legitimate concerns about traffic flow and parking. The original plan as approved by the Planning Department February 28, 2018 for 695 Brown, had a single family house in the proposed location, in keeping with the neighborhood. We expressed concerns at the February meeting about the traffic and parking issues that 8 new townhouses would bring, given the narrowness of our street and that parking is allowed only on one side of Watkins. Two new residences in this space only exacerbates our existing traffic and parking issues. It is noted a 5 car parking pad is proposed; but this only brings more concerns, e.g. loss of greenspace, loss of proposed trees and landscaping, and additional loss of neighborhood feel with another "parking lot" in addition to the 4-car parking pad already approved with phase one. That means 29 cars could be parked on this parcel, all coming and going off Watkins.

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Re: Disapproval of 2 unit attached townhomes to front Watkins St

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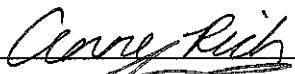

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	11/26	Anne Rich	572 Watkins
	11/26	Andrew Rich	572 Watkins

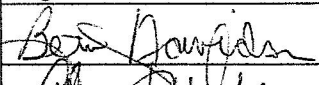
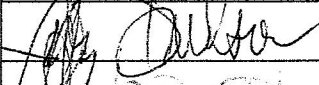

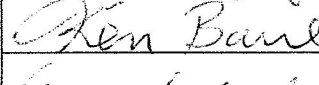
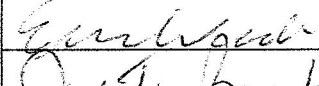
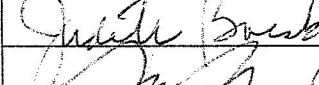


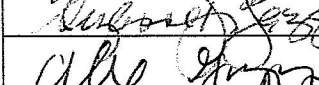
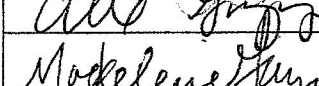
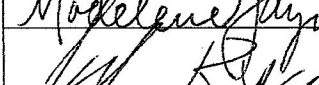
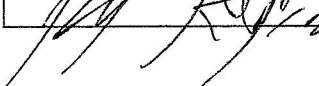
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3. Watkins Street is 21' wide and only allows parking on the east side of the street. In addition to the excess traffic from eight townhouses, which will be accessed through Watkins street, the double townhouse will exacerbate already congested parking problem.
4. Applying R8 zoning would allow only 4 foot setbacks which would crowd immediate neighbors and change the character of the neighborhood.

We request the Planning Board approve only a single family home that is suitable for the neighborhood and parking situation on Watkins street.

[illegible]

for Birmingham Planning Board to Reject Plans for Double Townhouses on Watkins St.

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4. Applying R8 zoning could allow even smaller setbacks which would crowd immediate neighbors and change the character of the neighborhood.

[illegible]

A new lot in life: Cities transform dying parking garages into living neighbourhoods

Decades of car-friendly urban planning has left cities saddled with aging and expensive spaces for increasingly obsolete vehicles. What do we do with them?

OLIVER MOORE > URBAN TRANSPORTATION REPORTER

LONDON

PUBLISHED NOVEMBER 27, 2018

UPDATED 22 HOURS AGO



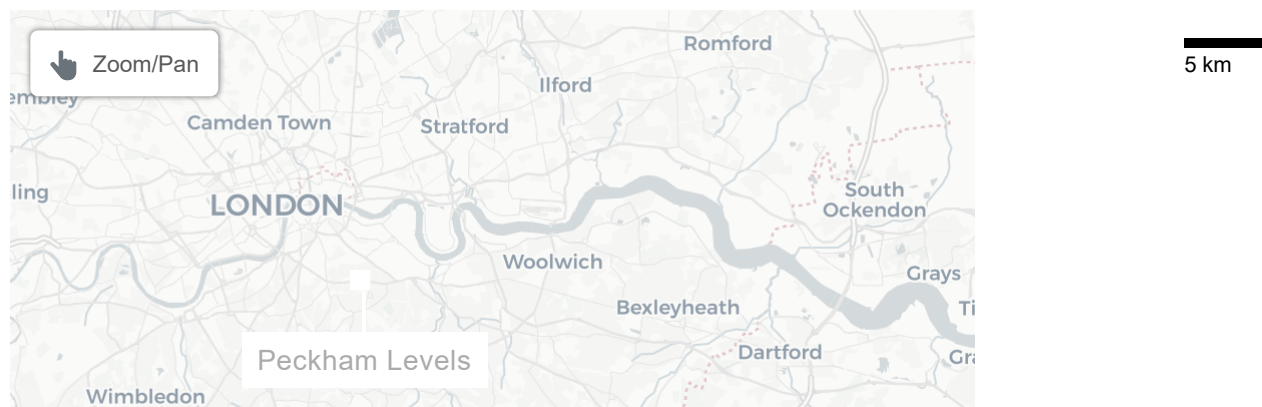
Peckham Levels used to be a seven-storey parking garage in South London, but has been converted into a space for entrepreneurs and artists.

JUSTIN GRIFFITHS-WILLIAMS/THE GLOBE AND MAIL

The yellow paint is still on the concrete, marking where cars once parked, but the ramps motorists drove up now funnel people on foot from one level to the next, where studio space, restaurants and shops attract thousands of visitors.



Converted for about £4-million (\$6.7-million), the site has been run since December by a company that profit-shares with the local council, tries to support budding entrepreneurs and showcases one vision of parking's future.



Leaflet | © OpenStreetMap

A century of motordom has led to millions of parking spaces, many of them in multilevel structures. Expensive to build and maintain, some of these threaten to become redundant amid development changes, softening interest in car ownership among young people and the possibility that vehicles will need less parking space as they become autonomous.

“The amount of parking we need will be dropping over the next 20 to 30 years,” said Christopher Leinberger, chair of the Center for Real Estate and Urban Analysis at George Washington University School of Business in Washington. “The decline in parking spaces is happening right now, and that sharp decline will continue as we build more walkable urban places.”

As this happens, the question of what to do with unneeded garages will confront most cities, including Canadian ones that have been building these structures for decades. Although parking garages have been converted in a few places – including using parts of them in Berlin and Lisbon as popular bars – low ceilings and other design features can make that hard to do.

“It’s definitely an interesting challenge to try to reuse and repurpose a building that was never built for this,” said Lodewijk van den Belt, site director at Peckham Levels.



help jazz up utilitarian walls. But none of this has stopped newspaper columnists from gushing about the space, or the roof-top bar and its excellent view becoming a popular gathering spot.



Since December, Peckham Levels has been run by a startup-like company that tries to support budding entrepreneurs in the area.

THE GLOBE AND MAIL

1 of 9

Building to convert

Officials in a number of cities are trying to make garage conversions easier by pushing architects to add features that will allow the buildings new life in the future. Although this remains rare in Canada, one municipality going this route is Calgary.

STORY CONTINUES BELOW ADVERTISEMENT

“It is definitely an element of design that we will be using going forward,” said Reachel Knight, business strategy co-ordinator at the Calgary Parking Authority. “Parking demand has decreased, and could potentially decrease even further with the autonomous vehicle.”



An artist's rendering of what the 9th Avenue SE Parkade & Innovation Centre in Calgary would look like.

CMLC

The \$80-million project is being done by Winnipeg's 5468796 Architecture, and founding partner Johanna Hurme explains that instead of using ramps they are building the floor with a continuous gentle slope, which can be retopped to make it level in the future.

The floors are also sturdier than in a normal garage, to allow for future uses, with about four metres between them. The site will have enough elevators and stairs for alternative occupancies and a lightwell to brighten the space.

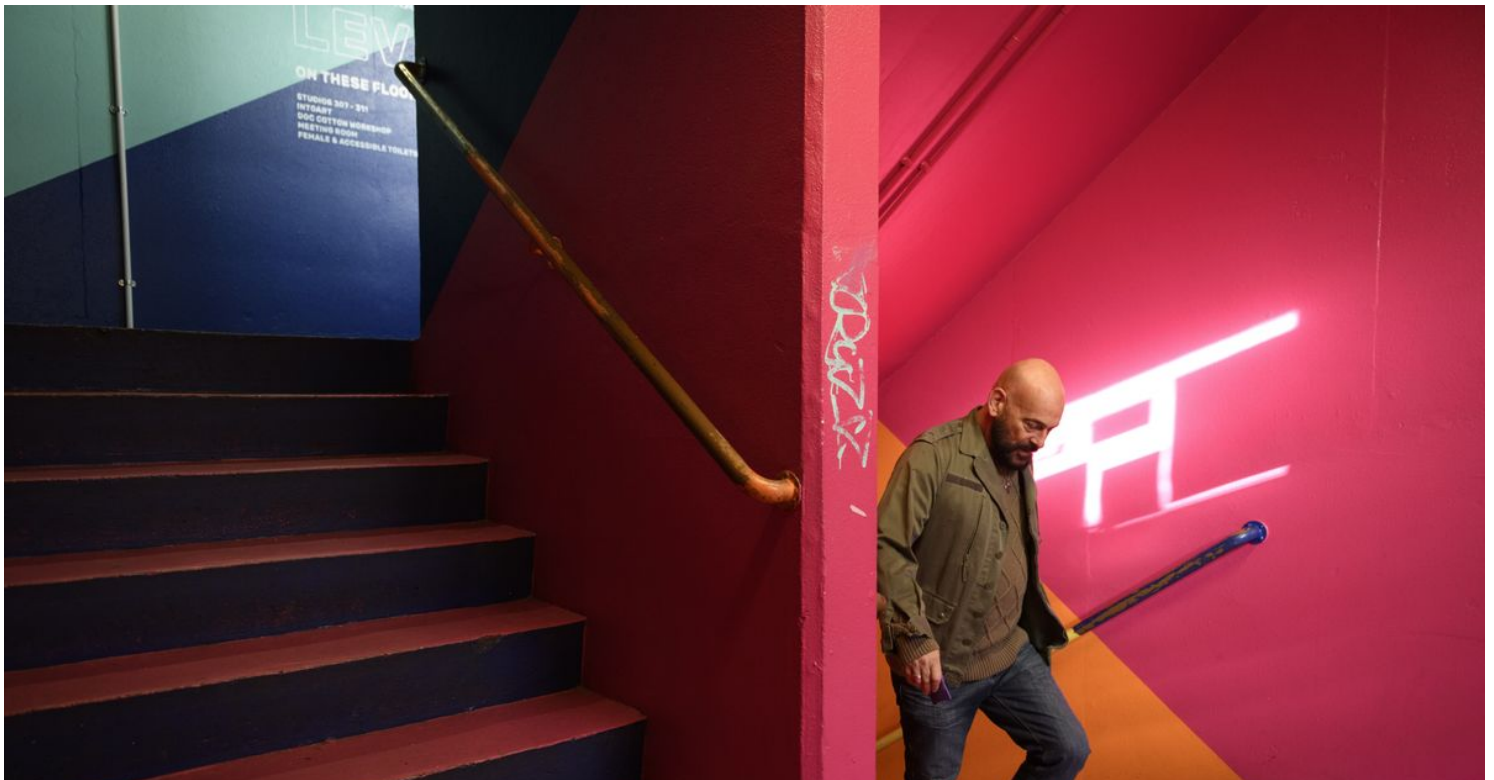


less today than it would be if we had to start making all of those measures [later]," she said.

Mary Smith, senior director of parking consulting at Walker Consultants, says that this sort of future-proofing is more economically defensible than planning a fully convertible garage, which she said carries a 30-per-cent to 50-per-cent cost premium. Plus, higher ceilings have value in the meantime.

"Your lighting is better, you can see across the structure better," Ms. Smith said. "There's benefits upfront if you provide the extra floor-to-floor height, and then you can have it there for the future. But to do anything more than that, I personally don't think is a good investment."

STORY CONTINUES BELOW ADVERTISEMENT





A limited-term lease left the team revamping Peckham Levels with few options to make structural changes. Besides, they didn't want to do too much to conceal that the space had once been a parking garage.

JUSTIN GRIFFITHS-WILLIAMS/THE GLOBE AND MAIL

When you have an old one

One of the earliest conversions was the so-called “Hotel for Autos” in Manhattan. Opened in 1930 as a high-tech space where vehicles could be moved mechanically into position, the business model promptly faltered. The building near Central Park became a warehouse in the 1940s and later a residence. It is now shared by apartments and a university facility.

In Toronto, a downtown parking garage designed by the same architecture firm that did Maple Leaf Gardens opened in 1925 and was converted to condos in the early 1980s. Designers wanted to keep the internal ramps, said resident Kristine Morris, who has researched the building’s history, which forced some creative thinking. Floors are split into two levels, each served by a different elevator.

“There’s all these weird kind of configurations in the building to accommodate the ramp system that’s there,” she said.

The team converting Peckham Levels in London didn’t want to disguise too much that it had been a garage, Mr. van den Belt said. And the limited-term lease made structural changes not feasible. There were also struggles with temperature control, and with perplexing acoustics that make sounds travel unexpectedly.

But they managed to turn it into a spot that hosts a popular annual festival and has periodic workshops for everything from sales to well-being. Visitors can get spa treatments or haircuts. On one of the upper levels, you can sit for a decent lunch, complete with a pint, at one of the brightly painted tables.

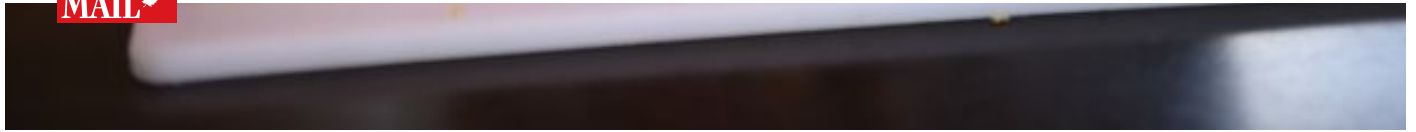
One of the restaurants up there specializes in duck. It goes by the name Canard and they pun on the receipt that they “Canardly wait to see you again.” Based on the steady stream of regulars through what had been a derelict old garage, the feeling appears to be mutual.



Canadian Hugo Worsley is the co-founder of Canard, a restaurant in Peckham Levels.

THE GLOBE AND MAIL





The restaurant specializes in duck and reinventions of traditional French food.

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'Canardly wait to see you again,' the restaurant's receipts read.

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Phillip Crawley, Publisher





Jana Ecker <jecker@bhamgov.org>

Fwd: Urban retail spaces - example pix

1 message

Joe Valentine <jvalentine@bhamgov.org>

Mon, Nov 26, 2018 at 1:41 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>, Ingrid Tighe <itighe@bhamgov.org>

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

From: **Mark Nickita** <mnickita@bhamgov.org>

Date: Fri, Nov 23, 2018 at 7:30 AM

Subject: Urban retail spaces - example pix

To: Joe Valentine <jvalentine@bhamgov.org>

FYI

Here are some photos of small urban retail spaces from my recent European study tour

My observations include that there is extensive retail in urban environments, and that they are notably active and healthy

The vast majority of Retail spaces on global city streets, in Urban, walkable districts are typically not large spaces . Most stores in urban districts are under 1000 square feet, a high percentage are as small as 200-300 square feet - as seen in the photos included here.

This size and type of retailer is a precedent in urban retail districts all over the world. But these retailers are not only in large cities like Paris, London and Shanghai, but can be found locally In Detroit's Midtown, new center, Corktown, as well as small Detroit metro Downtowns like Northville, Plymouth, Ann Arbor, Farmington, Rochester, Royal Oak and Ferndale among others.

Of note - These cities also have larger retail spaces, over 1000 feet and, in some cases, they are much larger. However, these larger retail spaces tend to be designated in limited shopping districts, more high traffic districts, and also tend to be chain stores.

Other important observations, other than there is a majority of small spaces, include:

Overwhelming, Clear glass is used for store windows along the street

There is virtually never window covers, curtains or shades in the storefront .

There are No office uses or desk/clerical uses in storefronts along the sidewalk - didn't see one example of this

Window displays are illuminated in the evening, when stores are closed

Additionally

My observations during my recent global urban studies also include the lack of unleased spaces. There were Very few "for lease" signs and , in fact, When there was a space empty, it was often connected to a building or spaces that were under Redevelopment.

recent observations over recent months also include - that There are very limited empty, unleased spaces in the pedestrian-oriented areas within metro Detroit's urban districts and downtowns - same as the list above.

In general, urban, walkable retail districts and downtowns seem to be doing well and even thriving

Mark











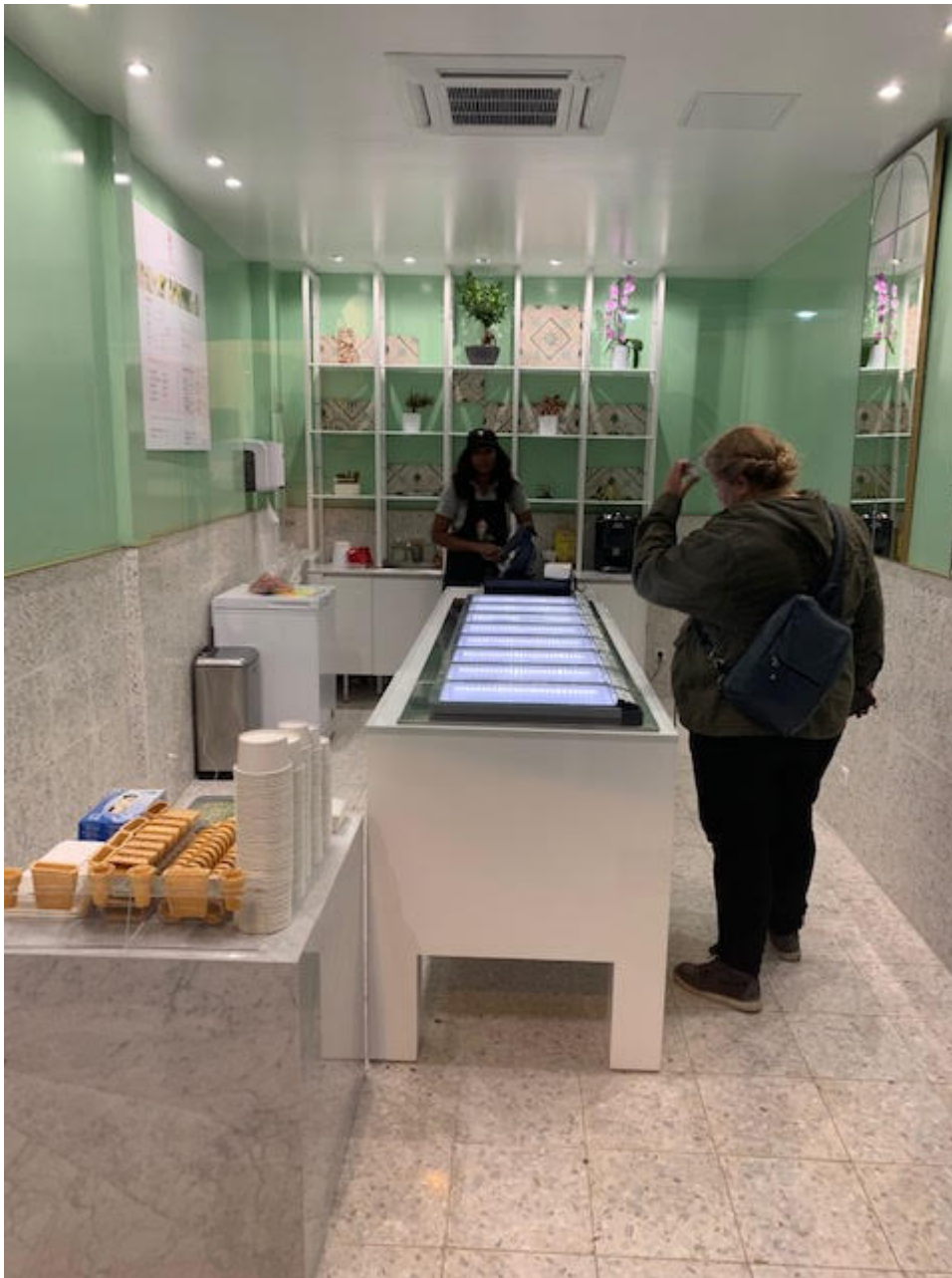












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11/26/2018

City of Birmingham MI Mail - Fwd: Urban retail spaces - example pix

Twitter: @JoeValentine151

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Why walkable cities are good for the economy, according to a city planner

People spend more money when cities are less vehicle-oriented.

By Aditi Shrikant | aditi@vox.com | Updated Oct 26, 2018, 2:18pm EDT



Philadelphia is the fifth most walkable city in America, with a walk score of 79. | M. Edlow for VISIT PHILADELPHIA®



You've probably seen the term "walkability" thrown around in relation to cities, neighborhoods, and even apartments. A city's walkability, per **Walk Score**, is determined by analyzing how many errands can be done without a car, and cities with the highest scores (like Boston, New York, and San Francisco) often come with an incredibly steep cost of living.

On Walk Score's one to 100 scale that evaluates cities with a population of 200,000 or more, New York City is the most walkable city in the country with a score of 89, and

Fayetteville, North Carolina, is the least walkable with a score of 29. The average walk score of all American cities with a population of over 200,000 is 49.

Walkability is treated as a static part of a city; your city is either walkable or not. You either need a car or you don't. But a city's walkability is dynamic and can be improved with people-oriented city planning, which will benefit the local economy and make societies more equitable.

Walkability is great for the economy

American city planner Jeff Speck has been advocating for walkability for the past 25 years, and in his new book, *Walkability City Rules: 101 Steps to Making Better Places*, he carefully outlines how to "sell" walkability and then implement it.

The idea is marketed based on a few big benefits, according to Speck's book, one of them being economics. Cities with high walk scores also have high property values. According to a **2009 study**, each additional walk score point resulted in home values increasing between \$500 and \$3,000.

Investing in walkable cities, whether through allocating funds to repaint pedestrian walkways or building affordable housing close to downtowns, also attracts diverse populations and creates jobs. According to the **Chicago Metropolitan Agency for Planning**, 63 percent of millennials and 42 percent of boomers would like to live in a place where they don't need a car. And according to the National Association of Realtors, **62 percent of millennials** prefer to live in a walkable community where a car is optional. If cities seem less automobile-dependent, chances are they are more appealing to a range of ages.

Walking also costs the city very little, unlike cars and even public transit. According to Speck's book, if a resident takes a bus ride, it may cost them \$1 but costs the city \$1.50 in bus operation. If a resident decides to drive, it costs the city \$9.20 in services like policing and ambulances. When a resident walks, the cost to the city is a penny.

People also tend to spend more money in walkable cities, stimulating the local economy. A **2008 report of San Francisco's downtown** found that public transit users and walkers spent less on each trip downtown but made more frequent trips, which meant they spent more money overall. Those in cars spent more money on one trip but frequented downtown less.

This aligns with the concept of **people-oriented streets**, the urban planning practice of making roads safe to cross and filled with amenities people need (restaurants, banks, salons etc.). Many streets in America, especially in areas of suburban sprawl, are vehicle-oriented, don't have sidewalks, and are not accessible without a car.

Even though the United States is a car-centric society, one-third of Americans don't have a license, and according to a government census, a majority of those who walk to work make under \$50,000.

"The most common condition is the poor person who can afford a car but it totally disrupts their finances," Speck told me. "The unfortunate circumstance is that most Americans live in places where car ownership is mandatory."

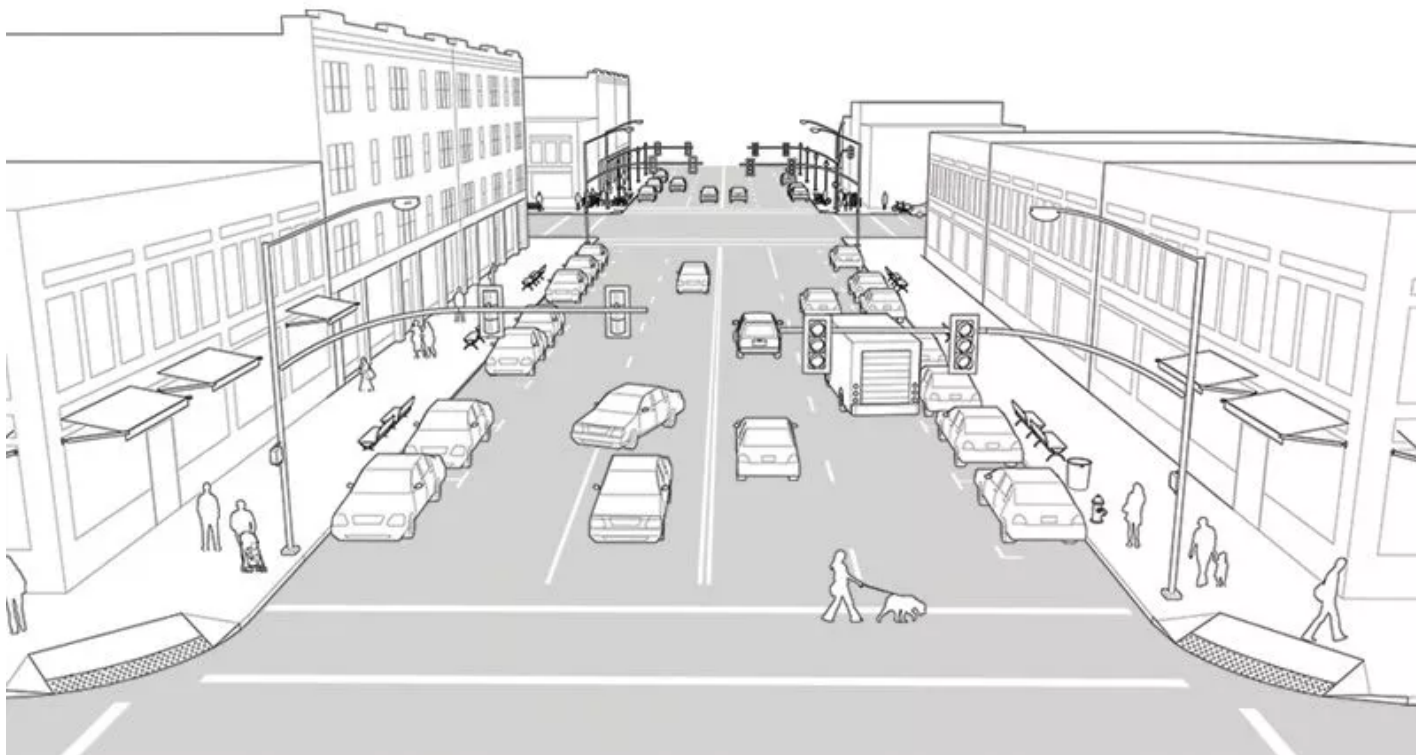
Walkability doesn't have to mean gentrification

With talk of home prices going up and walkability attracting more people, walkability can read as a recipe for displacement. Take Oakland, California, for example. When San Francisco become too pricey and people were looking for a more affordable alternative, nearby Oakland was an appealing option. But while the influx of people spurred new development and increased walkability, it also hiked the cost of living; now the **average rent for an apartment in Oakland is \$2,926**, compared to \$1,695 in 2011.

But Speck says walkability can actually work to make communities more equitable. According to his book, cities with more transit choice demonstrate less income inequality and less overspending on rent. Walkability opens up the world to the elderly, who often struggle to find transportation when they lose the ability to drive, and public transit is used most by minorities and those making under \$50,000. Since transit and walking go hand in hand, improving the walkability of a city could help better serve those in lower income brackets.

"For the typical city where most Americans live, there's very little risk of improved walkability causing gentrification," he told Vox, "particularity in the short term, just because [cities] have so far to go just to reach a modicum of safety and comfort."

How cities can become more walkable



The National Association of City Transportation provides before and after blue prints of what an auto-oriented street would look like if transformed into a people-oriented street. | National Association of City Transportation



Though he's been preaching the walking gospel for years, Speck says the message has only recently caught on. "In the '80s, no one got it," he said. "In the '90s, developers started to get it. In the aughts, the cities got it. And now I'm finally seeing in this decade that the engineers are starting to get it. Our biggest impediment [in developing walkable cities] was the public works folks and engineers who weren't letting us do things right."

The **National Association of City Transportation** (NACTO)'s executive director, Linda Bailey, says that in years past, the national city planning standard addressed people walking as an afterthought, which is why NACTO builds design guides to direct cities on how to become more pedestrian-friendly. Guides outline a number of transformations including **how to turn a heavy-traffic two-way street into a "neighborhood main street"** with bike lanes, sidewalks, and greenery.

Cities that have been notably increasing their walkability include Washington, DC, and Seattle, where city planners started dedicating space on the edges of roads to pedestrians and calling them "walkways" as opposed to sidewalks.

One of the biggest reasons many cities aren't walkable is because land is dissected into "uses," something called "single-use zoning": Retail cannot be next to a medical office cannot be next a single-family home cannot be next to a multi-family home. So in order for a person to get lunch, go to the doctor, and then buy a birthday present, they have to travel to three different "zones," and can only do so efficiently by car.

This may have been helpful in the 19th century when homes needed to be far away from factories emitting toxic fumes, but today it makes less sense. The solution: Cities should adopt regulations that allow land to be multi-use, such as in the mixed-use developments that dot the sprawling landscape of many American suburbs and cities.

In Plano, Texas, the Legacy Town Center features shops, apartments, a movie theater, and restaurants in a pedestrian-friendly smattering of urbanism. The city of Tampa is constructing **Water Street Tampa** — a \$3 billion development that will include shops, entertainment, residences, and offices.

Bailey says mixed-use developments are attractive to developers because they present an opportunity to experience what it could have been like to plan a city 50 or 80 years ago.

“Really, they’re trying to recreate what cities like Philadelphia have always had,” she says. (With a walk score of 79, Philly is the fifth most walkable city in America.)

Other steps in Speck’s book include pushing for local parks and schools, both of which foster community and ownership of a neighborhood. He also says that cities need to invest in attainable housing downtown so they don’t get overrun with the wealthy.

“An extreme example [of wealth in walkable cities] is this kind of jack-o’-lantern effect, where many homes are owned by people who own five homes and if they are distributing their time between these homes evenly, most of the time a house is empty, so you get this weird condition of the extremely dense ghost town, which is the worst,” Speck says.

There are also more simple tasks like reallocating road space to accommodate bikes or creating street parking so people can drive to a city, park, and then walk around and enjoy. “Restriping a too-fast street to include a bike lane, or turning a row of parallel parking spaces into angled parking, these things can be done for the price of paint,” Speck tells Vox. “If a street needs resurfacing anyway as part of its regular maintenance, the changes can be done for free.”

Whatever method, walkability is a spectrum, and implementing positive change that gets people to drive their car less is better for the economy and the environment. “The more we can walk, bike, and take transit, we’re spending a lot less than the alternative, which is to drag around a two-ton carcass of steel that belches climate change,” Speck says.

Watch: Superblocks — how Barcelona is taking city streets back from cars

Correction: An earlier version of this story misidentified the American city with the lowest Walk Score.



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November 25, 2018 12:01 AM

Moving (even) more upscale: High-end projects changing the face of Birmingham

KIRK PINHO



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More than a half-dozen projects totaling well north of \$250 million are either under construction or in serious planning phases

Projects include new luxury hotel, swank housing, upscale retail, additional parking

Developers see a demand for high-end condos and top-of-the-line office space



Contributed rendering

The Jeffrey, shown here in a rendering, is one of a raft of new projects that are rapidly changing the face of Birmingham. Sam Surnow, president of Birmingham-based real estate firm The Surnow Co., is overseeing the property redevelopment.

Developers are changing downtown Birmingham, no more than five stories at a time (per zoning rules).

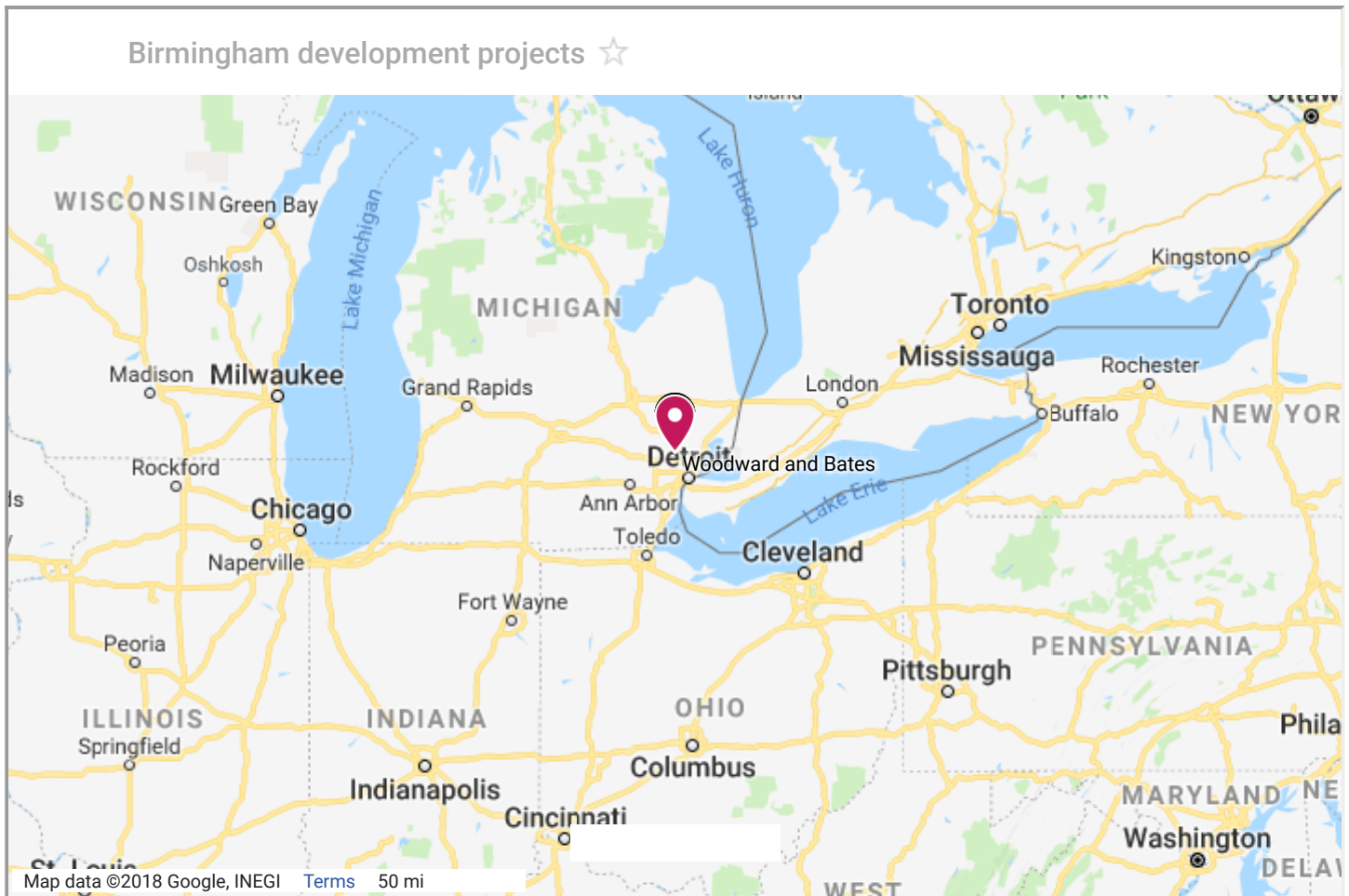
More than a half-dozen projects totaling well north of \$250 million are either under construction or in the serious planning phases, working their way through the various city approval processes.

In all, they will bring a new luxury hotel, swank condominiums and apartments ("affordable *for Birmingham*," one developer emphasized of the rentals), tens of thousands of square feet of office, trendy upscale retail and additional parking to one of the region's most affluent communities.

The central business district's walkability, household income, surrounding areas and desirable amenities like shopping and dining are attracting developers who see an unmet demand for high-end condos and top-of-the-line office space, among other uses. They come with the known Birmingham names: Surnow and Shiffman, Saroki and Jonna, Robertson and Simon.

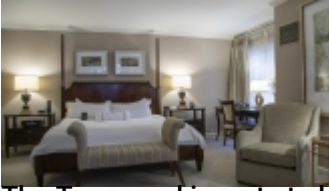
All working on projects of varying scales and types.

But the biggest project of them all is the 4 acres on the west side of Old Woodward Avenue north of Willits Street, which is targeted for a minimum \$125 million redevelopment into approximately 58 apartments, 21,000 square feet of retail space and 46,000 square feet of office space, plus 1,400 parking spaces across a new public-private partnership in which the city would be responsible for improving or creating 1,276 spaces, according to public documents.



Ron Boji, one of the developers on the project that also includes John Rakolta Jr., Victor Saroki and Paul Robertson, said a development agreement has not yet been signed but that public design meetings are tentatively slated for the spring. A term sheet is expected by January, he said. Multiple buildings are planned.

RELATED ARTICLE



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While the outcome of that project isn't yet set in stone, one thing is certain.

"There is a greater demand for this kind of community, with a walkable feel," said Sam Surnow, president of Birmingham-based real estate firm The Surnow Co., which is redeveloping the Church of Christ, Scientist property at 191 Chester St. into The Jeffrey, a 24,700-square-foot, \$12.5 million office building named after his late father, well-known Birmingham developer Jeff Surnow, [who died in 2015](#).

"People are veering away from malls, and it's becoming more and more attractive to have this type of atmosphere. The market is hot and people are jumping on opportunities. People are paying crazy prices on things and are willing to take risks."



Contributed rendering

The Jeffrey is a planned 24,700-square-foot, \$12.5 million office building at 191 Chester St.

Example A: The \$7 million price tag for less than an acre of land in 2016 on which construction is now taking place on [the luxury 126-room, 17-residence Daxton Hotel](#), a project led by Mark Mitchell of Birmingham-based Lorient Capital.

Matt Shiffman, whose Birmingham-based Alden Development Group LLC has more than \$90 million in development projects nearing completion or in the pipeline, agreed with Surnow.

"Values seem to be a little bit high on raw land," he said. "That said, you have a lot of land owners that, in a strong economy, are trying to maximize the biggest return that they can. But pricing on their land, to eager developers who want to do things at very high numbers, is challenging in order to make solid returns on investment."

Mark Nickita, co-founder and president of Detroit-based architecture and planning firm Archive DS and a Birmingham City Commission member, said the activity in Birmingham is a continuation of an ongoing drift toward downtown urban cores.

"It has become of primary interest to development groups, in Detroit, Birmingham, Ferndale, Royal Oak. It's become more and more prominent and downtown Detroit isn't the only place people want to be. Birmingham has a certain character, a certain type of downtown that certain businesses, retailers and residents want to be in, just like Detroit and Royal Oak."

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"just like Detroit and Royal Oak" - I applaud Birmingham, but I'm sure the city isn't going to give \$5.5 million in Taxpayer dollars to Ron Boji to build in Birmingham like the City of Royal Oak Did... something stinks in Royal Oak.

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Pop-ups, new shops expand holiday shopping in Detroit

Candice Williams, The Detroit News Published 12:01 a.m. ET Nov. 23, 2018

Detroit — An influx of new brick-and-mortar stores and pop-up shops in the city's downtown has made it an increasingly popular holiday shopping destination in recent years.

This year, more than 30 Michigan-based entrepreneurs will showcase unique gifts at the Downtown Detroit Markets.



(Photo: Brittany Greeson, Special to Detroit News)

The shops, which run through Jan. 13, are open Wednesday through Sunday weekly in Cadillac Square, Capitol Park and at 1441 Woodward Collective.

Foodies can check out Nostimo Kitchen in a large greenhouse in Cadillac Square. It's a collaboration between chef Toni Sova of Southfield-based Nostimo Kitchen and Bedrock, which, along with the Quicken Loans Community Fund sponsors the event.

"We collaborated and created a space that offers Detroit goods as well as my favorite picks as a chef," said Sova.



Shoppers flock to the holiday markets in downtown Detroit. The shops, which run through Jan. 13, are open Wednesday through Sunday weekly in Cadillac Square, Capitol Park and at 1441 Woodward Collective. (Photo: Brittany Greeson, Special to The Detroit News)

For the sweet tooth, the Nostimo Kitchen's hut offers goods from Detroit Marshmallow, Iversen's Bakery in Detroit and Mindo Chocolate, a vegan chocolate maker in Dexter. The shop also offers a variety of cookbooks, seasonal plates, denim bags and aprons.

"A lot of these items I personally used and knew," Sova said.

There's a range in price points.

"We have that sweet spot of a \$25, \$20 gift," she said. "I think it's for somebody who wants a cookie all the way to somebody who considers themselves a foodie."

More than 90 percent of the small businesses in the markets are minority-owned with 75 percent run by women, said Helen Johnson, vice president at Quicken Loans Community Fund.

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The markets are a draw for shoppers. The markets last year generated \$2 million in revenue for the businesses that participated, Johnson said.

"If (shoppers) go to the markets they're going to see a variety of options for what they can buy," she said. "You can get something small for a stocking stuffer or something for yourself or you can buy something for everybody on your list. You can spend as little as you want to or as much as you want to."

Another markets vendor, Corina Baldwin, operates her shop, Little High Flyers, in Midtown and a pop-up location in Capitol Park. She focuses on selling art, books and accessories for children. The products come from women-owned small businesses from around the world.

Baldwin said she carries a few popular items, including a white onesie that reads "Give me a Detroit fist bump" and features a rendering of the Joe Louis fist monument.

"I buy that organically and we print it here in Detroit," she said.



248 Studio, a pop-up shop in the Capitol Park markets, offers a wide variety of Detroit- and Michigan-themed clothing and gifts. (Photo: Brittany Greeson, Special to The Detroit News)

Another hot item are the \$30 pilot winter hats for boys and girls.

"Everybody is excited about those," she said. "It's sort of our signature item."

At the 1441 Woodward Collective, an indoor retail incubator, shoppers will find more than a dozen vendors under one roof.

That's where Tee Capel operates her business Fly Behavior, offering women's clothing, accessories and stationary. She said she started her business four years ago after seeing a need for affordable, stylish and classic clothing items.

"What I usually get is a lot of sisters, or mothers or even husband or boyfriends that buy for the stylish woman in their life," she said. "Typically, they come and buy sweaters and dresses. We do a lot of outerwear."

Gift options from Fly Behavior include a teddy bear coat that Capel says draws attention from shoppers. The fluffy coat resembles teddy bear fur and comes in colors including black and pink. The full-length version of the coat is \$168, while the short version is \$158.

Other shops at 1441 Woodward Collective include companies with menswear and accessories, candles, jewelry and kid's clothing.

Detroit GT offers Detroit-themed clothing and colorful art prints and coasters with sketched images of notable Detroit landmarks like the Michigan Central Depot, Belle Isle Aquarium, Eastern Market and the Fisher Building.

Blu Mitten has clothing for little girls. A big hit, Capel says, is a bubblegum scented, rubber backpack that come with a bracelet.

"I think we kind of have something for everybody here," Capel said.



The markets generated \$2 million for businesses last year, said Helen Johnson, vice president at Quicken Loans Community Fund. *(Photo: Brittany Greeson, Special to The Detroit News)*

To enhance the shopping experience, food and beverage options are available in both Cadillac Square and Capitol Park. The team at Parc created the restaurant menu for the Cadillac Lodge while Prime + Proper and Townhouse will head the Capitol Inn tent in Capitol Park. The Inn will also feature a rotation of live musicians.

"The markets are about spending money, but the public space is about spending time," Johnson said.

For a full list of vendors, visit [Bedrock's Facebook \(https://www.facebook.com/BedrockDetroit/\)](https://www.facebook.com/BedrockDetroit/) page.

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Transportation Demand Management: Taking Wheels Off the Road

By Joan Mooney | Posted: Wednesday, December 5, 2018 2:00 pm

Eric Sundquist, managing director of the State Smart Transportation Initiative at the University of Wisconsin, said we have been going about the problem of traffic congestion all wrong.

Instead of “destroying the village to save it” – making roads wider and development more auto-centric – we should approach traffic from the demand perspective. That means figuring out how to reduce traffic and reduce the number and length of car trips, especially single-occupancy vehicle trips.

That’s more complicated, but it may be less expensive than widening roads. And it is likely more effective in the long term. Cities and drivers alike have seen areas where there’s a short period of relief after roads are widened, only to see the wider roads just as clogged six months or a year later.

There’s another problem with focusing on the supply part of traffic management.

“When you put in wider roads, that squeezes out other modes of transportation,” said Sundquist. “Let’s put a thumb on the scale (to favor other modes).”

That’s transportation demand management, which focuses on reducing the number and length of auto trips, especially in peak travel times. TDM includes a variety of measures, ranging from subsidized carpooling apps run by the city to make carpooling easier, to incentives such as subsidized transit passes, to bicycle and pedestrian facilities.

California led the way in 2013

City planners have focused more on TDM in the past five years. Pasadena, Calif., led the effort when it passed a new set of planning metrics in 2013.

“(The city was) responding to this notion that they kept widening the roads but it didn’t make things better,” said Sundquist. “It made it harder to walk, and there was more traffic because of that.”

Pasadena was responding to a new California law, SB 743. The state law changed the focus of the environmental review process from measuring cars’ wait time at intersections and their ability to drive at the speed limit, to instead measuring vehicle miles traveled (VMT).

The change was made largely because VMT “is a better indicator of vehicle emissions – the true environmental impact – and to better support active transportation modes” such as



A New Way

Transportation planners are beginning to look at traffic congestion in a whole new way. Instead of building new roads and more lanes, it's far more sustainable to find ways to get more cars and trucks off the road altogether.

walking and biking. The quote is from *Modernizing Mitigation: A Demand-Centered Approach*, published in September 2018 by the Mayors Innovation Project and the State Smart Transportation Initiative. Sundquist is a lead author.

In California, “the new law prompted several cities to broadly rethink supply-side mitigation and reorient their mitigation framework toward demand management,” the report says. In this context, mitigation means “actions taken to address transportation impacts from land use changes.”

Pasadena, for example, adopted a set of metrics that all large new developments must adhere to, including maximum VMT per capita (22.6 daily), maximum vehicle trips per capita, and other metrics such as bicycle facilities, transit facilities and the city’s Pedestrian Accessibility Score.

“Meeting the requirements is relatively easy in the urban core,” the report says. “For developers that are farther from the urban core, developers may need to add a mixed-use component, build a bike facility, or improve transit access by providing shuttle service or paying for a route modification.” All of those measures are less costly and less disruptive than widening roads.

From employer-run to city-run mitigation measures

“There are a fair number of TDM measures that are run through employers,” Sundquist said. Large employers may offer subsidized transit passes or bike lockers. “What’s less common is to push that notion to the way the city operates as a whole.”

For example, as part of an effort to lower VMT, a city can change the traditional parking requirements for new developments. Historically, cities have required new residential developments to have a minimum number of parking spaces per residential unit. But a plan being developed in Los Angeles takes the opposite approach, requiring mitigation measures to “offset” parking spaces they provide as part of a development.

In some cities, such as San Francisco, developers can earn mitigation points or credits by implementing a variety of measures. These can include improvements in bicycle infrastructure and amenities, a bikeshare program, a carpooling program (more on that below), and improvements to the pedestrian network, among others. The aim is to involve developers in the effort to lower the city’s VMT.

More broadly, “a city can try to reduce the need to travel for all kinds of things, or reduce the number of single-occupancy vehicles,” he said. “What congests the roads the most, for travelers and governments, is single-occupancy vehicles.”

Setting up carpools to decrease VMT

One way to cut the number of single-occupancy vehicles is to encourage carpooling. Many large employers organize carpools for their workers. City and regional governments have started to do the same. Some, such as Miami Valley, Ohio, use a centrally run computer program, and others, such as Palo Alto, Calif., use carpooling apps such as Scoop and Waze.

Nearly 40 years ago, the Miami Valley Regional Planning Commission started a region-wide carpooling program in response to the oil embargo of the mid-1970s. The RIDESHARE program now uses a software program, RideAmigos, that allows users to fill in information about where they live and work so it can look for carpool matches.

Users receive a list of carpool matches, and the rest is up to the individuals. Organizers encourage people to meet ahead of time in a neutral location and figure out the route and timing.

"It's a way to try to eliminate the uncertainty of getting in a car with a stranger," said Laura Loges, director of marketing and public affairs for the Miami Valley RPC.

Members of the carpool can decide if they want two or three people in the group.

"If it's over four, we try to get them into a vanpool," Loges said. RIDESHARE has several vanpools that go to Wright-Patterson Air Force Base, the largest employer in the area. RIDESHARE provides a \$700 monthly subsidy to encourage the vanpools.

The efforts are paying off. In 2010, the Brookings Institution found that while carpooling declined nationwide in the 2000s, of the 100 largest metro areas, only Dayton saw an increase.

Carpooling – There's an app for that

Many urban dwellers are accustomed to using an app for transportation, to call an Uber or Lyft. But some research has shown that such ride-hailing companies increase the number of cars on the road. So what about using an app to create carpools? Miami Valley RIDESHARE looked into that and was dissuaded by research showing that people don't want to download one more app.

But some do. And Google is ready to serve them with its new Waze Carpool smartphone app, which rolled out nationally in October.

Like RideAmigos, users type in their home and work location and commuting hours to look for a ride or offer one. One advantage to users is that they can then drive in the carpool lane in large urban areas.

Cities are starting to sign up. Palo Alto uses both Scoop, another carpooling app, and Waze. It's another tool for the Palo Alto Transportation Management Association, which was formed in January 2016 to reduce the number of single-occupancy vehicles downtown. Besides carpooling, it also uses transit subsidies and bicycling incentives.

Users who download the city's free Scoop app are guaranteed a price of just \$2 — subsidized by the city — for pickup from their home (within a 40-mile radius of downtown Palo Alto) to their job in the city. In third-quarter 2018, Scoop had 207 active users a month, with a slight increase in each of the first three quarters of the year. Waze Carpool, which was being tested in California before being rolled out nationwide, had 90 active users a month in the third quarter.

What are the downsides to carpooling apps? Safety and reliability may be two.

"Do you want to get in a car with a complete stranger?" said Kimberly Burton, president of Burton Planning Services, Westerville, Ohio. She notes that young people are more trusting and perhaps more willing to take such a risk. Waze does offer the option for women to request a female driver.

Another potential downside is the social equity component, Burton said. Lower-income urban residents may not have smartphones and cannot download a "free" app.

Transportation demand management measures such as city-organized carpooling and subsidized transit may require a change in priorities for many cities.

"None of these things are brain surgery," said Sundquist. "The hardest things are the requirements you're under as a developer to provide a lot of parking and make it easier to drive. We can't make everything super-car-accessible and expect people to walk. They'll drive because it's easier."

The job of cities that care about sustainability is to make it just as easy to use other modes of transportation.