

VIRTUAL MEETING OF THE BIRMINGHAM PLANNING BOARD
WEDNESDAY, APRIL 22, 2020
7:30 PM

<https://zoom.us/j/111656967> or dial: 877-853-5247 Toll-Free, Meeting Code: 111656967

- A. Roll Call
- B. Review and Approval of the Minutes of the regular meeting of **March 11, 2020**
- C. Chairpersons' Comments
- D. Review of the Agenda
- E. Old Business
 - 1. **35001 Woodward (Parking lots & Hunter House)** – Revised Preliminary Site Plan & Community Impact Study Review to allow construction of a new 5 story mixed use building containing retail, office and residential uses.
- F. Rezoning Request
 - 1. **469 – 479 S. Old Woodward (Former Mountain King and Talmer Bank)** – Request for rezoning from B3/D4 (up to 5 stories) to B3/D5 (over 5 stories).
- G. Special Land Use Permit Review
 - 1. **1800 W. Maple (Lutheran Church of the Redeemer)** - Special Land Use Permit Amendment to allow renovation and expansion of the Church.
- H. Final Site Plan & Design Reviews
 - 1. **1800 W. Maple (Lutheran Church of the Redeemer)** - Revised Final Site Plan to allow renovation and expansion of the Church.
- I. Community Impact Study Review
 - 1. **219 Elm Street (vacant office building)** - Request for Community Impact Study Review to allow construction of a new 5 story multiple family building.
- J. Preliminary Site Plan Review
 - 1. **219 Elm Street (vacant office building)** - Request for Community Impact Study Review to allow construction of a new 5 story multiple family building.
- K. Miscellaneous Business and Communications:
 - b. Communications
 - c. **Administrative Approval** Correspondence
 - d. Draft Agenda for the next Regular Planning Board Meeting (**May 13, 2020**)
 - e. Other Business
- L. Planning Division Action Items
 - 1. Staff Report on Previous Requests
 - 2. Additional Items from tonight's meeting
- M. Adjournment

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**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
THURSDAY, MARCH 11, 2020**

City Commission Room
151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Planning Board held on March 11, 2020.
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; Alternate Board Members Jason Emerine, Nasseem Ramin; Student Representative June Lee

Absent: Student Representative Rachel Hester

Administration: Jana Ecker, Planning Director
Nicholas Dupuis, City Planner
Laura Eichenhorn, Transcriptionist

City Commission: Brad Host

Master Planning Team:
Robert Gibbs, Gibbs Planning Group
Sarah Traxler, McKenna

03-36-20

B. Approval Of The Minutes Of The Regular Planning Board Meeting of February 27, 2020

Mr. Share stated that in page four, line four, the word 'will' should be removed. In line seven on page four, the word 'will' should be changed to 'must'.

Motion by Mr. Share

Seconded by Mr. Williams to approve the minutes of the Regular Planning Board Meeting of February 27, 2020 as amended.

Motion carried, 5-0.

VOICE VOTE

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

Nays: None

Abstain: Koseck, Boyle

03-37-20

C. Chairperson's Comments

Chairman Clein explained the topic and procedure for the evening's meeting.

Planning Director Ecker introduced June Lee, one of the two new student representatives to the Planning Board.

03-38-20

D. Review Of The Agenda

There were no changes to the agenda.

03-39-20

E. Study Session Items

1. Review of Draft Master Plan Document – Section B.1. Neighborhood Components (pages 85 – 139)

Mr. Gibbs commenced the presentation of the item.

Chairman Clein asked for a pause in the presentation to allow for public and Board comment.

In reply to a question from Joan Ritter, Chairman Clein explained that some of the lots that were highlighted were areas being potentially recommended for denser housing along the neighborhood seams.

Carl Kona said that according to the draft's neighborhood delineations, his downtown condo would be grouped into a neighborhood with many larger residential homes with more property. He shared concern that his needs for his street would be outweighed by the larger contingent of less centrally-located homes with different needs.

Peggy Peterson said she does not see enough development planned in the draft for the neighborhoods on the east side of Woodward. She said she would like more destinations to which people on the east side of Woodward could walk, such as parks, coffee shops, or bookstores.

In reply to a question from Larry Bertolini, Planning Director Ecker stated that the draft proposes the creation of some cohesive zoning characteristics within each neighborhood to allow for increased neighborhood distinctiveness.

Katie Pierce said 'neighborhoods' would be potentially too divisive a phrase, and that calling the draft's proposed neighborhoods 'districts' instead would minimize that divisiveness. She said 'neighborhoods' emphasizes perceived differences in where people live in Birmingham in a potentially negative way. She said she liked the idea of a staff liaison position between the City and different districts, and that a social ambassador position could also be created to connect new residents to Birmingham resources and events. Ms. Pierce concluded her comments by saying

she shared similar concerns to Mr. Kona about neighborhood associations making decisions on the neighborhood level. She said that neighborhood associations could disagree with each other, or become cliquish, both of which would be negative outcomes of their existence.

Mr. Williams stated that the Board had previously tried to re-energize parts of Torry along Adams. He said that during that initiative there was virtually no participation from Torry residents, and that the single resident that did participate was against moving a coffeeshop, bakery, or similar small commercial destination to the area. Mr. Williams said that a method of regular communication between Torry and the City would have significantly benefited the initiative. He said that while he suspected at the time that that single resident did not represent Torry, the City had no efficient way to solicit the input of other residents in the area if they did not attend the discussions on the initiative. He advocated strongly for a liaison or some other way to reliably increase communication between neighborhoods, City government, and City boards and committees.

Mr. Share concurred with Mr. Williams's comments. He said finding more efficient ways to facilitate communication between residents and the City regarding land planning would benefit the City, and is worthwhile to consider as part of the master planning process.

Mr. Koseck said the neighborhood gathering places should be more of a focus, as opposed to the neighborhood boundaries. He said he would prefer blurring of the neighborhood zones and more seamlessness between them since boundaries often result in unnecessary politicization.

Ms. Whipple-Boyce said she agreed with many of the previous comments made by other Board members. She said she liked the idea of a social ambassador, per Ms. Pierce's suggestion. She said the social ambassador should convey information directly to residents, possibly through a platform such as Nextdoor, instead of through neighborhood associations. Ms. Whipple-Boyce stated neighborhood associations are sometimes politicized, and sometimes do not adequately represent all residents within a neighborhood. Ms. Whipple-Boyce continued that decisions such as parking on streets should not be left up to individual neighborhoods, at the risk of making the decisions contentious and politicized. She said that the City has many boards that would be better equipped to make such decisions, and that neighborhood associations should occupy a social function, not a political one.

Mr. Jeffares said he agreed with Ms. Whipple-Boyce's statement that the City should directly communicate information to residents, and also that neighborhood associations would be an inappropriate mechanism for conveying City information. He said that while it is not the City's job to facilitate social interactions, providing places where social interactions can more easily occur is a land planning issue and a worthwhile goal. He also said that the path along the Rouge River should be emphasized as one of the best ways to connect neighborhoods within the City.

Chairman Clein said that he did not think the master plan should be venturing into issues of social engineering. He said planning districts are a useful concept to consider, and could be used to make sure that City resources are distributed more equitably among household groups. Chairman Clein agreed with Mr. Koseck, however, in saying that the neighborhoods and neighborhood associations should remain untouched by the master planning process in order not to risk politicizing the differences between them. He stated that he would welcome a memo from the

master planning team recommending staff positions or voting privileges, but that it is not a matter of land use proper and should not be included in a master plan. He said recommendations regarding how far out the noticing shed should go could be useful and are a land planning issue. Chairman Clein concluded by saying he no longer wanted to engage in conversations regarding neighborhood associations within the master planning context.

Mr. Gibbs said it would be helpful to receive clarification in the future regarding the proposed boundaries of the planning districts and the City's preferred number of planning districts.

Mr. Gibbs then provided a general overview of the topic of parking in neighborhoods.

Chairman Clein invited public comment.

Mr. Kona said that there should be some areas in Birmingham with permit parking only, combined with fines for violation of the rule. He explained that the parking demand in some areas is so high that prohibition of non-permit parking is the only reasonable option.

Mr. Horowitz noted that living in a walkable urban environment comes with compromises in terms of parking. He said that one cannot expect a pleasant, walkable environment and the amount of parking that comes with suburban sprawl, and that is a choice residents should be aware they are making.

Mr. Share said he was supportive of reducing the number of parking categories, as per the draft's recommendation. He said that he was not in support of the idea of funneling parking fees to the neighborhood that raises the fees. Mr. Share noted the City has a representative democracy, and therefore it is the Commission's responsibility to allocate resources and the various other boards and committee's responsibilities to make recommendations regarding those allocations.

Mr. Koseck said that giving the money raised to individual streets also did not make sense to him. He noted that residents pay high taxes and that there must be mechanisms in the City for residents to beautify their streets if they desire.

Ms. Whipple-Boyce and Mr. Williams voiced their agreement with Mr. Share and Mr. Koseck.

In reply to the recommendation that street speeds be lowered to 20 m.p.h., Ms. Ritter said that while she agreed, she did not think she would be able to drive at such a low speed.

In reply to a question from Mr. Lee, Planning Director Ecker stated that finishing the sidewalks around the City would have great benefit for pedestrians. She also noted that it would be in-line with the City's priority of being a walkable community.

In reply to Mr. Williams' comment that he has not seen cyclists using the trial bike path on Eton Road, Mr. Jeffares explained that the path does not work because it is not appropriate to have two columns of cyclists with elbows out travelling in opposite directions because they will make contact, and that there is a lot of glass on the surface of the bike path because it cannot be accessed by a street sweeper, which is also prohibitive to cyclists' use of the path. Mr. Jeffares

said he had already sent eight articles to City Manager Valentine explaining why the kind of design being tested on Eton Road is not appropriate for bicycle paths.

Ms. Whipple-Boyce said removing the parking lane from Lincoln would be a bad idea because it is working well for the residents there. She said she was also very supportive of getting sidewalks on all the streets in the City. She said that to Mr. Lee's point, she would like to see data and counts regarding the need for cycling lanes, paths, and loops before the City invests even more significantly in that kind of infrastructure. She said she liked the idea of the sharrows, and wanted to know if they could work.

Chairman Clein noted there are hundreds of studies that show that bicycle lanes and paths increase property values, increase rental rates, reduce crash numbers with pedestrians and reduce deaths.

Ms. Traxler explained that the majority of these recommendations were coming from the City's already adopted Multi-Modal Transportation Plan, and that the master plan team only added a few items here and there throughout the section.

Planning Director Ecker explained that the counts and other data were sourced from Strava and SEMCOG and were studied by the Multi-Modal Transportation Board. She stated that both sources showed that Birmingham has high rates of cyclist activity.

Mr. Williams stated that even though the bicycle lane on Eton is not used by cyclists, it has slowed traffic on Eton, which is a positive.

Mr. Share said that attempts in Huntington Woods to lower the speed limit from 25 m.p.h. to 20 m.p.h. on their streets have been rejected repeatedly by the Michigan Supreme Court.

In reply to Mr. Share's question regarding the design of bioswales, Mr. Gibbs explained that the master planning team is not looking to provide design recommendations on the bioswales or the exact type of bicycle infrastructure that should be included. He said the goals are much broader, and more like should the City increase its bicycle infrastructure, which would be designed at a later date, and should the City clean stormwater before it goes into the Rouge River, which would also be designed at a later date.

Chairman Clein explained bioswales would be installed between the greenspace and a sidewalk, and would be in addition to or in lieu of catch basins.

Mr. Koseck said that six foot sidewalks should be put in only where absolutely necessary due to engineering constraints, and that otherwise four foot sidewalks are preferable. He noted that every foot of additional concrete takes away greenspace.

In reply to the tree and green-space recommendations, Ms. Ritter said the City should be more accommodating if residents had a good reason to want to remove City-owned trees near their property.

In reply to Ms. Peterson, Planning Director Ecker confirmed landscaping is required as part of the building design for new buildings in the City.

Mr. Koseck said he would empathetically recommend policy that requires each street tree have plans for replacement before they are cut down.

Mr. Boyle said the City should state that in residential districts there is a tree preservation policy. He noted that in the downtown developers have to replace and provide street trees, and the same should be required in residential areas at least along the sidewalks, and maybe even into people's backyards.

Chairman Clein said that maintaining greenspace and minimizing concrete wherever appropriate is also an essential part of this conversation.

Mr. Gibbs presented the character of new housing section.

Ms. Pierce explained that she and her husband were seeking a lot combination for the benefit of a bigger yard. She said that an impediment to the process is that people seem to suspect they either want to build a large mansion on the property, even though they have stated they do not, or that they will sell the combined lot to a developer who will. She said she looked into how other municipalities deal with the concern, and that other affluent communities have a tiered system for lot coverage, where as the lot sizes increase the permitted percentage of lot coverage declines. She said they also provide quantitative maximum floor area coverages tied to lot sizes. She said these kind of quantitative ordinances could ease the concerns that seem to permeate discussions of housing in Birmingham. Ms. Pierce concluded that the draft's recommendations to only have lot enlargement areas on certain streets is arbitrary, and would be unfair to residents of other streets. She noted that the ability to get a lot combination is already rare enough without an arbitrary restriction based on what street one lives on, and that if the concern is excessively large houses being built on any combined lots, the quantitative ordinances she recommends would relieve those concerns.

In reply to a question from Anne Steglis, Planning Director Ecker explained how lot coverage measurements in the City currently work.

Ms. Steglis said she would be more supportive of bike paths than of bike lanes in order to allow many cyclists to ride together at once. She said that neighborhoods are defined by the people who live there, and not by the boundaries around it or homes within it. She said she would also like the idea of a social ambassador to increase social neighborhood cohesion.

Mr. Bertolini said that a one-size-fits-all approach to setbacks would be inappropriate due to different lot sizes throughout the City. He said a maximum building height is also a good idea, but allowing a third floor should be considered with some restrictions.

Ms. Steglis returned to say that all properties should have retaining walls to ensure that one home's water runoff remains on its own property. She said that she would like to see a truck fee charged to any construction or teardown projects so that there are sufficient resources to repair the damage done to streets by truck traffic.

Mr. Williams commented that it might be worth it to have different max lot width standards for new construction and for the expansion of current homes without a teardown. He said the latter category could often allow for aging-in-place through allowing expansion for first floor master bedrooms.

Mr. Koseck said that the design of single family houses is very complicated, and that a lot of the concerns being voiced would be alleviated less by specific size restrictions and more by different aesthetic choices. He cautioned that the topic of single family home design should be studied carefully and in detail in order to capture the nuances of the process.

Ms. Whipple-Boyce concurred with Mr. Koseck, and said this section of the draft overall identified appropriate places to commence that kind of detailed study.

Mr. Share suggested that the draft should recommend that the mass of homes be appropriate for lot size and for the neighborhood, instead of requiring greater setbacks. Mr. Share also stated that Marin County, CA has an ordinance that requires that as a home increases in size it must meet or exceed the requirements of the International Energy Code by a certain factor. He said that while it could not guarantee that houses would remain smaller, it may have an impact on house sizes and would also be more sustainable.

Mr. Jeffares cautioned that overly trying to restrict or interfere with what the market wants could have negative unintended consequences in the long-term. He explained that increasing the setbacks as the draft recommends, for instance, could result in the loss of \$100,000 in value in certain circumstances for someone looking to sell their home. He continued that if that person were looking to move into assisted living, the \$100,000 difference could be very significant for them. He said that did not mean he was against any restrictions, per se, but just that they should be considered carefully in terms of their potential ramifications.

Mr. Lee said he agreed with Mr. Jeffares completely, explaining that Birmingham would become less desirable over time if the housing stock largely becomes older and new homes become too difficult to build due to City ordinances. Mr. Lee suggested that perhaps new homes could be built without such great setback requirements as long as the building design were to fit the character of the neighborhood.

Chairman Clein said that it would be helpful if the conversation focused more on the intent of the recommendations, and whether they are desirable for Birmingham, rather than on the recommendations themselves. He said, for instance, it would be more helpful at this point to know whether the City wants to allow for ways of expanding existing homes in order to support aging-in-place than it would to specifically decide at this moment how that would be done.

Mr. Boyle said the issue was less the character of the homes and more the affordability of the homes. He noted that Birmingham is becoming less affordable in part, it seems, because of the scale of the new homes that are being built on lots. He said he was interested in incentivizing expansion of homes over teardowns, given that teardowns seem to be such a huge concern among so many of the residents. He said that while aesthetics and character are important, the underlying concern is what kind of housing market should exist in Birmingham.

Ms. Whipple-Boyce agreed with Mr. Boyle's assessment that character is not actually the underlying issue. She said while the specifics could be discussed down the line, it does seem that Birmingham should not be as supportive of new builds as it currently is. She said that she would be supportive of promoting the expansion of existing houses since it comes up so often as a topic.

Chairman Clein said that while he did not disagree with Ms. Whipple-Boyce and Mr. Boyle, many comments the City received regarding homes did address massing, setbacks, and height of buildings. He said that the cost of homes is not the only concern, and that there is a parallel concern about whether the size of new homes being allowed in Birmingham are excessive. He said the Board needed to clarify whether they thought there should be additional limitations added to the sizing of new homes, which is separate from the question of cost. He concluded by saying this section of the draft, overall, jumps topically too often and needed to be pulled together by the master planning team.

Mr. Gibbs said the streamlining would come from integrating the Board's recommendations as to what the priorities included in the draft should be. He said that certain topics would remain and others would be excised as the Board and other City decision makers request it.

Mr. Koseck said 2A, prevent runoff onto adjacent sites, should be struck because it is illegal not to prevent runoff onto adjacent sites. He said that the issue should be resolved by the City enforcing the present restrictions regarding the issue, instead of adding a new one that merely echoes the current policy. He continued that while character is a different consideration from cost, if Birmingham wanted to maintain a similarity of character between homes that should have been decided on thirty years ago. He said he could not see from this point a way that similarity between homes across the City could be enforced. He said that having more mature trees in the neighborhoods would be one way to soften the differences between homes. He also noted that the desire for greater setbacks in order to reduce home size and the desire to allow for expansions of existing homes in order to allow for aging-in-place are conflicting goals.

Mr. Gibbs said the overall question for this section is whether the City wants to have an increased say in the design of single family homes. He said there were legal ways to do that in the planning world, but also that the draft could strike those considerations if that is what the City would prefer. He said the master planning team was just seeking guidance as to which way the draft should go.

Chairman Clein said his personal opinion was that the City should not get more involved in the design of single family homes. He noted that the Building Department already reviews homes for their adherence to the City's ordinances. He said that while ordinances could be changed regarding matters of glazing, space between homes, massing, setbacks, height, or other topics, he did not think the Board should review every single family residential home.

Mr. Gibbs said the master planning team would include in the draft whatever the City directed them to. He said there were also questions as to whether individual neighborhoods should have different design ordinances, and that maybe neighborhoods could decide on what home design ordinances within their neighborhood they would want in place.

Ms. Traxler added that the implementation part of the plan has still not been completed. She said the current section may have some ideas that may more appropriately be included in the implementation chapter. She stated that under the Michigan Planning and Enabling Act, the Planning Board is charged with preparing the master plan and making the recommendations to the City Commission. She explained that Mr. Gibbs was correct in saying that the master planning team would implement the Board's guidance, and just reminded everyone that implementation would be further discussed in the future.

Mr. Share stated that while some of the recommendations in this section are valuable, he would like to see the section be more conceptual rather than prescriptive.

In reply to Mr. Lee, Mr. Gibbs explained that the master planning team was recommending a possible single family home review process because the master planning team perceives that a number of homes that have been built are out of character for Birmingham. He explained that many residents voiced similar concerns, and that is why a review process was being proposed.

Mr. Gibbs reviewed the accessory dwelling unit (ADU) recommendations and why ADUs are being considered.

Chairman Clein summarized that there is a missing segment of housing in Birmingham in terms of cost. A regional study says that there will be an increase in demand for all housing, including for the currently missing middle segment. He explained that allowing for ADUs where the main dwelling is owner-occupied would be one way of increasing the stock of missing middle housing in Birmingham if the City is so inclined.

Mr. Williams said that should be explicitly stated in the draft. Mr. Boyle concurred.

Mr. Boyle said he was frustrated that these sections are not being introduced with a bit of policy and clearly written bullet points. For this section, he said a simple overview of the housing situation in southeast Michigan, an explanation of where the demographics are going, and an explanation of why many older residents are finding it prohibitive to remain within the community if they want to downsize their homes would be beneficial. As a specific example, Mr. Boyle explained that if he were to sell his residence on Wimbledon Drive at this time, he would be unable to afford to remain in Birmingham. He said ADUs would be one way of allowing people like him to remain in the community, and added that the Pointes are making similar changes in their communities. He said the reasoning for these approaches should lead these sections, which are then followed by the more specific policy proposals.

Chairman Clein invited public comment, asking if based on what they heard regarding demographic trends they believed Birmingham should add additional housing units to the community.

Ms. Steglisch said that the City should do more to protect one story homes in order to allow new families to move into Birmingham or older people to downsize. She said ADUs should be taxed as additional dwelling units. She noted that while the argument is that ADUs would be more cost accessible for older people, in reality older people would not live in the ADUs because they would not be able to climb the stairs and there would be no elevator.

Chairman Clein noted that the question is not only about ADUs, but also about the potential benefits of two- or three- unit buildings along the neighborhood seams.

Ms. Peterson agreed with Ms. Steglish, saying that there is a lot of affordable housing on the east side of Birmingham that is being bought up by developers and then torn down.

Mr. Bertolini said it would be possible to have younger people rent out the ADUs and older people live on the main level.

Mr. Kona said he was concerned about enforcing the resident supervision of ADUs, since his neighbors have one and also travel frequently. He explained that in that case they could go out of town while their ADU is being rented, meaning that they would not be present to provide that supervision. Mr. Kona noted that while that specific ADU was intended for an elderly family member, when younger people live in ADUs more parking will be necessary. He said that large lots with enough parking do not encroach on neighbors if they have ADUs, but that is not the case in more tightly spaced areas.

Mr. Gibbs clarified that the ADUs would not be intended for relatives, and instead would be intended for rent. He also reiterated that the owner of the property would have to live on-site. Larger setbacks, landscaping, and other mitigation measures would be included as part of the ADU recommendations.

Ms. Pierce said that while ADUs are a creative, progressive solution to the need for more cost attainable housing in Birmingham, she would be worried about high resident turnover in rentals since she has young children. She said overall ADUs are probably worth pursuing, but a lot of thought should go into the details of safety and other issues.

Ms. Ritter said she liked the diversity of housing within Birmingham and that she would be supportive of ADUs.

Mr. Koseck agreed with Ms. Pierce that the details of how ADUs would work would need to be reviewed very thoroughly.

Chairman Clein summarized that residents are intrigued by ADUs, but that they would need more best practices and guidance as to how they would be implemented.

Mr. Gibbs confirmed the master planning team would return with more information on ADUs. He then presented the section regarding housing along the neighborhood seams.

Mr. Williams asked if some of these neighborhood seams would be inserted behind existing commercial development. He said that neighborhood seams to the east and west of Woodward between Lincoln and 14 Mile could represent significant intrusions to single family areas. He said he would expect numerous objections to such a proposal. He said that very clear definitions of seams and mapped seams would be critical for that reason. Mr. Williams continued that the boundaries between single family residential and commercial in those areas are already not well-maintained.

Ms. Ritter said that she was in support of the types of housing being proposed for neighborhood seams, and that it would be another way to provide cost attainable housing in Birmingham.

Joan Heinike asked where the people living in these more dense neighborhood seams would park.

Chairman Clein confirmed that parking would be a factor in allowing any of these more residentially-dense buildings to built.

Ms. Peterson said higher density residential on the east side of Woodward would be a vast improvement compared to all of the commercial buildings being built in that area.

Ms. Whipple-Boyce said she was enthusiastic about the neighborhood seams. She said she was a little surprised to see how many areas were being recommended for this treatment by the map on page 88, and said that maybe those areas could be reduced or an explanation could be included detailing why so many areas are proposed for inclusion. She said an explanation of the lot combination areas would also be helpful.

Mr. Koseck said he was also in support of the neighborhood seams. He asked if these would actually make housing more affordable, however, or if they would just create more profit, citing brownstones at Brown and Southfield that go for upwards of two million dollars each.

Mr. Share said he was also in support of neighborhood seams. He noted that on Southfield between Brown and Frank on the east side of the street there is a fourplex that seems to be working well and could be a model for housing in the neighborhood seams in Birmingham.

Mr. Boyle echoed Mr. Koseck's comments, saying that the direction could be set in the plan but implementation would need to be done very carefully. He noted that Minneapolis, MN tried to add more cost attainable, dense housing and ended up with similarly expensive, smaller units. He said Birmingham would have to be careful to figure out how to avoid a similar outcome. He recommended that Birmingham could preliminarily try these ideas in a few areas to see how it works before expanding it across the City.

Mr. Jeffares said he was in support of the neighborhood seams as well.

Chairman Clein said that the feedback seemed largely in support, with caveats regarding the placement of these more residentially dense structures and a way to ensure that their costs do not rival those of single family homes in Birmingham.

Mr. Gibbs commented that the population of 64-74 year old people in Birmingham is set to increase by 70% in the next 15-20 years. He said that many people in that demographic would take advantage of these higher-density residential areas.

Mr. Gibbs then reviewed neighborhood destinations.

Ms. Steglish said that neighborhood destinations would not inherently increase interactions between residents, explaining that people frequently enter the same places of business and do not interact.

Mr. Bertolini said that the master plan should not designate specific locations for these neighborhood destinations.

Mr. Boyle said the priority of the plan is not detailing exactly where these neighborhood destinations should be. Rather, the goal is to lay out the City's intent to eventually have neighborhood destinations that are walkable for many or most homes, and that the draft needs to lay that goal out for residents referencing this plan 20 or 30 years down the line.

Mr. Williams agreed with Mr. Bertolini and Mr. Boyle, saying that designating neighborhood destinations within the master plan would be a mistake because it could affect the market values of properties the City does not own.

Chairman Clein said he wanted to make sure that all residences in Birmingham would be within walking distance of a neighborhood destination as part of the plan.

Mr. Gibbs commented that not all of the neighborhood destinations would be commercial, and that some of them would be recreational instead. He said he was concerned about not designating neighborhood destinations because it would stymie the development of those destinations, and he noted that many of the proposed destinations are already on City-owned property.

Ms. Traxler added that not designating the neighborhood destinations could also lead to concerns about overdevelopment in the neighborhood. She explained that purpose of choosing destinations was to show how modest they would be, and how walkable with the radii depicted.

Mr. Share said he would remove the statement that the Community Foundation / Fund be established in a timely manner, develop civic programming as part of the monthly neighborhood loop events, and develop additional regular civic events to continue engaging the community from the master plan, as they do not have to do with land use.

Chairman Clein agreed. He said the community foundation fund sounded like a policy matter that the Commission could decide but was outside the land use purview of a master plan. He said the master planning team should feel free to supply a memo to the City Commission with any non-land use related suggestions, but that they should not be included directly in the master plan.

Ms. Traxler commented that the downtown shopping district tends to receive more City funding for events than potential events in the neighborhoods, and that could be shifted with changes in ways of administering funds.

Mr. Jeffares, speaking in support of neighborhood destinations and what they can do for the community, noted that his neighborhood's regular event has been sponsored by their neighborhood destination for many years.

Chairman Clein noted the end of the evening's master plan discussion, and thanked the public for its participation.

03-40-20

F. Miscellaneous Business and Communications:

a. Communications

b. Administrative Approval Correspondence

c. Draft Agenda for the next Regular Planning Board Meeting (March 25, 2020)

- **Rezoning for 469-479 S. Old Woodward**
- **35001 Woodward, postponed from 2/27/20**
- **Lutheran Church of the Redeemer proposing changes to the front portion of their building**

d. Other Business

City Planner Dupuis said there was one question for the Board regarding the Daxton Hotel.

Chairman Clein stated that he would have to recuse himself from the discussion because of a business relationship between his company and the developers of that site. He left the meeting at 10:44 p.m.

Vice-Chairman Williams took over running the meeting at 10:44 p.m.

City Planner Dupuis explained the Daxton owners wanted to remove a required light pole that is close to the canopy the hotel was going to build. He noted the canopy would be illuminated, and would illuminate that area at least as well as the light pole. Ms. Ecker noted that the City Commission would make the final decision as they previously approved the streetscape design. Mr. Dupuis stated the Daxton was also seeking to remove six parking spaces from the underground parking for a mechanical room.

City Planner Dupuis confirmed that the Daxton would still have surplus parking available even with the removal of the six spaces.

The Board concurred that they were comfortable with both of the proposed changes.

03-41-20

G. Planning Division Action Items

a. Staff Report on Previous Requests

b. Additional Items from tonight's meeting

03-42-20

H. Adjournment

No further business being evident, the Vice-Chairman adjourned the meeting at 10:48 p.m.

Jana L. Ecker

Planning Director

DRAFT



MEMORANDUM

Planning Division

DATE: April 16, 2020

TO: Planning Board Members

FROM: Jana Ecker, Planning Director

SUBJECT: 35001 & 35075 Woodward – The Maple – Revised Preliminary Site Plan Review (changes in blue text)

I. INTRODUCTION

The subject site, 35001 - 35075 Woodward Avenue, is currently home to the Hunter House restaurant, a City owned parking lot 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 previously submitted a Community Impact Study and Preliminary Site Plan Review for this site in 2018. At that time, a five story building was proposed with first floor retail, a hotel use, and residential units on the top floor.

On January 9, 2019 the Planning Board voted 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 a City-approved special event operations plan at the same time as completing the Final Site Plan Review process;
- 2) Applicant must provide mitigation strategies for control of noise vibration and dust;
- 3) Applicant will be required to bury all utilities on the site;
- 4) Applicant must distinguish an area for the separation and storage of recycling;
- 5) Applicant must conform to the streetscape design as outlined in the new E. Maple Rd. streetscape project;
- 6) Applicant provide information on all life safety issues and Fire Dept. approval, as well as details on the proposed security system provided to and approved by the Police Dept.;
- 7) Applicant must address the concerns of all City Depts.

On May 22, 2019, the Planning Board voted to APPROVE the Preliminary Site Plan for the proposed development at 35001 & 35075 Woodward, with the following conditions:

- 1) The applicant must clarify which refuse areas the two proposed retail uses are permitted to use, and the accessibility of such;

- 2) Submit specification sheets for the proposed ground mounted and rooftop mechanical units to ensure full screening;
- 3) Add the correct number of street trees to each street frontage, or obtain a waiver from the Staff Arborist;
- 4) The applicant must provide the correct number of street lights and provide regular spacing of such by Final Site Plan Review;
- 5) Submit a photometric plan and specifications on all proposed lighting;
- 5) The applicant must reduce the width of the garage entry on the west elevation or obtain a variance from the Board of Zoning Appeals;
- 6) Submit material samples, colors, and specifications as well as details on any proposed signage;
- 7) Applicant comply with the requests of all City Departments;
- 8) Applicant obtain approval of a lease agreement by the City Commission for all projections and /or encroachments on City property;
- 9) Applicant revise plan sheets as necessary to ensure all sheets are consistent and show the required property lines and clearly note all projections / encroachments across property lines; and
- 10) At Final Site Plan Review, the applicant must provide the Special Event Operations Plan for the said hotel.

However, since the Community Impact Study and Preliminary Site Plan were approved by the Planning Board in 2019, the applicant has made significant changes. Instead of a hotel, the applicant has now revised the plans and is proposing to construct a five-story mixed use building containing retail, office, residential and parking uses. The building will provide two levels of underground off-street parking, first floor retail, commercial and parking, second floor office use, with the third to fifth floors containing 42 residential units. Parking for the residential units, and parking for a portion of the retail and office areas will be provided below grade in the two level underground parking garage. A small additional parking area is provided on the first level. However, as the building is located within the Parking Assessment District, no on-site parking is required for retail, commercial or office uses.

On January 22, 2020, the Planning Board reviewed the Revised Community Impact Study and the Revised Preliminary Site Plan to include a five story mixed use building with retail, office and residential uses, along with underground parking. At that time, the Planning Board accepted the applicant's Revised Community Impact Study with the following conditions:

- 1) Provide copies of Phase I and II Environmental Assessments;**
- 2) Applicant must provide mitigation strategies for control of noise vibration and dust during construction;**
- 3) Applicant will be required to bury all utilities on the site;**
- 4) Applicant must distinguish an area for the separation and storage of recycling;**
- 5) Applicant must conform to the streetscape design as outlined in the new E. Maple streetscape project; and,**
- 6) 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.

On January 22, 2020 after moving to accept the Community Impact Statement, the Planning Board reviewed the Revised Preliminary Site Plan. Numerous concerns were raised by the Planning Board, particularly with regards to the at grade parking area accessible from Hamilton:

- If one were to enter the garage in their vehicle and discover that the cluster of three parking spaces allotted to Hunter House were full, one would have to either reverse onto Hamilton or execute a multi-point turn to exit back onto the street;**
- It is the Board's purview to make sure all elements of the plans are functional and adhere to ordinance, and it does not appear that the three space parking area off of Hamilton meets these requirements;**
- The Board should not approve parking off of Hamilton because it is not required by ordinance and creates an unsafe situation; and**
- The site plan is deficient under Article 7, section 7.27 of the Zoning Ordinance regarding the three space parking area off of Hamilton and the parking designated for the public off of Park Street.**

The consensus of the Planning Board was that the surface parking lot with the entrance on Hamilton should be removed and increased retail space provided. The Board voted to postpone the matter to a Special Meeting of the Planning Board on February 27, 2020 to allow the issue of the surface parking lot to be addressed.

The applicant requested postponement of the matter indefinitely on February 27, 2020 to allow additional time to meet with the owner of the Hunter House to discuss the surface parking lot and Hunter House layout issues.

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. A portion of the parking currently used by Hunter House on the NW corner of the site is owned by the City of Birmingham.**
- 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 applicant has resolved a majority of the previous zoning issues in regards to units meeting minimum floor area required, removing parking within 20 ft. of frontage line, and has now submitted a rooftop plan showing proposed RTU's and screening. However, the three loading spaces proposed are 39' by 10' by 14' in height, although they are required to be 40' by 12' 14' in height. **Thus, 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.**

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 commercial and residential uses will utilize a refuse area located just inside on both sides of the entryway for the underground parking facilities on the west side of the building on Park. The four dumpsters shown in this area are screened by a solid wall. However, it should be noted that there are several large windows in the general area.
- Refuse Area 2: The Hunter House restaurant will utilize a separate refuse area, which is located in their parking and loading area at grade on the northern portion of the site, underneath the building. This refuse area contains 2 dumpsters and is located within the building envelope and enclosed on all sides.

- 3.2 Parking Lot Screening – The applicant is proposing two levels of underground parking containing 82 parking spaces, and a small ground level parking area for the Hunter House restaurant containing 3 additional spaces, for a total of 85 parking spaces on site. The two underground levels will be fully screened within the building envelope and the ground level spaces will also be fully screened by the building. Both openings to the lower level and ground floor parking are 25' in width or less, and are covered by glass overhead doors.
- 3.3 Mechanical Equipment Screening – The applicant has submitted a rooftop plan for the proposed development showing the location of all proposed rooftop units (RTU) and the proposed screening. The screening proposed is 10.6' in height. **While the RTUs are shown on the roof plan, the applicant will be required to provide specification sheets on all RTUs to determine if they will be below the maximum allowable height and fully screened by the proposed mechanical screen walls.**

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: Twenty-two, 5 ft. tall Grey Gleam Junipers and four, 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 6 street trees along Woodward, 5 trees along Park, 3 trees along Maple, and 3 trees along Hamilton Row for a total of 13 trees. Seven Bowhall Red Maples are proposed along Maple and Hamilton, 5 American Sentry Lindens on Park Street, and 5 Skyline Honeylocust trees along Woodward, for a total of 17 street trees now proposed.

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. However, the applicant should consider the use of an alternative variety of Daylily as Stella D'Oro Daylilies have been overused throughout the City.

- 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 three 5' by 12' raised tree wells along E. Maple to match the proposed streetscape, as well as 2 City standard street lights along E. Maple. A 5' wide pedestrian walkway is also provided as

required. Additional landscape beds are also proposed in recessed areas along the southern elevation of the building. Along Woodward, the applicant is not proposing any pedestrian scale street lights, but is proposing three City standard benches. Along Park Street, 4 pedestrian scale lights are proposed, along with 1 bench and 1 trash can. The plans show what appear to be 2 bike racks, one near the southwest corner of the site and one at the northeast corner of the site. **However, these markings are not labelled, so the applicant must clarify. In addition, the Planning Board may wish to consider the spacing of street lighting along Park and / or Hamilton as the lights are spaced more than 40' apart as required.**

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 retail or office uses. The third through fifth floor residential units, however, require parking on-site. The proposed floor plans show a total of 42 units, 27 of which have 3 or more rooms, while the remaining 15 have 2 or less rooms.

1.5 spaces x 27 units = 41

1.25 spaces x 15 units = 19

Required Parking = 60 spaces

The applicant is proposing 2 levels of underground parking with 82 spaces, and a ground level parking area with 3 spaces for a total of 85 spaces on site which exceeds the parking requirement. **Based on the comments of the Planning Board in January 2020, the applicant has now removed the surface parking lot with Hamilton access, and thus a total of 82 parking spaces are now provided on site.** All parking spaces meet the minimum size requirement of 180 square feet. The proposed parking areas show one handicap accessible space on both levels of the underground parking, as well as an additional handicap accessible space on the ground level adjacent to Hunter House.

- 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'. in area. **The applicant is proposing 3 loading spaces within the building envelope, however the spaces proposed are 39' by 10' by 14', and thus must be increased in size or the applicant will be required to 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. This entry is 25' in width and has a glass overhead garage door proposed. Entry and exit to the 3 at grade

parking spaces adjacent to Hunter House will be via a garage door on the north side of the building off of Hamilton Row. This entry is 19' wide and also has a glass overhead garage door proposed. **As this surface parking lot has now been removed, the vehicular opening on Hamilton has been removed. The former surface parking area has now become additional first floor retail space.**

- 4.4 Pedestrian Circulation and Access –The applicant is proposing pedestrian entrances at twelve locations around the building. Five of the entrances are proposed on the west side of the building along Park, serving two retail spaces, an office lobby and a residential lobby. Six others are proposed along Woodward to serve Hunter House, two retail spaces, the loading area and an egress to the residential and office entries. Lastly, on Hamilton Row there is one pedestrian access via stairwell.

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 Engineering Department has reviewed the plans dated November 19, 2019, for the above-referenced project and offer the following comments:

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 Avenue frontage of the site. The developer will be then encouraged to construct their own building connection to this new section of public water main.
 - 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. 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;

3. There is no information on the current plans indicating 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 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 Avenue. It is unclear at this time how these issues will be addressed;
4. As you may be aware, the City is planning to convert Park Street to two-way traffic as a part of the reconstruction of Maple Road in this immediate area, currently planned for construction in 2020. The following must be considered:
 - a. If for some reason the City's construction plans for Maple Road are postponed such that this building project is opening in advance of the Maple Road project completion, then the owner of the building project will be expected to implement the changes to Park Street and the Maple Road intersection as a part of their project, and fund such changes accordingly.
 - b. The site plan must indicate the pavement markings proposed for Park Street once it is designed for two-way traffic. While on-street parking is planned for the easterly portion of northbound lane, the southern most space(s) may not be practical as currently illustrate on the plans without modifications or possibly elimination of one or two spaces (due to a possible conflict with the northbound turning movement);
5. It does not appear that the number and spacing of the proposed streetlights meets the City's Standards, specifically along Park Street and Hamilton Row;
6. Relative to the sidewalk/streetscape design:
 - a. The ADA crossing at Park Street and Maple (north side) has been slightly modified for the upcoming Maple Road project. The applicant should contact the Engineering Department for the current proposed alignment;
 - b. The proposed jointing pattern is problematic especially in the southwest corner of the site (too many small angled sections of sidewalk);
 - c. 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 Department 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.

All comments from the previous review remain unchanged. However, in the current submittal it appears that plan sheet L1 (dated 5/11/19) in the current submittal is not the latest plan sheet (revisions were made 11/19/19).

6.2 Department of Public Services – The DPS will provide comments before the meeting on April 22, 2020.

6.3 Fire Department – The Fire Department provided the following comments:

- This building shall meet all high rise requirements for fire codes, and life safety codes. MBC 2015, IFC 2015.
- This building shall be fully protected with a fire suppression system. NFPA 13 (2013).
- The fire protection water supply shall be a minimum of 6 inches.
- This building shall have a full, monitored fire alarm system. NFPA 72 (2013).
- The exterior balconies, and the rooftop terrace will require occupant notification devices.
- The exterior balconies, and the rooftop terrace will require fire suppression if any BBQ's, fire features, or other ignition sources are present, for any areas that have an overhang, or covered top, of 2 feet or more.
- Any fire pump installed in the building shall have an alternative power supply (generator).
- The rooftop terrace shall have a minimum of two paths of egress, proper markings, emergency lighting, and adhere to the required travel distances.
- Submitted floor plans shall include calculated egress travel distances for all areas of the building, including rooftop terrace.
- Once the project is underway, and reaches 40 feet in height, a temporary or permanent stairwell will need to be in place and fully operational.
- Once the project is underway, and reaches 40 feet in height, a temporary or permanent fire suppression standpipe will need to be installed and fully operational.
- The building will meet all emergency responder radio requirements. An evaluation of the radio signal strength will be conducted when the building is substantially complete. If radio signal strength is found to be below the minimum requirements, a Bi-Directional Antenna system shall be installed.

6.4 Police Department – **The Police Department is concerned about parking.**

6.5 Building Division – The Building Department previously 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:

- No apparent building code concerns at this stage.

The previous comments from the Building Department are still applicable.

7.0 Design Review

The proposed building façade will contain elements of brick, Travertine Stone, limestone, metal paneling, steel and clear glazing. The elevation plans show there will be at least one sign for the Hunter House facility, although each of the retail spaces are likely to have their own identification signs as well. 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.** A brief review of potential issues is noted below.

The applicant has submitted glazing calculations for the proposed development, which are as follows:

ELEVATION	MATERIAL AREA (SQ. FT.)	
	SOLID	GLASS
EAST (1' – 8')	565	1,325
% OF TOTAL	29.9%	70.1%
REQUIRED %	30% MAX	70% MIN
EAST (UPPER)	10,672	5,588
% OF TOTAL	65.6%	34.4%
REQUIRED %	65% MIN	35% MAX
WEST (1' – 8')	525	1,318
% OF TOTAL	29.6%	70.4%
REQUIRED %	30% MAX	70% MIN
WEST (UPPER)	10,629	5,418
% OF TOTAL	66.3%	33.7%
REQUIRED %	65% MIN	35% MAX
SOUTH (1' – 8')	190	468
% OF TOTAL	28.9%	71.1%
REQUIRED %	30% MAX	70% MIN
SOUTH (UPPER)	3,464	1,864
% OF TOTAL	65%	35%
REQUIRED %	65% MIN	35% MAX
NORTH (1' – 8')	193	465
% OF TOTAL	29.4%	70.6%

REQUIRED %	30% MAX	70% MIN
NORTH (UPPER)	3,600	1,600
% OF TOTAL	69.4%	30.6%
REQUIRED %	65% MIN	35% MAX

All glazing requirements have been met with the exception of the calculation provided for the upper portion of the south elevation (shaded in blue above) which misses the requirements by one percent. The applicant must submit glazing calculations that meet the ordinance, or obtain a variance from the Board of Zoning Appeals. All glazing requirements have now been met. However, the applicant should revise the plans to show the correct elevation on each chart on pages A.202 and A.203.

Another item of note is that the proposed building extends onto City property. The building itself is proposed below, on and over the City parcel at the northwest corner of this block. **The applicant will be required to enter into a lease agreement with the City for the use of this property.** In addition, the proposed underground parking levels also extend past the northern, southern and western property lines. **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.**

Finally, metal entry canopies at the southeast corner of the building that wrap around both the Maple and Woodward elevations project 2' into the City's right-of-way. In accordance with the recent changes to the projection standards, **the Planning Board is authorized to approve up to a 2' projection as part of the Final Site Plan Review process.**

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, Travertine Stone and limestone, and provides several distinct architectural features that are appropriate for its location as a terminating vista.

8.0 Approval Criteria

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

- (1) The location, size and height of the building, walls and fences shall be such that there is adequate landscaped open space so as to provide light, air and access to the persons occupying the structure.

- (2) The location, size and height of the building, walls and fences shall be such that there will be no interference with adequate light, air and access to adjacent lands and buildings.
- (3) The location, size and height of the building, walls and fences shall be such that they will not hinder the reasonable development of adjoining property and not diminish the value thereof.
- (4) The site plan, and its relation to streets, driveways and sidewalks, shall be such as to not interfere with or be hazardous to vehicular and pedestrian traffic.
- (5) The proposed development will be compatible with other uses and buildings in the neighborhood and will not be contrary to the spirit and purpose of this chapter.
- (6) The location, shape and size of required landscaped open space is such as to provide adequate open space for the benefit of the inhabitants of the building and the surrounding neighborhood.

9.0 Recommendation

Based on a review of the site plan revisions submitted, the Planning Division recommends that the Planning Board **APPROVE** the Revised Preliminary Site Plan for 35001 & 35075 Woodward – The Maple – with the following conditions:

- 1) Submit specification sheets on all of the proposed rooftop units and material/dimensional information on the screen wall to ensure full screening;
- 2) Revise the streetscape plans to meet all City requirements with regards to street lighting, furnishings and sidewalks;
- 3) 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;
- 4) Submit a photometric plan and specifications on all proposed lighting and materials, along with material samples at Final Site Plan and Design.
- 5) Work with the City to negotiate a lease for the use of City property below, at and above grade;
- 6) The Planning Board approves of the 2' projection into the right-of-way for the entry canopy at the corner of Maple and Woodward; and
- 7) Comply with the requests of all City Departments.

10.0 Sample Motion Language

Motion to **APPROVE** the Revised Preliminary Site Plan for 35001 & 35075 Woodward – The Maple – with the following conditions:

- 1) Submit specification sheets on all of the proposed rooftop units and material/dimensional information on the screen wall to ensure full

- screening;
- 2) Revise the streetscape plans to meet all City requirements with regards to street lighting, furnishings and sidewalks;
 - 3) 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;
 - 4) Submit a photometric plan and specifications on all proposed lighting and materials, along with material samples at Final Site Plan and Design.
 - 5) Work with the City to negotiate a lease for the use of City property below, at and above grade;
 - 6) The Planning Board approves of the 2' projection into the right-of-way for the entry canopy at the corner of Maple and Woodward; and
 - 7) Comply with the requests of all City Departments.

OR

Motion to **POSTPONE** the Preliminary Site Plan for 35001 & 35075 Woodward – The Maple – pending receipt of the following:

- 1) Submit specification sheets on all of the proposed rooftop units and material/dimensional information on the screen wall to ensure full screening;
- 2) Revise the streetscape plans to meet all City requirements with regards to street lighting, furnishings and sidewalks;
- 3) 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;
- 4) Submit a photometric plan and specifications on all proposed lighting and materials, along with material samples at Final Site Plan and Design.
- 5) Submit glazing calculations that meet the ordinance, or obtain a variance from the Board of Zoning Appeals for the upper South Elevation;
- 6) Work with the City to negotiate a lease for the use of City property below, at and above grade;
- 7) The Planning Board approves of the 2' projection into the right-of-way for the entry canopy at the corner of Maple and Woodward; and
- 8) 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. _____

**Planning Board Minutes
January 9, 2019**

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

**1. 35001 Woodward Ave. (Hunter House and vacant parking lot)
Request for approval of new five-story mixed use building with
hotel, retail and residential uses (postponed from December 12, 2018)**

The Chairman explained the CIS is an opportunity for the developer to provide answers to questions that help the Planning Board to understand how the proposed development might impact the community. That is something the board would either accept, decline, or postpone. The Preliminary Site Plan is a separate approval. It is the first step that is needed for the applicant to move forward with the project.

Ms. Ecker clarified that the subject site has a total land area of 0.5 acres which is made up of three parcels, 35001 Woodward Ave., 35075 Woodward Ave. and a surface parking lot that is owned by the City. The sites along Woodward Ave. are owned by Select Commercial Assets Hospitality, LLC. The owner of that property is Dr. Guyare, who is the applicant tonight and who has the right to seek approval for development on the property containing both sites. As part of his request he is asking that the City consider allowing him to develop a piece of City property.

Whenever someone is seeking to use City property they also need to enter into a Lease Agreement with the City. The applicant is proposing to continue to use the City parcel that currently is rented out for parking. They are also looking to lease some property in the right-of-way from the City.

CIS

Ms. Ecker recalled from the December meeting that main thing that was outstanding was with regard to the traffic study. The City's Traffic Consultant, F&V, had not had a chance to fully review all of the traffic information. At this time the City has a letter dated January 4 from F&V indicating they would recommend that the Planning Board accept the Traffic Study with the condition that a detailed special event operations plan be completed prior to obtaining a Certificate of Occupancy for the building. That would ensure that the hotel will have enough valets and enough time to take the cars over to a parking structure so that they don't queue up too far on Park St. and spill onto Maple Rd. If they do that it causes congestion moving onto Woodward Ave.

In response to Mr. Boyle, Ms. Ecker advised that F&V would review and approve the special event operations plan and then it would be brought back to the Planning Board as an addendum to the CIS as an offshoot of the Traffic Impact Study. The valet stand also has to be approved through the City. Any use of City parking spaces needs to be reviewed and approved by the City Commission.

Mr. Koseck inquired whether the Traffic Consultant is confident that there is a valet plan that would work. It seems to him the two parking structures that would likely serve this development are often tapped out.

Ms. Kroll answered that was one of her concerns. The Peabody and Park St. garages have been at capacity during the middle of the day. So if there was a banquet that occurred during the middle of the day there would probably be some issues. In that case she would want the hotel to outline where they propose to park their vehicles if the garages are full. For an evening event the two garages have plenty of capacity. In addition, the amount of time it takes for a valet to park a car needs to be documented in the special event plan. If they are not able to meet the plan then there is a code enforcement issue. There are only three queue spaces, so during a special event the hotel may want to ~~bag~~ **rent** the spaces on the north end of Park for queuing of vehicles.

Responding to Mr. Williams, Ms. Ecker established that the traffic signal currently located at Park / Maple Rd. / Peabody will stay but there will be changes made to the signal timing along with a signal for pedestrians as they cross Park. Maple Rd. traffic west of Peabody / Park is being reduced to a single lane.

It was discussed and Ms. Ecker affirmed that any contractual issues that the operator of the Hunter House and the owner of the land may have between themselves is a private civil matter and is not for this board or the City to adjudicate on, because there is established ownership of the property.

Mr. Kevin Biddison, Biddison Architecture, 320 Martin St. said they are working on operational procedures for queuing, such as hiring additional valets. They will do their best to keep the traffic and queuing out of the intersection. It has been noted that the underground parking that would extend out into the right-of-way might be in conflict with electrical conduits and they are reviewing that with the City. If there is an issue with the utility it is something they will pull back on, but if it is a small item it would be a monetary thing.

The proposed parking spaces that are outlined to service the new Hunter House all meet the 180 sq. ft. requirement. Mr. Biddison explained how deliveries and trash will be handled. The banquet room might accommodate 50 to 60 people at the most, as it is not a huge area. Mr. Boyle said in his opinion that isn't a particularly large space. That is an important issue in order to understand the community impact of the hotel.

Mr. Williams asked Ms. Kroll to comment on existing traffic on Maple Rd. at peak times, leaving the hotel. Ms. Kroll said that presently traffic going westbound on Maple Rd. does not back up into Woodward Ave. Eastbound, it does back up. Mr. Williams did not agree with that analysis because the traffic backs up between Old Woodward Ave. and Peabody, as the lights are not coordinated. The stacking at Peabody and Park is fine but the traffic moving west past Park and past Peabody stacks up. Ms. Kroll said that when an evaluation study for the hotel was made, they evaluated the future conditions with the two-way operations on Park.

Mr. Koseck questioned if there are any tweaks that Ms. Kroll would recommend that would make a better development from a traffic impact standpoint. Ms. Kroll replied her biggest concern is that they really only have space for three vehicles to queue up. During peak times that may not be enough storage space. Ideally if the hotel was located on the Hunter House corner, it would provide better queuing. Further responding to Mr. Koseck, she said that people going south on Woodward Ave. turning onto Hamilton and making a left turn into the Hunter House site is a condition that currently exists. Ms. Ecker pointed out there is no interior connection to get to the hotel site from the Hunter House parking lot. Mr. Koseck thought that generally people would not know that and may turn in to park there.

Chairman Clein opened up discussion from members of the public at 8:05 p.m.

Mr. Kelly Cobb said he is one of the owners of Hunter House along with his mother, Susan, who was also present. Hunter House is one of the oldest businesses in Birmingham as they have been in operation for 67 years. Some of their issues are not in the Planning Board's purview but he highlighted a couple that he thinks are.

To establish background, Mr. Cobb explained he transferred the property to the applicant, and as a part of that transfer there was a purchase agreement outlining certain rights that he retained. That agreement has not been furnished to the City as it is not necessarily within their purview. The agreement gives Hunter House sole discretion and approval rights over what their space looks like and the municipal lot. They have not approved the space, as it was submitted to the City without their knowledge.

Ms. Ecker clarified that regardless of what the agreement says, Hunter House does not have sole discretion over what happens on the City's property.

Mr. Cobb went on to say they have concerns and questions about parking, the same as the City has with traffic. He would appreciate if the City would contract with F&V to come up with a better study than the one proposed. The study assumes that Hunter House needs only 14 spots. Not accounted for in the study is that it would be fair to presume that Hunter House would need to use another 15 spaces or so in surrounding parking decks. Also not accounted for in the study is the Peabody development. The Peabody assumed a shortage of 57 spots between the Park and the Peabody decks. Add that to the 15 that Hunter House will need and that comes to a deficiency of 87 parking spots.

This raises concerns for them because they already have parking problems. People park in their lot and walk to Downtown. They are also concerned about traffic circulation. Their customers already loop around until they can get a spot to pick up the food from their phone in orders. That activity will increase if their parking shrinks and there is a severe deficiency within the broader area.

There is a statement in the CIS that it appears the Hunter House is not historic, as they have not been registered historic. They believe that they are, and he raised that as a concern for them.

Ms. Ecker clarified on the historic issue that the site or the building is not designated historic within the City of Birmingham, nor have they received an application from either the current or previous owners to consider designating it as such.

Mr. Koseck inquired how Mr. Cobb would change the proposal to meet his needs. Mr. Cobb indicated they have certain minimums of what they are guaranteed in the space, certain discretion on the shape of their building, how the layout would be, and all of those things. They are working with Mr. Biddison to find a solution to that and have not reached agreement over what the space looks like.

Mr. David Hart said he represents Hunter House. He stated the agreement between the two parties is part of the public record at the Oakland County Register of Deeds. It has been recorded since 2007 and perfects the interest of Hunter House.

Ms. Theresa Pelovocian from Bloomfield Hills said she believes that Hunter House is very special to everyone. People can remember countless times going to the Hunter House with their sons or daughters to celebrate some accomplishment. On another note, her daughter has been employed by Hunter House for four years and it has been a phenomenal place for her to work. The kids make good money, pick up great work ethics, and learn to handle themselves with the public. Hunter House is a great place for the community to go.

Motion by Mr. Williams

Seconded by Mr. Koseck to receive and file an e-mail against the project and supporting Hunter House dated January 2019.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Ramin

Mr. Williams announced that he has come to a different conclusion than the Planning Dept. or than F&V. There are a couple of concerns in their report that should be highlighted:

- Based on the parking analysis there is no capacity in either the Park or Peabody parking garage during the day;
- Any vehicle queues that extend beyond a four vehicle storage area will impact the operations of Maple Rd. and potentially the intersection at Woodward Ave.

Missing from the analysis is the single lane traffic heading west on Maple Rd. to Old Woodward Ave. which backs up frequently to beyond Peabody during busy hours. Therefore Mr. Williams said he is not inclined to approve the CIS or the project with this many unanswered traffic and parking issues. Further, he is not satisfied that the issues that the chairman highlighted at the last meeting have been answered adequately.

This situation is exacerbated because the City has to recognize the difficulties of building on this site, most importantly the traffic in this very confined area.

Mr. Koseck observed that anything that is developed on this site will bring in more traffic and have an enormous impact. He was curious how a hotel fits.

Mr. Share observed he is not hearing that the Traffic Consultant needs to do any more work. Secondly, he has never seen in a CIS the suggested condition that the applicant provide a City-approved special event operations plan prior to obtaining a Certificate of Occupancy. He would accept the CIS without that suggested condition but he has some extremely serious reservations about a site plan for this project because of the danger to public safety that the special event use and the valet operation create.

Mr. Boyle was in favor of deleting the requirement in the CIS for a special event operations plan. The appropriate place for that is in the Site Plan Review, along with concerns about traffic movements. He explained that by accepting the CIS it does not mean that the Planning Board is tacitly accepting this development. Chairman Clein added that he also doesn't want it inferred that by accepting the CIS the board is accepting the Traffic Study because they are clearly not.

Mr. Jeffares said that the Master Plan Downtown calls for a sister building to the Greenleaf Trust building on this site. If they were to develop an office building there would be the condition of many people leaving at the exact same time, all trying to get out onto Woodward Ave. If that is the alternative, to him that use would be far worse.

Motion by Mr. Boyle

Seconded by Mr. Jeffares 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 a City-approved special event operations plan at the same time as completing the Final Site Plan Review process;**
- 2) Applicant must provide mitigation strategies for control of noise vibration and dust;**
- 3) Applicant will be required to bury all utilities on the site;**
- 4) Applicant must distinguish an area for the separation and storage of recycling;**
- 5) Applicant must conform to the streetscape design as outlined in the new E. Maple Rd. streetscape project;**
- 6) Applicant provide information on all life safety issues and Fire Dept. approval, as well as details on the proposed security system provided to and approved by the Police Dept.; and**
- 7) Applicant must address the concerns of all City Depts.**

Amended by Mr. Share

And accepted by the makers of the motion to replace 1) as follows: Applicant must submit for approval by the Planning Board at the same time as completing the Final Site Plan Application process a special event operations

plan approved by the City Police Dept. after consultation with the City's Traffic Consultant.

No one from the public wished to comment on the motion at 8:40 p.m.

Motion carried, 6-1.

ROLLCALL VOTE

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

Nays: Williams

Absent: Ramin

The chairman noted that a number of issues have been raised during the CIS process that make him uncomfortable with moving forward with the Preliminary Site Plan this evening.

Mr. Williams agreed. The Planning Board has pointed out the unresolved issues that need to be addressed. Additionally, he feels that the Parking Assessment District with its impact on this particular property requires City attention. However, this problem exists whether this or any other significant development goes through.

Mr. Jeffares commented that the amount of time required to get into a deck is significantly longer than it used to be because of the queuing. A valet would have to wait behind people who are having trouble getting through with their card.

Ms. Whipple-Boyce expressed her concerns:

- She would like to see an internal floor plan for the retail level in order to better understand how the banquet area will be used. She thinks a lot more than 60 people will be using that space and that has a direct impact on the queuing of vehicles that are arriving;
- She wondered if keeping the Hunter House building has ever been considered because it is such an iconic structure.

Mr. Boyle made a couple of points:

- The board should know what the City intends to do in that area. He wanted to see the plan for turning Park into two-way, what the parking will be, and how long cars are going to wait;
- He is frustrated that so much emphasis is being placed on parking and designing around parking. This is not how it should be done. Also, the Hunter House states they need parking, yet they take four spaces in their lot to park their vans. Why not shift them farther away and release the parking spaces? They could also make arrangements to shuttle people back and forth for an event and include that in the plan.

Mr. Share observed that on Page 3 of the developer's December 31 traffic report, it states that the banquet facility will have a capacity of 150 to 200 guests.

Mr. Koseck did not think the site plan goes far enough beyond the limits of the site. His further thoughts were:

- Whether turning Park into a two-way street is still the right thing today just because it was someone's idea 20 years ago in the Downtown 2016 Master Plan. If he is going south on Park, where is he going;
- The 20 ft. parking zone will need a variance, but also it is a planning issue and he will have to be convinced that it is good planning.

Motion by Mr. Share

Seconded by Mr. Williams to postpone the Preliminary Site Plan for 35001 Woodward Ave. (Hunter House and vacant parking lot) to February 27, 2019.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Ramin

**Planning Board Minutes
May 22, 2019**

E. Request for Preliminary Site Plan Review

1. 35001 Woodward – The Maple – Request for approval of a Preliminary Site Plan to permit the construction of a five story hotel building (Postponed from February 27, 2019).

Planning Director Ecker presented the item.

Planning Director Ecker confirmed:

- City Engineer O'Meara has said the applicant's proposed plans for Park Street would not interfere with the City's plans for Park Street.
- The applicant has amended their plans to make them consistent with the City's plans for Maple.
- The applicant is required to have three loading spaces based on use and square footage of building. The spaces are required to be 40 feet long, 12 feet wide, and 14 feet in height.
- The traffic consultant has reviewed the most current plans. The three parking spaces further to the north have also been removed so the hotel may stack cars there if necessary.

Mr. Williams noted that the three spaces to the north which were removed were in front of retail establishments.

Kevin Biddison, architect, told the PB that he had met with the City's Engineering and Planning Departments multiple times in the past month and that the project had undergone a number of adjustments in order to come further into alignment with the City's requirements. He continued:

- The double-banked loading zone would allow the applicant to stack up to 10 cars if needed. Such circumstances would only be likely to occur in the daytime hours.
- The garage door width will be reduced to 25 feet from 30 feet as required.
- The applicant would be more than willing to add the additional tree necessary if the arborist signs off on it. The applicant will also add the additional street lamp required.
- Additional lighting will be added around the building once the building is built and the first round of lighting is installed to illuminate any remaining darker areas.
- The vertical aluminum fins with LED lighting at Maple and Park and Maple and Woodward are being installed to provide visual interest and are cut back into the stone so they will not project into the right-of-way.

Mr. Williams suggested adding the operations plan with the City onto the list of conditions for preliminary. He also cited his previous 'No' vote on the CIS due to safety

concerns, and commended the applicant for their efforts towards making the project safer through improved traffic flow and valet parking.

Mr. Koseck agreed with Mr. Williams, saying the applicant had come a long way in terms of improvements made to safety and traffic flow. He also said the hotel would likely need vestibules within the building, but that as long as they were interior it would not affect the site plan.

In reply to a query by Mr. Koseck, Mr. Biddison said the parking spaces on Hamilton are part of the conversation with the Hunter House Group. In addition, there are stairs on the Hamilton side of the building which would allow Hunter House patrons access to some of the additional spaces below grade.

Mr. Koseck said the retention of the 1½ foot wide curbed median on Park Street was a strange decision.

Mr. Biddison said the curb was being maintained at the request of City Engineer O'Meara in order to help drainage along the street. He said he anticipated the conversation with the Engineering Department regarding the curb would continue.

Mr. Boyle acknowledged that with all the competing interests on this site, nothing was going to be perfect but that the applicant's efforts had brought them much closer.

In response to Mr. Boyle, Mr. Biddison explained the rooftop would have seating and a rooftop bar.

Planning Director Ecker advised Mr. Biddison that within the overlay a commercial use could not be located above a residential use. She suggested the rooftop could be used by the residential occupants of the fifth floor of the building.

Mr. Biddison stated that both elevators would be available for resident use in the building. He confirmed a key system would be in use, allowing only residents to access residential floors.

Chairman Clein asked that the applicant confirm the width of the sidewalk in front of Greenleaf Trust and design their sidewalk to match that width.

Mr. Biddison said the five feet sidewalk proposed is what the Engineering Department instructed the applicant to provide.

Mr. Williams said the elevator usage should be reconsidered by the City from a security standpoint since residents may not know all their neighbors, and a non-resident could easily follow a resident out onto a residential floor.

Chairman Clein said he was not as concerned about a potential security issue, and advised that the applicant work the issue out within their own operations and with the City's Building Department. He continued:

- He appreciated the applicant's continued efforts to meet City requirements.

- Seven stacking spaces on Park Street seemed like too many to reserve for the purpose. It would require the City give up too much pedestrian and public space. He said he was not comfortable with it, and that while it might not yield a no vote from him this evening, he would advise the layout be reconsidered for the final.
- There is no reason one line of valet cars should be insufficient, especially with the three extra spaces being made available to the north.
- For the final review he would want to know that the applicant and the City's Engineering Department are creating good design for these conditions, and not just what works.
- This should look like a valet operation, which would take up little more space than parallel parking, instead of a double-stack for cars.

Mr. Williams said he agreed with Chairman Clein's concerns, but that he would also not want to see cars unable to move on Maple. He said the City might have to change some of its plans if it wants to allow reasonable development on this site.

Mr. Boyle recommended the applicant discuss the possibility of renting some of the space within the small parking lot near the hotel on Park Street, which would reduce some of the need to have extra street space for stacking cars.

Chairman Clein noted the applicant would have to speak to the City about its lease of the City's property, so it should also raise the question of renting that parking lot space per Mr. Boyle's recommendation.

Mr. Biddison said the applicant would be open to the conversation.

Mr. Koseck said he also believed it would be a good idea to explore with the City.

Chairman Clein recommended adding a letter dated May 20, 2019 from Kelly William Cobb, Vice-President of Hunter House Hamburgers to the official record. He summarized the letter as notifying the PB of the applicant's contractual obligations to Hunter House as related to the development. Noting that the issues raised by the letter were not in the PB's purview, Chairman Clein said it was still helpful to understand where the negotiations stand and extended his appreciation for the letter to Mr. Cobb.

Motion by Mr. Williams

Seconded by Mr. Share to receive and file the letter dated May 20, 2019 from Kelly William Cobb into the official record.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Mike Kopmeyer, 1351 Bennaville Ave, said he would like to see more green space in this plan. He said he would like to see some amount of the space set aside for a public park,

and that in a perfect world Birmingham would not have a four or five story building on that lot. He said as a compromise it would be good if there could be areas shaded by trees which are public and allow for people to gather. He also said he endorsed Chairman Clein's concerns with the planned double-stacked space on Park Street.

Mr. Kopmeyer continued that the frontage along Woodward seemed cold and not conducive to pedestrian usage and activity. He suggested that awnings or more masonry or other options could make that frontage seem more human-scale and approachable.

Mr. Boyle commended the applicant and architect on all the work they have done. He said he would like the applicant to review the stacking plans on Park Street. He added that, along the lines of Mr. Kopmeyer's comments, Mr. Boyle was keen to see the proposed building materials at the final site plan.

Mr. Williams suggested it would be prudent for Chairman Clein to participate in some of the operation discussions between the applicant and the City since he could best represent the PB's concerns about traffic flow and parking. He noted that while Planning Director Ecker is a capable intermediary between the PB and the applicant, the PB's recommendations should be directly conveyed by Chairman Clein due to the specificity of the Board's concerns.

Mr. Share said he would also dislike the double-stacking if not for the extreme public safety risks that could result should traffic not be managed efficiently at this intersection. He noted that the hotel could handle up to 120 vehicles for events, and that a dangerous situation would likely compound very quickly if hotel traffic is not adequately controlled. He said he would be satisfied if the Engineering Department and the City's traffic consultant confirmed that high-volume hotel traffic could be managed with single-stacking and a healthy margin of safety. Otherwise, he said double-stacking is a reasonable, although not ideal, condition to accept.

Mr. Boyle recommended the applicant consider different options for signage as it moves towards its Final Site Plan Review, specifying that it should avoid the signage issue that the Greenleaf Trust building has.

Motion by Mr. Boyle

Seconded by Mr. Koseck to approve the Preliminary Site Plan for 35001 & 35075 Woodward – The Maple – with the following conditions: 1) The applicant must clarify which refuse areas the two proposed retail uses are permitted to use, and the accessibility of such; 2) Submit specification sheets for the proposed ground mounted and rooftop mechanical units to ensure full screening; 3) Add the correct number of street trees to each street frontage, or obtain a waiver from the Staff Arborist; 4) The applicant must provide the correct number of street lights and provide regular spacing of such by Final Site Plan Review. 5) Submit a photometric plan and specifications on all proposed lighting; 5) The applicant must reduce the width of the garage entry on the west elevation or obtain a variance from the Board of Zoning Appeals; 6) Submit material samples, colors, and specifications as well as details on

any proposed signage; 7) Applicant comply with the requests of all City Departments; 8) Applicant obtain approval of a lease agreement by the City Commission for all projections and /or encroachments on City property; 9) Applicant revise plan sheets as necessary to ensure all sheets are consistent and show the required property lines and clearly note all projections / encroachments across property lines; and 10) At Final Site Plan Review, the applicant must provide the Special Event Operations Plan for the said hotel.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

**Planning Board Minutes
January 22, 2020**

E. Community Impact Study Review and Preliminary Site Plan Review

- 1. 35001 Woodward (Parking lots & Hunter House)** - Revised Community Impact Study Review to allow construction of a new 5 story mixed use building containing retail, office and residential uses

Planning Director Ecker presented the item. She confirmed that 35001 Woodward is located in the Parking Assessment District (PAD).

Motion by Mr. Williams

Seconded by Mr. Share to accept for filing the memorandum from Assistant City Engineer Austin Fletcher dated January 22, 2020.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Kevin Biddison, architect for the project, commented on the fact that the 11 extra parking spaces could be used by the general public because the stairway and elevator accessing the residential areas of the building would be keycoded to prevent unauthorized entry.

Kelly Cobb, owner of Hunter House Hamburgers, stated that the wait time on Hamilton will increase if the number of parking spots available to Hunter House decreases.

Mr. Williams explained he had previously voted against the Community Impact Study (CIS) for this project due to concerns regarding potential congestion at Park and Maple stemming from an entrance to the site being located too close to Maple. He said that the current CIS corrected that issue.

Motion by Mr. Share

Seconded by Mr. Williams to accept the CIS as provided for the proposed development at 35001 and 35075 Woodward – with the following conditions:

- 1) Provide copies of Phase I and II Environmental Assessments;**
- 2) Applicant must provide mitigation strategies for control of noise vibration and dust during construction;**
- 3) Applicant will be required to bury all utilities on the site;**
- 4) Applicant must distinguish an area for the separation and storage of recycling;**
- 5) Applicant must conform to the streetscape design as outlined in the new E. Maple streetscape project; and,**
- 6) 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.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Mr. Biddison explained the trash receptacles would be stored and obscured behind the wall meaning they would only be visible to stationary observers, looking into the building at a certain angle, while the glass doors are rolled up to allow entry or egress.

Ms. Whipple-Boyce shared concern regarding the fact that if one were to enter the garage in their vehicle and discover that the cluster of three parking spaces allotted to Hunter House were full, one would have to either reverse onto Hamilton or execute a multi-point turn to exit back onto the street.

Mr. Share and Mr. Koseck shared concern regarding the parking layout on the site as well.

Mr. Biddison stated that the eleven or twelve parking spaces being discussed as public spaces could also be executive or residential spaces, meaning they could be private instead and tied to an office or retail lease.

Mr. Cobb spoke, saying:

- Hunter House employees will continue parking in the parking deck, for which they are reimbursed, as opposed to parking in the three parking spaces in the garage off Hamilton.
- According to the deed the developer is required to provide Hunter House with 14 parking spaces which shall also be located on Hunter House property.
- If he were to enter the three-space section in the garage in his truck and discover those spots full, he would not be able to execute a turn that would allow him to leave given the insufficient space.
- There have been a number of deed violations on the part of the developer in this process including not seeking Mr. Cobb's approval of plans for the site before the plans' submission to the City, not seeking Mr. Cobb's approval for planning to build a non-hotel development, and proposing to leave a space for Hunter House that Mr. Cobb says would be unusable for operating the restaurant.
- He proposed multiple compromises to the developer which would allow Hunter House to continue and for a development to be built on the lot, all of which were passed on by the developer.
- If the developer and the Hunter House cannot reach an understanding, Mr. Cobb would pursue legal action. He said that legal action could result in a delay of the development for seven to ten years. Mr. Cobb said that the City, the developer, and himself should sit down together and try to reach an agreement amenable to all parties in order to avoid such a delay.

Chairman Clein said that in many respects he was in strong favor of the plan submitted for this site, including three stories of residential with units under 1,000 square feet, less reliance on office space, and well designed facades on most of the project. He continued that he sympathized with the Hunter House, which he said was being pulled from a park-and-go model to an urban center model. Chairman Clein said there were also aspects of the plan that gave him pause, including the functionality of the three parking space area in the garage and the Hunter House's charge that their space as laid out in these plans would be unusable. He acknowledged that it is not within the Board's purview to get involved in a dispute between two private parties. He stated that it is within the Board's purview to make sure all elements of the plans are functional and adhere to ordinance, however, and that he was unclear if the three parking space area off of Hamilton met those requirements.

Mr. Williams said he would not approve plans that include the three space parking area off of Hamilton because that layout creates more problems than it solves or propose a restaurant layout that would not comply with various laws, including health codes and ADA regulations. He concurred with the Chairman that the Board should not intervene in a matter between private parties, but knowing that the restaurant could not operate legally is a matter within the Board's purview.

Mr. Share also emphasized that the Board should not be involved in a dispute between two private parties. He said the Board has ruled on projects before that have resulted in legal action between two private parties subsequent to the approval. Mr. Share said he would consider moving forward on a preliminary site plan ~~under those~~ **despite these** circumstances, but that this particular site plan was deficient under Article 7, section 7.27 of the Zoning Ordinance in a couple of respects including the three parking space area off of Hamilton and the parking designated for the public off of Park Street. He said that the parking off of Park Street could become hazardous unless there was a traffic flow plan presented.

Mr. Koseck concurred with his colleagues' previous comments that the dispute between the Hunter House and the developer is not within the Board's purview. Continuing, he said that the plans are an improvement over previous plans submitted for the development, and that the building complies with ordinance. He stressed that the Board's only present obligation regarding this development was to ensure that residential parking would be included onsite. Mr. Koseck suggested that if the development included an egress across from the loading dock, a vehicle could move straight through the garage from Hamilton onto Park Street if it saw no free parking spaces in the three space area off of Hamilton. In that design, it could also turn into the three parking space area if there were a vacant space. This would avoid the need for either a vehicle reversal onto Hamilton or a multi-point turn in the case of full spaces. Mr. Koseck said he would approve the plans if that possibility were present.

Mr. Biddison confirmed that such a route through the garage would be possible. He stated he would need the owner to comment further on how the route would be designed.

Ms. Whipple-Boyce said that from a Board perspective the site should not include the

parking off of Hamilton because it is not required by ordinance and creates an unsafe situation. She said she understood the legal agreement between the developer and the Hunter House required 14 spaces, but that was not the Board's concern. She expressed great enthusiasm for the majority of the project in general, and frustration that the contention between the developer and the Hunter House was resulting in poor design in certain areas. She conceded that Mr. Koseck's proposal of being able to pass through from Hamilton onto Park would in theory solve the issue, but that the best outcome from a City perspective would be to eliminate the spaces off of Hamilton.

Mr. Emerine said he was also very enthusiastic about most aspects of the project with the exception of the issues with the parking off of Hamilton. He said he could not support the plans without a resolution to the Hamilton parking issue which could include Mr. Koseck's proposal of allowing entry off of Hamilton and egress onto Park.

Mr. Share said he would offer an editorial comment to the developer and the Hunter House, recommending that the parties actually speak to one another and resolve their issues.

Chairman Clein agreed, and said a future City Commission discussion of potential public land use by this development would prove very difficult if the issues between the Hunter House and the developer are not resolved.

Motion by Mr. Williams

Seconded by Mr. Koseck to schedule a special meeting of the Planning Board for the evening of February 27, 2020 at 7:30 p.m. to be held in the City Commission room.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Motion by Mr. Williams

Seconded by Mr. Share to postpone consideration of the preliminary site plan for 35001 Woodward to February 27, 2020.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

**Zoning Compliance Summary Sheet
Revised Preliminary 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: Approx. 0.5 acres (including City lot)
Proposed: Approx. 0.5 acres (including City lot)

Dwelling Units: Existing: 0 units
Proposed: 42 units

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 previously shown at 690 sq.ft., **unit sizes are not shown on the current submittal.**

The applicant will be required to verify that all residential units meet the minimum size requirements.

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:	56.3 ft.
Floor-Ceiling Height:	Required:	N/A
	Proposed:	N/A
Principal Ped. Entry:	Required:	On a frontage line
	Proposed:	Twelve entrances, 6 on Park Street frontage line (1 residential lobby, 1 office lobby, parking entry, 3 retail) and 4 principal pedestrian entries and 2 egress exits on Woodward frontage line and 1 egress exit on Hamilton
Absence of Bldg. Façade:	Required:	N/A
	Proposed:	N/A

Opening Width:	Required:	25 ft. maximum
	Proposed:	25 ft. on Park
Parking:	Required:	17 – 2 or less room units = 21 spaces 25 – 3 or more room units = 38 spaces Total Required: 59
	Proposed:	82 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:	None
Loading Area:	Required:	3 off-street loading spaces (40' x 12' and 14' in height)
	Proposed:	2 off-street loading spaces (39' x 10' by 14' in height).
		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:	Retail use along the entirety of the Maple frontage at the required depths
Screening:		
	<u>Parking:</u>	Required: 32 in. capped masonry screen wall
		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: Rooftop screening is 10.6 ft. in height, spec sheets on mechanical required at Final Site Plan Review.
	<u>Elect. Transformer:</u>	Required: Fully screened from public view
		Proposed: 5 ft. Junipers and 6 ft. Arborvitae

<u>Dumpster:</u>	Required:	6 ft. capped masonry screen wall
	Proposed:	All refuse areas are proposed within the building envelope and are screened by solid walls.

320 Martin Street Suite 10
Birmingham, Michigan 48009
t:248.554.9500
Contact Person: Kevin Biddison
e.mail: kb@biddison-ad.com

PROPOSED BUILDING FOR:

The Maple

PROJECT LOCATION:

35001 AND 35075 WOODWARD AVE.
BIRMINGHAM, MI 48009
ZONED: B-4 BUSINESS-RESIDENTIAL
OVERLAY ZONING DISTRICT: D-4

APPLICANT INFORMATION

HESHAM GAYAR
8469 WARWICK GROVE COURT,
GRAND BLANC, MI 48439

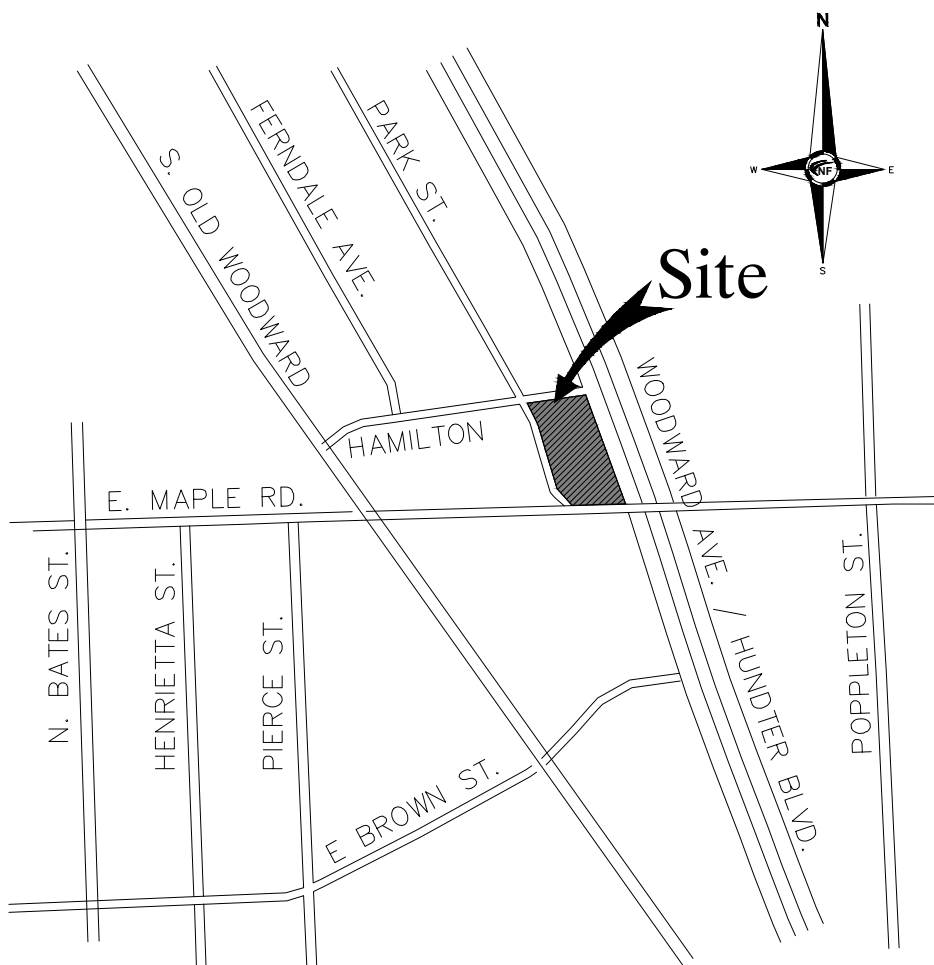
T. 810.338.3923
E. HESHAM.GAYER@GMAIL.COM

SHEET INDEX:

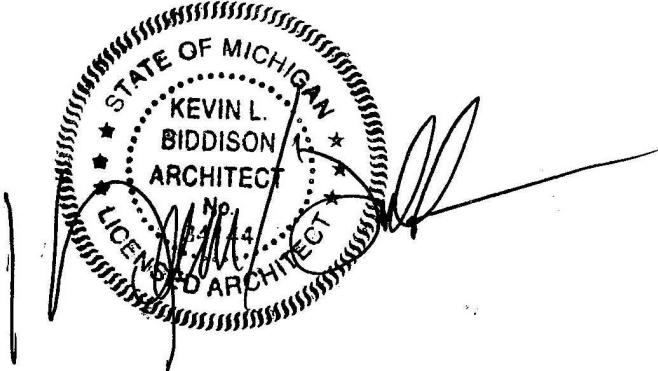
T.101	TITLE SHEET
SP-2 L-1	PRELIMINARY SITE PLAN LANDSCAPE PLAN
LL.100 LL.101	LOWER LEVEL 1 PARKING PLAN LOWER LEVEL 2 PARKING PLAN
A.101 A.102 A.103 A.104 A.105 A.106	FIRST FLOOR PLAN SECOND FLOOR PLAN THIRD FLOOR PLAN FOURTH FLOOR PLAN FIFTH FLOOR PLAN ROOF PLAN
A.201 A.202 A.203	EXTERIOR ELEVATION EXTERIOR ELEVATION EXTERIOR ELEVATION
A.301 A.302	EXTERIOR PERSPECTIVE IMAGES EXTERIOR PERSPECTIVE IMAGES

FIRE SUPPRESSION NOTE:
THE BUILDING WILL BE PROVIDED WITH A FULLY AUTOMATIC FIRE PROTECTION SPRINKLER SYSTEM INSTALLED (FIRE SUPPRESSION SYSTEM) - WORK WILL BE DESIGNED TO MEET M.B.C. REQUIREMENTS AND CITY OF BIRMINGHAM INSPECTION & PERMIT APPROVAL. FACTORY MUTUAL STANDARDS AND SPECIFICATIONS SHALL ALSO BE USED WHERE NOT OTHERWISE IN CONFLICT WITH LOCAL STANDARDS. SPRINKLER CONTRACTOR SHALL BE FULLY LICENSED AND BE RESPONSIBLE FOR PREPARATION OF ENGINEERED DRAWINGS. SUBMISSION OF DRAWINGS TO ALL LOCAL AND STATE AGENCIES FOR APPROVAL AND FOR COORDINATION OF REQUIREMENTS WITH OWNERS AND TENANTS INSURANCE CARRIER.

NOTE:
FIRE PROTECTION SYSTEM FOR THE BUILDING EQUAL TO: GROUND FLOOR - ORDINARY HAZARD AND FLOORS 2-5 LITE HAZARD (OFFICE AND RESIDENTIAL).N.F.P.A. NO. 13 CRITERIA AND SECTION 903.3.1.1 WITH ONE (1) 4" D.I. BUILDING SERVICE PROVIDED. TYPE 2A FIRE EXTINGUISHERS SHALL BE PROVIDED AND SPACED A MAX. OF 75' APART PER SECTION 906.1 OF THE 2012 INTERNATIONAL FIRE CODE AND / OR BY THE DIRECTION OF THE FIRE MARSHAL.



LOCATION MAP
SCALE: NOT TO SCALE



Consultants

Project data

GOVERNING CODES: 2015 MICHIGAN BUILDING CODE
2015 MICHIGAN PLUMBING CODE
2015 MICHIGAN MECHANICAL CODE
2015 MICHIGAN REHABILITATION CODE
2015 INTERNATIONAL FUEL GAS CODE
MICHIGAN ELECTRICAL CODE, 2014 N.E.C.
W/ PART 8 STATE AMENDMENTS
ICC/ANSI A117.1-2015 AND MICHIGAN
BARRIER FREE DESIGN LAW OF PUBLIC
ACT 1 OF 1966 AS AMENDED.
MICHIGAN UNIFORM ENERGY CODE RULES
PART 10 WITH ANSI/ASHRAE/IESNA
STANDARD 90.1-2015
2015 INTERNATIONAL FIRE CODE
NFPA 13 - 2010
NFPA 72 - 2010

BUILDING AREA: 101,970 SQFT
PARKING AREA: 48,732 SQFT
TOTAL BUILDING & PARKING AREA: 150,702 SQFT

BUILDING USE: M: MERCANTILE
B: BUSINESS OFFICE
R-2: RESIDENTIAL APARTMENT

TYPE OF CONSTRUCTION:

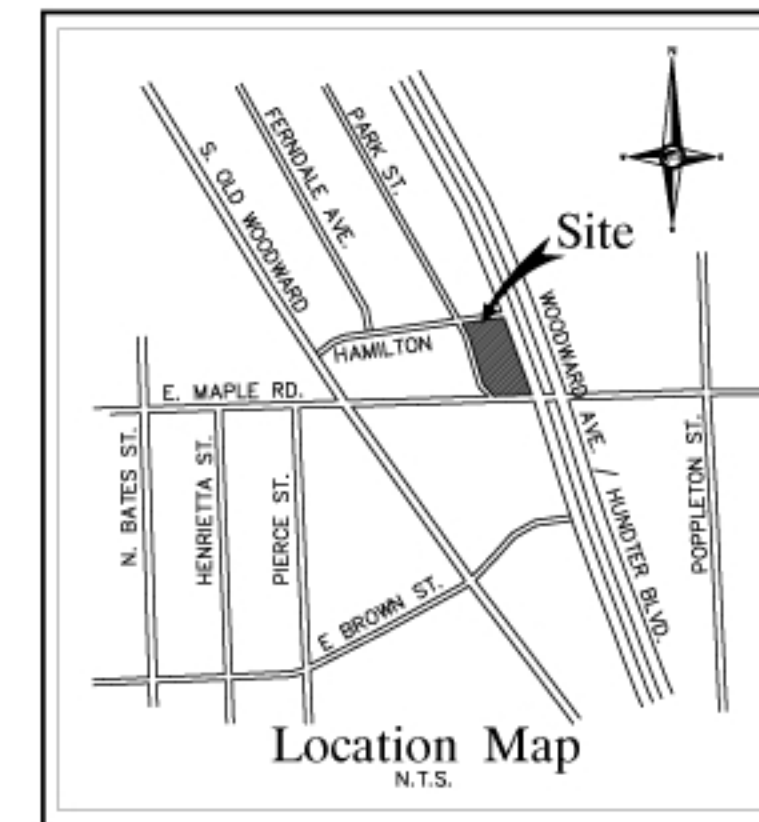
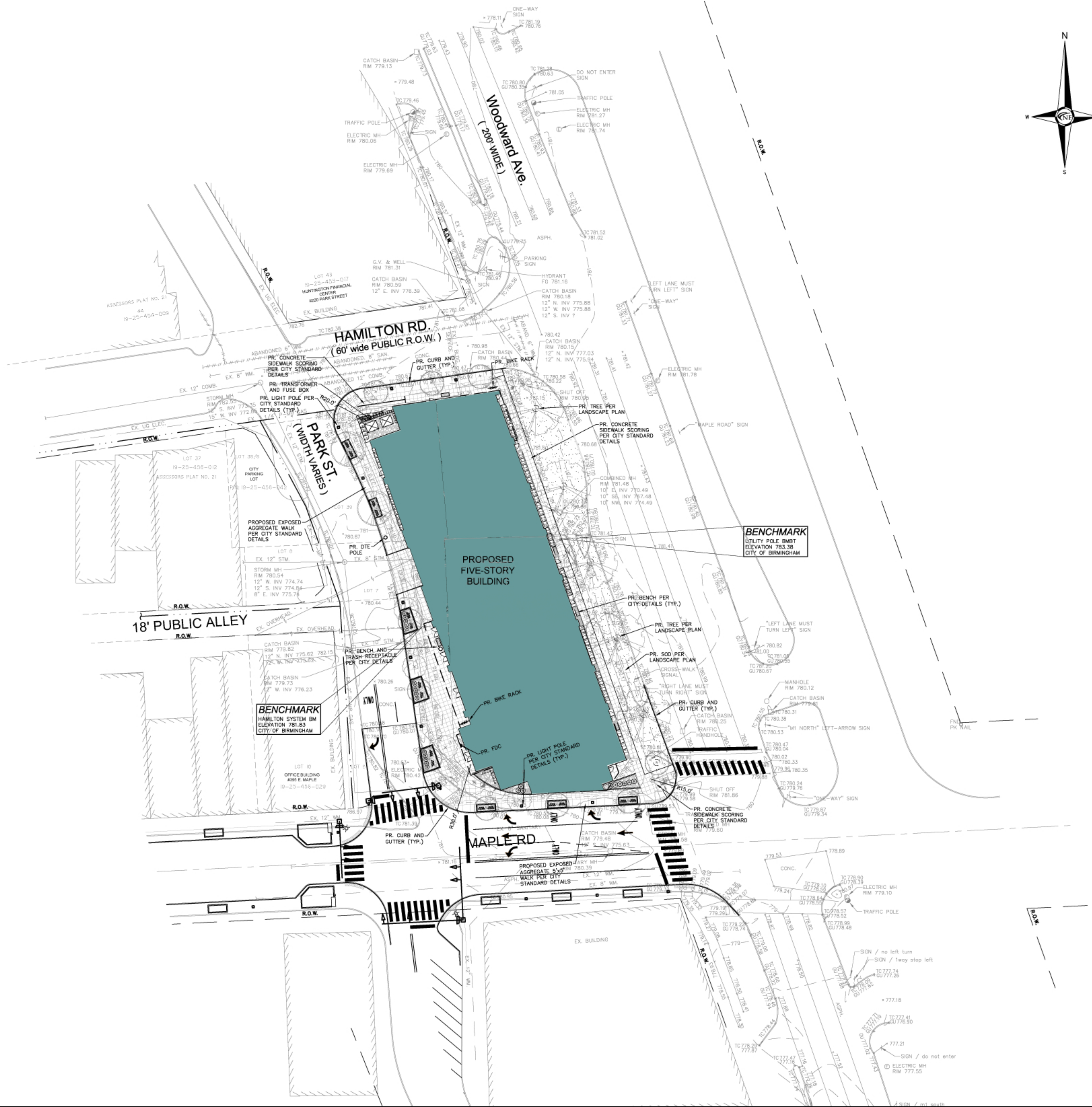
2015 MBC: TYPE IIA (PROTECTED)
NFPA 220: TYPE II-000

SITE PLAN REVIEW	03.29.18
SITE PLAN REVIEW	11.26.18
SITE PLAN REVISION	01.02.19
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SITE PLAN REVIEW	02.14.20

Project no.

THE MAPLE 1971.16

Sheet no.



NF ENGINEERS
CIVIL ENGINEERS
LAND SURVEYORS
LAND PLANNERS

NOWAK & FRAUS ENGINEERS
46777 WOODWARD AVE.
PONTIAC, MI 48342-5032
TEL. (248) 332-7931
FAX. (248) 332-8257

PROJECT
35001 & 35075 Woodward

CLIENT
Biddison Architecture
320 Martin, Suite 10
Birmingham, MI 48009

Contact: Kevin Biddison
Ph: (248) 554-9500

PROJECT LOCATION
Part of Section 25
T. 2 North, R. 10 East
City of Birmingham,
Oakland County, Michigan

SHEET
Preliminary Site Plan



PAVING LEGEND

PROPOSED CONCRETE PAVEMENT
PROPOSED ASPHALT PAVEMENT

LEGEND

MANHOLE
HYDRANT
GATE VALVE
CATCH BASIN
EX. R. Y. CATCH BASIN
EXISTING BURIED CABLES
OVERHEAD LINES
LIGHT POLE
SIGN
EXISTING GAS MAIN
PR. SANITARY SEWER
PR. WATER MAIN
PR. STORM SEWER
PR. R. Y. CATCH BASIN
PROPOSED LIGHT POLE
PR. TOP OF CURB ELEVATION
PR. GUTTER ELEVATION
PR. TOP OF WALK ELEVATION
PR. TOP OF PVMT. ELEVATION
FINISH GRADE ELEVATION

REVISIONS

11-26-2018 Revised Per Client
12-31-2018 Revised Per Client
04-11-2019 Revised Per Client
05-10-2019 Revised Per City
11-19-2019 Revised Per Client

DRAWN BY:
A. Eizember

DESIGNED BY:
P. Williams

APPROVED BY:
P. Williams

DATE:
March 28, 2018

SCALE: 1" = 30'

NFE JOB NO. 398-01
SHEET NO. SP-2



GROUND COVER KEY

- 1 TYPICAL SOD LAWN AREAS, SOWN ON 3" TOPSOIL
- 2 4" DIA SPADE CUT EDGE W/ 3" SHREDDED BARK MULCH
- 3 3" DEPTH DOUBLE SHREDDED HARDWOOD BARK MULCH

PLANT SCHEDULE

KEY	QTY	BOTANICAL/COMMON NAME	SIZE	SPACING	ROOT	COMMENT
TREES						
AR	10	Acer rubrum 'Bowhall' Bowhall Red Maple	3" CAL	40' OC	B&B	FULLY BRANCHED HEADS
GT	5	Gleditsia triacanthos 'Skyline' Skyline Honey Locust	3" CAL	SEE PLAN	B&B	FULLY BRANCHED HEADS
SHRUBS						
BX	80	Buxus x 'Winter Gem' Winter Gem Boxwood	30" HT	30" OC	B&B	MAINTAIN AS HEDGE
DG	69	Deutzia gracilis 'Nikko' Dwarf Slender Deutzia	2 GAL	18" OC	CONT	
JS	12	Juniperus scopulorum 'Grey Glean' Grey Glean Juniper	5' HT	2' OC	B&B	
TE	36	Taxus x m. 'Everlow' Everlow Yew	18" HT	24" OC	B&B	MAINTAIN AS HEDGE
TO	4	Thuja occidentalis 'Smaragd' Smaragd Green Arborvitae	6' HT	42" OC	B&B	
GROUNDCOVERS/PERENNIALS						
CA	9	Calamagrostis a. 'Karl Foerster' Karl Foerster Feather Reed Grass	3 GAL	30" OC	CONT	
HS	29	Hemerocallis 'Stella D'Oro' Stella D'Oro Daylily	2 GAL	24" OC	CONT	
LS	656	Lilium spicata Cresping Lilyturf	1 GAL	12" OC	CONT	TRIANGULAR SPACING

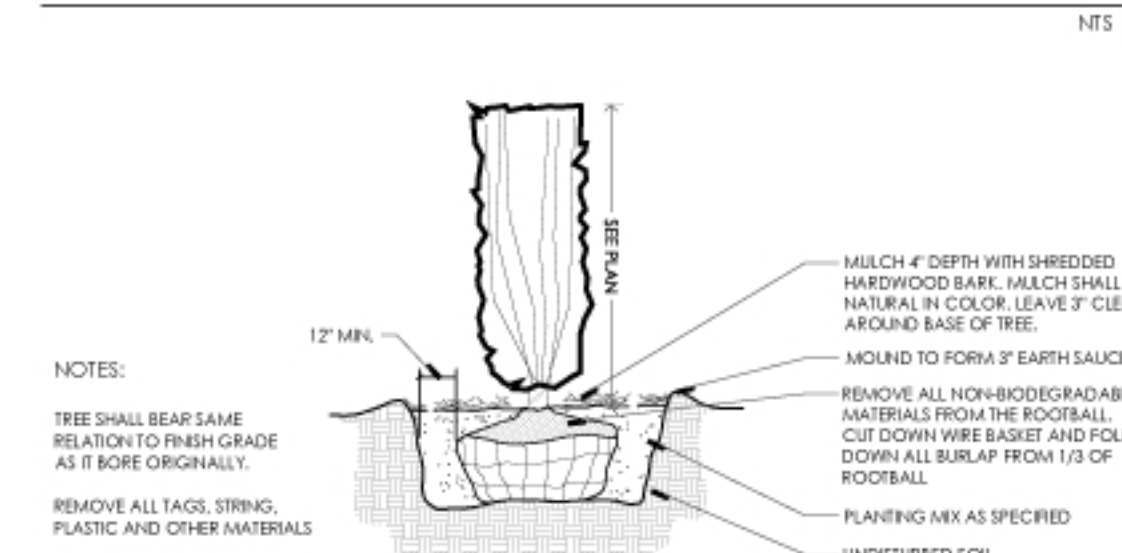
GENERAL LANDSCAPE NOTES

- LANDSCAPE CONTRACTOR SHALL VISIT SITE, INSPECT EXISTING CONDITIONS AND REVIEW PROPOSED PLANTING AND RELATED WORK. IN CASE OF DISCREPANCY BETWEEN PLAN AND PLANT LIST, THE PLAN SHALL GOVERN QUANTITIES. CONTACT THE LANDSCAPE ARCHITECT WITH ANY CONCERNS.
- THE CONTRACTOR SHALL VERIFY LOCATION OF ALL ON-SITE UTILITIES PRIOR TO BEGINNING CONSTRUCTION ON HIS/HER PHASE OF WORK. ANY DAMAGE OR INTERRUPTION OF SERVICES SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR.
- THE CONTRACTOR SHALL COORDINATE ALL RELATED ACTIVITIES WITH OTHER TRADES, AND SHALL INFORM ANY UNACCEPTABLE SITE CONDITIONS TO THE OWNER'S REPRESENTATIVE PRIOR TO COMMENCEMENT.
- PLANTS SHALL BE FULLY BRANCHED, AND IN HEALTHY VIGOROUS GROWING CONDITION.
- PLANTS SHALL BE WATERED BEFORE AND AFTER PLANTING IS COMPLETE.
- ALL TREES MUST BE STAKED, PRUNED AND MULCHED AND SHALL BE GUARANTEED TO EXHIBIT A NORMAL GROWTH CYCLE FOR AT LEAST ONE (1) YEAR FOLLOWING PLANTING.
- ALL MATERIAL SHALL CONFORM TO THE GUIDELINES ESTABLISHED IN THE MOST RECENT EDITION OF THE "AMERICAN STANDARDS FOR NURSERY STOCK."
- CONTRACTOR WILL SUPPLY FINISHED GRADE AND DRAINAGE AS NECESSARY TO SUPPLY PLANT MIX DEPTH IN ALL PLANTING BEDS AS INDICATED IN PLANT DETAILS AND A DEPTH OF 4" IN ALL LAWN AREAS.
- PROVIDE CLEAN BACKFILL SOIL, USING MATERIAL STOCKPILED ON-SITE. SOIL SHALL BE SCREENED AND FREE OF DEBRIS, FOREIGN MATERIAL, AND STONE. SLOW-RELEASE FERTILIZER SHALL BE ADDED TO THE PLANT PITS BEFORE BEING BACKFILLED. APPLICATION SHALL BE AT THE MANUFACTURER'S RECOMMENDED RATES.
- AMENDED PLANT MIX (PREPARED TOPSOIL) SHALL CONSIST OF 1/3 SCREENED TOPSOIL, 1/3 SAND, AND 1/3 10-12" DEEP COMPOST, MIXED WELL AND SPREAD TO A DEPTH AS INDICATED IN PLANTING DETAILS.
- ALL PLANTINGS SHALL BE MULCHED WITH SHREDDED HARDWOOD BARK, SPREAD TO A DEPTH OF 3" FOR TREES AND SHRUBS, AND 2" ON ANNUALS, PERENNIALS, AND GROUND COVER PLANTINGS. MULCH SHALL BE FREE FROM DEBRIS AND FOREIGN MATERIAL, AND PICES ON INCONSISTENT SIZE.
- NO SUBSTITUTIONS OR CHANGES OF LOCATION, OR PLANT TYPE SHALL BE MADE WITHOUT THE APPROVAL OF THE LANDSCAPE ARCHITECT OR OWNER'S REPRESENTATIVE. THE LANDSCAPE ARCHITECT SHALL BE NOTIFIED OF ANY DISCREPANCIES BETWEEN THE PLANS AND FIELD CONDITIONS PRIOR TO INSTALLATION.
- THE LANDSCAPE CONTRACTOR SHALL BE RESPONSIBLE FOR MAINTAINING ALL PLANT MATERIAL IN A VERTICAL CONDITION THROUGHOUT THE GUARANTEED PERIOD.
- THE LANDSCAPE ARCHITECT OR OWNER'S REPRESENTATIVE SHALL HAVE THE RIGHT TO REJECT ANY WORK OR MATERIAL THAT DOES NOT MEET THE REQUIREMENTS OF THE PLANS AND/OR SPECIFICATIONS.
- THE LANDSCAPE CONTRACTOR SHALL SEED AND MULCH OR SOD (AS INDICATED ON PLANS) ALL AREAS DESIGNATED AS SUCH ON THE PLANS, THROUGHOUT THE CONTRACT LIMITS. FURTHER, THE CONTRACTOR SHALL BE RESPONSIBLE FOR RESTORING AREAS DISTURBED DURING CONSTRUCTION, NOT IN THE CONTRACT LIMITS, TO EQUAL OR GREATER CONDITION.
- ALL LANDSCAPE AREAS SHALL HAVE PROPER DRAINAGE THAT PREVENTS EXCESSIVE WATER FROM PONDING ON LAWN AREAS OR AROUND TREES AND SHRUBS.
- ALL LANDSCAPE AREAS SHALL BE IRRIGATED WITH AN AUTOMATIC UNDERGROUND SYSTEM.

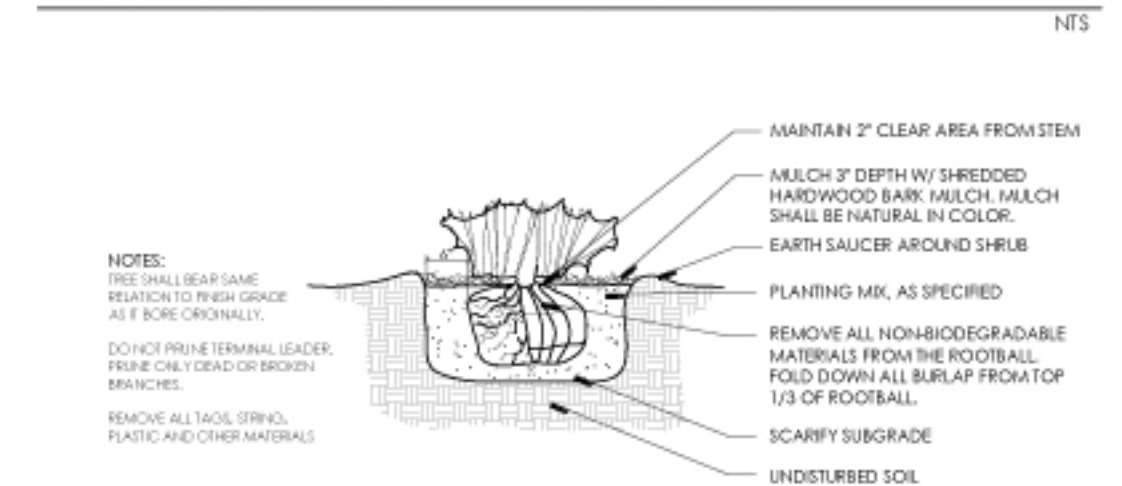
NOTE:
OUP DECIDUOUS TREES ABOVE 3" CALIPER, STAKE TREES BELOW 3" CALIPER.
STAKE TREES JUST BELOW FIRST BRANCH USING 2" WIDE BELT-LIKE NYLON OR PLASTIC STRAPS. CONNECT FROM TREE TO STAKE OPPOSITE. ALLOW FOR SOME FLEXING. REMOVE AFTER ONE (1) YEAR.

NOTE:
TREES SHALL BEAR SAME RELATION TO FINISH GRADE AS IT BORE ORIGINALLY OR SLIGHTLY HIGHER THAN FINISH GRADE UP TO 4" ABOVE GRADE, IF DIRECTED BY LANDSCAPE ARCHITECT FOR HEAVY CLAY SOILS.
DO NOT PRUNE TERMINAL LEADER. PRUNE ONLY DEAD OR BROKEN BRANCHES.
REMOVE ALL TAGS, STRING, PLASTIC AND OTHER MATERIALS.

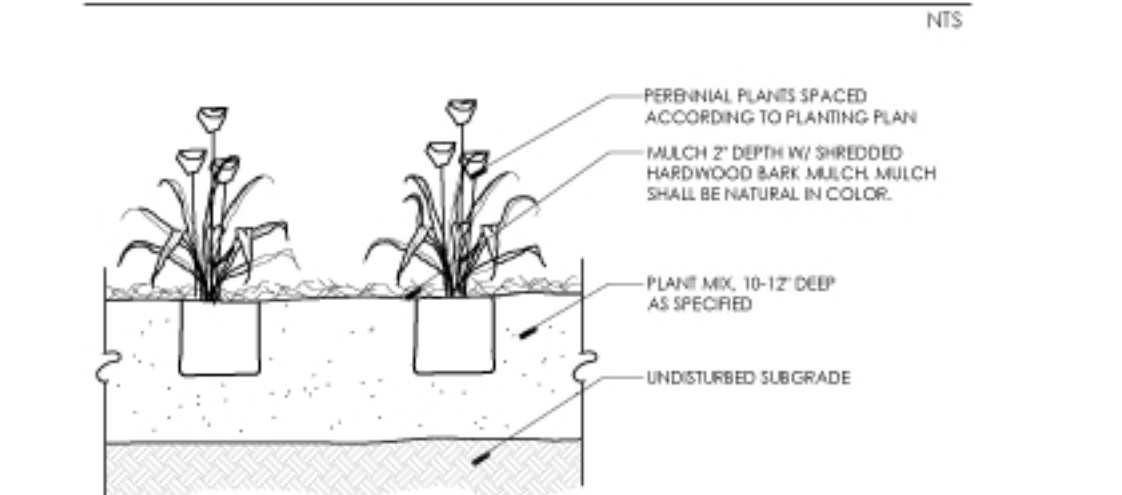
DECIDUOUS TREE PLANTING DETAIL



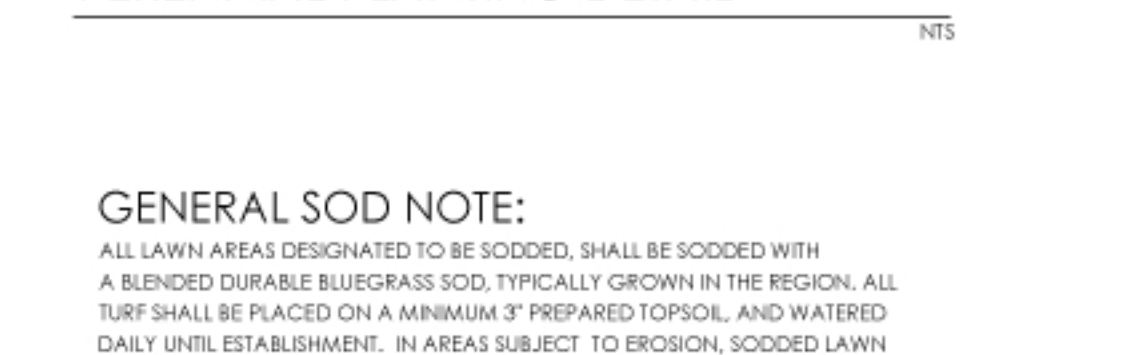
UPRIGHT EVERGREEN PLANTING DETAIL



HEDGE PLANTING DETAIL



PERENNIAL PLANTING DETAIL



GENERAL SOD NOTE:

ALL LAWN AREAS DESIGNATED TO BE SODDED, SHALL BE SODDED WITH A BLENDED DURABLE BLUEGRASS SOD, TYPICALLY GROWN IN THE REGION. ALL TURF SHALL BE PLACED ON A MINIMUM 3" PREPARED TOPSOIL, AND WATERED DAILY UNTIL ESTABLISHMENT. IN AREAS SUBJECT TO EROSION, SODDED LAWN SHALL BE STABILIZED WHERE NECESSARY, AND LAID PERPENDICULAR TO SLOPES. SOD INSTALLATION SHALL OCCUR ONLY:
SPRING: APRIL 1 TO JUNE 1
FALL: AUGUST 15 TO OCTOBER 15



NOWAK & FRAUS ENGINEERS
46777 WOODWARD AVE.
PONTIAC, MI 48342-5032
TEL. (248) 332-7931
FAX. (248) 332-8257

SEAL



PROJECT

35001 & 35075 Woodward

CLIENT

Biddison Architecture
320 Martin, Suite 10
Birmingham, MI 48009

Contact: Kevin Biddison
Ph: (248) 554-9500

PROJECT LOCATION

Part of Section 25
T. 2 North, R. 10 East
City of Birmingham,
Oakland County, Michigan

SHEET

Landscape Plan



REVISIONS

12/28/18 REVISED PER CITY REVIEW
02/20/19 REVISED PER CITY
04/11/19 REVISED PER ARCHITECT
05/10/19 REVISED PER CITY

DRAWN BY:

G. Ostrowski

DESIGNED BY:

G. Ostrowski

APPROVED BY:

G. Ostrowski

DATE

November 26, 2018

SCALE: 1" = 20'

20 10 0 10 20 30

NFE JOB NO.

J398-01

SHEET NO.

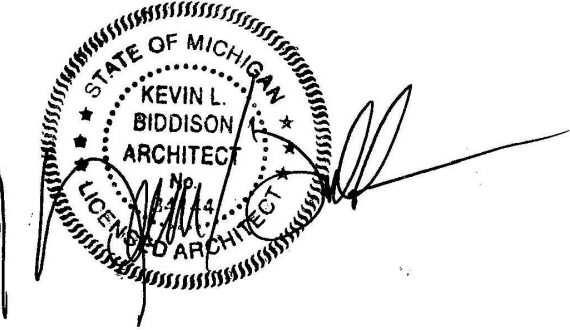
L1

PROPOSED BUILDING FOR:
The Maple

35001 and 35075 Woodward Ave.
Birmingham, Michigan

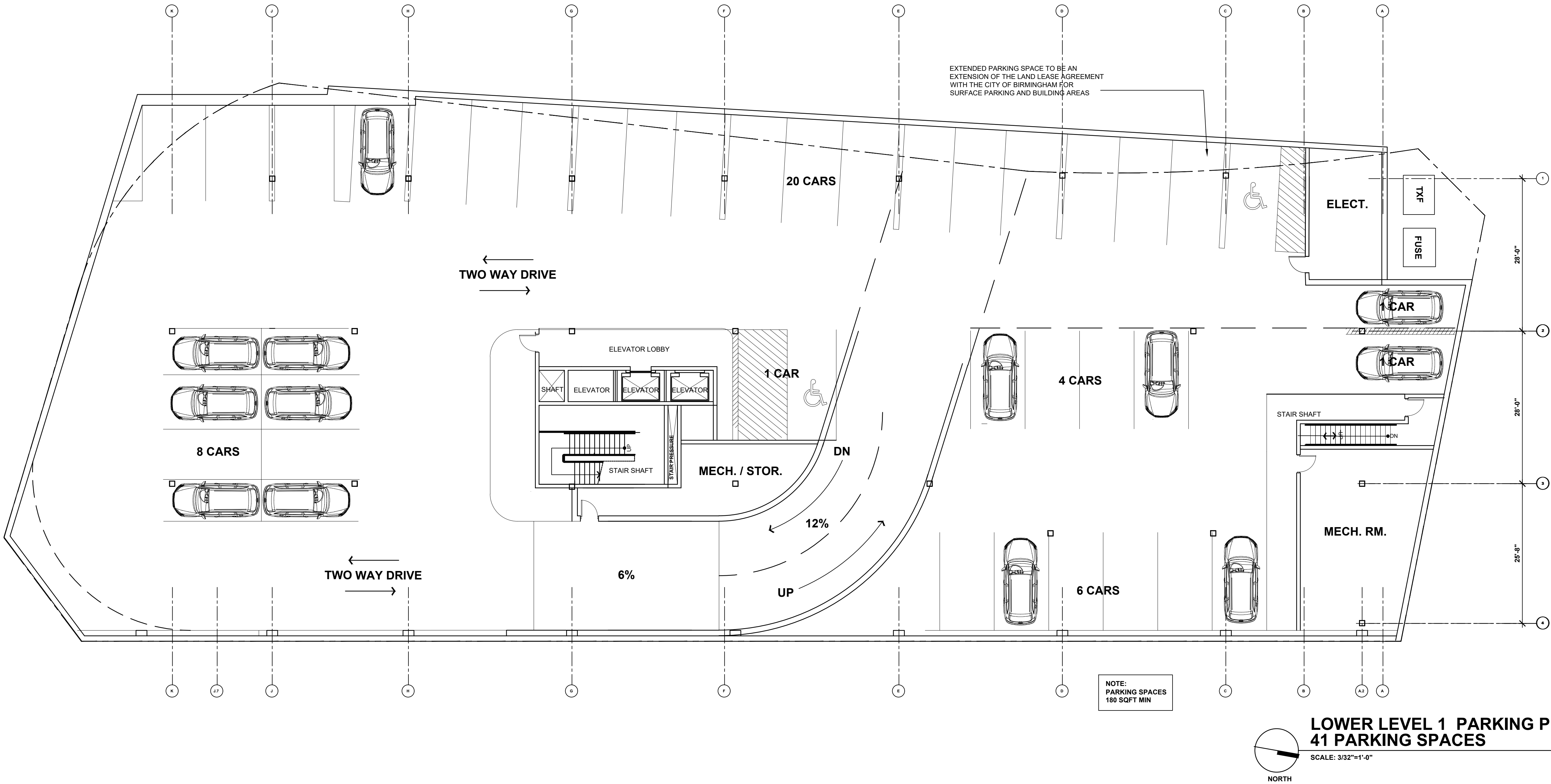
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SITE PLAN REVIEW	10.18.19
SITE PLAN REVIEW	11.22.19
SITE PLAN REVIEW	01.02.20
SITE PLAN REVIEW	02.14.20

LOWER LEVEL 1
PARKING PLAN



1971.16

LL.100

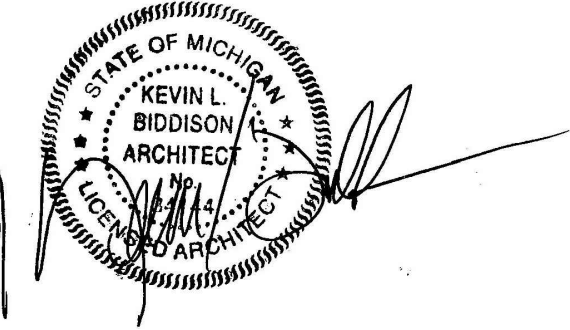


PROPOSED BUILDING FOR:
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Birmingham, Michigan

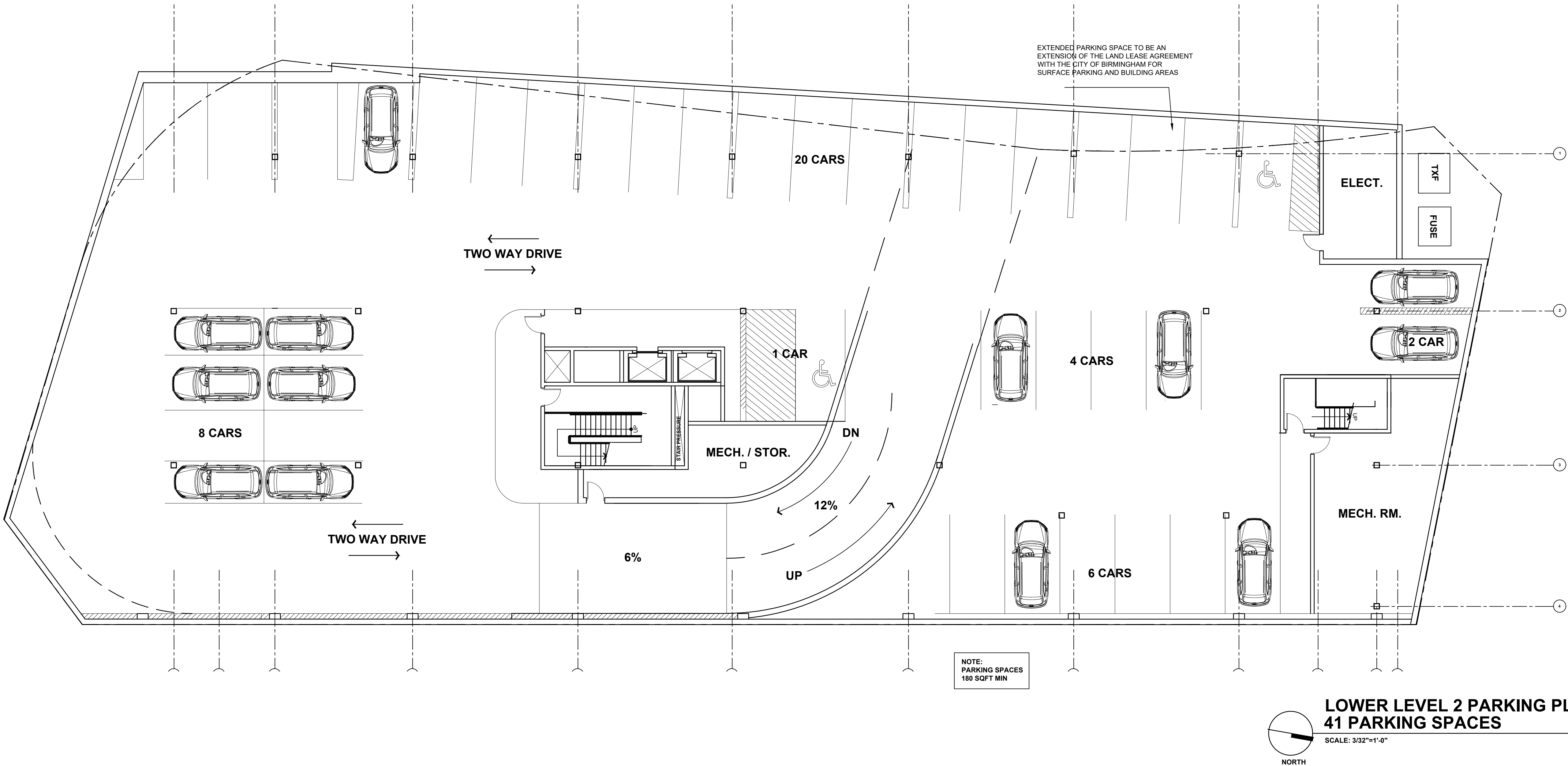
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SITE PLAN REVIEW	01.02.20
SITE PLAN REVIEW	01.02.20

**LOWER LEVEL 2
PARKING PLAN**



1971.16

LL.101

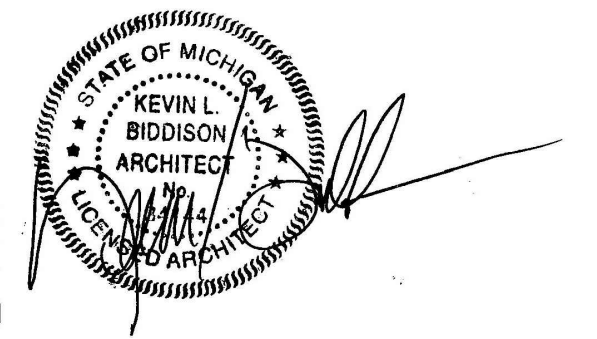


The Maple

35001 and 35075 Woodward Ave.
Birmingham, Michigan

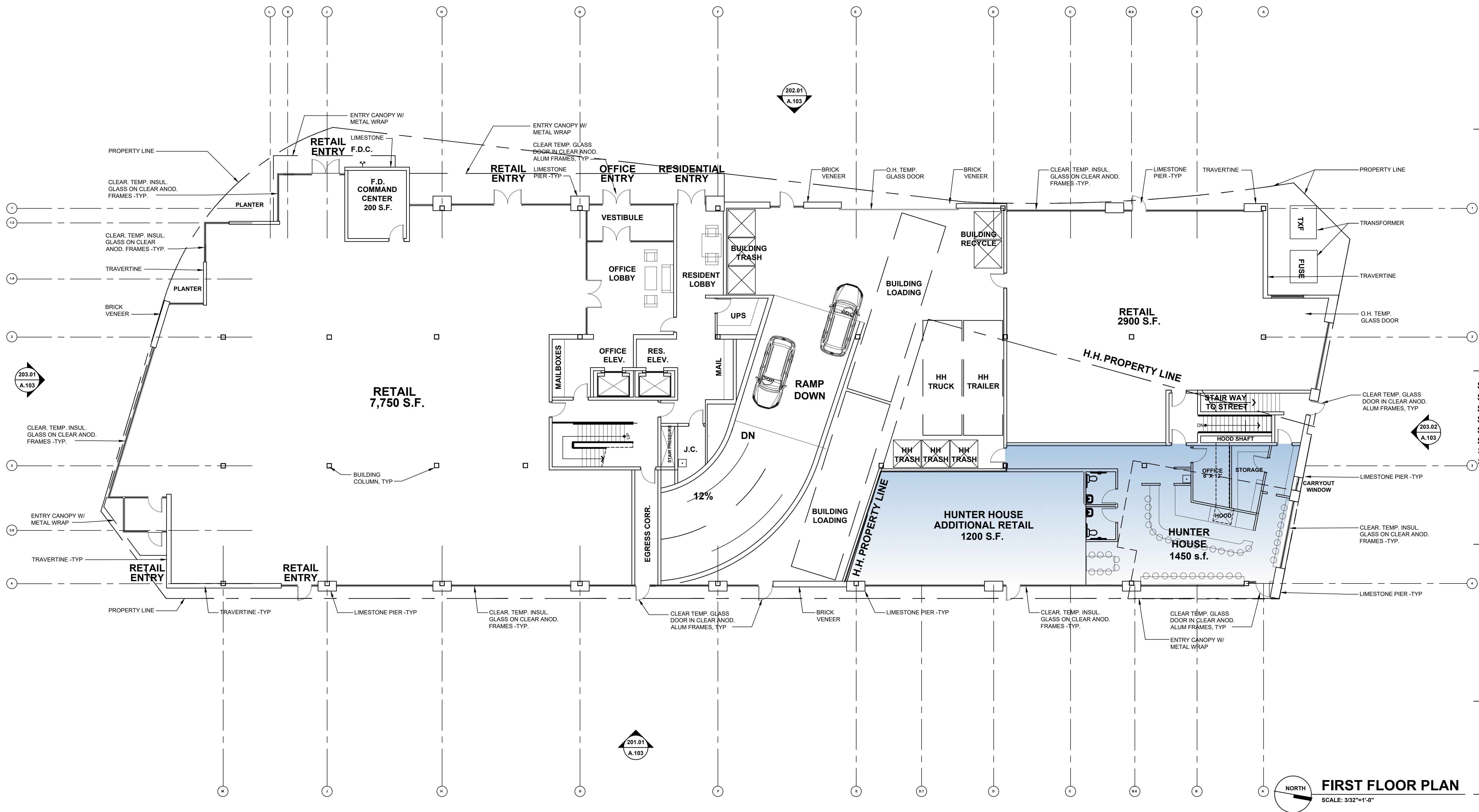
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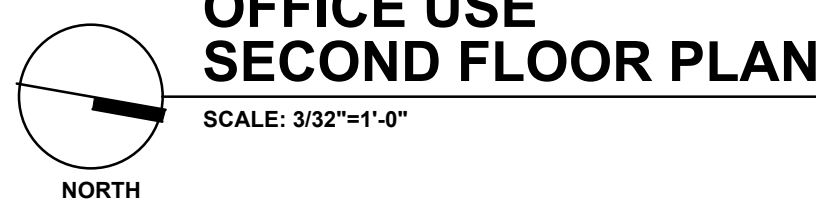
FIRST FLOOR PLAN



1971.16

A.101



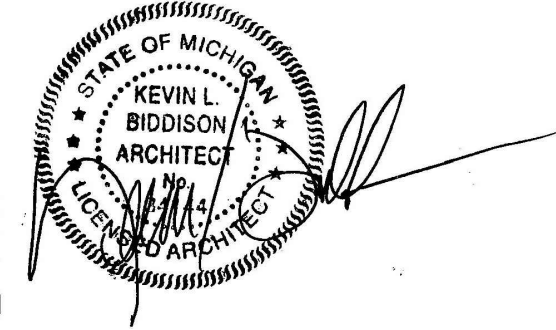
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PROPOSED BUILDING FOR:
The Maple

35001 and 35075 Woodward Ave.
Birmingham, Michigan

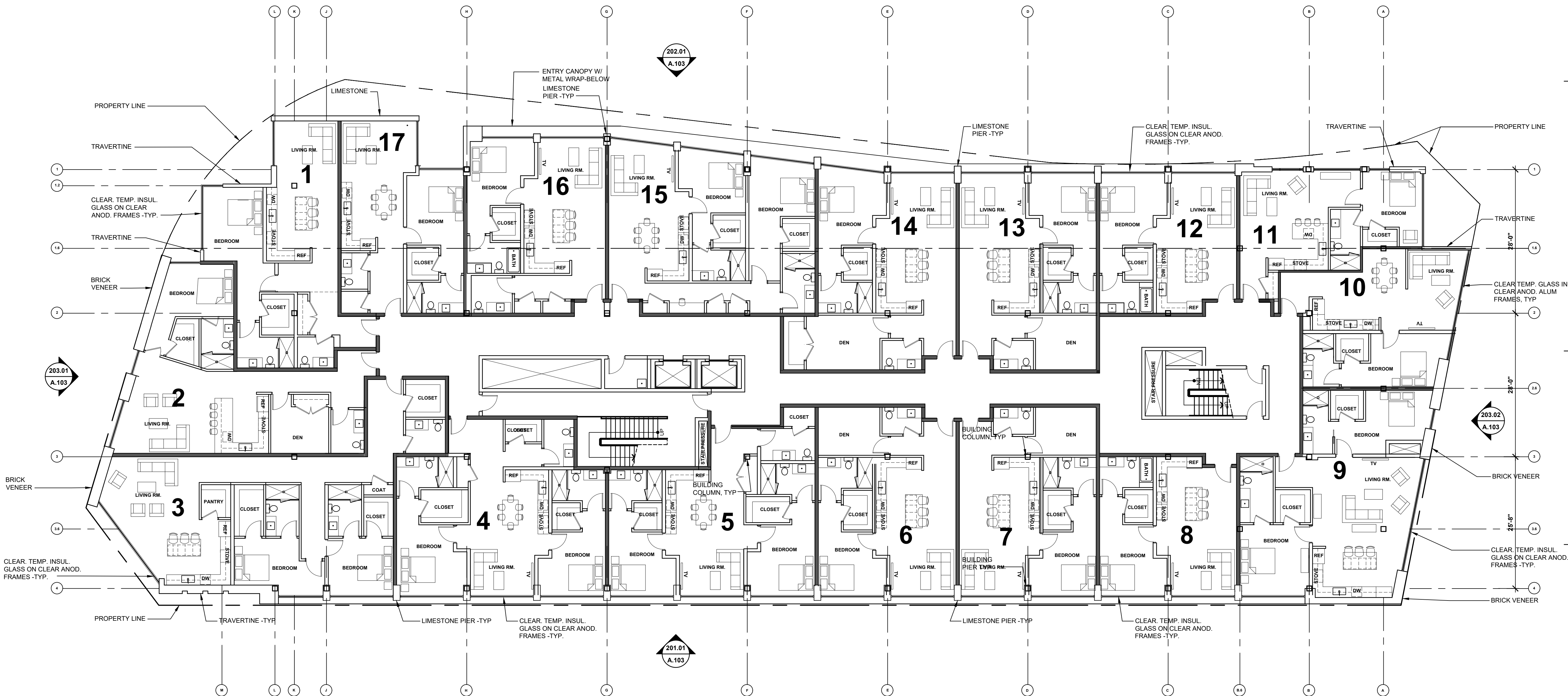
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SITE PLAN REVIEW	02.14.20

**THIRD
FLOOR PLAN**



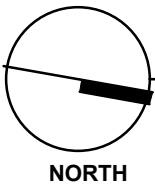
1971.16

A.103



**RESIDENTIAL USE
THIRD FLOOR PLAN**

SCALE: 3/32"=1'-0"



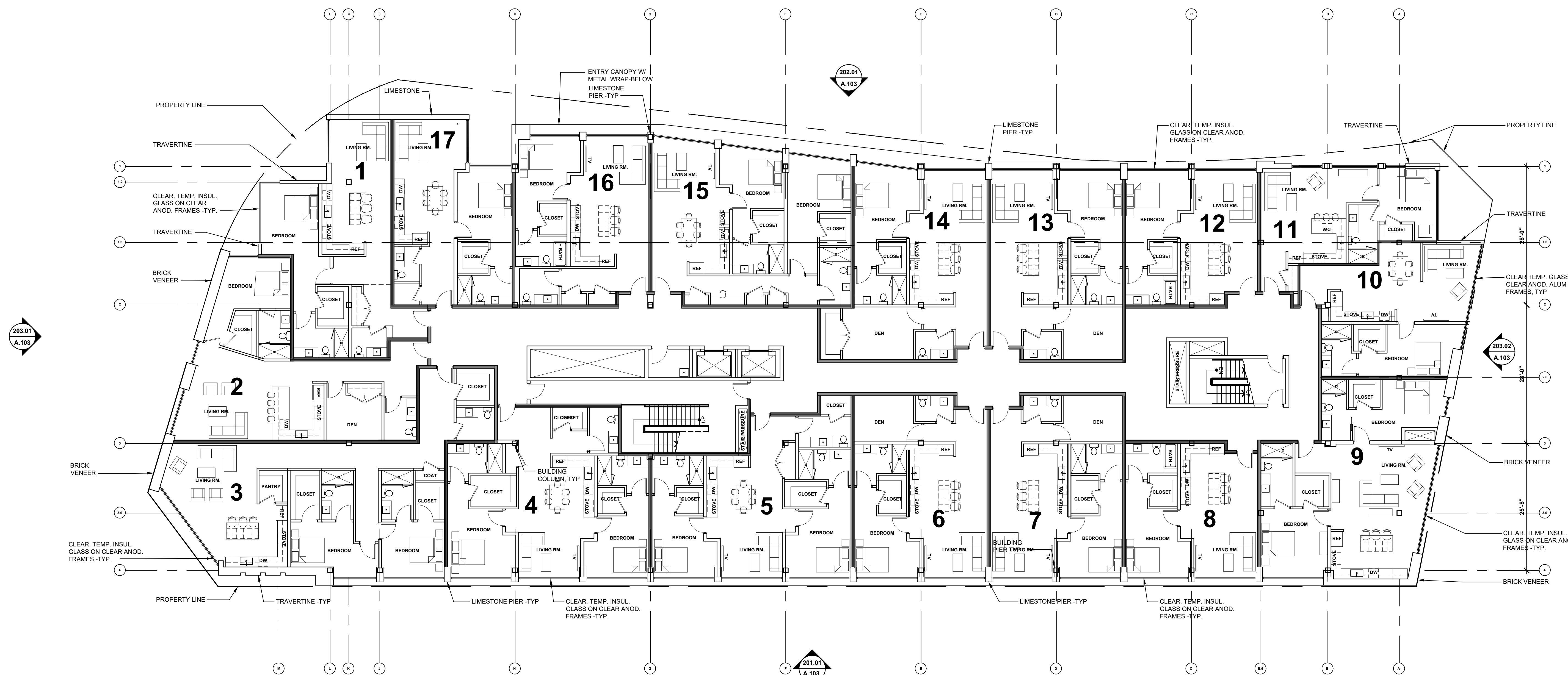
The Maple

Issued dr/ch

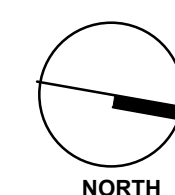
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1971.16

A.104



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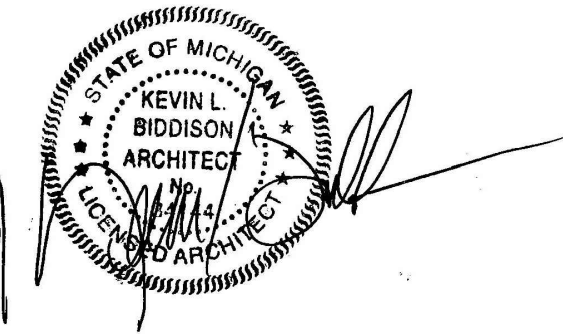


PROPOSED BUILDING FOR:
The Maple

35001 and 35075 Woodward Ave.
Birmingham, Michigan

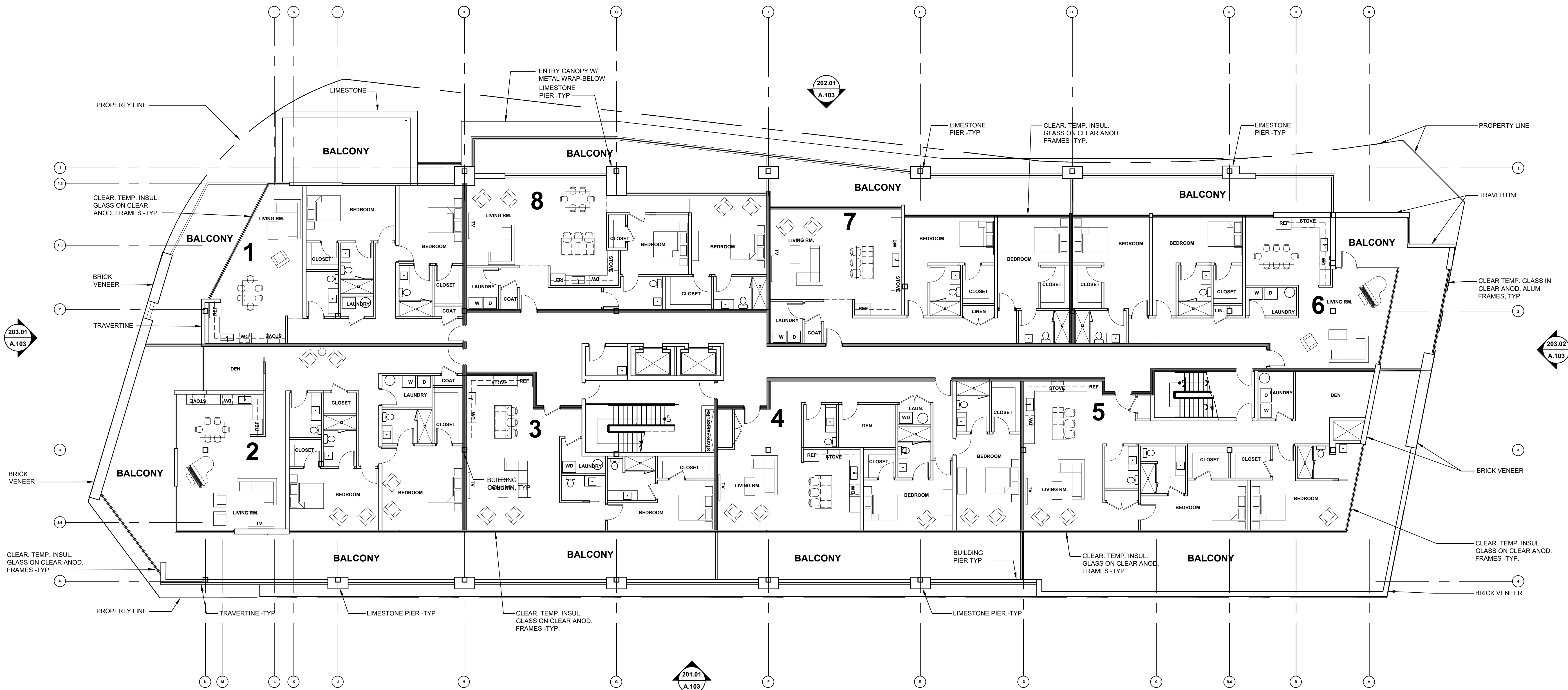
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**FIFTH
FLOOR PLAN**



1971.16

A.105



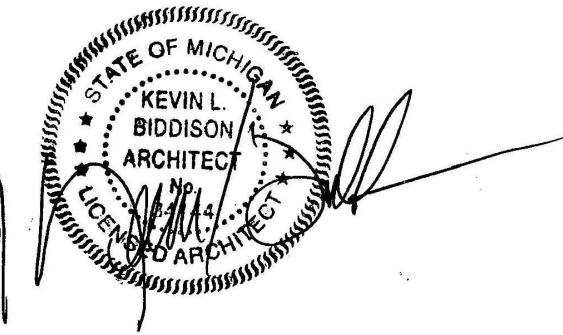
**RESIDENTIAL USE
FIFTH FLOOR PLAN**
SCALE: 3/32"=1'-0"
NORTH

PROPOSED BUILDING FOR:
The Maple

35001 and 35075 Woodward Ave.
Birmingham, Michigan

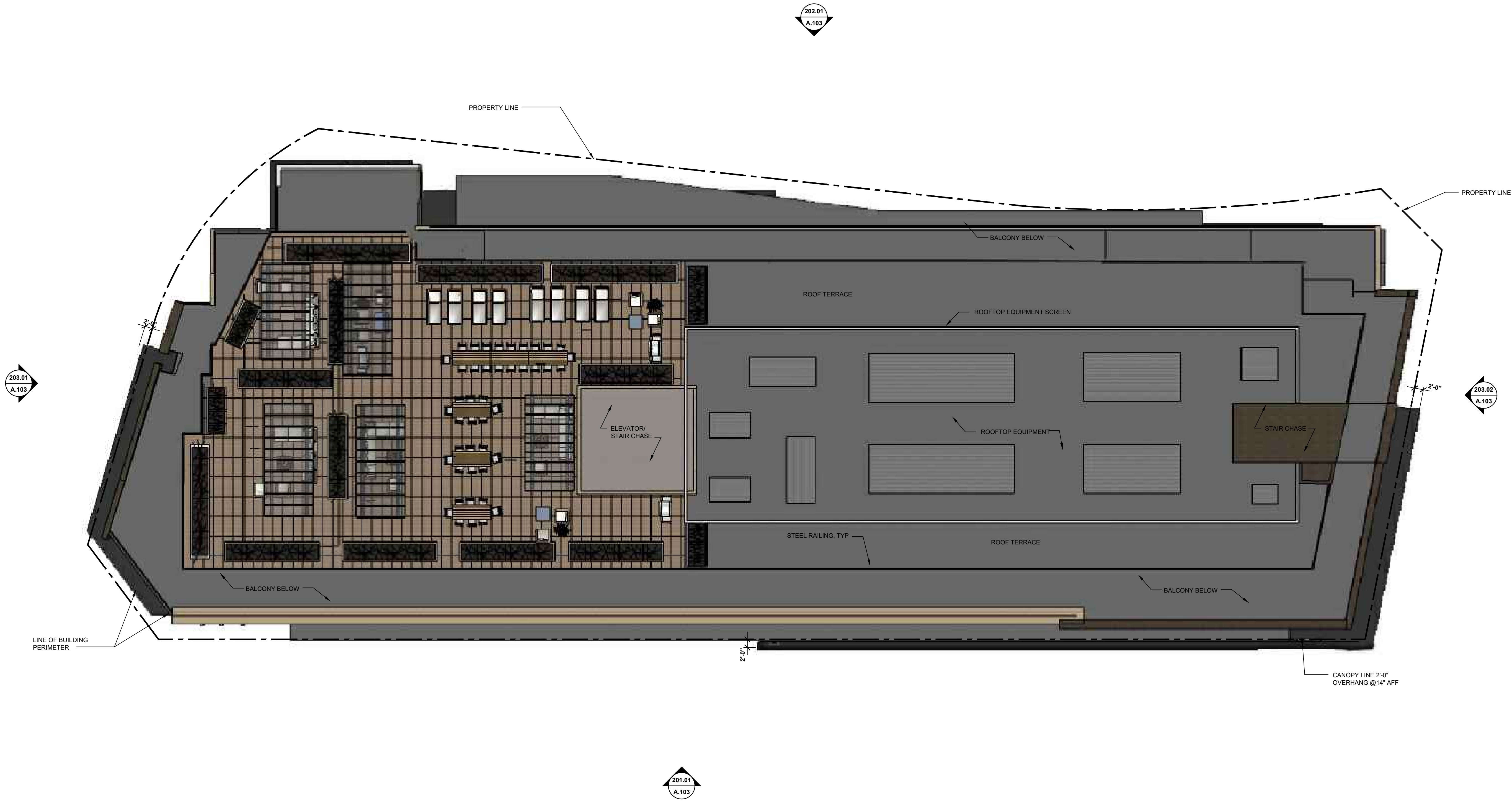
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SITE PLAN REVIEW	02.14.20

ROOF PLAN



1971.16

A.106



ROOF PLAN
SCALE: 3/32"=1'-0"

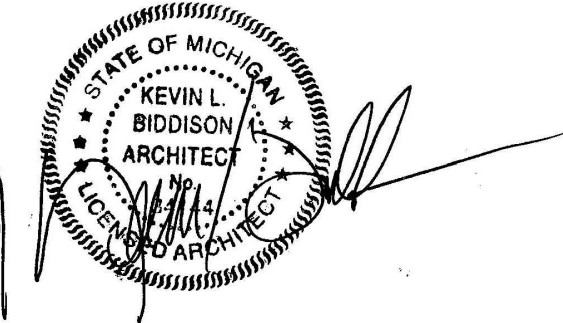
PROPOSED BUILDING FOR:

The Maple

35001 and 35075 Woodward Ave.
Birmingham, Michigan

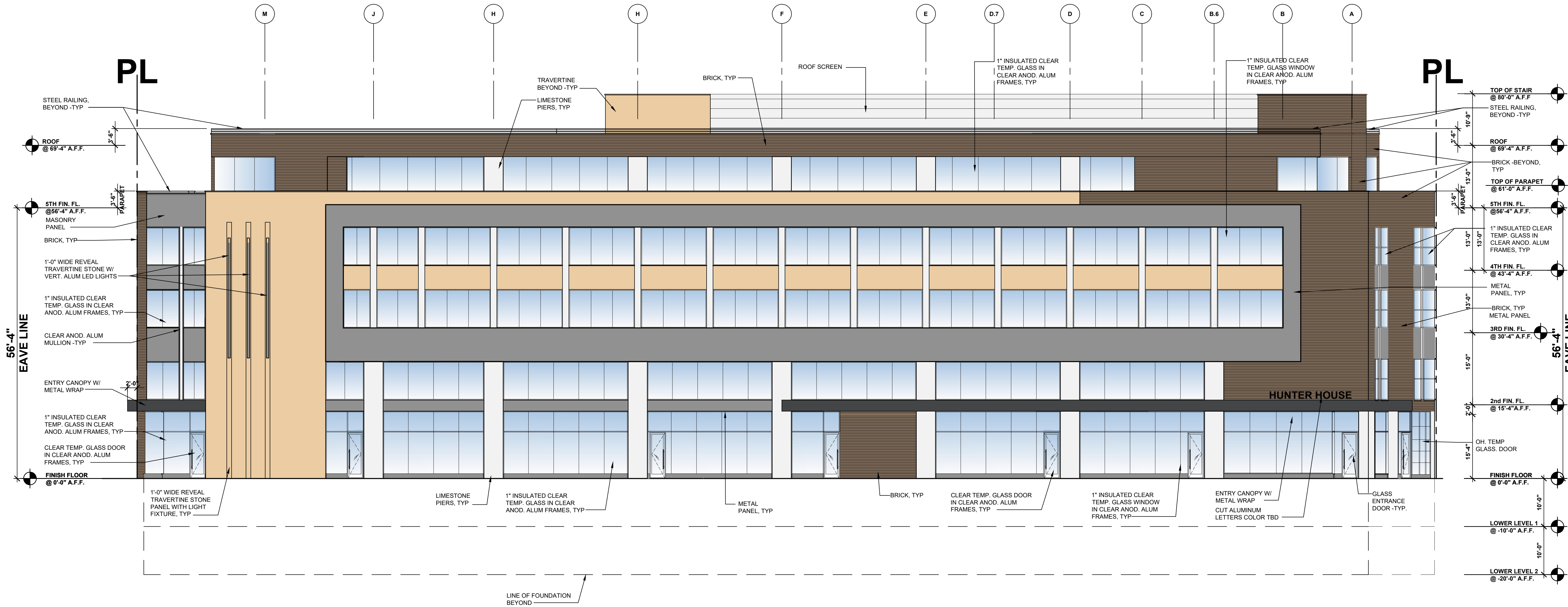
SITE PLAN REVIEW	03.29.18
SITE PLAN REVIEW	11.26.18
SITE PLAN REVIEW	05.13.19
SITE PLAN REVIEW	11.22.19
SITE PLAN REVIEW	01.02.20
SITE PLAN REVIEW	02.14.20

ELEVATIONS



1971.16

A.201

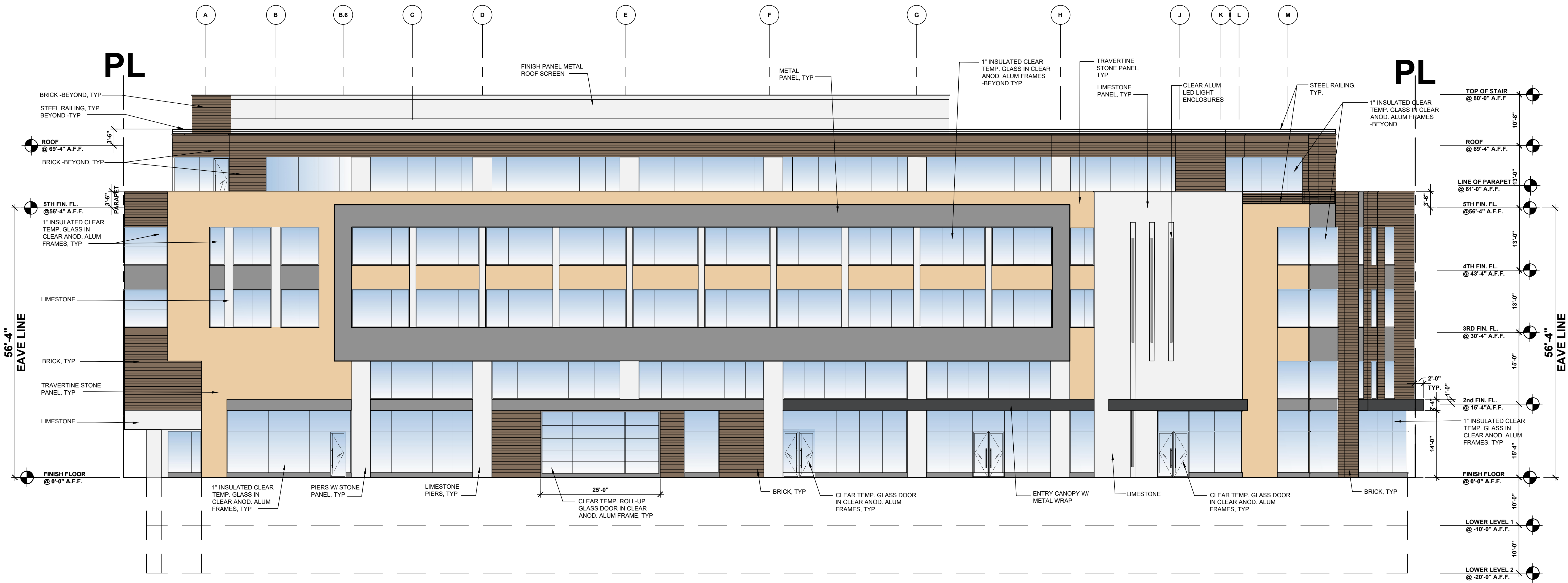
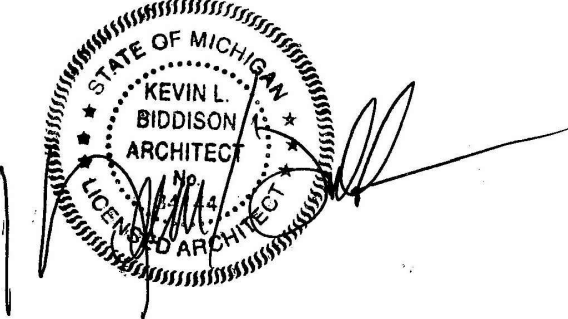


ELEVATION	MATERIAL AREA (SQ. FT.)	
	SOLID	GLASS
EAST (1'-0" TO 8'-0")	565	1,325
% OF TOTAL	29.9%	70.1%
REQUIRED %	30% MAX	70% MIN

ELEVATION	MATERIAL AREA (SQ. FT.)	
	SOLID	GLASS
EAST (2ND FLOOR TO ROOF)	10,672	5,588
% OF TOTAL	65.6%	34.4%
REQUIRED %	65% MIN	35% MAX

201.01 EAST ELEVATION
A.103 SCALE: 3/32"=1'-0"

SITE PLAN REVIEW	03.29.18
SITE PLAN REVIEW	11.26.18
SITE PLAN REVIEW	05.13.19
SITE PLAN REVIEW	11.22.19
SITE PLAN REVIEW	01.02.20
SITE PLAN REVIEW	02.14.20

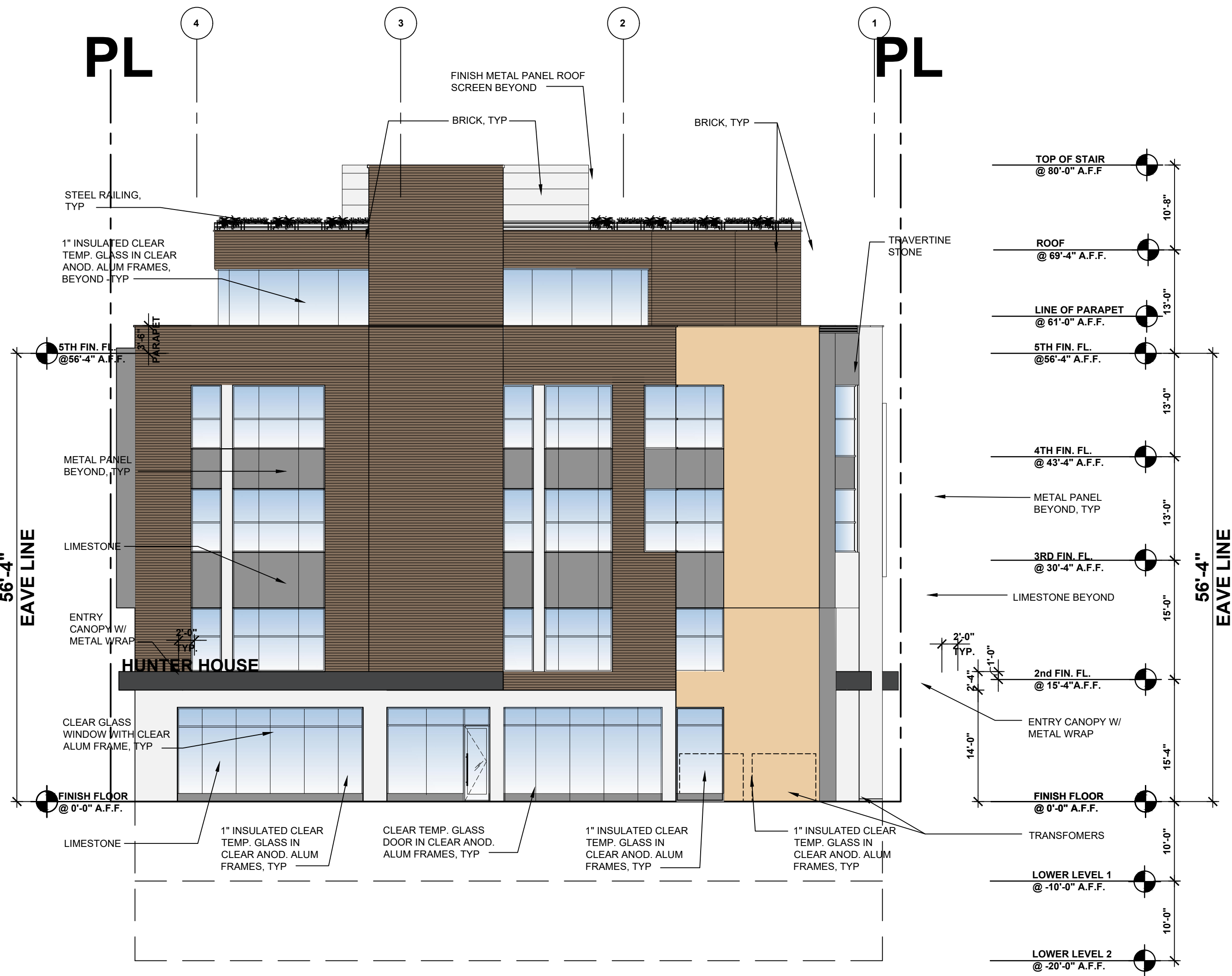
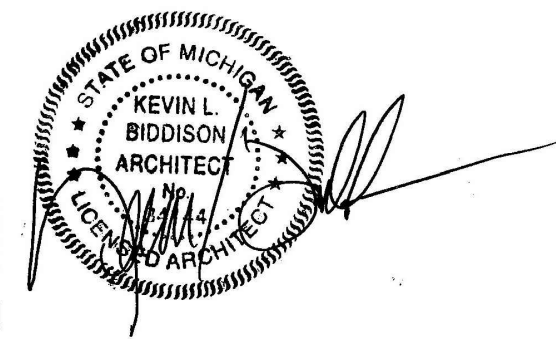


ELEVATION	MATERIAL AREA (SQ. FT.)	
	SOLID	GLASS
EAST (1'-0" TO 8'-0")	525	1,318
% OF TOTAL	29.6%	70.4%
REQUIRED %	30% MAX	70% MIN

ELEVATION	MATERIAL AREA (SQ. FT.)	
	SOLID	GLASS
EAST (2ND FLOOR TO ROOF)	10,629	5,418
% OF TOTAL	66.3%	33.7%
REQUIRED %	65% MIN	35% MAX

202.01 WEST ELEVATION
A.102 SCALE: 3/32"=1'-0"

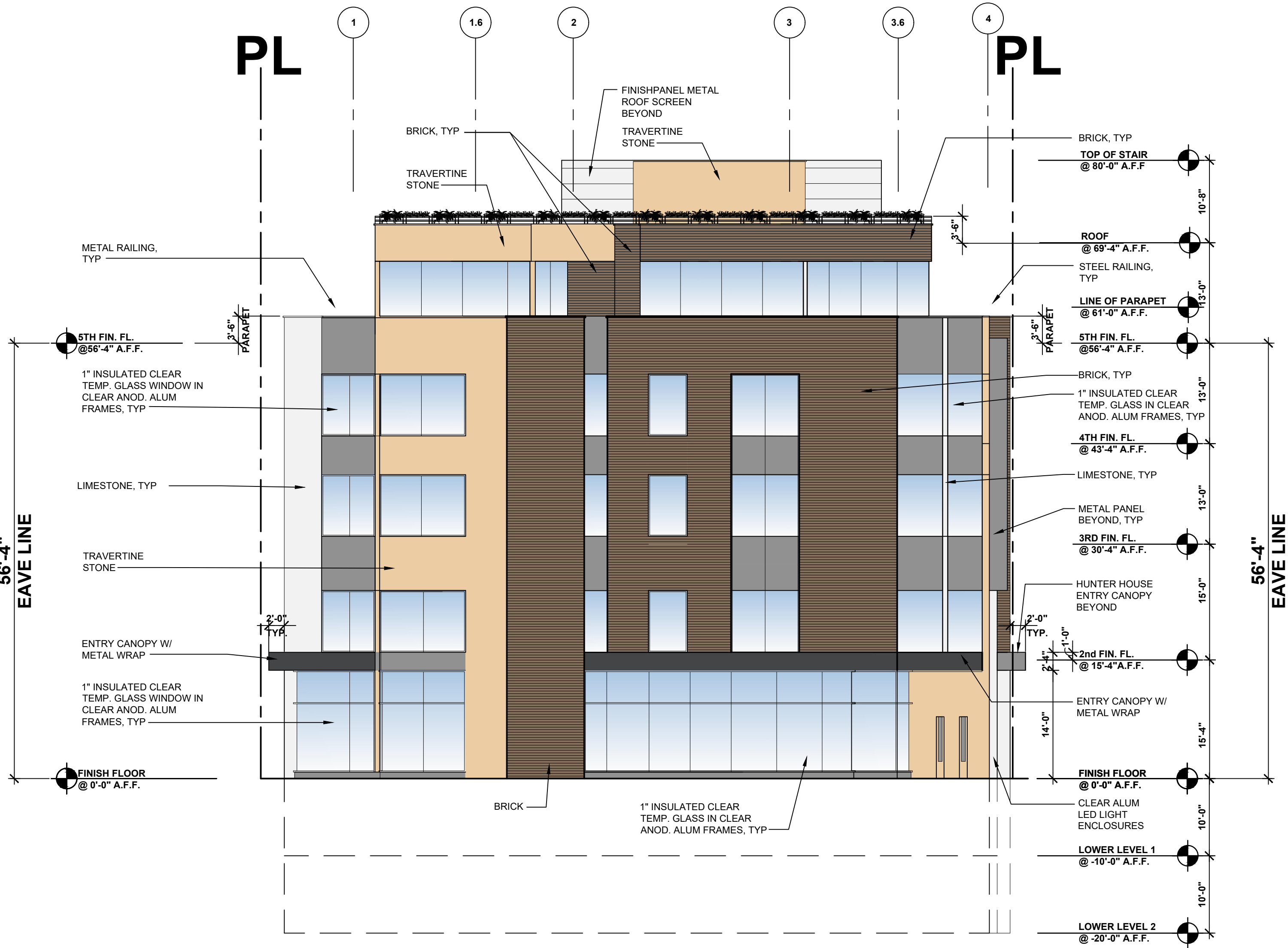
SITE PLAN REVIEW	03.29.18
SITE PLAN REVIEW	11.26.18
SITE PLAN REVIEW	05.13.19
SITE PLAN REVIEW	11.22.19
SITE PLAN REVIEW	01.02.20
SITE PLAN REVIEW	02.14.20



ELEVATION	MATERIAL AREA (SQ. FT.)	
	SOLID	GLASS
EAST (1'-0" TO 8'-0")	193	468
% OF TOTAL	29.4%	70.6%
REQUIRED %	30% MAX	70% MIN

ELEVATION	MATERIAL AREA (SQ. FT.)	
	SOLID	GLASS
EAST (2ND FLOOR TO ROOF)	3,600	1,600
% OF TOTAL	69.4%	30.6%
REQUIRED %	65% MIN	35% MAX

203.02 NORTH ELEVATION
A.103 SCALE: 3/32"=1'-0"



ELEVATION	MATERIAL AREA (SQ. FT.)	
	SOLID	GLASS
EAST (1'-0" TO 8'-0")	190	468
% OF TOTAL	28.9%	71.1%
REQUIRED %	30% MAX	70% MIN

ELEVATION	MATERIAL AREA (SQ. FT.)	
	SOLID	GLASS
EAST (2ND FLOOR TO ROOF)	3,464	1,864
% OF TOTAL	65%	35%
REQUIRED %	65% MIN	35% MAX

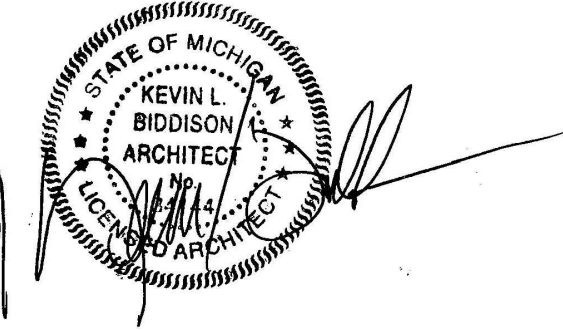
203.01 SOUTH ELEVATION
A.103 SCALE: 3/32"=1'-0"

PROPOSED BUILDING FOR:
The Maple

35001 and 35075 Woodward Ave.
Birmingham, Michigan

SITE PLAN REVIEW	11.26.18
SITE PLAN REVIEW	05.13.19
SITE PLAN REVIEW	11.22.19
SITE PLAN REVIEW	01.02.20
SITE PLAN REVIEW	02.14.20

PERSPECTIVE
IMAGES



1971.16

A.301



SOUTHEAST PERSPECTIVE IMAGE



NORTHEAST PERSPECTIVE IMAGE



EAST PERSPECTIVE IMAGE



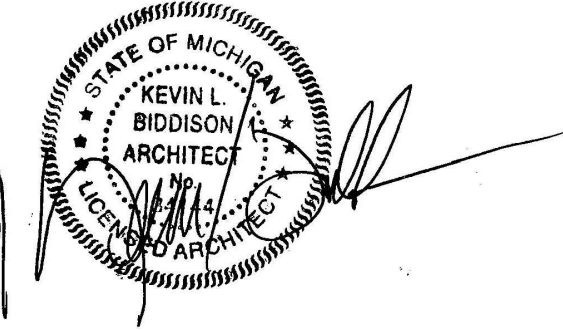
SOUTHWEST PERSPECTIVE IMAGE

PROPOSED BUILDING FOR:
The Maple

35001 and 35075 Woodward Ave.
Birmingham, Michigan

SITE PLAN REVIEW	01.02.19
SITE PLAN REVIEW	05.13.19
SITE PLAN REVIEW	11.22.19
SITE PLAN REVIEW	01.02.20
SITE PLAN REVIEW	02.14.20

PERSPECTIVE
IMAGES

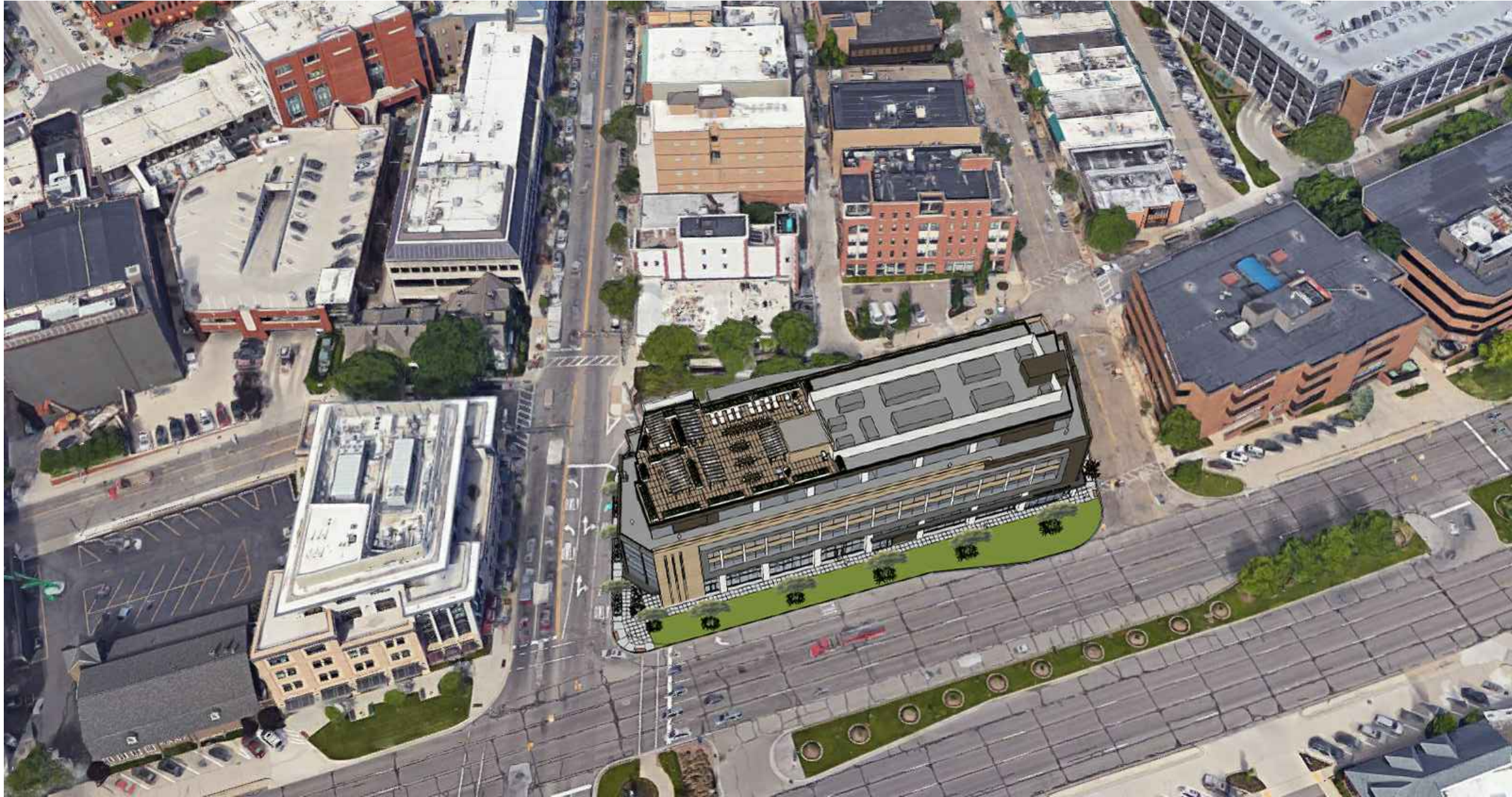


1971.16

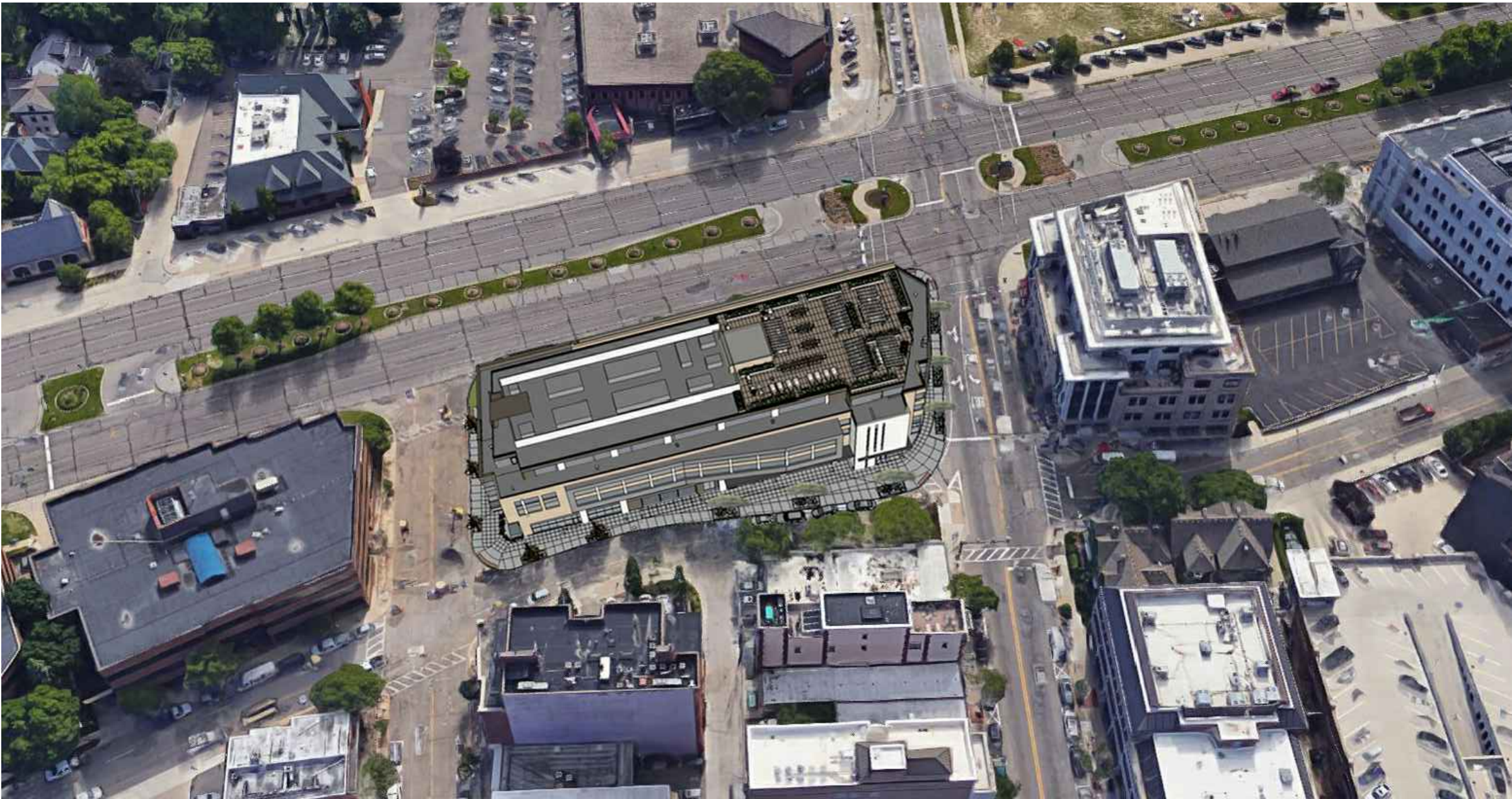
A.302



SOUTH AERIAL IMAGE



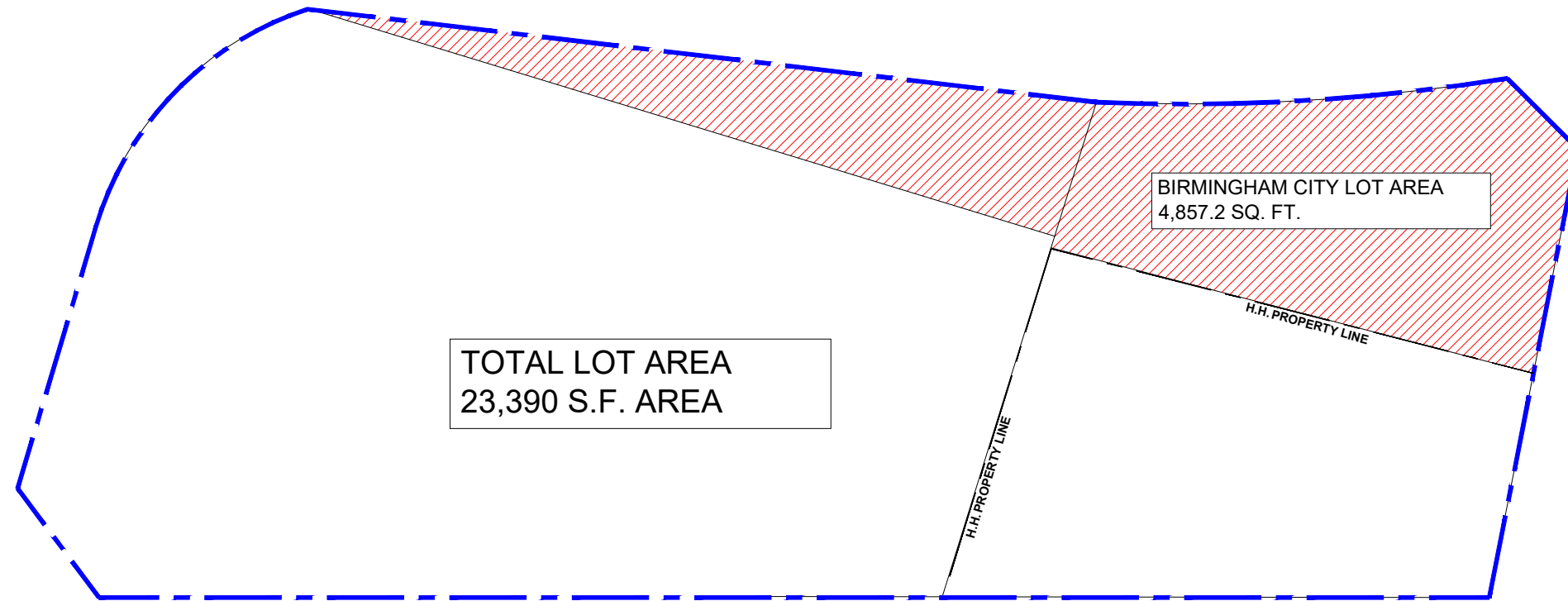
EAST AERIAL IMAGE



WEST AERIAL IMAGE

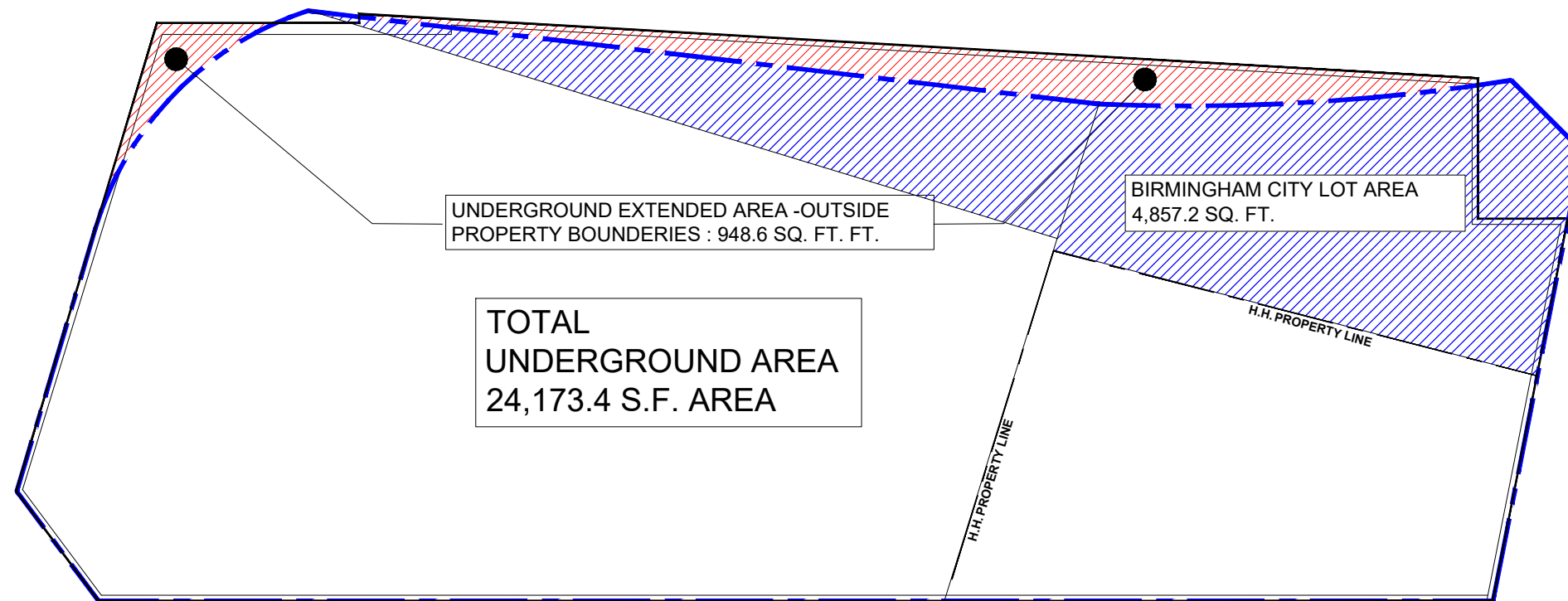


NORTH AERIAL IMAGE



THE MAPLE ABOVE GROUND

02-12-2020



THE MAPLE LOWER LEVEL PARKING

02-12-2020

Consultants

Project title

PROPOSED BUILDING FOR:
The Maple

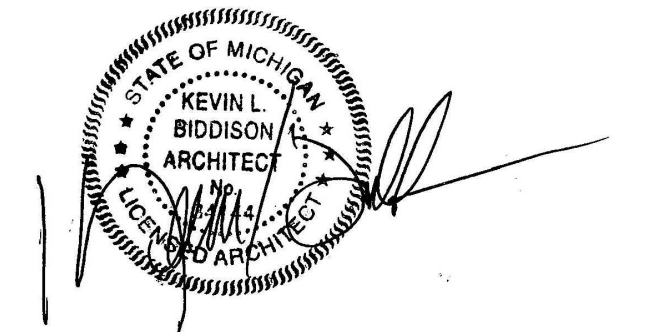
35001 and 35075 Woodward Ave.
Birmingham, Michigan

Issued dr/ch

SITE PLAN REVIEW	11.26.18
SITE PLAN REVISION	01.02.19
SITE PLAN REVISION	02.20.19
SITE PLAN REVIEW	05.13.19
SITE PLAN REVIEW	10.18.19
SITE PLAN REVIEW	11.22.19
SITE PLAN REVIEW	01.02.20
SITE PLAN REVIEW	02.14.20
SITE PLAN REVIEW	04.03.20

Sheet title

FIRST FLOOR PLAN

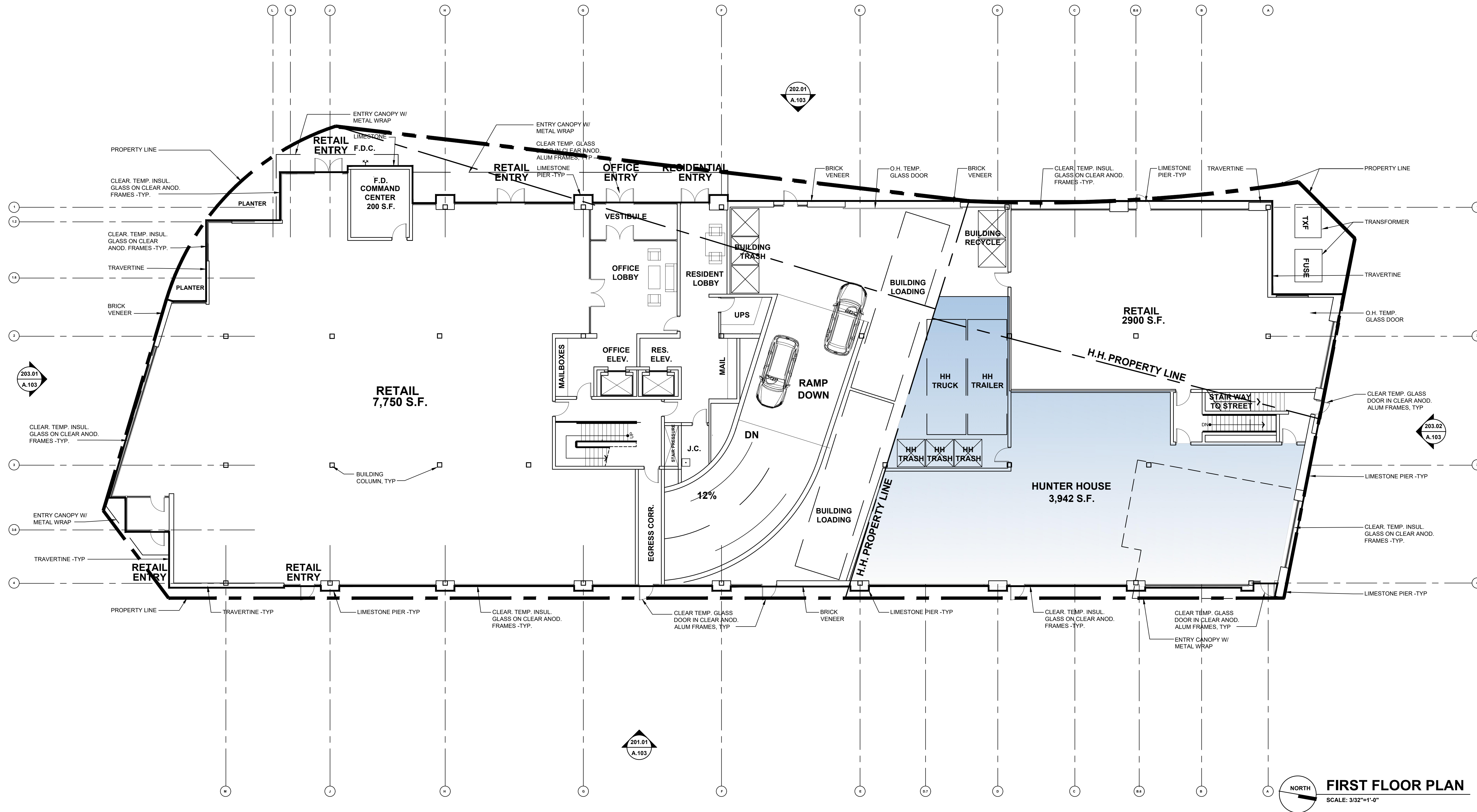


Project no.

1971.16

Sheet no.

A.101



DATE: April 17, 2020

TO: Planning Board

FROM: Jana Ecker, Planning Director

SUBJECT: Rezoning Request for 469-479 S. Old Woodward (Changes from review in 2019 noted in blue type)

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

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

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

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

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

On both November 14, 2018 and again on December 12, 2018, the applicant requested postponement of the rehearing to allow additional time for the developer and property owner to meet with the adjacent property owners. Thus, the matter was ultimately postponed until the January 23, 2019 meeting of the Planning Board.

On January 23, 2019, the Planning Board conducted a public rehearing to consider the requested rezoning of the properties. After much discussion, the Planning Board voted 4-3 in favor of recommending approval of the proposed rezoning to the City Commission and adopted the findings of fact contained in the staff report dated November 8, 2018.

On February 11, 2019, the City Commission set a public hearing for March 11, 2019 to consider the proposed rezoning for the properties located at 469 – 479 S. Old Woodward.

On March 11, 2019, the City Commission conducted a public hearing on the proposed rezoning for the properties located at 469-479 S. Old Woodward from B4/D-4 to B4/D-5. After extensive discussion, the City Commission was unable to reach consensus on the application. The matter was referred to the City Attorney to determine what action, if any, was taken.

Please find attached a letter from the City Attorney dated May 6, 2019 outlining the outcome of the public hearing of the City Commission on March 11, 2019, and the City's position that the applicant may bring their application for rezoning before the City again without waiting one year to do so.

Petition for Amendment to the Zoning Ordinance:

In June 2019, the Planning Board received a petition requesting an amendment to the Zoning Ordinance and / or the Zoning Map from the owners of 469-479 S. Old Woodward. Specifically, the applicant requested that the Planning Board address the following issues and suggest any zoning amendments necessary to do so as the City Commission discussed at their meeting on March 11, 2019:

- 1. Clarify the applicable standards to determine building height in the D5 Zone;**
- 2. Clarify the meaning of "immediately adjacent or abutting"; and**
- 3. Determine which properties to consider, if any, for rezoning to the D5 zoning.**

On July 10, 2019, the Planning Board discussed the applicant's petition. Board consensus was that the applicable regulations to determine building height were sufficiently clear in the Zoning Ordinance and no amendments were needed. Board members agreed that clarification was required for the terms "immediately adjacent" and "abutting". With regards to the determination of which properties to consider, if any, for rezoning to D5, the Planning Board recommended having DPZ CoDesign conduct a focused study to assist in this determination.

On September 11, 2019, the Planning Board reviewed the study prepared by DPZ CoDesign with respect to the area in Downtown Birmingham bounded by Haynes, Brown, Old Woodward and Woodward Avenue and the findings as to which properties

should be considered for rezoning to D5 given their proximity to properties with existing buildings over 5 stories in height. The Board requested additional massing illustrations. The Planning Board also discussed proposed ordinance language to clarify the meaning of the terms “immediately adjacent” and “abutting”. The Planning Board concluded that further study was needed on a clear definition of abutting, and stated that draft ordinance language should also address how streets and alleys would affect the definition of abutting.

On November 13, 2019, the Planning Board reviewed the additional massing studies provided by DPZ and stated that the study was requested to determine whether good planning practices would support future rezoning requests for parcels in the subject area. The Planning Board then discussed draft ordinance language that removed the use of the term “immediately adjacent” from the D5 language, and provided a definition for abutting, as well as clarifying how the presence of streets and alleys would affect whether properties were deemed abutting. After much discussion, the Planning Board voted to set a public hearing to amend Article 3, Overlay Districts, section 3.04(A) to amend the building height standards in the D5 zone of the Downtown Birmingham Overlay District and Article 9, Definitions, section 9.02 to add a definition for abutting.

On December 11, 2019, the Planning Board conducted a public hearing on the proposed ordinance amendments. The Planning Board voted unanimously to recommend the proposed amendments to the City Commission.

On December 16, 2019, the City Commission set a public hearing date for January 13, 2020.

On January 13, 2020, the City Commission conducted a public hearing on the proposed amendments to Article 3, Overlay Districts, section 3.04(A) and Article 9, Definitions, section 9.02. The City Commission voted to adopt the amendments and the new language for D5 as outlined in Article 3, section 3.04(A) is as follows:

New buildings constructed or additions to existing buildings in the D5 Zone must meet the requirements of the Downtown Birmingham Overlay District and the D4 Zone, except that the height of any addition and new construction in the D5 Zone may be over the maximum building height up to, but not exceeding, the height of an existing building on a directly abutting D5 Zone property, if the property owner agrees to the construction of the building under the provisions of a Special Land Use Permit. For the purposes of this section, private properties separated by public property (including public right-of-way and public vias), will not be deemed abutting.

Also on January 13, 2020, the City Commission voted to adopt an amendment to Article 9, section 9.02, Definitions, to add the following definition:

Abutting: Sharing a boundary or property line.

Please find attached to this report the staff report that was presented to the City Commission on January 13, 2020, with all of the relevant attachments.

At this time the applicant has requested that the rezoning request for 469 – 479 S. Old Woodward be brought back to the Planning Board for review and consideration given that no action was taken by the City Commission on March 11, 2019, and given that the

D5 ordinance language had been clarified and approved by the City Commission on January 13, 2020.

History of Property

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

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

Requirements for Rezoning

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

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

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

Applicant response:

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

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

Applicant response:

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

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

Applicant response:

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

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

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

Information required on plot plans shall be as follows:

1. Applicant's name, address and telephone number.
2. Scale, north point, and dates of submission and revisions.
3. Zoning classification of petitioner's parcel and all abutting parcels.
4. Existing lot lines, building lines, structures, parking areas, driveways, and other improvements on the site and within 100 feet of the site.
5. Existing use of the property.

6. Dimensions, centerlines and right-of-way widths of all abutting streets and alleys.
7. Location of existing drainage courses, floodplains, lakes, streams, and wood lots.
8. All existing easements.
9. Location of existing sanitary systems and or septic systems.
10. Location and size of existing water mains, well sites and building service.
11. Identification and seal of architect, engineer, land surveyor, or landscape architect who prepared the plans. If any of the items listed above are not applicable to a particular plot plan, the applicant must specify in the plot plan which items do not apply and, furthermore, why the items are not applicable.

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

Article 7 section 7.02 of the Zoning Ordinance further states:

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

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

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

Planning Division Analysis & Findings

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

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

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

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

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

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

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

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

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

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

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

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

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

The properties immediately north and south of the subject site are zoned B3 and D5, which allow a mix of residential, retail and commercial uses, and buildings over 5 stories in height up to a maximum height of 180'. The property to the east across Woodward Avenue is zoned MU5 which also allows a mix of residential, retail and commercial uses and allows buildings up to 6 stories and 78' in height. The property to the west across S. Old Woodward is zoned B2-B and D2, also allowing a mix of residential, retail and commercial uses and buildings up to 3 stories and 56' in height.

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

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

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

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

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

Departmental Reports

1. Engineering Division – The Engineering Department has no concerns with the rezoning application at this time.
2. Department of Public Services –The Department of Public Services has no concerns at this time.
3. Fire Department – The Fire Department has no concerns with the rezoning at this time.
4. Police Department – The Police Department has no concerns with the rezoning application.

5. Building Department – The Building Department has no concerns with the rezoning application at this time.

Sample motions with attached conditions have been provided in the event that the Planning Board deems it appropriate to send a recommendation of approval forward to the City Commission.

Suggested Action:

Based on a review of the rezoning request and supporting documentation submitted by the applicant, a review of the applicable master plan documents and the development trends in the area, the Planning Board adopts the findings of fact contained in the staff report dated April 17, 2020 and recommends **APPROVAL** to the City Commission for the rezoning of 469 - 479 S. Old Woodward from D-4 to D-5 in the Downtown Overlay.

OR

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

1. _____
2. _____
3. _____

OR

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

1. _____
2. _____
3. _____

**City Commission Minutes
February 13, 2017**

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

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

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

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

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

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

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

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

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

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

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

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

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

MOTION: Motion by DeWeese, seconded by Boutros:

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

AND

To approve the rezoning of the following properties:

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

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

VOTE: Yeas, 7
Nays, 0
Absent, None

Planning Board Minutes
June 27, 2018

REZONING APPLICATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Boyle made the following points:

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

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

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

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

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

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

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

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

Motion by Mr. Boyle

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

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

Motion failed, 2-5.

ROLLCALL VOTE

Yeas: Boyle, Jeffares

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

Absent: Share, Williams

Motion by Ms. Whipple-Boyce

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

Motion carried, 5-2.

ROLLCALL VOTE

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

Nays: Jeffares, Whipple-Boyce

Absent: Share, Williams

**Planning Board Minutes
September 12, 2018**

REZONING APPLICATION

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

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

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

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

Motion by Mr. Williams

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

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

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Share

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

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

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

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

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

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

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

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

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

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

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

Motion by Mr. Williams

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

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

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

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Share

Planning Board Minutes October 10, 2018

REZONING APPLICATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Motion by Mr. Boyle

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

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Ramin

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

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

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

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

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

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

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

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

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

Motion by Mr. Share

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

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

Motion failed, 3-4.

ROLLCALL VOTE

Yeas: Share, Koseck, Clein

Nays: Boyle, Jeffares, Whipple-Boyce, Williams

Absent: Ramin

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

Motion carried, 4-3.

ROLLCALL VOTE

Yeas: Jeffares, Whipple-Boyce, Boyle, Williams

Nays: Koseck, Share, Clein

Absent: Ramin

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

Motion by Mr. Williams

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

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

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Ramin

**Planning Board Minutes
December 12, 2018**

E. REZONING REQUEST

1. 469-479 S. Old Woodward Ave. (former Mountain King and Talmer Bank) Request to reconsider application in light of new information to be presented to rezone from B-3 and D-4 to B-3 and D-5 to allow a nine-story mixed use building (postponed from November 14, 2018, and the applicant has asked for additional postponement)

Motion by Mr. Williams

Seconded by Ms. Whipple-Boyce that the rehearing of the rezoning request for

469-479 S. Old Woodward Ave. (former Mountain King and Talmer Bank) be postponed to the regular Planning Board meeting of January 23, 2019.

Motion carried, 7-0.

There were no comments from members of the public at 7:35 p.m.

VOICE VOTE

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

Nays: None

Absent: None

Mr. Williams asked that upon republishing this material, staff note any new information on the first page.

Planning Board Minutes
January 23, 2019

E. REZONING REQUEST

- 1. 469 – 479 S. Old Woodward (former Mountain King & Talmer Bank)** – Request to reconsider application in light of new information to be presented to rezone from B3 and D4 to B3 and D5 to allow a nine story mixed use building (Postponed from December 12, 2018).

Ms. Ecker identified the subject site and reviewed the history of the rezoning requests over the past year. It was noted that the building immediately to the north of 469-479 S. Old Woodward is approximately 115 feet tall, and that the tower to the south of 469-479 S. Old Woodward, attached to the 555 building, is approximately 80 feet tall. The current zoning would allow for an approximately 80 feet tall building at 469-479 S. Old Woodward.

The 2016 Plan would only allow a five-story building at the 469-479 S. Old Woodward site. D-5 zoning allows a building to go up to, but not exceed, the height of an adjacent building. D-4 zoning allows a building to have five stories if the top floor is residential. Planning Director Ecker did not believe there are any other properties zoned D-4 in the Downtown Overlay which are not also in the Parking Assessment District (PAD).

Planning Director Ecker reviewed the requirements for rezoning contained in the Zoning Ordinance and explained the findings related to these as outlined in the staff report, along with the applicant's responses as submitted. After the review was complete, Ms. Ecker noted that based on the Planning Department's review "of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable master plan documents, current zoning and recent development trends in the area, [...] the applicant meets the established Zoning Ordinance requirements of Article 7, section 7.02(B)(5) to qualify for a rezoning of the property from D-4 to D-5 in the Downtown Overlay district."

Mr. Rick Rattner, Attorney, was present to represent the applicant. On behalf of the applicant Mr. Rattner and architect Chris Longe gave a presentation first outlining the applicant's adherence to the Zoning Ordinance requirements of Article 7, section 7.02(B)(5), similar to the Planning Department's findings of positive rezoning qualifications of the property, and secondly showing a massing of the proposed building, zoned as D-5, at the 469-479 S. Old Woodward site.

Mr. Rattner began by saying he could not think of another situation in Birmingham where two buildings are zoned in the same way with a third building, in the middle, zoned differently. Mr. Rattner continued:

- The 469-479 S. Old Woodward site essentially creates a gap in the streetscape since it is currently one or two stories and cannot be rebuilt.
- Based on intended height, the applicant would return to the Board for a Special Land Use Permit (SLUP) which would also take into account the neighbors' preferences.
- D-5 zoning would allow for on-site parking and the same uses as the surrounding buildings.

Mr. Longe described the 469-479 S. Old Woodward site. If the current buildings were maintained and reused for a non-conforming use the applicant would need to provide parking for 55 cars since the site is outside of the PAD. His presentation illustrated and talked through some other D-4 zoned options that would be similarly untenable for the site.

The Board was then presented with two massing models to demonstrate what the proposed building would look like if the City Commission were to grant the change in zoning to D-5.

Mr. Longe clarified that the proposed building could be stepped back from Birmingham Place to provide more open space between the two buildings if the change in zoning to D-5 is granted. He added that this idea came about as part of the ongoing discussion with the tenants of Birmingham Place.

Mr. Longe confirmed for Mr. Emerine that the top block represented on the proposed building would be a mechanical block, not an additional story to the building.

Chairperson Clein thanked Mr. Longe for the massing diagrams, stating they were helpful.

Mr. Rattner told Mr. Share that the applicant is coming before the Board instead of the Board of Zoning Appeals because the applicant is attempting to do a development under the current zoning ordinances of the City. Mr. Rattner added that it is unusual and unfair to maintain the site at D-4 when both buildings adjacent to the site are zoned at D-5.

Doraid Markus, one of the applicants, opined that a five-story hotel would not be as becoming of Birmingham as a nine-story hotel. He specified that in order to create an uncrowded first floor and mezzanine level and a sufficient number of rooms, the building would need the extra height.

Susan Friedlander, Attorney representing Birmingham Place Residential Condominium Association, explained that the evening's discussion was supposed to be a rehearing since the site had originally been described incorrectly as being in the PAD. Given this, she wondered why the applicant had yet to explain this evening how the PAD was such a significant issue that the Board should consider voting differently than it had in the past. She added:

- The applicant's assertion that they could not park onsite with a five-story building, but could park onsite with a nine-story building -- even though a nine-story building would require an increase of parking spaces -- did not compute.
- Other hotels being built in the PAD are putting two levels of parking underground.
- The applicant said they would be able to use approximately 40 spaces from the 555 building if the site was built to nine stories. Ms. Friedlander questioned why this arrangement would not work with a five-story building as well.
- During tonight's presentation the applicant did not mention the various parking sharing arrangements available to the applicant under the ordinance. Such sharing arrangements could significantly decrease the burden of providing parking. She said addressing this issue is more of a parking variance matter than an ordinance matter.
- According to Planning Director Ecker's report, there is no consensus on whether the City should be raising building heights in this area. If the Board and Commission determined that these three high-value buildings should have their heights raised without consulting the Master Plan for the area, then the City was not zoning according to a Plan. Michigan law requires that every City zones according to its Plan(s).

- Changing building heights in the Downtown Overlay district merits a thorough community engagement process, similar to the process of changing building heights in the Triangle District. Insufficient consultation of the community on this matter could result in the impression that this zoning change was insufficiently considered and vetted. She also said the February 2017 Commission discussion on the issue reflected similar concerns from the Commissioners regarding the lack of community engagement.
- A number of other properties in Birmingham could also request changes in zoning based on being next to D-5 buildings. The problem is whether these changes are being made according to the City's 2016 and Master Plans.
- The City specified in its 2016 Plan that it wanted to maintain its small town character. According to Ms. Friedlander, small towns do not usually go above three or four story buildings. While Birmingham has gone back and forth on whether it would allow taller buildings, drastic changes to building heights should be made according to the City's Plans.
- The discussion of changing this site's zoning should occur under the auspices of the upcoming Master Planning process. Otherwise, this is similar to spot-zoning, since no land use patterns changed for the site.

David Nykanen, Attorney, said he represents some of the residential owners in the Birmingham Place Condominium Association. Noting that a hotel would require the least amount of parking on this site, Mr. Nykanen asserted that the applicant chose not to present the parking implications of that option in the current discussion so as to make the parking requirements seem more onerous than they are. He continued:

- Two other sites in Birmingham are building five story hotels, demonstrating that parking a five story hotel within the City is not excessively burdensome.
- In addition to the potential parking agreement with the 555 building, other options are available to the applicant for parking a five story hotel on this site.
- The applicant's statements this evening demonstrated that this rezoning request is based on the applicant's preference for a certain type of hotel, not the inability to build a hotel on the site more generally.
- The zoning uses for both D-4 and D-5 are the same, so Mr. Rattner's assertion that a change in zoning is necessary to allow the applicant to enjoy the same uses as the adjacent buildings is fallacious. The only difference between the zoning types is the building height.
- A five story hotel on the site would be taller than the 555 building and would adequately fill in the visual gap in the streetscape.
- It is clear that this rezoning request is about economics and not about land use, which is an insufficient reason to rezone a property.

Jason Abel, Attorney, said he represents the Masters' Association of the Birmingham Place Condominium Association. He said he echoed the previous two speakers and drew the Board's attention to 7.02(B)(2)(b)(i) and 7.02(B)(2)(b)(ii). Mr. Abel explained:

- Regarding 7.02(B)(2)(b)(i), the applicant is required to show, and the Board is required to present findings of facts, as to why the rezoning is necessary for the preservation and enjoyment of the rights of usage commonly associated with the property. Mr. Abel described 'necessary' as the critical word, since it is not necessary to develop a nine story hotel on this property. A five story building could be developed on this site with many different uses. The problem is that the applicant is requesting a change in the zoning to access a use that is not permitted in the five story setting. While Mr. Abel acknowledged

this to be an understandable preference on the part of the applicant, he asserted that it would not be a 'necessary' change. Additionally, the applicant's contention that they would make more money with a taller building or would not be able to provide enough parking with a shorter building could be used by any developer in any zoning environment, making their argument so broad as to fall outside the need for a specific and 'necessary' zoning change.

- Regarding 7.02(B)(2)(b)(ii), the zoning of D-4 is not inappropriate for the current land use. The issue is, rather, that the applicant would like to build a nine story hotel on a parcel zoned for a five story use.
- The applicant presented arguments adjacent to the Zoning Ordinance rather than addressing the Zoning Ordinance.
- Regarding 7.02(B)(2)(b)(iii), Mr. Abel said the applicant did not address the detrimental impact changing the zoning of the site to D-5 would have on the neighbors.

Carole Kozlow stated that her family has always loved Birmingham's smaller town nature. Recalling Mr. Markus making a statement similar to 'if the City does not want large buildings, it never should have allowed the first one to be built' during the June 2018 conversation on the issue, Ms. Kozlow said she agreed. Noting that Birmingham has since changed course on large buildings, she asked that the City continue to preserve its character, rather than having to fix the problem after the fact.

Karl Sachs said he has lived in Birmingham for about 25 years and said he had been asked to convey some of his neighbors' feelings on the potential rezoning. He continued that many of their points had already been covered by others but that he wanted to mention his neighbor Mike Humphrey's written statement that the potential rezoning does not adhere to the Master Plan. Mr. Sachs said that this hotel would make privacy nearly impossible for the residents of Birmingham Place living on the side adjacent to the proposed site.

Michele Prentiss, Property Manager of Birmingham Place, presented the Board with a written reply to the applicant's summary statements as included in the Board's agenda packet for the evening. She then gave a copy to Chairperson Clein.

Chairperson Clein asked if there was a motion to receive and file the letter.

Mr. Williams asked for a copy of the letter. Chairperson Clein said he would pass along his copy for Mr. Williams to read. Mr. Williams said that without a copy for each Board member to read, he would not make a motion to receive and file the letter.

Chairperson Clein said he would acknowledge the letter, and upon receipt of the letter as an email to Planning Director Ecker the letter would be included in agenda material on the matter moving forward.

Seeing no further comments from the public, Chairperson Clein brought the discussion back to the Board. Chairperson Clein said it was time for the Board to make a decision.

Mr. Share asked if the letter had any new information, saying he did not want to make a decision if there was information the Board had not yet heard.

Ms. Friedlander told the Board that all the letter's points had been covered in the evening's discussion.

Mr. Share spoke first, saying that this is an unusual zoning request since it only impacts the height of the building allowed. He continued that when D-5 was implemented, the Board did not preclude other sites from seeking to be zoned D-5 in the future. From a streetscape perspective, he saw no significant difference between a five story and nine story building on the site. The proposed change does not seem 'necessary' as defined by 7.02(B)(2)(b)(i). It would behoove the Board to look at the zoning of the entire block from Hazel to Brown. He would not be voting in favor of rezoning unless his colleagues persuade him otherwise.

Mr. Koseck said none of the new information persuasively explained why the City Commission should approve the rezoning. He noted the 2016 Plan conclusively zoned the building at D-4. Cities tend to have buildings of varying heights, and the variety is partially what makes cities interesting, so the streetscape argument was not particularly compelling. Assuming the site was purchased with awareness of the D-4 zoning, Mr. Koseck suggested that this is not so much a zoning issue as a parking issue. He recommended the applicant apply to join the PAD or enter into some other beneficial parking arrangement. Addressing Mr. Markus' assertion that certain hotel designs are not becoming of Birmingham, Mr. Koseck said his firm is currently building a hotel in Ann Arbor with nine-foot floor to ceiling heights, that he is confident that the result will be sufficiently upscale, and that something similar could be done in the applicant's case. Lastly, Mr. Koseck noted the community's consistent concerns that the rezoning would be detrimental to the neighbors. He said no new information could be provided that would change his thinking on the matter.

Mr. Williams pointed out that the City Attorney found the site eligible for D-5 zoning. He said Ms. Friedlander could pursue the matter further with the City Attorney, but that the Board is bound by the City Attorney's opinion. The D-4 zoning for this site does not allow reasonable enjoyment of the property since all other D-4 sites in Birmingham have access to the PAD. Because this currently makes the property non-competitive, Mr. Williams said he would be in favor of rezoning.

Mr. Emerine noted the persuasive impact of the City Attorney's opinion that this site is eligible for D-5 zoning. Adding that the developer would need to acquire a SLUP should the rezoning move forward, Mr. Emerine stated he was comfortable with the rezoning at this time.

Mr. Jeffares recalled the Board had considered rezoning the surrounding area but had decided they wanted to keep D-5 to this smaller area at the time. He expressed an equivocal opinion on the idea of zoning a building according to its neighbor's zoning, but said that a building zoned differently between two buildings of the same zone seemed significant enough to change.

Ms. Whipple-Boyce addressed Ms. Friedlander's contention that D-5 was in any way surreptitiously done, saying that the Board and the City Commission spent many public meetings discussing the issue in depth. Ms. Whipple-Boyce added that she affirmed the City Attorney's findings regarding the application, and that she believed the applicant proved their case.

Chairperson Clein said he was against the rezoning at this time. He continued that the origins of D-5 zoning have no bearing on the question before the Board this evening, or if they do it is a legal question not up to the Board's interpretation. He clarified that the Board's directive was to

determine whether this parcel and application met the ordinance requirements for rezoning. Arguments about adjacencies were also not relevant. The applicant did not meet the burden of proof. Building heights across the downtown should not be changed without a downtown Master Plan. While Chairperson Clein said he would likely recommend the building be permitted a height increase within a planning process, neither the City's Master or 2016 plans allow the flexibility to add four stories to this building outside of the planning process. He noted that there were a number of D-4 uses not presented that would be appropriate for this parcel. In conclusion Chairperson Clein said he was firmly in opposition to rezoning at this time, but said he would entertain any other Board member's replies.

Mr. Jeffares said the owners of the other D-5 parcels applied for rezoning based on finances but that ironically tonight's applicant was being chastised for doing the same thing.

Chairperson Clein begged to differ and clarified for the record that the owners of the other D-5 parcels were having to get a number of different variances for every change they wanted to make on their properties.

Mr. Jeffares asserted the other D-5 parcel owners had indeed brought up financing in their rezoning application.

Chairperson Clein disagreed, saying that D-5 zoning arose out of a directive from the City Commission asking the Board to find a way to bring the currently D-5 parcels in question into compliance.

Motion by Mr. Williams

Seconded by Mr. Jeffares that based on a review of the rezoning request by the applicant and the supporting documentation submitted by the applicant, a review of the City's current Master Plan and the City's current 2016 Plan, and development trends in the area, and in compliance with 7.02(B)(5)(a) - 7.02(B)(5)(e), the Planning Board adopts the findings of fact in the staff report dated November 8, 2018, and recommends approval to the City Commission for the rezoning of 469 – 479 S. Old Woodward from D-4 to D-5 in the downtown overlay.

Motion carried, 4-3.

ROLL CALL VOTE

Yeas: Whipple-Boyce, Emerine, Jeffares, Williams

Nays: Clein, Koseck, Share

Absent: Ramin

Chairperson Clein explained that this is a recommendation to the City Commission. He explained the Commission will then take this recommendation and all attendant information, hold another public hearing of the applicant's request and the community's perspective, and make their determination. Chairperson Clein thanked the audience for voicing their opinions during the discussion.

City Commission Minutes
March 11, 2019

NEW BUSINESS

PUBLIC HEARING TO CONSIDER THE REZONING OF 469 – 479 S. OLD WOODWARD FROM B3/D4 TO B3/D5

Mayor Bordman suggested the Commission consider including this property in the Parking Assessment District (PAD) before considering whether to rezone the property, since they are separate considerations.

Commissioner DeWeese supported Mayor Bordman's suggestion.

Commissioner Hoff said she was unsure whether the issues were actually separate, since the parking requirements for a property are partially dependent on whether the property is part of the PAD.

Mayor Bordman advised that the contractor's decisions vis-a-vis parking may change if the property is included in the PAD, but the Commission's decision on how to zone the property will not, and as a result should be considered separately.

Agreeing with Mayor Bordman, Commissioner Sherman suggested the entire discussion of this property's potential inclusion in the PAD be moved to a later date so as not to confuse this evening's public hearing on rezoning.

Commissioner DeWeese opined that if the Commission sends the possibility of this property's inclusion in the PAD to the Advisory Parking Committee (APC) for further study, it clarifies the topic of the evening's public hearing in the same way Commissioner Sherman intended.

Mayor Bordman sought comment from the Commission on whether this property's potential inclusion in the PAD should be sent to the APC for further study.

Mayor Pro Tem Boutros said the question of this property's inclusion in the PAD is an important subject and he would be comfortable voting on the issue separately this evening.

Commissioner Harris agreed with Commissioner Sherman and said he would like to see more thorough information from staff before the Commission decides whether to refer the question to the APC.

Commissioner Nickita said this will end up before the APC, so it would be most efficient to move the PAD question for their study now.

Commissioner Sherman opined that this discussion was inappropriate in both timing and procedure. He said that not only does this conversation have nothing to do with the current rezoning request, but the onus for requesting a property's inclusion in the PAD is on the property owner, not the City.

The Commission took no action on the question of the property's inclusion in the PAD, and Mayor Bordman affirmed it would not be part of the evening's discussions.

Mayor Bordman noted for the record that the City received a confirmed petition from the property's neighbors. As a result, according to state statute, the motion to re-zone would have to pass with a $\frac{3}{4}$ vote, meaning six out of the seven Commissioners approving.

Mayor Bordman then gave a review of public hearing procedure and opened the public hearing at 7:59 p.m.

Planning Director Ecker presented the proposed rezoning. Clarifications/Comments

Commissioner Nickita stated Birmingham Place, in terms of space which can be occupied, is 98' 2" tall. The mechanicals bring the height of the building up to 114' 4". This makes Birmingham Place 18' 2" taller in eave height than the allowable D4 height.

Planning Director Ecker explained:

- The on-site parking requirements do not change between D4 and D5.
- A D4 zoned building has a five-story and 80' maximum, including all mechanicals. If a property in the D4 district wanted to go to six stories and 80', the property would have to receive a variance from the Board of Zoning Appeals (BZA).
- Any building zoned D5 is subject to a Special Land Use Permit (SLUP) over five stories or 80'.
- Any Birmingham property owner can apply for any zoning classification, but it does not mean the owner will be granted approval for the rezoning.
- Buildings in the downtown overlay district have a maximum overall height, which includes mechanical height.
- The City has increased flexibility in influencing the design, development and use of buildings zoned D5 through the SLUP requirement, once the building is over five stories or 80'.

Rick Rattner, attorney for the applicant, presented the rezoning request. The presentation began with a four-minute video excerpt from the July 8, 2015 Planning Board (PB) meeting. Mr. Rattner said:

- The Planning Board considered the matter of the D5 zoning designation very carefully, as the video excerpt demonstrated. He reviewed the Board's process for creating the D5 designation, adding that new construction was anticipated as a result of the D5 zoning classification.
- This is clearly not an instance of spot-zoning, since spot-zoning entails changing one building to be zoned differently from the surrounding properties, allowing permitted uses that are inconsistent with the area, and is an unreasonable classification. None of those conditions are

present in the subject rezoning request. The proposed rezoning would make this building the same as the surrounding properties, have similar use to the surrounding buildings, and would be a reasonable classification change.

- Rezoning 469 - 479 S. Old Woodward to D5 fits the Master Plan by allowing for the building of aesthetically similar buildings in the downtown in order to encourage a sense of place. While the property owner could build a D4-compliant building, this would result in the owner of the property not being able to enjoy the same rights of usage that the adjacent buildings enjoy.
- If Birmingham Place or the 555 Building had owned 469 - 479 S. Old Woodward at the time the D5 zoning designation was created, it is likely the 469 - 479 S. Old Woodward property would have been rezoned to D5 at the time as well. Mr. Rattner cited the 555 Building's pursuit and eventual receipt of a D5 rezoning of the vacant lot to the south of the property.
- The 469 - 479 S. Old Woodward lot is unusual in that it is long, narrow, and neither part of the PAD nor adjacent to any building that is part of the PAD. To not rezone this parcel would be to leave it as a D4 island surrounded by two D5 buildings.
- Part of the due diligence done in purchasing this parcel was understanding the City ordinance could potentially permit the rezoning of this parcel to D5. Purchasing the parcel with the intent to request its rezoning was appropriate and in-line with the intention of the D5 zoning ordinance.
- The applicant is not pursuing entry into the PAD because of their distance from the relevant parking decks.

Mayor Bordman made clear that the current issue before the Commission is whether to rezone the parcel to D5, and not any consideration of what might be built on the parcel. She emphasized that the focus must remain on whether rezoning the parcel is appropriate for the City as a whole.

Mayor Bordman also noted that the building to the south of 469 - 479 S. Old Woodward is 77½' tall, which is 2½' shorter than the permitted height for a D4 building.

Mr. Rattner replied that the height of the closest building to the 469 - 479 S. Old Woodward parcel is 114'. He suggested it is more appropriate to compare the parcel to the buildings directly abutting it, rather than to the building across the street. He added that the 77½' building being reference is zoned D5, and if they were approved for a SLUP could build higher because of that zoning.

Mayor Bordman invited members of the public to speak.

Mr. Rattner spoke once more, stating an objection to the submitted petition since he and the applicant have not yet had an opportunity to review its contents.

Mayor Bordman thanked Mr. Rattner for his comments.

Susan Friedlaender, attorney at Friedlaender Nykanen & Rogowski, said the excerpt Mr. Rattner presented from the July 8, 2015 PB meeting was irrelevant because the minutes from a PB

meeting in January 2016 reflect the PB was unable to reach consensus about D5 zoning. At that time the PB decided to address the non-conforming aspects of the 555 Building and not the whole surrounding area. Ms. Friedlaender continued:

- At the July 26, 2016 City Commission meeting, a motion was passed "to review the non-conformance provisions pertaining to commercial buildings to provide specific requirements considering a new zoning category or categories that allow for changes to non-conforming buildings for the maintenance and renovation of existing buildings consistent with those permitted for residential buildings and structures."
- The reason the applicant asked for the rehearing from the PB was because the PB failed to recognize the applicant was not in the PAD.
- The Master Plan recognizes that building height varies within the City, and the standard is that the maximum building height should be based on the smaller buildings in proximity.

Michele Prentice, property manager at Birmingham Place, said a number of condominiums sold in the building were partially purchased on the assurance that the parcel at 469 - 479 S. Old Woodward could not be built over five stories, and thus would not significantly obstruct southern sun or views even when developed. She continued:

- The effect of the proposed rezoning on the south-facing condominiums is already apparent, as one was taken off the market with no offers and two have been on the market for over 120 days, when in the last four years condominiums in Birmingham Place were on the market for less than 35 day.
- Sales of condominiums in other parts of the building have not fared better.
- A sixteen-year office tenant of Birmingham Place informed Ms. Prentice he would not be renewing his lease because he did not want his view to be obstructed by a hotel.
- Continued slow residential sales and rentals will decrease the taxable value of Birmingham Place and decrease tax revenue received by the City. The current taxable value of Birmingham Place is estimated at \$36 million which generates an estimated \$1.6 million in yearly property taxes to the City.
- Birmingham Place has 146 residential units.

Patrick Howe, attorney representing the Birmingham Place Commercial Condo Association, said:

- The Commission has to determine whether the whole of the downtown overlay district should be eligible to go from D4 to D5.
- The record reflects that this matter has only been considered by the Commission for a cumulative 18 minutes prior to this evening, in the context of discussing the applicability of the D5 ordinance to three non-conforming buildings.
- Birmingham's Master Plan speaks to compatible building heights, not whether it is appropriate for buildings to be built taller than five stories.
- According to Planning Director Ecker, the height maximum for a building zoned D5 on the 469 - 479 S. Old Woodward parcel would be 15 stories. In addition, Planning Director Ecker indicated that buildings across the street can be considered adjacent for the purpose of determining height

maximums. Given this, many more parcels could reasonably argue for a D5 rezoning, which would change the look of Woodward Ave.

- It would be most appropriate to explore the potential ramifications during the City's planning process rather than exclusively during the consideration of the rezoning of a single parcel.

Bob Clemente of 411 S. Old Woodward advised the Commission that he owns a couple of condominiums in Birmingham Place, and works in a Birmingham Place office where his employer has been a tenant since around 1985. Mr. Clemente agreed with Mr. Howe. He added:

- The goal of the 2016 Plan was to strengthen the spatial and architectural character of the downtown area in mass and scale with the immediate surroundings and the downtown tradition of two- to four- story buildings.
- Rezoning the 469 - 479 S. Old Woodward parcel stands to have an intensely negative impact on Birmingham Place over an eighteen-foot height difference.
- The applicant and their representative have made it clear that the building would be viable if they kept the D4 zoning on the parcel in question, but just prefer it to be D5.

Jason Abel, attorney for the Birmingham Place Development Master Association, said:

- The implications of 7.02(b)(5)(d) and 7.02(b)(2)(b)(1) would be the focus of his comments.
- The PB recommended the Commission consider the rezoning by a 4-3 vote, with two of the dissenting members asking why the rezoning would be required for enjoyment of use. Mr. Abel asserted they were not provided with an answer to that inquiry because the rezoning is not, in fact, necessary for the enjoyment of use.
- City staff reports show no finding of fact that would allow for the legitimate support of the applicant on this issue. The findings of fact only noted that under the current zoning classification all the same uses are permitted as under the D5 classification, and that the building is not part of the PAD.
- He challenges the applicant to prove that the property cannot be used under the D4 classification, as that is the fundamental consideration of 7.02(b)(2)(b)(1).
- Mr. Rattner argued that rezoning should be considered based on whether it is necessary in order to bestow the rights and usage common to an adjacent property to the property in question, which is not what the City ordinance says. The question the ordinance actually addresses is whether the current zoning allows for the enjoyment of property ownership.

Mickey Schwartz of Birmingham Place said the City's previous plans intentionally limited building height, and this matter should be considered as part of the current Master Planning process. He noted that a number of other buildings in the area have conformed to their D4 zoning and it has not been a problem for them.

Richard Huddleston, vice-president of Valstone Asset Management and office tenant at 260 E. Brown, explained that from November 2010 - December 2017 Valstone owned the commercial space at Birmingham Place. He continued:

- Valstone rescued the commercial space at Birmingham Place from foreclosure by purchasing the note, renovating the building, and turning it into one of the most desirable business addresses in southeastern Michigan.
- When 469 - 479 S. Old Woodward was on the market, he was approached by the real estate brokers to purchase the property. After running the numbers, he determined that the only way to make the parcel profitable would be to significantly obscure the southern view for the tenants of Birmingham Place, and he found that he would not in good conscience be able to do that.

Karl Sachs of 666 Baldwin Ct. said he would be concerned about the domino effect of granting D5 zoning to this parcel and other buildings along Woodward pursuing the same height increases through their own subsequent requests for rezoning.

Anthony Yousaif, one of the developers of the 469 - 479 S. Old Woodward parcel, yielded his time to Duraid Markus.

Duraid Markus introduced himself as one of the partners in the 469 - 479 S. Old Woodward development. Mr. Markus said:

- The project went back to the PB because the developers were unsure whether a D5 zoning allowed for the expansion of buildings, not only because the building had not been appropriately described as being outside of the PAD.
- City Attorney Currier had already opined that the parcel is eligible for D5 rezoning.
- When he considered purchasing the parcel, research into the City ordinances indicated rezoning should be possible subject to the owners entering into a SLUP.
- There are no other buildings in Birmingham where the middle building is zoned differently from the buildings on the left and the right.
- Rezoning to D5 would allow the proposed building to be stepped back, which would minimize the impact on Birmingham Place. Leaving the zoning at D4 would require the building to be built up to the lot line, resulting in far more obstruction for south-facing Birmingham Place tenants.
- The domino effect concern with rezoning leading to more rezoning is a red herring considering the loss of flexibility a developer experiences when agreeing to a SLUP. In many cases it is more likely that a developer would find it more beneficial to remain in D4 than to agree to a SLUP.

Alice Lezotte, a Birmingham Place resident, said that Birmingham Place is a vertical neighborhood and entreated the Commissioners to consider it as such, keeping in mind what they would want for their horizontal neighborhoods. She explained this discussion is a matter of quality of life, air, space, noise, and safety for the residents of Birmingham Place.

Fred Lavery, owner of the Audi Dealership on Woodward in Birmingham, said that as a business owner who has been party to SLUPs with the City he believes Mr. Markus is correct in saying that the City gains control by rezoning the parcel to D5 because of the SLUP requirement. The Triangle District, which is designed with consideration of New Urbanism, requires building heights from five to nine stories, meaning the precedent for taller buildings has already been set in Birmingham.

Paul Reagan, 997 Purdy, said he had occasion to attend the PB meeting on adjacent buildings and recalled it being said that it was nothing more than cleaning house for the two non-conforming buildings. The 555 Building and Birmingham Place are aberrations in Birmingham planning, not an appropriate standard. Mr. Reagan shared concern that this is an attempt to get a parcel rezoned in a way that would no longer be possible after the community has its say as part of the upcoming Master Planning process, and he urged the Commission not to let it go through. He asked the Commission to send the issue back to the PB with a focus on respecting the 2016 Plan and figuring out the issue of shared parking for the parcel.

Mayor Bordman closed the public hearing at 9:42 p.m.

Commissioner Hoff explained that she understood Birmingham Place residents' concerns, but the decision before the Commission is the rezoning of a parcel, not how that rezoning might affect the residents of Birmingham Place. She continued:

- Rezoning the parcel to D5 would not significantly change or benefit the streetscape versus a D4 parcel, despite the applicant's assertion that it would.
- When the PB determined which buildings would be part of the D5 zone, the decision specifically applied to those buildings. The ordinance specifies that it is "to allow for the extension or enlargement of existing legal non-conforming commercial buildings."
- She is concerned about setting a precedent for further D5 zoning. The condition of buildings of different heights in Birmingham already exists, and Birmingham is a beautiful city with it.
- Section 7.02(b)(2) states that rezoning must be proven necessary for the preservation and enjoyment of rights of usage, and she was not convinced that it is necessary.
- She would not be voting in favor of the rezoning.

Commissioner DeWeese said he did not understand the D5 zoning designation to be applicable to any buildings beyond the specific non-conforming buildings for which the designation was designed. He said he was not convinced the zoning needed to be changed for enjoyment of use, and that the 555 Building seems to be made up of two buildings, the shorter of which would be more appropriate to determine the height to which the proposed building at 469 - 479

- S. Old Woodward could go. While he said he would consider other points, at this time Commissioner DeWeese indicated he would not be voting to approve the rezoning.

Commissioner Sherman said the question of what buildings and areas would be appropriately included in the D5 zoning area, with specific attention from Haines to Brown, should be sent back

to the PB with a request for a definitive answer. No action should be taken on the motion because it is too related to the potential development in this case.

Commissioner DeWeese said he would be comfortable sending this back to the PB with the request that they pay particular attention to the issues broached this evening. He added that he was not comfortable with the 4-3 vote by the PB and would like more unanimity in their recommendation.

Mayor Bordman said she was not in favor of sending the matter back to the PB. She noted all the information the Commission had been provided with in order to make a decision and said it would not be appropriate to delay.

Commissioner Nickita said:

- The 200-foot right-of-way of the Woodward Corridor between the 555 Building and Birmingham Place on the west side and the west side of the Triangle District on the east side has been intentionally planned and developed as a high-density area.
- While the Downtown Overlay has always adhered to buildings that are no more than five stories in height, the Woodward Corridor has been built with taller buildings. For this reason, rezoning the parcel at 469 - 479 S. Old Woodward to D5 would not establish a precedent for the buildings in the Downtown Overlay. The D4 parcel in question is anomalous among the other buildings along the Woodward Corridor.
- The City has much more influence on any development at 469 - 479 S. Old Woodward if they change the zoning to D5 because of the SLUP requirement.
- The Citywide Master Plan is a broad view, and as such will not focus on specific zoning details like the question currently before the Commission.
- The ability to update non-conforming properties or parcels was the intention of the D5 classification. The ordinance was supposed to refer to whatever property is closest to the property in question in order to determine the maximum height. Because the ordinance language seems not to be clear on the issue, it would be inappropriate to vote on this since the definition of 'adjacent and abutting' is being interpreted more broadly than may have been originally intended. The point in the D5 ordinance language should be clarified so that an 'adjacent' building cannot be interpreted as a building across the street.

Mayor Pro Tem Boutros said he would like to see this studied as part of the Master Planning process.

Commissioner Harris said he agrees with Mayor Bordman that the decision should be made this evening. Referring to 7.02(2)(b)(2), he continued:

- He does not see a significant difference between the first criterion requiring rezoning for the necessity and preservation of enjoyment and rights and the second criterion requiring rezoning if the zoning classification is no longer appropriate. That said, the applicant made a

compelling case that parking is unfeasible with this parcel zoned to D4, which satisfies both criteria.

- He was hoping to hear how D5 zoning would resolve the issue of parking, but since the applicant sufficiently demonstrated that parking would be an issue in D4 the criteria were still met.
- A staff report from November 8, 2018 stated adhering to a D4 would be "completely inconsistent and dominated by the height of the adjacent Birmingham Place and 555 Buildings."
- The last criterion under 7.02(b)(2)(b) is "why the proposed zoning will not be detrimental to the surrounding properties." The applicant made a compelling case as to why D5 is better for Birmingham Place, and the SLUP requirement would allow the City to encourage the accommodation of the neighboring properties.
- Commissioner Nickita's assessment that there are limitations on when the D5 can be applied to future properties is accurate. There is no real risk of a 'slippery slope' with this zoning because this decision is not binding for any other decision. In addition, any building that sought to be rezoned to D5 would be subject to a SLUP.
- The risk level that the property owner assumed when buying the 469 - 479 S. Old Woodward parcel is irrelevant to the present discussion.
- Although the D5 was designed with the particular focus on the previous non-conforming properties, it was not restricted to only those non-conforming properties.
- For all those reasons, he is inclined to support the rezoning request.
- He also took heed of Commissioner Nikita's comments about the ambiguity in the ordinance, which he agrees should be addressed, but at a later date. The ambiguity does not dissuade him from approving the rezoning for this particular property.

Commissioner Hoff said there were valid reasons for sending this back to the PB, but she believed that a decision should be made.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner DeWeese: To deny the rezoning of 469 - 479 S. Old Woodward from B3/D4 to B3/D5.

City Attorney Currier said he would have to research whether the applicant could submit a new application before a year's time elapses if the City makes changes to the D5 ordinance, because it might sufficiently constitute a material change in circumstance.

Mayor Bordman said she would be supporting the motion because she does not want the issue to go back to the PB.

VOTE: Yeas, 3
Nays, 4 (Boutros, Harris, Nickita, Sherman)

MOTION FAILED

MOTION: Motion by Commissioner Harris
To approve the rezoning of 469 - 479 S. Old Woodward from B3/D4 to B3/D5.

MOTION DIED FOR LACK OF A SECOND

MOTION: Motion by Mayor Pro Tem Boutros
To postpone the hearing to do a comprehensive study.

MOTION DIED FOR LACK OF SECOND

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Nickita:
To postpone the public hearing to July 22, 2019 for the purposes of sending it back to the Planning Board with specific direction to look at the issues raised by Commissioner Nickita on the D-5 ordinance and to look at the properties between Haines and Brown, Old Woodward and Woodward for the appropriate zoning classification.

Planning Director Ecker said the ordinance language could possibly be reviewed and brought back by July 22, 2019. She was not sure if the PB would reach consensus in three months on the geographic area to which the D5 zoning should be applied, since they have already studied the issue and were not able to reach consensus.

Commissioner Hoff said she would be interested in knowing whether building heights should be to the eaves or to the tallest structure on a building, and the specific meaning of the 'adjacent' and 'abutting' in the context of the ordinance.

Commissioner Sherman said he would be willing to change the date in the motion to allow an additional month of study.

Commissioner Nickita said it should not take four months to define the method of determining building height and the definitions of 'adjacent' and 'abutting'. He said it would be better to keep the date in the motion and to extend it if necessary.

Mayor Bordman invited public comment on the motion.

Mr. Rattner stated the applicant had no objection to the motion.

Mr. Schwartz said that all the interested parties have weighed in on the issue, and the Commission is in effect postponing a civic duty.

Mr. Bloom said he would like to know the impact on the City if the parcel is built up as a hotel, office building, mixed use space, or any other type of development. He would want the PB to

report on each building-type's likely impact on parking, public safety, density, and overall quality of life for Birmingham residents.

Mr. Reagan said 'adjacent' and 'abutting' were terms already discussed at the beginning of the 2016 planning process. In addition, the expansion of the geographic area being studied concerned Mr. Reagan because, as he stated, the neighborhood included within that area already deals with significant congestion, cut-through traffic, and parking issues. If these developments occur, there has to be sufficient parking accommodations. Mr. Reagan asserted parking shortages would stem the possible larger D5 developments the City is considering allowing.

Ms. Friedlaender said choosing to raise the heights of buildings should be part of a community study process, and all the buildings around the Merrillwood building should be included in this motion and studied since Merrillwood is also zoned D5.

Mr. Abel said the Commission should make a decision this evening.

Commissioner Hoff said Commissioner Nickita's concerns should be spelled out in the motion. Mayor Bordman agreed with Mr. Abel and Commissioner Hoff. She asked if there was a motion to amend in order to include Commissioner Nickita's comments. No motion to amend was offered.

VOTE:	Yeas,	2 (Nickita, Sherman)
	Nays,	5

MOTION FAILED

The Commission took no action. The property remains zoned D4.

Mayor Bordman referred the issue to City Attorney Currier to determine the specific terms under which the applicant may re-apply, since the application was not denied.

Mayor Bordman recessed the meeting for three minutes. The meeting resumed at 10:48 p.m.

DATE: March 4, 2019

TO: Joseph A. Valentine, City Manager

FROM: Jana L. Ecker, Planning Director

SUBJECT: Public hearing to consider the rezoning of 469 – 479 S. Old Woodward from B3/D4 to B3/D5

INTRODUCTION:

The owner of the above-captioned properties applied for rezoning from B3/D4 to B3/D5 to allow them to proceed with site plan review approval to demolish the existing one story Mountain King and Talmer Bank buildings, and construct a new 9 story hotel on the two properties.

BACKGROUND:

On June 27, 2018, the Planning Board conducted a public hearing to consider the requested rezoning of the properties located at 469 – 479 S. Old Woodward, currently the site of the former Mountain King restaurant and Talmer Bank. After much discussion, the Planning Board voted to recommend denial of the proposed rezoning to the City Commission.

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

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

Section 7.02(6) of the Zoning Ordinance states:

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

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

On September 12, 2018, the Planning Board considered the applicant's request for a rehearing based on new information. After much discussion, the Planning Board voted to postpone consideration of the public hearing until October 10, 2018, pending receipt of a legal opinion of counsel in writing as to whether the proposed properties are eligible to be rezoned to the D5 category.

On October 10, 2018, the Planning Board again considered the applicant's request for a rehearing, and after further discussion, voted to grant a rehearing based on the substantial change in the evidence that was presented to the Board on June 27, 2018. However, the Planning Board further voted to conduct the public rehearing of the rezoning on November 14, 2018.

On both November 14, 2018 and again on December 12, 2018, the applicant requested postponement of the rehearing to allow additional time for the developer and property owner to meet with the adjacent property owners. Thus, the matter was ultimately postponed until the January 23, 2019 meeting of the Planning Board.

On January 23, 2019, the Planning Board conducted a public rehearing to consider the requested rezoning of the properties. After much discussion, the Planning Board voted 4-3 in favor of recommending approval of the proposed rezoning to the City Commission and adopted the findings of fact contained in the staff report dated November 8, 2018.

On February 11, 2019, the City Commission set a public hearing for March 11, 2019 to consider the proposed rezoning for the properties located at 469 – 479 S. Old Woodward.

LEGAL REVIEW:

No legal review is required.

FISCAL IMPACT:

There is no fiscal impact for this agenda item.

SUMMARY:

The City Commission is set to conduct a public hearing to consider the requested rezoning of the properties located at 469 – 479 S. Old Woodward from B3/D4 to B3/D5.

In the alternative, the City Commission could also consider approving the placement of the properties at 469 – 479 S. Old Woodward into the Parking Assessment District, and charging the required assessment fee. This would eliminate the onsite parking requirements for all retail and commercial uses., although parking for any proposed residential units would still be required on site.

ATTACHMENTS:

Please find attached the following documents for your review:

- Rezoning application and supporting documents submitted by applicant
- Letter from the City Attorney dated September 11, 2018 and October 1, 2018
- Staff reports prepared for the Planning Board
- All relevant City Commission and Planning Board meeting minutes
- All letters and petitions received for and against the proposed rezoning

SUGGESTED RESOLUTION:

To APPROVE the rezoning of 469 – 479 S. Old Woodward from B3/D4 to B3/D5;

OR

To DENY the rezoning of 469 – 479 S. Old Woodward from B3/D4 to B3/D5;

OR

To POSTPONE the hearing on the rezoning of 469 – 479 S. Old Woodward from B3/D4 to B3/D5 to _____, 2019;

AND / OR

To direct the Advisory Parking Committee to review the properties at 469 – 479 S. Old Woodward for inclusion into the Parking Assessment District, and to provide a recommendation to the City Commission.

APPLICATION & SUPPORTING DOCUMENTS FROM APPLICANT

APPLICATION FOR ZONING MAP OR ORDINANCE CHANGE Birmingham, Michigan

TO THE CITY COMMISSION:

The undersigned hereby makes application to the City Commission to:

1. Zoning Map Change:

Change premises described as:

479 South Old Woodward Avenue

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

Legal Description

from its present zoning

classification of B3/D4 to B3/D5.

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

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

2. Change premises described as:

No.

Street

Legal Description

from its present zoning

classification of _____ to _____.

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

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

Signature of Applicant: _____

Print Name: Christopher J. Longe

Name of Owner: Birmingham Tower Parters, LLC

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

Birmingham, Michigan 48009

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

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

APPLICATION FOR ZONING MAP OR ORDINANCE CHANGE
Birmingham, Michigan

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

Date Received: _____ Received By: _____

Resolution No. _____ Approved/Denied _____

Application Fee: \$1,500.00 Receipt Number _____

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

ZONING MAP OR ORDINANCE AMENDMENT PROCEDURE

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

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

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

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

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

APPLICATION FOR ZONING MAP OR ORDINANCE CHANGE
Birmingham, Michigan

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

Date Received: _____ Received By: _____

Resolution No. _____ Approved/Denied _____

Application Fee: \$1,500.00 Receipt Number _____

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



Williams Williams Rattner & Plunkett, P.C.
Attorneys and Counselors

380 North Old Woodward Avenue
Suite 300
Birmingham, Michigan 48009

Tel: (248) 642-0333
Fax: (248) 642-0856

May 17, 2018

Richard D. Rattner
rdr@wwrplaw.com

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

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

Dear Members of the Planning Board and City Commission:

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

Executive Summary

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

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

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

The Subject Property and the Master Plans

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

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

The Birmingham of 2016

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

Very truly yours,

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

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

Richard D. Rattner

RDR/cmc

Corrected
May 17, 2018

Richard D. Rattner
rdr@wwrplaw.com

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

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

Dear Members of the Planning Board and City Commission:

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

Executive Summary

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

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

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

The Subject Property and the Master Plans

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

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

The Birmingham of 2016

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

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

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

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

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

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

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

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

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

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

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

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

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

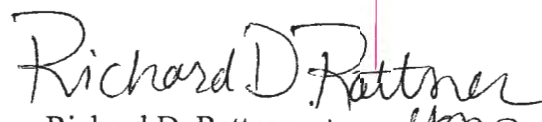
The proposed rezoning of the Subject Property is not detrimental to surrounding property owners. Note that the proposed rezoning does not extend the D-5 classification further to the north or south of the current D-5 Zoning, but actually fills in the one gap in the streetscape that is noticeably out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

Conclusion

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

Very truly yours,

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


Richard D. Rattner *by [signature]*

RDR/cmc

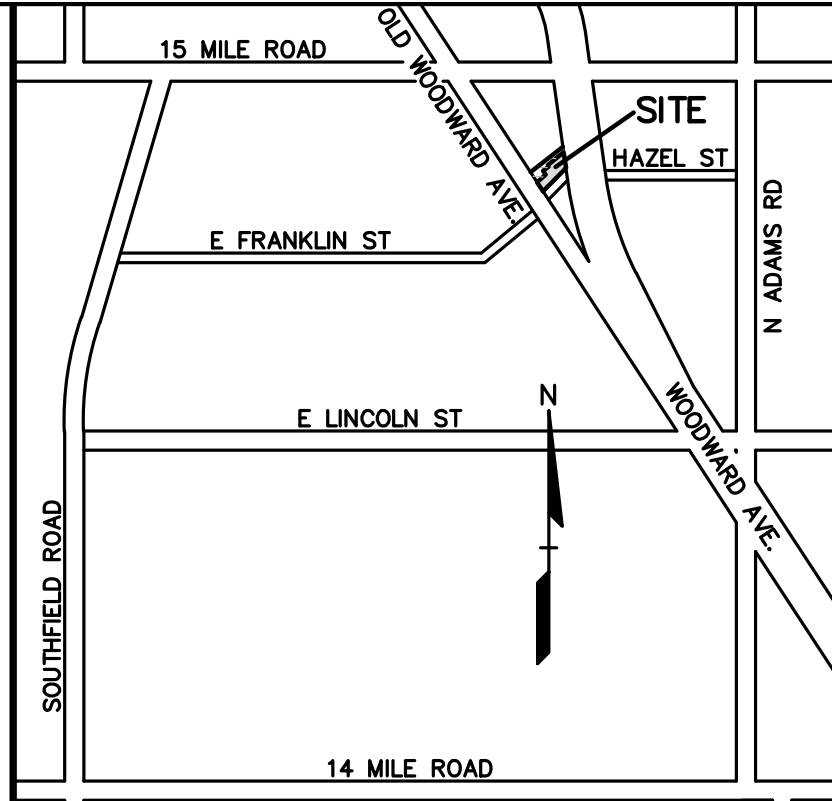
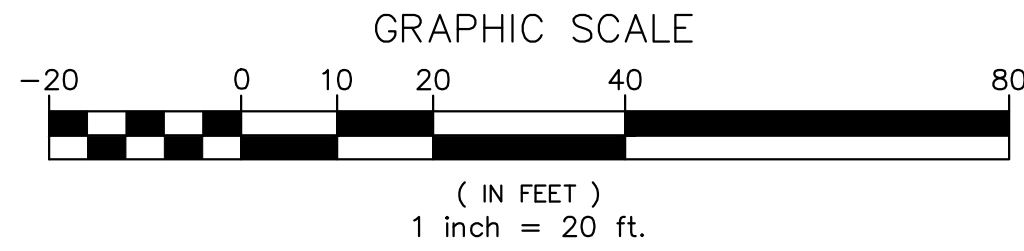
BENCHMARKS:
(GPS DERIVED - NAVD88)

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

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

FLOOD PLAN:

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



LOCATION MAP - NOT TO SCALE

REVISIONS	
NO.	DATE
1	04/15/2017
2	04/15/2017
3	04/15/2017
4	04/15/2017
5	04/15/2017
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99	04/15/2017
100	04/15/2017

CAUTION!!
THE LOCATIONS AND ELEVATIONS OF EXISTING
UNDERGROUND UTILITIES AS SHOWN ON THIS
DRAWING ARE ONLY APPROXIMATE. NO GUARANTEE IS
GIVEN BY THE SURVEYOR THAT THE UTILITIES
LOCATED ARE THE SAME AS THOSE SHOWN ON
THE DRAWING. THE USER OF THIS DRAWING
SHOULD VERIFY THE LOCATION AND DEPTH OF
UTILITIES PRIOR TO THE START OF CONSTRUCTION.

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CONSTRUCTION CONTRACTOR AGREES THAT IN
ACCORDANCE WITH GENERALLY ACCEPTED
CONSTRUCTION PRACTICES, CONSTRUCTION
CONTRACTOR SHALL BE RESPONSIBLE FOR THE
PROTECTION OF ALL EXISTING UTILITIES AND
STRUCTURES 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 NEGLIGENCE OF THE DESIGN
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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.]

REVISIONS			
NO.	DATE	BY	REVISION
1	04/15/2017	AL	1. ALL DIM. REV. PER ADJACENT PARCEL T.C.

LOCATION MAP – NOT TO SCALE

CAUTION!!
THE LOCATIONS AND ELEVATIONS OF EXISTING UNDERGROUND UTILITIES AS SHOWN ON THIS DRAWING ARE ONLY APPROXIMATE. NO GUARANTEE IS GIVEN EXPRESSED OR IMPLIED AS TO THE COMPLETENESS OR ACCURACY THEREOF. THE CONTRACTOR SHALL BE EXCLUSIVELY RESPONSIBLE FOR DETERMINING THE EXACT UTILITY LOCATIONS AND ELEVATIONS PRIOR TO THE START OF CONSTRUCTION.

THIS DRAWING AND DESIGN ARE THE PROPERTY OF PEA, INC. THEY ARE SUBMITTED ON THE CONDITION THAT THEY ARE NOT TO BE USED, REPRODUCED, OR COPIED IN WHOLE OR IN PART, OR USED FOR FURNISHING INFORMATION TO OTHERS, WITHOUT THE PRIOR WRITTEN CONSENT OF PEA, INC. ALL COMMON LAW RIGHTS OF COPYRIGHT AND OTHERWISE ARE HEREBY SPECIFICALLY RESERVED. © 2017 PEA, INC.

CONSTRUCTION CONTRACTOR AGREES THAT IN ACCORDANCE WITH GENERALLY ACCEPTED CONSTRUCTION PRACTICES, CONSTRUCTION CONTRACTOR WILL BE REQUIRED TO ASSUME SOLE AND COMPLETE RESPONSIBILITY FOR JOB SET CONDITIONS DURING THE COURSE OF CONSTRUCTION OF THE PROJECT, INCLUDING SAFETY OF ALL PERSONS AND PROPERTY. THAT THIS REQUIREMENT SHALL BE MADE TO APPLY CONTINUOUSLY AND NOT BE LIMITED TO NORMAL WORKING HOURS, AND CONSTRUCTION CONTRACTOR FURTHER AGREES TO DEFEND, INDEMNIFY AND HOLD DESIGN PROFESSIONAL, WORKERS FROM ANY AND ALL LIABILITY, REAL OR ALLEGED, IN CONNECTION WITH THE PERFORMANCE OF WORK ON THIS PROJECT EXCEPTING LIABILITY ARISING FROM THE SOLE NEGLIGENCE OF THE DESIGN PROFESSIONAL.

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f: 248.689.1044
www.peainc.com

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

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

CERTIFICATE OF SURVEY

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

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

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

C-3.0

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

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

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

SYMBOLS: GRADING

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

PROPOSED CONTOUR LINE

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.

64.50

764

GENERAL GRADING AND EARTHWORK NOTES:

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

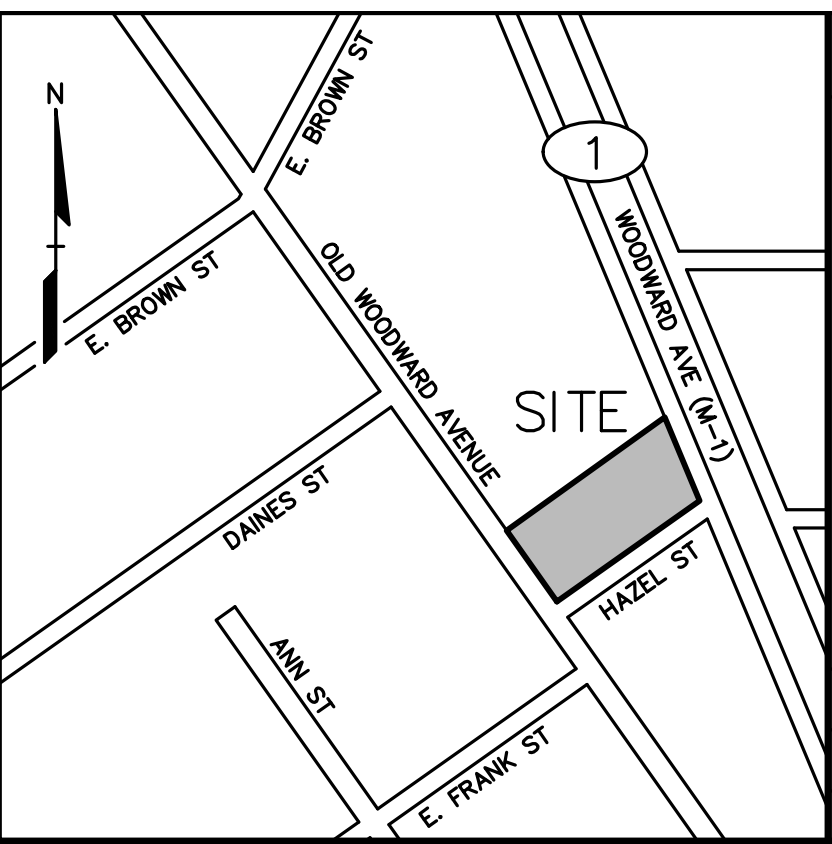
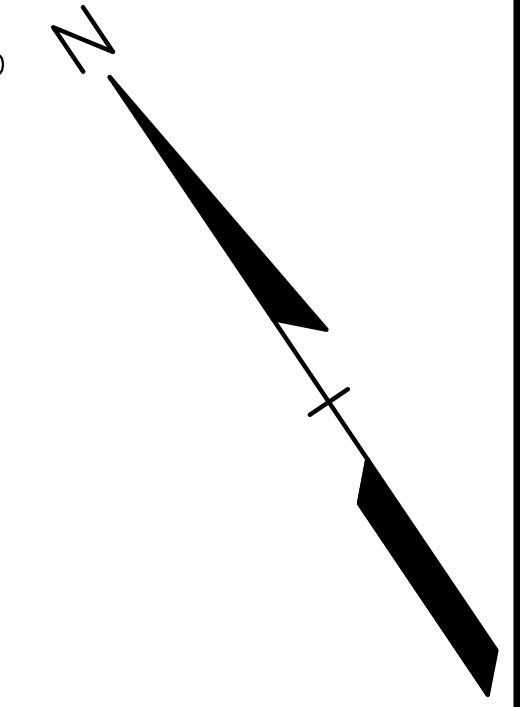
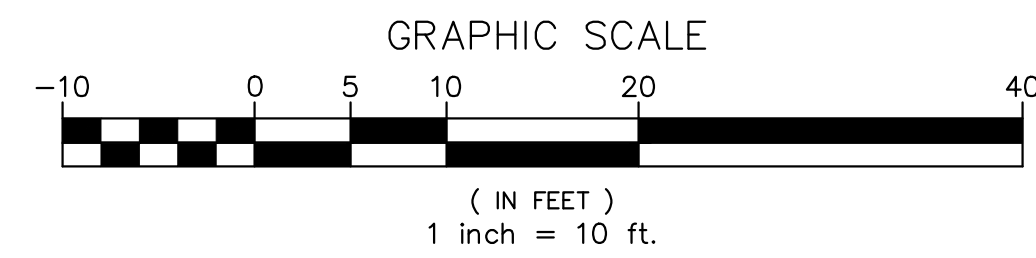
SIDEWALK RAMP LEGEND:

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

REFER TO LATEST M.D.O.T. R-28 STANDARD RAMP AND DETECTABLE WARNING DETAILS AND CITY OF BIRMINGHAM CBD STREETSCAPE DETAILS FOR SIDEWALK RAMP DETAILS

EARTHWORK BALANCING NOTE:

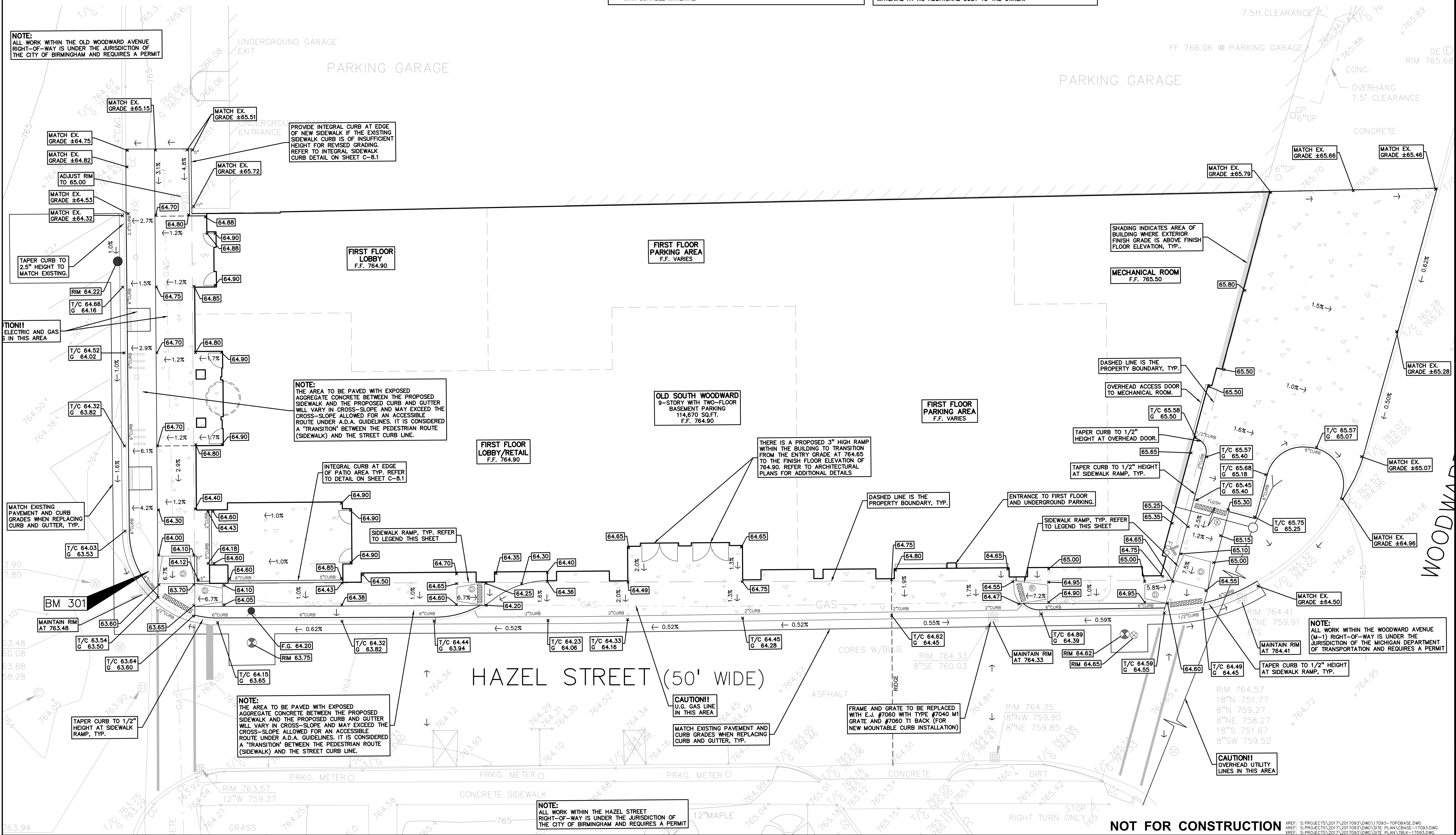
THE CONTRACTOR SHALL BE RESPONSIBLE FOR IMPORTING OR EXPORTING ALL MATERIALS AS REQUIRED TO PROPERLY GRADE THIS PROJECT TO THE FINISHED ELEVATIONS SHOWN ON THE APPROVED PLANS. THE CONTRACTOR SHALL MAKE THEIR OWN DETERMINATION OF CUT AND FILL QUANTITIES AND ALLOW FOR REMOVAL OF EXCESS OR IMPORTATION OF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



LOCATION MAP – NOT TO SCALE

[illegible]

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



CAUTION!!
THE LOCATIONS AND ELEVATIONS OF EXISTING UNDERGROUND UTILITIES AS SHOWN ON THIS DRAWING ARE ONLY APPROXIMATE. NO GUARANTEE IS EITHER EXPRESSED OR IMPLIED AS TO THE COMPLETENESS OR ACCURACY THEREOF. THE CONTRACTOR SHALL BE EXCLUSIVELY RESPONSIBLE FOR DETERMINING THE EXACT UTILITY LOCATIONS AND ELEVATIONS PRIOR TO THE START OF CONSTRUCTION.

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251 EAST MERRILL STREET, SUITE #205
BIRMINGHAM, MICHIGAN, 48009

GRADING PLAN

SOUTH OLD WOODWARD
OLD WOODWARD AVENUE AT HAZEL STREET

DES	PR	DN	PR	SI/R	D/C	P/M	IPR
CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN, 48009							

PROJECT	FILE	DATE	DESCRIPTION	STATUS	REMARKS
PROJECTS\2017\2017-093 HAZEL STREET & WOODWARD AVE - JPB\09g\Site Plans\C-4.1\GRAD=17083.dwg					

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\TRK-17093.DWG

BENCHMARKS
(GPS DERIVED - NAVD88)

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

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

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

Permit No. _____
Date: _____

CITY OF BIRMINGHAM
STORM WATER RUNOFF CONTROL

Project Location: Hazel Street at Old Woodward
Designed by: Paul Bater, PEA

PE: Yes No

	(A) Exist. *	(B) Proposed	
(1) Affected Area	0.423	0.423	acres
(2) Area of Impervious Surface	0.423	0.423	acres
(3) Percent Impervious	100	100	%
(4) Runoff Factor	2.4	2.4	cfs/acre
(5) Unrestricted Runoff Rate	1.02	1.02	cfs
(6) Maximum Permitted Runoff Rate		1.02	cfs
(7) Uncontrolled Runoff Area		-	acres
(8) Area of Impervious Surfaces - Uncontrolled Runoff Area		-	acres
(9) Runoff Factor - Uncontrolled Runoff Area		-	%
(10) Runoff Factor - Uncontrolled Runoff Area		-	cfs/acre
(11) Runoff Rate - Uncontrolled Runoff Area		-	cfs
(12) Maximum Permitted Runoff Rate via Sewer Service Connection		-	cfs
(13) Runoff Rate per Acre		-	cfs/acre
(14) Required Storage per Acre		-	cu.ft./acre
(15) Required Storage for Parcel		-	cu.ft.

PROPOSED DESIGN

(16) Design Storage	-	cu.ft.
(17) Design Outlet Capacity to Sewer Service	-	cfs

Approved by: _____

City Engineer

* Existing Prior to Re-Development

NOTE:
BASED ON THE CITY OF BIRMINGHAM STORM WATER DETENTION WORKSHEET, THIS SITE WILL NOT REQUIRE STORM WATER DETENTION AS THE POST-DEVELOPMENT RUNOFF RATE WILL BE LOWER THAN THE EXISTING RUNOFF RATE.

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

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

CVS PHARMACY
444 S. OLD WOODWARD AVE.

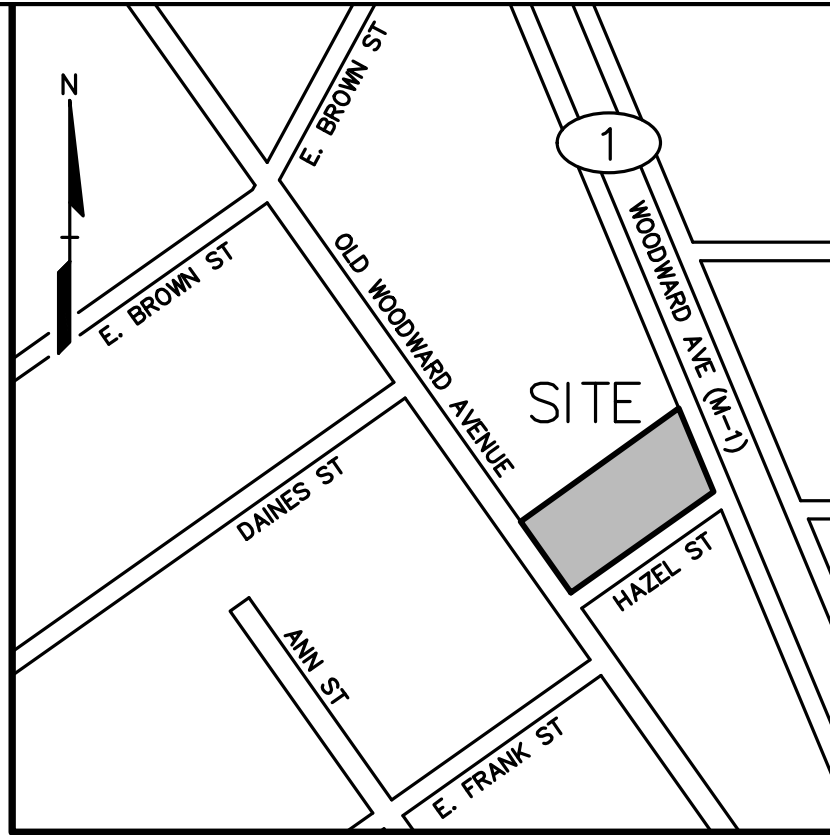
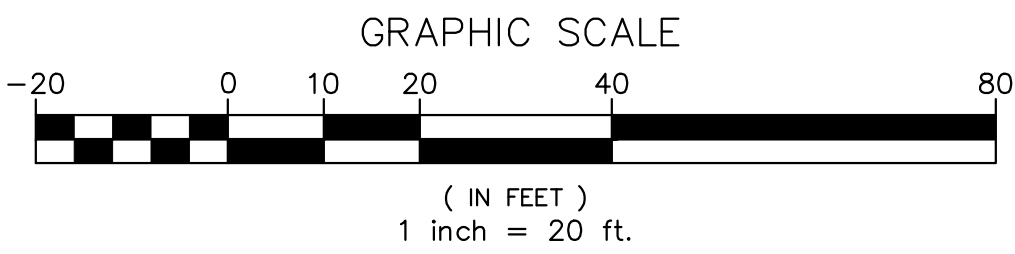
S. OLD WOODWARD AVENUE
(100' WIDE)

WOODWARD AVENUE / M-1
(200' WIDE)

HAZEL STREET (50' WIDE)

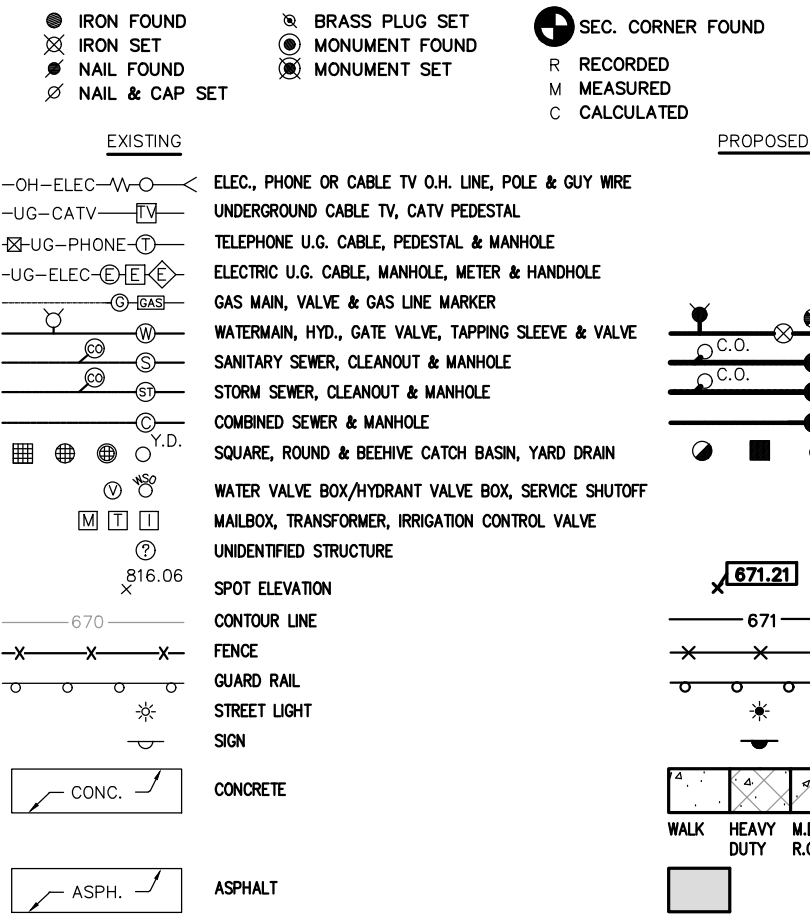
555 S. OLD WOODWARD AVE.

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



LOCATION MAP - NOT TO SCALE

LEGEND



REFERENCE DRAWINGS

WATER MAIN NOT RECEIVED AT TIME OF SURVEY
SANITARY SEWER NOT RECEIVED AT TIME OF SURVEY
STORM SEWER NOT RECEIVED AT TIME OF SURVEY
COMBINED SEWER NOT RECEIVED AT TIME OF SURVEY
ELECTRIC NOT RECEIVED AT TIME OF SURVEY
TELEPHONE NOT RECEIVED AT TIME OF SURVEY
GAS NOT RECEIVED AT TIME OF SURVEY
PETROLEUM NOT RECEIVED AT TIME OF SURVEY
CATV NOT RECEIVED AT TIME OF SURVEY
FLOOD PLAIN ZONE X, FEMA FORM 26125C0537F, DATED 09-29-06

GENERAL UTILITY NOTES:

- ALL UTILITY LINES, STRUCTURES AND TRENCHES SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE STANDARDS AND REQUIREMENTS OF THE CITY OF BIRMINGHAM.
- NO PHYSICAL CONNECTION TO THE EXISTING WATER MAIN CAN BE MADE UNTIL ALL NEW WATER MAIN PASSES PRESSURE AND BACTERIOLOGICAL TESTS TO THE SATISFACTION OF THE CITY.
- REFER TO DETAIL SHEET C-7.1 FOR ADDITIONAL UTILITY DETAILS AND NOTES.
- ALL WATER MAIN AND FITTINGS (3" DIAMETER AND LARGER) SHALL BE DUCTILE IRON, CLASS 54.
- WATER MAIN SERVICE LEADS SHALL BE TYPE 'K' ANNEALED SEAMLESS COPPER WITH FLARED FITTINGS, UNLESS OTHERWISE NOTED.
- ALL WATER MAIN SHALL BE PROVIDED WITH 5.5' OF COVER UNLESS OTHERWISE NOTED.
- ALL FIRE HYDRANTS SHALL BE EFW #5BR MODEL #250 PER CITY STANDARDS.
- ALL HYDRANTS TO BE A MINIMUM OF 5' FROM BACK OF CURB, TYP.
- ALL NECESSARY FITTINGS, THRUST BLOCKS, RESTRAINING GLANDS, BLOW OFFS, ETC. FOR WATER MAIN ARE CONSIDERED INCIDENTAL TO THIS PROJECT. THE CONTRACTOR SHALL INSTALL THESE ITEMS AS NECESSARY AND AS REQUIRED BY THE CITY OF BIRMINGHAM.
- ALL SANITARY SEWER LEADS SHALL BE POLYVINYL CHLORIDE (PVC) SDR 23.5 PIPE AND FITTINGS. ALL JOINTS TO BE ELASTOMERIC GASKET JOINTS PER ASTM D3212 UNLESS OTHERWISE NOTED.
- SANITARY LEADS SHALL BE PROVIDED WITH CLEANOUTS EVERY 100 FEET AND AT EVERY BEND AS SHOWN. ALL CLEANOUTS TO BE PROVIDED WITH E.J.L.W. #1565 BOX OR EQUAL.
- ALL STORM SEWER 12" DIAMETER OR LARGER SHALL BE REINFORCED CONCRETE PIPE (RCP C-76) CLASS IV WITH MODIFIED TONGUE AND GROOVE JOINT WITH RUBBER GASKETS UNLESS SPECIFIED OTHERWISE (ASTM C-443).
- ALL STORM SEWER LEADS SHALL BE PVC SCHEDULE 40 WITH GLUED JOINTS UNLESS OTHERWISE NOTED.
- PIPE LENGTHS ARE GIVEN FROM CENTER OF STRUCTURE AND TO END OF FLARED END SECTION UNLESS NOTED OTHERWISE.
- THE CITY OF BIRMINGHAM STANDARD DETAIL SHEETS ARE INCORPORATED INTO AND MADE A PART OF THESE PLANS. CONTRACTOR TO REFER TO THE CITY OF BIRMINGHAM STANDARD DETAIL SHEETS FOR ALL STRUCTURE, PIPE MATERIALS, BEDDING, TESTING, ETC. NOTES AND DETAILS.

SAND BACKFILL NOTE:
ALL UTILITIES UNDER PAVEMENT OR WITHIN 3' OF THE EDGE OF PAVEMENT (OR WITHIN THE 45° LINE OF INFLUENCE OF PAVEMENT) SHALL HAVE M.D.O.T. CLASS II GRANULAR BACKFILL COMPACTED TO 95% MAX. DRY DENSITY (ASTM D-1557).

REVISIONS

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

DES.	PB	DN	PB	SUR.	DLC	P.M.	JPB
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ORIGINAL ISSUE DATE:
MARCH 6, 2017
PEA JOB NO. 2017-093
SCALE: 1" = 20'
DRAWING NUMBER:

C-6.0

NOT FOR CONSTRUCTION

XREF: S:\PROJECTS\2017\2017093\DWG\17093-17093.dwg
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3. 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 TO RESULTING UTILITIES 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 REMOVED OR RE-DOING THE WORK WILL BE AT THE CONTRACTOR'S EXPENSE. 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 UNWANTED 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 TO MAINTAIN TRAFFIC IN ACCORDANCE WITH LOCAL REQUIREMENTS AND THE MANUAL ON 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 EXISTING WORKING IN AN EXCAVATION THAT MAY EXPOSE EMPLOYEES TO THE DANGER OF MOVING GROUND.

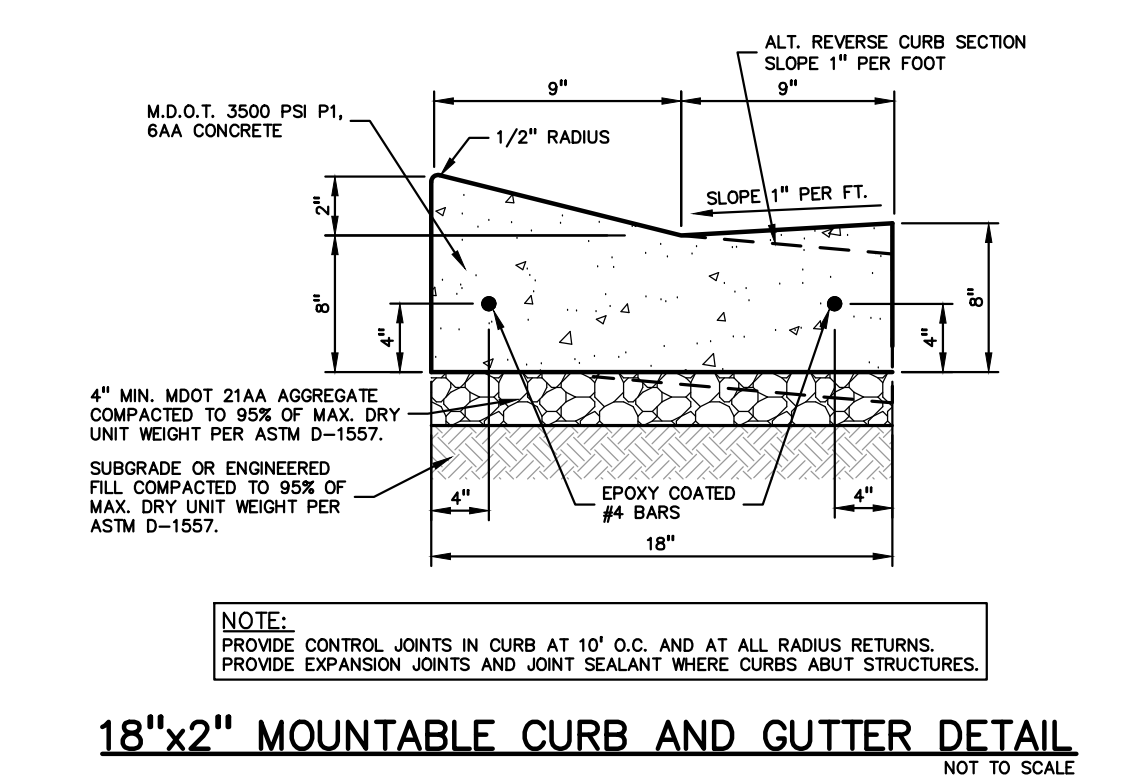
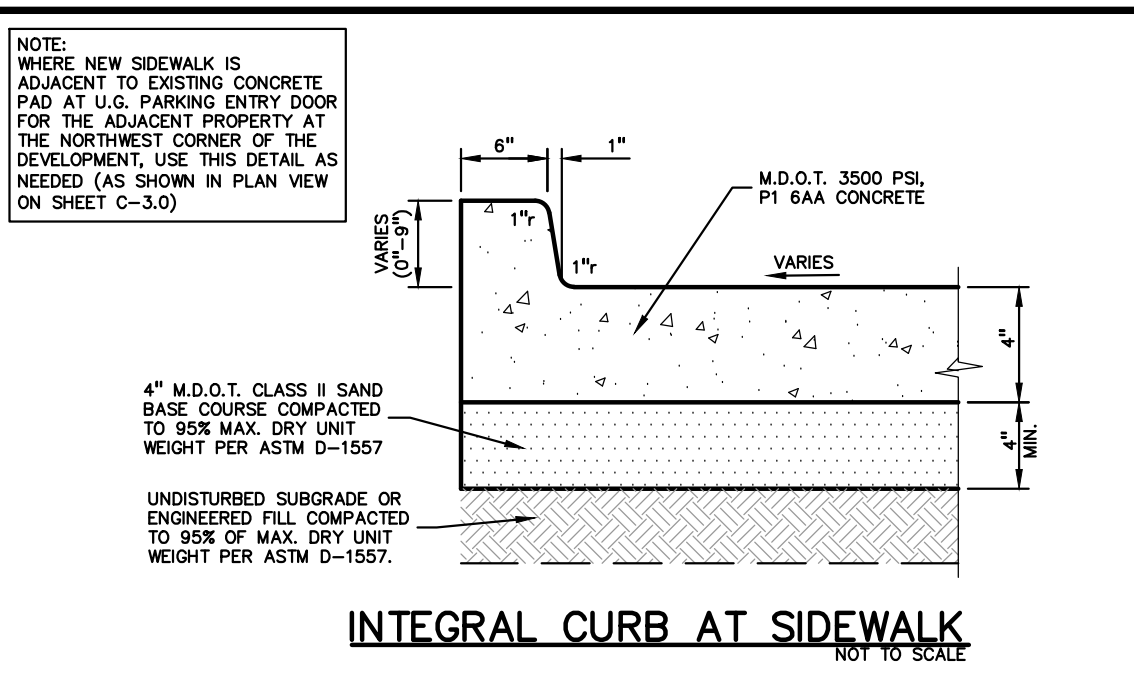
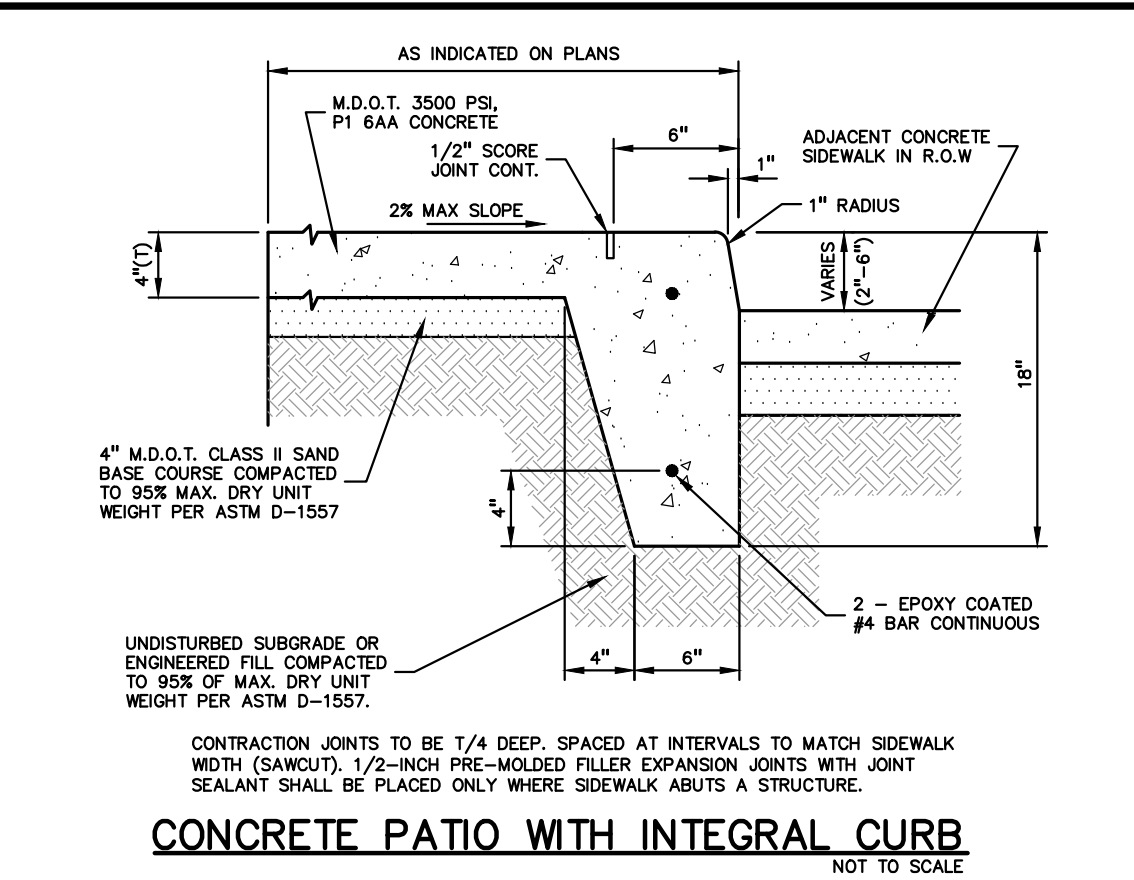
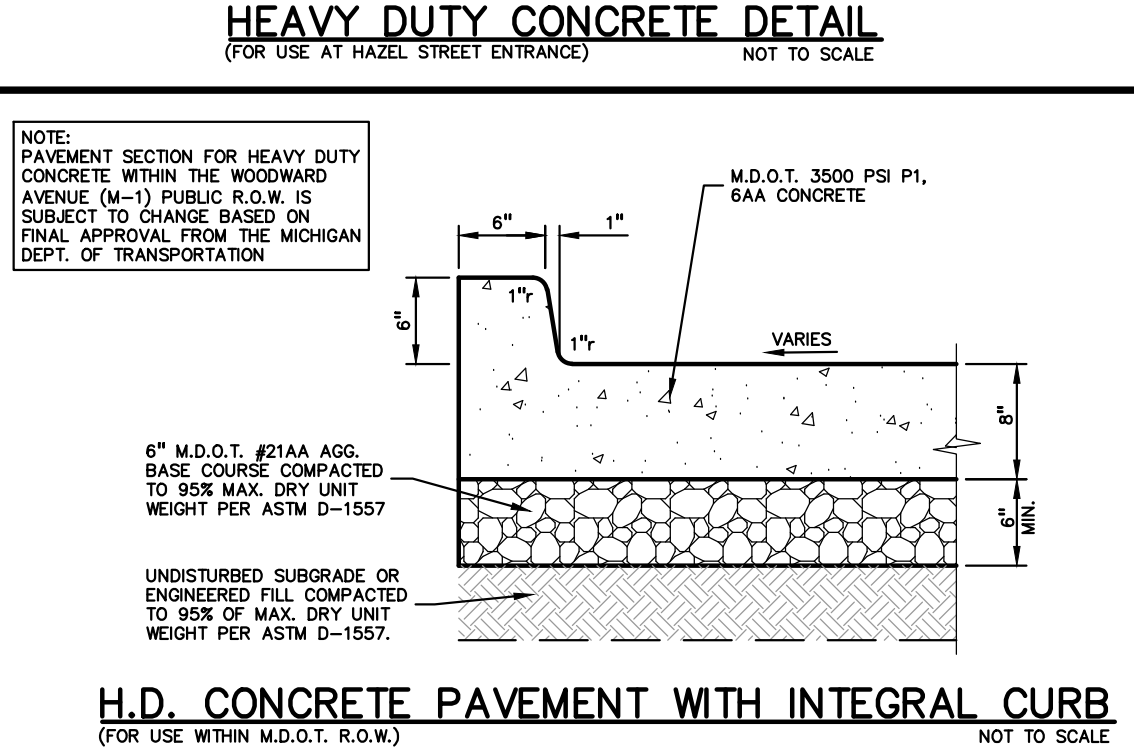
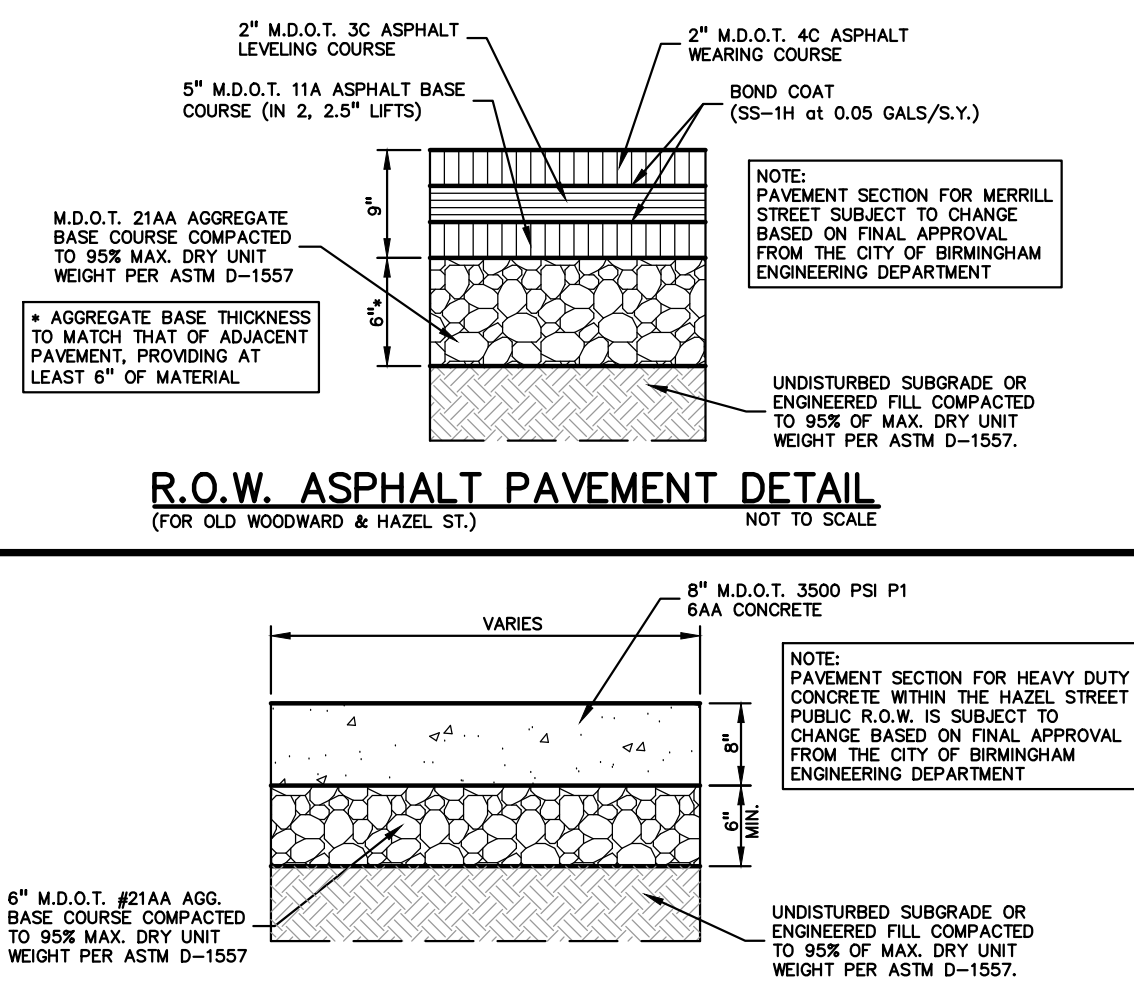
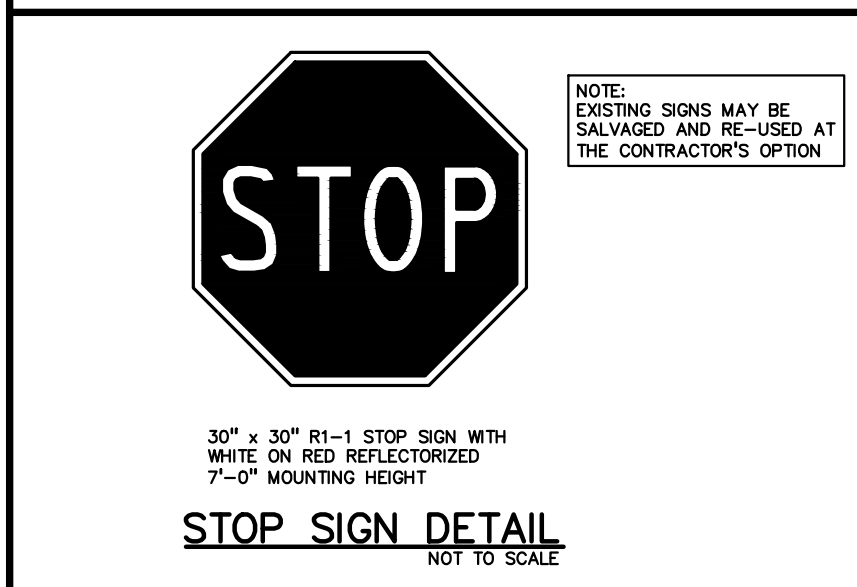
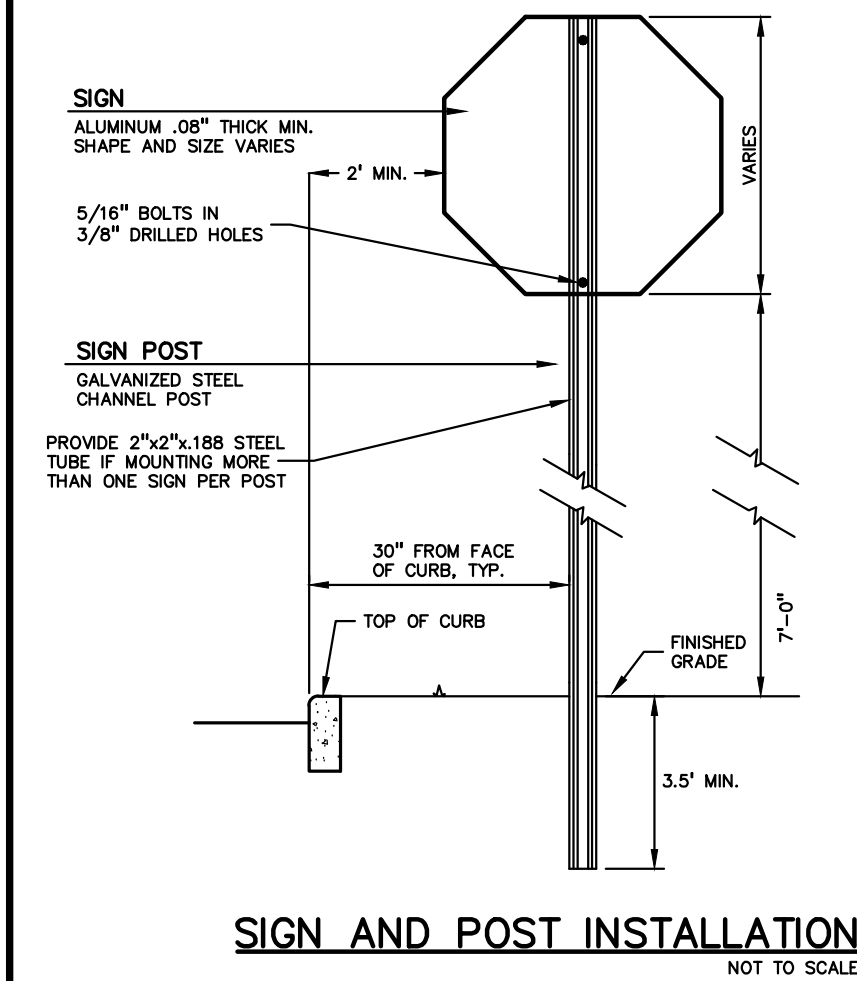
1. ALL WORKMANSHIP AND MATERIALS SHALL BE IN ACCORDANCE WITH THE CURRENT STANDARDS AND SPECIFICATIONS OF THE CITY OF BIRMINGHAM AND M.C.D.O.T.
2. IN AREAS WHERE NEW PAVEMENTS ARE BEING CONSTRUCTED, THE TOPSOIL AND SOIL CONTAINING ORGANIC MATTER SHALL BE REMOVED PRIOR TO PAVEMENT CONSTRUCTION.
3. ON-SITE 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 PROOFLROLLED 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) NOT 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 ARE COMPLETE. 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 JOHN 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 GLUED 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.

[illegible]

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NOTES AND DETAILS

SOUTH OLD WOODWARD

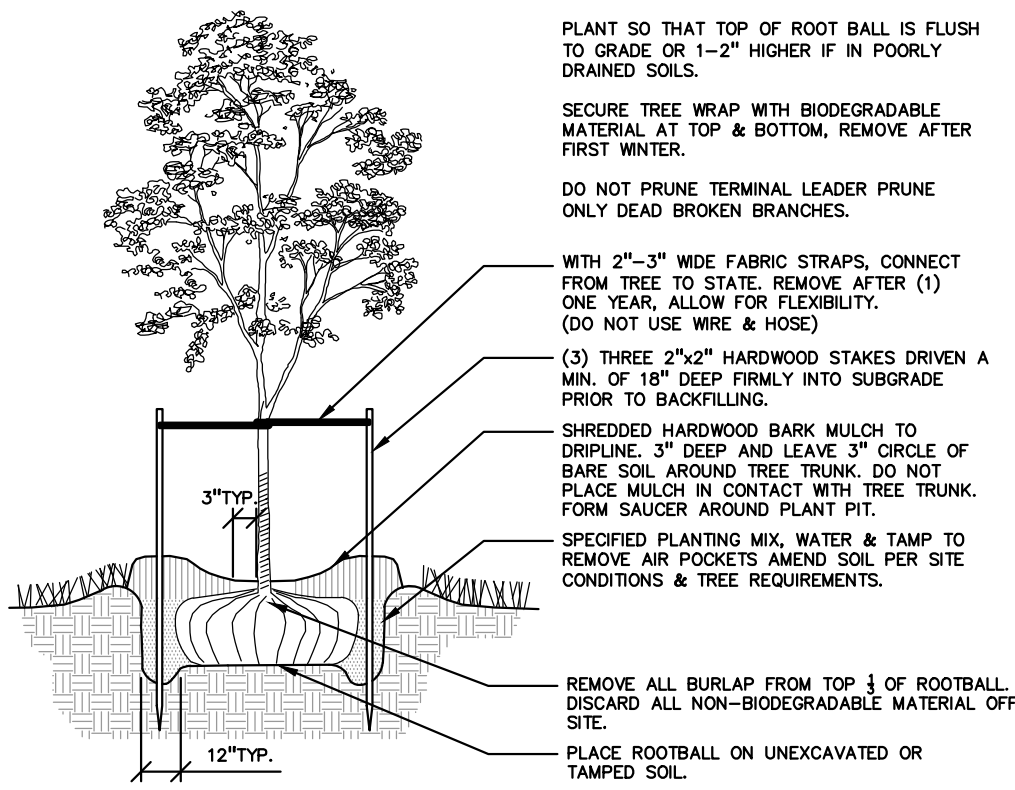
OLD WOODWARD AVENUE AT HAZEL STREET
CITY OF BIRMINGHAM, OKLAHOMA COUNTY, MICHIGAN, 48009

DES.	PB	DN	ST	WIDEN	AV	PRF.	DRY	P.C.	P.M.	JPB
PROJECT: 201707-003, STREET & WOODWARD AV										
PROJECT: 201707-003, STREET & WOODWARD AV										
PROJECT: 201707-003, STREET & WOODWARD AV										

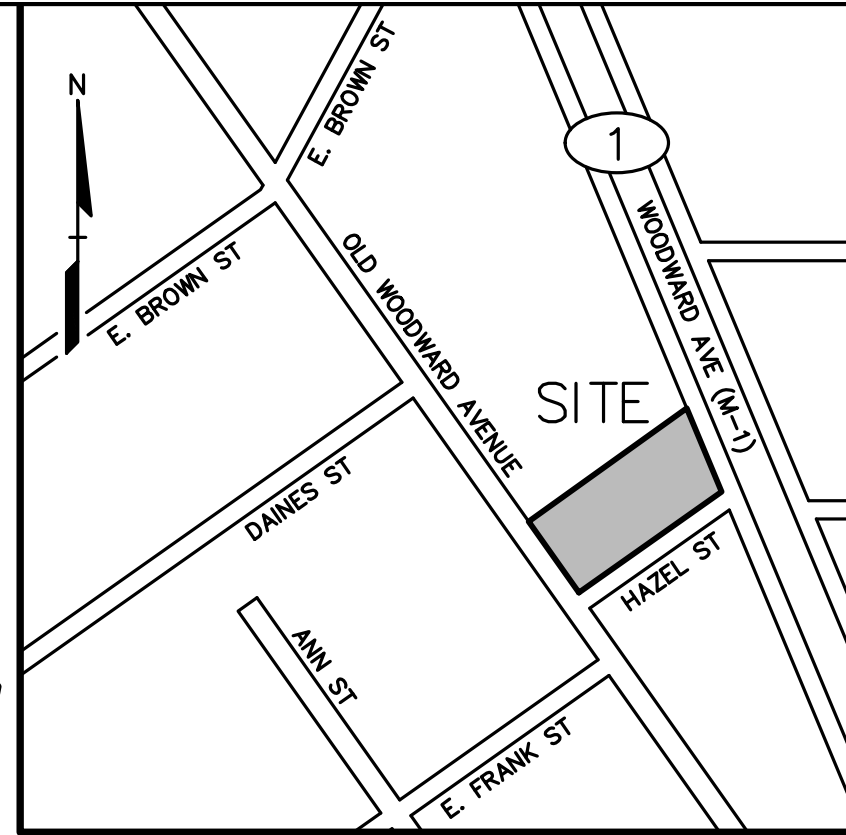
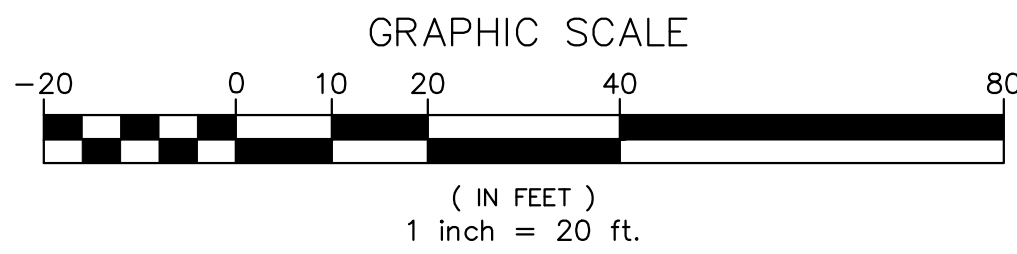
ORIGINAL ISSUE DATE: MARCH 6, 2017
PEA JOB NO. 2017-093
SCALE: NONE
DRAWING NUMBER:

C-8.1

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\TBK-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
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:

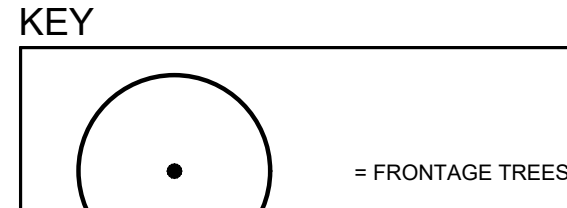
STANDARD LANDSCAPE REQUIREMENTS
PER 4.20 LA-01 B3.-FOR PARKING 20 OR MORE SPACES
PER 4.20 LA-01 F.-FOR PARKING LOTS 7500 SF OR GREATER
5% OF INTERIOR PARKING LOT AREA SHALL BE
LANDSCAPED WITH 1 TREE/150 SF OF REQ.D AREA

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



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" SHREDDED HARDWOOD BARK MULCH WITH PRE EMERGENT, SEE SPECIFICATIONS. SHREDDED 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.



CAUTION!!
THE LOCATIONS AND ELEVATIONS OF EXISTING UNDERGROUND UTILITIES AS SHOWN ON THIS DRAWING ARE ONLY APPROXIMATE. NO GUARANTEE IS GIVEN FOR THE ACCURACY OF THE INFORMATION. THE CONTRACTOR SHALL BE EXCLUSIVELY RESPONSIBLE FOR DETERMINING THE EXACT UTILITY LOCATIONS AND ELEVATIONS PRIOR TO THE START OF CONSTRUCTION.

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

DES. LW DN LW SUR. P.M. JTS

ORIGINAL ISSUE DATE:
MARCH 6, 2017

PEA JOB NO. 2017-093

SCALE: 1" = 20'

DRAWING NUMBER:

L-1.0

NOT FOR CONSTRUCTION

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

August 13, 2018

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

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

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

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

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

Summary

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

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

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

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

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

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

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

City not included in the Parking Assessment District.

Zoning Analysis – Revisited

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

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

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

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

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

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

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

469 S. Old Woodward

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

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

479 S. Old Woodward

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

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

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

Combined Lots

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

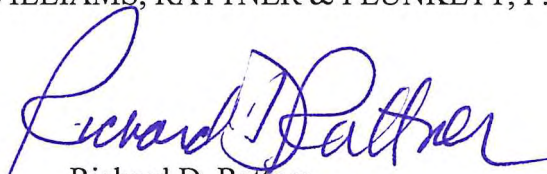
Conclusion

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

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

Very truly yours,

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



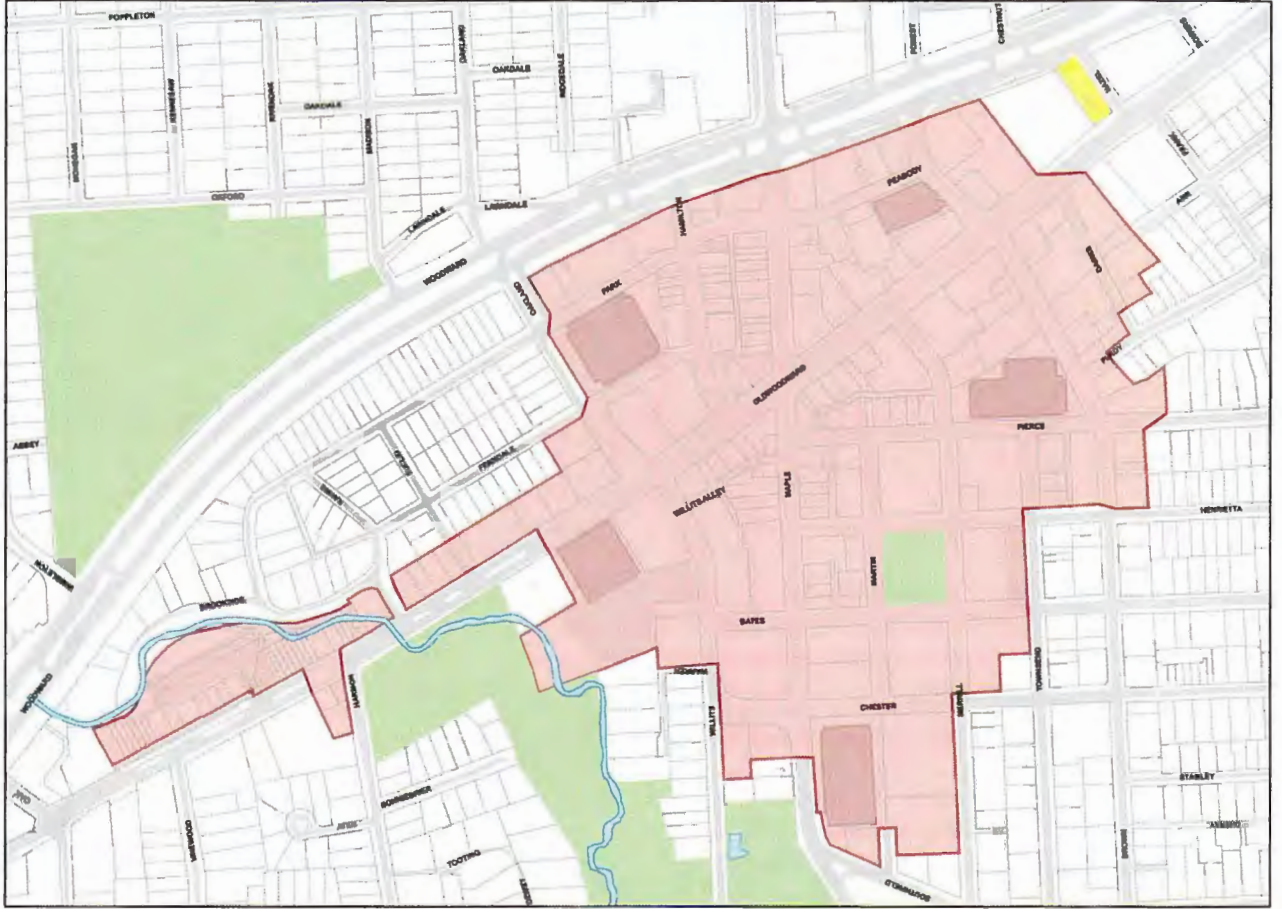
Richard D. Rattner

RDR/gsm

CITY OF BIRMINGHAM
DOWNTOWN PARKING ASSESSMENT DISTRICT

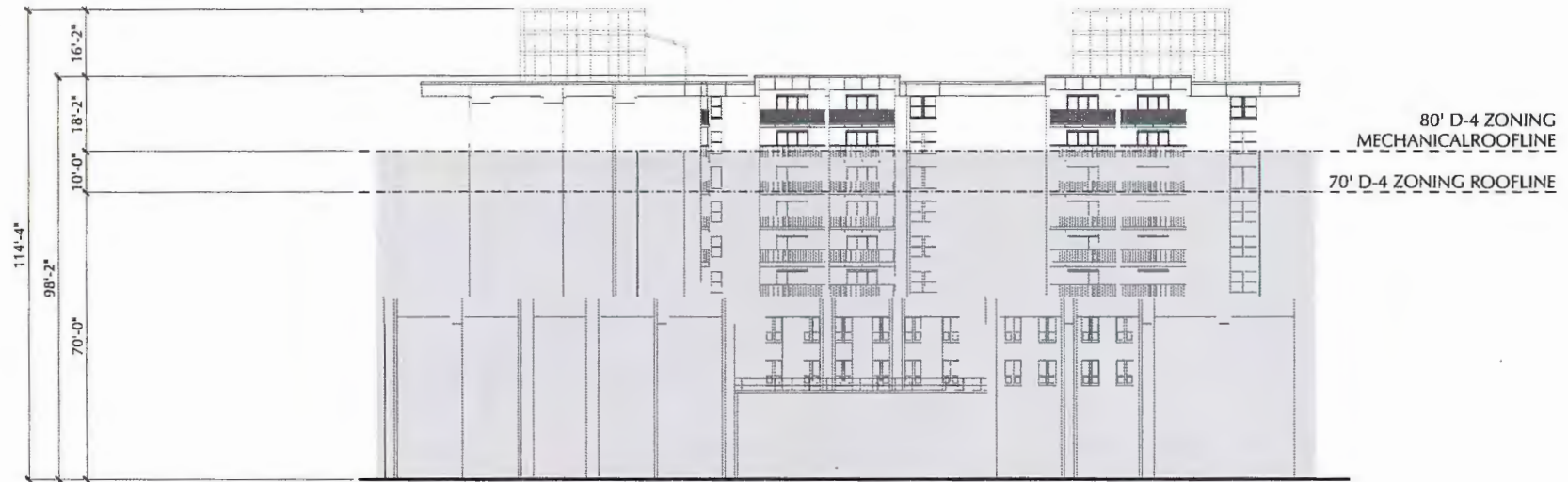


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tabbies' EXHIBIT
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Project M1 - The Hazelton
Birmingham Tower Partners, LLC
469 + 479 South Old Woodward
Birmingham, Michigan 48009



BIRMINGHAM PLACE HEIGHT COMPARISON DIAGRAM

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



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

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

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

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

City Commission Room
151 Martin Street, Birmingham, Michigan

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

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

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

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

06-108-18

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

Mr. Jeffares made a correction:

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

Motion by Mr. Koseck

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

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Abstain: Emerine

Absent: Share, Williams

06-109-18

CHAIRPERSON'S COMMENTS (none)

06-110-18

APPROVAL OF THE AGENDA (no change)

06-111-18

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

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

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

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

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

Motion by Ms. Whipple-Boyce

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

Motion carried, 7-0.

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

VOICE VOTE

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

Nays: None

Absent: Share, Williams

06-112-18

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

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

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

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

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

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

Design Review

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

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

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

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

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

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

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

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

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

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

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

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

Motion by Mr. Jeffares

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

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

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

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Share, Williams

06-113-18

REZONING APPLICATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Boyle made the following points:

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

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

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

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

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

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

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

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

Motion by Mr. Boyle

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

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

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

Motion failed, 2-5.

ROLLCALL VOTE

Yeas: Boyle, Jeffares

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

Absent: Share, Williams

Motion by Ms. Whipple-Boyce

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

Motion carried, 5-2.

ROLLCALL VOTE

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

Nays: Jeffares, Whipple-Boyce

Absent: Share, Williams

06-114-18

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

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

Motion by Mr. Boyle

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

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

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Share, Williams

06-115-18

MISCELLANEOUS BUSINESS AND COMMUNICATIONS

a. Communications (none)

b. Administrative Approval Requests

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

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

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

d. Other Business

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

06-116-18

PLANNING DIVISION ACTION ITEMS

Staff report on previous requests (none)

Additional items from tonight's meeting (none)

06-117-18

ADJOURNMENT

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

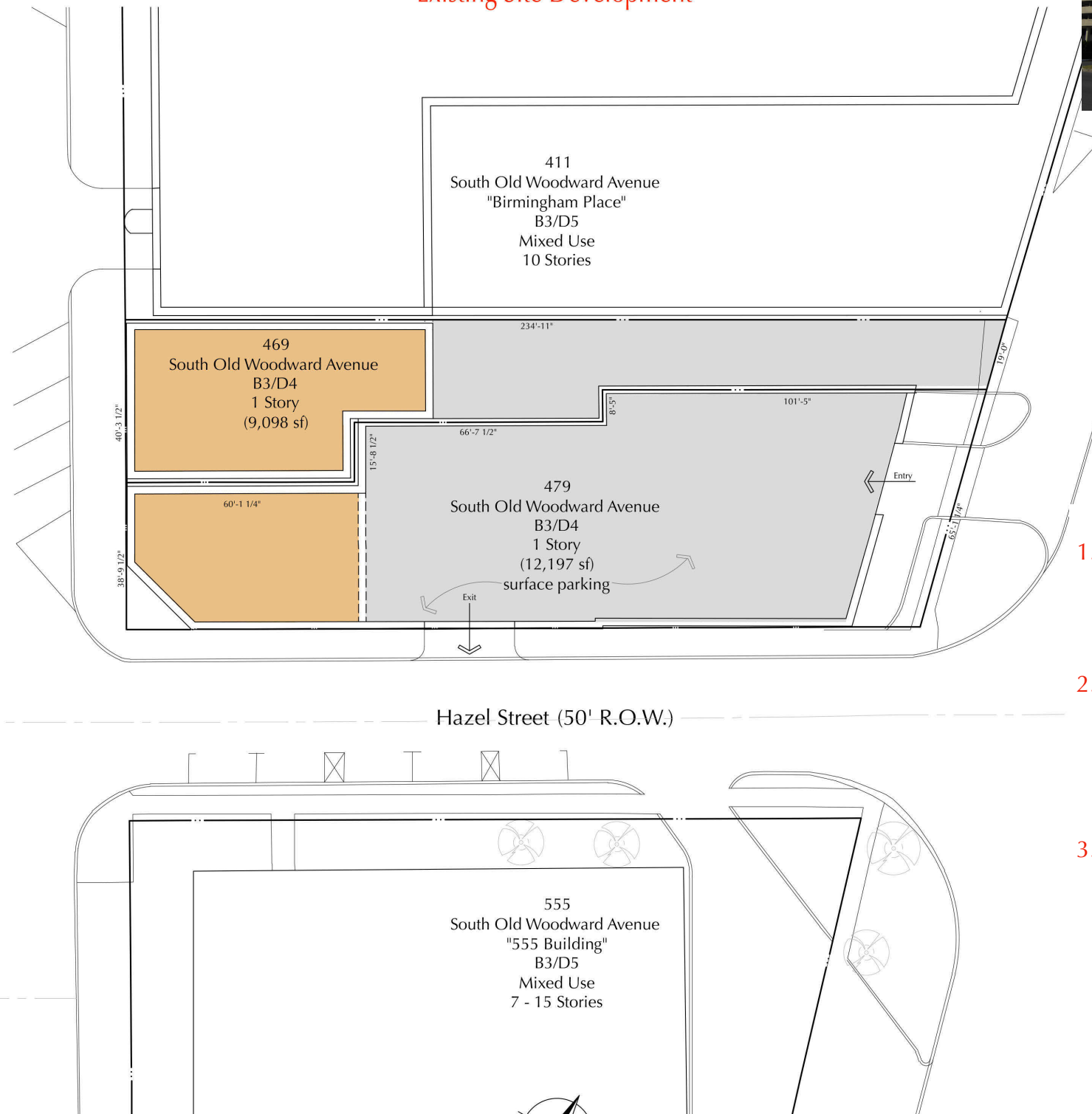
Jana L. Ecker
Planning Director



Project M1

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

Existing Site Development



Use and Parking Data

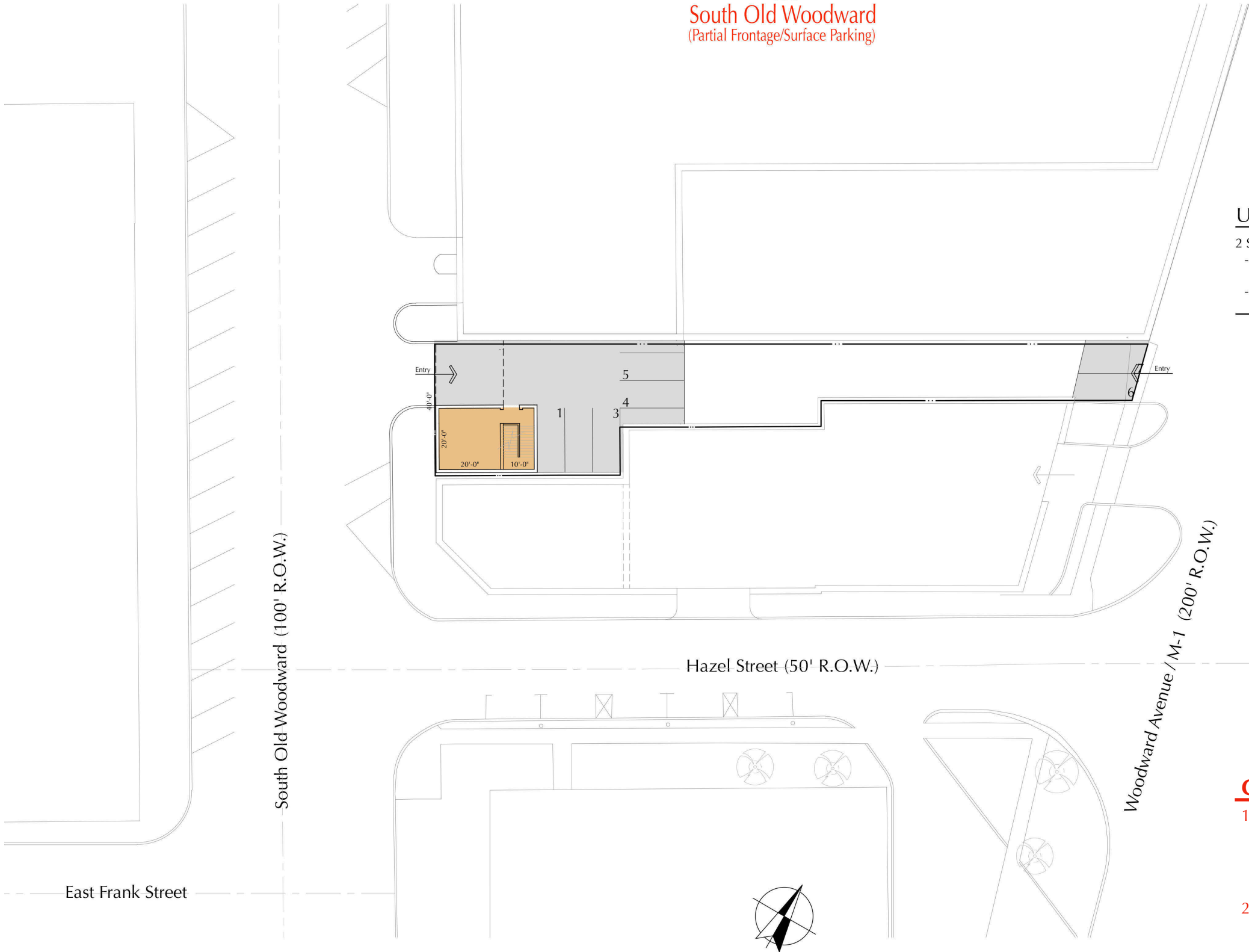
Current Use	
- 469 2,516 sf Restaurant / 75 =	39 Spaces
- 479 1,873 sf Bank / 150 =	16 Spaces
Total Required	55 Spaces

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



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

469
South Old Woodward
(Partial Frontage/Surface Parking)

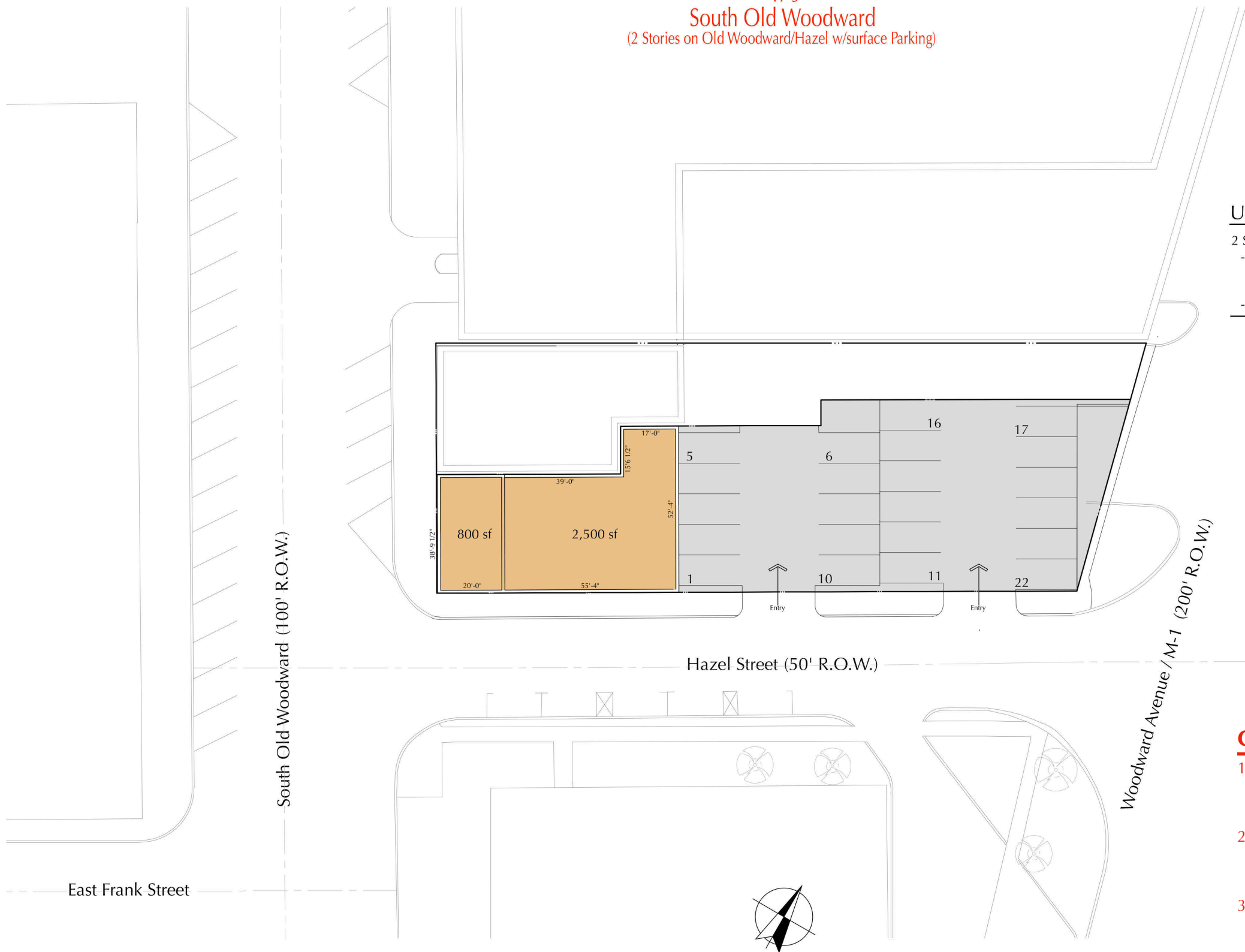


Use and Parking Data		
2 Story Building		
-	600 sf Retail (1st) / 300 =	2 Spaces
-	800 sf Office (2nd) / 150 =	5.3 Spaces
Total Required		7.3 Spaces
Total Provided		7 Spaces

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

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

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



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

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



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

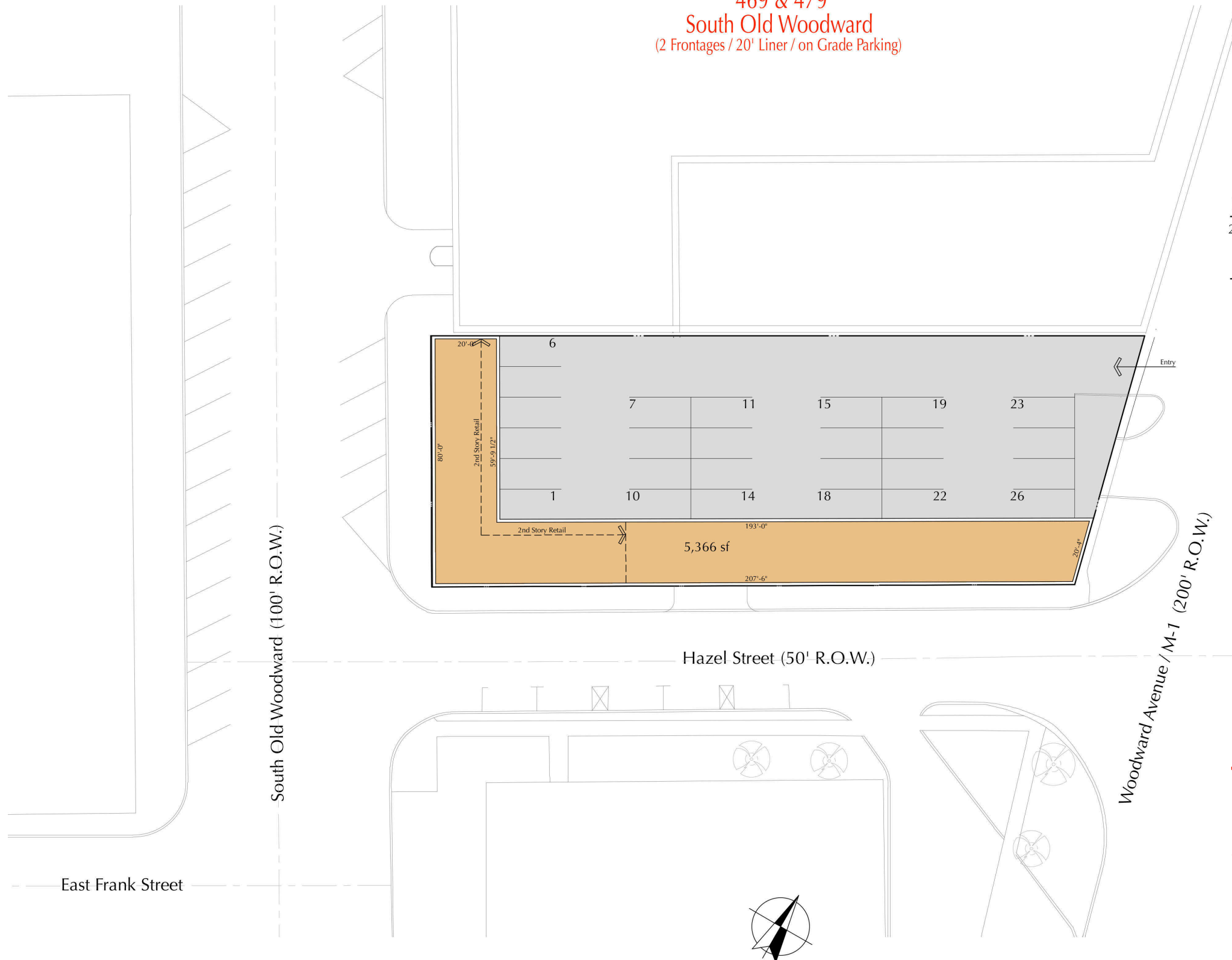
469 & 479
South Old Woodward
(2 Frontages / 20' Liner / on Grade Parking)

Use and Parking Data

2 Story Building (Retail)

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

Total Required	26 Spaces
Total Provided	26 Spaces

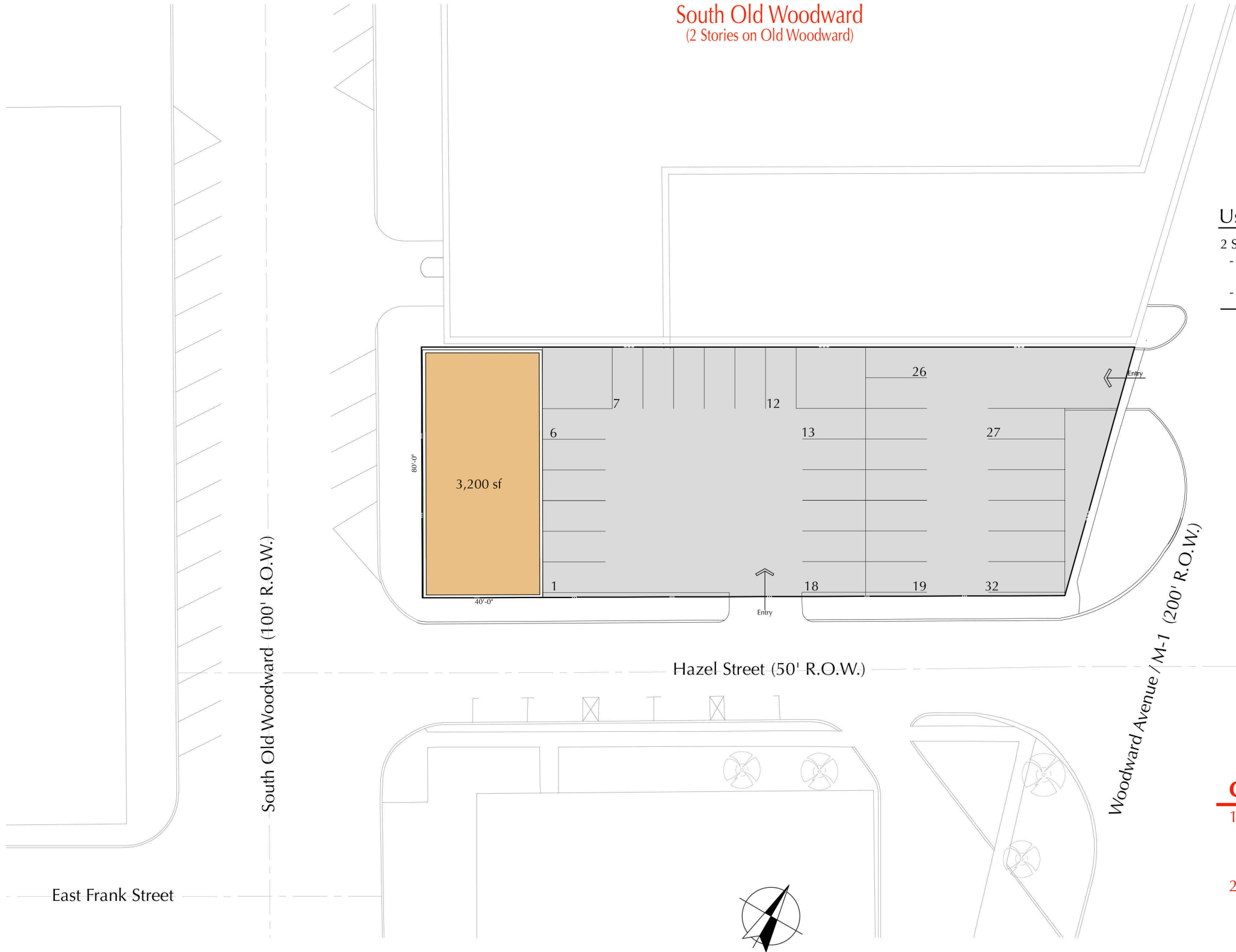


Comments

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

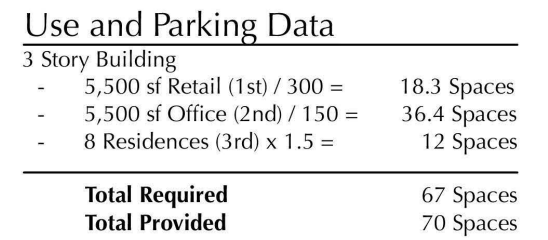
469 & 479
South Old Woodward
(2 Stories on Old Woodward)



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

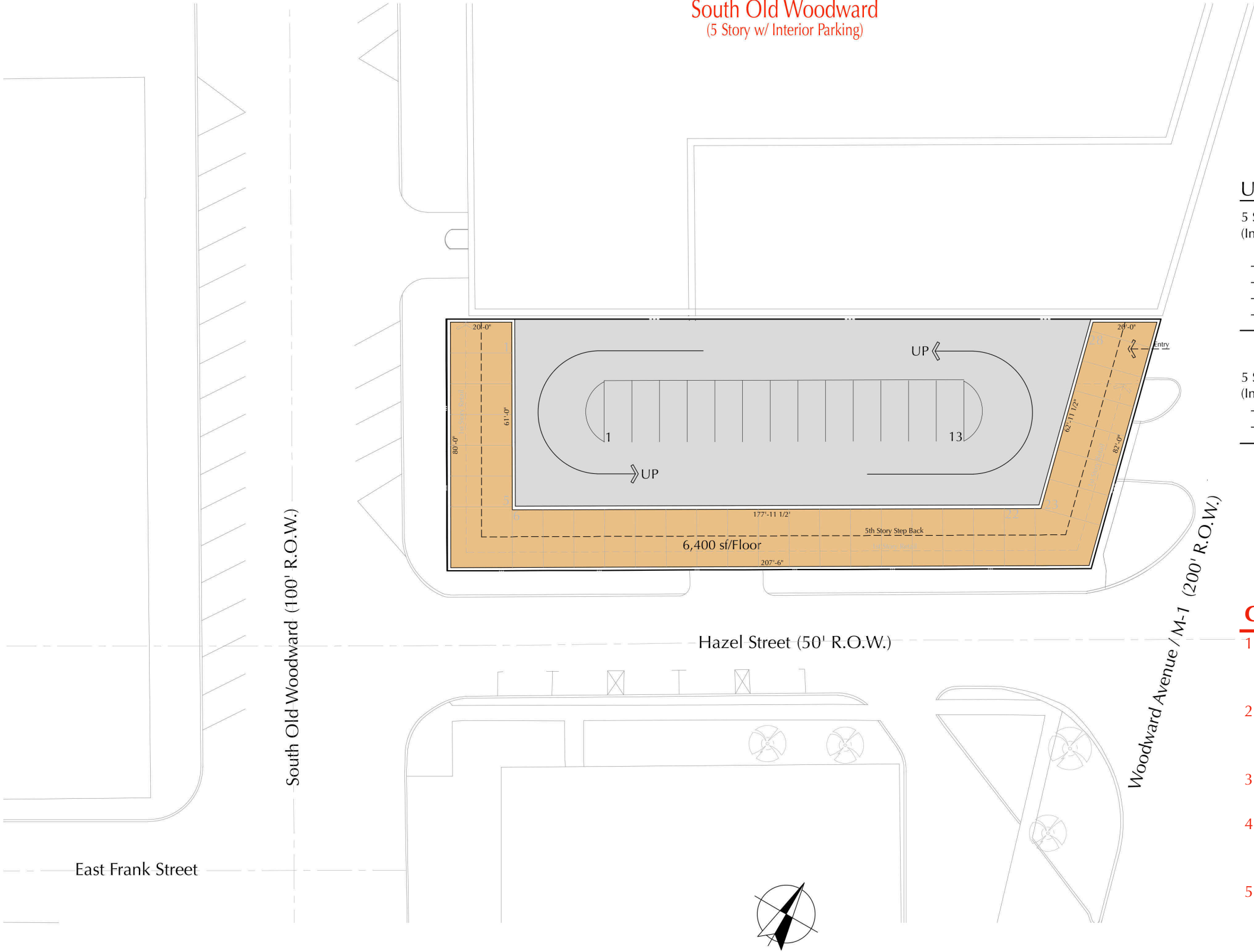
- Comments
- Provides 2 story/mixed-use (retail/office) on South Old Woodward
 - Surface parking on both Hazel and Woodward Avenue (2 curb cuts)

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



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

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



Use and Parking Data

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

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

Total Required 113 Spaces

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

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

Total Provided 80 Spaces

Comments

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



REZONING REQUEST FOR 469-479 S. OLD WOODWARD
SUMMARY OF PRIOR SUBMITTAL FROM THE APPLICANT AND
THE ANALYSIS & FINDINGS OF THE PLANNING DEPARTMENT'S REVIEW

Over the past several months, the applicant has submitted written documentation and evidence in support of applicant's application to rezone 469-479 S. Old Woodward to the D-5 Downtown Overlay District. In addition, the Planning Department has completed a thorough analysis of the applicant's request to rezone the subject property as well as all of the information that was submitted by the applicant during this rezoning process. The following is a summary of the Planning Department's analysis and findings under the City Ordinance regarding the applicant's request to rezone 469-479 S. Old Woodward:

- The subject site consists of two vacant, single story commercial buildings (Mountain King and First Place Bank).
- The 0.423-acre site includes two narrow parcels, one facing 3 streets (Old Woodward, Hazel and Woodward), and the other facing 2 streets (Old Woodward and Woodward).
- The rezoning request is made pursuant to Article 7, section 7.02 of the Zoning Code.
- Section 7.02(B)(2)(b)(i) – Due to the site configuration fronting S. Old Woodward, Hazel and Woodward, and the narrow lot size and the off-street parking requirements, rezoning is necessary to preserve enjoyment of rights and usage commonly associated with ownership.
- Section 7.02(B)(2)(b)(ii) – Current zoning is no longer appropriate due to off-site parking requirements, narrow lot size configurations, and frontages.
- Section 7.02(B)(2)(b)(iii) – Rezoning will not be detrimental to surrounding properties as the adjacent and abutting properties are zoned D-5, mixed retail, commercial and residential properties, and applicant's proposal will add consistency to the streetscape in mass and architectural detail.
- Section 7.02(B)(5)(a) -- The objectives of the City's master plan and 2016 Plan are met by the rezoning as the proposed streetscape will improve the frontages of S. Old Woodward, Hazel and Woodward and project a strong image of the City toward Woodward with similar massing and architectural detail to adjacent buildings.
- Section 7.02(B)(5)(b) -- The existing uses of property in the general area align with applicant's proposed rezoning. Both the Birmingham Place and the 555 Building (neighboring properties) are mixed use buildings with both retail, commercial and residential uses. Properties to the east and west of the subject property are used for parking, retail and commercial.
- Section 7.02(B)(5)(c) -- Both neighboring properties are zoned in the D-5 Overlay Zone.
- Section 7.02(B)(5)(d) – The applicant's property is suitable for uses in the D-5 which are the same as in the current D-4 Zone. However, if a 5-story or less building is constructed under the D-4 at the site, it would be completely dominated by and inconsistent with the height of the neighboring Birmingham Place and 555 Building.
- Section 7.02(B)(5)(e) – The requested rezoning is consistent with the trend of development of this area of S. Old Woodward which is dominated by the height of the 555 Building and Birmingham Place.
- Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable master plan documents, current zoning and recent development trends in the area, the Planning Department finds that the applicant meets the established Zoning Ordinance requirements of Article 7, section 7.02(B)(5) to qualify for a rezoning of the property from D-4 to D-5 in the Downtown Overlay district.

September 11, 2018

Ms. Jana Ecker, Planning Director
City of Birmingham
151 Martin Street, P.O. Box 3001
Birmingham, MI 48012-3001

Re: Rezoning Application Before the Planning Board

Dear Ms. Ecker:

This letter is in response to your request to clarify the procedure by which applications for rezoning and determinations of rezoning are made. The Zoning Ordinance states in Section 7.02 B.2. *Application for Rezoning*, as follows:

"2. Application for Rezoning.

1. *Persons Entitled to Seek Rezoning.* Only a person who has a fee interest in a piece of property, or a contractual interest which may become a fee interest in a piece of property, may seek an amendment in the zoning classification of that property under this section.
2. *Application for Rezoning.*
 - a. An application for an amendment to change the zoning classification of a particular property must be filed with the Building Official on such forms and accompanied by such fees as may be specified by the City Commission. The application and any supporting documentation shall be forwarded by the City Building Department to the Planning Board for study and recommendation.
 - b. Each application for an amendment to change the zoning classification of a particular property shall include statements addressing the following:
 - i. An explanation of why the rezoning is necessary for the preservation and enjoyment of the rights of usage commonly associated with property ownership.
 - ii. An explanation of why the existing zoning classification is no longer appropriate.
 - iii. An explanation of why the proposed rezoning will not be detrimental to surrounding properties.
 - c. Applications for amendments that are intended to change the zoning classification of a particular property shall be accompanied by a plot plan. The plot plan shall be drawn to a scale of not less than one inch equals 50 feet for a property of less than 3 acres and one inch equals 100

Beier Howlett

Ms. Jana Ecker, Planning Director
September 11, 2018
Page 2

feet for property of 3 acres or more in size. Information required on plot plans shall be as follows:

- i. Applicant's name, address and telephone number.
- ii. Scale, north point, and dates of submission and revisions.
- iii. Zoning classification of petitioner's parcel and all abutting parcels.
- iv. Existing lot lines, building lines, structures, parking areas, driveways, and other improvements on the site and within 100 feet of the site.
- v. Existing use of the property.
- vi. Dimensions, centerlines and right-of-way widths of all abutting streets and alleys.
- vii. Location of existing drainage courses, floodplains, lakes, streams, and wood lots.
- viii. All existing easements.
- ix. Location of existing sanitary systems and/or septic systems.
- x. Location and size of existing water mains, well sites and building service.
- xi. Identification and seal of architect, engineer, land surveyor, or landscape architect who prepared the plans.

If any of the items listed above are not applicable to a particular plot plan, the applicant must specify in the plot plan which items do not apply, and, furthermore, why the items are not applicable."

The foregoing is the information that is to be provided by the applicant to provide the materials to assist the Planning Board in making its findings of fact. It does not set the criteria by which findings of fact or recommendations should be made. Those are set forth in Section 7.02 B.5, which reads as follows:

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

- a. The objectives of the City's then current master plan and the City's 2016 Plan.
- b. Existing uses of property within in the general area of the property in question.
- c. Zoning classification of property within the general area of property in question.
- d. The suitability of the property in question to the uses permitted under the existing zoning classification.

Beier Howlett

Ms. Jana Ecker, Planning Director
September 11, 2018
Page 3

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

The foregoing Section 7.02 B.5. sets forth the criteria upon which the Planning Board makes written findings of fact. Thereafter, the findings of fact, together with its recommendations, are sent to the City Commission to determine possible rezoning of the subject property.

* * * * *

I have also been asked to outline the procedure for the Board to consider a petition by the applicant for rehearing of the rezoning application. The instant case involves 469-479 South Old Woodward. The first matter the Planning Board should consider is whether they will grant the rehearing of this matter to the applicant. If they believe there is not sufficient information to grant a rehearing, it could be denied at that time and no rehearing will be granted.


Second, if the Planning Board believes a rehearing should be granted, then a ruling granting the rehearing should be entered, followed by a rehearing on the substance of the matter before the Board. At such time, the Planning Board can take into account such additional information that is submitted by the applicant or by any person opposing the application. This will create an additional record upon which the Planning Board will then make its findings of fact and recommendation pursuant to 7.02 B.5.

A rehearing does not automatically grant the request of the applicant, nor does it automatically deny it. The Planning Board is free to make whatever decision it deems appropriate based on the material and the facts placed before it by the applicant and those in opposition.

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

Very truly yours,

BEIER HOWLETT, P.C.


Timothy J. Currier
Birmingham City Attorney

TJC/jc

Beier Howlett

ATTORNEYS AND COUNSELORS

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

October 1, 2018

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

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

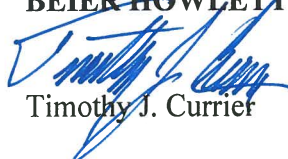
Dear Members of the Board:

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

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

Very truly yours,

BEIER HOWLETT, P.C.



Timothy J. Currier

TJC/jc

Beier Howlett

ATTORNEYS AND COUNSELORS

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

October 1, 2018

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

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

Dear Members of the Board:

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

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

ANSWER: YES.

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

Very truly yours,

BEIER HOWLETT, P.C.



Timothy J. Currier

TJC/jc

STAFF REPORTS TO PLANNING BOARD (MOST RECENT FIRST)



MEMORANDUM

Planning Division

DATE: January 17, 2019

TO: Planning Board

FROM: Jana L. Ecker, Planning Director

SUBJECT: Rehearing of Rezoning Request for 469 – 479 S. Old Woodward
(New information in Blue Type)

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

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

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

Section 7.02(6) of the Zoning Ordinance states:

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

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

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

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

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

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

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

At the Planning Board meeting on November 14, 2018, the applicant requested postponement of the rehearing to December 12, 2018.

At the Planning Board meeting on December 12, 2018, the applicant requested further postponement of the rehearing to January 27, 2019 to allow additional time to meet with the neighbors and attempt to reach an agreement on the proposed development.

The only new document that is being provided at this time is a memo from the applicant dated January 18, 2019 summarizing previous documents submitted and discussed at Planning Board meetings. This document is attached immediately following this memo and minutes.

REZONING REQUEST FOR 469-479 S. OLD WOODWARD
SUMMARY OF PRIOR SUBMITTAL FROM THE APPLICANT AND
THE ANALYSIS & FINDINGS OF THE PLANNING DEPARTMENT'S REVIEW

Over the past several months, the applicant has submitted written documentation and evidence in support of applicant's application to rezone 469-479 S. Old Woodward to the D-5 Downtown Overlay District. In addition, the Planning Department has completed a thorough analysis of the applicant's request to rezone the subject property as well as all of the information that was submitted by the applicant during this rezoning process. The following is a summary of the Planning Department's analysis and findings under the City Ordinance regarding the applicant's request to rezone 469-479 S. Old Woodward:

- The subject site consists of two vacant, single story commercial buildings (Mountain King and First Place Bank).
- The 0.423-acre site includes two narrow parcels, one facing 3 streets (Old Woodward, Hazel and Woodward), and the other facing 2 streets (Old Woodward and Woodward).
- The rezoning request is made pursuant to Article 7, section 7.02 of the Zoning Code.
- Section 7.02(B)(2)(b)(i) – Due to the site configuration fronting S. Old Woodward, Hazel and Woodward, and the narrow lot size and the off-street parking requirements, rezoning is necessary to preserve enjoyment of rights and usage commonly associated with ownership.
- Section 7.02(B)(2)(b)(ii) – Current zoning is no longer appropriate due to off-site parking requirements, narrow lot size configurations, and frontages.
- Section 7.02(B)(2)(b)(iii) – Rezoning will not be detrimental to surrounding properties as the adjacent and abutting properties are zoned D-5, mixed retail, commercial and residential properties, and applicant's proposal will add consistency to the streetscape in mass and architectural detail.
- Section 7.02(B)(5)(a) -- The objectives of the City's master plan and 2016 Plan are met by the rezoning as the proposed streetscape will improve the frontages of S. Old Woodward, Hazel and Woodward and project a strong image of the City toward Woodward with similar massing and architectural detail to adjacent buildings.
- Section 7.02(B)(5)(b) -- The existing uses of property in the general area align with applicant's proposed rezoning. Both the Birmingham Place and the 555 Building (neighboring properties) are mixed use buildings with both retail, commercial and residential uses. Properties to the east and west of the subject property are used for parking, retail and commercial.
- Section 7.02(B)(5)(c) -- Both neighboring properties are zoned in the D-5 Overlay Zone.
- Section 7.02(B)(5)(d) – The applicant's property is suitable for uses in the D-5 which are the same as in the current D-4 Zone. However, if a 5-story or less building is constructed under the D-4 at the site, it would be completely dominated by and inconsistent with the height of the neighboring Birmingham Place and 555 Building.
- Section 7.02(B)(5)(e) – The requested rezoning is consistent with the trend of development of this area of S. Old Woodward which is dominated by the height of the 555 Building and Birmingham Place.
- Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable master plan documents, current zoning and recent development trends in the area, the Planning Department finds that the applicant meets the established Zoning Ordinance requirements of Article 7, section 7.02(B)(5) to qualify for a rezoning of the property from D-4 to D-5 in the Downtown Overlay district.

DATE: November 8, 2018

TO: Planning Board

FROM: Jana Ecker, Planning Director

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

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

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

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

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

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

History of Property

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

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

Requirements for Rezoning

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

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

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

Applicant response:

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

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

Applicant response:

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

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

Applicant response:

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

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

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

Information required on plot plans shall be as follows:

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

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

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

Article 7 section 7.02 of the Zoning Ordinance further states:

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

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

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

Planning Division Analysis & Findings

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Departmental Reports

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

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

Suggested Action:

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

OR

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

1. _____
2. _____
3. _____

OR

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

1. _____
2. _____
3. _____



MEMORANDUM

Planning Division

DATE: October 5, 2018

TO: Planning Board

FROM: Jana L. Ecker, Planning Director

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

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

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

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

Section 7.02(6) of the Zoning Ordinance states:

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

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

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

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

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

Should the Planning Board accept that the applicant has proven a substantial change in the evidence and a rehearing should occur, all of the previous application documents, plans and reports are also provided for your review and consideration.

Suggested Action:

1. Sample Motion Language on Request for Rehearing:

The Planning Board finds that there have been substantial changes in the evidence previously presented at the rezoning hearing on June 27, 2018, and thus grant a rehearing of the rezoning request for 469 – 479 S. Old Woodward.

OR

The Planning Board finds that there have not been substantial changes in the evidence previously presented at the rezoning hearing on June 27, 2018, and thus denies a rehearing of the rezoning request for 469 – 479 S. Old Woodward.

2. Sample Motion Language on Rezoning Request if Rehearing is Granted:

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

OR

Motion to recommend **DENIAL** to the City Commission of the applicant's request for the rezoning of the property at 469 - 479 S. Old Woodward from D-4 to D-5 in the Downtown Overlay for the following reasons:

1. _____
2. _____
3. _____

OR

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

1. _____
2. _____
3. _____



MEMORANDUM

Planning Division

DATE: September 7, 2018

TO: Planning Board

FROM: Jana L. Ecker, Planning Director

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

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

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

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

Section 7.02(6) of the Zoning Ordinance states:

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

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

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

substantial change in the evidence and a rehearing should occur, all of the previous application documents, plans and reports are also provided for your review and consideration.

Suggested Action:

1. Sample Motion Language on Request for Rehearing:

The Planning Board finds that there have been substantial changes in the evidence previously presented at the rezoning hearing on June 27, 2018, and thus grant a rehearing of the rezoning request for 469 – 479 S. Old Woodward.

OR

The Planning Board finds that there have not been substantial changes in the evidence previously presented at the rezoning hearing on June 27, 2018, and thus denies a rehearing of the rezoning request for 469 – 479 S. Old Woodward.

2. Sample Motion Language on Rezoning Request if Rehearing is Granted:

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

OR

Motion to recommend **DENIAL** to the City Commission of the applicant's request for the rezoning of the property at 469 - 479 S. Old Woodward from D-4 to D-5 in the Downtown Overlay for the following reasons:

1. _____
2. _____
3. _____

OR

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

1. _____
2. _____
3. _____



MEMORANDUM

Planning Division

DATE: May 18th, 2018

TO: Jana Ecker, Planning Director

FROM: Nicholas Dupuis, Planning Intern

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

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

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

History of Property

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

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

Requirements for Rezoning

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

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

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

Applicant response:

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

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

Applicant response:

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

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

Applicant response:

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

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

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

Information required on plot plans shall be as follows:

1. Applicant's name, address and telephone number.
2. Scale, north point, and dates of submission and revisions.
3. Zoning classification of petitioner's parcel and all abutting parcels.
4. Existing lot lines, building lines, structures, parking areas, driveways, and other improvements on the site and within 100 feet of the site.
5. Existing use of the property.
6. Dimensions, centerlines and right-of-way widths of all abutting streets and alleys.
7. Location of existing drainage courses, floodplains, lakes, streams, and wood lots.
8. All existing easements.
9. Location of existing sanitary systems and or septic systems.
10. Location and size of existing water mains, well sites and building service.
11. Identification and seal of architect, engineer, land surveyor, or landscape architect who prepared the plans. If any of the items listed above are not applicable to a particular plot plan, the applicant must specify in the plot plan which items do not apply and, furthermore, why the items are not applicable.

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

Article 7 section 7.02 of the Zoning Ordinance further states:

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

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

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

Planning Division Analysis

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

Section 1.04 of the Birmingham Zoning Ordinance states: the purpose of the Zoning Ordinance is to guide the growth and development of the City in accordance with the goals, objectives and strategies stated within the Birmingham Future Land Use Plan and the Downtown Birmingham 2016 Plan. A review of both plans reveals that the proposal to rezone the subject property to the D-5 Zoning District meets the spirit and intent of the ordinance. The 2016 Plan recommends specific building heights and massing that appropriately defines the public street. The proposed building allows for mixed uses and a scale that will seamlessly match the adjacent buildings, meanwhile supporting the improvement of the streetscape along S. Old Woodward, Hazel and Woodward by building to the frontage line.

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

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

As mentioned above, the Birmingham Place and 555 Buildings are located to the north and south of the subject site, respectively. The property is located on Woodward Avenue, which has a 200' wide right of way. The southbound lanes of Woodward lie directly east of the property, and South Old Woodward lies to the west. Across Woodward to the east is the Audi dealership, and across S. Old Woodward to the West is the long commercial building with a CVS and other businesses.

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

	North	South	East	West
--	-------	-------	------	------

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

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

The properties immediately north and south of the subject site are zoned B3 and D5, which allow a mix of residential, retail and commercial uses, and buildings over 5 stories in height up to a maximum height of 180'. The property to the east across Woodward Avenue is zoned MU5 which also allows a mix of residential, retail and commercial uses and allows buildings up to 6 stories and 78' in height. The property to the west across S. Old Woodward is zoned B2-B and D2, also allowing a mix of residential, retail and commercial uses and buildings up to 3 stories and 56' in height.

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

Under the current zoning, all of the same uses are permitted as those under the D5 zoning classification. However, under the current zoning of D4, the building would be capped at a height of 5 stories and thus be dwarfed by the adjacent Birmingham Place and 555 Buildings.

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

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

Departmental Reports

1. Engineering Division – The Engineering Department has no concerns with the rezoning application at this time.
2. Department of Public Services –The Department of Public Services has no concerns at this time.
3. Fire Department – The Fire Department has no concerns with the rezoning at this time.
4. Police Department – The Police Department has no concerns with the rezoning application.

5. Building Department – No comments were provided from the Building Department on the rezoning application.

Planning Department Findings

Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable master plan documents, current zoning and recent development trends in the area, the Planning Department finds that the applicant meets the established ordinance requirements to qualify for a rezoning of the property from D-4 to D-5 in the downtown overlay district for the purpose of building as high, but no higher than, adjacent buildings. Given the recommendations of the 2016 Plan, the existing mix of uses in the immediate area and given the size and quality of the building, the proposal to rezone for the purpose of building to nine stories is appropriate and compatible in the area. The following sample motions with attached conditions have been provided in the event that the Planning Board deems it appropriate to send a recommendation of approval forward to the City Commission.

Sample Motion Language

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

OR

Motion to recommend **DENIAL** to the City Commission of the applicant's request for the rezoning of the property at 469 - 479 S. Old Woodward from D-4 to D-5 in the Downtown Overlay for the following reasons:

1. _____
2. _____
3. _____

OR

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

1. _____
2. _____
3. _____

**City Commission Minutes
February 13, 2017**

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

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

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

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

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

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

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

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

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

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

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

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

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

MOTION: Motion by DeWeese, seconded by Boutros:

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

AND

To approve the rezoning of the following properties:

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

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

VOTE: Yeas, 7
Nays, 0
Absent, None

ORDINANCE NO. _____

THE CITY OF BIRMINGHAM ORDAINS:

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

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

Article 03 shall be amended as follows:

Section 3.04 Specific Standards

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

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

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

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

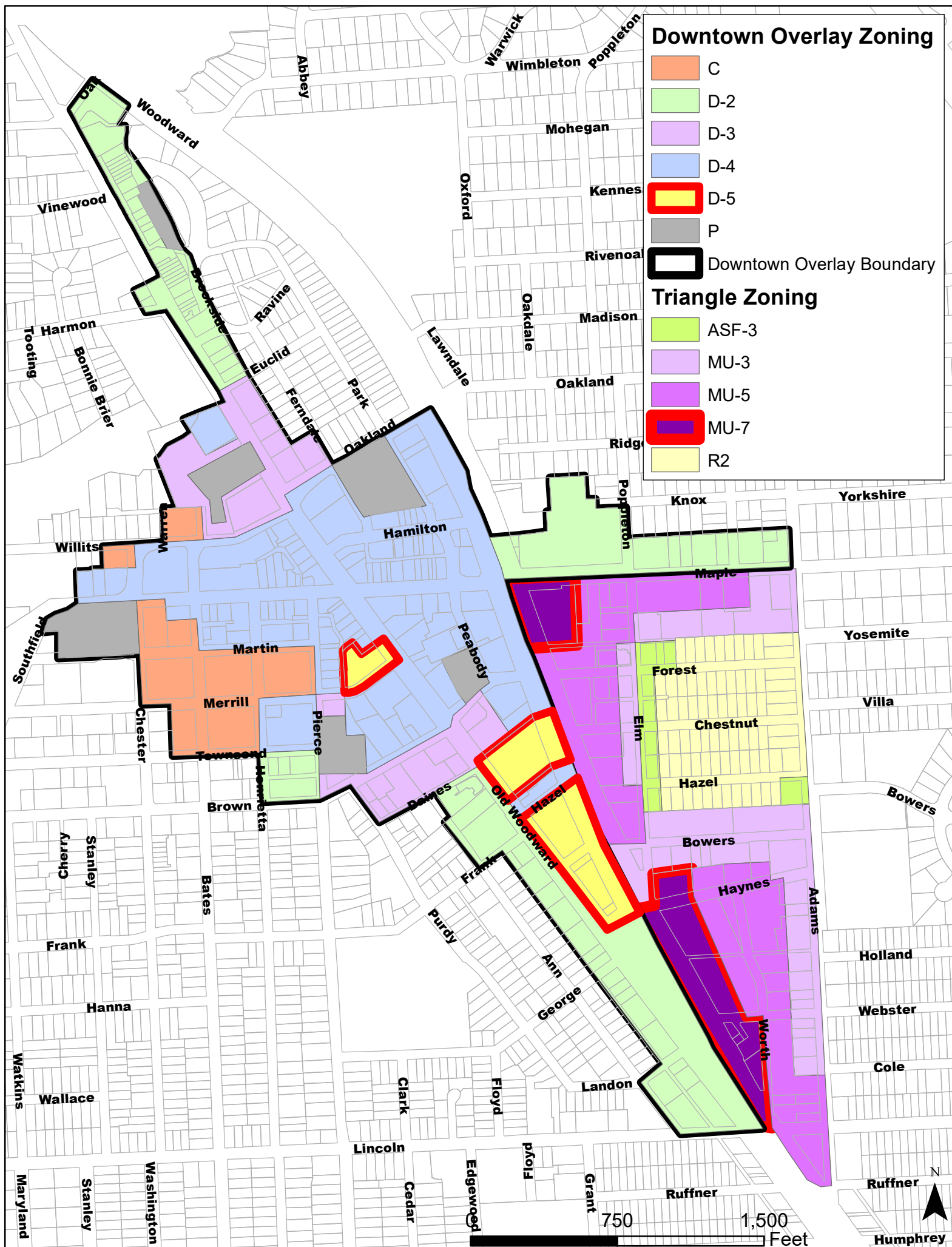
B. Building placement. Buildings and their elements shall be placed on lots as follows:

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

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

Mark Nickita, Mayor

Cheryl Arft, City Clerk





CITY OF BIRMINGHAM FIRE DEPARTMENT

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

June 22, 2018

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

Dear Jana:

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

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

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

Sincerely,

John M. Connaughton, Fire Chief

RELEVANT MEETING MINUTES

City Commission Minutes February 13, 2017

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

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

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

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

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

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

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

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

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

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

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

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

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

MOTION: Motion by DeWeese, seconded by Boutros:

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

AND

To approve the rezoning of the following properties:

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

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

VOTE: Yeas, 7
Nays, 0
Absent, None

Planning Board Minutes
June 27, 2018

REZONING APPLICATION

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

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

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

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

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

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

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

Planning Board as a result of that application and included the other two buildings in a similar situation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ms. Tony Schwartz, 411 Old Woodward Ave., maintained that it is the height of the building that is in question here, not its quality. Secondly, traffic is a big problem on that corner. There is a new hotel that is starting to be built on the corner of Brown and Old Woodward which will add more

traffic to that corner. She understands there may be a pool deck on the top floor of the proposed building - who is going to control music and noise and parties. She lives right across on the tenth floor.

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

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

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

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

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

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

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

Mr. Boyle made the following points:

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

- At the end of the day he is of a mind to approve the rezoning because overall he sees the benefits for the City and for this particular area. However, he does not underestimate the cost for the immediate residents in the contiguous building.

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

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

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

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

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

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

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

Motion by Mr. Boyle

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

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

Motion failed, 2-5.

ROLLCALL VOTE

Yeas: Boyle, Jeffares

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

Absent: Share, Williams

Motion by Ms. Whipple-Boyce

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

Motion carried, 5-2.

ROLLCALL VOTE

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

Nays: Jeffares, Whipple-Boyce

Absent: Share, Williams

City Commission Minutes
August 13, 2018

8-221-18 CANCEL PUBLIC HEARING – 469–479 S. OLD WOODWARD – REZONING

City Manager Valentine reported the applicant wishes to go back to Planning Board.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner DeWeese:

To cancel the public hearing to consider approval of the rezoning of 469–479 S. Old Woodward from B3/D4 to B3/D5 and to refer the matter back to the Planning Board.

VOTE:	Yeas,	7
	Nays,	0
	Absent,	0

The Commission decided to further discuss during Commissioner Comments:

- How much information needs to be provided to the Commission upon the cancellation of a public hearing; and,
- How to supply Commissioners with previously submitted background information for agenda items.

**Planning Board Minutes
September 12, 2018**

REZONING APPLICATION

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

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

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

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

Motion by Mr. Williams

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

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

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Share

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

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

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

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

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

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

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

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

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

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

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

Motion by Mr. Williams

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

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

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

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Share

Planning Board Minutes
October 10, 2018

REZONING APPLICATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Motion by Mr. Boyle

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

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Ramin

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

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

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

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

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

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

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

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

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

Motion by Mr. Share

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

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

Motion failed, 3-4.

ROLLCALL VOTE

Yeas: Share, Koseck, Clein

Nays: Boyle, Jeffares, Whipple-Boyce, Williams

Absent: Ramin

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

Motion carried, 4-3.

ROLLCALL VOTE

Yeas: Jeffares, Whipple-Boyce, Boyle, Williams

Nays: Koseck, Share, Clein

Absent: Ramin

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

Motion by Mr. Williams

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

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

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Ramin

Planning Board Minutes
November 14, 2018

E. REZONING APPLICATION

1. 469-479 S. Old Woodward Ave. (former Mountain King and Talmer Bank)

Rehearing of application to rezone from B-3 and D-4 to B-3 and D-5 to allow a nine-story mixed-use building (postponed from October 10, 2018)

Mr. Rick Rattner, 380 N. Old Woodward Ave., said that after many hours of work they thought it might be helpful if they were given a chance to talk to the Birmingham Place neighbors and see if they could come to some conclusion about how they might accommodate each other. Therefore, they ask that the application be postponed to a date certain.

Mr. Clein announced that communication between parties is always something this board has strived for. Therefore, he would be willing to wait in order to allow that to happen.

Mr. Share assured that the Planning Board would not simply rubber stamp the agreement that was made, should they make one.

Mr. Koseck added that through communication there is always a better result, better planning, and happier people. So he was in favor of the request.

At 7:35 p.m. the Chairman asked for public discussion.

Ms. Susan Friedlander, who represents Birmingham Place Residential Condominium Assoc., said this is the first they are hearing about the postponement request. Her clients are upset about it because this is their fifth time in front of the Planning Board. It has gotten really expensive for them as well as time consuming. Further, they lose people every time their hearing is put off. Therefore, they want to just go ahead this evening. Additionally, she questioned why they were not notified of the postponement before tonight's meeting.

Mr. Jason Able spoke on behalf of the Condominiums of Birmingham Place Master Assoc. He echoed Ms. Friedlander's words. Every time this appeal is postponed less people show up.

Mr. Larry Rockind, resident of Birmingham Place, said at a minimum the applicant should be required to give some indication of what they have in mind. Also they should talk about paying the costs that the residents have incurred as a result of the delays.

Mr. Mickey Schwartz, resident of Birmingham Place, noted that in other developments like the Frank St. project the developer met with the neighborhood before submitting anything to the Planning Dept., which is the appropriate way of doing something. This has been going along for a long time and he doesn't see any grounds for further postponement. So, he asked the Board not to extend the hearing. If the hearing is extended he asked that it be for a period of six months in order to accommodate the residents who will be away for the winter.

Mr. Duraid Markus, one of the principals of the ownership of the two buildings, said he understands the concerns. He asked for a chance to show the residents of Birmingham Place

what the development would look like at five and nine stories and what he can or cannot accommodate them with. He wants to do a lot to appease their fears. It came to this late juncture because they finally finalized the plans.

Discussion clarified that tonight the Board is dealing with massing and the intensity of use.

Ms. Whipple-Boyce asked Mr. Markus if anything he is planning to discuss with the residents of Birmingham Place has to do with him not rezoning the property. Mr. Markus responded that if he can show the residents a rezoning plan that they are happy with maybe there will be less opposition.

Mr. Share explained that the Board is well aware of the intensity of the feelings of the residents of Birmingham Place. Their letters are all part of the record. Therefore, ~~no matter how many if~~ **fewer** people show up for the hearing it won't influence the Board's decision.

Mr. Koseck hoped this would be a win-win and the residents would see something positive in what is being proposed by the applicant.

Mr. Jeffares said the Board has seen where something received complete opposition and they worked on it and came up with a great outcome. That is what he would like to strive for and have everybody be happy. Maybe it will work or not work, but why not give it a shot.

Mr. Emerine thought it is important that people get together and discuss this. He was in favor of postponement. Mr. Boyle said he is of the same mind. From his experience on this Board, the more conversation there is outside of this room, the better understanding there is between parties. Chairman Clein was in general agreement with those feelings.

Mr. Markus indicated that December 12th would be fine to come back.

Motion by Mr. Boyle

Seconded by Mr. Koseck that in light of the statements from the applicant that we postpone this rezoning application for 469-479 S. Old Woodward Ave. (former Mountain King and Talmer Bank) to the Planning Board meeting scheduled for December 12, 2018.

There were two further comments from the public on the motion at 7:58 p.m.

Mr. Mickey Schwartz, resident of Birmingham Place, said tonight's hearing is about rezoning. It seemed to him they have digressed into talking about the specifics of the project that have nothing to do with rezoning. He heard Ms. Whipple-Boyce ask Mr. Markus whether or not he would request a rezoning change. However, he didn't hear him answer her question, and gave a non-responsive answer. If this is really about the rezoning then maybe they should talk about that tonight. They can always talk about the specifics of the project if the Board agrees to the rezoning request.

Ms. Tony Schwartz, resident of Birmingham Place, said this is a rezoning and why discuss a project that may not even happen if it is not approved. It is hard for her to believe that when the developer originally bought the property he did not have the intention of building to ten stories.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Williams

**Planning Board Minutes
December 12, 2018**

E. REZONING REQUEST

1. 469-479 S. Old Woodward Ave. (former Mountain King and Talmer Bank) Request to reconsider application in light of new information to be presented to rezone from B-3 and D-4 to B-3 and D-5 to allow a nine-story mixed use building (postponed from November 14, 2018, and the applicant has asked for additional postponement)

Motion by Mr. Williams

Seconded by Ms. Whipple-Boyce that the rehearing of the rezoning request for 469-479 S. Old Woodward Ave. (former Mountain King and Talmer Bank) be postponed to the regular Planning Board meeting of January 23, 2019.

Motion carried, 7-0.

There were no comments from members of the public at 7:35 p.m.

VOICE VOTE

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

Nays: None

Absent: None

Mr. Williams asked that upon republishing this material, staff note any new information on the first page.

DRAFT Planning Board Minutes
January 23, 2018

E. REZONING REQUEST

- 1. 469 – 479 S. Old Woodward (former Mountain King & Talmer Bank)** – Request to reconsider application in light of new information to be presented to rezone from B3 and D4 to B3 and D5 to allow a nine story mixed use building (Postponed from December 12, 2018).

Ms. Ecker identified the subject site and reviewed the history of the rezoning requests over the past year. It was noted that the building immediately to the north of 469-479 S. Old Woodward is approximately 115 feet tall, and that the tower to the south of 469-479 S. Old Woodward, attached to the 555 building, is approximately 80 feet tall. The current zoning would allow for an approximately 80 feet tall building at 469-479 S. Old Woodward.

The 2016 Plan would only allow a five-story building at the 469-479 S. Old Woodward site. D-5 zoning allows a building to go up to, but not exceed, the height of an adjacent building. D-4 zoning allows a building to have five stories if the top floor is residential. Planning Director Ecker did not believe there are any other properties zoned D-4 in the Downtown Overlay which are not also in the Parking Assessment District (PAD).

Planning Director Ecker reviewed the requirements for rezoning contained in the Zoning Ordinance and explained the findings related to these as outlined in the staff report, along with the applicant's responses as submitted. After the review was complete, Ms. Ecker noted that based on the Planning Department's review "of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable master plan documents, current zoning and recent development trends in the area, [...] the applicant meets the established Zoning Ordinance requirements of Article 7, section 7.02(B)(5) to qualify for a rezoning of the property from D-4 to D-5 in the Downtown Overlay district."

Mr. Rick Rattner, Attorney, was present to represent the applicant. On behalf of the applicant Mr. Rattner and architect Chris Long gave a presentation first outlining the applicant's adherence to the Zoning Ordinance requirements of Article 7, section 7.02(B)(5), similar to the Planning Department's findings of positive rezoning qualifications of the property, and secondly showing a massing of the proposed building, zoned as D-5, at the 469-479 S. Old Woodward site.

Mr. Rattner began by saying he could not think of another situation in Birmingham where two buildings are zoned in the same way with a third building, in the middle, zoned differently. Mr. Rattner continued:

- The 469-479 S. Old Woodward site essentially creates a gap in the streetscape since it is currently one or two stories and cannot be rebuilt.
- Based on intended height, the applicant would return to the Board for a Special Land Use Permit (SLUP) which would also take into account the neighbors' preferences.
- D-5 zoning would allow for on-site parking and the same uses as the surrounding buildings.

Mr. Longe described the 469-479 S. Old Woodward site. If the current buildings were maintained and reused for a non-conforming use the applicant would need to provide parking for 55 cars since the site is outside of the PAD. His presentation illustrated and talked through some other D-4 zoned options that would be similarly untenable for the site.

The Board was then presented with two massing models to demonstrate what the proposed building would look like if the City Commission were to grant the change in zoning to D-5.

Mr. Longe clarified that the proposed building could be stepped back from Birmingham Place to provide more open space between the two buildings if the change in zoning to D-5 is granted. He added that this idea came about as part of the ongoing discussion with the tenants of Birmingham Place.

Mr. Longe confirmed for Mr. Emerine that the top block represented on the proposed building would be a mechanical block, not an additional story to the building.

Chairperson Clein thanked Mr. Longe for the massing diagrams, stating they were helpful.

Mr. Rattner told Mr. Share that the applicant is coming before the Board instead of the Board of Zoning Appeals because the applicant is attempting to do a development under the current zoning ordinances of the City. Mr. Rattner added that it is unusual and unfair to maintain the site at D-4 when both buildings adjacent to the site are zoned at D-5.

Doraid Markus, one of the applicants, opined that a five-story hotel would not be as becoming of Birmingham as a nine-story hotel. He specified that in order to create an uncrowded first floor and mezzanine level and a sufficient number of rooms, the building would need the extra height.

Susan Friedlander, Attorney representing Birmingham Place Residential Condominium Association, explained that the evening's discussion was supposed to be a rehearing since the site had originally been described incorrectly as being in the PAD. Given this, she wondered why the applicant had yet to explain this evening how the PAD was such a significant issue that the Board should consider voting differently than it had in the past. She added:

- The applicant's assertion that they could not park onsite with a five-story building, but could park onsite with a nine-story building -- even though a nine-story building would require an increase of parking spaces -- did not compute.
- Other hotels being built in the PAD are putting two levels of parking underground.
- The applicant said they would be able to use approximately 40 spaces from the 555 building if the site was built to nine stories. Ms. Friedlander questioned why this arrangement would not work with a five-story building as well.
- During tonight's presentation the applicant did not mention the various parking sharing arrangements available to the applicant under the ordinance. Such sharing arrangements could significantly decrease the burden of providing parking. She said addressing this issue is more of a parking variance matter than an ordinance matter.
- According to Planning Director Ecker's report, there is no consensus on whether the City should be raising building heights in this area. If the Board and Commission determined that these three high-value buildings should have their heights raised without consulting the Master Plan for the area, then the City was not zoning according to a Plan. Michigan law requires that every City zones according to its Plan(s).

- Changing building heights in the Downtown Overlay district merits a thorough community engagement process, similar to the process of changing building heights in the Triangle District. Insufficient consultation of the community on this matter could result in the impression that this zoning change was insufficiently considered and vetted. She also said the February 2017 Commission discussion on the issue reflected similar concerns from the Commissioners regarding the lack of community engagement.
- A number of other properties in Birmingham could also request changes in zoning based on being next to D-5 buildings. The problem is whether these changes are being made according to the City's 2016 and Master Plans.
- The City specified in its 2016 Plan that it wanted to maintain its small town character. According to Ms. Friedlander, small towns do not usually go above three or four story buildings. While Birmingham has gone back and forth on whether it would allow taller buildings, drastic changes to building heights should be made according to the City's Plans.
- The discussion of changing this site's zoning should occur under the auspices of the upcoming Master Planning process. Otherwise, this is similar to spot-zoning, since no land use patterns changed for the site.

David Nykanen, Attorney, said he represents some of the residential owners in the Birmingham Place Condominium Association. Noting that a hotel would require the least amount of parking on this site, Mr. Nykanen asserted that the applicant chose not to present the parking implications of that option in the current discussion so as to make the parking requirements seem more onerous than they are. He continued:

- Two other sites in Birmingham are building five story hotels, demonstrating that parking a five story hotel within the City is not excessively burdensome.
- In addition to the potential parking agreement with the 555 building, other options are available to the applicant for parking a five story hotel on this site.
- The applicant's statements this evening demonstrated that this rezoning request is based on the applicant's preference for a certain type of hotel, not the inability to build a hotel on the site more generally.
- The zoning uses for both D-4 and D-5 are the same, so Mr. Rattner's assertion that a change in zoning is necessary to allow the applicant to enjoy the same uses as the adjacent buildings is fallacious. The only difference between the zoning types is the building height.
- A five story hotel on the site would be taller than the 555 building and would adequately fill in the visual gap in the streetscape.
- It is clear that this rezoning request is about economics and not about land use, which is an insufficient reason to rezone a property.

Jason Abel, Attorney, said he represents the Masters' Association of the Birmingham Place Condominium Association. He said he echoed the previous two speakers and drew the Board's attention to 7.02(B)(2)(b)(i) and 7.02(B)(2)(b)(ii). Mr. Abel explained:

- Regarding 7.02(B)(2)(b)(i), the applicant is required to show, and the Board is required to present findings of facts, as to why the rezoning is necessary for the preservation and enjoyment of the rights of usage commonly associated with the property. Mr. Abel described 'necessary' as the critical word, since it is not necessary to develop a nine story hotel on this property. A five story building could be developed on this site with many different uses. The problem is that the applicant is requesting a change in the zoning to access a use that is not permitted in the five story setting. While Mr. Abel acknowledged

this to be an understandable preference on the part of the applicant, he asserted that it would not be a 'necessary' change. Additionally, the applicant's contention that they would make more money with a taller building or would not be able to provide enough parking with a shorter building could be used by any developer in any zoning environment, making their argument so broad as to fall outside the need for a specific and 'necessary' zoning change.

- Regarding 7.02(B)(2)(b)(ii), the zoning of D-4 is not inappropriate for the current land use. The issue is, rather, that the applicant would like to build a nine story hotel on a parcel zoned for a five story use.
- The applicant presented arguments adjacent to the Zoning Ordinance rather than addressing the Zoning Ordinance.
- Regarding 7.02(B)(2)(b)(iii), Mr. Abel said the applicant did not address the detrimental impact changing the zoning of the site to D-5 would have on the neighbors.

Carole Kozlow stated that her family has always loved Birmingham's smaller town nature. Recalling Mr. Markus making a statement similar to 'if the City does not want large buildings, it never should have allowed the first one to be built' during the June 2018 conversation on the issue, Ms. Kozlow said she agreed. Noting that Birmingham has since changed course on large buildings, she asked that the City continue to preserve its character, rather than having to fix the problem after the fact.

Karl Sachs said he has lived in Birmingham for about 25 years and said he had been asked to convey some of his neighbors' feelings on the potential rezoning. He continued that many of their points had already been covered by others but that he wanted to mention his neighbor Mike Humphrey's written statement that the potential rezoning does not adhere to the Master Plan. Mr. Sachs said that this hotel would make privacy nearly impossible for the residents of Birmingham Place living on the side adjacent to the proposed site.

Michele Prentiss, Property Manager of Birmingham Place, presented the Board with a written reply to the applicant's summary statements as included in the Board's agenda packet for the evening. She then gave a copy to Chairperson Clein.

Chairperson Clein asked if there was a motion to receive and file the letter.

Mr. Williams asked for a copy of the letter. Chairperson Clein said he would pass along his copy for Mr. Williams to read. Mr. Williams said that without a copy for each Board member to read, he would not make a motion to receive and file the letter.

Chairperson Clein said he would acknowledge the letter, and upon receipt of the letter as an email to Planning Director Ecker the letter would be included in agenda material on the matter moving forward.

Seeing no further comments from the public, Chairperson Clein brought the discussion back to the Board. Chairperson Clein said it was time for the Board to make a decision.

Mr. Share asked if the letter had any new information, saying he did not want to make a decision if there was information the Board had not yet heard.

Ms. Friedlander told the Board that all the letter's points had been covered in the evening's discussion.

Mr. Share spoke first, saying that this is an unusual zoning request since it only impacts the height of the building allowed. He continued that when D-5 was implemented, the Board did not preclude other sites from seeking to be zoned D-5 in the future. From a streetscape perspective, he saw no significant difference between a five story and nine story building on the site. The proposed change does not seem 'necessary' as defined by 7.02(B)(2)(b)(i). It would behoove the Board to look at the zoning of the entire block from Hazel to Brown. He would not be voting in favor of rezoning unless his colleagues persuade him otherwise.

Mr. Koseck said none of the new information persuasively explained why the City Commission should approve the rezoning. He noted the 2016 Plan conclusively zoned the building at D-4. Cities tend to have buildings of varying heights, and the variety is partially what makes cities interesting, so the streetscape argument was not particularly compelling. Assuming the site was purchased with awareness of the D-4 zoning, Mr. Koseck suggested that this is not so much a zoning issue as a parking issue. He recommended the applicant apply to join the PAD or enter into some other beneficial parking arrangement. Addressing Mr. Markus' assertion that certain hotel designs are not becoming of Birmingham, Mr. Koseck said his firm is currently building a hotel in Ann Arbor with nine-foot floor to ceiling heights, that he is confident that the result will be sufficiently upscale, and that something similar could be done in the applicant's case. Lastly, Mr. Koseck noted the community's consistent concerns that the rezoning would be detrimental to the neighbors. He said no new information could be provided that would change his thinking on the matter.

Mr. Williams pointed out that the City Attorney found the site eligible for D-5 zoning. He said Ms. Friedlander could pursue the matter further with the City Attorney, but that the Board is bound by the City Attorney's opinion. The D-4 zoning for this site does not allow reasonable enjoyment of the property since all other D-4 sites in Birmingham have access to the PAD. Because this currently makes the property non-competitive, Mr. Williams said he would be in favor of rezoning.

Mr. Emerine noted the persuasive impact of the City Attorney's opinion that this site is eligible for D-5 zoning. Adding that the developer would need to acquire a SLUP should the rezoning move forward, Mr. Emerine stated he was comfortable with the rezoning at this time.

Mr. Jeffares recalled the Board had considered rezoning the surrounding area but had decided they wanted to keep D-5 to this smaller area at the time. He expressed an equivocal opinion on the idea of zoning a building according to its neighbor's zoning, but said that a building zoned differently between two buildings of the same zone seemed significant enough to change.

Ms. Whipple-Boyce addressed Ms. Friedlander's contention that D-5 was in any way surreptitiously done, saying that the Board and the City Commission spent many public meetings discussing the issue in depth. Ms. Whipple-Boyce added that she affirmed the City Attorney's findings regarding the application, and that she believed the applicant proved their case.

Chairperson Clein said he was against the rezoning at this time. He continued that the origins of D-5 zoning have no bearing on the question before the Board this evening, or if they do it is a legal question not up to the Board's interpretation. He clarified that the Board's directive was to

determine whether this parcel and application met the ordinance requirements for rezoning. Arguments about adjacencies were also not relevant. The applicant did not meet the burden of proof. Building heights across the downtown should not be changed without a downtown Master Plan. While Chairperson Clein said he would likely recommend the building be permitted a height increase within a planning process, neither the City's Master or 2016 plans allow the flexibility to add four stories to this building outside of the planning process. He noted that there were a number of D-4 uses not presented that would be appropriate for this parcel. In conclusion Chairperson Clein said he was firmly in opposition to rezoning at this time, but said he would entertain any other Board member's replies.

Mr. Jeffares said the owners of the other D-5 parcels applied for rezoning based on finances but that ironically tonight's applicant was being chastised for doing the same thing.

Chairperson Clein begged to differ and clarified for the record that the owners of the other D-5 parcels were having to get a number of different variances for every change they wanted to make on their properties.

Mr. Jeffares asserted the other D-5 parcel owners had indeed brought up financing in their rezoning application.

Chairperson Clein disagreed, saying that D-5 zoning arose out of a directive from the City Commission asking the Board to find a way to bring the currently D-5 parcels in question into compliance.

Motion by Mr. Williams

Seconded by Mr. Jeffares that based on a review of the rezoning request by the applicant and the supporting documentation submitted by the applicant, a review of the City's current Master Plan and the City's current 2016 Plan, and development trends in the area, and in compliance with 7.02(B)(5)(a) - 7.02(B)(5)(e), the Planning Board adopts the findings of fact in the staff report dated November 8, 2018, and recommends approval to the City Commission for the rezoning of 469 – 479 S. Old Woodward from D-4 to D-5 in the downtown overlay.

Motion carried, 4-3.

ROLL CALL VOTE

Yeas: Whipple-Boyce, Emerine, Jeffares, Williams

Nays: Clein, Koseck, Share

Absent: Ramin

Chairperson Clein explained that this is a recommendation to the City Commission. He explained the Commission will then take this recommendation and all attendant information, hold another public hearing of the applicant's request and the community's perspective, and make their determination. Chairperson Clein thanked the audience for voicing their opinions during the discussion.

CORRESPONDENCE RECEIVED FOR & AGAINST REZONING

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

VIA HAND DELIVERY

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

Re: 4694 79 S. Old Woodward Avenue (the "Proposed Development")
Request to Rezone from B3/D4 to B3/D5 Filed by Christopher Long
on Behalf of Birmingham Tower Partners, LLC (the "Applicant")
Hearing Scheduled for Wednesday, May 23, 2018 (the "Hearing")

Dear Ms. Ecker:

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

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

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

Yours very truly,



Michael Schwartz, MD

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

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

June 7, 2018

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

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

Ladies and Gentlemen:

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

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

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

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

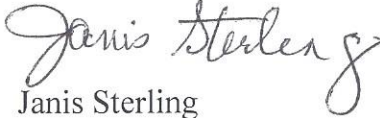
In addition, we have serious safety and other concerns, including:

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

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

Yours very truly,


Eric Sterling


Janis Sterling

ADDRESS: ~~411~~ 411 S. Old Woodward, #1029
DATE: 6/7/2018

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

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

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.

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Yours very truly,



Nikole Fine

Unit #521

411 S. Old Woodward, Suite 603
Birmingham, MI 48009

June 8, 2018

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

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

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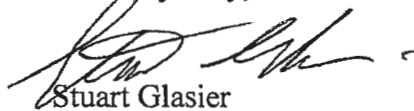
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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

A handwritten signature in black ink, appearing to read "Stuart Glasier", with a stylized flourish at the end.

Stuart Glasier

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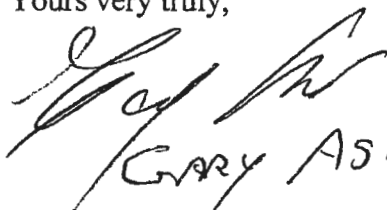
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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,


Gary Askeir
305 Purdy

2400 East Lincoln Street, Unit 425
Birmingham, MI 48009

June 8, 2018

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

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

Ladies and Gentlemen:

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ADDRESS: 411 S. Old Woodward # 1028
Birmingham Mi
DATE: 6-9-2018

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

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

Ladies and Gentlemen:

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

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

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

June 12 2018

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

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

Ladies and Gentlemen:

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

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

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


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

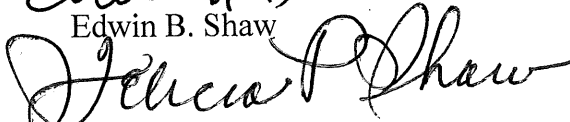
In addition, we have serious safety and other concerns, including:

1. Birmingham firefighting capability is limited to 7 stories. This would leave most of the back of the Proposed Project and virtually all of the south end of Birmingham Place with inadequate or no fire protection.
2. We also suggest that the Proposed Project would unduly burden our city's already hard-pressed police and public safety/rescue facilities.
3. Hazel Street is already a busy connector between Woodward and Old Woodward, especially at rush hour times. The Proposed Project would literally clog this small street with excess traffic, especially if the "four stack" valet service recommended by the developer's own traffic study is implemented and if the current four on-street parking spaces are included in the Proposed Project's plan for adequate parking, as Christopher Longe recently stated to the Planning Board would be the case. We note that the City's own traffic advisor, Fleis & Vandenbrink, also finds considerable fault with the developer's traffic study.
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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



Jana Ecker <jecker@bhamgov.org>

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

1 message

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

Wed, Jun 13, 2018 at 9:52 PM

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

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

Sent from my iPad

Begin forwarded message:

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

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

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

[Birmingham, MI. 48000](#)

June 8, 2018

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

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

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

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

6/19/2018

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

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

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

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

Best regards,

Alice Lezotte



Jana Ecker <jecker@bhamgov.org>

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

1 message

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

Wed, Jun 13, 2018 at 9:52 PM

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

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

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

6/10/18

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

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

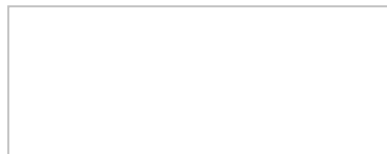
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I believe that a nine story building on this 0.41 acre parcel would be totally out of place, would violate the 2016 Master Plan and would be inconsistent with the small town downtown concept I firmly believe is very important to maintaining the character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

Thank you.

Julie Wolfe



2 attachments



image001.png
6K



image003.png
7K

411 S. Old Woodward, Suite 1012
Birmingham, MI 48009

June 14, 2018

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

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

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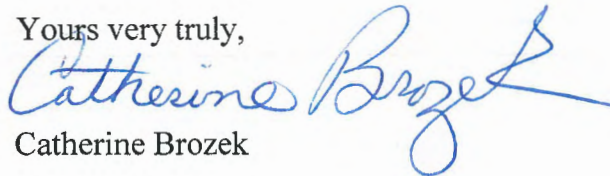
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Yours very truly,



Catherine Brozek

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

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

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

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Yours very truly,

Carol Kozlow

A handwritten signature in cursive script that reads "Carol Kozlow". The signature is written in dark ink and is positioned below the printed name.

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

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

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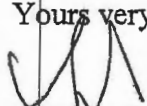
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Yours very truly,


Lewis P. Rucklind
Birmingham Place
Unit 510

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

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

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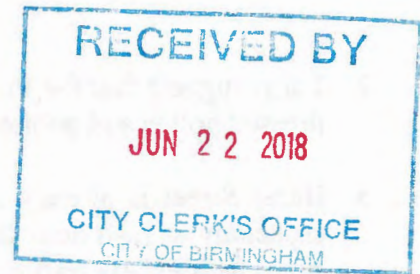
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Yours very truly,

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.

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018



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

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

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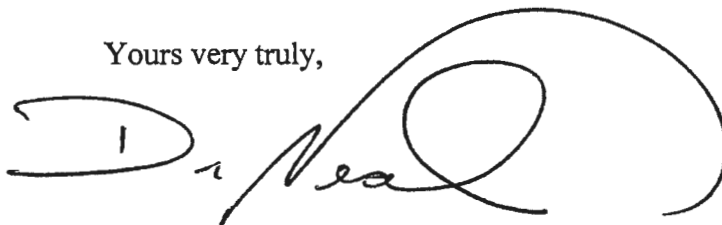
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Yours very truly,

A handwritten signature in black ink, appearing to read "Dr. Neal". The signature is stylized with a large, sweeping loop at the end.

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

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

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

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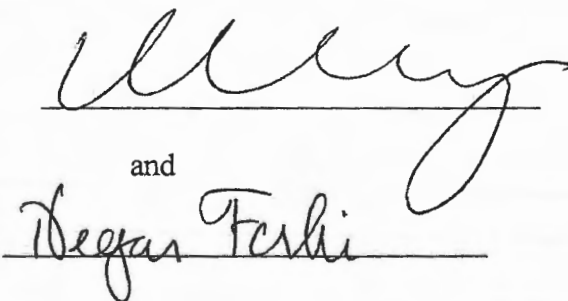
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Yours very truly,

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 bottom. 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.

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,

Valerie Foley
411 S. Old Woodward Ave
Unit 508
Birmingham AL
35209

Unit # 703

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

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

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

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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Yours very truly,

A handwritten signature in black ink, appearing to read "Arthur Longe". The signature is fluid and cursive, with a large, stylized initial "A".

UNIT #806

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

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

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Yours very truly,

Michael C. Schwartz
Voni Schwartz
411 S. Old Woodward
#1018
B'ham 38009

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

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

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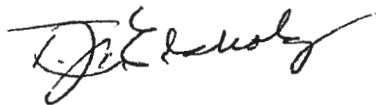
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Yours very truly,

T. J. ELSHOLTZ



E. A. ELSHOLTZ



411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

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

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

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Yours very truly,

Sigina Tellman

Unit 606

*411 S. Old Woodward Ave
Birmingham, MI 48009*

411 S. Old Woodward, Suite 902
Birmingham, MI 48009

June 15, 2018

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

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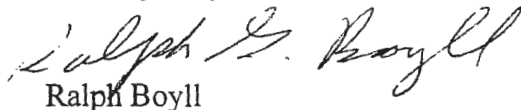
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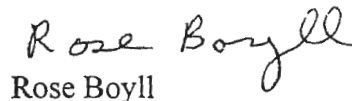
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Yours very truly,


Ralph Boyll


Rose Boyll

06/08/18

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

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

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Yours very truly,
Victoria Shounieya
Victoria Shounieya
Unit #514

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

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

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Yours very truly,

Gavin Butler
411 S. Old Woodward Ave
Unit 508
Birmingham Michigan

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Yours very truly,


Alex Shoenberger

514

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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

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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Yours very truly,


Ted Elsholz

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

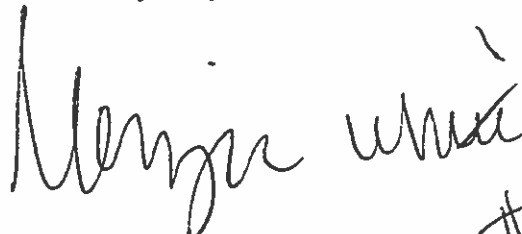
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Yours very truly,


#505

411 S. Old Woodward, Suite # 725
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009



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Yours very truly,

Rose M. Boyle
Ralph S. Boyle

411 S. Old Woodward, Suite ~~#~~ 901
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Yours very truly,

Helen O. Kane
OWNER

411 S. Old Woodward, Suite 529
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

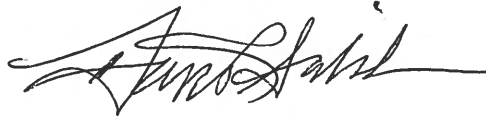
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Yours very truly,

A handwritten signature in black ink, appearing to read "David Saliba", with a stylized flourish at the end.

DAVID SALIBA
Unit 529

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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Yours very truly,

Ronnie M. Schibb

Birmingham Place, unit #529

Birmingham, MI 48009

June 16, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Yours very truly,

Leslie Rolden
687 Vinewood

Birmingham, MI 48009

June 16, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project ")

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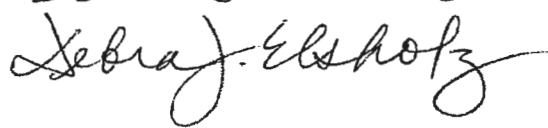
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Yours very truly,

Debra J. Elsholz


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,

Mike Galpin
460 Park

Birmingham, MI 48009

June 18, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

1034 Waterfall Court
Birmingham MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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Yours very truly,

Judge Susan D. Borman (Retired)

Susan Borman

DJ MARLUC HOLDINGS LLC

6632 Telegraph Rd. #359
Bloomfield Hills, MI 48301

6/18/2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

The project that has been proposed for this in-fill site should be approved because it would be appropriate for this parcel of land. If allowed to be built, the project would:

1. Be in harmony with the pattern of the neighboring buildings by filling in the noticeable 'gap' between them, which can be seen from both South Old Woodward and Woodward Avenue.
2. Be consistent with the building heights, uses, and character of Birmingham Place and the 555 Building.
3. Increase the walkability of this area by providing retail at the street level, and by strengthening the retail connection between Birmingham Place and the 555 Building.
4. Add foot traffic (shopper & travelers) to the south end of the city by encouraging foot traffic from the downtown to continue on the completed blocks.
5. Activate Hazel Street in perpetuity – while currently busy with construction bypass traffic, Hazel is an otherwise dormant street (which is vacated on the east side of Woodward Avenue).
6. Adhere to the spirit and intent of both the 2016 Master Plan and the D5 zoning overlay.
7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,



John Kello

411 S. Old Woodward
Birmingham, MI 48009

June 19, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Yours very truly,

A handwritten signature in dark ink, appearing to read 'Dana Bassipour', with a stylized, cursive script.

Dana Bassipour

June 19, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

I am writing, as the owner of a residential comdo unit in Birmingham Place, to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

The city's 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest. Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population.

The Proposed Project is also esthetically displeasing. Instead of enhancing the Woodward corridor with an attractive entrance, it presents only a blank wall to the passing public. It would also create the hostile appearance of blocking off much of South Old Woodward and beyond by erecting a virtual wall of buildings running from the south end of the 555 residential units through the north end of Birmingham Place, reminiscent of medieval walls built around cities to keep people out, not to invite them in.

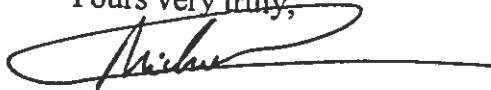
In addition, I have serious safety and other concerns, including:

1. Birmingham firefighting capability is limited to 7 stories. This would leave most of the back of the Proposed Project and virtually all of the south end of Birmingham Place with inadequate or no fire protection.

2. I also suggest that the Proposed Project would unduly burden our city's already hard-pressed police and public safety/rescue facilities.
3. Hazel Street is already a busy connector between Woodward and Old Woodward, especially at rush hour times. The Proposed Project would literally clog this small street with excess traffic, especially if the "four stack" valet service recommended by the developer's own traffic study is implemented and if the current four on-street parking spaces are included in the Proposed Project's plan for adequate parking, as Christopher Longe recently stated to the Planning Board would be the case. We note that the City's own traffic advisor, Fleis & Vandenbrink, also finds considerable fault with the developer's traffic study.
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,

A handwritten signature in black ink, appearing to read "Michael Hanna", with a long horizontal flourish extending to the right.

Michael Hanna

June 19, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

I am writing, as the owner of three residential condo units in Birmingham Place, to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

The city's 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest, Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population.

The Proposed Project is also esthetically displeasing. Instead of enhancing the Woodward corridor with an attractive entrance, it presents only a blank wall to the passing public. It would also create the hostile appearance of blocking off much of South Old Woodward and beyond by erecting a virtual wall of buildings running from the south end of the 555 residential units through the north end of Birmingham Place, reminiscent of medieval walls built around cities to keep people out, not to invite them in.

In addition, I have serious safety and other concerns, including:

1. Birmingham firefighting capability is limited to 7 stories. This would leave most of the back of the Proposed Project and virtually all of the south end of Birmingham Place with inadequate or no fire protection.

2. I also suggest that the Proposed Project would unduly burden our city's already hard-pressed police and public safety/rescue facilities.
3. Hazel Street is already a busy connector between Woodward and Old Woodward, especially at rush hour times. The Proposed Project would literally clog this small street with excess traffic, especially if the "four stack" valet service recommended by the developer's own traffic study is implemented and if the current four on-street parking spaces are included in the Proposed Project's plan for adequate parking, as Christopher Longe recently stated to the Planning Board would be the case. We note that the City's own traffic advisor, Fleis & Vandenbrink, also finds considerable fault with the developer's traffic study.
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5. The Proposed Project will require deep excavation ("digging half way to China," as Mr. Longe recently expressed to the Planning Board) and heavy equipment and materials, which could seriously jeopardize the structural integrity of Birmingham Place. The developer has not adequately addressed this and has not made provision to repair, or more importantly to prevent, any damage to Birmingham Place.

Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Doris Hanna", written over a horizontal line.

Doris Hanna

ADDRESS:

319 GREENWOOD
BIRMINGHAM, MI 48009

DATE:

JUNE 19, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

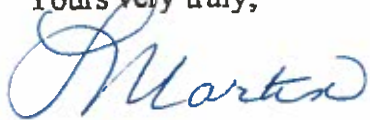
Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

We are residents of the City of Birmingham and are writing to express our deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally *not* zoned as D5, despite being located between two of the D5 buildings.

We believe that a nine story building on this 0.41 acre parcel would be totally out of place, would violate the 2016 Master Plan and would be inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city. We respectfully ask that you stay the course that has been followed and has been successful for so long. Thank you.

Yours very truly,



LISA A. MARTIN

June 19, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

I am writing, as the owner of one or more residential condo units in Birmingham Place, to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

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.

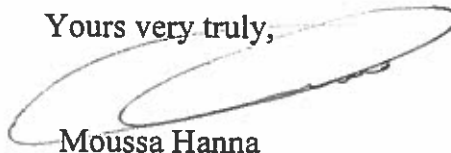
In addition, I have serious safety and other concerns, including:

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,

A handwritten signature in dark ink, appearing to read "Moussa Hanna", written over a horizontal line.

Moussa Hanna

Lexi Drew
152 N Old Woodward
Birmingham, MI 48009
248.220.1731

Date 6/20/2018
Birmingham City Commission & Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue
Dear City Commission and Planning Board Members,

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

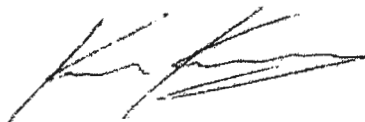
The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

The project that has been proposed for this in-fill site should be approved because it would be appropriate for this parcel of land. If allowed to be built, the project would:

1. Be in harmony with the pattern of the neighboring buildings by filling in the noticeable 'gap' between them, which can be seen from both South Old Woodward and Woodward Avenue.
2. Be consistent with the building heights, uses, and character of Birmingham Place and the 555 Building.
3. Increase the walkability of this area by providing retail at the street level, and by strengthening the retail connection between Birmingham Place and the 555 Building.
4. Add foot traffic (shopper & travelers) to the south end of the city by encouraging foot traffic from the downtown to continue on the completed blocks.
5. Activate Hazel Street in perpetuity – while currently busy with construction bypass traffic, Hazel is an otherwise dormant street (which is vacated on the east side of Woodward Avenue).
6. Adhere to the spirit and intent of both the 2016 Master Plan and the D5 zoning overlay.
7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin Kejbou', with a stylized, sweeping flourish at the end.

Kevin Kejbou
152 N Old Woodward
Birmingham MI 48009



2000 Town Center
Suite 2200
Southfield, MI 48075

248 353 5400 Tel
248 353 8134 Fax

June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

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.
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7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

David Hesano
First Vice President
David.hesano@cbre.com



DETROIT ATLANTA CHICAGO CLEVELAND DALLAS HOUSTON LOS ANGELES MIAMI NEW YORK SAN FRANCISCO SOUTH JERSEY WASHINGTON DC

June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which is 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

The project that has been proposed for this in-fill site should be approved because it would be appropriate for this parcel of land. If allowed to be built, the project would:

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7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony Toma".

Anthony Toma
CEO & Founder
Nine9
2653 Industrial Row Dr.
Troy, MI 48084



June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

RE: Proposed Project at 469-479 S Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

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:

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5. Activate Hazel Street in perpetuity – while currently busy with construction bypass traffic, Hazel is an otherwise dormant street (which is vacated on the east side of Woodward Avenue).
6. Adhere to the spirit and intent of both the 2016 Master Plan and the DS 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,

Gregg Speaks
Managing Director
CIBC Bank USA
34901 Woodward Avenue, Suite 200
Birmingham, MI 48009



MIDWEST HOSPITALITY GROUP INC.

June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

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.

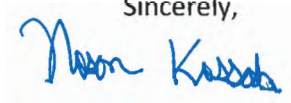
The project that has been proposed for this in-fill site should be approved because it would be appropriate for this parcel of land. If allowed to be built, the project would:

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.
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5. Activate Hazel Street in perpetuity – while currently busy with construction bypass traffic, Hazel is an otherwise dormant street (which is vacated on the east side of Woodward Avenue).
6. Adhere to the spirit and intent of both the 2016 Master Plan and the D5 zoning overlay.

7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,



Nason Kassab
35270 Woodward Ave
Birmingham, MI 48009



June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete and old one-story buildings that sit between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

The project that has been proposed for this in-fill site should be approved because it would be appropriate for this parcel of land. If allowed to be built, the project would:

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7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.
10. This project would continue to make the City of Birmingham the premier city to live and shop

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

A handwritten signature in black ink, appearing to be 'KD' or 'Kevin Denha', written in a cursive style.

Kevin Denha
40700 Woodward Ave Suite 125
Bloomfield Hills, MI. 48304

ISHBIA & GAGLEARD, P.C.
ATTORNEYS AND COUNSELORS
MERRILLWOOD BUILDING
251 MERRILL STREET, SUITE 212
BIRMINGHAM, MICHIGAN 48009

JEFFREY A. ISHBIA
MICHAEL A. GAGLEARD *
MARK W. CHERRY
DAVID N. ZACKS **

PHILIP CWAGENBERG
FRANK J. LAROCCA
MICHAEL J. WEISBERG **
SARA E. ROHLAND

ISIDORE B. TORRES, OF COUNSEL
C. GILES SMITH, JR., OF COUNSEL

(248) 647-8590
(800) 647-6269

FAX (248) 647-8596

* ALSO ADMITTED IN CALIFORNIA
** ALSO ADMITTED IN FLORIDA

June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

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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,

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

Dear City Commission and Planning Board Members,

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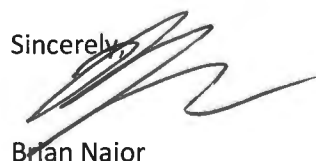
The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

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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,



Brian Najor
Najor Companies
600 N. Old Companies, Ste 100
Birmingham, MI 48009



JONNA

luxury homes

6/20/18

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

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.
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8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,



Joseph Jonna, Jonna Luxury Homes



June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

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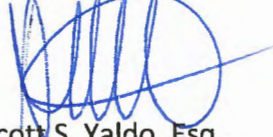
500 S. Old Woodward Ave., Second Floor, Birmingham, MI 48009

Phone: (248)645-5300 Fax: (248)645-5301

www.yaldolaw.com

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Scott S. Yaldo', is written over a light blue rectangular background.

Scott S. Yaldo, Esq.



Phone: 586-268-3200 | Fax: 586-268-3224
7096 E 14 Mile Rd Warren, MI 48092
andiamoitalia.com

June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

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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8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

Joseph P. Vicari
7096 E. 14 Mile Rd.
Warren, MI 48092



David Breedlove
85 Tradd Street
Charleston, SC. 29401

June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

I am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project referenced above. I am no longer a resident of Birmingham but maintain a condominium in Birmingham. Birmingham has been my home for most of my 70 years since my parents bought their first home on Villa in 1949. I remember visiting Pearls for a nice Chinese dinner. So, I know the area well. And while we moved from our home on Lincoln to warmer weather after retirement, Birmingham will always be home. I have watched how the character of the town has changed over the last 65 years. I was sad when the City allowed 555 to be built. I will always believe it was a mistake. We do not need another mistake.

I was encouraged when the City leaders realized they needed to protect the character and feel of the city. There was no place for skyscrapers in Birmingham. The city's 2016 Master Plan recognized the need to control the height of new buildings in the city center. I think they have done an excellent job over the last twenty years.

I have watched in my new home, Charleston, as real estate investors have tried to come in and build one more hotel and destroy what makes Charleston attractive. It is an on-going battle. You are faced with the same economic pressures and arguments I hear in Charleston. It is just one more hotel. There are already buildings of similar height in town. The city needs more hotel rooms. It will generate more business in town. The arguments are always the same and unfortunately, so are the results. The town becomes more impersonal. Small businesses are replaced by those that cater to the transient visitors. Residents must go elsewhere to shop.

As city commissioner, you must protect what you have today and what makes Birmingham so attractive as a place to live, work and raise a family. It is unique place in southeast Michigan, beautiful neighborhoods surrounding a friendly and inviting downtown.

I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept I firmly believe is very important to

maintaining the character and long-standing plan for this beautiful city. If someone wants to build a 9 or 10 story hotel, let them go to Troy or Southfield.

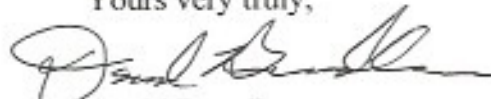
The city's 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest. Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population. Approving a change to the zoning will open the door for the next developer to come in and argue for a similar change. What is the argument against building a high rise on the North side of Birmingham Place? Across the street?

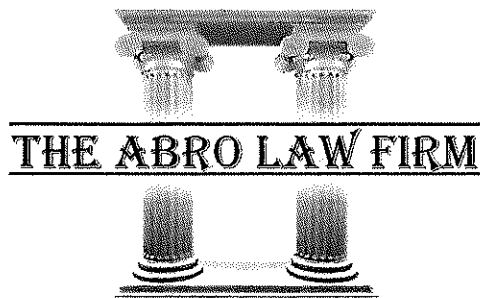
I cannot assess the technical implications of the proposal such as traffic, impact on city services, disruption of business during construction and impact on surrounding structures. I leave that to the Commissioners and their technical experts. The parties who purchased the reference property knew the zoning at the time. They are calculating they can change the City Commissioner's minds. They are not concerned with the long term implications to the city but only how to maximize return on their investment. I sincerely hope their calculations are wrong. Another high rise in the southern end of town will ruin the neighborhood feel and open the door for more rezoning requests.

Thank you for your time and attention, and for, I sincerely hope, your vote to preserve what is a beautiful and people friendly city.

Yours very truly,



David Breedlove



Phone: (248) 723-4545
Fax: (248) 598-4049
E-Mail: gus@abrolaw.com

500 S. Old Woodward
Second Floor, Suite 200
Birmingham, Michigan 48009

ATTORNEYS AND COUNSELORS AT LAW

June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

RE: *Proposed Project at 469-479 S. Old Woodward Avenue*

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which is 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

The project that has been proposed for this in-fill site should be approved because it would be appropriate for this parcel of land. If allowed to be built, the project would:

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7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Thank you for your attention herein. As always, should you have any question or require any additional information, please do not hesitate to call me directly. I remain,

Very truly yours,

THE ABRO LAW FIRM

Gus J. Abro, Esq.

GA/gja



June 21, 2018

*The Elia Group, LLC
Real Estate & Development Services*

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members:

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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For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

The Elia Group, LLC

Zaid D. Elia, President



June 21, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

Jonna Construction is a builder and investor in Downtown Birmingham.

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

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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

LAW OFFICES OF
RANDAL TOMA & ASSOCIATES, P.C.
500 S. OLD WOODWARD AVENUE, SECOND FLOOR
BIRMINGHAM, MICHIGAN 48009
OFFICE (248) 948-1500
FAX (248) 948-1501

June 21, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.


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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



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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For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

Jacques Van Staden - Founder & CEO
176 S. Old Woodward Ave
Birmingham, MI 48009



Jana Ecker <jecker@bhamgov.org>

Rezoning issue

1 message

Clinton Baller <cmballer@avidpays.com>
To: Jana Ecker <Jecker@bhamgov.org>

Fri, Jun 22, 2018 at 10:17 AM

Jana,

Could you please let the Planning Board know my thoughts on the rezoning request for the former Franklin/First Place/Talmer bank building and Chinese restaurant on Woodward/Old Woodward?

I don't know why that property was not included in the D5 rezoning that occurred several months ago, but it should have been. Birmingham Place is nine stories, and the 555 building is 15. I can't imagine that the city would not allow something of similar height and mass to occupy the space between these two projects.

Beyond that, I think the city ought to insist on a project that brings some vitality to Old Woodward and the side street (Hazel), which are now dead zones. Either that, or just vacate Hazel insist on a use that is advantageous to the city.

My two cents, which are worth at least a nickel, I think.

Cheers!

Clint

June 25, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

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9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,



Derek Dickow
211 E Merrill St., 504
Birmingham, MI 48009

411 S. Old Woodward, Suite 631
Birmingham, MI 48009

June 26, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

The city's 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest. Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population.

The Proposed Project is also esthetically displeasing. Instead of enhancing the Woodward corridor with an attractive entrance, it presents only a blank wall to the passing public. It would also create the hostile appearance of blocking off much of South Old Woodward and beyond by erecting a virtual wall of buildings running from the south end of the 555 residential units through the north end of Birmingham Place, reminiscent of medieval walls built around cities to keep people out, not to invite them in.

In addition, I have serious safety and other concerns, including:

1. Birmingham firefighting capability is limited to 7 stories. This would leave most of the back of the Proposed Project and virtually all of the south end of Birmingham Place with inadequate or no fire protection.

2. I also suggest that the Proposed Project would unduly burden our city's already hard-pressed police and public safety/rescue facilities.
3. Hazel Street is already a busy connector between Woodward and Old Woodward, especially at rush hour times. The Proposed Project would literally clog this small street with excess traffic, especially if the "four stack" valet service recommended by the developer's own traffic study is implemented and if the current four on-street parking spaces are included in the Proposed Project's plan for adequate parking, as Christopher Longe recently stated to the Planning Board would be the case. We note that the City's own traffic advisor, Fleis & Vandenbrink, also finds considerable fault with the developer's traffic study.
4. The demolition and construction time of the Proposed Project would be finite, but during that time, the heavy equipment needed for a project this size would cause construction damage to Hazel Street, Old Woodward and Woodward. Depending on the timing, this could result in at least the repaving work already planned for Old Woodward south having to be redone at a very substantial cost.
5. The Proposed Project will require deep excavation ("digging half way to China," as Mr. Longe recently expressed to the Planning Board) and heavy equipment and materials, which could seriously jeopardize the structural integrity of Birmingham Place. The developer has not adequately addressed this and has not made provision to repair, or more importantly to prevent, any damage to Birmingham Place.

Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,



Dennis W. Liu

PETER R. SOBELTON
420 HARMON
BIRMINGHAM, MI 48009
248-433-5200



June 27, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin St
Birmingham, MI 48009

I am writing to express my strong support for the Re-Zoning request for the mixed use project being proposed for 469-479 S. Old Woodward Ave.

The proposed project will fit in nicely with its neighbors on either side, bearing in mind, each of which are 9 and 15 stories in height. With this development, rather than the present one story buildings, we will now have a building matching the scale, character and use of those buildings on either side.

Additionally, the proposed project would most certainly attract a greater amount of people to the south end of town, and no doubt also throughout the town, while adding retail shopping, thus tying into the already existing retail in the two neighboring buildings. Perhaps one of the most advantageous parts of the project, will be the alleviation of the necessity to accommodate parking on the street, as a result of the parking that will be provided on site.

This project is a win-win, and should be approved for re-zoning in the most hasty of manners, continuing Birmingham's lead in cutting edge developments, as we continue to see the increasing competition for tenancy from our neighboring cities.

Sincerely,

A handwritten signature in blue ink that reads "Peter R. Sobelton".

Peter R. Sobelton

411 S. Old Woodward Avenue
Birmingham, MI 48009

June 27, 2018



Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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,

A handwritten signature in black ink, appearing to read "Tom Longe". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

MICHAEL D. UMPHREY. ESQ.
411 S. Old Woodward Ave., Unit 618
Birmingham, MI 48009-6647
(248) 339-7708 – Telephone
(248) 528-5129 – Facsimile

June 27, 2018

VIA HAND DELIVERY

John M. Connaughton, Fire Chief
572 South Adams
Birmingham, MI 48009

Re: Proposal to Rezone 469-479 S. Old Woodward Avenue

Dear Chief Connaughton:

I am writing, individually and as an officer and director of the Birmingham Place Residential Condominium Association, in response to your letter of June 22 Jana Ecker. A number of residents here discussed this matter with Joel Campbell and wish we had been sent a copy of the letter, but at least we got it as part of the agenda for tomorrow night's Planning Board hearing.

In any event, we have some serious concerns with this situation in general and with your letter in particular, which include:

1. The proposed new building is *not* planned to be built "very close to the South Side of Birmingham Place" but rather is proposed to literally abut the southerly walls of Birmingham Place. This may not have a direct bearing on fire issues, but it does raise other issues and should, in any event, be stated accurately.
2. We understand that the fire equipment currently has some, albeit limited, access to Birmingham Place from Hazel Street. Your letter correctly states that you "... would not deploy our aerial truck for operations on the South Side of the building," but it fails to note that the proposed building, which would be 22 feet taller than Birmingham Place, completely eliminates whatever access is currently available from Hazel Street.
3. Your letter also states "... we do have access from both the East and West sides of the building." If the proposed building is built, a review of the drawings makes it clear that there would, in fact, be no fire equipment access whatsoever to most, if not all, of the residential and office units on the southerly part of Birmingham Place from the east side and only limited access to these units from the west side.

4. Current access from the west side also includes an alley running from Woodward Avenue to the rear of 469 S. Old Woodward. While this alley might well not accommodate larger fire trucks, it certainly provides some access to some equipment, which would be completely cut off by the proposed building.
5. We agree completely with the balance of the second paragraph regarding fighting "high rise" fires from within the building and also detailing the helpful fire fighting fixtures and equipment in Birmingham Place. Nevertheless, the simple fact remains that fire protection for Birmingham Place (and more importantly, the people who live and work here) will be less than it was if the proposed building is built as planned.

Our bottom line, so to speak, is that fire protection to at least the southerly portion of Birmingham Place would be reduced if the proposed building were allowed, and we have to ask you, as Fire Chief, how much increased risk for the sake of new development that hopes to maximize and increase the currently allowable building size is acceptable. The increased risk can easily be avoided by the City denying the rezoning request and maintaining the status quo. The value of adding several stories to a building pales in comparison to any increased risk to the health, safety and welfare of the Birmingham Place residents and occupants as well as the firefighters tasked with protecting the residents and occupants.

We request that you very seriously reconsider your position on this matter and advise both the Planning Board and the City Commission of the same, preferably before the meeting tonight but in any event at your first opportunity. Thank you for your time and attention. Best regards.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Michael D. Umphrey", with a stylized, sweeping flourish extending to the right.

Michael D. Umphrey

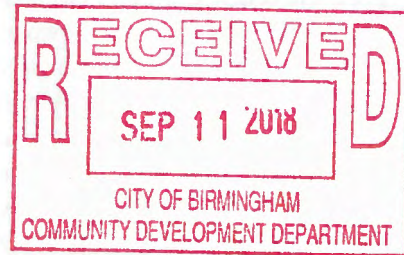
xc: All Birmingham Planning Board Members (via hand delivery)
All Birmingham City Commissioners (via hand delivery)



Susan K. Friedlaender
Direct: (248) 406-6088
sfriedlaender@fnrplc.com

September 11, 2018

City of Birmingham
Planning Board
151 Martin St.
Birmingham, MI 48009
Attention: Ms. Jana Ecker



Re: Request for Re-Hearing on Application to include 469 and 479 S. Old Woodward
in the D5 Downtown Birmingham Overlay District Zone

Dear Members of the Planning Board and Ms. Ecker:

We are writing this letter on behalf of the Birmingham Place Residential Condominium Association. The Association opposes the rehearing and rezoning of the Applicant's property to the D5 overlay zone for many reasons as detailed in this letter. The dispositive reason to again deny recommendation of the rezoning is because the D5 ordinance was never intended to be applied in the manner requested.

Introduction

It is first baffling to the Association that the Applicant was able to obtain a rehearing of this Board's decision at the June 27, 2018 public hearing to deny the Applicant's request for a tabling of its the rezoning request. The Applicant apparently was able to defy this Board's denial of the tabling request and come back again with the exact same rezoning request. The Applicant's latest submission not only fails to demonstrate any substantial change in facts, evidence or conditions but is also fails to show that the Planning Board made any mistake, failed to consider any relevant facts or was misled by alleged mischaracterizations regarding the clear, history, intent and purpose of the D5 Ordinance. A close examination of the Applicant's rehearing request reveals inconsistencies, fallacies, erroneous assumptions, unsupported assertions, and mischaracterizations of the record and history of the D5 ordinance. The intention of this letter is to provide that closer examination which should leave no doubt that the Planning Board should not change its original vote to deny a positive rezoning recommendation.

There Has Been No Mischaracterization of the Intent of the D5 Ordinance and its Inapplicability to the Applicant's Property.

It is impossible to read through the history of the D5 ordinance and arrive at a good faith conclusion that Birmingham Place or any Planning Board member has mischaracterized the purpose of the D5 ordinance enactment. The facts and history of the D5 ordinance, and its plain language, leave no doubt that the final product was concerned only with existing buildings which were non-conforming due to height over 5 stories and setbacks. The following is a summary of the history of the D5 ordinance. However, attached as Exhibit A, is a detailed timeline with references to the relevant public records which supports the statements made in this summary.

The 555 Building proposed the first draft of the D5 ordinance as the means to renovate and expand its existing non-conforming buildings and develop a new building on the southern portion of its site. The owners could not make those changes under the City's then existing ordinances that governed the renovation and expansion of nonconforming property. Although the Planning Board discussed several different approaches to help the 555 Building overcome its nonconforming status, which included taking a broader look at the Southern Gateway area, the Planning Board ultimately decided to deal only with three nonconforming taller buildings: The 555 Building, Birmingham Place and Merrillwood. It settled on dealing only with nonconforming commercial buildings over 5 stories because there was no consensus on how to address the development of other parcels on the West side of Woodward that did not have the height nonconformity. Moreover, the only direction that the City Commission gave the Planning Board regarding the drafting of a new overlay ordinance was (1) to find a way to make those taller buildings legally conforming structures and (2) draft language that would allow the reasonable renovation and expansion of other commercial nonconforming buildings throughout the City. The City Commission did not direct the Planning Board to draft a new overlay ordinance that allowed any building *under* 5 stories to obtain greater height because located adjacent to a building that was over 5 stories. The Applicant's representations to the contrary are simply opportunistic.

The above conclusion is amply supported by a memorandum from Planning Director Jana Ecker to the Planning Board dated September 22, 2015 (sic) that was included in the City Commission's February 13, 2017 packet.¹ The City Commission voted to approve the D5 ordinance at that February meeting. (Memorandum attached as Exhibit B)

Ecker discusses in the memorandum that the Planning Board faced a dilemma regarding how to deal with the 555 Building. While the Planning Board recognized the importance of the 555 Building, it was hesitant to create "a new classification around a specific building." (Ecker Memorandum, p. 1) The memorandum details the failed attempts to devise a way to not only address the 555 Building but also the future development of several other parcels, including parcels that did not share the height nonconformity. The Planning Board was unable to draft an ordinance regarding the future development of other parcels because *"there were varying viewpoints on whether a new overlay should be created that included multiple properties along Woodward, and if so, which properties to include. No consensus was reached."* (Ecker Memorandum, pp. 2-3) (Emphasis added) The Planning Board considered several options to allow changes to legal non-conforming commercial buildings.² The Planning Board considered drafting two new overlay ordinances, one of which could be applied even to conforming property on the west side of Woodward, which would allow building heights that matched the allowable height east of Woodward in the Triangle District. (*Id.* at p. 5) Ecker suggested amending the B-3 ordinance to allow the same development rights that existed when the 555 Building was constructed under that ordinance. Although no consensus could be reached regarding application of the ordinance to the future development of existing properties, there was consensus with the blessing of the City

¹ The contents of the memorandum suggest that the date contains a typographical error because the timeline discussed within the memo extends to setting the December 14, 2016 public hearing.

² The Zoning Ordinance already contained a provision that allowed the limited expansion of nonconforming residential buildings. See Section 6.02

Commission that the improvement and expansion of legal nonconforming buildings should be studied. (*Id.* at p. 3) The decision was made therefore only to deal with the nonconformity issue in the new D5 overlay district.

Thus, although Planning Board members correctly remember discussing additional properties in the Southern Gateway during the D5 drafting process, those discussions did not bear fruit or any action because of a lack of consensus. It was not because the Mountain King owners were not before the Board. It was because the Planning Board could not reach a consensus other than allowing valuable buildings such as the 555 Building, Birmingham Place and Merrillwood the greater right to renovate or expand without the disability of being a non-conforming property because of height and setback.

The Applicant was not prejudiced by the Planning Department's Mistaken Statement in its Review of the Community Impact Statement and Preliminary Site Plan

The Applicant claims that this Board made its rezoning recommendation based upon the mistaken assumption that the Property is located within the Parking Assessment District (PAD) and that it allegedly was prejudiced by the asserted mistaken assumption.

First, it is true that the Planning Department's review of the Applicant's Community Impact Statement (CIS) and Preliminary Site Plan review erroneously stated that the Applicant's property was within the PAD. The Planning Department's mistake, however, did not prejudice the Planning Board's review of the rezoning request for several reasons. First, the mistake regarding the PAD was in the Planning Department's CIS and Preliminary Site Plan review and the Planning Board did not consider the CIS or site plan at the rezoning hearing.

Second, the Planning Board did not prevent the Applicant from explaining how the parking requirements impacted its ability to develop the land under the D4 ordinance. The record shows that the Applicant discussed the fact that the property is not in the PAD. (Video of hearing at 2:07:56) In answer to the question why the property could not be developed under the D4 overlay ordinance, the Applicant claimed that it could not develop the Property under D4 because it was not in the PAD.

Owner: "But office building, to put a . . . I don't have the parking for it. *I'm not in the Parking Assessment District*, so I'm limited by parking. I can't put a restaurant there, because I . . . you know . . . I, I, don't have the parking to park it. The only thing I can really put there at the end of the day is a hotel. I mean that's the only thing that makes it work. *And again, to make it work as a hotel, I need to fit everything into this package that the hotel wants.*" (emphasis added)

Third, if the Applicant believed that not being part of the PAD was crucial to its rezoning request nothing prevented the Applicant from discussing that fact when initially addressing the standards for the rezoning. The fact that the Applicant made no mention of the PAD in its initial written rezoning request belies its post hoc argument that the issue was so crucial to its request.

Moreover, if parking is the issue as the Applicant now claims that it is, the remedy is not to develop a project that has even greater parking requirements than is required under the existing ordinance. The rezoning is not necessary to meet the parking requirements when the possibility of

variances for parking can resolve parking related problems.

Finally, the Applicant stated that it was its understanding that it is the only D4 site that is not in the PAD. That understanding appears to be wrong. If the GIS website is up to date, it appears that there are two other parcels that also are zoned D4 but shown as outside of the PAD. The parcels are 484 W. Maple and 460 W. Maple. (See Exhibit C, Map with Overlay District and PAD Map)

The Applicant Has not Demonstrated That the Applicable Parking Requirements Prevent Development Under the D4 Overlay Ordinance

The Applicant's supplemental explanation under Section 7.02(B)(2)(b)(i) of "why the rezoning is necessary for the preservation and enjoyment of the rights and usage commonly associated with property ownership" is that it cannot meet the parking requirements if developed under the D4 overlay ordinance. The Applicant asserts that it needs more vertical height for a mixed use project and to meet parking requirements. As discussed below, the Applicant has failed to support this claim. It is hard to determine whether the Applicant claims that the property cannot be used as it currently exists because of the inability to meet parking requirements or that it cannot be redeveloped physically for any purpose under the current zoning classification because of its configuration coupled with the D4/B-3 mixed use and parking requirements.

The Applicant makes the following assertions regarding parking requirements:

Contrary to what was assumed by the Planning Board, because the Property is not in the Parking Assessment District ... it currently has no possibility of providing off-street parking on the premises. In fact, it is currently non-conforming and cannot comply with Article 4. 46 of the Zoning Ordinance (Off-Street Parking Spaces Required) Letter, p. 2

The off-street parking requirements for this Property make the engineering and design of a mixed-use D-4 seriously impractical if not impossible. Letter, p.3

Not only will the Applicant lack the required area within which to locate all of the mixed uses with a first-floor retail mandate, the Applicant also is absolutely hamstrung by the off-street parking requirements for this site. The maximum use of the underground area will not yield enough parking spaces for a building designed to current zoning. Rezoning the Property to the D-5 Zone will allow more vertical space within which to accommodate a mixed-use building together with the required parking for all permitted uses. Letter, p. 3

There are serious difficulties with building an underground

garage within the D-4 design parameters that is deeper than two levels....Consequently , any such garage is limited to approximately 60 parking spaces. Letter, p. 5

Based upon the first quote above, the Applicant appears to be stating that the property as it currently exists cannot support any or very limited off-street parking. Even if that is true, under Section 4.45 (G) 2 and 4 of the zoning ordinance, off-street parking can be provided within 100 feet of the site or via shared parking arrangements. The Applicant claimed in its CIS that it has an agreement with the 555 Building for the use of 45 parking spaces. The Applicant could also apply for parking variances. If the application of the parking provision of the zoning ordinance prevents the property from being used, the likelihood of necessary variances is extremely high.

The next four quotes appear to be referring to a redevelopment under the D4 overlay district requirements. The Applicant essentially makes the logically challenged argument that because it is outside of the PAD it needs to develop a project that requires even more parking to meet the off street parking requirements. The Applicant's proposed use shows a three level underground parking facility with 100 spaces and an agreement with the 555 Building for 45 more spaces.³ The Applicant does not explain the discrepancy between its proposed plan and its new claim that any underground garage is limited to approximately 60 parking spaces because of D4 design regulations. However, the same D4 design regulations that would apply to an underground garage in the D4 district also apply in the D5 district. The D5 zone does not provide any relief from the design issue. The Applicant, however, asserts that it could meet the parking requirements if it could construct a 9 story building but it cannot meet the parking requirements if it constructs a 5 story building. If the site can only accommodate 60 parking spaces rather than the 100 spaces that the Applicant originally represented, it defies explanation how a taller building is better able to meet even greater parking requirements. Moreover, if there is a design requirement which hampers providing more onsite parking, that is a variance and not a zoning issue.

The Applicant also does not explain whether it means that if restricted to five stories, it cannot develop its preferred 98 hotel units, 29 residential units and a first floor coffee shop/ hotel lobby. The Applicant asserts that it needs more height because it cannot possibly fit mixed uses and meet parking requirements on its site if limited to 5 stories. According to its proposed plan, however, it can fit approximately 21-26 hotel rooms per floor and 13 residential units per floor. It is unclear if the Applicant is now claiming that it can only build a two level underground parking garage rather than a three level underground garage. In either case, it does not affect the above ground height of the building. The Applicant likely could develop a 5 story mixed use building with for example 70 hotel units, 13 residential units and the same size lobby/coffee shop as proposed. A 5 story development with these specifications might require 73 parking spaces for the hotel, approximately 13-16 spaces for the residential uses (depending on the number of rooms) and 12 spaces for the lobby/coffee shop. Even if the Applicant could only fit 60 spaces onsite, it

³ The Applicant appears to have made some mistakes in its parking analysis. For example the residential parking requirement under B-3 is 1 space for a 2 room dwelling and 1.25 spaces for a dwelling that has more than 3 rooms. The Applicant claimed that it needed 1.25 spaces for 26 apartments and 1.5 spaces for 3 apartments for a total of 37 spaces. The actual requirement is 29.75 spaces for 29 units.

could provide 105 spaces with the 555 Building parking agreement for 45 spaces.

The Applicant also has not explained whether it has explored the possibility of parking variances. A good argument exists that it should not have to provide any parking spaces for the lobby/coffee shop. The users of those retail spaces will likely be hotel guests or neighboring occupants who can easily walk to the coffee shop. The coffee shop likely will not be a destination spot for the motoring public. It is also likely that the hotel would not always be at full capacity which could provide a basis for obtaining additional parking variances. The City also is in the process of reviewing parking requirements for residential uses and possibility eliminating them for a site such as the Applicant's property.

Therefore, the answer to not being in the PAD is not to create taller buildings with higher density that requires more parking. The more reasonable solution is developing at lower densities with lower parking requirements and applying for any needed variances.

The Planning Board Appropriately Decided to Table Consideration of the CIS and Preliminary Site Plan Review

The Applicants second supplemental explanation under Sec. 7. 02(B){2}(b)(ii) of "why the existing zoning classification is no longer appropriate" essentially contains a confused diatribe regarding the Planning Board's decision to table consideration of the CIS and preliminary site plan review until after the City Commission acted on the rezoning request. It also discusses the ability to develop and use the property under the existing classification, which was addressed above in this letter. The Applicant also claims under this section that the Board was misled to believe that the D5 overlay zone only applies to existing buildings taller than five stories. That issue has also been addressed earlier in this letter.

First, the Planning Board correctly voted not to review the CIS or proposed site plan until and unless the rezoning was granted. There is no legal or factual basis for the CIS and preliminary site plan review until the petitioner secures the rezoning necessary to develop the property as proposed. In fact, it is an elementary zoning and planning principle that neither a planning board or legislative body should ever consider a particularized site plan at the rezoning stage unless the rezoning is conditional or part of a planned unit development. The reason is that the municipality is supposed to be making the rezoning decision based upon whether the general zoning classification is appropriate for the property and not whether any specific proposed plan is appropriate for the property. Another reason is because once the land is rezoned, the land owner cannot be tied to any specific site plan. The owner is free to develop the land under any provision of the new zoning classification. It would have been an error if the Planning Board had recommended rezoning based upon the CIS or site plan or had been unduly influenced by the proposed use for the site in making a decision.

Second, the Applicant's assertion that the Michigan Zoning Enabling Act, MCL 125.3101, et seq ("MZEA") requires that rezoning decisions be made according to a *site plan* is inaccurate and nonsensical. The MZEA provides that a *zoning ordinance* must be "based on a plan designed to promote the public health, safety and general welfare..." (emphasis added) This means that the zoning ordinance itself and any amendments to it must be based - not on a site plan for the particular use of a single parcel of property - but upon a general land use plan, like the 2016 Birmingham Plan. The MZEA does not require site plans for *rezoning* property. It does require

site plans for the approval of special land uses and planned unit developments. A site plan ensures that property is developed consistent with ordinance requirements. The Planning Board did not prejudice the Applicant in any way by not reviewing a proposed site plan for a zoning that did not exist for the site. The rezoning of property is a legislative rather than administrative act and depends on the implementation and furtherance of general policies. It does not depend on a site plan for a single parcel of property.

**The Applicant Failed to Support that the Rezoning Will Not Be Detrimental to
Surrounding Properties**

The Applicant's supplemental explanation of why the proposed rezoning will not be detrimental to surrounding properties relies on its factually inaccurate statement that the City intended that the D5 overlay zone apply to the Applicant's property and that the Birmingham Place owners will not be harmed by the rezoning.

First, as previously discussed, the history of the D5 zone indisputably supports that the clear intent of the D5 zone is only to apply to existing buildings taller than five stories. It should be noted here however that the Applicant's Letter very misleadingly takes Ms. Ecker's comment regarding new construction in the D5 zone completely out of context. All the participants in the D5 ordinance amendment process understood that the new construction provision was added for the benefit of the 555 Building. The language regarding new construction was not meant for property that had no existing height nonconformity that the D5 ordinance amendment was addressing.

Second, the Birmingham Place owners maintain their position that the proposed rezoning will be detrimental to the use and enjoyment of their property. A vast majority of the residential condominium owners, even those whose views will not be impacted, are opposed to the proposed development for many reasons that will be brought to the Board's and Commission's attention.

**The Board Did Not Fail to Make Required Findings of Fact or Misapply the Rezoning
Standards**

The Applicant further claims that the Planning Board failed to make the required findings under Ordinance Section 7.02(B)(5). Its primary complaint is that the ordinance allegedly does not require the Planning Board to determine whether the property can be used as zoned. This is splitting hairs.

Section 7.02(B)(5) (d) of the zoning ordinance requires that the Planning Board make findings of fact regarding "[t]he suitability of the property in question to the uses permitted under the existing zoning classification." Asking the Applicant why it cannot use the property as zoned is simply a way of determining whether the property is suitable for the uses permitted under the existing zoning ordinance.

Second, the Applicant claims that the Planning Board should have examined the appropriateness of the current zoning and not whether the Applicant could develop under this category. Again this is splitting hairs because it is the same question. The zoning may be inappropriate as applied to this site if the Applicant cannot develop or use its property under this classification. If the property can be used and the zoning classification still furthers master plan

goals and the public interest then it remains appropriate. The only difference between the D4 and D5 overlay zones is building height. The uses are the same. The Applicant's only argument that conditions changed is the rezoning of Birmingham Place and the 555 Building. However that rezoning has not changed any existing land use patterns. The rezoning recognized existing land uses that had become nonconforming because of building height policies that changed after those taller buildings were constructed. Birmingham Place is as tall now as it was when it was rezoned to D5. The rezoning merely normalized the existing heights of the affected buildings.

A community generally should preserve its master plan and existing zoning unless the zoning classification no longer furthers the master plan goals or is no longer suitable for the site because of changed conditions and development patterns. The City certainly can adopt new master plan goals but should not make sweeping changes to the City's land use plan through its zoning ordinances alone without first studying the issue of increasing building heights. The planning study is supposed to precede such zoning changes because the Zoning Enabling Act mandates that zoning be based on a plan. There has been no official study or public notice of any plan to allow more than 5 stories on the West side of Woodward. Moreover, the City weakens its master plan and its ability to defend it in court when it approves rezoning that is inconsistent with the plan. The proposed rezoning was not consistent with the 2016 Plan which reflects a policy decision to limit the height of buildings in the Downtown Overlay Zone to five stories. It is true that the City has since allowed taller buildings in the Triangle District but that new zoning was accomplished according to the Triangle District Plan. Therefore, when asked to depart from the 2016 Plan as it applies to the West side of Woodward, the City is well within its rights to require that the proponent demonstrate that the property cannot physically or viably be developed as zoned. To suggest otherwise ignores established zoning law and planning principles.

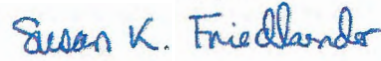
CONCLUSION

The Applicant has not provided any new information that should change the Planning Board's original and correct recommendation to rezone the property to the D5 overlay classification. It is beyond dispute that the D5 ordinance was meant only to apply to existing buildings over 5 stories or existing sites that contained buildings over 5 stories. The Planning Board determined when it drafted the D5 ordinance that it would not address the future development of any other parcels in the Southern Gateway. It would be unfair and a failure of process for the Planning Board to ignore that history because the public will then have been misled by the process to enact the D5 ordinance. It is customary for the City to involve the public in any study to raise building heights as it did in the Triangle District.

Moreover, the Applicant made no effort to demonstrate that the D4 ordinance is unreasonable or unworkable as applied to its property. It has not made any credible case to support the rezoning request. At the June 27, 2018 hearing, the Applicant claimed that he could only make the site work with a hotel and in order to develop a hotel *"I need to fit everything into this package that the hotel wants."* (emphasis added) This is the very reason why the City cannot rezone property based upon a proposed use. The issue is not what this particular hotel wants and the City cannot guarantee by rezoning the property that the hotel will even go through with the development. The issue is what does the existing zoning allow and can any of the allowable uses be reasonably developed consistent with the City's land use policies as reflected in the 2016 Plan and its zoning ordinance.

The Planning Board, therefore, must recommend a denial of this opportunistic and improper rezoning request.

Very truly yours,



Susan K. Friedlaender

EXHIBIT A

TIMELINE AND SUPPORTING MATERIALS REGARDING THE EVOLUTION OF THE INTENT AND PURPOSE OF THE D5 OVERLAY ORDINANCE

INTRODUCTION

It is impossible to read through the history of the D5 ordinance and arrive at a good faith conclusion that Birmingham Place has mischaracterized the purpose of its enactment. The facts and history of the D5 ordinance, and its plain language, leave no doubt that the final and enacted draft was concerned only with existing buildings which were non-conforming due to height over 5 stories and setbacks. In fact, the only direction that the City Commission gave the Planning Board regarding the drafting of a new overlay ordinance was to find a way to allow the renovation and expansion of legal nonconforming commercial buildings. Although the Planning Board discussed several different approaches to help the 555 Building overcome its nonconforming status, which included taking a broader look at the Southern Gateway area, the Planning Board ultimately decided to deal only with three nonconforming taller buildings: The 555 Building, Birmingham Place and Merrillwood. It settled on dealing only with nonconforming commercial buildings over 5 stories because there was no consensus on how to address the development of other parcels on the West side of Woodward that did not have the height nonconformity. This is why it would be completely improper to rezone the Applicant's property to D5. The rezoning would pose a serious question regarding whether the Planning Board properly notified the public and City Commission regarding the intent and application of the D5 ordinance.

June 10, 2015 Planning Board Study Session

In the spring of 2015 the owners of the 555 Building submitted a request to amend the zoning ordinance and create a new D5 overlay district for buildings over five stories. The owners proposed the ordinance after the building department found "that any changes to the existing legal non-conforming building would increase the nonconformity, and thus be prohibited unless numerous variances were approved." (2015-06-10 Minutes from Planning Board Study Session)

When first presented with several different drafts of the proposed D5 ordinance, **the Planning Board discussed that the proposed amendment "should be viewed not only as to how it applies to 555 S. Old Woodward Ave., but possibly to other properties as well." *Id.*** The reason for this cautious approach was to counter any charges of spot zoning or undue favoritism. The dilemma that emerged, however, was the valid concern about applying the ordinance to other properties without further study: (Emphasis added)¹

Mr. Koseck noted there are all kinds of non-conforming buildings in the City and he doesn't think the goal is that they should all go away and become conforming. That is why the Board of Zoning

¹ Please note that the reason for the inconsistency of referring to the "D-5" and "D5" overlay zone throughout this letter is because while the Zoning Ordinance uses the "D5" appellation, the minutes and other writers often use "D-5" designation. This writer chooses to use the official Zoning Ordinance version.

Appeals exists. He is in favor of improvements being made to the building, but as the applicant makes enhancements he (page 7) hopes they would go further to be more in compliance with D-4, D-3, D-2, and D-1. It scares him to expand D-5 beyond the limits of this property without further study.” *Id.*

Chairman Clein thought of this as an opportunity to take a look at this building along with several parcels in the context of future development. If Bruce Johnson, Building Official, and Tim Currier, City Attorney, would come to a Planning Board meeting and are on board, he would be in favor of providing some relief in a unique situation; but he just doesn't want to do it capriciously. The Ordinance standards were put in place for a reason and he would be supportive of fitting them into the context of a building that obviously is not going away, in order to help make it better.

Ms. Whipple-Boyce was also in support of helping to make this Gateway building better looking. She thought also that it would be helpful to have Messrs. Johnson and Currier come to a Planning Board meeting. She could not imagine why the Planning Board could not somehow help the applicant to get their building re-skinned in some other way. Further, the ordinance proposal should not include some of the things that the board does not want to have in the City.

Ms. Lazar was in full support, as well, of trying to do something with the building. However, she didn't see how this board could whip up a new ordinance in a short period of time. It concerns her that what might be applied to this building could become applicable to some other sites which would not be appropriate. She would rather try to help the applicant get to where they need to be with this building” *Id.*

July 7, 2015 Planning Board Study Session

At the next study session, the Planning Board continued discussions regarding whether to target a larger area between Hazel and Brown or limit the application of the new ordinance to the 555 Building.

Mr. Williams summed up the discussion by saying the board wants to go the conforming route and use the SLUP process to do it. Maybe the applicant won't get everything but they can probably get a substantial achievement through the combination of the new MU classification plus SLUP exceptions for what they get as of right and what they get as a bonus. Ms. Ecker noted that is consistent with what the City does in other districts and what has been approved by the City Commission. This is a methodology that gives the Planning Board flexibility. It was the consensus that staff should work on

crafting something to that effect, taking the 555 Bldg. separately so that it gets through the City Commission.

September 9, 2015 Study Session

At the next study session, Ms. Ecker summarized the process as follows:

The applicant is seeking to rezone the 555 S. Woodward Ave. properties from the existing D-4 Overlay zoning classification to the proposed D-5 Overlay zoning classification, which would essentially render the existing building as a legal, conforming building that could then be renovated and expanded.” (2015-09- 09 Minutes, p. 9)

The Planning Board continued to ponder the scope of the work and whether it should go beyond dealing only with the 555 Building. Mr. Williams suggested creating a D5 district for the 555 Building and a D-6 District for other locations which might be nine stories. *Id.* at p. 10.

The Planning Board failed to reach a consensus or agreement with Mr. Williams suggestion.

September 30, 2015 Planning Board Study Session

At the next study session, the purpose of the proposed ordinance was characterized as follows:

Ms. Ecker explained that in order to renovate and expand the existing building, the owners of the 555 S. Old Woodward Building are requesting a Zoning Ordinance amendment to create a new D-5: Downtown Gateway Over Five Stories zoning classification in the Downtown Birmingham Overlay District. The proposal then is to seek rezoning of the 555 S. Woodward Ave. property from the existing D-4 Overlay zoning classification to the proposed D-5 Overlay zoning classification, which would essentially render the existing building as a legal, conforming building that could then be renovated and expanded.” (2015-09-30 Minutes, pp 10-11)

The Planning Board again discussed creating two new overlay zones to address not only the nonconformity issue but also to address other property in the Southern Gateway area. The Planning Board continued to debate the expanded approach and could not reach a consensus.

Ms. Whipple-Boyce said it is important to try to help the applicant have some sort of zoning classification so they can move on with their project. However, she also does not want to see 168 ft. up and down Woodward Ave. **She is not sure that looking at the whole area is even appropriate. So maybe just work with this building and give them a zoning classification.** Steer the applicant toward having their building conform with the sort of downtown standards that the board hopes to have; which for example, isn't the garden level. If they want to continue to have these when they come forward with a new plan that is when they can go to the BZA. (Emphasis Added)

Mr. Share was in favor of having the applicant first exhaust their remedies. If the BZA doesn't provide them with the relief they need and this board concludes that it is really critical, then maybe the board changes the ordinance, takes the heat for it, and tells everyone it is because they don't want the building to fall down.

Chairman Clein said he is not hearing any clear direction so the board needs to bring this back because it is a complicated issue.
(Emphasis Added)

The Owner's attorney assured the Planning Board that providing the 555 Building with relief would not be spot zoning.

January 17, 2016 Planning Board Study Session

At the opening of the study session, Ms. Ecker recounted the history of the ordinance amendment and rezoning request. She explained that the 555 Building not only wanted to renovate the existing building **but the owners also wanted to add "an addition to the south of the existing residential tower for new retail space and residential units."** (Emphasis Added)

In order to renovate and expand the existing building, the owners of the 555 S. Old Woodward Building are requesting a Zoning Ordinance amendment to create a new D- 5: Downtown Gateway Over Five Stories zoning classification in the Downtown Birmingham Overlay District which would essentially render the existing building as a legal, conforming building that could then be renovated and expanded." (2016-01-17 Minutes, pp 3-4)

Ms. Ecker also recounted that as of the last study session the Planning Board could not reach a consensus regarding whether to deal only with the 555 Building or look at properties along Woodward north to Brown Street:

There was no consensus on whether only the 555 S. Old Woodward Ave. property should be placed in a new overlay classification or whether this should extend north to Brown St. along Woodward Ave.

The minutes from the study session show that the Planning Board continued to debate whether to include properties other than the 555 Building in the proposed overlay district:

Mr. Share thought there are two separate questions. One relates to the 555 Building and whether or not it ought to be allowed to become conforming; separately, there is a question about general planning principles.

Mr. Boyle's opinion was there are three issues: the building itself; the corridor; and thirdly how to move forward with the details on S. Old Woodward Ave.

Mr. Williams stated the board should focus on the 555 Building and come up with a practical solution. The problem is that the building isn't right and it needs to be improved.

Ms. Whipple-Boyce said the question is whether a new zoning classification needs to be created, or can the applicant go through the variance process and achieve the same result.

Understandably, the owners of the 555 Building wanted to move forward with their request. The owners' attorney reiterated that the Owner was requesting that "the Zoning Ordinance be amended to accommodate their building; and second that the zoning map include the petitioner's property." (Emphasis added) The attorney did not believe that accommodating the building would be spot zoning, meaning that the Planning Board did not have to concern itself with anything other than moving forward on an ordinance that would apply only to the 555 Building.

Additionally, he [Mr. Rattner, the attorney] emphasized this is certainly not spot zoning. The idea is to modify the ordinance to make a nonconforming building one that should obviously be conforming in order to allow the owner to make improvements. Mr. Rattner requested that the proposed ordinance be moved forward to a public hearing.

The Planning Board was persuaded and concluded that it needed to focus on the 555 Building and leave discussion of the corridor for another day.

Chairman Clein summarized that the board has come to the conclusion that it needs to focus on the 555 Building. The rest of the corridor is a different discussion. The board concluded that a sub-committee consisting of Ms. Ecker, Mr. Rattner, the City Attorney, and two board members could have a discussion on this in an open meeting forum. Mr. Share and Mr. Koseck volunteered to represent the Planning Board in the deliberations.

There was one public comment which shows that this member of the public understood that the Planning Board would not be making any new and sweeping changes but only be focusing on how to help the 555 Building.

Mr. Paul Reagan, 997 Purdy, said he is encouraged by the discussion. No one wants the building to deteriorate. **He is glad that the Planning Board is not going beyond what was asked for, which is to restore the building. That is about how far it should go.** Right now there is real competition for parking on S. Old Woodward Ave. Imagine what expanding the density of that building would do to the neighborhood. Lastly, he was shocked to

hear the petitioner had a hand in drafting ordinance language for rezoning. (Emphasis Added)

The Planning Board decided to establish a sub-committee to work on the new ordinance amendment. The sub-committee did not present its findings and proposals until September 2016. In the interim however the Planning Board obtained direction from the City Commission regarding dealing with the important issue of nonconforming commercial buildings.

June 20, 2016 Joint Session with City Commission

The Planning Board presented several land use items to the City Commission at the joint session with the understanding that if the City Commission wanted further discussion the matter would be submitted at a subsequent meeting for more formal direction to further study and address the issue. (See 2016-06-13 Memo from J.A. Valentine to City Commission.) Mr. Valentine also submitted a more detailed memo to the City Commission dated June 14, 2016 which in part described the issue of "Existing Commercial Non-Conforming Buildings" and asked the Commission whether the issue merited further discussion. (See June 14, 2016 Valentine Memo.)

The representation made to the City Commission was that the Planning Board wanted to address the 555 Building and other existing non-conforming buildings like Birmingham Place and Merrillwood. There was no representation that the Planning Board would address extending the proposed new overlay ordinance to buildings like the Applicant's building that was not in danger of losing substantial value like the 555 Building if forced to redevelop only by losing substantial building height.

July 25, 2016 City Commission Meeting

Ms. Ecker attended the City Commission meeting to get the Commission's formal direction on how the Planning Board should proceed on the planning issues raised at the joint meeting.

Ms. Ecker represented to the Commission that the Board was only looking for ways to deal with existing nonconforming commercial buildings and not to create a new ordinance that would allow existing sites without any height non-conformity to construct new buildings under the proposed zoning district. The ordinance was not intended to deal with new development that could conform to the existing zoning classification. Ms. Ecker stated:

if a review of all the buildings in town was done, one would find something slightly non-conforming on many of the buildings that were built, especially if they were built prior to the sixty's when the zoning ordinance came into effect. She noted specifically buildings such as the Merrillwood Building, Birmingham Place, and the 555 building in regards to the height and bulk of the buildings. She explained that the discussion at the workshop was that there should be some regulation in the zoning ordinance that allows for some maintenance or renovation to those types of buildings when they are already nonconforming. (Minutes, p. 6)

Mayor Pro Tem Nickita stated that this was an issue that the Commission wanted to address.

He questioned if the City is looking at identifying a district or a series of buildings throughout the City. Ms. Ecker explained that this is to establish a procedure where if there was a nonconforming building in the City and whichever way it is non-conforming, it would give the owner a way to make changes to modernize that building. (Minutes, p. 6) (emphasis added)

The City Commission gave the following direction to the Planning Board:

MOTION: Motion by DeWeese, seconded by Bordman: To review the non-conformance provisions pertaining to commercial buildings to provide specific requirements, considering a new zoning category or categories, that allow for changes to non-conforming buildings for the maintenance and renovation of existing buildings consistent with those permitted for residential buildings and structures. (*Id.*)

The City Commission's specific directive relative to any new zoning category was to allow for changes to non-conforming buildings and for their renovation and maintenance. It was not to create a new overlay district that allowed any property the option to build taller than 5 stories.

August 10, 2016 Planning Board Meeting

Ms. Ecker briefed the Planning Board on the City Commission's directives regarding the planning issues addressed at the joint meeting. She reported that that the Commission directed the Planning Board as follows:

3) Existing Commercial Non-Conforming Buildings - to review the non-conformance provisions pertaining to commercial buildings to provide specific requirements considering creating a new zoning category or categories to allow for changes to nonconforming buildings for maintenance and renovation consistent with those permitted for residential buildings and structures. (Minutes, p.5)

Ms. Ecker suggested creating a win-win situation by offering the ability to renovate or to add an addition, but the City would get something in return. Ms. Whipple-Boyce said it would be nice to have this in place ahead of time for buildings like 555 Woodward and Merrillwood. **Chairman Clein thought the board could consider new zoning categories if there are specific areas that need it; but they can also consider generic language changes. Look at the non-conforming buildings first.** (*Id.*)(Emphasis added)

September 14, 2016 Planning Board Meeting

At this meeting, the Planning Board resumed the discussion of non-conforming building regulation under the City Commission's parameters which did not include allowing sites with buildings under 5 stories the ability to go higher than 5 stories.

Ms. Ecker, along with the attorney for the 555 Building, suggested that instead of creating a new overlay district, the Planning Board could recommend amendments to the B-3 zoning ordinance that would render not only the 555 Building but also Birmingham Place as conforming buildings.

It was during the discussion to amend the B-3 ordinance that the only reference to Mountain King is recorded in any public document concerning the D5 zoning amendment:

Ms. Ecker stated that the 555 Building, Birmingham Place and Mountain King were the only properties in the City zoned B-3 in the underlying D-4 Zone. She suggested an option that would amend the regulations for height and setback similar to what they were when the buildings were approved. **Mr. Williams wanted to limit the focus on just the 555 Woodward Bldg. as he thinks it needs to be approved.** (Minutes, p. 5) (Emphasis added)

Ms. Ecker noted this option would allow the applicant to have a conforming status and apply for financing to do an expansion and improvement on the building. It would allow them to do an addition to the south and come to zero setback, and to go up to match the height of the building that is there. What it would not do is force them to address the issue of the garden level or the dead zone along Woodward Ave. However, it would permit them to address that. *Id.*

Ecker was mistaken regarding the number of parcels zoned B-3. The Power House Gym property is also zoned B-3. Regardless, it should be clear that the only reason Ecker mentioned Mountain King was to promote the idea that changing the B-3 zoning would alleviate any concern about spot zoning and at the same time would not open the door to many other parcels being able to take advantage of the amended ordinance. However, there was no support for the B-3 amendment option.

Mr. Koseck was in favor of allowing the building to continue to be updated but that doesn't mean it should be permitted to grow. Any add-on to the south would have to meet the current Ordinance."

Discussion concerned whether B-3 zoning that allows Birmingham Place and Mountain King to reach 168 ft. in height would be a hard sell to the public. The conclusion was they could not sell it on more than one piece of property. Mr. Williams proposed they go back to a previous zoning for the 555 Building that existed 45 years ago. He didn't think it should include any other

property. Because of that they would not be making a special case for this building in the form of spot zoning. The legal argument is that it would be remedying a wrong. (2016-09-14 Minutes, p. 5)(Emphasis added) (Minutes, p. 5) (Emphasis added)

September 28, 2016 Planning Board Meeting

Ms. Ecker provided background information including that at the last study session the Planning Board “resumed their discussion regarding legal nonconforming buildings.” The result was that “after much consideration” the Board directed the Planning Staff to meet with the 555 Building applicant to draft proposed ordinance language that addressed “the improvement of commercial buildings throughout the City, and also specifically addresses the legal, non-conforming status of three buildings downtown.” (2016-09-28 Minutes, p. 3) ²

It is clear that by this meeting the Planning Board was only discussing a draft of the D5 overlay ordinance that gave the 555 Building, Birmingham Place and Merrillwood conforming status and nothing more. According to the minutes, the approach, with which the 555 Building applicant agreed, “was first to create a D-5 Zone, and second to recommend rezoning of one or more properties into the new D-5 category. This would allow the board to have further discussion on whether they want it to be the 555 Building property, or include the Birmingham Place and the Merrillwood Building, which are also non-conforming with regard to height.” (*Id.* at p. 5.)

It is also very clear that the Planning Board intended that the D5 language regarding new development in the D5 zone was for the benefit of the 555 Building owners, who expressed throughout the process that they wanted the right to use their vacant property for a new building that could be built as tall as the 555 Building. The only issue was whether building higher than 5 stories would require a special land use permit.

Chairman Clein summarized that the language would make any property that is put into the D-5 Zone legal and conforming as to height and setback. It would allow expansions as part of building maintenance. Undeveloped portions of the property could be built upon so long as it meets the D-4 Overlay standards. The south side of the 555 Building still needs to be resolved.” (*Id.*)

Mr. Williams did not agree with limiting the south side to five stories. However, anything built above five stories would require a Special Land Use Permit (“SLUP”). Mr. Share was in favor of tying all of the expansions to a SLUP. Chairman Clein felt the D-4 controls are in place and any expansion must conform. Mr. Share thought the City should have some control over how changes get made. Mr. Koseck liked the SLUP because it allows the City to control the design to meet the spirit and intent of the D-4 Zone. Mr. Jeffares agreed. (*Id.*)

² As stated, the Planning Board also amended Section 6.02 so that it applied to nonconforming commercial and residential buildings.

The 555 Building owner's Attorney responded to the discussion as follows:

Mr. Richard Rattner, Attorney, represented the applicant. He said they are almost there with allowing the 555 Building to be conforming in all respects. Secondly, the proposed expansion language is fine. Third, they would like to see the height of a new building being constructed in the D-5 Zone be up to but not exceeding the height of the building immediately adjacent or abutting it. That means the south building cannot be any higher than the 555 Building. They would like to do that without a SLUP. (*Id.*) (Emphasis added)

October 28, 2016 Planning Commission Meeting

At this meeting, the Planning Board set a public hearing for making a recommendation on the amendment of the D5 ordinance and the proposed rezoning of the 555 Building to the new zoning overlay district category.

First, Ms. Ecker provided a recap which reiterated that the proposed D5 classification would accomplish two goals: (1) render 555 S. Old Woodward a legal conforming structure and (2) allow a new addition at the south end of the building that could be built as tall as the adjacent structure. (2016-10-26 Minutes, p. 4)

Ms. Ecker also suggested that the Board should recommend rezoning Birmingham Place and Merrillwood to the D5 classification because they were also nonconforming in building height. The consensus was to contact the owners before including them. There was no suggestion that they contact the owner of the Mountain King property or include that property in the rezoning because the Mountain King property did not contain an existing building over 5 stories.

The decision to include Merrillwood in the rezoning further establishes that the City did not intend the D5 Overlay ordinance as part of any general development incentive for the South Woodward Gateway as the Applicant has represented to the Board. Merrillwood is not located in the South Woodward Gateway. The Planning Board included Birmingham Place and Merrillwood because the only purpose of the D5 overlay district is to provide legal conforming status to existing buildings over 5 stories.

December 14, 2016 Planning Commission Meeting

At this meeting, the Planning Board held a public hearing on the proposed D5 amendment and the rezoning of the three nonconforming buildings. Ms. Ecker explained that the Planning Board set the public hearing "with the goal of bringing several non-conforming buildings in Birmingham into compliance. The proposed ordinance amendments would add a new D-5 classification to the Downtown Overlay Zone which would allow buildings that are currently non-conforming to be considered legal in regards to setbacks, number of stories, and height. The new

D-5 zone would also allow additions or new construction in the D-5 to match the height of abutting or adjacent buildings.” (2016-12-14 Minutes, p. 3) (Emphasis added)³

It should be obvious that Ms. Ecker would have notified the public that the new D5 classification could be applied to any property in the City whether or not it was nonconforming in height if that was the intent of the new ordinance. The failure to notify the public of that intent is another reason why the Planning Board must again deny recommendation of the rezoning request. In fact, a resident, who was concerned about the impact on parking demand commented that he did not believe that residents really understood what was being considered. If what was being proposed was other than what has been represented as the goal of the amendment, there has been a serious breach of the public trust.

February 13, 2017 City Commission Public Hearing

At this meeting, the City Commission held a public hearing on the D5 ordinance amendment and rezoning. The planning department briefed the City Manager prior to the hearing.

In a Memorandum dated February 6, 2017 from Senior Planner Matthew Baka he reminded the City Manager that the Planning Board and City Commission discussed the issue of legal non-conforming commercial buildings at the June 2016 joint meeting.

The Memo further provides that the Planning Board held a public hearing

to consider Zoning Ordinance amendments **with the goal of bringing several non-conforming buildings in Birmingham into compliance**. The proposed ordinance amendments would add a new D-5 classification to the Downtown Overlay Zone which would allow buildings that are currently nonconforming to be considered legal in regards to setbacks, number of stories, and height. The new D-5 zone would also allow additions or new construction in the D-5 to match the height of abutting or adjacent buildings. (Memo, p. 1.) (emphasis added)

The Memo advised only that the goal of the zoning ordinance amendment was to render several buildings legally conforming structures. The Memo would have alerted the City Manager if the intention was to allow new construction on sites that did not already contain a building greater than 5 stories.

The minutes from the February 13, 2017 public hearing show that City Planner Ecker advised the Commission that with respect to the new D5 classification and rezoning of the three buildings:

[The impact of the amendments would make the three buildings legal conforming buildings, and they would be allowed to be

³ As stated, the Planning Board also recommended amending Article 6, Nonconformances, Section 6.02 by removing the limitation that the extension or expansion of nonconforming property applied only to residential property.

extended or enlarged with a Special Land Use Permit. If a new building was constructed, it could match the height of the existing building with a Special Land Use Permit.

The new category would deal with existing buildings located in the D5 zone. This change enables applicants to obtain funding for significant renovations or improvements as a legal conforming building. The second part allows expansion with the restriction to meet the overlay. (Minutes, p. 15)

First, Ms. Ecker unmistakably represented to the City Commission that the proposed D5 ordinance would apply to taller existing buildings, like the 555 Building, Birmingham Place and Merrillwood, and allow improvements and expansions of those buildings or sites.

Second, Ms. Ecker also led the Commissioners to believe that only the 555 Building would be eligible to build a new taller building in the D5 district because of the vacant land on its site. **Ecker advised Commissioner Boutros that the language regarding new construction of a building as tall as an adjacent building was inserted because “the 555 site has room where a new building could be constructed.” (Id.)**

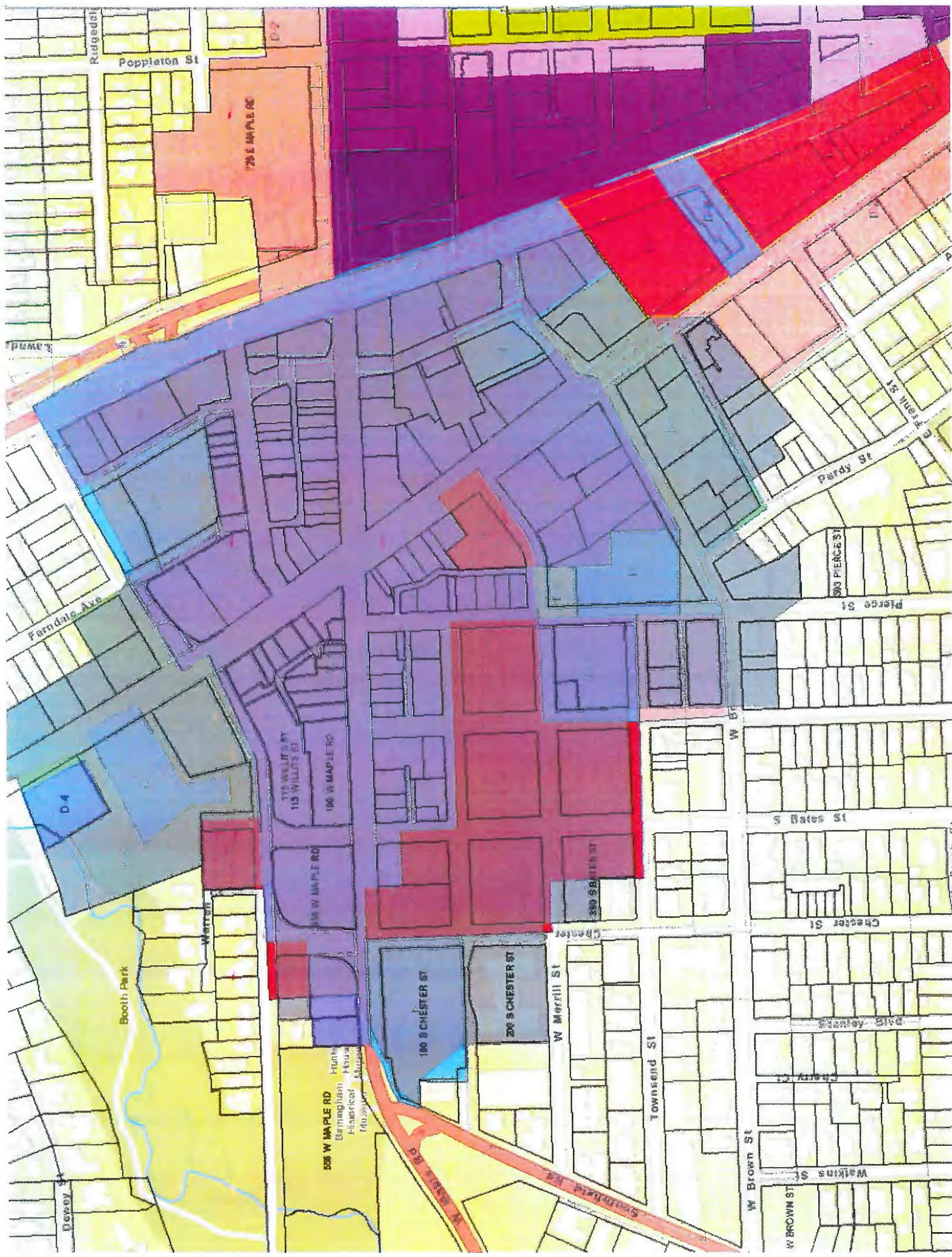
Ecker also assured Commissioner Hoff as follows:

Commissioner Hoff asked if Birmingham Place or Merrillwood could buy the adjacent structures and then build in the space. City Planner Ecker said that they could not, because the properties next door would not have the D5 zoning classification.”

The clear inference is that neither Merrillwood or Birmingham Place could build new taller buildings by simply buying the next door parcels because those parcels would not have been eligible to be part of the D5 district. The 555 Building could construct a new building because its entire site would be zoned D5.

CONCLUSION

The history of the D5 overlay ordinance should clear up any misconception or unsupported assertions by the Applicant that Birmingham Place, its attorneys or any Planning Board member mischaracterized the intent and purpose of the D5 ordinance. The facts show that the only intent was to allow the renovation and expansion of existing buildings taller than 5 stories. It was also to allow the 555 Building the option to build on its vacant property that also was zoned D5. There was no intent that the City apply the ordinance to property like the Applicant’s property which can be redeveloped under the D4 ordinance and not lose any preexisting height. As a nonconforming building for reasons other than being taller than 5 stories, the Applicant can seek permission to renovate or expand its existing buildings under Article 6, Section 6.02.



Poppiaton St

751 MAPLE RD

Fernale Ave

D4

Booth Park

558 W MAPLE RD
Birmingham
Hollywood
Hollywood
Hollywood

100 S CHESTER ST

200 S CHESTER ST

W Merrill St

Townsend St

W Brown St

W BROWN ST

Stanley St

Chester St

W Maple St

303 PIERCE ST

Piercy St



MEMORANDUM

Community Development Department

DATE: September 22, 2015

TO: Planning Board Members

FROM: Jana L. Ecker, Planning Director

SUBJECT: Study Session on Legal Non-conforming Buildings

Last year, the owners of the 555 S. Old Woodward building applied to the Planning Board to amend the Zoning Ordinance to allow the renovation of the existing building, the addition of new residential units along S. Old Woodward, as well as an addition to the south of the existing residential tower for new retail space and residential units. The Building Official had previously ruled that some changes to the existing legal non-conforming building may be permitted. However, the scale and scope of the changes that the property owner sought to implement would exceed what would be permitted as maintenance and thus were not permitted in accordance with the legal non-conforming regulations contained in the Zoning Ordinance.

In order to renovate and expand the existing building, the owners of the 555 S. Old Woodward building requested a Zoning Ordinance amendment to create a new D-5: Downtown Gateway Over Five Stories zoning classification in the Downtown Birmingham Overlay District. The proposal was then to seek rezoning of the 555 S. Old Woodward properties from the existing D-4 Overlay zoning classification to the proposed D-5 Overlay zoning classification, which would essentially render the existing building at 555 S. Old Woodward as a legal, conforming building that could then be renovated and expanded in accordance with new D5 development standards.

On May 13, 2015, the Planning Board began discussing the applicant's proposal to create a new D-5: Downtown Gateway (Over Five Stories) zoning classification in the Downtown Birmingham Overlay District. Planning Board members discussed the desire to review the proposed amendment within the spirit, vision and context of the entire downtown, and not to create a new zoning classification around a specific building. The Planning Board did, however, recognize the importance of the 555 S. Old Woodward building and the need to allow renovations and additions to improve its presence at the south end of Downtown Birmingham. Specific concerns raised regarding the existing 555 S. Old Woodward building were the unwelcome facades of the Woodward elevation, the split level concept on the S. Old Woodward elevation, and the exposed structured parking.

At subsequent Planning Board meetings on June 10th, 2015 and July 8th, 2015 the Planning Board further discussed the ways that the building could be modified and improved as a conforming structure and not through the use of variance requests. The Planning Board indicated that they would like to craft a zoning classification or overlay expansion that allows

the 555 Building to be renovated but also mirrors the development standards in the Triangle District across Woodward, which allows a maximum of 9 stories. Board members discussed taking a look at the 555 building along with several other parcels in the context of future development. It was suggested that this could be accomplished through a combination of a new zoning district and a Special Land Use Permit (SLUP) or the addition of a D6 zone as well, to differentiate permitted height north of Bowers, and south of Bowers along Woodward. The board reviewed multiple examples of similar "gateway corridor" districts in other cities (see attached), along with highlights, notes and sample ordinance language from other cities that were relevant. There were varying viewpoints on whether a new overlay should be created that included multiple properties along Woodward, and if so, which properties to include. No consensus was reached.

On September 9, 2016, the board reviewed a revised draft of the proposed D5 zone. Board members discussed the appropriate height for buildings along the west side of Woodward adjacent to the Triangle District. Some board members felt that the allowable height in a new D5 or D6 zone should mirror the 9 stories permitted in the Triangle District on the east side of Woodward. Other board members felt that additions should be permitted to match the height of existing non-conforming buildings. The board was unable to reach consensus on how to proceed, and requested additional information and direction from the City Attorney on potential options to provide exemptions for non-conforming buildings. The City Attorney's response letter dated September 29, 2016 is attached for your review.

On June 20, 2016 the issue of legal non-conforming commercial buildings was discussed at a joint meeting of the City Commission and Planning Board. The 555 S. Old Woodward building, the Merrillwood Building and Birmingham Place were referenced due to their non-conformity with regards to their height and bulk, and the desire to allow improvements or changes to these buildings. While no action was taken at the joint meeting, there was consensus that the issue of the improvement or expansion of legal non-conforming buildings should be studied.

On July 25, 2016, the City Commission again discussed the issue of legal, non-conforming commercial buildings and directed the Planning Board to review the non-conformance provisions pertaining to commercial buildings to provide specific requirements, considering a new zoning category or categories, that allow for changes to non-conforming buildings for the maintenance and renovation of existing buildings consistent with those permitted for residential buildings and structures.

On September 14, 2016, the Planning Board resumed their discussion regarding legal non-conforming buildings. Specifically, the Planning Board discussed the following options to allow changes to legal non-conforming buildings for maintenance, renovation and/or expansion:

1. Allow Maintenance and Renovation Only of Existing Legal, Non-conforming Commercial Buildings

Article 6, Section 6.02 of the Zoning Ordinance could be amended as follows:

6.02 Continuance of Nonconformity

- A. Limitations: Any nonconforming building or use existing at the time of enactment or amendment of this Zoning Ordinance may be continued if maintained in good condition, but:
1. The use shall not be changed to another nonconforming use except as permitted by the Board of Zoning Appeals.
 2. The use shall not be reestablished after discontinuance for 6 months.
 3. The use or building shall not be extended or enlarged except as herein provided. Nonconforming ~~residential~~ buildings may be extended or enlarged, provided that the extension or enlargement does not itself violate any provision of the Zoning Ordinance. Where the extension or enlargement will violate any provision of the Zoning Ordinance, application for a variance shall be made to the Board of Zoning Appeals pursuant to Section 8.01(F).

The amendment noted above would allow for the maintenance, extension or enlargement of an existing legal, non-conforming building so long as the addition meets the current zoning standards for the existing zone district. This amendment would allow both commercial and residential legal non-conforming buildings to be expanded using a consistent approach. As an example, this approach would allow a 10 story legal non-conforming building in a 5 story zone district (building that is non-conforming for height only) to construct an addition. However, the addition could not be 10 stories in height to match the existing building, but could be built up to a maximum of 5 stories as currently allowed in the zone district.

2. Allow the Expansion of Existing Legal, Non-conforming Buildings To Match Existing Non-conforming Conditions

Article 6, Section 6.02 of the Zoning Ordinance could be amended as follows:

6.02 Continuance of Nonconformity

- A. Limitations: Any nonconforming building or use existing at the time of enactment or amendment of this Zoning Ordinance may be continued if maintained in good condition, but:
1. The use shall not be changed to another nonconforming use except as permitted by the Board of Zoning Appeals.
 2. The use shall not be reestablished after discontinuance for 6 months.
 3. The use or building shall not be extended or enlarged except as herein provided. Nonconforming ~~residential~~ buildings may be extended or enlarged, provided that the extension or enlargement does not itself **increase the degree of the dimensional nonconformance, nor** violate any provision of the Zoning Ordinance. Where the extension or enlargement will violate any provision of the Zoning Ordinance, application for a variance shall be made to the Board of Zoning Appeals pursuant to Section 8.01(F).

OR

Section 6.02 Continuance of Nonconformity

- A. Limitations: Any nonconforming building or use existing at the time of enactment or amendment of this Zoning Ordinance may be continued if maintained in good condition, but:
1. The use shall not be changed to another nonconforming use except as permitted by the Board of Zoning Appeals.
 2. The use shall not be reestablished after discontinuance for 6 months.
 3. The use or building shall not be extended or enlarged except as herein provided. ~~Nonconforming residential buildings may be extended or enlarged, provided that the extension or enlargement does not itself violate any provision of the Zoning Ordinance. Where the extension or enlargement will violate any provision of the Zoning Ordinance, application for a variance shall be made to the Board of Zoning Appeals pursuant to Section 8.01(F).~~ **A legally nonconforming structure may expand its square footage provided that the expansion does not exceed the extent of the height and/or setback in nonconformance. All other development standards must be met in the expansion.**
 - a. **A vertical expansion of a nonconforming building or structure which is legally nonconforming as to one or more setback requirements is a permitted expansion of that nonconformity.**
 - b. **A horizontal expansion of a nonconforming building or structure which is legally nonconforming as to one or more height requirements is a permitted expansion of that nonconformity.**

Both of the amendments noted above would allow for the maintenance, extension or enlargement of an existing legal, non-conforming building up to, but not exceeding, the existing non-conforming dimension. The first option listed above is more general in nature, and could include the expansion of any type of non-conformity (height, setbacks, FAR, density, lot coverage etc.). The second option listed above is limited to expanding only height and/or setback non-conformities. As an example, this approach would allow a 10 story legal non-conforming building in a 5 story zone district (building that is non-conforming for height or setbacks) to construct an addition up to 10 stories in height to match the existing building height and setbacks.

3. Convert Existing Legal, Non-conforming Buildings to Conforming Using a Special Land Use Permit

Another option to consider may be to convert buildings or structures in Downtown Birmingham that are legal non-conforming with regards to height into conforming buildings through the use of a Special Land Use Permit. An amendment to Article 3, Overlay Districts, or to Article 6, Nonconformances, could be proposed as follows:

Conversion of Non-conforming Status: A building in the Downtown Birmingham Overlay District that is a legal non-conforming building or structure with regards to height may be deemed a conforming building or structure with regards to height if the property owner agrees to specific conditions to control the future extension, enlargement or renovation of the building or structure and said conditions are approved by the City Commission under the provisions of a Special Land Use Permit.

This approach would allow for the extension or enlargement of existing legal, non-conforming buildings downtown on a case by case basis as negotiated by the City Commission. The amendment noted above would provide flexibility for different site conditions and would provide control over the parameters of future expansion based on site and neighborhood context. As an example, a 10 story legal non-conforming building in a 5 story zone district could be deemed conforming if placed under the provisions of a SLUP that establish the specific conditions for maximum extension or enlargement of the building in the future.

4. Re-establish the Zoning District(s) in effect when Building Permits were Issued for Buildings in Excess of 5 Stories (or amend the B3 Zoning District) to render existing buildings conforming

Another option to consider may be to re-establish the former zoning classification(s) in place in the 1970's when several buildings were legally constructed greater than 5 stories in height, and to rezone properties with non-conforming buildings with regards to height back to this classification. Thus, any extension or enlargement of an existing legal, non-conforming building so rezoned would be permitted as anticipated at the time of construction. As an example, a 10 story building constructed in 1975 under a classification that permitted 11 stories in height could be extended or enlarged up to 11 stories in height.

5. Create a New Zoning District(s)

Another option to consider is to create a new zoning classification(s) that would permit additional building height and rezoning certain properties to this classification, thus rendering legal non-conforming buildings or structures conforming buildings with regard to height. This approach has been discussed by the Planning Board over the past year, and amendments have been drafted to create two new classifications under the Downtown Overlay, D5 and D6, to attempt to address the non-conforming heights of several buildings downtown. The Planning Board has also discussed using this approach to address sites along the west side of Woodward to allow additional height even for existing conforming buildings along the corridor to match the height permitted on the east side of Woodward in the Triangle District. The latest version of

the draft previously discussed by the Planning Board is attached and highlighted to indicate areas noted for further discussion. As an example using this approach, an existing 10 story legal non-conforming building in a 5 story zone district could be rezoned to a new zoning classification to be created that would allow 10 story buildings as of right.

At the Planning Board meeting on September 14, 2016, board members agreed that the improvement and maintenance of existing legal, non-conforming commercial buildings should be permitted, and expansion of such buildings should also be permitted consistent with regulations for residential buildings. Board members also discussed at length the issue of several legal, non-conforming buildings in the Downtown Overlay District, and the desire to allow improvements to those buildings as well. After much discussion, the Planning Board directed Planning staff to meet with the applicant for the 555 Building to craft ordinance language that would make existing buildings downtown conforming with regards to both height and setbacks, and to allow future expansion that would comply with the standards of the D4 Overlay.

On September 28, 2016, the Planning Board discussed draft ordinance language that proposed to create a D5 zone district that would render existing buildings legal and conforming with regards to setback and height. Board members agreed that additions or renovations should be permitted to existing buildings. With regards to the construction of new buildings in the proposed D5 zone district, there was much discussion as to whether such buildings should meet the 5 story maximum height in the D4 zone district, or should be allowed to match the height of the existing adjacent buildings. The consensus of the board was to allow additional height for new buildings in the D5 to match existing adjacent buildings, if the new building was constructed under the provisions of a SLUP. At the end of the discussion, the applicant asked if the Planning Board could simply waive certain requirements in the D5 zone instead of requiring a SLUP. Staff agreed to discuss this with the City Attorney.

Since the September 28, 2016 Planning Board meeting, City staff has met with the applicant to refine the draft ordinance language. Accordingly, please find attached draft ordinance language for your review based on the Planning Board's direction from the last meeting that addresses the improvement of commercial buildings throughout the City, and also specifically addresses the legal, non-conforming status of buildings downtown.

The applicant has also provided another version of a draft ordinance for the Planning Board's discussion as well based on their desire to construct a new building that exceeds the height of the existing 555 building, but maintains the same number of stories. The applicant's revised draft is also attached for your review.

Finally, City staff has reviewed the applicant's request as to whether the Planning Board can simply waive certain requirements in the D5 zone with both the City Manager and the City Attorney. Although it was unclear as to whether there was a legal question, the City Manager directed the City Attorney to respond. The City Attorney has advised that the question of whether the Planning Board can waive specific requirements is not a legal question, but rather a

policy question. Ultimately, the City Commission has the sole authorization to pass zoning legislation, with or without waivers, so long as they remain in compliance with the Michigan Zoning Enabling Act.

Should the Planning Board wish to recommend the attached ordinance amendments, the board may also wish to consider proposing a rezoning of the 555 Building, Birmingham Place and/or the Merrillwood Building to the proposed D5 Zone (over 5 stories).

Suggested Action:

To set a public hearing for December 14, 2016 to consider the following amendments to Chapter 126 Zoning:

- (a) Article 3, Downtown Birmingham Overlay District, Section 3.04, to create a new D5 Zone and to establish development standards for this district;
- (b) Article 6, Nonconformances, Section 6.02, to allow for the extension and/or enlargement of existing legal, non-conforming commercial buildings;

AND

To set a public hearing for December 14, 2016 to consider the rezoning of the following properties:

- (d) **555 S. Old Woodward** (555 Office and Residential Buildings) from D4 in the Downtown Overlay to D5 in the Downtown Overlay;
- (e) **411 S. Old Woodward** (Birmingham Place) from D4 in the Downtown Overlay to D5 in the Downtown Overlay; and
- (f) **225 E. Merrillwood** (Merrillwood Building) from D4 in the Downtown Overlay to D5 in the Downtown Overlay.

Via E-Mail and US Mail

October 10, 2018

Mr. Timothy J. Currier
Beier Howlett, P.C.
3001 W. Big Beaver Road
Suite 200
Troy, Michigan 48084

***Re: Opposition to Rezoning of Property located at 469 and 479 S. Old Woodward,
Birmingham, Michigan (the "Property")***

Mr. Currier:

We attempted to reach you by phone earlier today. We are contacting you to inform you, and the others copied on this letter, that our Firm has been engaged by Condominiums at Birmingham Place Association (the "Association") to work along with counsel for the Birmingham Place Residential Condominium Association. The Association is the so-called Master Association for the Birmingham Place development.

Please be advised that the Association opposes the application to rezone the Property to the D-5 Overlay Zone and fully supports the position of the Birmingham Place Residential Condominium Association. We understand the rezoning application is "back" on the Planning Board's agenda for its meeting tonight. Unfortunately, we will not be available to participate in the meeting tonight, but we wanted you to be aware of our involvement and our client's position.

As you might expect, we have recently become involved and have not had the opportunity to thoroughly review all of the extensive information and voluminous documents. However, even based on our limited review, we do not understand how (or why) this matter finds itself back before the Planning Board. In addition, even if the application is properly back before the Planning Board, we also do not see how (or why) any of the so-called "new" information or positions could possibly justify a change to the Planning Board's previous decision.

In any case, please be aware that if the Planning Board elects to reconsider the rezoning application based on so-styled "new" information, and/or if the Planning Board changes from its previous position of recommending denial of the rezoning application, our Firm will continue forward and complete our thorough review of all of the information and will join in also

HONIGMAN

Honigman Miller Schwartz and Cohn LLP
Attorneys and Counselors

J. Patrick Lennon

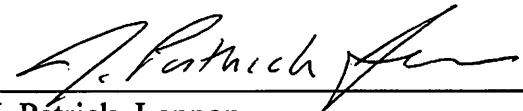
(269) 337-7712
Fax: (269) 337-7713
Lennon@honigman.com

advising the Association of its legal rights and remedies along with the Residential Condominium Association's counsel.

Thank you for your time and attention to this matter. As always, please feel free to contact me with any questions or comments.

Very truly yours,

HONIGMAN MILLER SCHWARTZ AND COHN LLP

By: 
J. Patrick Lennon

cc: Ms. Michele Prentice
Ms. Jana L. Ecker
Ms. Susan K. Friedlander
Mr. Richard D. Rattner

Submitted On Behalf of Birmingham Place on 01-23-18

REZONING REQUEST FOR 469-479 S. OLD WOODWARD

RESPONSE TO "SUMMARY OF PRIOR SUBMITTAL FROM THE APPLICANT

AND THE ANALYSIS & FINDINGS OF THE PLANNING DEPARTMENT'S REVIEW

Over the past several months, the applicant has submitted written documentation and evidence in support of applicant's application to rezone 469-479 S. Old Woodward to the D-5 Downtown Overlay District. In addition, the Planning Department has completed a thorough analysis of the applicant's request to rezone the subject property as well as all of the information that was submitted by the applicant during this rezoning process. The following is a summary of the Planning Department's analysis and findings under the City Ordinance regarding the applicant's request to rezone 469-479 S. Old Woodward:

- The subject site consists of two vacant, single story commercial buildings (Mountain King and First Place Bank).

Reply: Agreed

- The 0.423-acre site includes two narrow parcels, one facing 3 streets (Old Woodward, Hazel and Woodward), and the other facing 2 streets (Old Woodward and Woodward).

Reply: Agreed

- The rezoning request is made pursuant to Article 7, section 7.02 of the Zoning Code.

Reply: Agreed

- Section 7.02(B)(2)(b)(i) – Due to the site configuration fronting S. Old Woodward, Hazel and Woodward, and the narrow lot size and the off-street parking requirements, rezoning is necessary to preserve enjoyment of rights and usage commonly associated with ownership.

Reply: This is first of several completely subjective conclusions stated as fact but without any supporting facts or evidence. The actual fact is that the very nature of the lots' size and configuration and the parking requirements make building a nine (9) story building virtually unworkable, especially as regards parking and traffic issues (see report by independent expert retained by the City with findings to the contrary of what the developer claims the Planning Board has made).

- Section 7.02(B)(2)(b)(ii) – Current zoning is no longer appropriate due to off-site parking requirements, narrow lot size configurations, and frontages.

Reply: See immediately above; rezoning would only exacerbate already serious problems.

- Section 7.02(B)(2)(b)(iii) – Rezoning will not be detrimental to surrounding properties as the adjacent and abutting properties are zoned D-5, mixed retail, commercial and residential properties, and applicant's proposal will add consistency to the streetscape in mass and architectural detail.

Reply: The clear facts are that only Birmingham Place and the 555 Building are zoned D-5, that the office portion of the 555 Building on Hazel Street is only five (5) to six (6) stories, and that all other nearby properties are one (1) or two (2) story buildings. It is apparent at a glance that the building the developer proposes would dwarf almost all nearby buildings, would create substantial inconsistency to the area in both mass and architectural detail, the latter, based on the developer's filings with the City to date being a very substantial departure from all adjacent and nearby buildings, make the proposed building "stick out like a sore thumb" in an otherwise very attractive area.

- Section 7.02(B)(5)(a) -- The objectives of the City's master plan and 2016 Plan are met by the rezoning as the proposed streetscape will improve the frontages of S. Old Woodward, Hazel and Woodward and project a strong image of the City toward Woodward with similar massing and architectural detail to adjacent buildings.

Reply: The actual fact is that, based on the developer's drawings submitted to date, the proposed building would have a virtually blank wall facing Woodward Avenue, would crowd the already narrow Hazel Street area with hotel frontage and would be detriment to the Old Woodward frontage by adding inconsistent mass running all the way to the Hazel Street corner. The only "strong image of the City toward Woodward" would be the unwelcoming appearance of a modern day version of a medieval wall running from the north end of Birmingham Place all the way to the south end of the 555 Building.

- Section 7.02(B)(5)(b) -- The existing uses of property in the general area align with applicant's proposed rezoning. Both the Birmingham Place and the 555 Building (neighboring properties) are mixed use buildings with both retail, commercial and residential uses. Properties to the east and west of the subject property are used for parking, retail and commercial.

Reply: The factual portion of the above re mixed use buildings, etc. is accurate, but the statement that the proposed hotel somehow "aligns" with entirely different uses in all nearby buildings is obviously inaccurate at best.

- Section 7.02(B)(5)(c) -- Both neighboring properties are zoned in the D-5 Overlay Zone.

Reply: Correct but irrelevant, especially in light of the subject property having been intentionally zoned D-4 and "both neighboring properties" having been zoned D-5 primarily, if not exclusively, to give them legal conforming status, which was never necessary or intended for the subject property.

- Section 7.02(B)(5)(d) -- The applicant's property is suitable for uses in the D-5 which are the same as in the current D-4 Zone. However, if a 5-story or less building is constructed under the D-4 at the site, it would be completely dominated by and inconsistent with the height of the neighboring Birmingham Place and 555 Building.

Reply: In actual fact, a five (5) story or lower building would be entirely consistent with every building in the area other than Birmingham Place and the 555 Building, neither of which dominate or are inconsistent with the one (1) story properties that have occupied the subject property for decades.

- Section 7.02(B)(5)(e) – The requested rezoning is consistent with the trend of development of this area of S. Old Woodward which is dominated by the height of the 555 Building and Birmingham Place.

Reply: The alleged “domination” of Birmingham Place and the 555 Building is patently inaccurate, given the actual facts of the vast majority of development in the S. Old Woodward area. More importantly, the trend of development in Birmingham has complied with D-4 standards. A memo dated May 18, 2018 from the Planning Department to this Board (which may have been removed from this Board's second packet and on which the Planning Department has supposedly completely reversed itself) reads in part:

"Developments trends in Birmingham's Downtown Overlay have seen many buildings built, or approved to be built, to D-4 Standards such as the Maple gateway buildings close by (Greenleaf Trust, Balmoral and the proposed Peabody Redevelopment), the Brookside development, and the proposed mixed use development replacing the Varsity Shop. There have been no buildings erected to D-5 Overlay Zoning standards in some time."

Further, there has been no change in the trend in development or in the character of this area since the 2016 Plan was adopted – taller buildings existed then, and yet the predominant character of the downtown area remains two- to four-story buildings. All other recent developments (e.g., the Daxton Hotel, Forefront, Bristol, Brookside, Peabody, Westbrow, the new proposed Maple House, even 750 Forest in the Triangle District, etc.) have complied with the Master Plan; so should this development.

- Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable master plan documents, current zoning and recent development trends in the area, the Planning Department finds that the applicant meets the established Zoning Ordinance requirements of Article 7, section 7.02(B)(5) to qualify for a rezoning of the property from D-4 to D-5 in the Downtown Overlay district.

Reply: It is difficult to understand how the Planning Department could come to this conclusion, if it actually has, but even if it actually has, the conclusion is clearly contrary to the obvious facts and should be ignored by the Planning Board.

ADDRESS:

DATE:

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

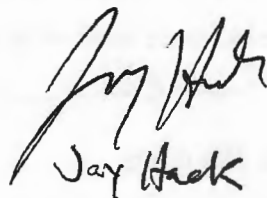
Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

We are residents of the City of Birmingham and are writing to express our deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally *not* zoned as D5, despite being located between two of the D5 buildings.

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,



Jay Hark
1276 Smith Ave.
Birmingham MI 48009

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. 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,

A handwritten signature in cursive script, reading "Brenda Knight". The signature is written in dark ink and is positioned above two vertical pink lines that serve as a signature line.

ADDRESS:

DATE:

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Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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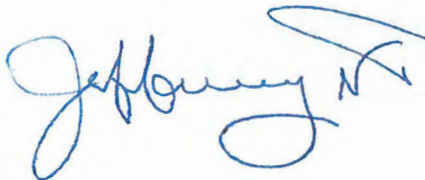
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Yours very truly,

 955 Bud Birmingham, HI
48009

ADDRESS:

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Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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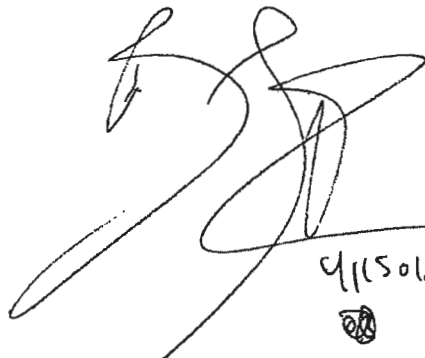
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Yours very truly,



4115 Old Woodward
Unit 624
Birmingham, AL

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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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.

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,


Eunice Galperin

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.

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,

P. Steven Warren
1296 Stanley Blvd
Birmingham, Mich
48009

ADDRESS:

DATE:

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

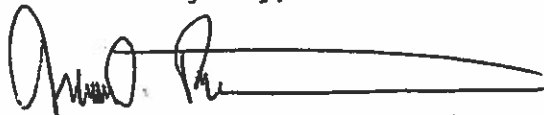
Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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,



Mark D. Rubinstein
268 Pilgrim
6/23/18

Arlene R. Rubinstein
268 Pilgrim
6/23/18

May 6, 2019

Mr. Joseph A. Valentine, City Manager
City of Birmingham
151 Martin Street, P.O. Box 3001
Birmingham, MI 48012-3001

Re: Request to Amend the D5 Overlay Zoning Ordinance

Dear Mr. Valentine:

On March 11, 2019, a request was made to rezone 469-479 South Old Woodward from B3/D4 to B3/D5. The following are the excerpts from the Minutes of that meeting as to the City Commission's discussion:

"MOTION: Motion by Commissioner Hoff, seconded by Commissioner DeWeese:
To deny the rezoning of 469 – 479 S. Old Woodward from B3/D4 to B3/D5.

City Attorney Currier said he would have to research whether the applicant could submit a new application before a year's time elapses if the City makes changes to the D5 ordinance, because it might sufficiently constitute a material change in circumstance.

Mayor Bordman said she would be supporting the motion because she does not want the issue to go back to the PB.

VOTE: Yeas, 3
Nays, 4 (Boutros, Harris, Nickita, Sherman)

MOTION FAILED

MOTION: Motion by Commissioner Harris
To approve the rezoning of 469 – 479 S. Old Woodward from B3/D4 to B3/D5.

MOTION DIED FOR LACK OF A SECOND

MOTION: Motion by Mayor Pro Tem Boutros
To postpone the hearing to do a comprehensive study.

MOTION DIED FOR LACK OF SECOND

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Nickita:

To postpone the public hearing to July 22, 2019 for the purpose of sending it back to the Planning Board with specific direction to look at the issues raised by Commissioner Nickita on the D-5 ordinance and to look at the properties between Haines and Brown, Old Woodward and Woodward for the appropriate zoning classification.

Planning Director Ecker said the ordinance language could possibly be reviewed and brought back by July 22, 2019. She was not sure if the PB would reach consensus in three months on the geographic area to which the D5 zoning should be applied, since they have already studied the issue and were not able to reach consensus.

Commissioner Hoff said she would be interested in knowing whether building heights should be to the eaves or the tallest structure on a building, and the specific meaning of the ‘adjacent’ and ‘abutting’ in the context of the ordinance.

Commissioner Sherman said he would be willing to change the date in the motion to allow an additional month of study.

Commissioner Nickita said it should not take four months to define the method of determining building height and the definitions of ‘adjacent’ and ‘abutting’. He said it would be better to keep the date in the motion and to extend it if necessary.

Mayor Bordman invited public comment on the motion.

Mr. Rattner stated the applicant had no objection to the motion.

Mr. Schwartz said that all the interested parties have weighed in on the issue, and the Commission is in effect postponing a civic duty.

Mr. Bloom said he would like to know the impact on the City if the parcel is built up as a hotel, office building, mixed use space, or any other type of development. He would want the PB to report on each building-type’s likely impact on parking, public safety, density, and overall quality of life for Birmingham residents.

Mr. Reagan said ‘adjacent’ and ‘abutting’ were terms already discussed at the beginning of the 2016 planning process. In addition, the expansion of the geographic area being studied concerned Mr. Reagan because, as he stated, the

neighborhood included within that area already deals with significant congestion, cut-through traffic, and parking issues. If these developments occur, there has to be sufficient parking accommodations. Mr. Reagan asserted parking shortages would stem the possible larger D5 developments the City is considering allowing.

Ms. Friedlander said choosing to raise the heights of buildings should be part of a community study process, and all the buildings around the Merrillwood building should be included in this motion and studied since Merrillwood is also zoned D5.

Mr. Abel said the Commission should make a decision this evening.

Commissioner Hoff said Commissioner Nickita's concerns should be spelled out in the motion.

Mayor Bordman agreed with Mr. Abel and Commissioner Hoff. She asked if there was motion to amend in order to include Commissioner Nickita's comments.

No motion to amend was offered.

VOTE: Yeas, 2 (Nickita, Sherman)
 Nays, 5

MOTION FAILED

The Commission took no action. The property remains zoned D4.

Mayor Bordman recessed the meeting for three minutes. The meeting resumed at 10:48 p.m."

The Birmingham Zoning Ordinance provides under Section 7.02B6:

"6. *Underlying Action by the City Commission.* Following receipt of the written report and recommendations from the Planning Board, the City Commission may grant or deny any application for the amendment for rezoning. If the City Commission denies the application, no application shall be reheard for at least one year, unless there have been substantial changes in the facts, evidence, and/or conditions demonstrated by the applicant. The determination of whether there have been such changes shall be made by the Planning Board at the time the application is submitted for processing."

The question is, was the City Commission's motions a denial of the application that prevent it from being reheard for at least one year. In this regard, I refer you to Robert's Rules of Order:

“SECONDING A MOTION. After a motion has been made, another member who wishes it to be considered says, ‘I second the motion,’ or, ‘I second it,’ or even, ‘Second!’—without obtaining the floor, and in small assemblies without rising. ** In large assemblies, and especially in those where nonmembers may be seated in the hall, the seconder should stand, and without waiting to be recognized should state his name (with other identification, if appropriate) and say, ‘Mr. President [or ‘Mr. Chairman’], I second the motion.’ In some organizations, especially labor unions, the word ‘support’ is used in place of ‘second.’

If no member seconds the motion, the chair must be sure that all have heard it before proceeding to other business. In such a case the chair normally asks, ‘Is there a second to the motion?’ In a large hall he may repeat the motion before doing so. Or, if a resolution was submitted in writing and read by the chair or the secretary rather than by the mover (as described on p. 33) the chair may say, ‘Miss A has moved the adoption of the resolution just read. Is there a second to the resolution?’; or, if the text of the resolution has been distributed to the members in advance and was moved without being read, the chair may say, for example, ‘Miss A has moved the adoption of the resolution relating to....., as printed. Is there a second to the resolution?’ If there still is no second, the chair says, ‘The motion [or ‘resolution’] is not a seconded’; or, ‘Since there is no second, the motion is not before this meeting.’ Then he immediately says, ‘The next item of business is’; or, if appropriate, ‘Is there any further business?’

A second merely implies that the seconder agrees that the motion should *come before the meeting* and not that he necessarily favors the motion. A member may second a motion (even if using the word ‘support’ as indicated above) because he would like to see the assembly go on record as *rejecting* the proposal, if he believes a vote on the motion would have such a result. A motion made by direction of a board or duly appointed committee of the assembly requires no second from the floor (provided the subordinate group is composed of more than one person), since the motion's introduction has been directed by a majority vote within the board or committee and is therefore desired by at least two assembly members or elected or appointed persons to whose opinion the assembly is presumed to give weight regarding the board's or committee's concerns. (For rules governing the appointment of non-assembly members to committees, see pp. 174-75, 492-93, 496.)”

Beier Howlett

Mr. Joseph A. Valentine, City Manager
City of Birmingham
Page 5

Though the Minutes indicate that the motion to deny the rezoning failed, and the motion to approve the rezoning did not receive a second, the failure to have a second to the motion to approve only means that it was not before the meeting, and, therefore, it was not officially rejected. It is, therefore, our opinion that Section 702B6 is not applicable with respect to the request to amend the D5 Overlay Zoning Ordinance, and re-application can be made without waiting one year to do so.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

BEIER HOWLETT, P.C.

Timothy J. Currier
Birmingham City Attorney

TJC/jc

CITY OF BIRMINGHAM
Date 05/07/2018 10:31:32 AM
Ref 00148181
Receipt 426908
Amount \$1,550.00

APPLICATION FOR ZONING MAP OR ORDINANCE CHANGE
Birmingham, Michigan

TO THE CITY COMMISSION:

The undersigned hereby makes application to the City Commission to:

1. Zoning Map Change:

Change premises described as:

479 South Old Woodward Avenue

No. Street
Tax ID #: 19-36-208-012; see documents for more information

Legal Description
from its present zoning

classification of B3/D4 to B3/D5.

A sealed land survey showing location, size of lot and placement of building (if any) on the lot to scale must be attached.

Statements and reason for request or other data have a direct bearing on the request.

2. Change premises described as:

No. Street
Legal Description
from its present zoning

classification of _____ to _____.

A sealed land survey showing location, size of lot and placement of building (if any) on the lot to scale must be attached.

Statements and reasons for request or other data have a direct bearing on the request.

Signature of Applicant: 

Print Name: Christopher J. Longe

Name of Owner: Birmingham Tower Parters, LLC

Address and Telephone Number: 251 East Merrill Street, Suite 205

Birmingham, Michigan 48009

CITY OF BIRMINGHAM
Date 05/07/2018 10:31:32 AM
Ref 00148182
Receipt 426908
Amount \$100.00

APPLICATION FOR ZONING MAP OR ORDINANCE CHANGE
Birmingham, Michigan

A letter of authority, or power of attorney, shall be attached in case the appeal is made by a person other than the actual owner of the property.

Date Received: _____ Received By: _____

Resolution No. _____ Approved/Denied _____

Application Fee: \$1,500.00 Receipt Number _____

The petitioner shall be responsible for any costs incurred by consultant, including but not limited to traffic and environmental, contracted by the city to review the proposed site plan and/or community impact study as determined by the city planner.

ZONING MAP OR ORDINANCE AMENDMENT PROCEDURE

Procedure to be followed on all applications for Zoning Map or Ordinance amendments.

1. Preliminary discussion with the Community Development Director or City Planner.
2. Formal application to City Commission with the following information:
 - a) Change requested
 - b) Signature and name of persons requesting change
 - c) Reasons for requested change
3. City Commission will refer request to the Planning Board for recommendation and final report.
4. Planning Board will hold a public hearing prior to which a notice will be published in an official paper or a paper of general circulation not less than fifteen (15) days prior to the hearing.
5. At the conclusion of a public hearing, the Planning Board will forward a recommendation of the Zoning Map or Ordinance amendment request. The City Commission may, by ordinance, change the Zoning Map or Ordinance only after the Planning Board had held at least one (1) public hearing regarding the proposed amendment and has reported to the City Commission thereon. The City Commission may hold additional public hearings as it deems necessary.
6. Upon the presentation of protest petition meeting the requirements listed below, an amendment to the Zoning Map or Ordinance which is the object of the petition shall be passed only by a three-fourths (3/4) vote of the City Commission. The protest petition shall be presented to the City Commission before final action on the amendment, and shall be signed by one (1) of the following:
 - a) The owners of at least twenty percent (20%) of the area of land included in the proposed change.
 - b) The owners of at least twenty percent (20%) of the area of the land included within an area extending outward one hundred (100) feet from any point on the boundary of the land included in the proposed change.

For the purpose of calculating the twenty percent (20%) requirement, publicly-owned land shall be excluded.

7. The City Commission will then take action on the application upon review of the Planning Board's recommendation and approved minutes of the Public Hearing.
8. Following adoption of a Zoning Map or Ordinance change by the City Commission, one (1) notice of adoption shall be published in the newspaper of general circulation in the City within fifteen (15) days after adoption.

CITY OF BIRMINGHAM
Date 05/07/2018 10:31:32 AM
Ref 00148179
Receipt 426908
Amount \$1,550.00

APPLICATION FOR ZONING MAP OR ORDINANCE CHANGE
Birmingham, Michigan

TO THE CITY COMMISSION:

The undersigned hereby makes application to the City Commission to:

1. Zoning Map Change:

Change premises described as:

469 South Old Woodward Avenue

No. Street
Tax ID #: 19-36-208-011; see documents for more information

Legal Description
_____ from its present zoning

classification of B3/D4 to B3/D5.

A sealed land survey showing location, size of lot and placement of building (if any) on the lot to scale must be attached.

Statements and reason for request or other data have a direct bearing on the request.

2. Change premises described as:

No. Street
_____ Legal Description
_____ from its present zoning

classification of _____ to _____.

A sealed land survey showing location, size of lot and placement of building (if any) on the lot to scale must be attached.

Statements and reasons for request or other data have a direct bearing on the request.

Signature of Applicant: 

Print Name: Christopher J. Longe

Name of Owner: Birmingham Tower Parters, LLC

Address and Telephone Number: 251 East Merrill Street, Suite 205

Birmingham, Michigan 48009

CITY OF BIRMINGHAM
Date 05/07/2018 10:31:32 AM
Ref 00148180
Receipt 426908
Amount \$100.00

APPLICATION FOR ZONING MAP OR ORDINANCE CHANGE
Birmingham, Michigan

A letter of authority, or power of attorney, shall be attached in case the appeal is made by a person other than the actual owner of the property.

Date Received: _____ Received By: _____

Resolution No. _____ Approved/Denied _____

Application Fee: \$1,500.00 Receipt Number _____

The petitioner shall be responsible for any costs incurred by consultant, including but not limited to traffic and environmental, contracted by the city to review the proposed site plan and/or community impact study as determined by the city planner.

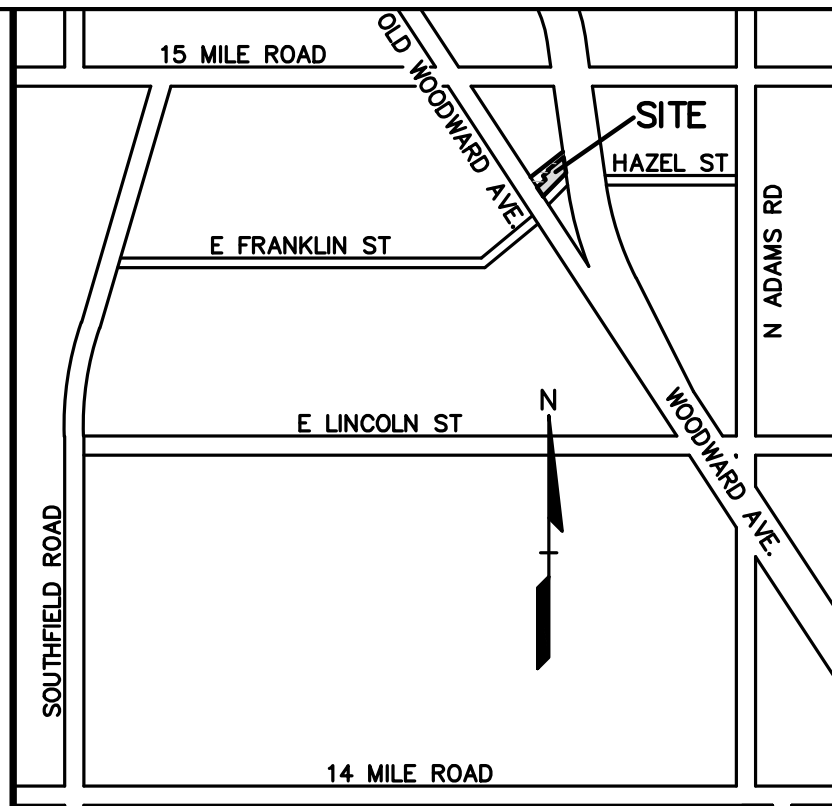
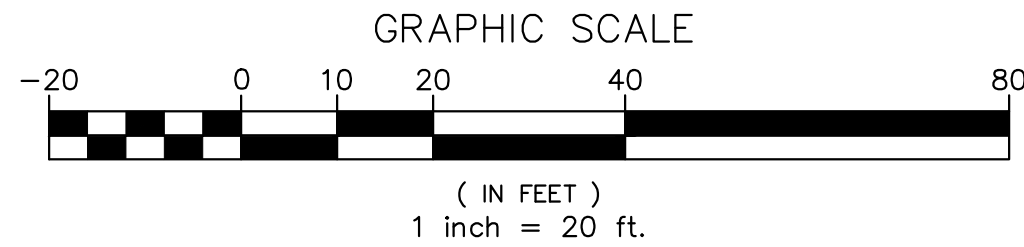
BENCHMARKS:
(GPS DERIVED - NAVD88)

BM #300
BENCH TIE IN NORTH FACE OF
U-POLE, SOUTHWEST CORNER HAZEL
STREET AND WOODWARD AVENUE
(HUNTER BOULEVARD)
ELEV. = 765.98

BM #301
TOP OF NORTHEAST ANCHOR BOLT
OF LIGHT POLE BASE, NORTHEAST
CORNER OF HAZEL STREET AND OLD
WOODWARD AVENUE
ELEV. = 766.58

FLOOD PLAN:

BY GRAPHICAL PLOTTING, SITE IS WITHIN ZONE "X",
AREA DETERMINED TO BE OUTSIDE OF THE 0.2%
ANNUAL CHANCE FLOODPLAIN PER FLOOD INSURANCE
RATE MAP NUMBER 26125C0537F (PANEL 537 OF 704),
DATED SEPTEMBER 29, 2006.



LOCATION MAP - NOT TO SCALE

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
LOCATIONS OR ELEVATIONS OF EXISTING UTILITIES.
THE CONTRACTOR SHALL BE RESPONSIBLE FOR
VERIFYING THE EXACT UTILITY LOCATIONS AND
ELEVATIONS PRIOR TO THE START OF CONSTRUCTION.

THIS DRAWING AND DESIGN ARE THE PROPERTY OF
PEA, INC. AND ARE NOT TO BE REPRODUCED, COPIED,
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WITHOUT THE WRITTEN CONSENT OF PEA, INC. ALL COMMON
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CONSTRUCTION CONTRACTOR AGREES THAT IN
ACCORDANCE WITH GENERALLY ACCEPTED
CONSTRUCTION PRACTICES, CONSTRUCTION
CONTRACTOR SHALL BE RESPONSIBLE FOR ASSUMING SOLE
AND COMPLETE RESPONSIBILITY FOR JOB SET
CONNECTIONS DURING THE COURSE OF CONSTRUCTION
OF THE PROJECT, INCLUDING SAFETY OF ALL PERSONS
AND PROPERTY. THAT THE REQUIREMENT SHALL BE
MADE TO APPLY CONTINUOUSLY AND NOT BE LIMITED
TO NORMAL WORKING HOURS AND CONSTRUCTION
CONTRACTOR FURTHER AGREES TO DEFEND, INDEMNIFY
AND HOLD DESIGN PROFESSIONAL HARMLESS FROM ANY
AND ALL LIABILITY REAL OR ALLEGED IN CONNECTION
WITH THE PERFORMANCE OF WORK ON THIS PROJECT
EXCEPTING LIABILITY ARISING FROM THE SOLE
NEGLECT OF THE DESIGN PROFESSIONAL.

**3 FULL WORKING DAYS
BEFORE YOU DIG CALL**

811

Know what's below
Call before you dig

Miss Dig System, Inc.

1-800-482-7171 www.missdig.net

(TOLL FREE)



PEA, Inc.

2430 Rochester Ct, Ste 100
Troy, MI 48063-1872
T: 248.689.9090
F: 248.689.1044
www.peainc.com

MARKUS ASSOCIATES, LLC
BIRMINGHAM, MI 48009

**TOPOGRAPHIC & ALTA/NSPS LAND
TITLE SURVEY-HAZEL ST./WOODWARD**

PART OF THE NE 1/4 OF SECTION 36, T. 02N, R. 10E,
CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN

DES.	DN.	DL/CSD	SUR.	RS	P.M.	JPB
SVR/ALTS/2017/2017-093	HAZEL STREET & WOODWARD AVE	HAZEL STREET & WOODWARD AVE	HAZEL STREET & WOODWARD AVE	HAZEL STREET & WOODWARD AVE	HAZEL STREET & WOODWARD AVE	HAZEL STREET & WOODWARD AVE

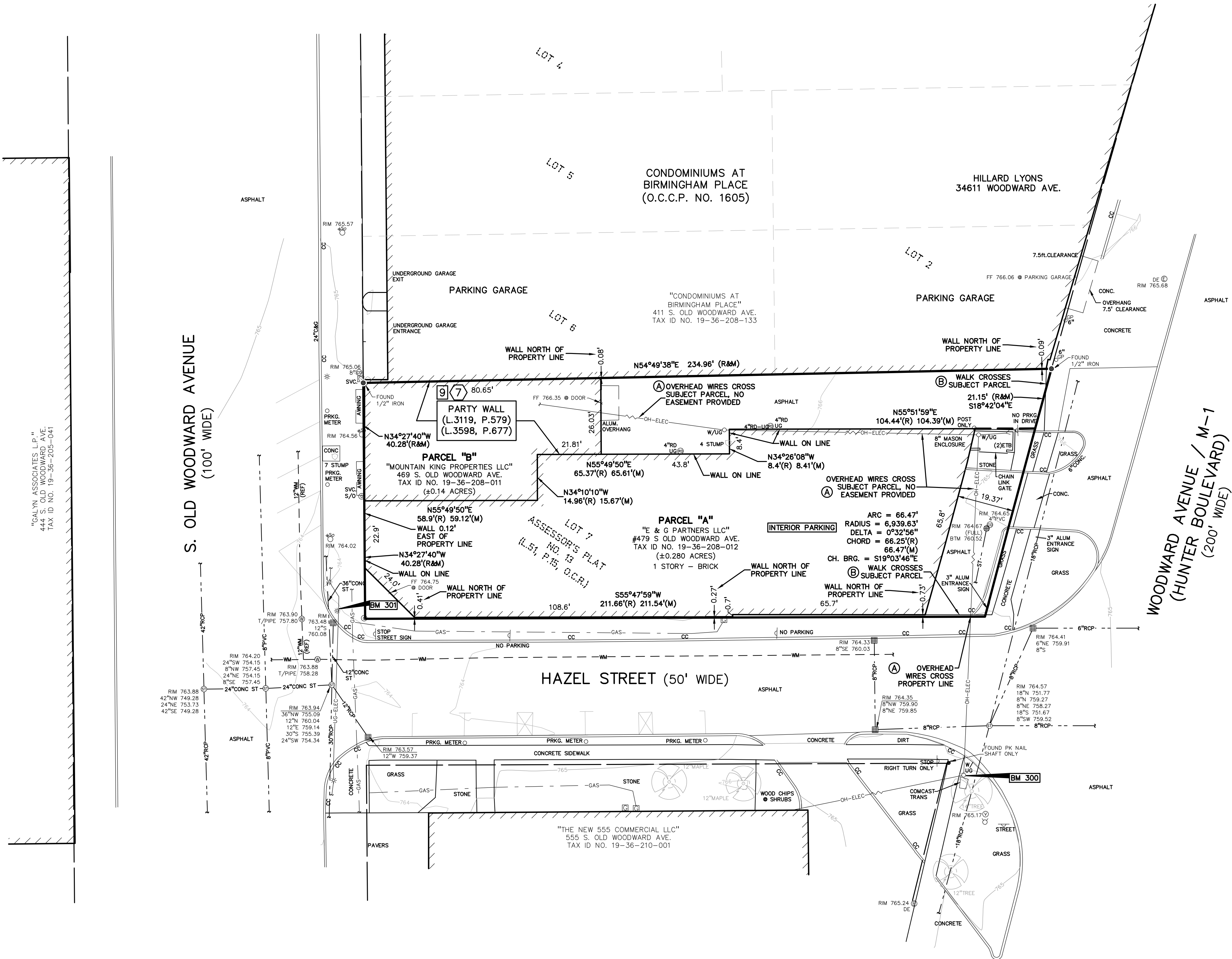
ORIGINAL ISSUE DATE:
APRIL 15, 2017

PEA JOB NO. 2017-093

SCALE: 1" = 20'

DRAWING NUMBER:

1 OF 2



- LEGEND**
- IRON FOUND
 - IRON SET
 - NAIL FOUND
 - NAIL & CAP SET
 - BRASS PLUG SET
 - MONUMENT FOUND
 - MONUMENT SET
 - SEC. CORNER FOUND
 - RECORDED
 - MEASURED
 - CALCULATED
- EXISTING**
- OH-ELEC-W-O: ELEC. PHONE OR CABLE TV O.H. LINE, POLE & GUY WIRE
 - UG-CATV: UNDERGROUND CABLE TV, CATV PEDESTAL
 - UG-PHONE: TELEPHONE U.G. CABLE, PEDESTAL & MANHOLE
 - UG-ELEC: ELECTRIC U.G. CABLE, MANHOLE, METER & HANDHOLE
 - WATERMAIN: WATERMAIN, HYD. GATE VALVE, TAPPING SLEEVE & VALVE
 - SANITARY SEWER: SANITARY SEWER, CLEANOUT & MANHOLE
 - STORM SEWER: STORM SEWER, CLEANOUT & MANHOLE
 - CHIMNEY: CHIMNEY, ROUND & RESERVE CATCH BASIN, YARD DRAIN
 - POST INDICATOR VALVE: POST INDICATOR VALVE
 - WATER VALVE BOX/HYDRANT VALVE BOX, SERVICE SHUTOFF
 - MAILBOX, TRANSFORMER, IRRIGATION CONTROL VALVE
 - UNIDENTIFIED STRUCTURE
 - SPOT ELEVATION
 - CONTOUR LINE
 - GUARD RAIL
 - STREET LIGHT
 - SIGN
 - CONC.: CONCRETE
 - ASPH.: ASPHALT
 - GRAVEL: GRAVEL SHOULDER
- REFERENCE DRAWINGS**
- ASSESSOR'S PLAT NO. 13, L.S.1, P.15, O.C.R.
 - EXHIBIT B - CONDOMINIUMS AT BIRMINGHAM PLACE, O.C.C.P. NO. 1605

SEE SHEET 2 OF 2 FOR
SCHEDULE B EXCEPTIONS,
LEGAL DESCRIPTIONS AND
SURVEYOR'S NOTES

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.

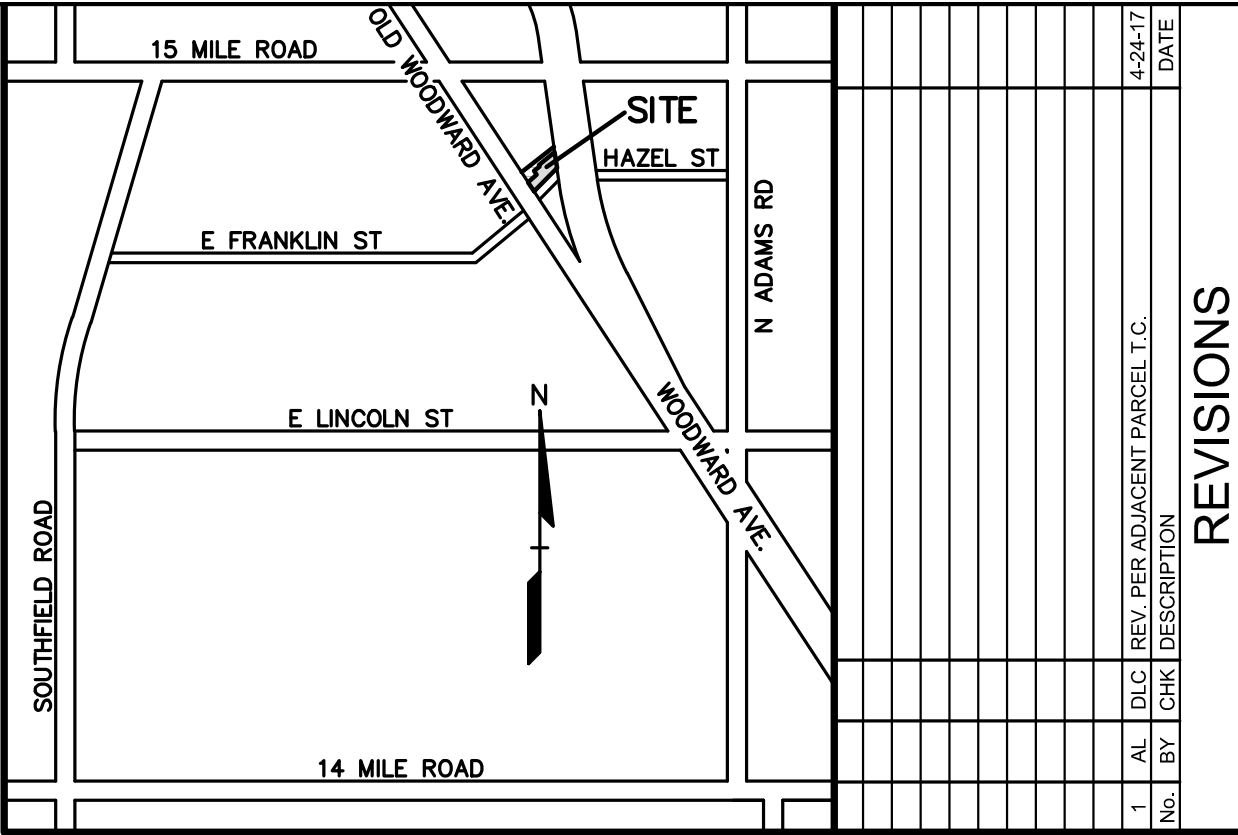
PARCEL "B" SURVEYOR'S NOTES:

- (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.]



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f: 248.689.1044
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MARKUS ASSOCIATES, LLC BIRMINGHAM, MI 48009	TOPOGRAPHIC & ALTA/NSPS LAND TITLE SURVEY-HAZEL ST./WOODWARD			
	PART OF THE NE 1/4 OF SECTION 36, T. 12N., R. 10E., CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN			
	DES.	DN.	DL/C/DSD	SUR.
	JPB	RS	RS	P.M.

ORIGINAL ISSUE DATE: APRIL 15, 2017
PEA JOB NO. 2017-093
SCALE: 1" = 20'
DRAWING NUMBER: 2 OF 2

CERTIFICATE OF SURVEY

To: First American Title Insurance Company
Title Connect, L.L.C.
Markus Associates, LLC

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 2, 3, 4, 5, 7(a), 8, 10(a), 11, and 13 of Table A thereof. The fieldwork was completed on March 24, 2017.

Daniel Cole, PS No. 59791
Agent for PEA, Inc.

BENCHMARKS
(GPS DERIVED - NAVD88)

BM #300
BENCH TIE IN NORTH FACE OF U-POLE, SOUTHWEST CORNER HAZEL STREET AND WOODWARD AVENUE (HUNTER BOULEVARD)
ELEV = 765.98

BM #301
TOP OF NORTHEAST ANCHOR BOLT OF LIGHT POLE BASE, NORTHEAST CORNER OF HAZEL STREET AND OLD WOODWARD AVENUE
ELEV = 766.58

FLOODPLAIN NOTE:
BY GRAPHICAL PLOTTING, SITE IS WITHIN ZONE "X", AREA DETERMINED TO BE OUTSIDE OF THE 0.2% ANNUAL CHANCE FLOODPLAIN PER FLOOD INSURANCE RATE MAP NUMBER 26125C0537F (PANEL 537 OF 704), DATED SEPTEMBER 29, 2006.

Permit No. _____
Date: _____

CITY OF BIRMINGHAM
STORM WATER RUNOFF CONTROL

Project Location: Hazel Street at Old Woodward
Designed by: Paul Bater, PEA

PE: Yes No

	(A) Exist. *	(B) Proposed	
(1) Affected Area	0.423	0.423	acres
(2) Area of Impervious Surface	0.423	0.423	acres
(3) Percent Impervious	100	100	%
(4) Runoff Factor	2.4	2.4	cfs/acre
(5) Unrestricted Runoff Rate	1.02	1.02	cfs
(6) Maximum Permitted Runoff Rate		1.02	cfs
(7) Uncontrolled Runoff Area		-	acres
(8) Area of Impervious Surfaces - Uncontrolled Runoff Area		-	acres
(9) Runoff Factor - Uncontrolled Runoff Area		-	%
(10) Runoff Factor - Uncontrolled Runoff Area		-	cfs/acre
(11) Runoff Rate - Uncontrolled Runoff Area		-	cfs
(12) Maximum Permitted Runoff Rate via Sewer Service Connection		-	cfs
(13) Runoff Rate per Acre		-	cfs/acre
(14) Required Storage per Acre		-	cu.ft./acre
(15) Required Storage for Parcel		-	cu.ft.

PROPOSED DESIGN

(16) Design Storage	-	cu.ft.
(17) Design Outlet Capacity to Sewer Service	-	cfs

Approved by: _____

City Engineer

* Existing Prior to Re-Development

NOTE:
BASED ON THE CITY OF BIRMINGHAM STORM WATER DETENTION WORKSHEET, THIS SITE WILL NOT REQUIRE STORM WATER DETENTION AS THE POST-DEVELOPMENT RUNOFF RATE WILL BE LOWER THAN THE EXISTING RUNOFF RATE.

NOTE:
ALL WORK WITHIN THE WOODWARD AVENUE (M-1) RIGHT-OF-WAY IS UNDER THE JURISDICTION OF THE MICHIGAN DEPARTMENT OF TRANSPORTATION AND REQUIRES A PERMIT

NOTE:
ALL WORK WITHIN THE OLD WOODWARD AVENUE RIGHT-OF-WAY IS UNDER THE JURISDICTION OF THE CITY OF BIRMINGHAM AND REQUIRES A PERMIT

CVS PHARMACY
444 S. OLD WOODWARD AVE.

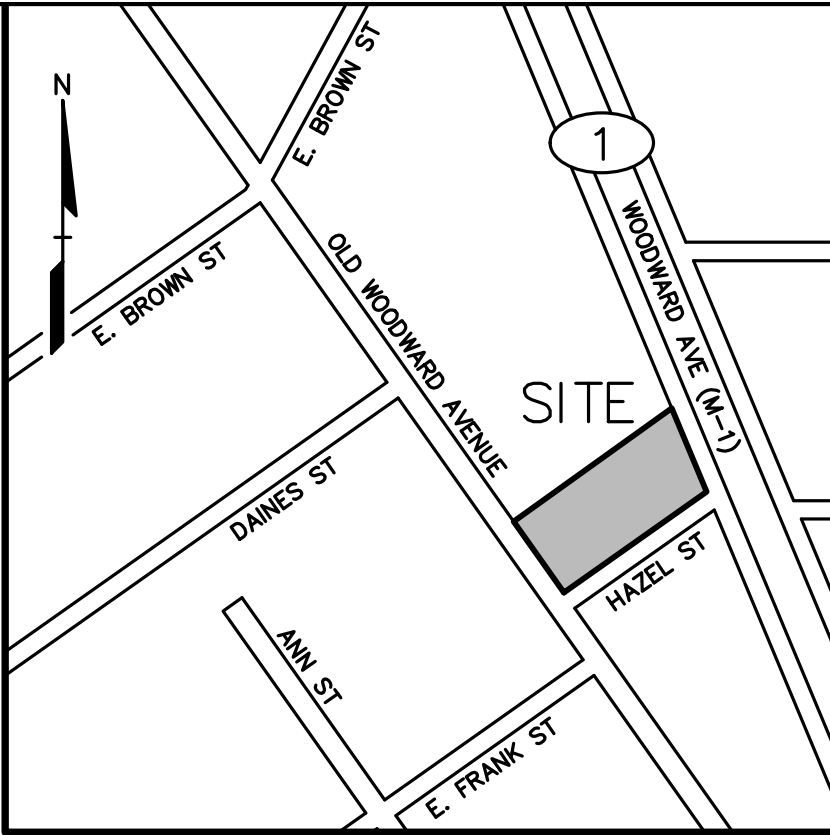
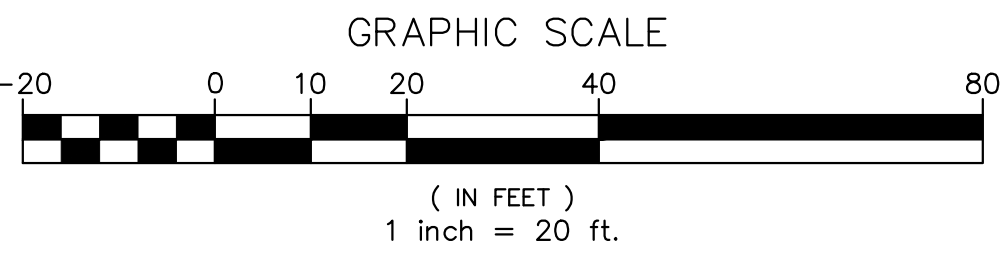
S. OLD WOODWARD AVENUE
(100' WIDE)

WOODWARD AVENUE / M-1
(200' WIDE)

HAZEL STREET (50' WIDE)

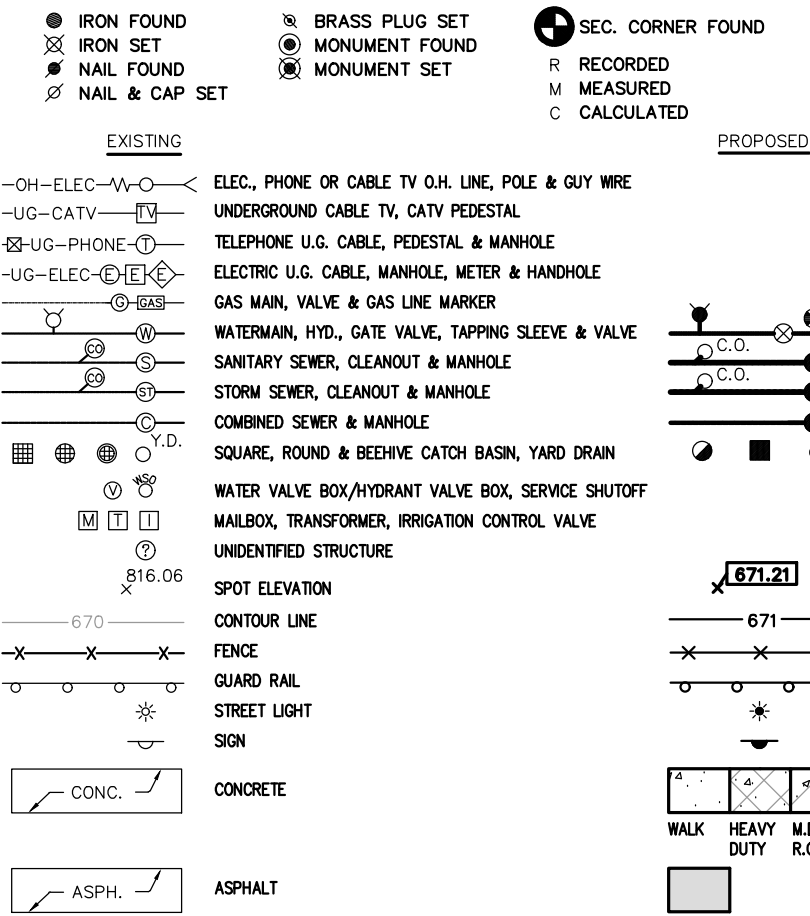
555 S. OLD WOODWARD AVE.

NOTE:
ALL WORK WITHIN THE HAZEL STREET RIGHT-OF-WAY IS UNDER THE JURISDICTION OF THE CITY OF BIRMINGHAM AND REQUIRES A PERMIT



LOCATION MAP - NOT TO SCALE

LEGEND



REFERENCE DRAWINGS

WATER MAIN NOT RECEIVED AT TIME OF SURVEY
SANITARY SEWER NOT RECEIVED AT TIME OF SURVEY
STORM SEWER NOT RECEIVED AT TIME OF SURVEY
COMBINED SEWER NOT RECEIVED AT TIME OF SURVEY
ELECTRIC NOT RECEIVED AT TIME OF SURVEY
TELEPHONE NOT RECEIVED AT TIME OF SURVEY
GAS NOT RECEIVED AT TIME OF SURVEY
PETROLEUM NOT RECEIVED AT TIME OF SURVEY
CATV NOT RECEIVED AT TIME OF SURVEY
FLOOD PLAIN ZONE X, FEMA FORM 26125C0537F, DATED 09-29-06

GENERAL UTILITY NOTES:

- ALL UTILITY LINES, STRUCTURES AND TRENCHES SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE STANDARDS AND REQUIREMENTS OF THE CITY OF BIRMINGHAM.
- NO PHYSICAL CONNECTION TO THE EXISTING WATER MAIN CAN BE MADE UNTIL ALL NEW WATER MAIN PASSES PRESSURE AND BACTERIOLOGICAL TESTS TO THE SATISFACTION OF THE CITY.
- REFER TO DETAIL SHEET C-7.1 FOR ADDITIONAL UTILITY DETAILS AND NOTES.
- ALL WATER MAIN AND FITTINGS (3" DIAMETER AND LARGER) SHALL BE DUCTILE IRON, CLASS 54.
- WATER MAIN SERVICE LEADS SHALL BE TYPE 'K' ANNEALED SEAMLESS COPPER WITH FLARED FITTINGS, UNLESS OTHERWISE NOTED.
- ALL WATER MAIN SHALL BE PROVIDED WITH 5.5' OF COVER UNLESS OTHERWISE NOTED.
- ALL FIRE HYDRANTS SHALL BE EJW #5BR MODEL #250 PER CITY STANDARDS.
- ALL HYDRANTS TO BE A MINIMUM OF 5' FROM BACK OF CURB, TYP.
- ALL NECESSARY FITTINGS, THRUST BLOCKS, RESTRAINING GLANDS, BLOW OFFS, ETC. FOR WATER MAIN ARE CONSIDERED INCIDENTAL TO THIS PROJECT. THE CONTRACTOR SHALL INSTALL THESE ITEMS AS NECESSARY AND AS REQUIRED BY THE CITY OF BIRMINGHAM.
- ALL SANITARY SEWER LEADS SHALL BE POLYVINYL CHLORIDE (PVC) SDR 23.5 PIPE AND FITTINGS. ALL JOINTS TO BE ELASTOMERIC GASKET JOINTS PER ASTM D3212 UNLESS OTHERWISE NOTED.
- SANITARY LEADS SHALL BE PROVIDED WITH CLEANOUTS EVERY 100 FEET AND AT EVERY BEND AS SHOWN. ALL CLEANOUTS TO BE PROVIDED WITH E.J.W. #1565 BOX OR EQUAL.
- ALL STORM SEWER 12" DIAMETER OR LARGER SHALL BE REINFORCED CONCRETE PIPE (RCP C-76) CLASS IV WITH MODIFIED TONGUE AND GROOVE JOINT WITH RUBBER GASKETS UNLESS SPECIFIED OTHERWISE (ASTM C-443).
- ALL STORM SEWER LEADS SHALL BE PVC SCHEDULE 40 WITH GLUED JOINTS UNLESS OTHERWISE NOTED.
- PIPE LENGTHS ARE GIVEN FROM CENTER OF STRUCTURE AND TO END OF FLARED END SECTION UNLESS NOTED OTHERWISE.
- THE CITY OF BIRMINGHAM STANDARD DETAIL SHEETS ARE INCORPORATED INTO AND MADE A PART OF THESE PLANS. CONTRACTOR TO REFER TO THE CITY OF BIRMINGHAM STANDARD DETAIL SHEETS FOR ALL STRUCTURE, PIPE MATERIALS, BEDDING, TESTING, ETC. NOTES AND DETAILS.

SAND BACKFILL NOTE:
ALL UTILITIES UNDER PAVEMENT OR WITHIN 3' OF THE EDGE OF PAVEMENT (OR WITHIN THE 45° LINE OF INFLUENCE OF PAVEMENT) SHALL HAVE M.D.O.T. CLASS II GRANULAR BACKFILL COMPACTED TO 95% MAX. DRY DENSITY (ASTM D-1557).

REVISIONS

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PRELIMINARY UTILITY PLAN
SOUTH OLD WOODWARD
OLD WOODWARD AVENUE AT HAZEL STREET
CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN 48009

DES.	PB	DN	PB	SUR.	DLC	P.M.	JPB
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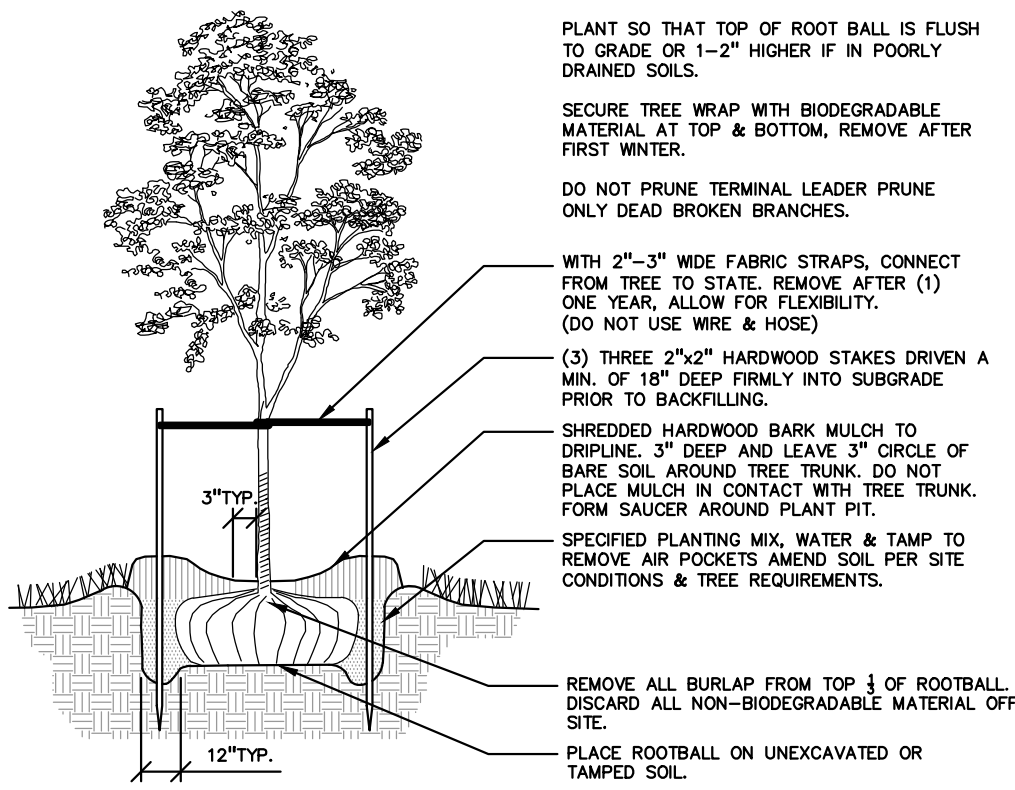
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S:\PROJECTS\2017\2017093\DWG\17093-17093.dwg

ORIGINAL ISSUE DATE:
MARCH 6, 2017
PEA JOB NO. 2017-093
SCALE: 1" = 20'
DRAWING NUMBER:

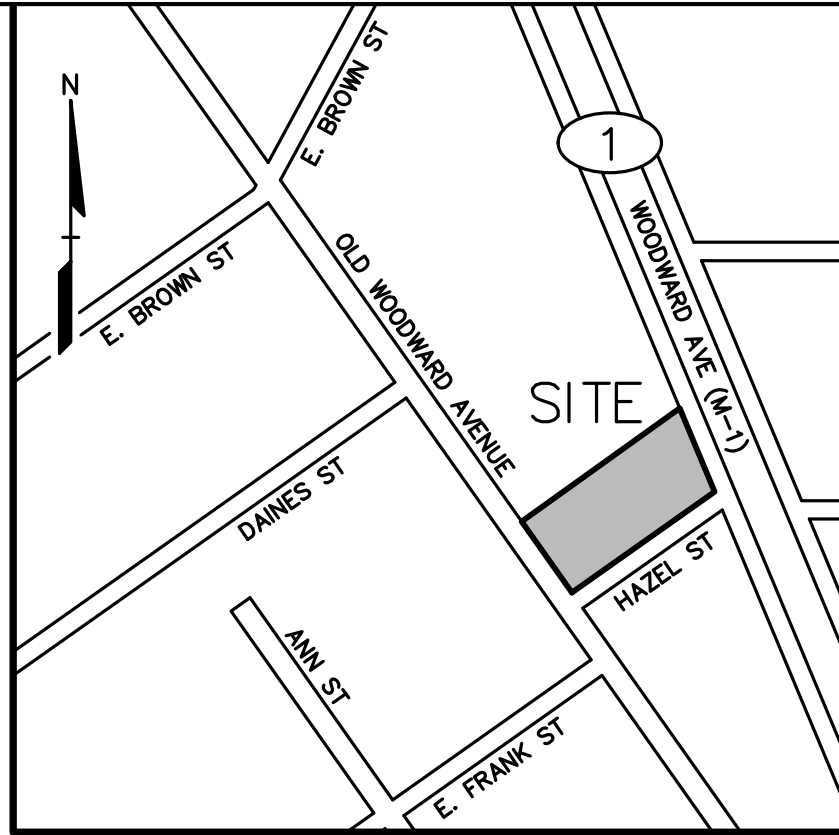
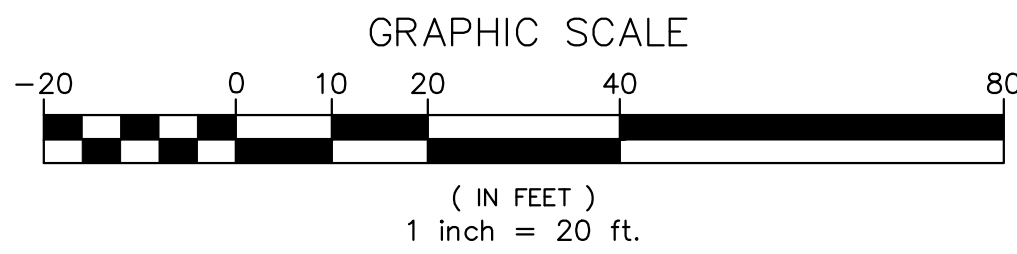
C-6.0

NOT FOR CONSTRUCTION

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XREF: S:\PROJECTS\2017\2017093\DWG\17093-17093.dwg
XREF: S:\PROJECTS\2017\2017093\DWG\17093-17093.dwg



DECIDUOUS TREE PLANTING DETAIL
NOT TO SCALE



LOCATION MAP - NOT TO SCALE

TREE PLANT LIST:				
QUANTITY	KEY SYMBOL	COMMON NAME	SCIENTIFIC NAME	SIZE
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



GENERAL PLANTING NOTES:

1. 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.
2. 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.
3. 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.
4. CONTRACTOR IS RESPONSIBLE FOR VERIFYING ALL QUANTITIES SHOWN ON LANDSCAPE PLAN PRIOR TO PRICING THE WORK.
5. THE OWNER'S REPRESENTATIVE RESERVES THE RIGHT TO REJECT ANY PLANT MATERIAL NOT MEETING SPECIFICATIONS.
6. ALL SINGLE STEM SHADE TREES TO HAVE STRAIGHT TRUNKS AND SYMMETRICAL CROWNS.
7. ALL SINGLE TRUNK SHADE TREES TO HAVE A CENTRAL LEADER; TREES WITH FORKED OR IRREGULAR TRUNKS WILL NOT BE ACCEPTED.
8. 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.
9. ALL EVERGREEN TREES SHALL BE HEAVILY BRANCHED AND FULL TO THE GROUND, SYMMETRICAL IN SHAPE AND NOT SHEARED FOR THE LAST FIVE GROWING SEASONS.
10. ALL TREES TO HAVE CLAY OR CLAY LOAM BALLS, TREES WITH SAND BALLS WILL BE REJECTED.
11. 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.
12. 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.
13. IT IS MANDATORY THAT POSITIVE DRAINAGE IS PROVIDED AWAY FROM ALL BUILDINGS.
14. ALL PLANTING BEDS SHALL RECEIVE 3" SHREDDED HARDWOOD BARK MULCH WITH PRE EMERGENT, SEE SPECIFICATIONS. SHREDDED PALETTE AND DYED MULCH WILL NOT BE ACCEPTED.
15. ALL LANDSCAPED AREAS SHALL RECEIVE 3" COMPACTED TOPSOIL.
16. SEE SPECIFICATIONS FOR ADDITIONAL COMMENTS, REQUIREMENTS, PLANTING PROCEDURES AND WARRANTY STANDARDS.
17. 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

DES. LW DN LW SUR. P.M. JTS

ORIGINAL ISSUE DATE:
MARCH 6, 2017

PEA JOB NO. 2017-093

SCALE: 1" = 20'

DRAWING NUMBER:

L-1.0

NOT FOR CONSTRUCTION

XREF: S:\PROJECTS\2017\2017093\DWG\17093-TOPOBASE.DWG
XREF: S:\PROJECTS\2017\2017093\DWG\SITE PLAN\BASE-17093.DWG
XREF: S:\PROJECTS\2017\2017093\DWG\SITE PLAN\TBLK-17093.DWG



Williams Williams Rattner & Plunkett, P.C.
Attorneys and Counselors

380 North Old Woodward Avenue
Suite 300
Birmingham, Michigan 48009

Tel: (248) 642-0333
Fax: (248) 642-0856

May 17, 2018

Richard D. Rattner
rdr@wwrplaw.com

City of Birmingham
City Commission
151 Martin St.
Birmingham, MI 48009

Re: Application to include 469 and 479 S. Old Woodward, Birmingham, MI
("Subject Property") in the D5 Downtown Birmingham Overlay District
Zone ("Application")

Dear Members of the Planning Board and City Commission:

Please accept this letter from the property owner ("Property Owner") of 469 and 479 S. Old Woodward ("Property") as a Supplement to the referenced rezoning Application file to rezone the Subject Property from the D-3 Zone to the D-5 Overlay Zone in the Downtown Birmingham Overlay District.

Executive Summary

The Subject Property is a former single-story restaurant building and bank that sits between two existing tall buildings in the City. Birmingham Place is located to the north and the 555 Buildings are located to the south. The placement of the buildings is not only inconsistent with a cohesive and harmonious streetscape in that area but is contrary to the intent of the Master Plan. This inconsistent height results in a streetscape along South Old Woodward that appears to have a "missing tooth."

If the Subject Property is rezoned to D-5, there is an excellent opportunity for the Subject Property, Birmingham Place and the 555 Buildings to create an impressive southern gateway to Downtown Birmingham. It is therefore reasonable that the Subject Property, sitting directly between the 555 Buildings and Birmingham Place, be included in the same zoning district, that is as part of the D-5 Overlay District, as those neighboring two buildings.

Rezoning the Subject Property to the same classification as the buildings immediately to the north and south will enhance and complete the streetscape of these important two blocks of Downtown Birmingham. Inclusion of the Subject Property in the D-5 Overlay Zone is consistent with the 2016 Master Plan. Moreover, it will allow the Subject Property to enjoy the same development regulations as the neighboring properties.

The Subject Property and the Master Plans

A review of the history surrounding the zoning of this area of Downtown is instructive. The minutes of the City Commission during the late 1960s and early 1970s, reveals that the height of the buildings in this area of Downtown were historically zoned for the height of the 555 Buildings and Birmingham Place. However, the zoning ordinance was amended in the 1970's after the construction of those buildings to a maximum of four stories. Therefore, for several years, the taller buildings in the City were burdened with the status of legal nonconforming uses.

In 2016, the City corrected this down zoning for the 555 Building to the south and Birmingham Place to the north, with the creation of the D-5 Zone to allow for existing heights (in the case of the 555 Buildings and Birmingham Place) and to allow for new construction to a height up to the same height of an immediately adjacent or abutting building (see Ordinance 3.04-4-b). While the 555 Building and Birmingham Place are now at allowable heights, sitting in between them, the Subject Property is the only building in that streetscape that cannot be constructed to a height that is consistent to its neighbors. This inconsistency creates an obvious gap in the street's architecture which is not harmonious with the overall downtown design and longer-range plan for that part of South Old Woodward.

The Birmingham of 2016

In 1996, the City Commission adopted the Downtown Birmingham 2016 Plan ("2016 Plan") and amended the Zoning Ordinance to include the Downtown Birmingham Overlay District. The Subject Property is located in the D-3 Zone, sitting between two tall buildings in the City that have been rezoned to the D-5 zone. These multi-story buildings are the established character of this particular area of the City. Placing the Subject Property in the D-5 zone would allow development of the Subject Property to be at a similar height to the buildings directly to the north and south. The Applicant desires to develop the Subject Property in a manner that completes the block between Brown and Hazel while adding to the cohesiveness of the South Old Woodward southern gateway area.

The Birmingham Zoning Ordinance at Sec. 1.04 provides that the purpose of the Zoning Ordinance is to "...guide the growth and development of the City in accordance with the goals, objectives and strategies stated within the Birmingham Master Plan ("Birmingham Plan"), and Downtown Birmingham 2016 Plan. A review of the Birmingham Plan (1980) and the Downtown Birmingham 2016 Plan (1996) reveals that this application to include the Subject Property in a D-5 Overlay District meets the spirit and intent of the ordinance as well as the 2016 Plan. It will allow for mixed uses and add to the vitality of the modern streetscape envisioned for this part of town by the 2016 Plan. With rezoning, the Subject Property can become that desired mixed-use space for retail, residential and hotel, and bring new life to the South Old Woodward area.

Any redevelopment of the Subject Property in compliance with its current zoning classification would result in a building with frontage dwarfed by the existing neighboring structures. Therefore, by rezoning the Subject Property to the D-5 overlay, a new building could be built to a similar height as the neighboring buildings, and effectively complete an otherwise missing piece of the streetscape.

In summary, it is clear that the intent of the 2016 Plan includes development of this southern area of the Downtown Overlay District as a gateway to Downtown through enhancing the character of buildings and providing our City with an active, pedestrian-friendly, urban streetscape.

Rezoning Amendment – Sec. 7.02 (B)(2)(b)(i)-(iii)

The Zoning Ordinance at Sec. 7.02 requires that as part of an application for rezoning, the petitioner should address certain issues to be considered by the Planning Board and the City Commission. Please consider the following comments with respect to these issues.

7.02(B)(2)(b)(i) - An Explanation of Why the Rezoning is Necessary for the Preservation and Enjoyment of the Rights and Usage Commonly Associated with Property Ownership

Rezoning of the Subject Property is necessary to preserve the Applicant's enjoyment of rights associated with ownership of a property zoned for mixed uses. Because of the size and corner configuration of the parcel, it will not support street-level retail, residential, and parking for residents in the same manner as the neighboring properties. The 2016 Plan clearly anticipates mixed use developments. Such planning requires space to design and locate mixed uses within a given structure. Without the ability to go higher with a new building than current zoning allows, the Applicant will not have the required area within which to locate a mix of uses, or otherwise to be able to enjoy all of the allowed uses that would commonly be associated the design of such a modern, mixed-use building. Furthermore, the D-5 Ordinance, at section 3.04-4-b, anticipates that the Subject Property and those similarly situated may enjoy the same rights of usage through an extension of height as other existing tall buildings already enjoy in the D-5 Overlay District.

Sec. 7.02(B)(2)(b)(ii) - An Explanation of Why the Existing Zoning Classification is No Longer Appropriate

The existing D-3 zoning classification is no longer appropriate for the Subject Property. The Subject Property is surrounded by the Birmingham Place, a ten-story building on the north side and the 555 Buildings, a fifteen-story building on the south side. This height is an established pattern in this area of the City. This rezoning request is actually an "infill" rezoning to bring the entire area into architectural and design harmony with surrounding buildings. It is reasonable for the Subject Property to share the same zoning classification as its surrounding neighbors. This would allow development of the property in a manner consistent with the

existing structures from Brown Street south to Haynes Street. It will create a more unified block and enhance the character of the gateway area to Downtown Birmingham. The rezoning of the Subject Property would restore the property to a zoning classification this area of the City once enjoyed, as the Planning Board has done for with Birmingham Place and the 555 Buildings. Hence, given the location of the Subject Property sandwiched between two properties in the D-5 Zone, the D-3 Zone is no longer appropriate.

Sec. 7.02(B)(2)(b)(iii) - An Explanation of Why the Proposed Zoning will not be Detrimental to the Surrounding Properties

The proposed rezoning of the Subject Property is not detrimental to surrounding property owners. Note that the proposed rezoning does not extend the D-5 classification further to the north or south of the current D-5 Zoning, but actually fills in the one gap in the streetscape that is noticeably out of place and anachronistically remains in the D-3 Zone. The surrounding properties to the north and south already are in the D-5 Zone. When these neighboring properties were rezoned, the Planning Board anticipated that eventually the Subject Property also may be rezoned for the reasons stated in this letter. Placing the Subject Property in D-5 Zone will be placing it on equal footing with the surrounding properties from a structural, use and design perspective. The proposed rezoning will enhance the entire area by allowing it to be developed as an attractive part of the South Old Woodward gateway and bring that area into compliance with the spirit and intent of the 2016 Master Plan.

Conclusion

The Applicant respectfully requests that the City Commission rezone the Subject Property from the D-3 to the D-5 Zone as discussed in this letter.

Very truly yours,

WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, P.C.

A handwritten signature in black ink, appearing to read "Richard D. Rattner", written in a cursive style.

Richard D. Rattner

RDR/cmc



Project M1

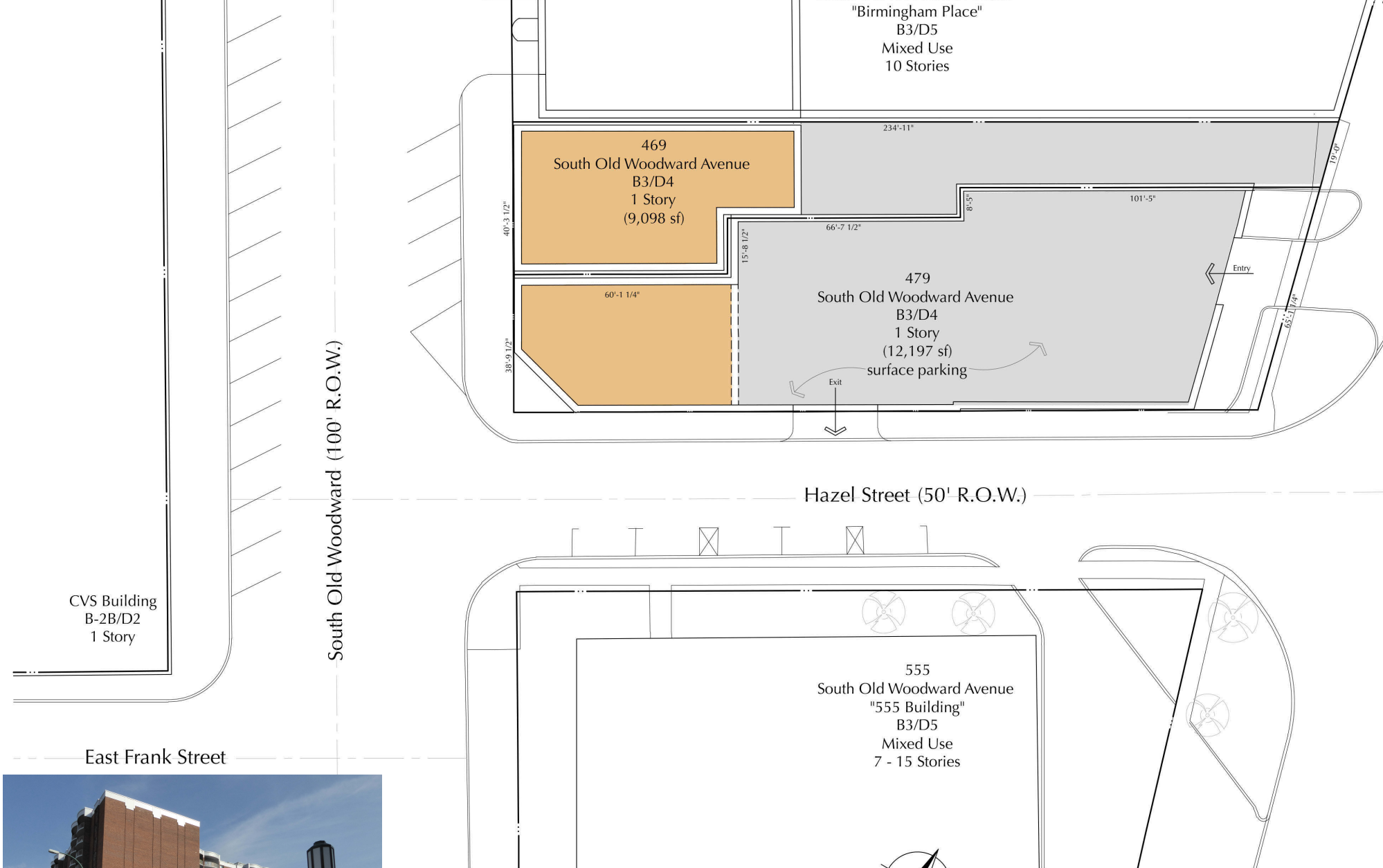
Markus Management Group LLC
469 + 479 South Old Woodward Avenue
Birmingham, MI 48009

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

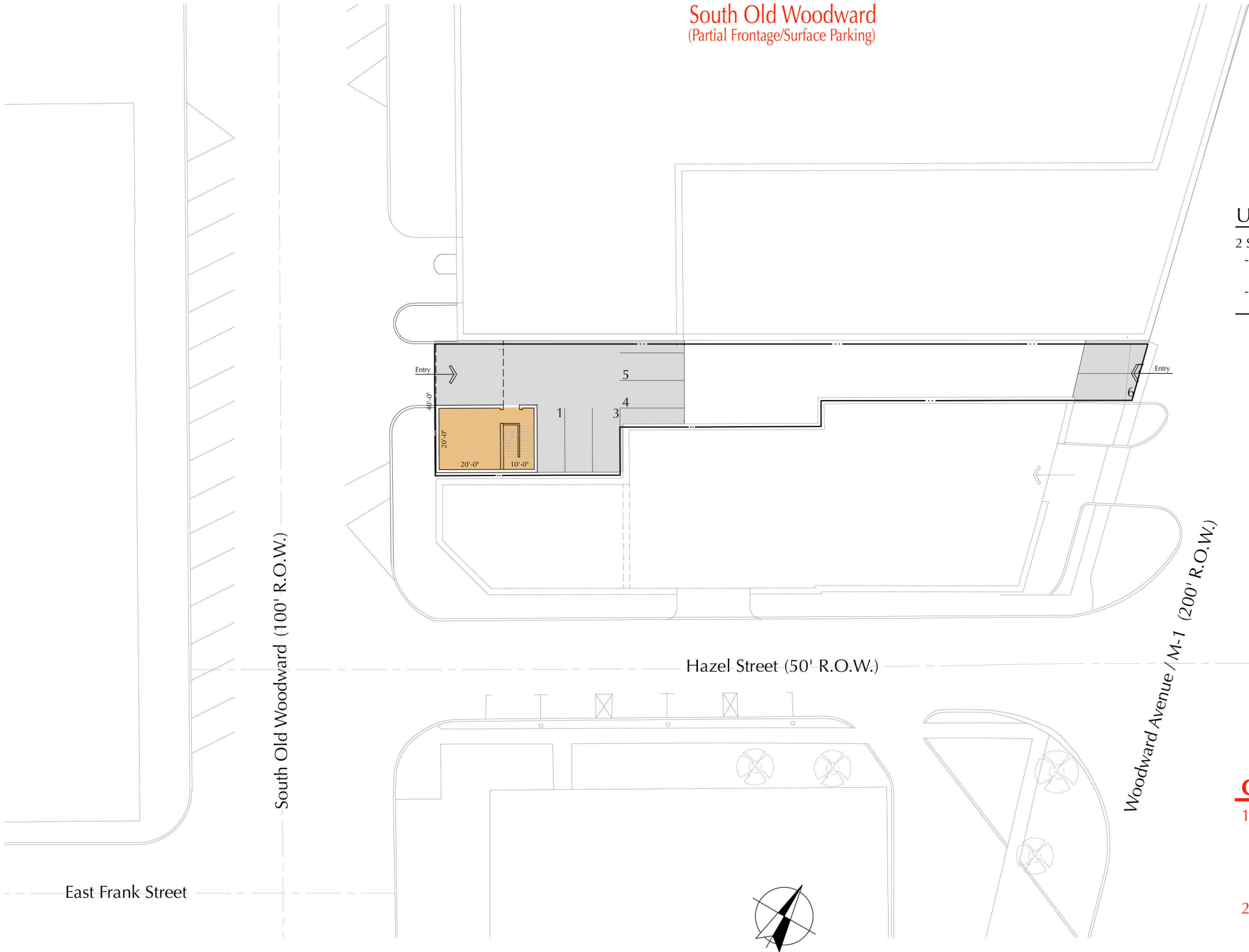


1. Cannot redevelop either site with the same use or building size and provide adequate parking
2. Cannot redevelop either site with a single-story building (required to meet the 'Downtown Birmingham Overlay Ordinance').
3. Combined sites have 3 separate frontages that are required to meet the 'Downtown 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

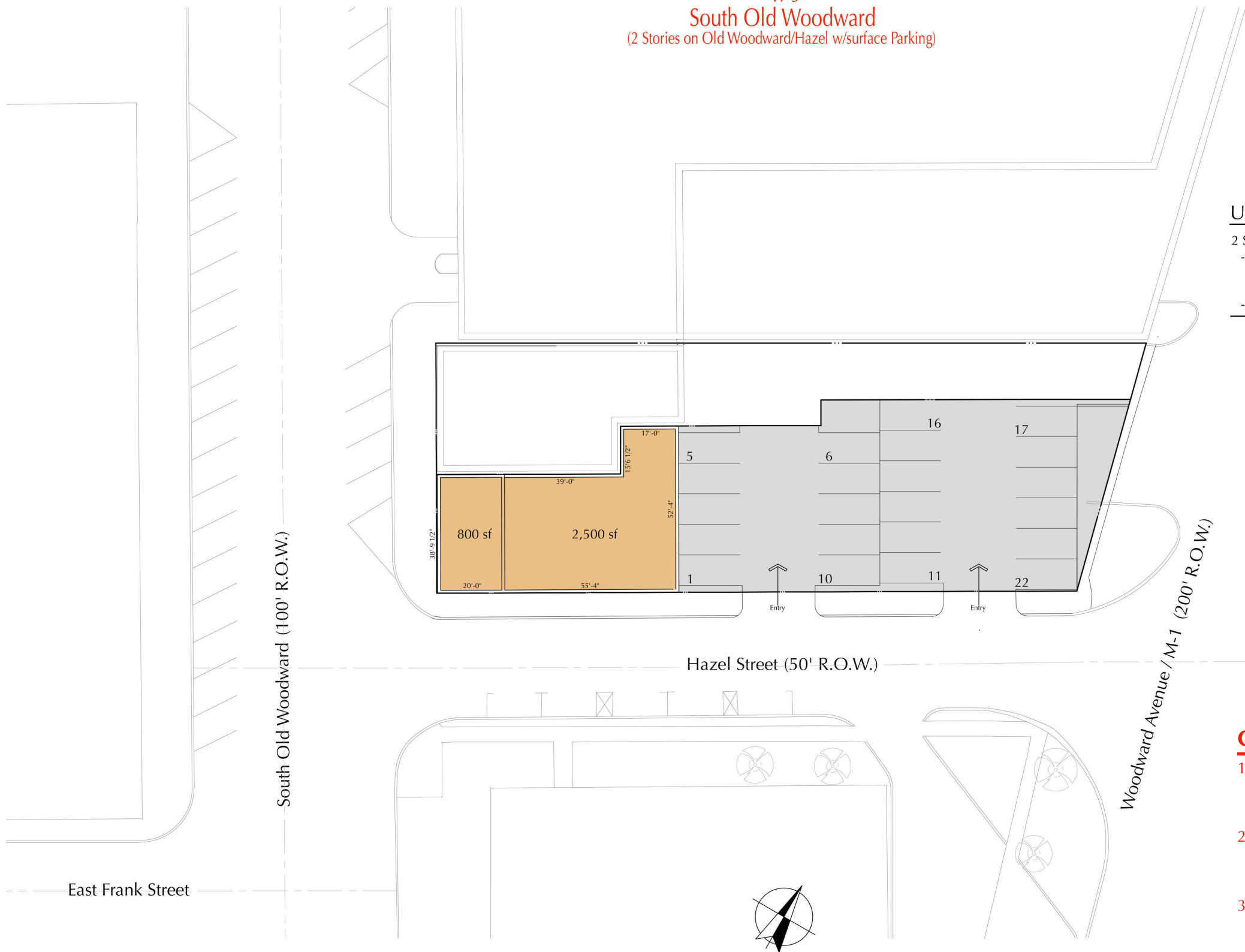
Total Required	7.3 Spaces
Total Provided	7 Spaces

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
<hr/>	
- 2,500 sf Office (1st) / 150 =	16.7 Spaces
<hr/>	
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

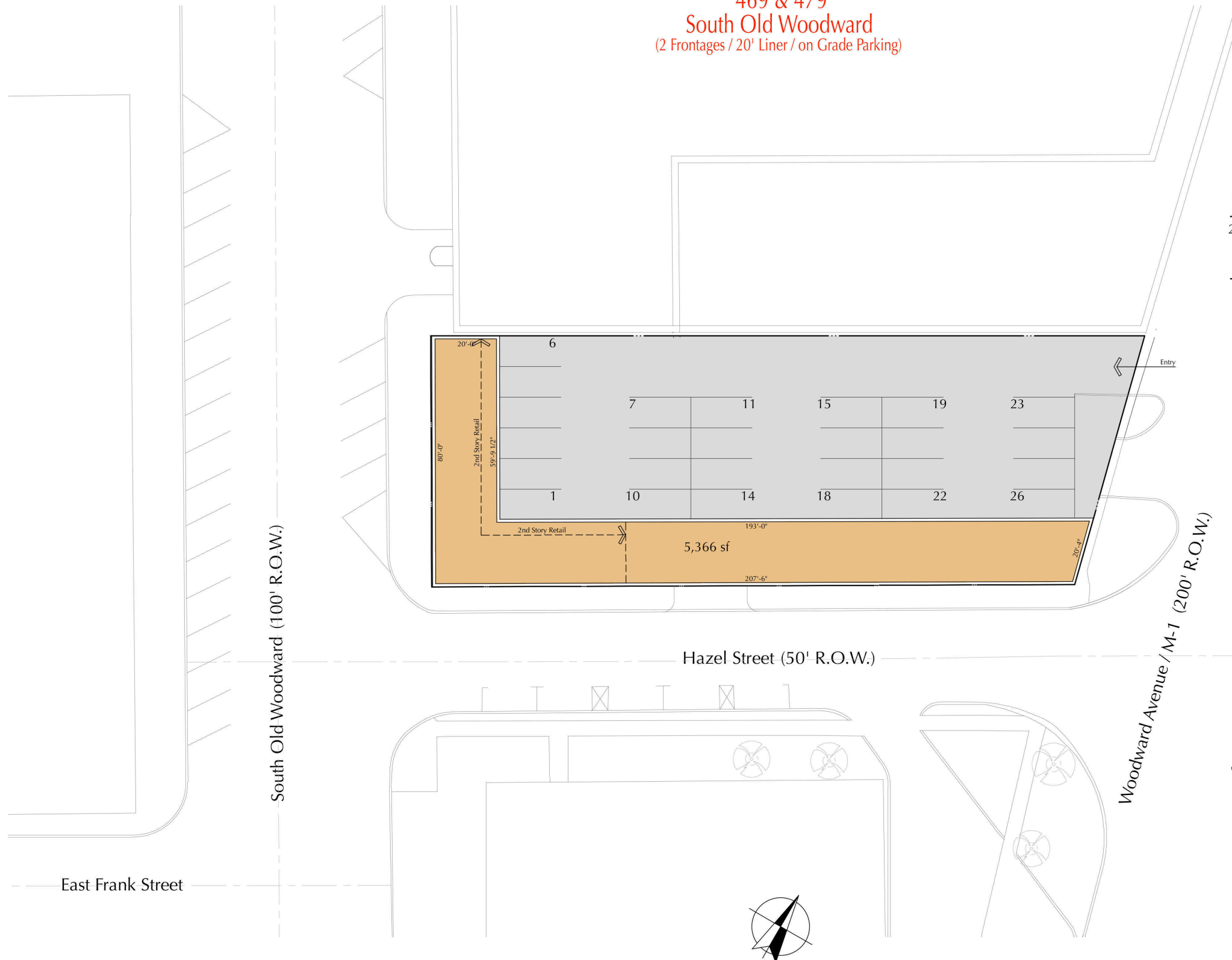
469 & 479
South Old Woodward
(2 Frontages / 20' Liner / on Grade Parking)

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

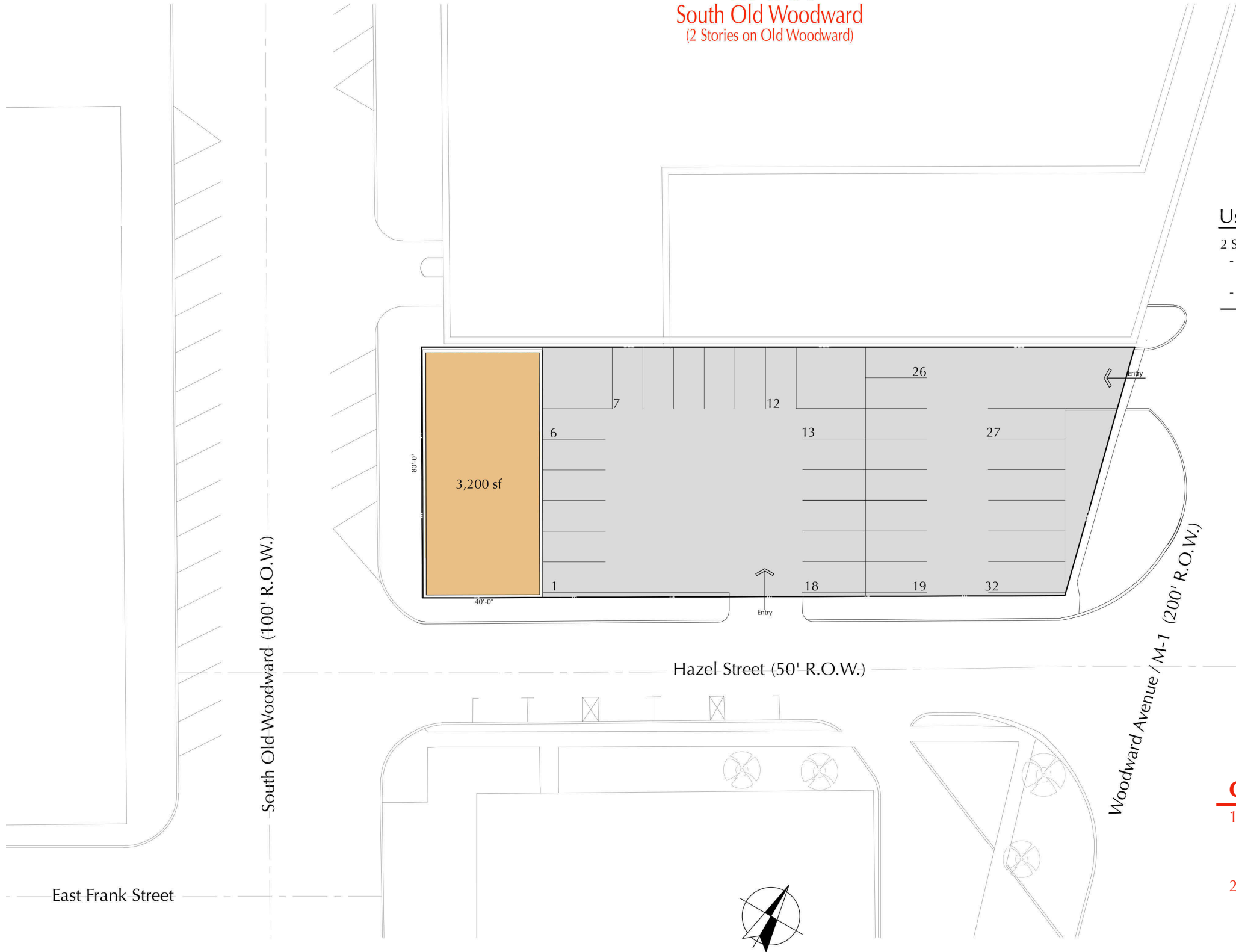


Comments

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)

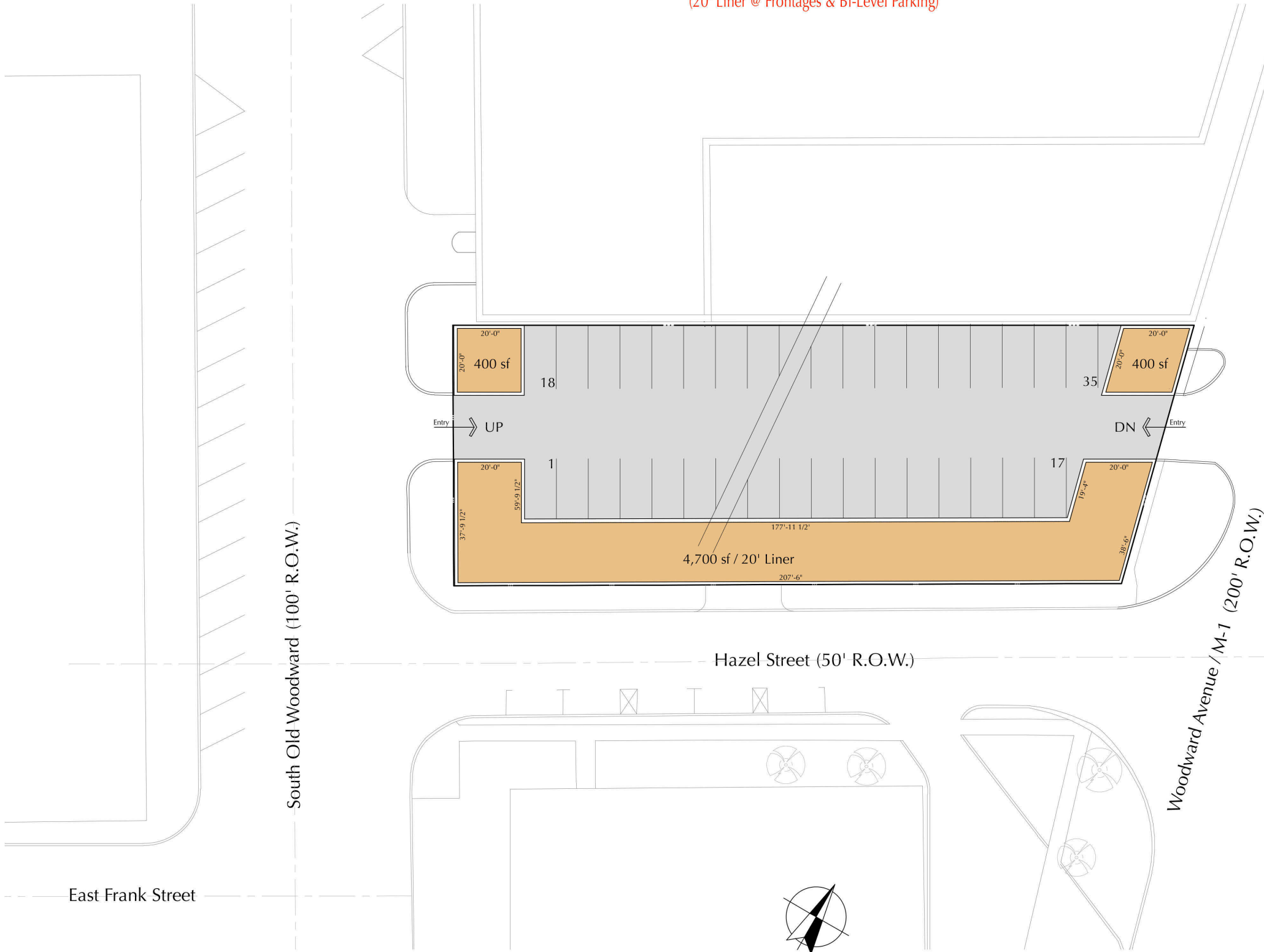


Use and Parking Data		
2 Story Building		
-	3,200 sf Retail (1st) / 300 =	10.7 Spaces
-	3,200 sf Office (2nd) / 150 =	21.3 Spaces
Total Required		32 Spaces
Total Provided		32 Spaces

- 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)



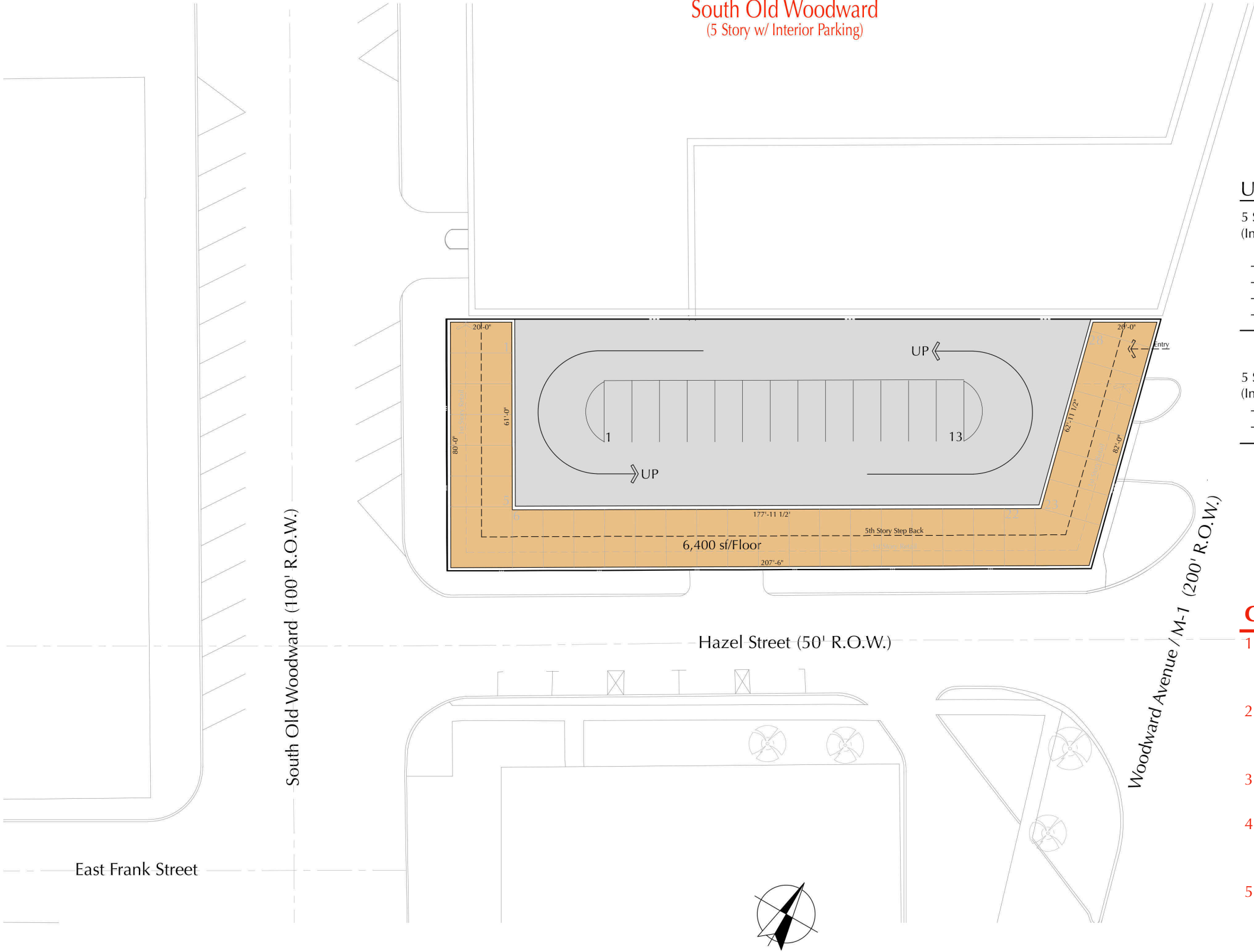
Use and Parking Data

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
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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

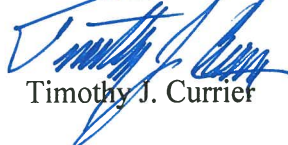
Dear Members of the Board:

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

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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

August 13, 2018

City of Birmingham
City Commission
Planning Board
151 Martin St.
Birmingham, MI 48009
Attention: Ms. Jana Ecker

Re: Request for Re-Hearing on Application to include 469 and 479 S. Old Woodward, Birmingham, MI ("Subject Property") in the D5 Downtown Birmingham Overlay District Zone ("Application")

Dear Members of the City Commission, Planning Board and Ms. Ecker:

Please accept this letter from the property owner ("Property Owner") of 469 and 479 S. Old Woodward ("Property") as a Request for Re-Hearing of the Property Owner's rezoning Application to rezone the Subject Property from the D-4 Overlay Zone to the D-5 Overlay Zone in the Downtown Birmingham Overlay District.

The information set forth in this letter supplements the information set forth in the Application and the undersigned's letter of May 17, 2018. Please recall that the subject Property is a former single-story restaurant building and drive-through bank that sits between two existing D-5 zoned buildings in the City. The Property is in the B-3 Office-Residential Zone and the D-4 Overlay Zone.

Summary

The Application was considered by the Planning Board at its meeting on June 27, 2018 and the Planning Board denied the Application. The Applicant requests that the Planning Board rehear the Application due to consideration of new information not reviewed and to correct certain factual inaccuracies or errors in the record that quite likely prevented the Planning Board from affording this Application a full and fair hearing. Without such a full consideration of all of these new and pertinent factors, the Board will be in the position of recommending denial of a petition without the opportunity of hearing all of the important issues related to the intent, purpose and consequences of such a zone, and without the advantage of putting those issues in perspective when considering a zoning ordinance that is a crucial part of the Birmingham Downtown Overlay District plan.

The D-5 ordinance is one of the most carefully drafted ordinances produced by the City. It is the subject of over two years of study and research. Multiple alternative drafts were proposed by the City Planning Department over the years, and every section has been fully discussed and vetted by the City Commission and the Planning Board. This D-5 ordinance was recognized as being an integral part of the Downtown Birmingham Overlay District by the City. When the ordinance was passed it was heralded as not only solving existing problems but it fit into the fabric of the Overlay District's plan to encourage mixed use buildings in the Downtown Overlay (especially in the South Old Woodward area) so that our city can maintain a vibrant, pedestrian friendly attractive live, work and entertainment district. It was enacted as part of the City's modern plan to create a sustainable, vibrant downtown.

To mischaracterize this ordinance as a mere correction of nonconformity for three buildings is not only erroneous, but does disservice to the hard work done by the City Commission, Planning Board and Administration. Most importantly, such an analysis does not comply with the spirit, intent and vision exhibited in theory and practice in the Downtown Birmingham Overlay District. Said simply, such an interpretation ignores and discredits all of the good faith hard work that went into the creation of not only the Ordinance, but the master plan process for the future of our growing and vibrant downtown.

The Property is *not* within the Parking Assessment District, Contrary to Information Presented in the Board's Packet

This Property is *not* within the parking assessment district. This is a serious flaw in any zoning analysis and must be corrected in order for the public record of the Board's action and recommendation on the Application to properly reflect the realities of this matter. Correcting this fact leads to new information about the Property and the plan for development of the Property that is central to the question of rezoning pursuant to the Zoning Enabling Act. The Board has not had an opportunity to review this new information in the first instance. The new information significantly changes the analysis of rezoning under Article 7.02B2b and 7.02B5 of the Zoning Ordinance.

Contrary to what was assumed by the Planning Board, because the Property is not in the Parking Assessment District (Parking Assessment District Map is enclosed for your reference at **Exhibit A**), it currently has no possibility of providing off-street parking on the premises. In fact, it is currently non-conforming and cannot comply with Article 4.46 of the Zoning Ordinance (Off-Street Parking Spaces Required).

The Planning Department's Memorandum submitted to the Planning Board, dated May 18, 2018, regarding the Community Impact Statement of the Property's redevelopment, erroneously provides, "The subject Property is in the Parking Assessment District." And not only is the subject Property not in the Parking Assessment District, contrary to what was reported to the Planning Board, but we understand that this Property is the only D-4 zoned property in the

City not included in the Parking Assessment District.

Zoning Analysis – Revisited

Whether or not the Property is within the Parking Assessment District makes a significant difference in terms of the analysis under Sec. 7.02(B)(2)(b)(i-iii), Zoning Amendments. Section 7.02(B) requires the Applicant to provide certain explanations about the rezoning to be considered by the Planning Board and the City Commission. Please consider the following new information regarding the effects of the Parking Assessment District on this analysis, which was not reviewed by the Board.

- **Sec. 7.02(B)(2)(b)(i) - An Explanation of Why the Rezoning is Necessary for the Preservation and Enjoyment of the Rights and Usage Commonly Associated with Property Ownership**

The issue of location outside of the Parking Assessment District provides new information about the necessity of rezoning the Property to preserve the Applicant's enjoyment of rights associated with ownership. Because of the size and narrow corner configuration of the Property, it will not support street-level retail, residential, *and the required parking for those uses*. The off-street parking requirements for this Property make the engineering and design of a mixed-use D-4 seriously impractical if not impossible. The 2016 Plan promotes mixed use developments. Such planning requires space to design and locate mixed uses within a given structure. Not only will the Applicant lack the required area within which to locate all of the mixed uses with a first-floor retail mandate, the Applicant also is absolutely hamstrung by the off-street parking requirements for this site. The maximum use of the underground area will not yield enough parking spaces for a building designed to current zoning. Rezoning the Property to the D-5 Zone will allow more vertical space within which to accommodate a mixed-use building together with the required parking for all permitted uses.

- **Sec. 7.02(B)(2)(b)(ii) - An Explanation of Why the Existing Zoning Classification is No Longer Appropriate**

The Applicant provided information that the current zoning was no longer appropriate at the June 27, 2108 meeting. However, the Board inadvertently coalesced around a discussion and conclusion that the Applicant had not shown that a "D-4 building would not work" at the site (Mr. Koseck and Ms. Whipple-Boyce at hearing time 2:20:15). But this is not the requirement set forth in the ordinance. Further, the Board denied discussion about the development plan for the Property, until after the Applicant obtained rezoning. The Board applied a standard of proof that is not part of the ordinance, but rather more aptly applies to considering whether the rezoning depended on whether the Applicant can use the property as zoned. This is not the standard under the ordinance. Such a standard is often heard in a discussion of whether the property has been inversely condemned by the application of the ordinance. It is unfair to hold the applicant to a

standard that requires proof that the property cannot be used as zoned rather than the “appropriateness” of current zoning. When properly analyzed in the context of the Master Plan, which is the standard of the Birmingham ordinances, it is appropriate for the subject Property to share the same zoning classification as its immediate neighbors. As will be demonstrated in the next paragraph, the Property is incapable of supporting a structure built to current D-4 or B-3 zoning requirements.

The Property consists of two lots -- 469 and 479 -- which front Old Woodward and Woodward Avenue. The lots are in the “retail/red-line district” and under current zoning, each lot is severely restricted.

469 S. Old Woodward

The 469 lot width narrows as it extends east and has approximately 21 feet of Woodward Avenue frontage. The site has an existing 1 story, 2,900 square feet building, formerly used as a restaurant. Should this parcel be re-used, its only use (by necessity) would need to be a ‘nonconforming’ restaurant, since any change in use without a parking assessment district designation would require it to provide onsite parking for the new intended uses. However, since the restaurant has been closed for more than six months, it would not be eligible to continue as a nonconforming use!

Given the parcel’s narrow configuration, the only onsite parking that could be provided to satisfy the ordinance is two (2) spaces off of Woodward Avenue. Only two onsite parking spaces would limit the building footprint to approximately 300 to 600 square feet, depending on the permitted use. There is no practically feasible way to provide greater parking spaces.

479 S. Old Woodward

The 479 parcel has 211 feet of frontage on Hazel and approximately 40 feet of frontage on Old Woodward. This lot expands as it extends east to approximately 66 feet of Woodward Avenue frontage. The lot has an existing one-story, 11,826 square foot enclosure of which a small portion is a finished bank building. The balance is dedicated to a drive-thru lane for a drive-thru bank. Should this parcel be re-used, its only use (by necessity) must be a ‘nonconforming’ drive-thru bank since any change in use under the Ordinance would trigger onsite parking requirements for the new intended use. Also, drive-thru banks are specifically prohibited in the downtown Birmingham Overly District. See ordinance at Article 3(4)(C)(2)(b): “The following uses are prohibited...Drive-in facilities or any commercial use that encourages patrons to remain in their automobiles while receiving goods or services.”

Given lot 479’s configuration, the only onsite parking that would be practically feasible is approximately 13 spaces to be entered off of Woodward Avenue or Hazel. Thirteen onsite parking spaces would limit the building footprint to not more than from 1,950 square feet to

approximately 3,900 square feet, depending on the permitted use. It is possible for a new building to be multiple stories and this may allow for greater area on the ground floor for parking spaces. At most with a 2200 square foot ground floor, 27 parking spaces could be fit to the site. However, the building would be limited to approximately two stories and would not be contextual to the neighborhood. In essence, the lot would be converted partially to a surface parking lot.

Combined Lots

Seemingly, the combination of the two parcels would create greater opportunity to develop a project conforming to the Master Plan and the 2016 Downtown Plan goals for the B3/D4 zoning. Unfortunately, the combined parcel cannot meet the Master Plan and 2016 Downtown Plan goals of mixed uses and first floor retail without both onsite parking and underground parking. The Ordinance mandates main level retail (20' minimum in depth) on Old Woodward. Of course, onsite parking must be provided for any additional uses. This forces redevelopment toward uses with minimal parking requirements, such as hotels, which is what the Applicant proposes. As stated elsewhere in this letter, there are serious difficulties with building an underground garage within the D-4 design parameters that is deeper than two levels. Clearly, the current zoning unfairly forces the owner into an unreasonable position when considering the parcel's potential use and its place in the Downtown Overly District. Consequently, any such garage is limited to approximately 60 parking spaces.

To discuss these difficulties in a vacuum is not the intention of the Zoning Enabling Act. The Act at MCL 125.3203 provides that zoning must be determined according to a plan. Here, the Applicant attempted to explain to the Board that the site plan is impacted by the fact that the Property is not within the Parking Assessment District. Unfortunately, the Board refused to consider any site plan and its conformance to the 2016 Plan, putting such review off until the Applicant obtained rezoning. This placed the Applicant in a double-bind. He could not demonstrate the inappropriateness of current zoning without an analysis of how the Parking Assessment District, or lack thereof, affects the site plan design. Had the Applicant been allowed to at least discuss a site plan design in relation to the rezoning analysis, he would have demonstrated that there is no feasible option to develop the Property within the current zoning classifications outside of the Parking Assessment District. This would have been a valuable discussion of new information that should have at least been heard by the Planning Board.

Mischaracterization that the D-5 Ordinance was Passed Only to Make Three Properties Conforming

Two attorneys from the same law firm, as representatives of the residents of Birmingham Place, each separately addressed the Board during the June 27th hearing. The main thrust of their argument to the Board was that the only reason the D-5 Zone was added to the ordinance was in order to correct the non-conformity of the 555 Building, Merrill Wood and Birmingham

Place. They argued that the new Zone did not apply to any other properties. This assertion ignores the very careful hard work of the City Commission, the Planning Board, and the Administration. This claim is also clearly contrary to the history of the D-5 ordinances and to its plain language.

The history of the Planning Board's consideration of the D-5 Zone was outlined in detail by Ms. Ecker at the June 27th meeting. The Planning Board studied and considered the revisions to the ordinance for the South Old Woodward area for two years prior to adopting the D-5 Zone. In the Planning Department's Memorandum to the Planning Board, dated September 22, 2016, submitted to the Board for its September 28, 2016 study session, Ms. Ecker wrote: "The consensus of the Board was to allow additional height for new buildings in the D-5 zone district to match existing adjacent buildings, if the new building was constructed under the provisions of a SLUP."

During the June 27, 2018 hearing, Chairman Clein expressed (at time 2:10:25 of the hearing video), that during consideration of the new D-5 Zone, the Board considered the entire southern area of Downtown and positively did discuss the subject Property for potential property rezoning. However, the Board did not include the Property initially because no applicant or interested owner had come forward at that time. Mr. Jeffares also reiterated the same point (at time 1:48:30 of the hearing video). Ms. Ecker clearly stated (at video time 2:09:00) that the new D-5 Zone is a zoning classification that is not limited to the three non-conforming buildings (555 Building, Merrill Wood and Birmingham Place).

Despite clear evidence to the contrary, the mischaracterizations assumed in this hearing were espoused by Ms. Whipple-Boyce who indicated that she understood the D-5 Zone only applied to the three properties, and was not available for the Applicant's Property. These misrepresentations had a direct bearing on consideration of the Applicant's explanation of why the rezoning will not be detrimental to surrounding properties.

Sec. 7.02(B)(2)(b)(iii) - An Explanation of Why the Proposed Zoning will not be Detrimental to the Surrounding Properties

Both the adjacent and abutting properties are in the D-5 Zone. These misrepresentations that the D-5 is closed to other buildings led the Board to bypass the Applicant's D-5 site plan design. Instead the Board envisioned the abutment of a D-5 structure next to the Birmingham Place and the impact of such on the Birmingham Place residents. However, it is clear that when these neighboring properties were rezoned to D-5, the Planning Board anticipated that eventually the owner of the subject Property would apply to be rezoned for the reasons stated in this letter. The idea that an ordinance is created for only a few buildings, when the ordinance itself states otherwise, is unsupportable and unreasonable. Rezoning the subject Property to a D-5 Zone will be putting this parcel on equal footing with the surrounding properties from a structural, use and design perspective. The proposed rezoning will enhance the entire area by allowing it to be

developed as an attractive part of the South Old Woodward gateway and, most importantly, bring that area into compliance with the spirit and intent of the 2016 Master Plan. Many of the condominium owners from Birmingham Place who spoke out against the rezoning, as did their attorneys, will lose their views to the south even with a development compliant with current zoning. Please see the attached depiction of the D-4 height overlaid against the Birmingham Place (**Exhibit B**). However, the Board seemed to acknowledge the mootness of the alleged detriment to Birmingham Place given the potential impact of a conforming D-4 structure, and yet at least one member, Ms. Whipple-Boyce, still maintained that the D-5 Zone was intended to correct the non-conformance of only three properties.

The Board Failed to Make Required Findings of Fact under Ordinance Sec. 7.02(B)(5)

In making its decision on June 27th, the Board denied the Application based on Ordinance Sec. 7.02(B)(2)(b) and the required explanations imposed on the Applicant. As a result of its misunderstanding of the analysis required by the Zoning Amendments section of the Ordinance, the Board committed error in basing its decision on Sec. 7.02(B)(2)(b) rather than on the findings of fact required by Sec. 7.02(B)(5). Section 7.02(B)(5)(a-e) lists five findings the Board must make regarding the Application when making its recommendation to the City Commission. Without these findings by the Planning Board, the recommendation to the City Commission does not give the commission sufficient information to understand why this rezoning Application was denied.

- ***Sec. 7.02(B)(5)(a) - The objectives of the City's then current master plan and the City's 2016 Plan.***

The Board made no findings of fact with respect to the objectives of the City's current master plan and the City's 2016 Plan. A simple motion to deny a recommendation of rezoning was made "to recommend DENIAL to the City Commission of the applicant's request for the rezoning of the property at 469-479 S. Old Woodward Ave. from D-4 to D-5 in the Downtown Overlay." (See **Exhibit C**, June 27, 2018 meeting minutes, at p.10).

The Applicant, however, in its May 17, 2018 letter to the Board, submitted significant information relating to the conformance of D-4 to D-5 rezoning of the Property with the goals of the 2016 Master Plan to promote mixed uses and consistency in architectural details and massing to neighboring structures.

- ***Sec. 7.02(B)(5)(b) - Existing uses of the property within the general area of the property in question.***

The Board made no finding of fact with respect to uses of property within the area of the Property, although the Board acknowledged the D-5 zone to the immediate north and south of the Property. And as stated above, the Board coalesced around the conclusion that the Applicant had not "shown a D-4 building could not work."

In his May 17, 2018 supplemental letter to the Board, the Applicant explained the proposed mix-use of the development as retail, hotel and residential, all uses consistent with surrounding properties.

- ***Sec. 7.02(B)(5)(c) - Zoning classification of the property within the general area of the property in question.***

The Board acknowledged that the entire southern area of Birmingham has been studied for change in zoning possibly to a gateway district due to the established heights of the iconic 555 Building and the Birmingham Place Building. The Board acknowledged the recent rezoning of the abutting and adjacent properties to the D-5 Zone and the current zoning classifications of nearby properties. The Board did not make any findings that addressed the fact that the subject Property is not only located in the area of the D-5 zone, but actually is situated between two D-5 zoned parcels. The adjacent and abutting properties are zoned D-5.

- ***Sec. 7.02(B)(5)(d) - The suitability of the property in question to the uses permitted under the existing zoning classification.***

The Board made no findings of fact regarding the suitability of the Property in question to the uses under the existing zoning classification. The Board's discussion centered on the height of the proposed development under the D-5 versus the D-4. There was no finding or discussion of suitability to permitted uses. The Applicant directs the Board's attention here because the Property sits outside of the Parking Assessment District. The Board failed to engage with this fact and its implications on the Applicant's site plan, which has a significant negative impact on the Applicant's ability to use the Property within the uses promoted by the 2016 Plan. Again, without a factual finding, the Board concluded that the Applicant had not proven that a D-4 building would not work at the Property (June 27, 2018 hearing video, Chairman Clein, starting at video time 2:10:25).

- ***Sec. 7.02(B)(5)(e) - The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.***

There was little discussion of the trend of development in the general area, other than the discussion of the historical development of the 555 Building and Birmingham Place prior to their down-zoning in later amendments to the Ordinance. Again, the Board acknowledged the recent changes in zoning to the 555 Building and Birmingham Place, as well as a mention of a zoning variance obtained for the development of the Pearl property. However, the Board did not make a finding of fact regarding the trend of development and its relationship to its decision to deny the Applicant's request.

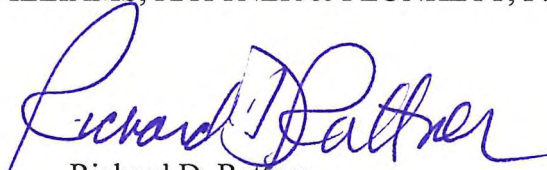
Conclusion

Applicant respectfully requests that this matter be referred back to the Planning Board to allow full consideration of the following:

- Report of the Planning Department concluding that the Petitioner had satisfied all of the ordinance requirements of Sec. 7.02(B)(5)(a-e). No contrary findings of fact were made by the Planning Board.
- The Property is the only D-4 property in the City *not* in the Parking Assessment District. The report in the Planning Department's packet to the Planning Board with regard to the CIS mistakenly stated that the Property was in the Parking Assessment District. This new fact is crucial to an accurate analysis of the rezoning request.
- The purpose of the D-5 ordinance was mischaracterized as merely an ordinance to correct only three buildings in the City. The ordinance clearly states otherwise, and there was much discussion during the years of meetings about the area of the City that should be considered for the D-5 zone.
- The standard used for the discussion of rezoning the Property was not a requirement of the zoning ordinance. An applicant must present facts that support the ordinances in Sec. 7.02(B)(5)(a-e) as well as Sec. 7.02(B)(2)(b)(i-iii). None of those ordinance sections requires the Applicant show that the Property cannot be used as zoned, contrary to what was discussed in the public hearing.

Very truly yours,

WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, P.C.



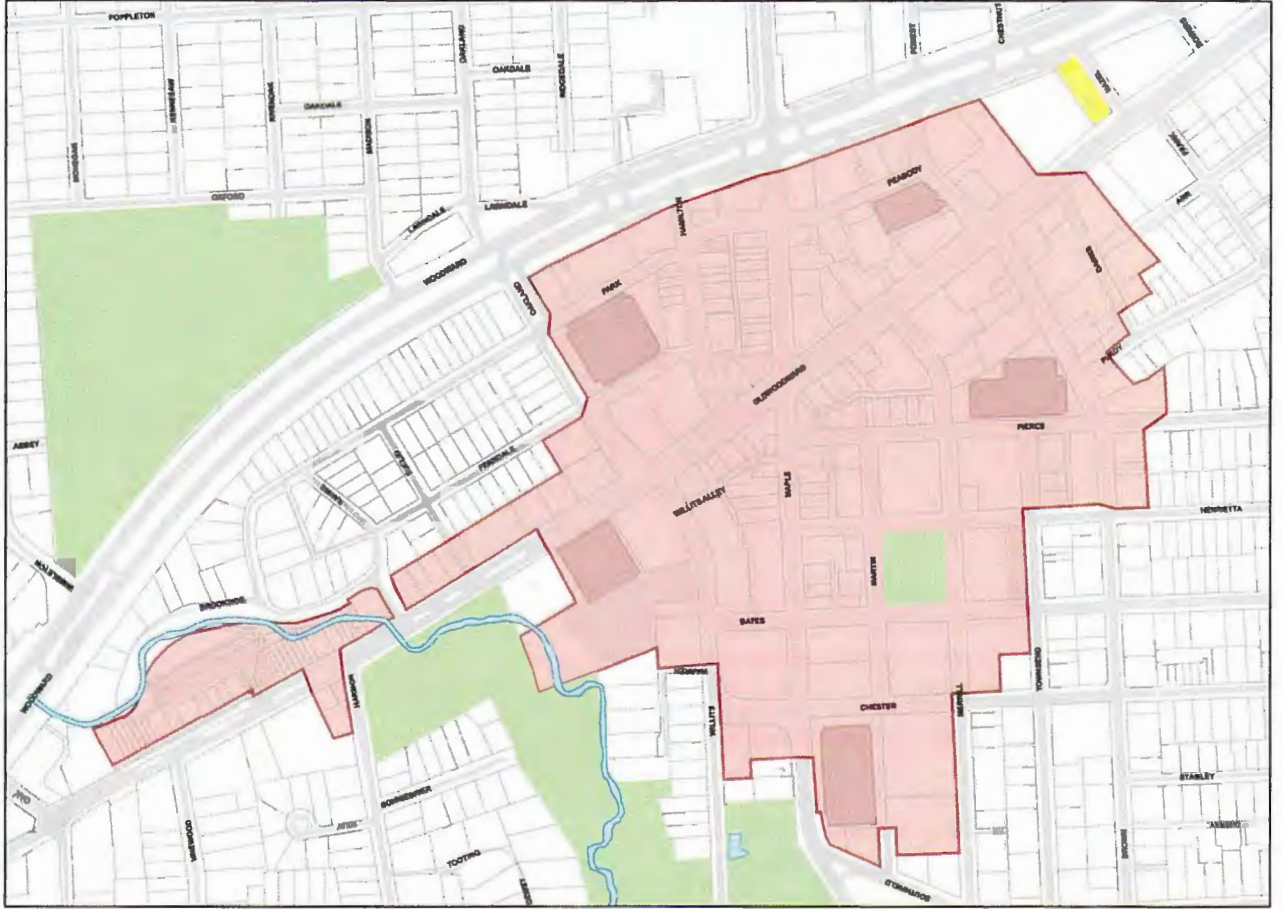
Richard D. Rattner

RDR/gsm

CITY OF BIRMINGHAM
DOWNTOWN PARKING ASSESSMENT DISTRICT

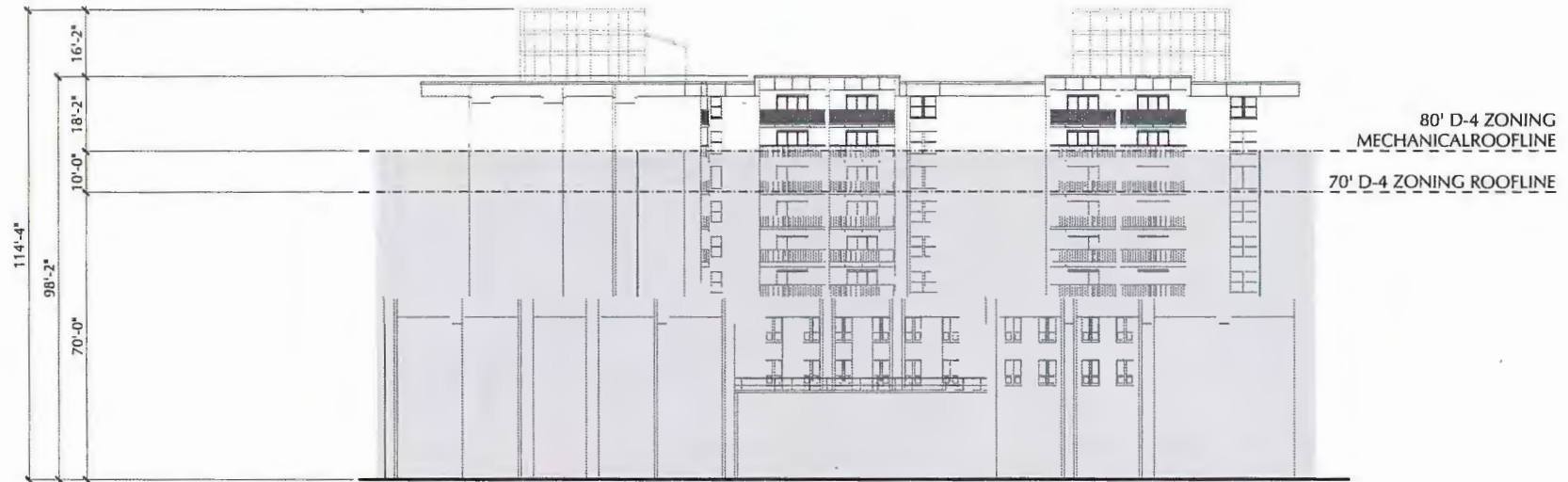


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tabbies' EXHIBIT
A

Project M1 - The Hazelton
Birmingham Tower Partners, LLC
469 + 479 South Old Woodward
Birmingham, Michigan 48009



BIRMINGHAM PLACE HEIGHT COMPARISON DIAGRAM

CHRISTOPHER J LONGE AIA
ARCHITECTURE
INTERIORS
124 Peabody, Birmingham, Michigan 48029 248.258.6943



**CITY OF BIRMINGHAM
PLANNING BOARD ACTION ITEMS
OF WEDNESDAY, JUNE 27, 2018**

Item	Page
SPECIAL LAND USE PERMIT ("SLUP") AMENDMENT REVISED FINAL SITE PLAN AND DESIGN REVIEW	
1. 260 N. Old Woodward Ave., The Morrie - Application for Special Land Use Permit ("SLUP") Amendment to allow the addition of a dance floor to the previously approved restaurant	2
Motion by Ms. Whipple-Boyce	2
Seconded by Mr. Koseck to recommend APPROVAL to the City Commission of the Final Site Plan and SLUP Amendment for 260 N. Old Woodward Ave., The Morrie, to add a dance floor to the previously approved plans with the condition that the applicant comply with Chapter 50, Noise, Division 4.	
Motion carried, 7-0.	2
2. 2010 Cole St. (currently vacant) - Application for Final Site Plan and Design Review to renovate the existing building and expand the parking lot	3
Motion by Mr. Jeffares	5
Seconded by Mr. Koseck to recommend APPROVAL of the Final Site Plan and Design Review for 2010 Cole St. subject to the following conditions:	
1. Applicant submit a signed letter from DTE approving the location of all electrical transformers;	
2. Applicant install City standard bike racks, benches and trash receptacles as required in the Rail District;	
3. Applicant submit all signage details to the Planning Division for approval, including specifications on any wall signs, canopy signs or address signs;	
4. Applicant add pedestrian striping on the west side of the building leading to the west entrance of the building.	
5. Applicant move the arborvitae screening to the north with Administrative Approval from the Planning Dept.	
6. Applicant comply with the requests of all City Departments.	
Motion carried, 7-0.	
REZONING APPLICATION	5
1. 469-479 S. Old Woodward Ave. (former Mountain King) - Request to rezone from B-3 and D-4 to B-3 and D-5 to allow a nine-story mixed-use building	

Item	Page
<p>Motion by Mr. Boyle Seconded by Mr. Jeffares that based on a review of the rezoning request and supporting documentation submitted by the applicant, a review of the applicable Master Plan documents and the development trends in the area, the Planning Board recommends APPROVAL to the City Commission for the rezoning of 469-479 S. Old Woodward Ave. from D-4 to D-5 in the Downtown Overlay.</p>	5
<p>Motion failed, 2-5.</p>	11
<p>Motion by Ms. Whipple-Boyce Seconded by Mr. Koseck to recommend DENIAL to the City Commission of the applicant's request for the rezoning of the property at 469-479 S. Old Woodward Ave. from D-4 to D-5 in the Downtown Overlay.</p>	11
<p>Motion carried, 5-2.</p>	11
<p>PRELIMINARY SITE PLAN REVIEW AND COMMUNITY IMPACT STUDY ("CIS")</p>	11
<p>1. 469-479 S. Old Woodward Ave. (former Mountain King) - Application for Preliminary Site Plan and CIS to permit new construction of a nine-story mixed-use building</p>	12
<p>Motion by Mr. Boyle Seconded by Ms. Whipple-Boyce to postpone this application to August 22, 2018 following the consideration of this rezoning application at the City Commission.</p>	12
<p>Motion carried, 7-0.</p>	12

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, JUNE 27, 2018**

City Commission Room
151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Planning Board held on June 27, 2018. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Janelle Whipple-Boyce; Alternate Board Members Jason Emerine, Nasseem Ramin

Absent: Board Members Daniel Share, Bryan Williams; Student Representatives Madison Dominato, Sam Fogel, Ellie McElroy

Administration: Matthew Baka, Sr. Planner
Jana Ecker, Planning Director
Carole Salutes, Recording Secretary

06-108-18

APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING OF JUNE 13, 2018

Mr. Jeffares made a correction:

Page 8 - Fourth paragraph from the bottom insert after "of," "office use for business to business."

Motion by Mr. Koseck

Seconded by Mr. Boyle to approve the Minutes of the Regular Planning Board Meeting of June 13, 2018.

Motion carried, 7-0.

VOICE VOTE

Yeas: Koseck, Boyle, Clein, Jeffares, Ramin, Whipple-Boyce

Nays: None

Abstain: Emerine

Absent: Share, Williams

06-109-18

CHAIRPERSON'S COMMENTS (none)

06-110-18

APPROVAL OF THE AGENDA (no change)

06-111-18

**SPECIAL LAND USE PERMIT ("SLUP") AMENDMENT
REVISED FINAL SITE PLAN AND DESIGN REVIEW**

1. 260 N. Old Woodward Ave., The Morrie - Application for Special Land Use Permit ("SLUP") Amendment to allow the addition of a dance floor to the previously approved restaurant

Mr., Baka recalled that this application has already been approved by the Planning Board and the applicant is coming back for one change. On May 14th, 2018, the applicant went before the City Commission and indicated that they were also proposing to move tables to clear a dance area when needed. The City Commission determined that a dancing area was not in the original scope or shown on the plans; therefore it must be re-reviewed by the Planning Board.

The applicant has submitted a SLUP Amendment application with associated site plans depicting the location and size of a dancing area proposed in their dining room. The dance floor measures 10 ft. by 38 ft. and is located in front of the raised booth seating area.

At 7:32 p.m., there were no comments from the audience on the proposal.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Koseck to recommend APPROVAL to the City Commission of the Final Site Plan and SLUP Amendment for 260 N. Old Woodward Ave., The Morrie, to add a dance floor to the previously approved plans with the condition that the applicant comply with Chapter 50, Noise, Division 4.

Motion carried, 7-0.

There were no comments from the public on the motion at 7:35 p.m.

VOICE VOTE

Yeas: Whipple-Boyce, Koseck, Boyle, Clein, Emerine, Jeffares, Ramin

Nays: None

Absent: Share, Williams

06-112-18

2. 2010 Cole St. (currently vacant) - Application for Final Site Plan and Design Review to renovate the existing building and expand the parking lot

Mr. Baka advised the subject property, located in the Rail District, is a 0.77 acre site currently containing a single-story commercial building and a parking lot. The applicant is proposing to renovate the existing building to allow for three tenant spaces consisting of retail, fitness and potentially storage uses. The existing parking lot is proposed to be expanded, while the landscaping and streetscape will also be improved. The building is proposed to receive new

paint, awnings, lighting and architectural detail. Also, the applicant would like to screen the loading space with arborvitae.

The applicant engaged in a pre-application discussion with the Planning Board on May 23, 2018. At that time the applicant described the plan to beautify and fill the current building to bring the site back into function while the property owners work on a plan to redevelop the entire property in the future. Planning Board members asked the owners to provide active first-floor uses to activate the street, as well as add glazing and architectural details to break the monotony of the existing blank walls.

The submitted site plan shows a new electrical transformer adjacent to the dumpster enclosure at the southeast corner of the property that is screened with arborvitae. The applicant has noted that DTE has been contacted regarding the transformer location and that DTE approval will be acquired in regards to the location. The applicant must still submit a signed letter from DTE approving the location of all electrical transformers.

The applicant is proposing to expand and rework the existing parking lot to a 38 space lot containing both additional landscaping and two ADA parking spaces. The parking requirement for the three tenants is 12 spaces.

Design Review

The applicant is proposing new renovations that include new paint, awnings, lighting and architectural details including new windows and doors along the north and west elevations. Eight new door/window installations with dark bronze metal frames are proposed along the north and west elevations. Four open-ended canvas awnings are also proposed over the new window/door installations. The doors, windows and awnings help to break up the vast blank space that currently exists on the walls.

Article 4, section 4.90 of the Zoning Ordinance requires buildings in the MX Zoning District to provide a minimum of 70% glazing on any ground floor façade that faces a street or parking area.

Signage: The applicant has indicated that the northern portion of the wall on the west elevation will be a potential location for tenant signage. The applicant is also proposing to place their address sign on the parking lot screen wall in front of the building. The applicant must submit all signage details to the Planning Dept. for approval, including specifications on any wall signs, canopy signs or address signs. The applicant has now submitted material samples of each newly proposed material (including new glass, awning fabric, patio pavers) to complete the Design Review.

In response to Mr. Koseck, Ms. Ecker explained the City is in the process of figuring out the street lighting in the Rail District. DTE has installed three different types of lights with three different types of globes, along with different fixtures throughout the Rail District and none of them are correct since the first installation at Armstrong White on E. Lincoln. Basically the negotiations with DTE to correct the problem are down to cost right now.

Mr. Boyle noticed that the plans do not show a safe pedestrian zone through the parking lot. Further, Mr. Boyle noted on the west facade of the building there are grey awnings with small windows underneath; but no windows on the large section that is adjacent to the patio.

Mr. Koseck pointed out that the plans show the driveway bisects the sidewalk. Mr. Baka replied that the Engineering Dept. has stated that the sidewalk must maintain its current configuration by placing it through the driveway approach.

Mr. Baka agreed with Mr. Emerine that clarification is needed because the applicant is required to have six trees in the parking lot and ten are shown in the site plan.

Mr. Jason Krieger, Krieger Klatt Architects, was present with Mr. Tom Lasky and Mr. Andy Petcoff from the ownership, along with Mr. Brian Kowalski, the project architect. Mr. Krieger said the site plan is correct regarding the trees. The windows on the west elevation are up high because a fitness center is proposed and they tried to maintain as much wall space as possible for them. They are trying to add more fenestrations and glass. Windows have been added on the southwest corner of the building. On the north elevation the windows have been lowered down to the ground to create more of a storefront feel.

Their proposal is to basically clean up the building, paint it, improve it, and then occupy it. They will comply with City standards for lights, trash cans, and benches. With regard to the parking lot, they hope to keep as much as they can and add on to it in compliance with City engineering standards. Personally, he would rather see more screening closer to Cole St., behind the retaining wall, and not right at the loading area where it might get hit. Then, just leave the loading zone as a striped area. Mr. Koseck agreed, because typically there is no truck parked in the loading space. He suggested that Mr. Krieger could work with staff to shift the arborvitae to the north where it wouldn't be hit. Additionally, Mr. Koseck thought it would be nice to have some planter boxes in the patio area just to soften it. Mr. Krieger agreed that the patio should be broken up a little with some greenery.

Mr. Krieger explained that tenant to the north is a cabinet shop and the south tenant space is vacant.

Responding to Mr. Boyle, Mr. Krieger said did not see a problem with putting in a pedestrian safety path through the parking lot to the entrance of the center. However they might lose one parking space.

No one from the public cared to comment on the proposal at 8:01 p.m.

Motion by Mr. Jeffares

Seconded by Mr. Koseck to recommend APPROVAL of the Final Site Plan and Design Review for 2010 Cole St. subject to the following conditions:

- 1. Applicant submit a signed letter from DTE approving the location of all electrical transformers;**
- 2. Applicant install City standard bike racks, benches and trash receptacles as required in the Rail District;**
- 3. Applicant submit all signage details to the Planning Division for approval, including specifications on any wall signs, canopy signs or address signs;**
- 4. Applicant add pedestrian striping on the west side of the building leading to the west entrance of the building.**
- 5. Applicant move the arborvitae screening to the north with Administrative Approval from the Planning Dept.**
- 6. Applicant comply with the requests of all City Departments.**

At 8:05 p.m. there were no comments on the motion from members of the audience.

Motion carried, 7-0.

VOICE VOTE

Yeas: Jeffares, Koseck, Boyle, Emerine, Klein, Ramin, Whipple-Boyce

Nays: None

Absent: Share, Williams

06-113-18

REZONING APPLICATION

1. 469-479 S. Old Woodward Ave. (former Mountain King) - Request to rezone from B-3 and D-4 to B-3 and D-5 to allow a nine-story mixed-use building

Chairman Clein said that judging from all of the letters that have been received related to this project, it is very clear that the residents of Birmingham Place oppose the rezoning. All of the letters will be added to the record.

Ms. Ecker explained the applicant for 469-479 S. Old Woodward is requesting that the Planning Board hold a public hearing to consider the rezoning of the property from B-3 (Office Residential) and D-4 (Downtown Overlay) to B-3 (Office Residential) and D-5 (Downtown Overlay). The applicant is seeking the rezoning to allow for the construction of a nine-story mixed-use building with three levels of underground parking in between the Birmingham Place and the 555 Building. The maximum height allowed in the D-4 Zoning District is 4-5 stories. In the D-5 Zoning District, developers may build as high, but no higher than the adjacent buildings which are located in the D-5 Zone. The 0.423 acre subject site spans Hazel St. from S. Old Woodward Ave. to Woodward Ave. The site currently contains two vacant single-story commercial buildings (formerly Mountain King Restaurant and Talmer Bank). The applicant is proposing to demolish the present buildings for the construction of a ten-story mixed-use building.

The applicant has noted that when the zoning was changed down to one or two floors in the 1970s, the 555 Building and Birmingham Place were designated to a legal non-conforming use because their height was not allowable. Ultimately, the zoning was changed to D-4 in 1996 by the adoption of the 2016 Plan and the Downtown Overlay that raised the height up to a maximum of five stories Downtown. In 2017, a new D-5 Zone was created to bring the 555 Building, the Merrillwood Building and Birmingham Place into a legal conforming status. The subject property is located between Birmingham Place and the 555 Building, both of which are zoned D-5 currently.

Ms. Ecker went through the three items that the applicant must demonstrate for the rezoning of a property and the applicant's reasons as to how they feel they have met them.

Ms. Ecker then went through the planning analysis based on the evidence provided by the application. Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable Master Plan documents, current zoning and recent development trends in the area, the Planning Dept. finds that the applicant meets the established ordinance requirements to qualify for a rezoning of the property from D-4 to D-5 in the Downtown Overlay District for the purpose of building as high, but no higher than, the building to the north, Birmingham Place.

Answering Mr. Boyle, Ms. Ecker said the Master Plan which dates back to 1980 did not give specific height requirements like the 2016 Plan recommended. Under the 2016 Plan the recommended height in the Downtown was a maximum of five stories. The 555 Building submitted an application to the City and to the Planning Board to consider creating a new category that would make them a legal and conforming building that would allow them to receive financing to renovate the building and bring it up to current standards in the marketplace. The D-5 Ordinance was crafted by the Planning Board as a result of that application and included the other two buildings in a similar situation.

Mr. Rick Rattner, Attorney, Williams, Williams, Rattner & Plunkett, PC, emphasized that in the D-5 going above five stories subjects the property to a Special Land Use Permit ("SLUP") which is different than just building as of right. Secondly, in 2016 Andres Duany commented favorably on the 555 Building and on Birmingham Place.

He presented a PowerPoint that went to four issues that have to do with rezoning:

- Rezoning Amendment - Sec. 7.02 (B) (2) (b) (i)-(iii) requires that as part of an application for rezoning, the petitioner should address certain issues to be considered by the Planning Board and the City Commission.
- Sec. 7.02 (B) (2) (b) (i) - An Explanation of Why the Rezoning is Necessary for the Preservation and Enjoyment of the Rights and Usage Commonly Associated with Property Ownership. Without the ability to go higher with a new building than the zoning allows, the applicant will not have the required area within which to locate a mix of uses that would commonly be associated with the design of a modern, mixed-use building.
- Sec. 7.02 (B) (2) (b) (ii) - An explanation of Why the Existing Zoning Classification is No Longer Appropriate. It is reasonable for the subject property to share the same zoning classification as its surrounding neighbors. Given the location of the subject property sandwiched between two properties in the D-5 Zone, the D-4 Zone is no longer appropriate.
- Sec. 7.02 (B) (2) (b) (iii) - An Explanation of Why the Proposed Zoning will not be Detrimental to the Surrounding Properties. The proposed rezoning will enhance the entire area by allowing it to be developed as an attractive part of the S, Old Woodward gateway and bring that area into compliance with the spirit and intent of the 2016 Plan.

Mr. Rattner concluded by asking the Planning Board to favorably recommend that they are able to use their property and preserve their rights of usage, fit into the streetscape, fit the Master Plan and fit all elements of this Ordinance because they meet every single one of them.

At 8:45 p.m. the Chairman opened the meeting to public comments.

Ms. Susan Friedlander, 1564 Henrietta, attorney for Birmingham Place Residential Condominium Association, made the following points:

- The City created the D-5 District for a singular and special purpose which was to bring several buildings into conforming status.
- The proposed building is not sandwiched between the 10-story Birmingham Place and the 15-story 555 Building - there is Hazel, a 50 ft. right-of-way that provides a proper transition between buildings. There is not even a height difference, because the building that is immediately adjacent to Hazel is 77 ft. tall. So if this proposed building went up to 80 ft, which it is allowed to do under D-4 it would be very consistent with the building right across the street. There would be a perfect transition. It would only be 34 ft. shorter than Birmingham Place.

- If the proposed building is zoned D-5, what about the building on the north, the Powerhouse Building, Jax Car Wash or the Varsity Building. Why shouldn't they get the D-5 Zoning as well?
- There is a process that must be followed so that property is not rezoned on an ad hoc and an arbitrary basis.

Mr. Tom Lasky, 2006 Cole, spoke in support of the rezoning request. This is the face of new Birmingham and will be done responsibly.

Mr. Mike Humphrey, who lives in Birmingham Place, said there is nothing in the record that shows that the D-5 Overlay was created to do anything other than to make the three tall existing buildings legal and conforming. The developer bought the property knowing how it was zoned; but now they say that they cannot develop a four or five-story mixed-use building there. If the City is going to change the Master Plan, go for it, but do it with professional study and community involvement; not a piece at a time.

Mr. David Nykian, 40700 Woodward Ave., said he represents some of the owners in the Birmingham Place Condominium. He believes the facts lead to the conclusion that the D-4 Zoning is actually clearly appropriate for this property:

- The D-5 District was created just to address the non-conformities of three buildings. So the City has already made the decision in the past as to what zoning is appropriate for this site.
- Nothing about the property has changed since then that should cause the City to alter its conclusion about what the appropriate height is.
- The height of the 555 Building on the north is 77 ft. So if the subject site were developed today under D-4, it could be taller than the 555 Building.
- Breaking up the building heights would provide more of an architectural character to the City than one monolithic height across the entire street.
- There is nothing under the D-4 Zoning classification that that would prohibit the developer from developing a mixed-use development.
- The only things that would change by amending the classification from D-4 to D-5 are the height of the building and the profit margin of the developer.

Mr. Mickey Schwartz, 411 Old Woodward Ave., stated that infill has nothing to do with height equality. So he thinks the developer has to have a better excuse for building a 10-story building. The small town feeling is what is unique about Birmingham. Deny the rezoning request.

Dr. Cynthia Neil, a resident of Birmingham Place, said she was deeply offended by the petitioner's statement that the development would not adversely affect the residents. From her balcony she would be able to bounce a tennis ball against the wall of the proposed building.

Mr. Chris Jonna, C&P Real Estate Group, spoke in support of the project. The applicant builds nothing but first-class buildings. Increasing the zoning classification will be a tremendous benefit to Downtown Birmingham by bringing in more people to the area.

Mr. Lewis Rockind, a resident of Birmingham Place, emphasized that the zoning has to be contemplated in the context of what is intended to be developed. As a resident of Birmingham Place he is looking at the detrimental effect on the surrounding properties of increased vehicle and pedestrian traffic.

Mr. Daniel Jacob, 261 E. Maple Rd., said he is 100% in support of the project. The intended use of the property is much needed and would be a huge benefit to the City. Birmingham is changing and this project moves with the times.

Mr. Joseph Shalala, 255 S. Old Woodward Ave., spoke in support of the proposed building. It will support all of the small businesses by bringing in people such as office, residential, and hotel users. All of those things combined will help Birmingham.

Ms. Tony Schwartz, 411 Old Woodward Ave., maintained that it is the height of the building that is in question here, not its quality. Secondly, traffic is a big problem on that corner. There is a new hotel that is starting to be built on the corner of Brown and Old Woodward which will add more traffic to that corner. She understands there may be a pool deck on the top floor of the proposed building - who is going to control music and noise and parties. She lives right across on the tenth floor.

Chairman Clein advised that concerns related to traffic and noise are not part of a rezoning but would be handled under a Site Plan Review, and should this be moved forward to a rezoning the applicant would be required to obtain a Special Land Use Permit ("SLUP") which allows the City Commission to put additional restriction on the uses of the building.

Mr. Duraid Markus, one of the partners in the ownership entity for 469-479 S. Old Woodward Ave. (former Mountain King and Talmer Bank), said if this happened in New York, Chicago or LA there would not be a single skyscraper built. He noted that everybody who opposes this is only one contingent, and it has not been the entire City that comes in to support or not support.

It makes sense to build where the project is harmonious and fits in with the rezoning proposal. For those reasons he asked the board to consider all of the comments and make the decision to allow them to rezone the parcel.

Ms. Wilma Thelman who lives in Birmingham Place said none of them have heard why a conforming building cannot be built on that site.

Mr. Jeffares noted that things change and now Birmingham holds 21 thousand people. Secondly he recalled that the Board did discuss rezoning the subject property; however there was nobody from there to make their case so the Board just rezoned the existing buildings.

Mr. Koseck advised that D-4 Zoning allows a building to be built to 80 ft. So it will already block six floors of Birmingham Place. He did not believe the applicant's contention that they cannot make a five-story building work. He thought that a five-story could be a successful mixed-use building. In some ways it might even fit the form and the transition better and the upper three floors of Birmingham Place will not be affected.

Ms. Whipple-Boyce said when the Board established the D-5 Zoning Classification she felt it applied to three specific buildings. In her mind it had to do with bringing non-conforming buildings into conformity so that they could qualify for financing and improve their properties. Thinking about some of the other properties that could be affected down the road that are adjacent to other properties like this is an unanswered question for her. It causes her to hesitate tonight on recommending the rezoning to D-5.

Mr. Boyle made the following points:

- The Master Plan is meant to have the ability to adapt to changing circumstances. Similarly, zoning is powerful when it is able to adapt. So, change is normal; it is not frequent, but it is usual.
- He was positive about the potential impact on the City as a whole of rezoning this property.
- The potential impact of rezoning on the contiguous properties will affect a number of people. The Board is here to determine who has the weight in this particular discussion, the entire City or the adjacent neighbors.
- There are checks and balances built into the system. If the rezoning were to be approved, the community would have two elements to be brought to the table. One would be the Site Plan Review process, and secondly the height would kick in the SLUP where the Planning Board can recommend controlling modifications to the City Commission who will hold a public hearing on the proposal.
- At the end of the day he is of a mind to approve the rezoning because overall he sees the benefits for the City and for this particular area. However, he does not underestimate the cost for the immediate residents in the contiguous building.

Ms. Ramin stated one of the burdens the applicant must carry to justify rezoning is an explanation of why the existing D-4 classification is no longer appropriate.

Mr. Duraid Markus said they cannot get in a hotel concept on this little parcel so they have to go vertical by a couple of floors. He has to be honest, it is the economics. He cannot get a development off the ground. They are not in the Parking Assessment District and are therefore limited by the required parking for an office building or a restaurant.

Answering Mr. Emerine, Ms. Ecker explained that anyone on any site on any site can apply for a rezoning to any of the existing zoning classifications.

Chairman Clein commented that rezoning is the most difficult thing the Board has to do - balancing the rights of adjacent land owners. To Ms. Ramin's point, the burden has not been met as to why a five-story building will not work. The answer that was given was economics, which has no place in a rezoning discussion. Therefore, he is not supportive of the rezoning.

Mr. Jeffares said he cannot come up with a reason for the height of the proposed building to be lower.

Ms. Whipple-Boyce indicated she has no problem with the subject building being built as high as Birmingham Place. But she doesn't think the applicant has made the case that they deserve to be rezoned and that the current zoning classification is no longer appropriate. She was appalled to hear the applicant say they bought this property and the only thing that will work there is a ten-story hotel and it should be rezoned because that is what they want to build. Therefore she doesn't think the applicant has proved their case.

Mr. Rattner noted that maybe the best thing for them to do is to ask for postponement so they can come back with a different plan. Chairman Clein stated that for him postponing would just be kicking the can down to another meeting. Mr. Boyle said he is in favor of not accepting that proposal and actually making a motion this evening.

Motion by Mr. Boyle

Seconded by Mr. Jeffares that based on a review of the rezoning request and supporting documentation submitted by the applicant, a review of the applicable Master Plan documents and the development trends in the area, the Planning Board

recommends APPROVAL to the City Commission for the rezoning of 469-479 S. Old Woodward Ave. from D-4 to D-5 in the Downtown Overlay.

There were no comments from the public on the motion at 10 p.m.

Motion failed, 2-5.

ROLLCALL VOTE

Yeas: Boyle, Jeffares

Nays: Clein, Koseck, Emerine, Ramin, Whipple-Boyce

Absent: Share, Williams

Motion by Ms. Whipple-Boyce

Seconded by Mr. Koseck to recommend DENIAL to the City Commission of the applicant's request for the rezoning of the property at 469-479 S. Old Woodward Ave. from D-4 to D-5 in the Downtown Overlay.

Motion carried, 5-2.

ROLLCALL VOTE

Yeas: Whipple-Boyce, Koseck, Clein, Emerine, Ramin

Nays: Jeffares, Whipple-Boyce

Absent: Share, Williams

06-114-18

PRELIMINARY SITE PLAN REVIEW AND COMMUNITY IMPACT STUDY ("CIS")

1. 469-479 S. Old Woodward Ave. (former Mountain King) - Application for Preliminary Site Plan and CIS to permit new construction of a nine-story mixed-use building

Motion by Mr. Boyle

Seconded by Ms. Whipple-Boyce to postpone this application to August 22, 2018 following the consideration of this rezoning application at the City Commission.

There was no discussion from the public on the motion at 10:02 p.m.

Motion carried, 7-0.

VOICE VOTE

Yeas: Boyle, Whipple-Boyce, Clein, Emerine, Jeffares, Koseck, Ramin

Nays: None

Absent: Share, Williams

06-115-18

MISCELLANEOUS BUSINESS AND COMMUNICATIONS

a. Communications (none)

b. Administrative Approval Requests

- 2211 Cole, Cole II - Approval for screening of two rooftop units.
- East of Woodward Ave. and north of Bennaville, parking lot - Renovate existing parking lot to increase number of parking spots, install new screen wall per code.
- Mr. Baka brought forward a request from a resident of Crosswinds to add to their outdoor deck motorized screening that rolls up and down. It is fastened to the building and would need a permit. The neighbor put one up too. Ms. Ecker said it is a design change from what was approved for the deck and there was not a Building Permit issued. Consensus was they should come to the Planning Board for approval and that Board members should visit the site.

c. Draft Agenda for the next Regular Planning Board Meeting of July 11, 2018

- Bistro Regulations;
- Ongoing discussion of first-floor retail;
- Discussion on parking.

d. Other Business

- Ms. Ecker noted the SLUP request for 191 N. Chester was approved at the City Commission to allow the office use in the old Church of Christ Scientist Bldg.
- The Hazel, Ravines, Downtown SLUP was also approved.
- Also, the Commission established the Master Plan Selection Committee.

06-116-18

PLANNING DIVISION ACTION ITEMS

Staff report on previous requests (none)

Additional items from tonight's meeting (none)

06-117-18

ADJOURNMENT

No further business being evident, the Chairman adjourned the meeting at 10:10 p.m.

**Jana L. Ecker
Planning Director**

REZONING REQUEST FOR 469-479 S. OLD WOODWARD
SUMMARY OF PRIOR SUBMITTAL FROM THE APPLICANT AND
THE ANALYSIS & FINDINGS OF THE PLANNING DEPARTMENT'S REVIEW

Over the past several months, the applicant has submitted written documentation and evidence in support of applicant's application to rezone 469-479 S. Old Woodward to the D-5 Downtown Overlay District. In addition, the Planning Department has completed a thorough analysis of the applicant's request to rezone the subject property as well as all of the information that was submitted by the applicant during this rezoning process. The following is a summary of the Planning Department's analysis and findings under the City Ordinance regarding the applicant's request to rezone 469-479 S. Old Woodward:

- The subject site consists of two vacant, single story commercial buildings (Mountain King and First Place Bank).
- The 0.423-acre site includes two narrow parcels, one facing 3 streets (Old Woodward, Hazel and Woodward), and the other facing 2 streets (Old Woodward and Woodward).
- The rezoning request is made pursuant to Article 7, section 7.02 of the Zoning Code.
- Section 7.02(B)(2)(b)(i) – Due to the site configuration fronting S. Old Woodward, Hazel and Woodward, and the narrow lot size and the off-street parking requirements, rezoning is necessary to preserve enjoyment of rights and usage commonly associated with ownership.
- Section 7.02(B)(2)(b)(ii) – Current zoning is no longer appropriate due to off-site parking requirements, narrow lot size configurations, and frontages.
- Section 7.02(B)(2)(b)(iii) – Rezoning will not be detrimental to surrounding properties as the adjacent and abutting properties are zoned D-5, mixed retail, commercial and residential properties, and applicant's proposal will add consistency to the streetscape in mass and architectural detail.
- Section 7.02(B)(5)(a) -- The objectives of the City's master plan and 2016 Plan are met by the rezoning as the proposed streetscape will improve the frontages of S. Old Woodward, Hazel and Woodward and project a strong image of the City toward Woodward with similar massing and architectural detail to adjacent buildings.
- Section 7.02(B)(5)(b) -- The existing uses of property in the general area align with applicant's proposed rezoning. Both the Birmingham Place and the 555 Building (neighboring properties) are mixed use buildings with both retail, commercial and residential uses. Properties to the east and west of the subject property are used for parking, retail and commercial.
- Section 7.02(B)(5)(c) -- Both neighboring properties are zoned in the D-5 Overlay Zone.
- Section 7.02(B)(5)(d) – The applicant's property is suitable for uses in the D-5 which are the same as in the current D-4 Zone. However, if a 5-story or less building is constructed under the D-4 at the site, it would be completely dominated by and inconsistent with the height of the neighboring Birmingham Place and 555 Building.
- Section 7.02(B)(5)(e) – The requested rezoning is consistent with the trend of development of this area of S. Old Woodward which is dominated by the height of the 555 Building and Birmingham Place.
- Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable master plan documents, current zoning and recent development trends in the area, the Planning Department finds that the applicant meets the established Zoning Ordinance requirements of Article 7, section 7.02(B)(5) to qualify for a rezoning of the property from D-4 to D-5 in the Downtown Overlay district.

RE: Scheduling of Hearing Before Planning Commission - 469 and 479 S Old Woodward (Collectively "Property")

1 message

Richard Rattner <RDRattner@wwrplaw.com>
To: Jana Ecker <Jecker@bhamgov.org>

Mon, Jan 27, 2020 at 4:25 PM

Jana:

Thanks for your response.

Rick



Richard D. Rattner

380 North Old Woodward Avenue, Suite 300

Birmingham, Michigan 48009

Main: (248) 642-0333 • Fax (248) 642-0856

rdr@wwrplaw.com



[Bio](#)

[vCard](#)

wwrplaw.com

From: Jana Ecker <Jecker@bhamgov.org>
Sent: Monday, January 27, 2020 4:17 PM
To: Richard Rattner <RDRattner@WWRPLaw.com>
Cc: Doraide Marcus (dmarkus@markusllc.com.) <dmarkus@markusllc.com>; Christopher Longe (cjlonge@cjlongeaia.com) <cjlonge@cjlongeaia.com>
Subject: Re: Scheduling of Hearing Before Planning Commission - 469 and 479 S Old Woodward (Collectively "Property")

Good afternoon,

I received your email and I confirm that the rezoning request for [469 - 479 S. Old Woodward](#) will be placed on the February 27, 2020 meeting of the Planning Board.

Jana

On Mon, Jan 27, 2020 at 3:07 PM Richard Rattner <RDRattner@wwrplaw.com> wrote:

Ms. Ecker:

Pursuant to our prior discussions, please accept this email as our client's request to be added to the Agenda of the Planning Board meeting, scheduled for February 27, 2020. The subject of the hearing is the continuation of the hearing on the application to include 469 and [479 S. Old Woodward, Birmingham, MI](#) in the D-5 Downtown Birmingham Overlay

District Zone ("Application"). The Application and supporting information was filed with the Planning Department and, after a hearing at the Planning Board, the matter was heard by the City Commission on March 11, 2019. The City Commission took no action on the matter. Since the March 11, 2019 meeting, the Planning Board has reviewed certain issues to clarify the language of the D-5 Overlay Ordinance. Now that those discussions have been held, our client now request that the Application for rezoning now be added to the Agenda for the February 27, 2020, hearing at the Planning Board.

Please confirm that this matter has been added to the agenda.

Thank you for your attention to this matter.

Rick Rattner



Richard D. Rattner

380 North Old Woodward Avenue, Suite 300

Birmingham, Michigan 48009

Main: (248) 642-0333 • Fax (248) 642-0856

rdr@wwrplaw.com



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--

Jana L. Ecker

Planning Director

City of Birmingham

248-530-1841

An aerial view from Google Earth showing a large, multi-story brick building with a white cornice. The building is situated on a street corner. To the right, a multi-story concrete parking garage is visible. A street lamp stands on the sidewalk in front of the building. The sky is clear and blue.

469/479 S. Old Woodward Avenue

Former Mountain King Restaurant/Drive Thru Bank

Rezone to D5

Pursuant to Zoning Ordinance Sec. 7.02B

Birmingham Planning Board

April 22, 2020

Google Earth



D5 Is the Culmination of Exhaustive Study

- ✓ Contemplated for 2 years before enacted
- ✓ Many study sessions, discussions, and public meetings
- ✓ Advertised and noticed
- ✓ Considered many different options
- ✓ Multiple iterations of draft amendments
- ✓ Studied entire downtown area and study by planning
 - ✓ Consultant targeting this specific area of downtown

Article 1, Section 1.04

From 2016 Plan, Vision Statement



D5 will “reinforce [an] identifiable district in the Downtown to provide a sense of place.”



D5 will allow for a “diverse mix of uses, including [street-level] retail, commercial . . . and especially residential.”



D5 will allow a building that is “compatible, in mass and scale, with its immediate surroundings.”

Establishment of Overlay Districts in 2016 Plan Ord. Art I,1.12,A

- The overlay districts ...have been established to add additional and unique development standards which will better help the City of Birmingham accomplish the goals of the Downtown Birmingham 2016 Plan..."

D-5 Zoning Satisfies the Required Basic Provisions of Sec. 1.04 and Ord. Sec. 7.02(B)(2)(b)(i-iii)

- **D-5 Satisfies Purpose of Zoning Ordinance Sec. 1.04**
- **Rezoning Preserves Enjoyment of Rights and Usage Associated with Ownership Ord. Sec. 7.02(B)(2)(b)(i)**
- **Existing Zoning Not Appropriate Ord. Sec. 7.02(B)(2)(b)(ii)**
- **Rezoning is Not Detrimental to Surrounding Properties Sec. 7.02(B)(2)(b)(iii)**
- **D-5 Satisfies Purpose of Zoning Ordinance Sec. 1.04**

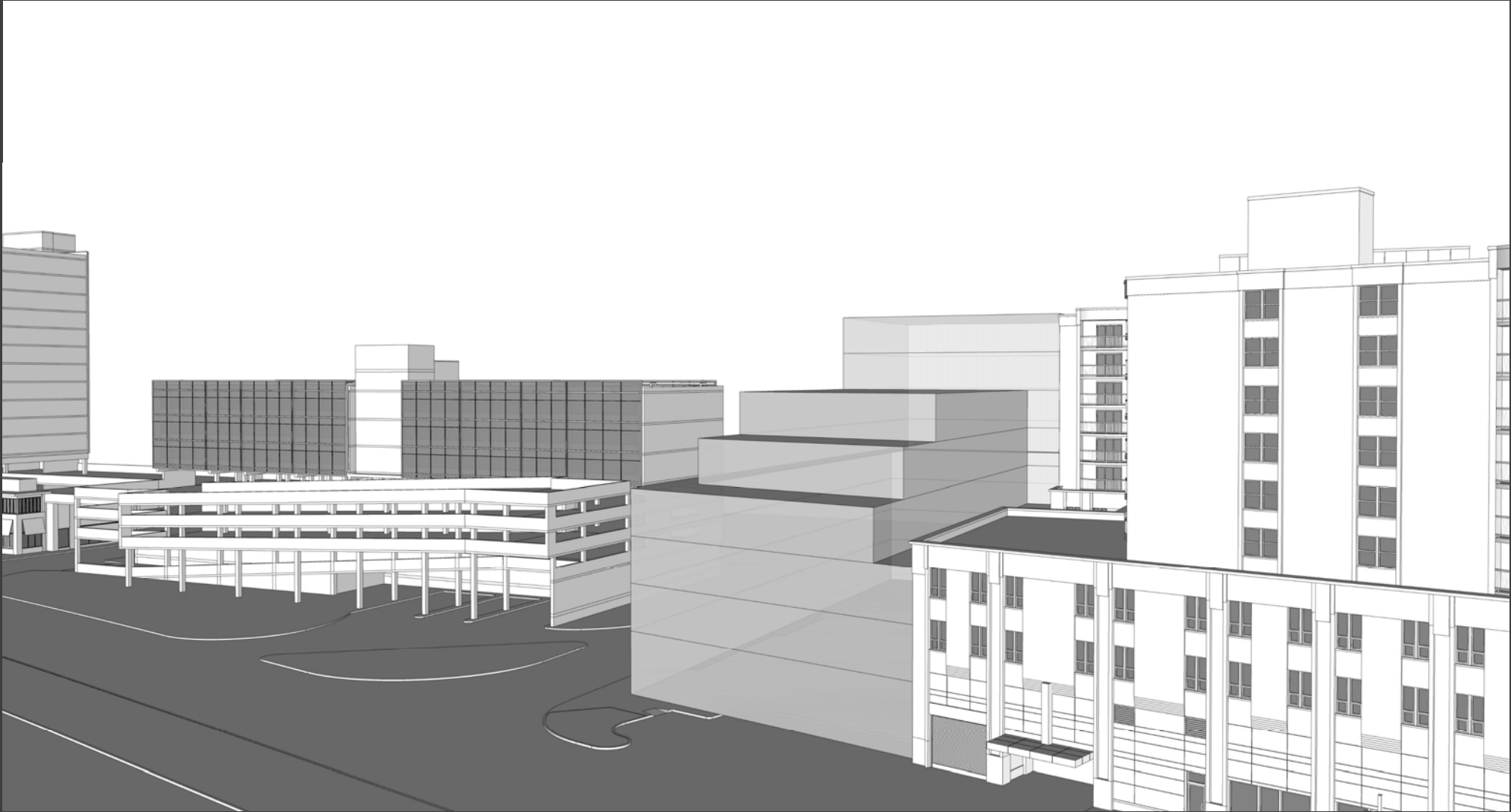
APPLICANT HAS DEMONSTRATED 5 FINDINGS OF ORDINANCE
SEC. 7.02(B)(5)(a)-(e)

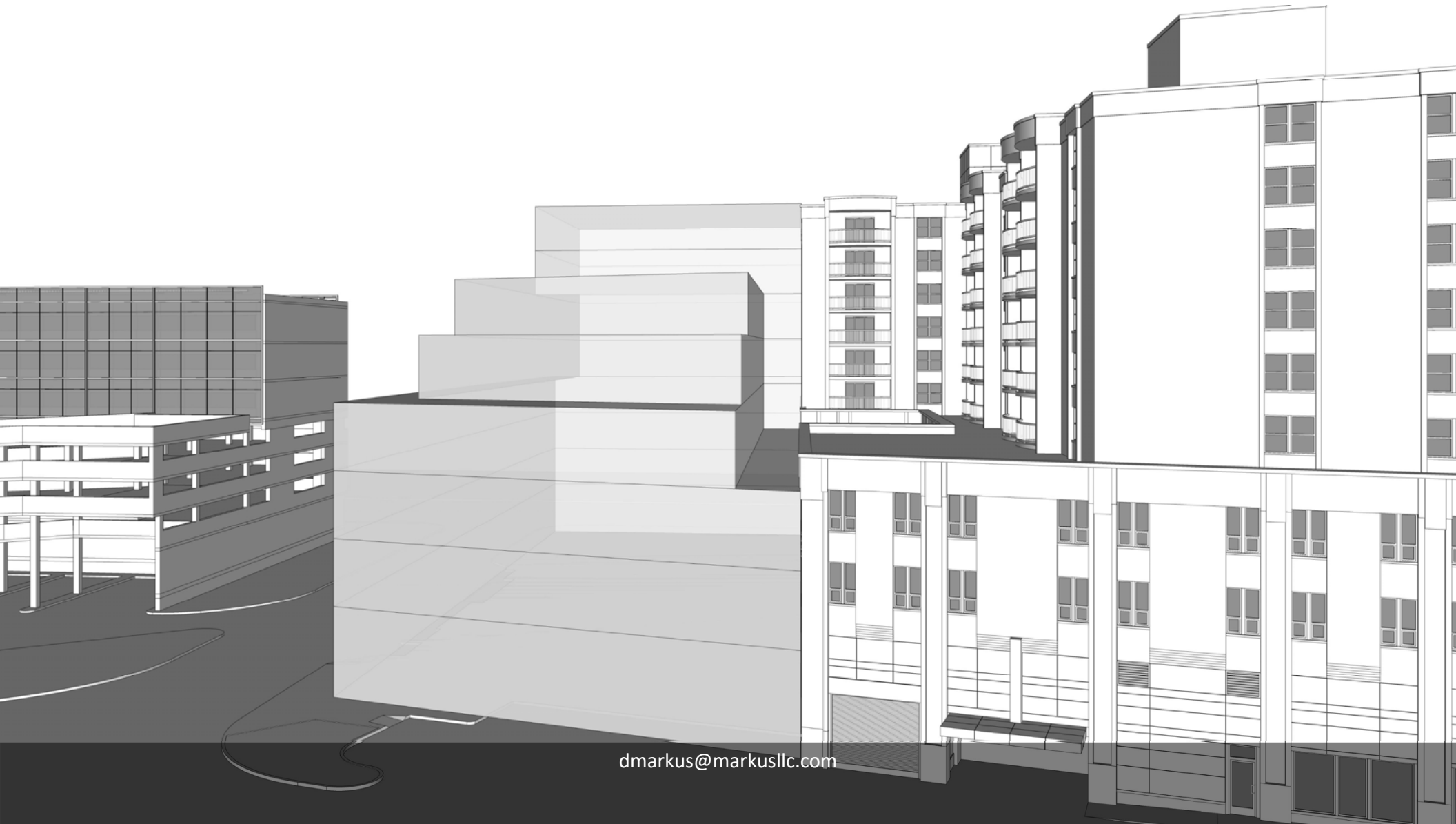
- ✓ Sec. 7.02(B)(5)(a) - conforms to the City's Master Plan and 2016 Plan
- ✓ Sec. 7.02(B)(5)(b) - The proposed mixed uses of the subject property (retail, residential, and hotel) are consistent with existing uses in the neighborhood.
- ✓ Sec. 7.02(B)(5)(c) - Properties in the general area (abutting and adjacent) are zoned D-5.
- ✓ Sec. 7.02(B)(5)(d) - Property is not suitable to the uses permitted under existing zoning due to constraints of the property and the relationship to neighboring property.
- ✓ Sec. 7.02(B)(5)(e) - Trend of development in the area favours D-5 zoning.

City Action

- The City, after consideration, has already amended the new D5 proposed ordinance language







dmarkus@markusllc.com





Thank You

***Rezone to D5
Pursuant to Zoning Ordinance Sec. 7.02B
Birmingham Planning Board
April 22, 2020***

Google Earth

CITY OF BIRMINGHAM
ORDINANCE NO.

THE CITY OF BIRMINGHAM ORDAINS: AN ORDINANCE TO AMEND CHAPTER 126,
ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

**TO AMEND ARTICLE 3, OVERLAY DISTRICTS, SECTION 3.04(A) TO AMEND THE
BUILDING HEIGHT STANDARDS IN THE D5 ZONE OF THE DOWNTOWN
BIRMINGHAM OVERLAY DISTRICT.**

Article 3, section 3.04 (A) of the Zoning Ordinance:

New buildings constructed or additions to existing buildings in the D5 Zone must meet the requirements of the Downtown Birmingham Overlay District and the D4 Zone, except that the height of any addition and new construction in the D5 Zone may be over the maximum building height up to, but not exceeding, the height of an existing building ~~in the~~ **on a directly abutting** D5 Zone **property**, ~~to which they are immediately adjacent or abutting~~ if the property owner agrees to the construction of the building under the provisions of a Special Land Use Permit. **For the purposes of this section, private properties separated by public property (including public right-of-way and public vias), will not be deemed abutting.**

ORDAINED this _____ publication day of _____, 2020 to become effective 7 days after publication.

Pierre Boutros, Mayor

Cheryl Arft, Acting City Clerk

CITY OF BIRMINGHAM
ORDINANCE NO.

THE CITY OF BIRMINGHAM ORDAINS: AN ORDINANCE TO AMEND CHAPTER 126,
ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

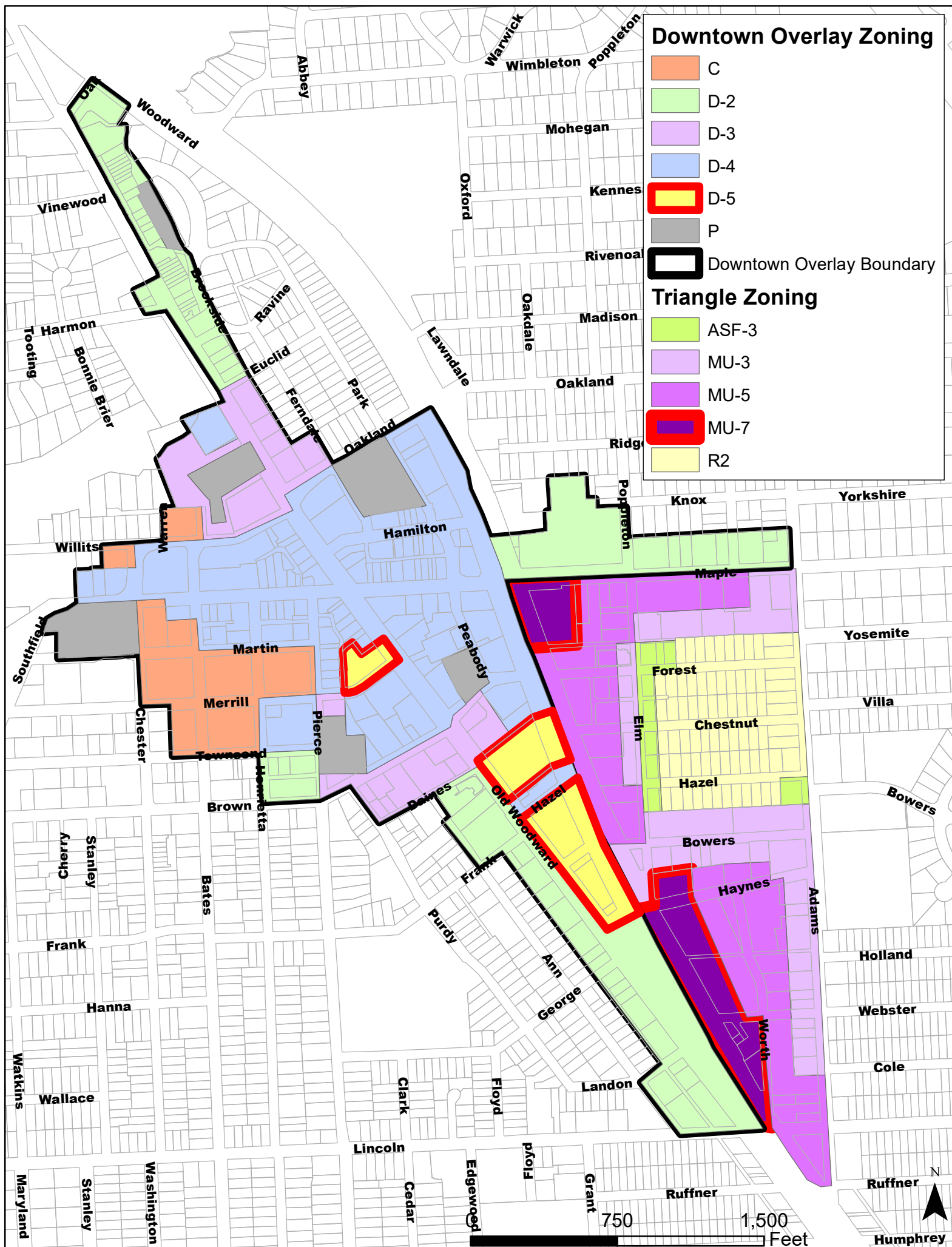
**TO AMEND ARTICLE 9, DEFINITIONS, SECTION 9.02 TO DEFINE THE TERM
ABUTTING.**

Abutting: Sharing a boundary or property line.

ORDAINED this _____ publication day of _____, 2020 to become effective 7 days
after publication.

Pierre Boutros, Mayor

Cheryl Arft, Acting City Clerk



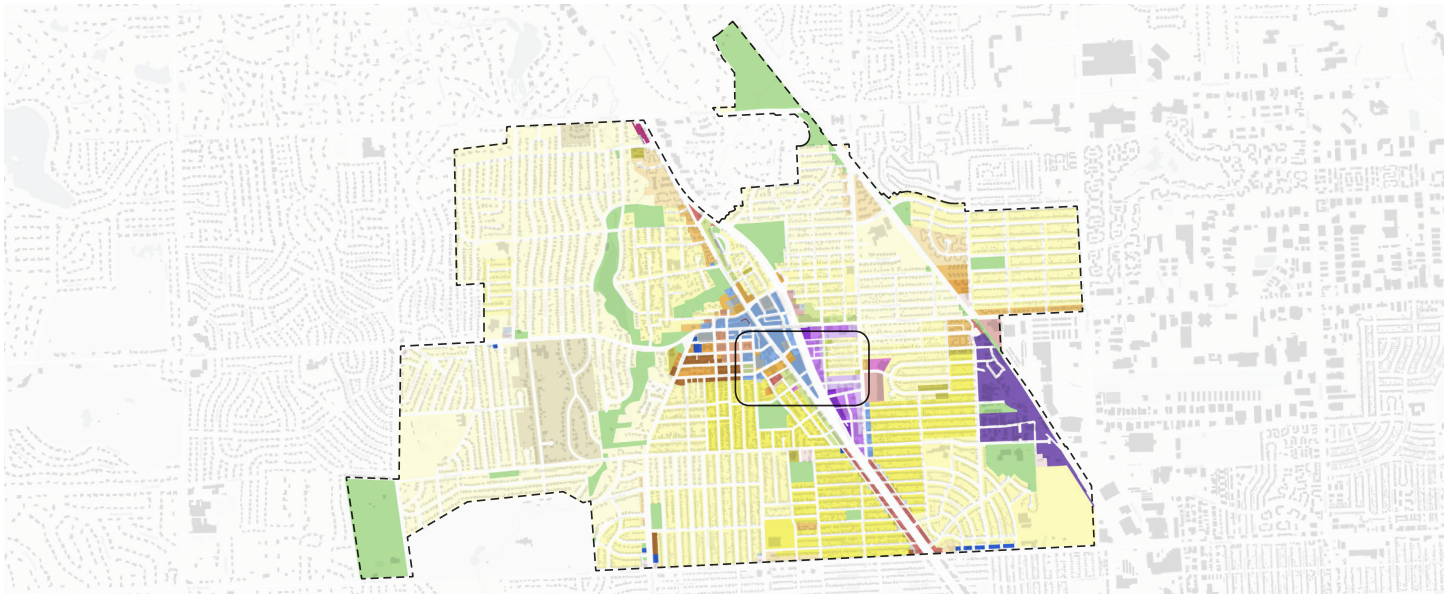


D5 STUDY

DPZ
CODESIGN

D5 Study

Purpose



Purpose:

To conduct a focused study of the area in Downtown Birmingham bounded by Haynes, Brown, Old Woodward and Woodward Avenue and make recommendations as to which properties should be considered for rezoning to D5 given their proximity to properties with existing buildings over 5 stories in height, to properties that are currently zoned to allow greater than 5 stories of height or due to other identified factors.

The Planning Board would then review the recommendations and use them to assist in clarifying the terms “abutting” and “adjacent” with regards to the D5 zone.

Zoning Enabling Act Reference:

125.3201 Regulation of land development and establishment of districts; provisions; uniformity of regulations; designations; limitations.

Sec. 201.

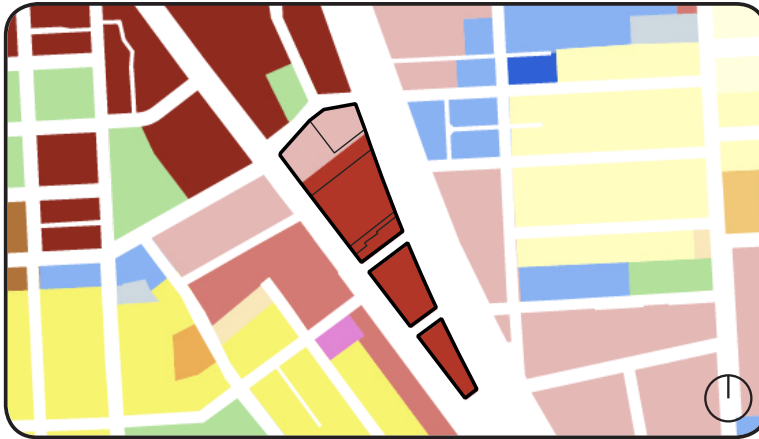
1. A local unit of government may provide by zoning ordinance for the regulation of land development and the establishment of 1 or more districts within its zoning jurisdiction which regulate the use of land and structures to meet the needs of the state’s citizens for food, fiber, energy, and other natural resources, places of

residence, recreation, industry, trade, service, and other uses of land, to ensure that use of the land is situated in appropriate locations and relationships, to limit the inappropriate overcrowding of land and congestion of population, transportation systems, and other public facilities, to facilitate adequate and efficient provision for transportation systems, sewage disposal, water, energy, education, recreation, and other public service and facility requirements, and to promote public health, safety, and welfare.

2. Except as otherwise provided under this act, the regulations shall be uniform for each class of land or buildings, dwellings, and structures within a district.
3. A local unit of government may provide under the zoning ordinance for the regulation of land development and the establishment of districts which apply only to land areas and activities involved in a special program to achieve specific land management objectives and avert or solve specific land use problems, including the regulation of land development and the establishment of districts in areas subject to damage from flooding or beach erosion.
4. A local unit of government may adopt land development regulations under the zoning ordinance designating or limiting the location, height, bulk, number of stories, uses, and size of dwellings, buildings, and structures that may be erected or altered, including tents and recreational vehicles.

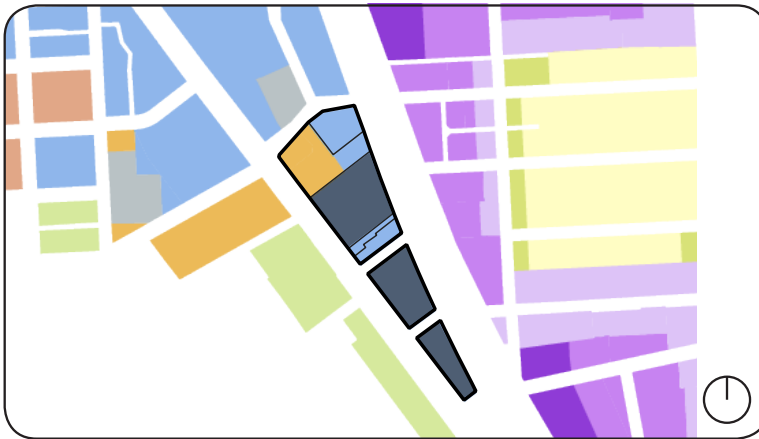
D5 Study Background

Zoning



Zoning district	max height
R3 SFR	28'
R5 MFR	30'
R7 MFR	50'
TZ1 attached SFR	35'
B-2 general business	40'
B-2B general business	40'
B-3 office-residential	60'
B-4 business-residential	60'
0-1 office	28'
0-2 office commercial	28'
P parking	50'
PP public property	-

Overlay zoning



Downtown overlay	max height
C community use	-
D2 3-story development	56'
D3 4-story development	68'
D4 5-story development	80'
D5 special land use	by permit
P parking structures	50'
Triangle overlay	max height
ASF-3 SFR	35'
R2 MFR	30'
MU-3 MFR	60'
MU-5 attached SF	82'
MU-7 general business	118'

Background:

The D5 zone is an overlay zone within the Downtown Birmingham Overlay District (DBOD), which is intended to implement the Downtown Birmingham 2016 Plan. Originally, the DBOD included 3 overlay zones: D2, D3, and D4, as well as Civic and Parking zones for parks and public parking. The D5 zone was established in order to make three otherwise legally non-conforming buildings legally conforming, two of which are within the study area. Prior to D5, the three non-conforming buildings fell within the D4 district, which restricts buildings to 5 stories if the upper floor is residential and 4 stories otherwise. The D5 district permits building height per the D4 requirements, except where a Special Land Use Permit (SLUP) allows heights over 5 stories. Above 5 stories there is no specified limit, outside of the subjective evaluation requirements of the SLUP process requiring recommendation of the Planning Board and approval of the City Commission.

The study area includes D5, D4, and D3 overlay zones, which are mapped over B-3, office-residential, and B-2, general business. D3 limits height to 4 stories where the upper floor is residential and 3 stories otherwise. The limits for D4 were previously stated. Properties mapped with D5 include two existing structures which exceeded 5 stories prior to the DBOD. The D3 and D4 district boundaries do not coincide with property lines at the northern end of the study area where one property is mapped with both D3 and D4. This is likely due to the location of Downtown Overlay zones recommended within the 2016 Plan which were drawn by hand prior to widespread adoption of GIS. Within the mid-block, there are two small properties mapped with D4, properties to the south and north of these being D5. See the map above and on the following page with D5 in dark gray, D4 in light blue, D3 in orange, and D2 in light green. The light gray parcels are public parking.

D5 Study

Background

Effective zoning within and around the study area



The current City Master Plan, from 1980, had recommended reducing the overall development capacity within Downtown from its 4 story limit at the time to 2 stories, due to parking limitations. The buildings which required the D5 zone had already been constructed, and some indicate that their presence at the time is in part what instigated the desire for a Master Plan update in 1980. The 555 Building is specifically discussed in the Master Plan as being out of character due to its bulk, not necessarily its height. The Master Plan also indicates that other high-rise buildings may be appropriate within the downtown to accentuate the skyline, provided careful regulation to ensure compatibility. At the time, most of Downtown was 2 stories or below, with a few taller buildings. The incompatibility between the higher buildings and 2 story downtown as a general practice is noted. Discussion of the Merrillwood Building, a 6 story building which steps back at the 3rd floor, states

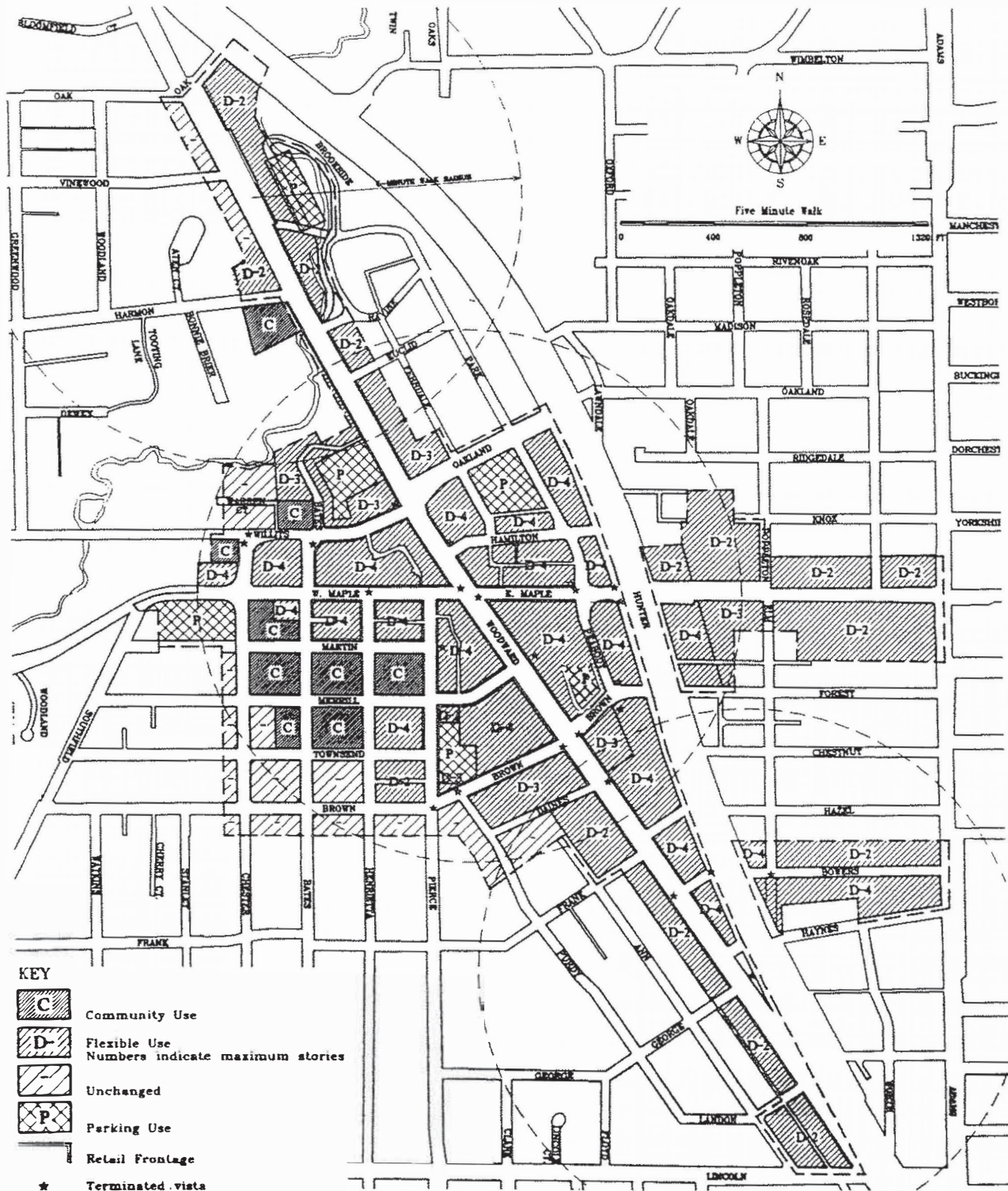
that its corner location is appropriate for taller buildings as a compliment to the otherwise low height of Downtown.

The Downtown Birmingham 2016 plan provided a recommended overlay district for Downtown and discussed heights such that the area generally retain a cap of five stories as most traditional American downtowns are between 2 and 4 stories. The Downtown Overlay District follows the height recommendations of the 2016 plan and zoning district boundary recommendations, shown below, with the exception of D5 which was added later. The boundary between D3 and D4 within the study area that does not coincide with property lines is a result of this map. Presumably, since D4 generally surrounds the area, the D3 portion is intended to preserve an existing historic building. Across Old Woodward, D3 and D2 districts are intended to provide a transition to the adjacent neighborhood.

Downtown Birmingham 2016

APPENDIX F – 2

BUILDING 1: REGULATING PLAN



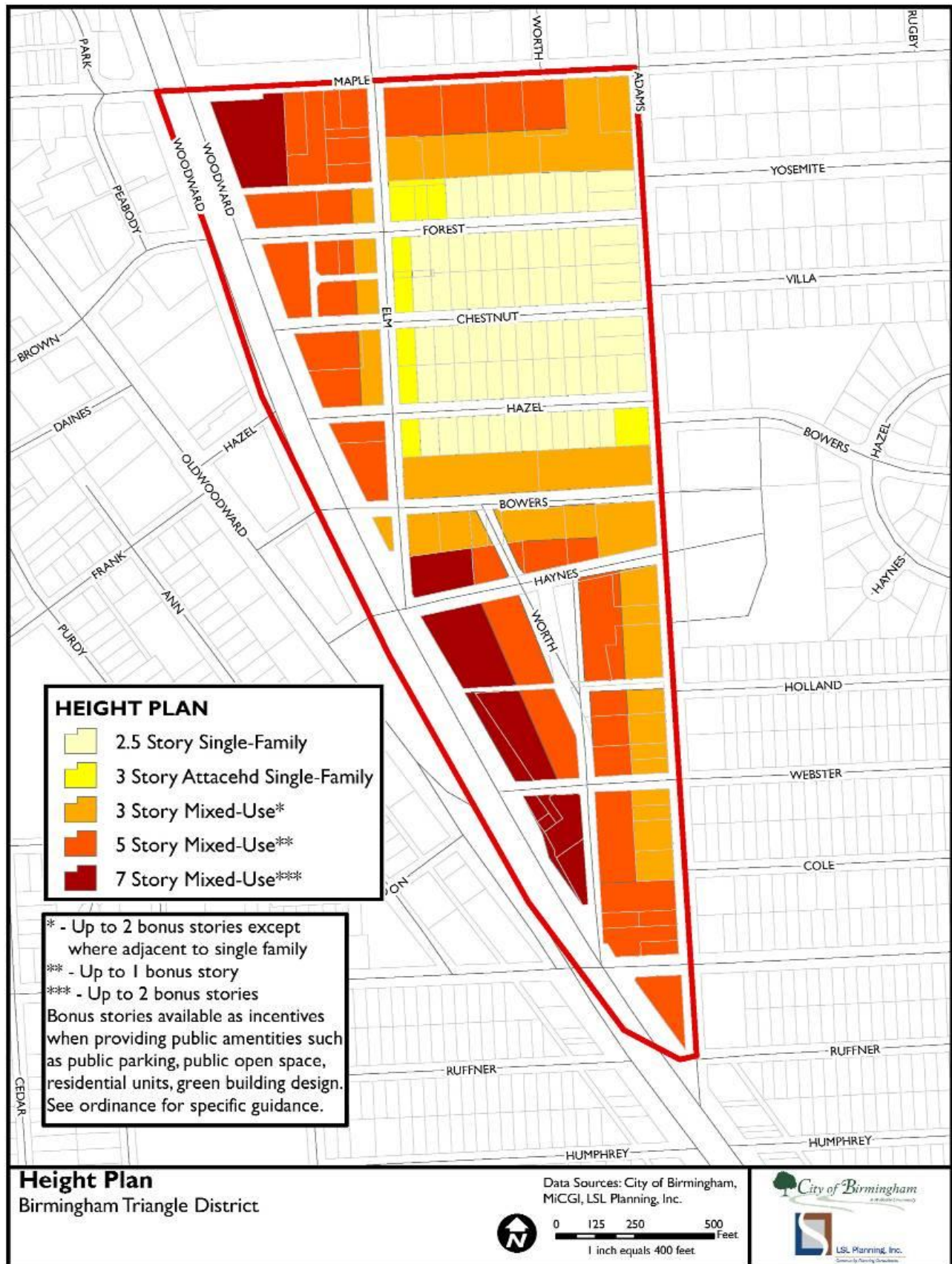
REGULATING PLAN OF THE DOWNTOWN BIRMINGHAM OVERLAY ZONING DISTRICT

D5 Study

Background

In addition to the core Downtown, the vision for the Triangle District, updated in 2007, is important contextually. Both the study area and the Triangle District frame the vision of Downtown Birmingham along big Woodward. The Triangle District Plan recommends that taller mixed-use buildings be located along Woodward, 7 to 9 stories, with medium height mixed-use buildings, 3 to 6 stories, within the District's interior. In all cases, the maximum permitted height is unclear due to the use of height bonuses where each stated height district can be increased in height, such as 3 Story Mixed-Use qualifying for 5 story buildings. The allocation of height and the Triangle District Overlay focus heavily on transitions to adjacent neighborhoods, especially the single-family housing which remains within the District. The study area is generally adjacent to areas of 5 to 6 story mixed-use buildings, due to the adjacency of those properties to residences along Forest, Chestnut, and Hazel. As apparent at Maple and Woodward and at Haynes and south along Woodward, the 7 to 9 story district would be mapped along the entirety of Woodward if residences were further, transitioning upward from the 5 to 6 story district.

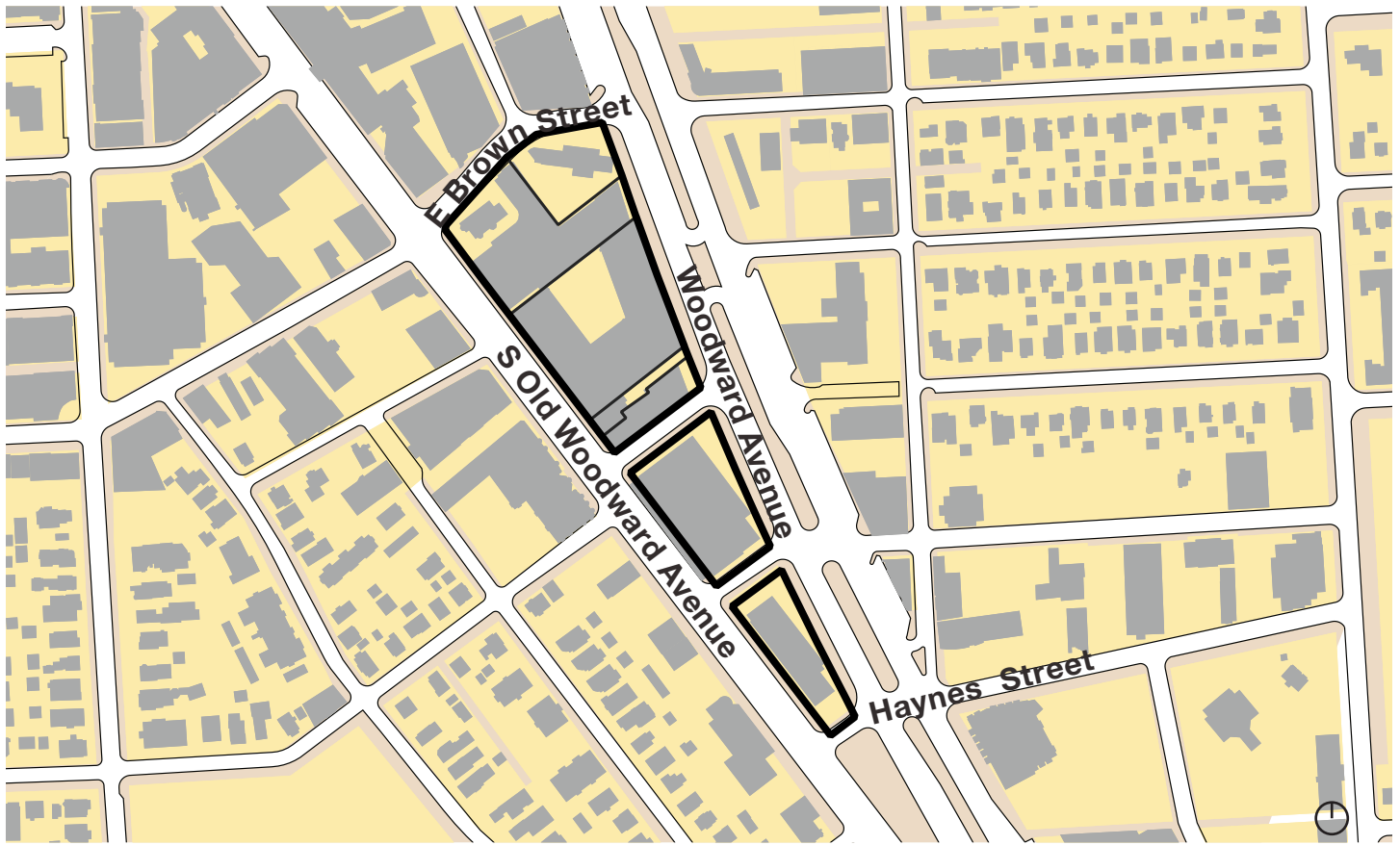
The Birmingham Plan for 2040, currently in progress, has proposed that Downtown Birmingham be considered to include 3 districts: Market North, Maple and Woodward, and Haynes Square. This proposal is aimed at bridging the Woodward divide and at improving the quality of retail and development along south Old Woodward. Presently, the experience of travel along Woodward is that one drives by Downtown Birmingham, rather than through Downtown Birmingham. The 2040 plan intends to change this perception to one of driving through the core of Downtown Birmingham. The study area occurs at a key seam between Haynes Square and Maple and Woodward, framing the northern end of Haynes Square. The concept for Haynes Square is to connect Old Woodward with big Woodward at a right-angle, accompanied by a public open space, the square. This alleviates the dangerous traffic condition at the current intersection of these roads, and provides a central public space to mark the entrance to greater Downtown Birmingham.



D5 Study

Discussion and Recommendation

Current Building Footprints



Discussion:

In order to evaluate the request, DPZ Partners Matthew Lambert and Marina Khoury discussed the conditions of the study area and surrounding Downtown Districts. Marina was consulted due to her extensive code experience and her lack of familiarity with the specifics of Birmingham, and objective party. Matthew provided familiarity with the conditions of the study area, the 2040 plan in progress, and the reason for this request.

Prior to being informed about further specifics, Marina was provided the information included in the Background section of this document, including the 3d models of the current conditions and present zoning allowances. Her initial take away was based upon 3 assertions:

1. Nothing in the present assignment of height through zoning justifies retaining a lower height for any properties within the study area.
2. Zones should generally be contiguous.
3. The design of buildings has a greater impact on compatibility than height.

Initial assertions from Marina reinforced the conclusions that Matthew had also arrived at. Further discussion ensued, addressing other issues of design compatibility and public benefit that are beyond the scope of the request, and addressed through the existing Special Land Use Permit (SLUP) process that is embedded in the D5 zone.

D5 Study

Discussion and Recommendation

Overall, it is clear that the entire study area merits rezoning to D5. This triangle of land occupies a very special position in Downtown Birmingham where Woodward and Old Woodward separate from each other. Already, the study area has been developed at a scale above the majority of the downtown area. Were the Triangle District height map extended in concept across Woodward, the study area would be mapped with the 7 to 9 story district. The most significant position within the study area is the site of the 555 building, which merits the greatest height. The remainder of the study area provides background to that key site: a podium which is capped by place where the Woodwards meet.

Impact overall must also be addressed. The sites within the study area that are not currently D5 would only impact directly abutting (sharing a property line) properties, Birmingham Place, which is already a taller building within D5. Context is established by the nearby properties, which includes the 555 building even though it is in the study area, properties zoned between 6 and 9 stories in the Triangle District, and 4 to 5 story properties within the overall Downtown District. Old Woodward and Woodward are both very wide roads where taller buildings on one side of the road have a limited impact on those adjacent properties across the road. In fact, due to the size of both roads, they require taller buildings to create a street room, greater height along Woodward than Old Woodward, as is recognized by the Triangle District zoning. Brown is also a relatively wide road, a portion of which is occupied by a parking structure. Taller buildings along the south side of Brown may require one or more stepbacks, which is already provided for in D4 and further requirements possible through D5's SLUP process. Hazel is the street where nearby properties are most impacted, however the only impacted property is the 555 building which is already tall and presents a mostly blank wall to the north.

One concern remains which is the preservation of the Ford-Peabody Mansion. This concern reflects the Downtown Overlay mapping of the 2016 Plan. While presently a listed historic resource, the Historic Preservation Ordinance provides little protection for the building overall. While the allocation of heights and zoning districts is not necessarily to be concerned with preservation in a downtown area, allocating significant additional height may induce development and loss of the historic asset. Yet the mansion could be relocated were the site to be redeveloped. This is a consideration left for the appointed boards and elected officials to address. Concerning the specifics of the request made, setting aside the question of historic significance, this site would also qualify for rezoning to D5.

Lastly, we want to reiterate an important point: the design of buildings is more impactful to compatibility than height. This sentiment was discussed at length in review of the study area, and also stated in the 1980 Master Plan which considered this same issue of the impact of height on the city. As also stated in the 1980 plan, the design of the 555 building was considered to be less compatible due to the long mass of the larger portion of the building. Should the study area be rezoned to D5 as recommended, it is incumbent upon the Planning Board and City Commission to ensure that the massing and design of any new building is compatible with the context.

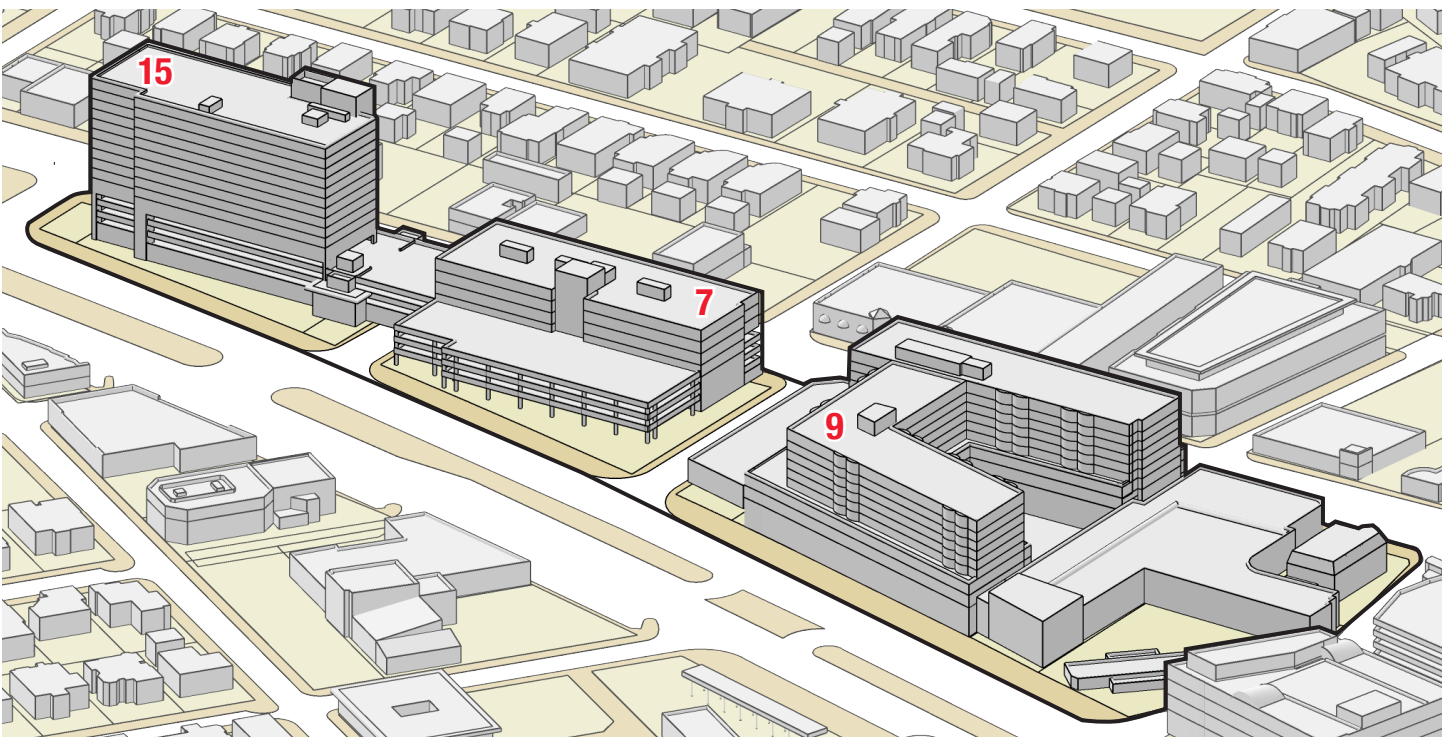
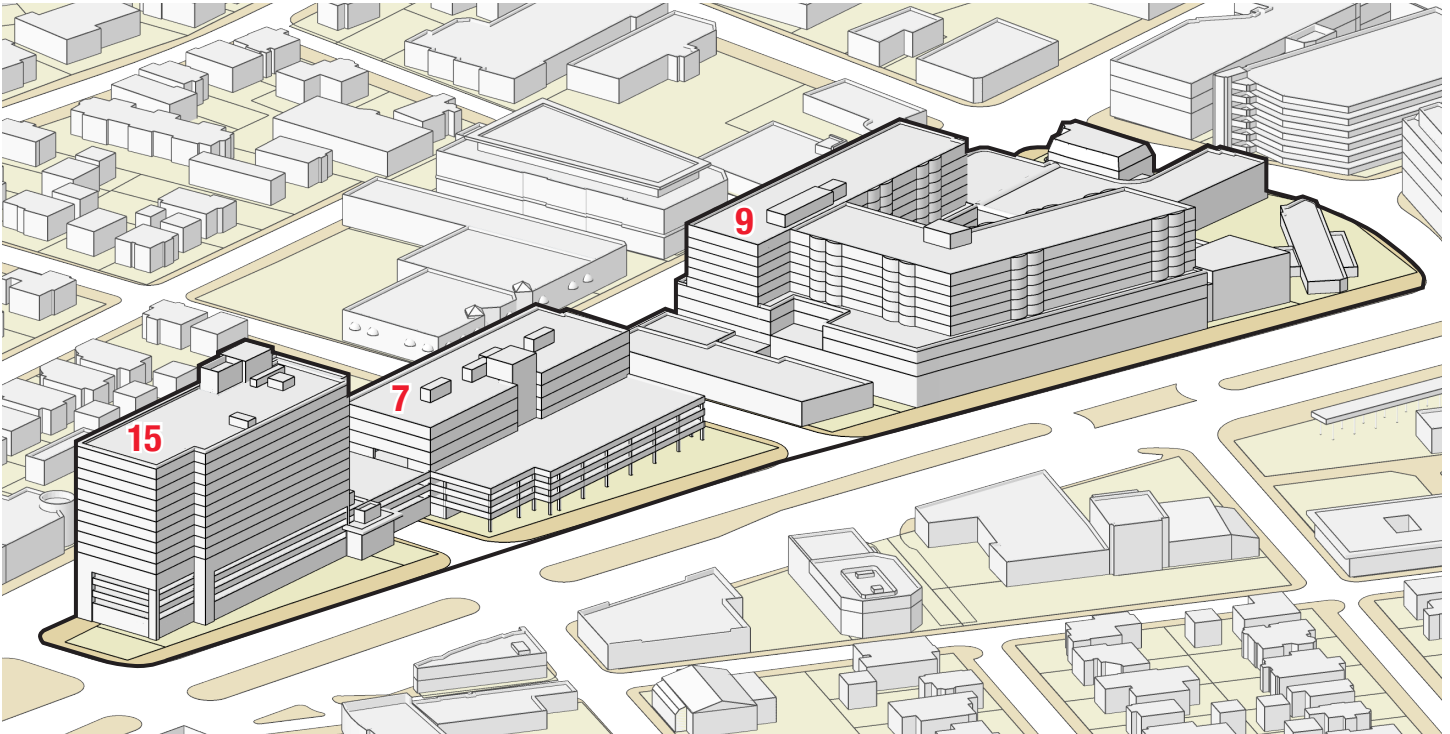
Recommendation:

All properties within the study area should be eligible for rezoning to D5, with the potential exception of the Ford-Peabody Mansion for considerations related to preservation.

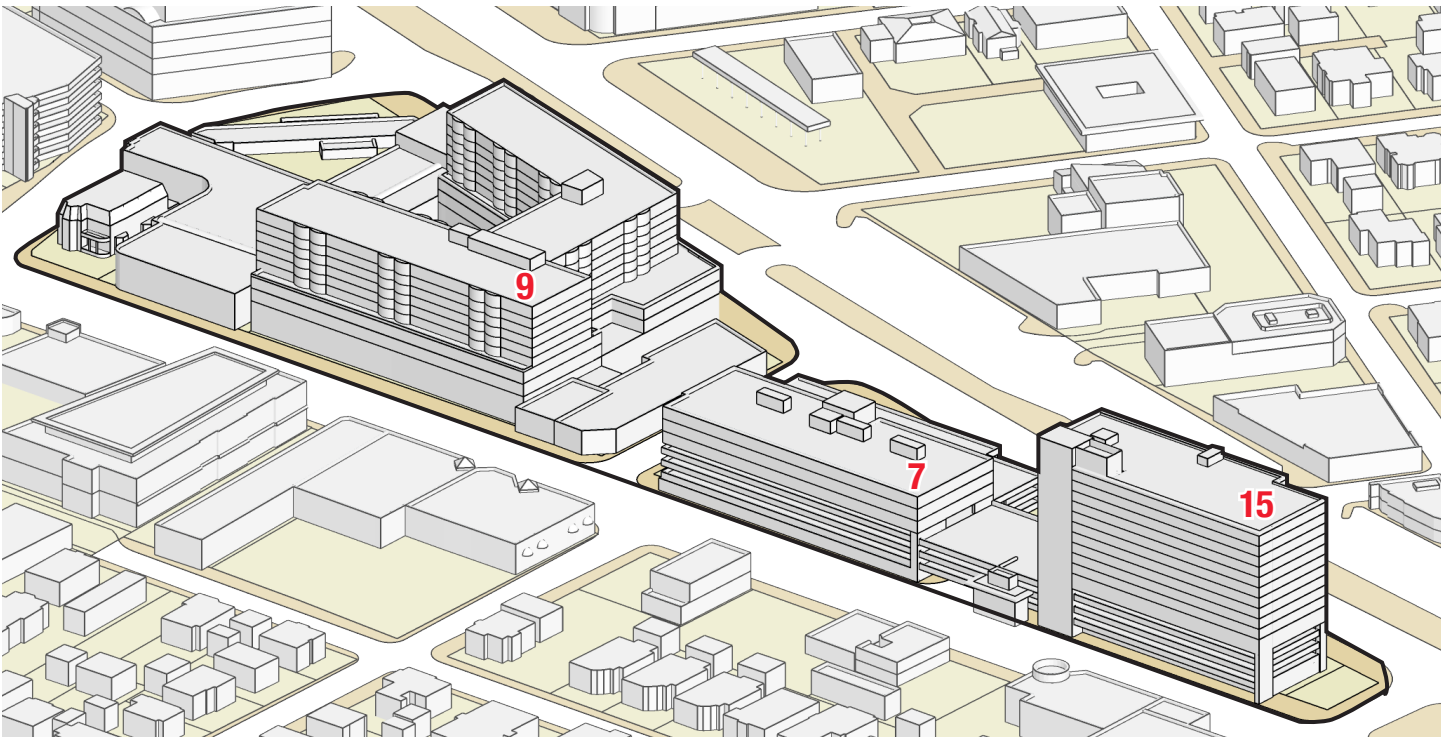
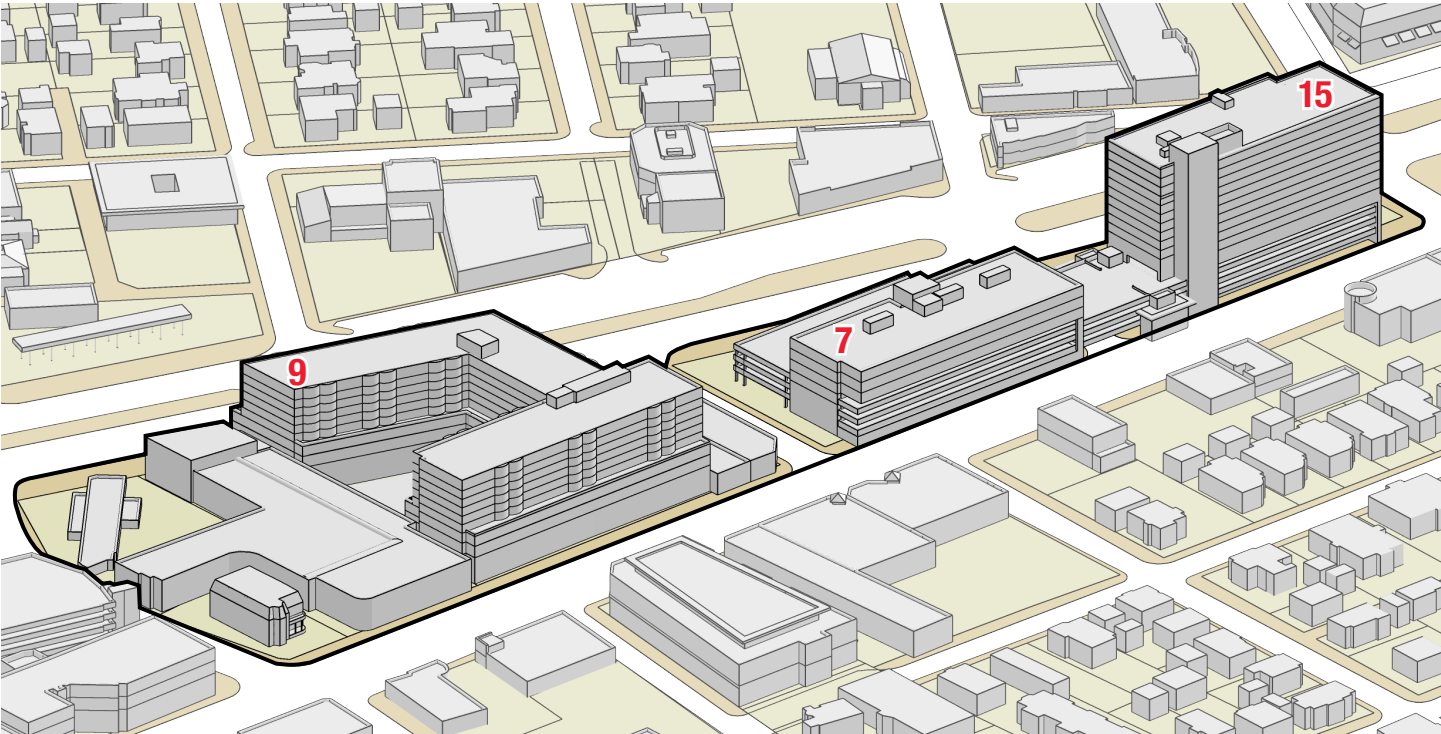
D5 Study

Massing Studies - Existing condition

Height of buildings in stories



Height of buildings in stories



D5 Study

Massing Studies - Development potential under current zoning

Downtown Overlay

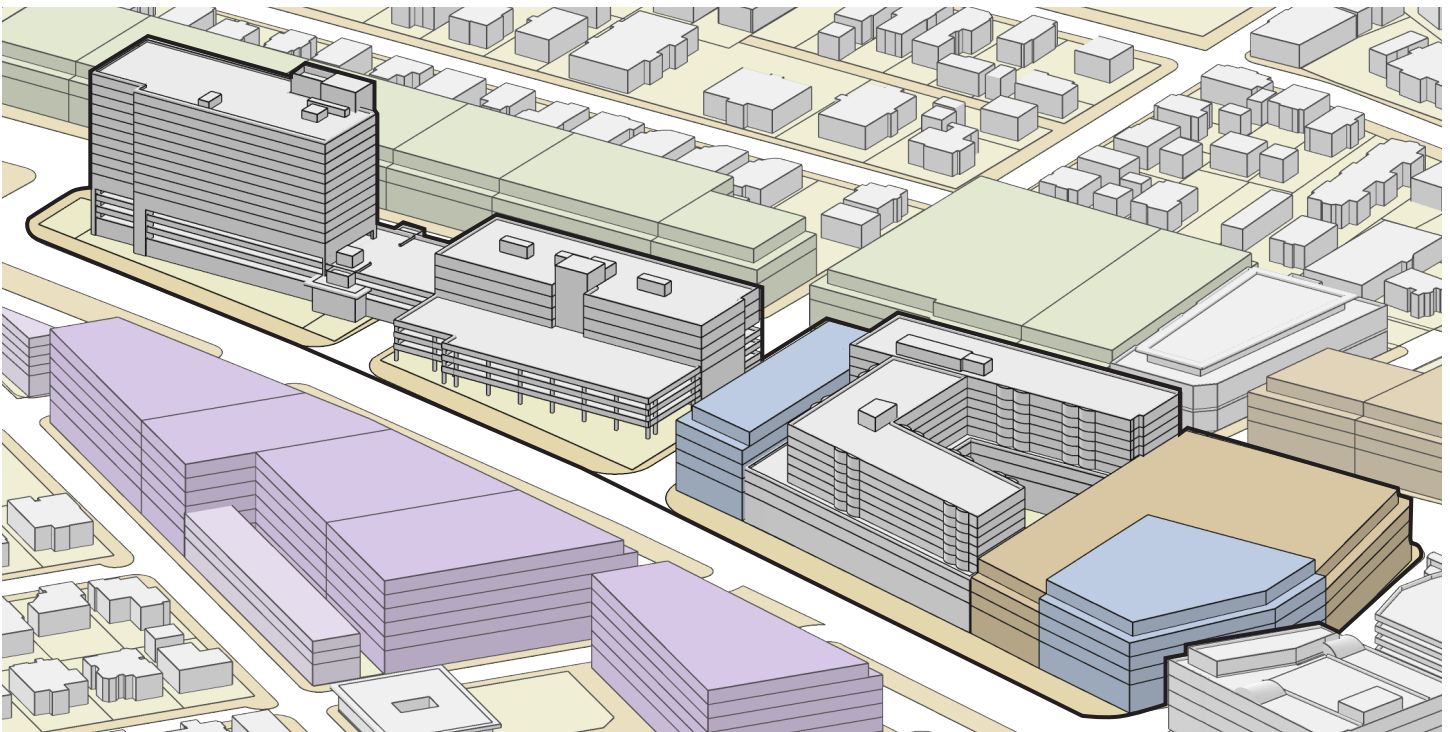
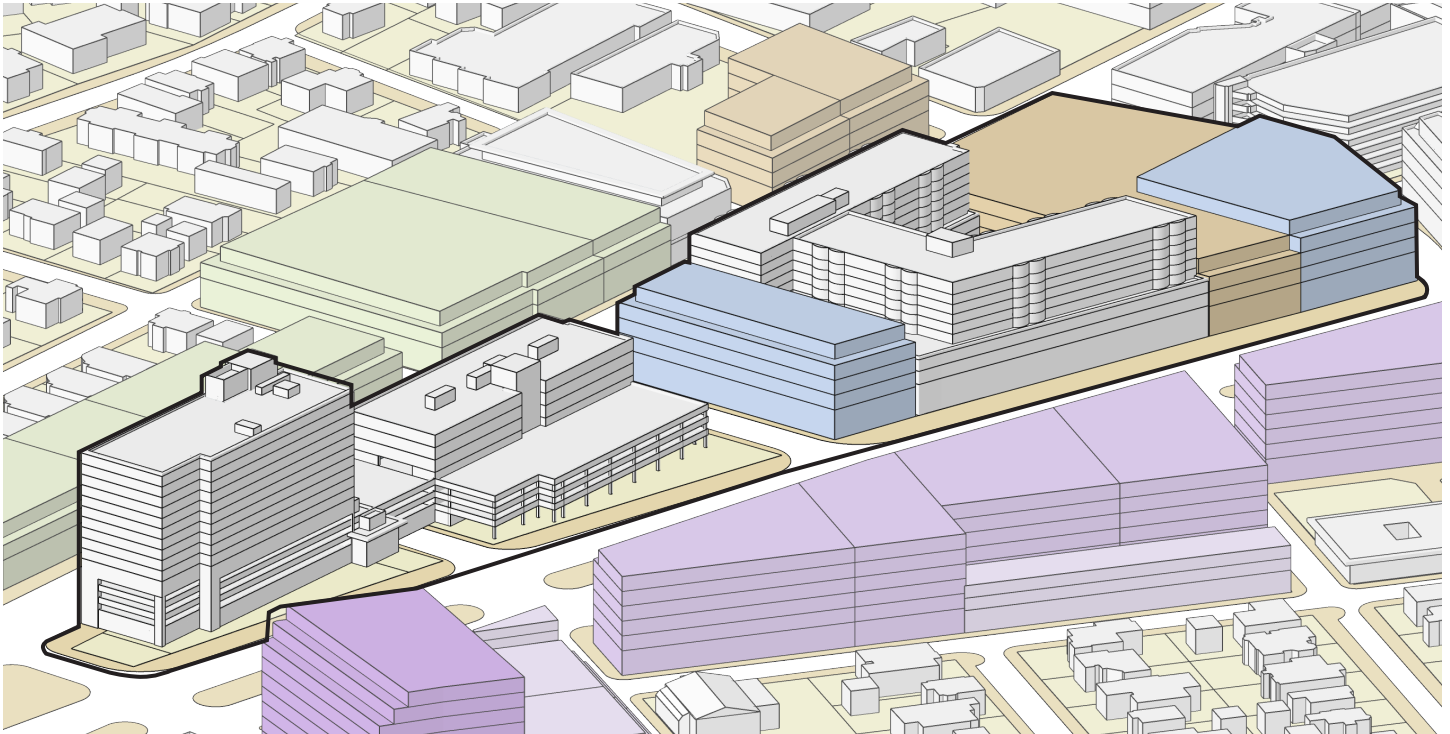
max allowable heights:

- D2 3-story development - 56'
- D3 4-story development - 68'
- D4 5-story development - 80'

Triangle Overlay

max allowable heights:

- MU-3 MFR - 60'
- MU-5 attached SF - 82'
- MU-7 general business - 118'



Massing Studies - Development potential under current zoning

Downtown Overlay

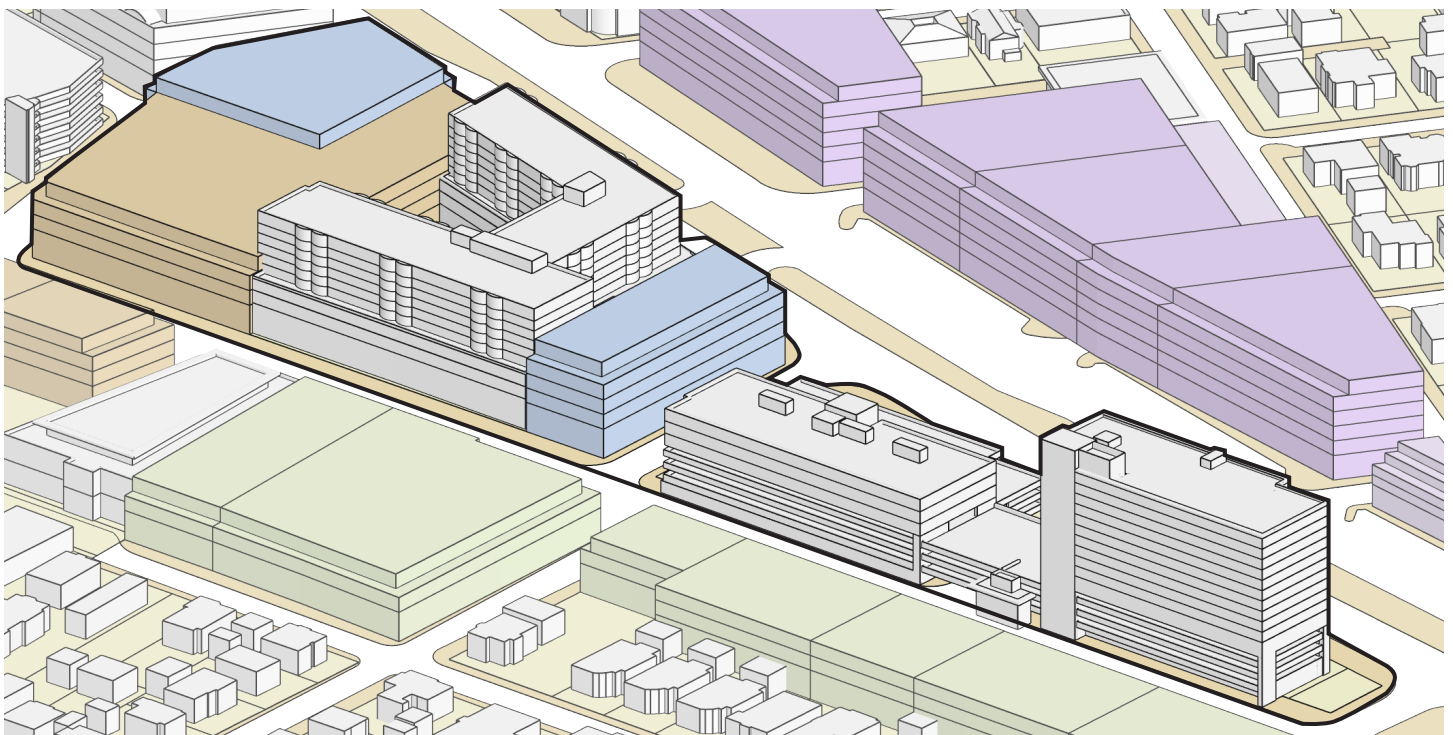
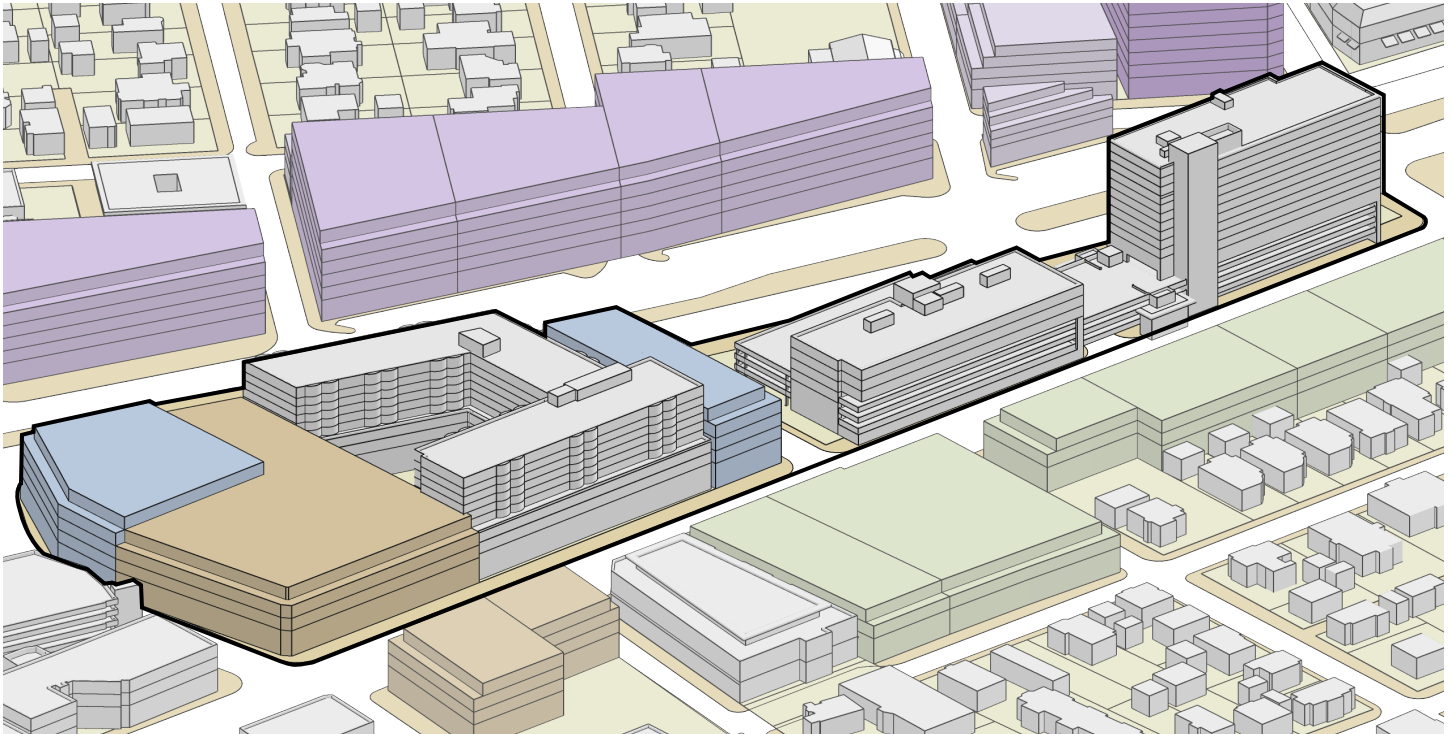
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- D4 5-story development - 80'

Triangle Overlay

max allowable heights:

- MU-3 MFR - 60'
- MU-5 attached SF - 82'
- MU-7 general business - 118'



411 S. Old Woodward Ave., Unit 1018
Birmingham, MI 48009
May 16, 2018

VIA HAND DELIVERY

Ms. Jana Ecker, Director
City of Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Development")
Request to Rezone from B3/D4 to B3/D5 Filed by Christopher Long
on Behalf of Birmingham Tower Partners, LLC (the "Applicant")
Hearing Scheduled for Wednesday, May 23, 2018 (the "Hearing")

Dear Ms. Ecker:

I request that the Hearing be rescheduled for two (2) reasons. First, I received notice of the Hearing by mail on May 8, 2018 and visited the City Planning Office on Friday, May 11, 2018 to review the application. As of that date, the Applicant had not filed the statements required under subsection 7.02 B.2.b of the Rezoning Amendments (i.e., explanations of why rezoning is necessary, of why the existing zoning classification is no longer appropriate, and of why the proposed rezoning will not be detrimental to the surrounding properties). I suggest that failure to timely file those explanations caused the notice of the Hearing not to meet the fifteen (15) day advance notification required under subsection 7.02 B.4.a.i of the Rezoning Amendments.

Second, as a Birmingham resident living adjacent to the Proposed Development, I would appreciate time to review the very extensive documents filed by the Applicant. I suggest that public input is critical on a project that seeks to permission to erect the first building greater than five (5) stories to be built in downtown Birmingham in decades, which could well set a precedent for continuing development of high rise structures in our beautiful community. Substantial additional time will be required for myself and the many other Birmingham residents who are affected by the Proposed Development to adequately review and to respond to these filings.

Please contact me at the above address, via email to mickeyschwartz@gmail.com, or at telephone numbers (248) 229-9989 or (248) 593-3155 with any questions or further requirements and in any event with the new hearing date. Thank you for your time and attention.

Yours very truly,



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.

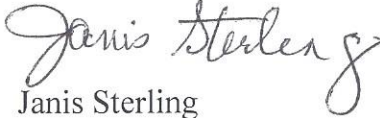
In addition, we have serious safety and other concerns, including:

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 ")

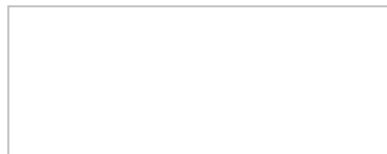
Ladies and Gentlemen:

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.

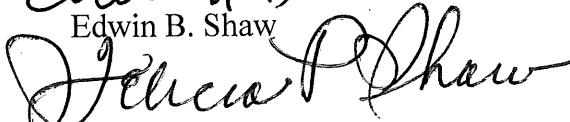
In addition, we have serious safety and other concerns, including:

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 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,

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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8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.



For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Frank Jonna', is written over the printed name.

Frank G. Jonna
6200 2nd Ave., Suite D-102
Detroit, MI 48202



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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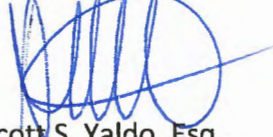
500 S. Old Woodward Ave., Second Floor, Birmingham, MI 48009

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

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.
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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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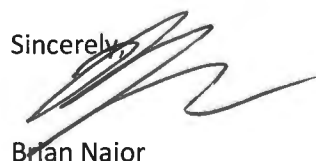
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For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

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

Dear City Commission and Planning Board Members,

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For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Very truly yours,
RANDAL TOMA & ASSOCIATES, P.C.



Randal S. Toma
Attorney at Law

Lexi Drew
152 N Old Woodward
Birmingham, MI 48009
248.220.1731

Date 6/20/2018
Birmingham City Commission & Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue
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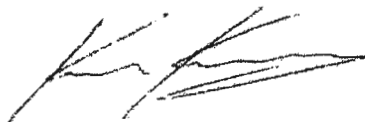
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For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin Kejbou', with a stylized, sweeping flourish at the end.

Kevin Kejbou
152 N Old Woodward
Birmingham MI 48009



2000 Town Center
Suite 2200
Southfield, MI 48075

248 353 5400 Tel
248 353 8134 Fax

June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

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For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

David Hesano
First Vice President
David.hesano@cbre.com

DJ MARLUC HOLDINGS LLC

6632 Telegraph Rd. #359
Bloomfield Hills, MI 48301

6/18/2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

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For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,



John Kello



DETROIT ATLANTA CHICAGO CLEVELAND DALLAS HOUSTON LOS ANGELES MIAMI NEW YORK SAN FRANCISCO SOUTH JERSEY WASHINGTON DC

June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony Toma".

Anthony Toma
CEO & Founder
Nine9
2653 Industrial Row Dr.
Troy, MI 48084



June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

RE: Proposed Project at 469-479 S Old Woodward Avenue

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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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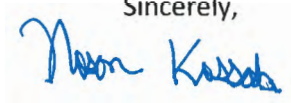
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Sincerely,



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

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Sincerely,

Jacques Van Staden - Founder & CEO
176 S. Old Woodward Ave
Birmingham, MI 48009

David Breedlove
85 Tradd Street
Charleston, SC. 29401

June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

I am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project referenced above. I am no longer a resident of Birmingham but maintain a condominium in Birmingham. Birmingham has been my home for most of my 70 years since my parents bought their first home on Villa in 1949. I remember visiting Pearls for a nice Chinese dinner. So, I know the area well. And while we moved from our home on Lincoln to warmer weather after retirement, Birmingham will always be home. I have watched how the character of the town has changed over the last 65 years. I was sad when the City allowed 555 to be built. I will always believe it was a mistake. We do not need another mistake.

I was encouraged when the City leaders realized they needed to protect the character and feel of the city. There was no place for skyscrapers in Birmingham. The city's 2016 Master Plan recognized the need to control the height of new buildings in the city center. I think they have done an excellent job over the last twenty years.

I have watched in my new home, Charleston, as real estate investors have tried to come in and build one more hotel and destroy what makes Charleston attractive. It is an on-going battle. You are faced with the same economic pressures and arguments I hear in Charleston. It is just one more hotel. There are already buildings of similar height in town. The city needs more hotel rooms. It will generate more business in town. The arguments are always the same and unfortunately, so are the results. The town becomes more impersonal. Small businesses are replaced by those that cater to the transient visitors. Residents must go elsewhere to shop.

As city commissioner, you must protect what you have today and what makes Birmingham so attractive as a place to live, work and raise a family. It is unique place in southeast Michigan, beautiful neighborhoods surrounding a friendly and inviting downtown.

I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept I firmly believe is very important to

maintaining the character and long-standing plan for this beautiful city. If someone wants to build a 9 or 10 story hotel, let them go to Troy or Southfield.

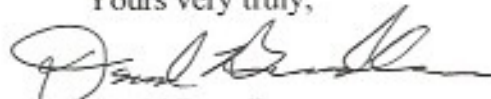
The city's 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest. Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population. Approving a change to the zoning will open the door for the next developer to come in and argue for a similar change. What is the argument against building a high rise on the North side of Birmingham Place? Across the street?

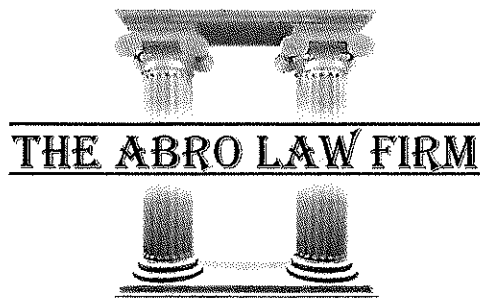
I cannot assess the technical implications of the proposal such as traffic, impact on city services, disruption of business during construction and impact on surrounding structures. I leave that to the Commissioners and their technical experts. The parties who purchased the reference property knew the zoning at the time. They are calculating they can change the City Commissioner's minds. They are not concerned with the long term implications to the city but only how to maximize return on their investment. I sincerely hope their calculations are wrong. Another high rise in the southern end of town will ruin the neighborhood feel and open the door for more rezoning requests.

Thank you for your time and attention, and for, I sincerely hope, your vote to preserve what is a beautiful and people friendly city.

Yours very truly,



David Breedlove



Phone: (248) 723-4545
Fax: (248) 598-4049
E-Mail: gus@abrolaw.com

500 S. Old Woodward
Second Floor, Suite 200
Birmingham, Michigan 48009

ATTORNEYS AND COUNSELORS AT LAW

June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

RE: *Proposed Project at 469-479 S. Old Woodward Avenue*

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

The project that has been proposed for this in-fill site should be approved because it would be appropriate for this parcel of land. If allowed to be built, the project would:

1. Be in harmony with the pattern of the neighboring buildings by filling in the noticeable 'gap' between them, which can be seen from both South Old Woodward and Woodward Avenue.
2. Be consistent with the building heights, uses, and character of Birmingham Place and the 555 Building.
3. Increase the walkability of this area by providing retail at the street level, and by strengthening the retail connection between Birmingham Place and the 555 Building.
4. Add foot traffic (shopper & travelers) to the south end of the city by encouraging foot traffic from the downtown to continue on the completed blocks.
5. Activate Hazel Street in perpetuity – while currently busy with construction bypass traffic, Hazel is an otherwise dormant street (which is vacated on the east side of Woodward Avenue).

6. Adhere to the spirit and intent of both the 2016 Master Plan and the D5 zoning overlay.
7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Thank you for your attention herein. As always, should you have any question or require any additional information, please do not hesitate to call me directly. I remain,

Very truly yours,

THE ABRO LAW FIRM

Gus J. Abro, Esq.



GA/gja



CITY OF BIRMINGHAM FIRE DEPARTMENT

572 SOUTH ADAMS • BIRMINGHAM, MICHIGAN 48009 • 248.530.1900 Fax 248.530.1950

June 22, 2018

Jana Ecker, Planning Director
City of Birmingham (MI)
151 Martin St.
P.O. Box 3001
Birmingham, MI 48012-3001

Dear Jana:

I am following up on our communications in regards to residents at 411 S. Old Woodward known as Birmingham Place and their concerns with fire protection. The proposed project at 469-479 S. Old Woodward is potentially going to be a nine story building, built very close to the South side of Birmingham Place. Their concern is the fire department's ability to fight a fire at Birmingham Place if the proposed project does not allow aerial operations on the South side of the building.

Though we would not deploy our aerial truck for operations on the South side of the building, we do have access from both the East and West sides of the building. Our aerial truck has an extended 100' ladder which would reach approximately six to seven stories based on the distance the aerial is positioned, due to this most high rise fires are fought from the inside of a high rise building. The Birmingham Place has a fire pump to increase pressure to upper floors, fire suppression sprinklers that when activated would extinguish a fire or contain the spread of the fire, standpipes at each floor allowing firefighters to connect hose lines to fight a fire and a fire alarm which would alert residents of the building. The exterior of the building is of a material that is non-combustible and smoke alarms throughout the building. Our officers and firefighters are well trained to aggressively attack a fire in a high rise building. There should be no concerns that the proposed project would hinder fire operations in the Birmingham Place.

I hope this letter will help ease the concerns of our residents as the Planning Board and other stakeholders discuss the proposal and the future of the site. Please let me know if I can assist you in any other way.

Sincerely,

John M. Connaughton, Fire Chief

Corrected
May 17, 2018

Richard D. Rattner
rdr@wwrplaw.com

City of Birmingham
City Commission
151 Martin St.
Birmingham, MI 48009

Re: Application to include 469 and 479 S. Old Woodward, Birmingham, MI
("Subject Property") in the D5 Downtown Birmingham Overlay District
Zone ("Application")

Dear Members of the Planning Board and City Commission:

Please accept this letter from the property owner ("Property Owner") of 469 and 479 S. Old Woodward ("Property") as a Supplement to the referenced rezoning Application file to rezone the Subject Property from the **D-4 Zone** to the **D-5 Overlay Zone** in the Downtown Birmingham Overlay District.

Executive Summary

The Subject Property is a former single-story restaurant building and bank that sits between two existing tall buildings in the City. Birmingham Place is located to the north and the 555 Buildings are located to the south. The placement of the buildings is not only inconsistent with a cohesive and harmonious streetscape in that area but is contrary to the intent of the Master Plan. This inconsistent height results in a streetscape along South Old Woodward that appears to have a "missing tooth."

If the Subject Property is rezoned to D-5, there is an excellent opportunity for the Subject Property, Birmingham Place and the 555 Buildings to create an impressive southern gateway to Downtown Birmingham. It is therefore reasonable that the Subject Property, sitting directly between the 555 Buildings and Birmingham Place, be included in the same zoning district, that is as part of the D-5 Overlay District, as those neighboring two buildings.

Rezoning the Subject Property to the same classification as the buildings immediately to the north and south will enhance and complete the streetscape of these important two blocks of Downtown Birmingham. Inclusion of the Subject Property in the D-5 Overlay Zone is consistent with the 2016 Master Plan. Moreover, it will allow the Subject Property to enjoy the same development regulations as the neighboring properties.

The Subject Property and the Master Plans

A review of the history surrounding the zoning of this area of Downtown is instructive. The minutes of the City Commission during the late 1960s and early 1970s, reveals that the height of the buildings in this area of Downtown were historically zoned for the height of the 555 Buildings and Birmingham Place. However, the zoning ordinance was amended in the 1970's after the construction of those buildings to a maximum of four stories. Therefore, for several years, the taller buildings in the City were burdened with the status of legal nonconforming uses.

In 2016, the City corrected this down zoning for the 555 Building to the south and Birmingham Place to the north, with the creation of the D-5 Zone to allow for existing heights (in the case of the 555 Buildings and Birmingham Place) and to allow for new construction to a height up to the same height of an immediately adjacent or abutting building (see Ordinance 3.04-4-b). While the 555 Building and Birmingham Place are now at allowable heights, sitting in between them, the Subject Property is the only building in that streetscape that cannot be constructed to a height that is consistent to its neighbors. This inconsistency creates an obvious gap in the street's architecture which is not harmonious with the overall downtown design and longer-range plan for that part of South Old Woodward.

The Birmingham of 2016

In 1996, the City Commission adopted the Downtown Birmingham 2016 Plan ("2016 Plan") and amended the Zoning Ordinance to include the Downtown Birmingham Overlay District. The Subject Property is located in the **D-4**

Zone, sitting between two tall buildings in the City that have been rezoned to the D-5 zone. These multi-story buildings are the established character of this particular area of the City. Placing the Subject Property in the D-5 zone would allow development of the Subject Property to be at a similar height to the buildings directly to the north and south. The Applicant desires to develop the Subject Property in a manner that completes the block between Brown and Hazel while adding to the cohesiveness of the South Old Woodward southern gateway area.

The Birmingham Zoning Ordinance at Sec. 1.04 provides that the purpose of the Zoning Ordinance is to "...guide the growth and development of the City in accordance with the goals, objectives and strategies stated within the Birmingham Master Plan ("Birmingham Plan"), and Downtown Birmingham 2016 Plan. A review of the Birmingham Plan (1980) and the Downtown Birmingham 2016 Plan (1996) reveals that this application to include the Subject Property in a D-5 Overlay District meets the spirit and intent of the ordinance as well as the 2016 Plan. It will allow for mixed uses and add to the vitality of the modern streetscape envisioned for this part of town by the 2016 Plan. With rezoning, the Subject Property can become that desired mixed-use space for retail, residential and hotel, and bring new life to the South Old Woodward area.

Any redevelopment of the Subject Property in compliance with its current zoning classification would result in a building with frontage dwarfed by the existing neighboring structures. Therefore, by rezoning the Subject Property to the D-5 overlay, a new building could be built to a similar height as the neighboring buildings, and effectively complete an otherwise missing piece of the streetscape.

In summary, it is clear that the intent of the 2016 Plan includes development of this southern area of the Downtown Overlay District as a gateway to Downtown through enhancing the character of buildings and providing our City with an active, pedestrian-friendly, urban streetscape.

Rezoning Amendment – Sec. 7.02 (B)(2)(b)(i)-(iii)

The Zoning Ordinance at Sec. 7.02 requires that as part of an application for rezoning, the petitioner should address certain issues to be considered by the Planning Board and the City Commission. Please consider the following comments with respect to these issues.

7.02(B)(2)(b)(i) - An Explanation of Why the Rezoning is Necessary for the Preservation and Enjoyment of the Rights and Usage Commonly Associated with Property Ownership

Rezoning of the Subject Property is necessary to preserve the Applicant's enjoyment of rights associated with ownership of a property zoned for mixed uses. Because of the size and corner configuration of the parcel, it will not support street-level retail, residential, and parking for residents in the same manner as the neighboring properties. The 2016 Plan clearly anticipates mixed use developments. Such planning requires space to design and locate mixed uses within a given structure. Without the ability to go higher with a new building than current zoning allows, the Applicant will not have the required area within which to locate a mix of uses, or otherwise to be able to enjoy all of the allowed uses that would commonly be associated the design of such a modern, mixed-use building. Furthermore, the D-5 Ordinance, at section 3.04-4-b, anticipates that the Subject Property and those similarly situated may enjoy the same rights of usage through an extension of height as other existing tall buildings already enjoy in the D-5 Overlay District.

Sec. 7.02(B)(2)(b)(ii) - An Explanation of Why the Existing Zoning Classification is No Longer Appropriate

The existing **D-4** zoning classification is no longer appropriate for the Subject Property. The Subject Property is surrounded by the Birmingham Place, a ten-story building on the north side and the 555 Buildings, a fifteen-story building on the south side. This height is an established pattern in this area of the City. This rezoning request is actually an "infill" rezoning to bring the entire area into architectural and design harmony with surrounding buildings. It is reasonable for the Subject Property to share the same zoning classification as its surrounding neighbors. This would allow development of the property in a manner consistent with the

existing structures from Brown Street south to Haynes Street. It will create a more unified block and enhance the character of the gateway area to Downtown Birmingham. The rezoning of the Subject Property would restore the property to a zoning classification this area of the City once enjoyed, as the Planning Board has done for with Birmingham Place and the 555 Buildings. Hence, given the location of the Subject Property sandwiched between two properties in the D-5 Zone, the **D-4** Zone is no longer appropriate.

Sec. 7.02(B)(2)(b)(iii) - An Explanation of Why the Proposed Zoning will not be Detrimental to the Surrounding Properties

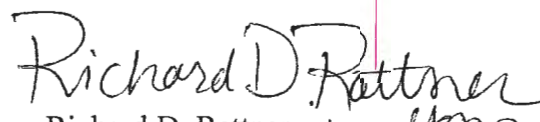
The proposed rezoning of the Subject Property is not detrimental to surrounding property owners. Note that the proposed rezoning does not extend the D-5 classification further to the north or south of the current D-5 Zoning, but actually fills in the one gap in the streetscape that is noticeably out of place and anachronistically remains in the **D-4** Zone. The surrounding properties to the north and south already are in the D-5 Zone. When these neighboring properties were rezoned, the Planning Board anticipated that eventually the Subject Property also may be rezoned for the reasons stated in this letter. Placing the Subject Property in D-5 Zone will be placing it on equal footing with the surrounding properties from a structural, use and design perspective. The proposed rezoning will enhance the entire area by allowing it to be developed as an attractive part of the South Old Woodward gateway and bring that area into compliance with the spirit and intent of the 2016 Master Plan.

Conclusion

The Applicant respectfully requests that the City Commission rezone the Subject Property from the **D-4** to the D-5 Zone as discussed in this letter.

Very truly yours,

WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, P.C.


Richard D. Rattner *by [signature]*

RDR/cmc

June 25, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

The project that has been proposed for this in-fill site should be approved because it would be appropriate for this parcel of land. If allowed to be built, the project would:

1. Be in harmony with the pattern of the neighboring buildings by filling in the noticeable 'gap' between them, which can be seen from both South Old Woodward and Woodward Avenue.
2. Be consistent with the building heights, uses, and character of Birmingham Place and the 555 Building.
3. Increase the walkability of this area by providing retail at the street level, and by strengthening the retail connection between Birmingham Place and the 555 Building.
4. Add foot traffic (shopper & travelers) to the south end of the city by encouraging foot traffic from the downtown to continue on the completed blocks.
5. Activate Hazel Street in perpetuity – while currently busy with construction bypass traffic, Hazel is an otherwise dormant street (which is vacated on the east side of Woodward Avenue).
6. Adhere to the spirit and intent of both the 2016 Master Plan and the D5 zoning overlay.
7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,



Derek Dickow
211 E Merrill St., 504
Birmingham, MI 48009

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project ")

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

The city's 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest. Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population.

The Proposed Project is also esthetically displeasing. Instead of enhancing the Woodward corridor with an attractive entrance, it presents only a blank wall to the passing public. It would also create the hostile appearance of blocking off much of South Old Woodward and beyond by erecting a virtual wall of buildings running from the south end of the 555 residential units through the north end of Birmingham Place, reminiscent of medieval walls built around cities to keep people out, not to invite them in.

In addition, I have serious safety and other concerns, including:

1. Birmingham firefighting capability is limited to 7 stories. This would leave most of the back of the Proposed Project and virtually all of the south end of Birmingham Place with inadequate or no fire protection.

2. I also suggest that the Proposed Project would unduly burden our city's already hard-pressed police and public safety/rescue facilities.
3. Hazel Street is already a busy connector between Woodward and Old Woodward, especially at rush hour times. The Proposed Project would literally clog this small street with excess traffic, especially if the "four stack" valet service recommended by the developer's own traffic study is implemented and if the current four on-street parking spaces are included in the Proposed Project's plan for adequate parking, as Christopher Longe recently stated to the Planning Board would be the case. We note that the City's own traffic advisor, Fleis & Vandenbrink, also finds considerable fault with the developer's traffic study.
4. The demolition and construction time of the Proposed Project would be finite, but during that time, the heavy equipment needed for a project this size would cause construction damage to Hazel Street, Old Woodward and Woodward. Depending on the timing, this could result in at least the repaving work already planned for Old Woodward south having to be redone at a very substantial cost.
5. The Proposed Project will require deep excavation ("digging half way to China," as Mr. Longe recently expressed to the Planning Board) and heavy equipment and materials, which could seriously jeopardize the structural integrity of Birmingham Place. The developer has not adequately addressed this and has not made provision to repair, or more importantly to prevent, any damage to Birmingham Place.

Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,
Victoria Shounieya
Victoria Shounieya
Unit #514

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,


Alex Shoenberger

514

411 S. Old Woodward, Suite 603
Birmingham, MI 48009

June 8, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

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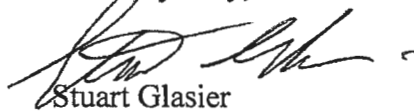
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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

A handwritten signature in black ink, appearing to read "Stuart Glasier", with a stylized flourish at the end.

Stuart Glasier

2400 East Lincoln Street, Unit 425
Birmingham, MI 48009

June 8, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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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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

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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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:

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Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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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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DATE:

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Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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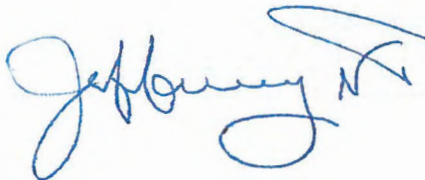
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 955 Bud Birmingham, HI
48009

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Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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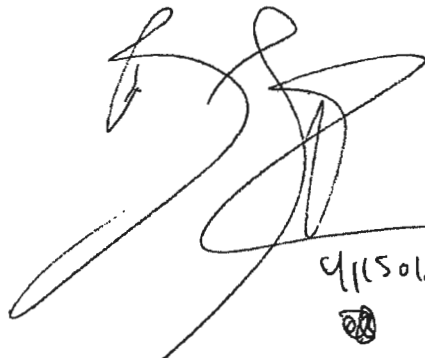
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Yours very truly,



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

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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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

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Birmingham Planning Board
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Birmingham, MI 48009

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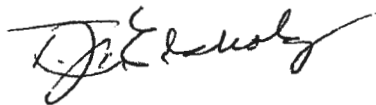
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T. J. ELSHOLTZ



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

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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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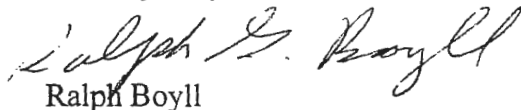
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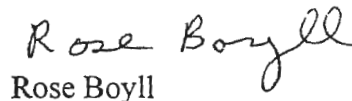
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Ralph Boyll


Rose Boyll

06/08/18

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Birmingham Planning Board
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Birmingham, MI 48009

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1. Birmingham firefighting capability is limited to 7 stories. This would leave most of the back of the Proposed Project and virtually all of the south end of Birmingham Place with inadequate or no fire protection.
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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,


Eunice Galperin

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

The city's 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest. Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

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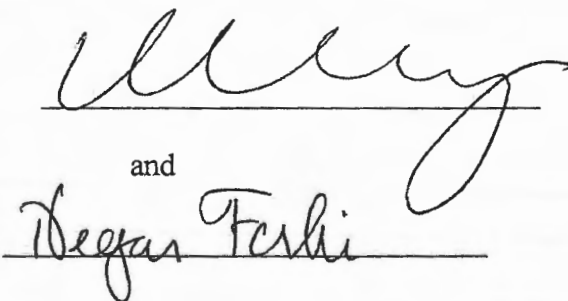
Thank you for your time and attention, and for, we sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

Vandad Raofi

and

Negar Farhi

The block contains two handwritten signatures. The first signature, for Vandad Raofi, is written in dark ink and is quite stylized, appearing as a series of loops and curves. The second signature, for Negar Farhi, is also in dark ink and is more legible, showing the first letters of the first and last names. Both signatures are written over horizontal lines.

Unit # 703

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

A handwritten signature in black ink, appearing to read "Arthur Longe". The signature is fluid and cursive, with a large, stylized initial "A".

Birmingham, MI 48009

June 16, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project ")

Ladies and Gentlemen:

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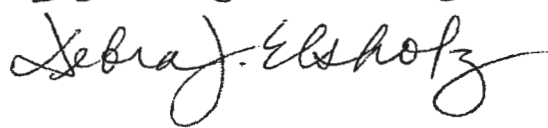
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Yours very truly,

Debra J. Elsholz


411 S. Old Woodward, Suite 729
Birmingham, MI 48009

June 8, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

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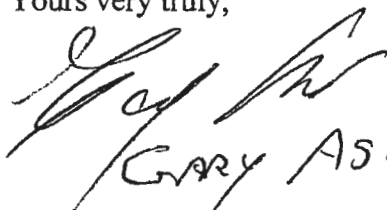
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Yours very truly,


Gary Askeir
305 Purdy

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

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Yours very truly,

Carol Kozlow

A handwritten signature in cursive script that reads "Carol Kozlow". The signature is written in dark ink and is positioned below the printed name.

ADDRESS: 411 S. Old Woodward #1028
Birmingham Mi
DATE: 6-9-2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

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We believe that a nine story building on this 0.41 acre parcel would be totally out of place, would violate the 2016 Master Plan and would be inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city. We respectfully ask that you stay the course that has been followed and has been successful for so long. Thank you.

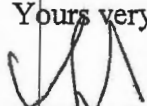
Yours very truly,


Bev Ross

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Yours very truly,


Lewis P. Rucklind
Birmingham Place
Unit 510

Birmingham, MI 48009

June 18, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

1034 Waterfall Court
Birmingham MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

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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.

ADDRESS:

DATE:

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

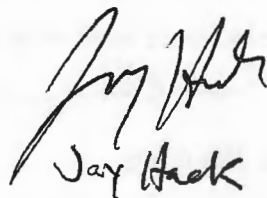
Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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Yours very truly,



Jay Hark
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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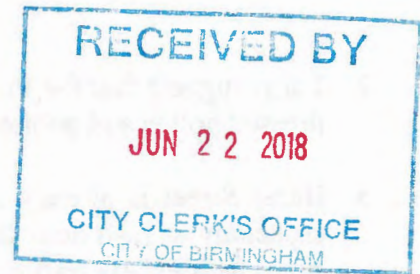
Yours very truly,

A handwritten signature in dark ink, appearing to read 'Dana Bassipour', with a stylized, cursive 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")

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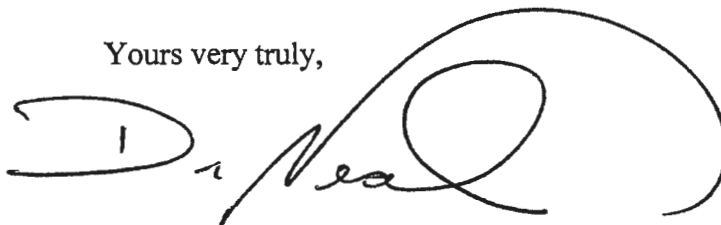
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2. I also suggest that the Proposed Project would unduly burden our city's already hard-pressed police and public safety/rescue facilities.
3. Hazel Street is already a busy connector between Woodward and Old Woodward, especially at rush hour times. The Proposed Project would literally clog this small street with excess traffic, especially if the "four stack" valet service recommended by the developer's own traffic study is implemented and if the current four on-street parking spaces are included in the Proposed Project's plan for adequate parking, as Christopher Longe recently stated to the Planning Board would be the case. We note that the City's own traffic advisor, Fleis & Vandenbrink, also finds considerable fault with the developer's traffic study.
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5. The Proposed Project will require deep excavation ("digging half way to China," as Mr. Longe recently expressed to the Planning Board) and heavy equipment and materials, which could seriously jeopardize the structural integrity of Birmingham Place. The developer has not adequately addressed this and has not made provision to repair, or more importantly to prevent, any damage to Birmingham Place.

Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

A handwritten signature in black ink, appearing to read "Dr. Neal". The signature is stylized with a large, sweeping loop at the end.

411 S. Old Woodward, Suite 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.

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.

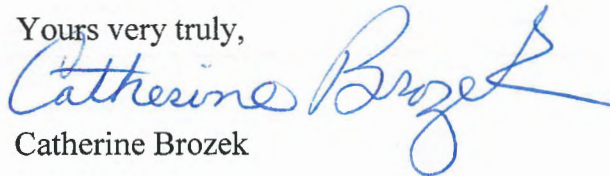
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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,



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.

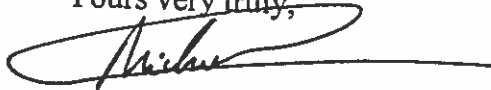
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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

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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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.

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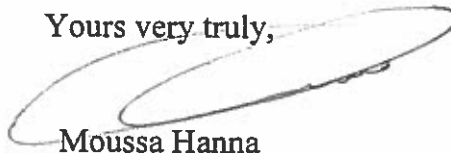
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Yours very truly,

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

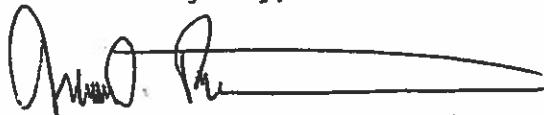
Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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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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Yours very truly,

Uriel Galperin
460 Park

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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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,

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.

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.

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Yours very truly,



Dennis W. Liu

ADDRESS:

DATE:

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

We are residents of the City of Birmingham and are writing to express our deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally *not* zoned as D5, despite being located between two of the D5 buildings.

We believe that a nine story building on this 0.41 acre parcel would be totally out of place, would violate the 2016 Master Plan and would be inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city. We respectfully ask that you stay the course that has been followed and has been successful for so long. Thank you.

Yours very truly,

Jackie Piceu
642 Oak Ave
Birmingham 48009

ADDRESS

DATE

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 460-179 S Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen

We are residents of the City of Birmingham and are writing to express our deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally *not* zoned as D5, despite being located between two of the D5 buildings.

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Yours very truly,

P. Steven Warren
1296 Stanley Blvd
Birmingham, Mich
48009

ADDRESS:

319 GREENWOOD
BIRMINGHAM, MI 48009

DATE:

JUNE 19, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

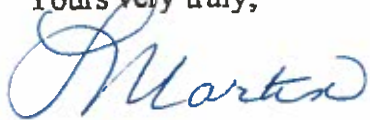
Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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Yours very truly,



LISA A. MARTIN

Birmingham, MI 48009

June 16, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

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Yours very truly,

Leslie Rolden
687 Vinewood

PETER R. SOBELTON
420 HARMON
BIRMINGHAM, MI 48009
248-433-5200



June 27, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin St
Birmingham, MI 48009

I am writing to express my strong support for the Re-Zoning request for the mixed use project being proposed for 469-479 S. Old Woodward Ave.

The proposed project will fit in nicely with its neighbors on either side, bearing in mind, each of which are 9 and 15 stories in height. With this development, rather than the present one story buildings, we will now have a building matching the scale, character and use of those buildings on either side.

Additionally, the proposed project would most certainly attract a greater amount of people to the south end of town, and no doubt also throughout the town, while adding retail shopping, thus tying into the already existing retail in the two neighboring buildings. Perhaps one of the most advantageous parts of the project, will be the alleviation of the necessity to accommodate parking on the street, as a result of the parking that will be provided on site.

This project is a win-win, and should be approved for re-zoning in the most hasty of manners, continuing Birmingham's lead in cutting edge developments, as we continue to see the increasing competition for tenancy from our neighboring cities.

Sincerely,

A handwritten signature in blue ink that reads "Peter R. Sobelton".

Peter R. Sobelton

411 S. Old Woodward Avenue
Birmingham, MI 48009

June 27, 2018



Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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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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Yours very truly,

Rose M. Boyle
Ralph S. Boyle

411 S. Old Woodward, Suite ~~#~~ 901
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Yours very truly,

Helen O. Kane
OWNER

411 S. Old Woodward, Suite 529
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

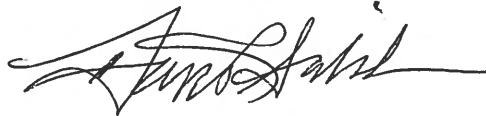
Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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Yours very truly,

A handwritten signature in black ink, appearing to read "David Saliba", with a stylized flourish at the end.

DAVID SALIBA
Unit 529

411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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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!

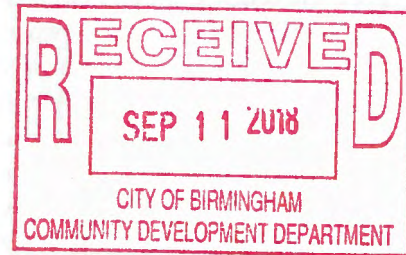
Clint



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.

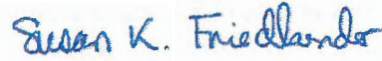
CONCLUSION

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.)**

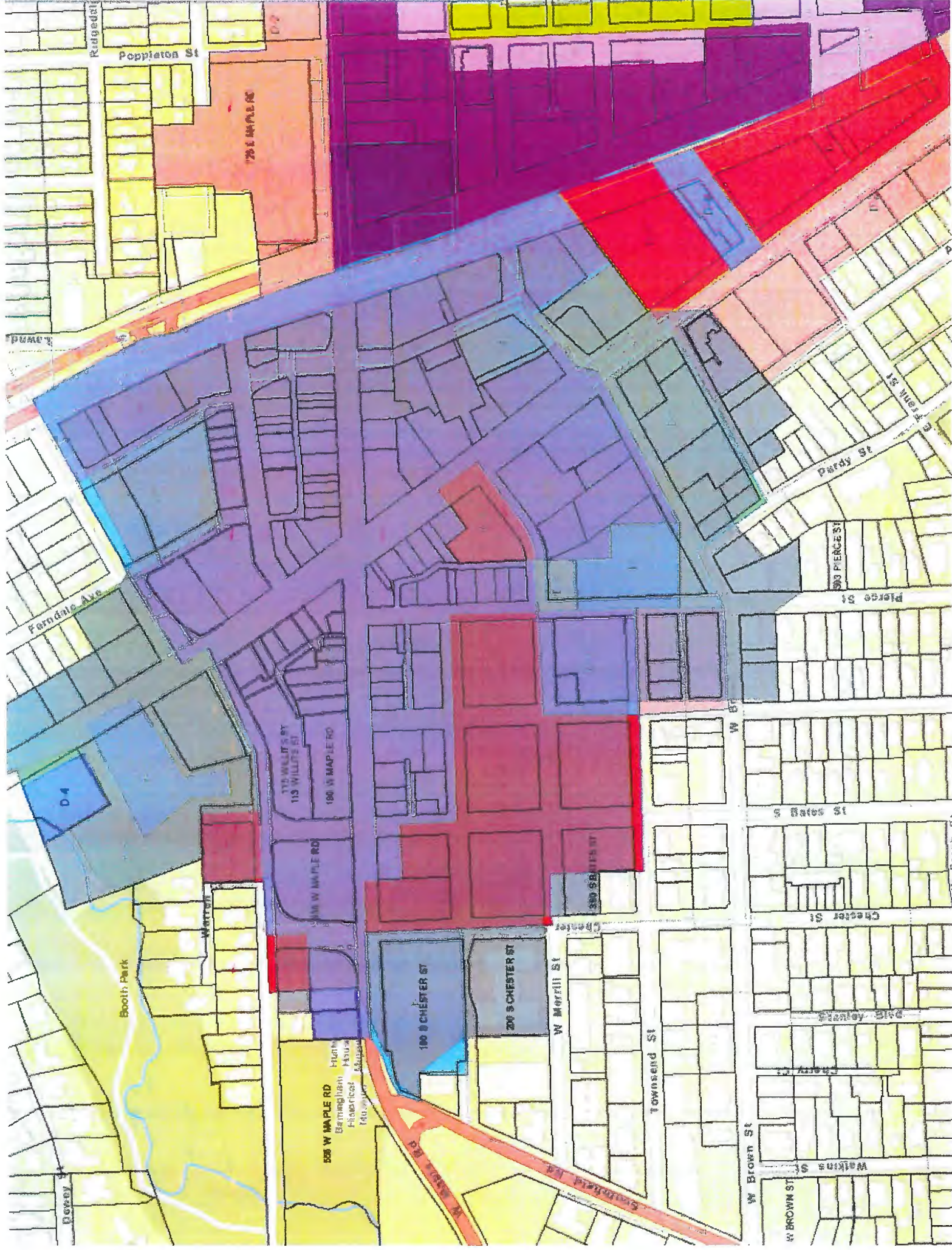
Ecker also assured Commissioner Hoff as follows:

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

Beier Howlett

Ms. Jana Ecker, Planning Director
September 11, 2018
Page 2

feet for property of 3 acres or more in size. Information required on plot plans shall be as follows:

- i. Applicant's name, address and telephone number.
- ii. Scale, north point, and dates of submission and revisions.
- iii. Zoning classification of petitioner's parcel and all abutting parcels.
- iv. Existing lot lines, building lines, structures, parking areas, driveways, and other improvements on the site and within 100 feet of the site.
- v. Existing use of the property.
- vi. Dimensions, centerlines and right-of-way widths of all abutting streets and alleys.
- vii. Location of existing drainage courses, floodplains, lakes, streams, and wood lots.
- viii. All existing easements.
- ix. Location of existing sanitary systems and/or septic systems.
- x. Location and size of existing water mains, well sites and building service.
- xi. Identification and seal of architect, engineer, land surveyor, or landscape architect who prepared the plans.

If any of the items listed above are not applicable to a particular plot plan, the applicant must specify in the plot plan which items do not apply, and, furthermore, why the items are not applicable."

The foregoing is the information that is to be provided by the applicant to provide the materials to assist the Planning Board in making its findings of fact. It does not set the criteria by which findings of fact or recommendations should be made. Those are set forth in Section 7.02 B.5, which reads as follows:

"5. Findings of Fact and Recommendation of the Planning Board. The Planning Board shall make written findings of fact and transmit same, together with its recommendation, to the City Commission. The City Commission may hold additional hearings if the City Commission considers it necessary. The Planning Board shall make findings based on the evidence presented to it with respect to the following matters:

- a. The objectives of the City's then current master plan and the City's 2016 Plan.
- b. Existing uses of property within in the general area of the property in question.
- c. Zoning classification of property within the general area of property in question.
- d. The suitability of the property in question to the uses permitted under the existing zoning classification.

Beier Howlett

Ms. Jana Ecker, Planning Director
September 11, 2018
Page 3

- e. The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.

The foregoing Section 7.02 B.5. sets forth the criteria upon which the Planning Board makes written findings of fact. Thereafter, the findings of fact, together with its recommendations, are sent to the City Commission to determine possible rezoning of the subject property.

* * * * *

I have also been asked to outline the procedure for the Board to consider a petition by the applicant for rehearing of the rezoning application. The instant case involves 469-479 South Old Woodward. The first matter the Planning Board should consider is whether they will grant the rehearing of this matter to the applicant. If they believe there is not sufficient information to grant a rehearing, it could be denied at that time and no rehearing will be granted.


Second, if the Planning Board believes a rehearing should be granted, then a ruling granting the rehearing should be entered, followed by a rehearing on the substance of the matter before the Board. At such time, the Planning Board can take into account such additional information that is submitted by the applicant or by any person opposing the application. This will create an additional record upon which the Planning Board will then make its findings of fact and recommendation pursuant to 7.02 B.5.

A rehearing does not automatically grant the request of the applicant, nor does it automatically deny it. The Planning Board is free to make whatever decision it deems appropriate based on the material and the facts placed before it by the applicant and those in opposition.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

BEIER HOWLETT, P.C.


Timothy J. Currier
Birmingham City Attorney

TJC/jc

Via E-Mail and US Mail

October 10, 2018

Mr. Timothy J. Currier
Beier Howlett, P.C.
3001 W. Big Beaver Road
Suite 200
Troy, Michigan 48084

***Re: Opposition to Rezoning of Property located at 469 and 479 S. Old Woodward,
Birmingham, Michigan (the "Property")***

Mr. Currier:

We attempted to reach you by phone earlier today. We are contacting you to inform you, and the others copied on this letter, that our Firm has been engaged by Condominiums at Birmingham Place Association (the "Association") to work along with counsel for the Birmingham Place Residential Condominium Association. The Association is the so-called Master Association for the Birmingham Place development.

Please be advised that the Association opposes the application to rezone the Property to the D-5 Overlay Zone and fully supports the position of the Birmingham Place Residential Condominium Association. We understand the rezoning application is "back" on the Planning Board's agenda for its meeting tonight. Unfortunately, we will not be available to participate in the meeting tonight, but we wanted you to be aware of our involvement and our client's position.

As you might expect, we have recently become involved and have not had the opportunity to thoroughly review all of the extensive information and voluminous documents. However, even based on our limited review, we do not understand how (or why) this matter finds itself back before the Planning Board. In addition, even if the application is properly back before the Planning Board, we also do not see how (or why) any of the so-called "new" information or positions could possibly justify a change to the Planning Board's previous decision.

In any case, please be aware that if the Planning Board elects to reconsider the rezoning application based on so-styled "new" information, and/or if the Planning Board changes from its previous position of recommending denial of the rezoning application, our Firm will continue forward and complete our thorough review of all of the information and will join in also

HONIGMAN

Honigman Miller Schwartz and Cohn LLP
Attorneys and Counselors

J. Patrick Lennon

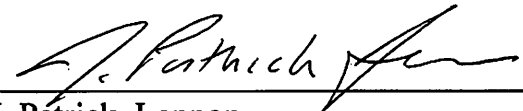
(269) 337-7712
Fax: (269) 337-7713
Lennon@honigman.com

advising the Association of its legal rights and remedies along with the Residential Condominium Association's counsel.

Thank you for your time and attention to this matter. As always, please feel free to contact me with any questions or comments.

Very truly yours,

HONIGMAN MILLER SCHWARTZ AND COHN LLP

By: 
J. Patrick Lennon

cc: Ms. Michele Prentice
Ms. Jana L. Ecker
Ms. Susan K. Friedlander
Mr. Richard D. Rattner



Gayle Goodman

411 S. Old Woodward, Unit 912, Birmingham, MI 48009

248-891-0908

3/2/2020

City Clerk
City of Birmingham
151 Martin
Birmingham, MI 48009

Dear City Clerk,

I am writing this letter to **strongly oppose** the rezoning request for **469-479 Old Woodward Avenue (former Mountain King and Talmer Bank)**.

A 9 story building would completely impede and block any view that I have from my condo unit. I paid a lot for my condo and have an amazing view of both old Woodward and Woodward. This 9 story building will not only impede on my view, but also devalue and depreciate my condo, which I paid handsomely for. I have no objection for a new building on the site as it would be a nice addition, however, 4 - 5 story building would be perfect, in my opinion. That said, I hope that this rezoning does **NOT** pass.

Best,

Gayle Goodman

411 S. Old Woodward Ave., Unit 1018
Birmingham, MI 48009
February 19, 2020



VIA HAND DELIVERY

Ms. Jana Ecker, Director
City of Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Development")
Request to Rezone from B3/D4 to B3/D5 Filed by William Rattner
Hearing Scheduled for Wednesday, February 27, 2020 (the "Hearing")

Dear Ms. Ecker:

I request that the Hearing be rescheduled for two (2) reasons as the legal requirements for a hearing have not been met.

First, the Developer has not met the legal requirement to request a hearing. As of last night (February 18, 2020), the Applicant had not posted the notice sign required under subsection 7.02 B.4.a.v of the Rezoning Amendments. As stated "A notice sign shall be posted in a conspicuous place on the subject property. . ." I would be glad to share with the planning board the photos of the property which demonstrated the lack of notice.

Second, the Planning Board errored in the required 15-day notice to adjacent property owners. (7.02 B3aiii). Specifically, the postcard mailed regarding Notice of Public Hearing stated the hearing would occur on "Wednesday, February 27, 2020". No such date exists. Either the meeting is on Wednesday February 26 or Thursday February 27. This confusion is unfair to concerned Birmingham citizens. Most importantly, accurate 15-day notification has not been mailed.

I request the Planning Board follow City Rules and Regulations and only hold a rezoning hearing when all regulations are met.

Please contact me via email to mickeschwartz@gmail.com, or at (248) 229-9989 with any questions or further requirements and in any event with the new hearing date.

Thank you for your time and attention.

Yours very truly,


Michael Schwartz, MD

xc: Planning Board Members (via separate emails)

Board Member		Term Expires/Email
Janelle Boyce	Residential/Interior Designer Member	03/28/2020 j/wboyce@hotmail.com
Robin Boyle	Planner/Professor	03/28/2022 r.boyle@wayne.edu
Scott Clein	Regular Member	03/28/2022 s.clein@comcast.net
Stuart Jeffares	Regular Member	03/28/2021 stuartjeffares@gmail.com
Bert Koseck	Architect	03/28/2020 bkoseck@comcast.net
Nasseem Ramin	Alternate Member	11/02/2020 nramin@dykema.com
Daniel Share	Building Owner	03/28/2021 dshare@bsdd.com
J. Bryan Williams	Attorney	03/28/2021 jwilliams@dickinsonwright.com
Jason Emerine	Alternate Member	11/02/2020
Sofia Trimble	Student Representative	12/31/2019
John Utley	Student Representative	12/31/2019

Re: Confirmation of postponement

1 message

Jana Ecker <Jecker@bhamgov.org>

Thu, Feb 20, 2020 at 9:07 AM

To: Mickey Schwartz <mickeyschwartz@gmail.com>, James J Arpin <jjarpin@gmail.com>

Good morning gentlemen,

As I indicated via email last evening, the **rezoning hearing for 469 - 479 S. Old Woodward will not be heard at the Planning Board meeting on February 27, 2020**. Please note that it will remain listed on the agenda, but there will be a note in bold type requesting postponement to March 25, 2020. We will send out new notices on the matter for that date. The applicant was advised yesterday that they are required to place the required notice sign on the property at least 15 days prior to the hearing, and to ensure that it remains posted until after the hearing.

Thank you for bringing this matter to our attention.

Jana Ecker

On Wed, Feb 19, 2020 at 8:55 PM Mickey Schwartz <mickeyschwartz@gmail.com> wrote:

Jana,

Can you please confirm that the rezoning hearing scheduled for next week's Planning Board meeting is postponed as per my concerns raised in my letter of 2/19/2020.

Thank you,

Mickey Schwartz, MD
248 229-9989
mickeyschwartz@gmail.com

--

Jana L. Ecker

*Planning Director
City of Birmingham
248-530-1841*

October 1, 2018

Ms. Jana L. Ecker and
Planning Board Members
City of Birmingham
151 Martin Street, P.O. Box 3001
Birmingham, MI 48012

Re: Legal Opinion Regarding Rezoning Application for 468-479 S. Old Woodward

Dear Members of the Board:

The Board has requested a legal opinion in connection with the following question:

Is the owner of the property located 469-479 S. Old Woodward (currently zoned D4 in the Downtown Overlay District) legally permitted to apply for rezoning to the newly created D5 zone district in the Downtown Overlay District?

ANSWER: YES.

If you have any additional questions, please do not hesitate to contact me.

Very truly yours,

BEIER HOWLETT, P.C.

Timothy J. Currier

TJC/jc

October 1, 2018

Ms. Jana L. Ecker and
Planning Board Members
City of Birmingham
151 Martin Street, P.O. Box 3001
Birmingham, MI 48012

Re: Legal Opinion Regarding Rezoning Application for 468-479 S. Old Woodward

Dear Members of the Board:

The Board has requested a legal opinion in connection with the following question:

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

400 S Old Woodward and 469-479 South Old Woodward

1 message

LYNN GROTH <lgroth@comcast.net>

Tue, Apr 7, 2020 at 5:10 PM

To: ndupuis@bham.org, jecker@bhamgov.org

To Whom it May Concern:

I am the Co- owner of the building at 444-494 S Old Woodward. We have tenants that pay a premium in their rent because they have dedicated parking for their customers. We are concerned that the change in usage, as in more tenants, for 400 South Old Woodward and 469-479 South Old Woodward could force people to look for offsite parking. We have a problem with the 555 South Old Woodward and 411 South Old Woodward building customers parking in our lot when they are not patronizing our businesses. Every week we have people looking to rent parking spaces. We can not handle more people looking for places to park because the building wasn't designed to accommodate it's tenants. Please consider the businesses that provide parking for their patrons when you contemplate usage changes to buildings on South Old Woodward.

Thank you,

Lynn Groth
Galyn Associates

Re: Upcoming Virtual Hearing for 469-479 S. Old Woodward Rezoning Request

1 message

Jana Ecker <Jecker@bhamgov.org>

Mon, Apr 13, 2020 at 3:38 PM

To: James J Arpin <jjarpin@gmail.com>

Cc: j/wboyce@hotmail.com, "r.boyle@wayne.edu" <r.boyle@wayne.edu>, Scott Clein <s.clein@comcast.net>, Stuart Jeffares <stuartjeffares@gmail.com>, bkosek@comcast.net, Nasseem Ramin <nramin@dykema.com>, Dan Share <dshare@bsdd.com>, Bryan Williams <jwilliams@dickinsonwright.com>

Good afternoon Mr. Arpin,

I received your email and will include it in the Planning Board's agenda for April 22, 2020.

Please allow me to respond to several of the comments in your email. The Planning Board meeting of April 22, 2020 was posted in a newspaper of general circulation on Sunday, April 5, 2020. Please see attached notice that was sent to the Oakland Press. Postcards were also mailed to all owners and occupants within 300' of the property requesting the rezoning more than 15 days prior to the scheduled public hearing, also attached. These are the required notices that must be posted/distributed 15 days prior. Both were completed, and both contained the details required to participate in the virtual meeting using a computer, smartphone or regular telephone.

The Planning Board's page on the City's website to which you refer that was listed in the postcard notice was to obtain copies of previously approved minutes of the Planning Board. All previously approved minutes are posted there for past meetings as noted on the postcard. This page will also be updated with the full agenda and all accompanying reports etc. on the Friday before the meeting as usual (Friday, April 17, 2020).

In addition, please find attached an easy to follow instruction sheet that may assist you in participating in virtual meetings.

Have a great day, and stay healthy,

Jana

On Mon, Apr 13, 2020 at 2:47 PM James J Arpin <jjarpin@gmail.com> wrote:

Hello Jana,

I hope this letter finds you safe and healthy. Thank you for reaching out.

In these unprecedented times of the ongoing pandemic, I realize the City must resort to Zoom virtual meetings in an attempt to conduct "essential" business.

Given that 469-479 South Old Woodward project application has gone through active public open forum discussions on;

- site plan reviews
- incomplete community impact studies
- extreme disagreements from Commissioners, PB members and outside counsels on the purpose of a D5 district
- parking district inclusion misinterpretations
- planning board rehearings
- no decision results from the City Commission
- D5 Subarea studies (and re-studies) by outside consultants
- Birmingham Master Plan impacts
- modifications to the D5 ordinance zoning code

I am respectfully requesting that the Planning Board consider postponing a hearing on the 469-479 rezoning application in a Zoom virtual meeting on April 22, 2020. Given the controversial nature and length of time the 469-479 South Old Woodward application(s) have been in discussion, I believe it is unfair to the community to hold a hearing that impedes equitable participation and can not guarantee open fair discussion by the public.

Given the governor's orders, our group who has concerns about the 469-479 South Old Woodward rezoning application, is unable to meet in a safe environment with each other or counsel to prepare for the upcoming April 22, 2020 hearing.

When I log onto https://www.bhamgov.org/government/boards/planning_agendas.php#outer-173 as of this letter it indicates there are "No documents" in the Virtual Meeting Notice section. Chapter 126 in the City ordinance states

- a. i. Notice of the time and place of the public hearing shall be published in an official newspaper or a paper of general circulation in the city, not less than 15 days before the date the application will be considered for approval.

If the PB is going to have a Zoom meeting, should the meeting be posted according to the zoning ordinance, not less than 15 days before the hearing?

Again, I realize the City has the technical capabilities and the concurrence of the MML / Governor (Orders 2020-15, 2020-42 ++) to hold Zoom virtual meetings, I am asking you and the PB to seriously consider whether you **should hold such a significant impactful rezoning hearing in the middle of a pandemic on a decision that will impact the City of Birmingham significantly forever.**

Regards,

Jim Arpin

m: +1 313 949 0252

On Apr 9, 2020, at 2:51 PM, Jana Ecker <Jecker@bhamgov.org> wrote:

Good afternoon,

I am reaching out to both of you as representatives of Birmingham Place to make sure you know that the upcoming rezoning request will be considered at a [virtual meeting](#) on April 22, 2020. Hopefully you have received your notice postcards with the Zoom link for the meeting. If you do not have the equipment (computer or smartphone) or desire to join the meeting over the internet, there is also a phone in option that allows you to listen and participate in the meeting in real time.

If you need any further information, please let me know.


Jana L. Ecker

*Planning Director
City of Birmingham
248-530-1841*

--
Jana L. Ecker

*Planning Director
City of Birmingham
248-530-1841*

3 attachments

 **469 - 479 S. Old Ww Rezoning - Virtual Meeting -4-22-20.doc**
47K

 **469 -479 S. Old Woodward - Rezoning - 4-22-20.doc**
47K

 **Public Meetings on Zoom - Guide for Members of the Public.docx**
381K

Fwd: Virtual Planning Board Meeting

1 message

Mickey Schwartz <mickeyschwartz@gmail.com>

To: Jana Ecker <jecker@bhamgov.org>

Tue, Apr 14, 2020 at 3:37 PM

As per your email, please forward this to the Planning Board members.
I am disappointed and do not understand why I can not communicate directly.

----- Forwarded message -----

From: **Mickey Schwartz** <mickeyschwartz@gmail.com>

Date: Tue, Apr 14, 2020 at 2:45 PM

Subject: Virtual Planning Board Meeting

To: <pboutros@bhamgov.org>, <llonge@bhamgov.org>, <cballer@bhamgov.org>, <rackyhoff@hotmail.com>, <bhost@bhamgov.org>, <mnickita@bhamgov.org>, <ssherman@bhamgov.org>

To: City Commissioners (and Planning Board Members):

The Birmingham Planning Board has scheduled a virtual meeting to address a non-essential, controversial rezoning issue that had been under consideration for years (469-479 Old Woodward Rezoning). In light of the current COVID-19 pandemic, this borders on the absurd. The notion that they MAY legally do this does not mean that it should be done. The new concept of virtual meetings for non-essential issues is fraught with problems in a democratic society particularly for citizens without technical skills.

I object to the meeting and formally request the Planning Board to defer this issue pending the resolution of the Michigan mandated shutdown.

We have no knowledge of the long-term effects of this horrible pandemic. Will we want more tall buildings and an increase in population density in downtown? What will happen to Birmingham retail as the society moves more to online shopping? We are in unprecedented times and uncharted territory. Why the urgency to consider changes now that the City may regret in the future?

Rather than business as usual, perhaps the Planning Board should be studying how the proposed Master Plan should be updated for a post COVID-19 environment.

Please postpone this rezoning issue.

(I tried to send this to the Planning Board members but their emails are not included in the City Web Page).

Mickey Schwartz, MD
411 South Old Woodward Ave. Unit 1018
Birmingham, MI 48009
248 229-9989
mickeyschwartz@gmail.com

Re: Virtual Planning Board Meeting

1 message

Joe Valentine <jvalentine@bhamgov.org>
To: mickeyschwartz@gmail.com
Cc: Jana Ecker <Jecker@bhamgov.org>

Tue, Apr 14, 2020 at 5:18 PM

Mr. Schwartz,

I am in receipt of your email to the City Commission and wanted to provide a reply given your concern for the application of [469-479 S. Old Woodward](#) being considered by the Planning Board on April 22nd. Given the applicant had submitted their application for consideration and their request to move it forward, they maintain their right to petition their government and continue the scheduled public hearing. A postponement at this time could come at the request of the applicant or by motion of the Planning Board if determined necessary in further considering their application. However, the City Commission does not have the ability to postpone a scheduled public hearing before the Planning Board.

In regard to watching this meeting, it should be streamed from our website and also broadcast over the normal cable stations for viewing, just as prior meetings.

I hope you find this information helpful.

Best regards,
Joe Valentine

From: Mickey Schwartz <mickeyschwartz@gmail.com>
Date: April 14, 2020 at 2:45:41 PM EDT
To: pboutros@bhamgov.org, tlonge@bhamgov.org, cballer@bhamgov.org, Rackyhoff@hotmail.com, bhost@bhamgov.org, mnickita@bhamgov.org, ssherman@bhamgov.org
Subject: Virtual Planning Board Meeting

To: City Commissioners (and Planning Board Members):

The Birmingham Planning Board has scheduled a virtual meeting to address a non-essential, controversial rezoning issue that had been under consideration for years (469-479 Old Woodward Rezoning). In light of the current COVID-19 pandemic, this borders on the absurd. The notion that they MAY legally do this does not mean that it should be done. The new concept of virtual meetings for non-essential issues is fraught with problems in a democratic society particularly for citizens without technical skills.

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Rather than business as usual, perhaps the Planning Board should be studying how the proposed Master Plan should be updated for a post COVID-19 environment.

Please postpone this rezoning issue.

(I tried to send this to the Planning Board members but their emails are not included in the City Web Page).

Mickey Schwartz, MD
411 South Old Woodward Ave. Unit 1018
Birmingham, MI 48009
248 229-9989
mickeyschwartz@gmail.com

Joseph A. Valentine
City Manager
[City of Birmingham](#)
[151 Martin Street](#)
Birmingham, MI 48009
(248) 530-1809 Office Direct
(248) 530-1109 Fax
jvalentine@bhamgov.org

Twitter: @JoeValentine151

To get the latest information regarding the City of Birmingham, please sign up for our communication tools by clicking here www.bit.ly/bhamnews.

Virtual Meeting Scheduled for April 22, 2020

1 message

Frederick Fromm <fafromm@gmail.com>

Wed, Apr 15, 2020 at 6:39 PM

To: r.boyle@wayne.edu, s.clein@comcast.net, stuartjeffares@gmail.com, bkosek@comcast.net, nramin@dykema.com, dshare@bsdd, jwilliams@dickinsonwright.com

Cc: jecker@bhamgov.org

Dear Members of the Birmingham Planning Board,

I understand you have scheduled a virtual meeting during which you will conduct a hearing regarding the requested rezoning of 469-479 S. Old Woodward from D-4 to D-5. This rezoning request has been the subject of multiple hearings before the Planning Board and at least one hearing before the City Commission.

The rezoning request has been very controversial as evidenced by the Planning Board first voting against the rezoning and then in a rehearing, voting in favor of the rezoning, and the City Commission taking no action (after much discussion) on the Planning Board's approval of the rezoning. The rezoning request, if approved, will have a significant negative effect on the adjacent building, Birmingham Place, which contains residential units, offices and retail units. Additionally, the rezoning request, if approved, will expand the D-5 zone in the Downtown Overlay District from being used only for pre-existing, nonconforming buildings at [411 S. Old Woodward](#) and 555 S. Old Woodward to new buildings (those not yet built).

Given the significance of the hearing and that the current situation involving the COVID-19 virus is temporary, the hearing on this rezoning request should not be held during the virtual meeting on April 22, but should be adjourned until the hearing can be held in person. Virtual meetings are clearly more difficult for people to participate in and voice their opinions to the Planning Board, which means the Planning Board will not likely hear from as many people as it would if the meeting is in person. If the Planning Board conducts this hearing during a virtual meeting, it will be showing favor to the developer and showing disfavor to the residents of Birmingham and other interested parties.

Sincerely,

Frederick A. And Kathleen A. Fromm
Residents of Downtown Birmingham



280 N. Old Woodward
Suite 12
Birmingham, MI 48009

O 248.385.3112

C 248.835.2068

F 888.450.1682

jphowe@jphowe.com

www.jphowe.com

April 15, 2020

VIA EMAIL ONLY

Birmingham Planning Board
c/o Ms. Jana Ecker
Planning Director
City of Birmingham
151 Martin St.
Birmingham, MI 48009

Re: Request to Adjourn Hearing on Request to Rezone 469-479 S. Old Woodward Ave. Until the Rescission or Expiration of (i) Michigan Stay at Home Executive Order No. 2020-42, and (ii) Michigan Executive Order 2020-15 Suspending Compliance with the Michigan Open Meetings Act

Dear Members of the Birmingham Planning Board,

On behalf of the Birmingham Place Residential Condominium Association and Birmingham Place Commercial Condominium Association, we respectfully request that the Planning Board adjourn the hearing on the rezoning of 469-479 S. Old Woodward Ave., until such time that the hearing can be held in person under the requirements of the Michigan Open Meetings Act. Holding this meeting “virtually” on April 22, 2020 is not only unfair and prejudicial to the condominium owners of Birmingham Place and various other stakeholders in the City of Birmingham, but is completely contrary to Governor Whitmer’s Executive Directive No. 2020-02. That Executive Directive, which supplements Governor Whitmer’s Executive Order 2020-15 that authorized virtual meetings which are not otherwise permissible under the Open Meetings Act, is in full force and effect, and states that:

*All public bodies of departments and agencies of the State, including but not limited to boards, commissions, committees, subcommittees, authorities, and councils, **must, to the extent practicable,** considerer postponing public meetings and/or agenda items that may be deferred until a later time.*

Birmingham Planning Board

c/o Ms. Jana Ecker
Planning Director
City of Birmingham

April 15, 2020

If there ever was an agenda item that may be deferred to a later time under the circumstances we are currently facing, this is one of them. This rezoning application has been **pending since June 2018**. Now, while our community is under extreme uncertainty, stress, and anxiety, we have to revisit this difficult case, which could have many negative impacts on our community, and Birmingham Place residents and commercial occupants. If that were not enough, the Birmingham Place residents must find the means to participate virtually through an app or telephone. This is simply an unreasonable request, and does not allow residents to participate in a meaningful and productive way. Many of the residents of Birmingham Place are senior citizens, and either do not understand how to participate virtually, or are not comfortable participating in this manner. My clients have participated in all of the hearings related to this rezoning case to date, and based on that experience, the Planning Board should anticipate a packed and confusing virtual meeting room. Is this really the best way to handle a rezoning case of this magnitude?

Other than the applicant's presumed desire to move this application forward, there is certainly no reason why the Planning Board must consider this rezoning application in a virtual format under these circumstances. While it is a nice accommodation that virtual meetings are authorized under Governor Whitmer's Executive Order 2020-15 so **essential business** can be dealt with during this crisis, a postponement of a rezoning request that was initiated in 2018 is clearly required under the Governor's Executive Directive 2020-02. We strongly urge the Planning Board to postpone this hearing to comply with the Governor's orders. If this matter must be heard in a virtual format on April 22nd, we demand that the Planning Board place on the record why this rezoning application could not be deferred to a later date as required in the Governor's Executive Directive 2020-02.

Thank you for your consideration of our request. We look forward to hearing from you prior to April 22nd.

Sincerely,

JPHOWE, PLLC



J. Patrick Howe

cc: Timothy J. Currier, City Attorney (via email)
Joseph A. Valentine, City Manager (via email)
Birmingham Place Residential Condominium Association
Birmingham Place Commercial Condominium Association

Adjournment of Planning Board Virtual Meeting April 22,2020

1 message

larry rochkind <larryproch@gmail.com>

Wed, Apr 15, 2020 at 3:03 PM

To: Jana Ecker <jecker@bhamgov.org>, jvalentine@bhamgov.org, pboutros@bhamgov.org, larry rochkind <larryproch@gmail.com>

To: Birmingham Planning Board c/o Jan Ecker, Planning Director**Cc:** Mayor, City Manager**From:** Louis P. Rochkind**Date:** April 15, 2020**REQUEST TO ADJOURN VIRTUAL HEARING ON REZONING REQUEST FOR [469-479 S. OLD WOODWARD](#) SCHEDULED FOR APRIL 22, 2020**

I am the owner of a condominium at [411 South Old Woodward](#). I ask that you adjourn the above hearing for these reasons, more fully discussed below:

1. *The Board is required by Executive Order 2020-1(1) to adjourn this hearing until a hearing can be held in person.*
2. *The format of a virtual hearing does not provide a fair and adequate forum for objectors to state their views, particularly for seniors, especially given the unusual importance of the issues and the unique complexity of the issues.*
3. *Before taking the drastic action requested, the Board should wait until it has time to digest the effects of the pandemic on the needs of Birmingham.*
4. *The virtual notice of the hearing is not timely and this requires adjournment of the hearing..*

1. *The Board is required by Executive Order 2020-1 (1) to adjourn this hearing until a hearing can be held in person.*

Executive Order 2020-02, Sect. 1, which remains in effect, provides (emphasis added):

*All public bodies of departments and agencies of the State, including but not limited to boards, commissions, committees, subcommittees, authorities, and councils, **must**, to the extent practicable, consider postponing public meetings and/or agenda items that may be deferred until a later time.*

In other words, this is in effect an order to bodies such as the Birmingham Planning Board to adjourn hearings until they can be held in person unless there is a compelling reason not to do so.

This is no doubt a recognition that virtual meetings are simply not as good as in person meetings for many reasons, including the ability of participants to actually participate fully. This is even more true for senior citizens, as discussed below.

The severe limitations of virtual meetings are described in this article:

When meeting face to face, people are freer with each other than they would be online. People are able to express themselves by using body language, gestures and words all of which work together to convey a message. Communication is better in face to face meetings because misunderstandings are less likely.[Ed.

Note: All of this is especially critical for senior citizens, who may have more difficulty following the proceeding in the best of circumstances.]

When you go in for a physical meeting, it is the primary reason why you are at the particular place at any given time. You will be with others attending the meeting as well and none will tolerate the other wasting their time. Everyone will be disciplined and will not be easily distracted by things like phones and computers. The serious environment will emphasize the need to concentrate fully on the meeting and keep off any distractions...

However the chances of having a communication breakdown are increased in virtual meetings. Distractions by personal and work related issues are more likely to happen during virtual meetings than face to face ones.

As discussed below, this meeting requires a decision by the Board which will affect the daily lives, home values, and probably financial futures and retirement planning of many residents. It is just too important to limit public participation to a virtual meeting which has all the detriments described above.

There is no "practicable" reason why this hearing should not be adjourned. It has been pending for almost two years with no effort by the Developer to expedite the proceeding. There is no prejudice to anyone to an adjournment, but a tremendous benefit to many in an adjournment for an in person hearing. (It is worth noting that this proceeding has been delayed on more than one occasion by the Developer's failure to comply with certain requirements or the Developer's request.)

2. The format of a virtual hearing does not provide a fair and adequate forum for objectors to state their views, particularly seniors, especially given the unusual importance of the issues and the unique complexity of the issues.

There are doubtless many matters before the Planning Board which may work well in a virtual meeting. This is not one of them. It is of unusual significance to an unusually large number of residents and is remarkably complex.

This application for rezoning involves rezoning a parcel abutting Birmingham Place's residential condominiums to permit construction of a tall commercial building. As the Manager of Birmingham Place told this Board, the mere possibility of this rezoning has deflated the market value of a number of units and, if built out, would obstruct the views of a number of units. Furthermore, together with the hotel completing construction at Brown and Old South Woodward, vehicle and pedestrian traffic will soar. And this is just the beginning. This is a very big and unusual deal.

The Request for Rezoning was first heard by the Board on June 27, 2018. The issue went to the Council, which sent it back for rehearing by the Board. After a rehearing on December 12, 2018, the matter was heard by the City Council on February 11, 2019. The Council failed to pass motions to approve, deny, or adjourn. The Council President advised at the meeting the Council would need to consult with the City attorney as to further proceedings. In the meantime, an entirely different proceeding changed the wording of the zoning ordinance applicable to this parcel.

Even with the help of counsel, it is a difficult proceeding to understand. And currently we cannot even meet with counsel or among ourselves. The many prior meetings on this rezoning request have been very well attended by objectors, including residents of Birmingham Place which has its own counsel. We have prepared for these meetings with our own meetings, including meeting before and after the hearing. This has enabled us to coordinate our presentations to be effective and to save time. In addition, we have sometimes changed our presentation depending on what happens at the hearing itself, which is impossible at a virtual hearing. In addition, the hearings have often involved visual aids, which even on a zoom conference will be difficult to appreciate.

A virtual meeting is useless to people who are not very computer literate and especially hopeless for many seniors. I am 71. Trust me when I tell you me and my friends are overwhelmed by the pandemic. Just arranging for food, taking care of our medical appointments and medications, and worrying about and trying to stay in touch with our children and grandchildren is wearying in and of itself. Many of us are not comfortable with computers.

As a recent study explained:

The study also highlights the obstacles older adults experience such as a significant decrease in sensory keenness, particularly with vision and hearing, as well as a decrease in motor skills due to health problems, such as arthritis and tremors. "Often a large challenge for older adults when using the computer is navigating the mouse and keyboard, which is commonly due to a health problem like arthritis."

Many of us when we look at instructions for a Zoom meeting will give up before we even start. In addition, simply navigating and being heard at a large Zoom meeting (and I have been in those) is challenging for the best of us. Have a heart.

There is no prejudice to anyone by a postponement. The application for rezoning was filed on June 27, 2018 and was before the City Council on February 11, 2019. The Developer has made no effort to expedite its request. Even if the request were approved, no outside activities could proceed at this point anyway. The matter has already been pending for close to two years.

3) Before taking the drastic action requested, the Board should wait until it has time to digest the effects of the pandemic on the needs of Birmingham.

We don't know what the future holds even in the short term, but one thing is for sure, life will not return to what we knew before the pandemic. As has been noted:

Yet cities since then have thrived and grown. They're much cleaner and safer than they were a century ago. That's because cities are by their nature adaptable organisms. More efficient than rural areas and more flexible than suburbs, they are constantly reinventing themselves — sometimes so quickly that it's startling, sometimes so slowly that we don't even notice.

The world after COVID-19 will be different — as it is after any disaster. And COVID-19 will accelerate changes that have been brewing in cities for a long time. The result will be a new kind of city, different than what we have seen before. A city that should be able to withstand shocks like COVID-19 in a sturdier fashion.

The Board needs to see what this new world might require before so dramatically changing our downtown as it has existed for years.

4) The virtual notice of the hearing is not timely and this requires adjournment of the hearing.

The well-known Open Meetings Act requires hearings like this one to be held in a public place with personal attendance. The only reason there is a "virtual" alternative is due to Executive Order 2020-15 which exempts compliance with the Act under detailed and specific requirements because of the pandemic. One of those requirements prescribes the necessary notice (Sect. 1(e):

(e) If a public body directly or indirectly maintains an official internet presence, the public body must, consistent with and in addition to any other applicable notice requirements under the OMA, post advance notice of a meeting held electronically on a portion of the public body's website that is fully accessible to the public. The public notice on the website must be included on either the homepage or on a separate webpage dedicated to public notices for non-regularly scheduled public meetings or electronic meetings and accessible through a prominent and conspicuous link on the website's homepage that clearly describes its purpose for public notification of those non-regularly scheduled or electronic public meetings. Notice of a meeting of a public body that will be held electronically must include all of the following:

(i) An explanation of the reason why the public body is meeting electronically.

(ii) Detailed procedures by which the public may participate in the meeting electronically, including a telephone number, internet address, or both.

(iii) Procedures by which persons may contact members of the public body to provide input or ask questions on any business that will come before the public body at the meeting.

(iv) Procedures by which persons with disabilities may participate in the meeting.

As with any notice, this one is necessary to provide everyone with an adequate opportunity to prepare and attend, The more complex the meeting, the longer the notice period should be.

The detailed requirements in the Order are in obvious deference to the fact that virtual meetings are more difficult for the participants. This means the public should have the maximum time available for notice. But it did not.

Our ordinance requires 15 days' notice of a zoning request with notice personally sent to residents within 300 feet. But the Board's virtual notice was (a) not sent to persons within 300 feet, and (b) published on the website on April 14, only seven, not fifteen, days before the hearing.

For all the reasons discussed above, maximum notice is necessary to give the public even a chance to participate meaningfully in the hearing.

But aside from that, the notice is inadequate under the ordinance and requires adjournment of the hearing, which should be to a time when a hearing can be held in person,

Re: Planning Board meeting

1 message

Joe Valentine <jvalentine@bhamgov.org>
To: Mickey Schwartz <mickeyschwartz@gmail.com>
Cc: Jana Ecker <Jecker@bhamgov.org>

Wed, Apr 15, 2020 at 5:20 PM

Mr. Schwartz,

Thank you for your email. The public hearing was previously scheduled and noticed for this upcoming meeting by the board. As long as the applicant wishes to proceed, the public hearing would continue under the applicant's prior request. The Executive Directive you are referencing applies to State agencies and is not an Executive Order covering municipalities. There is no question these are challenging times, however, we are following the guidance from this State as well as our obligations as a municipality.

I hope this helps provide some clarity on this matter.

Regards,
Joe Valentine

On Wed, Apr 15, 2020 at 9:37 AM Mickey Schwartz <mickeyschwartz@gmail.com> wrote:

As a follow up to yesterdays, email:

Just to be clear, are you stating that the Planning Board (and any Birmingham City government Board (elected or appointed)) acts totally independent of the City Commissioners?

Do the City Commissioners not have the legislative ability to enforce Governor Whitmer's Executive Directive No. 2020-02.

"All public bodies of departments and agencies of the State, including but not limited to boards, commissions, committees, subcommittees, authorities, and councils, must, to the extent practicable, considerer postponing public meetings and/or agenda items that may be deferred until a later time".

Why is this issue which has been under consideration for almost 2 years now so critical that it can not be postponed pending resumption on non-virtual meetings?

Mickey Schwartz, MD
248 229-9989
mickeyschwartz@gmail.com

--

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Re: Planning Board meeting

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--

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Regarding PB meeting to discuss rezoning request for downtown Birmingham:

Last night I attended a Birmingham Virtual Meeting. This **NONCONTROVERSIAL** virtual meeting was fraught with problems. The take home lesson is that **VIRTUAL MEETINGS ARE PROBLEMATIC** in a democracy and should be limited whenever possible. **AS SUCH, I AGAIN ASK FOR POSTPONEMENT OF PLANNING BOARD MEETINGS THAT REQUIRE PUBLIC PARTICIPATION UNTIL THESE HORRIBLE BUT NECESSARY COVID PANDEMIC RESTRICTIONS ARE EASED.**

The Birmingham Design Review Board (DRB) meeting was scheduled for 4/15/2020 at 7:15. Apparently, another meeting started first and the DRB was delayed for about an hour. I joined the meeting about 7:30 and had no concept of why the DRB meeting was not taking place. I could not ask for clarification. How is this fair to participants?

Nick Dupis handled the technical aspects of a virtual meeting as best as possible. Nonetheless, he could not overcome systematic limitations. **The limitations on citizen's ability to participate defeats the intent of the Open Meeting Act.**

Examples of problems include:

Participants that could not be seen, could not be easily called on to speak. To overcome this, Nick appropriately unmuted all participants but unfortunately, chaos ensued. Consider how challenging it is to try to let people speak when they all speak at the same time. Remember the story of the tower of Babel. One participant, unknowingly had background noise and had to be muted.

Nick suggested participants use a "raise hand" button on ZOOM to be recognized. This option is not available on all ZOOM devices and may require software updates on some computers. Citizen participation is limited. Telephone call-in citizens obviously cannot "raise hand".

One of the Board members had occasional random background noise in their house resulting in confusion to participants.

At times voices of speakers were muffled or frozen (due to external Internet issues) and potential important communications between the Board and Public were lost.

The pending rezoning issue before the Planning Board involves 100's (more realistically 1000's) of pages of documents. In a virtual meeting, citizens cannot review documents and participate without 2 computers/tablets. It is near impossible on an iPhone. How is this appropriate?

Zoom meetings limit open dialogue between board members due to initial inexperience (first zoom meeting ever for PB) and outcomes are unknown without any previous experiences in this technology. Goes without saying that the same tech issues apply to the public.

FOR ALL THESE CONCERNS AND MANY MORE, PLEASE POSTPONE THE REZONING HEARING PENDING A FAIR PROCESS ON AN ISSUE THAT ALL AGREE IS CONTROVERSIAL.

An aerial view from Google Earth showing a large, multi-story brick building with a white cornice. The building is situated on a street corner. To the right, a multi-story parking garage is visible. In the foreground, a smaller brick building with a white awning and a red awning is partially visible. A white van with "Marble Polishing" on the back is parked in front of the smaller building. A street lamp stands on the sidewalk. The sky is clear and blue.

469/479 S. Old Woodward Avenue

Former Mountain King Restaurant/Drive Thru Bank

Rezone to D5

Pursuant to Zoning Ordinance Sec. 7.02B

Birmingham Planning Board

April 22, 2020



D5 Is the Culmination of Exhaustive Study

- ✓ Contemplated for 2 years before enacted
- ✓ Many study sessions, discussions, and public meetings
- ✓ Advertised and noticed
- ✓ Considered many different options
- ✓ Multiple iterations of draft amendments
- ✓ Studied entire downtown area and study by planning
 - ✓ Consultant targeting this specific area of downtown

Article 1, Section 1.04

From 2016 Plan, Vision Statement



D5 will “reinforce [an] identifiable district in the Downtown to provide a sense of place.”



D5 will allow for a “diverse mix of uses, including [street-level] retail, commercial . . . and especially residential.”



D5 will allow a building that is “compatible, in mass and scale, with its immediate surroundings.”

Establishment of Overlay Districts in 2016 Plan Ord. Art I,1.12,A

- The overlay districts ...have been established to add additional and unique development standards which will better help the City of Birmingham accomplish the goals of the Downtown Birmingham 2016 Plan..."

D-5 Zoning Satisfies the Required Basic Provisions of Sec. 1.04 and Ord. Sec. 7.02(B)(2)(b)(i-iii)

- **D-5 Satisfies Purpose of Zoning Ordinance Sec. 1.04**
- **Rezoning Preserves Enjoyment of Rights and Usage Associated with Ownership Ord. Sec. 7.02(B)(2)(b)(i)**
- **Existing Zoning Not Appropriate Ord. Sec. 7.02(B)(2)(b)(ii)**
- **Rezoning is Not Detrimental to Surrounding Properties Sec. 7.02(B)(2)(b)(iii)**
- **D-5 Satisfies Purpose of Zoning Ordinance Sec. 1.04**

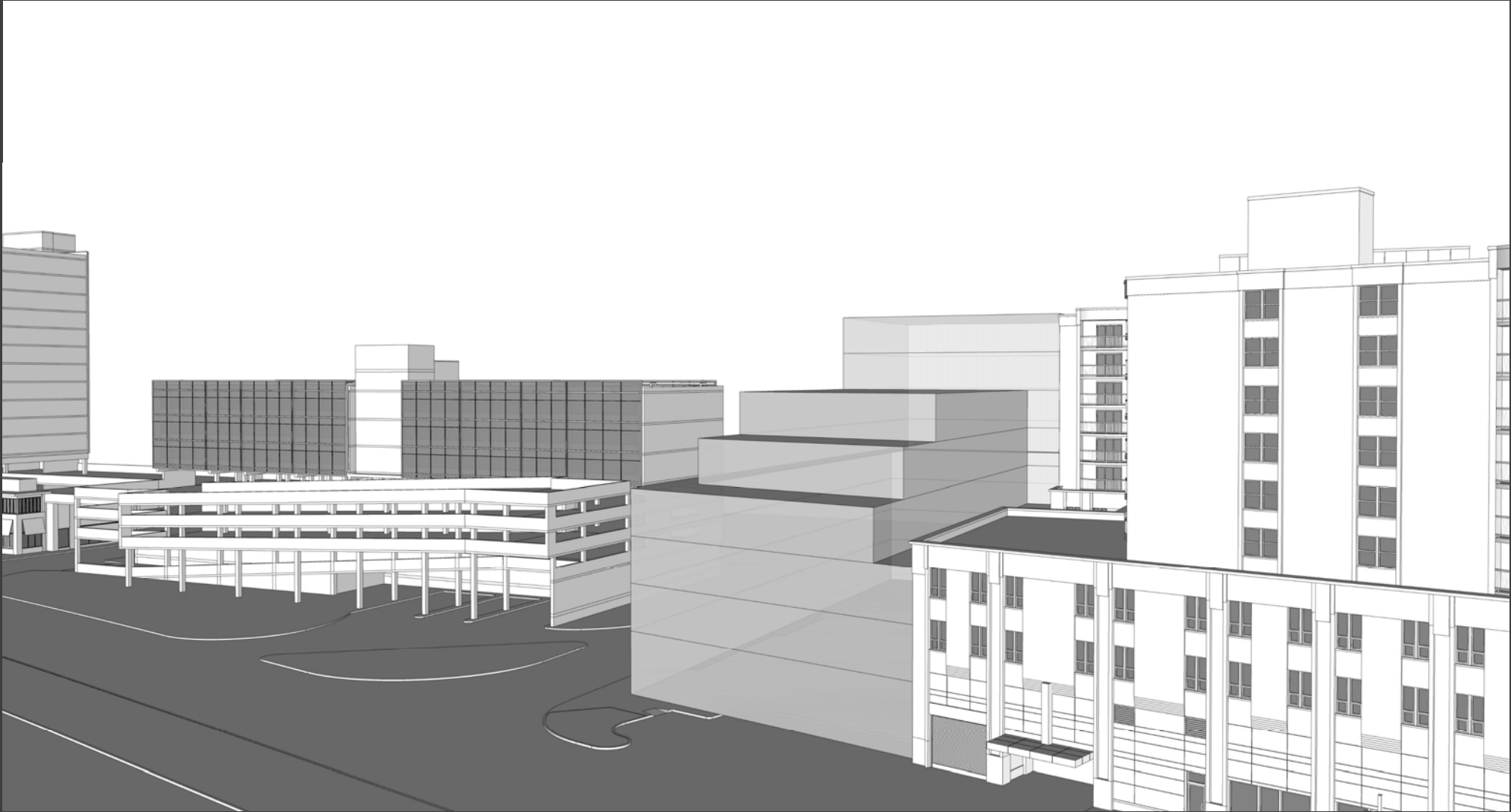
APPLICANT HAS DEMONSTRATED 5 FINDINGS OF ORDINANCE
SEC. 7.02(B)(5)(a)-(e)

- ✓ Sec. 7.02(B)(5)(a) – conforms to the City's Master Plan and 2016 Plan
- ✓ Sec. 7.02(B)(5)(b) – The proposed mixed uses of the subject property (retail, residential, and hotel) are consistent with existing uses in the neighborhood.
- ✓ Sec. 7.02(B)(5)(c) – Properties in the general area (abutting and adjacent) are zoned D-5.
- ✓ Sec. 7.02(B)(5)(d) – Property is not suitable to the uses permitted under existing zoning due to constraints of the property and the relationship to neighboring property.
- ✓ Sec. 7.02(B)(5)(e) – Trend of development in the area favours D-5 zoning.

City Action

- The City, after consideration, has already amended the new D5 proposed ordinance language







dmarkus@markusllc.com





Thank You

*Rezone to D5
Pursuant to Zoning Ordinance Sec. 7.02B
Birmingham Planning Board
April 22, 2020*

Google Earth

April 15, 2020

Ms. Jana Ecker, Planning Director
City of Birmingham
151 Martin St.
Birmingham, MI 48009

Re: Mr. J. Patrick Howe's Letter of April 15, 2020

Dear Ms. Ecker:

You forwarded the above referenced letter to this office for review, and in particular, to review the citations contained in the letter to the Governor's Directives and Orders.

In this regard, Mr. Howe stated the following:

"Holding this meeting 'virtually' on April 22, 2020 is not only unfair and prejudicial to the condominium owners of Birmingham Place and various other stakeholders in the City of Birmingham, but is completely contrary to Governor Whitmer's Executive Directive No. 2020-02. That Executive Directive, which supplements Governor Whitmer's Executive Order 2020-15 that authorized virtual meetings which are not otherwise permissible under the Open Meetings Act, is in full force and effect, and states that:

*All public bodies of departments and agencies of the State, including but not limited to boards, commissions, committees, subcommittees, authorities, and councils, **must, to the extent practicable**, considerer (sic) postponing public meetings and/or agenda items that may be deferred until a later time."*

What is not apparent from Mr. Howe's description, is there is a difference between Executive Directives and Executive Orders. Executive Directives, in this case, are sent only to State Department Directors and Autonomous Agency Heads. If you examine Executive Director 2020-02 which is attached hereto and incorporated by reference, you will see it is addressed as follows:

"Executive Directive 2020-02
Executive Directive
No. 2020-2

To: State Department Directors and Autonomous Agency Heads
From: Governor Gretchen Whitmer
Date: March 13, 2020"

Beier Howlett

Ms. Jana Ecker, Planning Director
City of Birmingham
April 15, 2020
Page 2

In addition, you will note that the operative section, which is also quoted by Mr. Howe, states in paragraph in 1, as follows:

“1. All public bodies of departments and agencies of the State, including but not limited to boards, commissions, committees, subcommittees, authorities, and councils, must, to the extent practicable, consider postponing public meetings and/or agenda items that may be deferred until a later time.” (Emphasis Added)

This Directive was not sent to cities, school districts or local government, but to State Department Directors and Agency Heads of the State. Therefore, it is not applicable in circumstances before the Planning Board.

Executive Order 2020-48, which rescinds 2020-15, was directed to local units of government, and all entities that are subject to the Open Meetings Act. On page 2 of the Governor’s Executive Order, she states as follows:

“To mitigate the spread of COVID-19, protect the public health, and provide essential protections to vulnerable Michiganders, it is crucial that all Michiganders take steps to limit in-person contact. These critical mitigation measures include social distancing and limiting the number of people interacting at public gatherings.

To that end, it is reasonable and necessary to temporarily suspend rules and procedures relating to physical presence at meetings and hearings of public bodies and other governmental entities in Michigan. These public bodies and entities must continue to conduct public business during this emergency, including actions to respond to COVID-19, and the general public must be able to continue to participate in government decision-making without unduly compromising public health, safety, and welfare.

Executive Order 2020-15 provided this limited and temporary relief from certain rules and procedures. This order clarifies and extends the duration of that relief, as it remains reasonable and necessary to suppress the spread of COVID-19 and protect the public health and safety of this state and its residents. With this order, Executive Order 2020-15 is rescinded.” (Emphasis Added)

You will note that this Order directs public bodies, and entities to continue to conduct public business. This document, which I have included for your review, does not direct that public bodies postpone business, but merely directs how remote meetings are to be conducted.

Beier Howlett

Ms. Jana Ecker, Planning Director
City of Birmingham
April 15, 2020
Page 3

As you will note from a thorough review of Executive Order 2020-48, there is no requirement that business be postponed. It is merely a modification of the requirements of the Open Meetings Act as to how remote meetings are to be conducted. In so doing, the Governor did not order any changes to the authority of the Planning Board in conducting its meetings or in the manner in which it considers requests for adjournments or postponements. Such requests are certainly still within the discretion of the Planning Board as to whether they wish to grant a postponement or not. It is not dictated by the Governor's Order 2020-48 and, as stated above, the Executive Directive 2020-02 is not applicable to cities and school districts.

We hope this is of assistance to you.

Very truly yours,

BEIER HOWLETT, P.C.

Timothy J. Currier
Birmingham City Attorney

TJC/jc

THE OFFICE OF

GOVERNOR GRETCHEN WHITMER

WHITMER / NEWS / EXECUTIVE DIRECTIVES

**Executive Directive 2020-02****Executive Directive****No. 2020-2**

To: State Department Directors and Autonomous Agency Heads

From: Governor Gretchen Whitmer

Date: March 13, 2020

Re: Public Meetings of State of Michigan Public Bodies During the COVID-19
Emergency

As governor, one of my most solemn obligations is to protect the health, safety, and welfare of Michigan residents, particularly in times of crisis. It is a core and critical duty of the executive branch to respond quickly and effectively to emergent threats to the public health, safety, and welfare of Michiganders, and to faithfully execute the laws of this state in a manner consistent with that priority.



With Executive Order 2020-4, I declared a statewide state of emergency due to the spread of the novel coronavirus (COVID-19). This is a new strain of coronavirus that had not been previously identified in humans, can easily spread from person to person, and can result in serious illness or death. To mitigate the spread of COVID-19 and to provide essential protections to vulnerable Michiganders and this state's health care system and other critical infrastructure, it is crucial that all Michiganders take steps to limit in-person contact, particularly in the context of large groups.

One of the cornerstones of public engagement in governmental activities is the ability to participate in the meetings of public bodies. The Open Meetings Act ("OMA"), 1976 PA 267, as amended, MCL 15.261-.275, sets forth guideposts to ensure that the public has meaningful access to the meetings and decision-making processes of certain public bodies. The OMA requires that "[a]ll meetings of a public body shall be open to the public and shall be held in a place available to the general public," and "[a]ll decisions of a public body" and "deliberations of a public body" must take place at a meeting open to the public. MCL 15.263(1)-(3). It further provides that "[a]ll persons shall be permitted to attend any meeting except as otherwise provided in this act" and "shall be permitted to address a meeting of a public body under rules established and recorded by the public body." MCL 15.263(1), (5). Finally, the OMA provides that "[a] meeting of a public body shall not be held unless public notice is given as provided in this section by a person designated by the public body." MCL 15.265(1).

The OMA promotes governmental accountability and fosters open and responsible governmental decision making. In conducting its business during this time of emergency, state government must ensure that it preserves these important governmental objectives without unduly compromising the public health, welfare, and safety of this state.

Acting under sections 1 and 8 of article 5 of the Michigan Constitution of 1963, I direct the following:

1. All public bodies of departments and agencies of the State, including but not limited to boards, commissions, committees, subcommittees, authorities, and councils, must, to the extent practicable, consider postponing public meetings and/or agenda items that may be deferred until a later time.

Q

X

2. All public bodies of departments and agencies of the State subject to the OMA that must continue to meet must do so by means sufficient to enable meaningful access and communication for all participants. Participation by remote access technology, including conference calling, real-time streaming, or other platforms is acceptable, and sufficient to form a quorum, so long as public access and participation is preserved.
3. Public notice of the time and date of each meeting of a public body of a department or agency of the State subject to the OMA must be given in the manner required by the OMA, which includes publication of the notice on the public body's internet website. The public

notice must include sufficient information such that the public's right to address a meeting of the public body is preserved.

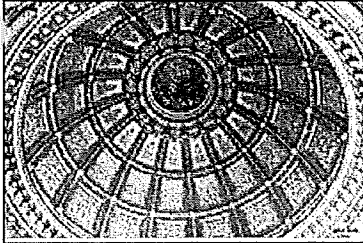
This directive is effective immediately and will remain in effect until further notice.

Thank you for your cooperation in implementing this directive.



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MICHIGAN LEGISLATURE

Michigan Compiled Laws Complete Through PA 84 of 2020
House: Adjourned until Thursday, April 16, 2020 10:00:00 AM
Senate: Adjourned until Thursday, April 16, 2020 10:00:00 AM

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E.O. NO. 2020-3	EXECUTIVE ORDER No. 2020-3 Amendment of Executive Order 2019-14 UP Energy Task Force Department of Environment, Great Lakes, and Energy
E.O. NO. 2020-4	EXECUTIVE ORDER No. 2020-4 (COVID-19) Declaration of State of Emergency
E.O. NO. 2020-5	EXECUTIVE ORDER No. 2020-5 (COVID-19) - rescinded - Temporary prohibition on large assemblages and events, temporary school closures
E.O. NO. 2020-6	EXECUTIVE ORDER No. 2020-6 (COVID-19) - rescinded - Temporary restrictions on entry into health care facilities, residential care facilities, congregate care facilities, and juvenile justice facilities
E.O. NO. 2020-7	EXECUTIVE ORDER No. 2020-7 (COVID-19) Temporary restrictions on entry into health care facilities, residential care facilities, congregate care facilities, and juvenile justice facilities Rescission of Executive Order 2020-6
E.O. NO. 2020-8	EXECUTIVE ORDER No. 2020-8 (COVID-19) Enhanced restrictions on price gouging
E.O. NO. 2020-9	EXECUTIVE ORDER No. 2020-09 (COVID-19) Temporary restrictions on the use of places of public accommodation
E.O. NO. 2020-10	EXECUTIVE ORDER No. 2020-10 (COVID-19) Temporary expansions in unemployment eligibility and cost-sharing

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E.O. NO. 2020-11	EXECUTIVE ORDER No. 2020-11 (COVID-19) Temporary prohibition on large assemblages and events, temporary school closures Rescission of Executive Order 2020-5 PDF
E.O. NO. 2020-12	EXECUTIVE ORDER No. 2020-12 (COVID-19) Enhanced support for deliveries PDF
E.O. NO. 2020-13	EXECUTIVE ORDER No. 2020-13 (COVID-19) Temporary enhancements to operational capacity and efficiency of health care facilities PDF
E.O. NO. 2020-14	EXECUTIVE ORDER No. 2020-14 (COVID-19) Temporary extension of deadline to redeem property for nonpayment of delinquent property taxes PDF
E.O. NO. 2020-15	EXECUTIVE ORDER No. 2020-15 (COVID-19) Temporary authorization of remote participation in public meetings and hearings and temporary relief from monthly meeting requirements for school boards PDF
E.O. NO. 2020-16	EXECUTIVE ORDER No. 2020-16 (COVID-19) Expanding child care access during the COVID-19 emergency PDF
E.O. NO. 2020-17	EXECUTIVE ORDER No. 2020-17 (COVID-19) Temporary restrictions on non-essential medical and dental procedure PDF
E.O. NO. 2020-18	EXECUTIVE ORDER No. 2020-18 (COVID-19) Enhanced restrictions on price gouging Rescission of Executive Order 2020-8 PDF
E.O. NO. 2020-19	EXECUTIVE ORDER No. 2020-19 (COVID-19) Temporary prohibition against entry to premises for the purpose of removing or excluding a tenant or mobile home owner from their home PDF
E.O. NO. 2020-20	EXECUTIVE ORDER No. 2020-20 (COVID-19) Temporary restrictions on the use of places of public accommodation Rescission of Executive Order 2020-9 PDF
E.O. NO. 2020-21	EXECUTIVE ORDER No. 2020-21 (COVID-19) Temporary requirement to suspend activities that are not necessary to sustain or protect life PDF
E.O. NO. 2020-22	EXECUTIVE ORDER No. 2020-22 (COVID-19) No. 2020-22 Extension of county canvass deadlines for the March 10, 2020 Presidential Primary Election PDF
E.O. NO. 2020-23	EXECUTIVE ORDER No. 2020-23 (COVID-19) Enhanced authorization of remote means for carrying out state administrative procedures PDF
E.O. NO. 2020-24	EXECUTIVE ORDER No. 2020-24 (COVID-19) Temporary expansions in unemployment eligibility and cost-sharing Rescission of Executive Order 2020-10 PDF
E.O. NO. 2020-25	EXECUTIVE ORDER No. 2020-25 (COVID-19) Temporary enhancements to operational capacity, flexibility, and efficiency of pharmacies PDF
E.O. NO. 2020-26	EXECUTIVE ORDER No. 2020-26 (COVID-19) Extension of April 2020 Michigan income tax filing deadlines PDF
E.O. NO. 2020-27	EXECUTIVE ORDER No. 2020-27 (COVID-19) Conducting elections on May 5, 2020 using absent voter ballots PDF

E.O. NO. 2020-28	EXECUTIVE ORDER No. 2020-28 (COVID-19) Restoring water service to occupied residences during the COVID-19 pandemic PDF
E.O. NO. 2020-29	EXECUTIVE ORDER No. 2020-29 (COVID-19) Temporary COVID-19 protocols for entry into Michigan Department of Corrections facilities and transfers to and from Department custody; temporary recommended COVID-19 protocols and enhanced early-release authorization for county jails, local lockups, and juvenile detention centers PDF
E.O. NO. 2020-30	EXECUTIVE ORDER No. 2020-30 (COVID-19) Temporary relief from certain restrictions and requirements governing the provision of medical services PDF
E.O. NO. 2020-31	EXECUTIVE ORDER No. 2020-31 (COVID-19) Temporary relief from standard vapor pressure restrictions on gasoline sales PDF
E.O. NO. 2020-32	EXECUTIVE ORDER No. 2020-32 (COVID-19) Temporary restrictions on non-essential veterinary services PDF
E.O. NO. 2020-33	EXECUTIVE ORDER No. 2020-33 (COVID-19) Expanded emergency and disaster declaration PDF
E.O. NO. 2020-34	EXECUTIVE ORDER No. 2020-34 (COVID-19) Temporary restrictions on veterinary services; Rescission of Executive Order 2020-32 PDF
E.O. NO. 2020-35	EXECUTIVE ORDER No. 2020-35 (COVID-19) Provision of K-12 education during the remainder of the 2019-2020 school year PDF
E.O. NO. 2020-36	EXECUTIVE ORDER No. 2020-36 (COVID-19) Protecting workers who stay home, stay safe when they or their close contacts are sick PDF
E.O. NO. 2020-37	EXECUTIVE ORDER No. 2020-37 (COVID-19) Temporary restrictions on entry into health care facilities, residential care facilities, congregate care facilities, and juvenile justice facilities Rescission of Executive Order 2020-7 PDF
E.O. NO. 2020-38	EXECUTIVE ORDER No. 2020-38 (COVID-19) Temporary extensions of certain FOIA deadlines to facilitate COVID-19 emergency response efforts PDF
E.O. NO. 2020-39	EXECUTIVE ORDER No. 2020-39 (COVID-19) Temporary relief from certain restrictions and requirements governing the provision of emergency medical services PDF
E.O. NO. 2020-40	EXECUTIVE ORDER No. 2020-40 (COVID-19) Temporary relief from certain credentialing requirements for motor carriers transporting essential supplies, equipment, and persons PDF
E.O. NO. 2020-41	EXECUTIVE ORDER No. 2020-41 (COVID-19) Encouraging the use of electronic signatures and remote notarization, witnessing, and visitation during the COVID-19 pandemic PDF
E.O. NO. 2020-42	EXECUTIVE ORDER No. 2020-42 (COVID-19) Temporary requirement to suspend activities that are not necessary to sustain or protect life - Rescission of Executive Order 2020-21 PDF

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**Executive Order 2020-15 (COVID-19)****EXECUTIVE ORDER****No. 2020-15****Temporary authorization of remote participation in public meetings
and hearings and temporary relief from monthly meeting
requirements for school boards**

The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. There is currently no approved vaccine or antiviral treatment for this disease.

On March 10, 2020, the Michigan Department of Health and Human Services identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, I issued Executive Order 2020-4. This order declared a state of emergency across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended, MCL 30.401-.421, and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31-.33.

The Emergency Management Act vests the governor with broad powers and duties to “cop[e] with dangers to this state or the people of this state presented by a disaster or emergency,” which the governor may implement through “executive orders, proclamations, and directives having the force and effect of law.” MCL 30.403(1)-(2). Similarly, the Emergency Powers of the Governor Act of 1945, provides that, after declaring a state of emergency, “the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control.” MCL 10.31(1).

To mitigate the spread of COVID-19, protect the public health, and provide essential protections to vulnerable Michiganders, it is crucial that all Michiganders take steps to limit in-person contact. These critical mitigation measures include social distancing and limiting the number of people interacting at public gatherings.

To that end, it is reasonable and necessary to temporarily suspend rules and procedures relating to physical presence at meetings and hearings of public bodies and other governmental entities in Michigan. These public bodies and entities must continue to

conduct public business during this emergency, including actions to respond to COVID-19, and the general public must be able to continue to participate in government decision-making without unduly compromising public health, safety, and welfare.

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. Effective immediately and continuing until April 15, 2020 at 11:59 pm, to the extent that the Open Meetings Act, 1976 PA 267, as amended, MCL 15.261 to 15.272 (“OMA”) requires that a meeting of a public body be held in a physical place available to the general public or requires the physical presence of one or more members of a public body, strict compliance with section 3 of the OMA,

MCL 15.263, is temporarily suspended in order to alleviate any such physical-place or physical-presence requirements, as follows:

(a) A meeting of a public body may be held electronically, including by telephonic conferencing or video conferencing, in a manner in which both the general public and the members of the public body may participate by electronic means.

(b) A meeting of a public body held electronically must be conducted in a manner that permits two-way communication so that members of the public body can hear and be heard by other members of the public body and so that general public participants can hear members of the public body and can be heard by members of the public body and other participants during a public comment period. The public body also may use technology to facilitate typed public comments that may be read to or shared with members of the public body and other participants.

(c) Members of a public body and of the general public participating electronically will be considered present and in attendance at the meeting and may participate in the meeting as if physically present at the meeting.

(d) All persons must be permitted to participate in any meeting of a public body held electronically, except as otherwise provided in the OMA.

(e) If a public body directly or indirectly maintains an official internet presence, the public body must, consistent with and in addition to any other applicable notice requirements under the OMA, post advance notice of a meeting held electronically on a portion of the public body's website that is fully accessible to the public. The public notice on the website must be included on either the homepage or on a separate webpage dedicated to public notices for non-regularly scheduled public meetings or electronic meetings and accessible through a prominent and conspicuous link on the website's homepage that clearly describes its purpose for public notification of those non-regularly scheduled or electronic public meetings. Notice of a meeting of a public body that will be held electronically must include all of the following:

- (i) An explanation of the reason why the public body is meeting electronically.
 - (ii) Detailed procedures by which the public may participate in the meeting electronically, including a telephone number, internet address, or both.
 - (iii) Procedures by which persons may contact members of the public body to provide input or ask questions on any business that will come before the public body at the meeting.
 - (iv) Procedures by which persons with disabilities may participate in the meeting.
- (f) The right of a person to participate in a meeting of a public body held electronically includes the right to tape-record, to videotape, to broadcast live on radio, and to telecast live on television the proceedings of the public body at a public meeting. The exercise of this right does not depend on the prior approval of the public body. However, a public body may establish reasonable rules and regulations to minimize the possibility of disrupting the meeting.
- (g) A public body may not require a person as a condition of participating in a meeting of the public body held electronically to register or otherwise provide his or her name or other information or otherwise to fulfill a condition precedent to attendance, other than mechanisms necessary to permit the person to participate in a public comment period of the meeting.
- (h) A person must be permitted to address a meeting of a public body held electronically under rules established and recorded by the public body. A person must not be excluded from a meeting held electronically otherwise open to the public except for a breach of the peace actually committed during the meeting.
- (i) During a meeting of a public body held electronically, members of the public body are urged to take all votes by roll call to avoid any questions about how each member of the public body votes.
- (j) If a public body holding a meeting electronically directly or indirectly maintains an official internet presence, the public body is encouraged to make available to the general public through the public body's website homepage an agenda and other materials relating to the meeting.

(k) Members of the general public otherwise participating in a meeting of a public body held electronically may be excluded from participation in a closed session of the public body held electronically during that meeting if the closed session is convened and held in compliance with the requirements of the OMA applicable to a closed session.

2. A public body holding a meeting electronically as provided under this order is encouraged to do so in a manner that effectuates as fully as possible the purposes of the OMA, which include promoting government accountability and fostering openness in government to enhance responsible decision-making. Discussions or deliberations at an open meeting that cannot at a minimum be heard by the general public participating in the meeting are contrary to these purposes. Accordingly, members of a public body must avoid using email, texting, instant messaging, and other such electronic forms of communication to make a decision or deliberate toward a decision, and must avoid "round-the-horn" decision-making in a manner not accessible to the public at an open meeting.
3. If a decision or other action of a public body is in compliance with the requirements of this order and the other requirements of the OMA, it is in compliance with the OMA.
4. Effective immediately and continuing until April 15, 2020 at 11:59 pm, if a statute or rule other than the OMA requires that public comments be permitted or a public hearing be held, including in conjunction with the issuance of a permit or a hearing required under the Uniform Budgeting and Accounting Act, 1968 PA 2, as amended, MCL 141.421 to 141.440a, a public body or department or agency may provide a means for remote public comment or participation through the use of any technology that would facilitate a member of the general public's ability to participate remotely to the same extent as if the member of the general public appeared in person. If not expressly authorized by statute or rule, written comment, including by electronic means, also is permitted.
5. Effective immediately and continuing until April 15, 2020 at 11:59 pm, strict compliance with subsection 6 of section 11a, subsection 7 of section 384, and subsection 1 of section 418a of the Revised School Code, 1976 PA 451, as amended, MCL 380.11a(6), MCL 380.384(7), and MCL 380.418a(1), is temporarily

suspended so as not to require school district boards to hold meetings at least once each month.

6. Nothing in this order permits a public body to limit or restrict the rights of the press or other news media. Members of public bodies are encouraged to facilitate access by members of the press and other news media both to meetings held electronically and to members of public bodies.
7. As used in this order, the terms "decision," "meeting," and "public body" mean those terms as defined under section 2 of the OMA, MCL 15.262, except this order does not apply to state legislative bodies.
8. A provision of this order will prevail over any conflicting provision of a local charter, ordinance, or rule.
9. This order supersedes sections 2 and 3 of Executive Directive 2020-2.

Given under my hand and the Great Seal of the State of Michigan.



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Timothy Currier

From: Jana Ecker <Jecker@bhamgov.org>
Sent: Wednesday, April 15, 2020 3:37 PM
To: Timothy Currier
Subject: Fwd: Adjournment of Planning Board Virtual Meeting April 22,2020

----- Forwarded message -----

From: **larry rockkind** <larryproch@gmail.com>
Date: Wed, Apr 15, 2020 at 3:03 PM
Subject: Adjournment of Planning Board Virtual Meeting April 22,2020
To: Jana Ecker <jecker@bhamgov.org>, <jvalentine@bhamgov.org>, <pboutros@bhamgov.org>, larry rockkind <larryproch@gmail.com>

To: Birmingham Planning Board c/o Jan Ecker, Planning Director
Cc: Mayor, City Manager
From: Louis P. Rockkind
Date: April 15, 2020

REQUEST TO ADJOURN VIRTUAL HEARING ON REZONING REQUEST FOR 469-479 S. OLD WOODWARD
SCHEDULED FOR APRIL 22, 2020

I am the owner of a condominium at 411 South Old Woodward. I ask that you adjourn the above hearing for these reasons, more fully discussed below:

1. *The Board is required by Executive Order 2020-1(1) to adjourn this hearing until a hearing can be held in person.*
2. *The format of a virtual hearing does not provide a fair and adequate forum for objectors to state their views, particularly for seniors, especially given the unusual importance of the issues and the unique complexity of the issues.*
3. *Before taking the drastic action requested, the Board should wait until it has time to digest the effects of the pandemic on the needs of Birmingham.*
4. *The virtual notice of the hearing is not timely and this requires adjournment of the hearing..*

1. *The Board is required by Executive Order 2020-1 (1) to adjourn this hearing until a hearing can be held in person.*

Executive Order 2020-02, Sect. 1, which remains in effect, provides (emphasis added):

*All public bodies of departments and agencies of the State, including but not limited to boards, commissions, committees, subcommittees, authorities, and councils, **must**, to the extent practicable, consider postponing public meetings and/or agenda items that may be deferred until a later time.*

In other words, this is in effect an order to bodies such as the Birmingham Planning Board to adjourn hearings until they can be held in person unless there is a compelling reason not to do so.

This is no doubt a recognition that virtual meetings are simply not as good as in person meetings for many reasons, including the ability of participants to actually participate fully. This is even more true for senior citizens, as discussed below.

The severe limitations of virtual meetings are described in this article:

When meeting face to face, people are freer with each other than they would be online. People are able to express themselves by using body language, gestures and words all of which work together to convey a message. Communication is better in face to face meetings because misunderstandings are less likely.[Ed.

Note: All of this is especially critical for senior citizens, who may have more difficulty following the proceeding in the best of circumstances.]

When you go in for a physical meeting, it is the primary reason why you are at the particular place at any given time. You will be with others attending the meeting as well and none will tolerate the other wasting their time. Everyone will be disciplined and will not be easily distracted by things like phones and computers. The serious environment will emphasize the need to concentrate fully on the meeting and keep off any distractions...

However the chances of having a communication breakdown are increased in virtual meetings. Distractions by personal and work related issues are more likely to happen during virtual meetings than face to face ones.

As discussed below, this meeting requires a decision by the Board which will affect the daily lives, home values, and probably financial futures and retirement planning of many residents. It is just too important to limit public participation to a virtual meeting which has all the detriments described above.

There is no "practicable" reason why this hearing should not be adjourned. It has been pending for almost two years with no effort by the Developer to expedite the proceeding. There is no prejudice to anyone to an adjournment, but a tremendous benefit to many in an adjournment for an in person hearing. (It is worth noting that this proceeding has been delayed on more than one occasion by the Developer's failure to comply with certain requirements or the Developer's request.)

2. *The format of a virtual hearing does not provide a fair and adequate forum for objectors to state their views, particularly seniors, especially given the unusual importance of the issues and the unique complexity of the issues.*

There are doubtless many matters before the Planning Board which may work well in a virtual meeting. This is not one of them. It is of unusual significance to an unusually large number of residents and is remarkably complex.

This application for rezoning involves rezoning a parcel abutting Birmingham Place's residential condominiums to permit construction of a tall commercial building. As the Manager of Birmingham Place told this Board, the mere possibility of this rezoning has deflated the market value of a number of units and, if built out, would obstruct the views of a number of units. Furthermore, together with the hotel completing construction at Brown and Old South Woodward, vehicle and pedestrian traffic will soar. And this is just the beginning. This is a very big and unusual deal.

The Request for Rezoning was first heard by the Board on June 27, 2018. The issue went to the Council, which sent it back for rehearing by the Board. After a rehearing on December 12, 2018, the matter was heard by the City Council on February 11, 2019. The Council failed to pass motions to approve, deny, or adjourn. The Council President advised at the meeting the Council would need to consult with the City attorney as to further proceedings. In the meantime, an entirely different proceeding changed the wording of the zoning ordinance applicable to this parcel.

Even with the help of counsel, it is a difficult proceeding to understand. And currently we cannot even meet with counsel or among ourselves. The many prior meetings on this rezoning request have been very well attended by objectors, including residents of Birmingham Place which has its own counsel. We have prepared for these meetings with our own meetings, including meeting before and after the hearing. This has enabled us to coordinate our presentations to be effective and to save time. In addition, we have sometimes changed our presentation depending on what happens at the hearing itself, which is impossible at a virtual hearing. In addition, the hearings have often involved visual aids, which even on a zoom conference will be difficult to appreciate.

A virtual meeting is useless to people who are not very computer literate and especially hopeless for many seniors. I am 71. Trust me when I tell you me and my friends are overwhelmed by the pandemic. Just arranging for food, taking care of our medical appointments and medications, and worrying about and trying to stay in touch with our children and grandchildren is wearying in and of itself. Many of us are not comfortable with computers.

As a recent study explained:

The study also highlights the obstacles older adults experience such as a significant decrease in sensory keenness, particularly with vision and hearing, as well as a decrease in motor skills due to health problems, such as arthritis and tremors. "Often a large challenge for older adults when using the computer is navigating the mouse and keyboard, which is commonly due to a health problem like arthritis."

Many of us when we look at instructions for a Zoom meeting will give up before we even start. In addition, simply navigating and being heard at a large Zoom meeting (and I have been in those) is challenging for the best of us. Have a heart.

There is no prejudice to anyone by a postponement. The application for rezoning was filed on June 27, 2018 and was before the City Council on February 11, 2019. The Developer has made no effort to expedite its request. Even if the request were approved, no outside activities could proceed at this point anyway. The matter has already been pending for close to two years.

3) *Before taking the drastic action requested, the Board should wait until it has time to digest the effects of the pandemic on the needs of Birmingham.*

We don't know what the future holds even in the short term, but one thing is for sure, life will not return to what we knew before the pandemic. As has been noted:

Yet cities since then have thrived and grown. They're much cleaner and safer than they were a century ago. That's because cities are by their nature adaptable organisms. More efficient than rural areas and more flexible than suburbs, they are constantly reinventing themselves — sometimes so quickly that it's startling, sometimes so slowly that we don't even notice.

The world after COVID-19 will be different — as it is after any disaster. And COVID-19 will accelerate changes that have been brewing in cities for a long time. The result will be a new kind of city, different than what we have seen before. A city that should be able to withstand shocks like COVID-19 in a sturdier fashion.

The Board needs to see what this new world might require before so dramatically changing our downtown as it has existed for years.

4) *The virtual notice of the hearing is not timely and this requires adjournment of the hearing.*

The well-known Open Meetings Act requires hearings like this one to be held in a public place with personal attendance. The only reason there is a "virtual" alternative is due to Executive Order 2020-15 which exempts compliance with the Act under detailed and specific requirements because of the pandemic. One of those requirements prescribes the necessary notice (Sect. 1(e):

(e) If a public body directly or indirectly maintains an official internet presence, the public body must, consistent with and in addition to any other applicable notice requirements under the OMA, post advance notice of a meeting held electronically on a portion of the public body's website that is fully accessible to the public. The public notice on the website must be included on either the homepage or on a separate webpage dedicated to public notices for non-regularly scheduled public meetings or electronic meetings and accessible through a prominent and conspicuous link on the website's homepage that clearly describes its purpose for public notification of those non-regularly scheduled or electronic public meetings. Notice of a meeting of a public body that will be held electronically must include all of the following:

- (i) An explanation of the reason why the public body is meeting electronically.*
- (ii) Detailed procedures by which the public may participate in the meeting electronically, including a telephone number, internet address, or both.*
- (iii) Procedures by which persons may contact members of the public body to provide input or ask questions on any business that will come before the public body at the meeting.*
- (iv) Procedures by which persons with disabilities may participate in the meeting.*

As with any notice, this one is necessary to provide everyone with an adequate opportunity to prepare and attend. The more complex the meeting, the longer the notice period should be.

The detailed requirements in the Order are in obvious deference to the fact that virtual meetings are more difficult for the participants. This means the public should have the maximum time available for notice. But it did not.

Our ordinance requires 15 days' notice of a zoning request with notice personally sent to residents within 300 feet. But the Board's virtual notice was (a) not sent to persons within 300 feet, and (b) published on the website on April 14, only seven, not fifteen, days before the hearing.

For all the reasons discussed above, maximum notice is necessary to give the public even a chance to participate meaningfully in the hearing.

But aside from that, the notice is inadequate under the ordinance and requires adjournment of the hearing, which should be to a time when a hearing can be held in person,

--

Jana L. Ecker

***Planning Director
City of Birmingham
248-530-1841***

April 15, 2020

David Stanchak
President, Chief Real Estate & Development Officer
RH
15 Koch Road
Corte Madera, CA 94925

Dear Mr. Stanchak,

I hope this letter finds you well as we endure these unprecedented times.

The current state of the public health crisis in this country is a great concern. What is equally concerning are the economic challenges that will come from the measures instituted to ensure the public's health and safety. This dichotomy has caused us to evaluate new economic tools to ensure the City's continued economic vitality in our downtown and other business districts in an environment recovering from State ordered restrictions. While our current commercial investment will provide 84 new residential units and 126 new hotel rooms within the next two years, we recognize to need to promote programs that will foster ongoing further investment in an environment post COVID-19.

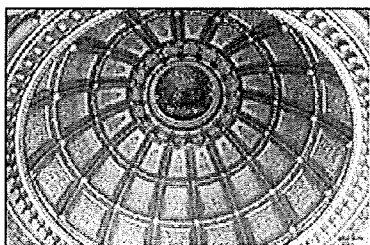
One of these development initiatives includes the creation of Commercial Rehabilitation Districts under Michigan Public Act 210 of 2005. This initiative would provide not only tax relief for qualifying developments such as destination stores with a minimum square footage, but also provide eligibility for a liquor license and an allocation of monthly parking permits upon completion of a new development. In addition, the eligibility of a valet license would be available for qualifying developments under these criteria.

We look forward to talking with you more about this new initiative and your plans for a new signature store in Michigan.

Sincerely,

Pierre Boutros
Mayor

Joseph A. Valentine
City Manager



MICHIGAN LEGISLATURE

Michigan Compiled Laws Complete Through PA 84 of 2020
 House: Adjourned until Thursday, April 16, 2020 10:00:00 AM
 Senate: Adjourned until Thursday, April 16, 2020 10:00:00 AM

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 Session Schedules
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 Search - Advanced

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| E.O. NO. 2020-5 | (COVID-19) - rescinded - Temporary prohibition on large assemblages and events, temporary school closures |
| E.O. NO. 2020-6 | (COVID-19) - rescinded - Temporary restrictions on entry into health care facilities, residential care facilities, congregate care facilities, and juvenile justice facilities |
| E.O. NO. 2020-7 | (COVID-19) Temporary restrictions on entry into health care facilities, residential care facilities, congregate care facilities, and juvenile justice facilities Rescission of Executive Order 2020-6 |
| E.O. NO. 2020-8 | (COVID-19) Enhanced restrictions on price gouging |
| E.O. NO. 2020-9 | (COVID-19) Temporary restrictions on the use of places of public accommodation |
| E.O. NO. 2020-10 | (COVID-19) Temporary expansions in unemployment eligibility and cost-sharing |
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E.O. NO. 2020-26	(COVID-19) Extension of April 2020 Michigan income tax filing deadlines PDF
E.O. NO. 2020-27	(COVID-19) Conducting elections on May 5, 2020 using absent voter ballots PDF
E.O. NO. 2020-28	(COVID-19) Restoring water service to occupied residences during the COVID-19 pandemic PDF
E.O. NO. 2020-29	(COVID-19) Temporary COVID-19 protocols for entry into Michigan Department of Corrections facilities and transfers to and from Department custody; temporary recommended COVID-19 protocols and enhanced early-release authorization for county jails, local lockups, and juvenile detention centers PDF
E.O. NO. 2020-30	(COVID-19) Temporary relief from certain restrictions and requirements governing the provision of medical services PDF
E.O. NO. 2020-31	(COVID-19) Temporary relief from standard vapor pressure restrictions on gasoline sales PDF
E.O. NO. 2020-32	(COVID-19) Temporary restrictions on non-essential veterinary services PDF
E.O. NO. 2020-33	(COVID-19) Expanded emergency and disaster declaration PDF

E.O. NO. 2020-34	(COVID-19) Temporary restrictions on veterinary services; Rescission of Executive Order 2020-32 PDF
E.O. NO. 2020-35	(COVID-19) Provision of K-12 education during the remainder of the 2019-2020 school year PDF
E.O. NO. 2020-36	(COVID-19) Protecting workers who stay home, stay safe when they or their close contacts are sick PDF
E.O. NO. 2020-37	(COVID-19) Temporary restrictions on entry into health care facilities, residential care facilities, congregate care facilities, and juvenile justice facilities Rescission of Executive Order 2020-7 PDF
E.O. NO. 2020-38	(COVID-19) Temporary extensions of certain FOIA deadlines to facilitate COVID-19 emergency response efforts PDF
E.O. NO. 2020-39	(COVID-19) Temporary relief from certain restrictions and requirements governing the provision of emergency medical services PDF
E.O. NO. 2020-40	(COVID-19) Temporary relief from certain credentialing requirements for motor carriers transporting essential supplies, equipment, and persons PDF
E.O. NO. 2020-41	(COVID-19) Encouraging the use of electronic signatures and remote notarization, witnessing, and visitation during the COVID-19 pandemic PDF
E.O. NO. 2020-42	(COVID-19) Temporary requirement to suspend activities that are not necessary to sustain or protect life - Rescission of Executive Order 2020-21 PDF
E.O. NO. 2020-43	(COVID-19) Temporary restrictions on the use of places of public accommodation - Rescission Executive Order 2020-20 PDF
E.O. NO. 2020-44	(COVID-19) Enhanced support for deliveries Rescission of Executive Order 2020-12 PDF
E.O. NO. 2020-45	(COVID 19) Enhanced authorization of remote means for carrying out state administrative procedures Rescission of Executive Order 2020-23 PDF
E.O. NO. 2020-46	(COVID 19) Mitigating the economic harms of the COVID-19 pandemic through the creation of a spirits buyback program for restaurants and bars throughout the state PDF
E.O. NO. 2020-47	Temporary extension of validity of driver's licenses, state identification cards and registration. PDF
E.O. NO. 2020-48	(COVID-19) EXECUTIVE ORDER Temporary authorization of remote participation in public meetings and hearings and temporary relief from monthly meeting requirements for school boards Rescission of Executive Order 2020-15 PDF
E.O. NO. 2020-49	(COVID-19) Temporary enhancements to operational capacity and efficiency of health care facilities Rescission of Executive Order 2020-13 PDF

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GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GARLIN GILCHRIST II
LT. GOVERNOR

SECRETARY OF SENATE
2020 APR 15 AM 9:29

EXECUTIVE ORDER

No. 2020-48

Temporary authorization of remote participation in public meetings and hearings and temporary relief from monthly meeting requirements for school boards

Rescission of Executive Order 2020-15

The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. There is currently no approved vaccine or antiviral treatment for this disease.

On March 10, 2020, the Michigan Department of Health and Human Services identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, I issued Executive Order 2020-4. This order declared a state of emergency across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended, MCL 30.401 et seq., and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31 et seq.

In the three weeks that followed, the virus spread across Michigan, bringing deaths in the hundreds, confirmed cases in the thousands, and deep disruption to this state's economy, homes, and educational, civic, social, and religious institutions. On April 1, 2020, in response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, I issued Executive Order 2020-33. This order expanded on Executive Order 2020-4 and declared both a state of emergency and a state of disaster across the State of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, and the Emergency Powers of the Governor Act of 1945.

The Emergency Management Act vests the governor with broad powers and duties to "cop[e] with dangers to this state or the people of this state presented by a disaster or emergency," which the governor may implement through "executive orders, proclamations, and directives having the force and effect of law." MCL 30.403(1)-(2). Similarly, the Emergency Powers of the Governor Act of 1945 provides that, after declaring a state of emergency, "the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control." MCL 10.31(1).

To mitigate the spread of COVID-19, protect the public health, and provide essential protections to vulnerable Michiganders, it is crucial that all Michiganders take steps to limit in-person contact. These critical mitigation measures include social distancing and limiting the number of people interacting at public gatherings.

To that end, it is reasonable and necessary to temporarily suspend rules and procedures relating to physical presence at meetings and hearings of public bodies and other governmental entities in Michigan. These public bodies and entities must continue to conduct public business during this emergency, including actions to respond to COVID-19, and the general public must be able to continue to participate in government decision-making without unduly compromising public health, safety, and welfare.

Executive Order 2020-15 provided this limited and temporary relief from certain rules and procedures. This order clarifies and extends the duration of that relief, as it remains reasonable and necessary to suppress the spread of COVID-19 and protect the public health and safety of this state and its residents. With this order, Executive Order 2020-15 is rescinded.

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. To the extent that the Open Meetings Act ("OMA"), 1976 PA 267, as amended, MCL 15.261 to 15.272, requires that a meeting of a public body be held in a physical place available to the general public or requires the physical presence of one or more members of a public body, strict compliance with section 3 of the OMA, MCL 15.263, is temporarily suspended in order to alleviate any such physical-place or physical-presence requirements, as follows:
 - (a) A meeting of a public body may be held electronically, including by telephonic conferencing or video conferencing, in a manner in which both the general public and the members of the public body may participate by electronic means.
 - (b) A meeting of a public body held electronically must be conducted in a manner that permits two-way communication so that members of the public body can hear and be heard by other members of the public body and so that general public participants can hear members of the public body and can be heard by members of the public body and other participants during a public comment period. The public body also may use technology to facilitate typed public comments that may be read to or shared with members of the public body and other participants.
 - (c) Members of a public body and of the general public participating electronically will be considered present and in attendance at the meeting and may participate in the meeting as if physically present at the meeting.
 - (d) All persons must be permitted to participate in any meeting of a public body held electronically, except as otherwise provided in the OMA.

- (e) If a public body directly or indirectly maintains an official internet presence, the public body must, consistent with and in addition to any other applicable notice requirements under the OMA, post advance notice of a meeting held electronically on a portion of the public body's website that is fully accessible to the public. The public notice on the website must be included on either the homepage or on a separate webpage dedicated to public notices for non-regularly scheduled public meetings or electronic meetings and accessible through a prominent and conspicuous link on the website's homepage that clearly describes its purpose for public notification of those non-regularly scheduled or electronic public meetings. Notice of a meeting of a public body that will be held electronically must include all of the following:
- (i) An explanation of the reason why the public body is meeting electronically.
 - (ii) Detailed procedures by which the public may participate in the meeting remotely, including a telephone number, internet address, or both.
 - (iii) Procedures by which persons may contact members of the public body to provide input or ask questions on any business that will come before the public body at the meeting.
 - (iv) Procedures by which persons with disabilities may participate in the meeting.
- (f) The right of a person to participate in a meeting of a public body held electronically includes the right to tape-record, to videotape, to broadcast live on radio, and to telecast live on television the proceedings of the public body at a public meeting. The exercise of this right does not depend on the prior approval of the public body. However, a public body may establish reasonable rules and regulations to minimize the possibility of disrupting the meeting.
- (g) A public body may not require a person as a condition of participating in a meeting of the public body held electronically to register or otherwise provide his or her name or other information or otherwise to fulfill a condition precedent to attendance, other than mechanisms necessary to permit the person to participate in a public comment period of the meeting.
- (h) A person must be permitted to address a meeting of a public body held electronically under rules established and recorded by the public body. A person must not be excluded from a meeting held electronically otherwise open to the public except for a breach of the peace actually committed during the meeting.
- (i) During a meeting of a public body held electronically, members of the public body are urged to take all votes by roll call to avoid any questions about how each member of the public body votes.
- (j) If a public body holding a meeting electronically directly or indirectly maintains an official internet presence, the public body is encouraged to make available to

the general public through the public body's website homepage an agenda and other materials relating to the meeting.

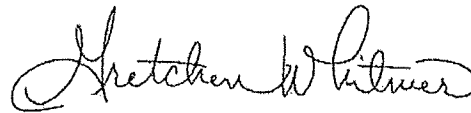
- (k) Members of the general public otherwise participating in a meeting of a public body held electronically may be excluded from participation in a closed session of the public body held electronically during that meeting if the closed session is convened and held in compliance with the requirements of the OMA applicable to a closed session.
- 2. A public body holding a meeting electronically as provided under this order is encouraged to do so in a manner that effectuates as fully as possible the purposes of the OMA, which include promoting government accountability and fostering openness in government to enhance responsible decision-making. Discussions or deliberations at an open meeting that cannot at a minimum be heard by the general public participating in the meeting are contrary to these purposes. Accordingly, members of a public body must avoid using email, texting, instant messaging, and other such electronic forms of communication to make a decision or deliberate toward a decision, and must avoid "round-the-horn" decision-making in a manner not accessible to the public at an open meeting.
- 3. If a decision or other action of a public body is in compliance with the requirements of this order and the other requirements of the OMA, it is in compliance with the OMA.
- 4. If a statute or rule other than the OMA requires that public comments be permitted or a public hearing be held, including in conjunction with the issuance of a permit or a hearing required under the Uniform Budgeting and Accounting Act, 1968 PA 2, as amended, MCL 141.421 to 141.440a, a public body or department or agency may provide a means for remote public comment or participation through the use of any technology that would facilitate a member of the general public's ability to participate remotely to the same extent as if the member of the general public appeared in person. If not expressly authorized by statute or rule, written comment, including by electronic means, also is permitted.
- 5. Strict compliance with subsection 6 of section 11a, subsection 7 of section 384, and subsection 1 of section 418a of the Revised School Code, 1976 PA 451, as amended, MCL 380.11a(6), MCL 380.384(7), and MCL 380.418a(1), is temporarily suspended so as not to require school district boards to hold meetings at least once each month.
- 6. Nothing in this order permits a public body to limit or restrict the rights of the press or other news media. Members of public bodies are encouraged to facilitate access by members of the press and other news media both to meetings held electronically and to members of public bodies.
- 7. As used in this order, the terms "decision," "meeting," and "public body" mean those terms as defined under section 2 of the OMA, MCL 15.262, except this order does not apply to state legislative bodies.

8. A provision of this order will prevail over any conflicting provision of a local charter, ordinance, or rule.
9. This order supersedes sections 2 and 3 of Executive Directive 2020-2.
10. This order is effective immediately and continues through May 12, 2020.
11. Executive Order 2020-15 is rescinded.

Given under my hand and the Great Seal of the State of Michigan.

Date: April 14, 2020

Time: 8:17 pm



GRETCHEN WHITMER
GOVERNOR

By the Governor:

SECRETARY OF STATE



MEMORANDUM

Planning Division

DATE: April 22, 2020

TO: Planning Board Members

FROM: Brooks Cowan, Planning Director

APPROVED: Jana Ecker, Planning Director

SUBJECT: 1800 W. Maple Final Site Plan and Design Review and SLUP Amendment

The subject property is located on the north side of W. Maple Road between N. Glenhurst and Chesterfield Avenue. The applicant is proposing an addition to the church to accommodate a larger sanctuary space. Religious Institutions such as Lutheran Church of the Redeemer may operate in an R-1 Zone with a Special Land Use Permit, which the applicant received in 1991.

The applicant is renovating 11,243 square feet of the church while creating an additional 3,791 square feet of usable space which is an 8.3% increase, therefore does not need a CIS. The changes and additions are for expanding the sanctuary space including the narthex, nave, ambulatory room, chance and the balcony. The renovations also expand office capacity and an additional waiting room.

Exterior changes include an enhanced front gable and pediment along with sidewalk improvements, barrier free ramps, landscaping and the relocation of a columbarium. At this time, the applicant is seeking the Planning Board's recommendation for approval of the Final Site Plan and a Special Land Use Permit Amendment to the City Commission.

1.0 Land Use and Zoning

- 1.1 Existing Land Use -The site is zoned R-1, Single Family Residential. The current occupant is a religious institution operating with a SLUP.
- 1.2 Existing Zoning - Currently zoned R-1, Single Family Residential, the existing use is a permitted use with a Special Land Use Permit.
- 1.3 2016 Regulating Plan - The subject site is not located within the Downtown Birmingham Overlay District.
- 1.4 Summary of Land Use and Zoning - The following chart summarizes existing land use and zoning adjacent to and/or in the vicinity of the subject site, including the proposed 2016 Regulating Plan zones.

	North	South	East	West
Existing Land Use	Single Family Residential	Single Family Residential	Commercial	Single Family Residential
Existing Zoning District	R-2 Single Family Residential	P – Parking O1 – Office R-1 Single Family Residential	P – Parking O1 – Office R-1 Single Family Residential	(Bloomfield Township)

2.0 Setback and Height Requirements

The proposed project appears to meet all of the bulk, area, height and placement requirements. The church steeple and spire is grandfathered in for the height limits. Please see attached zoning summary sheet for further details.

3.0 Screening and Landscaping

- 3.1 Dumpster Screening – No changes proposed. The dumpster is currently enclosed with a 6' masonry screen wall to match the existing church, and a 6' high pressure treated wooden gate.
- 3.2 Parking Facility Screening – Article 05, Section 4.54 (B)(7) of the Zoning Ordinance require all parking facilities that immediately adjoin the rear or side lot line of property zoned to a residential classification be screened with a 6' high masonry wall. Currently, the majority of the parking area is screened along the north, east and west property lines with 6' wooden privacy fencing and various types of vegetation.

On May 14th, 1991, A variance was granted from the Board of Zoning Appeals to permit a 6 foot wooden fence to be used as parking lot screening along the west, north and east property lines. On April 12, 2005, The Board of Zoning Appeals granted a variance to eliminate screening requirements on the first 240 feet of the west property line and to use existing vegetative screening in lieu of a fence. Minutes from both BZA meetings are provided below.

In accordance with section 4.54 (D)(3) of the Zoning Ordinance, screening is not required along the east property line where the proposed parking facility abuts the parking area for the commercial strip plaza next door to the subject site.

Section 4.54 (C)(3)(a) of the Zoning Ordinance requires that the front or side of any parking facility that abuts a street be screened with a 32" high masonry wall placed along the front setback line. Article 04, Section 4.54(D)(1) of the Zoning Ordinance further states that when screening is placed along a front setback line, the resulting

front yard shall be void of all parking and storage and must be landscaped. **The applicant appeared before the Board of Zoning Appeals on April 12, 2005 at which time they received variances for the 32" masonry screen walls along the front setback line to screen the parking areas in front of the church and to allow the front 2 parking spaces (4 total) on either side of the curved driveway to extend into the 25' front yard.**

- 3.3 Mechanical Screening – Five ground mounted condensers are proposed on the west side of the building facing Maple Road. The mechanical units 36" x 36" and are screened by Emerald Green Arborvitae 5 feet in height. There are two rooftop mechanical units on the western side of the new renovation. The mechanical units are obscured by the slope of the roof.
- 3.4 Landscaping - The applicant is proposing to remove 14 trees to accommodate for the expansion of the building. New additions will be surrounded by a landscaping bed with 78 Winter Gem Boxwoods, 54 Green Mound Alpine Currants and 21 Emerald Arbor Vitae. The front entrance and side courtyard will also have enhanced landscaping with 15 Karl Foester Reed Grass perennials, 12 Risky Business Hostas and 23 Creeping Lilyturf plants.

11 new trees will be planted on the eastern side of the building. 5 Skyline Honey Locusts will be planted along the eastern parking lot entrance, while 3 Eastern Hemlocks, 2 Pink Flair Flowering Cherry trees and 1 Marilee Crabapple tree will be planted along the eastern side of the church.

Although the subject property is zoned R-1 and is not subject to parking lot landscaping requirements, that applicant currently has 7,026 square feet of landscaping in their 80,465 square foot parking lot which is an 8.7% coverage rate.

4.0 Parking, Loading, Access, and Circulation

- 4.1 Parking – Article 04, Section 4.46 of the Zoning Ordinance requires one (1) space for every six fixed seats in a church. The church has 514 fixed seats, therefore 86 parking spaces are required on site. No changes to the parking lot are proposed. The applicant has 218 spaces on site, 11 of which are barrier free. All of the proposed parking spaces meet the 180 square feet size requirement.

Article 04, section 4.53(C)(3) of the Zoning Ordinance states that when screening is required along a front setback line, screenwall shall be placed along the setback line. **The applicant appeared before the Board of Zoning Appeals on April 12, 2005 at which time they received variances for the 32" masonry screen walls along the front setback line to screen the parking areas in front of the church and to allow the front 2 parking spaces on either side of the curved driveway to extend into the 25' front yard.**

- 4.2 Loading – No changes

- 4.3 Access & Circulation – The front entrance circle drive is being narrowed to a 20 foot width to accommodate the new walkway along the expanded front entrance. A new walkway surrounding the front and side of the building is proposed to connect to ADA accessible ramps on the east and west side of the nave and chancel.

The property has four curb cuts, two of which provide access to the rear parking lot, the other two providing ingress and egress to the front circle drive. **It is of note that the proposed walkway improvements connect to the front circle drive as well as the side and rear parking lots, but there is no walkway connecting to the entrance at the public sidewalk.**

5.0 Lighting

The applicant is proposing 10 new lights to be installed along the new walkway and columbarium. Six of the lights are proposed to be 150 watt 8-sided lanterns with textured panels and cadalabra vertical base-down lamps made by Antique Street Lamps. Four new Gotham 6-inch specular lights are also proposed; two above the front entrance and two above the side entrance on the west.

As this property is zoned R-1, the Lighting Standards of Section 4.21 of the Zoning Ordinance are not applicable, although the Planning Board may wish to require conditions for SLUP approval. The applicant has provided a photometric plan and lighting specs for their expansive property and parking lot.

The foot-candle ratio is 12.3:1 for circulation areas which satisfies the Zoning Ordinance's requirement of 20:1 or less. The existing light poles are all below 13' and are full cutoff luminaires, therefore satisfying the ordinance requirements.

6.0 Departmental Reports

- 6.1 Engineering Division – Engineering Department has no comments at this time.
- 6.2 Department of Public Services – No concerns were reported at this time.
- 6.3 Fire Department - No concerns were reported at this time.
- 6.4 Police Department - Comments to be provided by April 22nd, 2020.
- 6.5 Building Department – No concerns were reported at this time.

7.0 Design Review

The proposed sanctuary space is meant to be more accommodating for larger events. The expanded narthex provides more gathering space before and after services while the expansion of the east and west ambulatory and balcony provides greater seating capacity.

The new exterior will mainly be composed of "Berwick" modular brick from Belden Brick Co to match the existing brick. The expanded entrance will have four columns made of western red cedar wood that will be painted white. These columns are attached to a white pediment on a gabled roof. The plans indicate sand pebble - fine finish EIFS material on the front of the pediment as well as the east and west exteriors of the expanded Narthex. The sand pebble fine finish EIFS is meant to match the material above the town hall entrance on the west side of the building. The front façade is proposed to have spandrel glass with aluminum-clad wood, stone sills and soldier course headers. The sanctuary is complimented by a 50 foot steeple and spire that is grandfathered in for the height limits. The east and west sides of the sanctuary will have monument windows surrounded by stone detail and soldier course brick. Two windows are proposed to be removed and infilled with brick to accommodate the relocation of offices to the area connecting the sanctuary to the chapel. The roof edges will have a decorative white synthetic trim. A new rehearsal room will be constructed on the west side of the building that is complemented by two columns and an entryway to the side of the parking lot.

The columbarium will be moved from the west side of the chapel to the east side. The project architect has indicated the Church is contracting with a cemetery operator to assist with the relocation of the remains. The columbarium remains will be accompanied by various planters and benches. The entryways for the sanctuary, chapel, columbarium, and rehearsal room will be enhanced by a new walkway surrounded by new landscaping and additional antique lamps.

8.0 Approval Criteria for Final Site Plan

In accordance with Article 7, section 7.27 of the Zoning Ordinance, the proposed plans for development must meet the following conditions:

- (1) The location, size and height of the building, walls and fences shall be such that there is adequate landscaped open space so as to provide light, air and access to the persons occupying the structure.
- (2) The location, size and height of the building, walls and fences shall be such that there will be no interference with adequate light, air and access to adjacent lands and buildings.
- (3) The location, size and height of the building, walls and fences shall be such that they will not hinder the reasonable development of adjoining property not diminish the value thereof.
- (4) The site plan, and its relation to streets, driveways and sidewalks, shall be such as to not interfere with or be hazardous to vehicular and pedestrian traffic.
- (5) The proposed development will be compatible with other uses and buildings in the neighborhood and will not be contrary to the spirit and purpose of this chapter.
- (6) The location, shape and size of required landscaped open space is such as to provide adequate open space for the benefit of the inhabitants of the building and the surrounding neighborhood.

9.0 Approval Criteria for Special Land Use Permits

Article 07, section 7.34 of the Zoning Ordinance specifies the procedures and approval criteria for Special Land Use Permits. Use approval, site plan approval, and design review are the responsibilities of the City Commission. This section reads, in part:

Prior to its consideration of a special land use application (SLUP) for an initial permit or an amendment to a permit, the City Commission shall refer the site plan and the design to the Planning Board for its review and recommendation. After receiving the recommendation, the City Commission shall review the site plan and design of the buildings and uses proposed for the site described in the application of amendment.

The City Commission's approval of any special land use application or amendment pursuant to this section shall constitute approval of the site plan and design.

10.0 Recommendation

Based upon review of the Final Site Plan submitted, the Planning Division recommends that the Planning Board recommend approval to the City Commission for the Final Site Plan and Special Land Use Permit Amendment for 1800 W. Maple.

10.0 Sample Motion Language

Motion to recommend approval to the City Commission for the Final Site Plan for 1800 W. Maple.

AND

Motion to recommend approval to the City Commission for the Special Land Use Permit Amendment.

OR

Motion to recommend denial to the City Commission for the Special Land Use Permit Amendment and the Final Site Plan for 1800 W. Maple.

OR

Motion to postpone action on the requested Special Land Use Permit Amendment and the Final Site Plan for 1800 W. Maple, pending receipt of the following:

- 1) _____
- 2) _____
- 3) _____.

**SUMMARY SHEET
FINAL SITE PLAN AND DESIGN REVIEW
1800 W. Maple – Lutheran Church of the Redeemer
April 22, 2020**

Zoning: R-1, Single Family Residential

Adjacent Zoning:

	North	South	East	West
Existing Land Use	Single Family Residential	Single Family Residential	Commercial	Single Family Residential
Existing Zoning District	R-1 Single Family Residential	R-1 Single Family Residential	B-1, Neighborhood Business	R-1 Single Family Residential

Land Area: existing: 263,686 square feet or 6.053 acres

Minimum Lot Area: required: 9,000 square feet

Front Setback: required: 25 feet
proposed: 122.67 feet

Side Setback: required: 45 feet minimum per side, 112 feet total
proposed: 79.63 feet on the west side; 137.65 on the east side, 217.3 feet total

Rear Setback: required: 30 feet
proposed: 124.3 feet

Lot Coverage: permitted: 30% or 79,105 square feet
proposed: 19% or 49,140 square feet

Minimum Open Space: required: 40% or 105,474 square feet
proposed: 40% or 105,480 square feet

Max. Height: permitted: 30 feet to the midpoint, 2 stories
existing: 27 feet to the midpoint,
(Steeple and Spire are grandfathered in)

Loading: required: N/A
proposed: N/A

The applicant received a variance for the loading space requirement from the Board of Zoning Appeals on April 12, 2005.

Parking: required: 1 space / 6 fixed seats = 86 (514 fixed seats)
proposed: 218, including 11 barrier free spaces

The applicant received a variance from the Board of Zoning Appeals to allow 4 parking spaces within the 25 foot front setback on April 12, 2005.

Parking Lot Screening: required: 6 feet high masonry screen wall around all parking facilities that adjoin the side or rear lot line of residential areas. 32" high masonry screen wall around all parking facilities that abut a street.
proposed: 6 foot wood fence and vegetation

A variance was granted from the Board of Zoning Appeals on May 14, 1991 to permit the wood fence to be used as parking lot screening along the west, north and east property line. An additional variance was received from the BZA on April 12, 2005 to allow the western property line to be screened with vegetation, and to omit screening requirements along the front setback on W Maple.

Landscaping: required: N/A
Proposed: 8.7% parking lot landscaping coverage

Dumpster Screening: required: 6-foot high masonry screen wall with wooden doors
proposed: Existing

Mr. Gibbs stated he is going to abstain because he arrived in the middle of the presentation.

Yeas: Messrs. Cotton, Hughes, Conlin and Williams

Nays: Mr. Lillie

Abstain: Mr. Gibbs
Motion passes to deny the variance.

Appeal 91-14

The Lutheran Church of the Redeemer, 1800 W. Maple, is requesting a variance to install a wooden stockade fence in lieu of a masonry fence.

Section 5.215, Chapter 39, Birmingham City Code, requires screening fences to be made of masonry and therefore requires a variance.

Mr. Gibbs excused himself from participating in this appeal because he is a member of this church.

Mr. Murphy explained that churches located in residentially-zoned property are required to obtain a Special Land Use Permit. This was granted by the City Commission with the exception of the masonry fence issue because this needed a variance from this Board.

The petitioner is requesting, with the neighborhood's consent, to install a fence to be made of stockade wood material, similar to the type of material already installed in back of the property.

Mr. Tom Boyce, Chairman of the Board of Trustees for the church, explained exactly where the proposed fence would be located. The stockade fence would begin at the first jog on the west side of the property and continue around to the east and back up to Mills Pharmacy. The chain-link fence would be removed and replaced with the stockade fence. There are some neighbors along the north property line who want to keep the chain-link fence in place so the church will continue the existing stockade fence on the north side. The church will maintain the responsibility for cleaning the debris between the two fences.

Mr. Boyce explained the stockade fence is considered more aesthetically pleasing to both the neighbors and the congregation. The wooden stockade fence will not have any kind of detrimental impact on the trees and shrubbery along the property line. There are 26 trees along the property line. A masonry fence would interfere with the root structure of these trees. The issue of snow packing up against the wooden fence and deteriorating it would not be an issue because there is a curb that runs inside the fence by approximately 6' around the whole property.

Mr. Boyce explained whole purpose of putting up the fence to begin with was to address a lot of the neighbors' concerns regarding privacy. Mr. Boyce stated this situation is similar to Holy Name's which was before the Board previously.

Mr. Conlin referred to the names on the petition and asked how many of these people are affected immediately by the fence. Mr. Boyce stated there are 17 names out of 21. The other 3 neighbors were unable to be reached.

A landscape architect had stated that the existence of the trees may be undermined by a masonry wall.

Mr. Boyce stated the fence will be of very high quality cedar. The wooden posts are guaranteed to last 30-40 years.

Mr. Bruce Pence of 210 N. Glenhurst stated he has been a neighbor on the north side of the church's property for 30 years and strongly recommends positive consideration to the petitioner's request.

Ms. Rebecca Morrell who lives on Fairview behind the church on the north end stated she is in favor of the stockade fence in lieu of a masonry fence because she doesn't want any vegetation destroyed. She would like the church to plant some trees to replace some that were originally destroyed.

Mr. Mike Doonan who lives at 166 N. Glenhurst stated he endorses the proposal. The church has done yeoman's work all the way around in pleasing everybody.

Motion by Mr. Conlin

Seconded by Mr. Lillie in reference to Appeal 91-14 to grant a variance under Section 5.215, Chapter 39, Birmingham City Code, to allow the Lutheran Church of the Redeemer to install a cedar stockade fence of the quality represented in the hearing tonight. The petitioner has demonstrated more than adequately two major points, one of which the purpose of the Ordinance is to screen neighboring uses, those being different uses. The neighbors have stood up unanimously and supported the stockade in lieu of the masonry and that shows the spirit of the Ordinance is kept intact. Secondly, the petitioner has gone on record to state that the existing vegetation would be damaged or would have to be substantially removed which would incur damage or inconvenience or ecological problems with the neighbors and that in and of itself is a practical difficulty. Consequently, I would move that the variance be granted per the proposal as outlined tonight by the Board and linked to the plans submitted.

Yeas: Messrs. Williams, Cotton, Hughes, Conlin
and Mr. Lillie

Nays: None
Motion passes to grant the variance.

Appeal 91-15

Ms. Susan Pohl, representing the property owner of 1872 Derby, Birmingham, Michigan is requesting a variance in order to permit a family day-care home closer than 750 feet from another family day-care home.

Section 5.22(f), Chapter 39, Birmingham City Code, states that no family day-care homes shall be located closer than seven hundred fifty (750) feet from another family day-care home or foster-care facility except as permitted below:

The Board of Zoning Appeals may approve the location of a family day-care home within seven hundred fifty (750) feet of another existing home or foster-care facility upon proof and specific findings by the Board that the resulting concentration of uses will not adversely affect the peace and tranquility or the residential character of the surrounding area.

Mr. Murphy explained the Board has received this evening some correspondence from some of the neighbors and from the petitioner. The application that was sent to the Board does not have the signature of the owner, however Mr. Murphy explained he did have it in his file.

Mr. Murphy stated that if the Board grants this approval, it will run with the land; it would be a permanent variance for this address.

Mr. Lillie asked how many houses there are between the two day-care facilities; Mr. Murphy believes there are two.

Ms. Pohl stated she would like to be granted the variance and didn't see how it would cause any problems with the neighbors. She explained that most of the traffic from the other day-care facility, on the corner of Derby and Graefield, is located on Graefield. The traffic from her proposed facility would be located on Derby. Her driveway can accommodate three cars. Ms. Pohl stated she is caring for three children at the present time and the maximum the City allows is six children.

Ms. Pohl stated she can rent the house with the option to buy.

BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, APRIL 12, 2005

04-37-05

1800 WEST MAPLE
Lutheran Church of the Redeemer
(Appeal 05-23)

The owners of the property known as 1800 W. Maple request the following variances or reviews:

- A. A dimensional variance of 240.5 ft. to eliminate the requirement for a 6 ft. high masonry wall along the unscreened portion of the parking area along the west property line and to use existing vegetative screening in lieu of the 6 ft. high masonry wall required by Section 126-572 (7) of the Zoning Ordinance;
- B. A dimensional variance of 137 ft. to eliminate the requirement for a 32 in. high masonry screenwall at the front setback line along W. Maple in lieu of the 32 in. high masonry screenwall required by Section 126-572 (d) (3) (a)
- C. A dimensional variance to allow the existing four parking spaces to remain in the required front setback along W. Maple in lieu of eliminating the existing four parking spaces as required by Section 126-572 (e) (1) of the Zoning Ordinance.
- D. A dimensional variance of one loading space in lieu of the one loading space required by Section 126-569 of the Zoning Ordinance.

This property is zoned R-1 Single-Family Residential.

One letter of approval has been received from an adjacent residential neighbor.

Mr. Sabo advised that the Lutheran Church of the Redeemer has received final site plan and design review approval from the Planning Board along with the Planning Board's recommendation to the City Commission for approval of a Special Land Use Permit ("SLUP") Amendment with conditions attached.

The applicant is proposing to make numerous minor site plan changes, including reconfiguration of the parking area, curb and gutter improvements, sidewalk improvements, installation of numerous barrier-free ramps, landscape changes, construction of a dumpster enclosure, and addition of cenotaphs. As a result of adding landscaping and handicap compliant parking spaces to the parking lot, they will go from 231 spaces existing to 224 spaces proposed.

Mr. Jeffrey Huhta, P.E. from Nowak & Fraus, Consulting Engineers, was present along with Mr. Curtis Burstein from the Church's building committee. Mr. Huhta explained that basically, the existing parking area is in disrepair. The church would like to pull their existing parking away from the mature pine trees on the east side of the property and create landscape islands throughout the lot. Mr. Huhta went on to address the four variances.

A. With respect to eliminating the requirement for a 6 ft. high masonry wall on the unscreened portion of the parking area along the west property line, the church has responded to the concerns of the individual property owners along the row who preferred vegetation behind their property, rather than a wall. Now that the vegetation is matured and established, any disturbance to this area would be a detriment to the neighborhood.

B. As far as the 32 in. masonry screenwalls along the front setback line, Mr. Huhta felt that placing screenwalls in that area really doesn't make a whole lot of sense. The two 20 ft. long screenwalls that would be required on either end of the parking horseshoe will not provide any significant benefit as they will do nothing to screen the other parking spaces that are permissible by the Ordinance. It would be much better to enhance that area with some landscaping.

C. The existing four parking spaces in the required 25 ft. front setback are visible to the general public and serve an important function for the Church operations. In addition, the Church needs to retain as many on-site parking spaces as possible to serve its congregation.

D. The Church has no need for a loading space as there are no functions within the Church that require such a space. The Church does not receive any deliveries from trucks; all deliveries are from passenger vehicles. Of greater importance as previously stated is to provide for as many regular parking spaces as possible.

No one from the audience wished to participate in the discussion at 11:10 p.m.

Motion by Mr. Judd

Seconded by Mr. Conlin with respect to Appeal 05-23, 1800 W. Maple, the petitioner seeks four variances to the Zoning Ordinance. (A) is a variance to Section 126-572 (7) to eliminate the requirement for a 6 ft. high masonry wall along the unscreened portion of the parking area; (B) is a variance to Section 126-572 (d) (3) (a) to eliminate the requirement of a 32 in. high masonry screenwall at the front setback along W. Maple; (C) is a variance to Section 126-572 (e) (1) to allow the existing four parking spaces to remain in the required front setback; and (D) is a variance to Section 126-569 to eliminate the requirement of one loading space. There are four standards that a petitioner must meet to successfully argue practical difficulty: The first is whether strict compliance with the restrictions governing the area setbacks, frontage, height, etc. would unreasonably prevent the petitioner from using the property and to require the petitioner to conform

would be unnecessarily burdensome. The petitioner has shown that the four parking spaces in the required 25 ft. front setback serve an important function for the Church operations and the Church needs to retain as many on-site parking spaces as possible.

The second standard is whether to grant the variance would do substantial justice to the applicant or surrounding property owners. Under these circumstances it would. The Church has made an extremely good faith effort to meet the requirements of abutting property owners by planting vegetation on the unscreened portion of the parking area rather than erecting a 6 ft. high screenwall. Vegetation and landscaping are also being added to the rest of the property in order to make it aesthetically more pleasing.

The third standard is whether the plight of the petitioner is due to unique circumstances of the property. This property is certainly unique, in that it is a church that needs as much parking as possible in order to serve its congregation.

Last is whether the problem is self-created. The problem has been self-created in an effort to improve the Church property from the perspective of its members as well as the neighbors.

For those reasons, the motion is to grant the variances and tie the motion to the plans as presented.

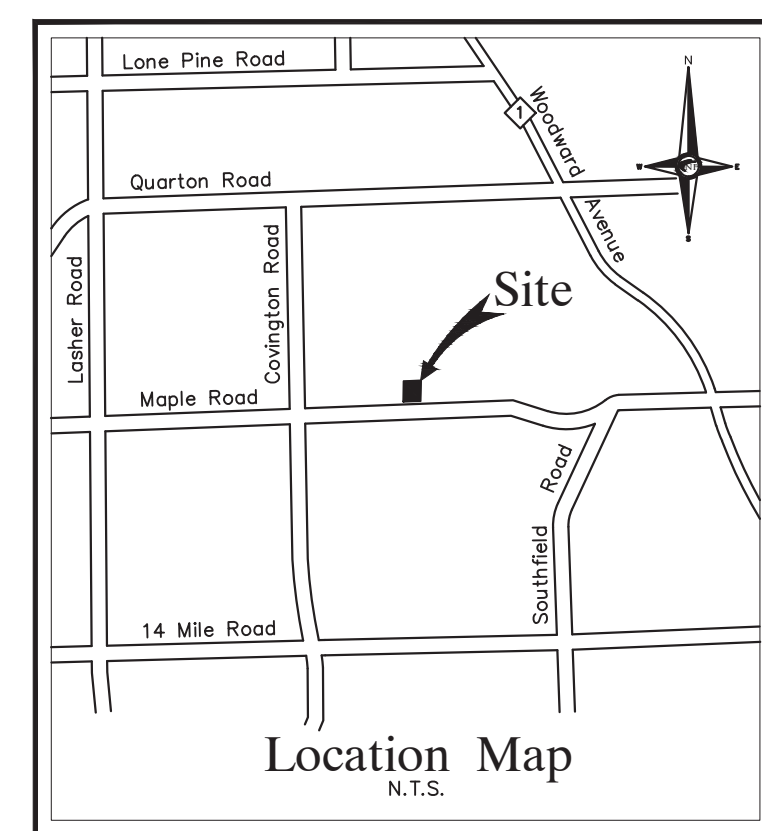
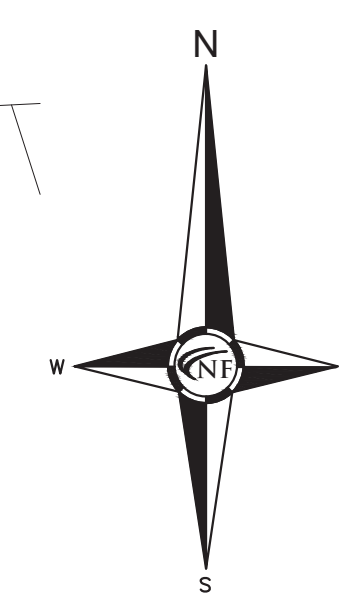
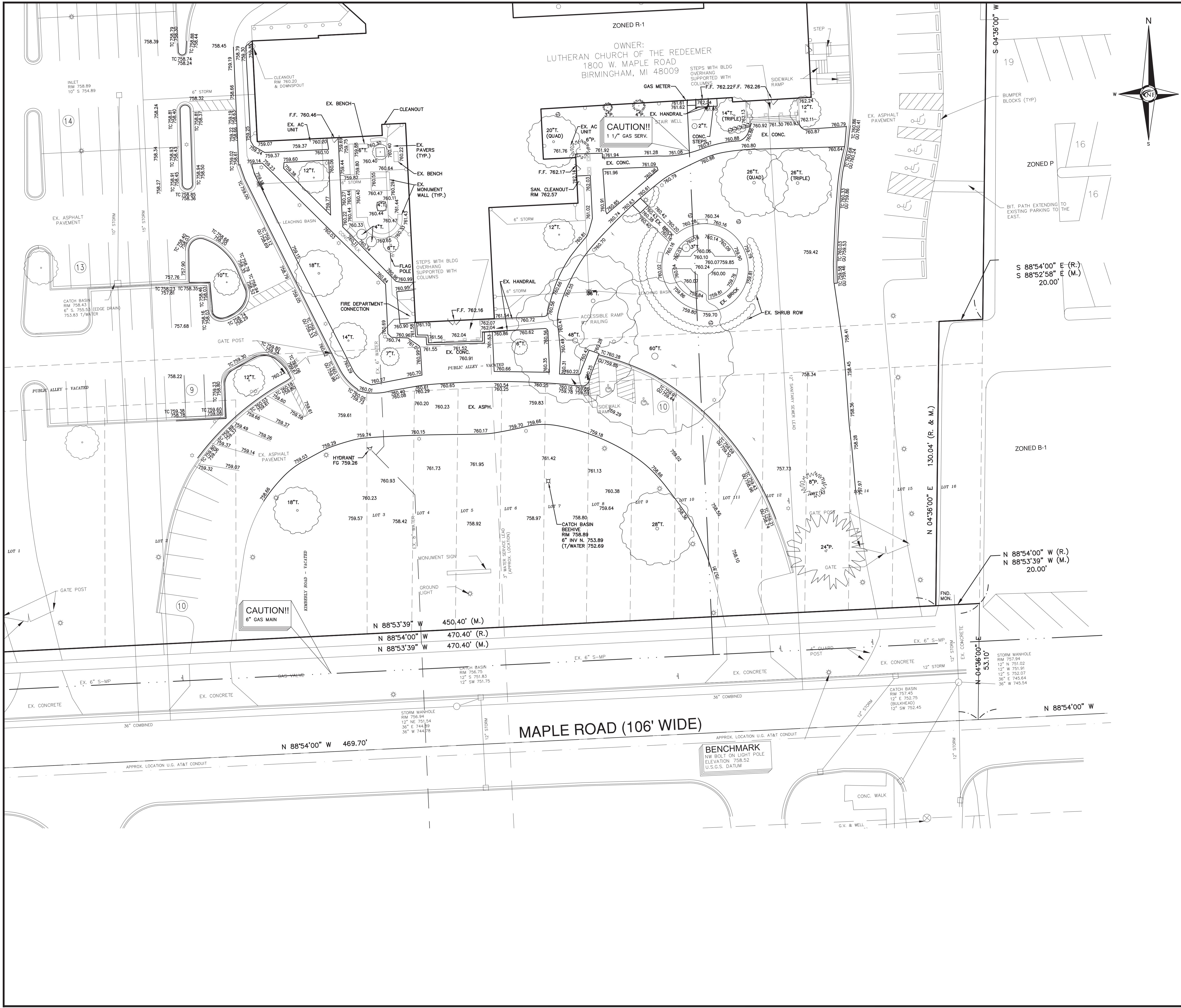
Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Judd, Conlin, Hughes, Koseck. Lillie, Lyon, Stamps

Nays: None

Absent: None

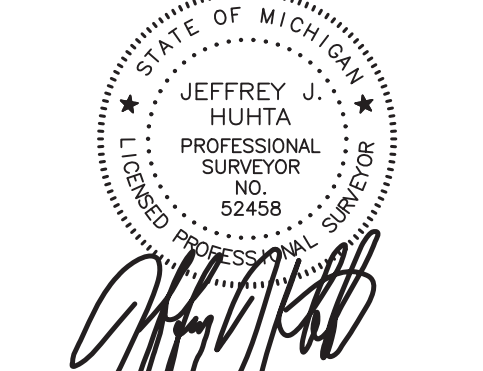


**NOWAK & FRAUS
ENGINEERS**

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46777 WOODWARD AVE.
PONTIAC, MI 48342-5032
TEL (248) 332-7931
FAX (248) 332-8257
WWW.NOWAKFRAUS.COM

SEAL



PROJECT

Lutheran Church
of the Redeemer
Building Expansion

CLIENT

Lutheran Church of the
Redeemer
1800 West Maple Road
Birmingham, Michigan

Contact

Steve Scheidt
Ph.: (248) 358-0800
Fax: (248) 358-2180

PROJECT LOCATION

Part of the SW ¼
of Section 26
T. 2 North, R. 10 East
City of Birmingham,
Oakland County, Michigan

SHEET

Limited Topographic, and
Tree Survey



DATE ISSUED/REVISED

2019-12-09 ISSUED FOR OWNER REVIEW
2019-12-11 ISSUED FOR SITE PLAN REVIEW
2019-12-30 REVISED PER OWNER

DRAWN BY:

C. Ellison

DESIGNED BY:

APPROVED BY:

J. Huhta

DATE:

November 18, 2019

SCALE: 1" = 20'

20 10 0 10 20 30

NFE JOB NO. SHEET NO.

D366-06 C2

LEGAL DESCRIPTION

LOTS 1 THROUGH 15 INCLUSIVE TOGETHER WITH ALL OF ADJACENT VACATED PUBLIC ALLEY, AND LOTS 17 THROUGH 34 INCLUSIVE OF "THE RUBY-N" SUBDIVISION, ALSO ALL OF VACATED KIMBERLY STREET, ALL BEING A PART OF SOUTHWEST 1/4 OF SECTION 26, TOWN 2 NORTH, RANGE 10 EAST, CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN, AS RECORDED IN L. ???, PG. ???, BEING MORE PARTICULARLY DESCRIBED AS:

COMMENCING AT THE S 1/4 CORNER OF SAID SECTION 26; THENCE N.0°54'00"W. ALONG THE SOUTHERLY LINE OF SAID SECTION 26, 232.82 FEET; THENCE N.04°36'00"E, 53.10 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF MAPLE ROAD (106 FEET WIDE); THENCE N.88°53'39"W. AS MEASURED (N.88°54'00"W. AS RECORDED) ALONG SAID NORTHERLY RIGHT-OF-WAY LINE OF SAID MAPLE ROAD, 20.00 FEET TO THE POINT OF BEGINNING; THENCE N.04°36'00"E. ALONG THE COMMON LOT LINE OF SAID LOTS 15 AND 16, 130.04 FEET TO A POINT ON THE NORTHERLY LINE OF SAID VACATED PUBLIC ALLEY; THENCE S.88°52'58"E. AS MEASURED (S.88°54'00"E. AS RECORDED) ALONG SAID NORTHERLY LINE OF PUBLIC ALLEY, 20.00 FEET TO A POINT ON THE EASTERLY LINE OF SAID "THE RUBY-N" SUBDIVISION; THENCE N.04°36'00"E. ALONG SAID EASTERLY LINE OF "THE RUBY-N" SUBDIVISION, 432.79 FEET TO THE NE CORNER OF SAID SUBDIVISION; THENCE N.88°55'00"W. ALONG THE NORTHERLY LINE OF SAID SUBDIVISION, 477.77 FEET TO THE NW CORNER OF SAID SUBDIVISION; THENCE S.03°51'00"W. ALONG THE WESTERLY LINE OF SAID SUBDIVISION TO A POINT ON SAID NORTHERLY RIGHT-OF-WAY LINE OF MAPLE ROAD; THENCE S.88°53'39"E. AS MEASURED (S.88°54'00"E. AS RECORDED) ALONG SAID NORTHERLY RIGHT-OF-WAY LINE OF MAPLE ROAD, 450.40 FEET TO THE POINT OF BEGINNING.

CONTAINING 263,686 SQ. FT. OR 6.053 ACRES OF GROSS AREA (260,533 SQ. FT. OR 5.981 ACRES NET OF PROPOSED RIGHT-OF-WAY) OF LAND, MORE OR LESS, ALSO BEING SUBJECT TO ANY EASEMENTS, RESTRICTIONS OR CONDITIONS OF RECORD.

TAX ITEM NO. 19-26-378-072

MISS DIG / COMCAST DISCLAIMER NOTE

THE LOCATION OF THE AERIAL LINES SHOWN ON THE RECORDS PROVIDED BY COMCAST COULD NOT BE ACCURATELY PLOTTED DUE TO A LACK OF DIMENSIONS AND/OR SCALE. CLIENT SHALL CONTACT (NAME OF THE UTILITY COMPANY) TO DETERMINE THE LOCATION OF THE UNDERGROUND UTILITY.

MISS DIG / AT&T DISCLAIMER NOTE

THE LOCATION OF THE AERIAL LINES SHOWN ON THE RECORDS PROVIDED BY AT&T COULD NOT BE ACCURATELY PLOTTED DUE TO A LACK OF DIMENSIONS AND/OR SCALE. CLIENT SHALL CONTACT (NAME OF THE UTILITY COMPANY) TO DETERMINE THE LOCATION OF THE UNDERGROUND UTILITY.

FLOOD HAZARD NOTE

THIS PROPERTY IS LOCATED IN ZONE "X" (AREAS DETERMINED TO BE OUTSIDE OF THE 0.2% ANNUAL CHANCE FLOOD PLAIN) AS INDICATED BY FLOOD INSURANCE RATE MAP (FIRM), PANEL NO. 26125C0536F, CITY OF BIRMINGHAM, OAKLAND COUNTY, STATE OF MICHIGAN, AS PREPARED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA), EFFECTIVE DATE SEPTEMBER 29, 2006.

MISS DIG / UTILITY DISCLAIMER NOTE

A MISS DIG TICKET NUMBER B92970990-00B, PURSUANT TO MICHIGAN PUBLIC ACT 174 WAS ENTERED FOR THE SURVEYED PROPERTY, DUE TO THE EXTENDED REPORTING PERIOD FOR UNDERGROUND FACILITY OWNERS TO PROVIDE THEIR RECORDS, THE SURVEY MAY NOT REFLECT ALL THE UTILITIES AT THE TIME THE SURVEY WAS ISSUED ON 2019-11-18. THE SURVEY ONLY REFLECTS THOSE UTILITIES WHICH COULD BE OBSERVED BY THE SURVEYOR IN THE FIELD OR AS DERIVED BY THE UTILITY COMPANY RECORDS FURNISH PRIOR TO THE DATE THIS SURVEY WAS ISSUED. THE CLIENT AND/OR THEIR AUTHORIZED AGENT SHALL VERIFY WITH THE FACILITY OWNERS AND/OR THEIR AUTHORIZED AGENTS, THE COMPLETENESS AND EXACTNESS OF THE UTILITIES LOCATION.

TOPOGRAPHIC SURVEY NOTES

ALL ELEVATIONS ARE EXISTING ELEVATIONS, UNLESS OTHERWISE NOTED.

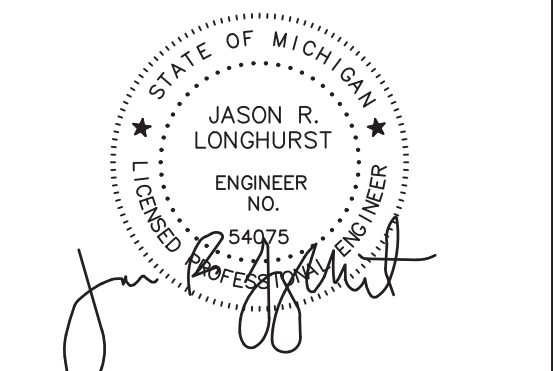
UTILITY LOCATIONS WERE OBTAINED FROM MUNICIPAL OFFICIALS AND RECORDS OF UTILITY COMPANIES, AND NO GUARANTEE CAN BE MADE TO THE COMPLETENESS, OR EXACTNESS OF LOCATION.

THIS SURVEY MAY NOT SHOW ALL EASEMENTS OF RECORD UNLESS AN UPDATED TITLE POLICY IS FURNISHED TO THE SURVEYOR BY THE OWNER.

LEGEND	
	MANHOLE
	HYDRANT
	MANHOLE
	UTILITY POLE
	GUY POLE
	GUY WIRE
	EXISTING SANITARY SEWER
	EXISTING SAN. CLEAN OUT
	EXISTING WATER MAIN
	EXISTING STORM SEWER
	EX. R.Y. CATCH BASIN
	EXISTING BURIED CABLES
	OVERHEAD LINES
	LIGHT POLE
	SIGN
	EXISTING GAS MAIN



SEAL



PROJECT
Lutheran Church
of the Redeemer
Building Expansion

CLIENT
Lutheran Church of the
Redeemer
1800 West Maple Road
Birmingham, Michigan

Contact
Steve Scheidt
Ph.: (248) 358-0800
Fax: (248) 358-2180

PROJECT LOCATION
Part of the SW $\frac{1}{4}$
of Section 26
T. 2 North, R. 10 East
City of Birmingham,
Oakland County, Michigan

SHEET
Site Plan



DATE	ISSUED/REVISED
2019-12-09	ISSUED FOR OWNER REVIEW
2019-12-11	ISSUED FOR SITE PLAN REVIEW
2019-12-30	REVISED PER OWNER

DRAWN BY:
T. Wood

DESIGNED BY:
T. Wood

APPROVED BY:
J. Longhurst

DATE:
December 9, 2019

SCALE: 1" = 20'

20 10 0 10 20 30

NFE JOB NO. SHEET NO.

D366-06 **C3**

GENERAL PAVING NOTES

PAVEMENT SHALL BE OF THE TYPE, THICKNESS AND CROSS SECTION AS INDICATED ON THE PLANS AND AS FOLLOWS:

CONCRETE: PORTLAND CEMENT TYPE I/A (AIR-ENCRASSED) WITH A MINIMUM CEMENT CONTENT OF 130 SACKS PER CUBIC YARD, MINIMUM 28 DAY COMPRESSIVE STRENGTH OF 3,500 PSI AND A SLOMP OF 1 1/2 TO 3 INCHES.

ASPHALT: BASE COURSE — MOD BITUMINOUS MIXTURE NO. 3C SURFACE COURSE — MOD BITUMINOUS MIXTURE NO. 13A

ASPHALT CEMENT PENETRATION GRADE 85—100, BOND COAT — MOD HOT SS-H, SPREAD RATE 1.5 TO 2.0 GALLON PER SQUARE YARD, MAXIMUM 2 INCH LIFT.

PAVEMENT BASE SHALL BE COMPACTED TO 95% OF THE MAXIMUM DENSITY (MODIFIED PROCTOR) PRIOR TO PLACEMENT OF PROPOSED PAVEMENT. EXISTING SUB-BASE SHALL BE PROOF-ROLLED IN THE PRESENCE OF THE AGENT AND RECORD SURVEYOR.

ALL CONCRETE PAVEMENT, DRIVEWAYS, CURB & GUTTER, ETC., SHALL BE SPRAY CURED WITH WHITE MEMBRANE CURING COMPOUND IMMEDIATELY FOLLOWING FINISHING OPERATION.

ALL CONCRETE PAVEMENT JOINTS SHALL BE FILLED WITH HOT POLY RUBBERIZED ASPHALT JOINT SEALING COMPOUND IMMEDIATELY AFTER FINISHING OPERATION.

ALL WORKMANSHIP AND MATERIALS SHALL BE IN ACCORDANCE WITH THE CURRENT STANDARDS AND SPECIFICATIONS OF THE MUNICIPALITY AND THE MICHIGAN DEPARTMENT OF TRANSPORTATION STANDARD SPECIFICATIONS FOR CONSTRUCTION, CURRENT EDITION.

ALL TOP OF CURB ELEVATIONS, AS SHOWN ON THE PLANS, ARE CALCULATED FOR A 2% DRAINAGE SLOPE UNLESS OTHERWISE NOTED.

ALL SIDEWALK RAMPS, CONFORMING TO PUBLIC ACT NO. 8, 1973, SHALL BE INSTALLED AS INDICATED ON THE PLANS.

CONSTRUCTION OF A NEW OR RECONSTRUCTED DRIVE APPROACH CONNECTING TO AN EXISTING STATE OR COUNTY ROADWAY SHALL BE ALLOWED ONLY AFTER AN APPROVED PERMIT HAS BEEN SECURED FROM THE AGENT AND HAS JURISDICTION OVER SAID ROADWAY.

FOR ANY WORK WITHIN THE PUBLIC RIGHT-OF-WAY, THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND LICENSES AND ARRANGE FOR ALL INSPECTION.

EXISTING TOPSOIL, VEGETATION AND ORGANIC MATERIALS SHALL BE STRIPPED AND REMOVED FROM PROPOSED PAVEMENT AREA PRIOR TO PLACEMENT OF BASE MATERIALS.

EXPANSION JOINTS SHOULD BE INSTALLED AT THE END OF ALL INTERSECTION LAYOUTS.

SIDEWALK RAMPS, CONFORMING TO PUBLIC ACT NO. 8, 1973, SHALL BE INSTALLED AS SHOWN AT ALL STREET INTERSECTIONS AND AT ALL BARRIER FREE PARKING AREAS INDICATED ON THE PLANS.

ALL PAVEMENT AREAS SHALL BE PROOF-ROLLED UNDER THE SUPERVISION OF A GEOTECHNICAL ENGINEER PRIOR TO THE PLACEMENT OF BASE MATERIALS AND FINISHING.

TOPSOIL SHALL BE MACHINE COMPACTED IN UNIFORM LIFTS NOT EXCEEDING 9 INCHES THICK TO 95% OF THE MAXIMUM DENSITY (MODIFIED PROCTOR) PRIOR TO PLACEMENT OF PROPOSED PAVEMENT.

PAVING LEGEND

PROPOSED CONCRETE PAVEMENT

PROPOSED ASPHALT PAVEMENT

LEGEND

	<p>EXISTING SANITARY SEWER</p>
	<p>SAN. CLEAN OUT</p>
	<p>EXISTING WATERMAIN</p>
	<p>EXISTING STORM SEWER</p>
	<p>EX. R. Y. CATCH BASIN</p>
	<p>EXISTING BURIED CABLES</p>
	<p>OVERHEAD LINES</p>
	<p>LIGHT POLE</p>
	<p>SIGN</p>
	<p>EXISTING GAS MAIN</p>
	<p>PR. SANITARY SEWER</p>
	<p>PR. WATER MAIN</p>
	<p>PR. STORM SEWER</p>
	<p>PR. R. Y. CATCH BASIN</p>
	<p>PROPOSED LIGHT POLE</p>
	<p>PR. TOP OF CURB ELEVATION</p>
	<p>PR. GUTTER ELEVATION</p>
	<p>PR. TOP OF WALK ELEVATION</p>
	<p>PR. TOP OF P.M.T. ELEVATION</p>
	<p>FINISH GRADE ELEVATION</p>

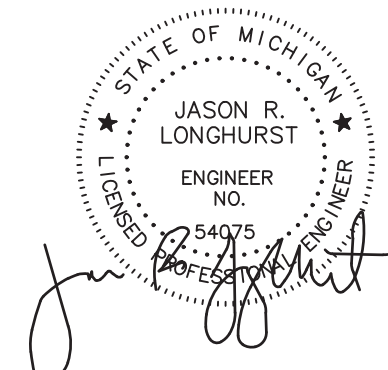
SITE DATA		
<u>SITE AREA</u>		
EXISTING:	263,686 SQUARE FEET OR 6.05 ACRES.	
<u>ZONING</u>		
EXISTING:	R-1 (SINGLE FAMILY RESIDENTIAL)	
<u>SETBACKS</u>	<u>REQUIRED</u>	<u>PROPOSED</u>
FRONT:	25'	122.67'
REAR:	*	79.63'
SIDE:	*	137.65'
SEAL:	30'	124.31'
* SIDE YARD SETBACKS = 25% OF LOT WIDTH (450.4') FOR BOTH SETBACKS		
<u>BUILDING HEIGHT</u>	<u>PROPOSED</u>	<u>PROPOSED</u>
REQUIRED:	2 STORIES, 30'	
<u>VEHICLE PARKING</u>	<u>PUBLIC ASSEMBLY USE - RELIGIOUS INSTITUTION</u>	
REQUIRED:	1 SPACE PER 6 SEATS	
	SEATS / 6 =	SPACES
PROVIDED:		216 SPACES
	(INCLUDES 11 HANDICAP SPACES)	
<u>SITE COVERAGE</u>		
BUILDING	45,764 SF	17.36%
PAVEMENT:	115,822 SF	43.92%
LANDSCAPING:	102,100 SF	38.72%
TOTAL:	263,686 SF	100.00%

NOWAK & FRAUS
ENGINEERS

CIVIL ENGINEERS
LAND SURVEYORS
LAND PLANNERS

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46777 WOODWARD AVE.
PONTIAC, MI 48342-5032
TEL. (248) 332-7931
FAX. (248) 332-8257
WWW.NOWAKFRAUS.COM

SEAL



PROJECT

Lutheran Church
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Building Expansion

CLIENT

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Birmingham, Michigan

Contact
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PROJECT LOCATION

Part of the SW $\frac{1}{4}$
of Section 26
T. 2 North, R. 10 East
City of Birmingham,
Oakland County, Michigan

SHEET
Notes and Details

Know what's **below**
Call before you dig.

DATE	ISSUED/REVISED
2019-12-09	ISSUED FOR OWNER REVIEW
2019-12-11	ISSUED FOR SITE PLAN REVIEW
2019-12-30	REVISED PER OWNER

DRAWN BY:
T. Wood

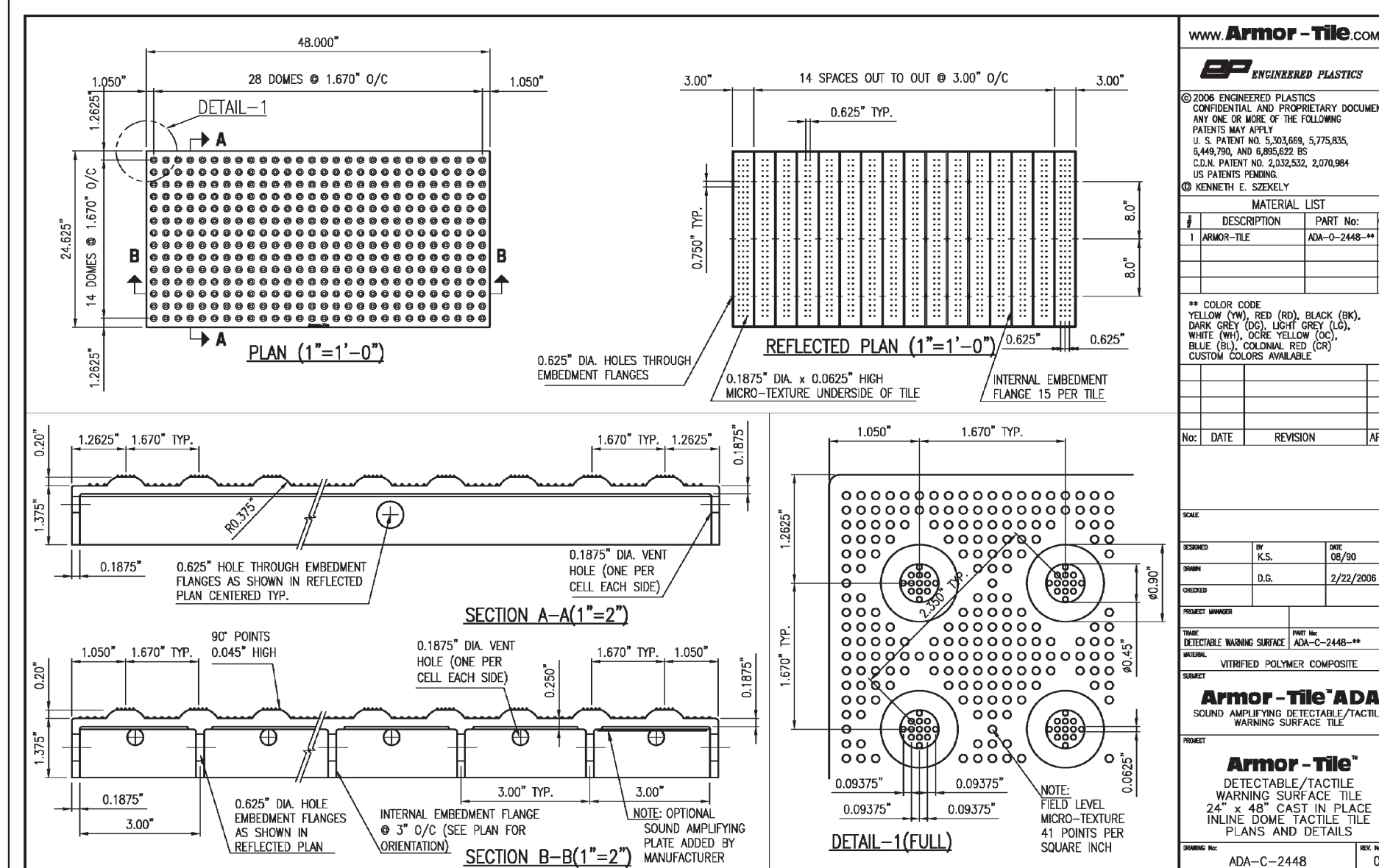
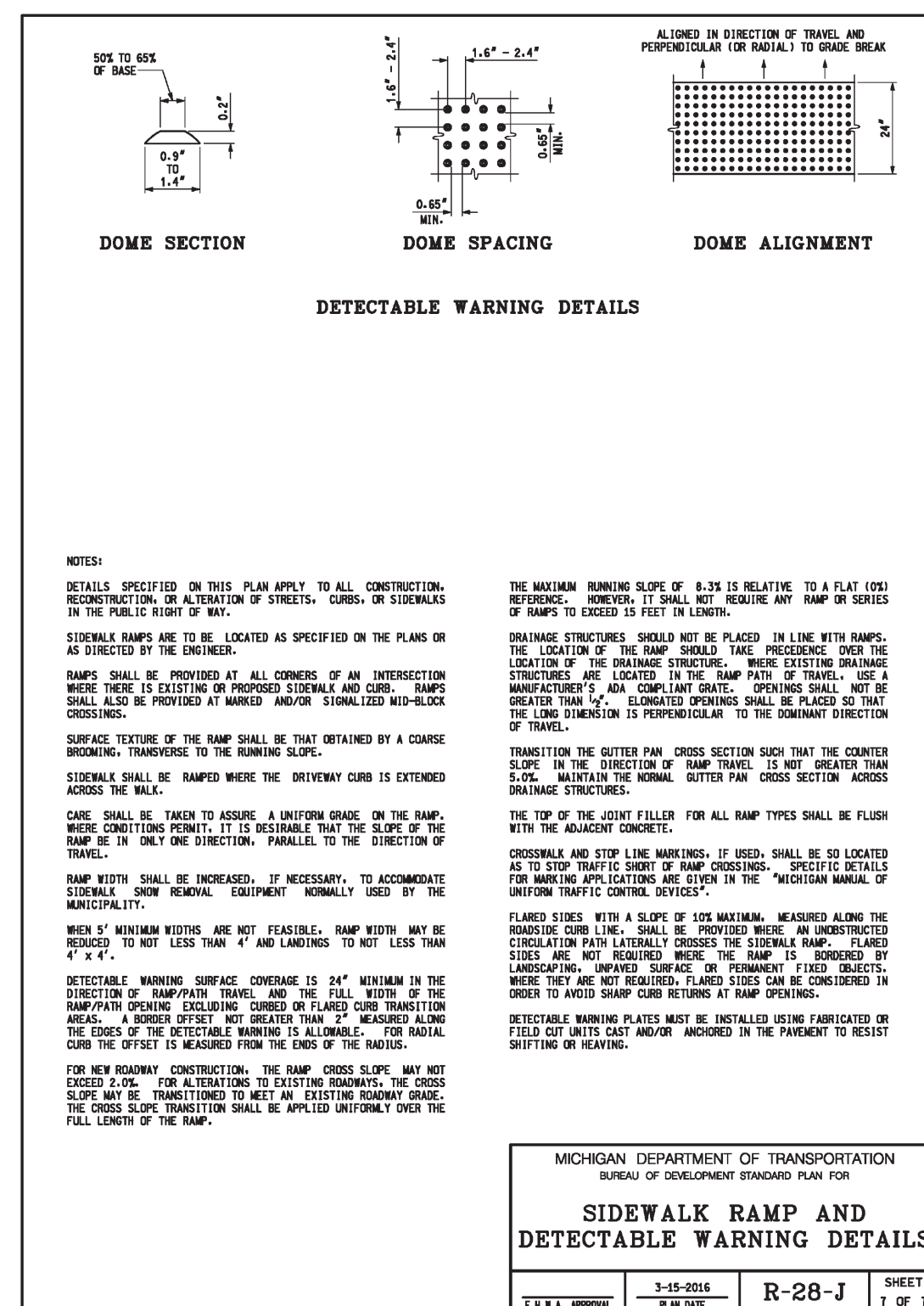
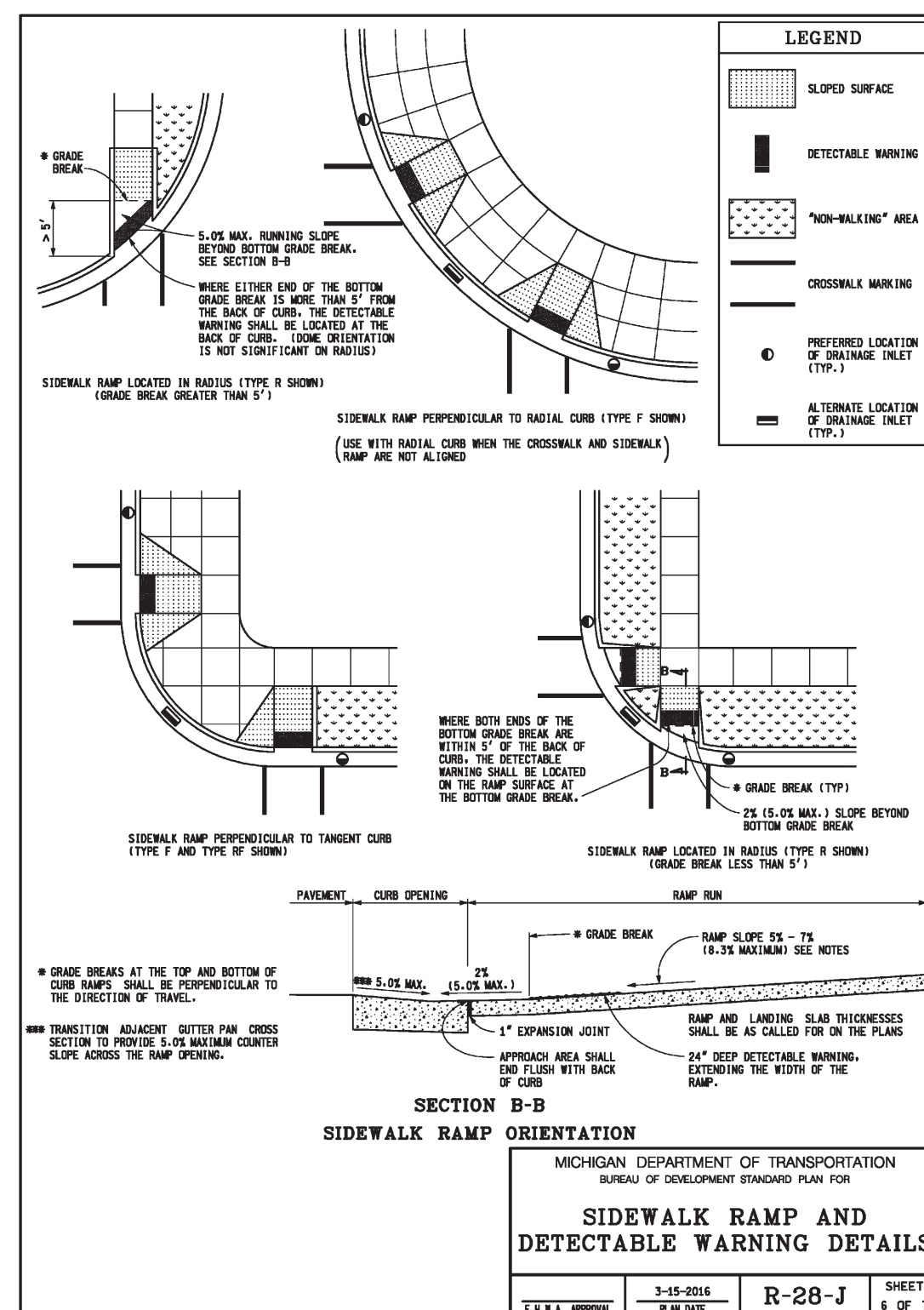
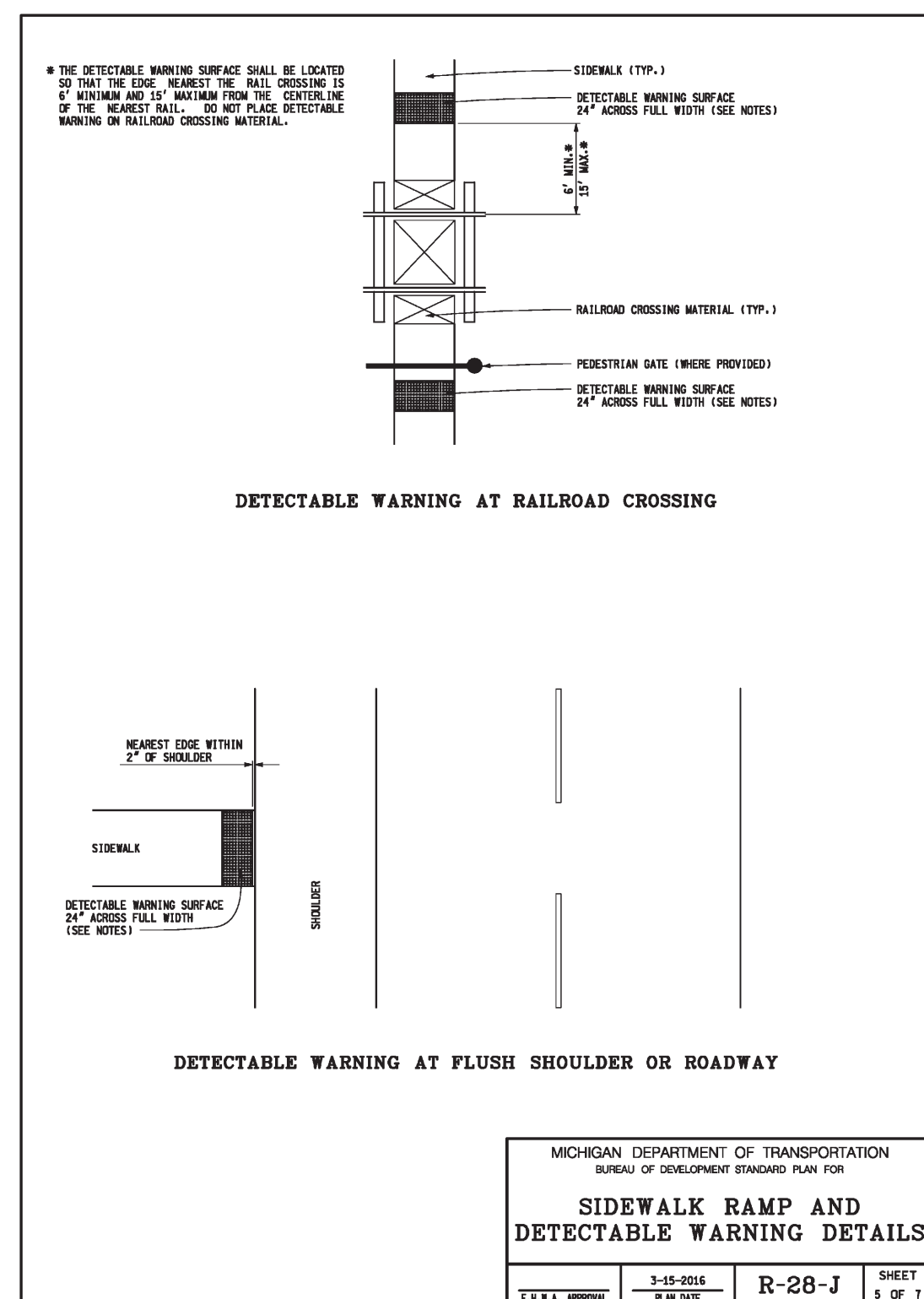
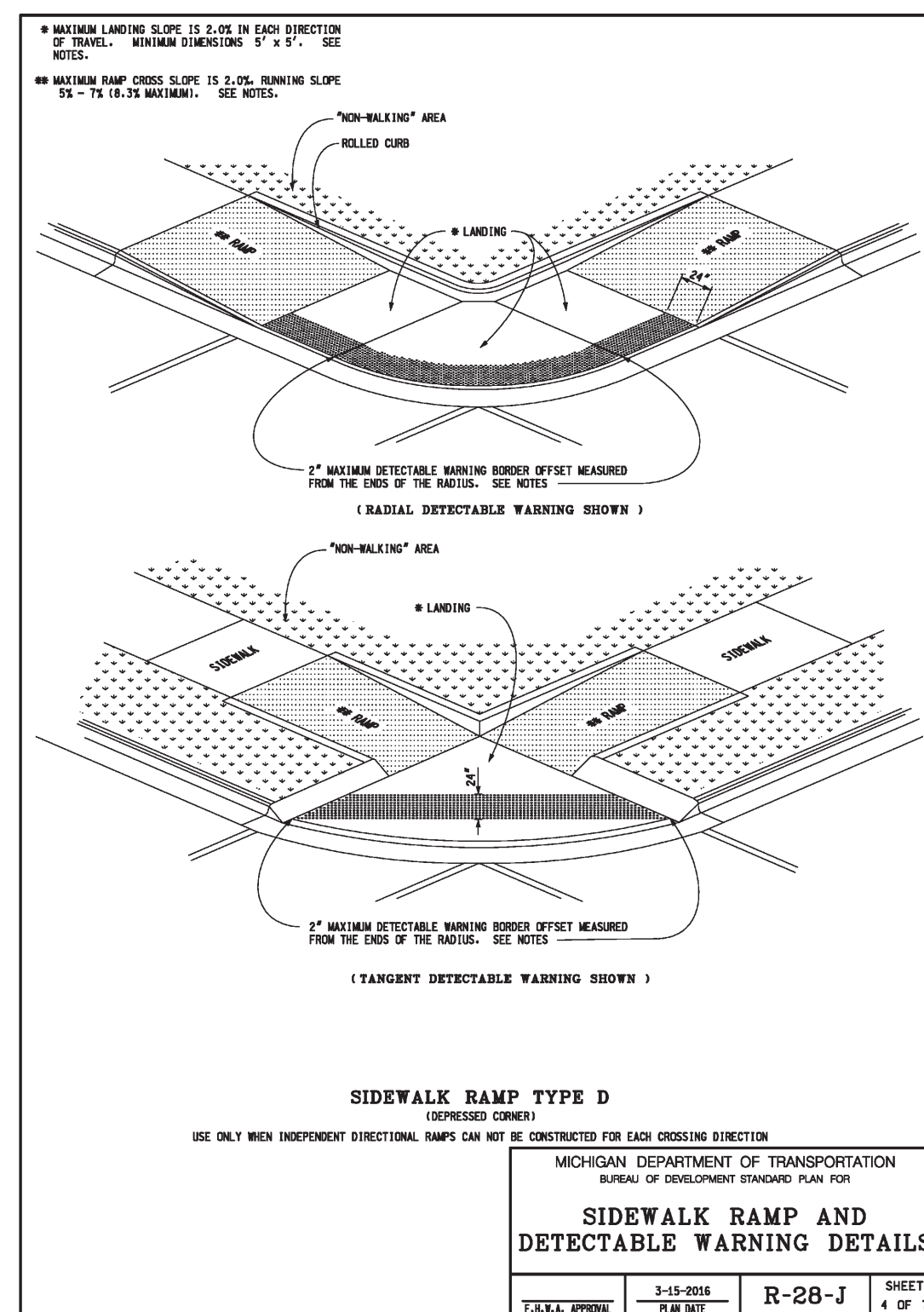
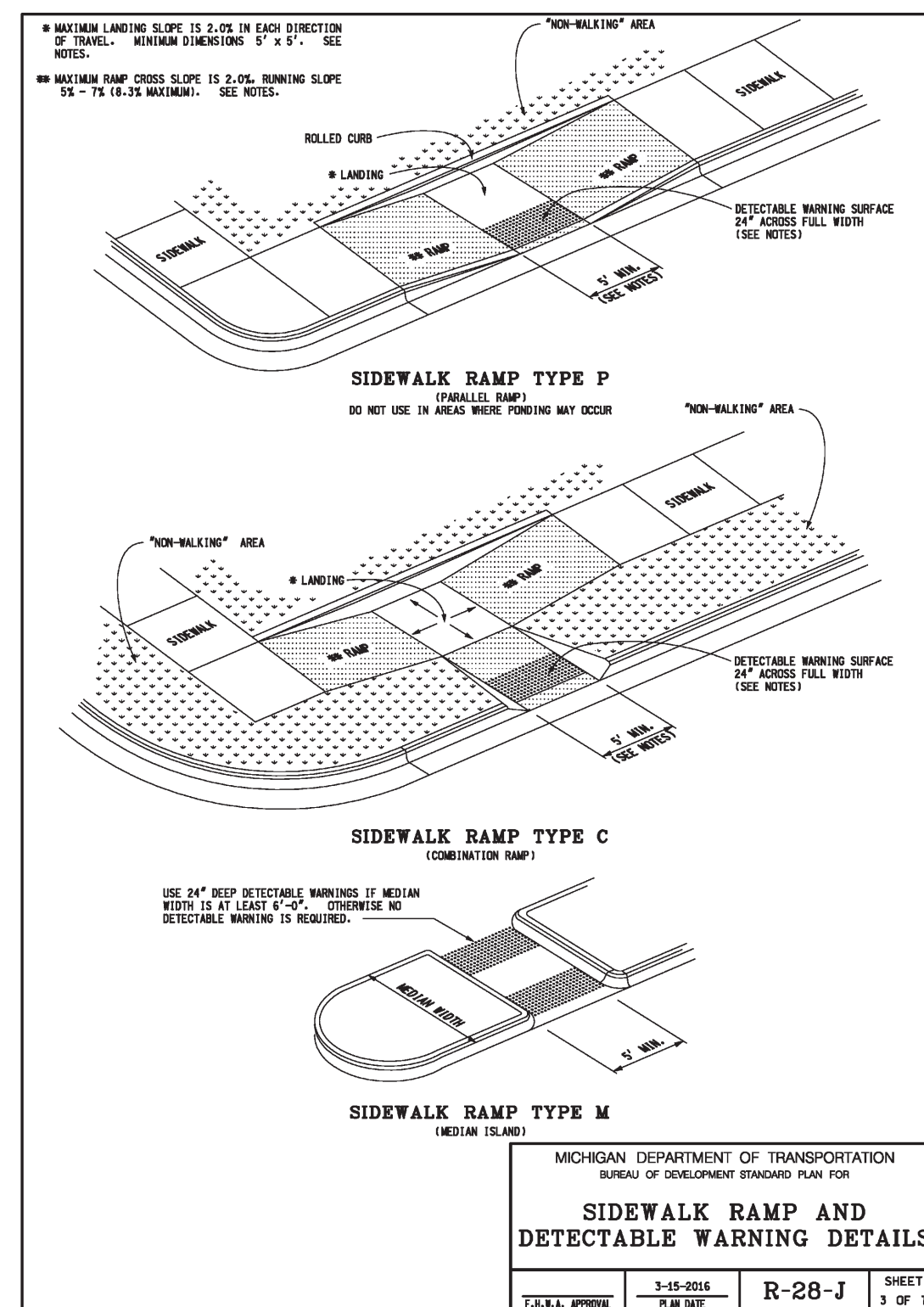
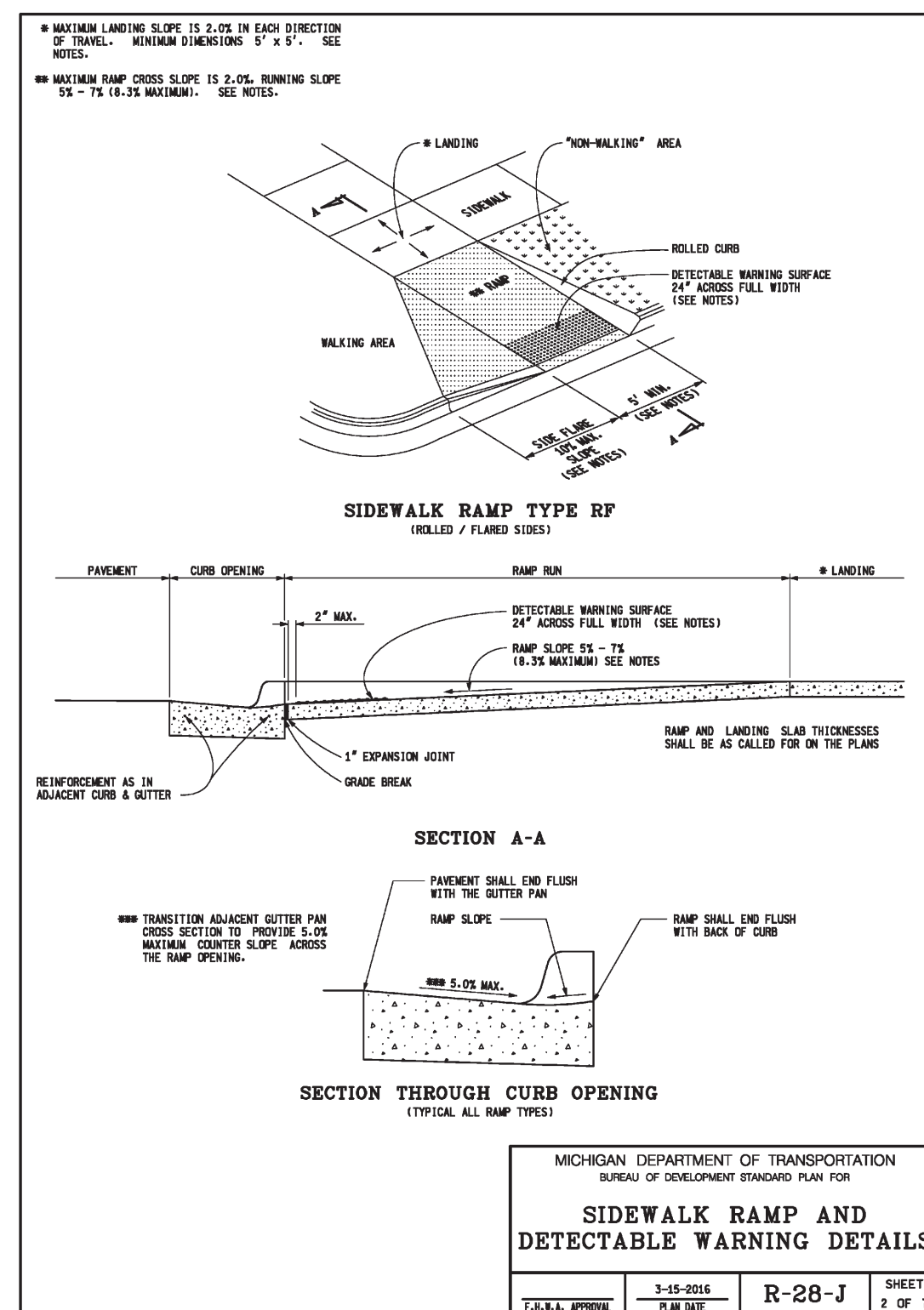
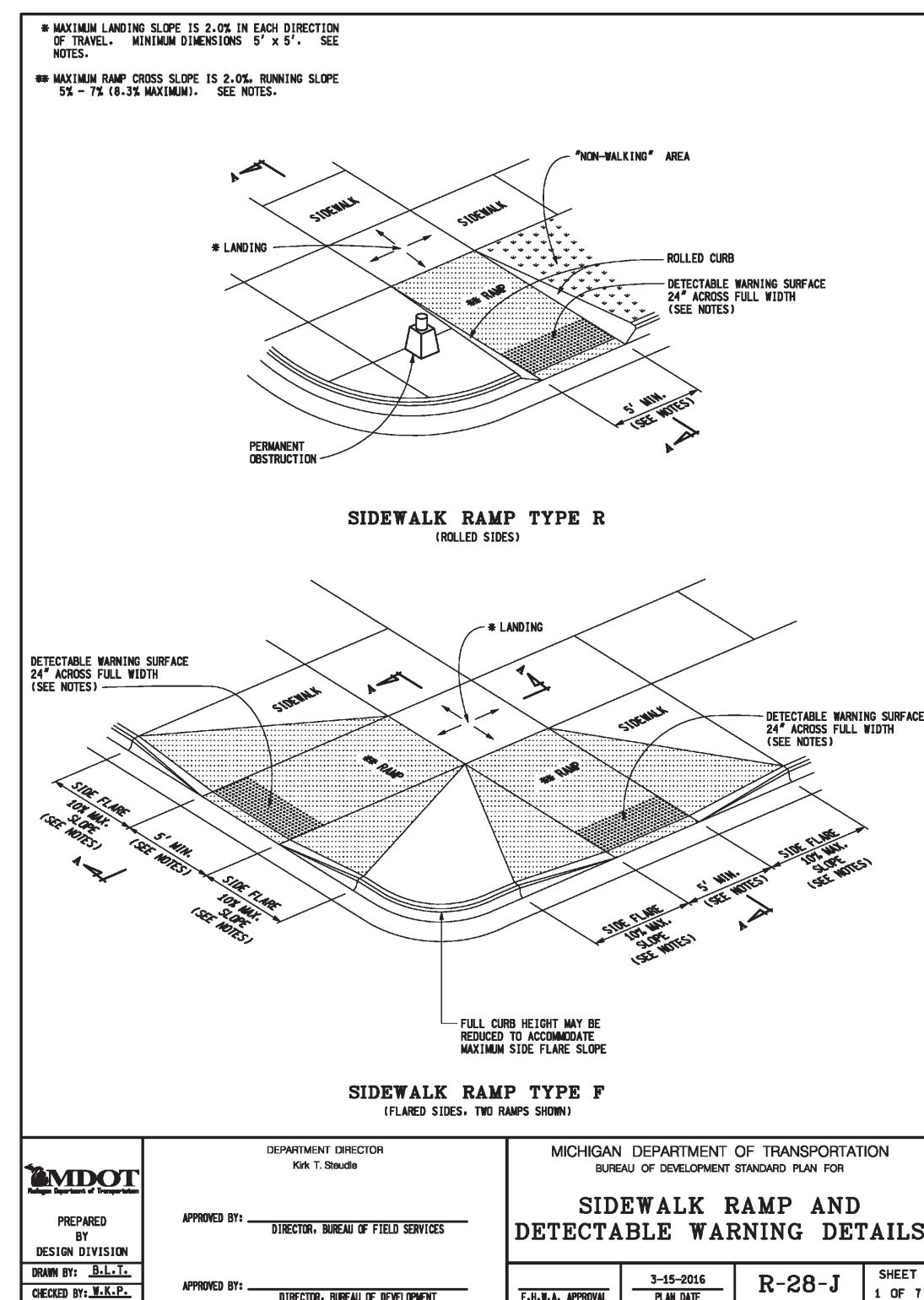
DESIGNED BY
T. Wood

APPROVED BY:
J. Longhurs

DATE:
December 9, 2019

SCALE: N.T.S.

NFE JOB NO. SHEET NO
D366-06 C4





Lutheran Church of the
Redeemer Building
Expansion

Lutheran Church of the Redeemer
1800 West Maple Road
Birmingham, Michigan

Contact
Steve Scheidt
Ph.: (248) 358-0800
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Part of the SW ¼
of Section 26
T. 2 North, R. 10 East
City of Birmingham,
Oakland County, Michigan

Tree Preservation Plan



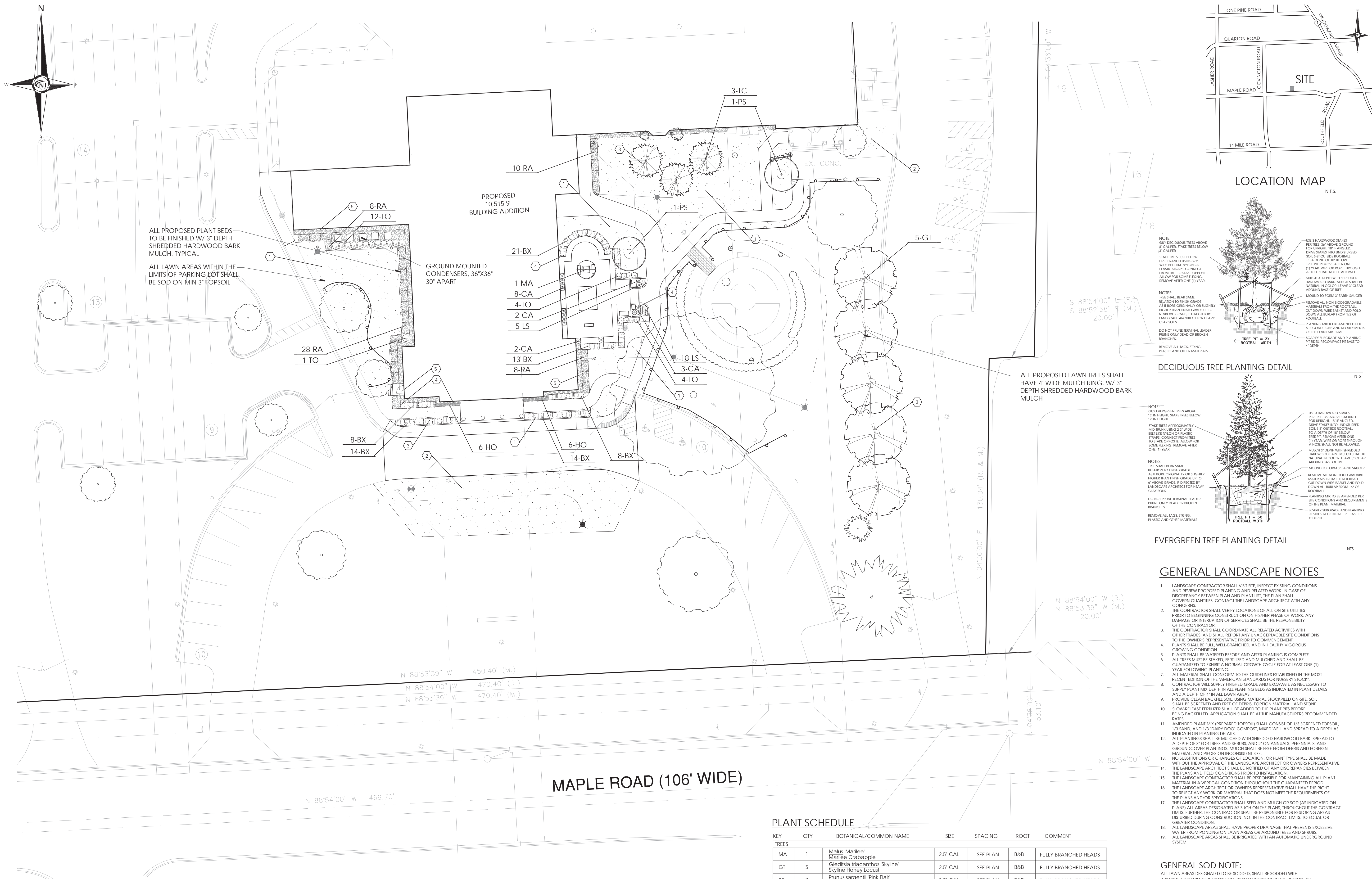
12/09/19 ISSUED FOR OWNER REVIEW
12/11/19 ISSUED FOR SITE PLAN REVIEW
12/30/19 REVISED PER OWNER

20	10	0	10	20	30
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D366-05

L1

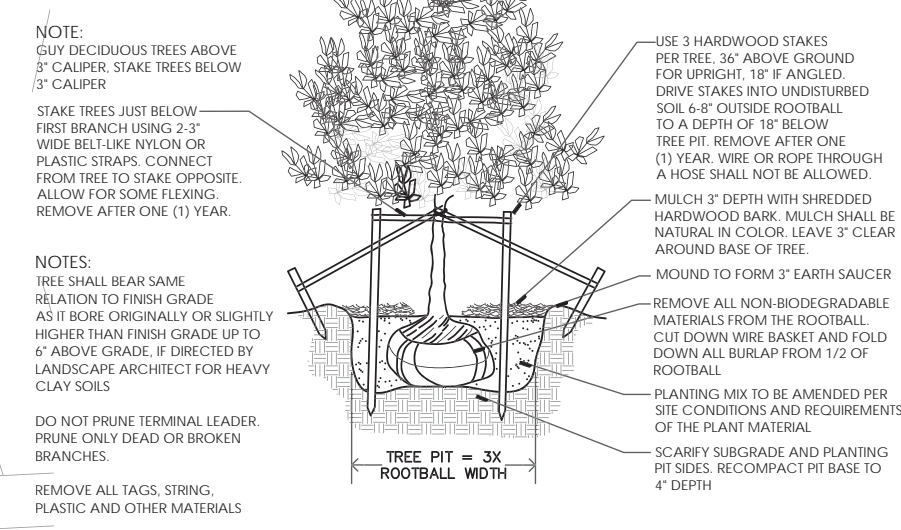




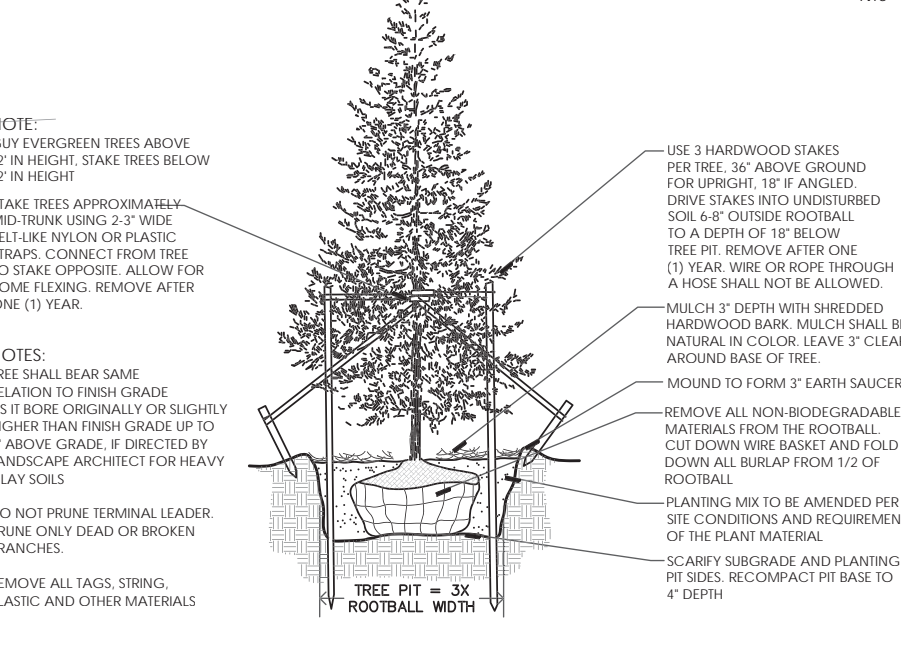
ALL PROPOSED PLANT BEDS TO BE FINISHED W/ 3" DEPTH SHREDDED HARDWOOD BARK MULCH, TYPICAL

ALL LAWN AREAS WITHIN THE LIMITS OF PARKING LOT SHALL BE SOD ON MIN 3" TOPSOIL

GROUND MOUNTED CONDENSERS, 36"x36" 30" APART



DECIDUOUS TREE PLANTING DETAIL



EVERGREEN TREE PLANTING DETAIL

GENERAL LANDSCAPE NOTES

- LANDSCAPE CONTRACTOR SHALL VISIT SITE, INSPECT EXISTING CONDITIONS AND REVIEW PROPOSED PLANTING AND RELATED WORK. IN CASE OF DISCREPANCY BETWEEN PLAN AND PLANT LIST, THE PLAN SHALL GOVERN QUANTITIES. CONTACT THE LANDSCAPE ARCHITECT WITH ANY CONCERNS.
- THE CONTRACTOR SHALL VERIFY LOCATIONS OF ALL ON-SITE UTILITIES PRIOR TO BEGINNING CONSTRUCTION OR HIGHER PHASE OF WORK. ANY DAMAGE OR INTERUPTION OF SERVICES SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR.
- THE CONTRACTOR SHALL COORDINATE ALL RELATED ACTIVITIES WITH OTHER TRADES, AND SHALL REPORT ANY UNACCEPTABLE SITE CONDITIONS TO THE OWNER'S REPRESENTATIVE PRIOR TO COMMENCEMENT.
- PLANTS SHALL BE FULL, WELL-BRANCHED, AND IN HEALTHY VIGOROUS GROWING CONDITION.
- PLANTS SHALL BE WATERED BEFORE AND AFTER PLANTING IS COMPLETE.
- ALL TREES MUST BE STAKED, FERTILIZED AND MULCHED, AND SHALL BE GUARANTEED TO EXHIBIT A NORMAL GROWTH CYCLE FOR AT LEAST ONE (1) YEAR FOLLOWING PLANTING.
- ALL MATERIAL SHALL CONFORM TO THE GUIDELINES ESTABLISHED IN THE MOST RECENT EDITION OF THE "AMERICAN STANDARDS FOR NURSERY STOCK".
- CONTRACTOR WILL SUPPLY FINISHED GRADE AND EXCAVATE AS NECESSARY TO SUPPLY PLANT MIX DEPTH IN ALL PLANTING BEDS AS INDICATED IN PLANT DETAILS AND A DEPTH OF 4" IN ALL LAWN AREAS.
- PROVIDE CLEAN BACKFILL SOIL, USING MATERIAL STOCKPILED ON SITE. SOIL SHALL BE SCREENED AND FREE OF DEBRIS, FOREIGN MATERIAL, AND STONE.
- SLOW RELEASE FERTILIZER SHALL BE ADDED TO THE PLANT MIX BEFORE BEING BACKFILLED. APPLICATION SHALL BE AT THE MANUFACTURER'S RECOMMENDED RATES.
- AMENDED PLANT MIX (PREPARED TOPSOIL) SHALL CONSIST OF 1/3 SCREENED TOPSOIL, 1/3 SAND, AND 1/3 "DAIRY DOO" COMPOST, MIXED WELL AND SPREAD TO A DEPTH AS INDICATED IN PLANTING DETAILS.
- ALL PLANTINGS SHALL BE MULCHED WITH SHREDDED HARDWOOD BARK, SPREAD TO A DEPTH OF 3" FOR TREES AND SHRUBS, AND 2" ON ANNUALS, PERENNIALS, AND GROUNDCOVER PLANTINGS. MULCH SHALL BE FREE FROM DEBRIS AND FOREIGN MATERIAL, AND PIECES ON INCONSISTENT SIZE.
- NO SUBSTITUTIONS OR CHANGES OF LOCATION OR PLANT TYPE SHALL BE MADE WITHOUT THE APPROVAL OF THE LANDSCAPE ARCHITECT OR OWNER'S REPRESENTATIVE.
- THE LANDSCAPE ARCHITECT SHALL BE NOTIFIED OF ANY DISCREPANCIES BETWEEN THE PLANS AND FIELD CONDITIONS PRIOR TO INSTALLATION.
- THE LANDSCAPE CONTRACTOR SHALL BE RESPONSIBLE FOR MAINTAINING ALL PLANT MATERIAL IN A VERTICAL CONDITION THROUGHOUT THE GUARANTEED PERIOD.
- THE LANDSCAPE ARCHITECT OR OWNER'S REPRESENTATIVE SHALL HAVE THE RIGHT TO RECTIFY ANY WORK OR MATERIAL THAT DOES NOT MEET THE REQUIREMENTS OF THE PLANS AND/OR SPECIFICATIONS.
- THE LANDSCAPE CONTRACTOR SHALL SEED AND MULCH OR SOD (AS INDICATED ON PLANS) ALL AREAS DESIGNATED AS SUCH ON THE PLANS, THROUGHOUT THE CONTRACT LIMITS. FURTHER, THE CONTRACTOR SHALL BE RESPONSIBLE FOR RESTORING AREAS DESTROYED DURING CONSTRUCTION, NOT IN THE CONTRACT LIMITS, TO EQUAL OR GREATER CONDITION.
- ALL LANDSCAPE AREAS SHALL HAVE PROPER DRAINAGE THAT PREVENTS EXCESSIVE WATER FROM PONDING ON LAWN AREAS OR AROUND TREES AND SHRUBS.
- ALL LANDSCAPE AREAS SHALL BE IRRIGATED WITH AN AUTOMATIC UNDERGROUND SYSTEM.

GENERAL SOD NOTE:

ALL LAWN AREAS DESIGNATED TO BE SODDED, SHALL BE SODDED WITH A BLENDED DURABLE BLUEGRASS SOD, TYPICALLY GROWN IN THE REGION. ALL TURF SHALL BE PLACED ON A MINIMUM 3" PREPARED TOPSOIL, AND WATERED DAILY UNTIL ESTABLISHMENT. IN AREAS SUBJECT TO EROSION, SODDED LAWN SHALL BE STABILIZED WHERE NECESSARY, AND LAID PERPENDICULAR TO SLOPES. SOD INSTALLATION SHALL OCCUR ONLY:

SPRING: APRIL TO JUNE1
FALL: AUGUST 15 TO OCTOBER 15

GENERAL SEED NOTE:

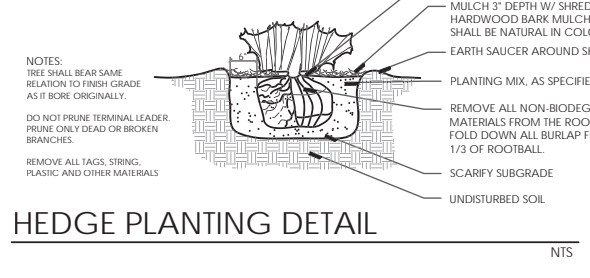
ALL LAWN AREAS DESIGNATED TO BE SEED, SHALL BE HYDRO-SEED WITH SPECIFIED BLENDS, AND STABILIZED WITH WOOD CELLULOSE FIBER MULCH (2,000 LBS PER ACRE). IN AREAS SUBJECT TO EROSION, SEEDING LAWN SHALL BE FURTHER STABILIZED WHERE NECESSARY WITH BIODEGRADABLE EROSION BLANKET AND STAKED UNTIL ESTABLISHED. ALL SEED SHALL BE APPLIED OVER A MINIMUM 3" PREPARED TOPSOIL, AND SHALL BE KEPT MOIST AND WATERED DAILY UNTIL ESTABLISHED.

SEEDING INSTALLATION SHALL OCCUR ONLY:

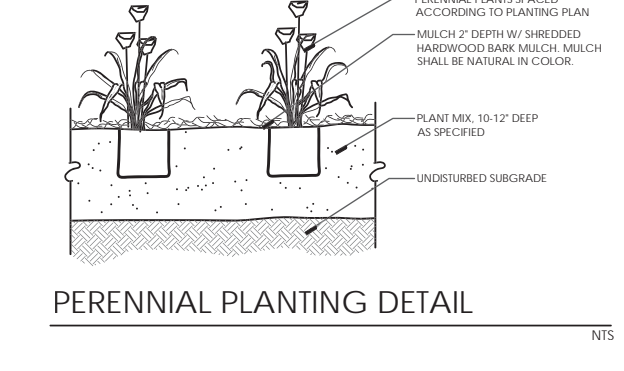
SPRING: APRIL TO JUNE1
FALL: AUGUST 15 TO OCTOBER 15

GROUND COVER KEY

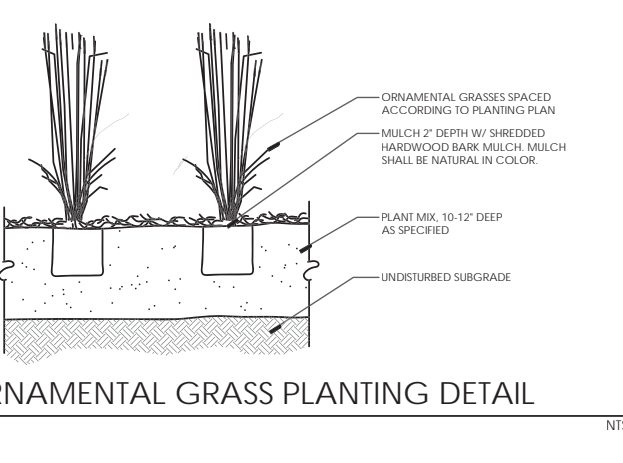
- TYPICAL SOD LAWN AREAS, SOWN ON 3" TOPSOIL
- RESTORE EXISTING LAWN AREAS W/ HYDROSEED AND MULCH
- 4" DIA SPADE CUT EDGE W/ 3" SHREDDED BARK MULCH
- 3" DEPTH DOUBLE SHREDDED HARDWOOD BARK MULCH
- 3/4" - 1 1/2" STONE MULCH, 3-4" DEPTH ON WEED BARRIER



HEDGE PLANTING DETAIL



PERENNIAL PLANTING DETAIL



ORNAMENTAL GRASS PLANTING DETAIL

50NFENGINEERS1969-2019

NOWAK & FRAUS ENGINEERS

CIVIL ENGINEERS
LAND SURVEYORS
LAND PLANNERS

NOWAK & FRAUS ENGINEERS
46777 WOODWARD AVE.
PONTIAC, MI 48342-5032
TEL. (248) 332-7931
FAX. (248) 332-8257
WWW.NOWAKFRAUS.COM

SEAL

PROJECT

Lutheran Church of the Redeemer Building Expansion

CLIENT

Lutheran Church of the Redeemer
1800 West Maple Road
Birmingham, Michigan

Contact

Steve Scheidt
Ph.: (248) 358-0800
Fax: (248) 358-2180

PROJECT LOCATION

Part of the SW 1/4 of Section 26
T. 2 North, R. 10 East
City of Birmingham,
Oakland County, Michigan

SHEET

Landscape Plan

811

Know what's below
Call before you dig.

REVISIONS	
12/09/19	ISSUED FOR OWNER REVIEW
12/11/19	ISSUED FOR SITE PLAN REVIEW
12/30/19	REVISED PER OWNER

DRAWN BY:
G. Ostrowski

DESIGNED BY:
G. Ostrowski

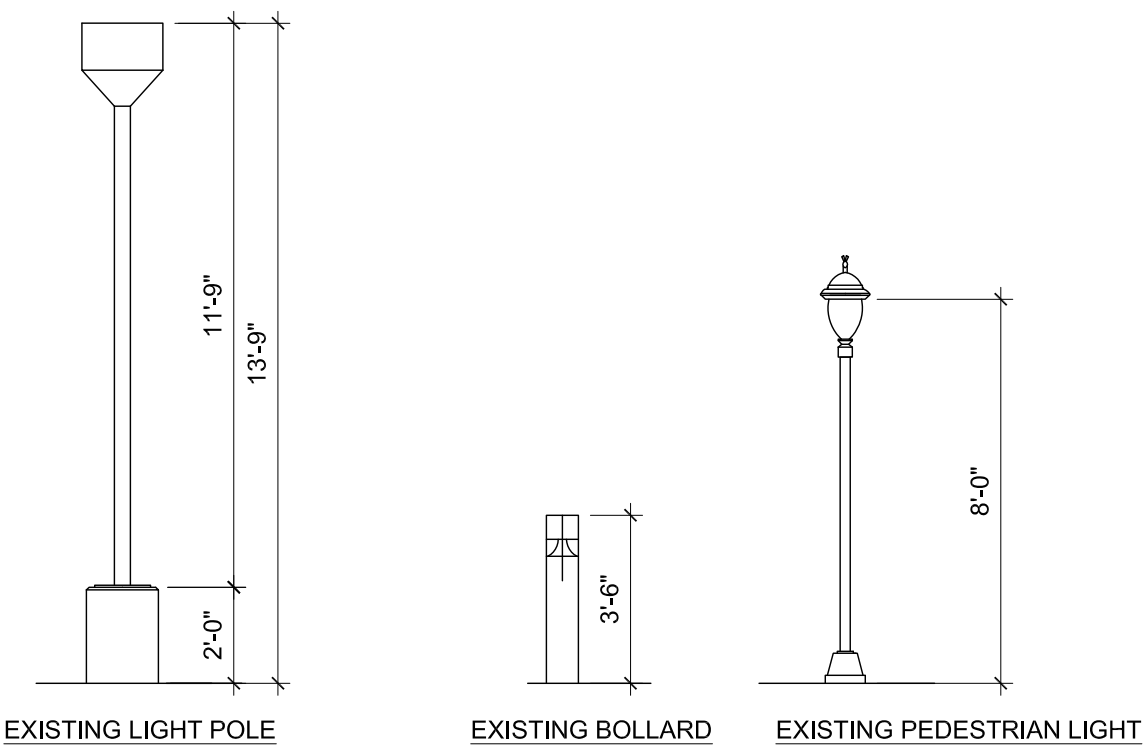
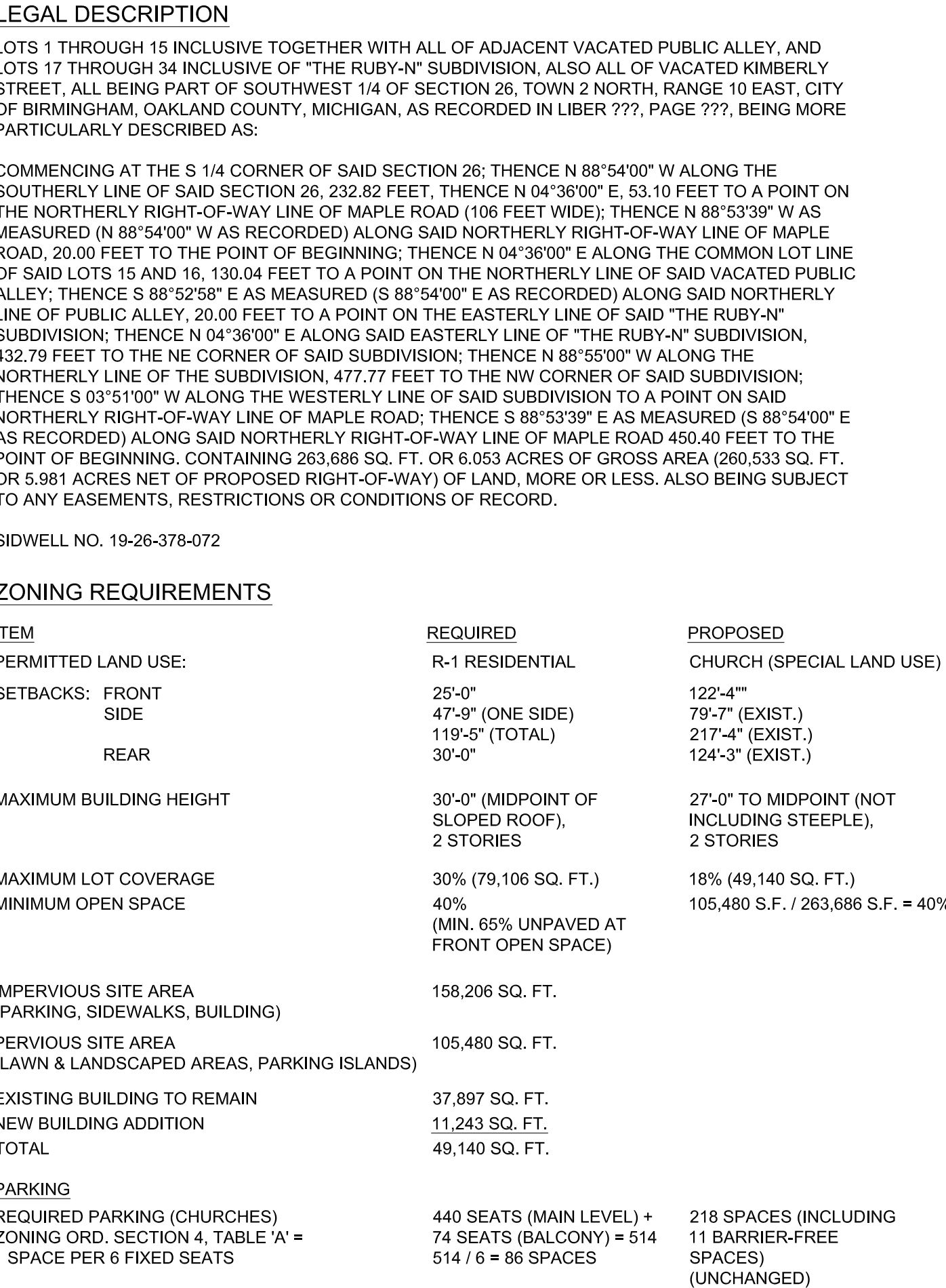
APPROVED BY:
G. Ostrowski

DATE:
12-04-2019

SCALE: 1" = 20'

20 10 0 10 20 30

NFE JOB NO. D366-05 SHEET NO. I2



2 SITE LIGHTING DETAILS

AS-101 SCALE: NONE

ISSUED:
11/15/19 DD PACKAGE
02/12/20 SPA PACKAGE

merritt
cieslak
design [p l c]

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LUTHERAN
CHURCH OF
THE REDEEMER

MAPLE ROAD
BIRMINGHAM, MICHIGAN

ARCHITECTURAL SITE PLAN

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Project No.	Sheet No.
15165	AS-101

24ACC6
Performance™ 16 Air Conditioner
with Puron® Refrigerant
1 – 1/2 to 5 Tons


turn to the experts




Performance
SERIES

Carrier's Air Conditioners with Puron® refrigerant provide a collection of features unmatched by any other family of equipment. The 24ACC has been designed utilizing Carrier's Puron refrigerant. The environmentally sound refrigerant allows you to make a responsible decision in the protection of the earth's ozone layer.
This product has been designed and manufactured to meet Energy Star® criteria for energy efficiency when matched with appropriate coil components. Refer to the combination ratings in the Product Data for system combinations that meet Energy Star® guidelines.

NOTE: Ratings contained in this document are subject to change at any time. Always refer to the AHRI directory (www.ahridirectory.org) for the most up-to-date ratings information.

INDUSTRY LEADING FEATURES / BENEFITS

Efficiency

- 14 – 16.5 SEER / 11.5– 13.5 EER
- Microtube Technology™ refrigeration system
- Indoor air quality accessories available

Sound

- Sound level as low as 72 dBA
- Compressor sound blanket standard

Comfort

- System supports Edge® Thermostat™ or standard thermostat controls

Reliability

- Puron® refrigerant – environmentally sound, won't deplete the ozone layer and low lifetime service cost.
- Scroll compressor
- Internal pressure relief valve
- Internal thermal overload
- Filter drier
- High and low pressure switches
- Balanced refrigeration system for maximum reliability

Durability

WeatherArmor™ protection package:


- Solid, durable sheet metal construction
- Louvered coil guard
- Baked-on, complete outer coverage, powder paint


Applications

- Long-line – up to 250 feet (76.20 m) total equivalent length, up to 200 feet (60.96 m) condenser above evaporator, or up to 80 ft. (24.38 m) evaporator above condenser (See Longline Guide for more information.)
- Low ambient (down to -20°F/-28.9°C) with accessory kit




GROUND-MOUNTED A/C CONDENSERS

TYPICAL FOR 5 UNITS. SIZE: 35" X 35" X 46" HIGH
LOCATION: SOUTH OF NEW WEST WING BUILDING ADDITION.

 **gotham** | E V O
Multiple Layers of Light



Luminaire Type: _____
Catalog Number: _____


General Illumination Round Downlight

6"

Feature Set

- Bounding Ray™ optical design
- Utilized optics mechanically attach the light engine to the lower reflector for complete optical alignment.
- 45° cutoff to source and source image
- Fully serviceable and upgradeable lensed LED light engine
- 70% lumen maintenance at 60,000 hours
- 2.5 SDCM, 85 CRI typical, 90+ CRI optional
- Fixtures are wet location, covered ceiling
- Available with 10% dimming, 1% dimming, or dim to dark
- Balming distribution with feathered edges provides even illumination on horizontal and vertical surfaces
- ENERGY STAR® certified product


Distribution





Superior Performance



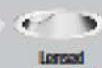

Horizontal Lumens	250	500	750	1000	1500	2000	2500	3000	3500	4000	4500	5000	6000	8000	10,000	12,000	15,000	17,500
Delivered Lumens	297	539	776	994	1471	2006	2537	3077	3542	4027	4533	5256	6371	8247	10637	12332	15776	17803
Wallage	3.4	6.2	8.2	9.6	14.7	19.7	24.7	29.5	33.8	39.0	47.3	48.7	57.6	74.9	97.1	115.0	150.9	175.3
Lumens per Watt	87.4	83.7	94.6	103.5	100.1	103.8	102.7	104.3	104.8	100.3	95.8	107.9	110.6	110.1	109.5	107.2	104.5	101.5





Coordinated Apertures | Multiple Layers of Light


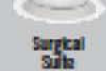


General Illumination Layer | EVO







High Center Beam Layer | Incho


EVO + Incho — Multiple Layers of Light

Core

Healthcare

Special Applications


EVO® OPEN
page 1 of 3

GOTHAM ARCHITECTURAL DOWNLIGHTING | 1400 Luster Road Cooper, GA 30012 | P 800-775-SEERV (7378) | gothamlighting.com
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BUILDING ILLUMINATION AT ENTRANCES

NEW LIGHTING FIXTURE TYPE 'A'
LOCATIONS: SEE PHOTOMETRIC PLAN

LT30 Luminaires



LT30 D

SPECIFICATIONS

DESCRIPTION

The octagonal shaped luminaire shall consist of a luminaire base with an integral ballast housing, an eight-sided lens frame, eight lens panels, an octagonal shaped hinged roof, and a spiked finial.

DIMENSIONS

Fixture dimensions shall be as detailed on back page.

MATERIALS

The luminaire base, ballast housing, frame assembly, roof, and finial shall be heavy wall, copper free, cast aluminum produced from certified ASTM 356.1 ingot per ASTM B-179-95A or ASTM B26-95, formed true to the pattern with complete detail. Lens panels shall be smooth, textured, or prismatic. Lenses are available in clear polycarbonate or clear acrylic. Internal reflectors shall be borosilicate glass and reflectors shall be polished aluminum. All hardware shall be stainless steel. All exterior hardware shall be tamper resistant.

INSTALLATION

The luminaire shall mount on a 3" O.D. x 3" tenon with six 1/4" dia. socket set screws. The ballast and socket assembly shall be furnished with a quick disconnect plug and mount on a removable ballast plate. The ballast plate shall be removed by loosening a thumb screw.

FINISH

For finish specifications and color options see "Finish" section in catalog.

LIGHT SOURCE

Luminaires shall be furnished with an H.I.D. ballast and socket assembly. Luminaire shall be UL listed and labeled as suitable for wet locations. Sockets shall be glazed porcelain, mogul or medium base, with a copper alloy nickel plated screw shell and center contact. Ballast shall be core and coil, high power factor, regulating type.

CERTIFICATION

Upon request, manufacturer shall certify the use of 356.1 ingot alloy. Upon request, manufacturer shall supply UL file# and listing information.

ANTIQUE Street Lamps

20118 W. Rundberg Ln., Austin, TX 78758
Ph (512) 977-8444 • Fax (512) 977-9522

L-33

DECORATIVE SITE LIGHTING

NEW LIGHTING FIXTURE TYPE 'SD'
LOCATIONS: SEE PHOTOMETRIC PLAN

NOTE:

REFER TO SHEET AS-101 FOR DESCRIPTION OF EXISTING SITE LIGHTING FIXTURES TO REMAIN.

REFER TO SITE PHOTOMETRIC SHEET FOR LOCATIONS AND ADDITIONAL DESRIPTIONS OF SITE LIGHTING FIXTURES.

ISSUED:

02/12/20 SPA PACKAGE

LUTHERAN CHURCH OF THE REDEEMER

MAPLE ROAD
BIRMINGHAM, MICHIGAN

NEW SITE COMPONENTS

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Sheet No.

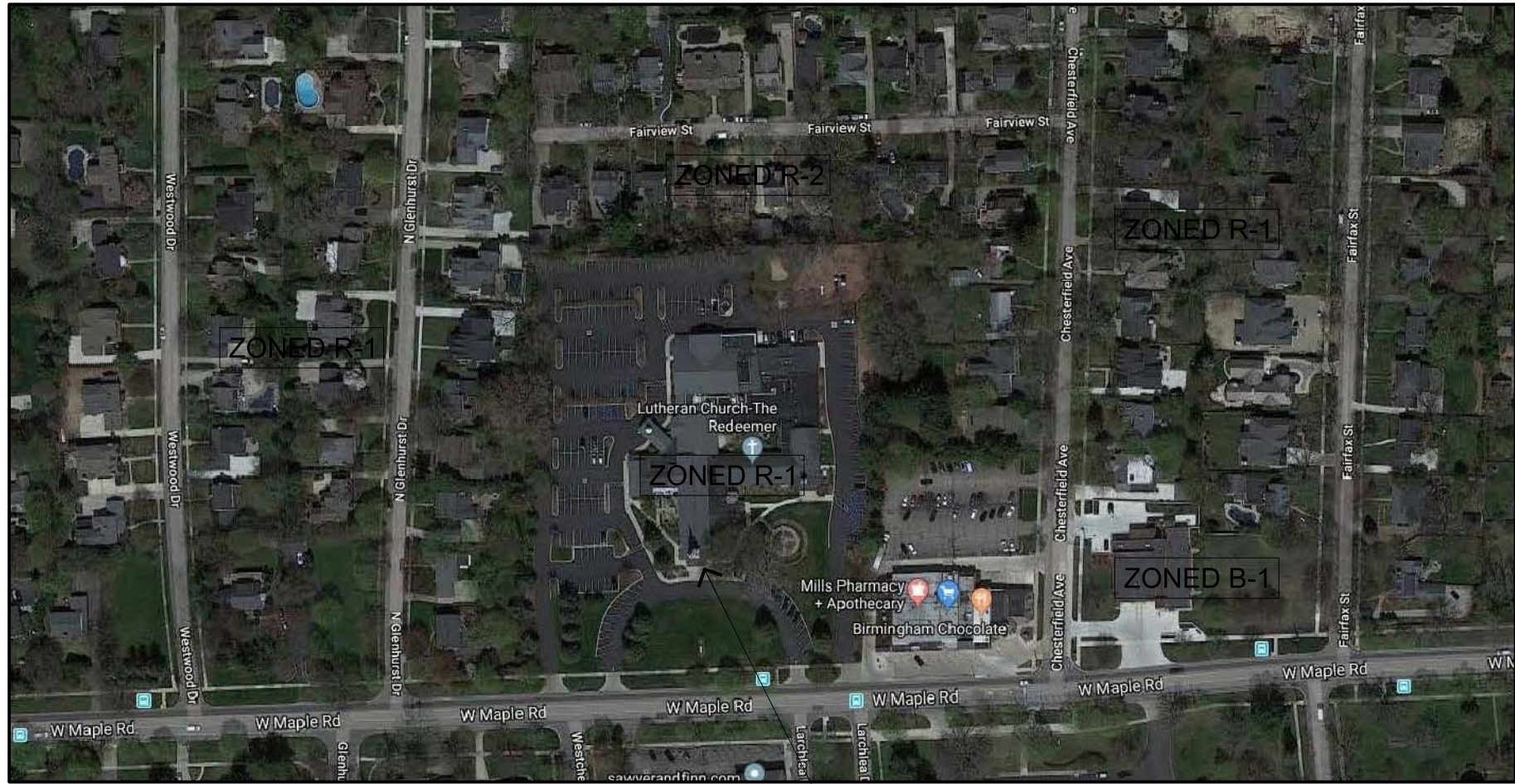
15165

AS-102

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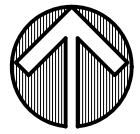


FRONT OF SANCTUARY



EXISTING LUTHERAN CHURCH
OF THE REDEEMER STRUCTURE

AERIAL SITE PLAN



FRONT OF SANCTUARY



WEST WING AND COLUMBARIUM



WEST ENTRANCE



WEST PARKING LOT



EAST WING



EAST PARKING LOT



EAST WING AND GARDEN

ISSUED:
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cieslak
design

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SITE PHOTOS &
AERIAL PLAN

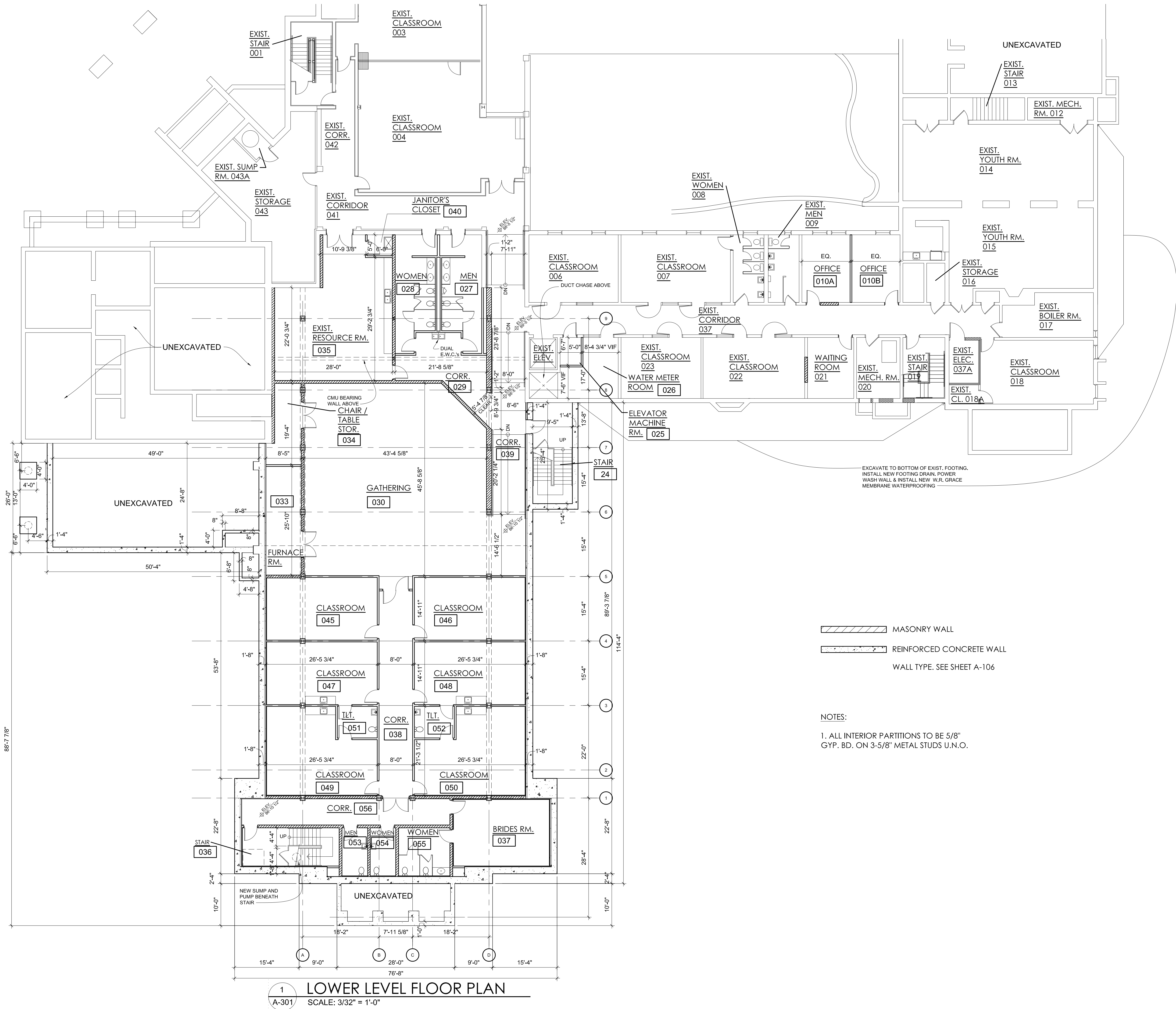
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Sheet No.

15165

A-002



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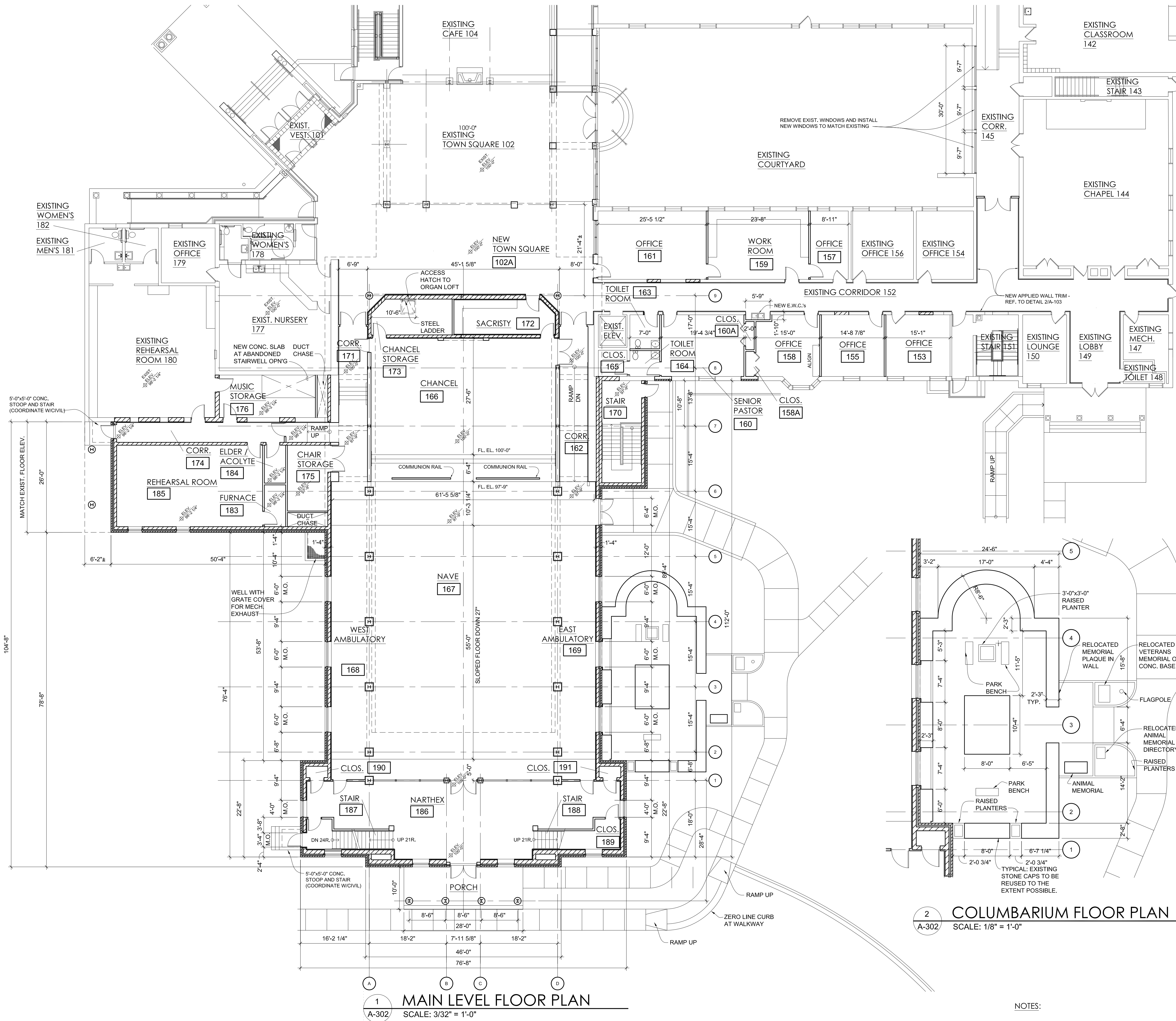
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LOWER LEVEL
FLOOR PLAN

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Project No. 15165
Sheet No. A-301



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MAPLE ROAD
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MAIN LEVEL
FLOOR PLAN

2 COLUMBARIUM FLOOR PLAN

SCALE: 1/8" = 1'-0"

NOTES:

1. ALL INTERIOR PARTITIONS TO BE 5/8"
GY.P. BD. ON 3-5/8" METAL STUDS U.N.O.

Project No.

15165

Sheet No.

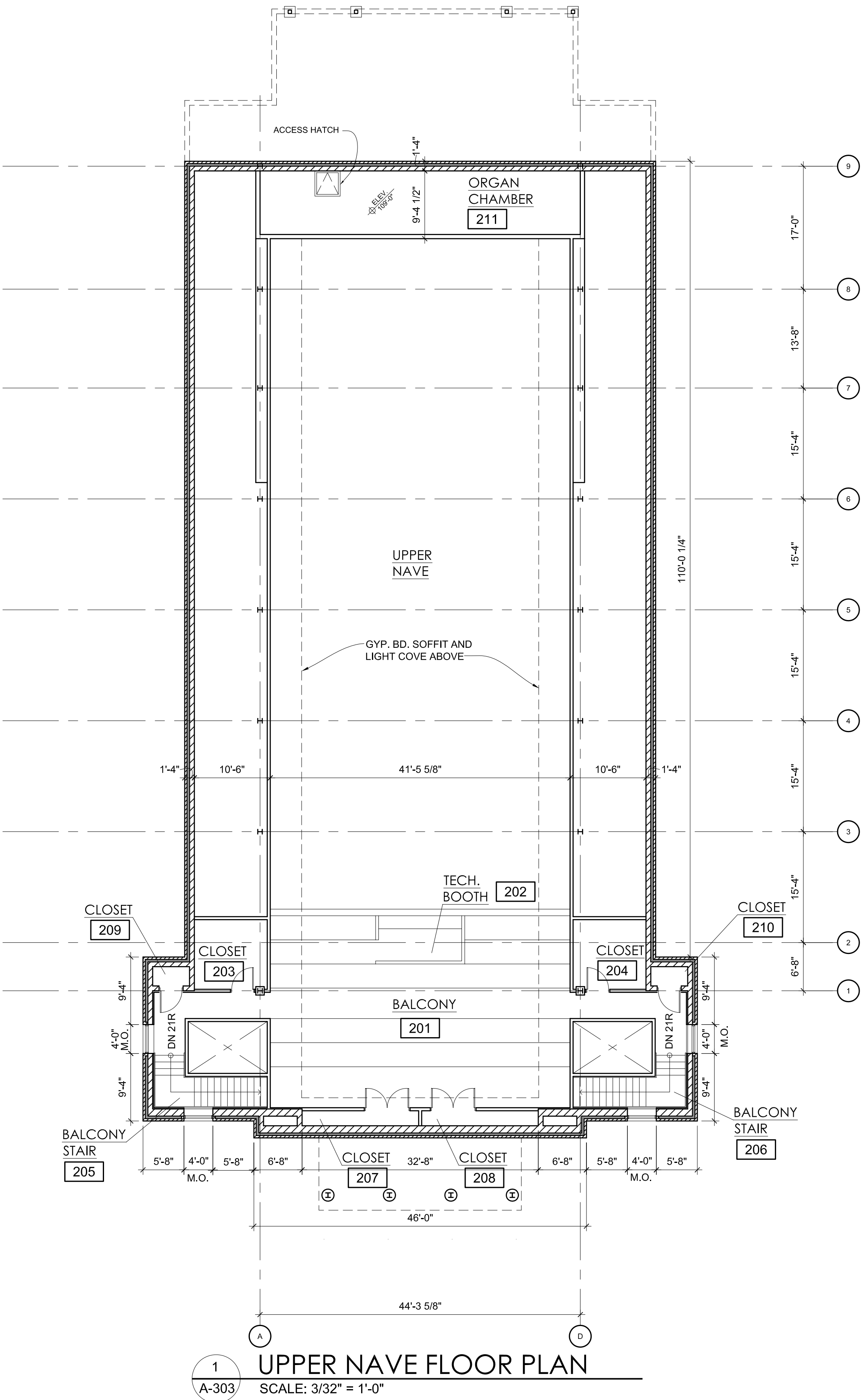
A-302

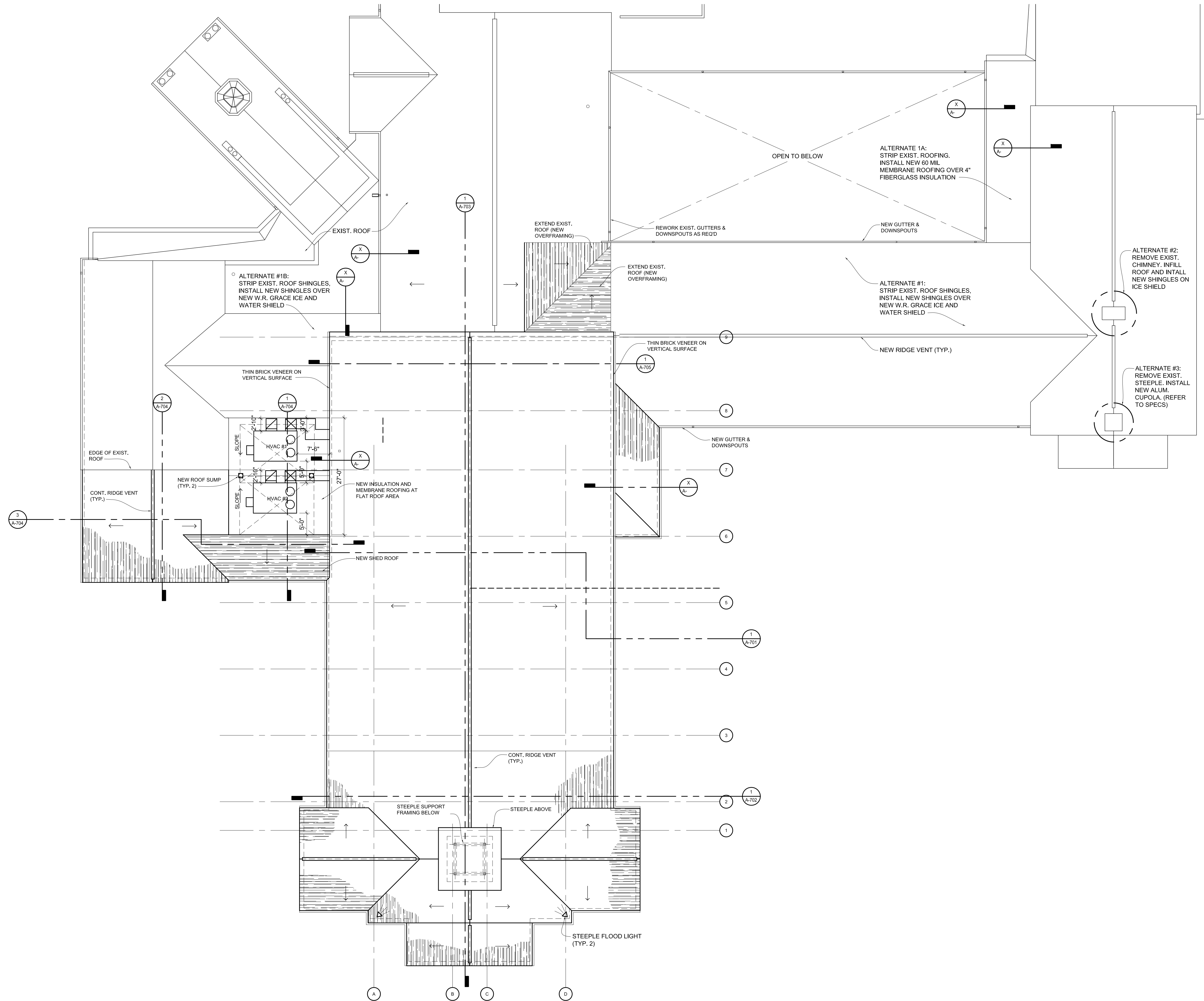
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BIRMINGHAM, MICHIGAN

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1
A-501

PARTIAL ROOF PLAN
SCALE: 3/32" = 1'-0"



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THE REDEEMER

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ROOF PLAN

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Project No.	Sheet No.
15165	A-501

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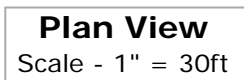
LUTHERAN
CHURCH OF
THE REDEEMER









EXTERIOR ELEVATIONS

Project No.	Sheet No.
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15165	A-601
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Schedule									
Symbol	Label	Quantity	Manufacturer	Catalog Number	Description	Lamp	Lumens Per Lamp	Light Loss Factor	Wattage
	SA	11	LITHONIA LIGHTING	KKS 150S RSS	POST-TOP TYPE V-SHORT,CUTOFF - SQUARE HOUSING	ONE 150-WATT CLEAR ET-23.5 HIGH PRESSURE SODIUM, HORIZONTAL POSITION.	16000	0.65	189
	BO	12	Lithonia Lighting	KBR6 70S R5	6 IN ROUND BOLLARD	ONE 100-WATT CLEAR E-17 HIGH PRESSURE SODIUM, VERTICAL BASE-DOWN POSITION.	6300	0.65	94
	SB	17	Antique Street Lamps	LT30 40W GR3 ACT	8-SIDED LANTERN WITH TEXTURED PANELS AND TYPE III REFRACTOR.	THREE 40W CANDLABRA BASE LAMPS, VERTICAL BASE-DOWN	1800	0.81	150
	PE	2	Antique Street Lamps	LT30 40W GR3 ACT	DECORATIVE PENDANT WITH TEXTURED PANELS	THREE 40W CANDLABRA BASE LAMPS, VERTICAL BASE-DOWN	1800	0.81	120
	SC	8	Antique Street Lamps	LT30 40W GR3 ACT	SCONCE WITH TEXTURED PANELS	THREE 40W CANDLABRA BASE LAMPS, VERTICAL BASE-DOWN	1800	0.81	120
	SC1	3	Antique Street Lamps	LT30 100W A19 ACT	SCONCE WITH TEXTURED PANELS	ONE 100W A19 MEDIUM BASE LAMPS, VERTICAL BASE-DOWN	1730	0.81	120
	B	8	Lithonia Lighting	WST 100S FT	ARCHITECTURAL SCONCE WITH FORWARD THROW DISTRIBUTION WITH CLEAR, FLAT GLASS LENS. CLEAR LAMP, MEETS THE "NIGHTTIME FRIENDLY" CRITERIA	ONE 100-WATT CLEAR ED-17 HIGH PRESSURE SODIUM, HORIZONTAL POSITION.	9000	0.65	135
	C	7	Gotham Architectural Lighting	LGF 42TRT 8RW FFL	8" HORIZONTAL RECESSED DOWNLIGHT, 42W TRIPLE TUBE COMPACT FLUORESCENT LAMP, WHITE PAINTED REFLECTOR, WITH FLAT FRESNEL LENS (FFL)	ONE 42-WATT COMPACT FLUORESCENT TRIPLE TUBE, HORIZONTAL POS.	3200	0.81	48
	SD_NEW	6	Antique Street Lamps	LT30 40W GR3 ACT	8-SIDED LANTERN WITH TEXTURED PANELS AND TYPE III REFRACTOR.	THREE 40W CANDLABRA BASE LAMPS, VERTICAL BASE-DOWN	1800	0.81	150
	A_NEW	4	Gotham Architectural Lighting	EVO 35/15 6AR WD LS	3500K, 1500LM, CRI80, 6IN CLEAR, WIDE DIST, SPECULAR	LED	1622	0.85	18.5



Final
Preliminary Site Plan Review Application / *SLUP*
Planning Division

Form will not be processed until it is completely filled out.

1. Applicant

Name: MERRITT CIESLAK DESIGN
Address: 33610 GRAND RIVER
FARMINGTON, MI 48335
Phone Number: 248 374-0001
Fax Number: _____
Email address: ss@mcdarchitects.com

3. Applicant's Attorney/Contact Person

Cell: (2) 321-9800
Name: MERRITT CIESLAK DESIGN
Address: 33610 GRAND RIVER
FARMINGTON, MI 48335
Phone Number: 248 374-0001
Fax Number: _____
Email address: ss@mcdarchitects.com
STEVE SCHNEEMANN

5. Required Attachments

- I. Two (2) paper copies and one (1) digital copy of all project plans including:
 - i. A detailed Existing Conditions Plan including the subject site in its entirety, including all property lines, buildings, structures, curb cuts, sidewalks, drives, ramps and all parking on site and on the street(s) adjacent to the site, and must show the same detail for all adjacent properties within 200 ft. of the subject sites property lines;
 - ii. A detailed and scaled Site Plan depicting accurately and in detail the proposed construction, alteration or repair;
 - iii. A certified Land Survey;
 - iv. Interior floor plans;

6. Project Information

Address/Location of the property: 1800 W. MAPLE
BIRMINGHAM, MI
Name of development: LUTHERAN CHURCH OF THE
Sidwell #: 19-26-378-072 REDEEMER
Current Use: CHURCH
Proposed Use: CHURCH
Area of Site in Acres: 0.053
Current zoning: R-1
Is the property located in the floodplain? NO

2. Property Owner

Name: LUTHERAN CHURCH OF THE REDEEMER
Address: 1800 W. MAPLE
BIRMINGHAM, MI
Phone Number: 248-644-4010
Fax Number: 248-644-1471
Email address: _____

4. Project Designer/Developer

Name: MERRITT CIESLAK DESIGN
Address: 33610 GRAND RIVER
FARMINGTON, MI 48335
Phone Number: 248 374-0001
Fax Number: _____
Email address: _____

Paul Cieslak (2) 374-0003

- v. A Landscape Plan;
- vi. A Photometric Plan;
- vii. Colored elevation drawings for each building elevation;
- II. Specification sheets for all proposed materials, light fixtures and mechanical equipment;
- III. Samples of all proposed materials;
- IV. Photographs of existing conditions on the site including all structures, parking areas, landscaping and adjacent structures;
- V. Current aerial photographs of the site and surrounding properties;
- VI. Warranty Deed, or Consent of Property Owner if applicant is not the owner;
- VII. Any other data requested by the Planning Board, Planning Department, or other City Departments.

Name of Historic District site is located in: N/A
Date of Historic District Commission Approval: N/A
Date of Design Review Board Approval: _____
Will proposed project require the division of platted lots? NO

Will proposed project require the combination of platted lots?
NO

7. Details of the Proposed Development (attach separate sheet if necessary)

REPLACEMENT OF THE EXISTING CHURCH SANCTUARY (TWO LEVELS)
RENOVATION OF EXISTING SPACES ADJACENT TO THE NEW SANCTUARY IN
THE EAST AND WEST BUILDING WINGS, RELOCATION OF THE EXISTING
COLUMBARIUM TO THE EAST SIDE OF THE NEW SANCTUARY,
RECONFIGURATION OF THE ACCESS DRIVE AND WALKWAYS ON THE SITE
TO ACCOMMODATE THE NEW CONSTRUCTION.

8. Buildings and Structures

Number of Buildings on Site: 1
Height of Buildings & # of Stories: 27'-0" ±, 1 STORY +
BALCONY

Use of Buildings: CHURCH
Height of Rooftop Mechanical Equipment: 22'-0" TO TOP
OF HIGHEST
(SCREENED)

9. Floor Use and Area (in Square Feet)

Proposed Commercial Structures:

Total basement floor area: _____
Number of square feet per upper floor: 11,243 S.F. (NEW)
Total floor area: 49,140 S.F. (NEW + EXISTING)
Floor area ratio (total floor area ÷ total land area): 18%

Open space: 105,480 S.F.
Percent of open space: 40%

Office Space: 1,4931 S.F.
Retail Space: N/A
Industrial Space: N/A
Assembly Space: 5,817 S.F. (NEW SANCTUARY)
Seating Capacity: 482 (NEW SANCTUARY + CHANCEL)
Maximum Occupancy Load: 1,987 (ENTIRE BUILDING)
BALCONY SEATING CAPACITY: 74

Proposed Residential Structures:

Total number of units: N/A
Number of one bedroom units: _____
Number of two bedroom units: _____
Number of three bedroom units: _____
Open space: _____
Percent of open space: _____

Rental units or condominiums? _____
Size of one bedroom units: _____
Size of two bedroom units: _____
Size of three bedroom units: _____
Seating Capacity: _____
Maximum Occupancy Load: _____

Proposed Additions:

Total basement floor area, if any, of addition: _____
Number of floors to be added: 2
Square footage added per floor: 11,243 S.F.
Total building floor area (including addition): 49,140 S.F.
Floor area ratio (total floor area ÷ total land area): 18%

Open Space: 105,480 S.F.
Percent of open space: 40%

LOWER LEVEL CLASSROOMS + GATHERING,
Use of addition: CHURCH SANCTUARY + MUSIC ROOMS
Height of addition: 27'-0" TO ROOF MIDPOINT
Office space in addition: N/A
Retail space in addition: N/A
Industrial space in addition: N/A
Assembly space in addition: 5,817 S.F.
Maximum building occupancy load (including addition):
1,987

10. Required and Proposed Setbacks

Required front setback: 25'-0"
Required rear setback: 30'-0"
Required total side setback: 119'-5"
Side setback: 47'-9"

Proposed front setback: 122'-4"
Proposed rear setback: 124'-3"
Proposed total side setback: 217'-4"
Second side setback: 79'-7"

11. Required and Proposed Parking

Required number of parking spaces: 860
Typical angle of parking spaces: 90°
Typical width of maneuvering lanes: 22'-0"
Location of parking on site: FRONT, SIDE & REAR YARDS
Location of parking off site: NONE
Number of light standards in parking area: 23
Screenwall material: WOOD

Proposed number of parking spaces: 218 (unchanged)
Typical size of parking spaces: 9'-0" x 20'-0"
Number of spaces <180 sq. ft.: NONE
Number of handicap spaces: 11
Shared parking agreement? NO
Height of light standards in parking area: 13'-9"
Height of screenwall: 6'-0" NO OVERHANG

12. Landscaping

Location of landscape areas: SEE INCLUDED
SHEET L2

Proposed landscape material: SEE INCLUDED
SHEET L2

13. Streetscape

Sidewalk width: N/A
Number of benches: N/A
Number of planters: N/A
Number of existing street trees: N/A
Number of proposed street trees: N/A
Streetscape plan submitted? N/A

Description of benches or planters: N/A

Species of existing trees: N/A

Species of proposed trees: N/A

14. Loading

Required number of loading spaces: N/A
Typical angle of loading spaces: _____
Screenwall material: _____
Location of loading spaces on site: _____

Proposed number of loading spaces: _____

Typical size of loading spaces: _____

Height of screenwall: _____

Typical time loading spaces are used: _____

15. Exterior Waste Receptacles

Required number of waste receptacles: 1 (EXISTING)
Location of waste receptacles: NORTH PARKING LOT
Screenwall material: BRICK

Proposed number of waste receptacles: NO NEW

Size of waste receptacles: N/A

Height of screenwall: 6'-4"

16. Mechanical Equipment

Utilities and Transformers:

Number of ground mounted transformers: 1 (EXISTING)
Size of transformers (L•W•H): 68" L x 56" W x 60" H
Number of utility easements: N/A
Screenwall material: EXISTING LANDSCAPING

Location of all utilities & easements: SEE SHEET C1.

EXISTING TRANSFORMER AT EAST SIDE
OF EXISTING BUILDING

Height of screenwall: 6'-0"

Ground Mounted Mechanical Equipment:

Number of ground mounted units: 5 (NEW)
Size of ground mounted units (L•W•H): 35" x 35" x 46" H
Screenwall material: LANDSCAPING - SEE SHEET L2

Location of all ground mounted units: NORTH
SOUTH SIDE OF
WEST WING ADDITION

Height of screenwall: 6'-0" LANDSCAPING

Rooftop Mechanical Equipment:

Number of rooftop units: 9 EXISTING, 2 NEW
Type of rooftop units: SEE SHEET A-501 FOR
NEW ROOFTOP UNITS
Screenwall material: SHINGLED ROOF SCREEN (NEW)
Location of screenwall: SOUTH FACE OF WEST
WING ADDITION

Location of all rooftop units: NORTH END OF EXIST. BUILDING,
ROOF OF WEST WING ADDITION

Size of rooftop units (L•W•H): 10'-0" x 7'-0" x 5'-4" H

Percentage of rooftop covered by mechanical units: < 3%

Height of screenwall: 15'-9" ± A.F.F.

Distance from rooftop units to all screenwalls: 5'-0"

17. Accessory Buildings

Number of accessory buildings: NONE
Location of accessory buildings: N/A

Size of accessory buildings: N/A

Height of accessory buildings: N/A

18. Building Lighting

Number of light standards on building: 2 (COLUMBARIUM)
Size of light fixtures (L•W•H): 20" X 20" X 20" (EXIST IN PARKING LOT)
Maximum wattage per fixture: SEE INCLUDED
Light level at each property line: SEE INCLUDED

Type of light standards on building: DECORATIVE -
SEE SHEET AS-102
Height from grade: 9'-0"
Proposed wattage per fixture: _____

19. Site Lighting

Number of light fixtures: 20 (EXIST. AT DRIVES)
Size of light fixtures (L•W•H): 20" X 20" X 20"
Maximum wattage per fixture: SEE INCLUDED
Light level at each property line: SEE INCLUDED

Type of light fixtures: EXISTING DECORATIVE
Height from grade: 13'-9"
Proposed wattage per fixture: EXISTING
Holiday tree lighting receptacles: 0

20. Adjacent Properties

Number of properties within 200 ft.: 52 ± (ALL R-1 OR R-2)

Property #1

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

Property #2

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

Property #3

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

Property #4

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

Property #5

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

Property #6

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

The undersigned states the above information is true and correct, and understands that it is the responsibility of the applicant to advise the Planning Division and / or Building Division of any additional changes made to an approved site plan. The undersigned further states that they have reviewed the procedures and guidelines for Site Plan Review in Birmingham, and have complied with same. The undersigned will be in attendance at the Planning Board meeting when this application will be discussed.

By providing your e-mail to the City, you agree to receive news notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.

Signature of Owner: Steven M. Scheidt Date: 02/13/2020

Print Name: Steven M. Scheidt

Signature of Applicant: Stefan Schneemann Date: 2/12/2020

Print Name: Stefan Schneemann

Signature of Architect: Ronald A. Cieslak Date: 2/12/2020

Print Name: Ronald Cieslak

Office Use Only

Application #: PSLU20-0001 Date Received: _____ Fee: \$2800.00

Date of Approval: _____ Date of Denial: _____ Accepted by: _____



PRELIMINARY SIT PLAN REVIEW APPLICATION CHECKLIST - PLANNING DIVISION

Applicant: LUTHERAN CHURCH OF THE REDEEMER Case #: _____ Date: 2/10/20

Address: 1800 W. MAPLE RD. Project: SANCTUARY REPLACEMENT
BIRMINGHAM, MS

All site plans and elevation drawings prepared for approval shall be prepared in accordance with the following specifications and other applicable requirements of the City of Birmingham. If more than one page is used, each page shall be numbered sequentially. All plans must be legible and of sufficient quality to provide for quality reproduction or recording. Plans must be no larger than 24" x 36", and must be folded and stapled together. The address of the site must be clearly noted on all plans and supporting documentation.

Preliminary Site Plan

A full Site Plan detailing the proposed changes for which approval is requested shall be drawn at a scale no smaller than 1" = 100' (unless the drawing will not fit on one 24" X 36" sheet) and shall include:

- ☒ 1. Name and address of applicant and proof of ownership;
 - ☒ 2. Name of Development (if applicable);
 - ☒ 3. Address of site and legal description of the real estate;
 - ☒ 4. Name and address of the land surveyor;
 - ☒ 5. Legend and notes, including a graphic scale, north point, and date;
 - ☒ 6. A separate location map;
 - ☒ 7. A map showing the boundary lines of adjacent land and the existing zoning of the area proposed to be developed as well as the adjacent land;
 - ☒ 8. Aerial photographs of the subject site and surrounding properties;
 - ☒ 9. A detailed and scaled Site Plan depicting accurately and in detail the proposed construction, alteration or repair;
 - ☒ 10. A detailed Existing Conditions Plan including the subject site in its entirety, including all property lines, buildings, structures, curb cuts, sidewalks, drives, ramps and all parking on site and on the street(s) adjacent to the site, and must show the same detail for all adjacent properties within 200 ft. of the subject site's property lines;
 - ☒ 11. Interior floor plans;
 - ☒ 12. A chart indicating the dates of any previous approvals by the Planning Board, Board of Zoning Appeals, Design Review Board, or the Historic District Commission ("HDC");
- N/A ☐

- ☒ 13. Existing and proposed layout of streets, open space and other basic elements of the plan;
- ☒ 14. Existing and proposed utilities and easements and their purpose;
- ☒ 15. Location of natural streams, regulated drains, 100-year flood plains, floodway, water courses, marshes, wooded areas, isolated preserve-able trees, wetlands, historic features, existing structures, dry wells, utility lines, fire hydrants and any other significant feature(s) that may influence the design of the development;
- ☒ 16. General description, location, and types of structures on site;
- ☒ 17. Location of sidewalks, curb cuts, and parking lots on subject site and all sites within 200 ft. of the property line;
- ☒ 18. Details of existing or proposed lighting, signage and other pertinent development features;
- ☒ 19. Elevation drawings showing proposed design;
- ☒ 20. Screening to be utilized in concealing any exposed mechanical or electrical equipment and all trash receptacle areas;
- ☒ 21. Location of all exterior lighting fixtures;
- ☒ 22. A Photometric Plan depicting proposed illuminance levels at all property lines;
- ☒ 23. A Landscape Plan showing all existing and proposed planting and screening materials, including the number, size, and type of plantings proposed and the method of irrigation; and
- ☒ 24. Any other information requested in writing by the Planning Division, the Planning Board, or the Building Official deemed important to the development.

Elevation Drawings

Complete elevation drawings detailing the proposed changes for which approval is requested shall be drawn at a scale no smaller than 1" = 100' (unless the drawing will not fit on one 24" X 36" sheet) and shall include:

- ☒ 25. Color elevation drawings showing the proposed design for each façade of the building;
- ☒ 26. List of all materials to be used for the building, marked on the elevation drawings;
- ☒ 27. Elevation drawings of all screenwalls to be utilized in concealing any exposed mechanical or electrical equipment, trash receptacle areas and parking areas;
- ☒ 28. Details of existing or proposed lighting, signage and other pertinent development features;
- ☒ 29. A list of any requested design changes;
- ☒ 30. Itemized list and specification sheets of all materials, light fixtures and mechanical equipment to be used, including exact size specifications, color, style, and the name of the manufacturer;
- ☒ 31. Location of all exterior lighting fixtures, exact size specifications, color, style and the name of the manufacturer of all fixtures, and a photometric analysis of all exterior lighting fixtures showing light levels to all property lines; and
- ☒ 32. Any other information requested in writing by the Planning Division, the Planning Board, or the Building Official deemed important to the development.

LINER 1304

597

Standard and Ohio Building Company

WARRANTY DEED

7-10-1920

This Indenture

Witneseth

1920

day of

in the year of our Lord one thousand nine hundred and forty one

Between LILLIAN A. SCHWIDE

part of the first part, and RUDOLPH STAROBLJAN LUMBERMAN COMPANY, a Michigan Ecclesiastical Corporation of Birmingham, Michigan

part of the second part, Witnesseth that the said part of the first part, for and in consideration of the sum of one dollar and no cents to him by the said part of the second part, the receipt whereof is hereby acknowledged and acknowledged, that by this present, grant, bargain, sell, convey, release, alien and confirm now and forever of the said part of the second part, and to his heirs and assigns, forever, all those certain pieces or parcels of land situate and being in the Village of Birmingham, County of Oakland and State of Michigan

and described as follows, to wit: Part of the Southwest Quarter of Section 26, commencing at the southeast corner of the Northwest Quarter of said Section 26, thence running North 88°54' West, 232.82 feet to a point, thence North 4°38' East 188.14 feet to a point of beginning, thence North 4°30' East 432.79 feet to a point, thence North 88°33' East 477.77 feet to a point, thence South 88°54' East 477.28 feet to a point of beginning containing approximately 6.7 acres, and

Lots 21 to 216 inclusive of the Ruby M. Sub., a Sub. of part of the Southwest Quarter of Section 26, T.2 N., R. 10 E., Village (now city) of Birmingham, Oakland County, Michigan according to the recorded plat thereof.

DEEDS COUNTY RECORDS DEPT. May 30 1921

Done at Birmingham



Together with all and singular the accretions and appurtenances thereto in anywise appertaining To have and to hold the said premises as herein described, with the appurtenances unto the said part of the second part, and to his heirs and assigns, forever; and the said LILLIAN A. SCHWIDE part of the first part for her self and heirs, executors and administrators, do covenant, grant, bargain and agree to and with the said part of the second part its heirs and assigns, that at the time of the executing and delivery of these presents she is well seized of the above granted premises in fee simple; that they are free from all incumbrances whatever except such, if any, as are excepted from the covenant following, and that she will, and do

For your self, have executed and after duly attested by me, your notary public in and for the State of Michigan

See your self, have executed and after duly attested by me, your notary public in and for the State of Michigan

598

LIBER 1304

beirs, executors, administrators, shall warrant and defend the same
against all lawful claims whatsoever, except

In witness whereof the said party of the first part has hereunto set her hand and
seal the day and year first above written.

Signed, sealed and delivered in presence of

Lillian A. Schmidt
LILLIAN A. SCHMIDT

(L. S.)

(L. S.)

(L. S.)

State of Michigan,
County of Oakland

On this 19th day of May

in the year one thousand nine hundred and 1934 before me,
a Notary Public, in and for said county, personally appeared LILLIAN A. SCHMIDT

to me known to be the same person described in and who executed the within instrument, who
then acknowledged the same to be her free act and deed.

My commission expires AUGUST 28, 1934

Notary Public

Lillian A. Schmidt
LILLIAN A. SCHMIDT
Notary Public
Michigan,
Oakland County, Michigan.

2-10

14857
Warranty Deed

LILLIAN A. SCHMIDT

TO

REDENER EVANGELICAL LUTHERAN
CHURCH, a Michigan Ecclesiasti-
cal Corporation to Birmingham
Michigan

REGISTER'S OFFICE

Oakland
Michigan County

This instrument was presented and
received for Record this

day of MAY 20 1934 A. D. 19

at 10:00 A. M. and Recorded
in LIBER 1304 of Records, on page 597

A certificate having been furnished in
compliance with 12134, Compiled Laws,
1915

Lillian A. Schmidt
LILLIAN A. SCHMIDT
Notary Public

TAXES PAYABLE—City Taxes payable from July
15 to August 15, without interest, at the City
Treasurer's Office.
This and Other Taxes payable from December 1
to December 31, without interest, at the City
Treasurer's Office.
The above applies to property in the City of Detroit.

Lillian A. Schmidt
LILLIAN A. SCHMIDT
Notary Public



MEMORANDUM

Planning Division

DATE: April 17th, 2020

TO: Planning Board Members

FROM: Nicholas Dupuis, City Planner

SUBJECT: 219 Elm Street – All Seasons of Birmingham Preliminary Site Plan & Community Impact Study Review

Introduction

The subject site, 219 Elm Street, is located at the north end of the Triangle District in the MU3 (Triangle Overlay) and 02 (Office/Commercial) Zoning Districts. Presently, the 0.35 acre parcel contains a modest two-story office building, a parking lot with roughly 25 off-street parking spaces, six mature trees, and various landscaping elements. The site is directly adjacent to the existing All Seasons of Birmingham senior living establishment that was completed around 2015. The Applicant has submitted an application for Preliminary Site Plan & Community Impact Study review proposing a new 5-story standalone senior independent living residential building with 25 units, 10 attached garages, surface parking, and a rooftop patio.

Community Impact Statement

Article 7, Section 7.27 (E) states that a community impact study (CIS) shall be required for a new structure and/or building of 20,000 square feet of gross floor area or greater, to be prepared by the petitioner, for review by the Planning Board at the preliminary Site Plan Review. As the proposed building is proposed at 45,366 sq. ft., a CIS has been submitted. 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.

1.0 Planning & Zoning Issues

- 1.1 **Use:** The proposed use as an independent senior living facility is a permitted use in the O2 Zoning District with a Special Land Use Permit.
- 1.2 **Triangle District Urban Design Plan:** Article 3, Section 3.05 of the Zoning Ordinance states that the purpose of the Triangle Overlay District is to:

1. Develop a fully integrated, mixed-use, pedestrian-oriented environment with buildings containing commercial, residential and office uses, similar to the downtown character west of Woodward Avenue.
2. Create a synergy of uses within the Triangle Overlay District to support economic development and redevelopment in accordance with the recommendations of the Triangle District Urban Design Plan.
3. Minimize traffic congestion, inefficient surface parking lots, infrastructure costs and environmental impacts by promoting a compact, mixed-use, pedestrian-friendly district.
4. Regulate building height to achieve appropriate scale along streetscapes to ensure proper transition to nearby residential neighborhoods.
5. Create a definable sense of place for the Triangle Overlay District with a pedestrian oriented, traditional urban form with bold innovations in architecture.

The proposal does well to consider many of the recommendations of the Triangle District Urban Design Plan (the "Plan"). The proposed building design and placement, building height, circulation and efficient parking match the general intent of the Plan. However, it falls short in others. The proposed building is not mixed use with residences located over commercial spaces, it is unclear if sustainable building or site design elements are proposed, and the building height and massing is compatible with the existing All Seasons to the north, but is much larger than the buildings moving to the south east single family residential area of the Triangle District.

The applicant has indicated that the proposed development meets the Plan by:

- Improving the appearance of the area by redevelopment with a new, visually attractive building and landscaping that conforms to the design standards of the Zoning District.
- Improving economic and social vitality by encouraging diversity of use and opportunity for a variety of experiences by providing much-needed independent senior housing, which introduces new residents to the community and allows current older residents in the area to stay in the community, which encourages a wide age demographic in the area and benefits local businesses by retaining current customers and adding new ones.
- Improving comfort, convenience, safety and enjoyment of pedestrian environment by increasing pedestrian traffic within the Triangle District, improving the sidewalks and providing right-of-way seating and lighting, and providing a building and site features located to improve the scale of the pedestrian walkways as they relate to the adjacent roadways.

- Encouraging sustainable development by providing a much-needed independent senior housing component to the area, and by providing this senior housing in an area that has businesses to support the needs of seniors, who in turn provide a wider customer base for those businesses.
- Protecting the integrity of established residential neighborhoods by providing a mixed-use development with a large residential component, and designing units for independent senior living, which have less overall impact (traffic, noise, public safety, etc.) than standard commercial, office and residential uses.

Ultimately, the proposal only partially meets the purpose and intent of the Triangle District Urban Design Plan. Once the building design has been fully developed, the applicant may add a considerable amount of sustainable building techniques that could offset a loss in the mixed use goals of the Plan, or a similar tradeoff.

1.3 **Land Development Issues**

The applicant has provided a Phase I Environmental Site Assessment (ESA) and soils information regarding the development of the site. The results have indicated that there are no land development issues on the site. The soil composition is described as suitable for development, with the potential for deeper or wider footings in some areas as needed. There are no steep slopes on the site. The preliminary calculations for excavated soils are approximately 200 cubic yards, which are proposed to be hauled off site via Elm, Maple, and South on Woodward. The applicant has indicated that they will be using that route throughout construction, including transporting an estimated 600 cubic yards of engineered fill soil for the basement.

The Phase I ESA, dated November 4th, 2019, was completed by ASTI Environmental. The ESA included a site inspection, interviews, review of EGLE, City of Birmingham and Oakland County records, database research, historical aerial photographs, Sanborn maps, prior ESA's and City Directories. The ESA describes the property as a dwelling in 1937 until 1987, where it was observed that a building addition was constructed, as well as a parking lot. A similar observation was made in 2016 that included a building addition and more parking. The subject site was used as a nursery and general office throughout its history, and the neighboring properties experienced a similar low-impact commercial use over time. ASTI Environmental also referenced a previous Phase I ESA completed in 2010 that noted a filling station to the north of the property. The subsequent Phase II ESA in 2012 found no volatile organic compounds. Polynuclear aromatic compounds were detected in soil borings, but concentrations did not exceed general residential cleanup criteria. Based on the findings, the site did not have any recognized environmental conditions present.

The applicant has indicated that a potential hazard or nuisance related to the proposed development is its position adjacent to the public sidewalk. The

applicant has indicated that measures will be taken to protect the sidewalk during construction such as an 8 ft. construction fence and protective scaffolding. The applicant has not provided any details regarding the mitigation of dust, noise, and/or debris during construction. **The applicant must submit details as to how they plan to mitigate dust, noise, and debris during construction.**

1.4 **Utilities, Noise & Air Issues**

The applicant has indicated that Detroit Edison electric service is proposed to come from existing overhead lines along the south side of the property. Consumers Energy gas service is proposed to come from the existing gas main on Elm St. AT&T telephone and Comcast cable service is also proposed to come from the existing overhead lines at the south side of the property. The CIS states that all private utility services to the building will be underground. Any easements that will be required for utilities have not been obtained at this time, as the site design and utility placement is in the preliminary phases. The applicant has stated that all necessary easements will be obtained when the exact utility placements are identified.

The applicant has NOT submitted a noise impact study at this time. The applicant has indicated that the proposed use as an independent senior living community is inherently less noisy. Strategic placement of split-system compressors and an emergency generator placed on the roof, daytime operational functions, and abiding by permitted construction operating hours are all expected to provide low noise levels emanating from the property. **The applicant must submit a noise impact study to complete the community impact study.**

The subject site is located in the Southeast Michigan Air Quality District, with monitoring stations in Pontiac, Rochester, Oak Park and Allen Park, as well as others in the District. The applicant has indicated that this region has surpassed the National Ambient Air Quality Standards for carbon monoxide, nitrogen dioxide, ozone, sulfur dioxide, and particulate matter less than 10 microns. The air quality is expected to remain high and is particularly important for the quality of life for seniors living in the proposed development. The applicant has also indicated that the development will not generate or establish a trend of air pollution in the area, citing less traffic and mechanical units that meet or exceed energy codes.

1.5 **Environmental Design & Historic Values**

The existing building, 5 of 6 trees, site landscaping, and associated site improvements will be removed from the site. As the site is flat, no regrading will be necessary. The proposed building is much larger in height and mass than the building that exists on site and will cover more of the site at roughly 96.9% impervious (existing site 81.3% impervious). The building will also be considerably larger than the buildings directly to the south and the buildings to

the west. The building does however match the scale of the existing All Seasons to the north, and the recently constructed building at Forest and Elm. The Planning Board may wish to require the applicant to take steps to retain the existing mature street trees wherever possible.

Although unclear at this time, it appears that the applicant will be building towards a LEED certification. LEED certified buildings may be used as one of the three requirements to be permitted additional building height in the Triangle Overlay District. The applicant has indicated that it is unclear at this phase of design which building elements will end up qualifying for LEED, but they have indicated that the following may qualify:

- Individual HVAC controls in each apartment will provide a high level of thermal comfort controlled by the individual occupants;
- The building and site will be designated no smoking, which will prevent or minimize exposure of building occupants, indoor surfaces, and ventilation air distribution systems to environmental tobacco smoke;
- The proposed recycling program will facilitate the reduction of waste generated by building occupants that is hauled to and disposed of in landfills;
- The project is located within a ¼ mile of 2 bus stops for an alternative method of transportation;
- The site is within an urban area with existing infrastructure, this site was previously developed, the site is within a ½ mile of 10 services, and the site offers pedestrian access to such services;
- Developing the site avoids development of inappropriate sites to reduce environmental impact; and
- The site development plans will reduce pollution from soil erosion, sedimentation and dust generation by incorporating best management practices for soil erosion and sediment control.

The applicant has acknowledged that the proposed building is larger than the existing building, which will affect the amount of sunlight that its neighbors receive. All waste receptacles are proposed to be stored within the building, which will minimize objectionable visual pollution.

Although the original dwelling from the early 1900's appears to still be present on site in some capacity, neither the site nor the existing building are currently located within any local or national historic districts. The CIS indicates that the property does not appear in State Historic Preservation Office (SHPO) historical listings, and that no adjacent properties appear historic or appear in the SHPO historical listings. **The applicant does not appear to have contacted the Department of the Interior or SHPO to make a determination on the eligibility of the property.** Currently, the applicant does not need to go before the Historic District Commission.

1.6 Refuse, Sewer & Water

The applicant has explained that through experience with the existing All Seasons, the proposed building will require one small dumpster and two 95-gallon recycling bins to service the site. All waste receptacles are proposed to be stored within the building in a rubbish room, which is located on the south side of the building and opens up to the public alley. The applicant has contacted Waste Management and SOCRRA and confirmed availability to serve the planned solid waste disposal and recycling needs of the site.

The CIS indicated that the sanitary sewer connection to the existing 18 in. combined sewer in Elm St. will adequately serve the development. Low flow toilets and faucets, energy star appliances, and laundry service at the large-scale facilities at the existing All Seasons will aid in the reduction of water flow into the existing infrastructure. The applicant has also advised that the planned storm water management system for the site will also be designed to adequately serve the development. The proposed development will increase the impervious surface of the existing site by roughly 3,100 sq. ft., but the applicant has indicated that the existing combined sewer capacity will be able to match the current site's output and store any additional runoff created by the increased impervious surfaces. There are no green infrastructure proposals on site to assist in the retention of storm water runoff. The applicant has stated that the size and layout of the proposal and the soil conditions (stiff sandy clay and silty clay) prohibit percolation, and prevents the use of any rain gardens or other similar features. The applicant did not discuss the potential for soil amendments or a green roof.

It is worth noting that the proposed development is within the George W. Kuhn (GWK) stormwater drainage district. The City has been very active in the preliminary activities of the GWK drainage district multi-community collaboration stormwater standards and code enforcement project, which aims to reduce the amount of stormwater runoff that enters the combined sewer system through green infrastructure initiatives. The GWK project has completed a first draft outlining its findings through a triple bottom line analysis and code audit of the 15 GWK communities and plans to focus its efforts on promoting infiltration through implementing best management practices for stormwater runoff.

Potable water service is proposed through a connection to the existing 12 in. public water main located in Elm St. The applicant has indicated that previous flow tests information provided by the fire Department shows an adequate water supply, and the water quality surpasses EPA and MDEQ water quality standards. The applicant has stated that the planned water service will be designed in accordance with City standards.

1.7 Public Safety

The CIS explains that the site fronts Elm Street and a public alley, which provides adequate access for emergency vehicles to access the site and there are no obstacles to such access.

The CIS has also stated that due to the nature of the use as a senior independent living community with a large number of residents that are able to leave and enter the building as needed, a third-party monitored security system is not proposed. The building will be designed with security features and an internal security system. A member of the management will be on site 24 hours a day at the adjacent All Seasons building. The lobby doors will be controlled by an intercom system connected to the units. All other building access doors will be locked, with access by a master key or keypad code. All units will be equipped with an emergency call system to notify the front desk/management office when assistance is needed.

The CIS indicates that all fire codes for access, layout, hydrant coverage and water connections, and that all City and NFPA fire codes will be met. Although the pavement specifications have not yet been designed, the applicant has stated that all site pavement will be able to handle the weight of fire and emergency vehicles. The elevators on site are proposed to accommodate a medical cart.

Finally, the applicant has indicated that the building fire suppression system has not been designed at this time but will meet all applicable fire codes. **The applicant must provide all details on the fire suppression system to the Fire Department for review.**

1.8 **Transportation Issues**

The applicant has submitted an abbreviated Form A traffic study indicating that the development is expected to generate low traffic. The average daily traffic presented in the submitted Form A is 135 vehicles per day, with 9 vehicles in/out of the site projected during the AM peak hour, and 12 vehicles in/out projected during the PM peak hour. The applicant has indicated that they will complete a Form B if required by the City's traffic consultant.

As described above, the site has adequate access to various methods of transportation to service the needs of the site. There is a SMART bus stop at the corner of Maple and Elm, and the Amtrak station is about a ½ mile away from the site. The applicant has indicated that the office staff will have information for residents about bus routes and schedules, and staff will be available to help plan bus and train trips. The All Seasons will also provide a regularly scheduled shuttle service for shopping, doctor visits, church services, recreational outings and similar daily activities within a 5-mile radius.

Finally, the applicant proposes to provide bike racks on the south west corner of the new development, but suggests that the adjacent exterior bike rack as the existing All Seasons may also be used, and is currently rarely used by the existing All Seasons residents. Two benches and two waste receptacles are proposed in the right-of-way, and an electric vehicle charging station will be provided for charging electric vehicles on site, and residents with garages will be able to request a charging station if they so desire.

The City's traffic consultant, Fleis and Vandenbrink (F&V), has received and reviewed a copy of the CIS submitted by the applicant. In a letter dated April 16th, 2020, F&V concluded that the proposed development plan is expected to generate less traffic than the current office land use, and that the pick-up/drop-off operations for All Seasons Phase 2 should be centralized, utilizing the existing All Seasons circular drive.

1.9 **Parking Issues**

The CIS indicates that the proposed development will supply 27 parking spaces where 12 are required, which will adequately serve the development. **There is a discrepancy in the CIS documents and the site plans submitted, however. There appears to be only 22 off-street parking spaces provided (10 in garages, 12 in rear parking lot).** The site appears to be adequately parked either way. A thorough analysis of required off-street parking is provided in the Preliminary Site Plan Review.

1.10 **Natural Features**

Aside from some grass and landscaping beds, the site is currently fully developed. There are no ponds or streams on site, and the City's most important natural feature, the Rouge River, does not pass through or anywhere near the site. As noted in an earlier section, the new proposal will increase the impervious area of the site by approximately 3,100 sq. ft. The applicant expects the additional runoff to be handled adequately by the proposed connection to an existing combined sewer.

The CIS states that the site contains no wetlands, is not located in a floodplain, and contains no unique natural feature, so its redevelopment is not likely to damage or destroy existing wildlife habitats. **At a small scale, the removal of mature trees and existing landscaping may temporarily damage existing habitats for birds, bees, butterflies, and important insects. The Planning Board may wish to consider requiring the landscaping proposed and detailed in the Preliminary Site Plan review to be native to support such wildlife.**

1.11 **Departmental Reports**

1. **Engineering Department** – The Engineering Department has not provided any comment on the CIS at this time.
2. **Department of Public Services** – The Department of Public Service has indicated that the removal and replacement of street trees is approved.
3. **Fire Department** – The Fire Department has provided the following comments:

1. This building will need to comply with the high-rise requirements of the Michigan Building Code, and the International Fire Code 2015 Editions. Including a Fire Command Center.
 2. Fire suppression will need to be installed throughout the entire building.
 3. Any exterior balcony that has any overhead projection of more than 2 feet, that has a BBQ or other fire feature placed on it, with combustible materials also placed on the balcony, the balcony will be required to have fire suppression coverage.
 4. **The proposed location of the FDC is not acceptable. The FDC will need to be relocated to the street (Elm) side of the building, and be placed in an unobstructed location approved by the Fire Marshal.**
 5. A full fire alarm system will need to be installed throughout the entire building, including occupant notification in all suites, on all exterior balconies, and on the rooftop terrace.
 6. Submitted floor plans will need to include egress travel distances.
4. **Police Department** – The Police Department has indicated that they would like to see the discrepancy in off-street parking spaces resolved and reported back.
 5. **Building Department** – The Building Department has not provided comments on the CIS at this time.

1.12 **Summary of CIS**

The following issues remain outstanding in regard to the CIS:

1. The applicant must submit details as to how they plan to mitigate dust, noise, and debris during construction.
2. The applicant must submit a noise impact study to complete the community impact study.
3. The applicant must contact the Department of the Interior or SHPO to make a determination on the historic eligibility of the property.
4. The applicant must provide all details on the fire suppression system to the Fire Department for review.

1.13 **Suggested Action**

To **ACCEPT** the Community Impact Study as provided by the applicant for the proposed development at 219 Elm St. – All Seasons – with the following conditions:

1. The applicant must submit details as to how they plan to mitigate dust, noise, and debris during construction prior to Final Site Plan;

2. The applicant must submit a noise impact study to complete the community impact study prior to Final Site Plan;
3. The applicant must contact the Department of the Interior or SHPO to make a determination on the historic eligibility of the property prior to Final Site Plan; and
4. The applicant must provide all details on the fire suppression system to the Fire Department for review prior to Final Site Plan.

1.14 **Sample Motion Language**

Motion to **ACCEPT** the Community Impact Study as provided by the applicant for the proposed development at 219 Elm St. – All Seasons – with the following Conditions:

1. The applicant must submit details as to how they plan to mitigate dust, noise, and debris during construction prior to Final Site Plan;
2. The applicant must submit a noise impact study to complete the community impact study prior to Final Site Plan;
3. The applicant must contact the Department of the Interior or SHPO to make a determination on the historic eligibility of the property prior to Final Site Plan; and
4. The applicant must provide all details on the fire suppression system to the Fire Department for review prior to Final Site Plan.

OR

Motion to **POSTPONE** the Community Impact Study as provided by the applicant for the proposed development at 219 Elm St. – All Seasons – pending receipt of the following:

1. _____
2. _____
3. _____

OR

Motion to **REJECT** the Community Impact Study as provided by the applicant for the proposed development at 219 Elm St. – All Seasons – for the following reason(s):

1. _____
2. _____
3. _____

Preliminary Site Plan Review

The applicant has submitted for Preliminary Site Plan review for the construction of a 5-story independent senior living complex in the O2 and MU3 Zoning Districts. The subject site presently contains a 2-story office building, street trees and landscaping, and associated parking and site improvements. The proposed building will front Elm St. and is adjacent to a public alley on the south side of the building.

2.0 Land Use & Zoning

- 2.1 **Existing Land Use** – The existing land use is commercial, and currently contains a 2-story office building.
- 2.2 **Zoning** – The subject site exists within the O2 (Office/Commercial) and MU3 Overlay (Mixed-Use 3) Zoning Districts.
- 2.3 **Summary of Adjacent Land Use & Zoning** – The following chart summarizes existing land use and zoning classifications of the adjacent and/or nearby properties:

	North	South	East	West
Existing Land Use	Multi-Family Residential	Office/Commercial	Multi-Family Residential	Commercial
Existing Zoning District	O2 (Office/Commercial)	O1 (Office)	O2 (Office/Commercial)	O2 (Office/Commercial)
Overlay Zoning District	MU5 (Mixed-Use 5)	ASF3 (Attached Single-Family)	MU3 (Mixed-Use 3)	MU5 (Mixed-Use 5)

3.0 Setback & Height Requirements

The attached zoning compliance summary analysis provides the required and proposed bulk, area, and placement regulations for the proposed project. The following bulk, area and placement issues are present:

1. The applicant has submitted site plans showing the walls at the east and west side setbacks containing windows. Article 3, Section 3.08 (B) of the Zoning Ordinance requires walls at the side setback line that contain windows to be setback 10 ft. from the side lot line. The east setback line is adjacent to an alley, which permits the applicant a 0 ft. setback requirement per Article 3, Section 3.16 (C). However, **the applicant must submit plans showing the side setback at the west at a minimum of 10 ft. or obtain a variance from the Board of Zoning Appeals.**
2. The maximum building height permitted in the MU3 Zoning district is 42 ft. and 3 stories. Upon the development of the site, an additional 24 ft.

and 2 stories may be granted (stepped back at a 45-degree angle from the top story allowed by right without the height bonus) with the completion of two or more requirements [summarized]: (1) Payment towards public parking facility, (2) dedication of an improved public plaza, (3) a mixed use, (4) sustainable LEED building design, and (5) transfer of development rights for a site containing a historic building. It is unclear which 2 or more requirements the applicant is seeking to be permitted the proposed additional 2 stories. **The applicant must complete the requirements of 3.08 (E) to receive additional building height.**

3. The site plans submitted show a minor building overhang at the front setback line above 8 ft. starting at the second floor. Article 4, Section 4.74 (D)(4)(c)(ii) states that permanent architectural features such as windows, balconies, overhangs and other architectural features that encroach into the right of way above 8' may be approved by the Planning Board, provided that they do not extend 2' or more into the right of way or create an obstruction and that the encroachment complies with the design review standards set forth in Article 7 of the Zoning Ordinance. The proposed projections encroach roughly 1.25 ft. into the right of way and thus may be approved by the Planning Board.
4. The applicant is proposing a rooftop use, which is permitted under Article 5, Section 5.07 (H) of the Zoning Ordinance. The 1,218 sq. ft. rooftop terrace is proposed at set back 5 ft. from the eave line as required but does not appear to have proposed any structures or elements such as habitable enclosures or eisenglass. **The applicant must submit a rooftop plan showing a detailed rooftop use including any proposed structures.**

4.0 Screening & Landscaping

4.1 Dumpster Screening

The applicant is proposing one trash dumpster and two 95-gallon recycling receptacles in a refuse room located within the building on the south side, adjacent to the public alley. The waste receptacles are thus fully screened from public view.

4.2 Parking Lot Screening

Article 4, Section 4.54 of the Zoning Ordinance requires that any parking facility that is proposed that abuts an alley and is adjacent to a business district provide screening along the setback line. The applicant is proposing to utilize the public alley as the access to the off-street parking facility. The proposed access aisle is roughly 25 ft. wide, and the remaining alley frontage is proposed as landscaping. In the landscaped area, the applicant is proposing Gro Low Sumac. The proposed plant spreads wide but does not grow tall (roughly 2 ft. when mature). If a masonry screen wall were proposed, it would have to adhere to the Zoning

Ordinance, which requires a minimum of 32 in. in height. The Planning Board may allow for variations in screen wall material, including the use of evergreen shrubs or trees as they see fit to provide adequate screening of the parking facility. **Thus, the applicant must modify the landscape in the landscaping bed to show an adequate density of evergreen plantings to fully screen the off-street parking facility.**

4.3 Mechanical Equipment Screening

The applicant does not appear to be proposing any ground-mounted mechanical equipment at this time. As site design develops, the applicant is required to adjust the site plans to show all newly proposed and ground (electrical transformers, etc.) or building-mounted (gas & water meters, etc.) mechanical units, and provide screening from public view.

The applicant has submitted a rooftop plan indicating a defined area for rooftop mechanical units (RTU's). The applicant is showing a generator in this space, and no other RTU's at this time. **The applicant must submit details on all proposed RTU's and details on the proposed screen wall to ensure the RTU's are fully screened from public view.**

4.4 Landscaping

The applicant has submitted a landscaping plan for the proposed development that depicts two landscaping areas that are within the site, and two at the north end of the site that are not within the property limits of the subject site. The parking lot does not require separate screening, at it is roughly 5,400 sq. ft., which is under the 7,500 sq. ft. threshold for parking lot landscaping requirements. The southernmost landscaping area is as described above. The applicant is proposing 10 Gro Low Sumac bushes. In the larger landscaping bed to the north end of the off-street parking facility, the applicant is proposing 22 Anabelle Hydrangea, 16 Wintergem Boxwood, and one existing tree that is proposed to be protected during construction. **As stated in the CIS, if a green roof, other green infrastructure facilities, or more native plant species are proposed as a part of LEED certification or otherwise, the applicant must submit a revised landscaping plan. Additionally, if the Planning Board wishes to require the applicant to replace the 10 Gro Low Sumac with evergreen plantings, they must submit a revised landscaping plan.**

4.5 Streetscape Elements

The applicant is proposing to fully furnish the streetscape with the required street trees, streetlights, benches, waste receptacles, and bike racks to match the Triangle District streetscape design standards.

The proposed development contains 138 ft. of frontage, which requires 3.5 street trees and streetlights. The applicant is proposing 5 street trees and 3 streetlights spaced 40 ft. apart. The applicant has indicated that bike racks,

benches and waste receptacles will be placed where they will most benefit the public. The site plan shows 2 benches and 2 waste receptacles, one set closer to the southern end of the property, and one set more centrally located within the frontage. The 3 proposed bike racks are located at the southwest corner of the property.

5.0 Parking, Loading & Circulation

5.1 Parking

Article 4, Section 4.45 of the Zoning Ordinance requires independent senior living complexes to provide 0.5 off-street parking spaces per unit proposed. The applicant is proposing 24 units; thus 12 off-street parking spaces are required for the development. The site plans submitted show 10 parking spaces in private garages, and 12 parking spaces in an off-street parking facility at the rear (east) of the building for a total of 22 off-street parking spaces (including 2 accessible spaces). **As noted in the above CIS review, the applicant has stated conflicting off-street parking figures in the CIS documents and the Site Plans submitted. The applicant must confirm which parking figure is correct, and must confirm that all parking spaces measure at least 180 sq. ft.**

5.2 Loading

The proposed development does not require any off-street loading facilities; thus none are proposed.

5.3 Vehicle Circulation & Access

The site plans submitted show vehicle access to the site and off-street parking facility is available via the public alley to the south of the building. The private garages are also accessed via the parking facility.

5.4 Pedestrian Circulation & Access

Pedestrian access to the site for the majority (21) of the units and general public will be through a main entrance and lobby located at the northwest corner of the building. Residents can then access their units via stairs or an elevator. The three first floor units have access directly from the Elm St. frontage. **It is unclear as to how residents or guests may access the building from the rear parking facilities.** Aside from the 10 private garages to be assigned to residents, there appear to be two doors that access a stairwell that may be accessed by residents through a keycard or keypad as suggested in the CIS.

6.0 Lighting

The applicant appears to be proposing wall sconces from Era Lantern but has not indicated the placement of any proposed light fixtures on the elevation drawings, nor

has the applicant submitted a photometric plan depicting the illumination levels at all of the property lines. **The applicant must submit details on the types and placement of all proposed light fixtures, as well as a photometric plan showing illumination levels at all property lines at Final Site Plan.**

7.0 Departmental Reports

7.1 Engineering Department - The Engineering Department has reviewed the plans dated March 12, 2020 and offer the following comments:

1. It should be noted that work is proposed on the adjacent property (i.e. storm sewer and concrete pad). An agreement, easement, lot combination, etc... will be required in order to perform this work;
2. It does not appear that the City Streetscape requirements have been met in regards to spacing of street lights and City trees (40' between trees and 40' between street lights). Review and revise;
3. The proposed 6" water service shall tap the proposed 6" water line either close to the building, at the building or in the building (only one tap to the public main);
4. The existing water service(s) shall be shown on the plans. The City will disconnect the existing water service(s) at the main. Please indicate that this work will be done by others on the plans;
5. All existing sanitary sewer leads shall be shown on the plans to include how they will be abandoned;
6. The plans shall reference the City's Datum.

Permits required for this project will include:

1. Street Obstruction Permit
2. Right-of-Way Permit
3. Sidewalk Permit

1.2 Department of Public Services - The Department of Public Service has indicated that the removal and replacement of street trees is approved.

1.3 Fire Department - The Fire Department has provided the following comments:

1. This building will need to comply with the high-rise requirements of the Michigan Building Code, and the International Fire Code 2015 Editions. Including a Fire Command Center.
2. Fire suppression will need to be installed throughout the entire building.
3. Any exterior balcony that has any overhead projection of more than 2 feet, that has a BBQ or other fire feature placed on it, with combustible materials also placed on the balcony, the balcony will be required to have fire suppression coverage.
4. The proposed location of the FDC is not acceptable. The FDC will need to be relocated to the street (Elm) side of the building, and be placed in an unobstructed location approved by the Fire Marshal.

5. A full fire alarm system will need to be installed throughout the entire building, including occupant notification in all suites, on all exterior balconies, and on the rooftop terrace.
 6. Submitted floor plans will need to include egress travel distances.
- 1.4 **Police Department** – The Police Department has indicated that they would like to see the discrepancy in off-street parking spaces resolved and reported back.
- 1.5 **Building Department** – The Building Department has not provided any comments on the PSP at this time.

2.0 Design Review

The applicant has submitted elevation drawings but has not yet submitted any material specifications for the proposed building. Specification sheets and samples for all façade materials, windows & doors, railings, and other proposed materials are required at Final Site Plan to complete the Design Review. Additionally, the applicant has not yet submitted glazing calculations for the proposed building. **The applicant must submit material specifications, samples, and glazing calculations for the proposed building at Final Site Plan review.**

3.0 Required Attachments

	Submitted	Not Submitted	Not Required
Existing Conditions Plan	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Detailed and Scaled Site Plan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Certified Land Survey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Interior Floor Plans	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Landscape Plan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Photometric Plan	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Colored Elevations	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Material Specification Sheets	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Material Samples	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Site & Aerial Photographs	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

4.0 Approval Criteria

In accordance with Article 7, section 7.27 of the Zoning Ordinance, the proposed plans for development must meet the following conditions

- 4.1 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.

- 4.2 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.
- 4.3 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.
- 4.4 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.
- 4.5 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.
- 4.6 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.

5.0 Recommendation

Based on a review of the site plans submitted, the Planning Division recommends that the Planning Board **APPROVE** the Preliminary Site Plan for 219 Elm St. – All Seasons – with the following conditions:

- 1. The applicant must submit plans showing the side setback at the west at a minimum of 10 ft. or obtain a variance from the Board of Zoning Appeals;
- 2. The applicant must complete the requirements of 3.08 (E) to receive additional building height;
- 3. The applicant must submit a rooftop plan showing a detailed rooftop use including any proposed structures;
- 4. The applicant must modify the landscape in the landscaping bed to show an adequate density of evergreen plantings to fully screen the off-street parking facility;
- 5. The applicant must submit details on all proposed RTU's and details on the proposed screen wall to ensure the RTU's are fully screened from public view;
- 6. The applicant must submit material specifications, samples, and glazing calculations for the proposed building at Final Site Plan review;
- 7. The applicant must submit details on the types and placement of all proposed light fixtures, as well as a photometric plan showing illumination levels at all property lines;
- 8. The applicant must submit an existing conditions plan; and
- 9. The applicant comply with the requests of all City Departments.

6.0 Sample Motion Language

Motion to **APPROVE** the Preliminary Site Plan for 219 Elm St. – All Seasons – with the following conditions:

1. The applicant must submit plans showing the side setback at the west at a minimum of 10 ft. or obtain a variance from the Board of Zoning Appeals;
2. The applicant must complete the requirements of 3.08 (E) to receive additional building height;
3. The applicant must submit a rooftop plan showing a detailed rooftop use including any proposed structures;
4. The applicant must modify the landscape in the landscaping bed to show an adequate density of evergreen plantings to fully screen the off-street parking facility;
5. The applicant must submit details on all proposed RTU's and details on the proposed screen wall to ensure the RTU's are fully screened from public view;
6. The applicant must submit material specifications, samples, and glazing calculations for the proposed building at Final Site Plan review;
7. The applicant must submit details on the types and placement of all proposed light fixtures, as well as a photometric plan showing illumination levels at all property lines;
8. The applicant must submit an existing conditions plan;
9. The applicant comply with the requests of all City Departments.

OR

Motion to **POSTPONE** the Preliminary Site Plan for 219 Elm St. – All Seasons – pending receipt of the following:

1. _____
2. _____
3. _____

OR

Motion to **DENY** the Preliminary Site Plan for 219 Elm St. – All Seasons – for the following reasons:

1. _____
2. _____
3. _____

Zoning Compliance Summary Sheet
Preliminary Site Plan Review & Community Impact Study
219 Elm St. – All Seasons 2

Existing Site: 2-Story Office Building

Zoning: O2 (Office/Commercial) & MU3 (Triangle Overlay)

Land Use: Commercial, Office

Existing Land Use and Zoning of Adjacent Properties:

	North	South	East	West
Existing Land Use	Multi-Family Residential	Office/Commercial	Multi-Family Residential	Commercial
Existing Zoning District	O2 (Office/Commercial)	O1 (Office)	O2 (Office/Commercial)	O2 (Office/Commercial)
Overlay Zoning District	MU5 (Mixed-Use 5)	ASF3 (Attached Single-Family)	MU3 (Mixed-Use 3)	MU5 (Mixed-Use 5)

Land Area:	Existing:	0.35 ac.
	Proposed:	0.35 ac. (no changes proposed)
Dwelling Units:	Existing:	0 units
	Proposed:	24 units
Minimum Lot Area/Unit:	Required:	N/A
	Proposed:	N/A
Min. Floor Area /Unit:	Required:	N/A
	Proposed:	N/A
Max. Total Floor Area:	Required:	N/A for residential uses
	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. minimum, 5 ft. maximum
	Proposed:	0 ft.
Side Setbacks	Required:	10 ft. for walls containing windows
	Proposed:	0 ft.
		The applicant must submit plans showing a west wall side setback at 10 ft. or greater, or obtain a variance from the Board of Zoning Appeals.
Rear Setback:	Required:	10 ft.
	Proposed:	42.4 ft.
Min. Front+Rear Setback	Required:	N/A
	Proposed:	N/A
Max. Bldg. Height:	Permitted:	66 ft., 5 stories*
		<i>*If requirements of Section 3.08(E) are met (see report)</i>
	Proposed:	61 ft., 5 stories
		It is unclear if the applicant will meet the requirements of Section 3.08 (E).
Min. Eave Height:	Required:	N/A
	Proposed:	N/A
Parking:	Required:	12 off-street
	Proposed:	22 off-street
Min. Parking Space Size:	Required:	180 sq. ft.
	Proposed:	180 sq. ft.
Loading Area:	Required:	None
	Proposed:	None
Screening:		
	<u>Parking:</u>	
	Required:	32 in. capped masonry wall or Evergreen
	Proposed:	None
		The applicant must provide appropriate parking lot screening, or obtain a variance from the Board of Zoning Appeals.
	<u>Loading:</u>	
	Required:	N/A
	Proposed:	N/A
<u>Rooftop Mechanical:</u>	Required:	Fully screened from public view

	Proposed:	None proposed at this time
<u>Elect. Transformer:</u>	Required:	Fully screened from public view
	Proposed:	N/A
<u>Dumpster:</u>	Required:	6 ft. masonry screenwall with wood gates
	Proposed:	Fully screened within building

COMMUNITY IMPACT STUDY

(Combined C.I.S. and Site Plan Review)



all seasons

OF BIRMINGHAM II

Prepared 03-06-20 for the City of Birmingham Site Plan Review

Owner/Applicant: **Maple Elm Development Company II LLC**
31731 Northwestern Hwy, Ste 250W, Farmington Hills, MI 48334
248-855-5400 contact: Mark Highlen

Architect: **Alexander V. Bogaerts & Associates. P.C.**
2445 Franklin Road, Bloomfield Hills, MI 48302
248-334-5000 contact: Xander Bogaerts

Civil Eng: **Professional Engineering Associates, Inc.**
2430 Rochester Court, Ste 100, Troy, MI 48083
248-689-9090 contact: John Thompson

Environmental: **ASTI Environmental**
10448 Citation Drive, Ste 100, Brighton MI 48116
800-395-ASTI contact: Anthony Spencer

COMMUNITY IMPACT STUDY - ALL SEASONS of BIRMINGHAM II

Table of Contents

Sec.#	Contents
1.	Combined CIS & Site Plan Review Application
2.	Proof of Ownership
3.	Vicinity Map
4.	Birmingham Zoning Maps
5.	CIS Checklist - Supplemental Information
6.	Zoning Requirements Analysis
7.	Noise Impact Study
8.	Traffic Impact Study
9.	Phase I Environmental Site Assessment
10.	Soils Investigation
11.	Air Quality Information

Section 1. Combined CIS & Site Plan Review Application



Combined CIS & Site Plan Review Application

Planning Division

Form will not be processed until it is completely filled out.

1. Applicant

Name: Maple Elm Development Company II LLC
Address: 31731 Northwestern Hwy, Suite 250W
Farmington Hills, MI 48334
Phone Number: 248-855-5400
Fax Number: 248-737-6175
Email Address: mhighlen@beztak.com

Property Owner

Name: Maple Elm Development Company II LLC
Address: Same as Applicant
Phone Number: _____
Fax Number: _____
Email Address: _____

2. Applicant's Attorney/Contact Person

Name: Mark Highlen - Land Development Project Mgr
Address: 31731 Northwestern Hwy, Suite 250W
Farmington Hills, MI 48334
Phone Number: 248-737-6175
Fax Number: 248-737-6175
Email Address: mhighlen@beztak.com

Project Designer/Developer

Name: Xander Bogaerts - Alexander V. Bogaerts & Assoc.
Address: 2445 Franklin Road
Bloomfield Hills, MI 48302
Phone Number: 248-334-5000
Fax Number: _____
Email Address: xbogaerts@bogaerts.us

3. Required Attachments

- Warranty Deed with legal description of property
- Required fee (see Fee Schedule for applicable amount)
- Fifteen (15) folded copies of plans including a certified land survey, color elevations showing all materials, site plan, landscape plan, photometric plan, and interior plan
- Photographs of existing site and buildings
- Samples of all materials to be used

- Catalog sheets for all proposed lighting, mechanical equipment & outdoor furniture
- Completed Checklist
- Digital copy of plans
- One (1) additional set of plans mounted on a foam board, including a color rendering of each elevation

4. Project Information

Address/Location of Property: 219 Elm Street
Birmingham MI 48009
Name of Development: All Seasons of Birmingham
Sidwell #: 19-36-227-028
Current Use: Businesses/Office
Current Zoning: MU-3

Name of Historic District site is in, if any: N/A
Date of HDC Approval, if any: N/A
Date of approval of DRB, if any: _____
Area in Acres: 0.35 ac.
Proposed Use: Senior Independent Living Apts.
Zoning of Adjacent Properties: MU-5, MU-3, ASF-3

Is property located in the floodplain? No

Will proposed project require the division of platted lots? No

5. Details of the Proposed Development (Attach separate sheet if necessary)

1 Senior Independent Living apartment building. 5 stories tall
25 residential apartments
10 attached garages + surface parking
rooftop patio

(see attached CIS and Project Plans for additional development details)

6. Buildings and Structures

Number of Buildings on site: 1
Height of Building & # of stories: 60' 9-1/2" / 5 story

Use of Buildings: Senior Independent Living w/ Amenities
Height of rooftop mechanical equipment: varies, 3' -5' (approx.)

7. Floor Use and Area (in square feet)

Proposed Commercial Structures:

Total basement floor area: N/A
Number of square feet per upper floor: _____
Total floor area: _____
Floor area ratio (total floor area divided by total land area): _____
Open space: _____
Percent of open space: _____

Office space: _____
Retail space: _____
Industrial space: _____
Assembly space: _____
Seating Capacity: _____
Maximum Occupancy Load: _____

Proposed Residential Structures:

Total number of units: 25
Number of one bedroom units: 0
Number of two bedroom units: 25
Number of three bedroom units: 0
Open space: N/A
Percent of open space: N/A

Rental units or condominiums?: Rental Units
Size of one bedroom units: 750 sf
Size of two bedroom units: 1191 sf - 1682 sf
Size of three bedroom units: N/A
Seating Capacity: N/A
Maximum Occupancy Load: N/A

Proposed Additions:

Total basement floor area, if any, of addition: N/A
Number of floors to be added: _____
Number of square feet added per floor: _____
Total floor area (including addition): _____
Floor area ratio (total floor area divided by total land area): _____
Open space: _____
Percent of open space: _____

Use of addition: _____
Height of addition: _____
Office space in addition: _____
Retail space in addition: _____
Industrial space in addition: _____
Assembly space in addition: _____
Maximum Occupancy Load (including addition): _____

8. Required and Proposed Setbacks

Required front setback: 0' to 5'
Required rear setback: 20'
Required total side setback: 0', 10' for wall w/ windows
Side setback: 0'

Proposed front setback: 0' - 5'
Proposed rear setback: 38'+
Proposed total side setback: 0' n. side
Second side setback: 2'+ on alley

9. Required and Proposed Parking

Required number of parking spaces: 0.5/unit = 13 spaces
Typical angle of parking spaces: 90 deg.
Typical width of maneuvering lanes: 20'
Location of parking on the site: E'ly side, behind bldg
Location of off site parking: 5 spaces on ASoBham 1
Number of light standards in parking area: no poles, only wall lights
Screenwall material: N/A

Proposed number of parking spaces: 27
Typical size of parking spaces: 9'x20' = 180 sf
Number of spaces < 180 sq. ft.: 27
Number of handicap spaces: 2, 1 surface, 1 garage
Shared Parking Agreement?: 5 spaces on ASoBham 1
Height of light standards in parking area: N/A
Height of screenwall: N/A

10. Landscaping

Location of landscape areas: _____
2 small islands in the rear of building
Small island at the se corner and along the s. side of bldg
See attached Landscape Plan

Proposed landscape material: _____
TBD. similar to neighboring All Seasons, with Maple,
Dogwood, Linden, Hornbeam, Boxwood, Hydrangea,
Arborvitae, Juniper, Cranberry Bush, Spurge, Daylily, etc.

Proposed Landscaping con'td

11. Streetscape

Sidewalk width: 12' wide proposed
Number of benches: 8
Number of planters: 4
Number of existing street trees: 10 (to be removed)
Number of proposed street trees: 12
Streetscape Plan submitted?: Included in package

Description of benches or planters: Benches & planters per Triangle District requirements
Species of existing street trees: Maple & Beech
Species of proposed street trees: Greenspire Linden

12. Loading

Required number of loading spaces: 1
Typical angle of loading spaces: parallel
Screenwall material: _____
Location of loading spaces on the site: adj. to s'ly property line

Proposed number of loading spaces: 1 (in alley)(trash pickup only)
Typical size of loading spaces: 12'x40'
Height of screenwall: N/A

13. Exterior Trash Receptacles

Required number of trash receptacles: 1
Location of trash receptacles: in building
Screenwall material: N/A

Proposed number of trash receptacles: 1 + recycling
Size of trash receptacles: tbd
Height of screenwall: N/A

14. Mechanical Equipment

Utilities & Transformers:

Number of ground mounted transformers: 1
Size of transformers (LxWxH): 4'x4'x3.5' (approx.)

Location of all utilities & easements: _____
Utility locations tbd. See attached site plan
Required easements to be determined.

Number of utility easements: to be determined
Screenwall material: N/A

Height of screenwall: N/A

Ground Mounted Mechanical Equipment:

Number of ground mounted units: 0
Size of ground mounted units (LxWxH): _____

Location of all ground mounted units: _____

Screenwall material: masonry wall along property line

Height of screenwall: _____

Rooftop Mechanical Equipment:

Number of rooftop units: 26
Type of rooftop units: 25 std. residential a/c condensing units
+ units for halls
1- 5'x3'x6' (approx.) backup generator housing

Location of all rooftop units: on 5th story roof.
Size of rooftop units (LxWxH): _____
3'x3'x3' (approx.) residential a/c condensing units

Rooftop Mechanical Equipment con'td

Screenwall material: Fiber cement board & wood

Location of screenwalls: _____

Adjacent to units and groups of units, allowing for access _____

Height of screenwall: 4' for condensing units, 10' max. for vent

Percentage of rooftop covered by mechanical units 8% (approx.)

Distance from rooftop units to all screenwalls: _____

Minimum distance required by code for access/clearance _____

15. Accessory BuildingsNumber of accessory buildings: N/A

Location of accessory buildings: _____

Size of accessory buildings: _____

Height of accessory buildings: _____

16. Building LightingNumber of light standards on building: 27 (est)Size of light fixtures (LxWxH): varies / tbdType of light standards on building: wall sconse / porch lightHeight from grade: 6' - 8'

Maximum wattage per fixture: _____

Light level at each property line: _____

lighting shall meet City Code requirementsProposed wattage per fixture: tbd (100 watt or less)**17. Site Lighting**Number of light fixtures: N/A.

Size of light fixtures (LxWxH): _____

Type of light fixtures: _____

Height from grade: _____

Maximum wattage per fixture: _____

Light level at each property line: _____

Proposed wattage per fixture: _____

Number & location of holiday tree lighting receptacles: _____

The undersigned states the above information is true and correct, and understands that it is the responsibility of the applicant to advise the Planning Division and / or Building Division of any additional changes made to an approved site plan. The undersigned further states that they have reviewed the procedures and guidelines for site plan review in Birmingham, and have complied with same. The undersigned will be in attendance at the Planning Board meeting when this application will be discussed.

Signature of Owner: _____

Date: 3/16/2020Print Name: MARK HIGHTEN - LAND DEVELOPMENT PROJECT MANAGER
& AUTHORIZED AGENT FOR MAPLE ELM DEVELOPMENT COMPANY II LLC

Signature of Applicant: _____

Date: 3/16/2020Print Name: MARK HIGHTEN - LAND DEVELOPMENT PROJECT MANAGER
& AUTHORIZED AGENT FOR MAPLE ELM DEVELOPMENT COMPANY II LLCSignature of Architect: N/A

Date: _____

Print Name: _____

Office Use Only

Application #: _____ Date Received: _____ Fee: _____

Date of Approval: _____ Date of Denial: _____ Accepted by: _____



COMBINED SITE PLAN REVIEW & COMMUNITY IMPACT STUDY APPLICATION CHECKLIST PLANNING DIVISION

Applicant: Maple Elm Development Company II LLC Case #: _____ Date: _____
31731 Northwestern Hwy, Suite 250W
Address: Farmington Hills, MI 48334 Project: All Seasons of Birmingham 2

All site plans and elevation drawings prepared for approval shall be prepared in accordance with the following specifications and other applicable requirements of the City of Birmingham. If more than one page is used, each page shall be numbered sequentially. All plans must be legible and of sufficient quality to provide for quality reproduction or recording. Plans must be no larger than 24" x 36", and must be folded and stapled together. The address of the site must be clearly noted on all plans and supporting documentation.

Site Plan

A full site plan detailing the proposed changes for which approval is requested shall be drawn at a scale no smaller than 1" = 100' (unless the drawing will not fit on one 24" X 36" sheet) and shall include:

- ☒ 1. Name and address of applicant and proof of ownership;
- ☒ 2. Name of Development (if applicable);
- ☒ 3. Address of site and legal description of the real estate;
- ☒ 4. Name and address of the land surveyor;
- ☒ 5. Legend and notes, including a graphic scale, north point, and date;
- ☒ 6. A separate location map;
- ☒ 7. A map showing the boundary lines of adjacent land and the existing zoning of the area proposed to be developed as well as the adjacent land;
- ☒ 8. Details of all proposed site plan changes;
- ☐ 9. A chart indicating the dates of any previous approvals by the Planning Board, Board of Zoning Appeals, Design Review Board, or the Historic District Commission ("HDC");
- ☒ 10. Existing and proposed layout of streets, open space and other basic elements of the plan;
- ☒ 11. Existing and proposed utilities and easements and their purpose;
- ☒ 12. 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;
- ☒ 13. General description, location, and types of structures on the site;
- ☒ 14. Details of existing or proposed lighting, signage and other pertinent development features;
- ☒ 15. Elevation drawings showing proposed design;
- ☒ 16. Screening to be utilized in concealing any exposed mechanical or electrical equipment and all trash receptacle areas;
- ☐ 17. Location of all exterior lighting fixtures;
- ☒ 18. A landscape plan showing all existing and proposed planting and screening materials, including the number, size, and type of plantings proposed and the method of irrigation; and

_____ 19. Any other information requested in writing by the Planning Division, the Planning Board, or the Building Official deemed important to the development.

Elevation Drawings

Complete elevation drawings detailing the proposed changes for which approval is requested shall be drawn at a scale no smaller than 1" = 100' (unless the drawing will not fit on one 24" X 36" sheet) and shall include:

☒ 20. Color elevation drawings showing the proposed design for each façade of the building;

_____ 21. List of all materials to be used for the building, marked on the elevation drawings;

_____ 22. Elevation drawings of all screenwalls to be utilized in concealing any exposed mechanical or electrical equipment, trash receptacle areas and parking areas;

☒ 23. Details of existing or proposed lighting, signage and other pertinent development features;

_____ 24. A list of any requested design changes;

_____ 25. Itemized list of all materials to be used, including exact size specifications, color, style, and the name of the manufacturer;

_____ 26. Location of all exterior lighting fixtures, exact size specifications, color, style and the name of the manufacturer of all fixtures, and a photometric analysis of all exterior lighting fixtures showing light levels to all property lines; and

_____ 27. Any other information requested in writing by the Planning Division, the Planning Board, or the Building Official deemed important to the development.



COMMUNITY IMPACT STUDY CHECKLIST

PLANNING DIVISION

Applicant: Maple Elm Development Company LLC Case #: _____ Date: _____
31731 Northwestern Hwy, Suite 250W
Address: Farmington Hills, MI 48334 Project: All Seasons of Birmingham

All Community Impact Studies prepared for approval must contain the following information:

General Information

- ☒ 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. Details of all proposed site plan changes;

Planning & Zoning Issues

- ☒ 9. Recommended land use of the subject property as designated on the future land use map of the city's Master Plan;
- ☒ 10. Goals and objectives of the city's Master Plans that demonstrate the city's support of the proposed development;
- ☒ 11. Whether or not the project site is located within an area of the city for which an Urban Design Plan has been adopted by the Planning Board in which special design criteria or other supplemental development requirements apply;
- ☒ 12. The current zoning classification of the subject property;
- ☒ 13. The zoning classification required for the proposed development;
- ☒ 14. The existing land uses adjacent to the proposed project;
- ☒ 15. Complete the attached "Zoning Requirements Analysis" chart;

Land Development Issues

- ☒ 16. A survey and site drainage plan;
- ☒ 17. Identify any sensitive soils on site that will require stabilization or alteration in order to support the proposed development;
- ☒ 18. Whether or not the proposed development will occur on a steep slope, and if so, the measures that will be taken to overcome potential erosion, slope stability and runoff;
- ☒ 19. The volume of excavated soils to be removed from the site and /or delivered to the site, and a map of the proposed haul routes;
- ☒ 20. Identify the potential hazards and nuisances that may be created by the proposed development and the suggested methods of mitigating such hazards;

Private Utilities

- ☒ 21. Indicate the source of all required private utilities to be provided;
- ☐ N/A 22. Provide verification that all required utility easements have been secured for necessary private utilities;

Noise Levels

- ☒ 23. Provide a reading of existing ambient noise and estimated future noise levels on the site;
- ☒ 24. Indicate whether the project will be exposed to or cause noise levels which exceed those levels prescribed in Chapter 50, Division 4, Section 50-71 through 50-77 of the Birmingham City Code, as amended;
- ☒ 25. Indicate whether the site is appropriate for the proposed activities and facilities given the existing ambient noise and the estimated future noise levels of the site;

Air Quality

- ☒ 26. Indicate whether the project is located in the vicinity of a monitoring station where air quality violations have been registered and, if so, provide information as to whether the project will increase air quality problems in the area;
- ☒ 27. Indicate if the nature of the project or its potential users would be particularly sensitive to existing air pollution levels and, if so, indicate how the project has been designed to mitigate possible adverse effects;
- ☒ 28. Indicate whether the proposal will establish a trend which, if continued, may lead to violation of air quality standards in the future;
- ☒ 29. Indicate whether the proposed project will have parking facilities for more than 75 cars and indicate percentage of required parking that is proposed;

Environmental Design and Historic Values

- ☒ 30. Indicate whether there will be demonstrable destruction or physical alteration of the natural or human-made environment on site or in the right-of-way (ie. clearance of trees, substantial regrading etc.);
- ☒ 31. Indicate whether there will be an intrusion of elements out of character or scale with the existing physical environment (ie. significant changes in size, scale of building, floor levels, entrance patterns, height, materials, color or style from that of surrounding developments);
- ☒ 32. Indicate all elements of the project that are eligible for LEED points if the building were to be LEED certified (ie. Extensive use of natural daylight, use of low VOC paint, use of renewable/recycled resources, energy efficient mechanical systems, use of wind and solar power, geothermal heating etc.);

- ☒ 33. Indicate whether the proposed structure will block or degrade views, change the skyline or create a new focal point;
- ☒ 34. Indicate whether there will be objectionable visual pollution introduced directly or indirectly due to loading docks, trash receptacles or parking, and indicate mitigation measures for same;
- ☒ 35. Indicate whether there will be an interference with or impairment of ambient conditions necessary for the enjoyment of the physical environment (ie. vibration, dust, odor, heat, glare etc.);
- ☒ 36. Indicate whether the project area and environs contain any properties listed on the National Register of Historic Places or the city's inventory of historic structures;
- ☒ 37. Provide any information on the project area that the State Historic Preservation Office (SHPO) may have;
- ☒ 38. Indicate whether there will be other properties within the boundaries or in the vicinity of the project that appear to be historic and thus require consultation with the SHPO as to eligibility for the National register;
- ☒ 39. Indicate whether the Department of the Interior has been requested to make a determination of eligibility on properties the SHPO or HDC deems eligible and affected by the project;
- ☐ 40. Provide proof that the HDC has been given an opportunity to comment on properties that are listed on or have been found eligible for the National Register and which would be affected by the project;

Refuse

- ☒ 41. Indicate whether the existing or planned solid waste disposal system will adequately service the proposed development including space for separation of recyclable materials;
- ☒ 42. Indicate whether the design capacity of the existing or planned solid waste disposal system will be exceeded as a result of the project;

Sanitary Sewer

- ☒ 43. Indicate whether existing or planned waste water systems will be able to adequately service the proposed development;
- ☒ 44. Indicate whether the design capacity of these facilities will be exceeded as a result of the project;
- ☒ 45. Indicate the elements of the project that have been incorporated to reduce the amount of water entering the sewer system (such as low flush toilets, EnergyStar appliances, restricted flow faucets, greywater recycling etc.) ;

Storm Sewer

- ☒ 46. Indicate whether existing or planned storm water disposal and treatment systems will adequately serve the proposed development;
- ☒ 47. Indicate whether the design capacity of these facilities will be exceeded as a result of the project;
- ☒ 48. Indicate the elements of the project that have been incorporated to reduce the amount of storm water entering the sewer system (such as the use of pervious concrete, rain gardens, greywater recycling, green pavers etc.);

Water Service

- ☒ 49. Indicate whether either the municipal water utility or on-site water supply system is adequate to serve the proposed project;
- ☒ 50. Indicate whether the water quality is safe from both a chemical and bacteriological standpoint;
- ☒ 51. Indicate whether the intended location of the service will be compatible with the location and elevation of the main;

Public Safety

- X 52. Whether or not the project location provides adequate access to police, fire and emergency medical services;
- X 53. Whether or not the proposed project design provides easy access for emergency vehicles and individuals (ie. are there obstacles to access, such as one-way roads, narrow bridges etc.);
- X 54. Whether or not there are plans for a security system which can be expanded, and whether approval for same has been granted by the police department;
- X 55. Detailed description of all fire access to the building, site, fire hydrants and water connections;
- X 56. Whether or not there are plans for adherence to all city and N.F.P.A. fire codes;
- X 57. Proof that one elevator has been designed to accommodate a medical cart;
- X 58. Detailed specifications on all fire lanes/parking lot surfaces/alleys/streets to demonstrate the ability to accommodate the weight of emergency / fire vehicles;
- N/A 59. Detailed description of all fire suppression systems;

Transportation issues

- X 60. Provide completed FORM A – Transportation Study Questionnaire (Abbreviated);
- N/A 61. Provide completed FORM B – Transportation Study Questionnaire if required by the city's transportation consultant;
- X 62. Indicate whether transportation facilities and services will be adequate to meet the needs of all users (i.e. access to public transportation, bicycle accommodations, pedestrian connections, disabled, elderly etc.);
- X 63. Indicate how the project will improve the mobility of all groups by providing transportation choices;
- X 64. Indicate how the users of the building will be encouraged to use public transit and non-motorized forms of transportation;
- X 65. Indicate the elements that have been incorporated into the site and surrounding right-of-way to encourage mode shift away from private vehicle trips;
- X 66. Indicate the elements of the project that have been provided to improve the comfort and safety of cyclists (such as secured or covered bicycle parking, lockers, bike lanes/paths, bicycle share program etc.);
- X 67. Indicate the elements of the project that have been provided to improve the comfort and safety of pedestrians (such as wheelchair ramps, crosswalk markings, pedestrian activated signal lights, bulb outs, benches, landscaping, lighting etc.);
- X 68. Indicate the elements of the project that have been provided to encourage the use of sustainable transportation modes (such as receptacles for electric vehicle charging, parking for scooters/Smart cars etc.);

Natural Features

- X 69. Indicate whether there are any visual indicators of pond and / or stream water quality problems on or near the site;
- X 70. Indicate whether the project will involve any increase in impervious surface area and, if so, indicate the runoff control measures that will be undertaken;
- X 71. Indicate whether the project will affect surface water flows on water levels of ponds or other water bodies;
- X 72. Indicate whether the project may affect or be affected by a wetland, flood plain, or floodway;
- X 73. Indicate whether the project location or construction will adversely impact unique natural features on or near the site;
- X 74. Indicate whether the project will either destroy or isolate a unique natural feature from public access;
- X 75. Indicate whether any unique natural feature will pose safety hazards for the proposed development;
- X 76. Indicate whether the project will damage or destroy existing wildlife habitats; and

Other Information

_____ 77. Any other information as may reasonably be required by the city to assure an adequate analysis of all existing and proposed site features and conditions.

Professional Qualifications

The preparer(s) of the CIS must indicate their professional qualifications, which must include registration in the state of Michigan in their profession where licensing is a state requirement for the practice of the profession (i.e. engineer, surveyor, architect etc.). Where the state does not require licensing (ie. planner, urban designer, economist etc.), the preparer must demonstrate acceptable credentials including, but not limited to, membership in professional societies, university degrees, documentation illustrating professional experience in preparing CIS related materials for similar projects.



Notice Signs - Rental Application Community Development

1. Applicant

Name: Maple Elm Development Company II LLC
Address: 31731 Northwestern Hwy, Suite 250W
Farmington Hills, MI 48334
Phone Number: 248-855-5400
Fax Number: 248-737-6175

Property Owner

Name: Same as Applicant
Address: _____
Phone Number: _____
Fax Number: _____

2. Project Information

Address/Location of Property: 219 Elm street
Name of Development: All Seasons of Birmingham II
Area in Acres: 0.35 ac.

Name of Historic District site is in, if any: N/A
Current Use: multiple businesses/offices
Current Zoning: MU-3

3. Date of Board Review

Board of Building Trades Appeals: _____
City Commission: _____
Historic District Commission: _____
Planning Board: _____

Board of Zoning Appeals: _____
Design Review Board: _____
Housing Board of Appeals: _____

The undersigned states the above information is true and correct, and understands that it is the responsibility of the applicant to post the Notice Sign(s) at least 15 days prior to the date on which the project will be reviewed by the appropriate board or commission, and to ensure that the Notice Sign(s) remains posted during the entire 15 day mandatory posting period. The undersigned further agrees to pay a rental fee and security deposit for the Notice Sign(s), and to remove all such signs on the day immediately following the date of the hearing at which the project was reviewed. The security deposit will be refunded when the Notice Sign(s) are returned undamaged to the Community Development Department. Failure to return the Notice Sign(s) and/or damage to the Notice Sign(s) will result in forfeiture of the security deposit.

Signature of Applicant: _____

Date: 3/16/2020

MARK HIGHLAN - LAND DEVELOPMENT
PROJECT MANAGER & AUTHORIZED
AGENT FOR MAPLE ELM DEVELOPMENT COMPANY II LLC

Office Use Only

Application #: _____ Date Received: _____ Fee: _____
Date of Approval: _____ Date of Denial: _____ Reviewed by: _____

Section 2. Proof of Ownership

OAKLAND COUNTY TREASURERS CERTIFICATE
This is to certify that there are no delinquent property
taxes as of this date owed to our office on this property.
No representation is made as to the status of any taxes,
tax liens or titles owed to any other entities.

JAN 23 2020

ANDREW E. MEISNER, County Treasurer
Sec. 135, Act 206, 1893 as amended

5.00

20340
LIBER 53766 PAGE 529
\$26.00 DEED - COMBINED
\$4.00 REMONUMENTATION
01/28/2020 02:30:55 P.M. RECEIPT# 15833
PAID RECORDED - OAKLAND COUNTY
LISA BROWN, CLERK/REGISTER OF DEEDS

WARRANTY DEED

Corporate(Platted/Condominium)

Drafted By:

Mark S. Turnbull
Kelly Crossing, LLC
10124 Bertram Lane
Fort Myers, FL 33919

Return To:

Maple Elm Development Company II LLC
31731 Northwestern Highway, Ste 250 W
Farmington Hills, MI 48334

Send Tax Bills To:

Maple Elm Development Company II LLC
31731 Northwestern Highway, Ste 250 W
Farmington Hills, MI 48334

Recording Fee: \$
File Number: 863232BH

State Transfer Tax: \$REVTA Filed
County Transfer Tax: \$REVTA Filed
Tax Parcel No.: 19-36-227-028

Know All Persons by These Presents: That **Kelly Crossing, LLC, a Florida limited liability company**
whose address is 10124 Bertram Lane, Fort Myers, FL 33919

Convey(s) and Warrant(s) to **Maple Elm Development Company II LLC, a Michigan limited liability company**
whose address is 31731 Northwestern Highway, Ste 250 W, Farmington Hills, MI 48334

the following described premises situated in the City of **Birmingham**, County of **Oakland**, State of Michigan, to wit:

(SEE ATTACHED EXHIBIT A)

More commonly known as: **219 Elm Street, Birmingham, MI 48009**

For the full consideration of: **Real Estate Transfer Valuation Affidavit on File**

Subject To:

Existing building and use restrictions, easements of record, and zoning ordinances, if any.

First American Title



First American Title Insurance Company

REVENUE TO BE AFFIXED
AFTER RECORDING

RETURN TO:
First American Title
10291 E Grand River, Ste B
Brighton, MI 48116
12833
256
OKLB

(Attached to and becoming a part of Warranty Deed dated: January 10th, 2020 between Kelly Crossing, LLC, a Florida limited liability company, as Seller(s) and Maple Elm Development Company II LLC, a Michigan limited liability company, as Purchaser(s).)

Dated this 10th day of January, 2020.

Seller(s):

Kelly Crossing, LLC, a Florida limited liability company

By: Synergy Commercial Group LLC, a Florida limited liability company

Its: Sole Member

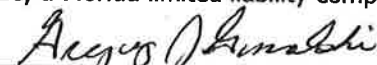
By: 

Name: Mark S. Turnbull

Title: Manager

State of Michigan
County of OAKLAND

The foregoing instrument was acknowledged before me this 10th day of January, 2020 by Mark S. Turnbull, Manager of Synergy Commercial Group, LLC, a Florida limited liability company, Sole Member of Kelly Crossing, LLC, a Florida limited liability company.


Notary Public: GREGORY J. GAMALSKI
Notary County/State: 1 OAKLAND COUNTY, MICHIGAN
County Acting In: OAKLAND COUNTY
Commission Expires: 12/07/2020

(Attached to and becoming a part of Warranty Deed dated: January 11, 2020 between Kelly Crossing, LLC, a Florida limited liability company, as Seller(s) and Maple Elm Development Company II LLC, a Michigan limited liability company, as Purchaser(s).)

EXHIBIT A

Land situated in the City of Birmingham, County of Oakland, State of Michigan, described as follows:

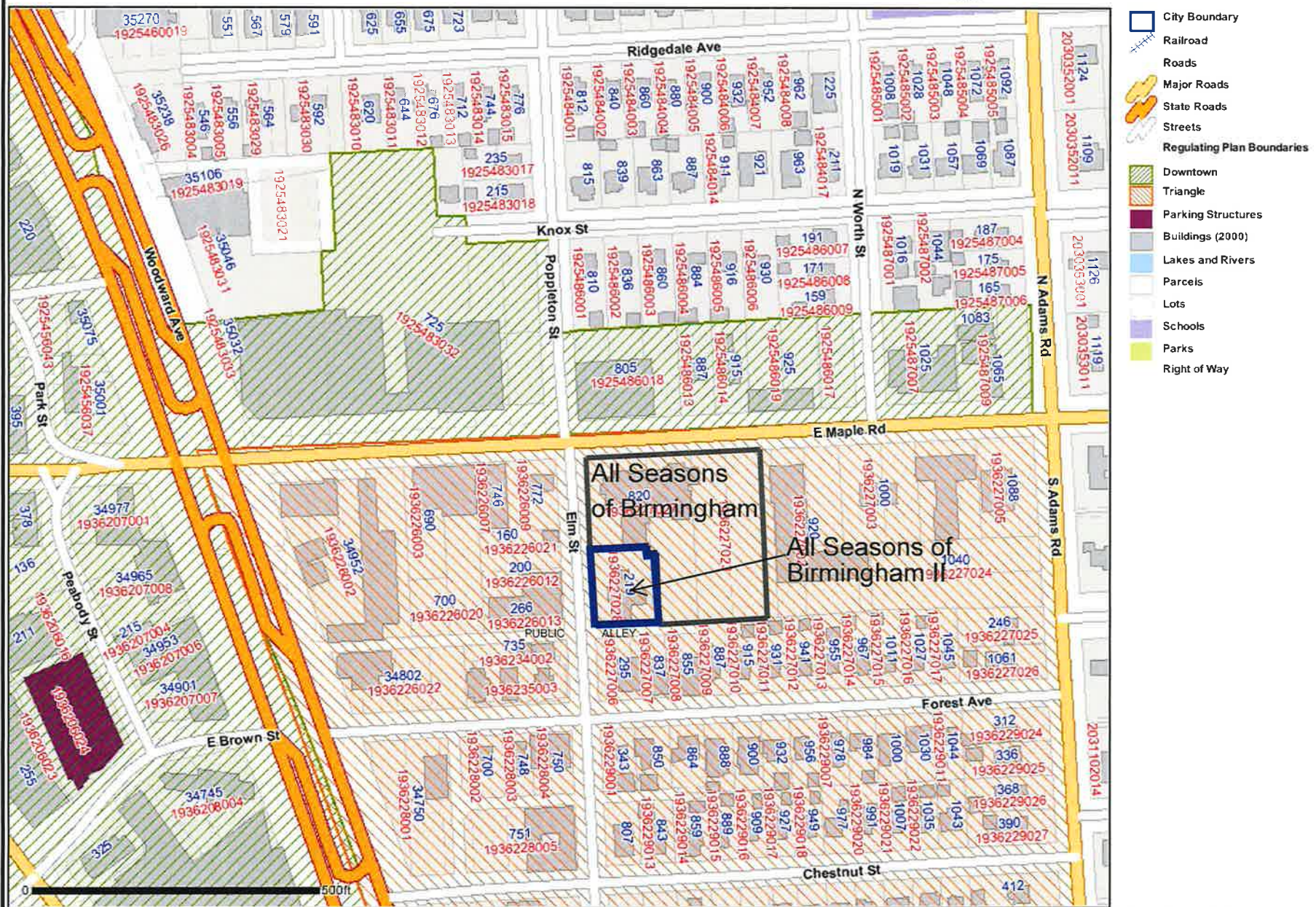
Lot 1, EXCEPT the North 158.70 feet, also EXCEPT the South 13.65 feet of the North 172.35 feet of the East 4.52 feet; also the West 9.50 feet of the South 124.68 feet of Lot 2 of ASSESSOR'S PLAT NO. 31, according to the plat thereof recorded in Liber 99 of Plats, Pages 16 and 17 of Oakland County Records.

Tax Parcel Number: 19-36-227-028

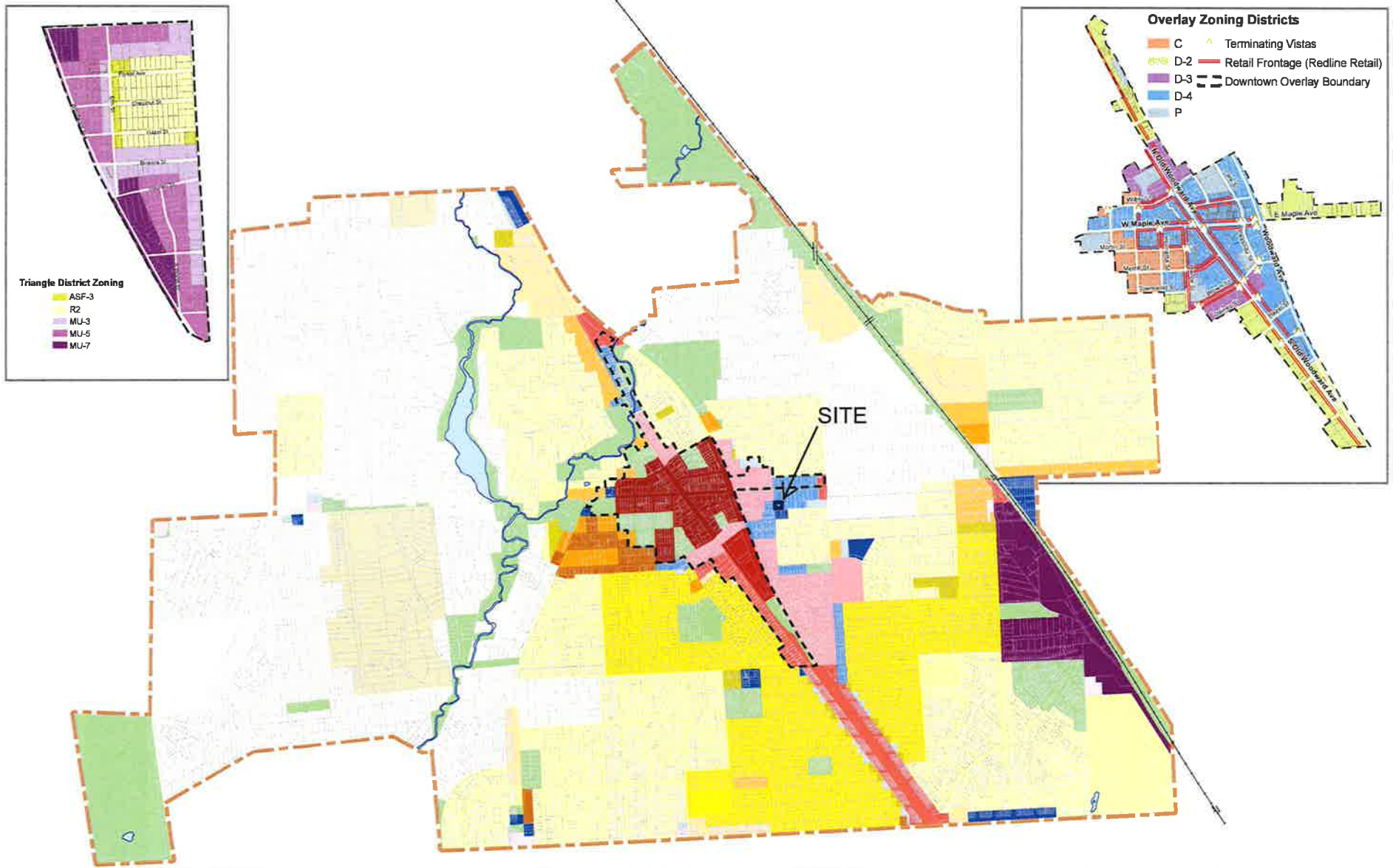
c/k/a 219 Elm Street, Birmingham, MI

Section 3. Vicinity Map

VICINITY MAP - ALL SEASONS OF BIRMINGHAM 2



Section 4. Birmingham Zoning Maps

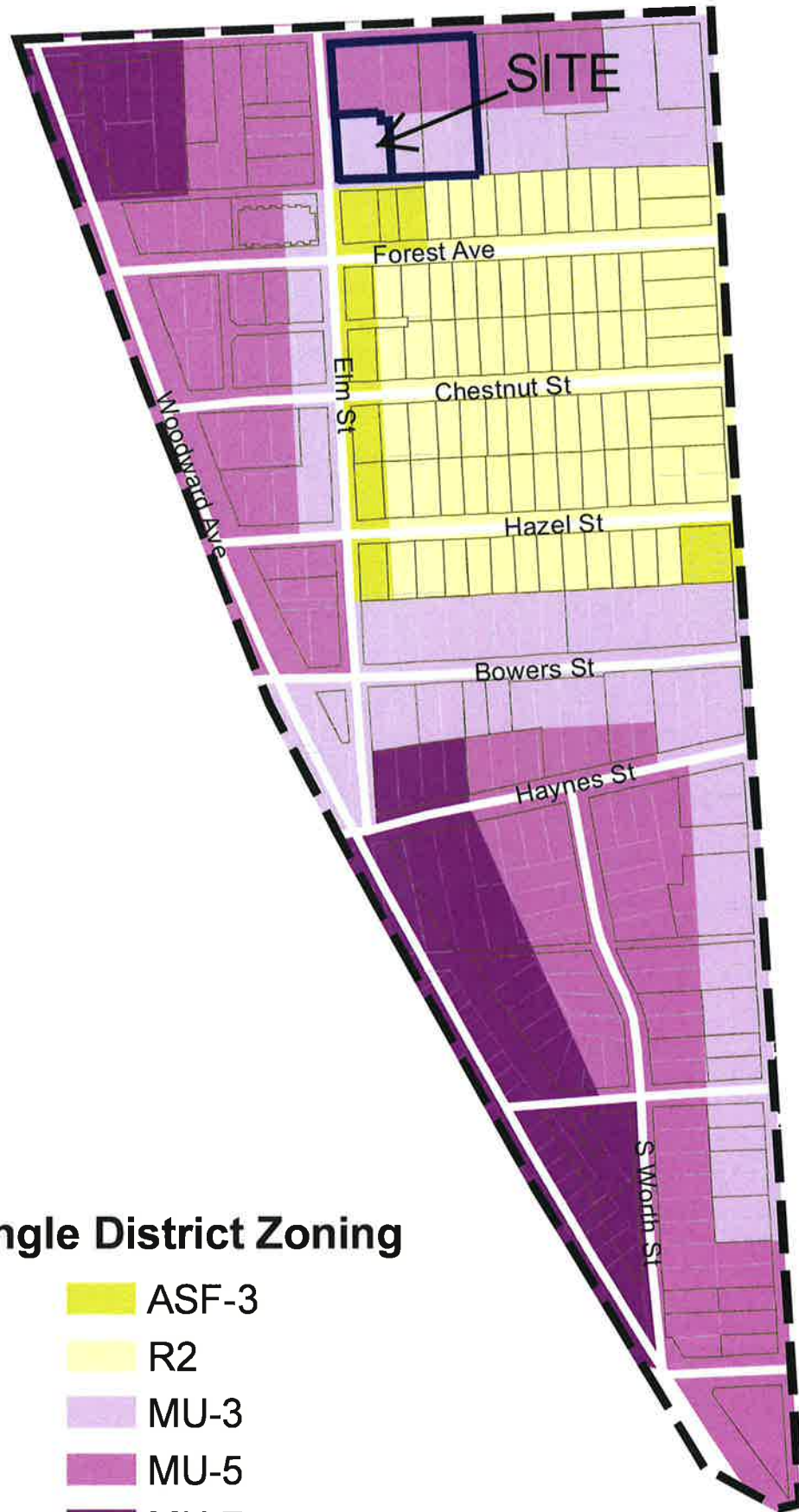


Coordinate System: State Plane Coordinate System Michigan South Zone 2113 Projection: Lambert Conformal
 Contour Units: International Feet, Datum: NAD83
 Data Sources: Oakland County GIS Utility, City of Birmingham
 Updated: July 14, 2008

City Of Birmingham Zoning Map

Zoning Districts

R1 Single-Family Residential	R7 Multiple-Family Residential	B-4 Business-Residential
R1-A Single-Family Residential	R8 Multiple-Family Residential	D-2 Office Commercial
R2 Single-Family Residential	MX Mixed-Use	D-1 Office
R3 Single-Family Residential	B-1 Neighborhood Business	P Parking
R4 Two-Family Residential	B-2 General Business	PP Public Property
R5 Multiple-Family Residential	B-2B General Business	D-3 Downtown Overlay Boundary
R6 Multiple-Family Residential	B-3 Office-Residential	



Triangle District Zoning

- ASF-3
- R2
- MU-3
- MU-5
- MU-7

Section 5. CIS Checklist - Supplemental Information

General Information

1. Name and Address of Applicant and Proof of Ownership
*See the CIS Cover Sheet for the Owner/Applicant's name and address.
See Section 2 for Proof of Ownership*
2. Name of Development
Maple Elm Development Company II, LLC
3. Address of Site and Legal Description of the Real Estate
This 0.35 acre parcel is located at 219 Elm Street, at the northeast corner of Elm Street and the alley just north of Forest Ave. The site has 138.61 ft of frontage along Elm Street and 114.20 ft along the alley. See the attached Preliminary Site Plan for the legal description of the property.
4. Name and Address of Land Surveyor
The land surveyor is Professional Engineering Associates, Inc. See the CIS Cover Sheet for address information.
5. Legend and Notes, including a graphic scale, north point, and date
See individual plans/maps for legends, notes, scales, north points and dates.
6. A separate Location Map
See Section 3 for a Vicinity Map and the attached Preliminary Site Plan for a 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
See Section 4 for Birmingham's Zoning Maps
8. Details of all proposed site plan changes
See the attached Preliminary Site Plan and this section

Planning & Zoning Issues

9. Recommended land use of the subject property as designated on the future land use map of the City's Master Plan
Appendix I – Key Triangle District Parcels identifies this site for a new residential building.
10. Goals and objectives of the City's Master Plan that demonstrate the City's support of the proposed development
All Seasons of Birmingham 2 is designed to meet the goals and objective of the Triangle Overlay District. It will:

- *Improve the appearance of the area by redevelopment with a new, visually attractive building and landscaping that conforms to the design standards of the zoning district.*
- *Improve economic & social vitality by encouraging diversity of use and opportunity for a variety of experiences by providing much-needed independent senior housing, which introduces new residents to the community and allows current older residents in the area to stay in the community, which encourages a wide age demographic in the area and benefits local businesses by retaining current customers and adding new ones.*
- *Improve comfort, convenience, safety and enjoyment of the pedestrian environment by increasing pedestrian traffic within the Triangle District, improving the sidewalks and providing right-of-way seating and lighting, and providing a building and site features located to improve the scale of the pedestrian walkways as they relate to the adjacent roadways.*
- *Encourage sustainable development... by providing a much-needed independent senior housing component to the area; and by providing this senior housing in an area that has businesses to support the needs of seniors, who in turn provide a wider customer base for those businesses.*
- *Protect integrity of established residential neighborhoods by providing a mixed-use development with a large residential component, and designating apartments for independent senior living, which will have less overall impact (traffic, noise, public safety, etc.) than standard commercial, office and residential uses.*

11. Whether or not the project is located within an area of the City for which an Urban Design Plan has been adopted by the Planning Board in which special design criteria or other supplemental development requirements apply.

The property is located in the Triangle Overlay District. The proposed development will conform to the design criteria and development requirements for the Triangle Overlay District.

12. The current zoning classification of the subject property.

The property is zoned MU-3.

13. The zoning classification required for the proposed development.

Multiple family dwellings are a permitted use in the MU-3 zoning district. Senior Independent Apartments are multiple family dwellings and are allowed in the MU-3 districts.

14. The existing land uses adjacent to the proposed project.

Senior Apartments to the north and east, Office uses to the south, and office/commercial uses to the west.

15. Complete the attached "Zoning Requirements Analysis" chart.

See Section 6 for the Zoning Requirements Analysis

Land Development Issues

16. A survey and site drainage plan.

See the attached Preliminary Site Plan.

17. Identify any sensitive soils on the site that will require stabilization or alteration in order to support the proposed development.

The soils report indicates the soils on site will support the proposed development. In some places, deeper or wider footings may be necessary due to areas of fill from previous site development, but this is not unusual for redevelopment projects. See Section 10 for the Soils Investigation.

18. Whether or not the proposed development will occur on a steep slope.

This site does not contain steep slopes.

19. The volume of excavated soils to be removed from the site and/or delivered to the site, and a map of the proposed haul route.

Based on preliminary calculations, we anticipate demolition of the building will require about 600 cy of engineered fill for the basement. Removal of the remaining asphalt/walks will leave the site at the approximate subgrade. Removal of approximately 200 cubic yards of soil from the site will be needed for construction of the small basement, building footings and building pad. These earthwork quantities will likely change with further, more detailed site design. The haul route for demolition and construction is anticipated to be north- or southbound on Woodward, a right turn onto Maple and a right turn on Elm, then a left turn into the alley and a left turn into the site. The haul route is subject to consultation and approval of the City. (See attached Haul Rout Map)

20. Identify the potential hazards and nuisances that may be created by the proposed development and the suggested methods of mitigating such hazards

Due to the infill nature of this development, with the building located directly adjacent to public sidewalks, there is a need to prohibit public access to the site during construction and protect pedestrians on the sidewalk. An 8' tall construction fence will be installed around the perimeter of the site throughout construction, and protective scaffolding and a wooden structure is proposed over the pedestrian sidewalk where it is adjacent to the building while the upper floors are being constructed.

Private Utilities

21. Indicate the source of all required private utilities.

Detroit Edison electric service is proposed to come from the existing overhead lines along the south side of the property. Consumers Energy gas service is proposed to come from the existing gas main in Elm Street. AT&T telephone and Comcast cable service is proposed to come from the existing overhead lines along the south side of the property. All proposed private utility services to the proposed building will be underground, and the exact location of the service lines will be determined by the individual utility companies later in the site design process.

22. Provide verification that all required utility easements have been secured for necessary private utilities.

Utility easements have not been secured at this time. The location of all necessary utility easements will be identified for the final site plan review and will be secured prior to the start of construction.

Noise Levels

23. Provide a reading of existing ambient noise and estimate future noise levels on the site.

See Section 7 for the Noise Impact Study which contains information regarding existing and potential noise levels on the site.

24. Indicate whether the project will be exposed to or cause noise levels which exceed those levels prescribed in Chapter 50, Division 4, Section 50-71 through 50-77 of the Birmingham City Code, as amended.

The operation of this proposed development will not exceed the noise levels prescribed in the Birmingham City Code. Given the small size of the site, its location in an urban setting, and its designation for a multi-story development, there will be a noise impact on the adjacent residential properties regardless of the type of development that occurs. The proposed use as Independent Senior Living apartments already goes a long way towards reducing the noise this site will generate. We will also specify high-efficiency mechanical units with low noise generation levels. To address potential noise concerns on the neighboring properties, we have:

- Positioned the Split-system compressor units serving the individual apartments on the roof so the noise generated by each unit is not directed straight at the neighboring property. The emergency generator for the elevator and key building functions will also be on the roof.*
- Operational functions generating intermittent noise will be scheduled during daytime hours. Emptying the dumpster (2 times per week, approximately 7 minutes each), and generator testing (1 time per months, 15 minutes each), can all be scheduled between 9 am and 5 pm.*
- Construction sound levels will be similar to other recent demolition and construction projects in the City. Noise levels will vary based on the stage of construction and the equipment used. Our research indicates an 85dB construction site noise level at 50' from the equipment.*
- Construction work on the site will be restricted to the hours specified in the City Code, and the contractors will be informed of the City's noise restrictions and operating hours.*

25. Indicate whether the site is appropriate for the proposed activities and facilities given the existing ambient noise and the estimated future noise levels of the site.

The proposed use of this site as Senior Independent Living apartments conforms to the MU-3 zoning district permitted uses. Noises generated by this development will be similar to, and most likely less than, noises generated by other permitted uses that could generate more vehicular traffic and more loading/unloading frequency. Existing ambient noise will not interfere with the intended use and occupancy of the proposed development.

Air Quality

26. Indicate whether the project is located in the vicinity of a monitoring station where air quality violations have been registered and, if so, provide information as to whether the project will increase air quality problems in the area.

See Section 14 for Air Quality Information. This site is located in the Southeast Michigan Air Quality District, with monitoring stations in Pontiac, Rochester, Oak Park

and Allen Park, as well as others in the district. This district has attained and surpassed the National Ambient Air Quality Standards for Carbon Monoxide, Nitrogen Dioxide, Ozone, Sulfur Dioxide, and particulate matter less than 10 microns, and has attained the standard for Annual and 24-hour Fine Particulates.

27. Indicate if the nature of the project or its potential users would be particularly sensitive to existing air pollution levels and, if so, indicate how the project has been designed to mitigate possible adverse effects.

Sensitivity to air pollution levels primarily depends on the individual person, but senior citizens may be more sensitive than much of the general public. Air quality in the area surpasses the EPA standards, and it continues to improve. In addition, each proposed apartment will have a heating/cooling system with air filtration, and the remainder of the building will also have heating/cooling systems with air filtration.

28. Indicate whether the proposal will establish a trend which, if continued, may lead to violation of air quality.

This proposed development will not establish a trend which may lead to a violation of air quality standards. The proposed Senior Independent Living apartments will generate less vehicular traffic than other more intense permitted uses, which means fewer emissions. All mechanical equipment for this proposed development will meet or exceed the requirements for air quality.

29. Indicate whether the proposed project will have parking facilities for more than 75 cars and indicate percentage of required parking that is proposed.

This site will have for less than 75 parking spaces. The development will include parking for approximately 27 cars, or about 1.5 spaces per each Senior Independent Living unit.

Environmental Design & Historic Values

30. Indicate whether there will be a demonstrable destruction or physical alteration of the natural or human-made environment on site or in the right-of-way (i.e. Clearance of trees, substantial re-grading, etc.).

The existing office building and associated site improvement will be demolished and removed from the site. The site is relatively flat and substantial re-grading will not be necessary. On-site trees and shrubs will be removed. The existing sidewalk in Elm Street, adjacent to this property, will be removed and reconstructed to conform to the Triangle District design standards.

31. Indicate whether there will be an intrusion of elements out of character or scale with the existing physical environment (i.e. Significant changes in size, scale of buildings, floor levels entrance patterns, height, materials, color or style form that of surrounding developments).

The proposed building is taller than other buildings in the area, but the proposed building height conforms to the MU-3 zoning requirements for new construction within the Triangle Overlay District.

32. Indicate all elements of the project that are eligible for LEED points if the building were to be LEED certified (i.e. Extensive use of natural daylight, use of low voc paint, use of renewable/recycled resources, energy efficient mechanical systems, use of wind and solar power, geothermal heating, etc.).

At this point, the project is not fully designed. We cannot be certain which building elements would be eligible for LEED points without final architectural, mechanical, electrical and plumbing plans, but elements of the project thus far that would be eligible for LEED points are:

- *Individual HVAC controls in each apartment will provide a high level of thermal comfort system controlled by individual occupants.*
- *The building and site will be designated "no smoking", which will prevent or minimize exposure of building occupants, indoor surfaces, and ventilation air distribution systems to environmental tobacco smoke.*
- *The proposed recycling program will facilitate the reduction of waste generated by building occupants that is hauled to and disposed of in landfills.*
- *The project is located within ¼ mile of 2 bus stops for another method of alternative transportation*
- *The site is in an urban area with existing infrastructure; the site was previously developed; the site is within ½ mile of 10 services; and the site offers pedestrian access to the services.*
- *Developing this site avoids development of inappropriate sites to reduce environmental impact.*
- *The site development plans will reduce pollution from soil erosion, sedimentation and dust generation by incorporating Best Management Practices for soil erosion and sedimentation control.*

33. Indicate whether the proposed structure will block or degrade views, change the skyline or create a new focal point.

The proposed building is taller than other buildings in the area, and will change the skyline and change some views from adjoining properties, but the proposed building height conforms to the MU-3 zoning requirements for new construction within the Triangle Overlay District.

34. Indicate whether there will be objectionable visual pollution introduced directly or indirectly due to loading docks, trash receptacles or parking, and indicate mitigation measures for same.

The trash and recycling receptacles will be stored within the building. Parking will be located in attached garages or off the alley. There is no need for a loading area. This is a strictly residential building.

35. Indicate whether there will be an interference with or impairment of ambient conditions necessary for the enjoyment of the physical environment (i.e. Vibration, dust, odor, heat, glare, etc.).

This development will not generate vibrations, dust, odor, heat, glare, etc., that would interfere with or impair the ambient conditions necessary for the enjoyment of the physical environment.

36. Indicate whether the project area and environs contain any properties listed on the National Register of Historic Places or the City's inventory of historic structures.

This property does not appear on the National Register of Historic Places and is not included in the City's inventory of historic structures.

37. Provide any information on the project area that the State Historic Preservation Office (SHPO) may have.

This property does not appear in a search of state-registered historic properties/structures listed in the State Historic Preservation Office database, and SHPO staff indicated it is not aware of any information relating to this property that would interfere with or limit its proposed use.

38. Indicate whether there will be other properties within the boundaries or in the vicinity of the project that appear to be historic and thus require consultation with the SHPO as to eligibility for the National Register.

None of the properties adjacent to this site appear historic, and none appear in a search of state-registered historic properties/structures listed in the State Historic Preservation Office database.

39. Indicate whether the Department of the Interior has been requested to make a determination of eligibility on properties the SHPO or HDC deems eligible and affected by the property.

The existing office building is not on the National or State Historic Registry.

40. Provide proof that the HDC has been given an opportunity to comment on properties that are listed on or have been found eligible for the National Register and which would be affected by the property.

This property is not listed as historic nor is it in a historic district, therefore the HDC will not be involved in this project.

Refuse

41. Indicate whether the existing or planned solid waste disposal system will adequately service the proposed development including space for separation of recyclable materials.

Our experience with our existing facilities indicate we will require (as planned) one small dumpster and two (2) 95 gallon recycling bins to serve this site. Refuse containers will be stored within a rubbish room in the building and rolled out on waste pickup days.

42. Indicate whether the design capacity of the existing or planned solid waste disposal system will be exceeded as a result of this project.

Waste Management and SOCRRA have been contacted and have confirmed their availability to serve the planned solid waste disposal and recycling needs of this site.

Sanitary Sewer

43. Indicate whether the existing or planned waste water systems will adequately service the proposed development.

See the attached Preliminary Site Plan. Sanitary sewer service shall be provided by connection to the existing 18" combined sewer in Elm Street. The proposed sewer lead will be designed to adequately serve this development.

44. Indicate whether the design capacity of these facilities will be exceeded as a result of the project.

The existing 18" combined sewer has adequate capacity to serve this proposed development.

45. Indicate the elements of the project that have been incorporated to reduce the amount of water entering the sewer system (such as low flush toilets, energystar appliances, restricted flow faucets, grey water recycling, etc.).

Building design will include low-flow toilets and faucets, and energy star appliances. In addition, seniors generally use less water than the average apartment resident. The available food/kitchen service and laundry service available through the adjacent All Seasons building may further reduce water usage because they are more efficient (economy of scale) than individuals separately washing their own clothes and preparing their own meals.

Storm Sewer

46. Indicate whether the existing or planned storm water disposal and treatment system will adequately service the proposed development.

See the attached Preliminary Site Plan. The planned storm water management system for this site will be designed to adequately serve the development.

47. Indicate whether the design capacity of these facilities will be exceeded as a result of the project.

The site is currently developed, with an ultimate outlet to the public alley sewer. The proposed development has approximately 3100 s.f. more impervious surface than the existing site, and will generate a little more runoff. The capacity of the existing combined sewer will not be exceeded due to this proposed development because the planned storm water management system will store the small amount of additional runoff and match the current storm water outflow rate for this site.

48. Indicate the elements of the project that have been incorporated to reduce the amount of storm water entering the sewer system (such as the use of pervious concrete, rain gardens, grey water recycling, green pavers, etc.).

Due to the size of the site, the layout of the proposed development, and the soil conditions, there are no feasible options to significantly reduce the quantity of runoff generated by this site. The soils are stiff sandy clay and silty clay up to 20' deep, prohibiting percolation. The small size of the site prevents any rain gardens or other similar features.

Water Service

49. Indicate whether the municipal water utility or on site water supply system is adequate to service the proposed development.

See the attached Preliminary Site Plan. Water service for this development will be provided by the existing 12" public water main in Elm Street. Previous flow test information provided by the Fire Department indicates an adequate water supply from this public water main.

50. Indicate whether the water quality is safe from both a chemical and bacteriological standpoint.

Birmingham's Annual Water Quality Report indicates the City's public water supply surpasses the EPA and MDEQ water quality standards, and is safe from a chemical and bacteriological standpoint.

51. Indicate whether the intended location of the service will be compatible with the location and elevation of the main.

The planned water service for this development will be designed in accordance with City standards to be compatible with the location and elevation of the public water main.

Public Safety

52. Whether or not the project location provides adequate access to police, fire and emergency medical services.

The site has frontage on Elm Street and a public alley, which provides adequate access to the property for emergency vehicles and public safety purposes.

53. Whether or not the proposed project design provides easy access for emergency vehicles and individuals (i.e. Are there obstacles to access, such as one-way roads, narrow bridges, etc.).

See the attached Preliminary Site Plan. There are no obstacles that impede access to this site. The proposed site layout provides vehicular access along Elm Street and the public alley, and from the rear driveway off the alley. All have sufficient overhead clearance and turn radii for emergency vehicles.

54. Whether or not there are plans for a security system which can be expanded, and whether approval for the same has been granted by the police department.

Due to the number of residents, their ability to leave and enter the building as needed, a third-party monitored security system is not proposed. The building will be designed with security features and an internal security system. A member of the management staff will be onsite 24 hours per day at the All Seasons building 1. The lobby doors will be controlled via an intercom system connected to the apartments. All other building access doors will be locked, with access by a master key or by keypad code. All apartment units will be equipped with an emergency call system to notify the front desk/management offices when assistance is needed.

55. Detailed description of all fire access to the building, site, fire hydrants and water connections.

This development shall conform to all applicable fire codes for layout, access, hydrant coverage and water connections. See the attached Preliminary Site Plan and Preliminary Architectural Plans for site and building information.

56. Whether or not there are plans for adherence to all City and NFPA fire codes.

The proposed site and building will be designed to conform to applicable City and National fire codes.

57. Proof that one elevator has been designed to accommodate a medical cart.

See the attached Preliminary Architectural Plans. The elevator for this proposed building shall be designed to accommodate a medical cart.

58. Detailed specifications on all fire lanes/parking lot surfaces/alleys/streets to demonstrate the ability to accommodate the weight of emergency/fire vehicles.

The pavement specifications for this site have not been designed. All site pavement will be designed to accommodate the weight of fire and emergency vehicles.

59. Detailed description of all fire suppression systems.

The building fire suppression system has not been designed at this time. The fire suppression system of the building shall meet all applicable fire codes. Technical plans for the system are not completed at this time. Upon their completion, security system plans will be provided to the police department for review and approval.

Transportation Issues

60. Provide completed FORM A – Transportation Study Questionnaire (Abbreviated).

See Section 11 for the Traffic Impact Analysis

61. Provide completed FORM B – Transportation Study Questionnaire if required by the City's transportation consultant.

We will submit Form B if the City's transportation consultant requires it.

62. Indicate whether transportation facilities and services will be adequate to meet the needs of all users (i.e. Access to public transportation, bicycle accommodations, pedestrian connections, disabled, elderly, etc.).

The transportation facilities available to the site (bus service, train service, shuttle bus service, pedestrian connections, bicycle facilities) will be adequate to serve the needs of the active elderly residents of the site.

63. Indicate how the project will improve mobility of all groups by providing transportation choices.

The site sidewalk connects to the right-of-way walk for pedestrian travel, there is a Smart bus stop at the site and an Amtrak station nearby, a shuttle bus is available for the residents' use, and on-site parking is provided for private vehicles.

64. Indicate how users of the building will be encouraged to use public transit and non-motorized forms of transportation.

There is a SMART bus stop at the corner of Maple Road and Elm Street, and SMART routes serve much of the Metropolitan Detroit area. For longer trips, the Amtrak station is about 1/2 mile east, near another SMART stop. Our office staff will have information for residents about bus routes and schedules, and staff will be available to help residents plan bus and train trips. Also, All Seasons of Birmingham will provide regularly scheduled shuttle service for shopping, doctor visits, church services, recreational outings and similar daily activities within a 5-mile radius. An exterior bike rack is available and rarely used in a protected area under the second story of the adjacent All Seasons building.

65. Indicate the elements that have been incorporated into the site and surrounding right-of-way to encourage mode shift away from private vehicle trips.

We find that our senior residents prefer not to drive, and use their cars only when absolutely necessary. The location of this site, close to downtown shopping and services, makes walking a very feasible alternative to driving. Amenities in the

adjacent All Seasons building will be available to the residents of All seasons 2 (barber shop/beauty salon, bank, meal programs, etc.) to reduce the need for residents to drive. In addition, All Seasons of Birmingham will provide transportation services for residents, including regularly scheduled shuttle service for shopping, doctor visits, church services, recreational outings and similar daily activities within a 5-mile radius, plus transportation to all planned off-site activities. Bike racks will be included to encourage cycling.

66. Indicate the elements of the project that have been provided to improve the comfort and safety of cyclists (such as secured covered bicycle parking, lockers, bike lanes/paths, bicycle share programs, etc.).

An exterior bike rack is available and rarely used in a protected area under the second story of the adjacent All Seasons building. Bike storage would occur as needed within the Units.

67. Indicate the elements of the project that have been provided to improve the comfort and safety of pedestrians (such as wheel chair ramps, crosswalk markings, pedestrian activated signal lights, bulb outs, benches, landscape lighting, etc.).

A bench is provided on the right-of-way walk. Wall sconse style porch lighting and garage door lighting will provide a safe and pleasant level of visibility. Primary and secondary building entrances, and site walkways will meet federal accessibility standards.

68. Indicate the elements of the project that have been provided to encourage the use of sustainable transportation modes (such as receptacles for electric vehicle charging, parking for scooters/smart cars, etc.).

An exterior charging station will be provided for charging electric vehicles, but due to the parking constraints on this site, specific parking spaces cannot be reserved for use by electric cars or smart cars only. Provisions will be made to provide a charging station for residents with garages upon their request.

Natural Features

69. Indicate whether there are any visual indicators of pond and/or stream water quality problems on or near the site.

There are no ponds or streams on or adjacent to this site.

70. Indicate whether the project will involve any increase in impervious surface area and, if so, indicate the runoff control measures that will be taken.

This site was developed previously. This proposed re-development project has approximately 3100 square feet more impervious surface than the previous development. The resulting minor increase in runoff will be stored in an enlarged storm sewer pipe and the storm sewer outlet will be restricted to match the rate of runoff from the existing site.

71. Indicate whether the project will affect surface water flows on water levels of ponds or other water bodies.

This development will not affect surface flows or water levels of any water bodies. The runoff rate from the site into the existing combined sewer will not increase, the increase in runoff quantity is very small, and there are no nearby ponds or streams.

72. Indicate whether the project may affect or be affected by a wetland, floodplain or floodway.

This development will not affect any wetland, floodplain or floodway. There are no wetlands, floodplains or floodways on or adjacent to this site.

73. Indicate whether the project location or construction will adversely impact unique natural features on or near the site.

This development project will not adversely impact any unique natural feature on this site or adjacent sites.

74. Indicate whether the project will either destroy or isolate a unique natural feature from public access.

This development project will not destroy or isolate any unique natural feature on this site or adjacent sites from public access.

75. Indicate whether any unique natural feature will pose safety hazards for the proposed development.

No unique natural feature poses a safety hazard for this development project will not adversely impact any on this site or adjacent sites

76. Indicate whether the project will damage or destroy existing wildlife habitats.

This project will not damage or destroy existing wildlife habitats.

Other Information

77. Any other information as may reasonably be required by the City to assure an adequate analysis of all existing and proposed site features and conditions.

Any additional information requested by the City, pertinent to their review of our proposed Senior Independent Living project, will be assembled in a timely manner and submitted to the City for approval.

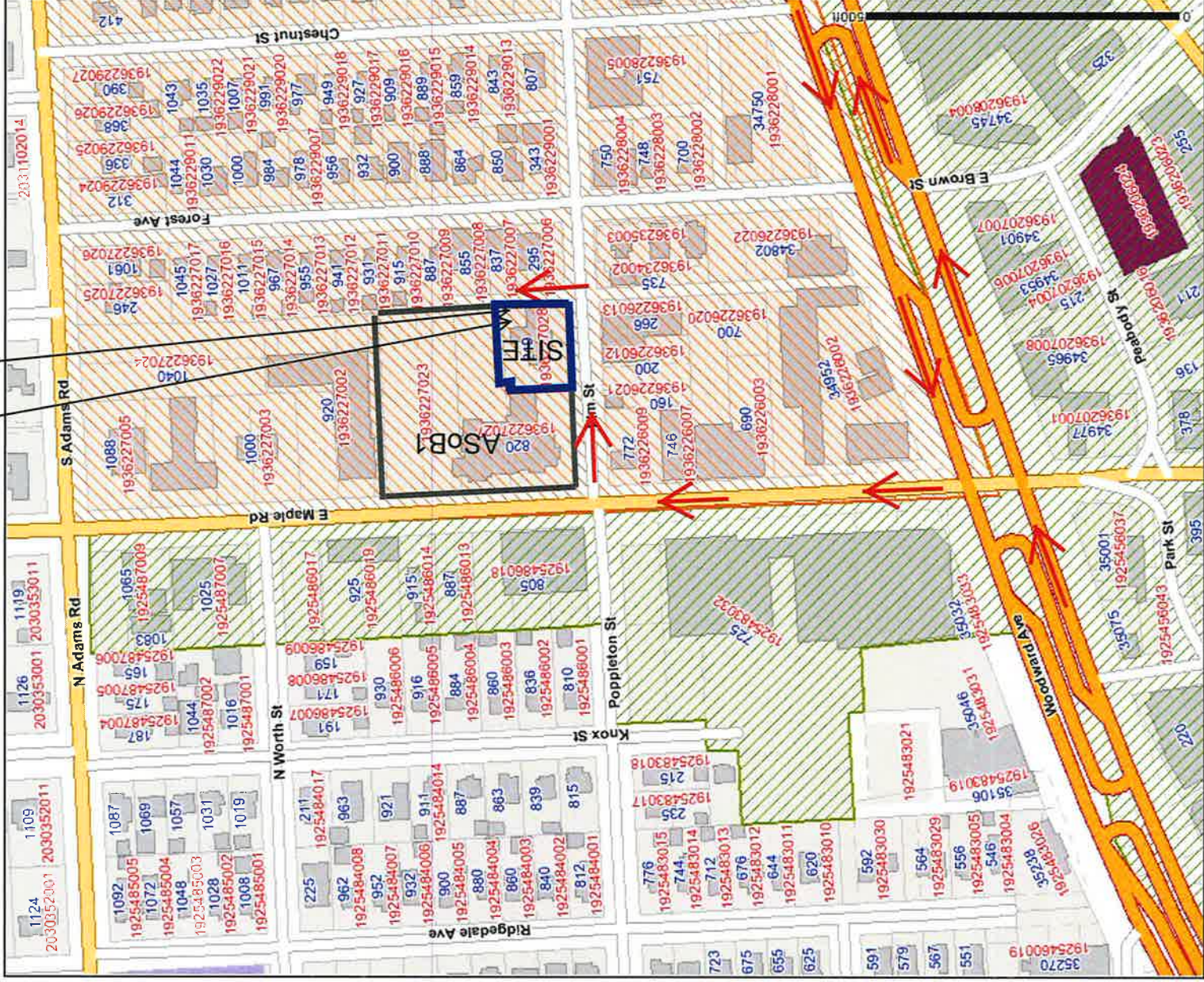
Professional Qualifications

The CIS checklist, plans and studies for All Seasons of Birmingham were prepared by a collaboration of: Xander Bogaerts and others at Alexander V. Bogaerts & Associates, P.C., licensed architects with current registrations in the State of Michigan; John Thompson and others at Professional Engineering Associates, Inc., licensed professional engineers with current registrations in the State of Michigan; Darren Brown, P.E. at Kolano & Saha Engineers, Inc., licensed professional engineers with current registrations in the State of Michigan; Pamela Chapman and others at ASTI Environmental, licensed professional engineers and environmental consultants with current registrations in the State of Michigan; and the Maple Elm Development Company II LLC, a partnership with extensive experience in the development and operation of successful residential and commercial properties throughout Michigan and the U.S.

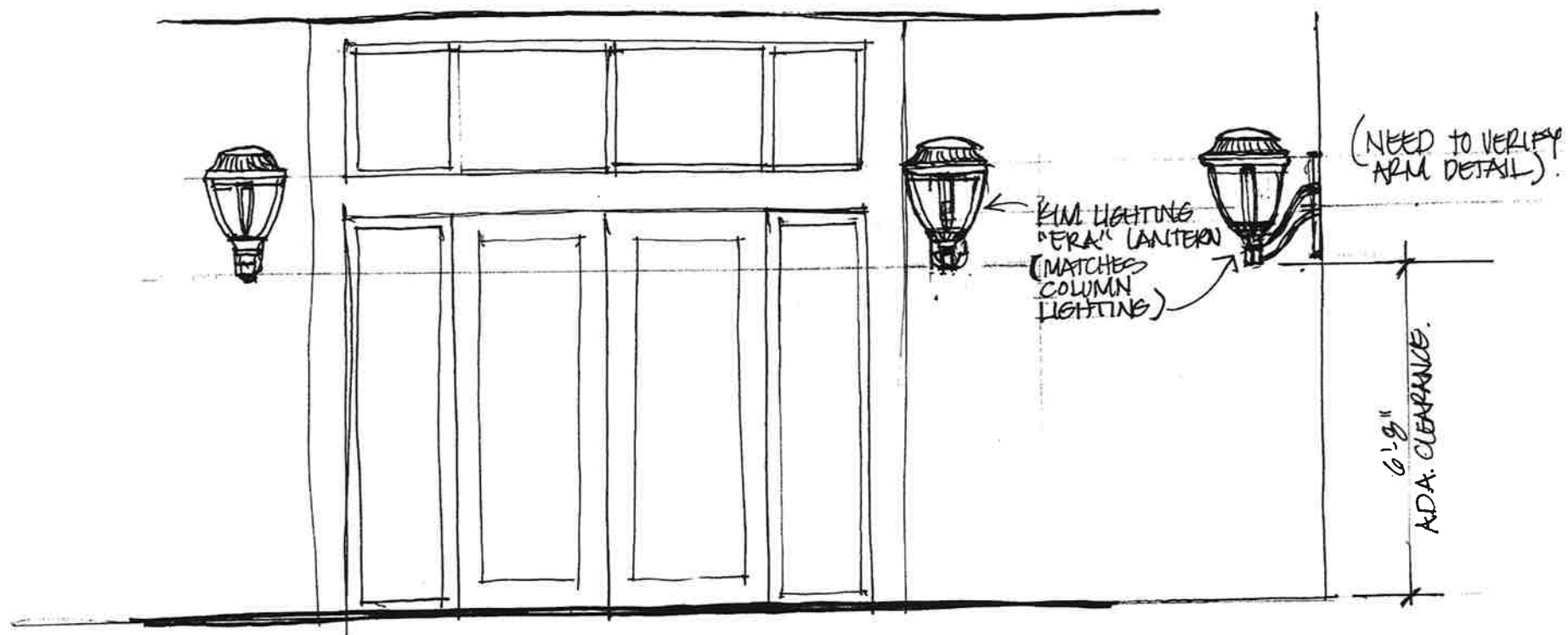
HAUL ROUTE MAP - ALL SEASONS OF BIRMINGHAM 2

- City Boundary
- Railroad
- Roads
- Major Roads
- State Roads
- Streets
- Regulating Plan Boundaries
- Downtown
- Triangle
- Parking Structures
- Buildings (2000)
- Lakes and Rivers
- Parcels
- Lots
- Schools
- Parks
- Right of Way

DEMOLITION
ENTRANCE
CONSTRUCTION
ENTRANCE



This map is neither a legally recorded map nor a survey and is not intended to be used as one. This map is a compilation of records, information and data located in various city, county, state and federal offices and other sources regarding the area shown, and is to be used for reference purposes only. The user of this map acknowledges that the City/County shall not be liable for any damages, and expressly waives all claims, and agrees to defend, indemnify, and hold harmless the City/County from any and all claims brought by the User, its employees or agents, or third parties which arise out of the User's access or use of data provided. Map Created: 5/21/2012



ALL SEASONS OF BIRMINGHAM : NEW ENTRY WALL LIGHT
 SCALE: 1/2" = 1'-0"

WALL FIXTURE DETAIL

Era[®] Lantern

19" Bottom or Top Mount Luminaire

SITE / ROADWAY



FEATURES

- Use 19" Era Lantern for pedestrian scale applications up to 200W
- Heritage style meets modern performance
- Dark-Sky compliant, full-cutoff optics with flat glass lens
- Pulse start metal halide, high pressure sodium, compact fluorescent and induction sources
- Three arm options; Single Straight, Single Curved, and Double Curved
- Three decorative accent options; medallion with DC Arm, leaflets with SS Arm, and top housing finial
- Unparalleled Selection of arm and pole options via Kim Lighting's online configurator

ORDERING INFORMATION (Example)

1A			LET	19	SS	H3	100PMH120	WH	LEAF/A-30	HSAS14-534188SA-HA11S/WH		
MOUNTING			SIZE			REFLECTOR			FIXTURE FINISH		POLE / POLE ARM	
• FM	Flush Mt.	1.0	19 19" Dia.			H1	Horizontal Type I	BL	Black	See p. 762-765 for ordering no., pole and arm EPA. Use small arms only. 1W Wall Mount arm not included and must be ordered separately.		
• PT	Pipe Tenon Mt.	1.0				H2	Horizontal Type II	DB	Dark Bronze			
			SUPPORT			H3	Horizontal Type III	LG	Light Gray			
• 1A	1 Arm Side Mt.	0.7	LEB Bottom Mt.			H4	Horizontal Type IV	SG	Stealth Gray™			
• 2B	2 Arm Side Mt.	1.4	LET Top Mt.			H5	Horizontal Type V	PS	Platinum Silver			
• 3Y	3 Arm Side Mt.	2.1				V3	Vertical Type III	WH	White			
• 4C	4 Arm Side Mt.	2.4				V5	Vertical Type V ⁵	CC	Custom Color*			
• 1W	Single Wall Mt.	n/a				*Consult representative						
									FIXTURE OPTIONS			
									LS	Lexan Lantern End.	HS	Houseside sh
									▲	Acrylic Lantern End.		flat glass*

NOTE: EPA is for Fixture only

ELECTRICAL MODULE^{1,2,3}

70PMH	70W PMH	70HPS	70W HPS	42PL	42W PL	85IF	85W IF ⁵
100PMH	100W PMH	100HPS	100W HPS	57PL	57W PL	NEW	
150PMH	150W PMH	150HPS	150W HPS				
175PMH	175W PMH ²						
200PMH	200W PMH ²						

Voltages	Voltages	Voltages	Voltages
120 120V	120 120V	120 120V	120 120V
208 208V ⁴	208 208V ⁴	208 208V ⁴	208 208V ⁴
240 240V ⁴	240 240V ⁴	240 240V ⁴	240 240V ⁴
277 277V	277 277V	277 277V	277 277V
347 347V	347 347V		
480 480V	480 480V		

¹ Optional Electronic Ballast is variable voltage ballast for use in 120 through 277 voltages and 50 or 60 Hz. For use with Pulse start Metal Halide lamps only. Consult factory for other usages. Add E to Electrical Module number e.g.: 200PMH277E.

² On LEB19/LET19, 175PMH120 through 277 and 200PMH120 through 277, Electrical Module is vertical only.

³ Kim Lighting recommends coated lamps.

⁴ Constant wattage isolated ballast is required on all 208V and 240V Canadian orders.

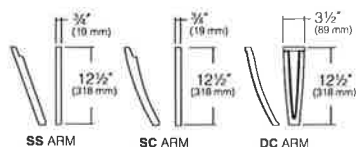
⁵ 85W IF available in type V distribution only.

NOTE: Due to the Energy Independence and Security Act (EISA) of 2007, Kim Lighting can no longer supply probe start Metal Halide ballasts with its luminaires, effective January 1, 2009. Contact Kim Lighting for availability of replacement ballasts for warranty service claims. (Visit www.aboutlightingcontrols.org or the Library of Congress website for more details).

FIXTURE OPTIONS

LS	Lexan Lantern Encl.	HS	Houseside shield flat glass*
A	Acrylic Lantern Encl.	HSC	Houseside shield sag glass*
LEAF	Leaflets, top & bottom of arm (SS only)	SF	120 Volt Single Fuse
MDL	Medallions, top of arm (DC only)	DF	208 Volt Double Fuse
TF	Finial (bottom mt. fixture only)	DF	240 Volt Double Fuse
FG	Flat glass for vert. lamp	SF	277 Volt Single Fuse
A-30	120 Volt photocell	SF	347 Volt Single Fuse
A-31	208 Volt photocell	DF	480 Volt Double Fuse
A-32	240 Volt photocell	*Not for use with Type V	
A-33	277 Volt photocell		
A-34	480 Volt photocell		
A-35	347 Volt Photocell		

PMH = Pulse Start Metal Halide
HPS = High Pressure Sodium
PL = Compact Fluorescent
IF = Induction Fluorescent



TOP MOUNT ADAPTER



CAP FOR TOP MOUNT



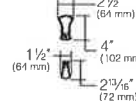
BOTTOM MOUNT ADAPTER



TF FINIAL



MDL MEDALLION



LEAF LEAFLETS

Section 6. Zoning Requirements Analysis



ZONING REQUIREMENTS ANALYSIS

Development Standard	Required	Proposed	Variance Required
Zoning Classification	MU-3	MU-3	None
Front Setback	0' to 5'	0' to 5' (on Elm)	None.
Rear Setback	20'	20'+	None
Side Setback	0' 10' for walls w/ windows	0'+	None
FAR - Percentage	N/A	N/A	None
FAR – Square Footage	N/A	N/A	None
Open Space – Percentage	N/A	N/A	None
Open Space – Square Footage	N/A	N/A	None
Number of Residential Units	None Specified	24	None
Minimum Floor Area	None Specified	32,702 sf.	None
Maximum Height	42' in MU-3, 66' w/ bonus stories	less than 66' (61' est.)	None
Parking	0.5 spaces per unit = 12 spaces	27 spaces	None
Loading	1- 12'x40' space	only loading is for garbage collection in the alley	None
Screening	6' masonry wall @ residential 3' masonry wall @ parking	N/A N/A	None

Section 6. Zoning Requirements Analysis



ZONING REQUIREMENTS ANALYSIS

Development Standard	Required	Proposed	Variance Required
Zoning Classification	MU-5 & MU-3	MU-5 & MU-3	None
Front Setback	0' to 5'	0' to 5' (on Elm) 2' to 9' on Maple, due to walk widening & bldg offsets	None. Waiver from P.B. is needed for front setback adjustment
Rear Setback	20'	20'+	None
Side Setback	10' for walls w/ windows	20'+	None
FAR - Percentage	N/A	N/A	None
FAR – Square Footage	N/A	N/A	None
Open Space – Percentage	N/A	N/A	None
Open Space – Square Footage	N/A	N/A	None
Number of Residential Units	None Specified	131, including 8 live/work	None
Minimum Floor Area	None Specified	150,449 sf.	None
Maximum Height	66' in MU-5 42' in MU-3	50'10" in MU-5 39'8" in MU-3	None
Parking	0.5 spaces per unit = 66 spaces	77 spaces	None
Loading	1- 12'x40' space	1- 13'x40' space	None
Screening	6' masonry wall @ residential 3' masonry wall @ parking	6' masonry wall @ residential 3' masonry wall @ parking	None

Section 7. Noise Impact Study

Senior Independent Living Apartments are a Permitted Residential Use in this district. This site will generate noise appropriate for this residential use. This site will likely generate less noise than a commercial use. Darren Brown of Kolano & Saha Engineers Inc. has been contracted to perform the required Noise Study. The resulting study will be provided to the City as soon as it is available.

Section 8. Traffic Impact Study

Senior Independent Living Apartments are a Permitted Residential Use in this district. This site will generate traffic appropriate for this Senior Residential use. This site will generate less traffic than a commercial use.

Below is the ITE Trip Estimates for this proposed use.

Land Use	ITE Code	Amount	Units	Average Daily Traffic (vpd)	AM Peak Hour (vph)			PM Peak Hour (vp)		
					In	Out	Total	In	Out	Total
Multi-Family Home (Mid-Rise)	221	25	D.U.	135	2	7	9	7	5	12

Because of this site's location so close to shopping, dining and services, and the general nature of seniors to avoid driving when possible, we expect many days will have far fewer trips than indicated.

Section 9. Phase I Environmental Site Assessment

Please note that this is a partial copy of the full Phase I ESA Report, with some maps & database search pages omitted for brevity. A full copy has been provided to the Planning Department.

PHASE I ENVIRONMENTAL SITE ASSESSMENT

**219 ELM STREET
BIRMINGHAM, MICHIGAN**

Æ Project Number 10-4068-715

December 14, 2010



Applied *Eco*Systems-Great Lakes, Inc.
Environmental Management, Consulting and Field Services
An Affiliate of Keystone Environmental, Inc.

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TABLE OF CONTENTS

EXECUTIVE SUMMARY	i
1.0 INTRODUCTION	1
1.1 Purpose.....	1
1.2 Detailed Scope of Services	2
1.3 Significant Assumptions	5
1.4 Limitations and Exceptions.....	6
1.5 Special Terms and Conditions	7
1.6 User Reliance	8
2.0 SITE DESCRIPTION	9
2.1 Property Location.....	9
2.2 Current Uses of Property	9
2.3 Current Adjoining Land Uses	10
3.0 USER PROVIDED INFORMATION.....	10
3.1 Title Records	10
3.2 Environmental Liens or Activity and Use Limitations.....	11
3.3 Specialized Knowledge	11
3.4 Commonly Known or Reasonably Ascertainable Information.....	11
3.5 Valuation Reduction for Environmental Issues	11
3.6 Owner, Property Manager, and Occupant Information	11
3.7 Reason for Performing Phase I ESA.....	11
3.8 Other	11
4.0 RECORDS REVIEW	12
4.1 Historical Environmental Reports.....	12
4.2 Federal and State Regulatory Database Search	12
4.3 Local Government Records	14
4.4 Chain of Title	15
4.5 Land Patents.....	15
4.6 Physical Setting Sources	16
4.7 Historical Use Information on the Property	18
4.8 Historical Use Information on Adjoining Sites	35

5.0	SITE RECONNAISSANCE.....	35
5.1	Methodology and Limiting Conditions.....	35
5.2	General Site Setting	36
5.3	Exterior Observations	37
5.4	Interior Observations	39
6.0	INTERVIEWS.....	42
6.1	Interview with Owner	43
6.2	Interview with Site Manager.....	43
6.3	Interviews with Occupants.....	43
6.4	Interviews with Local Government Officials	43
6.5	Interviews with Others	43
7.0	FINDINGS.....	44
8.0	OPINION.....	45
9.0	CONCLUSIONS.....	45
10.0	DEVIATIONS.....	45
11.0	ADDITIONAL SERVICES	46
11.1	Asbestos	46
11.2	Lead-Based Paint Hazards	47
11.3	Microbial Growth and Moisture Intrusion.....	47
11.4	Air Emissions.....	47
11.5	Wetlands	47
11.6	Radon	48
11.7	Groundwater Flow	48
11.8	Stormwater	49
11.9	Spill Plans	49
11.10	Abandoned Wells.....	49
11.11	Abandoned Septic Systems.....	50
12.0	REFERENCES.....	50
13.0	SIGNATURES OF ENVIRONMENTAL PROFESSIONALS	51
14.0	QUALIFICATIONS OF ENVIRONMENTAL PROFESSIONALS	52

ATTACHMENTS

Site Diagram

Local Government Records

Consumers Energy Records

Environmental Regulatory Database Report

EXECUTIVE SUMMARY

Applied *EcoSystems*-Great Lakes, Inc. (Æ) has conducted a Phase I Environmental Site Assessment (ESA) for the site identified as 219 Elm Street, Birmingham, Michigan (hereafter referred to as the “property”). The Phase I ESA consisted of an historical property review, site reconnaissance, and government records search, as summarized below.

The property consists of 0.359 acre of land developed with an approximately 5,368 square-foot commercial structure.

The purposes of the Phase I ESA are to identify discoverable recognized environmental conditions (RECs), as defined by ASTM, that may represent an environmental liability as well as to evaluate the potential for other non -ASTM scope business environmental risks.

Site History

Based on review of historical records and interviews with individuals familiar with the subject property, the subject property was initially developed in 1927 with the existing structure. The building was utilized as a residence until at least the 1950s. From the 1950s to at least the 1970s, the building was used as a day care and a home furnishing shop. In the 1980s, the building was renovated into office space. Since that time, the building has operated solely for commercial office use.

A filling station was historically located adjacent to the north of the subject property. The number or locations of underground storage tanks (USTs) were not determined. The USTs were not registered with the Department of Natural Resources and Environment (DNRE); therefore, no regulatory information regarding the site is available. Due to the unknown status of the site, it is considered a REC to the subject property.

Site Reconnaissance

At the time of the site reconnaissance, the subject property was developed with a two-story commercial office structure. Remaining portions of the property consisted of asphalt parking areas and lawn areas. No evidence of USTs, aboveground storage tanks (ASTs), significant chemical spills, or improper waste disposal was observed during the site reconnaissance.

Federal and State Government Records

A search of federal and state environmental database records was conducted in order to identify whether the subject property or sites in the vicinity are believed to represent a potential environmental concern. The subject property was not listed within the database report. Proximate sites were identified within the database report but are not considered concerns based on status and distance from the subject property.

Local Government Records

Æ reviewed or attempted to review records from the Birmingham Building and Fire Departments, the Oakland County Equalization Department, and the Oakland County Health Department. Records provided general building and property information.

Interviews

An interview was conducted with a representative of the ESA user, Mr. Mark Turnbull; the current property owner, Mr. Leo Savoie; a representative of the Birmingham Building Department, Mr. Mario Mendoza; and a representative of the Birmingham Fire Department, Fire Marshal Charlie Monti. The referenced individuals were not personally aware of RECs associated with the subject property.

Conclusion - ASTM RECs

Æ has performed a Phase I ESA in conformance with the scope and limitations of the ASTM E 1527-05 for the site identified as 219 Elm Street, Birmingham, Michigan. Any exceptions to, or deviations from, this practice are described in Section 10.0 of this report. This assessment has revealed no evidence of RECs in connection with the property.

Conclusion - Business Environmental Risks

Section 11 provides the detail of limited business environmental risk evaluations conducted beyond ASTM E 1527-05.

Of those business environmental risks evaluated, the following should be noted:

- According to the National Emission Standards for Hazardous Air Pollutants (NESHAP), the building must be inspected for asbestos prior to all renovations and demolitions, and a 10-day notification must be submitted to the Michigan Department of Natural Resources and Environment - Air Quality Division; and
- Due to the construction date of the building, the Occupational Safety and Health Administration (OSHA) requires an asbestos assessment and, if asbestos building materials are identified, completion of an Operation and Maintenance Plan.

1.0 INTRODUCTION

Æ completed a Phase I Environmental Site Assessment (ESA) for the site identified as 219 Elm Street, Birmingham, Michigan. The Phase I ESA was conducted under the terms of Æ's Proposal Number 10-4068-715 and Æ's standard Terms and Conditions, dated January 14, 2008.

1.1 Purpose

The Phase I ESA was conducted to investigate the property with respect to petroleum products and the range of contaminants within the scope of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. 9601) and Part 201 of Michigan Public Act 451, 1994, as amended, Michigan's Natural Resources and Environmental Protection Act (NREPA). The Phase I ESA is intended to satisfy the user's requirements to qualify for the innocent landowner, contiguous property owner, or bona fide prospective purchaser limitations on CERCLA liability and the innocent landowner's exemption under NREPA. According to ASTM E 1527-05, this practice constitutes "all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice" as defined in 42 U.S.C. 9601(35) (B) and MCL 324.20126(3)(h).

While no Phase I ESA can wholly eliminate uncertainty regarding the potential for recognized environmental conditions in connection with a property, the environmental conditions of the property have been investigated to the extent feasible, and in accordance with ASTM E 1527-05. This ASTM document is considered the industry guideline for Phase I ESAs. According to ASTM E 1527-05, every reasonable attempt has been made, given the existing time and resources constraints, to identify the presence or potential presence of hazardous substances and petroleum products on the property under conditions, which constitute a *Recognized Environmental Condition*. The term *Recognized Environmental Condition* (REC) means the presence or likely presence of any hazardous substances or petroleum products on a property under conditions that indicate an existing release, a past release, or a material threat of a release of any hazardous substances or petroleum products into structures on the property or into the

ground, groundwater, or surface water of the property. The term includes hazardous substances or petroleum products even under conditions in compliance with applicable laws. The term is not intended to include de minimis conditions that generally do not present a threat to human health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies.

1.2 Detailed Scope of Services

Records Review:

In order to identify documented RECs on state or federal environmental databases, potential RECs in local government records, and indications of previous property uses that may indicate a REC or potential REC, AEC reviewed or made a reasonable attempt to review, the following government and historical records for the subject property, as available:

State and Federal Environmental Database Review:

- National Priorities List (NPL);
- Comprehensive Environmental Response, Compensation and Liability Act (CERCLA);
- CERCLA No Further Remedial Action Planned Sites;
- Resource Conservation and Recovery Act (RCRA) Generator;
- RCRA Transport, Storage, or Disposal (TSD) Sites;
- RCRA Corrective Action Sites;
- Emergency Response Notification System (ERNS);
- State Hazardous Waste Sites (SHWS);
- Solid Waste Landfills (SWL);
- Leaking Underground Storage Tank Sites (LUST);
- Underground Storage Tank Sites (UST); and
- Baseline Environmental Assessment Sites (BEA) (Michigan Only).

Local Government Records:

- Building, Planning and/or Zoning Department(s);
- Tax Assessor's Office;
- Fire Department; and
- Department of Natural Resources and Environment (DNRE).

Physical Setting Sources:

- United States Geological Survey Topographic Map; and
- United States Department of Agriculture Soil Survey.

Historical Records:

- Aerial Photographs;
- Historical Plat Maps;
- Historical Topographic Maps;
- Local Street Directories; and
- Other Records as summarized in Section 4.5.

Site Reconnaissance:

The site reconnaissance was conducted by or under the direction of an Environmental Professional. The site reconnaissance included general Property and area observations including the following:

- Current use(s) of the Property;
- Past use(s) of the Property;
- Current use(s) of adjoining sites;
- Past uses of adjoining site(s);
- Current or past use in the surrounding area;
- Geologic, hydrogeologic, hydrologic, and topographic conditions;
- General observations of structures;
- Roads; and
- Potable water supply.

The site reconnaissance also included interior (if developed with buildings) and exterior observations as follows:

- Current use(s) of the Property;
- Past use(s) of the Property;
- Hazardous substances and petroleum products and containers;
- Unidentified substances and containers;
- Storage tanks;
- Odors;
- Pools of liquid;
- Drums;
- Polychlorinated Biphenyls (PCBs)*;
- Pits, ponds, or lagoons;
- Stained soil or pavement;
- Stressed vegetation;
- Solid waste;
- Wastewater;
- Wells; and
- Septic systems.

* In 1979, the Environmental Protection Agency issued final regulations banning the manufacture of polychlorinated biphenyls (PCBs) and phasing out most PCB uses. PCBs are toxic and persistent chemicals primarily used in heavy-duty electrical equipment, machine oils, and hydraulic equipment manufactured primarily between 1922 and 1977. The ASTM requirements do not include inspection/assessment of fluorescent light ballasts.

Interviews:

During the course of the Phase I ESA, Æ conducted or attempted to conduct interviews with the following individuals:

- ESA User;
- Property Owner;
- Key Site Manager;
- Occupants (as available);
- Past owners, operators, or occupants as available and necessary to document past property use and to evaluate RECs;
- Owners and/or occupants of adjoining properties, as available (only to evaluate potential unauthorized uses of the subject property); and
- Select local government officials (as available).

Report:

The Phase I ESA Report summarizes the results of the investigations and provides conclusions and opinions in general accordance with the recommended ASTM E 1527-05 format. References are provided, and copies of relevant maps and other documents are either incorporated into the body of the report or attached as exhibits.

The representations contained within the report are based on information gathered through site reconnaissance, records searches, and interviews. The extent of information and recommendations presented within the report is based solely upon the observations and investigations, and is not verified to be complete beyond the scope of the proposed services or intent of the assessment.

1.3 Significant Assumptions

Unless otherwise indicated, it is assumed that the Phase I ESA was completed in order to evaluate the existence or likely existence of RECs on the property in order to support a liability defense as outlined in Section 1.1.

The information obtained through the Records Review and Interviews is assumed to be accurate. If the quality of information obtained during the course of the Phase I ESA is in question in the opinion of the Environmental Professional conducting the Phase I ESA, those instances are discussed in conjunction with presentation of the information in the appropriate section(s) of this report.

The information provided to Æ to satisfy the ESA User Responsibilities, discussed in Section 4.0, is assumed to be accurate and complete. Æ does not represent that the information provided by the ESA User is either accurate or complete. ASTM E 1527-05 does not require verification of validity of information obtained from secondary sources.

1.4 Limitations and Exceptions

In certain instances, *data failure* or *data gaps*, as defined by ASTM, may prevent adherence to all ASTM E 1527-05 requirements. In such cases, the data gaps or data failures are discussed in the appropriate sections of this report, including an opinion of the Environmental Professional regarding of the significance of the data gap with respect to identifying RECs.

The property information collected during the Phase I ESA is designed to draw conclusions and opinions relative the existence or likely existence of RECs on the subject property and shall not be relied on for any other purpose.

During the course of the Phase I ESA, various public records were consulted. In some instances, review of the records is affected by limitations of the documents, including but not limited to the following: illegible hand-written documents, poor reproduction quality, limited map resolution, and map scale.

Unless otherwise indicated, the Phase I ESA does not assess other potential business environmental risks (as defined by ASTM E 1527-05) that may affect the value of the subject property, including but not limited to the following:

- Regulated wetlands;
- Radon;
- Lead-based paint;
- Asbestos-containing building materials;
- Sites of historical significance;
- Abandoned wells;
- Compliance with local, state, or federal regulations;
- Presence or absence of threatened or endangered species;
- Protected habitats;
- High voltage power lines; or
- Sites of Native American significance.

1.5 Special Terms and Conditions

Æ hereby gives notice that any statement or opinion contained in this report shall not be construed to create any warranty, expressed, or implied, or representation that the real property on which the investigation was conducted is free of hazardous substances or complies with any applicable regulatory or statutory requirements. Unless otherwise indicated in this report, no attempt was made to evaluate the compliance of present or past owners of the site with federal, state, or local laws and regulations. The conclusions presented in this report were based upon the services described, and not on scientific tasks or procedures beyond the scope of described services, or the time and budgetary constraints imposed.

Any entity considering the use, acquisition, or other involvement concerning the property that is the subject of this report shall enter into any use, occupation, or the like on sole reliance of its own judgment and on its own personal investigation of such property.

Æ has performed this limited assessment in a professional manner using the degree of skill and care exercised for similar projects under similar conditions by reputable and competent environmental consultants. Æ shall not be responsible for the conditions or consequences arising from relevant facts that were concealed, withheld, or not fully disclosed during the course of the investigation.

1.6 User Reliance

This report was prepared on behalf of:

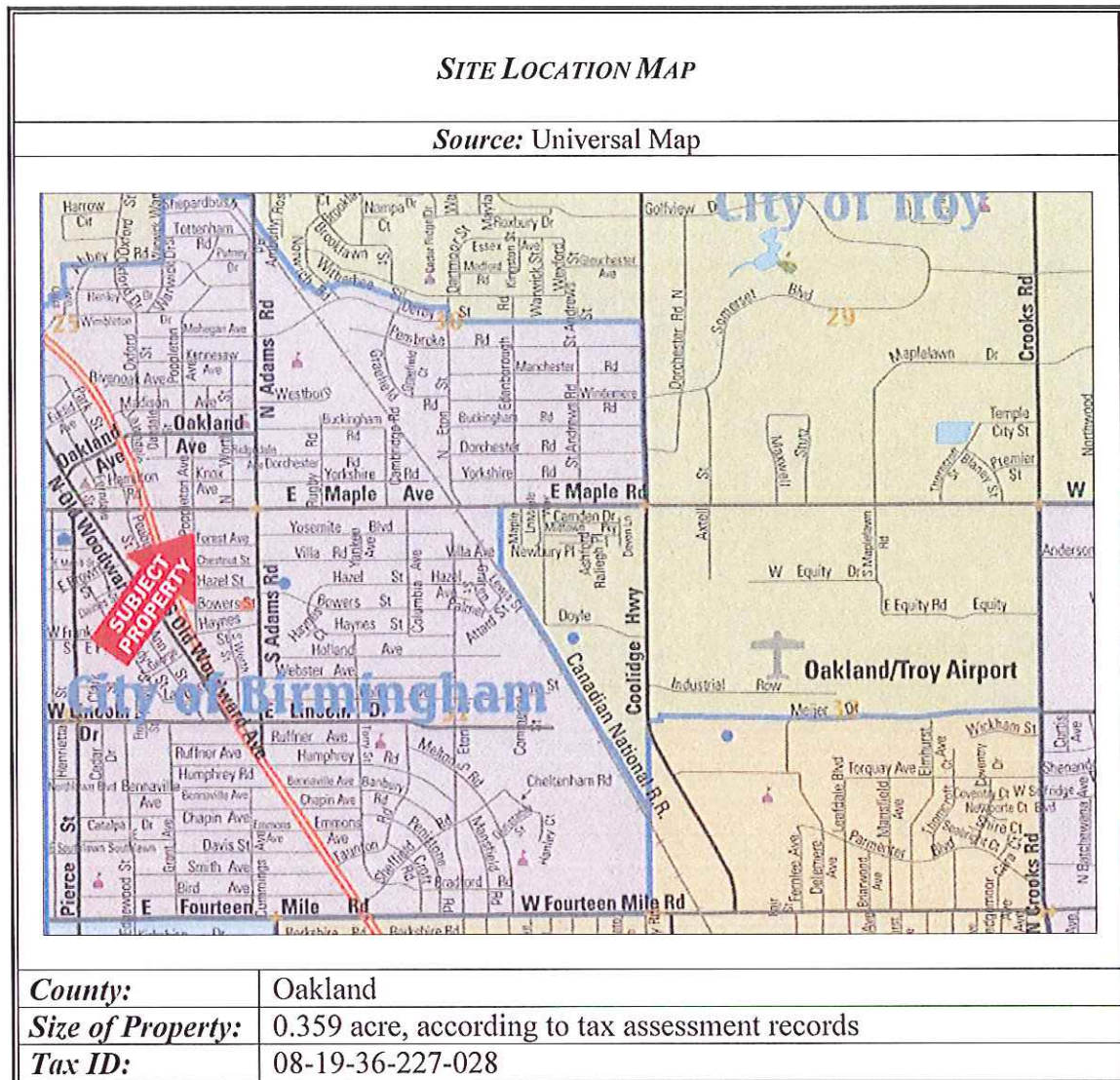
- Kelly Crossing, L.L.C.

Æ has completed this assessment according to industry standard practices and ASTM E 1527-05 standards for completing Environmental Site Assessments, and, consequently, the above party or parties may rely on it as a due diligent inquiry into the environmental condition of the subject property at the time of completion of the assessment.

This report shall not be used or relied upon by other parties without the expressed permission of Æ. No third parties are intended to benefit from this report, and no third party beneficiary rights will be implied from anything contained in this report.

2.0 SITE DESCRIPTION

2.1 Property Location



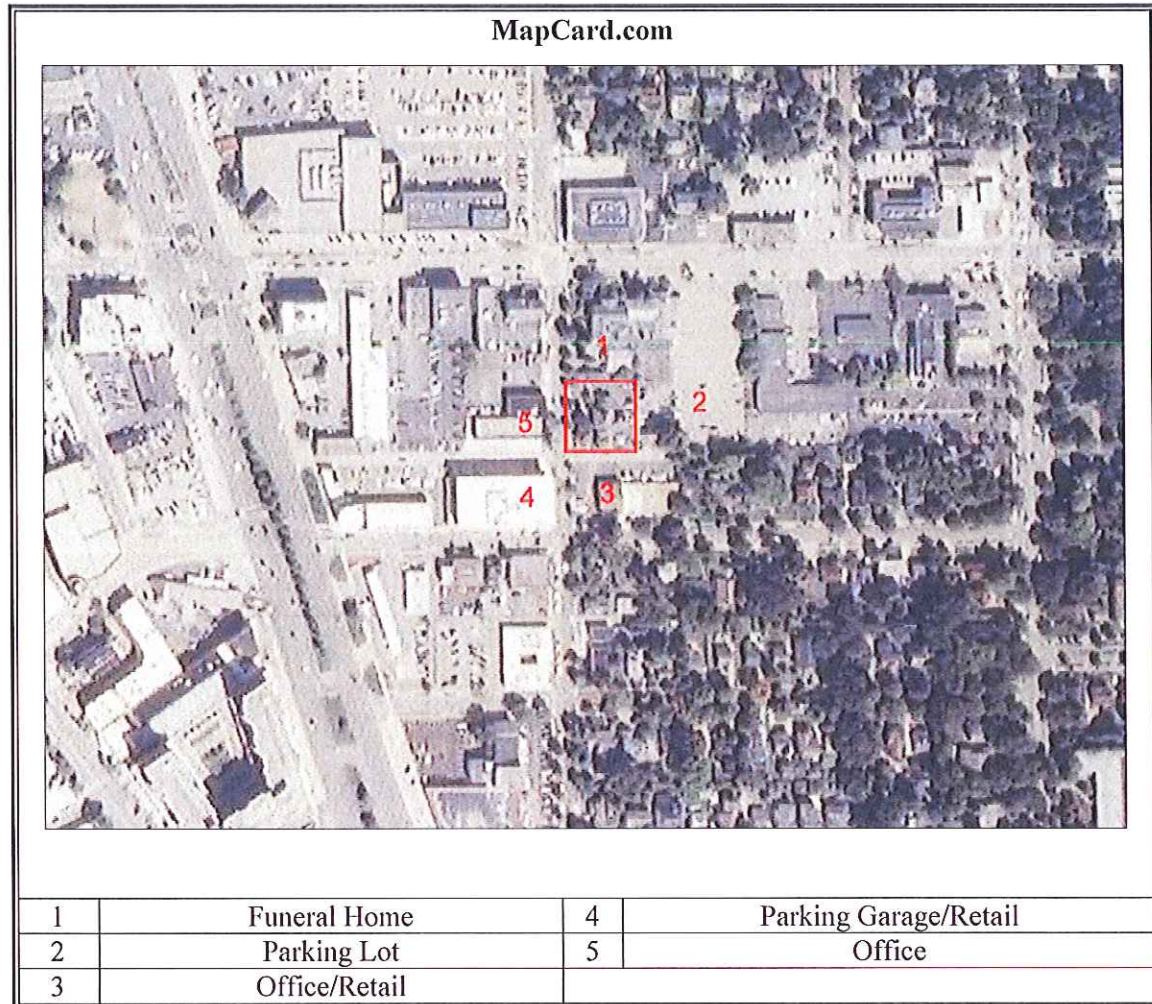
2.2 Current Uses of Property

The subject property is currently used for administrative purposes.

2.3 Current Adjoining Land Uses

The subject property is located in an area predominantly used for commercial and residential purposes.

Adjacent sites are as follows:



3.0 **USER PROVIDED INFORMATION**

For the purpose of this ESA, Mr. Mark Turnbull was interviewed as a representative of the ESA user.

3.1 Title Records

Title records for the subject property were not provided by the ESA user.

3.2 Environmental Liens

The ESA user did not indicate knowledge of environmental liens or land use limitations.

3.3 Specialized Knowledge

The ESA user did not indicate specialized knowledge regarding the presence of RECs associated with the subject property.

3.4 Commonly Known or Reasonably Ascertainable Information

Commonly known or reasonable ascertainable information provided by the ESA user did not indicate the presence of RECs associated with the subject property.

3.5 Valuation Reduction for Environmental Issues

The ESA user did not indicate a suspected valuation reduction due to environmental concerns.

3.6 Owner, Property Manager, and Occupant Information

The ESA user indicated that Mr. Leo Savoie is the current owner, manager, and occupant of the subject property.

3.7 Reason for Performing Phase I ESA

The Phase I ESA was performed to qualify for the innocent landowner defense to the CERCLA liability protection and liability protection under Part 201, Michigan Public Act 451, 1994, as amended (NREPA).

3.8 Other

The ESA user did not provide Æ with other relevant information unless presented in other sections of this report.

4.0 RECORDS REVIEW

4.1 Historical Environmental Reports

No historical environmental reports were provided to Æ during the course of this assessment.

4.2 Federal and State Regulatory Database Search

An environmental regulatory database search of the following federal and state file listings was reviewed to assess the potential for environmental liability associated with the property. Each database is periodically updated by the appropriate federal or state environmental agency, and the updated data are released to the public. The dates of data used in each database below are provided in the attached regulatory report.

Approximate distances have been corrected based on information obtained during the site reconnaissance, and may not be consistent with those listed in the regulatory search. A copy of the regulatory search, with maps identifying sites of potential environmental concern, is included in the attachments section of this report.

Based on Æ's previous experience, contaminants released in soil and/or groundwater in the general area of the subject property are generally not expected to migrate greater than 500 feet from the source of the release. Therefore, sites located greater than 500 feet from the subject property are not believed to represent a likely concern.

At a minimum, the following government databases were reviewed within the regulatory database report:

Government Database	ASTM Search Distance (Miles)	Sites Located Within 500 Feet Of The Subject Property
National Priorities List (NPL)	1.00	No
Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)	0.50	No
CERCLA No Further Remedial Action Planned Sites	0.25	No
Resource Conservation and Recovery Act (RCRA) Generator	0.25	Yes

Government Database	ASTM Search Distance (Miles)	Sites Located Within 500 Feet Of The Subject Property
RCRA Transport, Storage, or Disposal (TSD) Site	0.50	No
RCRA Corrective Action Site	1.00	No
Emergency Response Notification System (ERNS)	0.25	No
State Hazardous Waste Sites (SHWS)	1.00	No
Solid Waste Landfills (SWL)	0.50	No
Leaking Underground Storage Tank Sites (LUST)	0.50	Yes
Underground Storage Tank Sites (UST)	0.25	Yes
Baseline Environmental Assessment Sites (BEA)	0.25	Yes

The subject property was not listed. The following sites were identified within 500 feet of the subject property:

Elmwood Properties, 920 East Maple Road, approximately 200 feet northeast

The site was listed as a BEA site. According to Sanborn Fire Insurance Maps, the site formerly operated as a filling station. A/E submitted a request to the DNRE for available department records regarding the BEA, but a response was not received during the course of this assessment. Based on local topography, it is presumed that groundwater is to the southeast, away from the subject property. Additionally, it is presumed that underground utilities are located either overhead or along rights of ways along the municipal streets. It is unlikely that subsurface corridors exist between the site and the subject property. Due to inferred groundwater flow direction and lack of subsurface corridors connecting the sites, the BEA status is not believed to represent a REC to the subject property.

Parking Lot (Dietz Corp.), 985 East Maple Road, approximately 500 feet northeast

The site was listed as a BEA site and an open LUST site. A/E submitted a request to the DNRE for available department records regarding the status of the site, but a response was not received during the course of this assessment. According to the database report, a BEA was submitted in 1997, and a confirmed release was reported to the DNRE. It is assumed that the site formerly operated as a filling station. The open LUST status

indicates that corrective actions have not been completed to address the release. Due to presumed groundwater flow direction and distance from the subject property, the LUST status is not believed to represent a REC to the subject property.

Budget Rent a Car, 1000 East Maple Road, approximately 500 feet east

The site was listed as a closed UST site and an open LUST site. Four USTs containing gasoline, kerosene, and used oil were removed from the ground in 1991. Two releases were reported to the DNRE in 1990. A submitted a request to the DNRE for available department records regarding the status of the site, but a response was not received during the course of this assessment. Due to presumed groundwater flow direction and distance from the subject property, the LUST status is not believed to represent a REC to the subject property.

Speedway, 34750 Woodward Avenue, approximately 500 feet southwest

The site was listed as an active UST site and a closed LUST site. The site currently operates four USTs containing gasoline and diesel fuel. A confirmed release was reported to the DNRE in 1991. The site received regulatory closure in 1996. Due to the status of the site, it is not considered a REC to the subject property.

Kroger, 685 East Maple Road, approximately 500 feet northwest

The site was listed as a RCRA-conditionally exempt small quantity generator (VGN) of hazardous waste. As a VGN, the site generates less than 100 kilograms of hazardous waste per month. No violations or enforcements were identified within the records reviewed. Due to the status of the site, it is not considered a REC to the subject property.

4.3 Local Government Records

Building, Planning, and/or Zoning Department(s)

Building Department records consisted of various permits and site plans. Permits and plans indicated that the building was formerly used as a residence and a home furnishing store.

Tax Assessor's Office

Tax Assessment records consisted of a field sheets and a sketch. The building was listed as an office.

Fire Department

Fire Department records consisted of fire inspection notes. The notes indicate that the building was used as a day care/nursery.

Health Department

Æ was informed that no department records exist pertaining to the subject property.

Michigan Department of Natural Resources and Environment

Æ reviewed a list, dated October 2010, of Environmental Liens for properties in the State of Michigan provided by the DNRE Remediation and Redevelopment Division. The subject property was not listed on the Environmental Lien list.

4.4 Chain of Title

A chain of title search was not conducted for the subject property. Æ utilized aerial photographs, address directories, local government records, and interviews to determine the historical usage of the subject property. Information obtained from these sources is referenced throughout this report.

4.5 Land Patents

The Bureau of Land Management land patent database was searched for the original land patent. No land patent was identified for the area of the subject property. Based on general development patterns of properties in the State of Michigan, it is likely that the property was logged following initial sale by the federal government sale and later converted to agricultural uses.

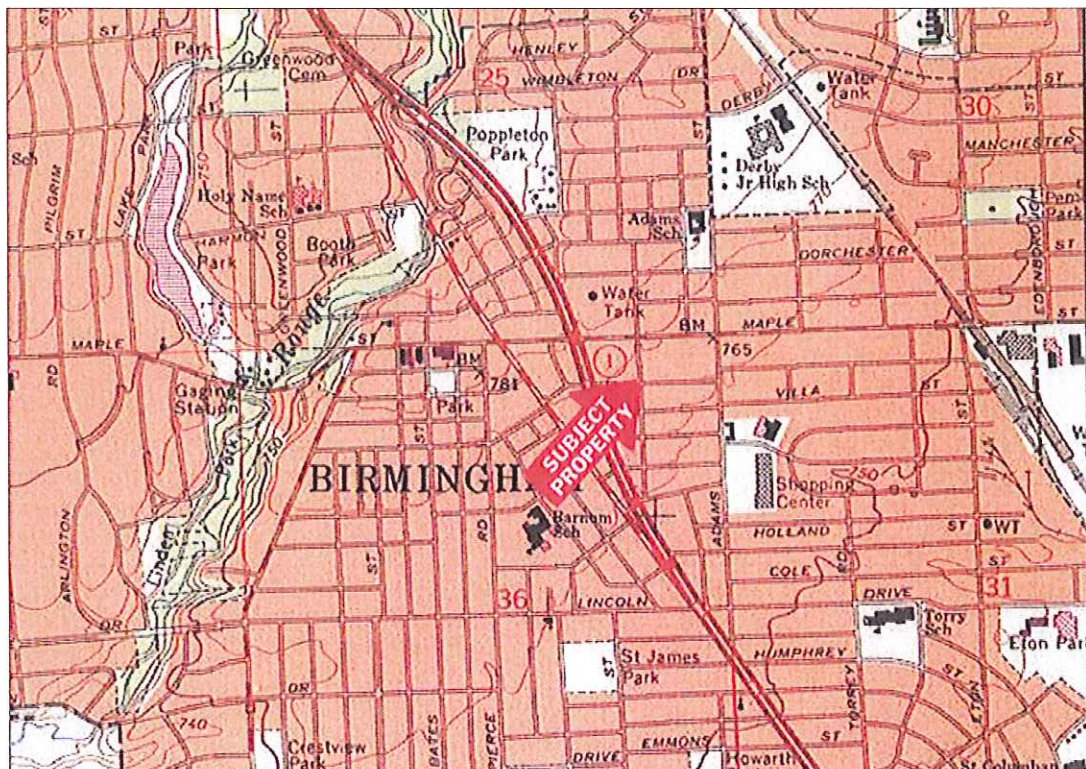
4.6 Physical Setting Sources

USGS Topographic Map

The United States Geological Survey (USGS) topographic quadrangle was reviewed to determine the general topography of the area and identify indicators of past property usage. The topographic map can also provide information about such environmental concerns as mines, mine dumps, or tailing locations; quarries and gravel pits; wells; tanks; and oil and gas pipelines.

TOPOGRAPHIC MAP

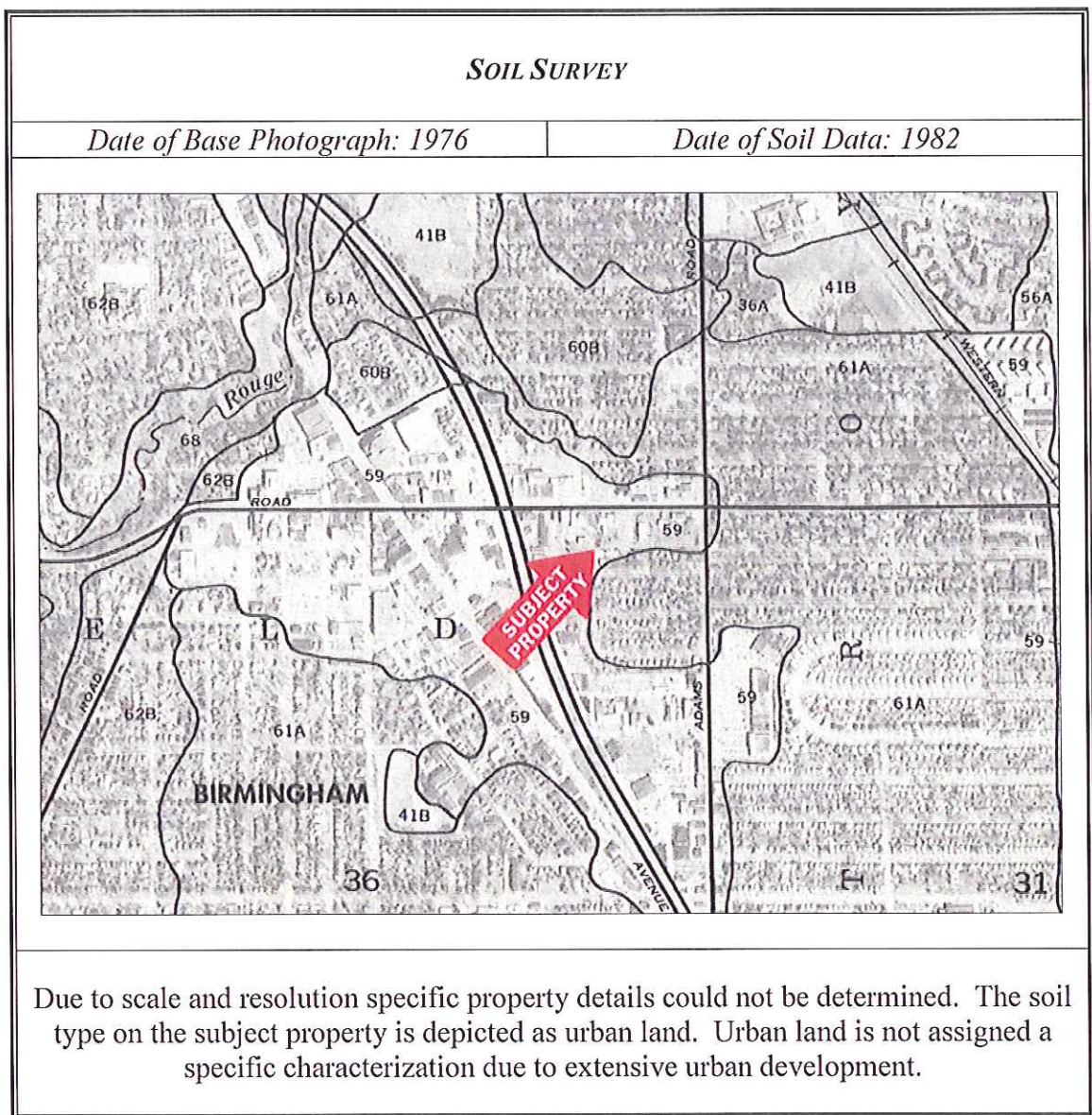
Birmingham, Michigan Quadrangle, 1981



The subject property appears in an area shaded pink, indicating dense urban development. The topography on the subject property appears generally flat.

USDA Soil Survey

The United States Department of Agriculture (U.S.D.A.) Soil Conservation Service's Soil Survey was reviewed for the property and surrounding area. The soil survey provides information regarding soil types, drainage, and other data relevant to agricultural uses, but also identifies some relevant geographical features and potential environmental concerns such as mines and quarries; gravel pits; pipelines; cemeteries; tanks; and oil and gas wells. Soil conditions such as "madeland" (typically fill materials) may also reveal historical fill activities. The soil survey also lists hydric (wetland) soil types. The aerial photograph base map may provide additional detail regarding previous property use.



4.7 Historical Use Information on the Property

The ASTM E 1527-05 standard requires that property use and development is established back to the earlier of 1940 or the time of the first developed use. Agricultural use and placement of fill are regarded as developed uses. It is likely that the property was used for row-crop agriculture in the past. Chemicals such as pesticides, herbicides, and fertilizers were commonly applied to agricultural land. Past application of agricultural chemicals is presumed to have been in accordance with label instructions and commonly accepted agricultural management practices and, absent evidence of a release, is not considered a REC.

Based on review of historical records and interviews with individuals familiar with the subject property, the subject property was initially developed in 1927 with the existing structure. The building was used as a residence until at least the 1950s. From the 1950s to at least the 1970s, the building was utilized as a day care and a home furnishing shop. In the 1980s, the building was renovated into office space. Since that time, the building has operated solely for commercial office use.

In addition to the other information presented throughout this report, A/E reviewed or attempted to review the following historical resources. Note that lines or arrows applied to graphics are to show approximate location of the subject property.

Historical Aerial Photographs

Aerial photographs were obtained from the Michigan State Center for Remote Sensing and GIS and Mapcard.com. Aerial photographs show development and property use trends.

AERIAL PHOTOGRAPH

Date: 1949

Source: Michigan State Center for Remote Sensing and GIS

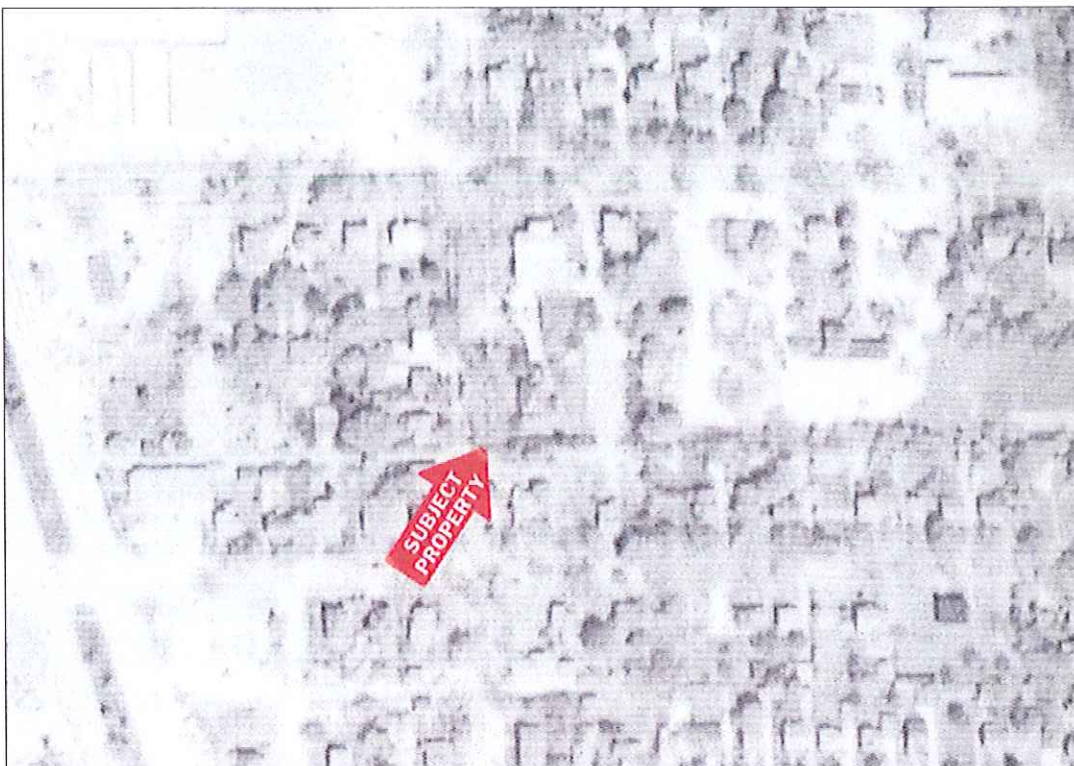


The subject property appears developed, though due to scale and resolution, specific property details could not be determined.

AERIAL PHOTOGRAPH

Date: 1956

Source: Michigan State Center for Remote Sensing and GIS



A structure appears on the subject property. Shape and orientation of the building appear consistent with the existing structure.

AERIAL PHOTOGRAPH

Date: 1961

Source: Michigan State Center for Remote Sensing and GIS



The subject property appears developed, though due to scale and resolution, specific property details could not be determined.

AERIAL PHOTOGRAPH

Date: 1972

Source: Michigan State Center for Remote Sensing and GIS



The subject property appears developed, though due to scale and resolution, specific property details could not be determined.

AERIAL PHOTOGRAPH

Date: 1980

Source: Michigan State Center for Remote Sensing and GIS



The subject property appears developed, though due to scale and resolution, specific property details could not be determined.

AERIAL PHOTOGRAPH

Date: 2000

Source: Michigan State Center for Remote Sensing and GIS



The subject property appears developed with the existing structure.

AERIAL PHOTOGRAPH

Date: 2009

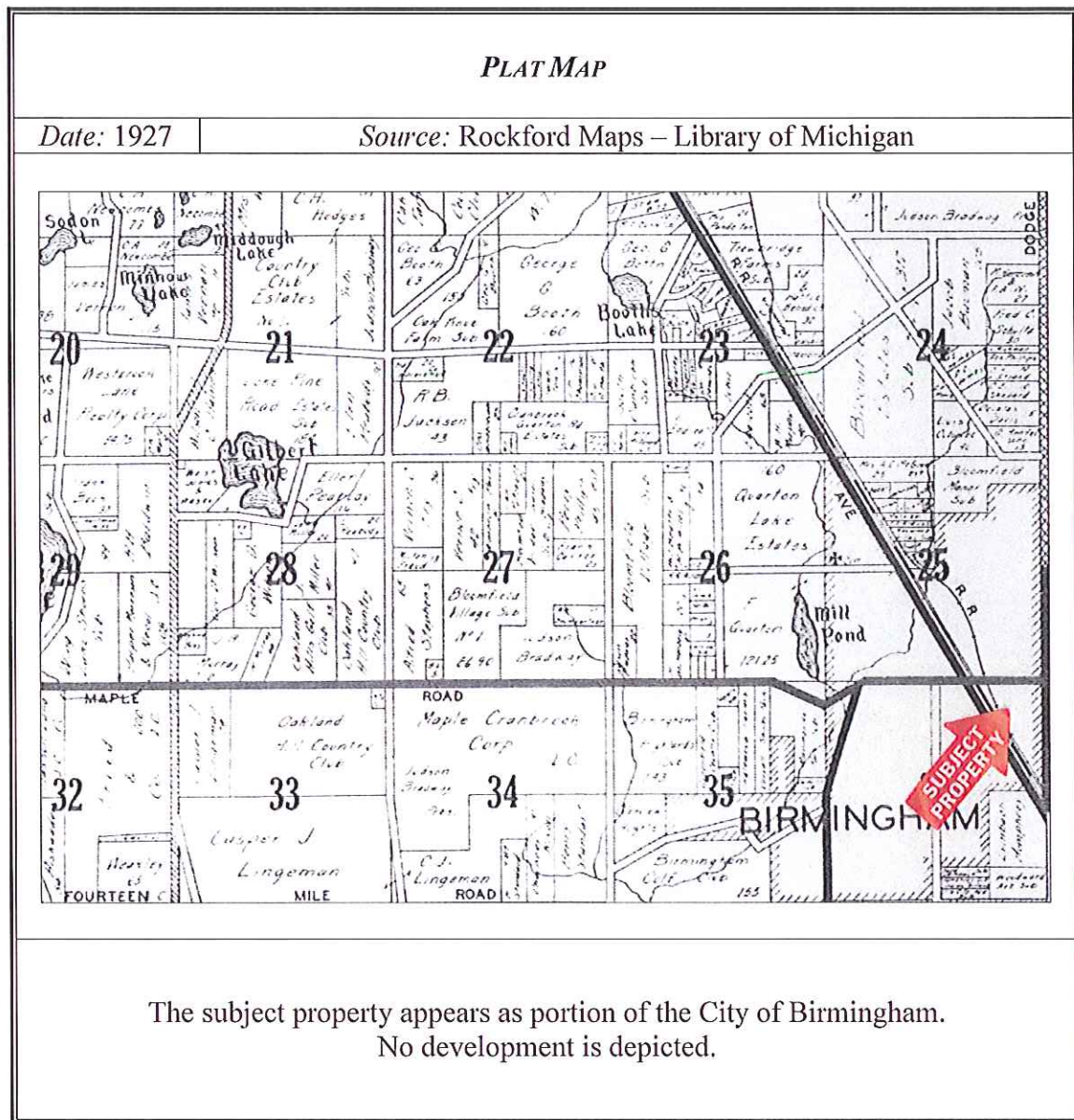
Source: Mapcard.com



The subject property appears developed consistent with current conditions.

Plat Maps

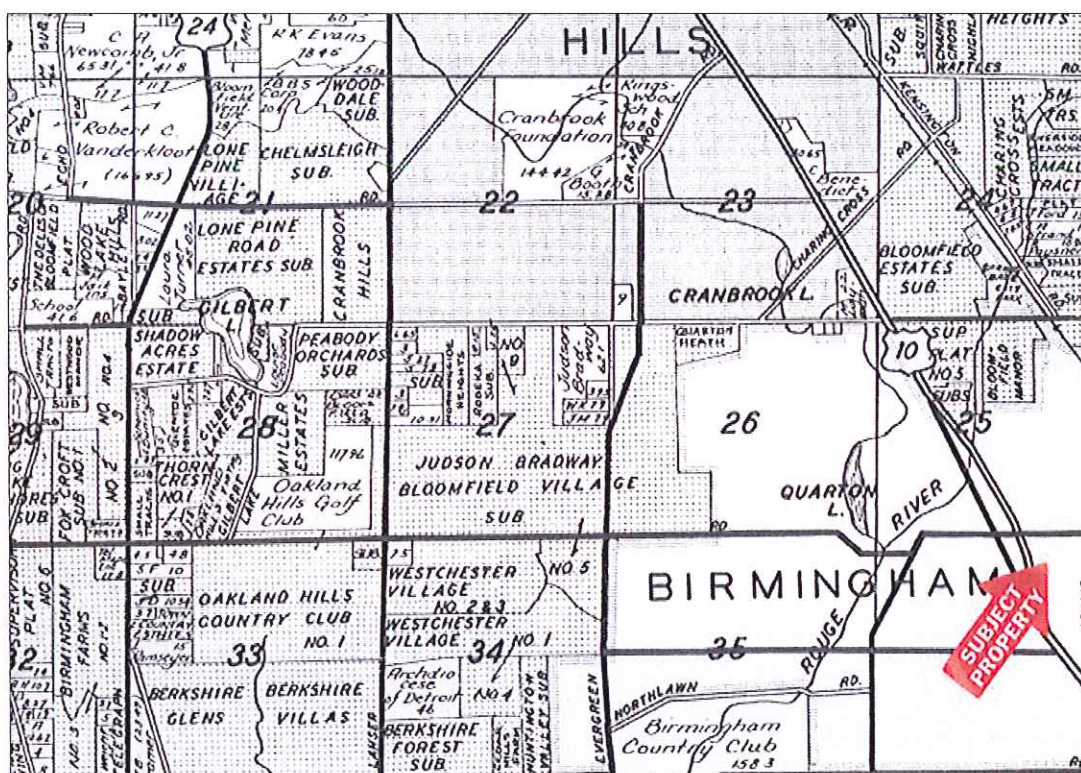
Plat maps are designed to show land size and ownership, and in some instances, land use. Maps were obtained from the Library of Michigan in Lansing, Michigan.



PLAT MAP

Date: 1960

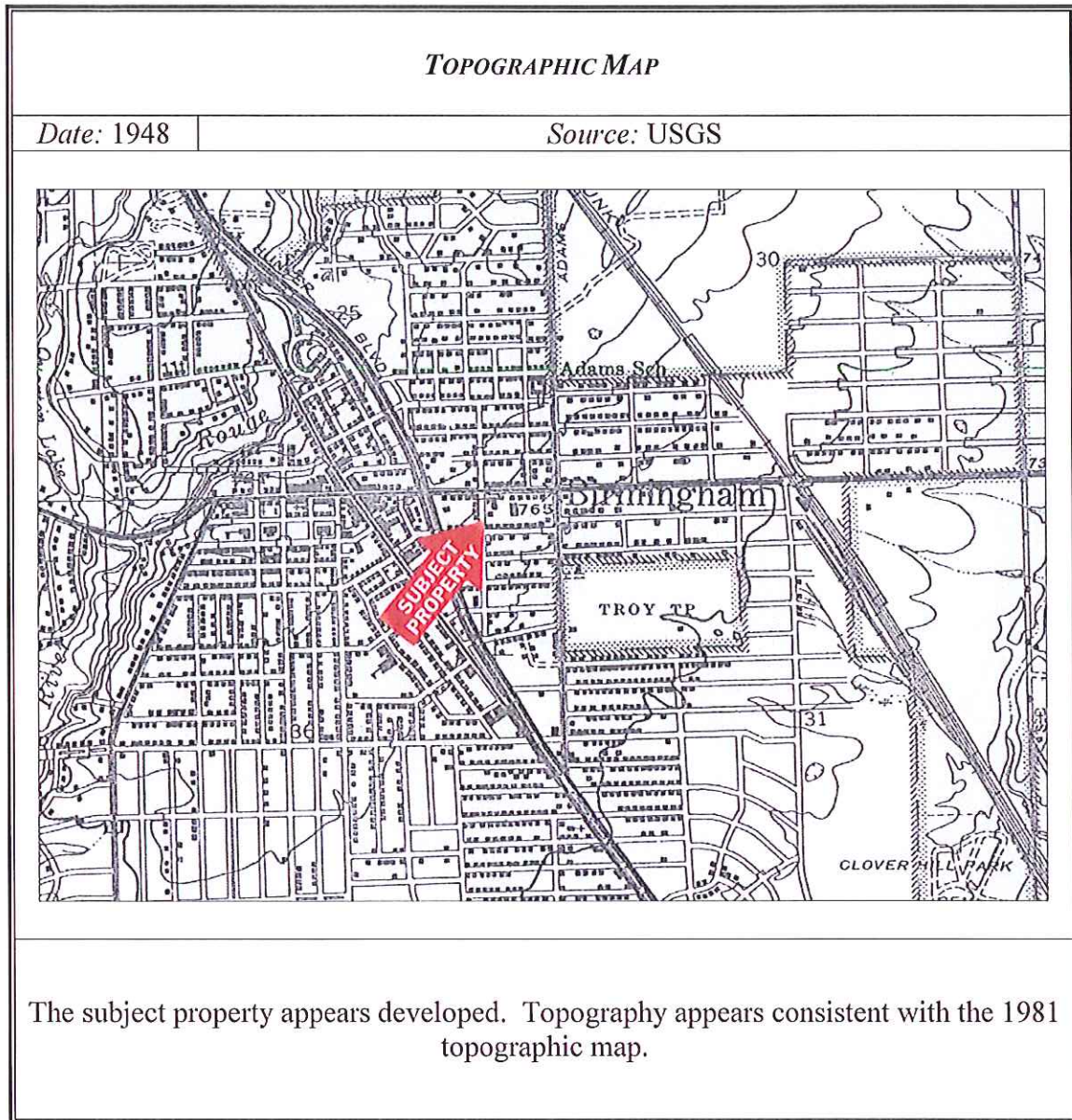
Source: Rockford Maps – Library of Michigan



The subject property appears as portion of the City of Birmingham.
No development is depicted.

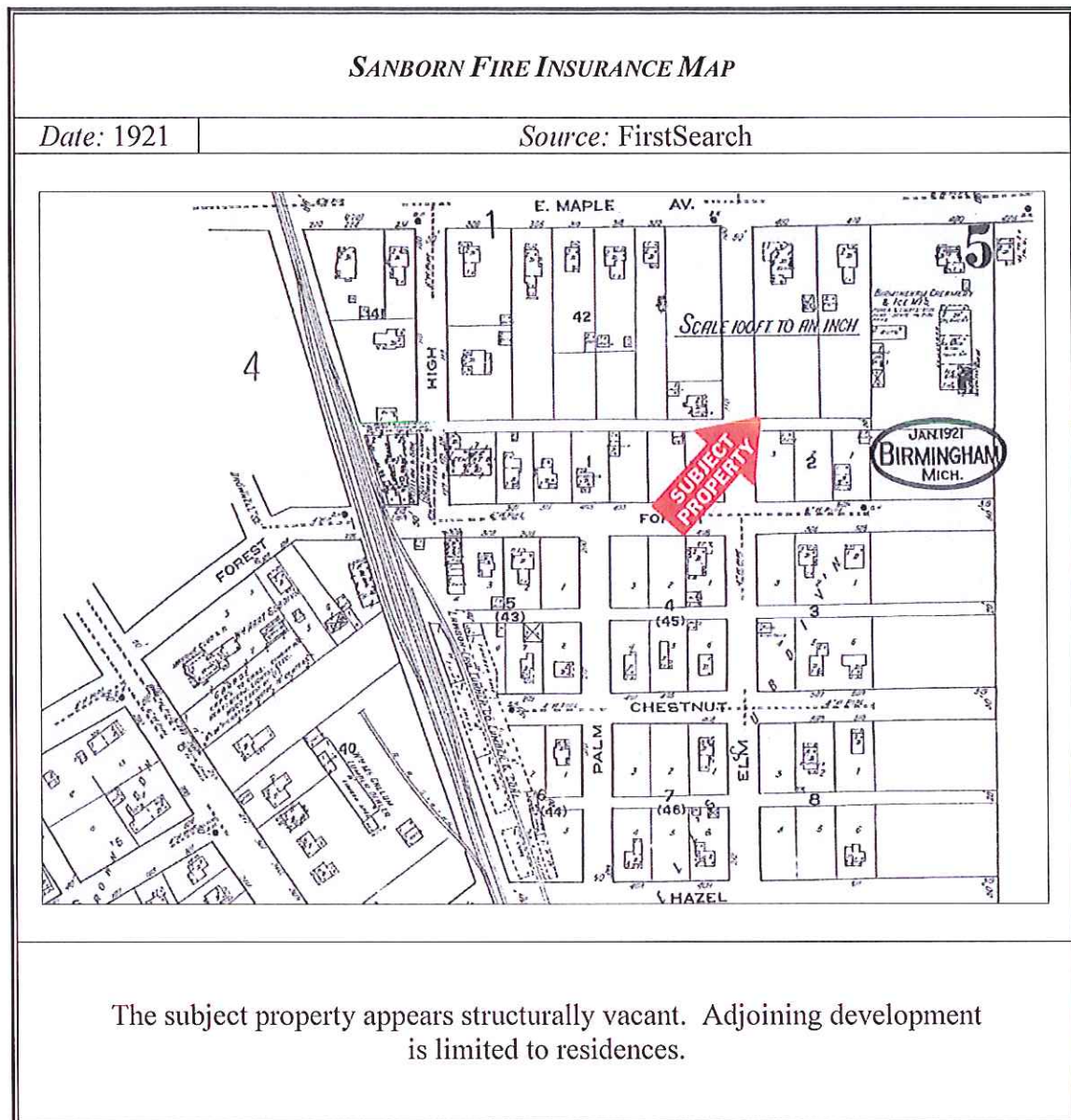
Topographic Maps

Topographic maps are designed to show the general topography of the area and identify indicators of past property usage. Maps were provided by the USGS.



Sanborn Fire Insurance Maps

Maps were provided by FirstSearch Technology Corporation.



SANBORN FIRE INSURANCE MAP

Date: 1926

Source: FirstSearch

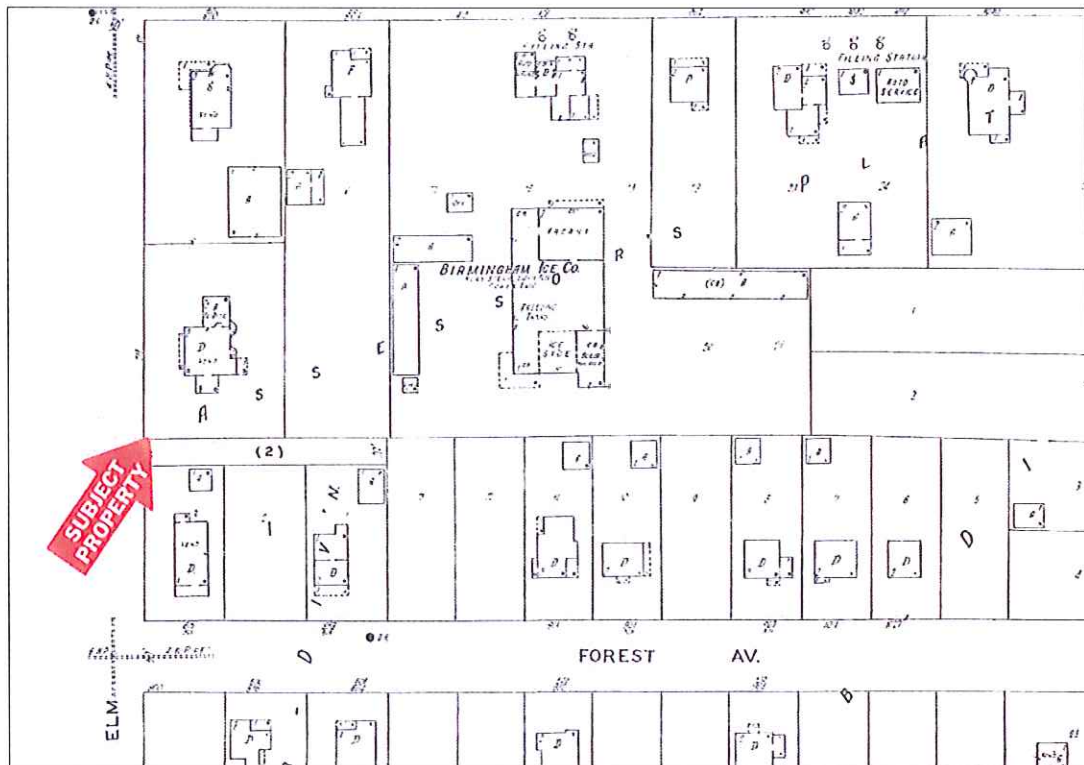


No significant changes appear to the subject property or adjacent sites since the 1921 map.

SANBORN FIRE INSURANCE MAP

Date: 1931

Source: FirstSearch

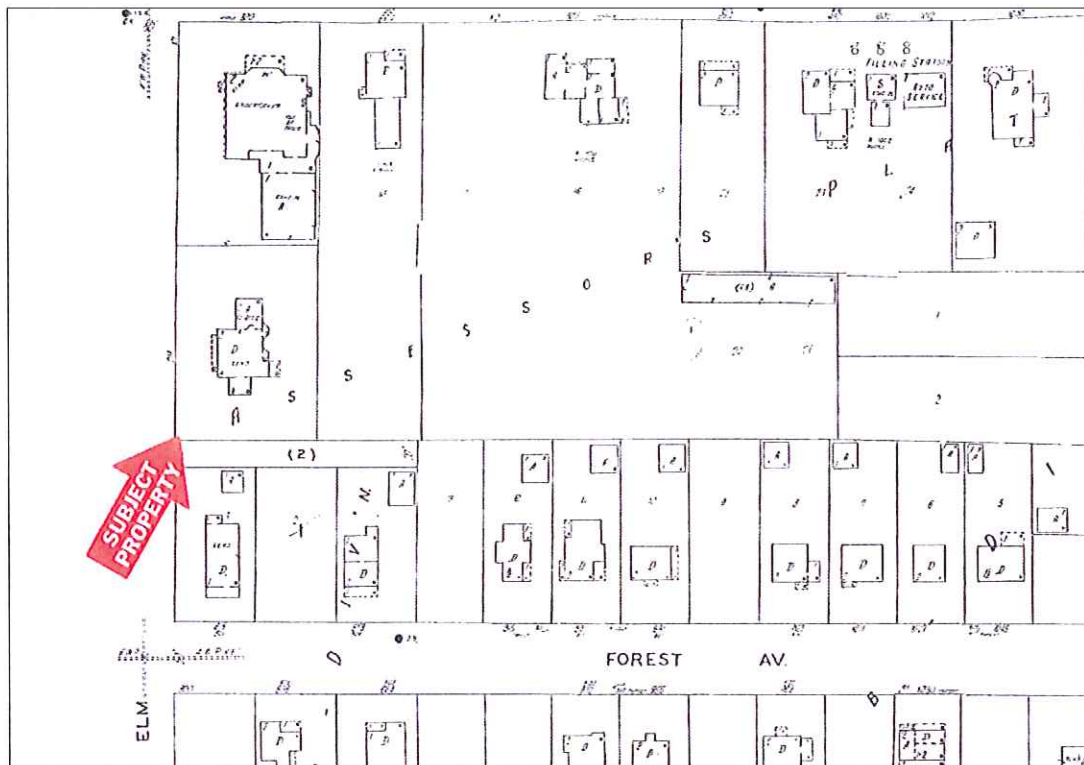


The subject property appears developed with a two-story brick residence. Two filling stations are located proximate to the north/northeast of the subject property.

SANBORN FIRE INSURANCE MAP

Date: 1949

Source: FirstSearch

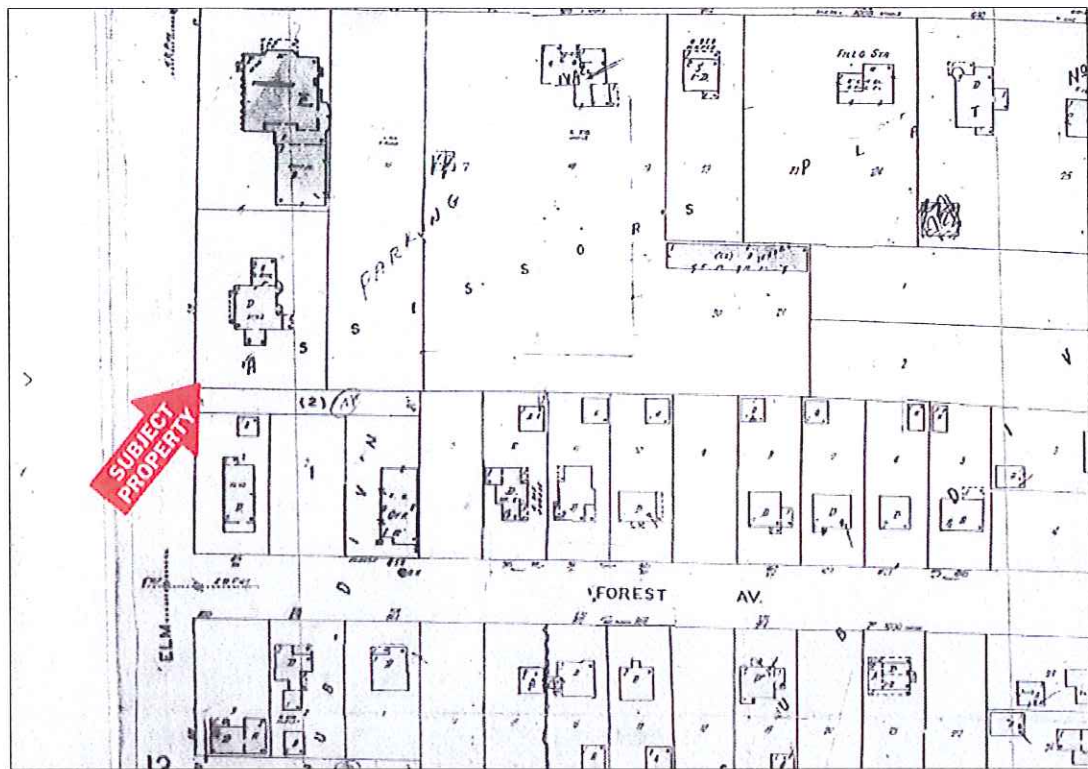


The subject property appears developed with a two-story brick residence. A filling station is located proximate to the northeast of the subject property.

SANBORN FIRE INSURANCE MAP

Date: 1960

Source: FirstSearch



The subject property appears developed with a two-story brick residence. A filling station is located proximate to the northeast of the subject property.

Local Street Directories

Bresser's address directories were reviewed at the Library of Michigan in Lansing, Michigan. Coverage for the area of the subject property was available from 1974 to 2010. Directories were reviewed in approximately 5-year intervals or as available. The listings are as follows:

Year	Listing
1974 to 1980	Cherub Haven-Multi-tenant Office
1985	No Listing
1990	Dynamic Results, Inc. Singh Associates Wickland Development
1995	Law Offices and Real Estate Offices
2000	Law Offices
2005 to 2010	Apex Appraisers Dentist Office

4.8 Historical Use Information on Adjoining Sites

Based on the reviewed historical records, adjoining sites were developed prior to the 1920s for residential purposes. A funeral home was developed to the north of the property 1940s. Commercial retail/office use on adjoining sites began in the 1960s.

A filling station was historically located adjacent to the northeast of the subject property.

5.0 SITE RECONNAISSANCE

<i>Date</i>	December 9, 2010
<i>Weather</i>	Cloudy, approximately 25 degrees F
<i>Inspector/Photographer</i>	Jeff Carr
<i>Boundaries determined by</i>	Site use and tax assessment records



View of subject building, facing east.

5.1 Methodology and Limiting Conditions

The building's exterior and property boundaries were inspected. Paved areas, interior storage, and finishes partially limited visibility during the site reconnaissance. The roof was not accessed.

5.2 General Site Setting

The site reconnaissance was conducted by Mr. Jeff Carr, an Environmental Professional (EP). The site reconnaissance included general property and area observations including the following:

Current use(s) of Adjoining Sites

The adjoining sites in all compass directions were developed with commercial office/retail operations.

Past Uses of Adjoining Sites

Past property use on adjoining sites was not evident during the site reconnaissance.

Current or Past uses in the Surrounding Area

Current and past uses in the surrounding area appear to have consisted of commercial and residential operations over time.

Geologic, Hydrogeologic, Hydrologic, and Topographic Conditions

The topography of subject property was generally flat. No exposed soils were identified during the site reconnaissance. No groundwater characteristics were identified during the site reconnaissance.

Description of Roads and Parking, Structures, and Utility Improvements

The property is accessible from Elm Street to the west. Parking areas consisted of asphalt. The building was constructed of brick located upon a basement.

Improvement	Connection Date	Comments
<i>Natural Gas</i>	1927/1986	The current connection date was provided by the Consumers Energy SIMS database.
<i>Municipal Water</i>	1927	A connection date was not determined. Due to its urban location, it is assumed that the subject property was connected to municipal water and sewer at time of initial development.
<i>Sanitary Sewer</i>		
<i>Drinking Water Well</i>	None	-----
<i>Septic</i>	None	-----
<i>Electricity</i>	1927	It is assumed that electricity was connected to the subject property at the time of initial development.

5.3 Exterior Observations

Current Use(s) of the Property

At the time of the site reconnaissance, the subject building was developed with a two-story brick building containing office space. Asphalt parking areas were located to the north, east, and south of the subject building.



View of subject building, facing northwest.



View of subject building, facing northeast.



View of subject building, facing south.

Past Use(s) of the Property

No past property use was identified.

<i>Exterior Observations</i>	
Hazardous Substances and Petroleum Products and Containers	None
Storage Tanks	None
Drums	None
Odors	None
Pools of Liquid	None
Unidentified Substances and Containers	None
PCBs	None
Pits, Ponds, Lagoons	None
Stained Soil or Pavement	None
Stressed Vegetation	None
Solid Waste	None
Wastewater	None
Wells	None
Septic Systems	None

5.4 Interior Observations

Current Use(s) of the Property

The building consisted of office space on the first, second, and basement levels of the building. An elevator was located within the building.

Past Use(s) of the Property

No past property use was identified.



Representative view of office space.



Representative view of utility room.



View of elevator equipment room.



View of elevator shaft.

<i>Interior Observations</i>	
Hazardous Substances and Petroleum Products and Containers	An elevator was located within the subject building. The equipment was located within a room adjacent to the elevator. The equipment appeared to contain a small volume of oil. No evidence of a release from the equipment was identified.
Storage Tanks	None
Unidentified Substances and Containers	None
Odors	None
Pools of Liquid	None
Drums	None
PCBs	None
Pits, Ponds, or Lagoons	None
Stained Pavement	Stained pavement was located within the elevator shaft. The elevator shaft was constructed of poured concrete. The concrete appeared in sound physical condition. No evidence of impact to the subsurface was identified.
Stressed Vegetation	None
Solid Waste	None
Drains and Sumps	Two sump crocks were located within the basement, including one within the elevator shaft. The crock contained water with an oil odor. No oil sheen was identified within the water. According to Mr. Savoie, the sump discharges in to the sanitary sewer.
Wastewater	None
Wells	None
Septic Systems	None

6.0 INTERVIEWS

Interviews were conducted by the AE project manager in attempt to obtain information relating to the following with regard to the possible presence of RECs associated with the subject property: current and past use and development of the property and surrounding areas, hazardous substances and petroleum products, storage tanks, odors, pools of liquids, drums or other containers, PCB-containing equipment, pits, ponds, lagoons, stained soil or pavement, stressed vegetation, solid waste disposal and/or fill materials, waste water treatment/discharge, wells, and septic systems. The interviews also included inquiry as to the likelihood of general environmental concerns and/or RECs.

6.1 Interview With Owner

Æ interviewed the current property owner, Mr. Leo Savoie. Mr. Savoie indicated that he purchased the property in the early 1990s with the existing commercial structure. He stated that the building was initially developed as a residence and utilized in association with the former funeral home adjacent to the north. He added that the building was renovated in the 1980s, consistent with current layout, with the exception of minor details.

Mr. Savoie noted that the elevator was installed in the 1980s and is maintained by Detroit Elevator and is inspected on a quarterly basis. Mr. Savoie was not aware of any releases from the elevator equipment. Due to the approximate date of installation, the elevator system is not believed to use PCB-containing oils.

6.2 Interview with Site Manager

Mr. Savoie was interviewed as the site manager.

6.3 Interviews With Occupants

Mr. Savoie was interviewed as an occupant.

6.4 Interviews With Local Government Officials

Æ interviewed a representative of the Birmingham Fire Department, Fire Marshal Charlie Monti and a representative of the Birmingham Building Department, Mr. Mario Mendoza. Each of the individuals indicated that the building was a residence converted to office space. They were not aware of RECs associated with the subject property.

6.5 Interviews With Others

No other interviews were conducted.

7.0 FINDINGS

This assessment has identified the following known RECs, historical RECs, suspect RECs, historical RECs, data gaps, and de minimis conditions.

Known RECs:

A known REC is identified as the presence or likely presence of any hazardous substance or petroleum product on a property under conditions that indicate an existing release, a past release, or a material threat of a release of any hazardous substances or petroleum products into structures on the property or into the ground, groundwater, or surface water of the property.

This assessment has revealed no evidence of RECs in connection with the property.

Historical RECs:

Historical RECs are described environmental conditions which, in the past, would have been considered a REC, but which may or may not be considered a REC currently.

No historical RECs were identified.

Data Gaps:

Data gaps are defined as a lack of, or inability to obtain, information required by this practice despite good faith efforts by the Environmental Professional to gather such information. The presence of data gaps may present the need to conduct further investigations of an intrusive or non-intrusive nature.

A filling station was historically located adjacent to the northeast of the subject property. According to Sanborn Maps, the USTs were located approximately 200 feet to the north. The USTs were not registered with the DNRE; therefore, no regulatory information regarding the site is available. Due to presumed groundwater flow direction and distance from the subject property, former use of USTs is not believed to represent a REC to the subject property.

De minimis Conditions:

De minimis conditions are those that generally do not present a material risk of harm to public health or the environment, and would not be the subject of enforcement actions if brought to the attention of appropriate governmental agencies.

No de minimis conditions were identified.

8.0 OPINIONS

No RECs were identified in association with the subject property; therefore, no additional investigations are recommended.

9.0 CONCLUSIONS

Æ has performed a Phase I ESA in conformance with the scope and limitations of the ASTM E 1527-05 for the site identified as 219 Elm Street, Birmingham, Michigan. Any exceptions to, or deviations from, this practice are described in Section 10.0 of this report.

This assessment has revealed no evidence of RECs in connection with the property.

10.0 DEVIATIONS

There were no significant deviations from the ASTM E 1527-05 requirements that are believed to alter the conclusion of this ESA.

11.0 ADDITIONAL SERVICES

During the Phase I ESA, Æ conducted a limited evaluation for potential material non-compliance with the following potential environmental compliance concerns, which are not included within the scope of the ASTM E 1527-05 Phase I ESA.

11.1 Asbestos

By 1980, the United States Environmental Protection Agency (EPA) had banned asbestos-containing spray-on insulation, decorative finishes, and acoustical materials.

Occupation Health and Safety Administration (OSHA) requirements for the building mandate identification of asbestos-containing building materials and completion of an Operation and Maintenance Plan for buildings constructed before 1980.

According to the National Emission Standards for Hazardous Air Pollutants (NESHAP) a building must be inspected for asbestos for all renovations and demolitions, regardless of construction date, and a 10-day notice must be submitted to the MDNRE - Air Quality Division

As the building was initially constructed in 1927, it is likely that asbestos-containing materials were used.

Note that this limited asbestos evaluation is intended to be used only as an indicator as to the likely presence of SACM in readily accessible areas within the subject building. Æ did not attempt to identify all SACM in the structure, nor is this survey complete in terms of SACM identification for the purposes of future renovation or remodeling activities.

11.2 Lead-Based Paint Hazards

In 1978, EPA banned the manufacture and use of lead-based paint and lead-based paint products. Current studies suggest that the primary sources of lead exposure for most children are deteriorating lead-based paint, lead contaminated dust, and lead contaminated residential soil.

As the existing structure was constructed in 1927, it is likely that lead-based paints were used.

11.3 Microbial Growth & Moisture Intrusion

Mold can be found throughout all indoor and outdoor environments. Indoors, mold can damage property and produce chemicals that may be harmful to human health. Visible mold should be removed from indoor spaces.

No mold was identified within the subject building.

11.4 Air Emissions

There are no industrial processes that result in air emissions on the subject property. No air discharge permits are associated with the property.

11.5 Wetlands

Wetlands are generally considered regulated (requiring a permit for any draining, dredging, or filling) if located within 500 feet of a surface water body or 1,000 feet of the Great Lakes and connecting waters. Wetlands larger than 5 acres and located in a county with a population of greater than 100,000 are also regulated.

While a formal Wetland Determination was not conducted, in addition to observations made during the site reconnaissance, the following resources were reviewed to determine if regulated wetlands are likely to be located on the property:

- USDA Soil Survey;
- USGS Topographic Map; and
- Aerial photographs.

No evidence of a wetland was identified on the subject property.

11.6 Radon

Radon is colorless, odorless, chemically inert, and radioactive gas that arises from the natural radioactive decay of radium, which is a natural decay product of uranium. Radon cannot be detected by human senses. According to the US Environmental Protection Agency (EPA), the World Health Organization (WHO), the US Department of Health and Human Services, and the EPA, radon is classified as a "Class A" human carcinogen. Radon typically enters buildings through cracks in concrete floors and walls in basements, as well as through floor sumps, drains, slab joists, and water supplies.

Review of a 1993 Radon Risk Map for Michigan, provided by EcoSearch Environmental Resources, Inc., indicates that an EPA survey of homes in Oakland County reported that 5% to 19% of homes surveyed as having levels of radon above the EPA recommended concentration of 4 picocuries per liter (pCi/L).

11.7 Groundwater Flow

Regional groundwater flow may often be generalized based on topography and/or proximity and location of water bodies. Groundwater flow is generally difficult to predict at the site-specific level due to highly variable localized groundwater flow patterns typical of shallow aquifers as well as the influence of subsurface utility trenches and other structures.

Inferred groundwater flow is to the southwest.

11.8 Stormwater

Industrial sites with exterior storage or activities that may allow stormwater to contact industrial materials and then drain to a storm sewer or surface water body may require a permit under the National Pollutant Discharge Elimination Systems (NPDES). Construction sites disturbing over 5 acres of land also require a permit.

No industrial activities occur on-site; therefore, the site is not currently subject to a stormwater plan under the National Pollutant Discharge Elimination Systems (NPDES). If future activities include industrial operations with exterior storage, a permit may be necessary.

11.9 Spill Plans

Storage of quantities of Critical Materials may necessitate completion of a Michigan Pollution Incident Prevention Plan (PIPP), and storage of oil may require a federal Spill Pollution Control and Countermeasures Plan (SPCC). Under the SPCC rule, the site must be non-transportation-related; it must have a single aboveground container larger than 660 gallons, an aggregate aboveground storage capacity greater than 1,320 gallons, or a completely buried storage capacity greater than 42,000 gallons; and there must be a reasonable expectation of a discharge into or upon navigable waters of the United States.

The subject property, in its current state, would not be subject to a SPCC. If future use includes storage of critical materials, a PIPP may be necessary.

11.10 Abandoned Wells

Abandoned wells can act as a conduit for contamination through surface runoff and groundwater infiltration and are generally required to be properly closed (requiring extraction of the well equipment and sealing the well casing with grout, cement, and/or bentonite) in accordance with local, regional, or State of Michigan Health Department rules.

No abandoned wells were identified on-site.

11.11 Abandoned Septic Systems

Abandoned septic systems are generally required to be properly closed (involving removal and proper disposal of the septic tank contents and filling of the tank with inert material) in accordance with local, regional, or State of Michigan Health Department rules.

No abandoned septic systems were identified on-site.

12.0 REFERENCES

The following resources were reviewed during the course of the Phase I ESA:

- American Society for Testing Materials Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process E 1527-05
- FirstSearch Technology Corporation Environmental FirstSearch Report
- United States Geological Survey: topographic map, 7.5 and 15 Minute Quadrangles
- United States Department of Agriculture Soil Conservation Service Soil Survey
- Rockford Maps Publishing
- MapCard.com, Topographic Maps and Aerial Photographs subscription service

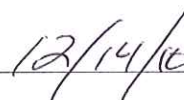
Other individuals and resources are cited in the appropriate sections of this report.

13.0 SIGNATURES OF ENVIRONMENTAL PROFESSIONALS

I declare that, to the best of our professional knowledge and belief, I meet the definition of Environmental Professional as defined in §312.10 of 40 CFR 312, and I have the specific qualifications based on education, training, and experience to assess a property of the nature, history, and setting of the subject property. I have developed and performed the all appropriate inquiries in conformance with the standards and practices set forth in 40 CFR Part 312.



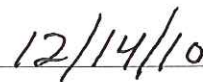
Michael D. Smith, Environmental Professional



Date



Jeffrey S. Carr, Environmental Professional



Date



Report of Geotechnical Investigation

**Proposed All Seasons
of Birmingham
820 E. Maple Road
Birmingham, Michigan**

Prepared for:

**Maple Elm Development Company
31731 Northwestern Highway, Suite 250W
Farmington Hills, Michigan 48334**

**G2 Project No. 120976
December 11, 2012**



December 11, 2012

Mr. Mark Highlen
Maple Elm Development Company
31731 Northwestern Highway, Suite 250W
Farmington Hills, Michigan 48334

Re: Report of Geotechnical Investigation
Proposed All Seasons of Birmingham
820 E. Maple Road
Birmingham, Michigan
G2 Project No. 120976

Dear Mr. Highlen:

We have completed the geotechnical investigation for the proposed All Seasons of Birmingham in Birmingham, Michigan. This report presents the results of our observations and analyses and our recommendations for earthwork operations, foundation design, and construction considerations as they relate to the geotechnical conditions on site.

We appreciate the opportunity to be of service to the Maple Elm Development Company and look forward to discussing the recommendations presented. In the meantime, if you have any questions regarding our report or any other matter pertaining to the project, please contact us.

Sincerely,

G2 Consulting Group, LLC

Jeffrey M. Hayball, P.E.
Project Engineer

Jason B. Stoops, P.E.
Project Manager

Noel J. Hargrave-Thomas, P.E.
Principal

JMH/JBS/NJHT/ljv

Enclosures

Geotechnical & Geoenvironmental
Engineering Services
1866 Woodslee Street
Troy, Michigan 48083
248.680.0400
FAX 248.680.9745



EXECUTIVE SUMMARY

We understand the proposed project consists of constructing a new 33,253 square foot building. The southeast portion of the building will be 3 stories and have a basement. The remaining building footprint will be 4 stories and be a slab-on-grade structure. Associated pavements and utilities will also be constructed in conjunction with the project.

We performed a total of ten (10) soil borings for the proposed project. Approximately 3 to 4 inches of bituminous pavement with approximately 3 to 11 inches of a sand and gravel aggregate base, are present at soil boring locations B-1 through B-8. Approximately 6 to 10 inches of topsoil are present at the ground surface of borings B-9 and B-10. Granular fill soils, consisting of very loose to loose gravelly sand, clayey sand, silty sand, and sand with trace organic matter, underlie the pavement and/or topsoil of borings B-1, B-2, B-4, B-6, and B-8 and extend to depths ranging from 21 inches to 7-1/2 feet below existing grades. Stiff silty clay fill with trace organic matter is present below the topsoil of borings B-9 and B-10 and extends to an approximate depth of 3 feet below grade. Stiff buried silty clay topsoil underlies the pavements and/or fill soils within borings B-1, B-3 through B-5, and B-7, and extends to depths ranging from 20 inches to 4 feet below existing grades. A buried concrete slab was encountered within boring B-2 between 21 inches and 2-1/2 feet below grade. Very loose native clayey sand is present below the buried concrete slab and/or buried topsoil of borings B-1 and B-2 and extends to depths of 3-1/2 and 5 feet. Stiff to hard native silty clay with occasional sand seams and layers generally underlies the fill soils, buried topsoil, and/or native clayey sand and extends to the explored depths of 25 and 35 feet. However, medium native silty clay is present within the upper 7 feet of boring B-4 and below an approximate depth of 32 feet of boring B-1. Groundwater was generally encountered within borings B-1, B-2, B-4 through B-6, and B-8, at approximate depths ranging from 3 to 7 feet during drilling operations. Upon completion of drilling, the groundwater level was measured within borings B-1, B-2, B-5, and B-8, at depths ranging from approximately 1 to 14 feet. Groundwater was not observed upon completion of drilling within borings B-4 and B-6. No measurable groundwater was observed during or upon completion of drilling operations within borings B-3, B-7, B-9, and B-10.

The finished floor elevation for the proposed structure is set at 770.33 feet. Based on existing site grades, we anticipate up to 3 feet of engineered fill will be required to achieve finished grades. We understand the southeastern portion of the building will be constructed on a basement at approximately 10 feet below the finished floor elevation and the remaining building footprint will be supported by foundations bearing at conventional depths. Fill soils and buried topsoil were encountered within the borings performed within the building footprint and have organic matter contents ranging from 2.2 to 5.3 percent, extending to depths ranging from 3 to 6-1/2 feet below existing grades. These soils are not suitable for support of foundations. Therefore, we recommended foundations extend through the fill soils and buried topsoil and bear within native soils. However, the existing fill soils and buried topsoil may be suitable for support of floor slabs and pavements provided satisfactory completion of proof rolling operations. Alternatively, the existing fill soils and buried topsoil can be completely removed within the building footprint and foundations and floor slabs can be supported on engineered fill atop of native soils.

We recommend the foundations for the basement portion of the proposed building be designed based on a net allowable soil bearing capacity of 4,000 psf within the native stiff to hard silty clay. We recommend a net allowable soil bearing pressure of 3,000 psf be used in design of the remaining building foundations supported within the stiff to hard silty clay and/or engineered fill.

This summary is not to be considered separate from the entire text of this report with all the conclusions and qualifications mentioned herein. Details of our analysis and recommendations are discussed in the following sections and in the Appendix of this report.



PROJECT DESCRIPTION

We understand the proposed project consists of constructing a new 33,253 square foot building. The southeast portion of the building will be 3 stories and have a basement. The remaining building footprint will be 4 stories and be a slab-on-grade structure. Associated pavements and utilities will also be constructed in conjunction with the project. Existing grades across the site range from approximately 767 to 772 feet. The proposed finished floor elevation of the proposed building is 770.33 feet.

At the time of our investigation, actual building loads were not available. However, we anticipate single column loads will range from 200 to 400 kips, and wall loads will range from 2 to 4 kips per linear foot. When actual loading conditions have been determined, G2 Consulting Group, LLC (G2) should be notified so that we may review the recommendations presented within this report.

An existing one story brick funeral home building with a basement is located on the west portion of the site. The existing building is located within the western portion of the proposed 4 story building without a basement. Therefore, the existing building will be demolished and its basement backfilled with engineered fill for support of the proposed building.

SCOPE OF SERVICES

The field operations, laboratory testing, and engineering report preparation were performed under the direction and supervision of a licensed professional engineer. Our services were performed according to generally accepted standards and procedures in the practice of geotechnical engineering. Our scope of services for this project is as follows:

1. We drilled a total of ten (10) soil borings throughout the proposed development. Soil borings B-1 and B-2 were drilled within the proposed basement area of the building footprint and extended to a depth of 35 feet each. The remaining borings, B-3 through B-10, were performed throughout the site and extended to a depth of 25 feet below grade.
2. We performed laboratory testing on representative samples obtained from the soil borings. Laboratory testing included visual engineering classification, natural moisture content, organic matter content, dry density, and unconfined compressive strength determinations.
3. We prepared this engineering report. Our report includes recommendations regarding the foundation type suitable for the soil conditions encountered, allowable bearing capacities of the anticipated bearing soil layers, estimated settlements, floor slab design parameters and considerations, pavement design parameter, cross-sections, and considerations, and construction considerations related to site preparation and foundation construction.

FIELD OPERATIONS

G2 Consulting Group, LLC (G2), in conjunction with the Maple Elm Development Company, selected the number, depth, and location of the soil borings based on the site concept plan and existing structure locations. The soil borings were located in the field by measuring from existing site features and



landmarks using conventional taping methods and were marked by a representative of G2 prior to drilling operations. The approximate soil boring locations are shown on the Soil Boring Location Plan, Plate No. 1. Ground surface elevations at the boring locations were interpolated from spot elevations and topographic contour lines presented on the Topographic Survey prepared by Professional Engineering Associates, dated September 12, 2012.

The soil borings were drilled using a truck-mounted rotary drilling rig. Continuous flight, 2-1/4-inch, inside diameter, hollow-stem augers were used to advance the boreholes to the explored depths. Within each soil boring, soil samples were obtained at intervals of 2-1/2 feet within the upper 10 feet and at intervals of 5 feet below that depth. An additional sample was obtained within borings B-1 and B-2 at 12-1/2 feet. Soil samples were obtained by the Standard Penetration Test method (ASTM D 1586), which involves driving a 2-inch diameter split-spoon sampler into the soil with a 140-pound weight falling 30 inches. The sampler is generally driven three successive 6-inch increments with the number of blows for each increment recorded. The number of blows required to advance the sampler the last 12 inches is termed the Standard Penetration Resistance (N). Blow counts for each 6-inch increment and the resulting N-values are presented on the individual soil boring logs.

The soil samples were placed in sealed containers in the field and brought to our laboratory for testing and classification. During field operations, the driller maintained logs of the encountered subsurface conditions, including changes in stratigraphy and observed groundwater levels. The final boring logs are based on the field logs supplemented by laboratory soil classification and test results. After completion of drilling operations, the boreholes were backfilled with excavated material and cold patch.

LABORATORY TESTING

Representative soil samples were subjected to laboratory testing to determine soil parameters pertinent for foundation design and site preparation. An experienced geotechnical engineer classified the samples in general conformance with the Unified Soil Classification System.

Laboratory testing included natural moisture content, organic matter content (loss-on-ignition), dry density, and unconfined compressive strength determinations. The organic matter content of representative samples was determined in accordance with ASTM Test Method D 2974, "Standard Test Methods for Moisture, Ash, and Organic Matter of Peat and Other Organic Soils". The unconfined compressive strengths were determined by ASTM Test Method D 2166 and using a spring loaded hand penetrometer. Per ASTM Test Method D 2166, the unconfined compressive strength of cohesive soils is determined by axially loading a small cylindrical soil sample under a slow rate of strain. The unconfined compressive strength is defined as the maximum stress applied to the soil sample before shear failure. If shear failure does not occur prior to a total strain of 15 percent, the unconfined compressive strength is defined as the stress at a total strain of 15 percent. The hand penetrometer estimates the unconfined compressive strength to a maximum of 4-1/2 tons per square foot (tsf) by measuring the resistance of the soil sample to the penetration of a calibrated spring loaded cylinder.

The results of the laboratory tests are indicated on the soil boring logs at the depths the samples were obtained. In addition, the Unconfined Compressive Strength Test, Figure Nos. 11 and 12, is presented in



the Appendix. We will hold the soil samples for 60 days from the date of this report. If you would like the samples, please let us know.

SITE DESCRIPTION

The proposed site is located at 820 E. Maple Road in Birmingham, Michigan. Maple Road bound the property to the north as Elm Street bounds the property to the west. The site is a former funeral home, which consists of a single-story structure with a basement and associated asphalt pavements. The finished floor elevation of the existing building is 771.7 feet. Site grades generally slope away from the existing building and down towards existing catch basins within the existing parking lot. Elevations on site range from approximately 767 feet to 771 feet. The surrounding properties are primarily residential and commercial in nature.

SOIL CONDITIONS

Approximately 3 to 4 inches of bituminous pavement with approximately 3 to 11 inches of a sand and gravel aggregate base, are present at soil boring locations B-1 through B-8. Approximately 6 to 10 inches of topsoil are present at the ground surface of borings B-9 and B-10. Fill soils, consisting of gravelly sand, clayey sand, silty sand, sand, and silty clay with trace organic matter, underlie the pavement and/or topsoil of borings B-1, B-2, B-4, B-6, and B-8 through B-10 and extend to depths ranging from 21 inches to 7-1/2 feet below existing grades. Buried silty clay topsoil is present below the pavements and/or fill soils within borings B-1, B-3 through B-5, and B-7, and extends to depths ranging from 20 inches to 4 feet below existing grades. A buried concrete slab is present within boring B-2 between 21 inches and 2-1/2 feet below grade. Native clayey sand underlies the buried concrete slab and/or buried topsoil of borings B-1 and B-2 and extends to depths of 3-1/2 and 5 feet. Native silty clay with occasional sand seams and layers is present below the fill soils, buried topsoil, and/or native clayey sand and extends to the explored depths of 25 and 35 feet.

The silty clay fill is stiff in consistency with a moisture content of 16 percent, an organic matter content of 2.8 percent, and an unconfined compressive strength of 3,000 pounds per square foot (psf). The granular fill is very loose to loose in compactness with Standard Penetration Test N-values ranging from 0 to 9 blows per foot (bpf) and organic matter contents ranging from 2.2 to 5.2 percent. The buried silty clay topsoil is stiff in consistency with moisture contents ranging from 20 to 27 percent, organic matter contents ranging from 4.1 to 8.0 percent, and unconfined compressive strengths ranging from 2,000 to 2,500 psf. The native clayey sand is very loose in compactness with a SPT N-value of 4 bpf. The native silty clay is generally stiff to hard in consistency with moisture contents ranging from 10 to 24 percent, dry densities ranging from 110 to 143 pounds per cubic foot (pcf), and unconfined compressive strength ranging from 2,000 to 9,000 psf. However, within the upper 7 feet of boring B-4 and below an approximate depth of 32 feet of boring B-1, the native silty clay is medium in consistency with natural moisture contents of 15 to 19 percent and unconfined compressive strength of 1,500 psf.

The stratification depths shown on the soil boring logs represent the soil conditions at the boring locations. Variations may occur between borings. Additionally, the stratigraphic lines represent the approximate boundaries between soil types. The transition may be more gradual than what is shown.



We have prepared the boring logs on the basis of laboratory classification and testing, as well as field logs of the soils encountered.

The Soil Boring Location Plan, Plate No. 1, Soil Boring Logs, Figure Nos. 1 through 10, and Unconfined Compressive Strength Test, Figure Nos. 11 and 12, are presented in the Appendix. The soil profiles described above are generalized descriptions of the conditions encountered at the boring locations. General Notes Terminology defining the nomenclature used on the boring logs and elsewhere in this report are presented on Figure No. 13.

GROUNDWATER CONDITIONS

Groundwater observations were made during and upon completion of drilling operations. Groundwater was generally encountered within borings B-1, B-2, B-4 through B-6, and B-8, at approximate depths ranging from 3 to 7 feet during drilling operations, corresponding to approximate elevations ranging from 761 to 765 feet. Upon completion of drilling, the groundwater level was measured within borings B-1, B-2, B-5, and B-8, at depths ranging from approximately 1 to 14 feet, corresponding to approximate elevations ranging from 753-1/2 to 767 feet. Groundwater was not observed upon completion of drilling within borings B-4 and B-6. No measurable groundwater was observed during or upon completion of drilling operations within borings B-3, B-7, B-9, and B-10.

Fluctuations in perched and long term groundwater levels should be anticipated due to seasonal variations and following periods of prolonged precipitation. It should also be noted that groundwater observations made during drilling operations in predominantly cohesive soils are not necessarily indicative of the static groundwater level. This is due to the low permeability of such soils and the tendency of drilling operations to seal off the natural paths of groundwater flow.

SITE PREPARATION RECOMMENDATIONS

We anticipate earthwork operations will consist of demolishing the existing building, removing the existing topsoil and bituminous pavements, removing abandoned utilities, backfilling abandoned utility and demolished building excavations with engineered fill, proof rolling the existing subgrade, placing and compacting engineered fill to achieve proposed grades, excavating for utilities and foundations, and preparing the site for floor slab and pavement support.

At the start of earthwork operations, the existing building and associated foundations should be completely removed within proposed building areas. The resulting excavation should be backfilled with engineered fill. In addition, the existing bituminous concrete pavements and topsoil should be completely removed within the footprint of the proposed building and pavement areas. Any existing utilities within the footprint of the proposed structure should be completely removed and backfilled with engineered fill. Existing utilities outside the proposed building footprint can be removed or abandoned in place and completely filled with grout.

The finished floor elevation for the proposed structure is set at 770.33 feet. Based on existing site grades, we anticipate one to 3 feet of engineered fill will be required to achieve finished grades. We understand the southeastern portion of the building will be constructed on a basement at approximately



10 feet below the finished floor elevation and the remaining building footprint will be supported by foundations bearing at conventional depths. The existing fill soils within the proposed basement area will be removed to achieve proposed grades. Fill soils and buried topsoil within the remaining building area without a basement have organic matter contents ranging from 4.2 to 5.3 percent, extending to depths ranging from 3 to 6-1/2 feet below existing grades. These soils are not suitable for support of foundations. Therefore, we recommended foundations extend through the fill soils and buried topsoil and bear within native soils. However, the existing fill soils and buried topsoil may be suitable for support of floor slabs and pavements provided satisfactory completion of proof rolling operations. Alternatively, the existing fill soils and buried topsoil can be completely removed within the building footprint and foundations and floor slabs can be supported on engineered fill atop of native soils.

Following demolition of the existing building and removal of the existing pavements and topsoil and prior to placement of any engineered fill, the exposed subgrade should be thoroughly proofrolled with a heavy rubber-tired vehicle such as a loaded dump truck and visually evaluated for instability and/or unsuitable soil conditions. Any unstable or unsuitable areas noted should be removed and replaced with engineered fill. We recommend all earthwork operations be performed in accordance with comprehensive specifications and be properly monitored in the field by qualified personnel under the direction of a licensed engineer.

Engineered fill should be free of organic matter, frozen soil, clods, or other harmful material. Engineered fill should be placed in uniform horizontal layers, not more than 9 inches in loose thickness. The engineered fill should be compacted to achieve a density of at least 95 percent of the maximum dry density as determined by the Modified Proctor compaction test (ASTM D 1557). All engineered fill material should be placed and compacted at approximately the optimum moisture content. Frozen material should not be used as fill, nor should fill be placed on a frozen subgrade. The existing fill and buried topsoil are generally not suitable for use as engineered fill beneath structures and pavements due to the presence of organic matter. The native silty clay that will be removed during excavation operations for the proposed building basement can be reused as engineered fill. However, the native silty clay generally has moisture contents above the anticipated optimum moisture content and may require moisture conditioning in order to be placed at least 95 percent of its maximum dry density.

FOUNDATION RECOMMENDATIONS

We understand the existing building with a basement within the proposed structure will be completely removed and replaced with engineered fill. In addition the southern portion of the proposed building will be constructed on a basement, approximately 10 feet below finished grades. However, the existing fill and buried topsoil encountered within borings within the remaining building footprint are not suitable for support of the foundations. Therefore, we recommend foundations extend through the existing fill and buried topsoil, where encountered, and bear on the stiff to hard silty clay at depths up to 6-1/2 feet below existing grades. Alternatively, we recommend the existing fill soils and buried topsoil be completely removed within the building footprint and foundations be constructed to bear at conventional depths within engineered fill.

We recommend the proposed building be supported on conventional shallow spread and/or strip footings. We recommend the foundations for the basement portion of the proposed building be designed based on



a net allowable soil bearing capacity up to 4,000 psf within the native stiff to hard silty clay. We recommend a net allowable soil bearing pressure of 3,000 psf be used in design of the remaining building foundations supported within the stiff to hard silty clay and/or engineered fill. We recommend a qualified geotechnical technician be on site during construction to observe the excavations, measure the bearing depth, and confirm the adequacy of the bearing soils. Exterior footings must bear at a minimum depth of 3-1/2 feet below finished grade for protection against frost action. Interior footings can bear at shallower depths provided adequate bearing soils are present.

Foundations for the proposed building may bear at different elevations. To achieve a change in the level of a strip footing, the footing should be gradually stepped at a grade no steeper than two units horizontal to one unit vertical. Adjacent spread footing foundations should be designed and constructed so the least lateral distance between the foundations is equivalent to or more than the difference in their bearing levels. Continuous wall or strip footings should be at least 12 inches in width and isolated spread footings should be at least 30 inches in their least dimension. We recommend all strip footings be suitably reinforced to minimize the effects of differential settlements associated with local variations in subsoil conditions.

If the recommendations outlined in this report are adhered to, total and differential settlements for the completed structures should be within 1 inch and 1/2 inch, respectively. We expect settlements of these magnitudes are within tolerable limits for the type of building proposed.

SITE SEISMIC COEFFICIENT AND LIQUEFACTION POTENTIAL

The city of Birmingham is located in Oakland County, Michigan which lies in the Central Stable Tectonic Region of the country. The observed soils beneath the project site generally consist of stiff to hard silty clay, with areas of medium silty clay present within the upper 5 feet or below an approximate depth of 32 feet in some borings. Groundwater was encountered within some of the borings at depths ranging from 3 to 7-1/2 feet below existing grades and upon completion at depths ranging from 1 to 14 feet below grade.

Based on Section 1615 of the 2009 Michigan Building Code, which incorporates the 2009 edition of the International Building Code, structures may be designed for seismic loading conditions on the basis of the following seismic coefficients and classifications:

- Site Class D – Stiff Soil Profile
 - Maximum Considered Earthquake Spectral Response Acceleration
 - at short periods (S_s) = 0.11g
 - at one second period (S_1) = 0.04g
 - Adjusted Maximum Considered Earthquake Spectral Response Acceleration
 - at short periods (S_{MS}) = 0.18g
 - at one second period (S_{M1}) = 0.10g
 - Five percent Damped Design Spectral Response Acceleration
 - at short periods (S_{DS}) = 0.12g
 - at one second period (S_{D1}) = 0.07g



The development of shear strains tending to cause liquefaction of sand deposits is governed by the character of the ground motion (i.e. acceleration and frequency), soil type, groundwater level, and in-situ stress conditions. Very loose to loose sands and sands below the water table is more likely to liquefy than dense sands and sands above the water table. We believe the risk of liquefaction occurring at this site is low based on the site being located in a low seismic activity area and the presence of predominantly cohesive soils beneath the site.

FLOOR SLAB RECOMMENDATIONS

Floor slabs within the west and southeast basement will be supported on engineered fill and native silty clay, respectively. Floor slabs within the northeast portion of building are expected to bear on engineered fill atop of fill soils and buried topsoil. Provided some floor slab settlement can be tolerated, engineered fill placed above the existing fill soils and buried topsoil can be used for support of the proposed building concrete floor slabs following satisfactory completion of the site preparation proof rolling operations as described in the site preparation section of this report. If settlement of the floor slab cannot be tolerated in this area, we recommend removing the existing fill soils and buried topsoil and replacing them with engineered fill. A subgrade modulus (k) of up to 150 pounds per cubic inch (pci) may be used in the design of floor slabs supported on engineered fill.

We recommend that at least 4 inches of clean coarse sand or pea gravel be placed between the subgrade and the bottom of the floor slab for use as a capillary break to reduce moisture transmission through the concrete floors and to reduce the potential for concrete curling. If moisture sensitive floor coverings are planned or if greater protection against vapor transmission is desired, a vapor barrier consisting of 10 mil plastic sheeting, or equivalent, may be placed on the sand layer beneath floor slabs. The floor slab should be isolated from the foundation system to allow for independent movement.

BELOW-GRADE WALL RECOMMENDATIONS

Below-grade walls or subgrade should be designed to withstand lateral earth pressures due to backfilled soils and adjacent traffic loads. Below-grade walls considered to be fixed at the top should be designed on the basis of at-rest lateral earth pressures corresponding to an equivalent fluid pressure of 55 pounds per square foot per foot of depth for drained backfill soil conditions and 85 pounds per square foot per foot of depth for undrain conditions.

Basement wall backfill should consist of MDOT Class II sand to maintain drained conditions. To provide the development of hydrostatic pressure on below grade floors and walls, a subdrain system should be installed at the foundation level. The perforated or slotted subdrains should be encircled with clean gravel and the pipe and gravel rapped with a non-woven filter fabric to prevent the migration of soil fines into the subdrains. The drainage system should have properly design clean outs and shall be connected to properly designed sump pump system or stormwater collection system. All exterior walls and floors below grade should also be waterproofed or damp-proofed at a minimum.



PAVEMENT RECOMMENDATIONS

We understand the pavement area will include construction of one drive and associated parking areas. Based on final grades for the proposed parking lot, we anticipate the proposed pavement surface will be at or slightly above existing grades. We anticipate the existing fill soils, buried topsoil, and engineered fill will be suitable for support of the proposed pavements following satisfactory completion of proof rolling operations as previously described within this report.

We performed pavement design analyses in accordance with the “AASHTO Guide for Design of Pavement Structures”. Based on the existing soil conditions, we have provided design pavement sections based on an effective modulus of subgrade reaction, k , of 80 pci. For evaluation purposes, we estimate minimum 18-kip equivalent-single-axle loads (ESALs) of 100,000 over a design life of 30, a serviceability loss of 2.5, a terminal serviceability value of 2.0, load transfer coefficient of 3.9, a drainage coefficient of 1.0, a standard deviation of 0.35 for rigid pavements, a reliability factor of 0.80, and a concrete strength of 3,500 psi.

Based on the results of our analysis, we recommend a minimum pavement section consisting of 6 inches of MDOT P1 concrete supported by 6 inches of MDOT 21AA dense graded material. All pavement materials are specified within the 2003 Standard Specifications for Construction from the Michigan Department of Transportation. The concrete pavement materials are described in Section 601. The aggregate materials for dense-graded base and concrete are described in Section 902.

Proper drainage is considered to be an important consideration for pavement design on cohesive soils. Given the predominant cohesive subgrade soils, we recommend edge drains are provided around the perimeter of any proposed curbs, since they can become a source of water infiltration into the pavement subgrade. We recommend finger drains be installed at the catch basin locations within the pavement. A minimum of four (4) finger drains should extend a minimum of 15 feet outward from each catch basin. Catch basins along curb lines should have a minimum of two (2) finger drains extending below the pavement. We recommend that the pavement and subgrade are properly sloped to promote effective surface and subsurface drainage and to prevent water from ponding. We also recommend pavement subbase material consist of non-frost-susceptible aggregates.

Regular, timely maintenance should be performed to reduce the potential deterioration associated with moisture infiltration through surface cracks. The owner should be prepared to seal the cracks with hot-applied elastic crack filler as soon as possible after cracking develops and as often as necessary to block the passage of water to the subgrade soils.

CONSTRUCTION CONSIDERATIONS

We anticipate utility excavations will generally extend to depths of 5 to 10 feet below proposed finished grades and foundation excavations will extend up to 10 feet within the proposed basement area and up to 6-1/2 feet within the remaining building footprint. Caving and/or sloughing of the granular engineered fill within the western portion of the site may occur during utility and foundation excavation. The contractor should be prepared to over excavate and form foundations within the granular soils, as



necessary. The sides of the spread and/or strip foundations should be constructed straight and vertical to reduce the risk of frozen soil adhering to the concrete and raising the foundations.

In general, we anticipate some accumulations of groundwater within construction excavations at the depths anticipated for this project. However, any groundwater or surface run off should be controllable with normal pumping from properly constructed sumps. Care should always be exercised when excavating near existing structures or utilities to avoid undermining. In no case should excavations extend below the level of adjacent foundations or utilities unless underpinning is planned.

We recommend a maximum slope of 1-1/2 horizontal unit to 1 vertical unit (1-1/2H:1V) for temporary excavations that extend below a depth of 5 feet within the very loose to loose granular fill soils, 1H:1V within the medium cohesive soils, and 3/4H:1V within the very stiff to hard cohesive soils. Where seepage from excavation cuts is observed, the slopes will need to be flattened sufficiently to achieve stability, but in no case left steeper than 2:1 at and below the seepage level. The tops of the slopes should be barricaded to prevent vehicles and storage loads within 7 feet of the tops of the slopes. If the temporary construction excavations are to be maintained during the rainy season, berms are suggested along the tops of the slopes to prevent runoff water from entering the excavation and eroding the slope faces. The soils exposed in slope faces should be inspected by our personnel so that modifications of the slopes may be made if variations in the soil or water conditions occur.

All excavations should be safely sheeted, shored, sloped, or braced in accordance with MI-OSHA requirements. If material is stored or equipment is operated near an excavation, stronger shoring must be used to resist the extra pressure due to the superimposed loads. Care should always be exercised when excavating near existing roadways or utilities to avoid undermining. In no case should excavations extend below the level of adjacent existing structures unless underpinning is planned.

GENERAL COMMENTS

We have formulated the evaluations and recommendations presented in this report relative to site preparation and foundations on the basis of data provided to us relating to the location, type, and grade for the proposed site. Any significant change in this data should be brought to our attention for review and evaluation with respect to the prevailing subsurface conditions.

The scope of the present investigation was limited to evaluation of subsurface conditions for the support of the building foundation and other related aspects of the development. No chemical, environmental, or hydrogeological testing or analyses were included in the scope of this investigation. If changes occur in the design, location, or concept of the project, the conclusions and recommendations contained in this report are not valid unless G2 Consulting Group, LLC reviews the changes. G2 Consulting Group, LLC will then confirm the recommendations presented herein or make changes in writing.

We have based the analyses and recommendations submitted in this report upon the data from soil borings performed at the approximate locations shown on the Soil Boring Location Plan, Plate No. 1. This report does not reflect variations that may occur between the actual boring locations and the actual structure locations. The nature and extent of any such variations may not become clear until the time of construction. If significant variations then become evident, it may be necessary for us to re-evaluate our report recommendations.



Soil conditions at the site could vary from those generalized on the basis of soil borings made at specific locations. It is, therefore, recommended that G2 Consulting Group, LLC be retained to provide soil engineering services during the site preparation, excavation, and foundation construction phases of the proposed project. This is to observe compliance with the design concepts, specifications, and recommendations. Also, this allows design changes to be made in the event that subsurface conditions differ from those anticipated prior to the start of construction.

APPENDIX

Soil Boring Location Plan

Plate No. 1

Soil Boring Logs

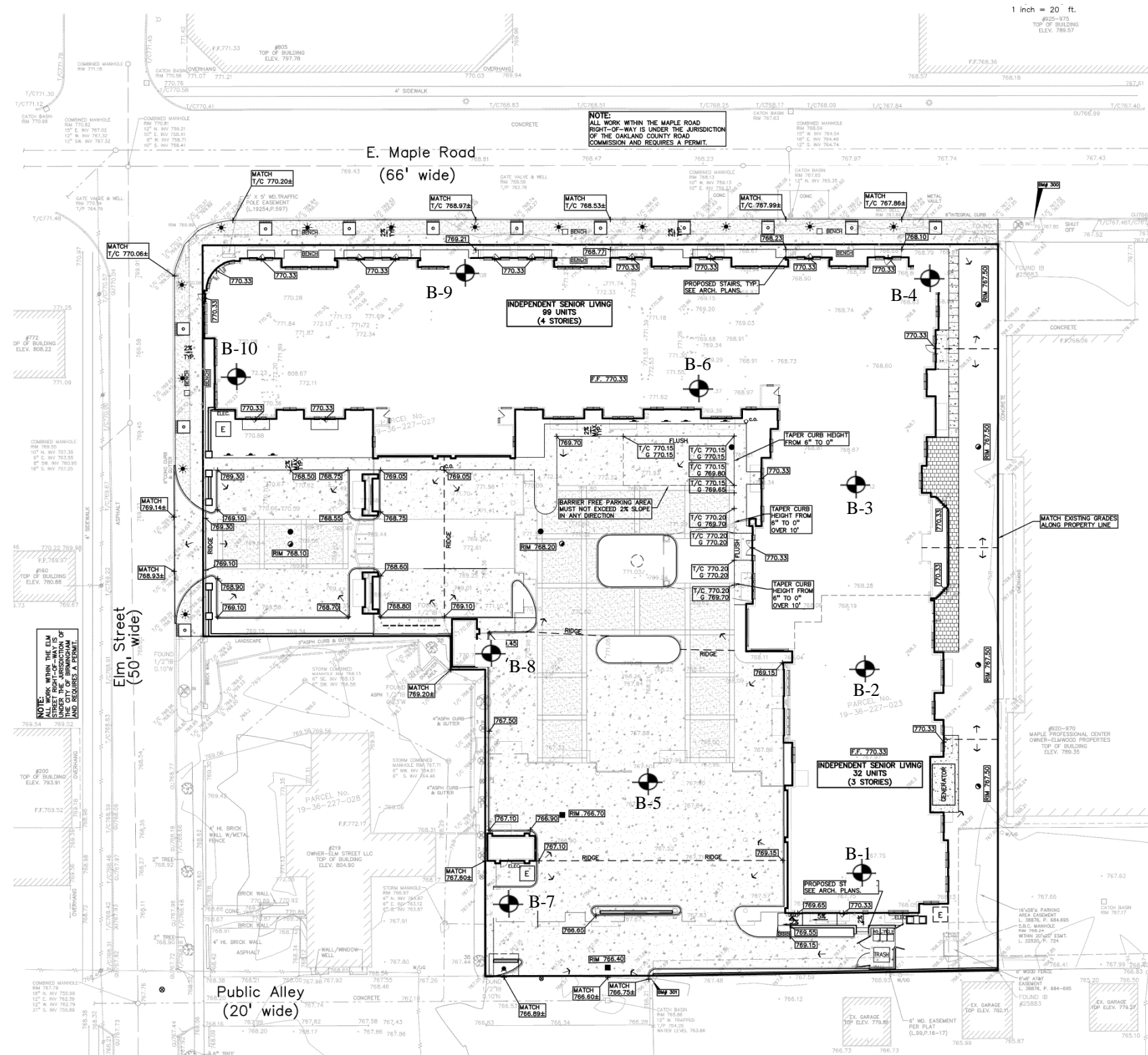
Figure Nos. 1 through 10

Unconfined Compressive Strength Test

Figure Nos. 11 and 12

General Notes Terminology

Figure No. 13



1 inch = 20' ft.

Legend

- Soil Boring Drilled by Strata Drilling, Inc. on November 27 and 28, 2012

Soil Boring Location Plan

Proposed All Seasons of Birmingham
820 E. Maple Road
Birmingham, Michigan



Project No. 120976	
Drawn by: JMH	
Date: 12-10-12	Plate No. 1
Scale: NTS	

Station: N/A

Soil Boring No. **B-1**

SUBSURFACE PROFILE				SOIL SAMPLE DATA					
ELEV. (ft)	PRO- FILE	GROUND SURFACE ELEVATION: 767.8 ft ±	DEPTH (ft)	SAMPLE TYPE-NO.	BLOWS/ 6-INCHES	STD. PEN. RESISTANCE (N)	MOISTURE CONTENT (%)	DRY DENSITY (PCF)	UNCONF. COMP. STR. (PSF)
		Bituminous Concrete (3-1/2 inches)	0.3						
		Fill: Brown Sand and Gravel (Aggregate Base, 6-1/2 inches)	0.8						
		Fill: Brown Gravelly Sand with trace silt	2.0	S-1	7 11 6	17	24.1		2500*
		Buried Topsoil: Stiff Dark Brown Silty Clay (Organic Matter Content = 8.0%)	4.0		2 2 2				
762.8		Very Loose Brown Clayey Sand with trace gravel	5.0	S-2	2 2	4			
				S-3	3 4 6	10	16.8		5000*
757.8		Very Stiff to Hard Brown and Gray Silty Clay with trace sand and gravel	10	S-4	3 4 8	12	16.8	120	3880
				S-5	4 9 13	22	14.8		9000*
752.8		Hard Gray Silty Clay with trace sand and gravel	14.0	S-6	6 8 8	16	12.7		8500*
				S-7	3 4 5	9	11.8	143	2500*
747.8			20						
		Stiff to Very Stiff Gray Silty Clay with trace sand and gravel and occasional sand seams	25	S-8	2 4 6	10	14.6		5000*
742.8				S-9	3 4 6	10	15.3		2000*
737.8			30						
		Medium Gray Silty Clay with trace sand and gravel and occasional sand seams	32.0	S-10	3 4 5	9	15.2		1500*
732.8			35.0						

Total Depth: 35ft End of Boring @ 35ft
 Drilling Date: November 27, 2012
 Inspector:
 Contractor: Strata Drilling, Inc.
 Driller: B. Sienkiewicz

Water Level Observation:
4 feet during drilling operations; 14 feet upon completion of
drilling operations

Notes:
* Calibrated Hand Penetrometer

Drilling Method:
2-1/4 inch, inside diameter, hollow-stem augers

Excavation Backfilling Procedure:
Borehole backfilled with auger cuttings and capped with cold patch

Figure No. 1

BORING LOG W/STAIN HEADER NO LAT LONG 120976.GPJ G2 CONS GDT 12/11/12

Project Name: Proposed All Seasons of Birmingham

Project Location: 820 E. Maple Road
Birmingham, Michigan

G2 Project No. 120976

Station: N/A



Soil Boring No. **B-2**

Consulting Group, LLC

SUBSURFACE PROFILE

SOIL SAMPLE DATA

ELEV. (ft)	PRO- FILE	GROUND SURFACE ELEVATION: 768.1 ft ±	DEPTH (ft)	SAMPLE TYPE-NO.	BLOWS/ 6-INCHES	STD. PEN. RESISTANCE (N)	MOISTURE CONTENT (%)	DRY DENSITY (PCF)	UNCONF. COMP. STR. (PSF)
		Bituminous Concrete (3-1/2 inches)	0.3						
		Fill: Brown Sand and Gravel (Aggregate Base, 5-1/2 inches)	0.8						
		Fill: Brown Gravelly Sand with trace silt	1.8						
		Buried Portland Cement Concrete Slab	2.5						
		Brown Clayey Sand with trace silt and gravel	3.5	S-1	11 20/0"	---			
763.1		Stiff Brown and Gray Silty Clay with trace sand and gravel	5	S-2	1 2 3	5	21.2		3000*
			7.0	S-3	2 5 8	13	15.5		4500*
758.1		Very Stiff to Hard Brown and Gray Silty Clay with trace sand and gravel and occasional sand layers	10	S-4	6 8 9	17	15.3		8000*
			14.0	S-5	6 10 12	22			
753.1			15	S-6	5 6 6	12	12.9	128	5570
748.1			20	S-7	3 5 7	12	15.7	119	2540
743.1		Stiff to Very Stiff Gray Silty Clay with trace sand and gravel	25	S-8	3 5 6	11	16.0		2000*
738.1			30	S-9	3 4 6	10	14.7		3000*
733.1			35.0	S-10	3 5 7	12	14.8		3000*

Total Depth: 35ft End of Boring @ 35ft
Drilling Date: November 27, 2012
Inspector:
Contractor: Strata Drilling, Inc.
Driller: B. Sienkiewicz

Water Level Observation:
7 feet during drilling operations; 12 feet upon completion of drilling operations

Notes:
* Calibrated Hand Penetrometer

Drilling Method:
2-1/4 inch, inside diameter, hollow-stem augers

Excavation Backfilling Procedure:
Borehole backfilled with auger cuttings and capped with cold patch

Figure No. 2

BORING LOG W/STA IN HEADER NO LAT LONG 120976.GPJ G2 CONS GDT 12/11/12

Project Name: Proposed All Seasons of Birmingham

Project Location: 820 E. Maple Road
Birmingham, Michigan

G2 Project No. 120976

Station: N/A



Soil Boring No. **B-3**

Consulting Group, LLC

SUBSURFACE PROFILE				SOIL SAMPLE DATA					
ELEV. (ft)	PRO- FILE	GROUND SURFACE ELEVATION: 768.6 ft ±	DEPTH (ft)	SAMPLE TYPE-NO.	BLOWS/ 6-INCHES	STD. PEN. RESISTANCE (N)	MOISTURE CONTENT (%)	DRY DENSITY (PCF)	UNCONF. COMP. STR. (PSF)
		Bituminous Concrete (3-1/2 inches)	0.3						
		Fill: Brown Sand and Gravel (Aggregate Base, 8-1/2 inches)	1.0						
		Buried Topsoil: Stiff Dark Brown Silty Clay (Organic Matter Content = 4.2%)	3.0	S-1	3 2 3	5	20.3		2500*
763.6		Stiff Brown and Gray Silty Clay with trace sand and gravel	5	S-2	2 2 4	6	20.3	116	2390
			7.0	S-3	3 6 8	14	15.6		7000*
758.6		Very Stiff to Hard Brown and Gray Silty Clay with trace sand and gravel	10	S-4	5 7 10	17	14.1		9000*
			12.0						
753.6			15	S-5	3 5 7	12	13.1		5000*
748.6		Very Stiff to Hard Gray Silty Clay with trace sand and gravel	20	S-6	3 5 6	11	15.6		6000*
743.6			25	S-7	3 5 7	12	14.9		5000*
		End of Boring @ 25ft							
738.6			30						
733.6			35						

Total Depth: 25ft
Drilling Date: November 27, 2012
Inspector:
Contractor: Strata Drilling, Inc.
Driller: B. Sienkiewicz

Water Level Observation:
Dry during and upon completion of drilling operations

Notes:
* Calibrated Hand Penetrometer

Drilling Method:
2-1/4 inch, inside diameter, hollow-stem augers

Excavation Backfilling Procedure:
Borehole backfilled with auger cuttings and capped with cold
patch

Figure No. 3

BORING LOG W/STA IN HEADER NO LAT LONG 120976.GPJ G2 CONS.GDT 12/11/12

Project Name: Proposed All Seasons of Birmingham

Project Location: 820 E. Maple Road
Birmingham, Michigan

G2 Project No. 120976

Station: N/A



Soil Boring No. **B-4**

Consulting Group, LLC

SUBSURFACE PROFILE				SOIL SAMPLE DATA					
ELEV. (ft)	PRO- FILE	GROUND SURFACE ELEVATION: 768.9 ft ±	DEPTH (ft)	SAMPLE TYPE-NO.	BLOWS/ 6-INCHES	STD. PEN. RESISTANCE (N)	MOISTURE CONTENT (%)	DRY DENSITY (PCF)	UNCONF. COMP. STR. (PSF)
		Bituminous Concrete (4 inches)	0.3						
		Fill: Brown Sand and Gravel (Aggregate Base, 6 inches)	0.8		6				
		Fill: Brown Sand with trace silt and gravel	2.0	S-1	7	10	26.8		2000*
		Buried Topsoil: Stiff Dark Brown Silty Clay (Organic Matter Content = 5.3%)	3.0		3				
763.9	▽	Medium Brown and Gray Silty Clay with trace sand and gravel and occasional sand layers	5	S-2	2 2 2	4	19.1		1500*
			7.0	S-3	4 6 8	14	14.9		9000*
758.9		Hard Brown and Gray Silty Clay with trace sand and gravel	10	S-4	5 10 12	22	13.9		9000*
			12.5						
753.9			15	S-5	3 5 6	11	14.3		4500*
748.9		Stiff to Very Stiff Gray Silty Clay with trace sand and gravel	20	S-6	2 4 7	11	14.9		3000*
743.9			25	S-7	3 5 7	12	14.6		4500*
		End of Boring @ 25ft							
738.9			30						
733.9			35						

Total Depth: 25ft
Drilling Date: November 27, 2012
Inspector:
Contractor: Strata Drilling, Inc.
Driller: B. Sienkiewicz

Water Level Observation:
4-1/2 feet during drilling operations; dry upon completion of drilling operations

Notes:
Boring offset 10 feet west and 5 feet south
* Calibrated Hand Penetrometer

Drilling Method:
2-1/4 inch, inside diameter, hollow-stem augers

Excavation Backfilling Procedure:
Borehole backfilled with auger cuttings and capped with cold patch

Figure No. 4

BORING LOG W/STA IN HEADER NO LAT LONG 120976.GPJ G2 CONS.GDT 12/11/12

Project Name: Proposed All Seasons of Birmingham

Project Location: 820 E. Maple Road
Birmingham, Michigan

G2 Project No. 120976

Station: N/A



Soil Boring No. **B-5**

Consulting Group, LLC

SUBSURFACE PROFILE

SOIL SAMPLE DATA

ELEV. (ft)	PRO- FILE	GROUND SURFACE ELEVATION: 767.8 ft ±	DEPTH (ft)	SAMPLE TYPE-NO.	BLOWS/ 6-INCHES	STD. PEN. RESISTANCE (N)	MOISTURE CONTENT (%)	DRY DENSITY (PCF)	UNCONF. COMP. STR. (PSF)
		Bituminous Concrete (4 inches)	0.3						
		Fill: Brown Sand and Gravel (Aggregate Base, 7 inches)	0.9		2				
		Buried Topsoil: Stiff Dark Brown Silty Clay (Organic Matter Content = 4.7%)	2.3	S-1	3	5	24.2		2000*
		Stiff Brown and Gray Silty Clay with trace sand and gravel and occasional sand seams	3.5		1				
762.8			5	S-2	2 3	5	15.8		2000*
		Stiff to Very Stiff Brown and Gray Silty Clay with trace sand and gravel		S-3	2 3 5	8	15.7	123	5560
757.8			10	S-4	3 7 11	18	14.3		6000*
			11.0						
752.8			15	S-5	2 3 5	8	10.2		3000*
		Stiff Gray Silty Clay with trace sand and gravel							
747.8			20	S-6	3 4 6	10	11.6		3000*
742.8			25	S-7	3 5 7	12	15.4		2000*
		End of Boring @ 25ft							
737.8			30						
732.8			35						

Total Depth: 25ft
Drilling Date: November 27, 2012
Inspector:
Contractor: Strata Drilling, Inc.
Driller: B. Sienkiewicz

Water Level Observation:
3 feet during drilling operations; 11 inches upon completion of
drilling operations

Notes:
* Calibrated Hand Penetrometer

Drilling Method:
2-1/4 inch, inside diameter, hollow-stem augers

Excavation Backfilling Procedure:
Borehole backfilled with auger cuttings and capped with cold
patch

Figure No. 5

BORING LOG W/STA IN HEADER NO LAT LONG 120976.GPJ G2 CONS.GDT 12/11/12

Project Name: Proposed All Seasons of Birmingham

Project Location: 820 E. Maple Road
Birmingham, Michigan

G2 Project No. 120976

Station: N/A



Soil Boring No. **B-6**

Consulting Group, LLC

SUBSURFACE PROFILE				SOIL SAMPLE DATA					
ELEV. (ft)	PRO- FILE	GROUND SURFACE ELEVATION: 769.0 ft ±	DEPTH (ft)	SAMPLE TYPE-NO.	BLOWS/ 6-INCHES	STD. PEN. RESISTANCE (N)	MOISTURE CONTENT (%)	DRY DENSITY (PCF)	UNCONF. COMP. STR. (PSF)
		Bituminous Concrete (3 inches)	0.3						
		Fill: Brown Sand and Gravel (Aggregate Base, 11 inches)	1.2						
		Fill: Loose Brown Sand with trace silt and gravel and occasional clay seams and layers		S-1	3 3 4	7			
764.0		Fill: Very Loose Brown Sand with trace silt and gravel	4.5	S-2	0 0 0	0			
			6.5	S-3	0 4 5	9	15.0		7000*
759.0		Very Stiff Brown and Gray Silty Clay with trace sand and gravel	10	S-4	5 8 11	19	15.3		6500*
			12.0						
754.0			15	S-5	3 6 7	13	14.4		7000*
		Very Stiff Gray Silty Clay with trace sand and gravel							
749.0			20	S-6	3 6 8	14	14.6		4500*
744.0			25	S-7	3 6 7	13	14.1		5500*
		End of Boring @ 25ft							
739.0			30						
734.0			35						

Total Depth: 25ft
Drilling Date: November 28, 2012
Inspector:
Contractor: Strata Drilling, Inc.
Driller: B. Sienkiewicz

Water Level Observation:
4-1/2 feet during drilling operations; dry upon completion of drilling operations

Notes:
* Calibrated Hand Penetrometer

Drilling Method:
2-1/4 inch, inside diameter, hollow-stem augers

Excavation Backfilling Procedure:
Borehole backfilled with auger cuttings and capped with cold patch

Figure No. 6

BORING LOG W/STA IN HEADER NO LAT LONG 120976.GPJ G2 CONS.GDT 12/11/12

Project Name: Proposed All Seasons of Birmingham

Project Location: 820 E. Maple Road
Birmingham, Michigan

G2 Project No. 120976

Station: N/A



Soil Boring No. **B-7**

Consulting Group, LLC

SUBSURFACE PROFILE				SOIL SAMPLE DATA					
ELEV. (ft)	PRO- FILE	GROUND SURFACE ELEVATION: 767.0 ft ±	DEPTH (ft)	SAMPLE TYPE-NO.	BLOWS/ 6-INCHES	STD. PEN. RESISTANCE (N)	MOISTURE CONTENT (%)	DRY DENSITY (PCF)	UNCONF. COMP. STR. (PSF)
		Bituminous Concrete (3 inches)	0.3						
		Fill: Brown Sand and Gravel (Aggregate Base, 7 inches)	0.8						
		Buried Topsoil: Dark Brown Silty Clay (Organic Matter Content = 4.1%)	1.7	S-1	2 3 3	6	18.0		3000*
762.0		Stiff to Very Stiff Brown and Gray Silty Clay with trace sand and gravel	5	S-2	2 3 5	8	15.0	120	5700
			6.0	S-3	5 8 10	18	15.1		9000*
757.0		Hard Brown and Gray Silty Clay with trace sand and gravel	10	S-4	5 9 12	21	14.7		9000*
			12.5						
752.0			15	S-5	3 6 7	13	13.9		6000*
747.0		Very Stiff Gray Silty Clay with trace sand and gravel	20	S-6	2 5 7	12	14.4		4500*
742.0			25	S-7	3 4 7	11	13.8		6000*
		End of Boring @ 25ft							
737.0			30						
732.0			35						

Total Depth: 25ft
Drilling Date: November 28, 2012
Inspector:
Contractor: Strata Drilling, Inc.
Driller: B. Sienkiewicz

Water Level Observation:
Dry during and upon completion of drilling operations

Notes:
Boring offset 12 feet north
* Calibrated Hand Penetrometer

Drilling Method:
2-1/4 inch, inside diameter, hollow-stem augers

Excavation Backfilling Procedure:
Borehole backfilled with auger cuttings and capped with cold
patch

Figure No. 7

BORING LOG W/STA IN HEADER NO LAT LONG 120976.GPJ G2 CONS.GDT 12/11/12

Project Name: Proposed All Seasons of Birmingham

Project Location: 820 E. Maple Road
Birmingham, Michigan

G2 Project No. 120976

Station: N/A



Soil Boring No. **B-8**

Consulting Group, LLC

SUBSURFACE PROFILE

SOIL SAMPLE DATA

ELEV. (ft)	PRO- FILE	GROUND SURFACE ELEVATION: 771.0 ft ±	DEPTH (ft)	SAMPLE TYPE-NO.	BLOWS/ 6-INCHES	STD. PEN. RESISTANCE (N)	MOISTURE CONTENT (%)	DRY DENSITY (PCF)	UNCONF. COMP. STR. (PSF)
		Bituminous Concrete (3 inches)	0.3						
		Fill: Brown Sand and Gravel (Aggregate Base, 3 inches)	0.5						
		Fill: Loose Dark Brown Clayey Sand with trace gravel and organic matter (Organic Matter Content = 5.2%)		S-1	2 4 4	8			
766.0			5	S-2	3 4 5	9			
		Fill: Very Loose Brown Sand with trace silt and gravel	6.0						
			7.5	S-3	1 1 0	1			
761.0			10	S-4	3 6 8	14	16.1		7500
		Very Stiff Brown and Gray Silty Clay with trace sand and gravel and occasional sand layers							
756.0			14.5	S-5	6 7 5	12	16.6		3000
751.0		Stiff to Very Stiff Gray Silty Clay with trace sand and gravel	20	S-6	3 5 7	12	13.8		6000
746.0			25.0	S-7	4 5 7	12	14.9		4500
		End of Boring @ 25ft							
741.0			30						
736.0			35						

Total Depth: 25ft
Drilling Date: November 28, 2012
Inspector:
Contractor: Strata Drilling, Inc.
Driller: B. Sienkiewicz

Water Level Observation:
6 feet during drilling operations; 12-1/2 feet upon completion of
drilling operations

Excavation Backfilling Procedure:
Borehole backfilled with auger cuttings and capped with cold
patch

Drilling Method:
2-1/4 inch, inside diameter, hollow-stem augers

Figure No. 8

BORING LOG W/STA IN HEADER NO LAT LONG 120976.GPJ G2 CONS.GDT 12/11/12

Project Name: Proposed All Seasons of Birmingham

Project Location: 820 E. Maple Road
Birmingham, Michigan

G2 Project No. 120976

Station: N/A



Soil Boring No. **B-9**

Consulting Group, LLC

SUBSURFACE PROFILE

SOIL SAMPLE DATA

ELEV. (ft)	PRO- FILE	GROUND SURFACE ELEVATION: 770.0 ft ±	DEPTH (ft)	SAMPLE TYPE-NO.	BLOWS/ 6-INCHES	STD. PEN. RESISTANCE (N)	MOISTURE CONTENT (%)	DRY DENSITY (PCF)	UNCONF. COMP. STR. (PSF)
		Topsoil: Dark Brown Silty Clay (10 inches)	0.8						
		Fill: Stiff Dark Brown Silty Clay with trace sand, gravel, and organic matter (Organic Matter Content = 2.8%)	3.0	S-1	2 2 3	5	16.3		3000*
765.0		Stiff Brown and Gray Silty Clay with trace sand and gravel	5	S-2	2 3 4	7	17.5	110	2200
			8.0	S-3	2 3 5	8	16.4		3500*
760.0		Hard Brown and Gray Silty Clay with trace sand and gravel	10	S-4	4 8 10	18	15.0		9000*
			12.5						
755.0		Very Stiff Gray Silty Clay with trace sand and gravel	15	S-5	3 6 8	14	13.8		5000*
			20	S-6	4 6 8	14	14.0		5500*
750.0			25	S-7	4 6 7	13	14.2		6000*
745.0		End of Boring @ 25ft	25.0						
740.0			30						
735.0			35						

Total Depth: 25ft
Drilling Date: November 28, 2012
Inspector:
Contractor: Strata Drilling, Inc.
Driller: B. Sienkiewicz

Water Level Observation:
Dry during and upon completion of drilling operations

Notes:
Boring offset 75 feet west and 8 feet south
* Calibrated Hand Penetrometer

Drilling Method:
2-1/4 inch, inside diameter, hollow-stem augers

Excavation Backfilling Procedure:
Borehole backfilled with auger cuttings

Figure No. 9

BORING LOG W/STA IN HEADER NO LAT LONG 120976.GPJ G2 CONS.GDT 12/11/12

Project Name: Proposed All Seasons of Birmingham

Project Location: 820 E. Maple Road
Birmingham, Michigan

G2 Project No. 120976

Station: N/A



Soil Boring No. **B-10**

Consulting Group, LLC

SUBSURFACE PROFILE				SOIL SAMPLE DATA					
ELEV. (ft)	PRO- FILE	GROUND SURFACE ELEVATION: 770.0 ft ±	DEPTH (ft)	SAMPLE TYPE-NO.	BLOWS/ 6-INCHES	STD. PEN. RESISTANCE (N)	MOISTURE CONTENT (%)	DRY DENSITY (PCF)	UNCONF. COMP. STR. (PSF)
		Topsoil: Dark Brown Silty Sand (6 inches)	0.5						
		Fill: Loose Dark Brown Silty Sand with trace clay, gravel, and organic matter (Organic Matter Content = 2.2%)	3.0	S-1	2 4 5	9	11.2		
765.0		Very Stiff to Hard Brown and Gray Silty Clay with trace sand and gravel	5	S-2	6 8 9	17	11.1		9000*
				S-3	4 5 8	13	14.0	118	4770
760.0			10	S-4	5 9 15	24	14.1		9000*
		Very Stiff Gray Silty Clay with trace sand and gravel	11.5						
755.0			15	S-5	4 6 8	14	14.0		6000*
750.0			20	S-6	4 6 8	14	14.0		6000*
745.0		End of Boring @ 25ft	25	S-7	3 5 7	12	13.8		4500*
740.0			30						
735.0			35						

Total Depth: 25ft
Drilling Date: November 28, 2012
Inspector:
Contractor: Strata Drilling, Inc.
Driller: B. Sienkiewicz

Water Level Observation:
Dry during and upon completion of drilling operations

Notes:
* Calibrated Hand Penetrometer

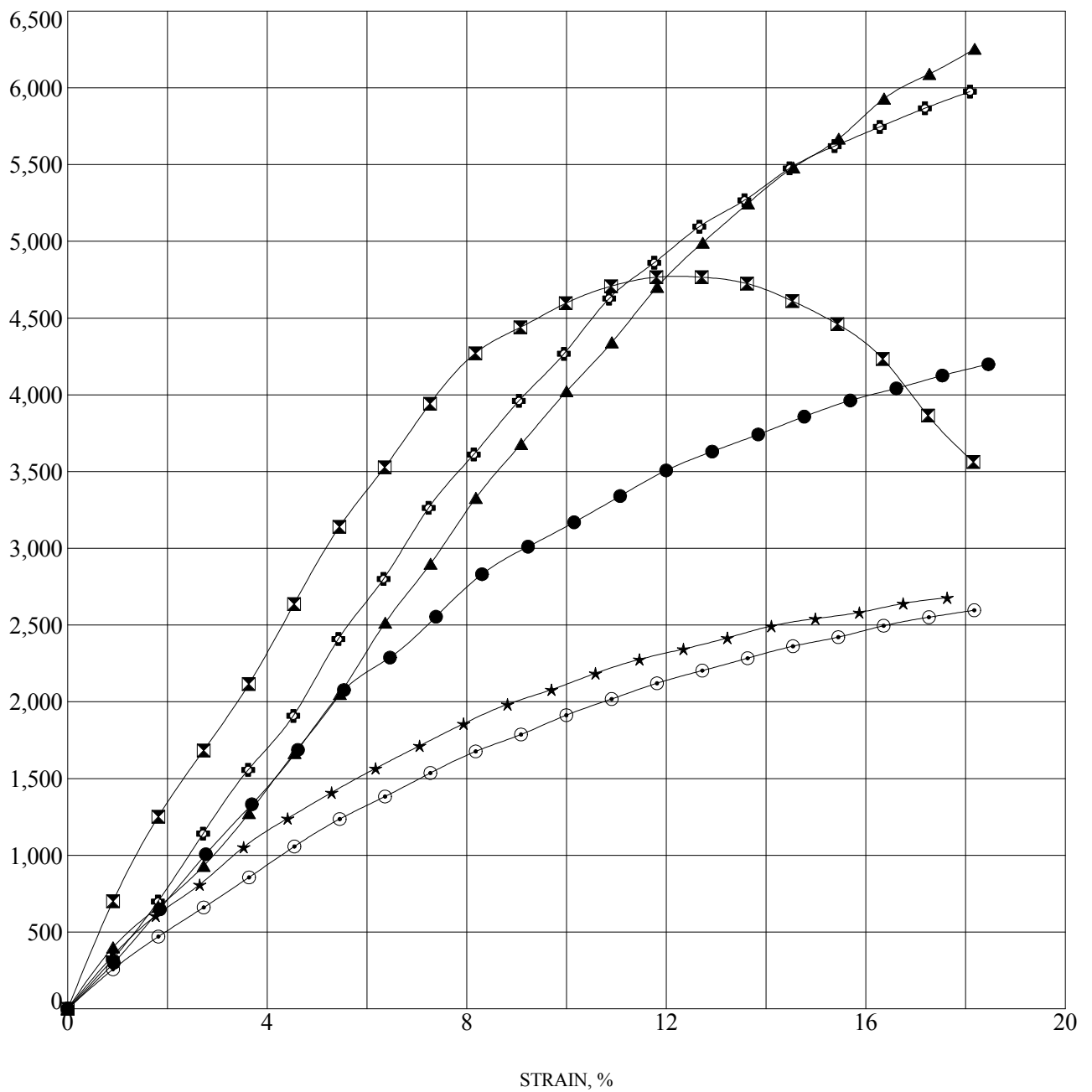
Drilling Method:
2-1/4 inch, inside diameter, hollow-stem augers

Excavation Backfilling Procedure:
Borehole backfilled with auger cuttings

Figure No. 10

BORING LOG W/STA IN HEADER NO LAT LONG 120976.GPJ G2 CONS.GDT 12/11/12

STRESS, psf



Specimen	Classification	MC%	γ_d	UC
● B-1 S-4	Brown and Gray Silty Clay	17	120	3880
⊠ B-10 S-3	Brown and Gray Silty Clay	14	118	4770
▲ B-2 S-6	Gray Silty Clay	13	128	5570
★ B-2 S-7		16	119	2540
⊙ B-3 S-2	Brown and Gray Silty Clay	20	116	2390
⊞ B-5 S-3	Brown and Gray Silty Clay	16	123	5560

UNCONFINED COMPRESSIVE STRENGTH TEST

Project Name: Proposed All Seasons of Birmingham

Project Location: 820 E. Maple Road
Birmingham, Michigan

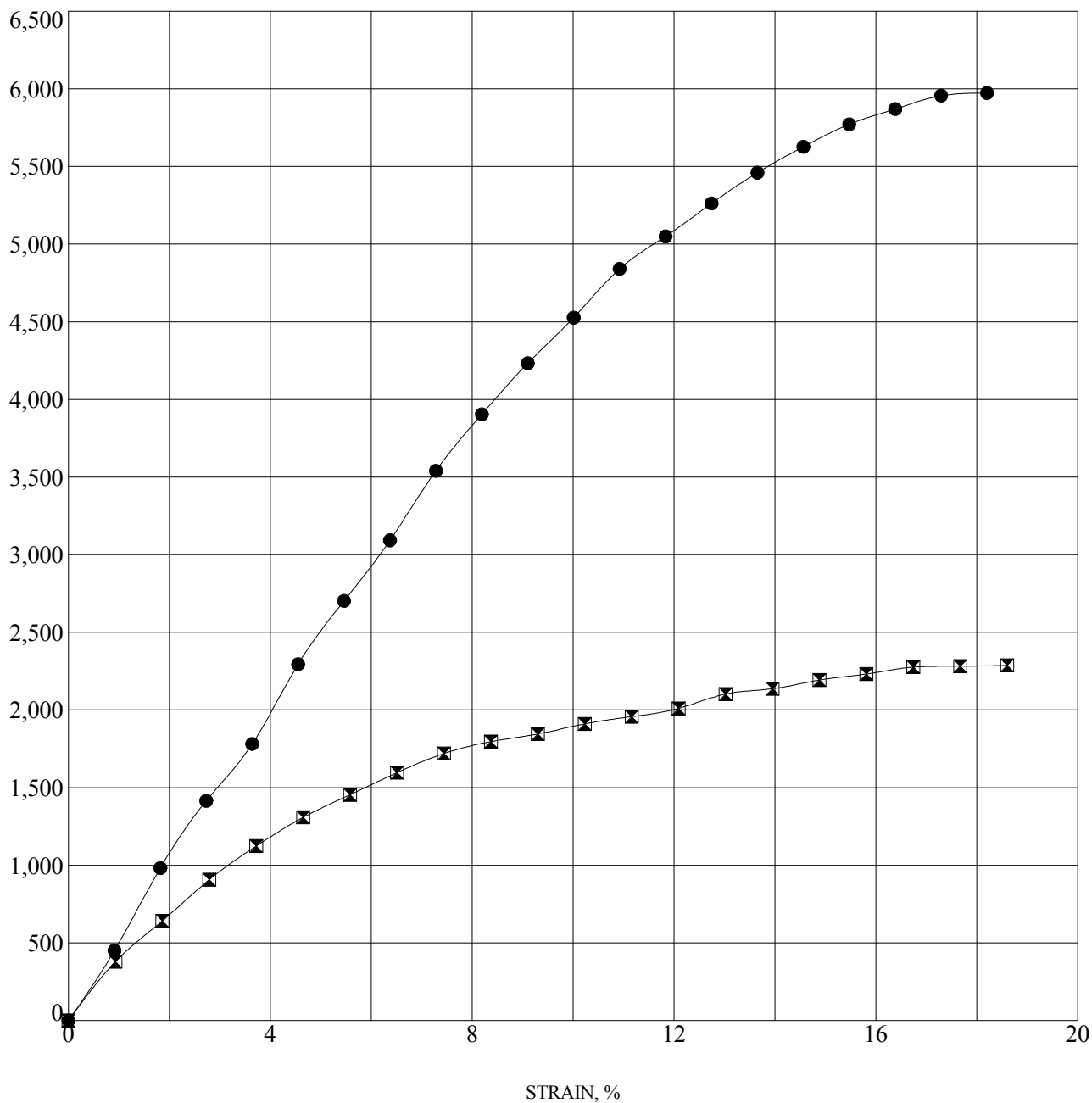
G2 Project No.: 120976

Figure No. 11



G2 Consulting Group, LLC

STRESS, psf



Specimen	Classification	MC%	γ_d	UC
● B-7 S-2	Brown and Gray Silty Clay	15	120	5700
⊠ B-9 S-2	Brown and Gray Silty Clay	18	110	2200



G2 Consulting Group, LLC

UNCONFINED COMPRESSIVE STRENGTH TEST

Project Name: Proposed All Seasons of Birmingham

Project Location: 820 E. Maple Road
Birmingham, Michigan

G2 Project No.: 120976

Figure No. 12

GENERAL NOTES TERMINOLOGY

Unless otherwise noted, all terms herein refer to the Standard Definitions presented in ASTM 653.

PARTICLE SIZE		CLASSIFICATION	
Boulders	- greater than 12 inches	The major soil constituent is the principal noun, i.e. clay, silt, sand, gravel. The second major soil constituent and other minor constituents are reported as follows:	
Cobbles	- 3 inches to 12 inches		
Gravel	- Coarse - 3/4 inches to 3 inches	Second Major Constituent (percent by weight) Trace - 1 to 12% Adjective - 12 to 35% And - over 35%	Minor Constituent (percent by weight) Trace - 1 to 12% Little - 12 to 23% Some - 23 to 33%
	- Fine - No. 4 to 3/4 inches		
Sand	- Coarse - No. 10 to No. 4		
	- Medium - No. 40 to No. 10		
	- Fine - No. 200 to No. 40		
Silt	- 0.005mm to 0.074mm		
Clay	- Less than 0.005mm		

COHESIVE SOILS

If clay content is sufficient so that clay dominates soil properties, clay becomes the principal noun with the other major soil constituent as modifier, i.e. sandy clay. Other minor soil constituents may be included in accordance with the classification breakdown for cohesionless soils, i.e. silty clay, trace sand, little gravel.

Consistency	Unconfined Compressive	
	Strength (psf)	Approximate Range of (N)
Very Soft	Below 500	0 - 2
Soft	500 - 1,000	3 - 4
Medium	1,000 - 2,000	5 - 8
Stiff	2,000 - 4,000	9 - 15
Very Stiff	4,000 - 8,000	16 - 30
Hard	8,000 - 16,000	31 - 50
Very Hard	Over 16,000	Over 50

Consistency of cohesive soils is based upon an evaluation of the observed resistance to deformation under load and not upon the Standard Penetration Resistance (N).

COHESIONLESS SOILS		
Density Classification	Relative Density %	Approximate Range of (N)
Very Loose	0 - 15	0 - 4
Loose	16 - 35	5 - 10
Medium Compact	36 - 65	11 - 30
Compact	66 - 85	31 - 50
Very Compact	86 - 100	Over 50

Relative Density of cohesionless soils is based upon the evaluation of the Standard Penetration Resistance (N), modified as required for depth effects, sampling effects, etc.

SAMPLE DESIGNATIONS

AS -	Auger Sample – Cuttings directly from auger flight
BS -	Bottle or Bag Samples
S -	Split Spoon Sample - ASTM D 1586
LS -	Liner Sample with liner insert 3 inches in length
ST -	Shelby Tube sample - 3 inch diameter unless otherwise noted
PS -	Piston Sample - 3 inch diameter unless otherwise noted
RC -	Rock Core - NX core unless otherwise noted

STANDARD PENETRATION TEST (ASTM D 1586) - A 2.0 inch outside-diameter, 1-3/8 inch inside-diameter split barrel sampler is driven into undisturbed soil by means of a 140-pound weight falling freely through a vertical distance of 30 inches. The sampler is normally driven three successive 6-inch increments. The total number of blows required for the final 12 inches of penetration is the Standard Penetration Resistance (N).

Section 11. Air Quality Information

Please note that this is a partial copy of the full Air Quality Report, with some general information and detailed data table



MICHIGAN DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND ENERGY

AIR QUALITY ANNUAL REPORT

2018



Michigan Department of Environment, Great Lakes, and Energy
Michigan.gov/egle | 800-662-9278

Air Quality Annual Report

2018

EXECUTIVE SUMMARY

This report gives an overview of the air quality for 2018. Current data for Michigan can be found on MIAir (www.deqmiar.org) and Air Quality alerts can be delivered directly to email by signing up for the Michigan EnviroFlash program (<http://miair.enviroflash.info/>). In April 2019, by Governor's executive order, the Michigan Department of Environmental Quality (MDEQ) became the Michigan Department of Environment, Great Lakes, and Energy (EGLE). While the data in this report was collected in 2018 under the agency name of MDEQ, this report will use EGLE.

The federal Clean Air Act (CAA) requires the United States Environmental Protection Agency (USEPA) to establish National Ambient Air Quality Standards (NAAQS) for six criteria pollutants considered harmful to public health and the environment.

The six pollutants monitored by EGLE, Air Quality Division (AQD) are:

- Carbon monoxide (CO);
- Lead (Pb);
- Nitrogen dioxide (NO₂);
- Ozone (O₃);
- Particulate matter smaller than 10 and 2.5 microns in diameter (PM₁₀ and PM_{2.5}, respectively); and
- Sulfur dioxide (SO₂).

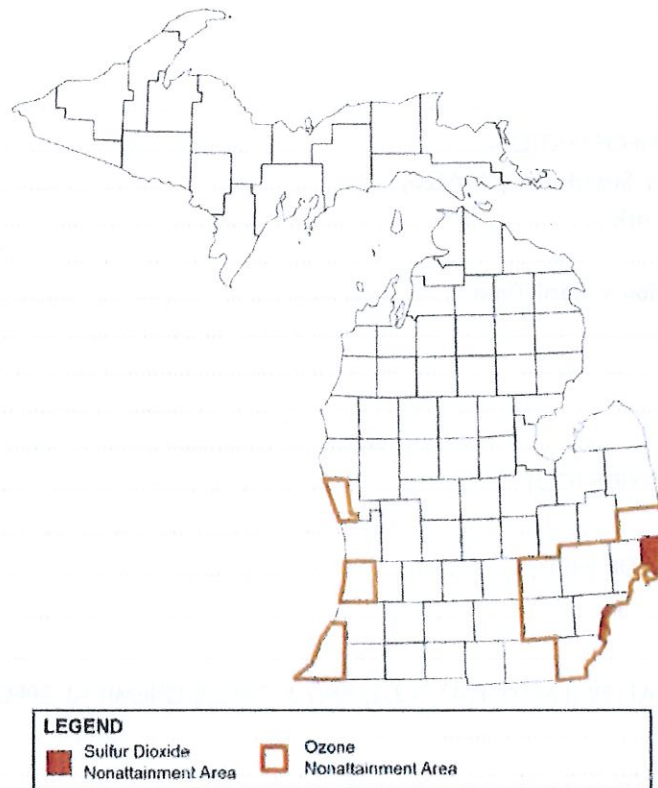
EGLE has established a network of over 40 monitoring sites throughout the state that monitor for one or more of the criteria pollutants (Figure 1.1 and Table 1.3).

Congress passed the CAA in 1970; however, Michigan has had a long-standing history of environmental awareness well before the Act was established. In 1887, Detroit was the first city in Michigan to adopt an air quality ordinance, which declared that the dense smoke from burning coal was a public nuisance.

The USEPA reviews the criteria pollutant standards every five years. Over time, based upon health data, the standards have been tightened to better protect public health (see Appendix D). Areas that meet the NAAQS are considered in "attainment." Locations where air pollution levels persistently exceed the NAAQS may be designated as "nonattainment." The tightening standards are why some areas in the state may be designated to nonattainment from attainment even though monitoring shows that air quality continues to improve.

Since EGLE began monitoring in the early 1970s, criteria pollutant levels have continually decreased (see Chap. 2-7). The air is much cleaner today than when the CAA began. The entire state of Michigan is in attainment for CO, Pb, NO₂, and particulate matter. Although portions of the state are in nonattainment for SO₂ and O₃, as illustrated in the figure below, levels of these pollutants are still decreasing. The NAAQS levels have also decreased recently, which prompted these nonattainment areas. EGLE is currently working on State Implementation Plans (SIPs) to reduce pollutants further and bring the entire state into attainment for SO₂ and ozone.

Attainment Status for the National Ambient Air Quality Standards



Several changes to the monitoring network occurred during 2018.

- Establishing three new monitoring sites and modifying an established site, Detroit-W. Fort St., near the Gordie Howe International Bridge construction area (Chap. 11)
- Shut down $PM_{2.5}$ at Coloma, and Sterling State Park to reduce workload and costs (Chap. 7).
- Shut down PM_{10} at River Rouge (Chap 7).
- Grand Rapids-Wealthy St., Lansing, and Detroit-W. Lafayette shut down due to site access issues (Chap. 7).
- $PM_{2.5}$ and PM_{10} monitors installed at Jenison site (Chap. 7).
- Established Lansing-Filley St. to replace Lansing site.
- Lead analysis added to all the metal sites to provide network consistency (Chap. 3).
- Secondary metals monitor added to Port Huron for USEPA compliance (Chap. 3).

Two special studies were completed in 2018. The Air Toxics Near-roadway study sampling was completed and the three near-roadway, Eliza Howell-Roadway, Eliza Howell-Downwind and Livonia-Roadway sites returned to their normal sampling protocol. NMH 48217 completed their one-year study, but EGLE will continue to monitor for five metals, SO_2 and $PM_{2.5}$ (see Chap. 11).

TABLE OF CONTENTS

INTRODUCTION.....	1
CHAPTER 1: BACKGROUND INFORMATION.....	2
National Ambient Air Quality Standards (NAAQS).....	2
Michigan Air Sampling Network.....	3
Current Attainment Status.....	6
Mlair – Air Quality Information in Real-Time.....	7
Air Quality Index.....	7
Air Quality Forecasts.....	7
Air Quality Notification.....	8
AIRNow.....	8
CHAPTER 2: CARBON MONOXIDE (CO).....	10
CHAPTER 3: LEAD (PB).....	13
CHAPTER 4: NITROGEN DIOXIDE (NO ₂).....	17
CHAPTER 5: SULFUR DIOXIDE (SO ₂).....	22
CHAPTER 6: OZONE (O ₃).....	27
CHAPTER 7: PARTICULATE MATTER (PM ₁₀ , PM _{10-2.5} , PM _{2.5} , PM _{2.5} CHEMICAL SPECIATION AND TSP)....	37
PM ₁₀	39
PM _{10-2.5}	41
PM _{2.5}	41
CHAPTER 8: TOXIC AIR POLLUTANTS.....	50
National Monitoring Efforts and Data Analysis.....	52
CHAPTER 9: METEOROLOGICAL INFORMATION.....	53
CHAPTER 10: SPECIAL PROJECTS.....	54
APPENDIX A: CRITERIA POLLUTANT SUMMARY FOR 2018	
APPENDIX B: 2018 AIR TOXICS MONITORING SUMMARY FOR METALS, VOCS, CARBONYL COMPOUNDS, PAHS, HEXAVALENT CHROMIUM & SPECIATED PM _{2.5}	
APPENDIX C: 2018 AIR QUALITY INDEX (AQI) PIE CHARTS	
APPENDIX D: NAAQS	
APPENDIX E: ACRONYMS AND THEIR DEFINITIONS	
ACKNOWLEDGMENTS	

INTRODUCTION

Air quality regulations in Michigan are based on National Ambient Air Quality Standards (NAAQS) established by United States Environmental Protection Agency (USEPA) based on the federal Clean Air Act (CAA). The NAAQS designates six criteria pollutants considered harmful to public health and the environment. The USEPA must describe the characteristics and potential health and welfare effects for these criteria pollutants. These standards define the maximum permissible concentration of criteria pollutants in the air (see **Table 1.1**).

The Michigan Department of Environment, Great Lakes, and Energy (EGLE), Air Quality Division (AQD) monitors the six criteria pollutants, which are:

- Carbon monoxide (CO),
- Lead (Pb),
- Nitrogen dioxide (NO₂),
- Ozone (O₃),
- Particulate matter smaller than 10 and 2.5 microns in diameter (PM₁₀ and PM_{2.5}, respectively), and
- Sulfur dioxide (SO₂).

Chapters 2 through 7 provide information on each of the six criteria pollutants and include:

- Michigan's monitoring requirements for 2018;
- Attainment/nonattainment status;
- Monitoring site locations (tables and maps show all the monitors active in 2018); and
- Air quality trends from 2013-2018 broken down by location.¹

The 2018 data for each criteria pollutant is available in **Appendix A**.

The AQD also monitors air toxics. Air toxics are other hazardous air pollutants that can affect human health and the environment.² This data can be found in **Appendix B**.

The purpose of this report is to provide a snapshot of Michigan's 2018 air quality data, air quality trends, overview of the monitoring network (available in much greater detail in the [2018 Network Review](#)),³ air toxics monitoring program, and other AQD programs, such as Mlair and the Emissions Inventory.⁴

¹ Air quality trends are based on actual statewide monitored readings, which are also listed in the USEPA's Air Quality Subsystem Quick Look Report Data at www3.epa.gov/airtrends/.

² [An Overview of Michigan Air Toxic Rules](#) is available on the AQD website at www.michigan.gov/air (select "Permits," then "Toxics Laws and Rules.")

³ Available online at www.michigan.gov/documents/deq/deq-aqd-amu-2018_air_monitoring_network_review_565062_7.pdf

⁴ [Online information](#) about criteria pollutants and air toxics, along with this and previous Annual Air Quality Reports, are available via the AQD's website at www.michigan.gov/air (select "Monitoring").

CHAPTER 1: BACKGROUND INFORMATION

This section summarizes the development of the NAAQS (see **Appendix D** for further details) and how compliance with these standards is determined. Also included is an overview of Michigan's air sampling network, attainment status of the state, and information on MIAir and the Air Quality Index (AQI).

National Ambient Air Quality Standards (NAAQS)

Under the CAA, the USEPA established a primary and secondary NAAQS for each criteria pollutant. The primary standard is designed to protect public health with an adequate margin of safety, including the health of the most susceptible individuals in a population, such as children, the elderly, and those with chronic respiratory ailments. Secondary standards are chosen to protect public welfare (personal comfort and well-being) and the environment.

In addition, the NAAQS have various averaging times to address health impacts. Short averaging times reflect the potential for acute (immediate) effects, whereas long-term averaging times are designed to protect against chronic (long-term) effects.

NAAQS have been established for CO, Pb, NO₂, PM, O₃, and SO₂. **Table 1.1** lists the primary and secondary NAAQS, averaging time, and concentration level for each criteria pollutant in effect in 2018. The concentrations are listed as parts per million (ppm), micrograms per cubic meter (µg/m³), and/or milligrams per cubic meter (mg/m³).

Table 1.1: NAAQS in Effect during 2018 for Criteria Pollutants

Pollutant	Primary (health) Level	Primary Averaging Time	Secondary (welfare) Level	Secondary Averaging Time
CO 8-hour average	9 ppm (10 mg/m ³)	8-hour average, not to be exceeded more than once per year (1971)	None*	None*
CO 1-hour average	35 ppm (40 mg/m ³)	1-hour average, not to be exceeded more than once per year (1971)	None*	None*
Lead	0.15 µg/m ³	Maximum rolling 3-month average (2008)	Same as Primary	Same as Primary
NO ₂ Annual mean	0.053 ppm (100 µg/m ³)	Annual mean (1971)	Same as Primary	Same as Primary
NO ₂ 1-hour average	0.100 ppm	98 th percentile of 1-hour average, averaged over 3 years (2010)	Same as Annual	Same as Annual
PM ₁₀	150 µg/m ³	24-hour average, not to be exceeded more than once per year over 3 years (1987)	Same as Primary	Same as Primary
PM _{2.5} Annual average	12.0 µg/m ³	Annual mean averaged over 3 years (2012)	15.0 µg/m ³	Annual mean
PM _{2.5} 24-hour average	35 µg/m ³	98 th percentile of 24-hour concentration, averaged over 3 years (2006)	Same as Primary	Same as Primary
Ozone	0.070 ppm	Annual 4 th highest 8-hour daily max averaged over 3 years (2015)	Same as Primary	Same as Primary
SO ₂	0.075 ppm	99 th percentile of 1-hour daily max averaged over 3 years (2010)	0.5 ppm	3 hours

*In 1985, the USEPA revoked the secondary standard for CO (for public welfare) due to a lack of evidence of adverse effects on public welfare at or near ambient concentrations.

Michigan Air Sampling Network

EGLE's AQD operates the Michigan Air Sampling Network (MASN), along with other governmental agencies. For instance, the O_3 and $PM_{2.5}$ monitors in Manistee County and Chippewa County are tribal monitors handled by the Little River Band of Ottawa Indians and the Inter-tribal Council of Michigan, respectively. **Figure 1.1** is a picture of our new Gordie Howe Bridge site at Trinity. **Figure 1.2** shows a map of the 2018 MASN monitoring sites.

The MASN consists of federal reference method (FRM) monitors that enable continuous monitoring for the gaseous pollutants CO , NO_2 , O_3 , and SO_2 providing real-time hourly data. PM and Pb monitors measure concentrations over a 24-hour period. In addition, continuous $PM_{2.5}$ and PM_{10} monitors provide real-time hourly data for PM . $PM_{2.5}$ chemical speciation monitors determine the chemical composition of $PM_{2.5}$. The MASN data is also used to provide timely reporting to EGLE's air quality reporting web page ([MIAir](#), see **Chap. 9**). The types of monitoring conducted in 2018 and the MASN locations are shown in **Table 1.3**.

The **NCore network** began January 1, 2011, as part of the USEPA's 2006 amended air monitoring requirements. NCore is a multi-pollutant network that integrates several advance measurement systems for particles, pollutant gases, and meteorology. Michigan has two NCore sites; Allen Park and Grand Rapids-Monroe Street. Further information on this network is provided in **Chapters 2** through **7**.

The **Near-road Monitoring Network** focuses on vehicle emissions and how they disperse near roadways. Data from these sites are presented in **Chapters 2, 5, and 7**.

Figure 1.1: Trinity Monitoring Site



Figure 1.2: 2018 MASN Monitoring Sites

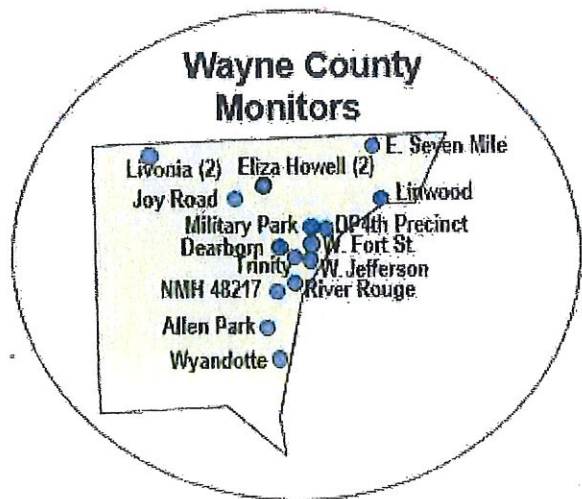
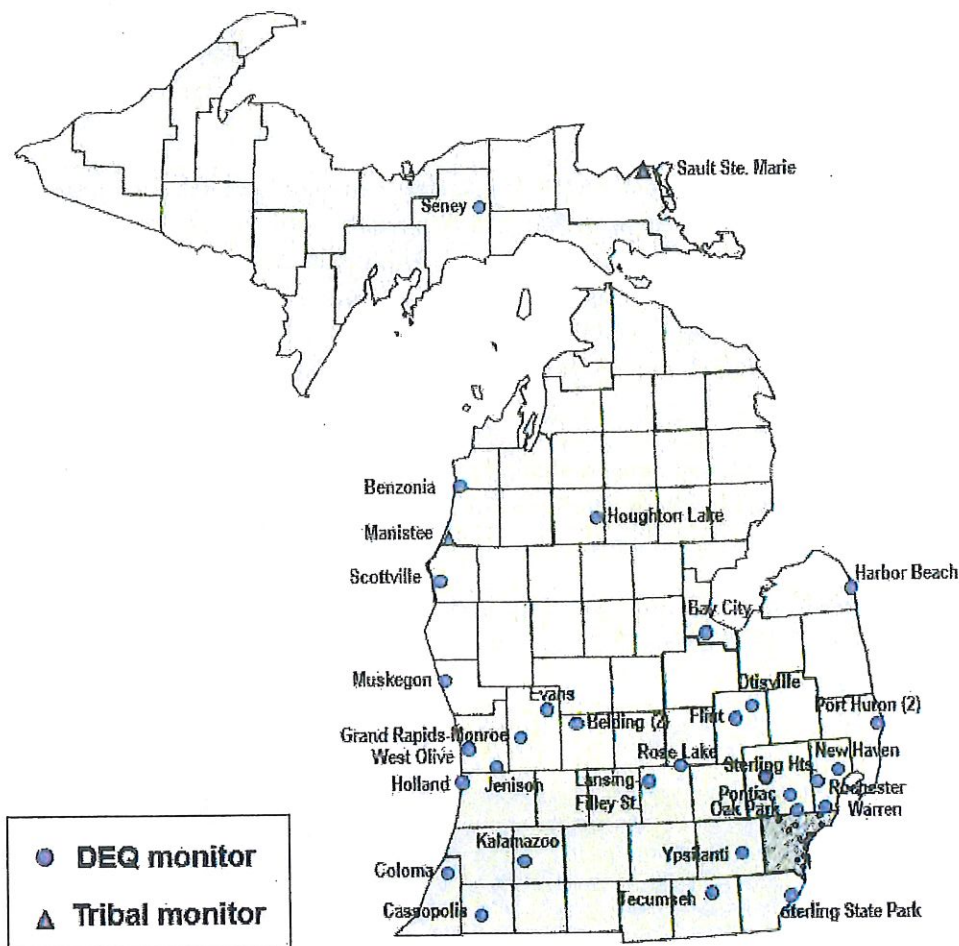


Table 1.2 Types of Monitoring Conducted in 2018 and MASN Location

Area	AIRS ID	Site Name	CO	NO ₂	Trace NO _x	O ₃	PM ₁₀	PM _{2.5}	PM _{2.5} Continuous	PM _{2.5} Speciation	SO ₂	VOC	Carbonyls	Trace Metals & Wind Speed & Direction	Relative Humidity	Solar Radiation	Barometric Pressure
Detroit-Ann Arbor	260910007	Tecumseh				√		√	√T	√+E					√		√
	260990009	New Haven				√		√						√	√	√	
	260991003	Warren				√											
	261250001	Oak Park				√		√						√			
	261470005	Port Huron				√		√	√T		√			√			
	261470031	Port Huron-Rural St.												√			
	261610008	Ypsilanti				√		√	√T					√			√
	261630001	Allen Park	√*		√	√	√	√	√T	√+A	√*			√	√	√	√
	261630005	River Rouge											√	√	√		
	261630015	Detroit-W. Fort St.		√			√	√	√B	√+A	√	√	√	√	√		√
	261630016	Detroit-Linwood						√									
	261630019	Detroit-E. 7 Mile		√		√		√						√	√		√
	261630025	Livonia						√									
	261630027	Detroit-W. Jefferson												√			
	261630033	Dearborn					√^	√	√T	√+A		√	√	√#	√	√	√
	261630036	Wyandotte						√									
	261630093	Eliza Howell-Roadway	√	√										√			
	261630094	Eliza Howell-Downwind	√	√										√	√		√
	261630095	Livonia-Roadway	√	√				√						√	√		√
	261630097	NMH 48217							√T		√			√			
	261360098	DP4th Precinct	√	√					√B	A	√			√			
	261360099	Trinity	√	√					√B	A	√			√	√		
	261360100	Military Park		√					√B	A	√			√			
Flint	260490021	Flint				√		√	√B						√		√
	260492001	Otisville				√									√		
Grand Rapids	261390005	Jenison				√	√	√							√		
	261390011	West Olive									√				√		
	260810020	Grand Rapids-Monroe	√*		√	√	√	√	√T	√	√*			√	√		√
Lansing/East Lansing	260810022	Evans				√									√		
	260650018	Lansing-Filley St.		√		√		√	√T		√				√		√
Monroe Co	260370002	Rose Lake				√											
	261150006	Sterling State Park									√				√		
Huron Co	260630007	Harbor Beach				√									√		
Bay Co	260170014	Bay City						√	√T						√		
Missaukee Co	261130001	Houghton Lake		√		√		√	√T						√		√
Allegan Co	260050003	Holland				√		√							√	√	√
Benzie Co	260190003	Benzon				√											
Berrien Co	260210014	Coloma				√									√		
Cass Co	260270003	Cassopolis				√									√		
Kalamazoo Co	260770008	Kalamazoo				√		√	√T						√		
Manistee Co	261010922	Manistee \$				√		√								√	√
Mason Co	261050007	Scottville				√									√		
Muskegon Co	261210039	Muskegon				√									√		
Schoolcraft Co	261530001	Seney Nat'l Wildlife				√			√T						√	√	√
Chippewa Co	260330901	Sault Ste. Marie \$				√			√B						√		
Ionia Co	260670002	Belding-Reed St.												√	√		
	260670003	Belding-Merrick St.												√			

√ = Data Collected

& = 5 trace metals: As, Cd, Mn, Ni and Pb

= 9 additional metals sampled: Ba, Be, Cr, Co, Cu, Fe, Mo, V, Zn

B = BAM continuous PM_{2.5} monitorT = TEOM continuous PM_{2.5} monitor

\$ = Tribal monitor

* = Trace monitor

^ = Continuous PM₁₀ monitor

A = Aethalometer monitor

E = EC/OC monitor

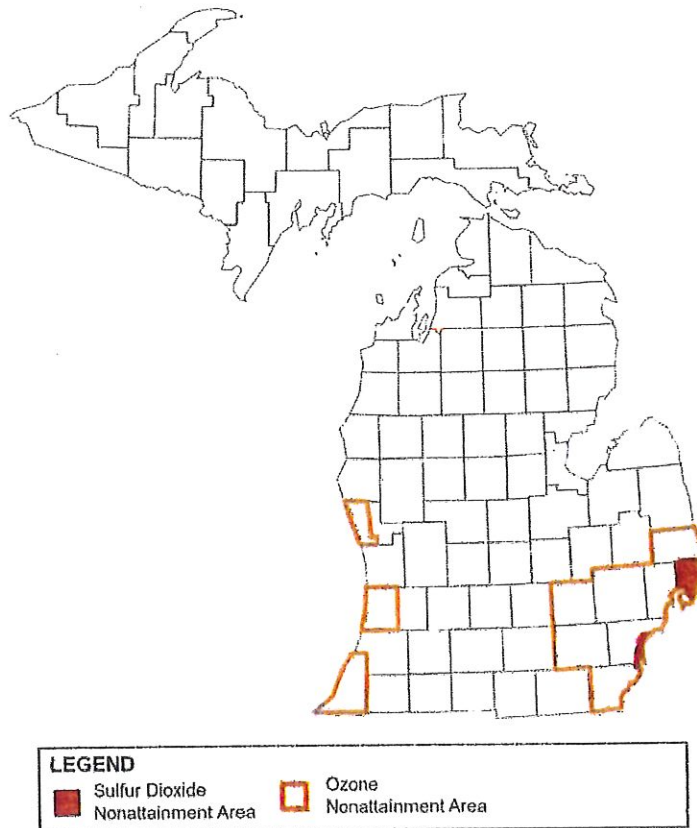
Current Attainment Status

Areas of the state that are below the NAAQS concentration level are called attainment areas. The entire state of Michigan is in attainment for the following pollutants:

- CO
- Pb
- NO₂
- Particulate Matter

Nonattainment areas are those that have been classified by the USEPA as having concentrations over the NAAQS level. Portions of the state are in nonattainment for SO₂ and O₃ (see **Fig. 1.3**). The SO₂ nonattainment area includes a portion of Wayne County and a portion of St. Clair County. Ozone nonattainment areas include Allegan County, Berrien County, a portion of Muskegon County and the 7-county area of Southeast Michigan, which includes Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw and Wayne Counties. Nonattainment status for O₃ was effective on August 3, 2018.

Figure 1.3: Attainment Status for the National Ambient Air Quality Standards

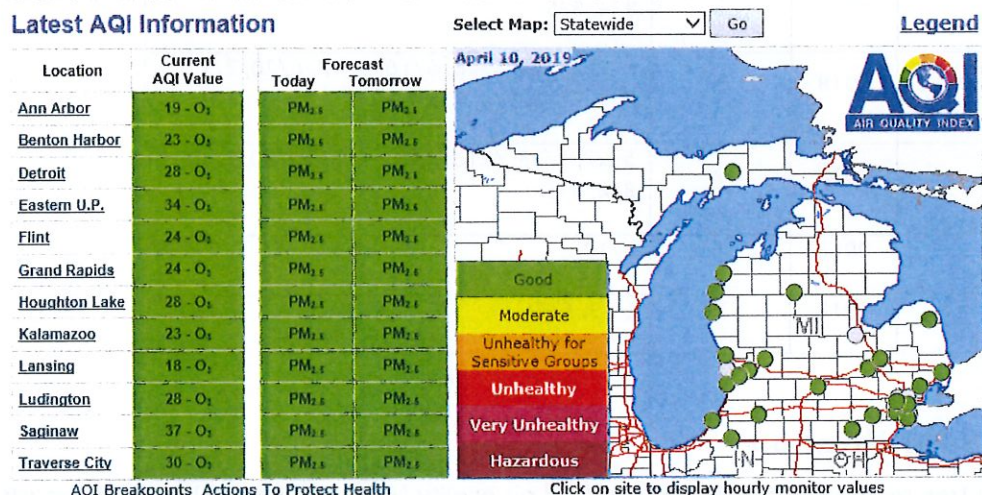


Mlair – Air Quality Information in Real-Time

Mlair is the internet tool that provides real-time air quality information via EGLE's web page. The www.deqmiar.org hotlink opens to the current Air Quality Index (AQI) map and displays air quality forecasts for "today" and "tomorrow." **Mlair** also hosts EnviroFlash, the automated air quality notification system.

Air Quality Index

The Air Quality Index (AQI) is a simple tool developed to communicate current air quality information to the public. The current day's color-coded AQI values, ranging from Good to Hazardous (see **Table 1.4**), are displayed in a forecast table and as dots on a Michigan map (see example below).



As can be seen from the annual summaries in **Appendix C**, air quality in Michigan is generally in the Good or Moderate range. An area will occasionally fall into the Unhealthy for Sensitive Groups range, but rarely reaches Unhealthy levels.

Mlair includes an "Air Quality Index Fact Sheet" link: www.michigan.gov/documents/deq/deq-aqi-aqifacts_273090_7.pdf which contains activity recommendations based on the AQI levels (also **Table 1.4**).

Air Quality Forecasts

AQD meteorologists provide air pollution forecasts to alert the public when air pollution levels may become elevated. **Action! Days** are declared when levels are expected to reach or exceed the Unhealthy for Sensitive Groups AQI health indicator. On **Action! Days**, businesses, industry, government and the public are encouraged to reduce air pollution levels by limiting vehicle use, refueling only after 6 PM, carpooling, walking, biking or taking public transit, deferring the use of gasoline-powered lawn and recreation equipment, limiting the use of volatile chemicals and curtailing all burning. More information on voluntary air pollution control measures can be found under the **Action! Days** tab on **Mlair**.

The weather plays a significant role in air quality (see Chap. 9 for an annual weather summary) and can either help increase or decrease the amount of pollution in the air. High temperatures, sun and longer days (i.e., more daylight hours) are conducive to ozone formation, whereas rain tends to wash pollutants out of the air. **Action! Days** are declared when meteorological conditions are conducive for the formation of elevated ground-level O₃ or PM_{2.5} concentrations.

Table 1.3 shows that there were some *Action!* Days declared during the summer of 2018.

Table 1.3: Action! Days Declared During Summer 2018

Location	Year	Number	Dates
Ann Arbor	2018	9	5/25, 5/28, 5/29, 6/17, 6/29, 6/30, 7/1, 8/4, 8/5
Benton Harbor	2018	10	5/25, 5/27, 5/28, 6/16, 6/17, 6/30, 7/9, 7/13, 8/4, 8/5
Detroit	2018	9	5/25, 5/28, 5/29, 6/17, 6/29, 6/30, 7/1, 8/4, 8/5
Grand Rapids	2018	11	5/25, 5/27, 5/28, 6/16, 6/17, 6/30, 7/1, 7/9, 7/13, 8/4, 8/5
Ludington	2018	9	5/27, 5/28, 6/16, 6/17, 6/29, 6/30, 7/1, 8/4, 8/5
Kalamazoo	2018	1	6/17
Traverse City	2018	2	6/29, 6/30

Air Quality Notification

EnviroFlash is a free service that provides automated air quality (AQI) and ultraviolet (UV) forecasts to subscribers. Those enrolled receive e-mail or mobile phone text messages when the health level they select is predicted to occur. AIRNow iPhone and Android applications deliver ozone and fine particle air quality forecasts plus detailed real-time information that can be used to better protect health when planning daily activities. To learn more about this program, select the **Mlair** button from Michigan's Air Quality page www.michigan.gov/air. To receive notices, choose the "Air Quality Notification" tab and click the "Enroll in AQI EnviroFlash" link. Michigan's EnviroFlash network has the potential to reach up to 98% of the state's population.

AIRNow

EGLE supplies Michigan air monitoring data to AIRNow, the USEPA's nation-wide air quality mapping system. Information about AIRNow is available at www.epa.gov/airnow or you can select the AIRNow hot link at the bottom of each **Mlair** web page.

Table 1.4: AQI Colors and Health Statements

AQI Color, Category and Value	Particulate Matter ($\mu\text{g}/\text{m}^3$) 24-hour	Ozone (ppm) 8-hour / 1-hour	Carbon Monoxide (ppm) 8-hour	Sulfur Dioxide (ppm) 24-hour	Nitrogen Dioxide (ppm) 1-hour
GREEN: Good 1- 50	None	None	None	None	None
YELLOW: Moderate 51- 100	Unusually sensitive people should consider reducing prolonged or heavy exertion.	Unusually sensitive people should consider reducing prolonged or heavy exertion.	None	None	None
ORANGE: Unhealthy for Sensitive Groups 101- 150	People with heart or lung disease, children, and older adults should <u>reduce prolonged</u> or <u>heavy</u> exertion.	People with heart or lung disease, children & older adults, and people who are active outdoors should <u>reduce prolonged</u> or heavy exertion.	People with heart disease, such as angina, should limit heavy exertion and avoid sources of CO, such as heavy traffic.	People with asthma should consider limiting outdoor exertion.	NONE
RED: Unhealthy 151- 200	People with heart or lung disease, children, and older adults should <u>avoid prolonged</u> or <u>heavy</u> exertion. Everyone should reduce prolonged or heavy exertion.	People with heart or lung disease, children & older adults, and people who are active outdoors should <u>avoid prolonged</u> or <u>heavy</u> exertion. Everyone should reduce prolonged or heavy exertion.	People with heart disease, such as angina, should reduce moderate exertion and avoid sources of CO, such as heavy traffic.	Children, Asthmatics, and People with heart or lung disease should reduce outdoor exertion.	None
PURPLE: Very Unhealthy 201- 300	People with heart or lung disease, children, and older adults should <u>avoid all</u> physical exertion outdoors. Everyone else should limit outdoor exertion.	People with heart or lung disease, children & older adults, and people who are active outdoors should <u>avoid all</u> physical exertion outdoors. Everyone else should limit outdoor exertion.	People with heart disease, such as angina, should avoid exertion and sources of CO, such as heavy traffic.	Children, asthmatics, and people with heart or lung disease should avoid outdoor exertion; everyone should reduce outdoor exertion.	Children and people with respiratory disease, such as asthma, should reduce outdoor exertion.
MAROON: Hazardous 301- 500	People with heart or lung disease, children, and older adults should remain indoors. Everyone should <u>avoid</u> prolonged or heavy exertion.	People with heart or lung disease, children, and older adults should remain indoors. Everyone should <u>avoid all</u> outdoor exertion.	People with heart disease, such as angina, should avoid exertion and sources of CO, such as heavy traffic. Everyone else should limit heavy exertion.	Children, Asthmatics, and people with heart or lung disease should remain indoors. Everyone should avoid outdoor exertion.	Children and People with respiratory disease, such as asthma, should avoid outdoor exertion.

CHAPTER 2: CARBON MONOXIDE (CO)

Carbon monoxide is a gas formed during incomplete burning of fuel. CO is colorless, odorless, and tasteless, and is lethal at elevated concentrations. Levels peak during colder months primarily due to cold temperatures that affect combustion efficiency of engines. The CO NAAQS is 9 ppm for the second highest 8-hour average and 35 ppm for the second highest 1-hour average. Its sources and effects are provided below.

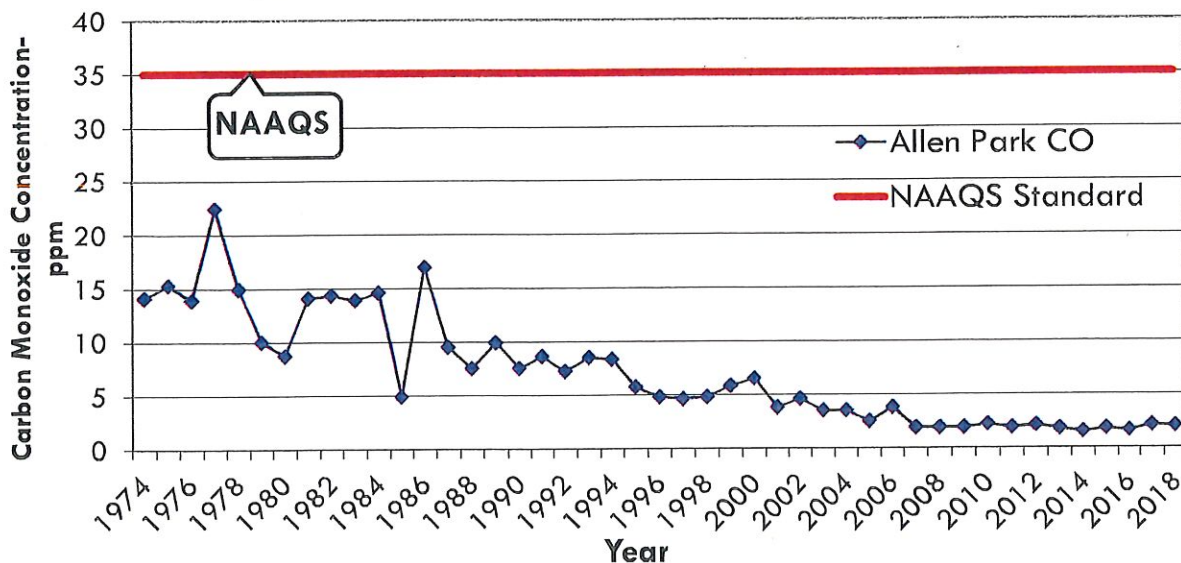
Sources: CO is given off whenever fuel or other carbon-based materials are burned. Outdoor exposure sources include automobile exhaust, industrial processes (metal processing and chemical production), and non-vehicle fuel combustion. Natural sources include volcanos, forest fires and photochemical reactions in the atmosphere. Indoor exposure sources include wood stoves and fireplaces, gas ranges with continuous pilot flame ignition, unvented gas or kerosene heaters, and cigarette smoke.

Effects: CO enters the bloodstream through the lungs, where it displaces oxygen delivered to the organs and tissues. Elevated levels can cause visual impairment, interfere with mental acuity by reducing learning ability and manual dexterity, and can decrease work performance in the completion of complex tasks. In extreme cases, unconsciousness and death can occur. CO also alters atmospheric photochemistry contributing to the formation of ground-level O₃, which can trigger serious respiratory problems.

Population most at risk: Those who suffer from cardiovascular (heart and respiratory) disease, fetuses, infants and the elderly are most at risk for exposure to elevated levels of CO. People with angina and peripheral vascular disease are especially at risk, as their circulatory systems are already compromised and less efficient at carrying oxygen; however, elevated CO levels can also affect healthy people.

Historical Trends: Southeast Michigan has been monitoring for CO for 45 years. **Figure 2.1** shows the CO trend at Allen Park to be well below the 1-hour standard of 35 ppm. This standard has not changed since 1971.

Figure 2.1: Historical 1-hour CO Averages at Allen Park



Figures 2.2 and 2.3 show CO emission sources and CO emissions by county (courtesy of the USEPA's State and County Emission Summaries).

Figure 2.2: CO Emissions by Source Sector

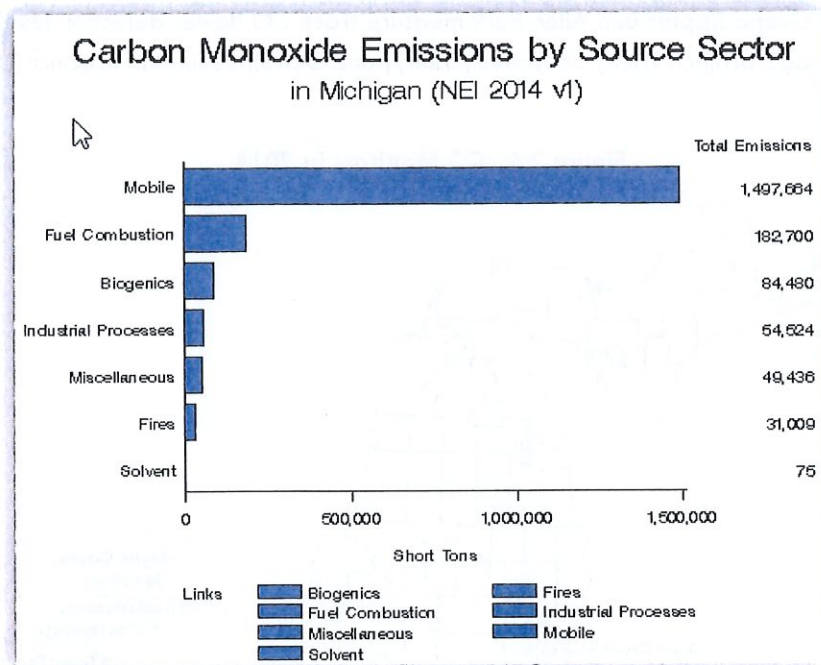


Figure 2.3: CO Emissions in 2014

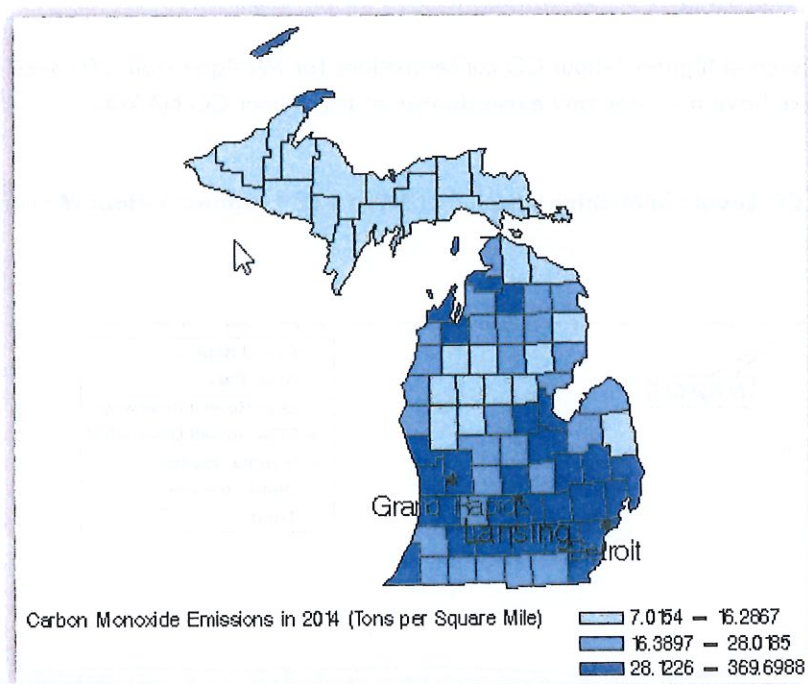


Figure 2.4 shows the location of each CO monitor that operated in 2018.

- Near-roadway network sites: two Eliza Howell Park and Livonia. A second downwind site at Eliza Howell Park provides a comparison to the near-roadway sites.
- NCore Network: Grand Rapids and Allen Park measure trace CO (lower detection levels 1 ppm-50 ppm).
- Gordie Howe Bridge project: Trinity St. Marks (Trinity) and Detroit Police 4th Precinct (DP4th Precinct), started 2018.

Figure 2.4: CO Monitors in 2018

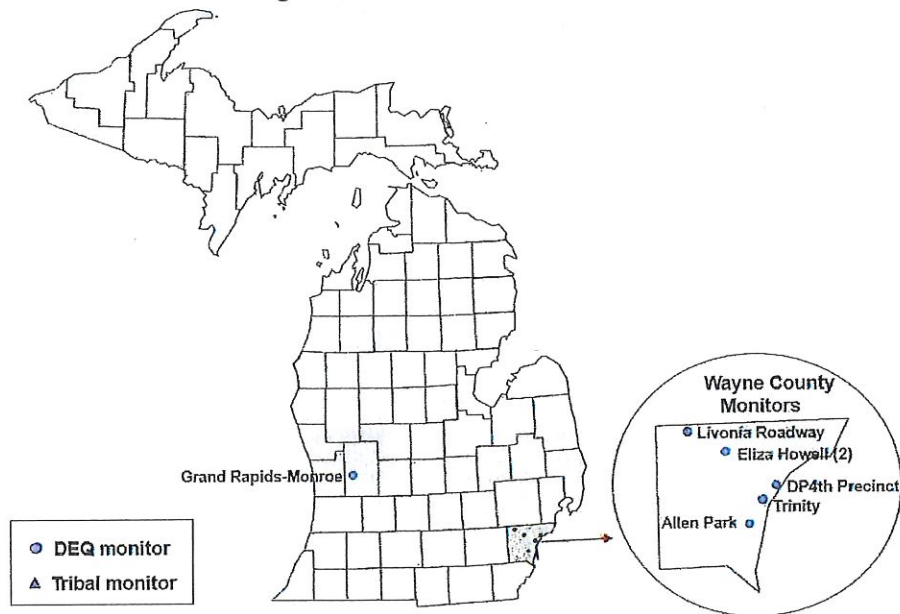
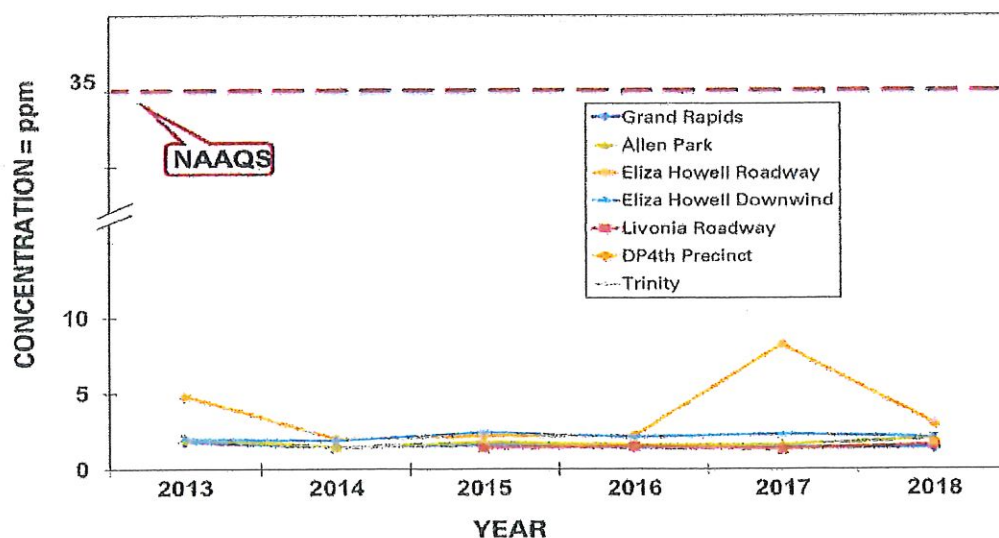


Figure 2.5 shows the second highest 1-hour CO concentrations for Michigan from 2013-2018, which demonstrates that there have not been any exceedances of the 1-hour CO NAAQS.

Figure 2.5: CO Levels in Michigan from 2013-2018 (2nd Highest 1-Hour Maximum Values)



CHAPTER 3: LEAD (PB)

Lead is a highly toxic metal found in coal, oil, and other fuels. It is also found in older paints, municipal solid waste and sewage sludge, and may be released to the atmosphere during combustion. In 2008, the USEPA lowered the Pb NAAQS from a maximum quarterly average of $1.5 \mu\text{g}/\text{m}^3$ to a 3-month rolling average of $0.15 \mu\text{g}/\text{m}^3$. Its sources and effects are presented below.

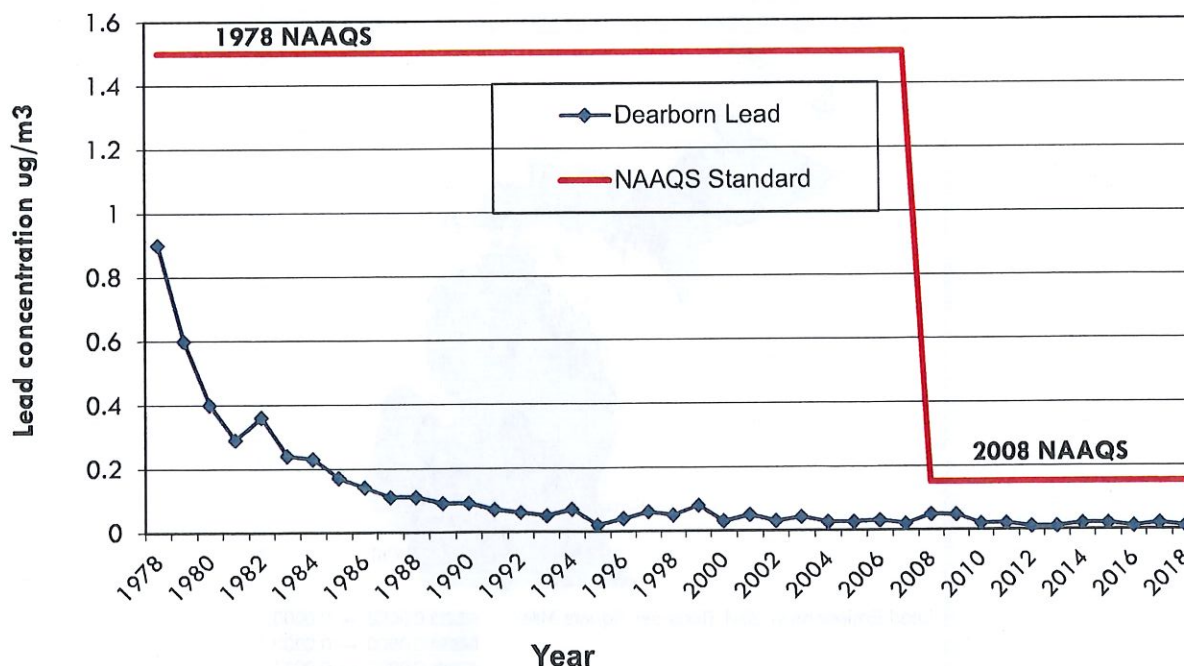
Sources: With the phase-out of leaded gas in the 1970s, the major sources of Pb emissions have been due to ore and metals processing and piston-engine aircraft operating on leaded aviation fuel. Other industrial sources include Pb acid battery manufacturers, waste incinerators, and utilities. The highest air concentrations of Pb are usually found near lead smelters.

Effects: Exposure occurs through the inhalation or ingestion of Pb in food, water, soil, or dust particles. Pb primarily accumulates in the body's blood, bones, and soft tissues, and adversely affects the nervous system as well as the cardiovascular system, reproductive system, blood, kidneys, and other organs.

Population most at risk: Fetuses and children are most at risk since low levels of Pb may cause central nervous system damage. Excessive Pb exposure during the early years of life is associated with lower IQ scores and neurological impairment (seizures, mental development, and behavioral disorders). Even at low doses, lead exposure is associated with changes in fundamental enzymatic, metabolic, and homeostatic mechanisms in the body, and Pb may be a factor in high blood pressure and subsequent heart disease.

Historical Trends: Southeast Michigan has been monitoring for lead for 40 years. **Figure 3.1** shows the trend for lead at Dearborn. The largest decrease in Pb in the air is due to the removal of Pb in gasoline. By 1975, most newly manufactured vehicles no longer required leaded gasoline, and as a result, there was a dramatic decrease in ambient Pb levels. In 1996, the USEPA banned the sale of leaded fuel for use in on-road vehicles. The graph also shows the decrease in the Pb standard that occurred in 2008.

Figure 3.1: Historical Quarterly/3-month Averages for Lead at Dearborn



Figures 3.2 and 3.3 show Pb emission sources and Pb emissions by county (courtesy of the USEPA's State and County Emission Summaries).

Figure 3.2: Pb Emissions by Source Sector

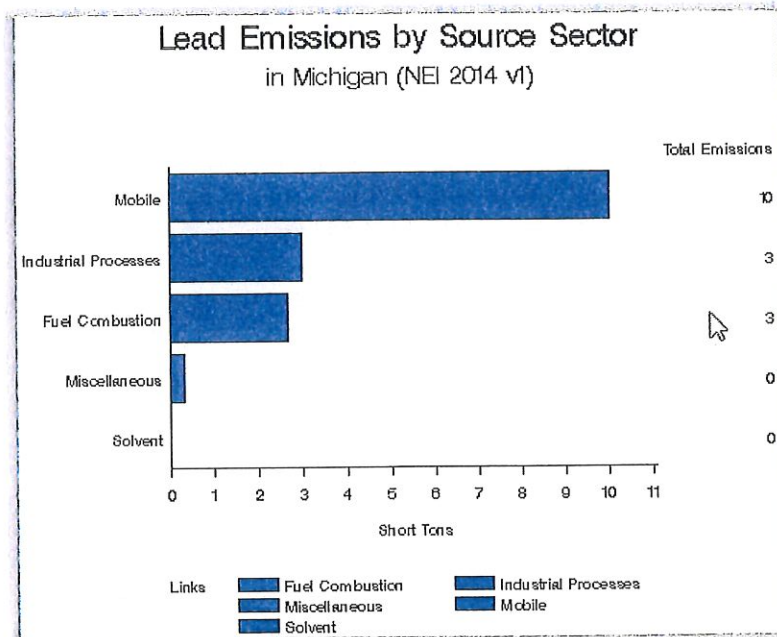


Figure 3.3: Pb Emissions in 2014

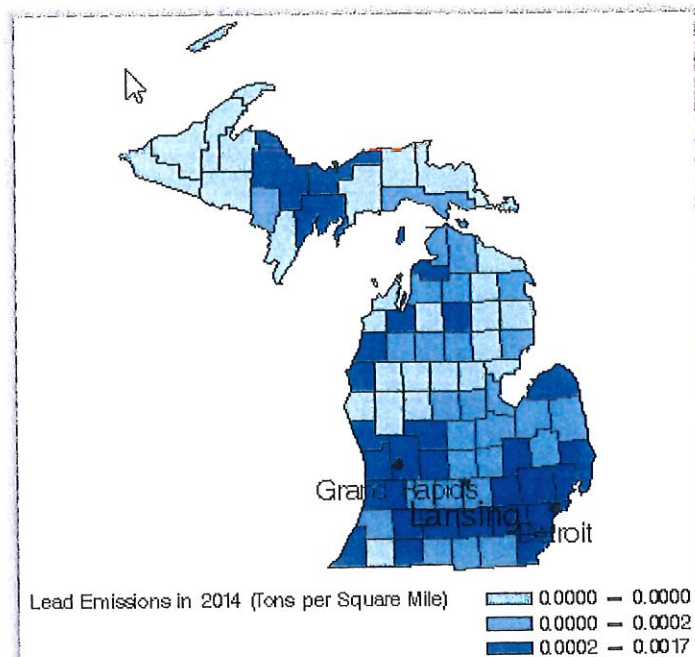


Figure 3.4 shows the location of the Pb monitors in the MASN in 2018. When the Pb NAAQS was lowered in 2008, the monitoring network was modified to consist of source-oriented monitors and population-oriented monitors. As part of the 2008 Pb NAAQS, EGLE must monitor near stationary sources emitting more than 1/2 ton of Pb per year.

Source-oriented sites: Port Huron-Rural St., Belding-Merrick St., and Belding-Reed St. The two sites in Belding previously were above the standard, but values for both the sites have been below the NAAQS for the past five years. Belding was designated to attainment on July 31, 2018.

- National Air Toxics Trend Sites (NATTS): Dearborn lead and trace metals, both as total suspended particulate (TSP) and PM₁₀. Lead measurements as PM_{2.5} are also made throughout the PM_{2.5} speciation network.
- Network consistency: River Rouge, Detroit-W. Jefferson, and Detroit-W. Fort St. On January 1, 2018, lead sampling was started at all the TSP metals sites to maintain consistency and to be more protective of public health. Many older homes, which often contain lead-based paint, are being demolished in the Detroit area near these monitors.
- Secondary monitor: Port Huron-Rural St. to comply with the USEPA's collocation regulations.
- Gordie Howe Bridge project: DP4th Precinct, Trinity, and Military Park.

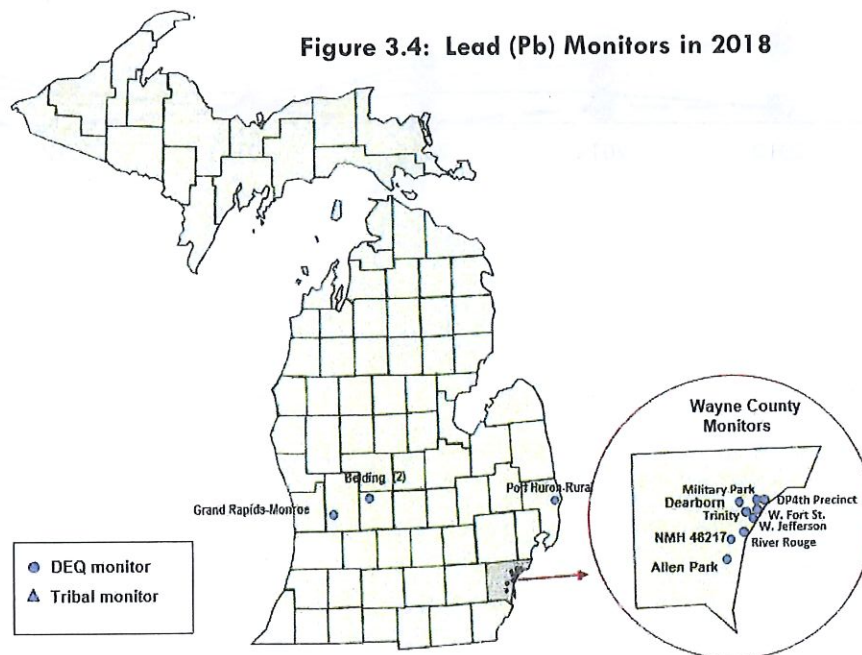
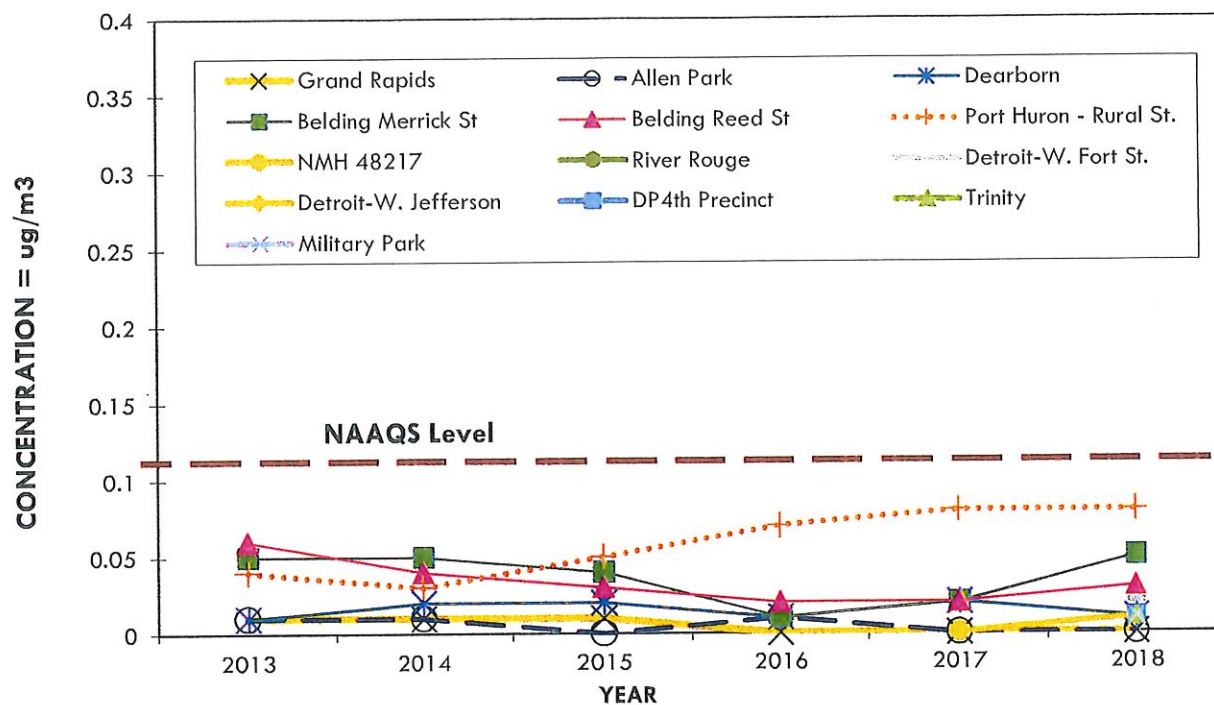


Figure 3.5 shows the maximum 3-month rolling average values for Pb from 2013 to 2018. All Pb monitor sites in Michigan are below the standard.

Figure 3.5: Lead Levels in Michigan from 2014-2018 (Maximum 3-Month Average Values)



CHAPTER 4: NITROGEN DIOXIDE (NO₂)

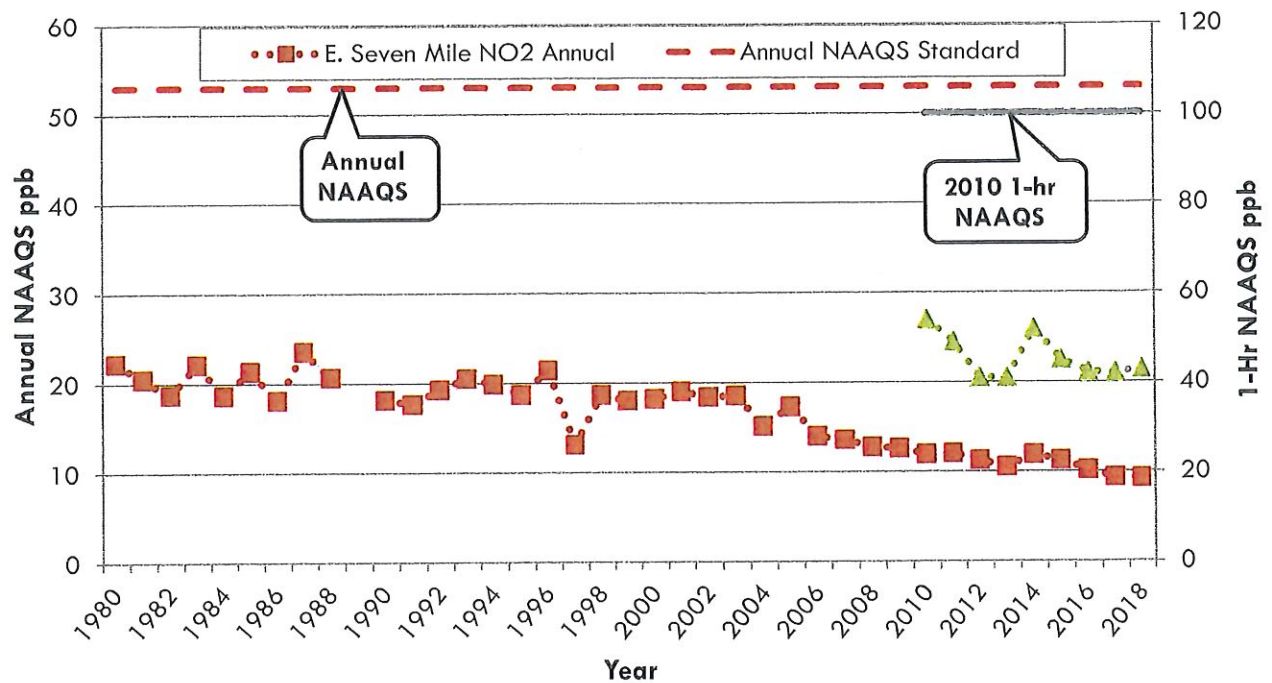
Nitrogen dioxide is a reddish-brown, highly reactive gas formed through oxidation of nitric oxide (NO). Upon dilution, it becomes yellow or invisible. High concentrations produce a pungent odor and lower levels have an odor similar to bleach. NO_x is the term used to describe the sum of NO, NO₂, and other nitrogen oxides. NO_x can lead to the formation of O₃ and NO₂ and can react with other substances in the atmosphere to form particulate matter or acidic products that are deposited in rain (acid rain), fog, or snow. Since 1971, the primary and secondary standard for NO₂ was an annual mean of 0.053 ppm. In January 2010, the USEPA added a 1-hour NO₂ standard of 100 ppb, taking the form of the 98th percentile averaged over three years. The sources and effects of NO₂ are as follows:

Sources: NO_x compounds and their transformed products occur both naturally and as a result of human activities. Natural sources of NO_x are lightning, forest fires, bacterial processes in soil, and stratospheric intrusion. Stratospheric intrusion is when the air upper atmosphere (stratosphere) descends towards the surface of the earth and mixes with the air at breathing level. Ammonia and other nitrogen compounds produced naturally are important in the cycling of nitrogen through the ecosystem. The major sources of man-made (anthropogenic) NO_x emissions come from high-temperature combustion processes such as those occurring in automobiles and power plants. Home heaters and gas stoves produce substantial amounts of NO₂ in indoor settings.

Effects: Exposure to NO₂ occurs through the respiratory system, irritating the lungs. Short-term NO₂ exposures (i.e., less than three hours) can produce coughing and changes in airway responsiveness and lung function. Evidence suggests that long-term exposures to NO₂ may lead to increased susceptibility to respiratory infection and may cause structural changes in the lungs. Exercise increases the ventilation rate and hence exposure to NO₂. Nitrate particles and NO₂ can block the transmission of light, resulting in visibility impairment (i.e., smog or haze). Nitrogen deposition can lead to fertilization, excessive nutrient enrichment, or acidification of terrestrial, wetland, and aquatic systems that can upset the delicate balance in those ecosystems.

Population most at risk: Individuals with pre-existing respiratory illnesses and asthmatics are more sensitive to the effects of NO₂ than the general population. Short-term NO₂ exposure can increase respiratory illnesses in children.

Historical Trends: Southeast Michigan has been monitoring for NO₂ for almost 40 years. **Figure 4.1** shows the trend for NO₂ at E. 7 Mile Road, which has been well below the annual standard of 53 ppb and shows a downward trend. In 2010, the USEPA added a 1-hour standard for NO₂, which have also remained well below the standard in Michigan. Southeast Michigan is highly industrialized; therefore, it is a good indicator of the air quality improvement for the rest of the state.

Figure 4.1: Historical Annual and 1-hour NO₂ at E. 7 Mile Road

Figures 4.2 and 4.3 show NO₂ emission sources and NO₂ emissions by county (courtesy of the USEPA's State and County Emission Summaries).

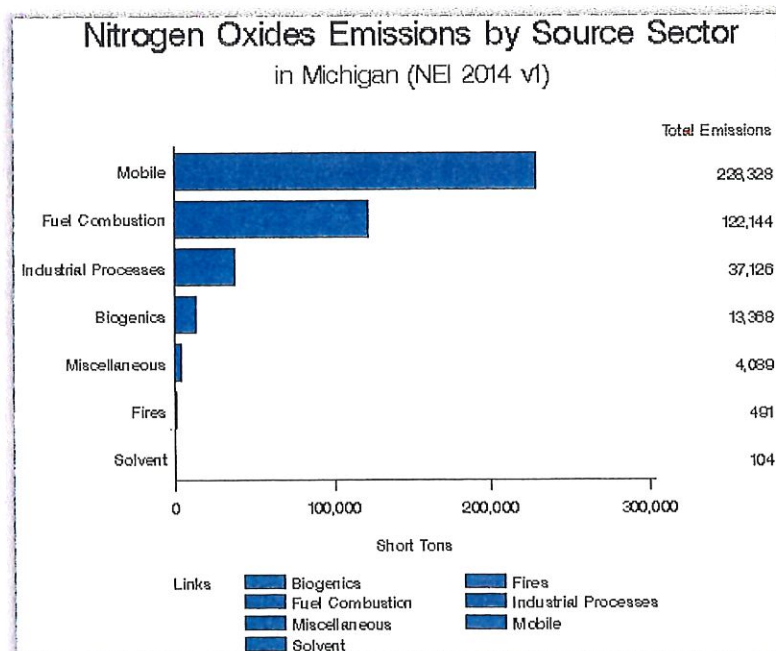
Figure 4.2: NO₂ Emissions by Source Sector

Figure 4.3: NO₂ Emissions in 2014

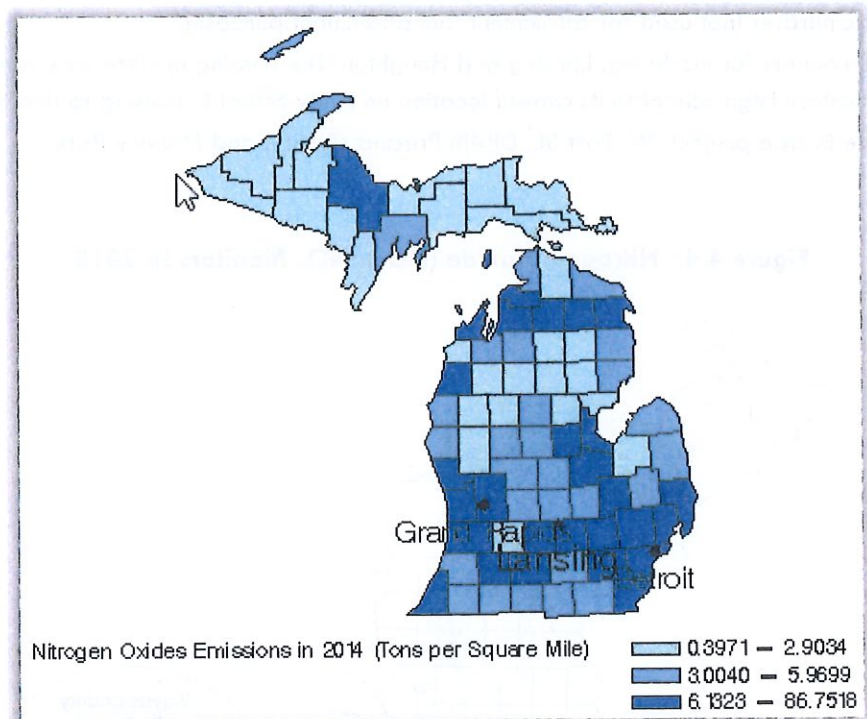
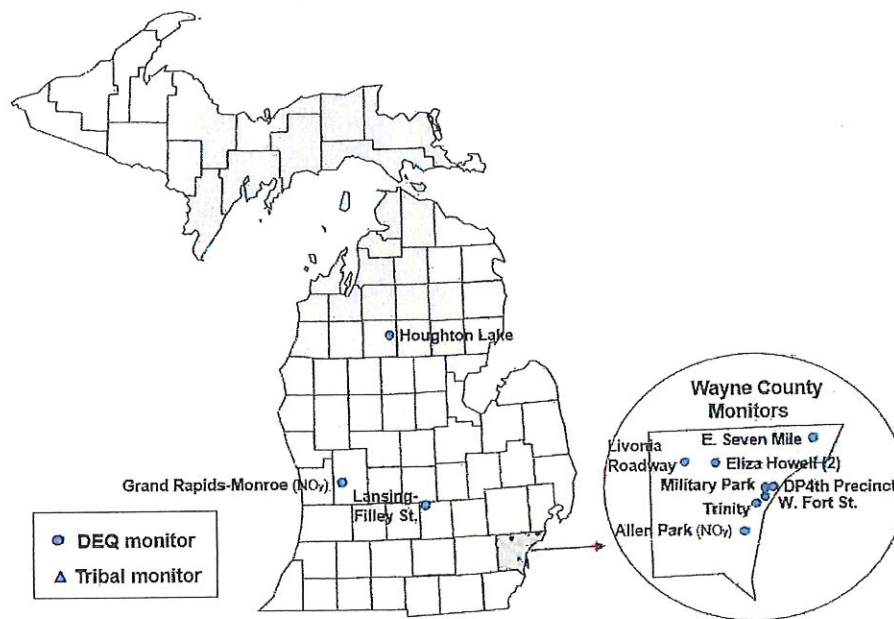


Figure 4.4 shows the location of all NO₂ monitors that operated in 2018.

- Downwind urban scale site: E. 7 Mile in Detroit
- Near-roadway Network sites: Two Detroit Eliza Howell (roadway and downwind sites) and Livonia.
- NCore sites: Grand Rapids and Allen Park, monitor NO_y, which includes NO_x, nitric acid and organic and inorganic nitrates (not used for attainment/nonattainment purposes).
- Background monitors for modeling: Lansing and Houghton. The Lansing monitor was moved in April 2018 from Eastern High School to its current location on Filley Street in Lansing to due to construction.
- Gordie Howe Bridge project: W. Fort St., DP4th Precinct, Trinity, and Military Park

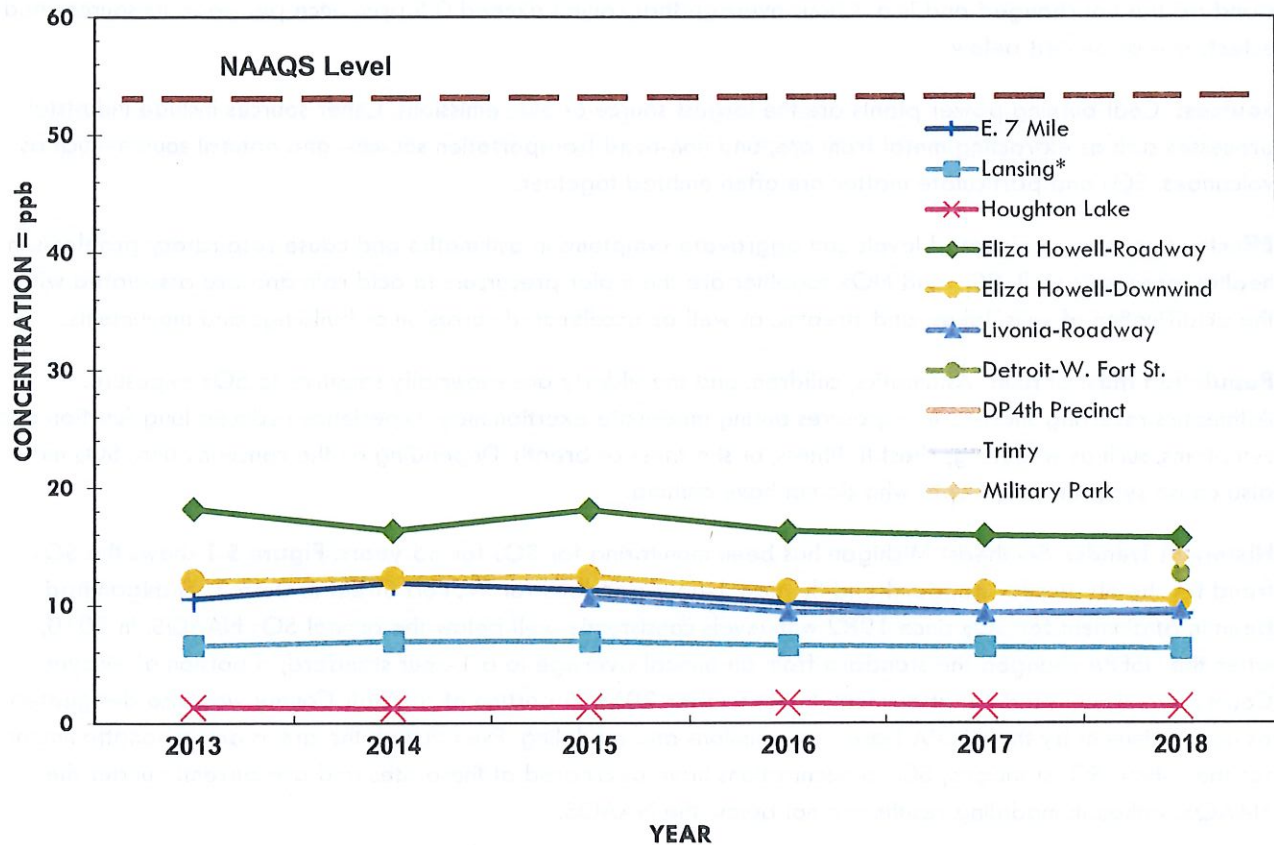
Figure 4.4: Nitrogen Dioxide (NO₂) /NO_y Monitors in 2018



Michigan's ambient NO₂ levels have always been well below the NAAQS. Since March 3, 1978, all areas in Michigan have been in attainment for the annual NO₂ NAAQS. As shown in **Figure 4.5**, all monitoring sites have had an annual NO₂ concentration at less than half of the 0.053 ppm NAAQS.

Even though there are no nonattainment areas for NO₂ in Michigan and monitoring for attainment purposes is not required, monitors continue to operate to support photochemical model validation work.

Figure 4.5: NO₂ Levels in MI from 2013-2018 (Annual Arithmetic Mean)**



*Indicates site was moved during the year and concentrations were averaged together for both locations.

**Since Allen Park and Grand Rapids are monitoring NO_y, those sites are not included in graph.

CHAPTER 5: SULFUR DIOXIDE (SO₂)

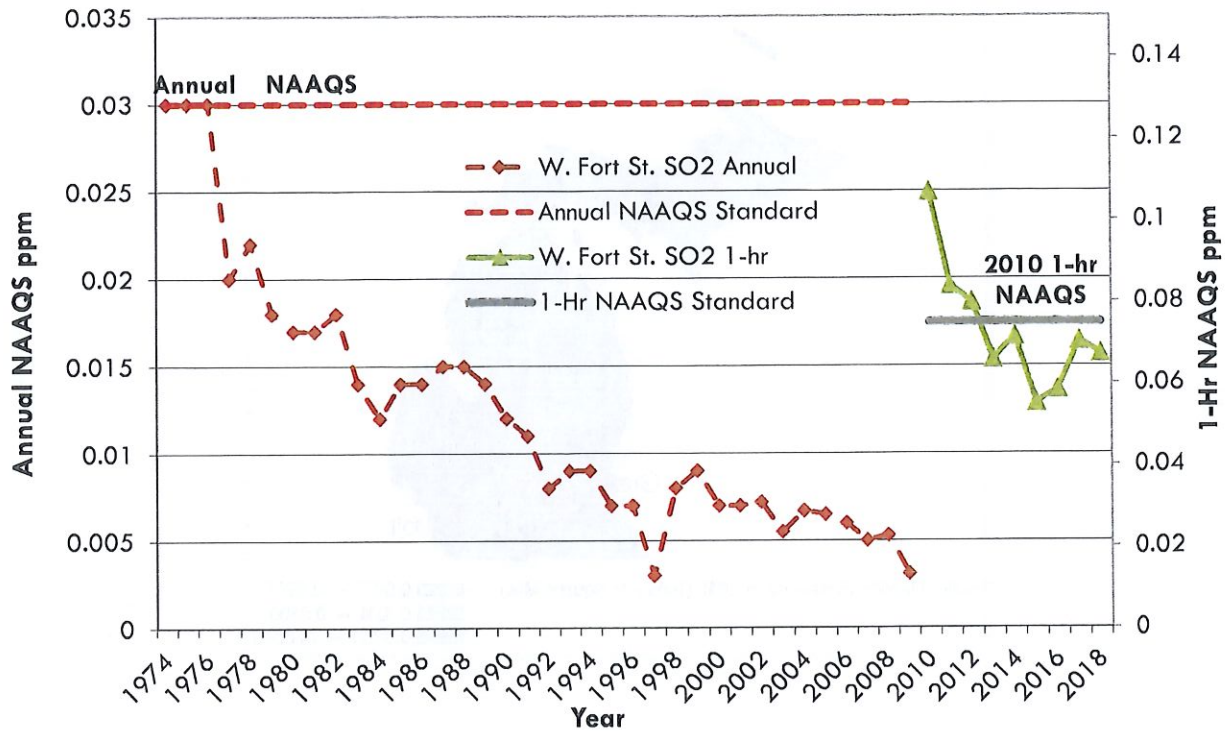
Sulfur dioxide is a gas formed by the burning of sulfur-containing material. Odorless at typical ambient concentrations, SO₂ can react with other atmospheric chemicals to form sulfuric acid. At higher concentrations it has a pungent, irritating odor similar to a struck match. When sulfur-bearing fuel is burned, the sulfur is oxidized to form SO₂, which then reacts with other pollutants to form aerosols. These aerosols can form particles in the air causing increases in PM_{2.5} levels. In liquid form, it is found in clouds, fog, rain, aerosol particles, and in surface films on these particles. In June 2010, the USEPA changed the primary SO₂ standard to a 99th percentile of 1-hour concentrations not to exceed 0.075 ppm, averaged over a 3-year period. The secondary standard has not changed and is a 3-hour average that cannot exceed 0.5 ppm once per year. Its sources and effects are presented below.

Sources: Coal-burning power plants are the largest source of SO₂ emissions. Other sources include industrial processes such as extracting metal from ore, and non-road transportation sources, and natural sources such as volcanoes. SO₂ and particulate matter are often emitted together.

Effects: Exposure to elevated levels can aggravate symptoms in asthmatics and cause respiratory problems in healthy groups as well. SO₂ and NO_x together are the major precursors to acid rain and are associated with the acidification of soils, lakes, and streams, as well as accelerated corrosion of buildings and monuments.

Population most at risk: Asthmatics, children, and the elderly are especially sensitive to SO₂ exposure. Asthmatics receiving short-term exposures during moderate exertion may experience reduced lung function and symptoms, such as wheezing, chest tightness, or shortness of breath. Depending on the concentration, SO₂ may also cause symptoms in people who do not have asthma.

Historical Trends: Southeast Michigan has been monitoring for SO₂ for 45 years. **Figure 5.1** shows the SO₂ trend for the old annual standard and the new 1-hour standard for W. Fort Street in Detroit. Michigan had been in attainment for SO₂ since 1982 with levels consistently well below the annual SO₂ NAAQS. In 2010, when the USEPA changed the standard from an annual average to a 1-hour standard, a portion of Wayne County was designated nonattainment. In September 2016, a portion of St. Clair County was also designated as nonattainment by the USEPA based on emissions and modeling. Even though the areas are in nonattainment for the 1-hour SO₂ standard, SO₂ concentrations have decreased at these sites and are currently under the NAAQS, although modeling results are not below the NAAQS.

Figure 5.1: Historical Annual and 1-hour SO₂ Averages at W. Fort St.

Figures 5.2 and 5.3 show SO₂ emission sources and SO₂ emissions by county (courtesy of the USEPA's State and County Emission Summaries).

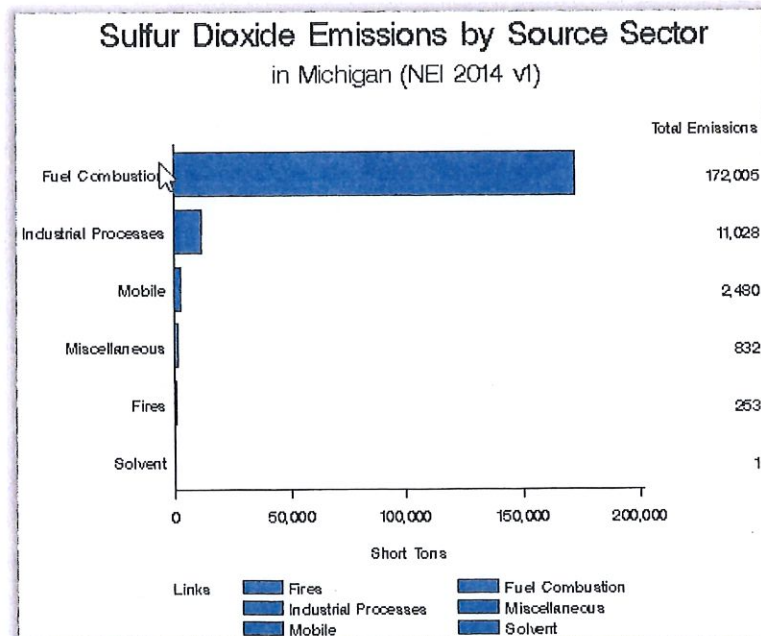
Figure 5.2: SO₂ Emissions by Source Sector

Figure 5.3: SO₂ Emissions in 2014

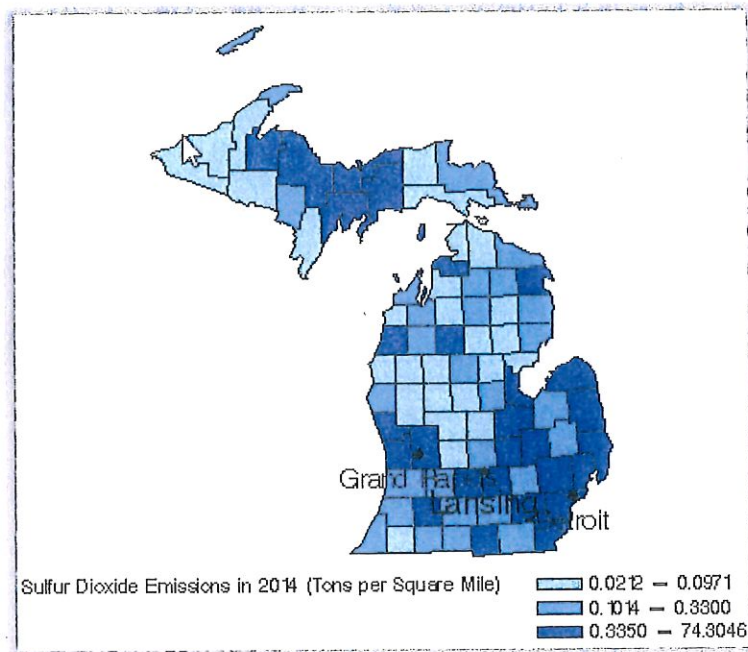


Figure 5.4 shows the location of each SO₂ monitor that operated in 2018.

- NCore sites: Allen Park and Grand Rapids have trace SO₂ monitors that have lower detection limits than traditional SO₂ monitors.
- Source-oriented sites: Lansing, Port Huron, W. Fort St., Sterling State Park, West Olive
- Community monitoring project: NMH 48217
- Background monitor: the Lansing monitor was moved in April 2018 from Eastern High School to its current location on Filley Street in Lansing due to construction.
- Gordie Howe Bridge project: DP4th Precinct, Trinity, and Military Park.

Figure 5.4: Sulfur Dioxide (SO₂) Monitors in 2018

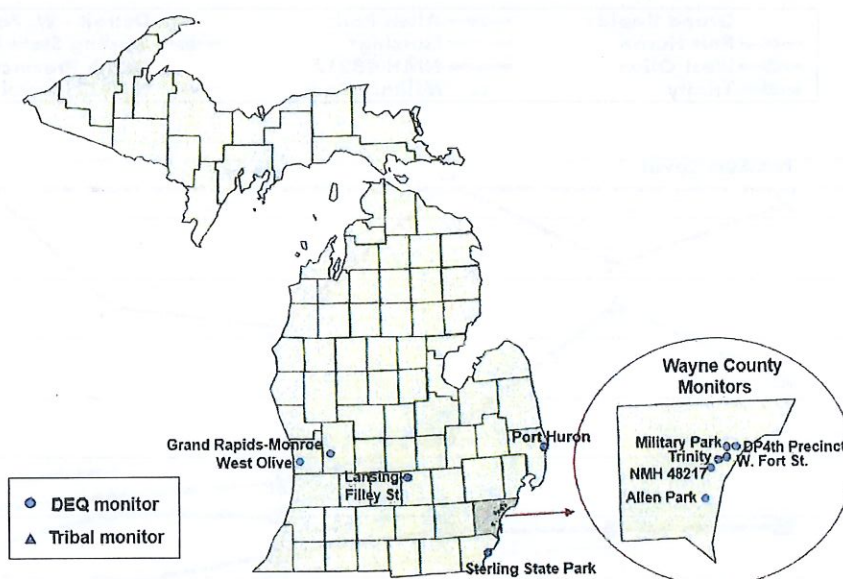
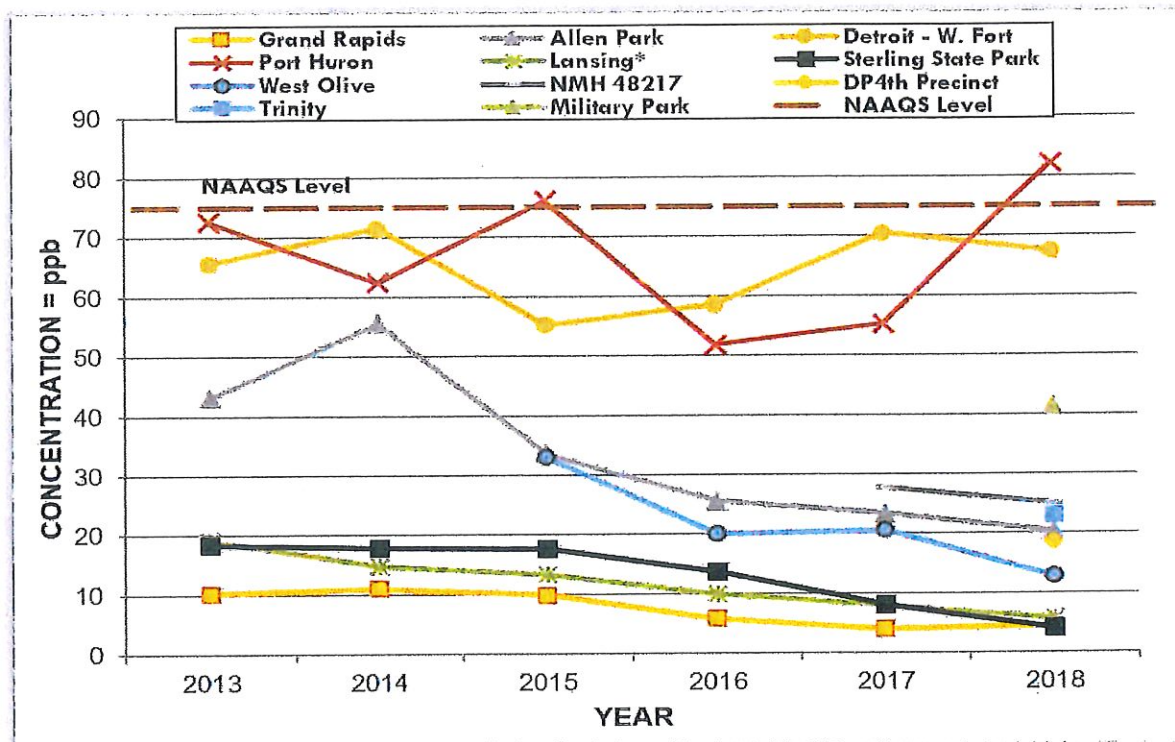


Figure 5.5 shows that all the SO₂ sites in Michigan are below the standard even though there is a nonattainment area for SO₂. The standard is a three-year average, therefore having one point above the NAAQS level line does not mean the monitor is over the standard. SO₂ pollution is extremely variable and would require a large monitoring network to designate areas as attainment. Therefore, SO₂ attainment depends on both emission modeling and monitoring data.

The NCore sites, Grand Rapids and Allen Park, monitor for trace SO₂. For trend purposes, all SO₂ data are graphed together in **Figure 5.5**.

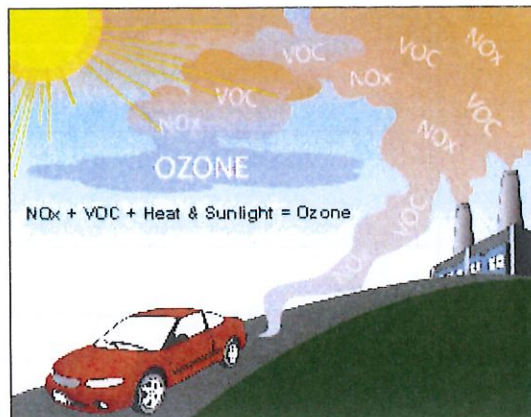
Figure 5.5: SO₂ Level in Michigan from 2013-2018 (1-Hour 99th Percentile)



*Indicates site was moved during the year and concentrations were averaged together for both locations.

CHAPTER 6: OZONE (O₃)

Ground-level O₃ is created by reactions involving nitrogen oxides (NO_x) and volatile organic compounds (VOCs), or hydrocarbons, in the presence of sunlight as the illustration to the right depicts (image courtesy of the USEPA). These reactions usually occur during the hot summer months as ultraviolet radiation from the sun initiates a sequence of photochemical reactions. In Earth's upper atmosphere (the stratosphere), O₃ helps by absorbing much of the sun's ultraviolet radiation, but in the lower atmosphere (the troposphere), ozone is an air pollutant. O₃ is also a key ingredient of urban smog and can be transported hundreds of miles under certain meteorological conditions. Ozone levels are often higher in rural areas than in cities due to transport to regions downwind from the actual emissions of NO_x and VOCs. Shoreline monitors along Lake Michigan often measure high ozone concentrations due to transport from upwind states. The ozone NAAQS was revised by the USEPA and became effective in November 2015. It is a 3-year average of the 4th highest daily maximum 8-hour average concentration that must not exceed 0.070 ppm. The sources and effects of ozone follow.



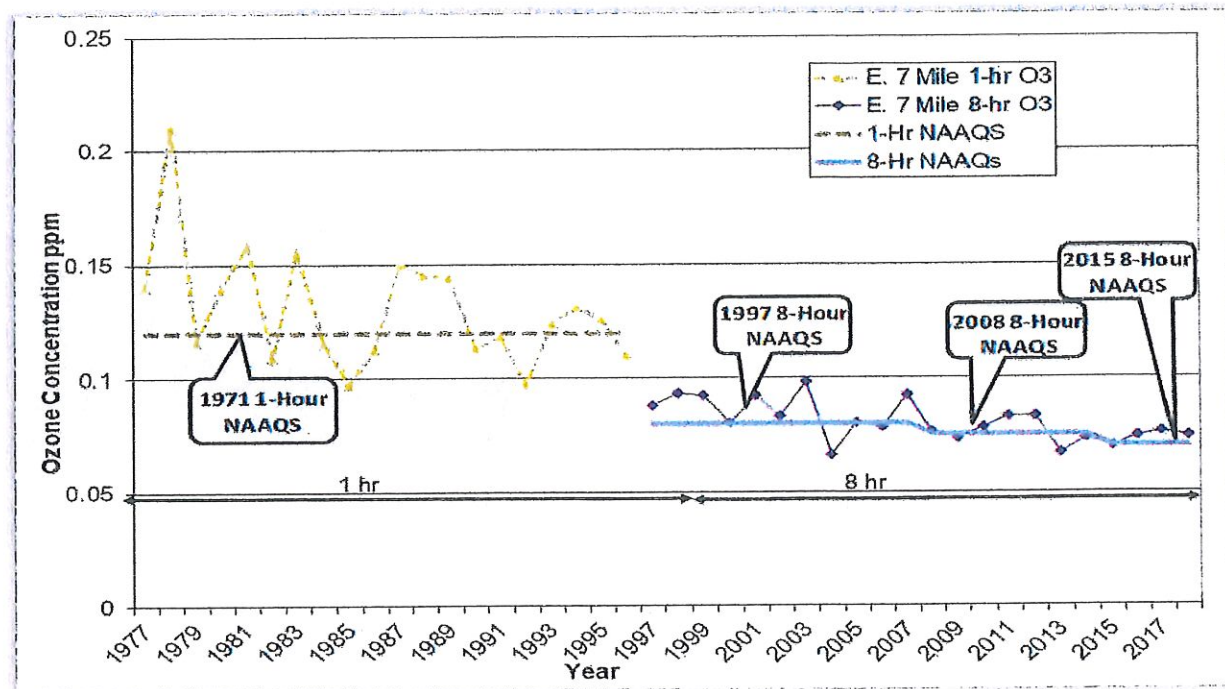
Sources: Major sources of NO_x and VOCs are engine exhaust, emissions from industrial facilities, combustion from power plants, gasoline vapors, chemical solvents, and biogenic emissions from natural sources. Ground-level O₃ can also be transported hundreds of miles under certain wind regimes. As a result, the long-range transport of air pollutants impacts the air quality of regions downwind from the actual area of formation.

Effects: Elevated O₃ exposure can irritate airways, reduce lung function, aggravate asthma and chronic lung diseases like emphysema and bronchitis, and inflame and damage the cells lining the lungs. Other effects include increased respiratory related hospital admissions with symptoms such as chest pain, shortness of breath, throat irritation, and cough. O₃ may also reduce the immune system's ability to fight off bacterial infections in the respiratory system, and long-term, repeated exposure may cause permanent lung damage. O₃ also impacts vegetation and forest ecosystems, including agricultural crop and forest yield reductions, diminished resistance to pests and pathogens, and reduced survivability of tree seedlings.

Population most at risk: Individuals most susceptible to the effects of O₃ exposure include those with a pre-existing or chronic respiratory disease, children who are active outdoors and adults who actively exercise or work outdoors.

Historical Trends: Southeast Michigan has been monitoring for ozone for over 40 years. **Figure 6.1** shows the ozone levels at the Detroit E. 7 Mile Road site. This graph shows how the standard changed from a 1-hour average of 0.120 ppm to an 8-hour average of 0.08 ppm in 1997. The standard was further lowered to 0.075 ppm in 2008 and to 0.070 ppm at the end of 2015. Ozone depends on weather conditions, so ozone concentrations are more variable than other pollutants. Ozone is also monitored primarily in warmer months. In the 2015 NAAQS, the ozone season was extended by two months to March 1 to October 31.

Figure 6.1: Historical 1-hour and 8-hour Ozone at E. 7 Mile



Figures 6.2 and 6.3 show VOC emission sources and VOC emissions by county (courtesy of the USEPA's State and County Emission Summaries).

Figure 6.2: VOC Emissions by Source Sector

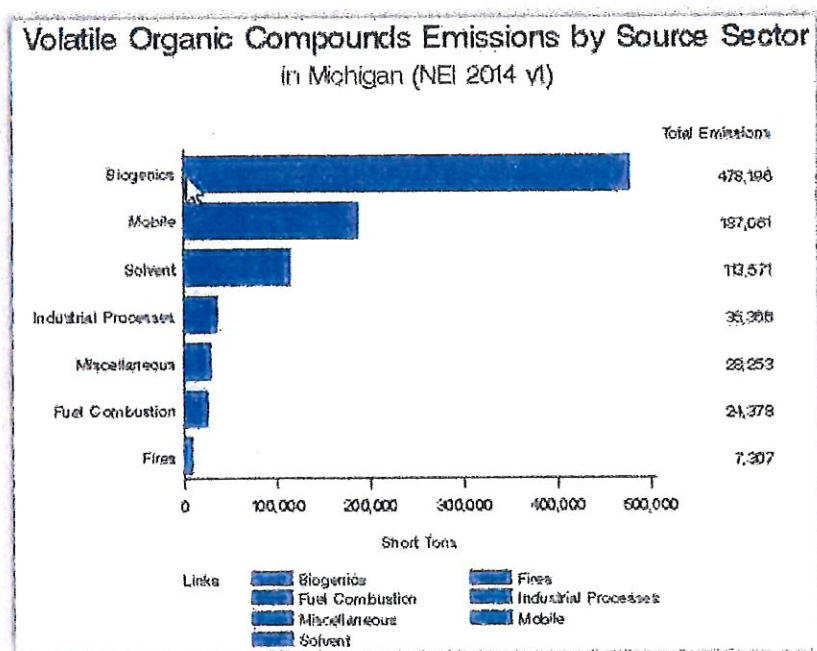


Figure 6.3: VOC Emissions in 2014

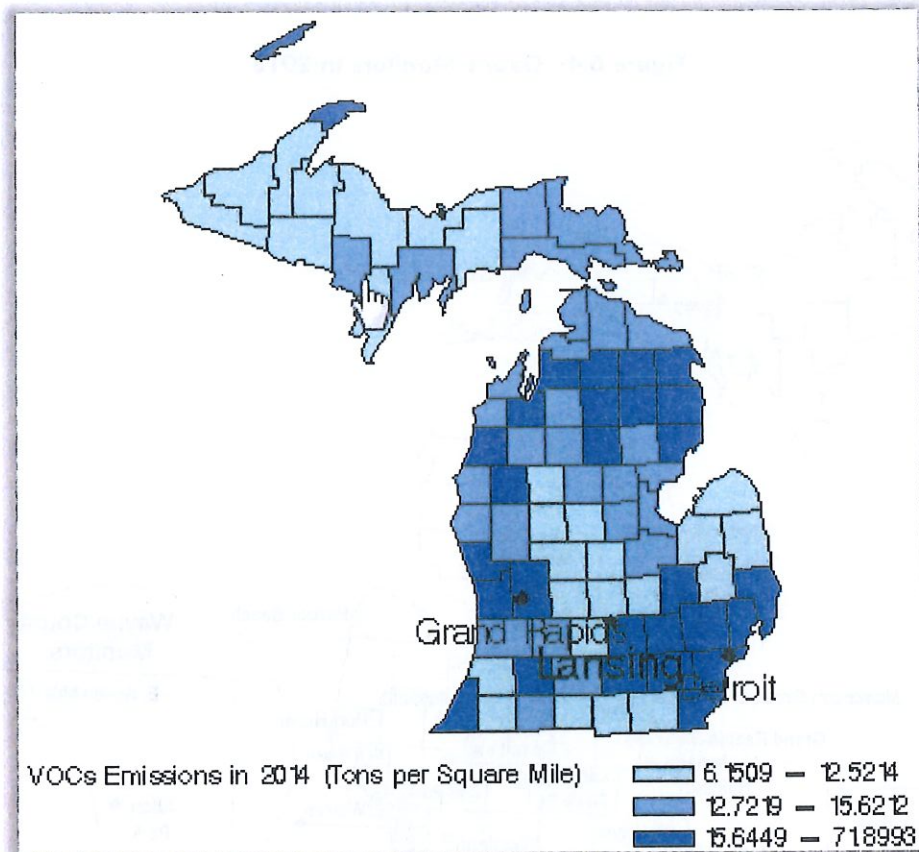


Figure 6.4 shows all O₃ air quality monitors active in Michigan at the beginning of the 2018 ozone season.

- Background site monitors: Houghton Lake, Scottville, Seney.
- Transport site monitors: Benzonia, Coloma, Harbor Beach, Holland, Muskegon, Tecumseh.
- Population-oriented monitors: all other sites. The Lansing monitor was moved in April 2018 from Eastern High School to its current location on Filley Street in Lansing to due to construction.

Figure 6.4: Ozone Monitors in 2018

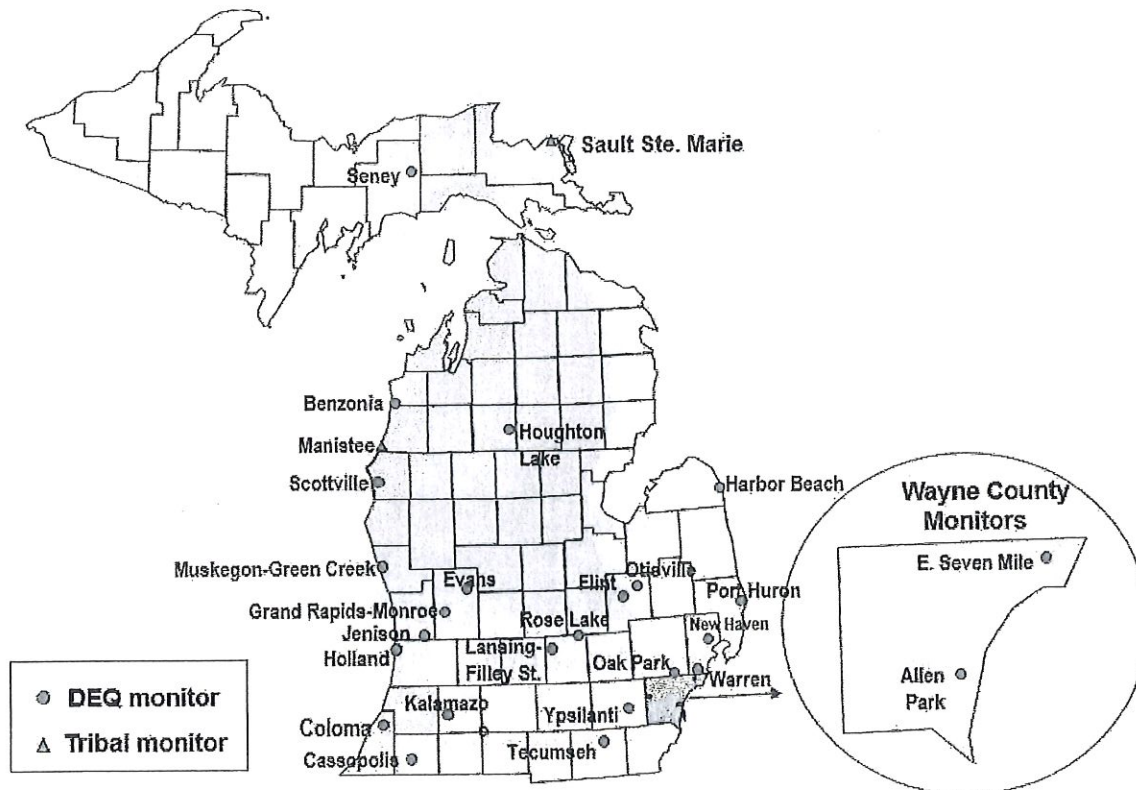


Table 6.1 shows the three-year averages of ozone. The USEPA uses these values (called design values) to determine attainment / nonattainment areas. In 2016, several monitors violated the 2015 standard of 0.070 ppm. The AQD recommended several counties be designated as nonattainment. The USEPA made their final designations for the 2015 standard on April 30, 2018 (effective August 3, 2018) based on 2014-2016 data. Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw and Wayne Counties were designated nonattainment in Southeast Michigan, and all of Berrien County, and portions of Allegan and Muskegon Counties were designated nonattainment in Western Michigan.

The O₃ monitoring season in Michigan was from April 1 through September 30, the hottest portion of the year. In 2017, the ozone season was extended to March 1 through October 31, based on the 2015 NAAQS. During this time O₃ monitoring data is available for the public via the AQD's website (discussed in **Chapter 1**). However, year-round O₃ monitoring is conducted at the following four sites: Allen Park, Grand Rapids, Houghton Lake, and Lansing. This data helps in attainment designations, and urban air quality and population exposure assessments.

Table 6.1: 3-Year Average of the 4th Highest 8-hour Ozone Values from 2014-2016, 2015-2017, 2016-2018 (concentrations in ppm).

Areas	County	Monitor Sites	2014-	2015-	2016-2018
Detroit-Ann Arbor	Lenawee	Tecumseh	0.067	0.066	0.068
	Macomb	New Haven	0.072	0.071	0.072
		Warren	0.067	0.066	0.069
	Oakland	Oak Park	0.069	0.070	0.073
	St. Clair	Port Huron	0.073	0.071	0.072
	Washtenaw	Ypsilanti	0.067	0.067	0.069
	Wayne	Allen Park	0.065	0.066	0.068
		Detroit-E. 7 Mile	0.072	0.073	0.074
Flint	Genesee	Flint	0.068	0.067	0.068
		Otisville	0.069	0.067	0.068
Grand Rapids	Ottawa	Jenison	0.070	0.068	0.070
	Kent	Grand Rapids	0.069	0.068	0.070
		Evans	0.067	0.067	0.068
Muskegon Co	Muskegon	Muskegon	0.075	0.074	0.076
Allegan Co	Allegan	Holland	0.075	0.073	0.073
Huron	Huron	Harbor Beach	0.068	0.067	0.068
Kalamazoo-Battle Creek	Kalamazoo	Kalamazoo	0.069	0.069	0.071
Lansing-East Lansing	Ingham	Lansing	0.067	0.067	0.068*
	Clinton	Rose Lake	0.067	0.066*	0.069*
Benton Harbor	Berrien	Coloma	0.074	0.073	0.073
Benzie Co	Benzie	Benzonia	0.069	0.065	0.068
Cass Co	Cass	Cassopolis	0.070	0.072	0.074
Chippewa Co	Chippewa	Sault Ste. Marie	0.059	0.057	0.055
Mason Co	Mason	Scottville	0.070	0.068	0.068
Missaukee Co	Missaukee	Houghton Lake	0.067	0.066	0.067
Manistee Co	Manistee	Manistee	0.068	0.067	0.066
Schoolcraft Co	Schoolcraft	Seney	0.070	0.067	0.064

Numbers in bold indicate 3-year averages over the 2015 ozone standard of 0.070 ppm.

*The three-year average is using data averaged from sites that were moved.

Tables 6.2 and 6.3 highlight the number of days when two or more O₃ monitors exceeded 0.070 ppm. It also specifies in which month they occurred and the temperature range.

Table 6.2: 2018 West Michigan Ozone Season

Daily High Temperature Range		2018 WEST MICHIGAN OZONE SEASON															
		March		April		May		June		July		August		September		October	
		Days	O ₃ Days	Days	O ₃ Days	Days	O ₃ Days	Days	O ₃ Days	Days	O ₃ Days	Days	O ₃ Days	Days	O ₃ Days	Days	O ₃ Days
>=	95	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
90	<= 94	0	0	0	0	3	3	4	1	8	1	3	0	1	0	0	0
85	<= 89	0	0	0	0	3	2	2	0	8	1	11	0	4	0	0	0
80	<= 84	0	0	0	0	6	0	8	1	9	0	8	0	8	0	4	0
75	<= 79	0	0	0	0	7	0	6	0	5	0	7	0	4	0	0	0
70	<= 74	0	0	2	0	3	0	8	0	1	0	1	0	1	0	2	0
65	<= 69	0	0	0	0	5	0	2	0	0	0	0	0	6	0	1	0
60	<= 64	0	0	8	0	2	0	0	0	0	0	0	0	2	0	2	0
55	<= 59	2	0	2	0	2	0	0	0	0	0	0	0	0	0	9	0
50	<= 54	4	0	2	0	1	0	0	0	0	0	0	0	1	0	8	0
49	<=	25	0	16	0	0	0	0	0	0	0	0	0	0	0	5	0
Totals		31	0	30	0	31	5	30	2	31	2	31	0	30	0	31	0

Days: Number of days during month when the daily high temperature falls within the specified temperature range.

O₃ Days: Number of days, during specified temperature range, when two or more area monitors exceeded 70 ppb.

For West Michigan, there were five O₃ exceedance days in May, two in June, and two in July when ozone exceeded 0.070 ppm at two or more ozone monitors. The temperatures for those days ranged between 80°F and 94°F.

Table 6.3: 2018 Southeast Michigan Ozone Season

Daily High Temperature Range		2018 SOUTHEAST MICHIGAN OZONE SEASON															
		March		April		May		June		July		August		September		October	
		Days	O ₃ Days	Days	O ₃ Days	Days	O ₃ Days	Days	O ₃ Days	Days	O ₃ Days	Days	O ₃ Days	Days	O ₃ Days	Days	O ₃ Days
>=	95	0	0	0	0	0	0	2	1	1	0	0	0	0	0	0	0
90	<= 94	0	0	0	0	4	2	2	1	9	3	3	0	5	0	0	0
85	<= 89	0	0	0	0	4	1	4	0	6	0	16	1	6	0	1	0
80	<= 84	0	0	0	0	4	0	6	1	13	0	8	0	0	0	3	0
75	<= 79	0	0	1	0	9	0	8	0	0	0	4	0	7	0	2	0
70	<= 74	0	0	2	0	4	0	7	0	2	0	0	0	4	0	2	0
65	<= 69	0	0	1	0	3	0	0	0	0	0	0	0	4	0	0	0
60	<= 64	1	0	4	0	1	0	1	0	0	0	0	0	4	0	4	0
55	<= 59	1	0	5	0	0	0	0	0	0	0	0	0	0	0	9	0
50	<= 54	3	0	1	0	2	0	0	0	0	0	0	0	0	0	6	0
49	<=	26	0	15	0	0	0	0	0	0	0	0	0	0	0	4	0
Totals		31	0	30	0	31	3	30	3	31	3	31	1	30	0	31	0

Days: Number of days during month when the daily high temperature falls within the specified temperature range.

O₃ Days: Number of days, during specified temperature range, when two or more area monitors exceeded 70 ppb.

For Southeast Michigan, there were three days in each of the months of May, June, and July, and one day in August when ozone exceeded 0.070 ppm at two or more ozone monitors. The temperature for those days were 80°F or higher.

Table 6.4 gives a breakdown of the O₃ days and the specific monitors that went over the standard in western, central/upper, and eastern Michigan in 2018.

Table 6.4: 8-Hour Exceedance Days (>0.070 ppm) and Locations

Date	MONITORS WITH EXCEEDANCES OF THE OZONE STANDARD			Total
	Western Michigan	Central / Upper Michigan	Eastern Michigan	
5/1/2018	Benzonia			1
5/24/2018		Seney	Port Huron	2
5/25/2018	Benzonia, Cassopolis, Coloma, Evans, Grand Rapids, Holland, Jenison, Kalamazoo, Manistee, Muskegon, Scottville	Lansing, Rose Lake	E. 7 Mile, Flint, Harbor Beach, New Haven, Oak Park, Otisville, Port Huron, Tecumseh, Warren	22
5/27/2018	Coloma, Holland, Kalamazoo, Muskegon	Rose Lake		5
5/28/2018	Cassopolis, Coloma, Kalamazoo	Rose Lake	Allen Park, E. 7 Mile, Flint, New Haven, Oak Park, Port Huron, Tecumseh, Ypsilanti	12
5/29/2018	Cassopolis, Coloma, Evans, Grand Rapids, Holland, Jenison, Muskegon	Lansing, Rose Lake	Flint, New Haven, Oak Park, Otisville, Tecumseh, Ypsilanti	15
5/31/2018	Cassopolis, Coloma, Grand Rapids, Holland, Jenison			5
6/7/2018			New Haven, Oak Park	2
6/8/2018			Oak Park	1
6/15/2018	Cassopolis, Coloma			2
6/17/2018	Holland, Muskegon		New Haven, Port Huron	4
6/29/2018			E. 7 Mile, Harbor Beach, New Haven, Oak Park, Port Huron, Warren	6
7/8/2018			Oak Park	1
7/9/2018	Cassopolis, Coloma, Holland, Muskegon, Scottville		E. 7 Mile, New Haven,	7
7/13/2018	Coloma, Grand Rapids, Holland, Jenison, Kalamazoo, Muskegon		E. 7 Mile, New Haven, Oak Park, Port Huron, Tecumseh, Warren, Ypsilanti	13
7/15/2018			E. 7 Mile, Harbor Beach, New Haven	3
8/2/2018	Holland			1
8/4/2018		Seney	Allen Park, E. 7 Mile, New Haven, Oak Park, Warren	6
TOTAL				107

On May 25, 2018, there were 22 monitors and on May 29, 2018, there were 15 monitor readings that exceeded the level of the standard. The sites with the most exceedances in the western region of Michigan was Cassopolis and Holland with eight. The central/upper Michigan site with the most exceedances was Rose Lake with four. The monitor at New Haven had 10 exceedances in eastern Michigan

Figure 6.5 shows the 4th highest 8-hour O₃ values for Southeast Michigan monitoring sites from 2013-2018. Detroit-E. 7 Mile, New Haven, Oak Park, and Port Huron site violated the 3-year standard.

Figure 6.6 shows the 4th highest 8-hour O₃ values for Grand Rapids-Muskegon-Holland CSA. Muskegon and Holland violated the 3-year standard.

Figure 6.7 shows 4th highest 8-hour O₃ values for mid-Michigan. Cassopolis, Coloma, and Kalamazoo violated the 3-year standard.

Figure 6.8 shows 4th highest 8-hour O₃ values for Northern Lower and Upper Peninsula. No sites violated the 3-year standard.

**Figure 6.5: O₃ Levels in Detroit-Warren-Flint CSA from 2013-2018
(4th Highest 8-Hour O₃ Values).**

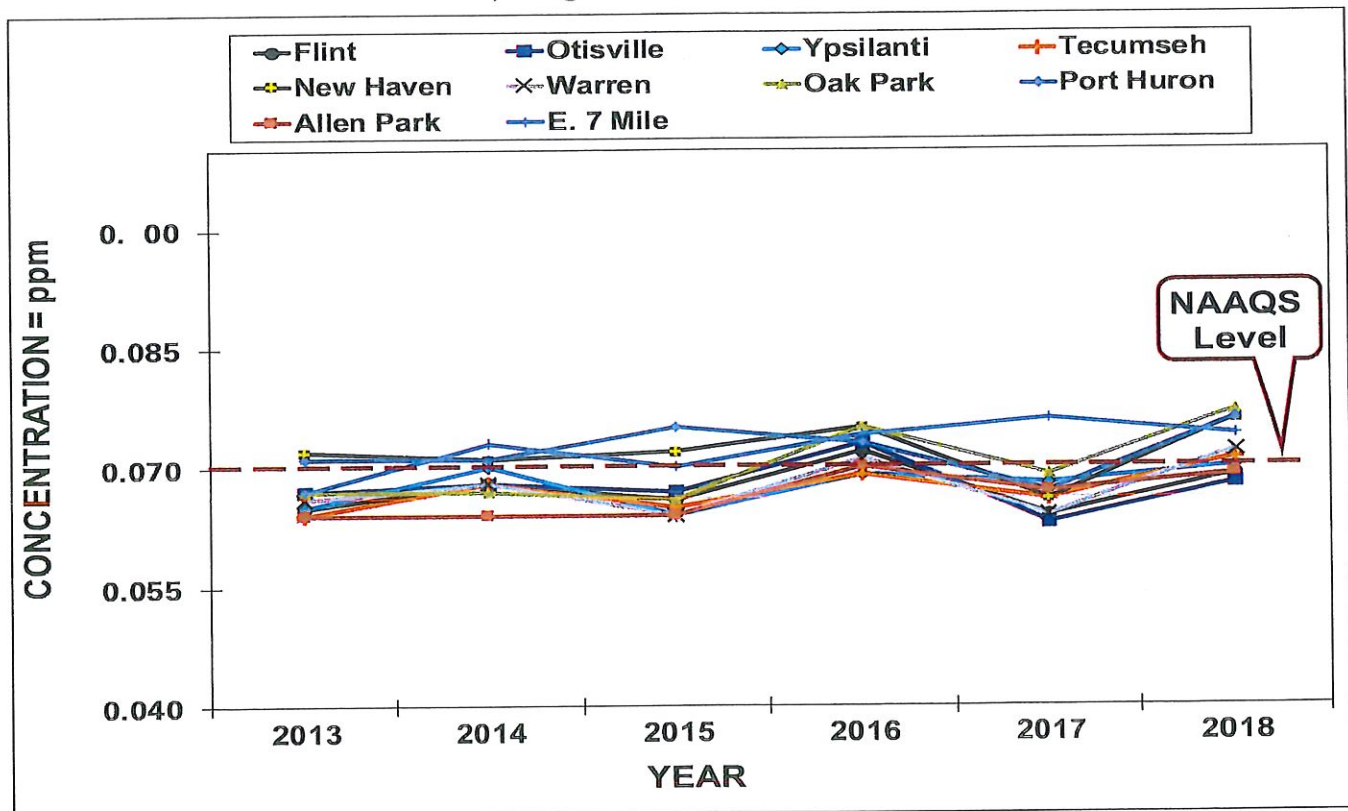


Figure 6.6: O₃ Levels in the Grand Rapids-Muskegon-Holland CSA from 2014-2018 (4th Highest 8-Hour O₃ Values)

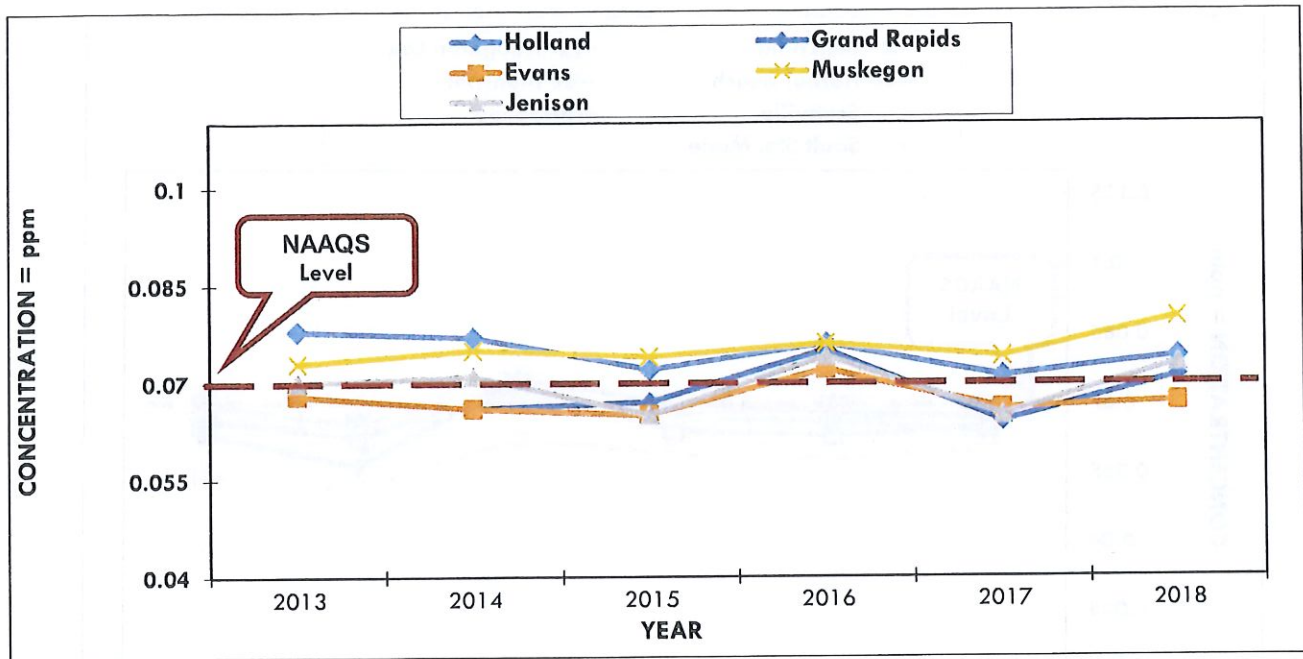
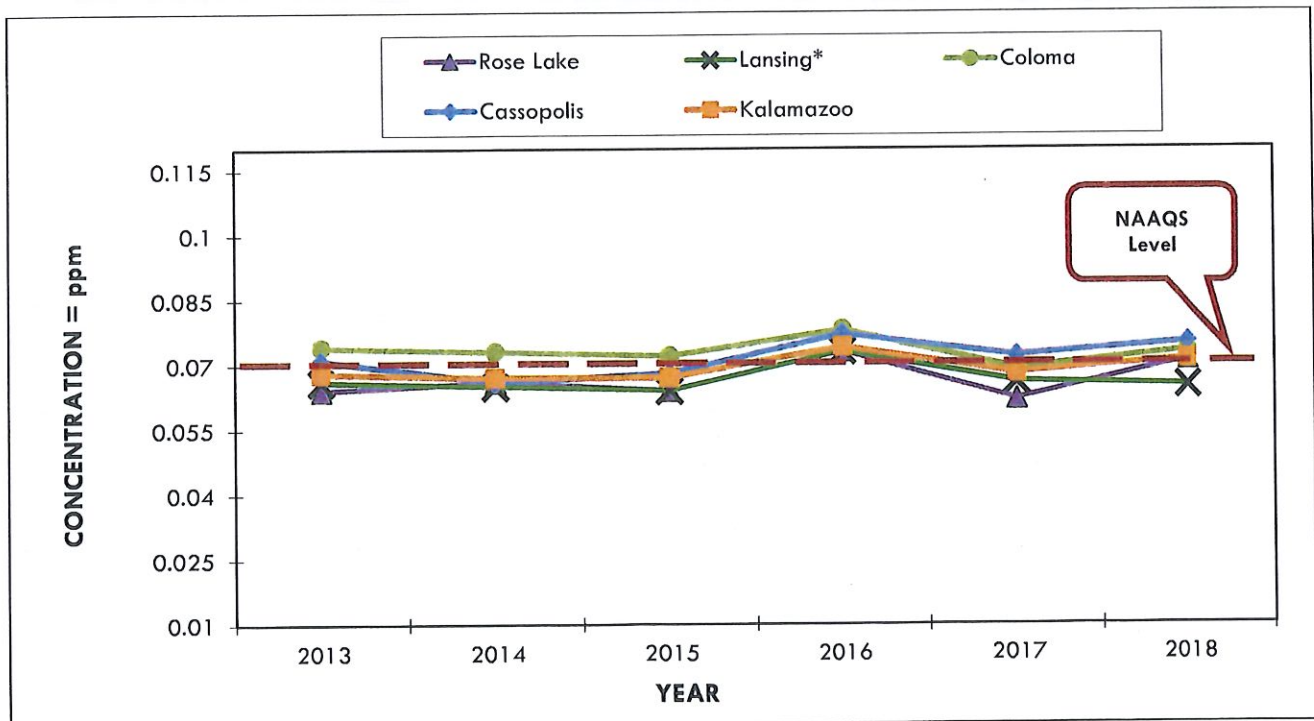
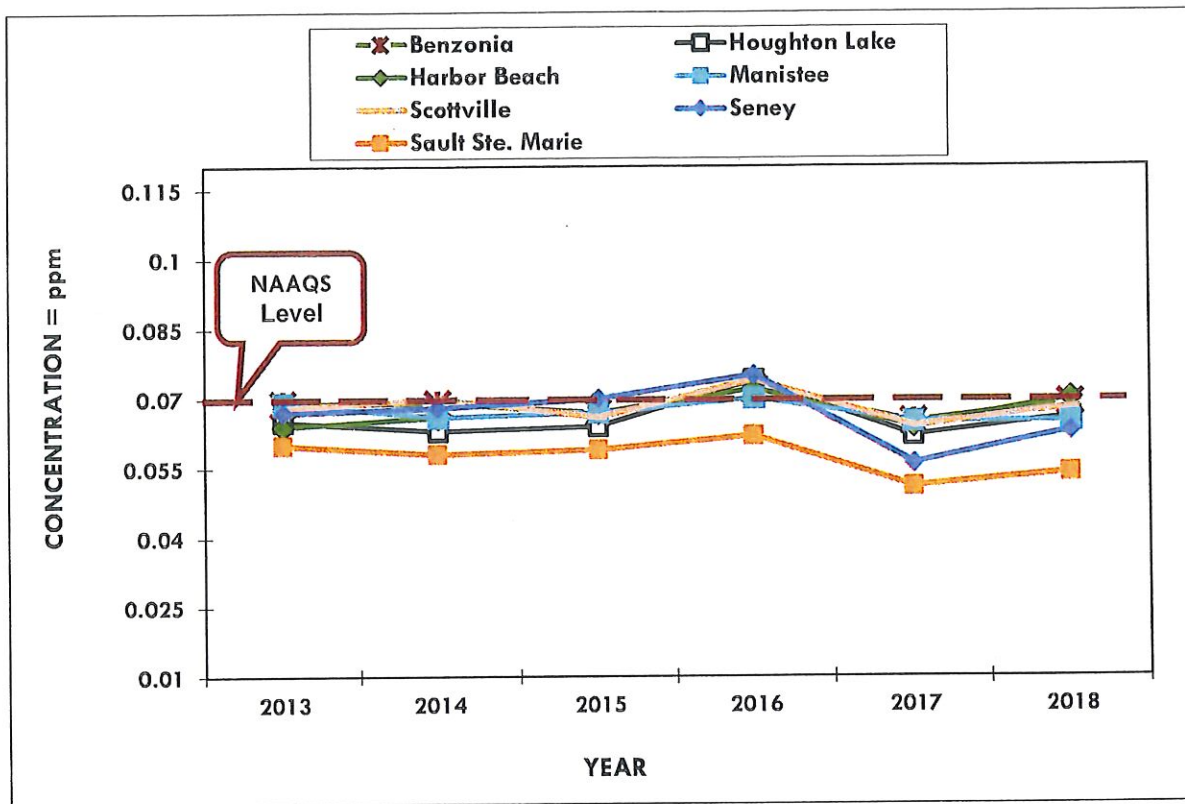


Figure 6.7: O₃ Levels in the Kalamazoo-Portage MSA, Lansing-E. Lansing-Owosso CSA, Niles-Benton Harbor MSA, & South Bend-Mishawaka (IN-MI) MSAs from 2013-2018 (4th Highest 8-Hour O₃ Values)



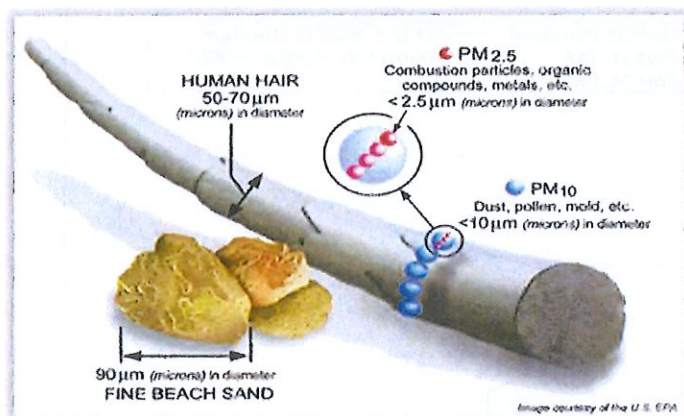
*Indicates site was moved during the year and concentrations were averaged together for both locations.

Figure 6.8: O₃ Levels in MI's Northern Lower and Upper Peninsula Areas from 2013-2018 (4th Highest 8-Hour O₃ Values)



CHAPTER 7: PARTICULATE MATTER (PM₁₀, PM_{10-2.5}, PM_{2.5}, PM_{2.5} CHEMICAL SPECIATION AND TSP)

Particulate matter (PM) is a general term used for a mixture of solid particles and liquid droplets (aerosols) found in the air. These are further categorized according to size; larger particles with diameters of less than 50 micrometers (μm) are classified as total suspended particulates (TSP). PM₁₀ consists of “coarse particles” less than 10 μm in diameter (about one-seventh the diameter of a human hair) and PM_{2.5} are much smaller “fine



particles” equal to or less than 2.5 μm in diameter. PM₁₀ has a 24-hour average standard of 150 $\mu\text{g}/\text{m}^3$ not to be exceeded more than once per year over 3 years. PM_{2.5} has an annual average standard of 12 $\mu\text{g}/\text{m}^3$, and a 98th percentile 24-hour concentration of 35 $\mu\text{g}/\text{m}^3$ averaged over 3 years. The sources and effects of PM are as follows:

Sources: PM can be emitted directly (primary) or may form in the atmosphere (secondary). Most man-made particulate emissions are classified as TSP. PM₁₀ consists of primary particles that can originate from power plants, various

manufacturing processes, wood stoves and fireplaces, agriculture and forestry practices, fugitive dust sources (road dust and windblown soil), and forest fires. PM_{2.5} can come directly from primary particle emissions or through secondary reactions that include VOCs, SO₂, and NO_x emissions originating from power plants, motor vehicles (especially diesel trucks and buses), industrial facilities, and other types of combustion sources.

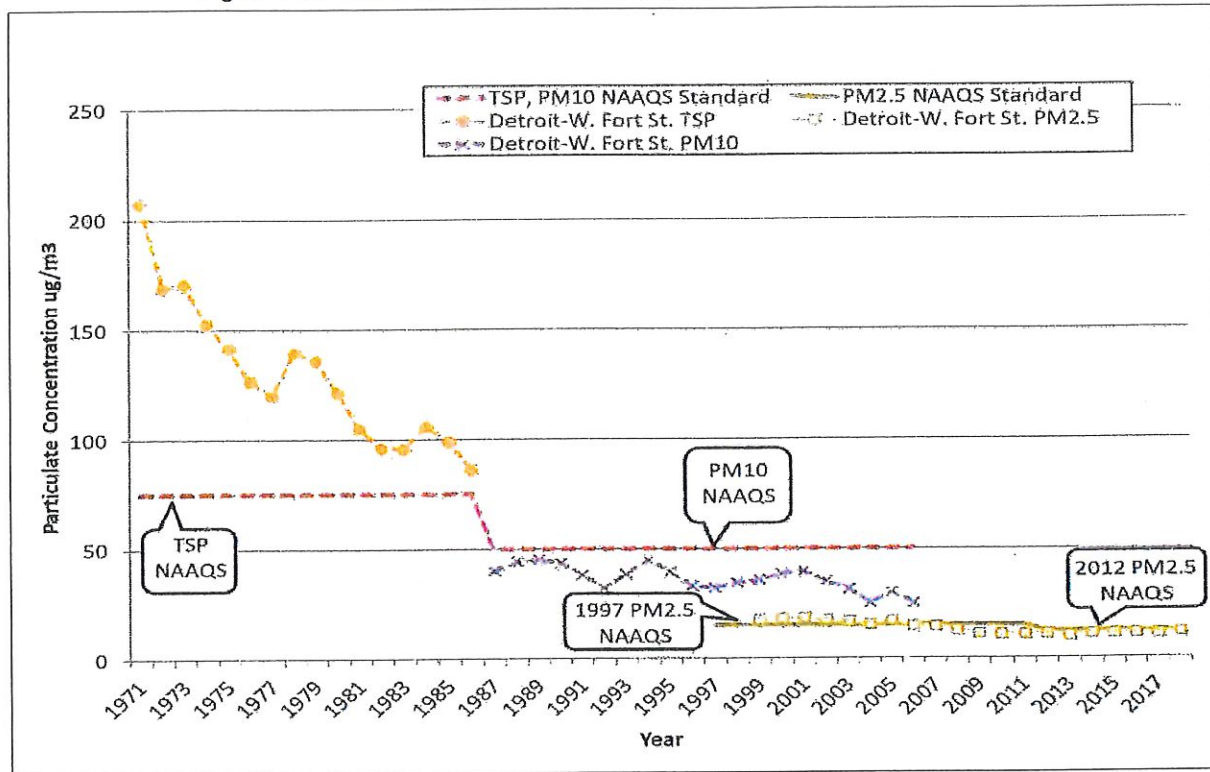
Effects: Exposure to PM can aggravate existing cardiovascular ailments and even cause death in susceptible populations. PM may affect breathing and the cellular defenses of the lungs and has been linked with heart and lung disease. Smaller particles (PM₁₀ or smaller) pose the greatest problems, because they can penetrate deep in the lungs and possibly into the bloodstream. PM is the major cause of reduced visibility in many parts of the United States. PM_{2.5} is considered a primary visibility-reducing component of urban and regional haze. Airborne particles impact vegetation ecosystems and damage paints, building materials and surfaces. Deposition of acid aerosols and salts increases corrosion of metals and impacts plant tissue.

Population most at risk: People with heart or lung disease, the elderly, and children are at highest risk from exposure to PM.

Historical Trends: Southeast Michigan has been monitoring for particulate for over 40 years. **Figure 7.1** shows the trends for particulate matter. In 1971, the USEPA promulgated an annual and 24-hour particulate standard based on total suspended particulates (TSP). In 1987, the USEPA changed the standard to PM₁₀. Health studies indicated that particles smaller than 10 microns affect respiration. In 1997, the USEPA added additional NAAQS for a smaller particle fraction size, PM_{2.5}, which can get deeper into the lungs and possibly into the blood stream. In 2006, the USEPA revoked the PM₁₀ annual standard but kept the PM₁₀ 24-hour standard. The PM_{2.5} 24-hour standard was also reduced from 65 $\mu\text{g}/\text{m}^3$ to 35 $\mu\text{g}/\text{m}^3$. In 2012, the USEPA reduced the annual standard from 15 $\mu\text{g}/\text{m}^3$ to 12 $\mu\text{g}/\text{m}^3$.

Particulate trends show that particulate concentrations have decreased, and the state is in compliance for all particulate NAAQS; however, Michigan has had past nonattainment issues in Southeast Michigan for TSP, PM₁₀ and PM_{2.5}.

Figure 7.1: Historical Annual Particulate Matter at W. Fort St. (SWHS)



PM₁₀

Figures 7.2 and 7.3 show PM₁₀ emission sources and PM₁₀ emissions by county (courtesy of the USEPA's State and County Emission Summaries).

Figure 7.2: PM₁₀ Emissions by Source Sector

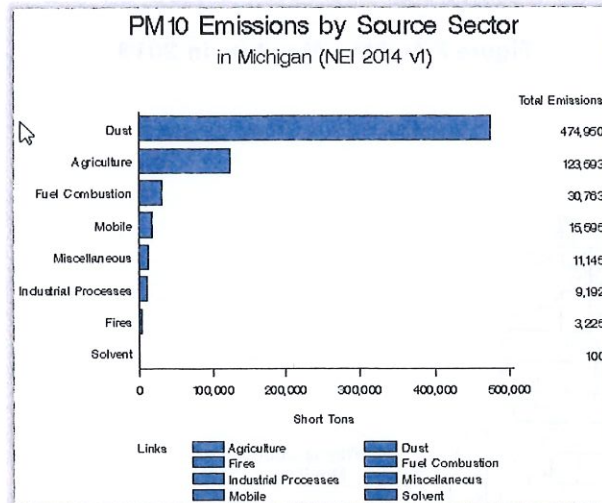
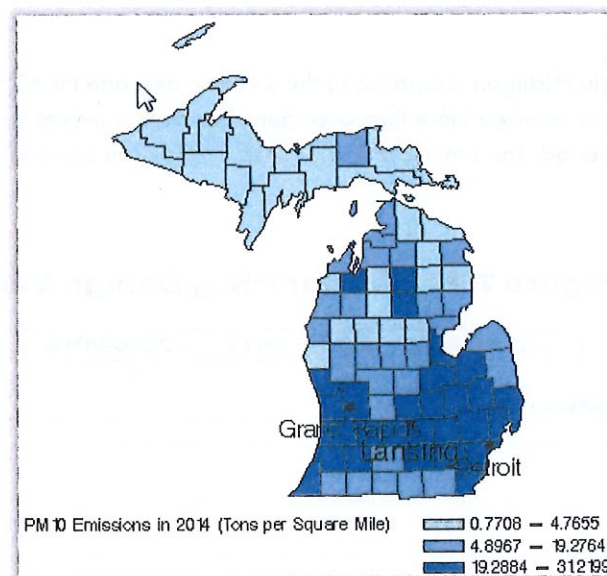


Figure 7.3: PM₁₀ Emissions in 2014



Since October 1996, all areas in Michigan have been in attainment with the PM₁₀ NAAQS. Due to the recent focus upon PM_{2.5} and because of the relatively low concentrations of PM₁₀ measured in recent years, Michigan's PM₁₀ network has been reduced to a minimum level. Table 1-3 identifies the locations of PM₁₀ monitoring stations that were operating in Michigan during 2016. These monitors are located mostly in the state's largest populated urban areas: three in the Detroit area and two in Grand Rapids. To better characterize the nature of particulate matter in Michigan, many of the existing PM₁₀ monitors are co-located with PM_{2.5} monitors in population-oriented areas.

Figure 7.4 shows the location of each PM₁₀ monitor. All PM₁₀ monitors are population-oriented monitors. A second PM₁₀ monitor was added to the Grand Rapids area in Jenison (**Figure 7.5**) based on the USEPA's population requirements. The River Rouge PM₁₀ monitor was shut down in the Detroit area to reduce cost and work load and since it is not required by the USEPA.

Figure 7.4: PM₁₀ Monitors in 2018

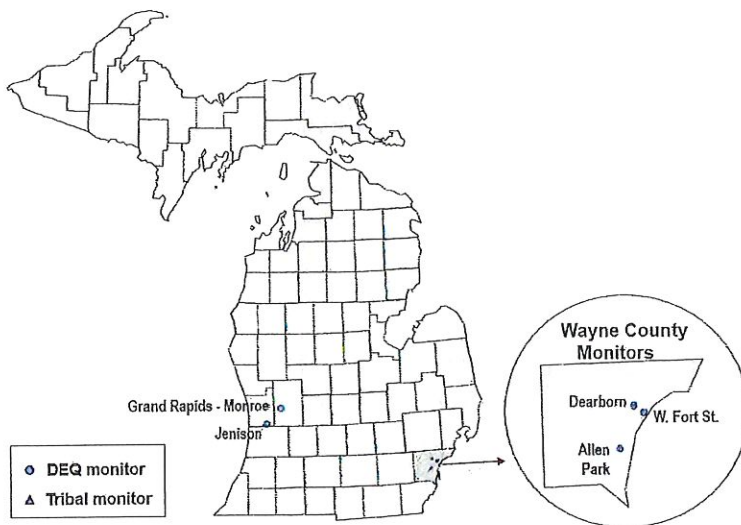
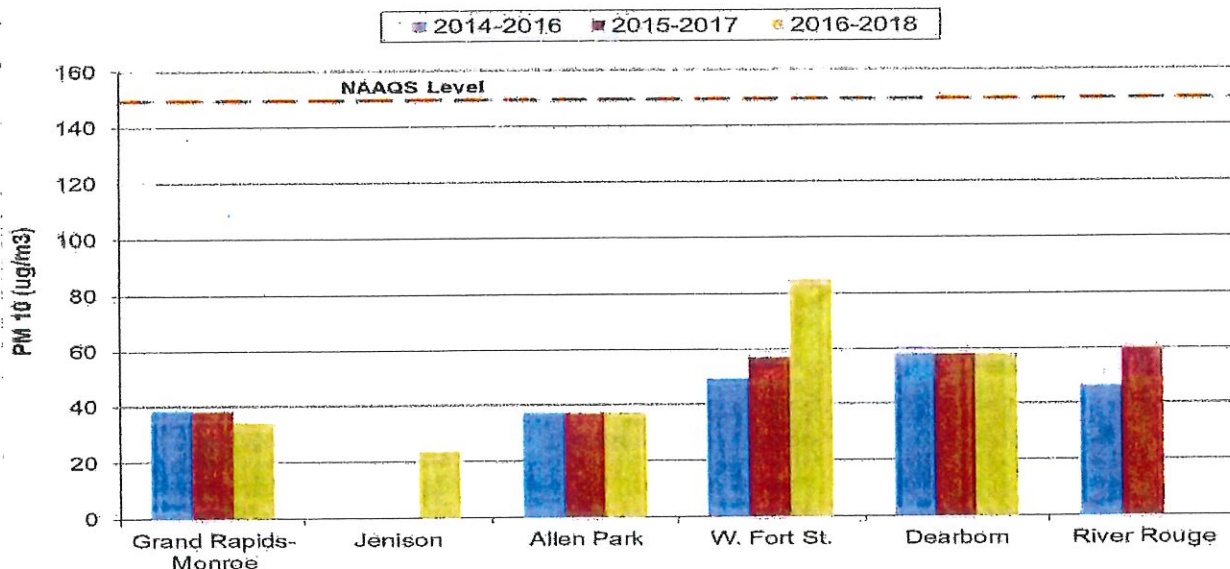


Figure 7.6 shows the PM₁₀ levels in Michigan compared to the 24-hour average NAAQS of 150 $\mu\text{g}/\text{m}^3$. This standard must not be exceeded on average more than once per year over a 3-year period. The design value is the 4th highest value over a 3-year period. The PM₁₀ levels at all sites in Michigan are well below the national standard.

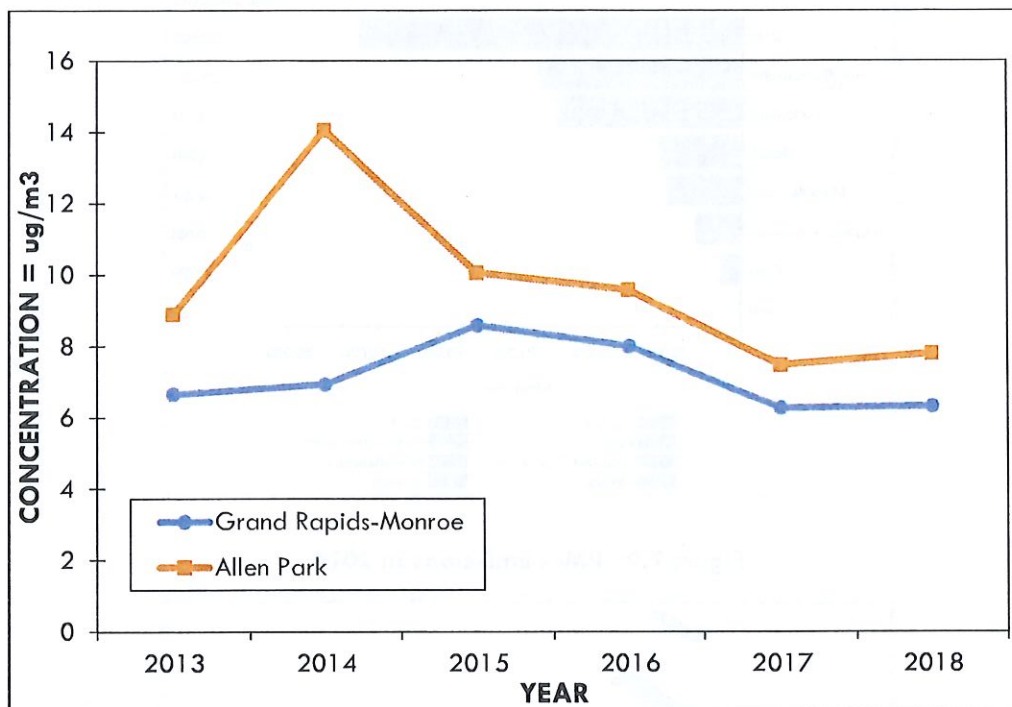
Figure 7.6: 24-Hour PM₁₀ Design Value



PM_{10-2.5}

The 2006 amended air monitoring regulations specified that measurements of PM coarse (PM_{10-2.5}) needed to be added to the NCore sites.⁵ EGLE began PM coarse monitoring at Allen Park and Grand Rapids-Monroe Street in 2010. **Figure 7.7** shows the PM_{10-2.5} levels in Michigan.

Figure 7.7: PM Coarse Levels in Michigan from 2013-2018 (Annual Arithmetic Mean)

**PM_{2.5}**

In December 2012, the USEPA revised the annual primary standard to 12 µg/m³ while the annual secondary standard remained at 15 µg/m³. The primary and secondary 24-hour standard remained at 35 µg/m³. In December 2014, the USEPA determined that no area in Michigan violated the 2012 standard and the state was classified as unclassifiable/attainment.

⁵ Current information can be found at <https://www3.epa.gov/ttn/amt/c/ncoreguidance.html>.

Figures 7.8 and 7.9 show $PM_{2.5}$ emission sources and $PM_{2.5}$ emissions by county (from the USEPA's State and County Emission Summaries).

Figure 7.8: $PM_{2.5}$ Emissions by Source Sector

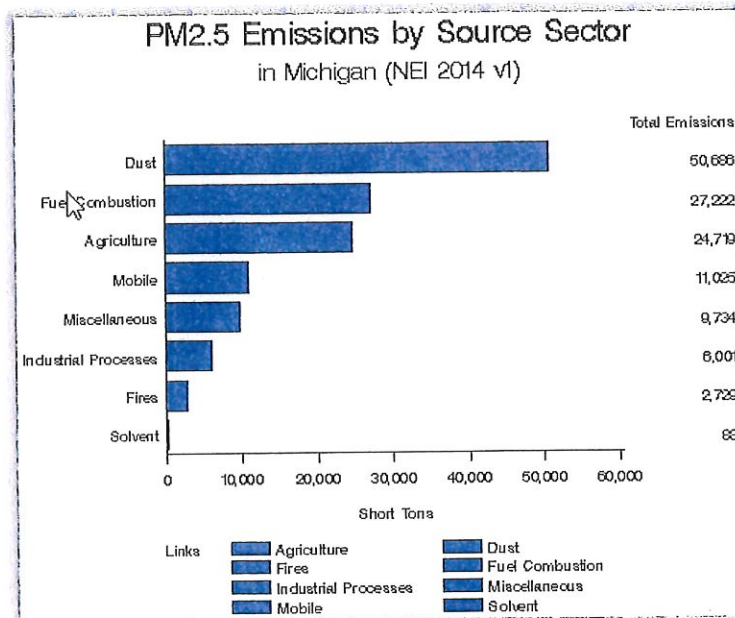
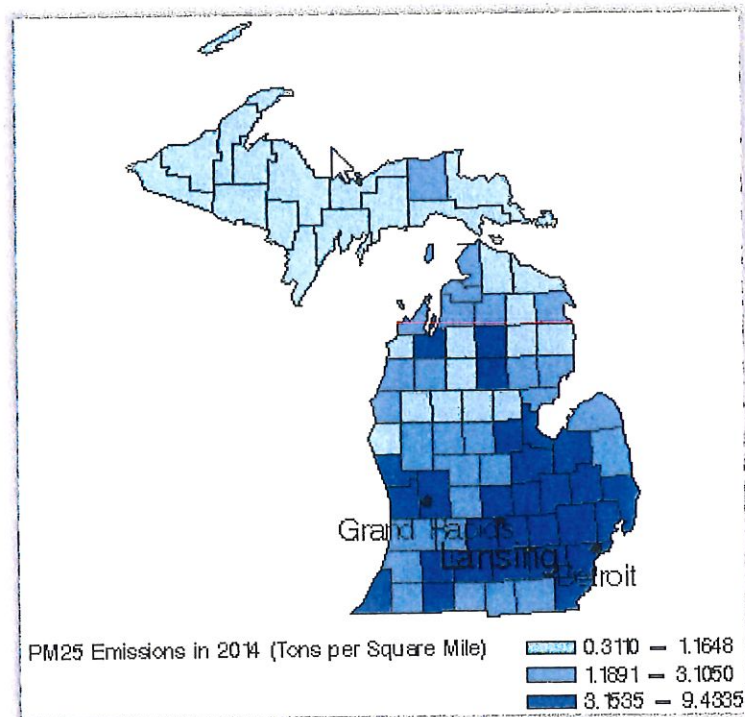


Figure 7.9: $PM_{2.5}$ Emissions in 2014



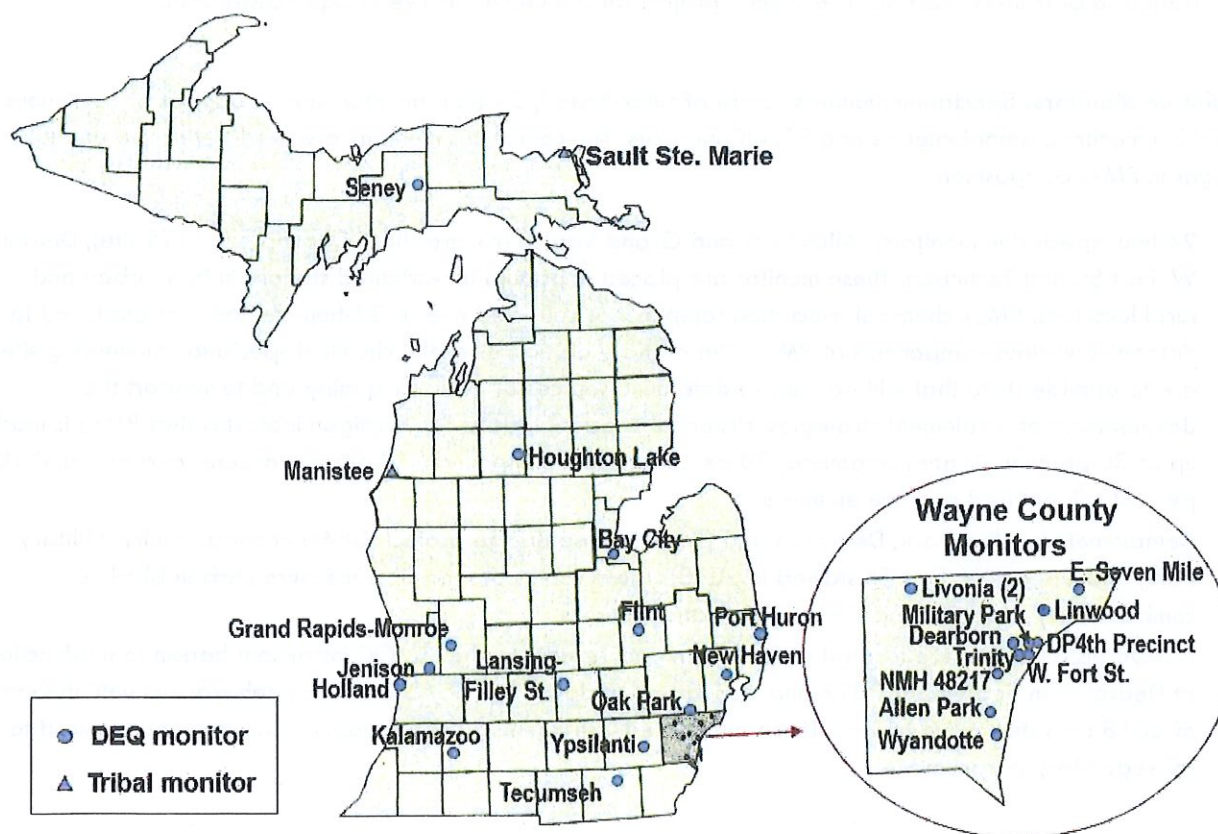
Fine particulate matter ($PM_{2.5}$) is measured using three techniques: a filter-based Federal Reference Method (FRM), Continuous Methods, and Chemical Speciation Methods. These methods are described in more detail in Appendix A.

Figure 7.10 shows the location of each PM_{2.5} monitor.

PM_{2.5} FRM Monitoring Network: PM_{2.5} FRM filter-based monitors are deployed to characterize background or regional PM_{2.5} transport collectively from upwind sources as well as population-oriented sites. Several changes occurred in the FRM network in 2018.

- Loss of site access shut down: Grand Rapids-Wealthy (moved to Jenison), Detroit-W. Lafayette on May 23, 2018 (property sold), Lansing in April 2018 (moved to Filley Street, due to construction).
- Low concentration monitors shut down: Coloma and Sterling State Park to reduce costs and workload.
- Collocations site added: Five PM_{2.5} FRM monitoring sites are co-located with PM₁₀ monitors to allow for PM_{2.5} and PM₁₀ comparisons.⁶ Co-located PM₁₀ and PM_{2.5} sites include Grand Rapids-Monroe, Dearborn, Allen Park, Detroit's W. Fort Street (SWHS), and newly added site, Jenison.

Figure 7.10: PM_{2.5} Monitors in 2018



⁶ Requirements for PM_{2.5} FRM sites are obtained from the Revised Requirements for Designation of Reference and Equivalent Methods for PM_{2.5} and Ambient Air Quality Surveillance for PM [62 FR 38763]; Guidance for Using Continuous Monitors in PM_{2.5} Monitoring Networks [EPA-454/R-98-012, May 1998]; and Appendix N to Part 50 - Interpretation of the National Ambient Air Quality Standards for PM [40 CFR Part 50, July 1, 1998].

Continuous PM_{2.5} Network: Short-term measurements of PM_{2.5} or PM₁₀ are updated on an hourly basis using TEOM or BAM instruments. At least one continuous monitor is required at the NCore PM_{2.5} monitoring site in a metropolitan area with a population greater than one million. Both Detroit (Allen Park) and Grand Rapids (Monroe) meet this requirement.⁷ Under the revised 2006 air monitoring regulations, 50 percent of the FRM monitoring sites are now required to have a continuous PM_{2.5} monitor. For Michigan, there are 22 FRM monitoring sites, 12 of which also had TEOMs or BAMs.

- A continuous PM_{2.5} monitor (BAM) operates at Sault Ste. Marie tribal monitor site for NAAQS comparison. Having a BAM as an FEM triggered a federal requirement to have an FEM and FRM co-located. EGLE replaced the TEOM with a BAM at the Flint site co-located with the FRM in October of 2018 to fulfill this requirement.
- BAMs replaced TEOMS: Detroit-W. Fort St.(co-located), Seney, Tecumseh, and Houghton Lake in fall 2018. Tecumseh and Houghton Lake stopped running the FRMs on January 1, 2019 and the BAMs will be used for NAAQS comparison. Seney was formerly running a TEOM and by changing it to a BAM, it will be used for NAAQS comparison in the Upper Peninsula of Michigan starting January 1, 2019.
- Gordie Howe Bridge project: DP4th Precinct, Trinity, and Military Park, also, the PM_{2.5} BAM monitor was added to Detroit-W. Fort St. as a special project for the Gordie Howe Bridge construction.

Speciation Monitors: Speciation monitors consist of filter-based, 24-hour monitors and two types of continuous speciation monitors, aethalometers and EC/OC monitors. The continuous monitors are used determine diurnal changes in PM_{2.5} composition

- 24-hour speciation monitors: Allen Park and Grand Rapids (NCore sites), Dearborn (NATTS site), Detroit-W. Fort St. and Tecumseh. These monitor are placed in population-oriented stations in both urban and rural locations. PM_{2.5} chemical speciation samples are collected over a 24-hour period and analyzed to determine various components of PM_{2.5}. The primary objectives of the chemical speciation monitoring sites are to provide data that will be used to determine sources of poor air quality and to support the development of attainment strategies. Historical speciation data for Michigan indicates that PM_{2.5} is made up of 30 percent nitrate compounds, 30 percent sulfate compounds, 30 percent organic carbon,⁸ and 10 percent unidentified or trace elements.
- Aethalometers: Allen Park, Dearborn and Gordie Howe Bridge project (DP4th Precinct, Trinity, Military Park, and Detroit-W. Fort St. started in 2018). These continuous monitors measure carbon black, a combustion by-product typical of transportation sources.
- EC/OC instruments were located at Dearborn and Tecumseh. The EC/OC instrument began to malfunction at Dearborn in September 2017 and was later shut down. The EC/OC at Tecumseh was run until the end of 2018 then shut down as well. These antiquated instruments were too costly to fix and not required to for regulatory purposes.

Table 1.2 in Chapter 1 shows all of Michigan's PM_{2.5} FRM monitoring stations operating in 2018 and denotes which sites have TEOM, BAM, Speciation, Aethalometer or EC/OC monitors in operation.

⁷ Under the Guidance for Using Continuous Monitors in PM_{2.5} Monitoring Networks [EPA-454/R-98-012, May 1998].

⁸ To better understand the chemical composition of the organic carbon fraction, a number of studies have been conducted in Southeast Michigan to further investigate organic carbon. Information can be found in the Michigan 2012 Ambient Air Monitoring Network Review, available at http://www.michigan.gov/documents/deq/deq-aqd-aqe-2012-Air-Mon-Network-Review_357137_7.pdf

Table 7.1 provides the design value, the 3-year average of the annual mean PM_{2.5} concentrations for 2016-2018. Michigan's levels are below the 12 µg/m³ primary standard.⁹ Stations labeled #2 provide a precision estimate of the overall measurement and operate on a one-in-six sampling schedule. All other monitors are sampled on a one-in-three-day schedule, except for Allen Park #1, which samples daily.

Table 7.1: 3-Year Average of the Annual Mean PM _{2.5} Concentrations						
Areas	County	Monitoring Sites	2016	2017	2018	2016-2018 Mean
Detroit-Ann Arbor	Lenawee	Tecumseh	7.46	7.34	7.96	7.6
	Livingston					
	Macomb	New Haven	7.51	7.41	7.82	7.6
	Oakland	Oak Park	7.87	8.11	8.27	8.1
	St. Clair	Port Huron	7.77	8.01	8.09	8.0
	Washtenaw	Ypsilanti #1	7.84	7.93	8.35	8.0
		Ypsilanti #2	8.06	8.32	8.81	8.4
	Wayne	Allen Park	8.72	8.47	9.14	8.8
		Detroit-Linwood	8.94	8.99	8.86	8.9
		Detroit-E. 7 Mile	8.11	7.88	8.40	8.1
		Detroit-W. Fort St.	11.32	11.01	11.89	11.4
		Detroit-W. Lafayette	8.38	7.93*	8.87*	8.4
		Wyandotte	7.70	7.18	8.02	7.6
		Dearborn #1	10.67	10.57	10.80	10.7
		Dearborn #2	10.52	10.82	11.06	10.8
		Livonia	8.16	7.98	7.45*	7.9
		Livonia-Roadway	8.53	8.46	9.10	8.7
Flint	Genesee	Flint	7.18	7.10	7.33	7.2
	Lapeer					
Grand Rapids	Ottawa	Jenison			8.32*	8.3
	Kent	Grand Rapids-Wealthy	8.79	9.15		9.0
		Grand Rapids #1	8.16	8.12	8.45	8.2
		Grand Rapids #2	8.48	8.31	8.93	8.6
Allegan Co	Allegan	Holland	6.99	7.49	7.61	7.4
Monroe Co	Monroe	Luna Pier				
		Sterling State Park	7.75	7.71		7.7
Kalamazoo-Battle Creek	Calhoun					
	Kalamazoo	Kalamazoo #1	8.09	8.03	8.47	8.2
		Kalamazoo #2	8.25	8.36	8.68	8.4
	Van Buren					
Lansing-East Lansing	Ingham	Lansing	7.31	7.23	7.73**	7.4
	Clinton					
	Eaton					
Benton Harbor	Berrien	Coloma	7.35	7.99		7.7
Bay Co	Bay	Bay City	6.84	6.75	7.15	6.9
Missaukee Co	Missaukee	Houghton Lake	4.87	4.81	5.42	5.0
Manistee Co	Manistee	Manistee	5.50	5.84	6.13	5.8
Chippewa Co	Chippewa	Sault Ste. Marie #1	5.04*	6.10*		5.6
		Sault Ste. Marie #2	5.03*	5.88*		5.5

*Indicates site was moved during the year and concentrations were averaged together for both locations
 **Indicates the site does not have a complete year of data.

⁹ For comparison to the standard, the average annual means is rounded to the nearest 0.1 µg/m³.

Table 7.2 provides the 24-hour 98th percentile PM_{2.5} concentrations for 2016-2018 showing Michigan's levels are below the 35 µg/m³ standard (3-year average).¹⁰

Table 7.2: 24-Hour 98th Percentile PM_{2.5} Values Averaged over 3 Years						
Areas	County	Monitoring Sites	2016	2017	2018	2016-2018 Mean
Detroit-Ann Arbor	Lenawee	Tecumseh	15.1	17.5	23.4	19
	Livingston					
	Macomb	New Haven	20.1	17.0	18.9	19
	Oakland	Oak Park	19.8	20.1	20.1	20
	St. Clair	Port Huron	19.1	19.2	19.6	19
	Washtenaw	Ypsilanti #1	17.6	18.8	21.3	19
		Ypsilanti #2	17.4	19.0	19.1	19
	Wayne	Allen Park	20.3	21.8	22.8	22
		Detroit-Linwood	22.5	25.0	18.6	22
		Detroit-E. 7 Mile	19.5	16.6	21.5	19
		Detroit-W. Fort St.	25.6	30.0	28.1	28
		Detroit-W. Lafayette	20.5	19.5	26.9	22
		Wyandotte	18.8	19.3	20.4	20
		Dearborn #1	25.8	24.5	26.1	25
		Dearborn #2	24.7	23.5	26.6	25
		Livonia	19.9	19.1	18.1	19
		Livonia-Roadway	21.4	19.0	29.0	23
Flint	Genesee	Flint	18.8	16.8	16.9	18
	Lapeer					
Grand Rapids	Ottawa	Jenison			22.3	22
	Kent	Grand Rapids-Wealthy	22.7	26.2		24
		Grand Rapids #1	19.5	22.6	18.9	20
		Grand Rapids #2	19.5	22.8	26.5	23
Allegan Co	Allegan	Holland	17.2	24.6	21.2	21
Monroe Co	Monroe	Luna Pier				
		Sterling State Park	18.3	20.5		19
Kalamazoo-Battle Creek	Calhoun					
	Kalamazoo	Kalamazoo #1	20.1	22.6	19.1	21
		Kalamazoo #2	20.2	22.5	19.1	21
	Van Buren					
Lansing-East Lansing	Ingham	Lansing	18.0	17.1	19.5*	18
	Clinton					
	Eaton					
Benton Harbor	Berrien	Coloma	17.2	26.2		19
Bay Co	Bay	Bay City	19.6	22.4	17.8	21
Missaukee Co	Missaukee	Houghton Lake	12.4	14.9	16.2	15
Manistee Co	Manistee	Manistee	12.6	19.2	16.9	16
Chippewa Co	Chippewa	Sault Ste. Marie #1	11.3	25.3		18
		Sault Ste. Marie #2	10.8	16.4		13

*Indicates site was moved during the year and concentrations were averaged together for both location.

¹⁰ The 98th percentile value was obtained from the USEPA AQS. For the purpose of comparing calculated values, the 3-year 24-hour average is rounded to the nearest 1 µg/m³.

Figures 7.11 through 7.14 illustrate the current annual mean $PM_{2.5}$ trend for each monitoring site in Michigan. For clarity, the monitoring sites within the Detroit-Warren-Flint CSA have been broken down into two graphs.

Figure 7.11 shows the 2018 levels in Wayne County remained below the $PM_{2.5}$ NAAQS standard. Historically, Dearborn has had the highest concentrations in the state, but W. Fort St. now has the highest concentrations.

Figure 7.12 contains the remainder of those sites in the Detroit-Warren-Flint CSA that are outside of Wayne County. These sites also show readings in 2018 to be below the $PM_{2.5}$ NAAQS.

Figure 7.13 combines the $PM_{2.5}$ monitoring sites located in West Michigan-Grand Rapids-Muskegon-Holland CSA, Kalamazoo and Benton Harbor MSAs. All sites are below the annual $PM_{2.5}$ NAAQS.

Figure 7.14 displays the remaining monitoring sites in the Northern Lower and Upper Peninsula. All of these sites are below the annual $PM_{2.5}$ NAAQS standard.

Figure 7.11: Detroit-Warren-Flint CSA (Wayne County Only)
Annual Arithmetic Means for $PM_{2.5}$ from 2013-2018

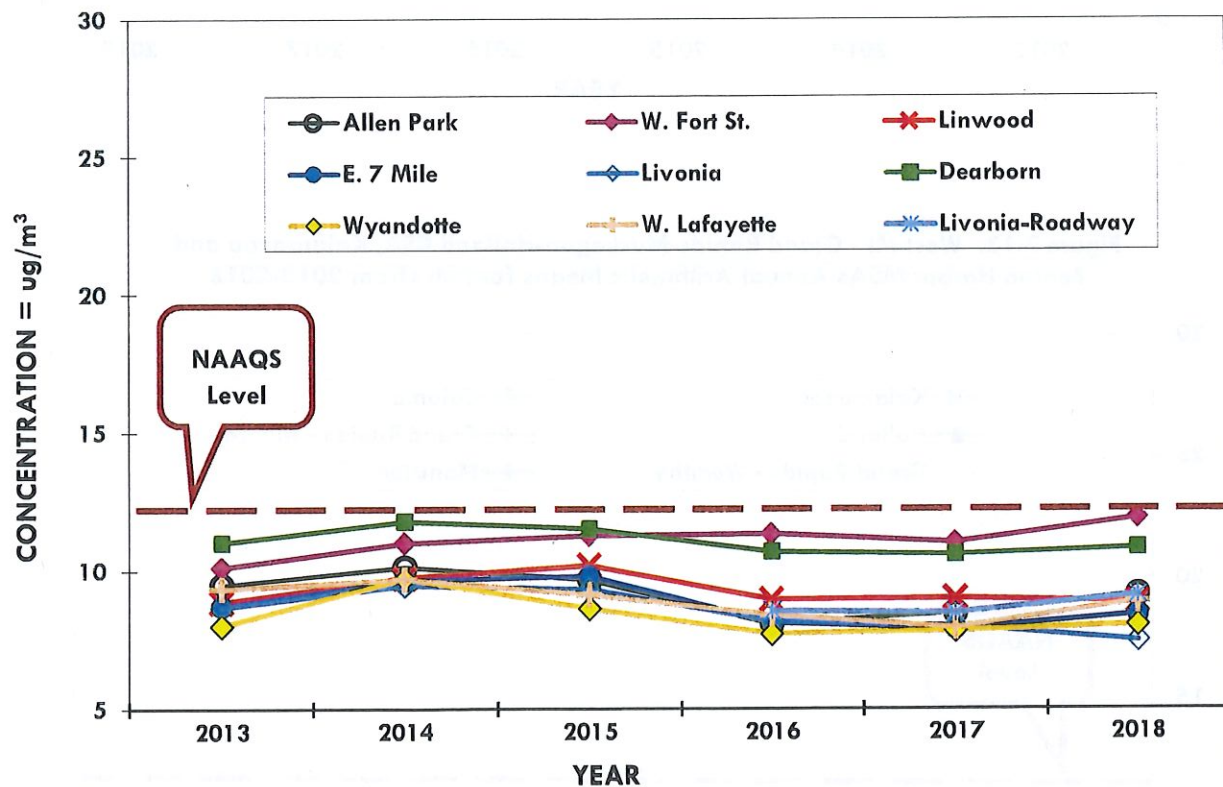


Figure 7.12: Detroit-Warren-Flint CSA (without Wayne County)
Annual Arithmetic Means for PM_{2.5} from 2013-2018

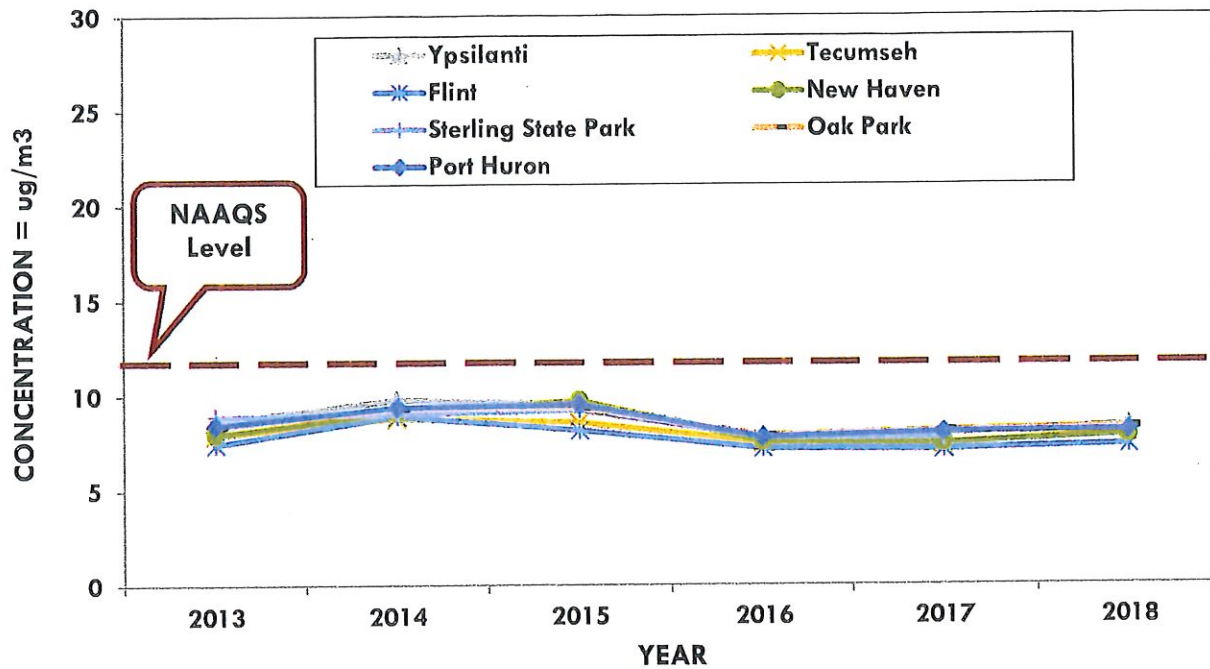


Figure 7.13: West MI - Grand Rapids-Muskegon-Holland CSA, Kalamazoo and
Benton Harbor MSAs Annual Arithmetic Means for PM_{2.5} from 2013-2018

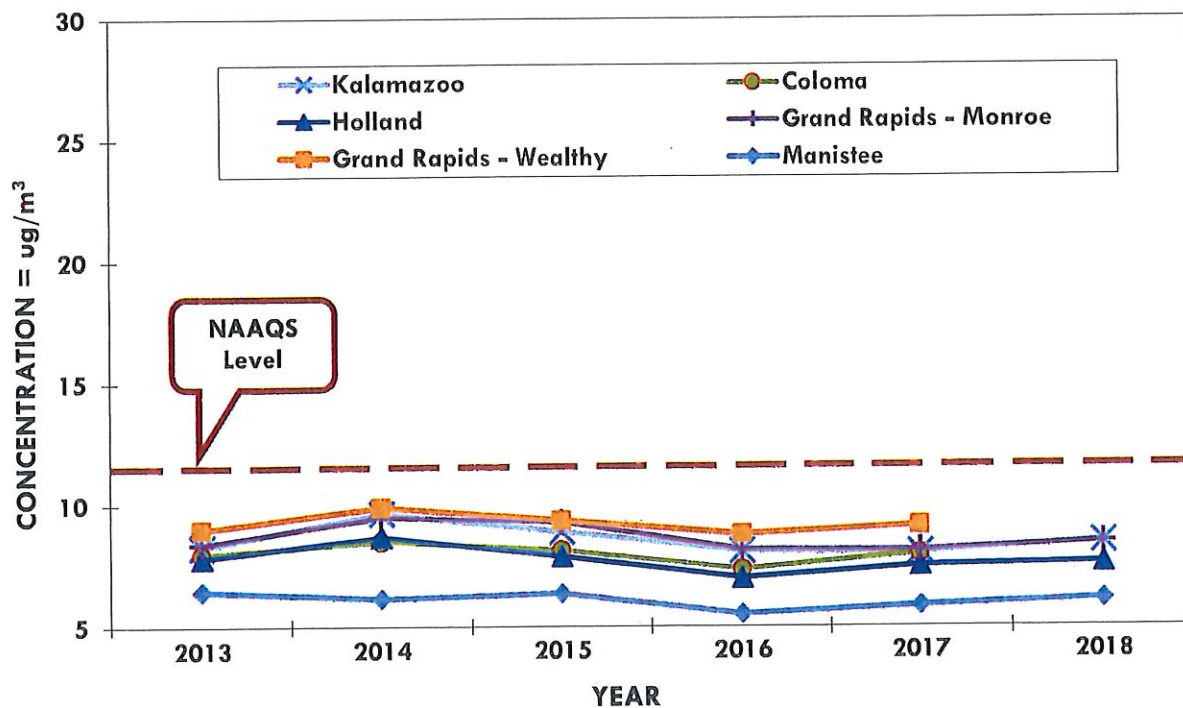
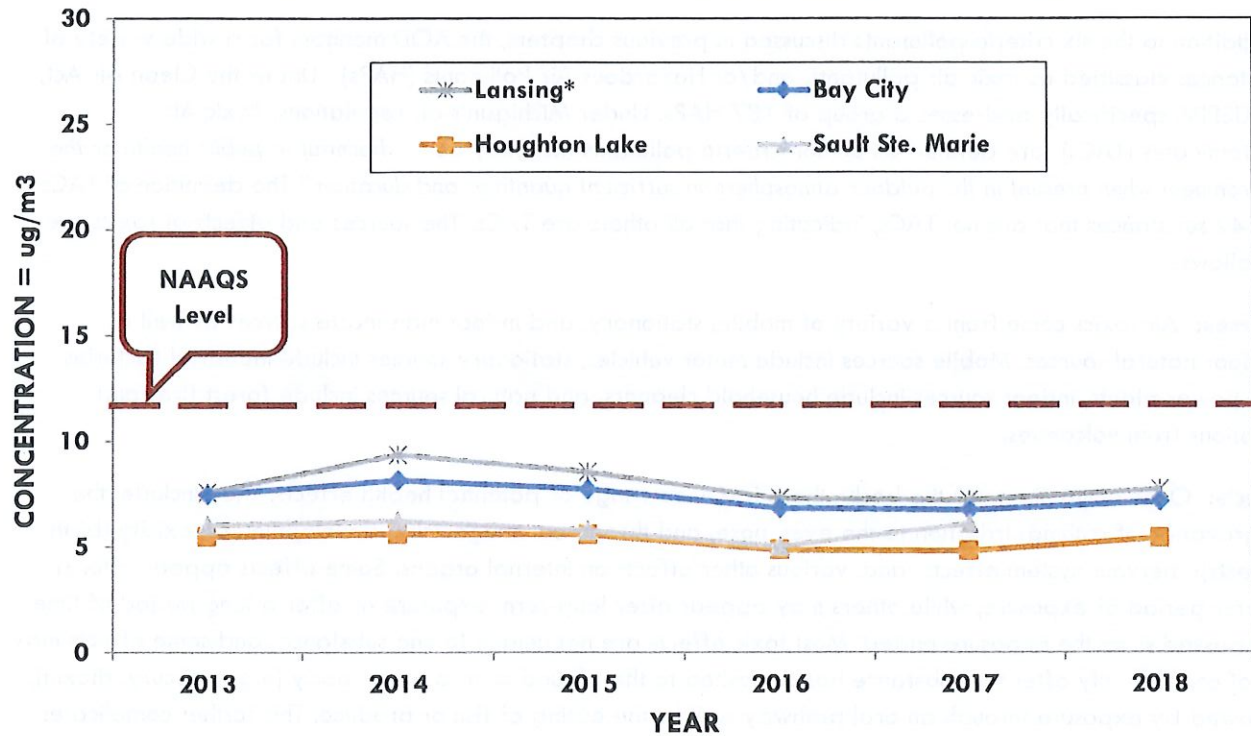


Figure 7.14: Lansing-E. Lansing CSA, Saginaw-Bay City CSA, Cadillac MiSA and Upper Peninsula Annual Arithmetic Means for PM_{2.5} from 2013-2018



*Indicates site was moved during the year and concentrations were averaged together for both locations.

CHAPTER 8: TOXIC AIR POLLUTANTS

In addition to the six criteria pollutants discussed in previous chapters, the AQD monitors for a wide variety of substances classified as toxic air pollutants, and/or Hazardous Air Pollutants (HAPs). Under the Clean Air Act, the USEPA specifically addresses a group of 187 HAPs. Under Michigan's air regulations, Toxic Air Contaminants (TACs) are defined as all non-criteria pollutants that may be "...harmful to public health or the environment when present in the outdoor atmosphere in sufficient quantities and duration." The definition of TACs lists 42 substances that are not TACs, indicating that all others are TACs. The sources and effects of toxics are as follows:

Sources: Air toxics come from a variety of mobile, stationary, and indoor man-made sources as well as outdoor natural sources. Mobile sources include motor vehicles, stationary sources include industrial factories and power plants, indoor sources include household cleaners, and natural sources include forest fires and eruptions from volcanoes.

Effects: Once air toxics enter the body, there is a wide range of potential health effects. They include: the aggravation of asthma; irritation to the eyes, nose, and throat; carcinogenicity; developmental toxicity (birth defects); nervous system effects; and, various other effects on internal organs. Some effects appear after a shorter period of exposure, while others may appear after long-term exposure or after a long period of time has passed since the exposure ended. Most toxic effects are not unique to one substance, and some effects may be of concern only after the substance has deposited to the ground or to a water body (e.g., mercury, dioxin), followed by exposure through an oral pathway such as the eating of fish or produce. This further complicates the assessment of air toxics concerns due to the broad range of susceptibility that various people may have.

Population most at risk: People with asthma, children, and the elderly are generally at the highest risk for health effects from exposure to air toxics.

Air Toxics can be categorized as:

- Metals: Examples include aluminum, arsenic, beryllium, barium, cadmium, chromium, cobalt, copper, iron, mercury, manganese, molybdenum, nickel, lead, vanadium, and zinc.
- Organic Substances: Further divided into sub-categories that include -
 - VOCs, include benzene (found in gasoline), perchloroethylene (emitted from some dry-cleaning facilities), and methylene chloride (a solvent and paint stripper used by industry);
 - carbonyl compounds (formaldehyde, acetone, and acetaldehyde);
 - semi-volatile compounds (SVOCs);
 - polycyclic aromatic hydrocarbons (PAHs)/polynuclear aromatic hydrocarbons (PNAs);
 - pesticides and;
 - polychlorinated biphenyls (PCBs).
- Other substances: Asbestos, dioxin, and radionuclides such as radon.

Because air toxics are such a large and diverse group of substances, regulatory agencies sometimes further refine these classifications to address specific concerns.

For example:

- Some initiatives have targeted those substances that are persistent, bioaccumulative and toxic (PBT), such as mercury, which accumulates in body tissues.
- The USEPA has developed an Integrated Urban Air Toxics Strategy with a focus on 30 substances (the Urban HAPs List).¹¹

The evaluation of air toxics levels is difficult due to several factors.

- There are no health-protective NAAQS. Instead, air quality assessments utilize various short- and long-term screening levels and health-based levels estimated to be safe considering the critical effects of concern for specific substances.
- There is incomplete toxicity information for many substances. For some air toxics, the analytical detection limits are too high to consistently measure the amount present, and in some cases, the risk assessment-based levels are below the detection limits.
- Data gaps are present regarding the potential for interactive toxic effects for co-exposure to multiple substances present in emissions and in ambient air. Air toxics also pose a challenge due to monitoring and analytical methods that are either unavailable for some compounds or cost-prohibitive for others (e.g., dioxins).

These factors make it difficult to accurately assess the potential health concerns of all air toxics. Nevertheless, it is feasible and important to characterize the potential health hazards and risks associated with many air toxics.

Table 8.1 shows the monitoring stations and what air toxic was monitored at each station in 2018. This table can also be found in **Appendix B** with the Air Toxics Monitoring Summary.

The NMH 48217 had VOCs and PAHs shut down after the one-year study was completed. More information can be found in Chapter 11. The PM₁₀ metals sampling for Mn was also shut down at River Rouge to reduce cost and work load. TSP Metals were added to the three new Gordie Howe Bridge sites, DP4th Precinct, Military Park, and Trinity.

Table 8.1: 2018 Toxics Sampling Sites

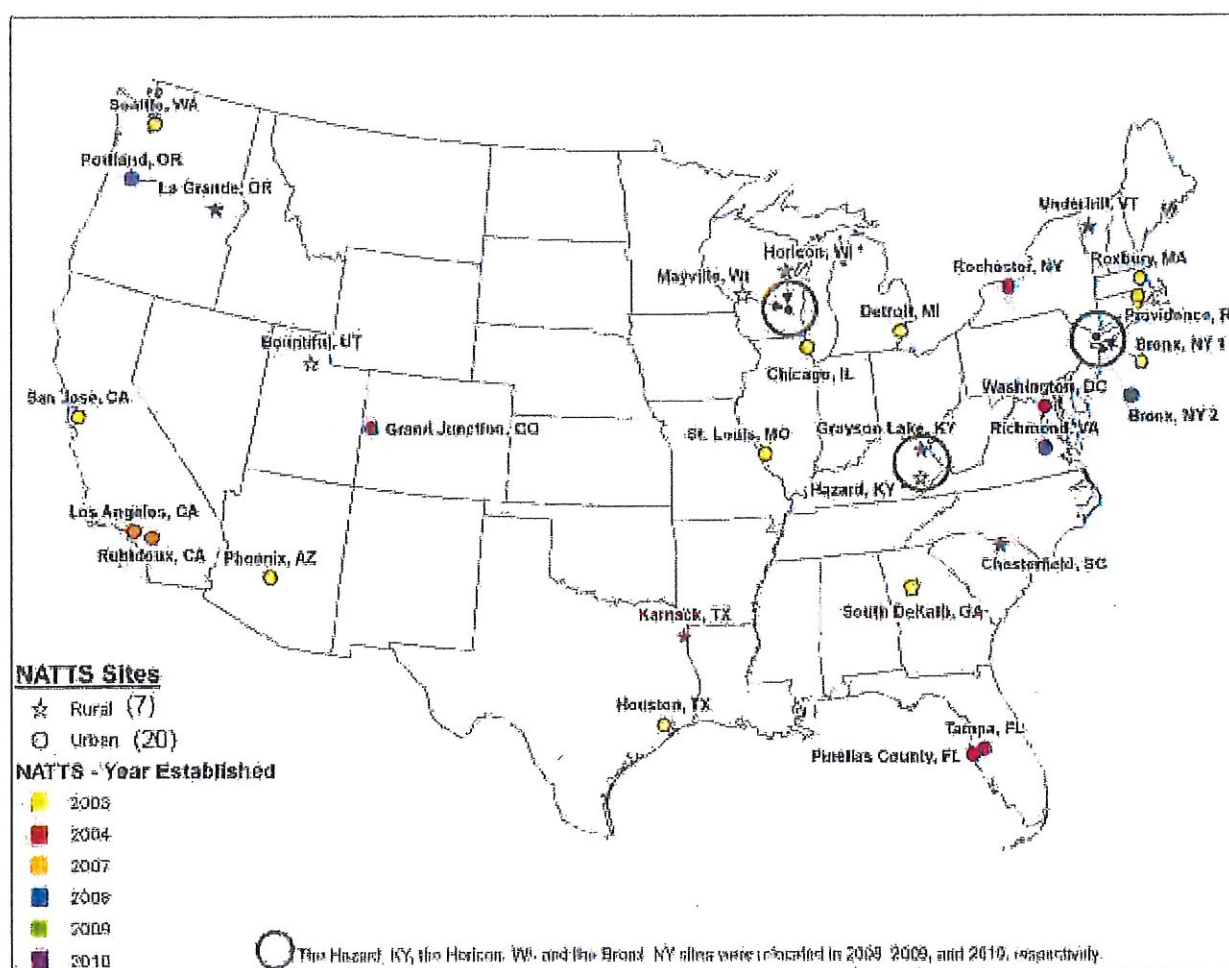
Site Name	VOC	Carbonyl	PAHs	Metals TSP	Metals PM ₁₀	Speciated PM _{2.5}
Allen Park				x	x	x
Dearborn	x	x	x	x	x	x
Detroit-W. Fort St.	x	x		x	Mn	x
Detroit-W. Jefferson				x		
Grand Rapids-Monroe				x		x
Belding-Merrick St.				x		
Belding-Reed St.				x		
NMH 48217				x		
Port Huron-Rural St.				x		
River Rouge		x		x		
Tecumseh						x
DP 4 th Precinct				x		
Military Park				x		
Trinity				x		

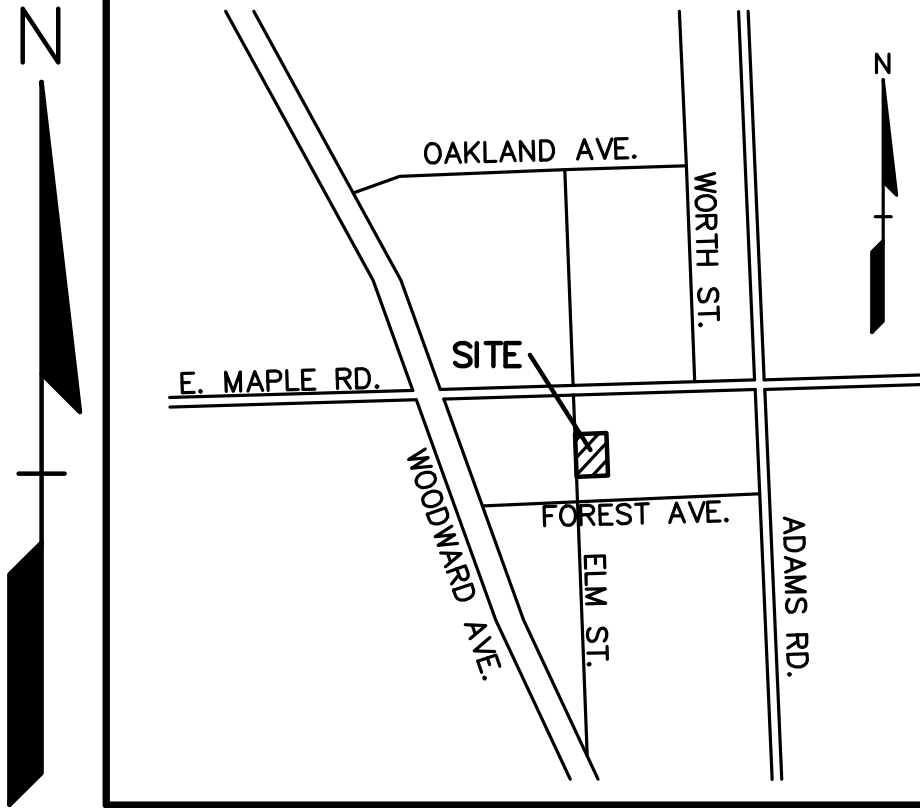
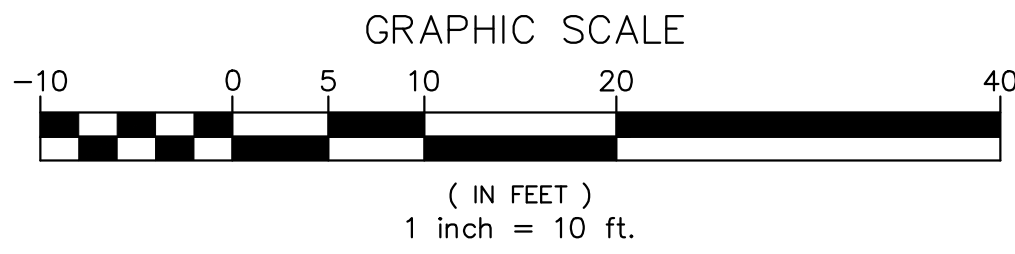
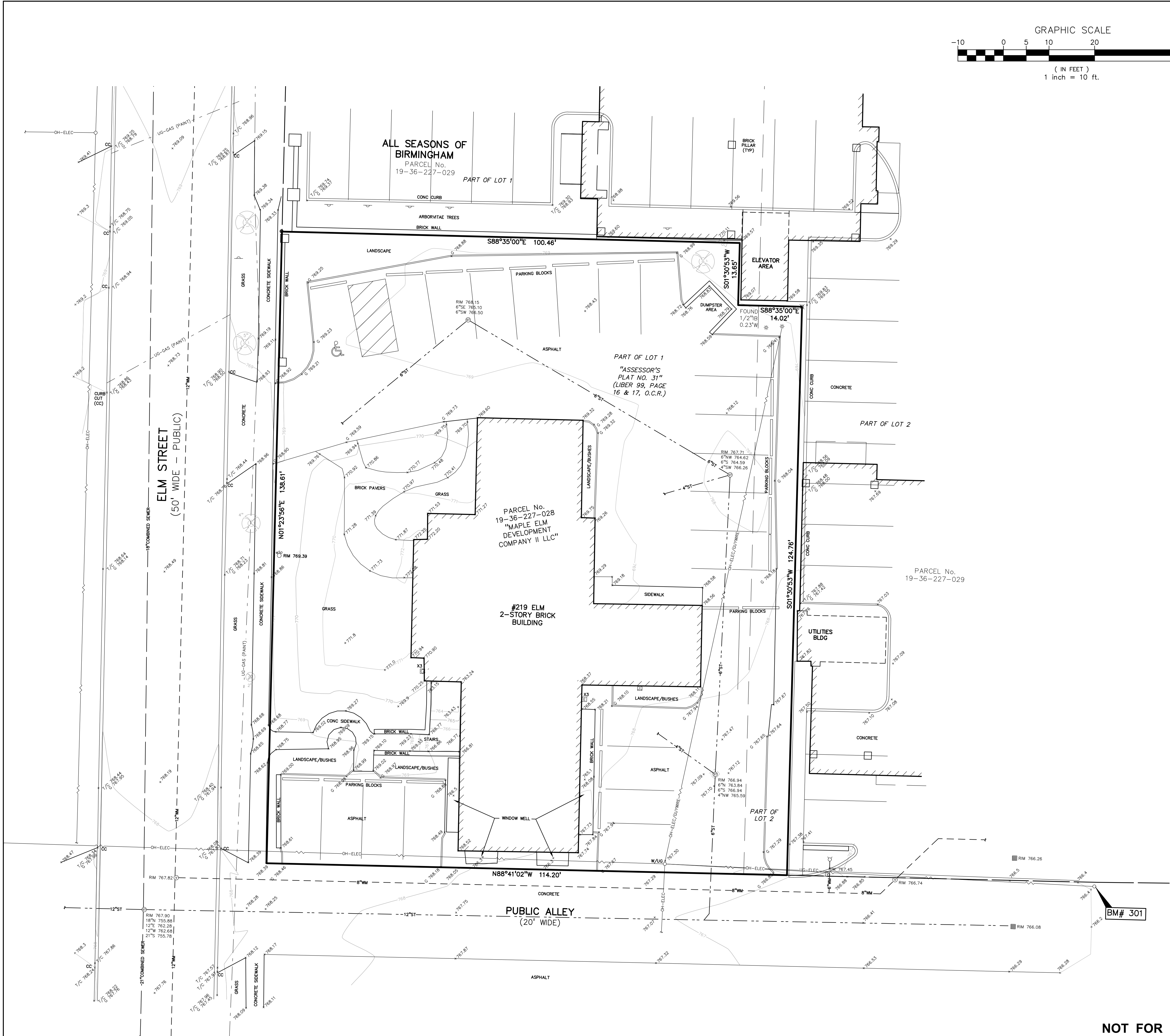
¹¹ USEPA's Air Toxics website: Urban Strategy is located at <https://www.epa.gov/urban-air-toxics>.

National Monitoring Efforts and Data Analysis

The USEPA administers national programs that identify air toxics levels, detect trends, and prioritize air toxics research. EGLE participates in these programs. In addition, the AQD operates a site in Dearborn that is part of the USEPA's NATTS. The purpose of the NATTS network is to detect trends in high-risk air toxics such as benzene, formaldehyde, chromium, and 1,3-butadiene and to measure the progress of air toxics regulatory programs at the national level. Currently, the NATTS network contains 27 stations; 20 urban and 7 rural (see **Figure 8.1**). The USEPA requires that the NATTS sites measure VOCs, carbonyls, PAHs and trace metals on a once-every-six-day sampling schedule. The Dearborn NATTS site measures trace metals as TSP, PM₁₀, and PM_{2.5}.

Figure 8.1: National Air Toxics Trends Sites





- LEGEND**
- IRON FOUND
 - ⊗ IRON SET
 - ⊗ NAIL FOUND
 - ⊗ NAIL & CAP SET
 - ⊗ BRASS PLUG SET
 - ⊗ MONUMENT FOUND
 - ⊗ MONUMENT SET
 - ⊗ SEC. CORNER FOUND
 - ⊗ RECORDED
 - ⊗ MEASURED
 - ⊗ CALCULATED
- EXISTING**
- OH-ELEC — W — ELEC, PHONE OR CABLE TV O.H. LINE, POLE & GUY WIRE
 - UG-CATV — UG UNDERGROUND CABLE TV, CATV PEDESTAL
 - UG-PHONE — UG TELEPHONE U.G. CABLE, PEDESTAL & MANHOLE
 - UG-ELEC — UG ELECTRIC U.G. CABLE, MANHOLE, METER & MANHOLE
 - GAS — GAS MAIN, VALVE & GAS LINE MARKER
 - WATERMAN, HYD. GATE VALVE, TAPPING SLEEVE & VALVE
 - SANITARY SEWER, CLEANOUT & MANHOLE
 - STORM SEWER, CLEANOUT & MANHOLE
 - COMBINED SEWER & MANHOLE
 - SQUARE, ROUND & REDUCED CATCH BASIN, YARD DRAIN
 - POST INDICATOR VALVE
 - WATER VALVE BOX/HYDRANT VALVE BOX, SERVICE SHUTOFF
 - MAILBOX, TRANSFORMER, IRRIGATION CONTROL VALVE
 - UNIDENTIFIED STRUCTURE
 - SPOT ELEVATION
 - CONTOUR LINE
 - FENCE
 - STREET LIGHT
 - SIGN
 - CONC. CONCRETE
 - ASPH. ASPHALT
- REFERENCE DRAWINGS**
- FLOOD PLAIN FEMA F.I.R.M. MAP #26125C0537F, DATED 9-29-08
 - OTHER "ALTA/NSPS LAND TITLE SURVEY", PEA JOB NO. 2012-049, DATED 1-4-17
 - OTHER "AS-BUILT UTILITY PLAN", PEA JOB NO. 2012-049, DATED 2-12-16

LEGAL DESCRIPTION
(PER TAX ASSESSORS)

T2N, R10E, SEC 36 ASSESSOR'S PLAT NO 31 LOT 1 EXCEPT NORTH 158.70 FEET, ALSO EXC SOUTH 13.65 FEET OF NORTH 172.35 FEET OF EAST 4.52 FEET, ALSO WEST 9.50 FEET OF SOUTH 124.68 FEET OF LOT 2.

BENCHMARKS
(USGS DATUM PER "BOUNDARY/TOPOGRAPHIC/TREE SURVEY - THE REGENCY AT ELM, SHEET SPI" NOWAK & FRAUS JOB #E322-01, DATED MAY 14, 2009)

BM #300
TOP NUT ON HYDRANT, SOUTH SIDE OF MAPLE ROAD, APPROX. 45' NORTHEAST OF THE NORTHEAST CORNER OF BUILDING #920-970 MAPLE.
ELEV. - 770.33

BM #301
PK NAIL IN NORTHWEST FACE OF THE 2ND UTILITY POLE EAST OF ELM STREET, APPROX. 115' EAST OF THE MOST SOUTHEAST CORNER OF BUILDING #219.
ELEV. - 768.49

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 26125C-0537F, DATED SEPTEMBER 29, 2006.

REVISIONS			DATE
NO.	BY	CHK.	DESCRIPTION

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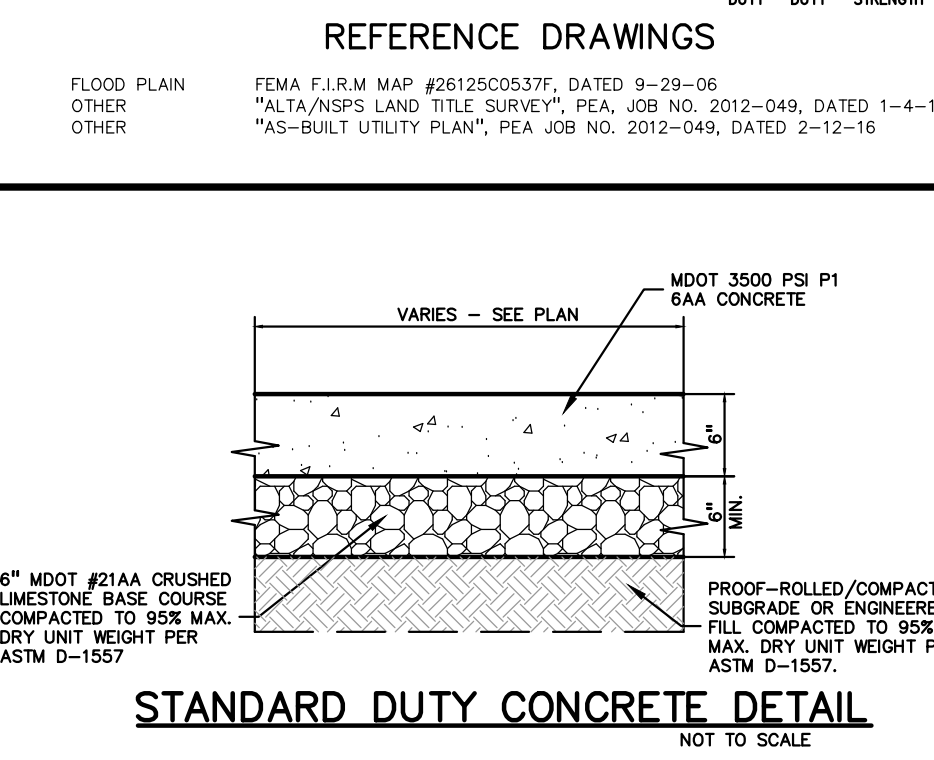
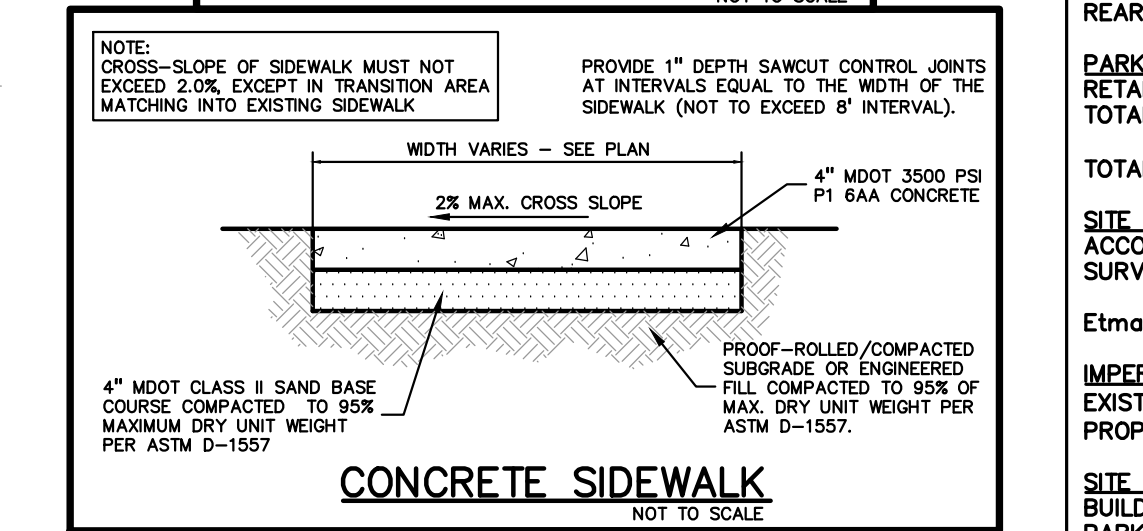
BEZTAZ COMPANIES		TOPOGRAPHIC SURVEY		SUR.		KTR		P.M.		JBT	
31731 NORTHWESTERN HWY. SUITE 250W	FARMINGTON HILLS, MI 48334	ALL SEASONS OF BIRMINGHAM	PART OF THE NE 1/4 OF SECTION 36, T.2N, R.10E, CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN	DES.	TKM	DN.	TKM	SUR.	TKM	DN.	TKM

ORIGINAL ISSUE DATE:
MARCH 12, 2020

PEA JOB NO. 2012-049

SCALE: 1" = 10'

DRAWING NUMBER:
P-1.0



TITLE TABLE:

EA: 0.35 ACRES (15,346 SQ.FT.) NET AND GROSS

MU-3 (TRIANGLE DISTRICT)

ED USE: INDEPENDENT SENIOR LIVING

UNIT: 24 TOTAL UNITS

GENERAL INFORMATION:

MIN ALLOWABLE BUILDING HEIGHT = 50 FEET (4 STORIES)

ED BUILDING HEIGHT = 4 STORY

G FOOTPRINT AREA = 9,369 SQ.FT.

G LOT COVERAGE = 61.1%

PERMIT REQUIREMENTS:

<u>REQUIRED:</u>	<u>PROPOSED:</u>
0'	0'
0'	0'/1.6'
0'	37.9'

SPACING CALCULATIONS:

= 0.5 SPACES PER UNIT

PARKING REQUIRED = $0.5 \times 24 = 12$ SPACES

PROPOSED PARKING SPACES = 22 SPACES INC. 2 H/C SPACES

PLS. INFORMATION:

ACCORDING TO THE CALIFORNIA NATURAL RESOURCES CONSERVATION SERVICE WEB SITE
FOR OAKLAND COUNTY, THE SITE CONSISTS OF THE FOLLOWING SOIL TYPES:

- UDORTHENTS AND UDIPSAMMENTS, NEARLY LEVEL TO HILLY

ADDITIONAL AREA:

8 (81.3% SQ.F.)

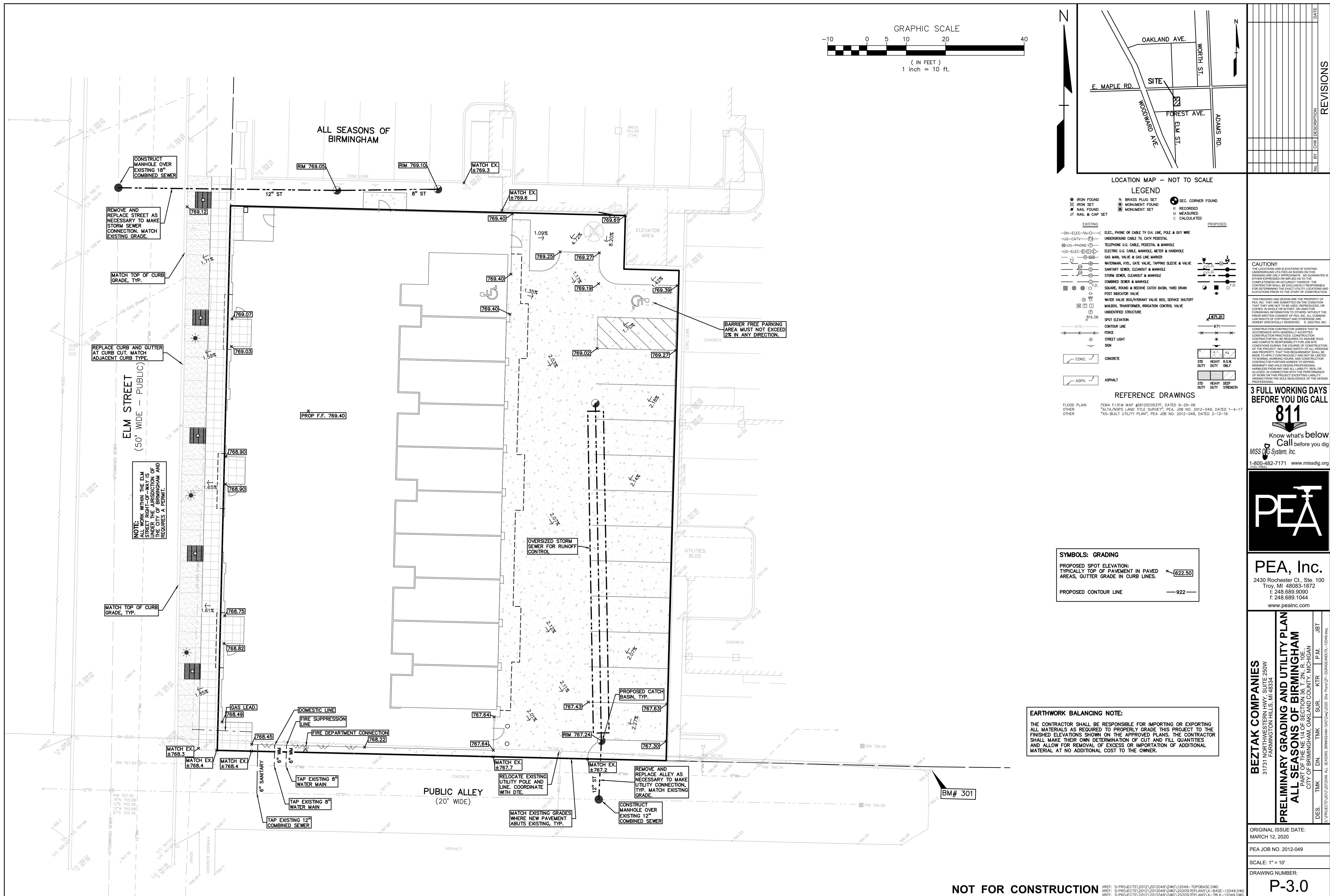
ED (96.9% S.F.)

REMARKS:

G FOOTPRINT = 9,369 SQ. FT.

G COVERED AND SIDEWALK = 1,000 SQ. FT.

BEZTAK COMPANIES 31731 NORTHWESTERN HWY., SUITE 250W FARMINGTON HILLS, MI 48334									
PRELIMINARY SITE PLAN ALL SEASONS OF BIRMINGHAM PART OF THE NE 1/4 OF SECTION 36, T. 2N., R. 06E., CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN									
DES.	TMK	DN.	TMK	SUR.	KTR	P.M.	JBT		
ORIGINAL ISSUE DATE: MARCH 12, 2020 PEJA JOB NO. 2012-049 SCALE: 1" = 10'									

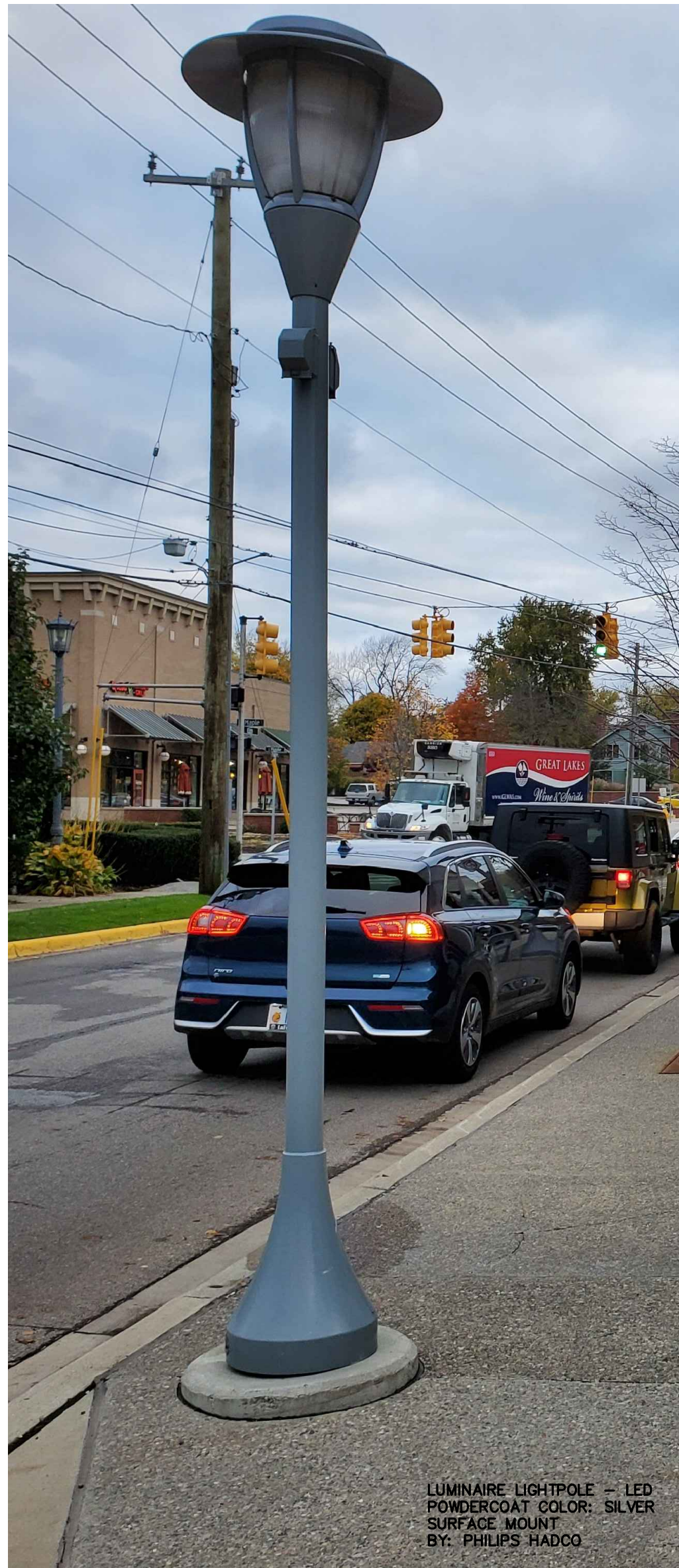


A stainless steel trash can with a perforated base and a handle. The can is rectangular with rounded corners and a handle on the right side. The base is covered in a grid of small holes.

SCALE: 1" = 1'-0"



SCALE: 1" = 1'-0"



SCALE: 1" = 1'-0"

SCALE: 1" = 1'-0"

SCALE: 1" = 1'-0"

XREF: S:\PROJECTS\2012\2012049\DWG\12049-TOPBASE.DWG
XREF: S:\PROJECTS\2012\2012049\DWG\2020SITEPLANS\X-BASE-12049.DWG
XREF: S:\PROJECTS\2012\2012049\DWG\2020SITEPLANS\X-TBLK-12049.DWG

[illegible]

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PRELIMINARY LANDSCAPE DETAILS
ALL SEASONS OF BIRMINGHAM

PART OF THE N 1/4 OF SECTION 36, T. 2N., R. 10E.
 CITY OF BIRMINGHAM, OKLAHOMA COUNTY, MICHIGAN

DES.	TWK	DN.	TWK	KTR	JBT
Notes: See the Instrument(s) referenced above. All Seasons Preliminary Survey from Plat No. 2-0-2004-00426-02 DE					

ORIGINAL ISSUE DATE:
MARCH 12, 2020

PEA JOB NO. 2012-049


SCALE: 1" = 10'

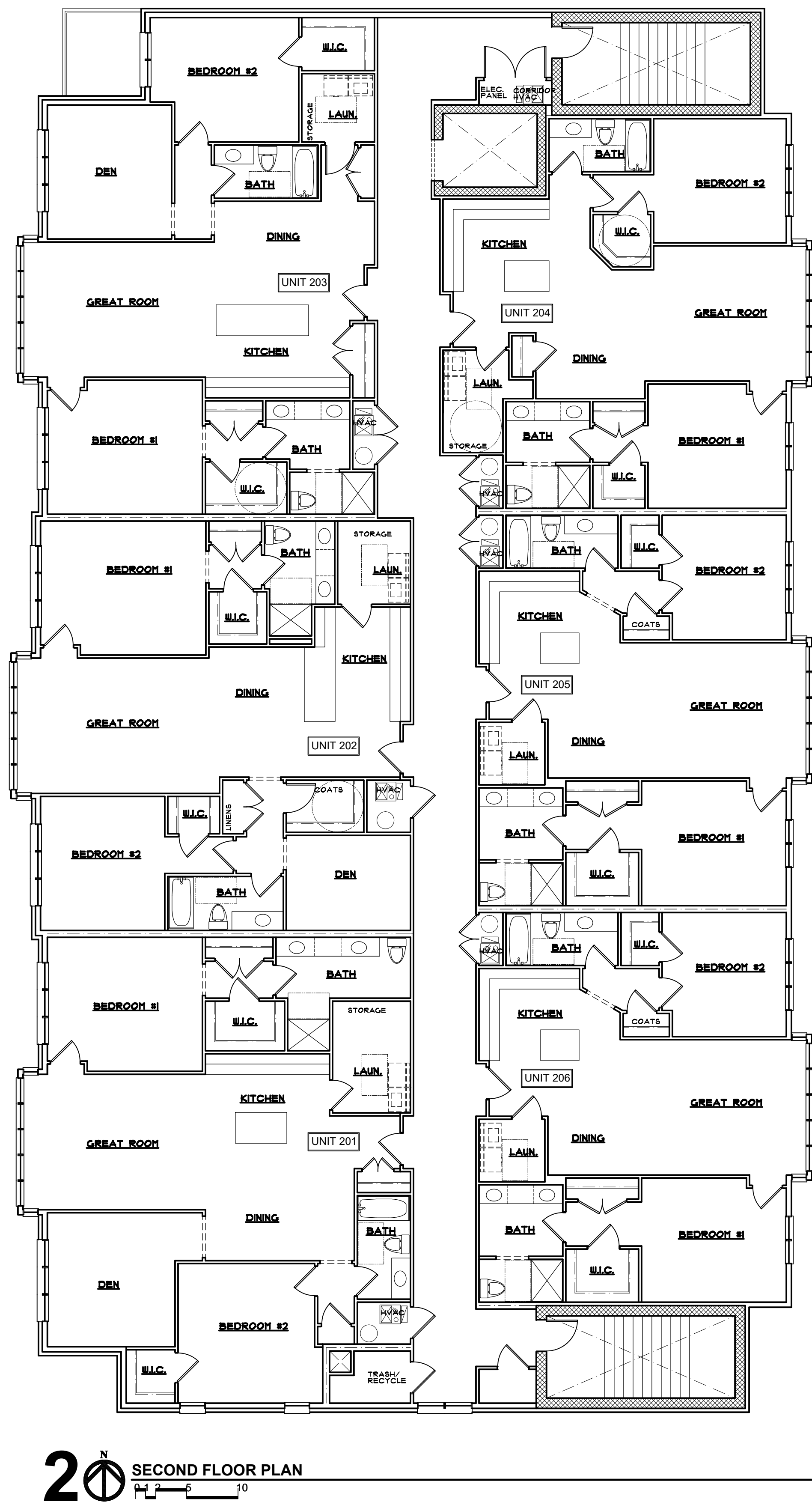
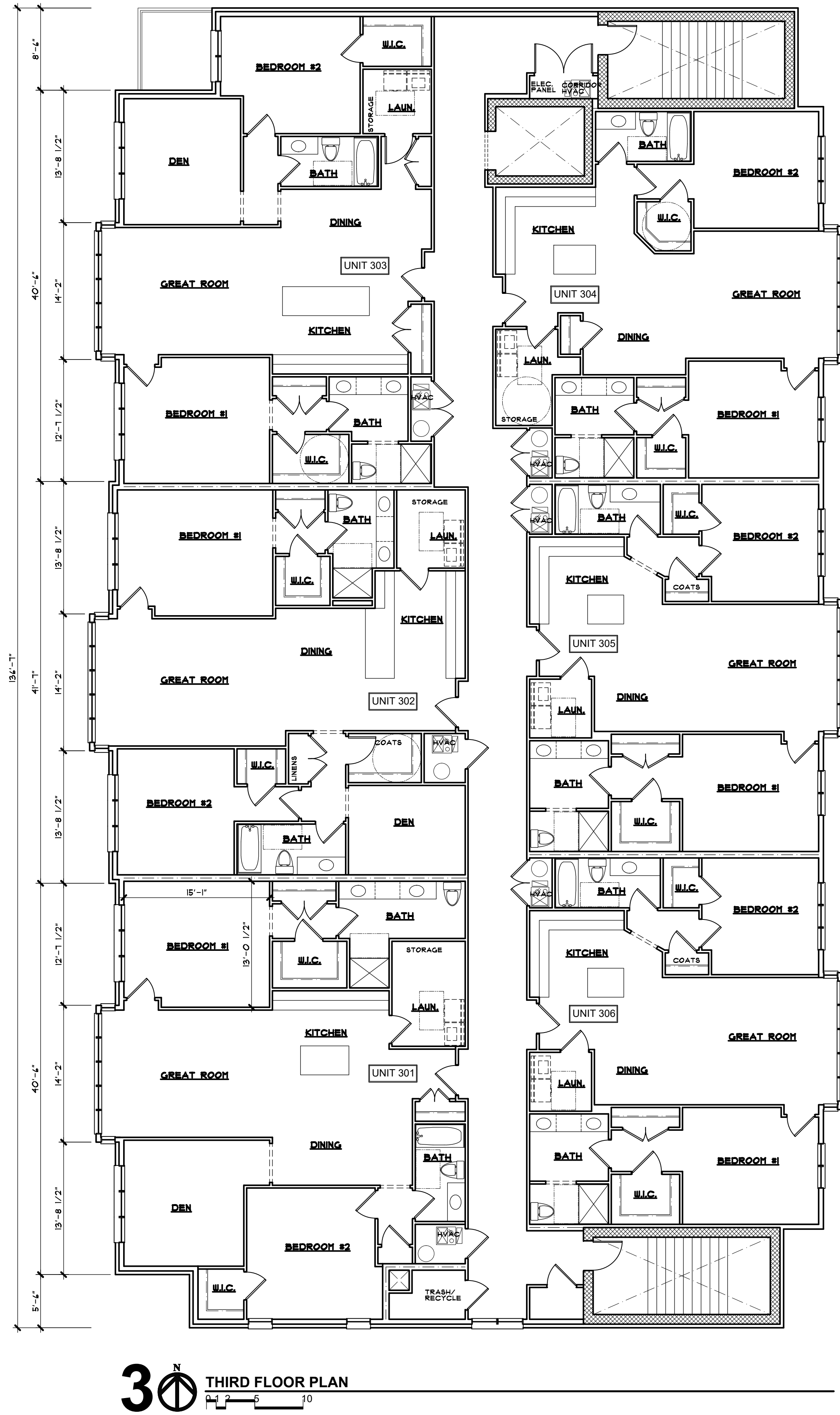
DRAWING NUMBER:

L-2.0



<u>FLOOR</u>	<u>UNIT #</u>	<u>SQ. FT.</u>	<u>FOOTPRINT</u>
<u>FIRST</u>	101	1387	9556
	102	1426	
	103	1237	
<u>SECOND</u>	201	1552	9964
	202	1483	
	203	1492	
	204	1226	
	205	1194	
	206	1191	
<u>THIRD</u>	301	1552	9964
	302	1483	
	303	1492	
	304	1226	
	305	1194	
	306	1191	
<u>FOURTH</u>	401	1682	8670
	402	1557	
	403	1226	
	404	1194	
	405	1191	
<u>FIFTH</u>	501	1369	7212
	502	1469	
	503	1346	
	504	1342	
<u>UNIT COUNT</u>			
24 UNITS		32702	45366
<u>ROOF TERRACE</u>	1212		

	
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2nd + 3rd FLR. PLANS

PRELIMINARY

BEZTAK
ALL SEASONS BIRMINGHAM
PHASE 2 ADDITION
BIRMINGHAM, MICHIGAN

■ SPA
2020-MAR-10

☐ BIDS

☐ PERMITS

☐ CONSTRUCTION

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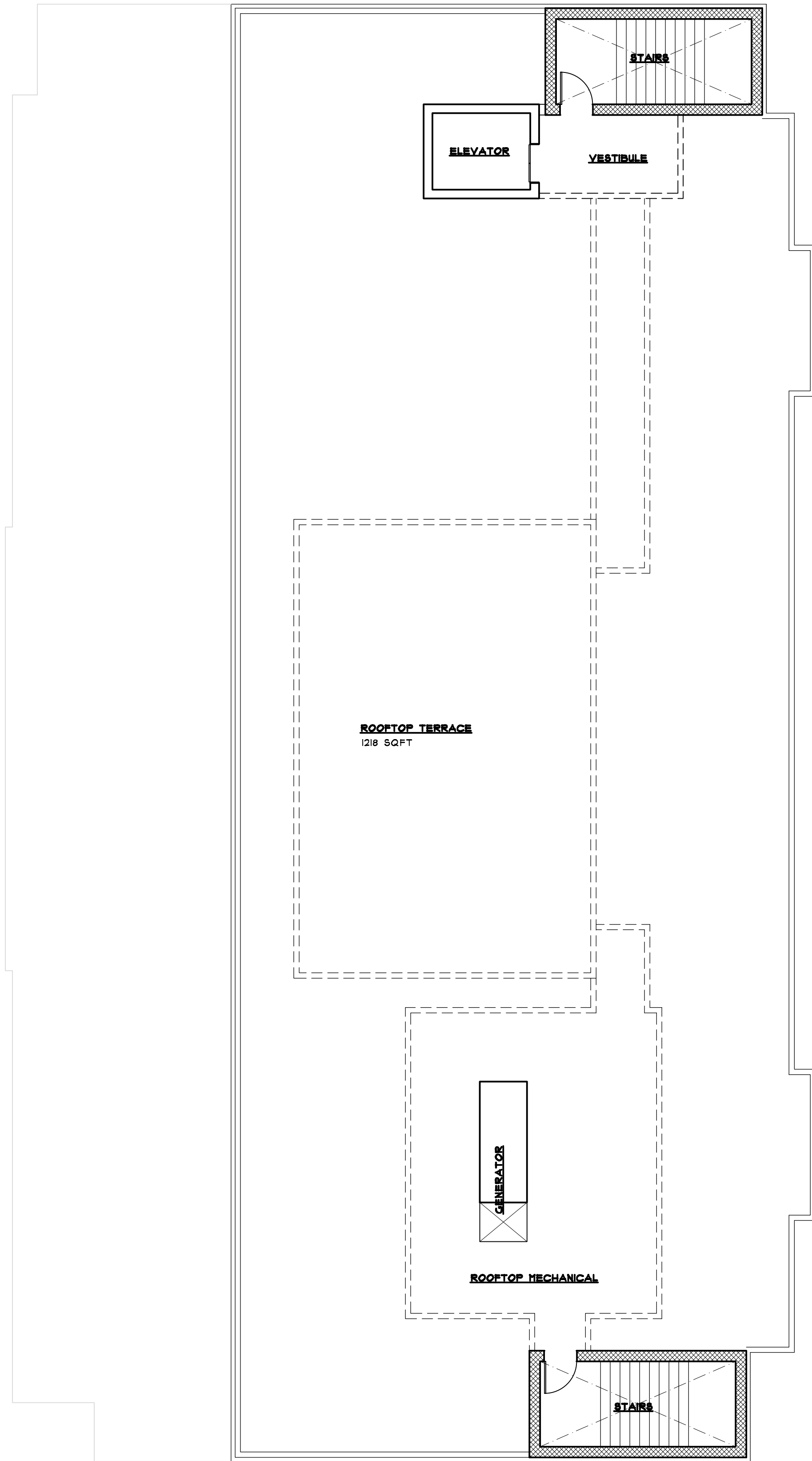
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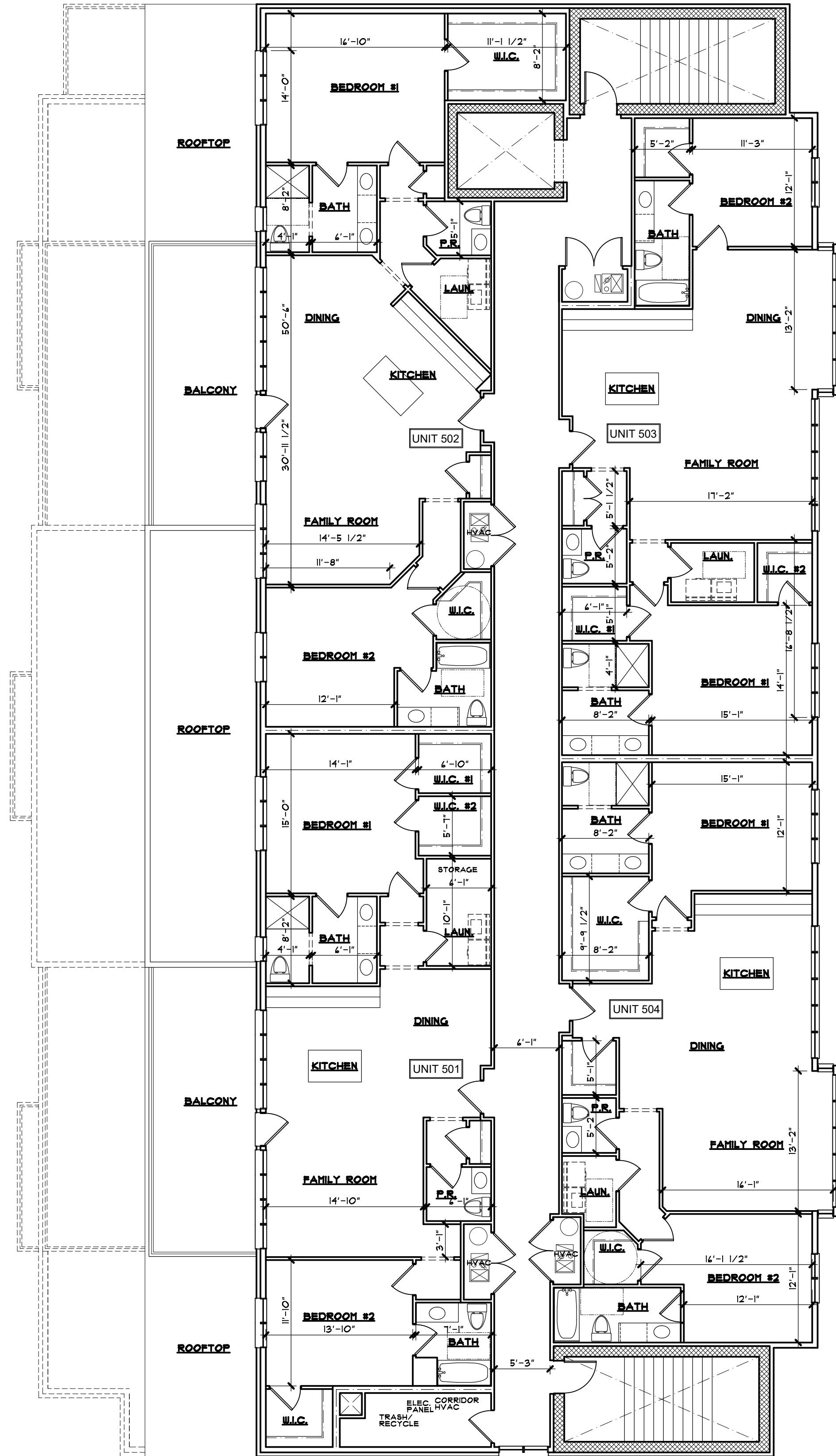
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DATE

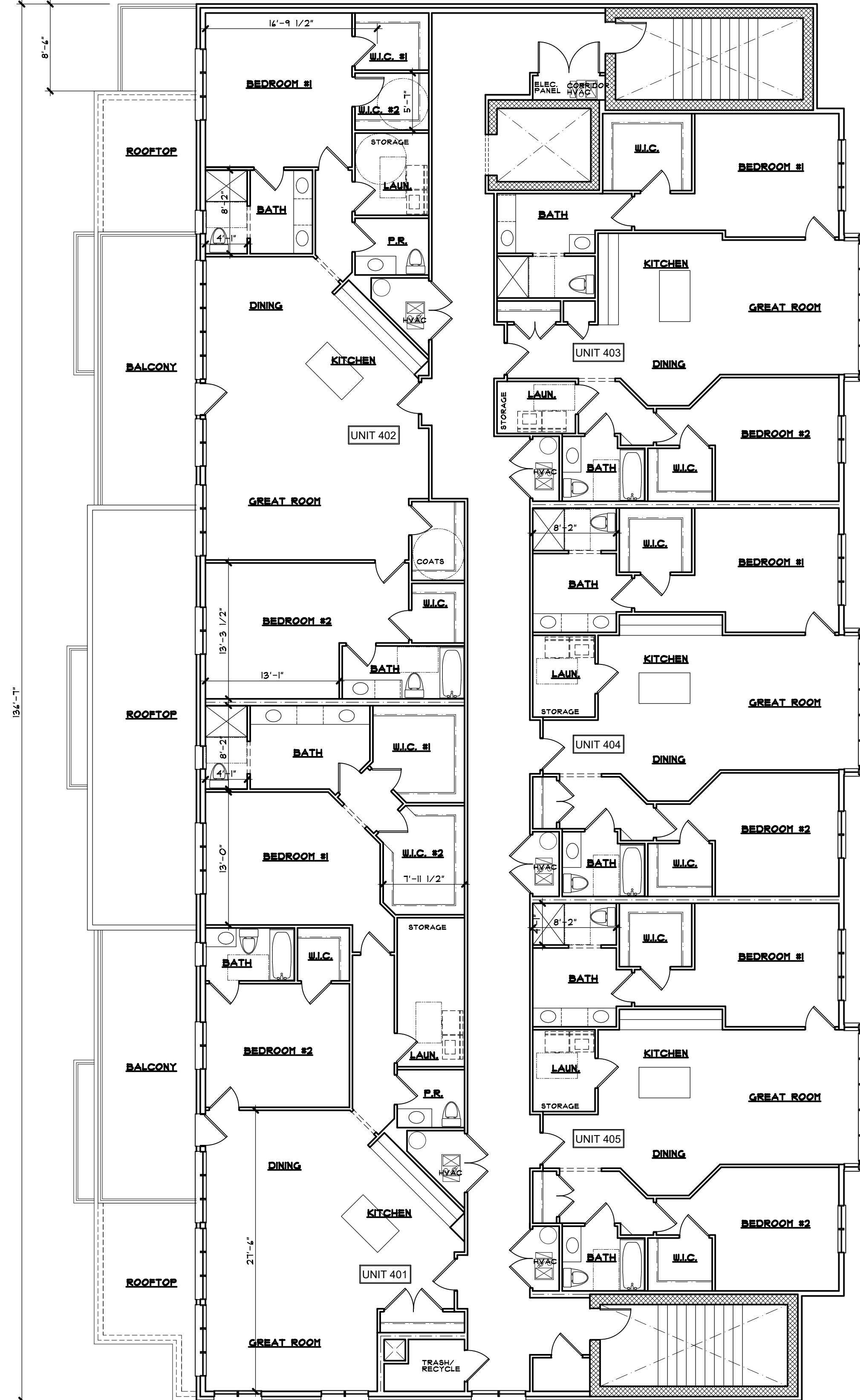
SHEET NUMBER



R ^N
ROOF PLAN
1" = 2' 5" = 10'



5 ^N
FIFTH FLOOR PLAN
1" = 2' 5" = 10'



4 ^N
FOURTH FLOOR PLAN
1" = 2' 5" = 10'

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PHASE 2 ADDITION
BIRMINGHAM, MICHIGAN

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WINDOW SILLS

IN DUELLING UNITS, WHERE THE OPENING OF AN OPERABLE WINDOW IS LOCATED MORE THAN 12" ABOVE FINISHED GRADE OR SURFACE BELOW, THE LOWER PORTION OF THE WINDOW SHALL BE A MINIMUM OF 24" INCHES ABOVE THE FINISHED FLOOR OF THE ROOM IN WHICH THE WINDOW IS LOCATED. GLAZING BETWEEN THE WINDOW AND 24" SHALL BE FIXED OR HAVE OPENINGS THROUGH WHICH A 4 INCH DIAMETER SPHERE CANNOT PASS.

EXCEPTIONS:

1. WHERE THE OPENINGS WILL NOT ALLOW A 4" DIA. SPHERE TO PASS THROUGH THE OPENING UNLESS THE OPENING IS IN ITS LARGEST OPENED POSITION.
2. OPENINGS THAT ARE PROVIDED WITH WINDOW GUARDS THAT COMPLY WITH ASTM F2090.

OVERHANGS & DRAINAGE

PROVIDE GUTTERS AND DOWNSPOUTS FOR DRAINAGE OF ROOF WATER. DOWNSPOUTS ARE TO BE CONNECTED TO THE STORY WATER COLLECTION SYSTEM. SEE CIVIL ENGINEERING DRAWINGS FOR CONNECTION DETAILS/LOCATIONS.

DOWNSPOUT LOCATIONS ARE T.B.D. BY BUILDER.

UNLESS NOTED OTHERWISE OVERHANG DIMENSIONS ARE 12" FROM FRAME. RAKE DIMENSIONS ARE 4" AT BRICK AND 6" AT SIDING.

STEEL LINTEL SCHEDULE	
LOOSE STEEL LINTELS FOR MASONRY - EXTERIOR ANGLES FOR BRICK OR STONE (NO FLOOR LOAD)	
MAX. CLEAR SPAN	LINTEL SIZE
5'-0" OR LESS	3 1/2" x 3 1/2" x 5/16"
7'-0" OR LESS	4" x 3 1/2" x 5/16"
8'-0" OR LESS	5" x 3 1/2" x 5/16"
9'-0" OR LESS	5" x 3 1/2" x 3/8"
10'-0" OR LESS	4" x 3 1/2" x 3/8"
NOTE: THIS SCHEDULE APPLIES UNLESS NOTED OTHERWISE ON THE PLANS AND/OR ELEVATIONS.	
NOTE: STEEL ANGLE LINTELS REQUIRE A SHOP COAT OF CORROSION-INHIBITIVE PAINT EXCEPT FOR LINTELS MADE OF RUST-ORIGIN-RESISTANT STEEL.	

**GENERAL REFERENCE FOR
ROUGH OPENING SIZES ONLY.**

**CONSULT WITH WINDOW
MANUFACTURER FOR EXACT
WINDOW SIZES & REQUIREMENTS.**

3'-0"

5'-0"

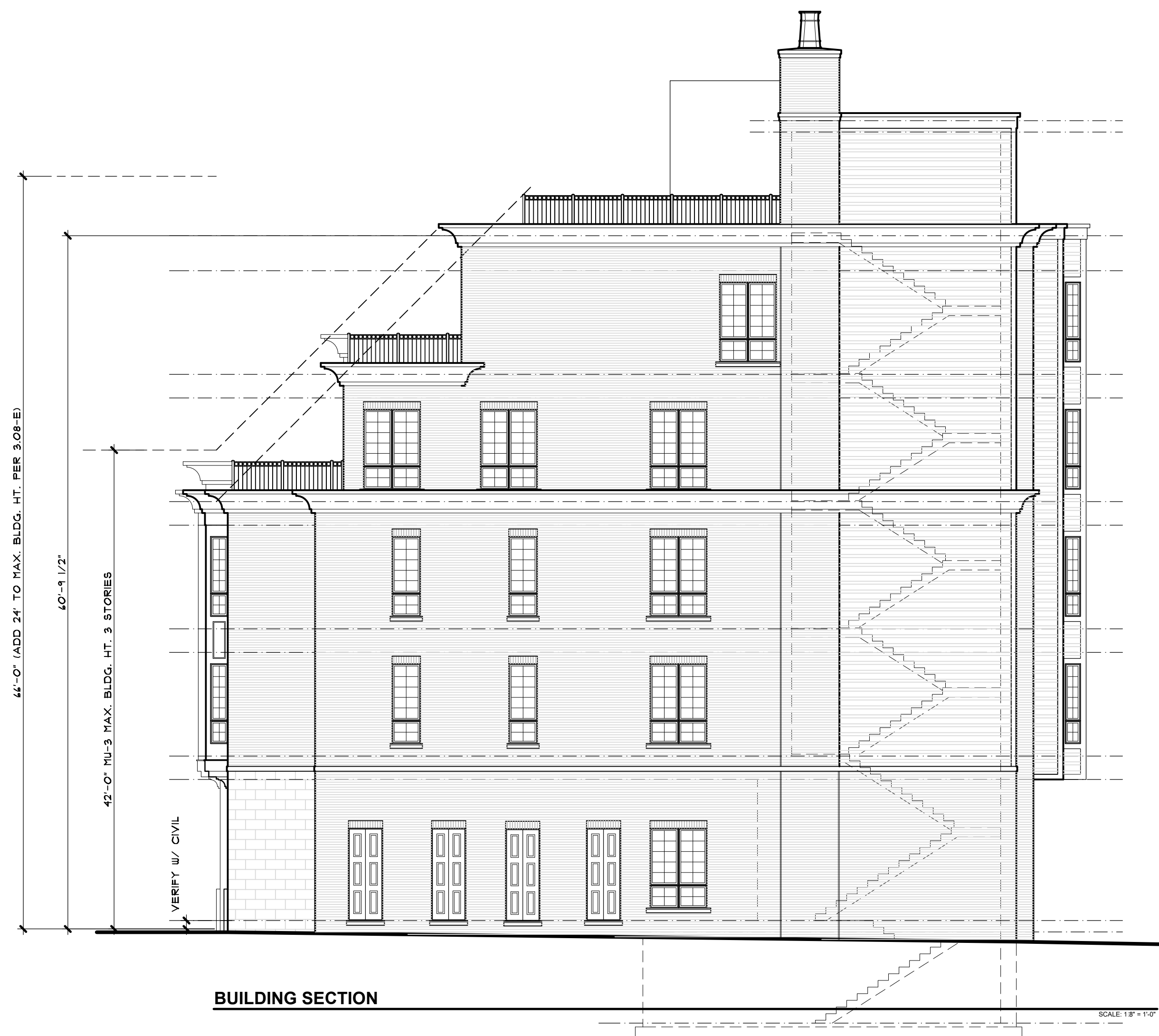
30x50

EGRESS WINDOW

EVERY SLEEPING ROOM SHALL HAVE AT LEAST ONE OPERABLE WINDOW OR EXTERIOR DOOR APPROVED FOR EMERGENCY EGRESS OR RESCUE. THE UNIT(S) MUST BE OPERABLE FROM THE INSIDE TO A FULL CLEAR OPENING WITHOUT THE USE OF SEPARATE TOOLS. WHERE WINDOWS ARE PROVIDED AS A MEANS OF EGRESS OR RESCUE, THEY SHALL HAVE SILL HEIGHT OF NOT MORE THAN 44 INCHES ABOVE THE FLOOR. ALL EGRESS OR RESCUE WINDOWS FROM SLEEPING ROOMS SHALL HAVE A MINIMUM NET CLEAR OPENING HEIGHT DIMENSION SHALL BE 24 INCHES AND WIDTH OF 20 INCHES.



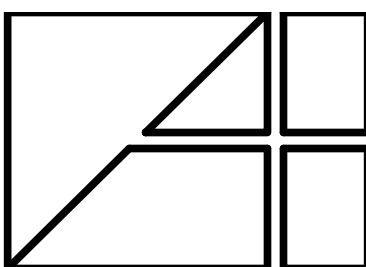
WEST ELEVATION (ELM STREET)



BUILDING SECTION

SCALE: 1/8" = 1'-0"

NOTE TO BUILDING OFFICIAL:
THIS DRAWING IS NOT VALID
UNLESS THE SIGNATURE AND
SEAL ARE IN BLUE INK.



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HEET TITLE _____
BLDG. SECT. _____

PRELIMINARY

CLIENT/PROJECT
BEZTAK
ALL SEASONS BIRMINGHAM
PHASE 2 ADDITION
BIRMINGHAM, MICHIGAN

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BIDS

PERMITS

☐ CONSTRUCTION

REVISIONS

DRAWN BY _____

CAD FILENAME —

CHECKED BY _____

JOB NUMBER _____

DATE _____

SHEET NUMBER _____

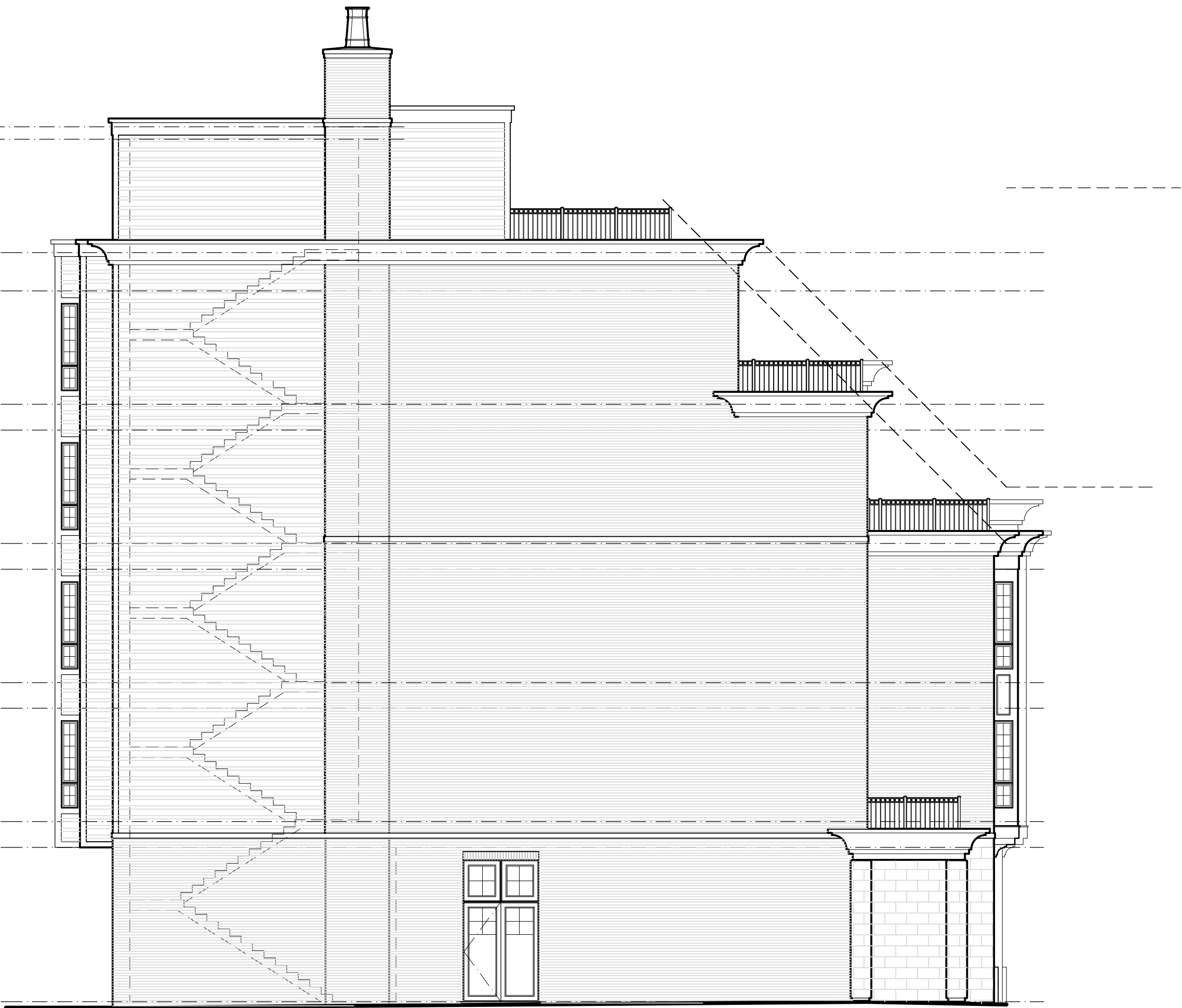


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EAST (REAR) ELEVATION

SCALE: 1/8" = 1'-0"



NORTH (RIGHT SIDE) ELEVATION

SCALE: 1/8" = 1'-0"

WINDOW SILLS

IN DWELLING UNITS, WHERE THE OPENING OF AN OPERABLE WINDOW IS LOCATED MORE THAN 12" ABOVE FINISHED GRADE OR SURFACE BELOW, THE LOWEST PART OF THE CLEAR OPENING OF THE WINDOW SHALL BE A MINIMUM OF 24" INCHES ABOVE THE FINISHED FLOOR OF THE ROOM IN WHICH THE WINDOW IS LOCATED. GLAZING BETWEEN THE FLOOR AND 24" SHALL BE FIXED OR HAVE OPENINGS THROUGH WHICH A 4" DIA. SPHERE CANNOT PASS.

EXCEPTIONS:

1. WINDOWS WHOSE OPENINGS WILL NOT ALLOW A 4" DIA. SPHERE TO PASS THROUGH THE OPENING WHERE THE OPENING IS IN ITS LARGEST OPENED POSITION.
2. OPENINGS THAT ARE PROVIDED WITH WINDOW GUARDS THAT COMPLY WITH ASTM F2090.

OVERHANGS & DRAINAGE

PROVIDE GUTTERS AND DOWNSPOUTS FOR DRAINAGE OF ROOF WATER. DOWNSPOUTS ARE TO BE CONNECTED TO THE STORY WATER COLLECTION SYSTEM. SEE CIVIL ENGINEERING DRAWINGS FOR CONNECTION DETAILS/LOCATIONS.

DOWNSPOUT LOCATIONS ARE T.B.D. BY BUILDER.

UNLESS NOTED OTHERWISE OVERHANG DIMENSIONS ARE 12" FROM FRAM. RAKE DIMENSIONS ARE 4" AT BRICK AND 4" AT SIDING.

STEEL LINTEL SCHEDULE

LOOSE STEEL LINTELS FOR MASONRY - EXTERIOR ANGLES FOR BRICK OR STONE (NO FLOOR LOAD)

MAX. CLEAR SPAN	LINTEL SIZE
5'-0" OR LESS	3 1/2" x 3 1/2" x 5/16"
7'-0" OR LESS	4" x 3 1/2" x 5/16"
8'-0" OR LESS	5" x 3 1/2" x 5/16"
9'-0" OR LESS	5" x 3 1/2" x 3/8"
10'-0" OR LESS	6" x 3 1/2" x 3/8"

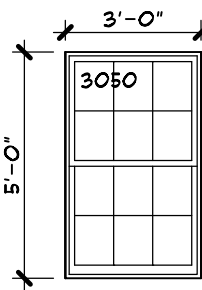
NOTE: THIS SCHEDULE APPLIES UNLESS NOTED OTHERWISE ON THE PLANS AND/OR ELEVATIONS.

NOTE: STEEL ANGLE LINTELS REQUIRE A SHOP COAT OF RUST-INHIBITIVE PAINT EXCEPT FOR LINTELS MADE OF CORROSION-RESISTANT STEEL.

TYP. WINDOW DESIGNATION

GENERAL REFERENCE FOR ROUGH OPENING SIZES ONLY.

CONSULT WITH WINDOW MANUFACTURER FOR EXACT WINDOW SIZES & REQUIREMENTS.



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BIRMINGHAM, MICHIGAN

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BIRMINGHAM, MICHIGAN

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DATE

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ELEVATIONS

PRELIMINARY

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ELM STREET ELEVATION

SCALE: 3/32" = 1'-0"

03.10.2020





April 16, 2020

VIA EMAIL

Ms. Jana L. Ecker
Planning Director
City of Birmingham
151 Martin Street, P.O. Box 3001
Birmingham, MI 48012

**RE: All Seasons Phase 2
219 Elm Street, Birmingham, MI
Site Plan and Community Impact Statement Review**

Dear Ms. Ecker:

Fleis & VandenBrink (F&V) staff have completed our review of the proposed All Seasons Phase 2 (219 Elm Street) Site Plan and Community Impact Statement dated March 6, 2019, which was received by F&V on April 16, 2020. Based on our review of the TIS we have the following comments:

1. The proposed development is Phase 2 of the adjacent All Seasons of Birmingham located at 111 Elm Street. All Seasons Phase 2 includes an independent senior living facility with 25 attached units for lease. Phase 2 will be an expansion of the existing All Seasons facility. Internal access is proposed for residents of Phase 2 to access the existing All Seasons building and amenities.
2. The trip generation analysis provided in CIS for the proposed development utilized the Institute of Transportation Engineers (ITE) Trip Generation Manual, 10th Edition land use code (LUC) 221-Multi-Family Housing, Mid-Rise. Since the proposed development provides a senior living facility LUC 252-Senior Adult Housing Attached was also reviewed. The trip generation included in the CIS and the projected trip generation for the proposed land uses are summarized in the table below.

Land Use	ITE Code	Size	Unit	Average Daily Traffic (vpd)	AM Peak Hour (vph)			PM Peak Hour (vph)		
					In	Out	Total	In	Out	Total
Multi-Family Housing (Mid-Rise)	221	25	DU	135	2	7	9	7	5	12
Senior Adult Housing-Attached	252	25	DU	75	2	3	5	4	4	8

3. The current land use on this site includes a small office building with multiple tenants. F&V compared the trips generated by the proposed development (senior housing) to the existing land use (small office) to determine the overall impact of the proposed development on the adjacent roadway. The results of the analysis are summarized in the table below and show the proposed development will generate less trips than the existing land use.

Land Use	ITE Code	Size	Unit	Average Daily Traffic (vpd)	AM Peak Hour (vph)			PM Peak Hour (vph)		
					In	Out	Total	In	Out	Total
Small Office Building	712	6,000	SF	97	10	2	12	12	3	15
Senior Adult Housing-Attached	252	25	DU	75	2	3	5	4	4	8
Difference				-22	-8	1	-7	-8	1	-7

27725 Stansbury Boulevard, Suite 195
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P: 248.536.0080
F: 248.536.0079
www.fveng.com

4. Additional on-site parking is provided with the proposed development. Access to the parking lot is via the existing alley east of Elm Street. This section of the alley provides access to the existing All Seasons property, however it does not continue through to Adams Street. Therefore, trips generated at this access will be limited to the All Seasons properties and the existing adjacent land uses at the intersection of Forest and Elm.
5. The Phase 2 site frontage on Elm Street does not provide a pick-up/drop-off area for residents of the proposed development. The existing All Seasons property provides an internal circular drive for this use; this includes personal vehicles, ride share (Uber/Lyft), and shuttle bus operations. The pick-up/drop-off operations of the All Seasons site should be centralized to insure that through traffic on Elm Street is not impacted.

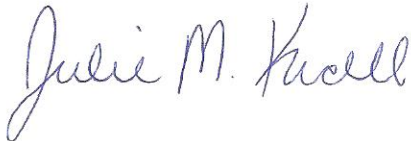
SUMMARY

- The proposed development plan is expected to generate *less* traffic than the current office land use.
- The pick-up/drop-off operations for All Seasons Phase 2 should be centralized, utilizing the existing All Seasons circular drive.

We hope that this report addresses the City's needs regarding this project. If you have any questions, please do not hesitate to contact us at your convenience.

Sincerely,

FLEIS & VANDENBRINK ENGINEERING, INC.



Julie M. Kroll, PE, PTOE
Traffic Engineering Services Manager